

## JOURNAL OF THE HOUSE

## Sixty-third Legislative Assembly

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Bismarck, January 9, 2013

The House convened at 1:00 p.m., with Speaker Devlin presiding.

The prayer was offered by Pastor Rich Wyatt, Living Hope Nazarene Church, Bismarck.

The roll was called and all members were present except Representatives Amerman, Boehning, Fehr, Steiner, Strinden, Weisz, and Zaiser.

A quorum was declared by the Speaker.

**CORRECTION AND REVISION OF THE JOURNAL**

**MR. SPEAKER:** Your **Committee on Correction and Revision of the Journal (Rep. Kretschmar, Chairman)** has carefully examined the Journal of the First Day and recommends that it be corrected as follows and when so corrected, recommends that it be approved:

Page 31, line 6, replace "12:30" with "12:00"

Page 31, delete line 8

Page 31, line 9, replace "Representative Zaiser" with "Representatives Amerman, Fehr, Karls, and Zaiser"

Page 31, delete line 27

Page 31, after line 29, insert "Lt. Governor Wrigley appointed Sen. Hogue and Rep. Koppelman to the committee."

Page 31, line 35, replace "Sen." with "Sens."

Page 31, after line 42, insert:

**"OATH OF OFFICE TO ELECTED OFFICIALS**

**CHIEF JUSTICE VANDEWALLE ADMINISTERED** the Oath of Office to the elected officials: Lt. Governor Drew Wrigley, Auditor Robert Peterson, Treasurer Kelly Schmidt, Commissioner of Insurance Adam Hamm, Public Service Commissioner Randy Christmann, Public Service Commissioner Julie Fedorchak, Superintendent of Public Instruction Kirsten Tschosik and Justice of the Supreme Court Daniel Crothers.

The Horizon Middle School Freshman Choir sang "For The Beauty of the Earth.""

Page 38, remove lines 2 through 8 and lines 15 through 18

**REP. KRETSCHMAR MOVED** that the report be adopted, which motion prevailed.

**MOTION**

**REP. VIGESAA MOVED** that the absent members be excused, which motion prevailed.

**MOTION**

**REP. VIGESAA MOVED** that the House be on the Ninth order of business and at the conclusion of that order, the House stand in recess until 1:15 p.m., at which time the House will meet in Joint Session with the Senate and that after the Joint Session with the Senate, the House stand adjourned until 1:00 p.m., Thursday, January 10, 2013, which motion prevailed.

**THE HOUSE RECONVENED** pursuant to recess taken, with Speaker Devlin presiding.

**MOTION**

**REP. VIGESAA MOVED** that a committee of two be appointed to escort Lt. Governor Drew Wrigley to the rostrum, which motion prevailed.

The Speaker appointed Reps. Sanford and Meier to the escort committee.

**SPEAKER DEVLIN PRESENTED** Lt. Governor Wrigley to the Assembly and turned the gavel over to him.

**MOTION**

**REP. VIGESAA MOVED** that a committee of two be appointed to escort the justices of the North Dakota Supreme Court to the seats reserved for them in the chamber, which motion prevailed.

The Chair appointed Sen. Klein and Rep. Vigesaa to the escort committee.

**MOTION**

**REP. VIGESAA MOVED** that a committee of two be appointed to escort the Chief Justice Gerald VandeWalle, to the rostrum, which motion prevailed.

The Chair appointed Sen. Hogue and Rep. Kretschmar to the escort committee.

**STATE OF THE JUDICIARY MESSAGE**

**January 9, 2013**

**Chief Justice Gerald W. VandeWalle**

**Introduction**

Lieutenant Governor Wrigley, Speaker Devlin, Governor Dalrymple, members of the Legislative Assembly, State executive officials, my judicial colleagues — the district judges and supreme court justices — and other friends. Thank you for the privilege of appearing before this Joint Session of the Sixty-third Legislative Assembly of our great State.

I begin this State of the Judiciary by observing that access to the courts and the ability to participate in one's own case are key concepts in delivering justice. We do not always meet that goal but we remain intent on keeping open the window of opportunity for all who seek remedy in our courts.

To that extent, I am pleased to report that for the most part the state of the North Dakota Judicial System is healthy. However, we are in need of your help to maintain the strength and vigor we must have to meet the challenges we face. I offer this brief review of what has happened, is happening and will be happening in the Judicial system:

**Task Force To Study Racial and Ethnic Bias in the Courts**

Four years ago, I came to the Legislature to request funding for a task force to study racial and ethnic bias in the court system. The task force which was so ably co-chaired by Supreme Court Justice Carol Kapsner and District Court Judge Donovan Foughty has completed its initial investigation. The results may not be what we might have envisioned. Despite our efforts to ensure that we have a fair and impartial justice system, there is a perception of bias in the courts. Some of this may be a result of national controversies, some is obviously local. As our economy grows our population becomes more diversified. We need to be aware and understand what that means to the judicial system. We intend to keep working on this issue. The judicial branch has neither the power of the sword nor the purse but instead must rely on the respect of the people in order to carry out its duties. The trust of the people in our ability to run a fair and impartial court system is not just an ideal but a necessity for us to function as our Constitution envisions.

**Mediation Program**

Five years ago, we started a mediation pilot program to address the needs of families going through child custody proceedings. This program is available everywhere in the state and is allowing rural, low-income, minority and self-represented people access to mediation they would not have otherwise. It has proven to be a well accepted program, with an 87% user satisfaction rate and a success rate that exceeded our expectations. We knew from previous evaluations that the program was having a positive impact on the number of cases that

settled through mutual agreement of the parties. This past year, we had the opportunity to look at two other areas where we had hoped to see a positive impact:

First, the time it takes to reach a final agreement, and

Second, how often cases are re-opened because of new disputes.

I am very pleased to report that our program is having the outcome we had hoped for. The evaluation found that the mediation process reduced the time to settlement by as much as 5 months in the Northwest Judicial District. Furthermore, those cases that go through mediation are 60% less likely to be re-opened than cases that have not had the benefit of mediation. While that is good news for the court it is even better news for the families who are wrestling with the emotional, financial and legal issues that are part of any custody proceeding. Our goal is to keep family relationships civil and positive for the children involved.

We are considering building on the success of this mediation program by expanding it to family and probate cases on appeal. Our goal in implementing appellate mediation is the same as for the district court program — to minimize family conflict, to encourage shared decision-making, and to support healthy relationships and communication among family members. We believe that less time spent in litigation means less animosity and less expense for all concerned.

### **Parenting Coordinator Program**

Where the Mediation Program is designed to assist parties early on in their case, the Parenting Coordinator Program is designed to assist parties after the parenting order is final. This program is the result of recommendations that came through the 2007-2009 interim committee on Judicial Process from the State Bar Association. The program is designed for those high-conflict cases where children are continually caught between parents whose parenting time becomes a tool in their on-going conflict with each other. In those cases, the judge can order the parties to pay for a parenting coordinator who has the authority to handle parenting time disputes immediately, without either party having to hire an attorney or file a motion with the court. By statute, this program is set to sunset on June 30, 2013. Anecdotal evidence suggests that it is effective and acceptance is growing. The State Bar Association is asking you to lift the sunset clause in the statute and we support that request. There is only minimal cost to the state to continue the program but it is one more opportunity the court has to bring families to work together rather than fighting each other.

### **Problem Solving Courts**

We currently have juvenile drug courts in six locations and adult drug courts in four locations and are in the process of establishing a juvenile drug court to serve the Valley City and Jamestown region. Interest is growing in other areas as well. Once again, I acknowledge Justice Mary Maring's and Judge Gail Hagerty's initiatives and the role of the executive and legislative branches in making these courts successful. The success of these courts truly rests on active collaboration between all three branches of government.

And in the area of problem solving courts and children and families, we are planning to move forward with North Dakota School Justice Partnership Leaders, Kirsten Baesler, Superintendent of Public Instruction, and Scott Davis, Indian Affairs Commissioner, in a national program to "keep kids in school and out of court." While North Dakota has a good record of school attendance and graduation, there are areas in which we can improve. The juvenile drug courts have been effective on that front and we will look at other instances in which we can cooperate with schools and other agencies. We want the juvenile courts to be an ally and not an obstacle to reducing the drop-out rate and keeping kids in school.

Recently, many states have implemented Veterans Courts to help veterans in the justice system as a result of their service to our Country. Our Court Services Administration Committee, chaired by Justice Daniel Crothers, examined the possibility of establishing such a court in North Dakota. Problem-solving courts demand a great deal of resources not just from the judiciary but many other entities including service providers, prosecutors and defense attorneys, probation, and community supporters. Our Committee determined there is not enough localized need in any area in the state to support a separate veterans court, but it did identify ways we can improve our court process to recognize when service-related

issues are present. I assure you that this is something that is on our minds, and if we see an increasing need, we will respond accordingly. Our impaired veterans deserve no less.

### **Technology**

I am pleased to report that our case management system, Odyssey, is implemented, and after April 1 of this year, 2013, all documents filed after the initiating pleadings must be filed electronically except for documents filed by self-represented litigants and prisoners; after June 1 of this year, initiating pleadings must be filed electronically in civil, non-juvenile cases. I am grateful to Justice Dale Sandstrom and the other members of the Court Technology Committee and technology staff for spearheading this momentous project, as well as you, the Legislature, who provided the funding. While there are still some problems we continue to resolve, we are well on our way to becoming a fully paperless system.

### **Guardianship Issues**

Under the study resolution adopted in the 2011 Legislative Session, the interim Human Services Committee received a report on the guardianship system in North Dakota. The report contained a number of recommendations that fell into three basic categories:

- 1.Strengthening procedural protections during the guardianship appointment process;
- 2.Providing better safeguards for those under guardianship; and
- 3.Stabilizing funding of the Public Administrator system.

The Human Services Committee voted to move forward on recommendations related to procedural protections and funding public administrators. The Court is also moving forward on the guardianship and elder issues. I am in the process of establishing an interdisciplinary network of stakeholders to make recommendations for improvements and to assist in implementing best practices in this area. Our goal in establishing this network is create a mechanism for all the entities who work with the elderly to work together to make a better system for the aged. As our elder population increases these issues require our continuing attention.

### **Rural Law Clerk Program**

Rural counties in North Dakota are facing a crisis in access to legal services. Currently, there are 21 counties that have 3 or fewer attorneys. In 4 of those counties, there are no attorneys at all. Many of the attorneys who live and practice in rural counties are nearing or past retirement age. At the suggestion of the State Bar Association, we are partnering with the UND Law School to create 3 summer internships for law students to address this shortage. These internships will be with judges chambered in communities with a population of 15,000 or less. We hope that this opportunity will show new lawyers the benefits of living and working in a small community and the satisfaction that can be found there.

### **UND Law School**

And speaking of the law school, I am pleased to hear the Governor's recommendation for the capital improvements to the UND School of Law. I say this not just as a proud alumnus of that school but because of the importance the school has to our state as a whole. The substantial majority of the lawyers practicing in our state are UND law school graduates. They chose to remain in North Dakota and become hardworking professionals who contribute to our economy and our communities. Of course, the building does not make the program. But the building does attract people to the law school and most importantly allows for increased opportunities to learn such as clinical legal education. As with the medical profession, we have a much better chance of retaining our young legal professionals if they choose to attend our law school.

### **Citizen Access Coordinator**

Every year, more people come to court without an attorney either by choice or because they are unable to afford one. Last year, we saw over 1,700 people who represented themselves in court in civil, family and juvenile cases. If we count the number of people who represented

themselves in felony, misdemeanor and infraction cases, that number jumps to over 6,500. As you might realize, navigating the court system is not a simple task. Too often these individuals are confused by the process and unable to proceed, requiring paperwork to be redone and hearings to be reset. This causes a great deal of frustration for the person and for the court. To confront this issue, we are proposing a new Citizen Access Coordinator position that will work under the auspices of the state law library. The Citizen Access Coordinator will be able to provide procedural advice and education to self-represented litigants. This in turn will help us to keep the wheels of justice turning.

### **Supreme Court Facilities**

Because there are several new legislators, I briefly review the history of the unification of the North Dakota Judicial Branch. It began well over a half century ago when the Legislature abolished the office of justice of the peace, it continued, some might say peaked, with the elimination of county judges, county justices and, in some instances by local option, municipal judges and the transfer of the jurisdiction of those courts to our district courts and the administration to the Chief Justice and State Court Administrator. With regard to the district courts, Cass County and Williams County have recently completed substantial improvements to their county courthouses with the assistance of the Court Facilities Fund you established. We are grateful to the counties for this undertaking.

It has now been six years since I first broached the subject of adequate space for the Supreme Court. In 1982, when we moved into the Judicial Wing, the entire supreme court, clerk's office, office of the court administrator, and law library consisted of 5 justices and 16 staff. At that time, we were allocated just 1/3 of the space we had requested and were told that it was a 10 to 15 year solution. A lot has changed in 30 years, chief among them, as I mentioned, is the unification of the county and district courts into a single entity under the administrative direction of the Chief Justice. Keeping in mind that most of the 22,000 square feet the court occupies actually consists of the courtroom, the law library, and records storage, we are squeezed to the limit to house 46 staff in space that was originally intended for 16. John Boyle with Facilities Management has informed us of a proposal that would allow additional space for the Judicial Branch. In any event, once again, I am asking for your assistance in resolving this issue.

### **Judicial Emergencies**

Most of you may not be familiar with the details of the practice of law, but you are all familiar with the flooding issues that we have been dealing with in this state. They disrupt the lives of individuals and wreak havoc on the ordinary course of business and government activity. When disasters happen, whether they are an act of God or man-made, the court needs the authority to ensure that the legal rights of litigants are protected. We have dealt with extended courthouse closures twice in the past fifteen years. I did not think lightning would strike twice. It did. This is why we are submitting a bill that will grant the supreme court the authority to temporarily suspend statutes of limitation in an orderly manner in the event of a disaster. It may seem like a small thing when people are faced with re-building homes and businesses but it is a significant step we can take to ensure no one loses their case because they or their attorney were displaced or a courthouse was closed.

### **Judges and Court Staff**

Courts are vital to maintaining the infrastructure of our society. Although not always noticeable, it becomes more apparent in the face of a rapidly changing economic and social landscape. This past summer, the State Bar Association undertook a study of the impact energy development is having on the justice system. They concluded that in order to meet the needs of northwestern North Dakota additional resources were needed across the board for courts, prosecutors, defense attorneys, social services, mental health providers and law enforcement. Businesses, government, and individuals need access to fair, quick and neutral dispute resolution. There is no doubt that in measuring the business climate of the State the due-process methods and the timeliness of the disposition of lawsuits plays a significant role in the result. Furthermore, backlogs drive up local incarceration costs, put the rights of the accused in jeopardy, impact businesses ability to operate, and damage families. In our energy-impacted counties we are seeing unprecedented growth in probate and quiet title cases where mineral rights are determined. Unfortunately, we are also seeing unprecedented growth in criminal cases as well. Just as in other sectors – housing, transportation, sales – the energy impact is rippling across the state. Morton and Burleigh Counties in particular are absorbing displaced cases from the Northwest Judicial District.

This in turn is putting a strain on their ability to function.

Rapid growth is not the only issue we are dealing with. Cass and Burleigh counties have seen their population and caseloads growing year after year without additional resources to handle the change. We have managed it by increased efficiencies but cutting corners comes at the cost of serving the public. We are grateful we have not had to endure budget cuts like other state courts have in the past few years, but the rapid growth in our state is producing the same sort of problems in handling our caseloads. I read recently that the average doctor's appointment is scheduled for 15 minutes. No one can question the value of having enough time to explain things to your doctor and giving the doctor adequate time to make a diagnosis. But, 15 minutes is a luxury when it comes to the average court hearing. Fifteen minutes is 5 minutes longer than the average protection order hearing and 5 times longer than the average bail hearing. One of our newly elected judges has been observing proceedings in various courts and has dubbed this as "conveyor-belt justice". It is what we have had to do to get the cases through the system. In some places, most notably in the northwestern part of the state, we are no longer able to provide even those minimum time frames.

So, how did we get in this situation? I described to you earlier the unification process. When we consolidated district and county courts we were required by legislative mandate to reduce the number of judges. That number was arbitrarily set at 42. I have suggested in prior addresses to you that it was too deep a cut to be sustainable and four years ago you created two new judgeships. In addition to cutting judges, the court also voluntarily eliminated clerk jobs when we consolidated the district and county clerk offices. Over the years, we have cut staff when our workload assessments tools said they were no longer needed. We have moved judges and staff from one court to another as a first option rather than coming to the legislature asking for more help. Ironically, one of those judges was moved from Watford City to Minot and one from Stanley to Minot. Watford City and Stanley have seen substantial increases in cases since that time. This has left us with no excess capacity in the system. We could manage with the status quo but we are struggling to handle our burgeoning economy. We have now reached a crisis point where judicial services are suffering throughout the state. We can no longer serve the growing needs of one area of the State at the expense, by cannibalizing, other parts of the State.

Moreover, Judge Frank Racek of Fargo has suggested that in light of our new case management system it is time to review our procedures to determine whether or not there are functions we perform that are no longer necessary. I agree with his suggestion but it is extremely difficult to ask our people to step back and take a look at what we are doing when the hydraulic pressure of what we currently do keeps increasing. There is simply no time to ponder needed changes.

We have before us a plan put forth by our Judicial Planning Commission to realign our district boundaries, but re-districting alone does not solve our judge shortage nor does it begin to address our staff shortage. In order to meet the demands of business and individuals, we must have additional judges and court staff to carry out the work. To that end I am requesting you to establish three new judgeships, two in the Northwest Judicial District which is the area most directly impacted by oil development, and one in the East Central Judicial District, Fargo. That still leaves the South Central Judicial District, Bismarck, with a significant unmet judicial need. I am requesting several additional employees to meet the needs in offices such as that of the clerk of court.

I realize that you will hear similar pleas from many governmental agencies. I am concerned that the monotonous repetition of these requests may result in ennui (that's a two bit French word that means boredom and the listlessness that accompanies it). I ask that you not succumb to ennui — at least not when the Judicial branch budget comes before you.

I quote one of our former supreme court justices — Justice Edward Engerud who served from 1904 to 1907 — when he said in 1906, "It is my belief that the people of the state desire to preserve the integrity and efficiency of the (supreme) court." I believe the same can be said of North Dakotans today.

## **Conclusion**

Finally, the Judges' Association invites you to stop in the hall between the legislative chambers for a brief reception and refreshments. If you have another meeting please feel

free to snatch and carry.

Lieutenant Governor Wrigley, Speaker Devlin, Governor Dalrymple and members of the Legislative Assembly, I thank you for the opportunity to speak to you this afternoon. I wish you, the legislative branch and Governor Dalrymple and the officers of the executive branch, all success as you grapple with the issues that face our great State. It is an exciting time in North Dakota and I look forward to working with you this session.

#### MOTION

**REP. VIGESAA MOVED** that the address of Chief Justice VandeWalle be printed in the House Journal, which motion prevailed.

#### MOTION

**REP. VIGESAA MOVED** that the Joint Session be dissolved, which motion prevailed.

#### REPORT OF STANDING COMMITTEE

**HB 1042: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1042 was placed on the Eleventh order on the calendar.

#### REPORT OF STANDING COMMITTEE

**HB 1051: Industry, Business and Labor Committee (Rep. Keiser, Chairman)** recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1051 was placed on the Eleventh order on the calendar.

#### REPORT OF STANDING COMMITTEE

**HB 1078: Industry, Business and Labor Committee (Rep. Keiser, Chairman)** recommends **DO PASS** (13 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1078 was placed on the Eleventh order on the calendar.

#### REPORT OF STANDING COMMITTEE

**HB 1087: Human Services Committee (Rep. Weisz, Chairman)** recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1087 was placed on the Eleventh order on the calendar.

#### REPORT OF STANDING COMMITTEE

**HB 1089: Human Services Committee (Rep. Weisz, Chairman)** recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1089 was placed on the Eleventh order on the calendar.

#### REPORT OF STANDING COMMITTEE

**HB 1110: Human Services Committee (Rep. Weisz, Chairman)** recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1110 was placed on the Eleventh order on the calendar.

#### FIRST READING OF HOUSE BILLS

Reps. Porter, Damschen, Hofstad and Sens. Burckhard, Carlisle, Lyson introduced:

**HB 1130:** A BILL for an Act to amend and reenact sections 20.1-03-12, 20.1-03-12.1, and 20.1-03-12.2 of the North Dakota Century Code, relating to hunting fees.

Was read the first time and referred to the **Energy and Natural Resources Committee**.

Reps. Hofstad, Schmidt, Vigesaa and Sens. Carlisle, Lyson, Schaible introduced:

**HB 1131:** A BILL for an Act to amend and reenact section 20.1-03-11 of the North Dakota Century Code, relating to big game and gratis licenses.

Was read the first time and referred to the **Energy and Natural Resources Committee**.

Reps. Nathe, Headland, Owens, Porter and Sens. Cook, Miller introduced:

**HB 1132:** A BILL for an Act to create and enact section 57-15-02.2 of the North Dakota Century Code, relating to e-mail notice to taxpayers regarding political subdivision budget or levy deliberations; to amend and reenact sections 57-15-02.1, 57-20-07.1, and 57-55-04 of the North Dakota Century Code, relating to property tax increase notices and property tax statements; and to provide an effective date.

Was read the first time and referred to the **Political Subdivisions Committee**.

Reps. Larson, Porter, Delmore and Sens. Anderson, Berry, Nelson introduced:

**HB 1133:** A BILL for an Act to create and enact three new sections to chapter 19-03.1 of the North Dakota Century Code, relating to controlled substance analogs; and to provide a penalty.

Was read the first time and referred to the **Judiciary Committee**.

Reps. Porter, Carlson, Drovdal and Sens. Armstrong, Lyson, Wardner introduced:

**HB 1134:** A BILL for an Act to create and enact section 57-51-02.6 of the North Dakota Century Code, relating to oil and gas gross production tax exemption for natural gas to encourage use of gas that might otherwise be flared; to amend and reenact sections 38-08-06.4 and 57-39.2-04.5 of the North Dakota Century Code, relating to flaring restrictions for natural gas and sales tax exemption for property used to process natural gas to encourage use of gas that might otherwise be flared; and to provide an effective date.

Was read the first time and referred to the **Finance and Taxation Committee**.

Reps. Keiser, Larson, Weisz and Sens. J. Lee, Marcellais introduced:

**HB 1135:** A BILL for an Act to provide an appropriation to the state department of health for a dental care services grant.

Was read the first time and referred to the **Human Services Committee**.

Rep. Klemin and Sen. Hogue introduced:

**HB 1136:** A BILL for an Act to amend and reenact subsection 3 of section 41-09-135 of the North Dakota Century Code, relating to article 9 of the Uniform Commercial Code.

Was read the first time and referred to the **Judiciary Committee**.

Reps. Toman, Kasper, Porter and Sens. Carlisle, Cook, Sitte introduced:

**HB 1137:** A BILL for an Act to amend and reenact section 54-10-27 of the North Dakota Century Code, relating to audits of occupational and professional boards.

Was read the first time and referred to the **Political Subdivisions Committee**.

Reps. Larson, Dockter, Karls and Sens. Carlisle, Lyson introduced:

**HB 1138:** A BILL for an Act to amend and reenact sections 12-63-09 and 12-63-12 of the North Dakota Century Code, relating to peace officer licenses; and to repeal section 12-63-08 of the North Dakota Century Code, relating to peace officer licenses.

Was read the first time and referred to the **Judiciary Committee**.

Reps. Belter, Brandenburg, Boe and Sens. Campbell, Schaible, Dotzenrod introduced:

**HB 1139:** A BILL for an Act to create and enact a new section to chapter 39-12 of the North Dakota Century Code, relating to weight exemption for implements of husbandry.

Was read the first time and referred to the **Transportation Committee**.

The House stood adjourned pursuant to Representative Vigesaa's motion.

**Buell J. Reich, Chief Clerk**