

State of the Judiciary
Chief Justice John Dan Kemp
June 12, 2020

President Rosenthal, President-Elect Keith, Fellow Justices and Judges, Members of the Bar, and Guests:

Introduction

It's always a pleasure to have the opportunity to address the joint meeting of the Arkansas Bar Association and the Arkansas Judicial Council, even more so when it's a history-making first-ever virtual Arkansas Bar Association conference. A few short months ago, no one could have predicted the impact COVID-19 would have on our communities. My heart goes out to the thousands of Arkansans who have overcome this disease. I would also like to offer my condolences to the families in our state who have lost loved ones during this pandemic.

It is often said that the Judiciary is the slowest of the three branches of government to act. In this case, I would dispute that assumption. I would like to share with you the progress that is being made within the judicial branch of our government, which quickly adapted in remarkable ways during this challenging time. I appreciate Arkansas Bar Association President Brian Rosenthal offering me this platform, and I commend him on an excellent year of service to the Bar Association. The state of the Arkansas Judiciary is in very good condition thanks to the extraordinary work of its circuit and district judges, its appellate justices and judges, the members of their staff, and clerk's office and Administrative Office of the Courts.

COVID-19 Response

On March 6, 2020, the Arkansas Supreme Court issued a statement on the COVID-19 outbreak in which we encouraged the Court Community to begin working with their local county officials to review emergency Continuity of Operations plans to prepare for the pandemic. Courts were encouraged to create working groups of local judges and court staff to study best practices and identify essential court functions. In order to communicate effectively with the local bar, local officials, and the public throughout the state, the AOC created a COVID-19 webpage at (www.arcourts.gov) with resources and updated information regarding court closures.

On March 13, 2020, I published a letter to all judges encouraging them to begin implementing the use of technology, such as telephone conference or videoconferencing for appearances or hearings when possible. Shortly after that, I requested a meeting with Zoom representatives after hearing they had granted full access to their product to educational institutions at no cost on a trial basis. Zoom was generous enough to grant us several hundred temporary licenses for free, and the AOC quickly deployed those to judges and trial court assistants around the State to enable virtual hearings. The AOC has done an excellent job offering training and technical support to the court community in an effort to help flatten the COVID-19 curve in our state. Thousands of virtual hearings have taken place during the pandemic, and with Contexte, eFiling, online public access, and online payment, our courts have been able to continue serving the public throughout this crisis.

On March 17, 2020, the Supreme Court of Arkansas issued its first Per Curiam in Response to the COVID-19 Pandemic. The Per Curiam said courts in Arkansas shall remain

open, but suspended in-person judicial proceedings with several exceptions. We again encouraged the courts in Arkansas to utilize all available technologies to continue handling judicial matters.

The COVID-19 crisis has forced courts nationwide to consider alternatives to in-person proceedings. Arkansas was uniquely positioned to meet this need in large part because of the great work done by the Supreme Court Commission on Children, Youth and Families. They quietly laid the groundwork to support videoconferencing in courts long before anyone had ever heard of COVID-19.

The Commission is chaired by Justice Rhonda Wood, and it consists of judges, legislators, the Secretaries of the Education and Human Services Departments, attorneys, juvenile officers, mental health experts, and other leaders from government and communities around the state. In March of 2019, the Commission voted to create a committee to study how video technology capability could facilitate children's access to the courts in dependency-neglect cases. The Commission visited last November with the Texas Children's Commission in Austin to learn about its use of videoconferencing for post-TPR youth in foster care. Tim Holthoff from the Court Information Systems Division accompanied that team to determine how the AOC could support videoconferencing in circuit courts.

Ultimately, the Commission determined that videoconferencing would do the following: 1) decrease travel time; 2) reduce school absences; 3) limit trauma; and 4) increase youth participation in court. The Commission believed this would particularly benefit youths placed outside of their home counties, youths with serious medical needs, and youths with a history of trauma. In January of 2020, the Commission unanimously approved a Pilot Project to implement Zoom videoconferencing in two courts: Judge Shannon Blatt's court in the 12th Judicial District

and Judge Barbara Halsey's court in the 2nd Judicial District. The Pilot Project implementation team included judges and their staffs, the Juvenile Division Director, representatives from the Education and Human Services Departments, the Governor's Child Welfare Senior Advisor, and other valuable stakeholders. Justice Wood began meeting regularly with the Pilot Project team to evaluate technology needs and plan for how to collect data and evaluate outcomes. The initial video hearings go-live date was scheduled for April 1st. However, it became apparent in mid-March, as the pandemic outbreak spread, that videoconferencing could play a bigger role in our courts statewide. The Supreme Court addressed the possibility of videoconferencing in its March 6th statement on COVID-19, and additional information and resources were included in the Court's March 13th per curiam.

The Commission worked quickly to share the pilot program's resources; a Judges' Bench Guide on creating a record for remote hearings; how-to instruction guides; and other visual guides to address common issues. Well before COVID-19, the Commission had worked through the privacy and practical aspects of using Zoom. The Commission Administrator, Derek Henderson, quickly converted all materials and resources for use state-wide and assisted Tim Holthoff with converting the pilot program to a state-wide rollout. Derek quickly became the Zoom expert within the AOC and helped answer countless questions from judges around the state. I can't thank Derek enough for his efforts.

Recently, the Interpreter Services Division of the AOC partnered with the Commission to create an innovative guide for judges using the simultaneous interpretation feature in Zoom. This and many other Zoom resources are posted to the Judiciary's website, and the site is updated regularly to address courts' ongoing needs. The Commission is monitoring usage, collecting

data, and will continue assisting courts to implement technology that saves time and money. I appreciate their effort and foresight.

Contexte and eFiling Rollouts

The Arkansas courts continue to improve technology which positively impacts accessibility, efficiency, and productivity within the overall judicial system. Over the past year, we completed eFiling projects in the circuit courts of Jefferson and Lincoln counties, bringing the total number of counties in Arkansas using eFiling to 24. There are six active projects in Saline, Clark, Crittenden, Franklin, Johnson, and Pope Counties that became operational in May on “eFiling Lite,” an option that simplifies the implementation process by postponing the setup of the electronic payment feature for filers.

With eFiling Lite, filers will still use the conventional method for the case initiating document and subsequent filings that require a fee. After the clerk processes the case initiating document in the eFiling system, all subsequent filings not requiring a fee may be filed electronically. This includes filings to existing cases initiated before the go-live date of the implementation. At an appropriate time later, the AOC will coordinate with courts to enable the electronic collection of filing fees and utilize the remaining eFiling features. Columbia, Union, Ouachita, White, and Prairie Counties will also be available on eFiling Lite this summer, with Drew, Chicot, Poinsett, and Arkansas Counties following shortly thereafter.

Independence, Stone, and Greene Counties have gone live on full Contexte, the state case management system, in recent months. Three additional district courts began using Contexte since the first of the year, and three new projects are underway utilizing funds from a Federal Motor Carrier Safety Administration grant.

Continuing Education

As called for in the Judiciary's strategic plan, it is clear that we have committed to new and innovative ways to deliver high-quality training to judges, and court staff. With the recent public health crisis, the need to stay connected and up-to-date with the most current information is even more vital. Compounding the problem is the need to practice social distancing and prevent large numbers of people from congregating at conferences and meetings. In April, the AOC began to roll out to the judiciary an online Learning Management System (LMS) software called TalentLMS. This system is an online repository of training for judges and court staff. Simply said, and I don't use the word lightly, it will revolutionize the way we create and disseminate judicial education. As the system grows and is filled with legal training programs, our judiciary will have an enormous resource of information to draw on at any time. If a judge is faced with some rare and complex type of proceeding, they will be able to immediately take a refresher course on how to preside over it, thereby building new competencies and diminishing legal error. Programs and instruction we formerly had to wait to receive in person at annual meetings can be delivered immediately and then remain accessible for years to come. Examples of training that has already been produced in the system include holding video conference hearings, judicial ethics in the age of social media, improving clarity and understanding in legal writing, and updates to recent changes in the law like child support charts, just to name a few. The learning management system will ultimately serve more than 3,000 learners statewide and cover every topic imaginable to improve the judicial branch's public service. It will help to ensure that our state's judges and court staff are among the most well-informed and professional in the country. By delivering more accessible education, we are creating a fairer and more efficient justice system. Plans are also underway to eventually offer online learning as the

primary source for application training, which will greatly reduce the cost and timeline of Contexte and eFiling implementations.

Juvenile Justice Reform

As part of Juvenile Justice Reform in our State, Act 189 was signed into law by Governor Hutchinson on March 6, 2019. The goal of this Act was to transform the juvenile justice system and improve outcomes for youth and families involved in the Arkansas Juvenile Justice System. To accomplish this, a validated risk-needs assessment tool was adopted for use by juvenile officers to determine the risk level for each youth before a juvenile delinquency case is filed. The assessments identify those youth who need more intensive rehabilitative treatment and those who are best dealt with through out-of-court diversion programs due to lower risk levels. This allows our system to focus our efforts and resources on those who need it most and provide specific services that address the child's individual needs. By July 1, 2020, the AOC will complete state-wide training of all juvenile officers and staff members at the Department of Youth Services concerning the administration and use of the assessment. Act 189 requires Juvenile Courts to share the recommendations from the assessment with DYS for those youth who are committed to the Department which allows various entities dealing with delinquent juveniles to utilize the same assessments tools to achieve continuity in decision-making.

The goals of these juvenile justice reform efforts include rehabilitating wayward youth through the use of effective, evidence-based programming and positive youth development while continuing to protect public safety. I want to thank the staff at the AOC that made this training possible, and I applaud the work of the General Assembly in passing this important

legislation, in particular, the bill's sponsors, Senator Missy Irvin and Representative Charlene Fite.

Electronic Record on Appeal

As I noted in my presentation last year, on June 6, 2019, the court issued a *per curiam* opinion containing announcements on electronic filing and briefing in the appellate courts. In order to keep pace with judicial technological advances, the court authorized a pilot project whereby parties may electronically file the record and the briefs under the proposed rules. Importantly, the pilot program eliminates the abstract and addendum and replaces those sections with a revamped jurisdictional statement and a robust statement of the case and facts. Page limits for each section are replaced with an overall word count for the substantive portions of the briefs. We are also developing software that enables the electronically filed briefs to become interactive with the new electronically filed trial court records. That software necessitates some changes in citation protocols, which appellate attorneys will find noted on their briefing schedules. In effect, using this new technology, appellate judges and their staffs will be able to click on a brief's citation hyperlink and that exact page of the trial court record will appear on the screen.

By far, the biggest reaction to the pilot project has been in support of eliminating abstracts and addenda. The ability to digitize appellate records now allows each appellate judge to access appellate records remotely. Thus, the court believes that requiring parties to prepare an abstract and addendum summarizing the record may no longer be necessary. In the pilot project, the abstract and addendum are replaced by a jurisdictional statement and statement of the case

and facts. The appellate court should only need these facts to confirm its jurisdiction and to understand and decide the issues on appeal.

The jurisdictional statement is no longer a perfunctory, two-point recitation. Now it is a functional summary of the procedural posture of the case with a detailed itemization and demonstration that the case below has a final order disposing of all disputes and that there was a timely notice of appeal, or that there is an otherwise appealable matter. You may think of this as a description of the documents that were previously required in the addendum. The reviewing judges should now be able to look at the jurisdictional statement and quickly determine whether the case is properly before the appellate courts.

Likewise, the revamped statement of the case and facts serves as a substitute for the defunct abstract because it is where the appellant can tell the appellate judges the story of the case below. Whereas before the appellate judges could skip straight to the abstract to get an understanding of the testimony of the witnesses, the arguments made to the trial judge, and the reasoning of the judge's findings and conclusion, now the statement of the case can convey that same information in a narrative form. This should be both easier to write for the attorneys, and also more comprehensive and understandable for the appellate judges. The pilot project built in some flexibility by taking out the per-section page limitations so if a case is particularly procedurally complex or factually difficult, the jurisdictional statement and the statement of the case and facts can be expanded to accommodate any given case.

The formal comment period for the pilot project ended February 28. The comments from the appellate bar were overwhelmingly positive in reaction to the changes made by the pilot project. To date, there have been 96 electronic appeals filed. There has been an increase in

electronic appeals filed during the pandemic. There have been 5 electronic appeals fully submitted to the Court of Appeals, but none fully submitted to the Supreme Court yet. I look forward to working with this new technology and relatively soon working on finalizing the rules and making electronic appeals mandatory. I believe these changes will make appeals simpler and thus less expensive, allowing greater access to justice all the way to the appellate courts.

If you have not read the *per curiam* and its proposed rule changes, I encourage you to do so. It is found at 2019 Ark. 213. Although the formal comment period has ended, feedback from the public and the bar would be helpful as we finalize this exciting new development in the practice of law. As I noted above, the Supreme Court has not yet had an electronic appeal submitted for our consideration. The Court may consider delaying mandatory filing of electronic records until we have had a chance to fully vet the pilot project and its significant changes. We are next planning to explore removing the step in the appellate process requiring the appellant's attorney to retrieve the record from the trial court and transmitting it to the appellate court. In the future, we hope to streamline the process by developing a system whereby the record is directly sent from the trial court clerk to the appellate clerk.

These changes are meant to make our appellate courts more accessible, less expensive, and more efficient.

Bar Identification Cards

In response to requests from attorneys for Bar of Arkansas membership cards, I am pleased to announce that the Court is starting a bar card program. The program is strictly voluntary for those attorneys who want a bar card. I anticipate that the bar cards will be available by August 1 of this year, and any attorney who is in good standing may obtain a bar

membership card by making the request at the Supreme Court clerk's office after that date. The request must be made in person so that a photograph may be taken and put on the card. The fee for the cards will be \$35.00. The funds generated from those fees will go to the Supreme Court Bar Account to offset the cost of the service.

Hopefully this will remedy the problem that some lawyers are having getting into jails to see their clients.

Conclusion

Clearly these are unprecedented times, and I'm proud of how the judges in Arkansas have responded. Their efforts have helped to lower the curve in our state, which has undoubtedly saved lives. The Bench and Bar have done a remarkable job adapting to new technologies that help ensure that the administration of justice continues during this pandemic.

I appreciate the support and thoughtfulness of my colleagues on the Supreme Court during this time. From swearing in new lawyers via Zoom, the first Supreme Court in the nation to do so, to being open to scheduling an oral argument utilizing videoconferencing, their willingness to embrace technology has been very helpful.

Again, I also want to acknowledge the staff of the Administrative Office of the Courts and the Supreme Court Clerk's Office. Their ability to step up when needed is much appreciated. They truly do a remarkable job serving all courts in our state. I thank you for your attention and I am grateful for the opportunity to serve as the Chief Justice for the great state of Arkansas.

Thank you.