THE STATE OF IDAHO
SUPREME COURT

DANIEL T. EISMANN
CHIEF JUSTICE

P.O. BOX 83720
BOISE, IDAHO 83720-0101
(208) 334-2149

January 20, 2009

Mr. Speaker and distinguished members of the Idaho House of Representatives:

It is an honor to report to you on the state of the Idaho judiciary. I wish that I could be speaking to you in person this year, but I recently completed my last chemotherapy treatment followed by an infusion of stem cells to regrow bone marrow that was destroyed by the chemotherapy. Because of my compromised immune system, at this point in my recovery I would have had to speak while wearing a HEPA filter mask, which is not very conducive to public speaking.

Last year I reported that a task force, which was chaired by Dean Burnett from the University of Idaho College of Law and which included the Hon. Denton Darrington and the Hon. Jim Clark, had recommended adding one more judge to the Idaho Court of Appeals to help with its increasing caseload. I thank you for enacting legislation and providing appropriations to do so. The Governor has appointed David Gratton to fill that position. The space on the ground floor of the Supreme Court building that formerly housed the state law library has also been remodeled to provide chambers for the Court of Appeals.

In addition to their regular caseloads, Idaho judges continue to devote countless hours presiding over problem-solving courts, including adult felony and juvenile drug courts, DUI courts, and adult and juvenile mental health courts. Their efforts are producing positive results. Idaho has 54 problem-solving courts that supervised 1,983 offenders in 2008, an increase of 9% from the prior year. A recent statewide evaluation of adult drug courts showed significant reductions in recidivism for participating offenders compared to a matched comparison group who received traditional management of probation. A study of four well-established DUI courts also showed a significant reduction in recidivism.

Idaho now has four Child Protection Drug Courts, which handle child abuse and neglect cases in which the abuse or neglect is related to the parents' substance abuse. Parental substance abuse is the main underlying cause of proceedings by the Department of Health and Welfare to terminate parental rights in Idaho. A national study of similar courts elsewhere has shown that when parents participated in such a court, their children spent less time in out-of-home placement and, when returned to parental custody, were less likely to be abused and removed again. We can expect similar results in Idaho. Two of Idaho's Child Protection Drug Courts are part of a national initiative by the Administration for Children and Families and will be extensively evaluated through Idaho State University over the next four years.

Proceedings to terminate parental rights are handled in magistrate court. It can take two to three years to go through the normal process of appealing the magistrate's decision to the district court and then to the Supreme Court. During that period, the status of the child is in limbo. We have a task force that will shortly be suggesting procedural changes so that a case involving the termination of parental rights will be heard by the Supreme Court within about four months after the magistrate judge's decision.

We now have seven domestic violence courts in Idaho, in which defendants are forced into treatment and held accountable through enhanced judicial monitoring, including regular "face-to-face" meetings with the judge. These courts also have a case coordinator who maintains regular contact with the victims, assisting them and their children in accessing needed services. An assessment of domestic violence courts in eastern Idaho has shown that a domestic violence court can significantly reduce violations of no contact orders and civil protection orders by offenders in that court. Legislation will be introduced this session to strengthen domestic violence courts statewide.

The coordinator of the Ada County domestic violence court worked with probation to create a risk assessment tool for regularly assessing the risks that offenders may pose to victims and their children. That information is then used to adjust probation recommendations to ensure offender accountability, to promote victim safety, and to refer victims to necessary available resources. We know of no other court that utilizes this type of ongoing risk assessment.

Because of the emotions involved, some of the more challenging court cases are domestic relations actions involving minor children. Judges throughout the state participate in parent education classes during which they introduce families to the court process and explain the variety of tools available to assist them in resolving child custody issues. In a statewide exit survey, parents who attended such classes gave the judges high marks, stating that the information was helpful and that it was reassuring to know they were being served as individuals. Over ninety percent of those parents said they would make a stronger effort to reduce parental conflict for the sake of their children's long-term best interests.

We are seeing increasing numbers of litigants in domestic relations cases who are not represented by attorneys. In Canyon, Ada, and Valley counties, parents who cannot afford attorneys are given the opportunity to work with professional mediators to arrive at an agreement on a workable parenting plan that is in the children's best interests. A recent evaluation of such cases in Ada County showed that parents utilizing such mediators have longer term resolutions and return to court less often than parents in litigated cases.

In 1999, we began opening court assistance offices where litigants who did not have attorneys could obtain forms for various civil actions and legal advice in filling out the forms if the office was staffed by an attorney. There are now court assistance offices in most Idaho counties, and last year over 38,000 people took advantage of that help.

In partnership with Idaho Legal Aid Services, in 2005 we began making forms for various civil cases available on the internet, which are maintained on a server provided by a third party at no charge. We have increased the number of forms available, and some of the more complex types of cases, such as domestic relations cases involving minor children, have forms created through an online interactive interview to make it easier for the pro se litigants. Five of the interactive interviews are also in Spanish. These online forms have been used by litigants in all forty-four Idaho counties. Of all states, Idaho has the third highest number of forms available online for pro se litigants. Of course, online forms cannot replace an attorney, but they provide an essential resource for the many citizens who cannot afford counsel to represent them.

We have also taken action to decrease the time it takes to appeal cases. Although the overwhelming majority of court reporters prepare transcripts of testimony timely, there were a few who were habitually late in doing so. As a result, some appeals were delayed a year or more while waiting for the transcript to be prepared. We have instituted time limits for the preparation of transcripts and consequences, including suspension without pay, for failing to meet those deadlines.

Last year we began providing online access to a data repository through which anyone can check the register of actions of cases in the trial courts of every county in the state. The register of actions is a case history containing a chronological list of all documents filed in the case and all hearings and trials. There are about 60,000 hits per day on the repository. When testing it, I discovered that in 1997 a criminal defendant had filed an action seeking to have me removed from office. Fortunately, the case was dismissed.

It does not appear that the recent economic downturn will result in a decrease in cases filed in our courts. When the last seven months of this year are compared to the last seven months of last year, there has been about a three to four percent increase in cases filed in the district courts and magistrate courts. Some types of cases have increased dramatically, with civil filings in the district courts increasing almost eighteen percent and felony DUI's increasing thirty four percent.

We have been able to provide adequate judicial resources only by the use of senior judges. Paying retired judges at a daily rate to preside over cases costs taxpayers less than increasing the number of judges in those parts of the state where the population has increased significantly faster than judicial positions.

The recent economic downturn will certainly present challenges for the judiciary. For years we have endeavored to keep the judicial budget for operating expenses and administrative personnel at the lowest level possible to provide the resources and services necessary for the judiciary to provide equal access to justice, the expeditious resolution of cases, and the training and support necessary for judges to utilize innovative techniques to address some of the most difficult problems in our society. We look forward to working with the legislature to find ways to insure that the citizens of Idaho can continue to have trust and confidence in their judiciary.

Respectfully submitted,

Daniel T. Eismann
Chief Justice of the Idaho Supreme Court