

Approved: WJW 7/22/92
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Senator Wint Winter Jr. at 10:05 a.m. on February 18, 1992 in room 514-S of the Capitol.

All members were present except:
Senator Yost who was excused.

Committee staff present:
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:
Chief Judge Mary Beck Briscoe, Kansas Court of Appeals
Brian Moline, State Corporation Commission
Herb Rohleder, District Court Administrative Judge, Great Bend
Kathryn Carter, District Magistrate Judge, Concordia

Chairman Winter brought the meeting to order by opening the hearing for SB 558.
SB 558 - stay or suspension of orders or decisions of corporation commission pending review.

Chief Judge Mary Beck Briscoe, Kansas Court of Appeals, testified in support of SB 558. (ATTACHMENT 1)

Brian Moline, State Corporation Commission, rose to state they have no objection to the extension of time requirement for hearings as presented in SB 558.

This concluded the hearing for SB 558.

Senator Bond moved to recommend SB 558 favorable for passage. Senator Feleciano seconded the motion. The motion carried.

Chairman Winter opened the hearing for SB 597.
SB 597 - increased powers and duties to district magistrate judges if assigned by district administrative judge.

Herb Rohleder, District Court Administrative Judge, Great Bend, testified in support of SB 597. He stated that, from his perspective of having served as a Magistrate Judge, SB 597 would help the court system by giving added flexibility to the administrative judges. The bill does not have a fiscal note as only those qualified magistrates who are willing to accept the additional responsibility would be given the additional duties. The change would actually save expenses and time for the district judges.

Judge Rohleder responded to questions by stating that he did not anticipate requests for additional compensation from the law-trained Magistrates, but that they would look forward to the duties as a way of obtaining additional experience.

Kathryn Carter, District Magistrate Judge, Concordia, testified in support of SB 597. (ATTACHMENT 2) She responded to questions by stating that training should not be a problem as the Office of Judicial Administration provides the training for all judges now, and it would only be a matter of including the selected law-trained magistrates with the district judges. She further noted that, from her own experience, most law-trained magistrates run for that office for the regular pay, benefits and the challenge of the position.

Judge Carter further responded to questions regarding appointment of pro-tem judges. She stated that law-trained magistrates had been appointed in that capacity, but they have been told that if the practice were to continue, they would be in serious trouble. She responded that creating new district judge positions in order to eliminate the magistrate judge system in Kansas would be very expensive. The current use of magistrates, particularly in the less-populated areas of the state, are saving the district judges considerable amounts of time and therefore saving the state money.

Letters in support of SB 597 were distributed to the Committee from Thomas M. Tuggle, District Judge of the Twelfth Judicial District and Larry T. Solomon, Administrative and District Judge of the Thirtieth Judicial District. (ATTACHMENTS 3 and 4)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:05 a.m. on February 18, 1992.

This concluded the hearing for SB 597.

Senator Moran moved to recommend SB 597 favorable for passage. Senator Gaines seconded the motion. The motion carried.

Chairman Winter noted that the Committee's favorable recommendation of SB 597 should not be viewed as an endorsement for increased pay for law-trained magistrate judges.

Chairman Winter opened the floor for discussion of SCR 1634.
SCR 1634 - providing certain constitutional rights for victims of crimes.

It was suggested a balloon be prepared by the interested parties to define the vague sections of the bill. The questions discussed by the Committee addressed what is "reasonable" for inclusion in a victims' rights amendment to the Constitution, at what point in the legal/judicial process a person becomes a victim, whether the amendment should be limited to violent person crimes, and whether the judge should have any discretion for victim input. It was further noted by the Committee that compliance with existing statutes should be increased and should prohibit authorities from citing the lack of state funding as an excuse for not providing personnel. Many of the victims' rights coordinators are currently funded through community corrections programs, which creates a problem with assigning priorities. Action was delayed until a balloon becomes available.

The Committee turned its attention to SB 508.
SB 508 - court costs to support the law enforcement training center.

Senator Kerr noted he was having an amendment prepared to designate portions of the applied court costs to be used as reimbursement for current training programs, limited to present programs to discourage creation of new training centers. He requested the Committee withhold any action on the bill until the amendment was drafted and could be distributed for their review in detail.

Jerry Donaldson, Kansas Legislative Research Department, presented the Committee with a memorandum reviewing current legislation that affects court costs. (ATTACHMENT 5)

The meeting was adjourned at 11:05 a.m.

Senate Bill No. 558

Proposed amendment to K.S.A. 66-118g

Testimony offered by:
Chief Judge Mary Beck Briscoe
Kansas Court of Appeals

In 1989 the Kansas Legislature created a Citizens' Utility Ratepayer Board (CURB) to represent ratepayers' interests in actions before the Kansas Corporation Commission. See K.S.A. 1991 Supp. 66-1222, et seq. Utility rate cases in which CURB commonly intervenes are subject, however, to a strict appellate deadline which the Legislature did not amend when it created CURB. See K.S.A. 66-118g(b). Clean-up legislation is needed to accommodate CURB's appeal and briefing time.

In 1978 the Legislature adopted an expedited appellate procedure for utility rate cases. L. 1978, ch. 265, sec. 1. Those cases are appealed directly to the Court of Appeals from the Kansas Corporation Commission (K.S.A. 1991 Supp. 66-118a[b]), and by statute the Court of Appeals must file an opinion within 90 days after an application for judicial review is filed. K.S.A. 66-118g(b). To facilitate the 90 day deadline, the Kansas Supreme Court adopted an expedited briefing schedule for utility rate cases. See Rule 9.02 (1991 Kan. Ct. R. Annot. 43) (attached). Applicant and respondent have twenty days each in which to file a brief. Rule 9.02. Prior to the creation of CURB, there was typically one applicant and one respondent in a utility rate appeal.

The difficulty with the 90 day deadline arises in that, with the creation of CURB, the potential exists for two applications for judicial review at any time within the thirty day appeal time with the first application triggering the statutory appellate deadline. There is also the potential that CURB's position will not align perfectly with that of either the applicant or the respondent, thus increasing the briefing time required. Although CURB's entry into a case could potentially extend the appellate schedule by 50 days, experience has shown a 30 day extension to be more typical. Under the present statutory scheme, the Court of Appeals has adjusted its own schedule and sought concessions from CURB in order to file opinions within the 90 day deadline.

K.S.A. 66-118g(b) needs to be amended to provide a 120 day appellate deadline to allow CURB its full appeal and briefing time.

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4. Section (b) construed in determining necessary parties in an original action in mandamus against a judge but not involving pending litigation. *State ex rel. Stephan v. Smith*, 242 Kan. 336, 747 P.2d 816 (1987).

5. Criminal defendant's appeal of pretrial denial of dismissal based on double jeopardy appropriately filed as original action under 9.01(a) and K.S.A. 22-2710. *In re Habeas Corpus Petition of Mason*, 245 Kan. 111, 775 P.2d 179 (1989).

Law Review and Bar Journal References

Monk, *Media Access to Court Proceedings*, 50 J.K.B.A. 212, 222 (1981).

Rule 9.02

UTILITY RATE CASES

When an application for judicial review of an order of the state corporation commission is filed in the Court of Appeals, such filing shall be treated for the purpose of further proceedings in the same manner as the docketing of an appeal from the district court, and the rules relating to appellate practice shall apply.

Unless otherwise ordered by the court:

- (a) The record shall be transmitted by the commission to the court forthwith.
- (b) Applicant's brief shall be filed within twenty (20) days after the application for review is filed.
- (c) A respondent's brief shall be filed within twenty (20) days after service of applicant's brief.
- (d) Any reply brief shall be filed not less than five (5) days before the date set for hearing.

Notwithstanding the provisions of Rule 7.02(d), the clerk shall give the attorneys not less than fifteen (15) days' notice of the time and place of hearing.

In cases where a public utility claims the rates allowed by the commission are inadequate, no motion for extension of time to file the utility's brief shall be considered unless it includes or is accompanied by a waiver of the ninety (90) day time limit imposed by K.S.A. 66-118g(b). So that respondent may have an equal amount of time to file its brief, such waiver shall be to the extent of at least twice the additional time requested by the utility.

If a prehearing conference is desired, a motion to that effect shall be filed within five (5) days after the filing of the application for judicial review. A motion for a prehearing conference filed later shall be considered only upon good cause shown.

[History: New Rule effective November 8, 1979; Am. effective July 16, 1980.]

Rule 9.03

TAX APPEAL CASES

(a) When an appeal is taken from the board of tax appeals to the Court of Appeals under K.S.A. 74-2426, the appellant shall file the notice of appeal with the clerk of the appellate courts.

DISTRICT COURT
TWELFTH JUDICIAL DISTRICT
STATE OF KANSAS

Kathryn Carter
DISTRICT MAGISTRATE JUDGE
CLOUD COUNTY COURTHOUSE

P.O. BOX 442
CONCORDIA, KANSAS 66901
PH. (913) 243-8130

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE
BY
DISTRICT MAGISTRATE JUDGE KATHRYN CARTER
SUPPORTING S.B. 597

To: Members of the Senate Judiciary Committee

Re: S.B. 597, Proposed Jurisdictional Amendment

Date: February 18, 1992

My Name is Kathryn Carter. I am the District Magistrate Judge for Cloud County, Kansas, in the Twelfth Judicial District. I graduated from KU Law School and am licensed to practice law in the State of Kansas, as well as before the Federal District Courts. In June of 1987 I was appointed to the bench.

I testify today in support of S.B. 597. The proposed expansion of jurisdiction for law trained district magistrate judges could benefit the State of Kansas in many ways.

The experience in my district is similar to that of the other two judicial districts served by a single district judge. The Honorable Thomas M. Tuggle, our district judge, covers six counties, an area of over 4,500 square miles, with a population of approximately 40,000. According to our 1991 statistics, Judge Tuggle's load of those cases that are beyond the jurisdiction of the magistrates, i.e. felony, domestic relations and chapter 60, exceeds the state average of the same. However, our total caseload per judge, that is of all cases, is below the state average of the same. This is true of the district to the west of us, the Seventeenth Judicial District, which also has only one district judge, but a law trained magistrate. It would be a much more efficient use of magistrates, if the one qualified under K.S.A. 20-334 were able to assist the district judge. This magistrate could equalize the caseload of the district judge, and if need be, the other magistrates could take up those cases the law trained magistrate might need to abandon due to scheduling.

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Along this line of reasoning, it has long appeared to me that no district should have less than one district judge. Judge Tuggle must regularly use a standing cross-assignment that the Supreme Court has put in place, calling upon district judges from other districts to travel to take up cases when he vacations or recuses himself in cases where he has a conflict of interest, travel and meal expense charged to the state. I would assume the other two single district judge districts do the same.

The greatest savings is probably in the area of appeals. At this time a defendant in a misdemeanor criminal case in our district enjoys not just the right to his day in court, but to two days in court.

Often DUI's and other serious misdemeanors are appealed simply to take advantage of the standard strategies of defense attorneys: delay and distract. Termination of parental rights are typically appealed by court-appointed attorneys to insure that all the avenues of recourse have been exhausted as a professional self-protection measure. The attorneys are not to be faulted, it is a quirk in our system that allows two trials, not an artificial manipulation. Even in the case of a jury finding that a defendant is guilty, if the trial was conducted by a magistrate, the defendant may have a second jury trial before a district judge. Certainly when the jury trial is conducted by a law trained magistrate, this must be a perversion of the system.

I would like to note and praise an important provision in S.B. 597, that which requires the assignment of the case AND the consent of the magistrate. This protection encourages the cooperation between the administrative judge and the magistrate in insuring the most efficient and equitable use of this proposal.

In conclusion, it seems clear that allowing a district magistrate judge who meets the statutory qualifications of a district judge to share the caseload, the passage of S.B. 597, would facilitate the movement of cases through court, improve the citizen's access to the system, and ease the burden of the district judge.

I appreciate your time, attention and consideration given me today, and urge you to support S.B. 597. Thank-you.



DISTRICT COURT OF KANSAS

TWELFTH JUDICIAL DISTRICT

Cloud, Jewell, Lincoln, Mitchell, Republic and Washington

Cloud County Courthouse
Post Office Box 423
Concordia, Kansas 66901

THOMAS M. TUGGLE
District Judge
913-243-8125

JO ANNE RICE
Administrative Assistant
913-243-8131

BECKY L. HOESLI, C.S.R.
Official Court Reporter
913-243-8193

February 14, 1992

The Honorable Wint Winter, Jr., Chairman
Senate Judiciary Committee
Kansas State Senate
State Capitol Building
Topeka, KS 66602

Re: Senate Bill No. 597.

Dear Senator Winter and Other Members of the Committee:

By way of introduction I am the District Administrative Judge of the Twelfth Judicial District. The district consists of six counties in north central Kansas with a population of approximately 40,000 people. This is a single district judge district. The Honorable Kathryn Carter, Cloud County District Magistrate Judge, is a law trained judge who meets the requirements of K.S.A. 20-334(a).

It would be of assistance to me to have a law trained judge who could act in my absence from the district or when it is necessary for me to recuse in a case. Presently, in such cases it is necessary for me to have a district judge assigned from another judicial district.

The bill lets the administrative judge determine what cases, if any, to assign to a law trained district magistrate judge and the assignment can be made only if it is agreeable to the district magistrate judge. Because the district magistrate judges would not receive any additional compensation for these additional duties the bill would have no adverse fiscal impact.

This bill permits the additional use of law trained judges at no expense to the state. Perhaps more importantly it can be a savings to the litigants. In some instances a case will be tried to a district magistrate judge and one or both of the parties know in advance that the case will be appealed to the district judge. This occurs in DUI cases and often in child in need of

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care cases where parental rights are terminated. It has never made sense to me in cases of this type to have the case heard twice by law trained judges. I urge your careful consideration of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas M. Tuggle', written in a cursive style.

Thomas M. Tuggle

TMT/jr

State of Kansas
Thirtieth Judicial District

Larry T. Solomon
District Judge
Courthouse

Box 495
Hingman, Ks. 67068-0495
Phone 316-532-5151

February 14, 1992

Senator Wint Winter, Jr.
 Chairman, Judiciary Committee
 State Capitol
 Topeka, KS 66612

Re: Senate Bill 597

Dear Chairman Winter:

I wanted to express my strong support for Senate Bill No. 597 particularly Subsection (c). I have a law trained District Magistrate Judge in my judicial district. He is a very competent individual and I know that he is ready, willing and able to undertake judicial duties outside of the traditional lay District Magistrate Judge jurisdiction. It would be extremely helpful to me in conflict of interest situations, sickness and vacation situations and general judicial manpower shortage situations if I could utilize my law trained District Magistrate Judge as a District Judge on occasion.

A compelling example of how the Subsection (c) would assist me relates to the recent problems the 30th Judicial District has experienced with judicial manpower shortage. The Honorable Clarence E. Renner, District Judge, retired on July 1, 1991. As of this date, his position has not been filled and our judicial district is short one district judge. It is my opinion that the state fiscal crisis and the OJA "budget crunch" is partially to blame for Judge Renner's position remaining unfilled. If I could use my law trained Magistrate in "District Judge jurisdiction" cases, it would significantly assist me in case management and equalization of judicial caseloads in our district.

I have spoken to several other Administrative Judges who have law trained District Magistrates in their judicial districts. Without exception, each one of those Administrative Judges have been in favor of expanding law trained District Magistrate Judge jurisdiction. I can only speak for myself, but I assure you that the authority granted in proposed Subsection (c) would not be abused or used to "bootstrap" a law trained District Magistrate Judge into a full-time District Judge. It would, however, provide me with some additional flexibility in assigning cases, give me greater ability to dispose of cases in accordance with Supreme

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Court time guidelines, and enable me to meet the needs of the lawyers and litigants in the 30th Judicial District more efficiently.

I sincerely hope that you and your colleagues will give serious consideration to approval of Subsection (c) of Senate Bill 597.

I feel strongly enough about this matter that I would normally try to attend your hearing. Unfortunately, I already have a trial scheduled and cannot travel to Topeka. If you have any questions concerning this matter or would like additional input, please feel free to contact me.

Very truly yours,



Larry T. Solomon
Administrative/District Judge

LTS:mh
xc: Senator Fred Kerr

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MEMORANDUM

Kansas Legislative Research Department

Room 545-N – Statehouse
Topeka, Kansas 66612-1586
(913) 296-3181

February 17, 1992

To: Senate Judiciary Committee
From: Jerry Donaldson, Principal Analyst
Re: Current Bills that Affect Court Costs

S.B. 508. This bill allows for a \$5.00 municipal court cost on certain cases charging a criminal or public offense or a moving violation offense where there is a finding of guilty, a plea of guilty or a no contest, a forfeiture of bond, or a diversion. Such moneys would be used for the Law Enforcement Training Center Fund.

H.B. 2769. This bill deals with the use of telefaxsimile communications in court proceedings. Also contained in the bill is a provision for the establishment of a Judiciary Technology Fund which requires a \$1.50 docket fee increase in all cases to be deposited in the Fund. Moneys from the Fund would be used to implement technological improvements to the court system and to fund meetings of the Judicial Council Technology Advisory Committee.

H.B. 2832. Under the bill certain docket fees would be increased by \$2.00 to establish a Judicial Branch Education Fund which, in addition, would have moneys transferred from the Municipal Judge Training Fund. Expenditures from the Judicial Branch Education Fund would be used to educate and train judicial branch officers, employees, and municipal court support staff and also be used for the education, training, and testing of municipal judges.

92-0187/JAD

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MUNICIPAL COURT
COURT COSTS

February 11, 1992

<u>City</u>	<u>Court Costs</u>
Emporia	\$19.50 all areas
Garden City	\$10.50 Traffic \$20.50 Criminal
Great Bend	\$10.00 all areas
Hays	\$ 5.00 Court Cost \$ 5.00 Warrant Fee \$10.00 Trial Fee (includes court cost)
Kansas City	\$10.00 Court Costs for guilty pleas. \$20.00 Trial Fee (includes court cost)
Lawrence	\$ 5.50 Court Costs (Traffic only-all other to district court)
Manhattan	\$30.00 all areas
Overland Park	No court costs.
Salina	\$20.00 all areas \$75.00 Diversion fee for DWI
Topeka	\$ 7.00 all areas \$ 5.00 extra if case is continued. \$15.00 extra if court date is missed.
Wichita	\$25.50 Trial fees plus 2.50 Witness fees \$20.50 Arraignment fees