

Approved: February 3, 2000
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on January 19, 2000 in Room 313-S of the Capitol.

All members were present except:

Representative Geraldine Flaharty - excused
Representative Phill Kline - excused
Representative Tony Powell - excused
Representative Candy Ruff - excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Kathy Porter, Office of Judicial Administration
Honorable Patrick Brazil, Chief Judge, Kansas Court of Appeals
Paul Davis, Kansas Bar Association
Bill Pauzauskie, Kansas Trial Lawyers Association

The Committee entertained three requests for bill introductions.

- ◆ A request from the Geary County Attorney dealing with time limitations for filing appeals in 1507 actions, which are usually filed by inmates. It would place a one year statute of limitations on those filings.

Representative Gregory made the motion to have the request introduced as a committee bill. Representative Lloyd seconded the motion. The motion carried.

- ◆ A request that would make it clear that business transactions would not be considered a consumer transaction in the Consumer Protection Act.

Representative Loyd made the motion to have the request introduced as a committee bill. Representative Lightner seconded the motion. The motion carried.

- ◆ A change in the Code of Civil Procedure for domestic relations, in the divorce section on property division. So the Court could take into account the failure of one party to perform a material duty or obligation.

Representative Edmonds made the motion to have the request introduced as a committee bill. Representative Loyd seconded the motion. The motion carried.

- ◆ A request to develop a procedure relating to the collection of information on traffic stops for the purpose of racial profiling.

Representative Wells made the motion to have the request introduced as a committee bill. Representative Haley seconded the motion. The motion carried.

Hearings on **HB 2600 - exclusions to jury service**, were opened.

Kathy Porter, Office of Judicial Administration, informed the committee that there are only two districts, the at 15th & 27th, in which excusing a juror for one year after service is not the practice. Many districts have jurors serving for a three month period. Once a juror is picked to serve on a jury, they are then excused for a period of year. A majority of the districts practice "one day-one trial", in which jurors are called to serve for one day or the duration of a trial. (Attachment 1)

CONTINUATION SHEET

Chairman O'Neal expressed concern that in the 27th Judicial District jurors serve on a panel for a period of three months, whether or not they are picked to serve on a jury. In one summer, he had several trials in which the same people were on the jury.

Hearings on **HB 2600** were closed.

Hearings on **HB 2601 - increase in Court of Appeals to 14 judges**, were opened.

Honorable Patrick Brazil, Chief Judge, Kansas Court of Appeals, appeared before the committee as a proponent of the bill. He informed the members that the Kansas Court of Appeals was re-established in 1977 with seven judges.

In 1983, the Judicial Council Appellate Process Advisory Committee found that the Court was overloaded with 1,067 cases filed in 1983 and wrote 80 opinions. The Advisory Committee recommended that no more than 75 opinions should be written in a year. In 1999 the Court wrote 100 opinions. Three judges were added in 1987, by then their caseload had risen to 1,128 cases. Due to Sentencing Guideline, in 1997 the caseload expanded to 2,260. The three additional judges has helped but has not kept up with the number of new cases being filed. The Court uses senior, retired judges, and current district judges to help with the caseload. The Court is asking for an additional four judges plus appropriate staff & space. (Attachment 2)

Paul Davis, Kansas Bar Association, appeared in support of the bill. He stated that more judges are needed in order to address the appeals in a timely manner and reduce the number of retired and district judges being used. (Attachment 3)

Bill Pauzauskie, Kansas Trial Lawyers Association, also appeared as a proponent. He commented that a case on appeal should not have to wait for one to two years in order to get a decision. With the addition of four new judges they should be resolved in an appropriate amount of time. (Attachment 4)

Hearings on **HB 2601** were closed.

Hearing on **HB 2372 - retirement system for justices & judges, retirement age**, were opened.

Kathy Porter, Office of Judicial Administration, appeared before the committee in support of the bill. She explained that the retirement age for judges is somewhat of a lottery. While the law states that they must retire at age 70, they are allowed to finish serving their term out. This makes some judges retire at age 70 while others can serve till age 76. The proposed bill would provide for the uniformity of retirement age. She requested an amendment that would make the bill effective upon publication in the Kansas Register. (Attachment 5)

Hearings on **HB 2372** were closed.

The committee meeting adjourned at 4:45 p.m. The next meeting is scheduled for January 20, 2000



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 West 10th
Topeka, Kansas 66612-1507

(785) 296-2256

January 19, 2000

Testimony on HB 2600 to House Judiciary Committee

Kathy Porter
Office of Judicial Administration

Thank you for the opportunity to appear on HB 2600, which would excuse from jury duty persons who have served as jurors in the county within one year immediately preceding.

My testimony is largely informational. The Office of Judicial Administration surveyed the 31 judicial districts and found only two districts in which excusing a juror for one year after service is not the practice. One of those two districts requires jurors to be available for a period of three months, during which time the jurors must call in every other week to see if they need to report to the courthouse. A juror may serve on one or more jury panels during that three-month period. After serving as a juror, that person is excused from jury service for a period of one year from the date the person was last required to call in.

Many districts have a three-month availability status, in which jurors must call in to see if they are needed. Jurors do not need to come to the courthouse unless they are needed, and they are excused after service. The overwhelming practice is the "one day/one trial" system, in which jurors are called to serve for one day, or the duration of one trial. Following that service, jurors are excused from additional service for a period of one year, or, in a few cases, for two years. Another notable difference is in Wichita, where jurors are available for jury service for one trial or one week.

I have attached a copy of the Supreme Court standards on jury service. As you review the standards, you will note that they are designed to be "juror friendly." Although jury service is an important duty of citizenship, it is acknowledged that jury service can indeed present a disruption in one's life. The standards are designed to minimize any disruption or inconvenience that might result.

A recent study conducted by Dr. Steven Cann of Washburn University and Professor Michael Kaye of Washburn University Law School surveyed a total of 1,747 Kansans called for jury service. The survey concluded that "[o]ver 80 percent of the respondents in this study gave the overall jury duty a positive evaluation, 91 percent said that court employees were courteous and helpful, and there was generally strong support for courthouse facilities." The authors noted:

"National surveys find between 50 and 60 percent of the citizens report satisfactory contact with government agencies. Citizen satisfaction with the Kansas jury system is well above the national average."

Thank you for the opportunity to appear on this bill, and I would be glad to stand for any questions that you might have.

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STANDARD 5: TERM OF JURY SERVICE

The period of time that persons' lives are disrupted by jury service should be the shortest period consistent with the needs of justice, financial considerations, and proper notice in order that the sacrifices and personal inconveniences of jury service might be minimized.

- (a) At least 20 days' notice of the initial date of jury service should be given whenever possible.
- (b) A procedure that utilizes first notification of jury service and summoning for a specific day is recommended.
- (c) Except in areas with few jury trials, persons should not be required to maintain a status of availability for jury service for longer than one week.
- (d) In areas with few jury trials, availability status should be the shortest time possible, but a period of no longer than one month is recommended. However, availability status of no longer than three months is acceptable. In either event, settings of the appearance date should be limited to three times during that period.
- (e) Telephone call-in systems should be utilized to inform jurors whether they are needed and, if so, when they should report to the courthouse.
- (f) Attendance of one day or the completion of one trial, whichever is longer, is recommended. However, attendance during one week or the completion of one trial, whichever is longer, is acceptable.



KANSAS COURT OF APPEALS

301 WEST TENTH
TOPEKA, KANSAS 66612-1507

J. PATRICK BRAZIL
CHIEF JUDGE

(913) 296-5407

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Remarks to the House Judiciary Committee

H.B. 2601

By: J. Patrick Brazil, Chief Judge, Court of Appeals

March 19, 2000

In June of 1997, the Kansas Citizens Justice Initiative was created to look at the justice system and make recommendations on how it could be improved. However, this was not the first time such a review has been undertaken.

The first time was in 1977 when the Court of Appeals was created. In the early '70's, the Judicial Study Advisory Committee, JSAC, was appointed to look at the needs of the Court system, much as the Kansas Justice Initiative is doing now.

At that time, the Supreme Court was the only appellate court in Kansas. JSAC found that, "The Supreme Court of Kansas is presently working at the full extent of its capacity." JSAC recommended creation of an intermediate Court of Appeals based on the following principles:

- Every litigant should have the right to at least one appeal.
- The appellate courts should be more accessible to the people.

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Attachment 2

- The delay, cost, and effort incident to the appeal should be no greater than necessary for sound decision making.
- The appellate courts must be provided sufficient time and facilities to do justice in each individual case.

In part, JSAC envisioned:

- Initially the court would consist of a chief judge and six associate judges. Additional judges would be provided by the legislature as caseload dictates.
- It would hear cases in panels of three judges.
- Its principal offices would be in Topeka, but the court would schedule hearings in or near the county where the case arose, to minimize the expense to the parties .

The legislature accepted the report and created the Court of Appeals in 1977.

By 1983, the caseload had grown to the point that the Governor asked the Judicial Council to study the Court's caseload and operation.

The committee formed by the Council found:

"The Court of Appeals has been diligent and innovative, and should be commended for its efforts to deal with the problem and for its high quality work in the face of the overwhelming number of cases filed. Simply stated the backlog occurred because more cases are filed than can be handled."

It noted JSAC's earlier conclusion that the appellate courts should be accessible and less expensive and recommended:

- Adding three additional judges;
- Increasing the judges' salaries;
- Adding additional research attorneys and secretaries;
- Increasing the use of technology, specifically word processing.

Again, the legislature recognized the needs and in 1987, and gave the Court of Appeals the three additional judges and additional staff.

The time has come again for the legislature to respond.

One of the recommendations of Judicial Council in 1983 was that the Court, *on a temporary basis*, use active and retired judges along with Court of Appeals judges to increase the number of panels of the court that could be scheduled. The Council envisioned that the use of outside judges would be discontinued once the backlog problem was alleviated. Unfortunately, the Court has been forced to rely on the extensive use of active district court judges as well as 4 senior judges to sit with the court in order to handle the caseload.

District court judges who sit with the court are not given any extra compensation, other than travel expenses, and still maintain their regular caseload in their home districts. This means that every day that an active district judge works for the Court of Appeals he or she is not

available to take care of the regular caseload in his or her home district.

One Court of Appeals judge on each panel is ultimately responsible for any opinion written by an outside judge. Because the outside judges do not have staff to support them in their work, secretaries of one Court of Appeals judge and research attorneys must be assigned to work with that outside judge. Currently, the court is using outside judges 35 to 40 times per year.

Reflecting the recommendations of the Justice Initiative, H.B. 2601 provides that four additional judges be added to the Court of Appeals in order to reduce the use of assigned district judges and senior judges, I am here to support their recommendation.

Another reason for more judges is because of the anticipated growth in appeals filed.

In Attachment A, the solid line represents the number of appeals filed each year, starting in 1983, when the Governor asked the Judicial Council to study the Court of Appeal's caseload.

The spike in numbers in 1993 was the result of the legislative adoption of the Sentencing Guidelines Act which went into effect in July 1993. The resulting guidelines appeals drove our caseload to an all time high of 2,260 appeals in 1997. Fortunately, the trend did not continue. The dashed line represents a projection of what our caseload would have

been based on 1983 through 1993 figures but for the guidelines. However, even with the drop in case filings, our appeals are still higher than we project it would have been but for the guidelines.

A comparison of our current caseload with the caseload in 1983, when the governor last called for a study of the court, shows an increase of 72%. While this increase is substantial, it doesn't tell the whole story. A significant problem was the backlog that was created in the first four years of the guidelines. Because the court did not have the resources, in judges or in staff, a substantial backlog of ready cases developed. Fortunately, with the help of the Supreme Court via the Blitz docket, and a lot of overtime by all our personnel and 32 outside or senior judges, we were able to reduce the number of cases in the backlog to manageable levels.

And, although the numbers of new appeals have been decreasing since 1996 as the majority of guideline issues have been resolved, the rate of decline has slowed markedly in the last two years. In 1999 the Court of Appeals had 1% fewer cases filed than in 1998. This suggests that we are at or approaching the time when the numbers of appeals will again begin to grow at the historic rate. (See Attachment A.)

As stated by the Judicial Council in 1983:

"Either fewer cases must come into the system or more cases must go out. More cases can go out only if the court devotes

less time to each case or has more resources."

We need help. While the use of assigned district judges and the occasional Blitz docket are useful short term responses, they are just that, short term measures. Absent an increase in the number of judges on this court or a continued decrease in the number of appeals filed, there is a very real possibility that a backlog could again begin to mushroom as the caseload grows.

The legislature stepped up to the plate and delivered in 1977 and in 1987. I'm asking you to do so again.

KANSAS COURT OF APPEALS

CASELOAD ACTIVITY SUMMARY

	<u>Month</u>	<u>Y-T-D</u>
Cases Pending December 1, 1999	1946	
Cases Filed	178	1841
Cases Transferred from Supreme Court	0	0
Motions for Rehearing Granted	0	3
Cases Reinstated	1	28
NET CASELOAD	<u>2125</u>	

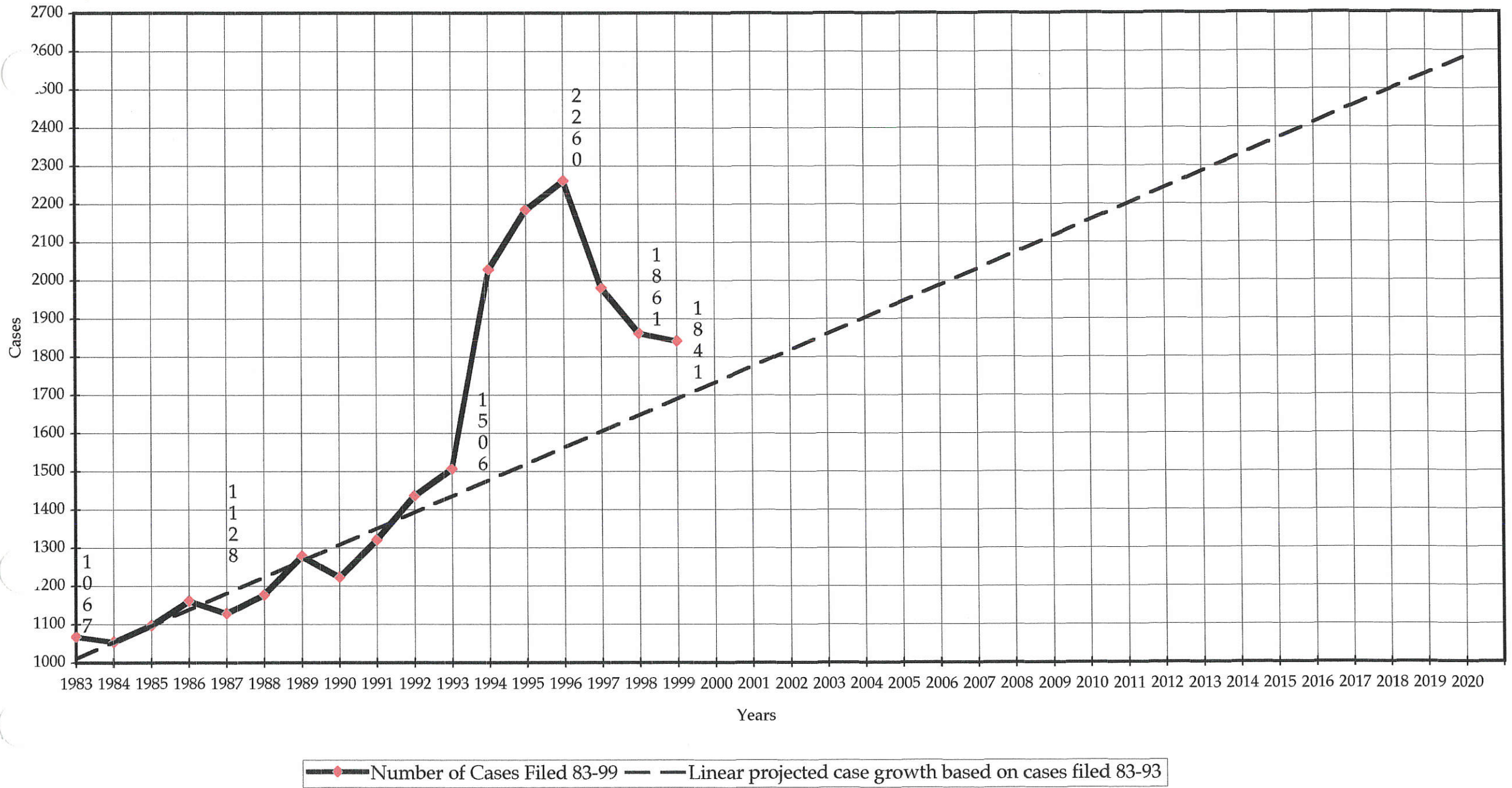
<u>Dispositions</u>	<u>Month</u>	<u>Y-T-D</u>	
Opinions:			
Published	23	130	
Unpublished	242	<u>1419</u>	1549
Dismissals:			
Voluntary (Motion by Appellant)	9	112	
Involuntary (Motion by Appellee)	1	18	
Stipulation (Both parties)	0	23	
Court Order (Court's Own Motion)	4	<u>90</u>	
Denials:			
Miscellaneous Denials	3	41	
Transfers:			
To Supreme Court	26	259	
To District Court	0	0	
TOTAL DECEMBER DISPOSITIONS	<u>308</u>	<u>2092</u>	

TOTAL CASES PENDING JANUARY 1, 2000 **1817**

Attachment A

Kansas Court of Appeals Actual and Projected Caseload Growth Updated 1/14/2000

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**KANSAS BAR
ASSOCIATION**

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LEGISLATIVE TESTIMONY

JANUARY 19, 2000

TO: CHAIRMAN MIKE O'NEAL AND MEMBERS OF THE
HOUSE JUDICIARY COMMITTEE

FROM: PAUL T. DAVIS, LEGISLATIVE COUNSEL

RE: HOUSE BILL 2601

Mr. Chairman and Members of the Committee:

My name is Paul T. Davis and I serve as Legislative Counsel for the Kansas Bar Association. The Kansas Bar Association is appearing today as a proponent of House Bill 2601. House Bill 2601 stems from a recommendation of the Kansas Justice Commission, which was authorized by order of the Kansas Supreme Court on June 3, 1997. In all, 46 members served on the Kansas Justice Commission that was co-chaired by former Governor Robert Bennett and Ms. Jill Docking. The Deans of Washburn University School of Law and the University of Kansas School of Law served as co-reporters for the Commission. The Commission met nine times during a period of almost two years along with conducting public hearings throughout Kansas to seek input from the public.

House Bill 2601 seeks to expand the number of judges sitting on the Court of Appeals from 10 to 14. Since the Court of Appeals was re-established in 1977, it has adhered to a policy that every litigant in District Court is entitled to an appeal.

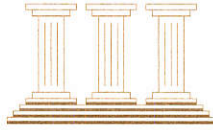
The result of this has been overwhelming caseloads. In 1983, there were 1,067 cases filed with the Court of Appeals. That number has steadily increased to where there were 1,841 case filings in 1999.

Back in 1983, the Judicial Council Appellate Process Advisory Committee recommended that each judge on the Court of Appeals write no more than 75 opinions each year. With the case filings at a little over one thousand that year, judges were still writing over 80 opinions per year. Three additional judges were added in 1987 but the Court has still struggled to keep pace with the number of case filings. When the Kansas Justice Initiative was commissioned, the number of cases pending before the Court was 1,403 and each judge wrote approximately 139 opinions per year. In 1998, the Court issued 1,467 opinions. Additionally, the Court's backlog has led to increased use of unpublished opinions that cannot be cited as authority in later cases.

If Kansas is going to maintain access to the Court of Appeals for all litigants in District Court, more judges are required to process appeals in a timely manner. Currently, the Court of Appeals uses a significant number of retired judges and current district judges to help with the Court's caseload. The Kansas Justice Commission recommends that use of retired and district court judges be greatly reduced. This can only happen if there are more judges that sit on the Court of Appeals.

As you are well aware, this bill was recommended favorably by the Special Committee on Judiciary that met during the interim. The estimated cost for implementing the legislation is \$249,302 for each position or a total cost of \$997,208 for four additions to the Court of Appeals (including salaries, fringe benefits and overhead expenses for the judge, one administrative assistant, and one research attorney).

The KBA respectfully requests that the Committee report House Bill 2601 favorably. I thank you for your time and am happy to stand for questions from the Committee.



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: House Judiciary Committee
FROM: Bill Pauzauskie, on Behalf of the Kansas Trial Lawyers Association
RE: In Support of House Bill NO. 2601
DATE: January 19, 2000

Mr. Chairman and members of the Committee:

The Kansas Trial Lawyers Association is pleased to support House Bill No. 2601 which would expand the Kansas Court of Appeals from its current ten (10) judges to fourteen (14) judges.

It has long been the philosophy in Kansas that every litigant is entitled to at least one level of appeal. The Kansas Court of Appeals was reestablished in 1997 in an attempt to fulfill this promise but has been hampered by an overwhelming case load. Due to the current backlog of cases, it is not unusual for a matter to pend in the Court of Appeals for periods of one and half to two and half years. In order to expedite this appeals process and to allow the appellate judges more opportunity for a thorough and equitable review of matters pending before them, the Court must be expanded. It is not uncommon for the Court of Appeals to have in excess of 1,250 cases pending before it at one time. Appellate judges, in an attempt to keep up, are issuing in excess of 125 opinions each year.

All litigants are entitled to a timely and thoughtful decision of each matter submitted to the Court of Appeals. Expanding the Court from its current ten (10) members to fourteen (14) members will help to meet this objective.

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Attachment 4

Terry Humphrey, Executive Director



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January 19, 2000

Testimony in Support of HB 2372 to House Judiciary Committee

Kathy Porter
Office of Judicial Administration

Thank you for the opportunity to appear in support of HB 2372, which would mandate that all judges and justices retire at the age of 75. Under current law, judges and justices must retire at the age of 70, but may finish serving the term during which the judge attains the age of 70.

Without the requested amendment, judicial retirement age is somewhat of a lottery. Because the current retirement age is dependent upon the birth date and term commencement of each judge or justice, the mandatory retirement age for judges can vary from age 70 to age 76. The requested amendment would provide a uniform retirement age for all judges and justices.

In testimony on this bill last year, the Judicial Branch requested an opportunity to consider the bill further and to explore all implications of the bill. As a part of that process, district judges and district magistrate judges were invited to send comments to the Chief Justice. Responses were overwhelmingly in favor of the bill. The comments received reflected careful consideration of the issue. While judges acknowledged the effects of the aging process that are familiar to many of us, many noted that, in general, people are living longer and are capable of a longer period of productive years in the workforce. Judges are no exception to this trend. Retaining the experience and wisdom of seasoned judges was a consideration noted by most judges who wrote in support of the bill.

In addition to the individual comments on the bill, the Kansas District Judges Association Executive Board voted unanimously to support passage of the bill.

I would request one amendment, to make the bill effective upon publication in the Kansas Register, so that judges impacted by the current retirement age will have the option of retiring under the provisions of this bill.

Thank you for your consideration of this bill, and I would be glad to try to answer any questions that you might have.

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Attachment 5