

Approved: April 28, 2000
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Michael R. O'Neal at 1:15 p.m. on April 5, 2000 in Room 519-S of the Capitol.

All members were present except:

Representative Dave Gregory - Excused
Representative Andrew Howell - Excused
Representative Tom Klein - Excused
Representative Candy Ruff - Excused
Representative Jonathan Wells - Excused

Committee staff present:

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

Conferees appearing before the committee:

Honorable Patrick Brazil, Chief Judge, Kansas Court of Appeals

Hearings on **HB 3051 - Increasing the Court of Appeals to 14 Judges, increasing by one each year to 2003**, were opened.

Honorable Patrick Brazil, Chief Judge, Kansas Court of Appeals, appeared in support of the proposal. He expressed that there was a serious need to add to the Court of Appeals. It's time for the Legislature to address the needs of the Court.

He informed the committee that it's been 13 years since the court was expanded. They have continually relied on the use of district court judges (30 - 40 each year) to augment their panels so they can handle the number of cases filed each year. Having the district court judges sit on the Court it has caused them to have a backlog of cases. (Attachment 1)

The Kansas Bar Association & Kansas Trial Lawyers Association did not appear before the committee but provided written testimony supporting the bill. (Attachments 2 & 3)

Hearings on **HB 3051** were closed.

HB 3051 - Increasing the Court of Appeals to 14 Judges, increasing by one each year to 2003

Representative Carmody made the motion to report HB 3051 favorably for passage. Representative Crow seconded the motion. The motion carried.

The meeting adjourned at 2:00 p.m.



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. 3051

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

April 5, 2000

On January 19, I appeared before this committee to support H.B. 2601. I told you then why we needed more judges on the Court of Appeals.

I'm not going to repeat those remarks today, but I have provided some highlights in my handouts.

I'm not going to repeat them because you have demonstrated your support for our request by your tireless efforts for us during this session.

So far you've been rebuffed primarily for budget reasons, so why would I ask you to try yet again with H.B. 3051.

The short answer is because it's the right thing to do.

You have recognized the long-term needs for the Court of Appeals and in

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doing so, you have joined with the Kansas Citizen's Justice Initiative, the KBA, the National Center for State Courts and others.

Now it's time for the Kansas Legislature to recognize our need.

The budget - it occurred to me this morning as I was preparing these remarks and reading about the revenue estimates in the paper that addressing the needs of the courts is a lot like a homeowner maintaining his or her house.

In fact, right now, my wife and I are looking at some landscaping needs where our ground has settled around the foundation and in other places.

Do we need to do something this year? Possibly not - the basement isn't leaking or the walls aren't cracking - yet. But whether we spend the money (or have the money) this year or wait until later, it will have to be done.

In the meantime, we have recognized the need and given it a priority. When the money is there, we need to get that work done before spending it for luxuries.

If the money for new judges is not available this year, then so be it. The need is still there.

H.B. 3051 would not be the first legislation passed without immediate funding - and it won't be the last.

Mr. Chairman, Members of the Committee, on behalf of the Court of Appeals, I thank you for your efforts this year and ask that you support this bill.

- The court is overly reliant on assigned district court judges.
 - 1999 used assigned judges 35 times on regular dockets and 31 times on the blitz docket. (1998 use assigned judges 37 time and 1997, 44 times.)
 - Impacts on the district court judges workload
 - No support staff dedicated to handling the work of assigned judges which in turn increased the work for Court of Appeals judges' staff.

- The decrease in new appeals filed the court has experienced in the last three years appears to be ending.
 - New filings will again resume their historic rise.
 - 463 new cases filed in first quarter 2000 vs. 415 in 1999 = 11% increase. (424 new cases filed in the first quarter of 1998.)
 - Changes in sentencing laws currently before the legislature could hasten that increase, i.e., more constitutional challenges based upon equal protection.

- Without additional judges, if the caseload again rises (as it did with sentencing guidelines) a backlog will grow thus delaying appeals.
 - Blitz dockets are a draconian short term remedy to a long term problem.

- Kansas Citizens Justice Initiative recommended adding four additional judges immediately.
 - First such initiative since 1983.
 - Recognized that if policy is to provide citizens ready access to the appeals process, the State must devote more resources to the system.



**KANSAS BAR
ASSOCIATION**

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LEGISLATIVE TESTIMONY

April 5, 2000

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

FROM: PAUL T. DAVIS, LEGISLATIVE COUNSEL

RE: HOUSE BILL 3051

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 3051. The impetus for House Bill 3051 is a recommendation of the Kansas Justice Commission, which was authorized by order of the Kansas Supreme Court on June 3, 1997, that four judges be added to the total number of judges sitting on the Kansas Court of Appeals. 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 3051 seeks to expand the number of judges sitting on the Court of Appeals from 10 to 14 over a three year period. Starting this year, one judge will be added per year. We believe this a sound approach to implementing the Justice Commission's recommendation.

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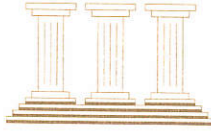
Since the Court of Appeals was re-established in 1977, it has adhered to a policy that every litigant in District Court is entitled to an appeal. The result of this has been overwhelming caseloads. In 1983, there were 1,067 cases filed with the Court of Appeals. That number has steadily increased to 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, House Bill 2601 was recommended favorably by the Special Committee on Judiciary that met during the interim. We greatly appreciate the committee's willingness to revisit this very important in light of the defeat of House Bill 2601 on the House floor. 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 3051 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: Chairman Mike O'Neal and Members of the House Judiciary Committee

FROM: Terry Humphrey, Executive Director
Kansas Trial Lawyers Association

RE: Support for HB 3051

DATE: April 4, 2000

Mr. Chairman and Members of the House Judiciary Committee, thank you for the opportunity to comment on House Bill 3051. The Kansas Trial Lawyers Association is pleased to support H. B. 3051, which would expand the Kansas Court of Appeals from its current 10 judges to 14 judges over the next four fiscal years.

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 1977 in an attempt to fulfill that promise. Since its inception, however, it 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 1 ½ to 2 ½ years. It is also 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 more than 125 opinions each year. The Court must be expanded in order to expedite the appeals process and to allow the appellate judges more opportunity for a thorough and equitable review of matters pending before them.

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 10 members to 14 members will help to meet this objective. Thank you.

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Terry Humphrey, Executive Director