Approved: 3-17-03
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on February 17, 2003 in Room 313-S of the Capitol.

All members were present except:
Representative Dean Newton - Excused

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

Conferees appearing before the committee:
Gerald Schultz, Garden City
Judge Robert Fairchild, 7th Judicial District, Lawrence
Judge Tom Tuggle, 12th Judicial District, Concordia
District Magistrate Judge Keith Hooper, 17th Judicial District, Smith Center
Judge Michael Freelove, 16th Judicial District, Ashland
Kathy Porter, Office of Judicial Administration
Representative Paul Davis
Judge Stephen Hill, 6th Judicial District, Paola
Judge David Mikesic, 29th Judicial District, Kansas City

Chairman announced that the hearing on **HB 2142 - nonpartisan selection of district court judges** was cancelled.

The hearing on **HB 2291 - district magistrate judges do not have jurisdiction over petitions to terminate parental rights**, was opened.

Gerald Schultz, Garden City, appeared as a proponent of the bill, which addresses instances when there are two trials in cases determining termination of parental rights. In Western Kansas many CINC cases are usually heard by a magistrate judge. If the magistrate hears the termination case, there is an automatic appeal to the District Judge, therefore causing the issue of termination to be tried twice. The proposed bill would have such motions heard by only the District Judge (Attachment 1).

The hearing on **HB 2291** was closed.

The hearing on **HB 2307 - elimination or reassignment of district magistrate judges positions upon vacancy**, was opened.

Judge Robert Fairchild, 7th Judicial District, supported the ability of the Chief Justice to move magistrate judges and eliminate positions if need be. In a time of budget crisis using resources in the most effective way seems like a logical option.

Judge Tom Tuggle appeared in support of the proposed bill. The public will still have access to the courts and their resources, counties just won't have a full time district magistrate judges. Chief judges are in the best position to determine what the needs are for their district. He has six district magistrate judges and could manage the workload with only three. The bill attempts to address the fact that some districts have too much work and others not enough (Attachment 2).

Judge Keith Hooper sees the bill as a way to repeal the one judge per county law which entitles every person justice without delay (Attachment 3).

Judge Michael Freelove was concerned that jury selection and venue would become district wide instead of being local. (Attachment 4)

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 17, 2003 in Room 313-S of the Capitol.

Kathy Porter, Office of Judicial Administration, took a neutral position on the bill, but suggested a two amendments:

- provisions governing venue need to be amended so the chief judge has the discretion to assign cases for hearings and trial anywhere within the judicial district and address that the filing of cases are to be filed in the county where the cause of action arises
- provisions regarding juries should be amended to all juries to be pulled from the county in which the cause of action arose (Attachment 5)

Hearing on **HB 2307** was closed.

The hearings on **HB 2341 - judicial performance evaluation process**,& **HB 2342 - district court & magistrate judges who are elected will not have party affiliations** was opened.

Representative Paul Davis appeared as the sponsor of the proposed bills. He explained that **HB 2341** would establish a judicial performance evaluation process as a way to assist voters in evaluating the performance of judges that are up for re-election. Currently, four states have adopted the same type of legislation. **HB 2342** would simply remove the party affiliation from judicial candidates which should lead to better candidates being selected by the voters. (Attachment 6)

Judge Stephen Hill supported the idea of **HB 2341** but was concerned with who would make up the evaluation commission and how the voters would receive this information in a timely manner (Attachment 7).

Judge David Mikesic appeared in opposition of the bill. He believes that non-partisan elections will drive up the costs of elections by mandating that the top two primary vote getters would advance to the general. (Attachment 8)

The hearings on **HB 2341** & **HB 2342** remained open.

BEFORE THE HOUSE JUDICIARY COMMITTEE

Hon. Michael O'Neal, Chairman

Identified Bill: HB2291
Subject: Limitation on Jurisdiction of Magistrate Judges in CINC Cases

Mr. Chairman and Members of the Judiciary Committee:

Thank you for allowing me to appear and give testimony in support of HB2291. It has come to the attention of many practitioners that we are generally having two trials in severance cases rather than one. The origination of this concern came to the attention of the Family Law Section of the Kansas Bar Association and was approved. Additionally, the Legislative Committee of the KBA, on a vote of 26-1, recommended to the Board Of Governors that the idea be included in the Association's Legislative Agenda. For unspecified reasons, the Board of Governors chose not to include the measure in its agenda. Having not garnered the support of the Board, myself and many practitioners remain committed to fix a problem and ask for you careful consideration of this bill.

The demands placed upon the Judicial Branch by virtue of CINC cases are routinely overlooked by outsiders. The fundamental constitutional right to the parent/child relationship is one of the most closely guarded fundamental rights of our liberties protected by the constitution. Thus, the decision to seek severance of parental rights is not taken lightly by prosecutors. The usual CINC case has been on file for an extended period of time, prior to the actual filing of a motion to sever parental rights under K.S.A. 38-1581 *et.seq.* Thus, the magistrate judge has been intimately involved with the parties, the problems that led to the filing of the action, measures taken to resolve family deficiencies, but has been inundated with countless hearsay "reports" that are kept in the social file of the case, which are not admissible at the severance hearing without additional foundation. Thus, this bill does not divest the magistrates of the primary responsibility to assist children and families improve their lives. However, the bill does shift the case from the magistrate to the District Judge for trial on the motion to sever.

Without doubt, the most troubling situation arises for the magistrate, after having read all the "baggage" reports from the SRS, SRS assigned vendor for child services, CASA, Guardian ad Litem and Special Advocate reports for a year or two, and then be asked to rule anew on the motion to sever. The severance hearing is designed to be a shift in the proceedings. The statute requires new service upon all parties and grandparents. The procedure is in place to give due regard and process to the rights sought to be extinguished. The problem with the present procedure is that it encourages two trials. Here is where the procedure becomes clouded and twisted.

Historically, the Kansas Supreme Court ruled in *In Re K.J.*, 242 Kan. 418 (1988). The successful attorney in that case is now District Judge Michael Quint of the 25th Judicial District. In an apparent response to *K.J.* the legislature amended the subject statute to provide for review on the record by the District Judge. In 1998, the problems with the procedure were again borne out in a published decision, *In Re J. H.*, 25 Kan.App.2d 372 (1998) where now District Judge Michael Quint was

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reversed by the Court of Appeals panel for implementing a procedure to give meaning to the words *de novo* as found in the statute. Back in 1988, the Supreme Court skirted the constitutional issues raised in the briefs and decided the case solely on the statutory grounds that 302b required a full *de novo* trial before the District Judge. Having seen the procedural quagmire develop over the last (10) years, the Supreme Court, without comment, withdrew the opinion of the Court of Appeals in *In Re J.H.* on March 5, 1999 the same day the Appeal was dismissed by the Supreme Court.

After discussing the matter with practitioners from a broad perspective and different geography, it is unsettled the manner in which District Judge's are to give meaningful review of trials conducted before a magistrate and preserved by a record. The procedure varies from judge to judge and district to district. What is readily apparent is the fact that far too much valuable judicial time is being spent wading through the appeal process at the District Court level. The better policy is to have the motion for severance heard by a District Judge one time. There simply is not the need to have two trials or hearings, incur countless delays from the first trial to the second "trial" on the record. The record proceedings are an enlightening experience. How does the trial judge "fix" errors made by the magistrate? This problem was brought to bear in the *J. H.* case which has now been withdrawn. The present procedure is rife with error and should be corrected.

Finally, the policy of our great State is to provide a uniform, consistent and clear method of assisting parents and children with high regard to the rights attendant to that relationship. Children and parents do not need a second trial at the District Court level. As a state, we do not need to be stretching our limited resources to provide redundant service. This bill is designed to make the system more efficient and less time consuming for the parties and judges of the District Court.

Respectfully Submitted,

GERALD O. SCHULTZ
302 Fleming, Suite 5
Garden City, Kansas 67846
(620) 276-3728

KANSAS DISTRICT JUDGES' ASSOCIATION
Post Office Box 423
Concordia, Kansas 66901

February 17, 2002

House Judiciary Committee

Re: House Bill 2307.

Dear Representative O'Neal and Other Members of the Committee:

The Kansas District Judges' Association supports those portions of H. B. 2307 which authorize the Supreme Court to terminate or transfer district magistrate judge positions at the end of a term or when the office becomes vacant.

Those portions of the bill amending the venue statutes and manner in which prospective jurors are drawn need further work.

KDJA believes that scarce judicial resources can best be managed by letting the Supreme Court determine the elimination or reassignment of district magistrate judges. The Supreme Court has the necessary resources and information (including case filing and termination statistics for each court) on which to make objective decisions balancing the competing interests of the public's right to access to the court with the wise use of judicial resources.

Since early statehood there has been a law requiring a resident judge in each county. This made sense for many years due to the fact that there was a substantial rural population in the state. However, since the 1930s there has been a trend of population movement from the rural areas to the urban areas. Likewise, as the rural population decreases so does the population of the respective judicial districts.

The 12th Judicial District is representative of rural multi-county judicial districts. The 12th Judicial District as now configured consists of six counties in north-central Kansas, *viz*: Cloud, Jewell, Lincoln, Mitchell, Republic and Washington.

In 1930 the population of the counties which now comprise the 12th Judicial District was 49,863.

In 1968 the counties of Jewell, Lincoln and Mitchell were added to give the district its current configuration.

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In 1970 the population of the district was 49,904.

In 2000 the population of the judicial district was 36,887, consisting of:[1]

Cloud	10,268
Jewell	3,791
Lincoln	3,578
Mitchell	6,932
Republic	5,835
Washington	6,483

The size of the caseload is correlated to the size of the population. In the greater populated counties of the 12th Judicial District the caseload is higher and conversely in the lesser populated counties the caseload is lower. To illustrate this correlation there is attached Exhibit A (a map of the judicial districts in the state) and Exhibit B (the caseload statistics for the 12th Judicial District).

I was reared in a rural area of Kansas, practiced law for many years in rural Kansas and I have been the chief judge for nearly fourteen years. Based upon this experience I believe I'm well qualified to understand the staffing needs of this district, probably better than anyone else.

The 12th Judicial District's current staffing of judges consists of one district judge (the chief judge) and six magistrate judges (one in each county). This district can be run efficiently with one district judge (the chief judge) and three magistrate judges without impairing the public's right to access to the courts.

The cost of a district magistrate position is approximately $67,000.00 annually according to the Office of Judicial Administration, which would compute to a savings of at least $201,000.00 plus some savings to the county budgets.

The KDJA believes that House Bill 2307 as it relates to elimination and reassignment of district magistrate judge positions is good public policy and KDJA respectfully requests serious consideration of this issue by the committee.

Respectfully submitted,

Thomas M. Tuggle

[1] *Kansas Statistical Abstract*, 2000, Institute for Public Policy and Business Research, University of Kansas.

Kansas Judicial Districts (31)

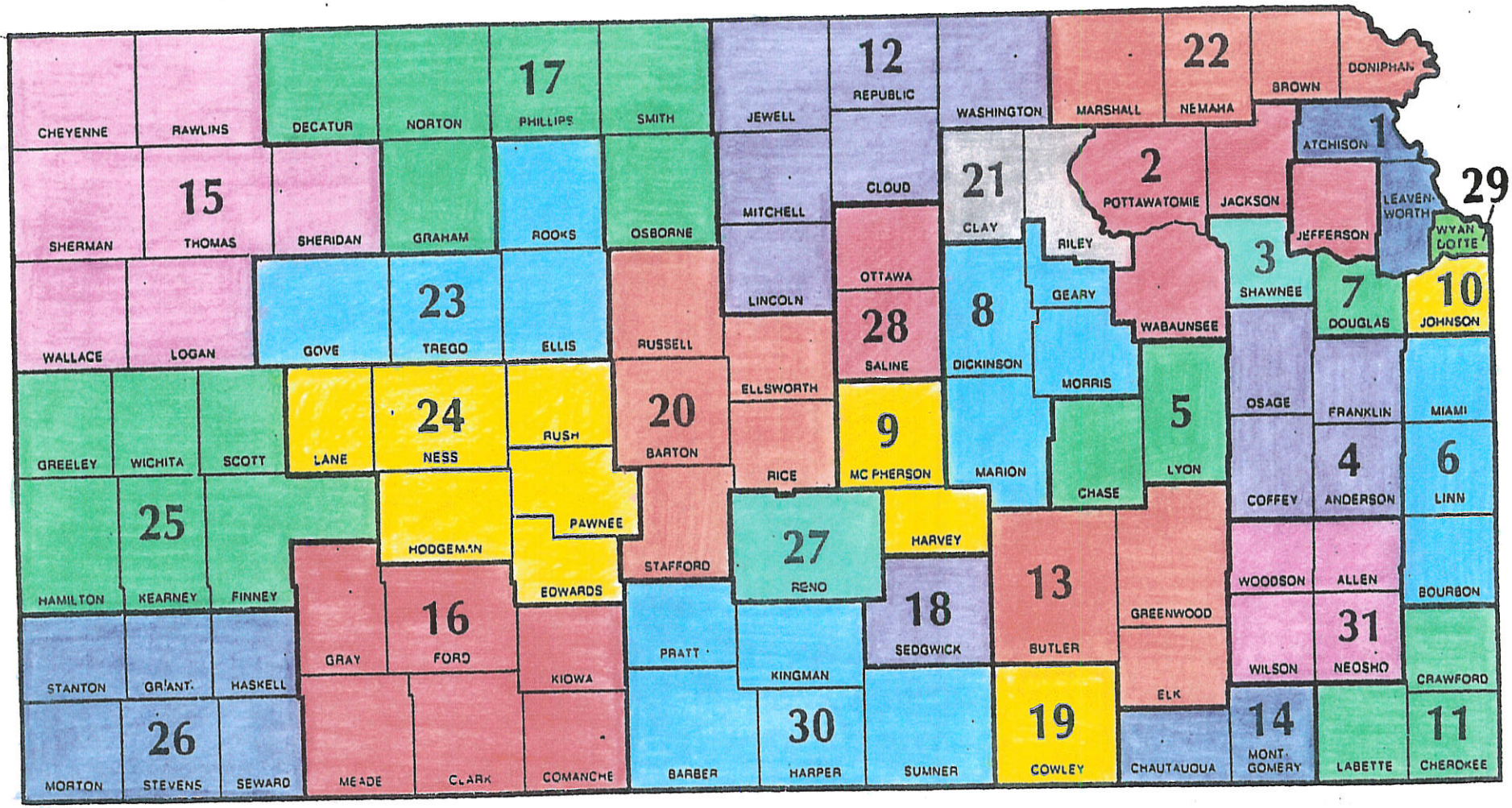

EXHIBIT A

EXHIBIT B

12TH JUDICIAL DISTRICT
DISTRICT CASELOAD STATISTICS
2002 CASE FILINGS

	CLOUD	JEWELL	LINCOLN	MITCHELL	REPUBLIC	WASHINGTON	DISTRICT TOTALS
CIVIL	73 (34%)	23 (11%)	24 (11%)	34 (16%)	26 (12%)	37 (16%)	217
LTD CIVIL	255 (44%)	30 (5%)	73 (13%)	100 (18%)	47 (8%)	72 (12%)	577
DOMESTIC	106 (34%)	27 (8%)	28 (9%)	59 (19%)	56 (18%)	38 (12%)	314
SM CLAIMS	96(27%)	36 (10%)	44 (13%)	100 (29%)	50 (14%)	26 (7%)	352
PROBATE	71 (23%)	35 (11%)	23 (7%)	53 (17%)	67 (22%)	61 (20%)	310
JV OFFENDER	62 (44%)	14 (10%)	6 (4%)	23 (16%)	22 (15%)	16 (11%)	143
JV CINC	21 (47%)	3 (7%)	2 (4%)	4 (9%)	8 (17%)	7 (16%)	45
CRIMINAL	339 (40%)	48 (6%)	94 (11%)	144 (17%)	97 (11%)	124 (15%)	846
CARE/TRMT	5 (29%)	1 (6%)	2 (12%)	3 (18%)	5 (29%)	1 (6%)	17
ADOPTION	2 (18%)	1 (9%)	1 (9%)	2 (18%)	1 (9%)	4 (37%)	11
TRAFFIC	1345 (27%)	350 (6%)	634 (13%)	682 (14%)	1405 (28%)	627 (12%)	5043
FISH & GAME	4 (4%)	17 (16%)	51 (47%)	26 (24%)	3 (3%)	7 (6%)	108
JV TOBACCO	2 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2
TOTALS	2381 (31%)	585 (7%)	982 (12%)	1230 (15%)	1787 (22%)	1020 (13%)	7985
TOTALS W/O TRAFFIC	1030 (37%)	218 (8%)	297 (10%)	522 (18%)	379 (13%)	386 (14%)	2832

Compiled by the Chief Clerk of the Twelfth Judicial District
(case filing statistics provided by individual counties)

TESTIMONY OF HON. KEITH W. HOOPER
SMITH COUNTY DISTRICT MAGISTRATE JUDGE
Before the House Judiciary Committee of the Kansas Legislature
Concerning HB 2307
February 17, 2003

My name is Keith Hooper and I represent the Kansas District Magistrate Judges Association. I am the elected District Magistrate Judge in Smith County, Kansas. Smith County is one of the State's smaller counties by population, located in extreme North Central Kansas. I retired from the active Army as a Lieutenant Colonel in 1993 and moved back to the family farm in northern Smith County. I was elected to the position of magistrate judge in 1996 and reelected in 2000.

I have come before you today to share with you my testimony and thoughts concerning HB 2307 and although the bill is 50 pages in length, it boils down to one issue, the repeal of K.S.A. 301b which states:

> *"In each county of this state there shall be at least one judge of the district court who is a resident of and has the judge's principal office in that county."*

It would appear that this statute is an acknowledgement of the right guaranteed by the Bill of Rights of the Constitution of the State of Kansas that all persons are entitled to have justice delivered without delay. Counties of Kansas have always had a resident judge. Before Court Unification it was the county or probate judge. They had many of the same responsibilities as the district magistrate judges have today but were funded by each county. It is my understanding that in 1977 when the Kansas Courts were unified, that if the rural counties supported the unification initiative, the Kansas Legislature guaranteed that all Kansas counties would have at least one resident judge of the district court. This two-tiered district court system (district judge and district magistrate judge)

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has worked smoothly and efficiently for the past 26 years. In fact, the Kansas court system has been recognized as one of the best state court systems in the United States. Ten years ago, all magistrates served in rural counties. Most were non-attorney judges. This has changed. Currently, twenty five percent of the magistrates are attorneys and two judicial districts (10th & 25th) have added five new magistrates – three in Olathe and two in Garden City. All, by the way, are attorneys. In Johnson County, there were 120 applicants for the 3 new positions of which 60 were attorneys.

I am not going to burden you with details about the types of cases that District Magistrate Judges can preside over because that is not the issue here. I have provided you a brochure that explains our functions. I will simply tell you that 87% of all cases filed in Kansas courts fall within the magistrate's jurisdiction but only 32% of the state court's judges are magistrates. That doesn't mean that magistrates hear 87% of the cases, it means that magistrates have statutory authority to hear 87% of the cases. In military terms, it appears that the Colonels are doing a lot of the Captains' work because there aren't enough Captains.

As you well know, rural Kansas is facing many challenges because of her declining population but big city problems have made their way to rural Kansas. Despite the declining population, my case load has remained relatively constant over the past six years. Before July, 1992, I, as were many magistrates in rural Kansas, detailed to assist urban counties in reducing caseload. OJA assigned me to Shawnee County for approximately five weeks a year to assist in felony preliminary hearings and juvenile court. Because of budget shortfalls, all magistrate temporary assignments to urban districts were curtailed. I would assume that the district court judges are now hearing

these less complicated cases, or the urban counties are providing funding out of their county budget for hiring pro tem judges, which may or may not be cost effective.

The beauty of being a rural Kansas judge is the special interest that I can take in juvenile court and I make it a point to know each child who appears before me. As an active member of the community, I mentor, coach, support, and provide the discipline that they may not get at home. Recidivism is rare in my court. In my many trips to Shawnee County to hear juvenile cases, the most frustrating thing was that juvenile court was very impersonal because of the heavy caseload,. The juvenile judge simply does not have the time to take a special interest in each child. I am afraid that counties who do not have a resident judge would run that same risk. I am also fearful that search warrants, protective custody hearings, involuntary commitment hearings, and juvenile detention hearings (all time sensitive) may be out of compliance because of the lack of a resident judge.

If HB 2307 is passed, there are four judicial districts in Kansas (12th, 15th, 17th and the 24th) that will most likely be affected because they have no urban area in their district. There are 24 magistrate judges in these districts. Five magistrates serve exclusively in urban areas. The remaining 45 magistrates, in addition to covering their own county, spend part of their week hearing cases in adjacent urban areas, as assigned by their chief judge. If this bill becomes law and if the Supreme Court decides that one county in each of the four judicial districts mentioned above does not have the caseload to support a resident judge and the judges were terminated, the potential savings to the State would be approximately $200,000. It is quite likely that the Supreme Court would transfer the

positions to urban areas, which would result in no savings. In fact, it would cost the taxpayers additional moneys for mileage expenses for other judges to cover these counties.

On page 10, line 14 of the bill, the following paragraph has been added:

> *"In counties where district magistrate judge positions are eliminated or from which district magistrate judge positions are reassigned, the county commission may elect to retain the position and pay the salary of the successor district magistrate judges in accordance with the provisions K.S.A. 20-310a, and amendments thereto."*

I think that the drafter of this bill has overlooked the fact that residents of rural counties are subject to and pay the same sorts of taxes to the same state taxing authority as do their counterparts in other areas of the state and they should be able to expect to receive similar services. I did discuss this proposal with my county commissioners and they thought it was a good idea, provided the county could keep the fines and court costs, which is almost double my annual salary.

Another issue of concern is found on page 9 line 29 of the bill:

> "Sec. 11. K.S.A. 20-336 is hereby amended to read as follows: 20-336. In any judicial district which has not approved the proposition of non-partisan selection of district court judges, election laws applicable to the election of *district judges* shall govern every election of district magistrate judges. Each district magistrate judge shall be elected by the electors of the *judicial district* where the judge's position is located."

Three of the four judicial districts that I mentioned before are in elected districts. As an example, my district, the 17th, is 120 miles from east to west, 60 miles from north to south and encompasses six rural counties. The logistics of running a campaign in six counties is impractical , since the magistrate will most likely hear cases in only two of the six counties in the district. It appears that this is an attempt to overlay an urban model,

where county and judicial districts are synonymous, on a rural area. It simply won't work. My other concern is that in my district, for example, candidates from the two larger counties in the 17th would have an advantage over the four smaller counties in an election and all of the judges for the entire district could come from one county. The selection process may work more smoothly in "retention districts" since the selection committee could consider county of domicile.

The "one judge per county" issue has been before your committee on several occasions in the past and each time, the statute remained unchanged. Again, you are dealing with the same issue. Before you make your decision, remember that the resident county judge concept is as old as the State of Kansas. As former Chief Justice Richard W. Holmes eloquently stated in his "State of the Judiciary" message presented to a joint session of the legislature on January 23, 1991:

> "Any amendment of K.S.A. 20-301b will, of course, ultimately have substantial impact on the Kansas judicial system and consideration must be given to the needs of law enforcement and the ability of the judicial branch of government to assure equal, swift and effective access to justice for all the citizens of Kansas."

The Kansas District Magistrate Association opposes the passage of HB 2307 because it appears quite likely that it would be discriminatory and would have an adverse effect for the citizens of many rural Kansas counties. The association, however, would support a tops down review of the 31 judicial districts in the state to determine if the magistrate judge issue is the only area that needs reform. Hard questions need to be asked. For example:

- Why are there no magistrate judges in the 1st, 3rd, 7th, 18th, 19th, and 29th judicial districts?
- Who hears the less complex cases in these districts?
- Is the county subsidizing the district court for pro tem judges? If so, how much?

- Why do some urban districts have one court reporter per judge and other urban districts have one court reporter per two judges?
- Can a formula be developed that mandates district judge/magistrate judge allocations based on numbers and types of cases filed in the courts?
- Can this formula be applied to all judicial districts across the state?

I am sure that the Kansas District Judges Association would support this initiative since it could ultimately decrease the judicial budget, decrease the backlog, and increase the number of judges statewide. I will close with a statement from Chief Justice McFarland in her 2002 State of the Judiciary Report:

> "Adding District Magistrate Judges has proved to be a cost-effective way to manage increasing caseloads. A District Magistrate Judge is able to manage many of the less complex cases, leaving the District Judges to handle the more complex caseload. The lower salary of a District Magistrate Judge coupled with less support staff makes this a cost-effective caseload management tool."

Subject to your questions, this concludes my testimony.

TESTIMONY FOR HOUSE JUDICIARY COMMITTEE ON HOUSE BILL 2307

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, GUESTS.

I first of all would like to thank you for the opportunity to speak to you today. I am Michael Freelove, District Magistrate Judge from Clark County in the 16th Judicial District. I am here as a representative of the District Magistrate Judge's Association to present our views on House Bill 2307

I have read this bill and found it disturbing from several aspects.

It begins by amending the Dispute Resolution statute on Arbitration K.S.A. 5-417, by striking the designation of the county where the application is filed and replacing the county with the district court of the judicial district.

On page 8 of the bill this is explained, starting at line 40 Section 7 " K.S.A. 20-301 there shall be in each judicial district a district court, which shall be a court of record, and shall have jurisdiction as determined by the supreme court or otherwise prescribed by law and also shall have the appellate jurisdiction as prescribed by law."

My question is, who will determine where this district court will be located. Are you going to burden a very busy Supreme Court with

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the task or will you make the designation. Will there be a judicial district court in each county in the multi-county districts. Will the non-judicial personnel remain in each county? If not how will the records of the present courts be maintained.

On page 49 of this bill are the statutes that are repealed. Included in those statutes is 20-301b that requires a judge in every county. That also means that there is a court in every county. I want to advise this committee that at the end of this term I am eligible for retirement under KEPRS with 85 points, unless the point system is changed. It makes no difference to me as far as my career as a judge if you repeal the one judge per county requirement. But it does make a difference to me where it concerns the citizens of my county that elected me to serve as their judge. Rural communities across the state are struggling to maintain the quality of life that made this state great.

The Kansas court system has gained national notoriety as a system that gets things done. We have been applauded for our efforts and success in caseload reduction due to stringent time standards.

This has been accomplished by hard work from the entire system, not just the judges but from the non-judicial personnel, clerks, administrative assistants, court reporters, court services officers and all involved.

This has been done in spite of budget constraints, which have lead in the past to hiring freezes of up to 60 days in all areas of the

system. These freezes have placed additional workloads on everyone. As you all know if you are short on staff, everyone has to work harder to get the job accomplished.

The need for additional judges is great. The increasing caseloads have handed the judges a very busy schedule. This leads us to one of the questions you are to consider, should there be a judge in every county?

Chief Justice McFarland made the statement " Where Judges are located and court is held are matters set by statute." Statistically, urban area judges have higher per judge caseloads than do rural judges. However case load means little to the litigants in court, they just want their day in court.

Whether to change the existing law is a matter of public policy. Statistics are but one factor to be considered. Public confidence in its judicial system is vital to an effective court operation. The county courthouse is a major feature and symbol of government in every county. If the judicial function is abolished, a loss of local area identity will occur and with it, a possible loss of public trust. These and other factors must be studied and balanced under current and anticipated future conditions.

In Western Kansas, as you know, we are for the most part are a sparsely populated rural area. Should we place a possible hardship

on our rural citizens by abolishing their local courts or limiting their access to the judicial process? The current system of district judges and district magistrate judges, works very well in our part of the state. With the district magistrate judge's jurisdiction the rural citizens have the same ease of access to the courts, to satisfy most of their pressing litigation, as do their urban counterparts.

Not only in Western Kansas but throughout all rural Kansas, in the multi-county districts this system is in place. In the majority of the multi-county districts, the well trained district magistrate judges, in addition to the duties in their respective counties, are assigned on a regular basis to the larger populated areas of the district to help with the case load by handling cases within their jurisdiction. This, in effect, serves the citizens of the rural areas and also helps ease the caseload of the judges in the more populated areas of the district. A district magistrate judge's salary is roughly $46,500.00 annually as compared to a district judge at around $97,000.00. I would say that is very economical justice for those areas.

In the 70s during the legislative quest to unify the court system the citizens of this state were promised a resident judge in ever county, thus the reason for K.S.A. 20-301b. This gave the citizens confidence that court unification would be a good thing and it was passed. Do we now take that promise away from our citizens under the guise of a money saving move? We all know that the elimination of some district magistrate judge positions would not

even be a Band-Aid on the states economic crisis. I believe there are better solutions.

On page 10 starting at line 14 we find "(b) In counties where district magistrate judge positions are eliminated or from which district magistrate judge positions are reassigned, the county commission may elect to retain the position and pay the salary of the current district magistrate judge. Counties may elect to pay the salary of the successor district magistrate judges in accordance with the provisions of K.S.A. 20-310a and amendments thereto." K.S.A. 20-310a provides for the appointment of judge pro tem to be appointed by the chief judge of the district and paid by the county where they were appointed. Will this statute be amended to allow the counties to appoint a judge? If so under what jurisdiction will this judge fall, since the prior position has been reassigned to another location or has been eliminated? What jurisdiction will this judge have? Will the counties still be required to furnish a budget to the judicial district court as set out in this bill?

I am sure that many of the counties would not have a problem with paying a judge if they were allowed to keep the revenue generated by that court.

Again on page 10 line 20 Sec. 13 has the requirement that all judges, retained or elected, be elected on a district wide ballot.

For the multi county districts this raises some concerns.

The county with the larger population would elect all of the judges in the district. The candidate in the lesser-populated county could win the election in their respective county by a landslide and still loose to the candidate from the larger county simply because of population distribution.

This also brings up the question of residency of the judge, will they be required to live in the county that they represent or where ever they choose in the district? Present law requires the district magistrate judge to be a resident of the county they serve. But then again if this bill becomes law they would serve in the judicial district court, wherever that might be. This information is not specified in the bill.

In going further in to the bill the question of venue is presented in the child in need of care and juvenile statutes. There should be special venue consideration in these cases. This bill does not address those considerations adequately.

Other venue questions are answered on page 37 lines 35-38 " the chief judge shall assign cases filed in the district court to any county within the judicial district, as assigned by the chief judge.

That may answer the venue question but the question of there being a court in each county remains.

The question of jury selection begins on page 20 and 21. This bill wants juries called from the judicial district; it eliminates the

county system. In one county districts this works, but will it in multi county districts? Well, I will let you explain to a voter called for jury duty that they may have to travel up to 100 miles one way to serve on that jury.

Ladies and gentlemen, my opinion of this bill is that it is very poorly written that it does not address all of the changes that would have to be made if it was passed. If you stop and think about amount of money saved by doing away with or reassigning some district magistrate judge it is very little compared to the services lost to the citizens of Kansas. I urge you to consider the burden that it would place on the citizens of our state. I sincerely hope that you do not forget the promise made to the people of Kansas when the courts were unified.

Thank you.

State of Kansas
Office of Judicial Administration
Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507 (785) 296-2256

February 17, 2003

Testimony Regarding HB 2307
House Judiciary Committee

Kathy Porter
Office of Judicial Administration

Thank you for the opportunity to provide testimony on this issue. Although the Office of Judicial Administration has taken a neutral position on this bill, there are a few amendments that would need to be made to make the provisions of this bill work, should it be enacted.

The first amendment concerns a series of provisions governing venue. While these statutes do need to be amended so that chief judges are given the discretion to assign cases for hearings and trial anywhere within the judicial district, the amendments currently in the bill would allow for both filing anywhere within the district and hearing the case anywhere within the district. Those amendments addressing filing should be eliminated so that cases are filed within the county where the cause of action arises. The chief judge will then decide in which county the case is to be heard within the judicial district.

The provisions of the bill regarding jury trials also should also be amended to allow juries to be pulled from the county in which the cause of action arose. If the trial is held in another county, the county in which the cause of action arose would be responsible for the costs of the jury trial.

As you can see, the bill is quite lengthy. Ideally, a committee of judges and clerks would work through the provisions of the bill to make sure that, if it is enacted, a workable system would result. Since the bill's inclusion in last Thursday's bill packet, the Office of Judicial Administration has been encouraging such review. At this time, the amendments noted above are all that have been brought to our attention, but we will continue to work to perfect the bill, should it progress during this legislative session.

Thank you for the opportunity to request these amendments.

KP:mr

H. JUDICIARY
2-17-03
Attachment: 5

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STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASS NTS
MEMBER: TAXATION
TRANSPORTATION
JUDICIARY

LEGISLATIVE TESTIMONY
REPRESENTATIVE PAUL DAVIS
HOUSE BILLS 2341 & 2342

FEBRUARY 17, 2003

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

FROM: REPRESENTATIVE PAUL DAVIS

Mr. Chairman and Members of the Committee:

I appear before you today as a proponent of both House Bill 2341 and House Bill 2342. I believe these two bills are interconnected because their enactment will result in greater accountability and public confidence in the judicial system.

House Bill 2341

This bill proposes to establish a judicial performance evaluation process similar to what was recommended by the Kansas Justice Commission in 1999. The goal of the evaluation process is to assist voters in evaluating the performance of judges and justices subject to retention and election, facilitate self-improvement of all judges and justice, and protect judicial independence while fostering public accountability of the judiciary. The Supreme Court Nominating Commission is empowered to set up the specifics of the judicial evaluation process with the assistance of the Office of Judicial Administration. The process would involve the surveying of Kansans who come into contact with a judge whether as a lawyer, court services officer, litigant, juror or other participant. After individuals are surveyed and the date is collected, the results will be published by the Commission and OJA prior to the election.

Most voters have absolutely no information about judges who are on the ballot, whether they are subject to retention or are running in an elected district. The time has come for us to establish a mechanism whereby voters can get some information. The establishment of a judicial evaluation process was the second recommendation of the Kansas Justice Commission, a

commission made up of a broad-based group of Kansas citizens and chaired by the late Governor Robert Bennett and Wichita businesswoman Jill Docking. Four states (Alaska, Arizona, Colorado and Utah) have adopted judicial evaluation programs that work. It can be done. That is why the Kansas Justice Commission made it one of their top recommendations.

House Bill 2342

This bill simply removes the partisan affiliations that judicial candidates have in those districts that elect judges. I firmly believe that there is no Republican or Democrat way to be a judge. Furthermore, one should not have to be a Democrat to get elected a judge in Wyandotte County or have to be a Republican to get elected a judge in Sedgwick County. Removing party affiliations will provide that judicial candidates can no longer hide behind party affiliations in elections. And I believe it will lead to better candidates being selected by the voters.

Judges in the remaining fourteen judicial districts who are elected through a partisan political process find themselves enmeshed in the political system to attain and retain an office founded on impartiality and independence. The conflict is inherent in the system.

Modern-day elections, including judicial elections, require large commitments of money and time. Family members, friends, fellow church members, clients and others are routinely requested to provide work and money for these campaigns, but normally those most interested in who will be elected judge are the attorneys who work in that court. It is a fact of life that a judge who must raise money and enlist help to conduct a campaign to attain the office is under obligation to someone and usually to many. As a result, that judge's impartiality is subject to question anytime a party or an attorney comes before the judge who is known to have contributed to the judge's election campaign. The judge then becomes subject to disqualification in that case if the judge's impartiality might reasonably be questioned. The more successful the judge is as a fund-raiser, the more significant the impact on the judge's ability to perform his or her job. However, it is no less problematic when the judge goes in debt to conduct the campaign and has to engage in fund-raising activities to retire the debt after the election. The public does not understand this dilemma and the election process significantly diminishes the impartial appearance of all judges, no matter how circumspect their conduct.

It is a tribute to the integrity of the Kansas judiciary that relatively few serious disciplinary complaints are filed against judges. In presenting this position paper in support of nonpartisan selection, the Commission on Judicial Qualifications does not impugn the integrity of individual judges but rather suggests that judges and the public would be well served by removing judges from the political process.

We agree with the Kansas Commission on Judicial Qualifications and with the judges and attorneys who work in our judicial system on a daily basis. The system needs to be changed to protect its integrity and independence. We ask Kansas to adopt a constitutional amendment expanding the current, non-partisan selection system to the entire State. Members of the Commission are committed to lead the educational effort to explain to voters why this change is so important to the continued integrity of – and public confidence in – our judicial system.

(b) To increase the information available to voters, the constitutional amendment adopting non-partisan selection of district court judges should authorize creation of a Kansas Judicial Evaluation Commission. The Commission would prepare and make available to the public evaluations of each judge prior to each judicial retention election. The Commission should include lawyer and non-lawyer members, appointed in equal numbers by the Governor and by the Kansas Supreme Court.

Rationale

All public officials should be accountable to the citizens of this State. The work done by judges is uniquely difficult for the public to evaluate. The actions of a judge over his or her term of office take place in hundreds of individual cases. Most of the time, no one other than the parties is present. Finding out whether a judge is generally fair, knowledgeable, polite to litigants, or is otherwise doing a good job cannot be accomplished by a trip to the library, a single visit to the courthouse, or even several courthouse visits. When voters are asked whether a judge should be retained in office, they should be given some solid information upon which they might make that decision.

In addition to public accountability, most workers benefit from some supervision and feedback regarding their work. Judges generally do not receive any. Each judge is assigned a docket of cases and is responsible for handling them. No one systematically reviews the judge's work and provides feedback. Comments made to the judge by attorneys or litigants are always suspect: if such comments are negative, they may just be sour grapes regarding a particular decision; if positive, they may just be an attempt to curry favor with a judge the attorney or litigant is likely to see again in the future.

At least four states – Alaska, Arizona, Colorado and Utah – have well-established, statewide judicial performance evaluation programs in place. These programs provide a comprehensive review of each judge's performance prior to retention elections. Some of them also provide interim reports to the judge during his or her term of office, allowing private feedback to be exchanged and, hopefully, acted upon.

The American Judicature Society, which since 1913 has supported improvement of the nation's courts and efficient administration of justice at all levels, recently completed an extensive study of these judicial performance evaluation programs, conducting voter exit surveys during the 1996 election and also conducting surveys of judges and judge evaluators. Especially after such programs have been in place for more than one election, voters were aware of the evaluation process and many voters indicated they obtained information specifically from those reports. In Alaska, where two decades of information was available, there was a direct correlation between the ratings of the judges in the evaluations and their votes in the retention elections. Judges reported that the reviews were fair and that the reports would help them in improving their job performance.

Kansas lawyers strongly support implementing some formal method of judicial evaluation. Kansas judges, by a sizeable plurality, also support such evaluations.

Some Form of Evaluation Should Be Implemented	**Judges**	**Attorneys**
Strongly Agree	15%	41%
Agree	33%	34%
Neutral	35%	14%
Disagree	9%	7%

We agree that such a program should be established in Kansas. Good examples of such programs are found in each of the states listed above. Alaska has had the longest experience, having started retention evaluations in 1976. Its commission conducts a professional survey of lawyers, police officers and probation officers; sends a questionnaire to each judge; surveys jurors; reviews performance-related data (such as case handling statistics); sends a separate questionnaire to selected lawyers who have recently appeared before the judge; and seeks general public input. The commission then publishes the result of each survey, along with its recommendation of whether the judge should be retained in office. Similar processes, with some variations, are used in each of the states. Sample reports from other states are found in Appendix C.

The establishment of a judicial performance evaluation program is not without accompanying costs. To provide a credible evaluation, with appropriate public input, is an involved process.

These programs can have several potential benefits. First, they provide meaningful information that voters can use when evaluating whether a judge should be retained in office. Second, they can be a powerful mechanism for removing the rare judge who proves unfit for the bench. This can occur either by voters acting upon an unfavorable recommendation or by a judge choosing not to seek retention after learning that he or she will be receiving an unfavorable review. Third, they provide meaningful information for judges to use in improving their own performance. At present, Kansas judges do not receive any systematic feedback about their job performance.

State	1996 Budget
Alaska	$107,550
Arizona	$256,400
Colorado	$17,000
Utah	$121,750

Notes:
1. Utah figure based on 1997-98 budget request; 1996 data not available.
2. Colorado figure apparently excludes separate funding of local commissions.

We propose including this recommendation in the same constitutional amendment package that would make merit selection a uniform, statewide method of selecting judges. We think the two recommendations go hand in hand, and that guaranteeing the citizens a useful judicial performance evaluation process would be quite helpful in justifying support for the nonpartisan, merit selection system. Indeed, we doubt that the judicial evaluation process we propose could be implemented fully in districts where judges are elected since it would be unfair to publicize the evaluation of an incumbent judge but provide no evaluation for the opponent.

We suggest that the constitutional provision not attempt to provide detailed procedures for the judicial evaluation commission to follow. The methodologies will, no doubt, need to be developed and refined over time. This can best be done, in our view, under rules adopted by the Kansas Supreme Court. Arizona's program, for example, operates primarily under rules established by the Arizona Supreme Court. Some others establish their own rules or operate under statutory directives. The Kansas Supreme Court has the constitutional mandate to supervise the lower courts of the State. In addition, through its staff and its own training, the Kansas Supreme Court is uniquely qualified to design and implement a judicial performance evaluation program. A variety of helpful resources are available. Accordingly, we recommend that the constitutional amendment

authorize creation of the performance evaluation commission, while leaving the rules governing its operation to be established by court rule.

Recommendation 2: Timeliness of Decisions.

The Kansas Supreme Court should provide, by rule, additional procedures for tracking the timeliness of decisions made by trial judges.

Rationale

It has often been said that justice delayed is justice denied. This is so because, in many cases, a remedy that is not made available on a timely basis may no longer be effective when ultimately provided.

K.S.A. 60-252a and Kansas Supreme Court Rule 166 presently require that decisions in contested non-jury civil trials be rendered within 90 days; that decisions on summary judgment motions be made within 60 days; and that decisions on all other motions be made within 30 days. If the judge does not meet these time standards, the judge is required to file a report with the Judicial Administrator within five days. However, compliance with these rules does not appear to be uniform, and there is no mechanism in place for tracking the matters taken "under advisement" by the judge that are pending decision.

We cannot say how widespread problems of slow issuance of decisions may be. There simply is no data available but there are anecdotal reports of some cases that have taken inordinately long for an opinion to be issued. There are reasons why some decisions may be delayed. Trial judges face pressures that often make it difficult to work on pending opinions due to other matters that must be heard. Criminal cases must receive priority. Statutory provisions require expedited hearings as well in several other areas, as do the exigencies of individual cases. However, at some point, a decision simply must be made, as recognized by the current Supreme Court rule setting time standards for issuing decisions.

We propose that each Chief Judge of the district be required to establish a mechanism for tracking cases under advisement for compliance with the time standards. We suggest that the mechanism for doing so be determined in each judicial district, since each district has a different computer system and other mechanisms for docketing and tracking cases.

When a case has been under advisement beyond time standards established by the Supreme Court, the Chief Judge of the district would provide notice to the Supreme Court or the Judicial Administrator and to the judge involved. That notice would inform the judge that if a decision is not rendered within 30 days, the matter may be referred to the Kansas Commission on Judicial Conduct for investigation of whether the judge is meeting the obligation under the Judicial Code of Conduct to "dispose of all judicial matters promptly, efficiently and fairly." If the decision is not rendered within 30 days from the transmittal of that notice, referral to the Commission on Judicial Conduct by the Supreme Court or the Judicial Administrator would be discretionary, as there may in some cases be a clearly appropriate reason for the delay.

EXECUTIVE SUMMARY

With financial support from the State Justice Institute (Award #SJI-96-12A-C-149), the American Judicature Society undertook a project to assess the impact of court-sponsored judicial performance evaluation programs that serve two purposes: improving judicial performance and informing voters in retention elections. Only four states, Alaska, Arizona, Colorado and Utah, had such programs in place for the 1996 judicial retention elections, the period we studied. Experience with retention evaluations varies from two to twenty years. Alaska first evaluated judges standing for retention in 1976, Arizona in 1994, Colorado in 1990, and Utah in 1990.

Performance evaluations as a response to the absence of information in judicial retention elections

All four states initially select their judges under a merit plan, whereby a nominating commission recruits, investigates, interviews and evaluates applicants for judgeships, and recommends a short list of the best-qualified candidates to the appointing authority. In each of the four states we studied the governor is the appointing authority. A traditional component of merit plans is retention elections, in which appointed judges seeking subsequent terms stand in uncontested, nonpartisan elections. In a retention election, voters are asked to respond yes or no to the question, "Shall Judge X be retained in office?" A judge who receives a simple majority of votes cast is retained. One rationale for the retention-election component of merit plans is to provide some measure of public accountability.

However, retention elections share with all judicial elections the problems of low visibility and lack of voter knowledge about candidates. To address these problems, some merit-plan states have adopted judicial retention evaluation programs. These programs are designed to collect systematic information about judges' on-the-bench performance, using such criteria as legal, administrative and communication skills, integrity, impartiality, temperament/demeanor, punctuality, and compliance with continuing judicial education requirements. The evaluation commissions analyze this information, and then publicly disseminate the evaluation results and recommendations to voters as widely as resources permit.

In addition, as part of the performance-improvement component of the process, the evaluations are intended to provide feedback to judges about their relative strengths and areas in need of improvement.

How performance evaluation programs operate

All four programs are based on a common model. Each commission conducts surveys of court users (attorneys, and typically police officers, jurors, litigants, social workers, etc.) to measure each judge's performance on a list of criteria or performance standards. Each commission also may meet with the judge under review, collect nonsurvey information such as a self-evaluation by the reviewed judge, caseload statistics, disciplinary sanctions, credit records, etc. Two states, Alaska and Arizona, invite public comment and hold public hearings. After analyzing information from survey and nonsurvey sources, the commission members author a summary of the evaluation findings and issue either a prescriptive or descriptive finding on each evaluated judges' performance in office. For example, the Alaska and Colorado commissions issue a recommendation to retain or not retain each reviewed judge; Utah reports whether or not the judge is certified for retention; and Arizona informs the voters that the judge meets or exceeds or fails to meet performance standards. Commissions disseminate the information to voters in a variety of ways, including, for example, mailing the evaluation results to each household (Alaska), inserting the voter information pamphlet in newspapers (Utah); distributing pamphlets at libraries, banks, shopping centers, etc. (Arizona and Colorado), purchasing newspaper ads and posting evaluation results on Web pages.

All four states conduct midterm evaluations; these results are confidential and strictly for the judge's guidance in improving his or her performance.

Summary of the assessment of judicial performance evaluation programs

The American Judicature Society (AJS) assessed the extent to which the Alaska, Arizona, Colorado and Utah retention evaluation programs are reaching their stated goals of informing voters and providing feedback to judges. The focus of our analysis is in making comparisons between programs. While these programs are based on a similar model, they also differ in some respects, and this permits us to isolate the strengths and weaknesses of specific programs. Finally, based on our assessment and suggestions from members of the project advisory committee, we conclude with recommendations for a successful performance evaluation program.

Data Collection. The data we use come primarily from three surveys that AJS commissioned or conducted as part of this study.

AJS commissioned an exit survey of nonrandomly selected voters in the largest locality in Alaska, Arizona, Colorado and Utah, measuring respondents' attitudes toward the court system, their participation in judicial retention elections, and the extent of their use of performance evaluation reports. This nonrandom poll netted 1554 respondents, of whom about one-third reported receiving the evaluation reports or information based on the reports.

By design the voter exit survey sampling was not random. Therefore, our voter respondents are not representative of voters in each locality, and our analysis of the exit survey is strictly exploratory. These voters' statements are valuable to this assessment, however, if only because they are the views of some citizens who are neither the evaluation commissioners nor evaluated judges, but they are not representative of all voters in each locality. We partly remedy

this shortcoming through a study of election outcomes data in Alaska retention elections, data that reflect the behavior of the population of voters in Alaska judicial retention elections.

AJS mailed survey questionnaires to all judges in the four states who were evaluated for retention in 1996; 70 percent of the judges responded. AJS also surveyed all commissioners who evaluated the judges standing for retention in 1996; 62 percent of them responded. We asked judges their attitudes toward, and satisfaction with, the evaluation process, and the extent to which they used the evaluation information to improve their own performance on the bench. We solicited similar information from commissioners so that we could make comparisons in the perceptions of both judges and commissioners. We also asked commissioners questions about, among other things, internal relationships between commissioners, the most useful evaluative criteria, and which respondent groups provide the most helpful information.

In addition, we asked each commission to provide a large quantity of qualitative material in the form of internal memoranda and public documents and reports that, among other things, gives us details about each commmission's structure and procedures. We use this qualitative information to interpret the patterns of responses in our three surveys.

Voter exit survey

In order for these commissions to reach their goal of informing voters, voters must have access to the evaluation information, and they must find the information interpretable and persuasive.

Commission visibility and respondents' access to reports. While our sampling procedure does not permit us to say how visible these commissions are to all voters, we can report that the Phoenix-area respondents were least familiar with their state evaluation commission (30.7 percent report familiarity with the commission), and Anchorage respondents were most familiar (58 percent). This difference in responses is not surprising since the Arizona Commission on Judicial Performance Review has only been in operation since the 1994 retention-election cycle, while the Alaska Judicial Council has been conducting evaluations of judges for voters since 1976. In the two other localities, 54.6 percent of Denver respondents and 49.6 percent of Salt Lake City respondents report familiarity with the commission.

Roughly 40 percent of Anchorage and Salt Lake City respondents say they obtained a copy of the evaluation report. Fewer voter respondents in the Phoenix area (15.2 percent) and Denver (24.4 percent) report acquiring the report. In a related finding, Arizona and Colorado judges and commissioners also believe that voters in their states do not get the evaluation information. The most salient difference among the commissions is that only Alaska and Utah disseminated the voter pamphlets directly to households in 1996.

Respondents' use of reports. Among those respondents who were familiar with the evaluation reports, most report that the evaluation information either determined or assisted their vote choice in retention elections. The most frequent response was that the evaluation information assisted but did not determine their vote choice (from a low of 39.3 percent of Phoenix-

area respondents to a high of 62.5 percent of Denver respondents). A few of those respondents who received a report say that their choices were based solely on the evaluation information, with the highest percentage among the Phoenix-area respondents (26.8 percent) and the lowest in Denver (13.8 percent).

Of the respondents who said they received the evaluation information, 59.8 percent in Anchorage, 60.0 percent in Phoenix, 81.6 percent in Denver, and 72.7 percent in Salt Lake City say the information influenced their vote choices in judicial retention elections. These percentages are very likely to overstate the true influence of the reports on voters' decision making. While the Denver respondents are the most likely of the four groups to find the information influential, they also are the most likely to find the evaluation report difficult to use. This may be a result of the format of the Colorado report to voters, which provides rich information about each judge but does so in a newspaper format with small type.

Many of the respondents who said they were familiar with the report say that the evaluation reports make them more likely to vote in judicial elections (64.6 percent in Anchorage; 66.1 percent in the Phoenix area; 72.0 percent in Denver and 68.1 percent in Salt Lake City), and that the evaluation reports make judges more accountable to voters (78.0 percent in Anchorage, 64.3 percent in Phoenix, 76.0 percent in Denver and 74.2 percent in Salt Lake City). These results are quite high, but they should be viewed with considerable caution. These respondents include only those who are familiar with the retention evaluation reports, and they are not representative of voters in each locality. It is likely that these results overstate the true feelings of the voting population. These findings would be quite strong, though, if they were replicated using a random selection design.

Statistical analysis of Alaska election outcomes. The sampling procedure in our exit survey of voters does not permit us to assess whether the general population of voters in each locality uses the evaluation information to differentiate between judges in their voting decisions. To partly remedy this shortcoming in our exit survey, we use Alaska election outcome data over judicial retention elections from 1976-96 to see if there is any statistical evidence that Alaska voters find the commission evaluations persuasive. Alaska is unique among the four states studied in that the retention recommendation is accompanied by a numeric rating. Each judge is rated on a 0-5 scale, where a rating of 3 is labeled acceptable in the voter information pamphlet.

Our analysis shows that Alaska voters take the ratings information into account. The higher the judge's rating, the higher his or her percent affirmative vote, on average. In addition, supplemental analysis of these data shows that Alaska voters (1) appear to find the bar ratings most persuasive, (2) tend to rely more heavily on the evaluation information for district court judges (limited jurisdiction) than for superior court judges (general jurisdiction), and (3) tend to give greater weight to negative evaluations than to positive evaluations. These results cannot be generalized to the other states in our study, however.

Judges' survey

In addition to informing voters, a primary goal of performance evaluation commissions is to provide judges with useful feedback. As noted above, we asked judges about the value of the evaluation findings and their attitudes toward the process. Our very high response rate from judges (70 percent) gives us confidence in the results. Their responses are summarized below.

Evaluations as feedback. A very high percentage of judges in all four states feel that the reports provide useful feedback on their performance, from a low of 73.5 percent in Utah to a high of 85.4 percent in Arizona. We have little evidence, however, for the specific ways the evaluation information influences judicial performance, since few judges report that the evaluations make them change their sentencing practices, affect the frequency of their public appearances, change their behavior toward the surveyed groups, or prompt them to take additional continuing judicial education courses. We conducted a follow-up survey of state judicial educators that found that few continuing judicial education courses are based on the performance results.

Other highlights of the judges' responses are:

- A majority of judges in Alaska, Arizona, and Colorado agree that the evaluation reports accurately reflect their job performance, and in Utah a near majority agrees;
- A significant majority in each state agree that appropriate criteria are used to evaluate their performance;
- Nearly all judges in each state feel that evaluation commissioners are fair;
- Large percentages in each state say commissioners understand their role as judges;
- Majorities in each state agree that the commissioners understand the importance of judicial independence;
- Majorities of judges in each state say that the evaluation process makes them appropriately accountable for their job performance.

Fairness of the process. Outside of Arizona, judges express dissatisfaction with the fairness of the available appeals process if they disagree with the commission's ultimate findings; a majority (but only a bare majority) of Arizona judges are comfortable with their available appeals process. It may be that Arizona's emphasis on involving the judge in the evaluation process makes appeals less important. The Arizona and Colorado commissions are required to interview all evaluated judges as part of the evaluation process. Consequently, judges in Arizona (60%) and Colorado (61%) are more likely than those in Alaska (42.9 percent) and Utah (34.4 percent) to feel that they have an adequate opportunity to respond to the commission findings before they are made public than judges in the other states.

With the exception of Utah judges, judges feel that the evaluations accurately reflect their performance and that the process is fair and preserves judicial independence. A follow-up survey of some Utah judges found that their expressed dissatisfaction is partly from the Utah Judicial Council's (UJC) apparent use of case processing as a standard to meet rather than as contextual information to help interpret the court user survey results. Furthermore, interviewed judges were particularly uncomfortable with the UJC's exclusive reliance on the attorney survey for its evaluation. The Utah commission is clearly aware of this problem; a majority of Utah commissioners in our survey state that the UJC does not have sufficient

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data to make an informed judgement about judges' performance, and the UJC is implementing a juror survey for the 1998 evaluation cycle.

Responding to interest group attacks. Most judges in Alaska (77.8 percent) and Colorado (59.4 percent) feel that the evaluation information helps to counterbalance narrow political attacks on the judiciary; smaller percentages of judges in Arizona and Utah agree (45.0 and 41.2 percent respectively). Nearly half of the 22 judges who reported experiencing such a campaign used the report in responding.

Commissioners' survey

We asked the commissioners questions that paralleled the questions on the judges' survey so that we could compare judge and commissioner perspectives on the evaluation process. We also asked commissioners some questions on internal commission interactions. Here, too, a high response rate (62 percent) gives us confidence in the results.

Commissioners appear overly optimistic on whether the performance evaluations prompt judges to take additional continuing judicial education courses; this is contradicted by judges, who report that their own professional development needs are the determining factor. A very large majority of commissioners in all states feel that judges have an adequate opportunity to respond to evaluation findings before they are made public and that judges have access to a fair appeals process. Judges in all states except Arizona disagree. The Arizona commission places particular emphasis on involving all evaluated judges in the review process, and this may make appeals less important or necessary. Many of the Utah commissioners report that their commission does not have sufficient independence to objectively evaluate judges, and this may reflect the persistent introduction of legislation in the Utah legislature to change or abolish the evaluation program.

As a group, commissioner respondents identified the following groups of court users as suppliers of useful information (in descending order): Lawyers, court personnel and law enforcement officers. The least useful sources are, again in descending order, jurors, litigants and witnesses.

Criteria commissioners identify as most helpful in assessing judicial performance are impartiality, integrity, knowledge of the law and procedures, and appropriate judicial temperament and demeanor. Least useful criteria are administrative skills, service to the legal profession and to the community, punctuality, effectiveness in working with other judges and court personnel and compliance with continuing education requirements.

Judges' and commissioners' views about performance evaluations

We asked judges and commissioners open-ended questions about the benefits of and problems with the evaluation process. For the most part, judges' comments fall under two main headings—the benefits to them and the benefits to the public. A main benefit to them is receiving feedback about their performance, "...the only way we get to see ourselves as others see us," as one judge said. Some judges listed political benefits, such as preventing the

6.12

legislature from "enacting a worse process," and keeping them out of politics. Nearly as many judges listed informing the public as a main benefit.

Commissioners' responses on the benefits of the process mirror judges' in some respects. For example, commissioners agree that feedback on judicial performance, informing voters and minimizing the influence of partisan politics on the process are clear benefits. A few commissioners added increasing citizen confidence in the judicial process and providing a foundation for improving the judicial system as additional benefits.

Judges identified the following as problems with the evaluation process: concerns about evaluation methodology, inadequate funding of the evaluation program and inadequate dissemination of evaluation results to the public.

Commissioners cited methodological problems, inadequate funding, poor dissemination of the evaluation findings, and an apathetic and/or uninformed public.

Based on the results of this study and suggestions of members of the project advisory committee, the following recommendations were developed (see Section VII of the report for full text):

Recommendations

1. **Establish clear rules and procedures for the performance evaluation process.**
2. **Provide adequate funding.**
3. **Develop clear, measurable performance standards.**
4. **When there is a sufficiently large pool of respondents, adopt standard random sampling and appropriate follow-up procedures when surveying court user groups.**
5. **Ensure confidentiality in surveys and in commission deliberations to promote candid responses by surveyed individuals and frank discussion among commissioners.**
6. **Establish strong self-improvement components of the performance evaluation process.**
7. **Mandate a procedure for judges to receive and respond to evaluation results before they are made public.**
8. **Establish an effective mechanism for disseminating evaluation reports to the public.**
9. **Establish a mechanism to incorporate evaluation results in designing judicial education programs.**
10. **Establish linkages with print media.**

11. Leave the process open to amendment.

12. Establish training programs for all evaluation commissioners.

13. Involve the public in and educate them about the process.

KANSAS AVERAGE CASELOAD PER JUDGE COMPARISONS
DISTRICTS WITH DISTRICT JUDGES ONLY
JULY 1, 2001 -- JUNE 30, 2002

	Number of Judges	Total Caseload per judge	rank	Total Less Traffic per judge	rank	Civil and Criminal per judge	rank	Chapter 60, Felony, Domestic Relations per judge	rank
District 3	14	3,752	1	2,952	1	2,757	1	422	6
District 27	4	3,671	2	2,075	3	1,591	4	597	1
District 9	3	3,536	3	2,165	2	1,707	2	491	3
District 18	26	2,738	4	1,829	4	1,593	3	556	2
District 7	5	2,528	5	1,628	5	1,412	5	392	7
District 1	6	2,208	6	1,395	6	1,149	6	433	5
District 29	16	1,813	7	1,333	7	1,135	7	437	4
District 19	3	1,786	8	1,198	8	920	8	323	8
Total Caseload	77	2,718		1,884		1,641		477	
Statewide Caseload	234	2,096		1,269		1,049		475	

KANSAS AVERAGE CASELOAD PER JUDGE COMPARISONS
DISTRICTS WITH MAGISTRATE JUDGES
JULY 1, 2001 -- JUNE 30, 2002

	Total Judges	Total Caseload per judge	rank	Total Less Traffic per judge	rank	Civil and Criminal per judge	rank	District Judges	Chapter 60, Felony, Domestic Relations per judge	rank
District 28	5	2,960	1	1,517	2	1,154	3	4	637	2
District 6	4	2,700	2	1,314	5	946	7	3	565	6
District 8	7	2,573	3	1,542	1	1,303	1	5	491	10
District 5	4	2,516	4	1,399	4	1,222	2	3	349	22
District 30	7	2,287	5	718	18	517	18	4	332	23
District 23	5	2,247	6	847	16	653	17	2	504	9
District 2	5	2,122	7	1,032	11	818	10	2	605	3
District 10	21	2,011	8	1,405	3	1,133	4	18	516	8
District 4	5	1,989	9	1,139	8	900	8	3	596	4
District 21	4	1,986	10	1,262	6	1,029	5	3	414	17
District 20	7	1,976	11	1,013	12	777	12	3	543	7
District 14	4	1,966	12	1,189	7	960	6	3	402	18
District 13	6	1,875	13	1,085	10	835	9	4	445	13
District 16	8	1,808	14	842	17	663	16	3	426	16
District 31	5	1,762	15	970	13	683	15	3	436	15
District 11	7	1,715	16	1,093	9	790	11	6	397	19
District 26	8	1,691	17	869	14	722	14	3	394	20
District 25	11	1,395	18	865	15	741	13	4	359	21
District 15	8	1,203	19	383	20	284	20	2	441	14
District 12	7	1,080	20	367	22	233	23	1	685	1
District 22	5	1,066	21	642	19	438	19	2	457	12
District 17	7	742	22	375	21	267	21	1	579	5
District 24	7	668	23	364	23	249	22	1	475	11
Total Caseload	157	1,790		968		759		83	474	
Statewide Caseload	234	2,096		1,269		1,049		160	475	

THE STATE OF KANSAS

SIXTH JUDICIAL DISTRICT

Stephen D. Hill
Chief District Judge

Phone: (913) 294-3644

P.O. Box 187
Paola, Kansas 66071

February 17, 2003

TO: Chairman and Members of the House Judiciary Committee

Thank you, Mr. Chairman, for giving me this opportunity to speak to you today about H.B. 2141 and H.B. 2341. The Kansas District Judges Association opposes both bills. We welcome the idea of evaluation of judicial performance. The judges believe that an appropriate process can be developed that would provide voters fair, responsible and constructive evaluations of trial and appellate judges and justices who are seeking retention. We believe that the results of such evaluations would also provide judges with information that can be used to improve their professional skills as judicial officers.

The key to such a process is consistency, thoroughness and fairness. This matter was studied extensively by the Kansas Citizens' Justice Initiative Commission. I was privileged to be a member of the Commission. In our report, submitted June 1999, we recommended a Constitutional Amendment for the non-partisan selection of all judges state-wide. Together with the Constitutional Amendment, we recommended that a Kansas Judicial Evaluation Commission be established as other states have done that would provide fair evaluations of the performances of judges and justices. We discovered that several states already had such commissions up and running. For example, Alaska, Arizona, Colorado and Utah were those mentioned in our report.

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Alaska is the state with the longest experience dealing with the retention of judges since their system was established in 1976. The Alaskan commission conducts a professional survey of lawyers, police officers, probation officers; it also sends questionnaires to each judge, surveys to jurors, reviews performance related statistical data (such as case handling statistics), and seeks input from litigants and lawyers who have recently appeared before the judge.

The commission in Alaska is made up of lawyers, lay-people and retired judges

In Colorado, the same commissions that are charged with nominating judicial candidates to the governor are also responsible for evaluating them. Most are locally funded.

When we were collecting information for input into the Commission's report, we went all across the state and in every venue we received very similar questions.

Who are these people?

How can we get information about them?

How can we tell whether an appellate judge is good or not?

How do we know whether someone on the Supreme Court is doing a good job?

Voters are wanting this information, but it needs to be provided in a fair and responsible manner.

Furthermore, currently in Kansas judges receive very little feedback concerning their job performance. Every judge that I have spoken with about this concept has agreed that they would welcome constructive advice. We just don't get it now.

Unfortunately, H.B. 2142 calls for a complicated, bifurcated retention election that would not be consistent, thorough or fair. This bill requires, in all retention districts, for the Clerk of the Supreme Court to mail out to the attorneys a ballot asking the lawyers to vote on whether or not to retain the judge. This increases the work load for the Clerk of the Supreme Court, not only to prepare but to transmit, receive and talley the ballots prior to October 1 each election year. Then, after the public votes, an aggregate total of 100% must be achieved by the judge seeking retention. We do not think this is workable in very small districts where there are few lawyers. For example, in one county in my district there is one lawyer. In many counties there are no

lawyers. Lawyers need not vote. What is the significance then, under this plan, if only 1/3 of the attorneys respond to this initial vote, thoroughness is lost. Secondly, attorneys are not the only people that can provide information concerning judges' performances. Court staff, such as those interviewed in Arizona routinely. Jurors and litigants such as those interviewed in Colorado, all have important information that can be given to judges. None of that is obtained under this scheme contained in H.B. 2141. Further, the judges are concerned that some lawyers who feel they have been harshly treated because the court has ruled against their position on some point of law would use this to get back at the judge. Furthermore, there is no feedback that would assist judges in improving their skills under H.B. 2141.

H.B. 2341 at least calls for a random survey to be developed, which is a step in the right direction. The bill also focuses on, what I would call the "consumers of judicial services," that is attorneys, litigants, jurors, law enforcement officers, court services officers, and social workers.

The difficulty we have with H.B. 2341 is the body appointed to perform this act. The Supreme Court Nominating Commission is not equipped to perform such an act. Plus, it has as its members only lawyers and lay people, there are no retired judges. In Alaska, the Judicial Council such as the one we already have in Kansas is the body they call upon to do this. The Council is made up of judges, lawyers and legislators, could be equipped to perform this task because they are given the right funding.

Another body that could be considered is the Commission on Judicial Qualifications, charged now with the enforcement of the Code of Judicial Conduct. In conclusion, I would say that these bills, H.B. 2141 and H.B. 2341, are good points at which to start the discussion. We judges think that the public wants more information about judges seeing retention, and I know the judges want more fair feedback so that our judicial performances can improve. We can accomplish these goals but not by enacting these two bills. I am glad to answer any questions you might have. I have brought some samples of judicial evaluations used in other states for you to examine.

Judge Stephen Will

Alaska Judicial Council Recommendation

Judge Patricia A. Collins, District Court, Ketchikan

I. Judicial Council Evaluation. The Alaska Judicial Council, a non-partisan citizens commission established by the Alaska Constitution, finds Judge Collins to be ***Qualified*** and recommends unanimously (6-0) that the public vote "YES" to retain her as a district court judge.

II. Summary of Evaluation Information. In a survey sent to all 2,604 attorneys in Alaska, Judge Collins was rated in the excellent range on overall judicial performance (4.6, see graph). She scored highest in the categories of "courtesy, freedom from arrogance" (4.7), "conduct free from impropriety" (4.7) and "settlement skills" (4.7). She scored 4.4 or better in all sixteen categories.

Summary Categories	Attorney Survey	Peace Officer Survey	Juror Survey	Court Employee Survey
Legal Ability	4.4	—	—	—
Impartiality	4.6	4.4	4.6	—
Integrity	4.6	4.5	—	4.8
Temperament	4.6	4.6	4.6	4.8
Diligence	4.5	4.5	—	4.7
Special Skills	4.7	4.2	—	—
Overall	4.6	4.5	4.7	4.8

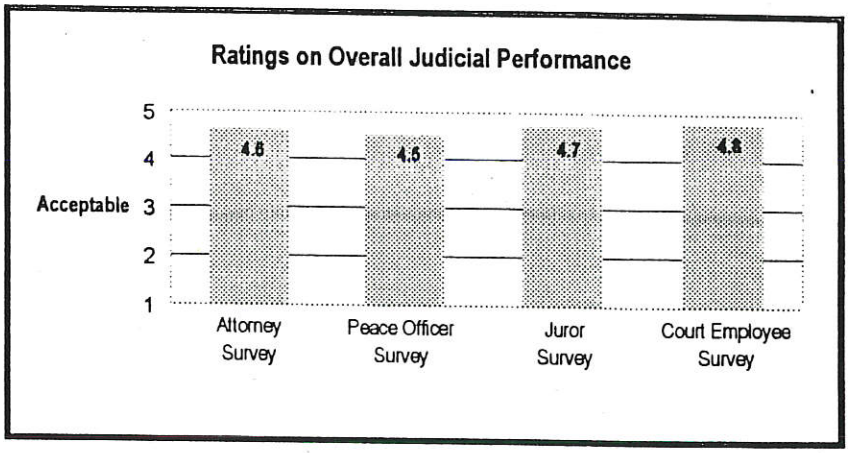
Ratings are based on a one to five scale. Five is the best rating and three is "acceptable."

Range Description
4.0 - 5.0 = Excellent
3.5 - 3.9 = Good
3.0 - 3.4 = Acceptable
2.5 - 2.9 = Below Acceptable
1.0 - 2.4 = Poor

A survey of all 1,338 peace and probation officers in Alaska rated Judge Collins in the excellent range on overall judicial performance (4.5, see graph). She scored highest in the categories of "conduct free from impropriety" (4.6), "courtesy" (4.6), "human understanding and compassion" (4.6) and "willingness to work diligently" (4.6). She scored 4.3 or better in all thirteen categories.

A survey of all jurors appearing before Judge Collins in 1996 and 1997 rated her in the excellent range (4.7) on overall performance. A survey of all court employees rated her in the excellent range (4.8) on overall performance.

The Council also completed a background investigation including a court records check, a disciplinary records check, a review of conflict of interest statements submitted to the court system and a review of financial disclosure statements submitted to the Alaska Public Offices Commission. Attorneys, peace officers, court employees and jurors were asked to submit written comments about the judge. The Council actively encouraged the public to comment, both in writing and in a statewide public hearing teleconference.



Recommendation: Vote "YES" to retain Judge Collins

Contact the Judicial Council at 1029 W. 3rd, Suite 201, Anchorage, AK 99501 (telephone: (907) 279-2526) for more detailed information, or review the information on our Internet site at:
www.ajc.state.ak.us

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20th Judicial District
District Judge

Honorable Daniel C. Hale

The Twentieth Judicial District Commission on Judicial Performance recommends that Judge Daniel C. Hale BE RETAINED.

Judge Hale is a graduate of the University of Colorado School of Law and was admitted to the Colorado Bar in 1971. After leaving the District Attorney's Office in 1976, Judge Hale spent 20 years in private practice primarily as a criminal defense trial attorney before he was appointed District Judge in 1996. His workload since July of 1996 has involved mainly civil and domestic relations cases.

In arriving at the recommendation that Judge Hale be retained, the Judicial Performance Commission reviewed the results and comments from surveys submitted to attorneys, court personnel, and jurors familiar with Judge Hale. Additional information was obtained from observations of Judge Hale in his courtroom and a personal interview before the Judicial Performance Commission.

Comments received by the Commission were overwhelmingly positive and included the following: "Judge Hale is a credit to the judiciary."; "Judge Hale runs a good courtroom. Clients have told me they felt he really listens."; "Always allows parties to have their day in court."; "I had an excellent experience as a juror. I was impressed with the way everything was handled."

Based on a random sampling of 95 attorneys, 65 responded to questionnaires. Responses showed 57 attorneys or 96.6% in favor of retention. A single attorney or 1.5% indicated Judge Hale should not be retained and one other respondent, also equating to 1.5%, had no opinion as to retention. Judge Hale was found to be courteous to those in his courtroom, able to maintain professional demeanor in court, unbiased toward either side, able to use court time effectively, well-prepared for court matters and able to match appropriate law to facts.

Of a random sampling of 28 court and probation employees, 18 responded to the survey. The overall evaluation of all 18 responding was 100% to retain. Respondents also acknowledged his equal treatment of parties regardless of age, gender, social or economic status and appearance, lifestyle or personal views.

Seventy-eight litigants were randomly sampled of which seven responded. Their evaluation was 83.3% or 5 respondents to retain, 1 responding litigant or 16.7% indicated Judge Hale should not be retained.

Of the 49 jurors randomly sampled, 21 responded. One hundred percent of responding jurors recommended Judge Hale be retained.

Superior Court in Pima County *(continued)*

Judge John E. Davis

Vote: By a vote of 29 to 0, the Commission concluded that Judge Davis **meets** Arizona's standards of judicial performance.

Profile: Law degree 1975. Appointed to the Superior Court in 1996. Assigned to Criminal Department during the review period.

Survey Results: The following are the composite percentage scores received by Judge Davis from evaluators who rated the judge satisfactory or above in each of the Commission's six evaluation categories.

Evaluation Category	Attorneys	Jurors	Litigants/Witnesses
Administrative Performance	85%	99%	93%
Communication Skills	85%	100%	96%
Integrity	90%	100%	97%
Judicial Temperament	88%	100%	97%
Legal Ability	90%	n/a	n/a
Settlement Activities	n/a	n/a	n/a

Judge Robert Donfeld

Vote: By a vote of 5 to 24, the Commission concluded that Judge Donfeld **does not meet** Arizona's standards of judicial performance.

Profile: Law degree 1973. Appointed to the Superior Court in 1995. Assigned to Civil/ADR Department during the review period.

Survey Results: The following are the composite percentage scores received by Judge Donfeld from evaluators who rated the judge satisfactory or above in each of the Commission's six evaluation categories.

Evaluation Category	Attorneys	Jurors	Litigants/Witnesses
Administrative Performance	87%	89%	100%
Communication Skills	79%	100%	100%
Integrity	76%	93%	100%
Judicial Temperament	61%	100%	100%
Legal Ability	82%	n/a	n/a
Settlement Activities	74%	n/a	n/a

DISTRICT COURT OF KANSAS

CHAMBERS OF
DAVID P. MIKESIC
DISTRICT JUDGE

WYANDOTTE COUNTY

COURTHOUSE
KANSAS CITY, KANSAS
66101-3076

FEBRUARY 18, 2003

REP. MICHAEL O'NEAL
CHAIRMAN
HOUSE JUDICIARY COMMITTEE
STATE CAPITOL
TOPEKA, KS 66612

RE: H B 2342 NON PARTISAN ELECTION OF JUDGES

Dear Representative O'Neal:

I am appearing on behalf of the District Judges of the 29th Judicial District. Several years ago our judges reviewed this concept as it appeared in a prior proposal and were opposed to its passage. I am here to state that the judges of the 29th Judicial District are still opposed to the concept in H B 2342.

We feel that passage of this proposal will have a negative effect on judicial elections in our county and will foster more contested elections of judges. In addition to more elections we feel this bill would drive-up the costs of elections by mandating that the top two (2) primary vote getters will advance to a general election. In our county most elections are determined in the primary election and judges would conclude their campaigning by the first week in August. Under H B 2342 judges would have to campaign from as early as April or May all the way to November. This will not only drive-up the cost of elections but will also cause the incumbent judge to spend all of his or her non-working hours campaigning.

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Therefore, we are opposed to the passage of H B 2342 and feel that if this committee desires to promote legislation to remove some of the politics from partisan elections, the committee should consider promoting legislation giving elected judges six (6) year terms of office.

Thank you for your consideration of my comments.

SINCERELY,

DAVID P MIKESIC
DIVISION 10: klp