

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on March 6, 2003 in Room 313-S of the Capitol.

All members were present except:

- Representative Doug Patterson - Excused
- Representative Dale Swenson - Excused
- Representative Dan Williams - 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:

- Chief Judge Gary Rulon
- Carol Gilliam-Green, Clerk of Kansas Supreme Court
- Jeanne Turner, Chief Clerk, 5th Judicial District, Emporia
- Kathy Porter, Office of Judicial Administration

Hearing on **HB 2418 - delay of phase-in increase of court of appeals to 14 judges**, was opened.

Chief Judge Rulon stated that in light of the severe budget problems that face the State, the Court does not oppose postponing funding for three additional Court of Appeals judges.

Hearing on **HB 2418** was closed.

Hearing on **SB 21 - nomination & selection of justices & judges**, was opened.

Carol Gilliam-Green, Clerk of Kansas Supreme Court, explained that the Kansas Supreme Court requested the bill to clarify provisions regarding several issues relating to the District Judicial Nominating Commission such as (Attachment 1):

- would use the words "on or before" throughout the statute so as to eliminate confusion as to the actual deadline
- delete the reference to Martindale-Hubble
- gives flexibility as to the place that the meeting could be held
- allow the clerk to arrange organized group meals during the meeting or evening
- lengthen the time for nominating commission to do their work in 45 days instead of 30 days.

Hearing on **SB 21** was closed.

Hearing on **SB 18 - issuance of executions & orders of sale**, was opened.

Jeanne Turner, Chief Clerk, 5th Judicial District, Emporia, commented that the proposed bill would clarify who signs orders of execution and orders of sales. It would simply state that the clerk issues the orders but the judge signs them (Attachment 2).

Hearing on **SB 18** was closed.

Hearing on **SB 17 - appointment of clerks & non judicial personnel by the chief judge of each judicial district**, was opened.

Kathy Porter, Office of Judicial Administration, explained that the proposed bill has been around for several years. It would allow the Chief Judge of each judicial district to pick the clerk of the district court and non judicial personnel with the approval of a majority of the other district judges. (Attachment 3)

Hearing on **SB 17** was closed.

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on March 6, 2003 in Room 313-S of the Capitol.

Hearing on **SB 19 - mandatory retirement age**, was opened.

Kathy Porter, Office of Judicial Administration, informed the committee that judges are the only state employees in KPERS who have a mandatory retirement age. The proposed bill would move that age from 70 to 75. (Attachment 4)

Hearing on **SB 19** was closed.

The committee minutes from February 10, 11, 12 & 13 were distributed.

The committee meeting adjourned at 4:30 p.m. The next meeting was scheduled for Tuesday, March 10, 2003 at 3:30 p.m. in room 313-S.

Senate Bill No. 21

Testimony of
Carol Gilliam Green, Clerk of the Kansas Supreme Court
Before the House Judiciary Committee
Thursday, March 6, 2003

The Kansas Supreme Court proposes a number of revisions to the statutes which govern the Supreme Court Nominating Commission (K.S.A. 20-119, *et seq.*, and K.S.A. 20-3003, *et seq.*) and the seventeen District Judicial Nominating Commissions (K.S.A. 20-2901, *et seq.*). Most of these provisions are my direct concern because I serve as Secretary to the Supreme Court Nominating Commission, run the elections for lawyer members of all nominating commissions, and handle the paperwork for appointment of non-lawyer members of the commissions.

I will review the substantive changes proposed by the Court but will not address clean-up provisions included at the direction of the Revisor of Statutes. Those clean-up provisions generally include gender neutral language, some minor word substitutions (*e.g.*, "such" instead of "said"), and removal and re-working of obsolete language, such as start-up provisions for the Supreme Court Nominating Commission which date to 1959.

Page 1, Section 1, line 37: This amendment clarifies that ballots must be received in the Clerk's Office on or before a certain date. Currently, we have some confusion on nomination and ballot deadlines because three phrases are used indiscriminately in the statutes, "on or before," "by" and "prior to." The most certain of those is "on or before," and we propose this change throughout the statutes.

Page 2, Section 3, line 42: The reference to Martindale-Hubbel is deleted. The information on our own computer data base is more current today than that publication. We process address changes daily and continuously add and delete

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attorneys from the system.

Page 3, Section 4, line 29: This amendment gives flexibility in meeting place. The Commission has not met in the state house in years. There is no room for us.

Page 5, Section 9, line 27: This amendment eliminates the prohibition against calling potential nominees "applicants." This may have made sense in 1959 but not today. In reality, all seek the position, complete a nomination form, and participate in an interview process which is very similar to a job application. Everyone calls the potential nominees "applicants" except the Commission.

Page 5, Section 10, line 35: This would allow me to organize group meals during meetings or in the evenings, often at less expense than individual "actual and necessary" expenses. The Commission is usually in Topeka for two days.

Page 7, Section 11, line 11: The statute currently requires an individual to vote for as many nominees as there are positions to be filled. *E.g.*, In the current election in Johnson County, there are two positions to be filled, and each ballot must contain a vote for two people or the ballot is void. My recommendation is that the vote be cast for not more than the number of positions to be filled. The current requirement results in an inordinate number of void ballots. *E.g.*, In 2000, when we had 4 positions on the ballot in Johnson County, we had 90 void ballots out of 815 ballots cast. In the same year in Shawnee County with 2 positions on the ballot, 46 of the 426 ballots cast were void.

In 1974, it may have been more likely that attorneys would know everyone on the ballot. We had @3,600 registered attorneys then. Now we have over 12,000.

Page 10, Section 13, line 5. This amendment provides that interim appointees are completing the unexpired term. This is needed to preserve the rotation of terms.

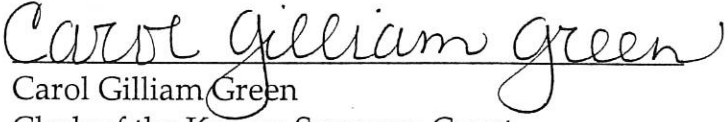
Page 10, Section 14, line 13: This amendment replaces the requirement that the commission meet within five days after notice that a vacancy exists on the district court with a requirement that the schedule for accepting nominations and conducting interviews be set within five days. The work of the commission begins immediately upon notice that a vacancy exists, but a notice to attorneys and to the general public must occur before the commission has reason to meet. Phone, fax, or e-mail is sufficient to set those schedules.

Page 10, Section 14, line 39: This amendment increases slightly the time in which the nominating commission has to do its work and clarifies that the triggering event for calculation of the time is the Chief Justice's notification to the commission that a vacancy exists. The nomination process simply cannot be completed in 30 days. Notices have to be mailed, two to three weeks must be allotted for nomination forms to be filed, the Commission must have time to review the files, and interviews are conducted.

Page 11, Section 16, line 42: This amendment provides some flexibility with regard to the date a district magistrate judge's appointment becomes effective. Under the current statute, the appointment is effective when made if the position is open or is effective on the date the position becomes open. As you know, the district nominating commissions make the final selection of district magistrate judges. Unlike the lengthier process for selecting district judges, we have an effective appointment as soon as the Commission meets. For a number of reasons, including budget and distribution of the workload, the Supreme Court requests some flexibility in setting the effective date of

the appointment.

I respectfully request the committee's favorable consideration of these proposed amendments.


Carol Gilliam Green
Clerk of the Kansas Supreme Court

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KANSAS ASSOCIATION OF DISTRICT COURT
CLERKS AND ADMINISTRATORS

Senate Bill No. 18
EXECUTIONS AND ORDERS OF SALE
K.S.A. 60-2401

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to speak on behalf of the Kansas Association of District Court Clerks and Administrators regarding Senate Bill No. 18. This bill proposes a clarification of procedures set forth in K.S.A. 60-2401(b) of who signs executions and orders of sale.

The statute, as it is currently written, states that executions and orders of sale shall be issued by the clerk at the request of any interested person and directed to the appropriate officers of the counties where they are to be levied.

No where in K.S.A. 60-2401(b) do you find specific wording on who is to sign these executions or orders. In practice, we have clerks signing them and we also have judges signing them. Because executions and an order of sale are a directive to an officer to seize property and cause it to be sold in satisfaction of a judgment, we are proposing to have this subsection changed to read that . . . **executions and orders of sale shall be issued by the clerk and signed by the judge.** This would eliminate clerks from the responsibility of making sure that all journal entries have been filed and all appeal time has passed—a responsibility we feel that a judge should have—not a clerk.

Thank you for allowing us the opportunity to appear before you today on this bill. I would be glad to answer any questions you may have.

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March 6, 2003

Testimony in Support of SB 17 House Judiciary Committee

Kathy Porter
Office of Judicial Administration

Currently, K.S.A. 20-343 provides that the chief judge is to appoint the clerk of the district court with the approval of a majority of the other district judges and designate one clerk as the chief clerk, with the approval of a majority of the other district judges of the judicial district. K.S.A. 20-345 includes this same provision for court services officers, secretaries, and other nonjudicial personnel. Senate Bill 17 would allow the chief judge to make these appointments without requiring the approval of the majority of the district judges.

This bill will seem familiar to many of you because you considered it during the 2001 legislative session. After passing both the House and Senate in different versions with nearly unanimous support, the bill was sent to conference committee. The House rejected the version recommended for passage by the conference committee, which was the Senate version, and the conference committee report was not considered again that session.

The current statutory language could make the selection of nonjudicial personnel difficult under some scenarios. One example might be a district in which there are three district judges, including the chief judge. Although the chief judge and one other district judge might agree as to the appointment of a clerk or chief clerk, the selection process could run into difficulties if the remaining district judge disagrees with that selection. To comply with the statute in a three-judge district, it would appear that both district judges would have to agree with the chief judge, because one of two district judges does not constitute a majority of the other district judges of the judicial district. Stated differently, one district judge could effectively block the agreed-upon decision of the chief judge and the other district judge.

In large, and even medium-sized judicial districts, it is unrealistic to expect the chief judge to gather together the other district judges or to go individually to the other district judges to seek approval every time a court services officer or a trial court clerk is hired. For all practical purposes, those decisions are generally made by a hiring committee, and the ultimate decision of that hiring committee is subject to the approval of the chief judge. An analogy that comes to mind would be if statute required the Secretary of Administration to call together the directors of

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the various divisions within the department to ascertain if a majority approved every time the need arose to hire a secretary for the Division of Accounts and Reports, a driver for the State Printing Plant, or a maintenance person for the Division of Facilities Management. Of course, such a requirement does not exist. It is easy to see, however, that such a requirement would be unnecessary and unworkable, as is current law regarding nonjudicial appointments.

Each of the 31 judicial districts throughout the state has one chief judge who is appointed by the Supreme Court. K.S.A. 20-329 provides that the chief judge "shall have general control over the assignment of cases within the district, subject to supervision by the Supreme Court." The chief judge "shall be responsible for and have general supervisory authority over the clerical and administrative functions of such court." A variety of other statutes outline the duties of chief judges. Among other duties, a chief judge may appoint judges *pro tem* under certain circumstances (K.S.A. 20-310a), is responsible for the preparation of the budget to be submitted to the Board of County Commissioners (K.S.A. 20-349), and has numerous other duties specified by statute. In addition, Supreme Court Rule 107, a copy of which is attached, outlines these and other duties.

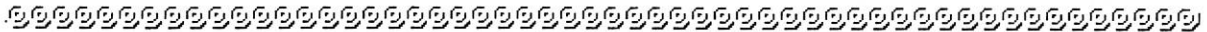
Given the broad range of responsibilities and duties with which chief judges are charged, it makes sense that the chief judge should have the ability to select the personnel who will be assisting the chief judge in carrying out these responsibilities and duties.

I request that you report SB 17 favorably for passage. Thank you for your consideration of this issue.

KP:mr

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Kansas Judicial Branch Rules Adopted by the Supreme Court Rules Relating to District Courts



Rule 107 DUTIES OF ADMINISTRATIVE JUDGE

In every judicial district the Supreme Court shall designate an administrative judge who shall have general control over the assignment of cases within said district under supervision of the Supreme Court. Assignment of cases shall be designed to distribute as equally as is reasonably possible the judicial work of the district. The administrative judge of each district shall be responsible for and have general supervisory authority over the clerical and administrative functions of the court.

At least once a month in single-county districts and at least once every three months in multiple-county districts the administrative judge shall call a meeting of all judges within the district for the purpose of reviewing the state of the dockets within the district and to discuss such other business as may affect the efficient operation of the court. Within guidelines established by the Supreme Court, by the judges of the judicial district, or by statute, the administrative judge shall have the following responsibilities.

(a) *Personnel Matters.* The administrative judge shall have supervision over recruitment, removal, compensation, and training of nonjudicial employees of the court. He shall prepare and submit to the judges for approval rules and regulations governing personnel matters to ensure that employees are recruited, selected, promoted, disciplined, removed, and retired appropriately.

(b) Trial Court Case Assignment. Cases shall be assigned under the supervision of the administrative judge. Under his supervision, the business of the court shall be apportioned among the trial judges as equally as possible and he shall reassign cases as necessity requires. He shall provide for the assignment of cases to any special division established in the court. A judge to whom a case is assigned shall accept that case unless he is disqualified or the interests of justice require that the case not be heard by that judge.

(c) Judge Assignments. The administrative judge, with the approval of the other judges, shall provide for the assignment and reassignment of judges to any specialized division of the court. The administrative judge shall prepare an orderly plan for vacations. The plan shall be approved by the judges of the court and shall be consistent with statewide guidelines.

(d) Information Compilation. The administrative judge shall have responsibility for development and coordination of statistical and management information.

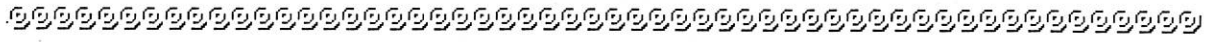
(e) Fiscal Matters. The administrative judge shall supervise the fiscal affairs of the court.

(f) Committees. The administrative judge may appoint standing and special committees necessary for the proper performance of the duties of the court.

(g) Liaison and Public Relations. The administrative judge shall represent the court in business, administrative or public relations matters. When appropriate, he shall meet with (or designate other judges to meet with) committees of the bench, bar, and news media to review problems and promote understanding.

(h) Improvement in the Functioning of the Court. The administrative judge shall evaluate the effectiveness of the court in administering justice and recommend changes.

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URL: http://www.kscourts.org/ctruls/dsct_107.htm
Updated: May 2002



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March 6, 2003

Testimony in Support of SB 19 House Judiciary Committee

Kathy Porter

Office of Judicial Administration

Thank you for the opportunity to appear in support of SB 19. Under current law, judges and justices must retire at the age of 70, but may finish serving the term during which the judge attains the age of 70. Under the provisions of SB 19, judges would be allowed to serve until age 75.

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

When this bill was proposed, district judges and district magistrate judges were invited to send comments to the Chief Justice. Responses were overwhelmingly in favor of the bill. The comments received reflected careful consideration of the issue. While judges acknowledged the effects of the aging process that are familiar to many of us, many noted that, in general, people are living longer and are capable of a longer period of productive years in the workforce. Judges are no exception to this trend.

Retaining the experience and wisdom of seasoned judges was a consideration noted by most judges who wrote in support of the bill. Usually judges are not elected or appointed to the bench until they have achieved considerable experience in the practice of law. Many judges are at the height of their productivity at age 70. In addition to the individual comments on the bill, the Kansas District Judges Association Executive Board voted unanimously to support passage of the bill.

The mandatory retirement age imposed on judges is contrary to what appears to be the practice for the majority of public and private sector employers. Of all state retirement groups administered by the Kansas State Employees Retirement System (KPERs), judges are the only group with a fixed mandatory retirement age.

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Our recent experience in replacing three Supreme Court Justices whose terms all expired on January 13, 2003, is not one that anyone connected with the process cares to repeat. Had Justice Ed Larson not retired several months in advance of the end of his term, the replacement process truly would not have been workable. The Supreme Court Nominating Commission takes at least sixty days to get a panel of names to the Governor. Postcards must be written, printed, and mailed to approximately 12,000 attorneys, seeking nominations for the position. The nomination period is left open for four to five weeks. The Nominating Commission must then review the responses, decide which nominees they wish to interview, check references, and then conduct the actual interviews before making a decision. The Governor then has sixty days in which to choose a new justice from the panel submitted by the Commission.

The process of assisting a newly appointed justice in setting up his or her office, choosing and hiring a staff, and making the transition to a new career is substantial and time consuming. Newly-appointed justices will sometimes find that there is a period of time during which they may have to recuse themselves from hearing and considering certain Supreme Court cases because they participated in the case at the district court level as an attorney or a judge. Although this provides some level of disruption when one new justice is appointed, the appointment of three new justices in close proximity to each other led to recusals in 17 of the cases on the March Supreme Court docket.

Similar legislation was proposed in the 2000 and 2001 Legislative Sessions. The 2000 House passed that session's bill by a vote of 121 to 2, with the Senate Judiciary Committee favorably recommending the bill for passage. In the final days of the 2000 Session, time did not allow final action to be taken on the bill. Given the impending retirements and appointments for three Supreme Court vacancies, the 2002 Legislature did not consider the issue.

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

KP:mr