

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 p.m. on February 10, 2004 in Room 313-S of the Capitol.

All members were present except:

Representative Jeff Jack- excused
Representative Dan Williams- excused

Committee staff present:

Jill Wolters, Revisor of Statutes
Diana Lee, Revisor of Statutes
Jerry Ann Donaldson, Kansas Legislative Research Department
Cindy O'Neal, Secretary

Conferees appearing before the committee:

Judge Stephen Tatum, Chief Judge 10th Judicial District, Johnson County
Kathy Porter, Office of Judicial Administration
Representative Larry Campbell
Representative David Huff
Steve Sloan, Midwest Minerals, Pittsburg, Kansas
Woody Moses, Kansas Aggregate Producers Association
Leslie Kaufman, Kansas Cooperative Council
Representative Paul Davis
Pat Scalia, Kansas Board of Indigent Defense
Kathleen Ambrosio, Kansas Association of Criminal Defense Lawyers
Ed Collister, Douglas County Defense Bar

The hearing on **HB 2614 - counties may pay district magistrate judges supplemental salary**, was opened.

Judge Stephen Tatum, Chief Judge 10th Judicial District, Johnson County, appeared before the committee as a proponent of the bill. 1995 was the last time a position was created for district court judges. Since that time there have been three district magistrate judge positions created. District magistrate judges make half as much as district court judges and less than hearing officers on a per hour basis. Municipal judges who serve in Olathe and Overland Park make between \$80 to \$90K a year. About thirty district magistrate judges supplement their salaries by serving as municipal court judges. The proposed bill would require no expenditures by the state, but simply allow communities across the state to supplement the salary of their district magistrate judges. (Attachment 1)

Johnson County currently uses Senior Judges and some pro-tem's to handle the caseload. It struck the committee as odd that they can hire pro-tem's but can't pay additional salaries for district magistrate judges.

Kathy Porter, Office of Judicial Administration, appeared as an opponent of the bill because it would create different classes of district magistrate judges. The salary of a district magistrate judge would not be based on workload but on whether the county wants to or can pay more for one. (Attachment 2)

A committee member pointed out that currently the courts are making a distinction between judges, those who work in urban area are hearing more cases for the same amount of salary that a rural judge gets for having a lesser caseload. If the courts don't want local units of governments to be able to supplement salaries then they need to adjust the workload.

The hearing on **HB 2614** was closed.

The hearing on **HB 2678 - increasing claim limit in small claims from \$1,800 to \$4,00**, was opened.

Representative Larry Campbell, appeared as the sponsor of the bill which would increase the amount that can be filed in a small claims court. This change would allow more people to access the court system and lower the number of crowded judicial dockets. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on February 10, 2004 in Room 313-S of the Capitol.

Representative David Huff appeared as a proponent of the bill. The last change to increase the amount that can be filed in small claims court was done in 1994 and the proposed bill would take into consideration of current market adjustments. (Attachment 4)

Steve Sloan, Midwest Minerals, & Woody Moses, Kansas Aggregate Producers Association, appeared in support of the proposed bill. Small claims courts offer valuable legal service to those who don't have the finances to access regular court services. (Attachments 5 & 6)

Leslie Kaufman, Kansas Cooperative Council, appeared as a proponent of the bill and suggested an amendment increasing the number of times per year an entity can file in small claims court. (Attachment 7)

Pawnee County Coop Association provided written testimony in support of the bill. (Attachment 8). Kansas Bar Association provided written testimony in opposition of the proposed bill. (Attachment 9)

The hearing on **HB 2678** was closed.

The hearing on **HB 2616 - compensation for attorneys representing indigent defendants, \$80 per hour**, was opened.

Representative Paul Davis appeared as the sponsor of the proposed bill. The \$50 hourly compensation rate has not be raised since 1987 and is not enough to fairly compensate attorneys. The \$50 per hour can barely cover their overhead expenses. Most attorneys are not interested in taking these types of cases due to the compensation level being so low. (Attachment 10)

Pat Scalia, Kansas Board of Indigent Defense, stated that there are few private attorneys willing to accept felony defense appointed cases due to the compensation. The increase to \$80 per hour would allow \$40 per hour to go towards overhead with the additional being credited to the attorney. (Attachment 11)

Kathleen Ambrosio, Kansas Association of Criminal Defense Lawyers, agreed that it is not economically feasible to defend rape, murder and drug cases. The average amount a criminal defense attorney charges is \$190, with \$68 per hour going towards overhead. (Attachment 12)

Ed Collister, Douglas County Defense Bar, informed the committee that the \$50 cost of doing business in 1988 would be worth \$32.69 in 2003. It would take \$76.47 today to equal the \$50 compensation set in 1988. (Attachment 13)

The Kansas District Judges' Association and the Kansas Bar Association both supported the proposed bill in written testimony. (Attachments 14 & 15)

The hearing on **HB 2616** was closed

HB 2554 - amendments to the Kansas Power of Attorney Act

Representative Long-Mast made the motion to report HB 2554 favorable for passage. Representative Loyd seconded the motion. The motion carried.

The committee adjourned at 4:45 p.m. The next meeting was scheduled for February 11, 2004.

Testimony of Stephen Tatum, Chief Judge, 10th Judicial District
re: House Bill 2614 before the House Judiciary Committee

Thank you for the opportunity to speak before you today in support of House Bill 2614, which would allow counties to supplement the salary of their Magistrate Judge(s).

Since court unification in the 70's, it has become apparent that the judicial districts across the state use their judicial resources in various ways. "One size fits all" does not always apply to address the unique judicial needs of Kansas communities.

Johnson County, for example, has eighteen District Court Judges and three District Magistrate Judges, as well as hearing officers. Our District Magistrate Judges make less than half as much as the District Court Judges. They make less than our hearing officers on a per hour basis (our hearing officers work 20 hours per week). They make far less than the full-time Municipal Judges who serve Olathe and Overland Park.(\$80k to \$90k)

However, our Magistrate Judges have full dockets. Last year, their assigned dockets included 1,378 domestic violence cases, 596 protection from abuse cases, 297 protection form stalking cases, 1,237 juvenile offender cases, 203 truancy cases, 403 probate cases (including adoption and care and treatment cases), 12,454 county traffic cases, 689 small claims cases, and 336 bad check cases.

Across the state, Magistrate Judges are used in different ways. Some travel to different courts as part of their duties. Some conduct preliminary examinations, some don't. Some are lay Judges, some are law-trained. Docket size and case assignments vary from community to community. Salaries as set by the State of Kansas for Magistrate Judges are not always able to address those variables.

The concept of allowing Magistrates to supplement their salary is not new. Currently, thirty District Magistrate Judges supplement their salaries by serving as municipal court judges in sixty-five municipalities. They are allowed to do this during regular working hours (as long as they take care of their regular magistrate dockets), and are paid by the municipalities in addition to their District Magistrate salary.

Further, in 1998, the legislature allowed counties to recognize the need to pay professional prosecutors commensurate with their obligations and eliminated the coupling of the salaries of District Attorneys and District Court Judges. This analogy recognizes case load and work load differences.

This bill requires no expenditures on the part of the State of Kansas. It simply allows each community across the state to supplement the salary of their Magistrate Judges if they feel it is appropriate. Such supplements could help in obtaining highly qualified candidates and in retaining highly qualified judges in a busy docket like those handled today by Magistrate Judges in Johnson County.

Thank you for your consideration.



State of Kansas

Office of Judicial Administration

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

(785) 296-2256

February 10, 2004

House Judiciary Committee

Testimony on HB 2614
Kathy Porter

HB 2614 would permit counties to either supplement the annual salary of district magistrate judges or to pay extra compensation to district magistrate judges. The Supreme Court is concerned that this provision would return the court system back to the days before court unification, when there were judicial pay differences and distinctions based on extremely modest jurisdictional differences.

The jurisdiction of a district magistrate judge is the same in all Kansas counties. We are aware that this legislation is based at least in part on the argument that district magistrate judges in some counties have higher caseloads than their colleagues in other counties. However, the enactment of HB 2614 would permit the creation of different classes of district magistrate judges based on where a magistrate lives and that county's ability to supplement the district magistrate judge's annual salary. The Kansas Supreme Court favors equal pay for all, and disapproves the creation of a separate class or classes of district magistrate judges.

In the early days of court unification, there were both district judges and associate district judges. Among other arguments presented at that time for eliminating the associate district judge class was the lack of a rational basis for this distinction. In other words, it was questioned whether the pay differential based on a modest jurisdictional difference between the two classes of district judges presented an Equal Protection argument. That same argument could be applied in the present situation in the absence of a rational basis for a pay differential for some district magistrate judges.

Moreover, such a change to the judicial system should not be implemented without careful study of all the issues involved. The Supreme Court has not been presented with any data suggesting that any particular county has any difficulty at all in recruiting or retaining district magistrate judges, nor has the Court been presented with any study reflecting that the cost of living in any Kansas county or group of counties is significantly higher than in other Kansas counties. If the reason for HB 2614 is to provide a geographic pay differential, the reasoning behind the bill should arguably be applied to district judges and nonjudicial employees, as well as to district magistrate judges. This would result in increased costs to counties and a drastic departure from our present unified court system.

The Kansas Supreme Court worked diligently to eliminate pay differences based on slight jurisdictional differences. The concern remains that HB 2614 would, in effect, be a step backward for the court system rather than a step forward.

House Judiciary Committee
2-10-04
Attachment 2

STATE OF KANSAS

LARRY L. CAMPBELL
STATE REPRESENTATIVE 26TH DISTRICT
JOHNSON COUNTY
P.O. BOX 3391
OLATHE, KANSAS 66063-3391
(913) 829-5756



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: APPROPRIATIONS
FINANCIAL INSTITUTIONS
LOCAL GOVERNMENT
TAX, JUDICIAL & TRANSPORTATION
BUDGET

February 10, 2004

Honorable Mike O'Neal and House Judiciary Committee:

Thank you for hearing HB2678. I stand in support of HB2678 for two reasons.

First, I believe that "Small Claims" court is an easy way for people to gain access to our court system. Increasing the Maximum amount will allow more people to have this access.

Second, it is my hope that by increasing the Small Claims limit, we could lower the number of crowded judicial dockets, which should in turn save money and provide a possible quicker resolution to cases.

I respectfully ask for your favorable consideration for HB2678.

Thank you.

A handwritten signature in black ink, appearing to read "Larry Campbell". The signature is fluid and cursive, with a long horizontal stroke at the end.

Representative Larry Campbell

DAVID HUFF
REPRESENTATIVE, 30TH DISTRICT
CITY OF LENEXA, KANSAS
10458 CAENEN LAKE RD.
LENEXA, KANSAS 66215
(913) 888-7730

STATE CAPITOL—RM. 174-W
TOPEKA, KANSAS 66612-1504
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE-CHAIR: TAX
MEMBER: ETHICS AND ELECTIONS
INSURANCE
KANSAS FUTURES

House HB 2678 Small Claims

Thank you chairman O'Neal, Vice chair Patterson, Ranking minority Pauls and fellow legislators:

Small claim courts are designed as a efficient and less expensive way to come before a judge and plead your case.

House Bill 2678 does one simple thing. This bill would change the maximum amount that a person can file and go to small claims court. The current maximum is \$1,800 which was last changed in 1994. Small items that were in the \$1,800 range in '94 have tripled in cost. This would bring the maximum in line with today's cost and raise the total to \$4,000.

Representative David Huff

KAPA

Kansas Aggregate
Producers' Association

TESTIMONY

Edward R. Moses
Managing Director

By the
Kansas Aggregate Producers' Association

Before the
House Committee on Judiciary

Regarding HB 2678

February 10, 2004

Mr. Chairman and members of the committee, my name is Steve Sloan, President of Midwest Minerals, Inc.; Pittsburg and of the Kansas Aggregate Producers' Association. Thank you for the opportunity to provide testimony support of HB 2678. The Kansas Aggregate Producers' Association (KAPA) is a statewide trade association comprised of over 250 members and one of the few industries to be represented in every county of this state.

Our company and many of our association members have had great success with the small claims court system but we are frustrated with the current limits. Current economic times have created more delinquent accounts than I can ever remember. Small claims court allows businesses to pay \$31.00 or \$51.00 to seek court judgments against dishonest parties. These costs normally become part of the judgment and are recovered. Our company and industry has utilized small claims court to collect past due balances in a process that is economical and efficient. However, we are severely limited in the number of cases we can take to small claims because of current limits.

If enacted HB 2678 would raise the claim or value amount in small claims actions from the current \$1,800 to \$4,000, allowing small business owners greater flexibility in the filing of small claims. The current \$1,800 limit has been in effect since 1994. We believe all Kansans would be better served by raising the current \$1,800 to \$4,000 for the following reasons:

- Enable producers to resolve a greater number of claims without having to secure the services of a lawyer or go to the expense of a formal trial.
- Reduce filing of suits either in the limited actions division, or the district court, relieving the workload in these areas.
- Allow the limit to track inflation increases since 1994 and provide some room to grow.

Since its inception in 1973, the Kansas Small Claims Act has become a valuable legal service, allowing many Kansans greater access to their judicial system. Please join us in making this an even better system by recommending HB 2678 favorable for passage.

Thank you for receiving our comments on HB 2678, I will be happy to respond to any questions you may have at this time.

KAPA

Kansas Aggregate
Producers' Association

TESTIMONY

Edward R. Moses
Managing Director

By the
Kansas Ready Mixed Concrete Association

Before the
House Committee on Judiciary

Regarding HB 2678

February 10, 2004

Mr. Chairman and members of the committee, my name is Woody Moses, Managing Director of the Kansas Ready Mixed Concrete Association. The Kansas Ready Mixed Concrete Association (KRMCA) is a statewide trade association, comprised of over 250 members, producing sand, gravel, crushed rock, and other various aggregate products, and one of the few industries to be represented in every county in the state.

Our members have routinely used the Small Claims Act since its inception in 1973, and in the past it has been a valuable tool. In recent years this value has been reduced by increasing difficulty utilizing the system as the claim limit has remained at \$1,800 since 1994. In effect preventing access to in two ways; 1.) by limiting the number of eligible claims, and 2.) the limited availability of legal counsel willing to accept cases of low value.

If enacted HB 2678 would raise the statutory limit in small claims actions from the current \$1,800 to \$4,000, allowing small business owners greater flexibility in the filing of small claims. We believe all Kansans would be better served by raising the current \$1,800 to \$4,000 for the following reasons:

- Enable producers to resolve a greater number of claims without having to secure the services of a lawyer or go to the expense of a formal trial.
- Reduce filing of suits either in the limited actions division, or the district court, relieving workload in these areas.

Since its inception in 1973, the Kansas Small Claims Act has become a valuable legal service, allowing many Kansans greater access to their judicial system. Please join us in making this an even better system by recommending HB 2678 favorably for passage.

Thank you for receiving our comments on HB 2678, I will be happy to respond to any questions you may have at this time.



**Leslie Kaufman, Director
Governmental Relations
Kansas Cooperative Council**

House Judiciary Committee
February 10, 2004

HB 2678 - Small Claims Court

Chairman O'Neal and members of the House Judiciary Committee. Thank you for the opportunity to appear today on behalf of the Kansas Cooperative Council (Council/KCC) and share our support for HB 2678. As you know, this bill increases the dollar amount for which recovery can be sought in small claims court. I am Leslie Kaufman and I serve the Council as Director of Governmental Relations. The Council has a membership of 186 cooperative businesses. Together, they have a combined membership of nearly 200,000 Kansans.

Over the past few years, there has been a growing interest within our membership to increase the dollar amount for which remedy can be sought in small claims court and to increase the number of claims per year one can file in this court. I have attached two emails, with permission of the senders, to my testimony today that illustrate the need for many cooperatives to have increased access to small claims court for amounts larger than the current \$1,800 limit. As you can see by the 2003 dates, this was an issue the Council was hoping to work last year.

We do appreciate that this bill is before you now, and that your committee has chosen to consider this measure. We certainly welcome legislative action to increase the claim amount available in small claims court and would respectfully request that you also consider increasing the number of times per year an entity can file in small claims court.

Thank you.

Council@Kansasco-op.coop

From: "Joe Biswell" <joe@stmaryscoop.com>
To: <Council@kansasco-op.coop>
Sent: Tuesday, January 14, 2003 10:00 AM

I am writing in response to your proposal to take legislation to Topeka to up the number of Small Claims that can be presented per year per county and the dollar amount. We have a propane business and will on average send a number of cases to an attorney as the year winds down because of the present limit. Without being specific I looked at our payables to the attorney for collection fees and it shows we spent over \$6,000.00 in 2002. Well over a third of this could have been saved had we have been able to handle them ourselves. Thanks for your help. Joe Biswell, Credit Manager, Farmers Union Coop, St. Marys, Kansas 66536 785-437-2984

Page 1 of 1

Diane@Kansasco-op.coop

From: "Dennis Taylor" <dennist@frontier-equity.com>
To: <council@kansasco-op.coop>
Sent: Thursday, January 09, 2003 3:52 PM
Attach: Small Claims Court.doc
Subject: Small Claims Court

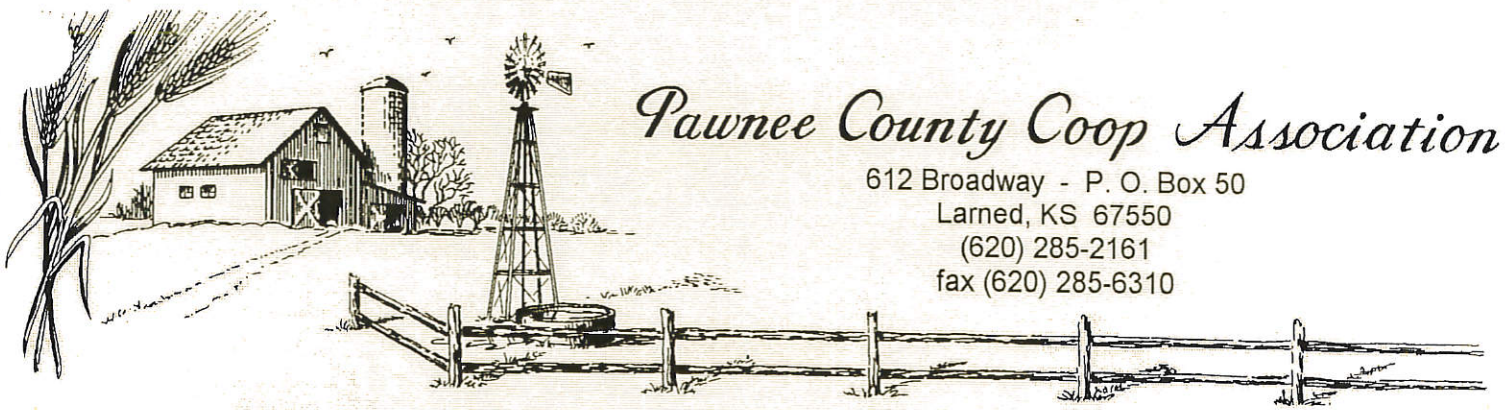
Co-op Council

January 9, 2003

The Frontier Equity Exchange feels it is necessary to raise the small claims filings from the current 10 appearances a year, up to at least 20 appearances a year. The Frontier Equity Exchange reasoning is due to the increased number of unpaid debts due to the tough economical times in which the current business owners and cooperatives can not afford to absorb these losses. The amounts of these unpaid debts have grown in size to an average \$2500.00 up to \$5000.00. Under the current small claims laws if a business chooses to pursue these unpaid debts we have to seek a lawyer at which time we loose approximately half of the unpaid debt in legal fee's. The small claims court of Kansas would hopefully increase the dollar amount from \$1800.00 to \$2500.00 or higher to help take the burden of these losses from small business.

Dennis Lee Taylor

Credit Manager



Pawnee County Coop Association

612 Broadway - P. O. Box 50
Larned, KS 67550
(620) 285-2161
fax (620) 285-6310

February 10, 2004

Dear Legislators,

Our letter today is in support of House Bill No 2678 an amended change to K.S.A. 61-2003. In today's economy the current statute that only allows small claims action not to exceed \$1,800.00 is inadequate. We feel that changing the not to exceed level to \$4,000.00 will be a right decision. Changing the limit to \$4,000.00 will allow individuals to recover more of the debt owed without incurring legal fees. We exercise our rights given to us under law to collect accounts. This increase will also help our Producers who sell alfalfa and other commodities. The current level of \$1,800.00 only covers a part of a load of hay so they have to seek legal council for collection.

Amounts higher than \$1,800.00 under the current statue requires an attorney representation. This only adds cost of collection and reduces our ultimate recovery of the bad account. In today's economy the \$4,000.00 level will allow more people to represent themselves in collecting past due accounts.

Currently the statue allows for 10 fillings in a calendar year per judicial jurisdiction. We ask that consideration be given to increase this to 20 to 25 times per year.

Thank you for this opportunity to share with you our thoughts on House Bill 2678.

Cordially yours,

Kim Alan Barnes



**KANSAS BAR
ASSOCIATION**

1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Telephone (785) 234-5696
FAX (785) 234-3813
www.ksbar.org

February 10, 2004,

TO: Members of the House Judiciary Committee

FROM: Jim Clark, KBA Legislative Counsel

RE: **HB 2678**

The Kansas Bar Association remains opposed to any legislation increasing the limit in small claims actions, and remains opposed to a non-uniform docket fee. Both provisions appear in House Bill 2678, and we recommend that the Committee either not act on the bill, or report it out unfavorably.

Thank you.

PAUL DAVIS
REPRESENTATIVE, 46TH DISTRICT
1527 MASSACHUSETTS
LAWRENCE, KANSAS 66044
(785) 749-1942



TOPEKA

HOUSE OF
REPRESENTATIVES

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February 10, 2004

TESTIMONY ON HOUSE BILL 2616
REPRESENTATIVE PAUL DAVIS

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

FROM: REPRESENTATIVE PAUL DAVIS

RE: HOUSE BILL 2616

Mr. Chairman and Members of the Committee:

House Bill 2616 aims to address a serious problem in the Kansas court system. This problem is the inability to attract and retain attorneys to represent indigent criminal defendants.

The 6th Amendment of the United States Constitution grants the right to counsel for criminal defendants. The Kansas Board of Indigents' Defense Services administers the funding of court appointed attorneys for Kansas criminal defendants. Typically, when a defendant is charged with a misdemeanor or felony crime, an attorney is appointed by a judge to represent that defendant if the defendant does not have the means to hire an attorney.

These attorneys are compensated at a rate of \$50.00 per hour for representing criminal defendants. This rate has been in existence since 1987 and has not been modified upward during such time. The \$50.00 per hour rate is simply not enough to fairly compensate attorneys. Many attorneys will tell you that they can barely cover their overhead expenses for \$50.00 per hour. Hourly rates for most Kansas attorneys range from \$100.00 to \$200.00 per hour. Additionally, attorneys who represent criminal defendants in the federal system are compensated at an hourly

rate of over \$100.00 per hour.

The result of this compensation level is that many attorneys are not interested in representing criminal defendants. This problem exists in both rural and urban areas. Many judges will tell you that they have to beg and plead with attorneys to represent indigent criminal defendants. Many of these defendants are charged with serious crimes that could result in long terms of incarceration. It is essential that they are provided an experienced, qualified attorney who can adequately represent them. If this does not occur, we run into constitutional issues revolving around the competency of some attorneys to represent certain defendants.

By raising the hourly rate of compensation for court appointed attorneys to \$80.00 per hour, we will be able to retain the good attorneys that are currently representing indigent criminal defendants and hopefully attract other competent attorneys into the system. I respectfully ask for your favorable consideration of this bill.

HOUSE BILL 2616
TESTIMONY OF
PAT SCALIA, EXECUTIVE DIRECTOR
BOARD OF INDIGENTS' DEFENSE SERVICES
FEBRUARY 10, 2004

It is the mission of the State Board of Indigents' Defense Services to provide the Sixth Amendment right to counsel in the most efficient and economical manner possible. We provide counsel through the use of regional public defenders and assigned counsel.

Public defender offices are established in those regions that can more cost effectively be served by public defenders. Assigned Counsel are appointed in those areas where a public defender office would not be cost effective. There are few private attorneys willing to accept felony defense appointed cases and the caseload is ever increasing. From FY 02 to FY 03, we saw an increase of 1,350 assigned counsel cases. We expect another thousand case increase from FY 03 to FY04.

Without the cooperation of private attorneys willing to work as assigned counsel, our system will collapse. In FY2003, we ran out of money to pay assigned counsel and advised them of that fact by letter. In response thereto, the entire attorney panel for Dodge City resigned. Public Defenders were pulled from other offices to handle cases in Dodge City. The private attorneys returned to assigned counsel service based on our advice of our efforts at funding. Had they refused, we would have been forced to open a public defender office in Dodge City. If all of our assigned counsel were to resign, we would be forced to open public defender offices in Kansas City, Leavenworth, Westmoreland, Ottawa, Pittsburg, Emporia, Independence, El-Dorado, McPherson, Concordia, Smith Center, Norton, Colby, Hays and Larned in addition to Dodge City. A low estimate of that cost would be \$6,500,000. Conflict public defender offices would have to be opened for offices already existing at a cost of approximately \$3,000,000 in additional funds. It is vital that we maintain a panel of assigned counsel.

Assigned Counsel have been paid \$50.00 per hour since 1987. The hourly rate was raised to \$50 per hour from the previous \$35 per hour as a result of the "Stephans" case. In its decision on that case, the Kansas Supreme Court suggests that the Board of Indigents' Defense consider the overhead cost of attorneys to determine a payment rate that would not be confiscatory. We have followed the Supreme Court suggestion by conducting a survey of our assigned counsel asking the following questions:

SURVEY OF ASSIGNED COUNSEL OVERHEAD COSTS

This survey will be presented to the Legislature and the Governor in support of a request to increase the hourly fee paid to assigned counsel within the Budget Request of the Board of Indigents' Defense Services. This survey will become a public document. This information will provide the necessary analysis suggested in *State ex rel Stephan v. Smith*. We ask for identifying information to support the credibility of the survey. Please return this information before August 1, 2003 by faxing to 785-368-6579.

1. Name of person answering this survey. _____
2. Number of lawyers in your firm. _____
3. Number of support staff _____
4. How many members of your firm engage in the practice of criminal defense in our state courts?

5. For each member designated in #4 above, approximately what percentage of their practice is spent in criminal practice?

6. How many members of your firm accept court appointments to provide criminal defense to indigent adults charged with felonies? (BIDS Assigned Counsel) _____
7. What are your annual overhead costs, broken down to an hourly basis?
 - a. Total overhead ÷ # of attorneys = overhead per attorney \$ _____
 - b. Overhead per attorney ÷ total hours billed = overhead per hour \$ _____
8. Keeping in mind the dictates of *State ex rel, Stephan v. Smith*, 242 Kan. 336, 747 P, 2d 816 (1987), i.e. that the rate of compensation that the Board of Indigent Defense Services should be required to pay to an attorney in a court appointed case must "fairly compensate the attorney, not at the top hourly rate an attorney might charge, but at least at a rate which is not confiscatory, considering overhead and expenses," what do you believe a fair rate of compensation would be for attorneys who are doing court appointed work?
 - a. Per hour for preparation time \$ _____
 - b. Per hour for time actually spent in court \$ _____

The results are compiled in the charts below. Following the median, overhead for assigned counsel is \$40 per hour. Therefore, the current hourly payment of \$50 per hour allows them only \$10 per hour compensation for a professional service.

We request an increase in the hourly rate to \$80 per hour. This hourly rate would allow \$40 per hour compensation after overhead. This reflects a yearly increase over the past 16 years of 3.88%. The rate paid to assigned counsel in federal court is \$90 per hour.

The cost of this enhancement is substantial - \$4,000,000. Compared to the cost of the alternative, however, this is cost effective.

Survey Responses

Response Received 22.1%
 No Response 77.9%

Survey Responses	<u>Sent</u>	<u>Received</u>	<u>Average</u>	<u>Median</u>	<u>Mode</u>
Survey Responses	489	108			
Lawyers			1.5	1	1
Support Staff			1.5	1	1
Practice Criminal Defense			1.4	1	1
Percent in Criminal Practice			53.5%	50.0%	
Accept Appointments			1.2	1	1
Annual Overhead			\$42,859.46	\$36,600.50	
Overhead per Attorney			\$311.62	\$40.00	\$0.00
Preparation Time Fair Rate			\$76.76	\$75.00	\$75.00
Court Time Fair Rate			\$89.68	\$90.00	\$100.00

President
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2nd - Tom Bartee
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J. Richard Lake
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3rd - Michael McCulloch
(913)829-8755

4th - Sal Intagliata
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Continuing Education Co-Chairs
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Legislative Committee Chair
Paige A. Nichols
(785)832-8024

Membership Committee Chair
Joseph A. Allen
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Newsletter Editor
David Freund
(316)264-8700

Strike Force Committee Chair
Roger L. Falk
(316)265-5115

Technology Committee Chair
Troy Huser
(785)537-4603

Executive Director
Patrick M. Lewis
(913)558-3961



February 10, 2004

To: House Judiciary Committee
From: Kansas Association of Criminal Defense Lawyers (KACDL)
By: Paige A. Nichols, KACDL Legislative Chair
Re: HB 2616 (regarding compensation for appointed counsel)

The Kansas Association of Criminal Defense Lawyers supports the proposed legislation raising compensation rates for appointed counsel.

This bill is necessary to reduce the disparity between compensation rates for appointed counsel in federal and state cases. Since 2002, the rate for appointed counsel in non-capital federal cases has been \$90 per hour (for both in-court and out-of-court work). The Federal Judicial Conference recently endorsed an increase in this rate to \$113 per hour, citing the need to keep qualified attorneys on the appointments list as a significant factor supporting the increased rate. Federal Judicial Conference, *Justifications for Increases in the Panel Attorney Hourly Rates in FY 2004*.

Increasing hourly rates for appointed counsel in criminal cases is also necessary to ensure that courts are able to “recruit and retain a sufficient number of qualified counsel to accept appointments in criminal cases.” *Id.*

Attorneys who accept appointments to represent indigent criminal defendants thereby must forego accepting retained work from private clients who ordinarily pay much higher rates. According to one national survey, non-reimbursable average office overhead costs are approximately \$68 per hour, and the average hourly billing rate charged by privately retained counsel is \$190 for sole practitioners and partners. *The Altman Weil Small Law Firm Economic Survey* (2002).

Low rates of pay for attorneys who represent the poor creates a two-tiered system that is incompatible with fundamental principles of justice. Anecdotal evidence suggests that many experienced defense attorneys in Kansas currently will not represent indigents because the costs to their firms is too high given the current rates of compensation, and they can easily find better paying clients. On the other hand, less experienced attorneys without a solid client base are willing to accept appointments, but then find themselves overwhelmed when they realize they must take on heavier and heavier caseloads just to pay their overhead costs.

This March will mark the forty-first anniversary of the Supreme Court’s landmark decision in *Gideon v. Wainwright*, holding that poor defendants have a constitutional right to a lawyer. The proposed legislation is one important step towards guaranteeing that right.

House Judiciary Committee
2-10-04
Attachment 12

Testimony for House Judiciary Committee
House Bill 2616

House Bill 2616 proposes to amend the hourly rate paid to court appointed counsel in felony cases to \$80 from its present \$50.

The United States Supreme Court and the Kansas Supreme Court have repeatedly held that the United States Constitution requires that all those charged with felony crimes who cannot afford counsel must be furnished defense counsel by the State before the State can deprive them of their freedom. The State cannot deprive one of his or her liberty without a court proceeding and an attorney on both sides of the dispute. Prosecutors are provided by the State and the defense lawyers are provided either by private counsel or public defenders. If defense counsel, and the tools to defend, are not provided in felony defense the ultimate result to the State is delay, reversals on appeal with consequent retrials or lack of action, an impact that is costly and fosters delay.

In 1988 the current system of State provided indigent defense counsel was adopted following the Kansas Supreme Court decision in *State ex rel Stephan v. Smith*, 747 P.2d 816, 242 Kan. 336 (1987). Although there were a number of issues considered in that case the one that is relevant for today's hearing relates to the requirement of reasonable compensation for defense counsel.

The rate that emerged after the Stephan case and the companion case of *Board of County Commissioners of Osage County v. Burns*, 242 Kan. 544, 747 P.2d 1338 (1988), was \$50 per hour, \$20 above the rate previously paid.

16 years has passed. Unfortunately, as we are all aware dollars in 1988 were worth considerably more than dollars today.

I sought out information that would address the effect passage of time has had on this pay rate. A CPA who offices in the same building as our law firm, provided information. His letter is attached. It is short and succinct. Considering inflation and the general cost of doing business \$50 an hour pay in 1988 would be worth \$32.69 in 2003. Relatively speaking appointed attorneys are getting paid roughly the same as pre-Stephan rates today. Looked at another way, \$50 purchase power in 1988 would require \$76.47 in 2003. It is simply time to increase the pay rate.

The Board of Indigents' Defense Services conducted a survey appointed counsel and reached a conclusion that \$40 per hour was the overhead figure for law offices currently. That means that to open an office and operate it without income to the lawyer \$40 each hour is required. Currently the income to the average lawyer in these cases would thus be \$10 an hour. The BIDS request is to raise the rate paid attorneys to \$80 per hour. We respectfully request that you favorably recommend the legislature. Thank you.

Yours very truly,

By:

Edward G. Collister, Jr.

EGC/ers

DEAN O. RADCLIFFE
CERTIFIED PUBLIC ACCOUNTANT
3311 CLINTON PARKWAY COURT
LAWRENCE, KANSAS 66047
PHONE (785) 842-7269

February 9, 2004

Mr. Edward G. Collister
3311 Clinton Parkway Court
Lawrence, Ks. 66047

Dear Ed:

Per your request I have researched the Consumer Price Index-All Urban Consumers. The index stood at 120.5 on December 31, 1988 and at 184.3 on December 31, 2003.

To put this in laymen's terms:

It would take \$76.47 to buy the same basket of goods in 2003 that you could get for \$50.00 in 1988.

\$50 pay in 1988 would be worth \$32.69 in 2003.

I hope this give you the information you needed.

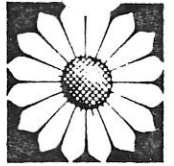
Sincerely,



Dean O. Radcliffe



The Kansas District Judges' Association



February 10, 2004

House Judiciary Committee

Testimony Concerning HB 2616

The Kansas District Judges Association (KDJA) Executive Board generally supports measures intended to provide adequate legal representation for indigent criminal defendants on a statewide basis. The Executive Board believes the current rate of \$50 per hour is inadequate.

The absence of a pool of attorneys interested in serving as defense counsel may result in consequences such as the inconvenience and expense of trial delays, or may impose a burden on judges to exert considerable time and effort in an attempt to find assigned counsel for a particular case. The ultimate consequence of an inadequate pool of attorneys willing to serve as assigned counsel is the dismissal of a case if counsel cannot be appointed so that a trial may proceed within the required time frame.

The ability to provide competent counsel for criminal defendants is a cornerstone of our criminal justice system. The KDJA Executive Board appreciates your consideration of measures such as this intended to assist in providing an adequate pool of attorneys willing to serve as defense counsel for indigent criminal defendants.



**KANSAS BAR
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February 10, 2004,

TO: Members of the House Judiciary Committee

FROM: Jim Clark, KBA Legislative Counsel

RE: **HB 2616**

The Kansas Bar Association supports the provisions of House Bill 2616 that establish a statutory rate of \$80 per hour for attorneys assigned to provide legal services for indigent defendants.

Not only is the current hourly rate inadequate, especially when compared with appointments to criminal cases in federal court, currently \$90/hour; but the rate does not reflect any increase since 1988. In comparison, salaries for staff public defenders, while not adequate, have at least reflected some kind of increase over the same period of time, as have salaries for prosecutors, legislators and other government employees. For a true comparison of those employees with the plight of attorneys assigned to indigent defense cases, we should roll all salaries back to the 1988 level. If that were to happen, more than a few legislators and state employees would not be in their current positions. Because the rate for assigned counsel remains frozen at the 1988 level, more than a few attorneys will continue to refuse indigent defendant cases.

The Kansas Bar Association urges this committee to report the bill favorably.

Thank you.