

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 p.m. on February 18, 2004 in Room 313-S of the Capitol.

All members were present except:

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:

Representative Michael O'Neal

Kay McFarland, Chief Justice, Kansas Supreme Court

Valerie Peterson, Prosecutor, City of Manhattan

Karlin Price, self

Lew Ebert, Kansas Chamber of Commerce & Industry

Scott Nehrbass, Kansas Association of Defense Counsel

Jim Clark, Kansas Bar Association

Kathy Porter, Office of Judicial Administration

Pedro Irigonegary, Kansas Trial Lawyers Association

The hearing on **HB 2880 - Office of Judicial Administration/judicial branch updates**, were opened.

Staff explained which statutes are repealed and why. (Attachment 1)

- K.S.A. 20-152, 20-153 and 20-154 were originally part of the joint resolution concerning a study and survey of the court system prior to unification. Most were repealed with the court unification bill but these remain.
- K.S.A. 20-161 required the supreme court to establish a pay plan for nonjudicial personnel and be submitted to the legislature before January 15, 1978.
- K.S.A. 20-321 - 20-323 were part of the Judicial Department Reform Act of 1965, which provided that the chief justice and departmental justices adopt rules and regulations. The rules and regulations have been placed in K.S.A. 20-319(g)
- K.S.A. 20-351a requires the chief justice to report to the chairperson of the House & Senate Judiciary Committees, annually, of district judge positions created or eliminated.

Representative Michael O'Neal complimented the Legislature for legislation allowing the Judicial Branch budget to come directly to the legislature, without budget review by the Governor. At the request of the Chairman, staff was directed to look thru the statutes to see if there were any that needed repealed or updated. While research was being done, it was pointed out that there are some inconsistencies in the statutes and a need for updates. Therefore, the proposed bill was recommended by the Chairman.

Article 3, Sec. 1 of the Kansas Constitution provides that "The supreme court shall have general administrative authority over all the courts in the state." Current law provides in K.S.A. 20-101, Sec. 1 that "the supreme court and each justice thereof shall have such specific powers and duties in exercising such administrative authority as may be provided by law.."

Section 2 of the proposed bill would make clear the role of the departmental justices in developing the budgets of the various judicial districts in the state over which they have a supervisory role.

Other changes address who appoints the judicial administrator. The reporter and clerk, under current law are appointed by the court. The change in appointment of the judicial administrator is intended to make the appointing powers of the court consistent. (Attachment 2)

Kay McFarland, Chief Justice, Kansas Supreme Court, appeared before the committee in opposition to the bill because it dilutes the authority of the chief justice. Each chief justice has there own leadership style and

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it is important that they be able to work closely with the Office of Judicial Administration to carry out the policy of the court. She wasn't aware of any other state that places limits on the chief justice as this bill would. (Attachment 3)

(Later, the committee was provided with a partial search of states that provide that the "supreme court, as a group, has the power to promulgate rules, regulations, and appoint an administrative director." Attachment 4)

She stressed that the other justices are included in all policy decisions. She claimed they have full participation on budget and policy decisions. She was concerned that four of the seven current justices are "getting into their roll" and that it takes time to get familiar with the court and how things work and placing new duties on them would get in the way of their job. She views the bill as micro-managing and interfering with internal matters and the way the court works.

Some committee members saw the bill as simply codifying current practices of the court, where all the justices are included in budget and policy decisions. If this procedure is happening now, they simply want it to continue and do not see it as micro-managing the judiciary.

The hearing on HB 2880 was closed.

The hearing on HB 2789 - statistics on restitution ordered & paid by criminal offenders, was opened.

Valerie Peterson, Prosecutor, City of Manhattan, appeared as a proponent of the bill which would allow the Office of Attorney General to collect information to see how many offenders are being let off of probation without paying their complete restitution. Some courts allow the offenders to be terminated off probation and then turn the unpaid restitution over to a collection agency. (Attachment 5)

Karlin Price, self, explained that once the unpaid restitution goes to a collection agency, their fee comes off of the price to be paid for restitution. She sees this as unfair to the victim. (Attachment 6)

Written testimony was provided by Gene Schmidt, Victims' Rights Coordinator for the Office of Attorney General, in support of the bill. (Attachment 7)

It was pointed out that under K.S.A. 21-4603(d)(b2), the office of attorney general already has the authority to collect restitution on behalf of victims.

The hearing on HB 2789 was closed.

The hearing on HB 2846 - jury patriotism act, was opened.

Lew Ebert, Kansas Chamber of Commerce & Industry, supports the proposed bill because it would help Kansans benefit from a jury of their peers. (Attachment 8)

Scott Nehrbass, Kansas Association of Defense Counsel, appeared as a proponent of the bill. He explained that the proposed bill would allow for jurors to have one automatic postponement of jury service with a simple method of rescheduling service to a more convenient time. Court would defer jury duty for an employee of a small business if another employee from that business was summoned. Citizens would not spend more than one day at the courthouse unless they are selected for a jury panel. Citizens would be guaranteed that they would not be called for jury service more often than once every two years. Those summoned to jury service would not be required to use leave time in order to serve. Jurors who serve on civil trials lasting longer than five days would be eligible for supplemental compensation of up to \$100 per day if they would have otherwise been excused from jury service due to financial hardship. (Attachment 9)

Jim Clark, Kansas Bar Association, appeared as an opponent of the bill. The bill only applies the \$100 to civil juries and not criminal trials. (Attachment 10)

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Kathy Porter, Office of Judicial Administration, suggested that the committee might consider \$100 per day would be paid to all jurors for service over six days, otherwise they would receive the \$10 per day fee. She was opposed to having the court collect an additional \$5 to be placed in a separate fund due to the extra work it would place on the clerks. (Attachment 11)

Pedro Irigonegary, Kansas Trial Lawyers Association, agreed that jurors deserve a higher compensation and that compensation should come from a broad-based source of those who use the court system. He opposed the rest of the bill because the jury system is currently working and doesnt need to be "fixed". (Attachment 12)

The hearing on HB 2846 was closed.

**HB 2291 - district magistrate judges do not have jurisdiction over petitions to terminate parental rights,** was scheduled for a hearing but was withdrawn due to the discovery it had a hearing in the 2003 Legislative Session.

The committee meeting adjourned. The next meeting was scheduled for February 19, 2004.

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MEMORANDUM

To: House Judiciary Committee  
From: Jill Ann Wolters, Senior Assistant Revisor *JAW*  
Date: February 18, 2004  
Subject: Review of HB2880

HB 2880 clarifies and updates judicial branch statutes concerning the duties of the supreme court, the chief justice of the supreme court and the justices of the supreme court.

Several statutes are repealed by this bill. They are attached for the Committee's review.

K.S.A. 20-152, 20-153 and 20-154 were originally part of a joint resolution passed in 1973, concerning a study and survey of the court system prior to unification. The section requesting the study and survey, K.S.A. 20-151, was repealed in 1976, effective January 10, 1977, in the court unification bill. The remaining three sections have remained in the statutes since that time.

K.S.A. 20-161 requires the supreme court to establish a pay plan for the nonjudicial personnel of the supreme court and the court of appeals. This plan was to be submitted to the legislature on or before January 15, 1978.

K.S.A. 20-321, 20-322 and 20-323 were a part of the Judicial Department Reform Act of 1965. K.S.A. 20-321 provided that the chief justice and departmental justices shall adopt rules and regulations to carry out the provisions of the article. The rules and regulations provisions have been placed in K.S.A. 20-319 (g). [See page 6, lines 1 through 3.]

The final statute repealed is K.S.A. 20-351a, which requires the chief justice to report to the chairpersons of the House and Senate Judiciary Committees, annually on or before December 1, of district judge positions created or eliminated. In the bill, this information would be provided, along with other information, to the Governor and the chairpersons. [See page 4, lines 23 through 31.]

K.S.A. 20-101 is amended in the bill and is merely a clarifying amendment.

Section 2, K.S.A. 20-158, discusses the preparation of the judicial branch budget. Currently, the chief justice is responsible for the judicial branch budget. Pursuant to the amendments, the chief justice would get the advice and approval of a majority of justices for the budget. The bill further provides that the basis for the district court budget request will be the recommendations established in K.S.A. 20-319, explained later in the memo.

The amendments to K.S.A. 20-162 delete language that was included in the statutes following unification of the courts.

K.S.A. 20-318 and 20-319 are rearranged so that 20-318 deals with the judicial administrator and the office of judicial administration (OJA) and 20-319 deals with the departmental justices of the supreme court. The stricken language in K.S.A. 20-318 (page 3, lines 13 through 19) is moved to K.S.A. 20-319 (page 4, lines 33 through 39). The amendments to K.S.A. 20-318 further establish that the judicial administrator will be appointed by the chief justice, with the advice and approval of the justices and serve at the will of the supreme court. The bill also adds language requiring the judicial administrator to prepare and utilize a comprehensive and uniform nonjudicial personnel plan for the district courts based upon minimum levels of personnel necessary to ensure public access to the district courts and to perform the essential and statutory duties of the courts. This plan shall be the basis on which to determine the placement of nonjudicial personnel for each judicial district. The final subsection of the bill requires OJA to annually publish the caseload of each judicial district, including all classifications and types of cases; the judicial personnel and nonjudicial personnel of each judicial district and district court offices, including the clerk's and court services offices; and the caseloads for any special needs programs of an individual judicial district that are allowed by the plan.

K.S.A. 20-319 is amended to reflect the departmental justices and their duties. An additional duty of such justice's is to oversee the development of the budget for each judicial district and make a report and recommendation on the budget requests to the chief justice. Subsection (g) is added for the rules and regulations authority of the justices.

The remaining amendments are an attempt to clarify and update the judicial branch statutes.

wells to prevent pollution of existing water. Any contractor who fails to properly seal any exploratory wells drilled in search of a water supply and abandoned by him shall be subject to the penalties set out in this act.

Sec. 14. Any person who shall willfully violate any lawful rule or regulation of the board relating to water well contracting, or who shall engage in the business of constructing, reconstructing or treating water wells without first having obtained a license as in this act required, or who shall knowingly violate any provisions of this act, shall be guilty of a class B misdemeanor and subject to the penalties therefor as provided by law.

Sec. 15. If any word, phrase, sentence or provision of this act is determined to be invalid, such invalidity shall not affect the other provisions of this act and they shall be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable.

Sec. 16. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 31, 1973.

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## RESOLUTIONS

### CHAPTER 418

#### Senate Joint Resolution No. 2

A JOINT RESOLUTION requesting the Kansas supreme court, in cooperation with the judicial council, to make a survey and study of the Kansas court system; authorizing appointment of an advisory committee; providing for clerical and staff assistance; and requiring a report thereon to the judiciary and the legislature.

*Be it resolved by the Senate of the State of Kansas, the House of Representatives agreeing thereto:*

Section 1. The supreme court, in cooperation with the judicial council, is hereby requested to make a survey and study of the Kansas court system including municipal courts. Such study and survey shall include: (1) Unification and restructuring of the courts; (2) administrative supervision of the courts; (3) selection, tenure, compensation and retirement of judges and court personnel; (4) appellate review; (5) financing of courts; and (6) such other areas assigned to it by the chief justice. The chief justice shall report to the judiciary and the 1974 legislature on such part of the study that is completed during 1973.

Sec. 2. The supreme court may appoint a judicial study advisory committee to assist in conducting the judicial study and survey and to make recommendations to the judiciary and the legislature. The judicial study advisory committee shall be considered a regular committee of the judicial council for the purpose of receiving per diem allowances.

Sec. 3. The judicial council is authorized to procure such supplies and fix compensation of such clerical and other assistance, and enter into contracts for employment of such consulting and technical groups, as may be necessary to carry out the provisions of this resolution. Under direction of the supreme court, the judicial administrator shall participate in the judicial survey and study and shall cooperate with the judicial council in this project. Upon request of the chief justice, the legislative coordinating council may make available such of the council's staff services as may be necessary to assist the chief justice in the preparation of any legislation necessary to implement any recommended statutory changes resulting from the survey and study.

Sec. 4. Any funds appropriated by the legislature to the judicial council or the supreme court may be used to match any moneys available from federal or private sources to assist in the conduct of the judicial survey and study.

Sec. 5. This resolution shall take effect and be in force from and after its publication in the official state paper.

Approved March 17, 1973.

Published in the official state paper March 23, 1973.

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## CHAPTER 419

#### Senate Resolution No. 11

A RESOLUTION approving Executive Reorganization Order No. 1, relating to the department of social and rehabilitation services.

*Be it resolved by the Senate of the State of Kansas:* That Executive Reorganization Order No. 1 is hereby approved.

*Be it further resolved:* That the secretary of state shall transmit a copy of this resolution to the governor.

Adopted April 4, 1973.

See chapter 367 and governor's message.

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## CHAPTER 420

#### House Resolution No. 1037

A RESOLUTION approving Executive Reorganization Order No. 1, relating to the department of social and rehabilitation services.

*Be it resolved by the House of Representatives of the State of Kansas:* That Executive Reorganization Order No. 1 is hereby approved.

*Be it further resolved:* That the secretary of state shall transmit a copy of this resolution to the governor.

Adopted April 5, 1973.

See chapter 367 and governor's message.

**Attorney General's Opinions:**

Supreme court nominating commission; applicability of title 7; 1964 civil rights act, Americans with disabilities act and Kansas acts against discrimination. 93-69.

**CASE ANNOTATIONS**

1. Cited; non-lawyer remaining on Supreme Court nominating commission following issuance of temporary permit to practice law examined. State ex rel. Stephan v. Adam, 243 K 619, 622, 760 P.2d 683 (1988).

**20-139. Conferences of supreme court justices and certain judges; expenses.** From time to time, the chief justice of the Kansas supreme court may order conferences of justices of the supreme court and judges of the district court and court of appeals on matters relating to the administration of justice. The actual and necessary expenses of the justices of the supreme court and judges of the district court and court of appeals incurred in connection with attending such conferences shall be paid, subject to the provisions of K.S.A. 75-3216.

**History:** L. 1963, ch. 202, § 1; L. 1973, ch. 128, § 1; L. 1976, ch. 146, § 4; Jan. 10, 1977.

**Research and Practice Aids:**

Judges = 24.

C.J.S. Judges § 40 et seq.

**20-140 to 20-144.**

**History:** L. 1963, ch. 425, §§ 1 to 5; Repealed, L. 1965, ch. 212, § 6; May 1.

**20-145.****Revisor's Note:**

Rules of the supreme court relating to the supreme court, court of appeals and appellate practice are published by the Supreme Court Reporter, Kansas Judicial Center, 301 West 10th, Topeka, Kansas 66612-1507.

**20-146.**

**History:** L. 1965, ch. 212, § 1; Repealed, L. 1975, ch. 178, § 32; Jan. 10, 1977.

**20-147.**

**History:** L. 1965, ch. 212, § 2; L. 1967, ch. 169, § 1; Repealed, L. 1975, ch. 178, § 32; Jan. 10, 1977.

**20-148.**

**History:** L. 1965, ch. 212, § 3; L. 1972, ch. 95, § 1; Repealed, L. 1975, ch. 178, § 32; Jan. 10, 1977.

**20-149, 20-150.**

**History:** L. 1965, ch. 212, §§ 4, 5; Repealed, L. 1975, ch. 178, § 32; Jan. 10, 1977.

**20-151.**

**History:** L. 1973, ch. 418, § 1; Repealed, L. 1976, ch. 145 § 246; Jan. 10, 1977.

**20-152. Judicial study advisory committee; appointment; expenses.** The supreme court may appoint a judicial study advisory committee to assist in conducting the judicial study and survey and to make recommendations to the judiciary and the legislature. The judicial study advisory committee shall be considered a regular committee of the judicial council for the purpose of receiving per diem allowances.

**History:** L. 1973, ch. 418, § 2; March 23.

**20-153. Same; supplies, clerical assistance, contracts; duties of judicial administrator; staff services of coordinating council.** The judicial council is authorized to procure such supplies and fix compensation of such clerical and other assistance, and enter into contracts for employment of such consulting and technical groups, as may be necessary to carry out the provisions of this resolution. Under direction of the supreme court, the judicial administrator shall participate in the judicial survey and study and shall cooperate with the judicial council in this project. Upon request of the chief justice, the legislative coordinating council may make available such of the council's staff services as may be necessary to assist the chief justice in the preparation of any legislation necessary to implement any recommended statutory changes resulting from the survey and study.

**History:** L. 1973, ch. 418, § 3; March 23.

**20-154. Same; use of judicial council and supreme court funds for matching purposes for study and survey.** Any funds appropriated by the legislature to the judicial council or the supreme court may be used to match any moneys available from federal or private sources to assist in the conduct of the judicial survey and study.

**History:** L. 1973, ch. 418, § 4; March 23.

**20-155. Supreme court law library; law librarian and other personnel.** There is hereby established the Kansas supreme court law library, which shall provide law library services to the judicial, legislative and executive branches of state government and to members of the bar under such rules as the supreme court may prescribe. The Kansas supreme court law library shall be under the supervision and control of the Kansas su-

changes in such budget as the director deems necessary and appropriate.

**History:** L. 1976, ch. 146, § 42; L. 1978, ch. 108, § 5; L. 1979, ch. 290, § 1; L. 1980, ch. 94, § 1; July 1.

**20-159. Reproduction and preservation of court records; minimum standards.** The supreme court may provide for and authorize any administrative judge of a judicial district, to photograph, microphotograph or reproduce or to have photographed, microphotographed or reproduced on film any of the court records, papers or documents which are by law placed in the courts of that judicial district and to acquire necessary facilities and equipment and to acquire, maintain and use all such appropriate containers and files as shall be necessary to accommodate and preserve the photographs, microphotographs or films so obtained. The photographing, microphotographing or filming may be so authorized for the reproducing of court records, where to do so will promote efficiency in the office, or as a method of preserving old or worn records, papers or documents. The photographic films and prints or reproductions therefrom, shall comply with federal standard no. 125a, dated April 24, 1958, or the latest revision thereof, issued pursuant to the federal property and administrative services act of 1949, and any amendments thereto. The device used to reproduce such records on such film shall be one which accurately reproduces the original thereof in all details.

**History:** L. 1977, ch. 104, § 1; July 1.

**20-160. Court may adopt rules relating to court records.** The supreme court may adopt rules to govern the reproduction, preservation, storage and destruction of court records of this state, not inconsistent with this act [\*].

**History:** L. 1977, ch. 104, § 4; July 1.

\* "This act," see, also, 19-254, 19-256, 20-159, 20-357 and 60-465a.

**Attorney General's Opinions:**

Rules of supreme court; reproduction and disposition of court records. 79-296.

**20-161. Supreme court to establish pay plan, personnel plan and affirmative action plan for certain nonjudicial personnel; contents of plans; copy submitted to legislature.** The supreme court shall establish for the nonjudicial personnel of the supreme court and the court of appeals a formal pay plan, a personnel

plan and an affirmative action plan for the hiring of minority persons. Such pay plan and personnel plan shall include, but not be limited to, job descriptions, qualifications of employees, salary ranges, vacation, sick and other authorized leave policies. A copy of such pay plan, personnel plan and affirmative action plan shall be submitted to the legislature on or before January 15, 1978.

**History:** L. 1977, ch. 296, § 2; July 1.

**20-162. Supreme court to establish judicial personnel classification system; contents; submission to legislative coordinating council.** (a) The supreme court shall establish by rule a judicial personnel classification system for all nonjudicial personnel in the state court system and for judicial personnel whose compensation is not otherwise prescribed by law. Said personnel classification system shall take effect on July 1, 1979, and shall prescribe the compensation for all such personnel. No county may supplement the compensation of district court personnel included in the judicial personnel compensation system. Such compensation shall be established so as to be commensurate with the duties and responsibilities of each type and class of personnel. In establishing the compensation for each type and class of personnel, the supreme court shall take into consideration: (1) The compensation of such personnel prior to January 1, 1979; (2) the compensation of personnel in the executive branch of state government who have comparable duties and responsibilities; and (3) the compensation of similar personnel in the court systems of other states having comparable size, population and characteristics.

(b) The following personnel shall not be included in the judicial personnel classification system:

- (1) County auditors,
- (2) coroners,
- (3) court trustees and personnel in each trustee's office, and
- (4) personnel performing services in adult or juvenile facilities used as a place of detention or for correctional purposes.

The compensation for the above personnel shall be paid by the county as prescribed by law.

(c) The judicial personnel classification system also shall prescribe the powers, duties and functions for each type and class of personnel, which shall be subject to and not inconsistent with



(1) With the help and assistance of the judicial administrator, make a survey of the conditions of the dockets and business of the district courts in the justice's department and make a report and recommendations on the conditions and business to the chief justice.

(2) Assemble the judges of the district courts within the justice's department, at least annually, to discuss such recommendations and other business as will benefit the judiciary of the state. When so summoned, the judges of the district courts in the various departments shall attend such conferences at the expense of the state. Such judges shall be entitled to their actual and necessary expenses while attending such conferences and shall be required to attend the conferences unless excused by the departmental justice for good cause.

(b) Departmental justices shall have authority within their departments to assign any district judge or district magistrate judge to hear any proceeding or try any cause, within the judge's jurisdiction, in other district courts. Any departmental justice may request the assistance of any district judge or district magistrate judge from another department.

(c) The departmental justices shall supervise all administrative matters relating to the district courts within their departments and require reports periodically, covering such matters and in such form as the supreme court may determine, on any such matter which will aid in promoting the efficiency or the speedy determination of causes now pending. Departmental justices shall have the power to examine the dockets, records and proceedings of any courts under their supervision. All judges and clerks of the several courts of the state shall promptly make such reports and furnish the information requested by any departmental justice or the judicial administrator, in the manner and form prescribed by the supreme court.

In order to properly advise the three branches of government on the operation of the juvenile justice system, each district court shall furnish the judicial administrator such information regarding juveniles coming to the attention of the court pursuant to the Kansas code for care of children as is determined necessary by the secretary of social and rehabilitation services and the director of the statistical analysis center of the Kansas bureau of investigation, on forms approved by the judicial administrator. Such information shall be confidential and shall not be disseminated or publicly

disclosed in a manner which enables identification of any individual who is a subject of the information.

The departmental justice shall assign to each administrative judge in the justice's department such duties as are necessary to carry out the intent of just, speedy and inexpensive litigation for the litigants of the state.

**History:** L. 1965, ch. 215, § 2; L. 1976, ch. 146, § 6; L. 1982, ch. 182, § 123; L. 1983, ch. 140, § 4; L. 1986, ch. 115, § 35; Jan. 12, 1987.

**Cross References to Related Sections:**

Juvenile offender information system, see 38-1617 et seq.

**Law Review and Bar Journal References:**

"Practicing Law in a Unified Kansas Court System," Linda Diane Henry Elrod, 16 W.L.J. 260 (1977).

**CASE ANNOTATIONS**

1. Cited; whether court had jurisdiction to order pen register and wiretap when component located in adjacent county examined. *State v. Gibson*, 255 K. 474, 482, 874 P.2d 1122 (1994).

**20-320. Same; duties of chief justice; records and report.** The chief justice shall analyze and study such reports as are submitted to him and promptly submit a summary thereof, and the recommendations of the judicial departments and judicial administrators, and shall cause a copy of all recommendations to be filed as public record in the office of the clerk of the supreme court and shall, at the beginning of every legislative session, submit a written report to the governor of the state, and to the judiciary committees of both houses of the legislature.

**History:** L. 1965, ch. 215, § 3; June 30.

**20-321. Same; rules and regulations; assistants.** The chief justice of the supreme court and each judicial department justice shall adopt such rules and regulations as they may deem necessary to carry out the provisions of this article, and shall assign such duties and shall appoint such assistants to the judicial administrator as they deem necessary, to promptly and efficiently carry out the intent of just, speedy, and inexpensive litigation for the litigants of the state.

**History:** L. 1965, ch. 215, § 4; June 30.

**20-322. Same; name of act; citation.** This act shall be known and may be cited as the "judicial department reform act of 1965."

**History:** L. 1965, ch. 215, § 5; June 30.

**CASE ANNOTATIONS**

1. Act does not violate any provision of Kansas Constitution. *State v. Schroeder*, 201 K. 811, 823, 443 P.2d 284.

**20-323.** Same; act supplemental to existing laws. This act shall be construed as supplemental to existing statutes pertaining to the selection or appointment of a judge pro tem of the district court.

**History:** L. 1965, ch. 215, § 6; June 30.

CASE ANNOTATIONS

1. Act does not violate any provision of Kansas Constitution. State v. Schroeder, 201 K. 811, 823, 443 P.2d 284.

**20-324.**

**Revisor's Note:**

Rules of the supreme court relating to the supreme court, court of appeals and appellate practice are published by the Supreme Court Reporter, Kansas Judicial Center, 301 West 10th, Topeka, Kansas 66612-1507.

JUDICIAL REAPPORTIONMENT ACT (1968)

**Cross References to Related Sections:**

Establishment of judicial districts, see 4-202 et seq.

**20-325.** Terms of court fixed by supreme court. The terms of the district courts of the judicial districts created by this act [°] shall be held in the counties of the districts at such times as shall be determined and fixed by the supreme court.

**History:** L. 1968, ch. 385, § 31; March 30.

\* "This act," see, also, 4-201 to 4-230, 20-327 to 20-333.

**20-326.**

**Revisor's Note:**

Rules of the supreme court relating to district courts are published by the Supreme Court Reporter, Kansas Judicial Center, 301 West 10th, Topeka, Kansas 66612-1507.

**20-327.** Terms of judges. All judges of district courts elected under the provisions of this act [°] shall be elected for terms of four years and until their successors are elected and qualified.

**History:** L. 1968, ch. 385, § 32; March 30.

\* "This act," see, also, 4-201 to 4-230, 20-325, 20-328 to 20-333.

**20-328.** Pending actions and proceedings. All actions and proceedings pending in the district court of any county at the time any judicial district is abolished and a new district established under the provisions of this act [°], whether the issues are joined or not, shall proceed in the district court of the judicial district in which said county is placed by the provisions of this act in the same manner as if said actions and proceedings had been commenced in said district, except when an action or proceeding pending in such a district court has been tried by the judge of said court,

and by him taken under advisement, and is still undecided at the time the judicial district is established, then it shall be the duty of the judge who tried said cause to make and render his findings and judgment thereon, and to determine all motions therein in all respects as though said county had not been placed in such judicial district.

**History:** L. 1968, ch. 385, § 33; March 30.

\* "This act," see, also, 4-201 to 4-230, 20-325, 20-327, 20-329 to 20-333.

**20-329.** Administrative judge; designation by supreme court; duties. In every judicial district, the supreme court shall designate a district judge as administrative judge who shall have general control over the assignment of cases within the district, subject to supervision by the supreme court. Within guidelines established by statute, rule of the supreme court or the district court, the administrative judge of each district court shall be responsible for and have general supervisory authority over the clerical and administrative functions of such court.

**History:** L. 1968, ch. 385, § 34; L. 1976, ch. 146, § 28; L. 1980, ch. 94, § 5; L. 1986, ch. 115, § 36; Jan. 12, 1987.

**Cross References to Related Sections:**

Provision of office space for supreme court justices and court of appeals judges, see 20-163.

**Law Review and Bar Journal References:**

"Practicing Law in a Unified Kansas Court System," Linda Diane Henry Elrod, 16 W.L.J. 260 (1977).

**Attorney General's Opinions:**

Classes of judges of district court. 85-183.

Alcohol and drug safety action program. 89-4.

**20-330.** Powers, rights and authority of district judges in districts with more than one district judge. Each of the district judges in judicial districts having more than one district judge shall have all the rights, powers and authority throughout said district possessed by district judges, the same as if each judge was the sole judge of such district, and such powers, rights and authority may be exercised by each of said district judges in the same or different counties in their district at the same time.

**History:** L. 1968, ch. 385, § 35; L. 1976, ch. 146, § 29; Jan. 10, 1977.

**20-331.** Residence requirements of judges of the district court. (a) Except as provided in subsection (b), any person who has the qualifications prescribed for a district judge by K.S.A. 20-334 shall be eligible for nomination,

the manner provided by K.S.A. 20-2801 and amendments thereto, and the state treasurer shall deposit the same in the state treasury to the credit of the state general fund, except as provided in K.S.A. 74-7336, and amendments thereto.

(b) The administrative judge may invest any moneys on deposit in the district court account if the moneys are not immediately required for the purposes for which they were collected or received. Such moneys may be invested in: (1) Time deposits, open account or certificates of deposit, for periods not to exceed six months, or savings deposits, in commercial banks located in the county, except that amounts invested which are not insured by the United States government shall be secured in the manner and amounts provided by K.S.A. 9-1402 and amendments thereto; (2) United States treasury bills or notes with maturities not to exceed six months; or (3) savings and loan associations located in the county. No investment of more than the amount insured by the federal deposit insurance corporation shall be made in any one savings and loan association. Interest received from the investment of moneys pursuant to this subsection shall be paid to the state treasurer in the manner provided by K.S.A. 20-2801 and amendments thereto, and the state treasurer shall deposit the same in the state treasury to the credit of the state general fund.

(c) Upon application of a party to an action in which such party claims ownership of moneys held by the district court, the administrative judge may invest such moneys in the same manner as provided by subsection (b). Interest received from the investment of moneys pursuant to this subsection shall become the property of the person found to be the owner of the moneys.

**History:** L. 1976, ch. 146, § 45; L. 1977, ch. 109, § 16; L. 1978, ch. 108, § 9; L. 1981, ch. 134, § 1; L. 1989, ch. 239, § 2; L. 1990, ch. 94, § 1; July 1.

**Revisor's Note:**

Section was amended twice in 1989 session, see also 20-350a.

**Attorney General's Opinions:**

Release prior to trial; local court rule. 94-25.

**CASE ANNOTATIONS**

1. Clerk of district court and administrative judge bound to pay to state treasurer all fines and forfeitures for violations of county resolutions. Board of Sedgwick County Comm'rs v. Noone, 235 K. 777, 783, 785, 682 P.2d 1303 (1984).

**20-350a.**

**History:** L. 1976, ch. 146, § 45; L. 1977, ch. 109, § 16; L. 1978, ch. 108, § 9; L. 1981, ch. 134, § 1; L. 1989, ch. 48, § 82; Repealed, L. 1990, ch. 94, § 3; July 1.

**20-351.**

**History:** L. 1976, ch. 146, § 43; L. 1976, ch. 380, § 8; L. 1977, ch. 112, § 4; Repealed, L. 1978, ch. 350, § 17; Jan. 1, 1979.

**20-351a. Elimination or addition of judgeships; report to legislature.** On or before December 1 of each year, the chief justice of the supreme court shall submit to the chairpersons of the committees on judiciary of the house of representatives and of the senate a report of all district magistrate judge positions created or eliminated, and all district judge positions created, pursuant to K.S.A. 20-352, 20-353, 20-354 or 20-355, and amendments thereto, during the twelve-month period ending the preceding October 1.

**History:** L. 1982, ch. 130, § 20; L. 1986, ch. 115, § 44; Jan. 12, 1987.

**20-352.**

**History:** L. 1976, ch. 146, § 23; Repealed, L. 1983, ch. 105, § 13; April 28.

**20-353. Conversion of district magistrate judge positions to new district judge positions; procedure.** If, upon the death, resignation, retirement or removal of a district magistrate judge in any judicial district, the supreme court determines that, in order to effectively expedite the business of the district court in the judicial district, the district magistrate judge position should be eliminated and that an additional position of district judge or an additional division of the district court of the judicial district should be created, the supreme court shall certify to the secretary of state the elimination of the district magistrate judge position and the creation of an additional position of district judge or division of the district court. If the position or division is to be created in a judicial district in which the proposition of nonpartisan selection of district court judges has been approved, as provided in K.S.A. 20-2901 and amendments thereto, the certification also shall be made to the chairperson of the district judicial nominating commission of the judicial district. When the certification has been made, the position or division shall be deemed created and the judgeship therefor shall be deemed vacant, to be filled in the manner pro-

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H.B. 2880  
House Judiciary Committee  
Feb. 18, 2004

CHAIRMAN:  
JUDICIARY COMMITTEE

MEMBER:  
TAX, JUDICIAL, TRANSPORTATION  
AND RETIREMENT BUDGET  
UNIFORM LAW COMMISSION  
KANSAS JUDICIAL COUNCIL

Members of the Committee,

I'm proud of this Committee's efforts recently in getting out the message that the needs of the Judicial Branch must be addressed. The passage of legislation allowing the Judicial Branch budget to come directly to the Legislature has helped considerably. The expansion of the Court of Appeals is another step forward. The needs of the Judicial Branch are not limited, however, to the Appellate branch. Recently, we've focused additional attention to the needs of our various district courts. The debate over Dist. Mag. Judges, although painful, helped emphasize the role we and the courts have in the allocation of precious judicial resources.

In reviewing the Judicial article in the Kansas Constitution and the various statutes addressing the court system to determine what additional things we might be able to do to improve the system, we've found a need to update some of the statutes and make some of the provisions more consistent. H.B. 2880 is the product of revisor recommendations and specific recommendations concerning the type of information we need to more effectively evaluate the needs of the Judicial branch.

Article 3, Sec. 1 of the Kansas Constitution provides that "...The supreme court shall have general administrative authority over all the courts in this state." K.S.A. 20-101, in Sect. 1 of the bill, provides that "...The supreme court and each justice thereof shall have such specific powers and duties in exercising such administrative authority as may be prescribed by law..."

The current provision regarding the development of the Judicial branch budget, particularly in light of recent legislation allowing that budget to come directly to the

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House Judiciary Committee  
2-18-04  
Attachment 2

Legislature, fails to acknowledge the role of the departmental justices, each of whom have administrative responsibilities with regard to the various judicial districts in the state. It is assumed the budget is developed by the court but the statute is ambiguous in that regard. The proposed language in Sect. 2 of the bill makes clear our intent that the Judicial branch budget will be the product of the supreme court, with such additional assistance from the lower courts and judicial administrator as may be necessary. The new language in the section also clarifies the role of the departmental justices in developing the budgets of the various judicial districts in the state over which they have a supervisory role. (See Sect. 5 (b)(3).

The changes in Sect. 4(a) of the bill are intended to make consistent the rules regarding appointment of positions by the court. For example, under Art. 3, Sec. 4 of the Kansas Constitution the reporter and clerk of the court are appointed by the “justices of the supreme court”. The appointment of the reporter is codified in K.S.A. 20-201. The amendments in Sect. 4(a) make appointment of the judicial administrator consistent with these provisions and the existing provisions of K.S.A. 20-318 that provide that the judicial administrator “.. shall perform such other duties as are provided by law or assigned...by the supreme court or the chief justice.”

Also, consistent with the provisions in existing law regarding assignments that may by law be given to the judicial administrator, the changes in Sect. 4 (b) of the bill are intended to address our interest in the development of a comprehensive plan for meeting the needs of the various judicial districts, both as to judicial as well as non-judicial personnel, etc.

As explained by our revisor, many of the proposed changes are technical in nature and provide an appropriate updating of the judicial article. Together, the changes outlined in H.B. 2880 will advance our continuing goal to assist the Judicial branch in meeting its needs now and in the future.

*Rep. Mike B'Neal*



# Supreme Court of Kansas

KAY MCFARLAND  
*Chief Justice*

Kansas Judicial Center  
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February 18, 2004

Testimony in Opposition to HB 2880  
Chief Justice Kay McFarland

Last Thursday, February 12, the House Calendar listed today's hearing for "HB \_\_\_ OJA / Judicial Branch updates." The bill number and bill were unavailable at that time but were included in the Monday, February 16, bill packet. The bill is far more than a housekeeping update of statutes. The bill would cause major changes in the internal operation of the Kansas Supreme Court and the Judicial Branch.

The office and selection of the Chief Justice is determined by the Kansas Constitution. The Chief Justice has the duty of administering the Judicial Branch. Consistent with this duty, the Chief Justice has always had the power to select and retain the judicial administrator. This is vital, as the operation of the Judicial Branch requires that the person occupying this key staff position be someone in whom the Chief Justice has complete confidence. The Chief Justice and the judicial administrator must have a good working relationship. Under this bill, the selection and retention of the judicial administrator is shifted to a majority of the Court. I know of no other state in which the Legislature has so handicapped the Chief Justice in the performance of his or her duties.

Sections 5 and 6 of the bill would create new bureaucratic duties within the Judicial Branch. Section 5 requires each of the six departmental justices to oversee the development of a budget for each judicial district. Additionally, departmental justices would be required to adopt rules and regulations "deemed necessary to carry out the provisions of the section."

## Personnel Plan Provisions

Section 4(b) provides the means for massive legislative micro-management of the Judicial Branch. Presently, the Judicial Branch must establish the need for new requested positions. Under Section 4(b) of the bill, the Judicial Branch would be placed in a unique zero-based budget situation. In effect, each existing position would have to be justified to legislative satisfaction each year and each existing position would be at risk of legislative deletion or transfer. It is ironic that this bill is before the House Judiciary Committee, which has long supported the Judicial Branch in opposing measures that would result in micro-management of the Judicial Branch.

## Conclusion

This bill would create a number of obviously damaging unintended consequences. I am sure more would surface if it became law. There is a maxim often applied to the practice of medicine which is applicable here. First, do no harm. This bill does harm. I urge that you kill this bill. House Judiciary Committee

2-18-04  
Attachment 3

# PARTIAL SEARCH

# New Mexico

West's New Mexico Statutes Annotated Currentness

Chapter 34. Court Structure and Administration

→ Article 9. Administrative Office of the Courts

## § 34-9-1. Administrative office of courts maintained at capital; director [FN1]

The administrative office of the courts of New Mexico shall be maintained at the seat of the government. It shall be supervised by a director who shall be appointed and subject to removal by the supreme court of New Mexico.

[FN1] Caption added by Publisher.

## § 34-9-2. Employees [FN1]

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# Iowa

I.C.A. § 602.1208

C

Iowa Code Annotated Currentness

Title XV. Judicial Branch and Judicial Procedures

Subtitle 2. Courts

Chapter 602. Judicial Branch (Refs & Annos)

▣ Article 1. Judicial Branch

▣ Part 2. Administration

## → 602.1208. State court administrator

1. The supreme court, by majority vote, shall appoint a state court administrator and may remove the administrator for cause.

2. The state court administrator is the principal administrative officer of the judicial branch, subject to the immediate direction and supervision of the chief justice.

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# Colorado

CO ST § 13-3-101  
C.R.S.A. § 13-3-101  
C

West's Colorado Revised Statutes Annotated Currentness

Title 13. Courts and Court Procedure

▣ Courts of Record

▣ Article 3. Judicial Departments

## → § 13-3-101. State court administrator--repeal

(1) There is created, pursuant to section 5(3) of article VI of the state constitution , the position of state court administrator, who shall be appointed by the justices of the supreme court at such compensation as shall be determined by them. The state court administrator is responsible to the supreme court and shall perform such duties as assigned to him by the chief justice and the supreme court.

(2) The state court administrator shall employ such other personnel as the supreme court deems necessary to aid the administration of the courts, as provided in section 5(3) of article VI of the state constitution .

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# West Virginia

Const. Art. 8, § 3

West's Annotated Code of West Virginia Currentness

The Constitution of West Virginia (1872)

Article VIII

## → § 3. Supreme Court of Appeals; Jurisdiction and Powers; Officers and Employees; Terms

The supreme court of appeals shall have original jurisdiction of proceedings in habeas corpus, mandamus, prohibition and certiorari.

The court shall have appellate jurisdiction in civil cases at law where the matter in controversy, exclusive of interest and costs, is of greater value or amount than three hundred dollars unless such value or amount is increased by the legislature; in civil cases in equity; in controversies concerning the title or boundaries of land; in proceedings in quo warranto, habeas corpus, mandamus, prohibition and certiorari; and in cases involving personal freedom or the constitutionality of a law. It shall have appellate jurisdiction in criminal cases, where there has been a conviction for a felony or misdemeanor in a circuit court, and such appellate jurisdiction as may be conferred upon it by law where there has been such a conviction in any other court. In criminal proceedings relating to the public revenue, the right of appeal shall belong to the State as well as to the defendant. It shall have such other appellate jurisdiction, in both civil and criminal cases, as may be prescribed by law.

The **court** shall have power to promulgate rules for all cases and proceedings, civil and criminal, for all of the **courts** of the State relating to writs, warrants, process practice and procedure, which shall have the force and effect of law.

The **court** shall have general supervisory control over all intermediate appellate **courts**, circuit **courts** and magistrate **courts**. The chief justice shall be the **administrative** head of all the **courts**. He may assign a judge from one intermediate appellate **court** to another, from one circuit **court** to another, or from one magistrate **court** to another, for temporary service. The **court** shall **appoint** an **administrative** director to serve at its pleasure at a salary to be fixed by the **court**. The **administrative** director shall, under the direction of the chief justice, prepare and submit a budget for the **court**.

The officers and employees of the **supreme court** of appeals, including the clerk and the law librarian, shall be **appointed** and may be removed by the **court**. Their duties and compensation shall be prescribed by the **court**.

The number, times and places of the terms of the **supreme court** of appeals shall be prescribed by law. There shall be at least two terms of the **court** held annually.

### CROSS REFERENCES

Certiorari, generally, see [§ 53-3-1](#) et seq.

Habeas corpus ad testificandum, see [§ 53-4-13](#).

Habeas corpus, generally, see [§ 53-4-1](#) et seq.

Habeas corpus, post-conviction review, see [§ 53-4A-1](#) et seq.

Habeas corpus, privilege not to be suspended, see [Const. Art. 3, § 4](#).

Mandamus, see [§ 53-1-1](#) et seq.

Post-conviction habeas corpus, generally, see [§ 53-4A-1](#) et seq.

Quo warranto, generally, see [§ 53-2-1](#) et seq.

Supreme court of appeals, generally, see [§ 51-1-1](#) et seq.

Writ of prohibition, see [§ 53-1-1](#) et seq.

W. Va. Code, § 51-1-15

West's Annotated Code of West Virginia Currentness  
Chapter 51. **Courts** and Their Officers (Refs & Annos)

Article 1. **Supreme Court** of Appeals

§ 51-1-15. **Administrative office of supreme court of appeals continued; director; assistants and secretaries; seal**

The **administrative** office of the **supreme court** of appeals heretofore established is hereby continued. The **court shall appoint** a **director** thereof and such assistants and secretaries as it deems necessary to perform the duties of the office as specified in section seventeen of this article and such other duties as may be specified by the **court**. Such appointees **shall** serve at the will and pleasure of the **court** and **shall** receive such compensation as may be fixed from time to time by the **court**. They **shall** also be reimbursed out of the state treasury for all reasonable and necessary expenses actually incurred for travel, meals and lodging incident to the performance of their duties as such appointees. The **director**, when so directed by the **court**, **shall** cause a seal of office to be made for such office of such design as the **court shall** approve, and **judicial** notice **shall** be taken of such seal.

Acts 1945, c. 41; Acts 1947, c. 54; Acts 1974, 1st Ex. Sess., c. 1.

LIBRARY REFERENCES

Key Numbers

**Courts** ¶55.

Westlaw Key Number Search: 106k55.

C.J.S. Courts §§ 107 to 109.

NOTES OF DECISIONS

Powers and duties of **director** 1

1. Powers and duties of **director**

Trial **court** has no authority to order **Administrative Director** of the **Supreme Court** of Appeals, and **director** has no authority to pay fees to attorney **appointed** as guardian ad litem for prisoner named as defendant in civil action; there is neither valid statute nor appropriation for expenditure for such fees, and **director** is not party against whom costs may be taxed. Rules Civ.Proc., Rules 17(c), 54(d); Trial Court Rule XIII. Quesinberry v. Quesinberry, 1994, 443 S.E.2d 222, 191 W.Va. 65. Costs ¶ 194.46

**Administrative Director** of the **Supreme Court** of Appeals is not appropriate state entity to pay lawyer **appointed** as guardian ad litem to represent child in action initiated to prove child's paternity when neither parties nor child is able to pay. Quesinberry v. Quesinberry, 1994, 443 S.E.2d 222, 191 W.Va. 65. Courts ¶ 55

W. Va. Code, § 51-1-15, WV ST § 51-1-15  
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# Michigan

M.C.L.A. Const. Art. 6, § 3

Michigan Compiled Laws Annotated Currentness

Michigan Constitution of 1963

Chapter 1. The Fundamental Law

^ Constitution of the State of Michigan 1963 (Refs & Annos)

^ Article VI. **Judicial** Branch (Refs & Annos)

➔ **§ 3. Chief justice; court administrator; other assistants**

Sec. 3. One justice of the **supreme court** shall be **selected** by the **court** as its chief justice as provided by rules of the **court**. He shall perform duties required by the **court**. The **supreme court** shall **appoint** an **administrator** of the **courts** and other assistants of the **supreme court** as may be necessary to aid in the **administration** of the **courts** of this state. The **administrator** shall perform **administrative** duties assigned by the **court**.

<Effective January 1, 1964>

### CONVENTION COMMENT

2003 Main Volume

This is a new section giving constitutional sanction for the **selection** of the Chief Justice by members of the **court**. This has been the practice for several decades, although Sec. 2, Article VII, of the present constitution requires that he "be chosen by the electors of the state." Duties of the Chief Justice would be those "required by the **court**."

The third and fourth sentences of the section give constitutional sanction to the existing office of **Administrator** of the **Courts** and clearly spell out the source of his authority. The language implements references to "superintending control" over all **courts** of lesser jurisdiction in Sec. 4, Article VII, of the present constitution and this proposed Article.

### HISTORICAL NOTES

2003 Main Volume

- Prior Constitutions:
- 1850, Art. 6, § 2.
  - 1908, Art. 7, § 2.

### CROSS REFERENCES

- Chief justice,
  - Head of **judicial** system, see § 600.152.
  - Selection**, resignation, see § 600.202.
- Investigation and removal or suspension by governor, see Const. Art. 5, § 10.
- Supreme court** staff, see § 600.251.

### LAW REVIEW AND JOURNAL COMMENTARIES

- Selection** of a chief justice. David L. Howe, 32 Mich.St.B.J. 20 (Feb. 1953).
- The **Supreme Court** commissioner. Theodore E. Troff, 47 Mich.St.B.J. 17 (1968).

### LIBRARY REFERENCES

2003 Main Volume

# Colorado

C.R.S.A. Const. Art. 6, § 5

West's Colorado Revised Statutes Annotated Currentness

Constitution of the State of Colorado [1876]

Article VI. **Judicial** Department (Refs & Annos)

Supreme Court

→§ 5. Personnel of court--departments--chief justice

(1) The **supreme court** shall consist of not less than seven justices, who may sit en banc or in departments. In case said **court** shall sit in departments, each of said departments shall have full power and authority of said **court** in the determination of causes, the issuing of writs and the exercise of all powers authorized by this constitution, or provided by law, subject to the general control of the **court** sitting en banc, and such rules and regulations as the **court** may make, but no decision of any department shall become judgment of the **court** unless concurred in by at least three justices, and no case involving construction of the constitution of this state or of the United States shall be decided except by the **court** en banc. Upon request of the **supreme court**, the number of justices may be increased to no more than nine members whenever two-thirds of the members of each house of the general assembly concur therein.

(2) The **supreme court** shall **select** a chief justice from its own membership to serve at the pleasure of a majority of the **court**, who shall be the executive head of the **judicial** system.

(3) The **supreme court** shall **appoint** a **court administrator** and such other personnel as the **court** may deem necessary to aid the **administration** of the **courts**. Whenever the chief justice deems assignment of a judge necessary to the prompt disposition of **judicial** business, he may: (a) Assign any county judge, or retired county judge who consents, temporarily to perform **judicial** duties in any county **court** if otherwise qualified under section 18 of this article, or assign, as hereafter may be authorized by law, said judge to any other **court**; or (b) assign any district, probate, or juvenile judge, or retired justice or district, probate, or juvenile judge who consents, temporarily to perform **judicial** duties in any **court**. For each day of such temporary service a retired justice or judge shall receive compensation in an amount equal to 1/20 of the monthly salary then currently applicable to the **judicial** position in which the temporary service is rendered.

(4) The chief justice shall **appoint** from the district judges of each **judicial** district a chief judge to serve at the pleasure of the chief justice. A chief judge shall receive no additional salary by reason of holding such position. Each chief judge shall have and exercise such **administrative** powers over all judges of all **courts** within his district as may be delegated to him by the chief justice.

## CREDIT(S)

Repealed and reenacted by 1961, S.C.R.61-012, § 1; Laws 1963, Ch. 313, § 1, eff. Jan. 12, 1965. Amended by Laws 1967, Ch. 455, Initiated 1966, eff. Jan. 17, 1967.

## CROSS REFERENCES

State **court administrator**, see § 13-3-101.

**Supreme court** employees, compensation, see § 13-2-111.

## LIBRARY REFERENCES

2001 Main Volume

**Courts** ⇐ 42(1), 55.

Westlaw Topic No. 106.

Const. Art. 5, § 10

Purdon's Pennsylvania Statutes and Consolidated Statutes Annotated [Currentness](#)

Purdon's Pennsylvania Statutes Annotated

~~PA CONST~~ Constitution of the Commonwealth of Pennsylvania ([Refs & Annos](#))

[Article V. The Judiciary \(Refs & Annos\)](#)

➔ **§ 10. Judicial administration**

(a) The **Supreme Court** shall exercise general supervisory and **administrative** authority over all the **courts** and justices of the peace, including authority to temporarily assign judges and justices of the peace from one **court** or district to another as it deems appropriate.

(b) The **Supreme Court** shall **appoint** a **court administrator** and may **appoint** such subordinate **administrators** and staff as may be necessary and proper for the prompt and proper disposition of the business of all **courts** and justices of the peace.

(c) The **Supreme Court** shall have the power to prescribe general rules governing practice, procedure and the conduct of all **courts**, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any **court** or justice of the peace, including the power to provide for assignment and reassignment of classes of actions or classes of appeals among the several **courts** as the needs of justice shall require, and for admission to the bar and to practice law, and the **administration** of all **courts** and supervision of all officers of the **judicial** branch, if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any **court** or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions. Notwithstanding the provisions of this section, the General Assembly may by statute provide for the manner of testimony of child victims or child material witnesses in criminal proceedings, including the use of videotaped depositions or testimony by closed-circuit television.

(d) The Chief Justice and president judges of all **courts** with seven or less judges shall be the justice or judge longest in continuous service on their respective **courts**; and in the event of his resignation from this position the justice or judge next longest in continuous service shall be the Chief Justice or president judge. The president judges of all other **courts** shall be **selected** for five-year terms by the members of their respective **courts**, except that the president judge of the traffic **court** in the City of Philadelphia shall be **appointed** by the Governor. A Chief Justice or president judge may resign such position and remain a member of the **court**. In the event of a tie vote for office of president judge in a **court** which elects its president judge, the **Supreme Court** shall **appoint** as president judge one of the judges receiving the highest number of votes.

(e) Should any two or more justices or judges of the same **court** assume office at the same time, they shall cast lots forthwith for priority of commission, and certify the results to the Governor who shall issue their commissions accordingly.

CREDIT(S)

Adopted April 23, 1968. Amended Nov. 4, 2003.

HISTORICAL NOTES

2004 Electronic Update  
2003 amendment

## California

West's Ann.Cal.Const. Art. 6, § 6

West's Annotated California Codes Currentness

Constitution of the State of California 1879 (Refs & Annos)

Article VI. **Judicial** (Refs & Annos)

→ § 6. **Judicial Council**

SEC. 6. (a) The **Judicial** Council consists of the Chief Justice and one other judge of the **Supreme Court**, three judges of **courts** of appeal, 10 judges of superior **courts**, two nonvoting **court administrators**, and any other nonvoting members as determined by the voting membership of the council, each **appointed** by the Chief Justice for a three-year term pursuant to procedures established by the council; four members of the State Bar **appointed** by its governing body for three-year terms; and one member of each house of the Legislature **appointed** as provided by the house.

(b) Council membership terminates if a member ceases to hold the position that qualified the member for **appointment**. A vacancy shall be filled by the **appointing** power for the remainder of the term.

(c) The council may **appoint** an **Administrative** Director of the **Courts**, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of **court administration**, practice and procedure.

(d) To improve the **administration** of justice the council shall survey **judicial** business and make recommendations to the **courts**, make recommendations annually to the Governor and Legislature, adopt rules for **court administration**, practice and procedure, and perform other functions prescribed by statute. The rules adopted shall not be inconsistent with statute.

(e) The Chief Justice shall seek to expedite **judicial** business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another **court** but only with the judge's consent if the **court** is of lower jurisdiction. A retired judge who consents may be assigned to any **court**.

(f) Judges shall report to the council as the Chief Justice directs concerning the condition of **judicial** business in their **courts**. They shall cooperate with the council and hold **court** as assigned.

CREDIT(S)

(Adopted Nov. 8, 1966. Amended Nov. 5, 1974; Stats.1994, Res. ch. 113 (S.C.A. 7) (Prop. 191, approved Nov. 8, 1994, operative Jan. 1, 1995); Stats.1996, Res. c. 36 (S.C.A.4), (Prop. 220, approved June 2, 1998, effective June 3, 1998); Stats.2002, Res. c. 88 (A.C.A.15), § 3 (Prop. 48, approved Nov. 5, 2002, eff. Nov. 6, 2002).)

LAW REVISION COMMISSION COMMENTS

2004 Electronic Update

1998 Amendment

For background relating to the amendment to Section 6 of Article VI of the California Constitution made by Proposition 220 (approved by the electors June 2, 1998), see *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1 (1994). [28 Cal.L.Rev.Comm. Reports App. 8 (1998)].



# Oklahoma

Const. Art. 7, § 6

Oklahoma Statutes Annotated [Currentness](#)

[Constitution of the State of Oklahoma \[Annotated\] \(Refs & Annos\)](#)

[Article VII. Judicial Department \(Refs & Annos\)](#)

→ **§ 6. Administrative authority--Director and staff**

Except with reference to the Senate sitting as a **Court** of Impeachment and the **Court** on the Judiciary, general **administrative** authority over all **courts** in this State, including the temporary assignment of any judge to a **court** other than that for which he was **selected**, is hereby vested in the **Supreme Court** and shall be exercised by the Chief Justice in accordance with its rules. The **Supreme Court** shall **appoint** an **administrative** director and staff, who shall serve at its pleasure to assist the Chief Justice in his **administrative** duties and to assist the **Court** on the Judiciary.

CREDIT(S)

Added by State Question No. 448, Legislative Referendum No. 164, adopted at election held July 11, 1967.

<<CONSTITUTION OF THE STATE OF OKLAHOMA [ANNOTATED]>>

<As amended through November 5, 2002>

## HISTORICAL NOTES

1981 Main Volume

The 1967 amendment repealed former § 6 of this article relating to the Supreme Court, which pertained to election of the chief justice, expiration of terms of justices, and time of election of justices.

See, now, § 2 of this article.

Proposed by Laws 1967, p. 698, H.J.R. No. 508.

## CROSS REFERENCES

Rules for the District Courts, see Title 12, Ch. 2, App., Rule 1 et seq.

## LAW REVIEW AND JOURNAL COMMENTARIES

Privileges. Kenneth N. McKinney. 32 Okla.L.Rev. 307 (1979).

## RESEARCH REFERENCES

2004 Electronic Pocket Part Update  
ALR Library

[97 ALR 5th 537](#), Construction And Validity Of State Provisions Governing Designation Of Substitute, Pro Tempore, Or Special Judge.

Forms

# Oklahoma

20 Okl.St. Ann. § 16.1

- 📖 Oklahoma Statutes Annotated Currentness
- 📖 Title 20. **Courts** (Refs & Annos)
- 📖 Chapter 1. **Supreme Court** (Refs & Annos)
- 📖 Administrative Director
- ➔ § 16.1. **Administrative Director of the Courts**

There shall be appointed by the **Supreme Court** an **Administrative Director** of the **Courts**, who shall serve at the pleasure of the **Supreme Court** to assist the Chief Justice in performance of **administrative** duties.

CREDIT(S)

Laws 1968, c. 379, § 1, eff. July 1, 1968.

### <<CHAPTER 1. SUPREME COURT>>

<For text of Rules of the **Supreme Court**, see OK ST S CT Rule 1.1 et seq.>

### HISTORICAL AND STATUTORY NOTES

2002 Main Volume

Title of Act:

An Act relating to the organization of the **Supreme Court** of Oklahoma; providing for an **Administrative Director**, and fixing compensation; authorizing said **director** to **appoint** a secretary and fixing compensation; providing for reimbursement of travel and lodging expenses of **Judicial** Nominating Commissioners; providing for reimbursement of expenses of members of the **Court** on the Judiciary and prosecutors; providing for secretaries to presiding judges of **Judicial Administrative** Districts; repealing 20 O.S.1961, §§ 7, 8, 13 and 77; providing for severability; providing an effective date; and declaring an emergency. Laws 1968, c. 379.

### LAW REVIEW AND JOURNAL COMMENTARIES

Oklahoma and uniformity in law--The 1968 record and some recommended legislation. Maurice H. Merrill. 39 Okla.B.J. 1953 (1968).

### LIBRARY REFERENCES

2002 Main Volume

- Courts ⇐55.
- WESTLAW Topic No. 106.
- C.J.S. Courts §§ 107 to 109.

20 Okl. St. Ann. § 16.1, OK ST T. 20 § 16.1

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## Arkansas

A.C.A. § 16-10-102

ARKANSAS CODE OF 1987 ANNOTATED  
 TITLE 16. PRACTICE, PROCEDURE, AND COURTS  
 SUBTITLE 2. COURTS AND COURT OFFICERS  
 CHAPTER 10. GENERAL PROVISIONS  
 SUBCHAPTER 1. GENERAL PROVISIONS

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 Current through the 2003 Regular Session

16-10-102 **Administrative Office of the Courts -- Director** -- Cooperation of **court** officers.

- (a)(1) There **shall** be an office for the **administration** of the nonjudicial business of the **judicial** branch which **shall** be known as the **Administrative Office of the Courts**.
- (2) There **shall** be a **Director** of the **Administrative Office of the Courts** who **shall** be nominated by the Chief Justice, subject to the approval of the **Supreme Court** and the **Judicial Council**. Subsequent to the **appointment**, the **Director** of the **Administrative Office of the Courts** **shall** hold office at the pleasure of the **Supreme Court**.
- (b) The **director shall** possess the same qualifications and **shall** be subject to the same restrictions as district judges.
- (c) The **director shall** receive such salary as may be fixed from time to time by the biennial appropriations salary act for the **Administrative Office of the Courts**.
- (d) The **director shall** not engage directly or indirectly in the practice of law and **shall** hold no other office or employment.
- (e) The **director**, subject to the direction of the **Supreme Court**, **shall** perform the following functions:
- (1) Examine the **administrative** methods of the **courts** and make recommendations to the **Supreme Court** for their improvement;
  - (2) Examine the state of the dockets of the **courts**, secure information as to their needs for assistance, if any, prepare statistical data and reports of the business of the **courts**, and advise the **Supreme Court** to the end, that proper action may be taken;
  - (3) Examine the estimates of the **courts** of the state for appropriations and present to the **Supreme Court** recommendations concerning them;
  - (4) Examine the statistical systems of the **courts** and make recommendations to the **Supreme Court** for a uniform system of **judicial** statistics;
  - (5) Collect, analyze, and report to the **Supreme Court** statistical and other data concerning the business of the **courts**;
  - (6) With the approval of the **Supreme Court** and at the request of the **Judicial Council**, the **director shall** act as Secretary of the **Judicial Council** and **shall** perform such duties as may be assigned to him;
  - (7) Examine the data processing needs of the **courts** and make recommendations to the **Supreme Court** as to the purchase and use of hardware and software for computer systems, telecommunications systems, and microfilming systems, and provide education to the **courts** on the use of such systems so as to improve the quality and efficiency of justice in the state;
  - (8) Assist the **Supreme Court** in the operation of the **Supreme Court Library**;
  - (9) Attend to the other nonjudicial business of the **judicial** branch under such rules and regulations as the **Supreme Court** may by order adopt.
- (f) The **director shall**, with the approval of the **Supreme Court**, **appoint** such assistants as may be necessary. He **shall** be provided with such office facilities as may be required.
- (g) The **director shall** advise and assist clerks of trial **courts** in the keeping of records of their proceedings and **shall** make reports and recommendations in connection therewith to the **Supreme Court**, the trial judges, and the clerks of those **courts**.
- (h) The clerks, officers, and employees of the **courts shall** comply with all requests of the **director** for information and statistical data relating to the business of the **courts** and the expenditure of public funds for their maintenance and operation. The **director shall** notify the **Supreme Court** of any noncompliance with such requests.

History. Acts 1965, No. 496, § 2; 1971, No. 599, § 1; 1973, No. 237, § 2; A.S.A. 1947, § 22-143; Acts 1989, No.

V.T.C.A., Government Code § 74.023

Vernon's Texas Statutes and Codes Annotated Currentness  
 Government Code (Refs & Annos)  
 Title 2. **Judicial** Branch  
 Subtitle F. **Court Administration**  
 Chapter 74. **Court Administration** Act (Refs & Annos)  
 Subchapter B. **Supreme Court**  
 § 74.023. **Director of Office of Court Administration**

(a) The **supreme court shall appoint** the **administrative director** of the **courts** for the office of **court administration**.

(b) The **director** serves at the pleasure of the **supreme court** and **shall** be subordinate to, and act by the authority and under the direction of, the chief justice.

CREDIT(S)

Added by Acts 1987, 70th Leg., ch. 148, § 2.93(a), eff. Sept. 1, 1987.

HISTORICAL AND STATUTORY NOTES

1998 Main Volume

Derivation:

Acts 1985, 69th Leg., ch. 732, § 2.

Acts 1987, 70th Leg., ch. 148, § 2.93(b)(4).

Vernon's Ann.Civ.St. art. 200a-1, § 2.003.

V. T. C. A., Government Code § 74.023, TX GOVT § 74.023

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AS 22.20.300

ALASKA STATUTES

Title 22. Judiciary.

Chapter 20. **Judicial** Officers, Employees, and Council; Attorneys.

Article 5. **Administrative Director.**

**Sec. 22.20.300 Administrative director.**

The chief justice of the **supreme court shall**, with the approval of the **supreme court**, **appoint** an **administrative director** to serve at the pleasure of the **supreme court** and to supervise the **administrative** operations of the **judicial** system.

(§ 15 ch 50 SLA 1959; am § 31 ch 32 SLA 1971)

<General Materials (GM) - References, Annotations, or Tables >

HISTORICAL NOTES

**Revisor's notes.** -- Formerly AS 22.05.150. Renumbered in 1998.

A. S. 22.20.300, AK ST § 22.20.300

Current through August 12, 2003

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# Arizona

A.R.S. Const. Art. 6 § 7

Arizona Revised Statutes Annotated [Currentness](#)

Constitution of the State of Arizona ([Refs & Annos](#))

[Article VI. Judicial Department \(Refs & Annos\)](#)

→ **§ 7. Supreme court; clerk and assistants; administrative director and staff**

Section 7. The **Supreme Court shall appoint** a clerk of the **court** and assistants thereto who **shall** serve at its pleasure, and who **shall** receive such compensation as may be provided by law.

The **Supreme Court shall appoint** an **administrative director** and staff to serve at its pleasure to assist the chief justice in discharging his **administrative** duties. The **director** and staff **shall** receive such compensation as may be provided by law.

CREDIT(S)

Addition approved election Nov. 8, 1960, eff. Dec. 9, 1960.

## HISTORICAL NOTES

### Source:

A.R.S. Const. former Art. 6, § 17.

The governor, on December 9, 1960, proclaimed that the repeal of former § 7 and the addition of this section, as proposed by Initiative Petition, filed July 5, 1960 (see Laws 1961, p. 379), had been approved by a majority of the electors in the November 8, 1960 general election and had become law.

Former § 7 related to the holding of **court** by a superior **court** judge of another county.

For disposition of the subject matter of sections of former Article VI, see Disposition Table preceding § 1 of this article.

## CROSS REFERENCES

Duties of clerk, see [§ 12-202](#).

Oath and bond of clerk, see [§ 12-201](#).

Salary of clerk, see [§§ 12-203, 38-611](#).

## LAW REVIEW AND JOURNAL COMMENTARIES

Arizona's new **judicial** article. William O. Douglas, 2 Ariz.L.Rev. 159, 164 (1960).

Modern **courts**--where do we go from here? Morris K. Udall, 2 Ariz.L.Rev. 166, 169, 170, 173, 175 (1960).

Organization of Arizona **Supreme Court**. James Duke Cameron, 17 Ariz.L.Rev. 643 (1975).

## LIBRARY REFERENCES

**Courts** [←55 to 58](#).

Westlaw Topic No. [106](#).

C.J.S. **Courts** [§§ 107 to 110](#).

C.J.S. **Stenographers** [§§ 2 to 21](#).

# Tennessee

T. C. A. § 16-3-802

West's Tennessee Code Annotated Currentness

Title 16. **Courts**

Chapter 3. **Supreme Court**

Part 8. **Administrative Office of the Courts**

§ 16-3-802. **General provisions**

(a) The **supreme court shall appoint** the **administrative director** of the **courts**, who **shall** serve as the **director** of the **administrative** office of the **courts**. The **administrative director shall** serve at the pleasure of the **supreme court**.

(b) The **supreme court shall** fix the salary of the **administrative director** of the **courts** at an amount not to exceed the salary paid to judges of the **court** of appeals.

1993 Pub. Acts, c. 65, § 2, eff. March 22, 1993.

## LIBRARY REFERENCES

### Key Numbers

States ↔ 53, 60(1).

Westlaw Key Number Searches: 360k53; 360k60(1).

C.J.S. States §§ 81 to 83, 86, 93 to 98, 101, 104 to 108, 136.

T. C. A. § 16-3-802, TN ST § 16-3-802

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# Ohio

Const. Art. IV, § 5

Baldwin's Ohio Revised Code Annotated Currentness

Constitution of the State of Ohio (Refs & Annos)

Article IV. Judicial (Refs & Annos)

➔ **O Const IV Sec. 5 Powers and duties of supreme court; superintendence of courts; rules**

(A) (1) In addition to all other powers vested by this article in the **supreme court**, the **supreme court shall** have general superintendence over all **courts** in the state. Such general superintending power **shall** be exercised by the chief justice in accordance with rules promulgated by the **supreme court**.

(2) The **supreme court shall appoint** an **administrative director** who **shall** assist the chief justice and who **shall** serve at the pleasure of the **court**. The compensation and duties of the **administrative director shall** be determined by the **court**.

(3) The chief justice or acting chief justice, as necessity arises, **shall** assign any judge of a **court** of common pleas or a division thereof temporarily to sit or hold **court** on any other **court** of common pleas or division thereof or any **court** of appeals or **shall** assign any judge of a **court** of appeals temporarily to sit or hold **court** on any other **court** of appeals or any **court** of common pleas or division thereof and upon such assignment said judge **shall** serve in such assigned capacity until the termination of the assignment. Rules may be adopted to provide for the temporary assignment of judges to sit and hold **court** in any **court** established by law.

(B) The **supreme court shall** prescribe rules governing practice and procedure in all **courts** of the state, which rules **shall** not abridge, enlarge, or modify any substantive right. Proposed rules **shall** be filed by the **court**, not later than the fifteenth day of January, with the clerk of each house of the general assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the general assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Courts may adopt additional rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the supreme court. The supreme court may make rules to require uniform record keeping for all courts of the state, and shall make rules governing the admission to the practice of law and discipline of persons so admitted.

(C) The chief justice of the supreme court or any judge of that court designated by him shall pass upon the disqualification of any judge of the courts of appeals or courts of common pleas or division thereof. Rules may be adopted to provide for the hearing of disqualification matters involving judges of courts established by law.

(1973 SJR 30, am. eff. 11-6-73; 132 v HJR 42, adopted eff. 5-7-68)

UNCODIFIED LAW

1997 H 215, § 163, eff. 6-30-97, reads:

The General Assembly hereby requests that the Supreme Court adopt, pursuant to its authority under Ohio Constitution, Article IV, Section 5, rules governing procedure in juvenile courts of the state that address the placement of children in foster homes in a county other than the county in which the child resided at the time of the removal.



# Missouri

V.A.M.S. Const. Art. 5, § 4

C

Vernon's Annotated Missouri Statutes Currentness

Constitution of 1945 of the State of Missouri

Article V. **Judicial Department** (Refs & Annos)

→ § 4. Superior courts to control inferior **courts--courts administrator** , salary--reapportionment commission, **appointment**

1. The **supreme court shall** have general superintending control over all **courts** and tribunals. Each district of the **court of appeals shall** have general superintending control over all **courts** and tribunals in its jurisdiction. The **supreme court** and districts of the **court of appeals** may issue and determine original remedial writs. Supervisory

authority over all **courts** is vested in the **supreme court** which may make appropriate delegations of this power.

2. The **supreme court** may **appoint** a state **courts administrator** and other staff to aid in the **administration** of the **courts** , and it **shall appoint** a clerk of the **supreme court** and may **appoint** other staff to aid in the **administration** of the business of the **supreme court** . Each such appointee **shall** serve at the pleasure of the **court** . The clerk's and **administrator's** salary **shall** be fixed by law. All other appointees **shall** have salaries fixed by the **court** within the legislative limits of the appropriation made for that purpose.

3. In the event that six commissioners of the **supreme court** are not available to sit as a reapportionment commission as provided in sections 2 , 3 and 7 of article III of the constitution of this state , a commission composed of six members **appointed** by the **supreme court** from among the judges of the **court of appeals**, **shall** serve in lieu of the commissioners of the **supreme court** . No more than two members of any division of the **court of appeals shall** be **appointed** to the commission.

CREDIT(S)

(Amendments adopted at special elections Aug. 4, 1970; Aug. 3, 1976.)

HISTORICAL NOTES

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# Mississippi

Miss. Code Ann. § 9-21-5

WEST'S ANNOTATED MISSISSIPPI CODE

TITLE 9. COURTS

CHAPTER 21. ADMINISTRATIVE OFFICE OF COURTS

CREATION AND DUTIES OF ADMINISTRATIVE OFFICE OF COURTS

§ 9-21-5. **Administrative Director**; appointment

The **Administrative Director** shall be appointed by and shall serve at the pleasure of the Supreme **Court** of Mississippi as the **Director** of the **Administrative Office of Courts**. The **Administrative Director** shall devote full time to the duties of the **office** to the exclusion of engagement in any other business or profession for profit.

CREDIT(S)

Laws 1993, Ch. 610, § 3; Laws 1996, Ch. 492, § 2, eff. from and after passage (approved April 11, 1996).

Current through End of 2003 Regular Session

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MS ST § 9-21-5

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# Georgia

Ga. Code Ann., § 15-5-23

West's Code of Georgia Annotated Currentness

Title 15. Courts

Chapter 5. Administration of Courts of Record Generally

Article 2. Judicial Council (Refs & Annos)

→ § 15-5-23. Director of the Administrative Office of the Courts; compensation; assistants

The Judicial Council shall appoint a director of the Administrative Office of the Courts who shall serve at the pleasure of the Judicial Council. The director shall be the executive head of the Administrative Office of the Courts and shall perform such duties as provided in Code Section 15-5-24 or as may be delegated to him by the Judicial Council. The director shall devote his full time to his official duties. The director shall receive compensation and expenses as authorized by the Judicial Council. With the approval of the Judicial Council, the director shall appoint such assistants and clerical and secretarial employees as are necessary to enable him to perform his duties and shall fix their compensation.

Laws 1973, p. 288, § 4.

## LIBRARY REFERENCES

Courts ↔ 55.

Westlaw Key Number Search: 106k55.

C.J.S. Courts §§ 107 to 109.

Ga. Code Ann., § 15-5-23, GA ST § 15-5-23

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West's Code of Georgia Annotated Currentness

Title 15. Courts

Chapter 5. Administration of Courts of Record Generally

→ Article 2. Judicial Council (Refs & Annos)

§ 15-5-20. Creation, powers and duties, members, terms, expenses

(a) The Supreme Court shall create a Judicial Council of Georgia, which council shall have such powers, duties, and responsibilities as may be provided by law or as may be provided by rule of the Supreme Court.

(b) Members of the council and their terms shall be as provided by the Supreme Court. The members of the council shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties as members of the council.

# Hawaii

HRS § 601-3


**HAWAII REVISED STATUTES ANNOTATED**  
 DIVISION 4. **COURTS** AND JUDICIAL PROCEEDINGS  
 TITLE 32. **COURTS** AND **COURT** OFFICERS  
 CHAPTER 601. **Courts** Generally  
**§ 601-3 Administrative director.**

(a) The chief justice, with the approval of the supreme **court**, shall appoint an **administrative director** of the **courts** to assist the chief justice in directing the **administration** of the judiciary. The **administrative director** shall be a resident of the State for a continuous period of three years prior to the **administrative director's** appointment, and shall be appointed without regard to chapter 76 and shall serve at the pleasure of the chief justice. The **administrative director** shall hold no other **office** or employment. Effective July 1, 2000, the salary of the **administrative director** shall be no greater than provided in section 26-54 and shall be determined by the chief justice based upon merit and other relevant factors. Effective July 1, 2004, and every eight years thereafter, the salary of the **administrative director** shall be as last determined by the judicial salary commission pursuant to section 608-1.5, unless disapproved by the legislature.

(b) The **administrative director** shall, subject to the direction of the chief justice, perform the following functions:

- (1) Examine the **administrative** methods of the **courts** and make recommendations to the chief justice for their improvement;
- (2) Examine the state of the dockets of the **courts**, secure information as to their needs of assistance, if any, prepare statistical data and reports of the business of the **courts** and advise the chief justice to the end that proper action may be taken;
- (3) Examine the estimates of the **courts** for appropriations and present to the chief justice the **administrative director's** recommendations concerning them;
- (4) Examine the statistical systems of the **courts** and make recommendations to the chief justice for a uniform system of judicial statistics;
- (5) Collect, analyze, and report to the chief justice statistical and other data concerning the business of the **courts**;
- (6) Assist the chief justice in the preparation of the budget, the six-year program and financial plan, the variance report and any other reports requested by the legislature;
- (7) Carry out all duties and responsibilities that are specified in Title 7 as it pertains to employees of the judiciary; and
- (8) Attend to such other matters as may be assigned by the chief justice.

(c) The **administrative director** shall, with the approval of the chief justice, appoint a deputy **administrative director** of the **courts** without regard to chapter 76 and such assistants as may be necessary. Such assistants shall be appointed without regard to chapter 76. Effective July 1, 2000, the salary of the deputy **administrative director** shall be no greater than provided in section 26-52(3) and shall be determined by the chief justice based upon merit and other relevant factors. Effective July 1, 2004, and every eight years thereafter, the salary of the deputy **administrative director** shall be as last determined by the judicial salary commission pursuant to section 608-1.5, unless disapproved by the legislature. The **administrative director** shall be provided with necessary **office** facilities.

(d) The judges, clerks, officers, and employees of the **courts** shall comply with all requests of the **administrative director** for information and statistical data relating to the business of the **courts** and expenditure of public funds

# Kentucky

KRS § 27A.050

Baldwin's Kentucky Revised Statutes Annotated Currentness

Title IV. Judicial Branch

\* Chapter 27A. Judicial Support Agencies and Personnel (Refs &amp; Annos)

→ **27A.050 Administrative Office of Courts; appointment of director; compensation; prohibition**

The **Administrative Office** of the **Courts** is created to serve as the staff for the Chief Justice in executing the policies and programs of the **Court** of Justice. The **director** of the **Administrative Office** of the **Courts**, employees thereof, and **administrative** assistants of the Chief Justice shall serve at the pleasure of the Chief Justice. Provided, however, the **director** shall be appointed or reappointed at least every four (4) years with the advice and consent of the Senate; but if the Senate is not in session when a term expires or a vacancy occurs, the Chief Justice shall make the appointment to take effect at once, subject to the approval of the Senate when convened. The salaries of the director, employees thereof, and administrative assistants of the Chief Justice shall be fixed by order of the Chief Justice and paid monthly or at such other periods as may be consonant with the policy applicable to payment of salaries of state employees out of the State Treasury. While holding their positions the **director**, employees of the **office** and **administrative** assistants shall not practice law in any **court** of this Commonwealth.

HISTORY: 1976 ex s, c 33, § 1, eff. 3-19-77

## HISTORICAL AND STATUTORY NOTES

1999 Main Volume Historical and Statutory Notes

**Note:** 27A.050 contains provisions analogous to former 27A.015, repealed by 1976 ex s, c 33, § 2, eff. 3-19-77 and former 22.110, repealed by 1976 c 61, § 12, eff. 6-19-76.

**Note:** 1976 ex s, c 33, § 3, eff. 3-19-77, reads: If any provision of this Act or the application thereof to any person or circumstance is held invalid, the entire Act shall be invalid, and to this end the provisions of this Act are not severable.

## CROSS REFERENCES

1999 Main Volume Cross References

**Administrative office** of the **courts** to act as **administrative** and fiscal agency of **court** of justice; functions, powers, duties, SCR 1.050  
Unified Juvenile Code, supervision of **court**-designated workers, 605.020

## LIBRARY REFERENCES

1999 Main Volume Library References

Courts 55.WESTLAW Topic No. 106.C.J.S. Courts § 107-109.

## NOTES OF DECISIONS AND OPINIONS

Juveniles 1Open records act 21. Juveniles

CONSTITUTION OF UTAH

ARTICLE VIII. JUDICIAL DEPARTMENT

§ 12 [Judicial Council -- Chief justice as administrative officer -- Legal counsel.]

- (1) There is created a Judicial Council which shall adopt rules for the administration of the courts of the state.
- (2) The Judicial Council shall consist of the chief justice of the Supreme Court, as presiding officer, and other justices, judges, and other persons as provided by statute. There shall be at least one representative on the Judicial Council from each court established by the Constitution or by statute.
- (3) The chief justice of the Supreme Court shall be the chief administrative officer for the courts and shall implement the rules adopted by the Judicial Council.
- (4) The Judicial Council may appoint legal counsel which shall provide all legal services for the Judicial Department

UT R J ADMIN Rule 3-301  
Judicial Administration Rule 3-301

WEST'S UTAH RULES OF COURT  
UTAH CODE OF JUDICIAL ADMINISTRATION  
PART I. JUDICIAL COUNCIL RULES OF JUDICIAL ADMINISTRATION  
CHAPTER 3. ADMINISTRATION OF THE JUDICIARY  
ARTICLE 3. NON-JUDICIAL OFFICERS

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Current with amendments received through 10-01-03

RULE 3-301. COURT ADMINISTRATORS

**Intent.** To establish the duties, responsibilities, and authority of the administrators of the courts.

**Applicability.** This rule shall apply to all persons who serve in an administrative support services capacity for courts

of record and state- employed administrators of courts not of record.

### Statement of the Rule.

(1) *General Provisions.* The following provisions respecting administrative duties, responsibilities, and authority shall govern the conduct of administrative matters of the courts of the State.

Administrative support services for the judiciary shall be organized into a central office known as the Administrative Office. Local trial court administrative offices shall be established when determined necessary by the Council and shall be known as Offices of the Court Executive.

(2) *Qualifications.* The state court administrator, state level administrators, and court executives shall be selected on the basis of professional ability and experience in the field of public administration and shall possess qualifications for office as may be set forth in the job descriptions and have an understanding of court procedures as well as of the nature and significance of court services.

(3) *State Court Administrator.*

(A) *Appointment and Tenure.* The state court administrator shall be appointed by the Chief Justice of the Supreme Court upon majority vote of the Supreme Court and shall serve at the pleasure of the Council and/or the Supreme Court. The administrator shall be removed from office upon majority vote of the Council concurred in by majority vote of the Supreme Court.

(B) *Duties, Responsibilities and Authority.* Under the general supervision of the presiding officer of the Council and within the policies established by the Council, the state court administrator shall:

(i) appoint a deputy court administrator who shall assist the administrator in the performance of his duties and responsibilities;

(ii) organize and administer all of the non-judicial activities of the courts;

(iii) assign, supervise, and direct the work of the non-judicial officers of the courts including the general supervision of court executives;

(iv) implement the standards, policies, and rules established by the Council;

(v) formulate and administer a system of personnel administration for the judiciary including but not limited to:

(a) establishment of uniform personnel policies;

(b) creation and abolishment of positions;

(c) establishment of classification schedules;

(d) approval of all personnel actions;

(e) appointment and removal of employees within the administrator's authority;

(vi) prepare, administer, and manage the state judicial budget and establish a fiscal management system including

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February 18, 2004

House Judiciary Committee

RE: Consideration of HB 2789

Dear Committee Members:

I am addressing you today to express support for HB 2789. I was a prosecutor for 3 ½ years before opening my own practice last November, and now an important part of my practice centers around crime victims' rights.

As a prosecutor, I saw firsthand the frustration of citizens who were victims of crime, yet never saw a penny of restitution for their loss. While restitution is almost always ordered, a perpetual problem is the lack of enforcement of that restitution order. Unfortunately, probation officers are often left with the task of collecting restitution. If they are unsuccessful in collecting the full amount by the time the offender's term of probation is up, some courts allow the offender to be terminated from probation and the unpaid restitution is sent to a collection agency.

This bill brings much needed attention to the importance of enforcing restitution orders, and it puts responsibility for tracking and enforcing restitution orders where it should properly lie-with the courts. I sincerely hope you will vote in favor of HB2789. Thank you for your time and attention.

Yours Truly,



VALERIE L. PETERSON



I am here today as the victim of, and survivor of a drunk driving crash.

The topic is restitution, and I feel that you should know that very often, those that are to receive restitution are surviving family members. I am an exception. The information you are getting is first hand.

Navigating the judicial system from the law-abiding citizens perspective has many challenges. First you have to find someone to explain to you what the natural sequence of events will be. Then you may show up to court any number of times to find out it has been postponed for a number of reasons. The most painful for me was the plea agreement. The offender was charged with several offenses, including aggravated battery, battery on a law enforcement officer, and his third DUI. In order to not tie up the courts time and invest a lot of money, the plea agreement was offered and taken.

The offender in my case was remanded to jail and allowed to participate in work-release for nine months, and then put on probation for one year. This person spent the entire nine months of work-release with a job at BNSF shops. During that time he did not pay anything toward restitution. Please remember that this restitution was not from a civil action, but part of the plea agreement the offender accepted.

In an attempt yesterday to see if he has yet paid anything, I discovered it is information almost as closely guarded as a secret of national security. After contacting the District Attorneys office, the next stop in the line of "pass the call on", went to the court clerks office. That office deferred to the office of the "never-ending search" for the probation officer handling the case. The probation officer calmly announced that "No, restitution has not been paid". The offender is now unemployed and due to be released from probation in June. When quizzed about what would happen then to the claim for restitution, he responded, "It goes to collection".

What chance does a collection company have of tracking down and recovering funds from an unemployed criminal who owes \$26,605.? We are all aware that collection services are not free, so a portion of the court ordered amount due will be taken off of the top from any funds recovered.

Please look at the issues that have been overlooked in the handling of recovering this money.

1. There is no central clearinghouse for locating the status of an order of restitution. Payments made, applied to what, etc.
2. Restitution was a part of the plea agreement. Yet, to my knowledge, no one has made any serious attempt to collect from him. He had no major living expenses during his nine months of work-release. It would seem to me that someone should have attached a large portion of his income during that period of time. He has had to report to a probation officer for the past eight months. Again, it seems as if employment and payment of restitution would be natural consequences of probation.

Not only is it frustrating, I feel it is a serious form of neglect that pursuit and follow through on

recovering court-ordered restitution has no type of priority. It obviously is not considered a violation of probation if the offender does not comply with all of the stipulations of the plea agreement. In my average citizen thinking, it would seem that it might expedite payment if probation was not considered concluded until restitution was complete.

This same offender has subsequently been arrested and charged as a habitual violator. My sincere hope is that he is not someone you meet on the road on your way home tonight.

In closing, the only analogy that comes to mind, although very unlady like, is this. Restitution has truly become the bastard child at the family reunion. No one wants to stand next to it or be associated with it. No one wants to admit knowledge of it, and certainly no one wants to claim responsibility for it happening.

*Respectfully submitted:*

*Karlin E. Price*

*Feb. 18, 2004*

February 17, 2004

House Judiciary Committee

**RE: Consideration of HB 2789**

By: Gene Schmidt, Victims' Rights Coordinator

Dear Committee Members:

My name is Gene Schmidt and I am the Statewide Victims' Rights Coordinator for the Office of Attorney General, Phill Kline. I am addressing you today to express support for HB 2789.

The key to any effective punishment and/or rehabilitation is responsibility. Our efforts to instill responsibility first and foremost have to be demonstrated by example. As long as we allow probation, parole, or restitution to go unchecked, we are simply feeding into responsibility as a myth.

Criminals know that they can out wait the system. They are quick to accept orders of restitution to dismiss their case because they know there will be no follow up on their payments or non payments. No one will notice. No one will check. No one will be responsible.

From the victims point of view, this is just another atrocity of the system. We allow them to accept restitution as a solution to dismiss their case with no demands or assurances or responsibility that restitution will ever be paid. And, if it is turned over by the state to a collection agency, the victim is charged for the collection fee.

This bill introduces responsibility from the top. By encouraging our courts to be responsible in measuring the collection of restitutions it will encourage better collections. More importantly, it will encourage responsibility by example. Why should any criminal feel responsible for debt when no one in the system is willing to follow up?

In my position as Crime Victims Coordinator for Kansas, I have traveled across the state to visit with victims and victim providers. I have found consistent in my visits that victims are continually let down by promises of the court. Abusers and rapists are ordered to therapy, some are even ordered to pay restitution. But in all these cases they are simply empty promises to victims and an easy way to close the case and move the docket onward.

Making judges and the judicial system responsible is at least a step forward for victims. It may even help regain some belief and confidence in a criminal justice system that seemingly continues to favor the criminal over the victim. A criminal justice system aiming to recoup losses for crime victims, dispenses justice. Such restitution should be saving bed space in prison while it also takes the profit out of crime and instills responsibility in offenders. I urge you to support this bill.

Gene Schmidt

# Legislative Testimony

HB 2846

February 18, 2004

Testimony before the Kansas House Judiciary Committee  
By Lew Ebert, President and CEO

Mr. Chairman and members of the committee:

My name is Lew Ebert representing The Kansas Chamber of Commerce, which supports HB 2846, commonly referred to as the Jury Patriotism Act.

The Kansas Chamber supports the notion that all citizens should fairly share the obligation and the right of jury duty in their communities regardless of their occupation, standing, or income level. This act promotes egalitarianism within the state's legal system by reducing inconveniences placed on those individuals who are asked to serve on a jury.

Similar legislation has been supported in other states by a number of disparate groups, including the Council of State Governments, the National Federation of Independent Business, AFL-CIO, National Black Chamber of Commerce, National Association of Manufacturers, and National Association of Wholesalers-Distributors. In Kansas the AFC-CIO and the Kansas Association of Defense Councils endorse this legislation.

In order for Kansas to move towards a truly first class legal system, The Kansas Chamber encourages you to favorably consider HB 2846. This measure will help ensure that all parties involved in the Kansas legal system benefit from a jury of their peers.

Thank you for your time and I will be happy to answer any questions.

*The Kansas Chamber is the statewide business advocacy group, with headquarters in Topeka. It is working to make Kansas more attractive to employers by reducing the costs of doing business in Kansas. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have nearly 7,500 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, large and medium sized employers all across Kansas.*

House Judiciary Committee  
2-18-04  
Attachment 8



**THE KANSAS  
CHAMBER**

The Force for Business

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**TESTIMONY OF SCOTT C. NEHRBASS, ESQ.  
SHOOK, HARDY & BACON L.L.P.  
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OVERLAND PARK, KANSAS 66210-1671  
SNEHRBASS@SHB.COM**

**ON BEHALF OF THE  
KANSAS ASSOCIATION OF DEFENSE COUNSEL  
AND  
AMERICAN LEGISLATIVE EXCHANGE COUNCIL**

**BEFORE THE KANSAS  
HOUSE COMMITTEE ON JUDICIARY**

**IN SUPPORT OF  
LEGISLATION TO IMPROVE THE JURY SYSTEM:  
HOUSE BILL 2846**

**WEDNESDAY  
FEBRUARY 18, 2004**

**TESTIMONY OF SCOTT C. NEHRBASS, ESQ.  
SHOOK, HARDY & BACON L.L.P.**

**ON BEHALF OF THE  
KANSAS ASSOCIATION OF DEFENSE COUNSEL  
AND  
AMERICAN LEGISLATIVE EXCHANGE COUNCIL**

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today before your distinguished Committee in support of H.B. 2846, a bill to improve jury service, introduced by the Chairman of this Committee, Representative Michael O'Neal.

**BACKGROUND**

By way of background, I am a partner in the Overland Park, Kansas office of Shook, Hardy & Bacon L.L.P., a Kansas City-based law firm with offices across the United States. In my practice, I have represented many individual and corporate clients in a wide variety of tort litigation and business litigation matters. I have tried cases to both juries and courts in Kansas state and federal courts. I have authored articles appearing in the *Kansas Law Review*, the *Journal of the Kansas Bar Association* and the Kansas Association of Defense Counsel's *Legal Letter*. I am a member of the American Bar Association, the Kansas Bar Association, the Kansas Association of Defense Counsel, the Kansas City Metropolitan Bar Association, the Christian Legal Society and the Earl E. O'Connor Kansas Inn of Court.

I am a Kansas native; I grew up and attended schools in a small town called "Altamont" in the southeast corner of the state. I then spent "the life term" at the University of Kansas -- receiving undergraduate degrees in economics and political science and, in 1993, a law degree. During law school, I was an associate editor of the *Kansas Law Review* and a member of Order of the Coif.

After law school, I spent two years as law clerk for the Honorable Monti L. Belot, a federal district judge in Wichita. The regular duties of law clerk included participating in jury selection and being the bailiff for the jury. I had the opportunity to “experience” jury selections in a unique way and gain perspectives from the judge, the jurors, the court staff, and the attorneys.

I joined the Overland Park office of Shook Hardy & Bacon in 1995. My practice focuses on civil litigation, primarily business and tort litigation matters. I am admitted to practice before the state courts of Kansas and Missouri, the United States District Court for the District of Kansas and the Western District of Missouri, the United States Court of Appeals for the Tenth Circuit, and the United States Supreme Court.

I am testifying today on behalf of the Kansas Association of Defense Counsel (KADC), of which I have been an active member since 1995 and of which I am presently a board member. The KADC is an organization of Kansas lawyers who devote a substantial part of their practice to the defense of civil litigation, especially Kansas businesses. The purposes of the KADC include supporting and working for the improvement of the court and jury trial systems, working for the administration of justice, and increasing the quantity and quality of the service and contribution that the legal profession renders to the community, state, and nation.

I am also testifying on behalf of the American Legislative Exchange Council (“ALEC”), the nation’s largest bipartisan membership association of state legislators, numbering over 2,400. ALEC’s National Task Forces provide a forum for legislators and the private sector to discuss issues, develop policies, and draft model legislation. My firm advises ALEC’s Civil Justice Task Force, which developed the model Jury Patriotism Act upon which H.B. 2846 is based.

The Jury Patriotism Act finds support across the political spectrum. Just a few of its supporters include the Council of State Governments, AFL-CIO, National Black Chamber of Commerce, National Association of Manufacturers, and National Association of Wholesaler-Distributors. Elected officials have responded to this broad-based support. Within months after its development, laws based on the Jury Patriotism Act were enacted in Arizona, Louisiana, and Utah. The Council for State Governments (CSG) subsequently endorsed the Arizona version of the Act as part of its suggested state legislation for the year 2004. Legislation based on the Jury Patriotism Act is currently under consideration in a number of states, including neighboring Missouri.

The version of the Jury Patriotism Act before you, H.B. 2846, is a Kansas bill. It has been designed to address special needs and concerns of Kansans.

### INTRODUCTION

A few years ago, the Kansas Supreme Court authorized the creation of a program known as The Kansas Citizens Justice Initiative (KCJI) to consider ways to improve Kansas's jury system. The KCJI Report concluded that "[j]uries are a key feature of American democracy. Almost unique in the world is the American practice of providing jury trials to determine guilt or innocence in criminal cases and to determine the facts in civil disputes. *How well juries do their job is central to the success of the justice system.*"<sup>1</sup> The KCJI's Report echoes an American tradition that embraces trial by jury as a fundamental right of a democratic people. In the *Federalist Papers*, the right to jury trial was praised as a "valuable safeguard to liberty" and "the

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<sup>1</sup> See KANSAS CITIZENS JUSTICE INITIATIVE DRAFT FINAL REPORT, *available at* <<http://www.kscourts.org/kcji/draft/intro.htm>> [hereinafter KAN. CITIZENS JUSTICE INITIATIVE REP.] (emphasis added). The jury reform recommendation can be found at <<http://www.kscourts.org/kcji/draft/ratrec20.htm>>. The Initiative was authorized by the Kansas Supreme Court on June 3, 1997, and met over the course of the next two years until it set forth its recommendations on May 4, 1999.



very palladium of free government.”<sup>2</sup> A century and a half ago, national observer Alexis de Tocqueville wrote about the jury system’s importance in preserving a free and democratic society.<sup>3</sup>

Recent national polls indicate that Americans continue to hold the jury system in high regard. According to an American Bar Association (ABA) opinion poll, seventy-eight percent of the public rate our jury system as the fairest method of determining guilt or innocence; sixty-nine percent consider juries to be the most important part of the justice system.<sup>4</sup> Yet, despite the strong support Americans have for the jury system, many in the public seek to avoid jury service at virtually every opportunity. According to an American Judicature Society study, on average, about twenty percent of those summoned to jury duty each year in state courts do not respond.<sup>5</sup> In at least one rural area, sheriffs’ deputies were recently forced to round up people shopping in the local Wal-Mart to fill the jury box.<sup>6</sup>

This information is no surprise to judges, lawyers or virtual strangers to the legal system. In today’s increasingly busy society, the nearly universal reaction to a jury summons is “how do I get out of this?” What lawyer has not been asked this by a client, friend or family member?

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<sup>2</sup> THE FEDERALIST PAPERS, No. 83.

<sup>3</sup> See 1 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 284-85 (J.P. Mayer ed., 1975).

<sup>4</sup> See AM. BAR ASS’N, PERCEPTIONS OF THE U.S. JUSTICE SYSTEM 6-7 (1998), available at <<http://www.abanet.org/media/perception/perceptions.pdf>>.

<sup>5</sup> See ROBERT G. BOATRIGHT, IMPROVING CITIZEN RESPONSE TO JURY SUMMONSES: A REPORT WITH RECOMMENDATIONS 13 (Am. Judicature Soc’y 1998). Others have estimated that as many as two-thirds of the approximately 15 million Americans summoned to jury service each year fail to report for jury duty. See David Schneider, *Jury Deliberations and the Need for Jury Reform: An Outsider’s View*, 36 JUDGES’ J., no. 4, at 25 (Fall 1997).

<sup>6</sup> See Amy Merrick, *When the Jury Box Runs Low, Deputies Hit Wal-Mart: Personal Summonses Get Job Done When Mail Doesn’t; Out for Milk, Off to Court*, WALL ST. J., Aug. 20, 2002, at A1, available at 2002 WL 3403962 (reporting on jury summonses for traffic court being served on 55 shoppers in a Shelby, North Carolina, Wal-Mart Supercenter).

(While I was clerking with Judge Belot, we had an experience with a lawyer who poorly handled such a question.) What lawyer has not confronted the juror who is saying things he or she does not believe in order to make it more likely he or she will be struck from the jury? (While trying a case, I had an interesting personal experience with just such a juror.)

Given this apparent conflict, it is important to consider why citizens have such negative feelings about jury service and to find ways to relieve their concerns. H.B. 2846 reflects on these issues and seeks to remove the barriers that frustrate jury service in Kansas.<sup>7</sup> The bill would promote jury service by alleviating the inconvenience and financial burden placed on those called to serve, giving people a greater sense of “ownership” in the system, and doing more to hold people accountable to the civic obligation (and honor) that jury service is.<sup>8</sup> It will also serve the very strong public policy of this state, as set forth in K.S.A. 43-155: “The public policy of this state is declared to be . . . that *all litigants* entitled to trial by jury shall have *the right* to juries selected at random from a *fair cross section* of the community.” Under H.B. 2846, Kansas litigants will have juries that are not pre-cleansed of certain members of the community but come from a “fair cross section” thereof.

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<sup>7</sup> In 2003, Representative O’Neal introduced H.B. 2381, which was based on an early draft of the Jury Patriotism Act. The earlier bill varies significantly from the legislation under consideration today. H.B. 2846, unlike its predecessor, does not require employers to compensate their employees during jury service. Nor does it criminalize failure to appear for jury service. H.B. 2846 reaches more citizens by making wage replacement or supplementation available to those who are not paid by their employers after the fifth day of jury service, rather than after the tenth day of service. H.B. 2846 also corrects a drafting error in the 2003 bill which set a \$100 filing fee to support the compensation for jurors on lengthy trials. H.B. 2846 provides for a nominal \$5 filing fee to support the lengthy trial fund.

<sup>8</sup> See Victor E. Schwartz et al., *The Jury Patriotism Act: Making Jury Service More Appealing and Rewarding to Citizens*, THE STATE FACTOR (Am. Legis. Exch. Council, Apr. 2003), available at <<http://www.alec.org/meSWFiles/pdf/0309.pdf>>.

## MAKING JURY SERVICE MORE USER FRIENDLY

H.B. 2846 seeks to eliminate some of the headaches of jury service by making the jury system more “user friendly” to jurors and their employers.

### **A Shorter Term of Service: One Day or One Trial**

In Kansas, citizens summoned for jury duty must be prepared to serve one term of court. Depending on where the prospective juror lives, this term can be rather lengthy. It is no wonder that some citizens cringe upon opening the jury summons, fearful of the possible disruption to their lives. Citizens have jobs that require their presence, children or other family members for whom they are responsible, travel plans that cannot be altered without penalty, and other commitments. Although some courts provide for a substantially shorter term, as in Sedgwick County where jurors are “on call” for a week, such terms still represent an interruption of personal, business, and family commitments.

A shorter term of service would also relieve some of the hardship placed upon jurors. Several Kansas courts, such as those in Shawnee and Johnson Counties, have adopted policies by which jurors are not required to spend more than one day at the courthouse unless they are selected to serve on a jury panel. This practice, known as the one-day/one-trial system, has been adopted by about one-half of the state courts.<sup>9</sup> Many states, including, California, Colorado, Connecticut, Florida, Massachusetts, and Utah, among others, have successfully adopted the one-day/one-trial system in all of their courts. Section 1 of H.B. 2846 would make the one-day/one-trial system the law throughout Kansas.

The one-day/one-trial system works. For example, by adopting this system, New York reduced its statewide average term of service, previously over five days, to just 2.2 days – a

decrease of more than fifty percent.<sup>10</sup> In Massachusetts, which has adopted the one-day/one-trial system, eighty-five percent of those who appear complete their jury service in just one day and ninety-five percent finish in three days.<sup>11</sup>

Jurors favor the one-day/one-trial term of service. In a study of juror attitudes, approximately ninety percent of 5,500 jurors selected the one-day/one-trial system as preferable to a thirty-day term, and a majority would not object to being called again.<sup>12</sup> The one-day/one-trial system term also may vastly reduce the need for hardship excuses. One court found that requests for excusal after the adoption of the one-day/one-trial system dropped to almost one percent, and most of these requests were accommodated by the court's postponement policy.<sup>13</sup> It should be no surprise that the survey also revealed that the one-day/one-trial system increased positive attitudes about jury duty and about the justice system generally.<sup>14</sup>

Employers also like the one-day/one-trial approach because it means fewer days of employee absences from work for jury duty. Research by the California Judicial Council found that the majority of employees return to work the next business day after reporting for jury service under the one-day/one-trial system.<sup>15</sup> In announcing the adoption of the one-day/one-

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<sup>9</sup> See Nat'l Center for State Courts, Best Practices Inst., *Jury Administration and Management: Term of Service*, <[http://www.ncsconline.org/Projects\\_Initiatives/BPI/JuryAdminManage.htm](http://www.ncsconline.org/Projects_Initiatives/BPI/JuryAdminManage.htm)> [hereinafter Best Practices].

<sup>10</sup> See N.Y. STATE UNIFIED COURT SYSTEM, CONTINUING JURY REFORM IN NEW YORK STATE 12 (2001).

<sup>11</sup> See Office of Jury Commissioner for the Commonwealth, *Introduction*, <<http://www.state.ma.us/courts/jury/introduc.htm>>.

<sup>12</sup> See David E. Kasunic, *One Day/One Trial: A Major Improvement in the Jury System*, JUDICATURE, v. 67 no. 2, at 81 (Aug. 1983) (citing a 1976 study of juror attitudes conduct by a professor with a specialty in statistics and sociology).

<sup>13</sup> See *id.* at 81-82.

<sup>14</sup> See *id.* at 81.

<sup>15</sup> See Don Wolfe, *Employers: Support Jury Service or Stop Complaining*, SILICON VALLEY / SAN JOSE BUS. J., July 5, 2002, available at <<http://sanjose.bizjournals.com/sanjose/stories/2002/07/08/editorial3.html>>.

trial system throughout the California judiciary and even in the smallest counties, Los Angeles Superior Court Presiding Judge James Bascue commented, "We know that one-day/one-trial is in the best interest of our employers and the communities we serve."<sup>16</sup>

In addition, implementation of a one-day/one-trial term of service could lead to fiscal savings for the state because the system is so efficient.<sup>17</sup> Rather than have a large number of jurors sitting around in a jury room for days on end, reading the newspaper and playing cards while collecting a juror fee, the one-day/one-trial method would bring in only the number of jurors that the court anticipates will be needed.<sup>18</sup>

The National Center for State Court's Best Practices Institute (NCSC) recognized the one-day/one-trial system as a particularly effective practice.<sup>19</sup> According to the NCSC, "no state court that has made the change to the shorter term of service has 'looked back' and returned to the former practice."<sup>20</sup> In fact, "every statewide jury reform task force report of the past decade has recommended adopting the change."<sup>21</sup> One-day/one-trial should be adopted in Kansas.

### **Jurors Would Have an Easy Means to Reschedule Service**

The inconvenience of jury duty is exacerbated by the lack of flexibility provided to potential jurors. Summoned jurors are instructed to appear on a certain date and are not provided with an easy means of *rescheduling* their service should they have a conflict. Therefore, those

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<sup>16</sup> Judicial Council of California, News Release No. 45, *One-Day or One-Trial Rule Now in Effect Throughout California*, June 10, 2002, available at <<http://www.courtinfo.ca.gov/presscenter/newsreleases/NR45-02.HTM>>.

<sup>17</sup> See Kasunic, *supra* note 13, at 71.

<sup>18</sup> See *id.* at 82; see also Best Practices, *supra* note 10 ("Although the direct costs of summoning so many more people adds to the budget, jurisdictions that have adopted this practice have also realized offsetting cost savings by making other changes to their jury management systems and juror compensation schemes.").

<sup>19</sup> See Best Practices, *supra* note 10.

<sup>20</sup> *Id.* (emphasis in original).

<sup>21</sup> *Id.* (emphasis in original).

summoned are left with three options: drop all other commitments during the allotted time, request that the court excuse them from service for hardship, or, if the other two alternatives are not available, ignore the jury summons.

Consider how a jury summons, under the current system, impacts small business owners – people like my father-in-law, who runs a very successful (and, consequently, very busy) painting business in Lawrence, or my cousins, who farm, ranch, and run a hunting lodge in southeast Kansas and northeast Oklahoma. How are they naturally going to respond when they get a jury summons during the most important times of the year for their businesses? We had a recent experience along these lines in a Franklin County jury trial, where a juror was struck for cause because he had to get his equipment ready for the upcoming soybean harvest.

The goal of H.B. 2846 is to enable more citizens – a larger, fairer cross-section of the community – to participate in the jury system by minimizing the disruption to their business or personal lives. Citizens summoned to jury duty should have the opportunity to postpone and reschedule their service to a more convenient date if necessary. An automatic postponement would reduce the incentive for farmers who are concerned about harvest, painters who are concerned about the summer paint season, professionals who have commitments to clients or patients, or others who have special family responsibilities or vacation plans, etc., to avoid jury service. The ABA has observed that such procedures “*enable a broader spectrum of the community to serve as jurors.*”<sup>22</sup>

H.B. 2846 would provide all summoned jurors with one automatic postponement of service for any purpose. The process for obtaining a postponement would be quick and easy. The summoned juror would simply contact the appropriate court official via telephone,

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<sup>22</sup> AM. BAR ASS’N, STANDARDS RELATED TO JUROR USE & MANAGEMENT 51 (1993) [hereinafter ABA STANDARDS].

electronic mail, or in writing. He or she would not have to provide any reason for the postponement – only a date on which he or she will appear for jury service within six months. Subsequent postponements would only be available in emergency situations.

H.B. 2846 also provides a second type of postponement aimed at protecting small businesses. Currently, it is possible for more than one employee of a business to be called for jury service during the same period. Such a situation may be particularly hard on small businesses. For this reason, Section 9 of the bill requires courts to postpone and reschedule the jury service of a summoned juror if another employee of his or her business is already serving jury duty. This postponement would not count toward the one postponement for any reason extended to all jurors.

Consider the impact of these changes on my father-in-law and his painting business, my cousins in southeast Kansas and their farming/ranching/hunting lodge businesses, or other small business owners. Upon receipt of the jury summons, if the time specified for jury service is problematic, they simply reschedule. In so doing, they “make an appointment” – a commitment – to participate in our justice system and experience the satisfaction that comes with fulfilling their civic obligation. A greater sense of “ownership” and genuine, meaningful participation in the system results.

### **Expanding the Opportunity to Serve and Relieving Juror Hardship on Lengthy Civil Trials**

Another major reason that people seek to avoid jury duty is the financial burden service may impose. Kansas pays jurors a ten dollar daily fee (plus reimbursement for mileage).<sup>23</sup> This amount may barely cover the cost of transportation, parking, and lunch.

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<sup>23</sup> See K.S.A. § 43-171.

The ABA has recognized that “[f]ew persons making more than the minimum wage can afford [the] . . . sudden and involuntary cut in pay” imposed by jury service.<sup>24</sup> Likewise, an opinion survey of Kansas jurors authorized by the Kansas Supreme Court found that one out of three jurors in the lowest income bracket consider the economic loss associated with jury service to be a “hardship.”<sup>25</sup>

As a result, courts must excuse from service laborers, salespersons, and parents with childcare expenses because of the economic hardship that they may suffer. Those who remain in the jury pool are primarily those who are not employed or whose employers will continue to pay their salary. Consequently, the basic democratic right to be tried by a jury of one’s peers may be largely illusory to many litigants. Non-diverse and unrepresentative juries may produce arbitrary results for plaintiffs, defendants, and prosecutors. Equally important, many people who would like to serve on a jury and experience the satisfaction of having participated in the system and fulfilled their civic duty are not, as a practical matter, able to participate.

The lack of available compensation may be particularly troublesome for jurors selected to serve on lengthy trials. Although somewhere between one-half and three-quarters of all trials conclude within three days, and very few cases extend beyond ten days, jurors who find themselves called to serve on the rare, lengthy trial may be subject to extreme financial hardship.<sup>26</sup>

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<sup>24</sup> See ABA STANDARDS, *supra* note 11, at 133-34 (quoting J. THOMAS MUNSTERMAN *ET AL.*, THE RELATIONSHIP OF JUROR FEES AND TERMS OF SERVICE TO JURY SYSTEM PERFORMANCE (1991)).

<sup>25</sup> See Steven Cann & Michael Kaye, *Report to the Honorable Kay McFarland Chief Justice of the Kansas Supreme Court on “Juror Satisfaction With the Kansas Court System,”* at 15.

<sup>26</sup> See ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS OF THE U.S. COURTS 165, tbl. C-8 (2002), available at <<http://www.uscourts.gov/judbus2002/contents.html>> (finding that 75% of all civil and criminal trials in the federal courts were completed within three days and 4% extended beyond nine days during the 12-month period ending



Lack of adequate compensation for jurors has several unfortunate results. Some jurors may opt to simply not show up in court. Those with jobs who will lose their salary during jury service are likely to plead with the court to be excused, particularly when the trial is expected to last several days, weeks, or months. Individuals who are not excused from service may be forced to make an inequitable and unfair personal sacrifice.

Ideally, the state would be able to provide greater compensation to jurors to relieve them of the financial hardship that can result from jury service. In these times of tight state budgets, however, significantly increasing the juror fee through payments out of the state's treasury may not be a realistic option. Even as long ago as 1993, the ABA recognized generally that "raising juror fees to compensate citizens for their time at current wage levels would place a nearly impossible burden on many financially hard-pressed jurisdictions."<sup>27</sup> This observation is no less true today in Kansas.

H.B. 2846 addresses this problem. Section 3 of the bill includes an innovative "Lengthy Trial Fund" to help relieve the burden on jurors serving on lengthy civil cases.<sup>28</sup> H.B. 2846 would provide jurors who serve on civil trials lasting longer than five days with supplemental compensation. (This will neutralize most claims of "financial hardship" due to the length of a

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September 30, 2002); U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CIVIL TRIAL CASES AND VERDICTS IN LARGE COUNTIES, 1996, at 13 (1999), *available at* <<http://www.ojp.usdoj.gov/bjs/pub/pdf/ctcvlc96.pdf>> (finding that the median number of days in jury trials in the nation's 75 largest counties was three days).

<sup>27</sup> ABA STANDARDS, *supra* note 25, at 134.

<sup>28</sup> As introduced, H.B. 2846 does not provide wage replacement or supplementation for jurors selected for criminal trials. Nevertheless, Kansas might consider providing special compensation to jurors in lengthy criminal trials. *See* H.B. 2520, 46<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. (Ariz. 2003) (signed by Gov. Janet Napolitano on May 12, 2003) (applies to civil and criminal petit juries); H.B. 2008 (La. 2003) (signed by Gov. Mike Foster on June 27, 2003) (lengthy trial fund applies to civil cases and criminal cases in which conviction carries a sentence of 20 years or more at hard labor). Extending the fund to jurors on criminal trials, however, would require an increase in the filing fee that supports such payments.

trial.) Payments from the fund after the fifth day of service would be no more than needed to relieve the juror's financial hardship and not greater than \$100 per day. In the rare case that a civil trial lasts ten days or more, any juror who is not fully compensated by his or her employer would be eligible to receive additional supplemental compensation from the fund of up to \$300 per day. A court administrator, hired by the judicial system and compensated by the fund, would manage the fund under rules and guidelines established by the state supreme court.

In order to qualify for payment, the juror would complete a form identifying the amount requested and provide the court with verification of his or her usual wage and how much the employer paid the employee during jury service. An individual who is self-employed or receives compensation other than wages would submit a sworn affidavit to the court attesting to his or her approximate gross weekly income and attaching supporting documentation.

The lengthy trial fund would be self-sustaining and not require any allocation of resources by the legislature. Rather, the fund would be financed through a minimal five-dollar court filing fee – in essence, a small “user fee.”<sup>29</sup> The fund is based on the premise that those who use and benefit from the jury system should help pay to finance it. The filing fee is not intended to be a barrier to the filing of lawsuits and would be the minimum amount necessary to fairly support jurors who serve on lengthy civil trials. At roughly the cost of a meal at McDonald's, the fee will not place any real burden on lawyers or their clients.

### **Protecting Citizens from Being Repeatedly Called for Jury Service**

Current Kansas law does not adequately protect citizens from being called repeatedly for jury service. Citizens may be called as often as once each year to report to the courthouse.

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<sup>29</sup> Recently, the Michigan Legislature adopted its own “Juror Compensation Reimbursement Fund,” which is similar to the Jury Patriotism Act in that it relies, in part, on a small increase in court filing fees to increase compensation for jurors serving on

Section 6 of H.B. 2846 exempts a citizen from further jury service if he or she has served as a juror within the past two years.

### **ENSURING THAT ALL PEOPLE SERVE ON JURIES**

In light of the ability to reschedule jury service to a more convenient date, as well as the shorter term of service, guarantee against being called repeatedly, and better protection of income on long trials provided by the bill, few people should need to request a complete excuse.

### **Limiting Excuses to True Hardship**

Kansas law currently allows any juror to avoid service “for reasons of compelling personal hardship or because requiring service would be contrary to public welfare, health or safety.”<sup>30</sup> This language is so broad and ambiguous that, in some cases, it has led Kansas courts to exempt whole categories of people. For example, it has been reported that one Kansas county reads the “contrary to public welfare, health or safety” clause as an automatic exemption for all physicians to opt out of service.<sup>31</sup> Anderson County interprets this clause to allow an exemption for all truck drivers! Those called for jury duty, whether farmers, painters, truck drivers or professionals, may use the rather lax “personal hardship” or “public welfare, health or safety” standards to avoid their obligation to serve.

Kansas’ porous hardship standards “not only reduce the inclusiveness and representativeness of a jury panel, but also place a disproportionate burden on those who are not exempt,” most notably blue-collar workers and retired and unemployed citizens.<sup>32</sup> When some groups of people are regularly dismissed from jury service, others bear more than their fair share

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lengthy trials. See H.B. 4551, 4552, 4553 and S.B. 1448, 1452, 2001-2002 Leg. Sess., (Mich. 2002).

<sup>30</sup> See K.S.A. § 43-155.

<sup>31</sup> See John Hanna, *Legislature may Excuse Doctors from Jury Duty*, TOPEKA CAPITAL-J., Aug. 9, 1999.

of the burden, and portions of society are left out of what was supposed to be a “fair cross section.” As a report of the ABA Commission on the 21<sup>st</sup> Century Judiciary recently concluded: “Meaningful steps should be taken to ensure that every jury pool represents a fair cross-section of the community from which it is drawn.”<sup>33</sup>

Furthermore, the absence of certain individuals from jury pools eliminates many important perspectives. A jury that lacks doctors or other professionals may lack the collective knowledge of a more representative jury. It is also possible that this small slice of our society may not evaluate or properly weigh complex technical, scientific, or other evidence. Such jurors may even believe that their role is to transfer wealth and not render justice on the merits of the case. Plaintiffs and defendants would all benefit from the diverse experience, values, and education of a truly representative jury.

Section 6 of H.B. 2846 would strike Kansas’ vague “compelling personal hardship” language currently used as grounds by many to be excused from jury duty. Instead, the bill would provide that, instead of obtaining a postponement, a juror might be excused for a twenty-four month period only when a juror has a documented medical condition that makes him or her unable to serve or when service would result in an “undue or extreme hardship.” The bill would strictly limit “undue or extreme hardship” to three circumstances: (1) because it is impossible for the prospective juror to obtain a substitute caregiver; (2) because jury service will cause the prospective juror to incur costs that will have a substantial adverse impact on the payment of the individual’s necessary daily living expenses; or (3) physical illness or disease. These grounds would more closely reflect true hardship and limit the opportunity for abuse.

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<sup>32</sup> ABA STANDARDS, *supra* note 25, at 51.

<sup>33</sup> AM. BAR ASS’N, REPORT OF THE ABA COMMISSION ON THE 21<sup>ST</sup> CENTURY JUDICIARY 87 (Mar. 2003) (draft report).

H.B. 2846 also would establish a procedure to make it more likely that the excuses will be strictly applied. Jurors would be required to provide the court with documentation supporting their request for an excuse. This minimal requirement would ensure that jurors are not inventing or exaggerating claimed hardships.

### **An Appropriate Deterrent for No-Shows**

Research shows that a significant number of those who do not respond to jury summonses fail to do so because they have little fear of receiving a penalty, or believe that the penalty will be a mere “slap on the wrist.” In Kansas, those who do not respond to a jury summons face a fine of no more than \$100.<sup>34</sup> When the penalty for not showing up for jury service is comparable to driving above the posted speed limit, it is no wonder that so many people disregard their jury summons with impunity. Furthermore, courts have little resources to follow up and penalize those who do not show. It is no secret that what is already a minimal fine rarely is imposed.

Jury service is an important obligation of citizenship. Criminal defendants rely on a representative jury to receive a fair trial. Parties in civil litigation also have a right to a representative jury. A person’s failure to appear in court not only damages the judicial system, it may also impair the rights of litigants. Ignoring a jury summons is an offense more serious than driving a few miles per hour over the posted speed limit. It should be addressed accordingly.

Section 8 of H.B. 2846 encourages jury participation by increasing the maximum fine for unexcused absences from jury service from \$100 to \$200. The bill would not impact a judge’s discretion to decide the amount of the fine and to excuse the absence if a summoned juror shows reasonable cause for his or her failure to appear. H.B. 2846 also provides judges with the

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<sup>34</sup> See K.S.A. § 43-165.

discretion to require no-shows to perform community service. This period would be at least equal to the time that the citizen would have spent in jury service and could be in lieu of, or in addition to, a monetary fine. This penalty should communicate to jurors the importance of jury service. "The point is not to punish people but to encourage people to answer the summons and make arrangements to do their jury service."<sup>35</sup>

### **Protecting Employment Rights**

Kansas law prohibits employers from discharging or threatening to discharge employees who take time off of work to serve on a jury.<sup>36</sup> H.B. 2846 provides even more protection for employees. Section 9 of the bill explicitly states that a business may not require its employees to use their annual vacation or sick leave time for jury service. Employees should not fear that by responding to a juror summons, they might be required to sacrifice their annual vacation.

### **CONCLUSION**

H.B. 2846 is a positive step toward breaking down each of the barriers that frustrate jury service in Kansas. The bill makes good public policy sense. I urge you to enact it now. Thank you.

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<sup>35</sup> Troy Anderson, *Show Up or Else; Courts Get Tough: Ignore Another Jury Summons And Get \$1,500 Fine*, L.A. DAILY NEWS, Jan. 19, 2002 (quoting Pomona, California Supervising Judge).

<sup>36</sup> See K.S.A. § 43-173.



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Testimony in Opposition to

**House Bill No. 2846**

Presented by Jim Clark, KBA Legislative Counsel  
House Judiciary Committee, February 18, 2004

House Bill 2846, which appears to be a kinder, gentler version of HB 2381, is an extensive revision of the laws regarding jury service. The bill does have some salutary points, specifically:

1. Requiring a \$5 fee from all lawyers who file a civil case, presumably under both Chapter 60 and 61. The Kansas Bar Association has long had a policy supporting a uniform docket fee; and, when compared to additional fees on service of process, garnishments or post-divorce motions, applying an across-the-board \$5 fee on all civil cases would have the effect of uniformly raising the docket fee in both kinds of cases.
2. The bill also purports to make whole jurors who spend more than five days in trial, at least in civil cases. The Kansas Bar Association has long supported efforts to increase jury fees, and has been successfully challenged in those efforts by local governments and their respective associations, as they would have been responsible for paying for the increase out of county general funds.

Unfortunately, the bill accomplishes both laudable goals by a huge funding shift. The increase in costs of the proposed long-term jury trial payment schedule would be shifted from county general funds to lawyers, more specifically, plaintiffs' attorneys, since they are the ones that file civil cases. While \$5 per case does not appear to be a significant increase in the cost of filing a civil case, would imposition of a similar fee on public school teachers be an acceptable option to help fund an increase in state financial aid to education? The answer in both instances is, or should be, a negative one. Specific segments of society should not be required to fund institutions that benefit society as a whole.

More importantly, the bill creates a serious disruption to the concept of jury service. While the bill purports to alleviate the financial hardship of jury duty, it only affects jurors in civil cases, and ignores the plight of jurors in criminal cases ---- who are more likely to serve in a long-term case. Jurors in a death penalty case, for example, will continue to be paid the current rate of \$10 per day, regardless of length of service. If prosecutors and defense attorneys are having a hard time seating jurors now, wait until jurors realize that if they can get excused from a criminal case, they may get called for a civil case, and become eligible for the increased compensation that this bill bestows.



State of Kansas

## Office of Judicial Administration

Kansas Judicial Center  
301 SW 10<sup>th</sup>  
Topeka, Kansas 66612-1507

(785) 296-2256

February 18, 2004

### Testimony in Opposition to HB 2846

Kathy Porter

The Judicial Branch has long supported attempts to increase payments to jurors above the \$10 per day provided in current law. This bill would provide additional funding for jurors in civil cases, but would provide no additional funding for jurors in criminal cases.

The Kansas District Judges Association Executive Board recently voted to oppose this bill based on the dichotomy it creates. While the bill appears to value jury service in civil trials, it also sends the message to the public that jury service in criminal trials is somehow less valuable. How will court personnel explain to jurors in criminal trials that they are allowed by law \$10 per day of service, while jurors in civil trials lasting from six to ten days may receive up to \$100 per day, and up to \$300 per day for trials lasting eleven or more days?

In order to answer some administrative questions and concerns about the provisions of this bill and an earlier version of the bill, 2003 HB 2381, the Office of Judicial Administration contacted the three states noted in publications as having enacted some version of this law. According to court personnel contacted, Arizona has not yet had any experience with making payments from its fund because payments are available only to jurors serving on jury trials commencing on or after July 1, 2004. Utah and Louisiana court personnel stated that the lengthy trial fund provision was not enacted.

The Committee might consider whether payments to jurors could be greatly simplified and the administrative costs could decrease if one flat rate were applied. As an example, \$100 per day could be paid to all jurors for service over six days. Clerks of the district court could simply send a list of those jurors to the fund's administrator, together with the number of days served. This would eliminate the need for forms and a determination of a juror's wages. This would also eliminate the need to make the "financial hardship" determination that New Section 3 (d) (1) appears to require before jurors may be paid up to \$100 per day beginning on the sixth day of jury service.



## **Collection of the \$5 Fee**

Clerks of the district court would be required to collect a \$5 fee for each civil case filed, with some exceptions. As the bill is drafted, it appears that this money will have to be segregated into a separate fund.

Clerks of the district court collect a variety of fees that are used for many purposes in state government, the majority of which are not related to the Judicial Branch budget. Each time money is required to be placed into a separate fund, that fund must be balanced on a daily and monthly basis. The use of accepted accounting principles takes much time and effort. This is one of several similar provisions that are under consideration by the 2004 Kansas Legislature requiring clerks to collect new fees or perform new functions. Each year similar measures add to the work of the clerks of the district court, yet no new clerks are added to perform these duties. The bill makes no provision to fund clerk positions or accounting system programming costs.

A much simpler method for all concerned, including the litigants, is to increase the docket fees for those types of cases noted by \$5, and then adjust the percentage distributions found in K.S.A. 2003 Supp. 20-367. This is how, for approximately 20 years, the Judicial Branch has been able to meet the Legislature's needs by getting the appropriate amounts of the docket fee into the appropriate funds. This time-honored method of fee distribution would not cause a significant amount of new work for the clerks. I would be glad to provide a balloon amendment with the appropriate percentage splits for this method.

## **Postponement Provision**

New Section 2 gives persons summoned for jury service one automatic postponement. Those persons must pick a date for jury service some time within the next six months.

Although it would seem a simple matter to keep a list of those granted a postponement, it must be considered that jury lists are pulled from drivers' license records and voting records. It would require time and effort not only to keep the list of postponements, but to determine whether the John Smith granted a postponement six months ago is or is not the same John Smith seeking a postponement today. This could be verified by using the person's address, but additional clerk time would be taken verifying this information for persons who have moved.

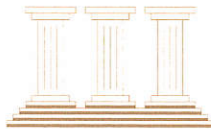
An additional concern is that it will be difficult to determine how many jurors need to be called for any particular trial because it will be unknown how many will use their one-time automatic postponement. It will also be difficult for jurors to select a jury service date within the next six months, because even in the urban districts we do not know that far in advance whether a jury pool will be needed on any particular date. This same concern was noted by Utah court personnel. Although Utah does not limit postponements, court personnel commented that, had the postponement provision in this bill been enacted, it would have caused problems because even in their highest volume court, jury trials are not so regular that they could allow jurors to pick a date up to six months in the future. Arizona court personnel also stated that they do not have this postponement provision.

## Terminology Issues

There are several terminology issues the Committee might wish to consider. On page 2, in line 6, a reference is made to "court" rules. That same section gives the Judicial Council the authority to promulgate rules, rather than the court. In line 17 on page 2, reference is made to each "trial" court collecting the \$5 fee. I would presume that it is intended the clerk of the district court collect this fee. In line 22 on page 2, the bill provides that the fees shall be forwarded to the administrator of the fund. Clerks of the district court remit all state fees to the State Treasurer monthly. Additional "boilerplate" language regarding state payments and warrants might be considered. In lines 28 and 36, also on page 2, references are made to the court paying replacement or supplemental wages and the court limiting the amount of disbursements. Both of these would appear to be duties assigned to the administrator, rather than the court.

On page three, in lines 23 through 28, the bill notes certain cases exempted from the \$5 fee. Statutory references for these types of cases would help to clarify the bill's intent. For example, clerks cannot be expected to segregate "child custody and support cases" from the pool of domestic cases that may or may not include child custody and support issues.

The bill also does not establish the Lengthy Trial Fund in the state treasury.



KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

TO: Members of the House Judiciary Committee

FROM: Pedro Irigonegaray  
Kansas Trial Lawyers Association

RE: 2004 HB 2846

DATE: Feb. 18, 2004

Chairman O'Neal and members of the committee, thank you for the opportunity to appear before you today. I am Pedro Irigonegaray, a practicing lawyer from Topeka and a past president of the Kansas Trial Lawyers Association.

The Kansas Trial Lawyers Association strenuously opposes HB 2846. A jury trial is one of the oldest and most meaningful democratic traditions in our country. When jurors send a message, it resonates beyond their literal courtroom. Every day, disputes are settled, responsibility is assigned, and accountability brought.

Because of the importance of juries to our democracy, it is vitally important that any changes be done after careful consideration. KTLA believes that several aspects of the bill before you raise more questions than answers. So, at best, it warrants further study.

That all jurors deserve better compensation is an idea with which KTLA strongly agrees. The \$10.00 daily fee for this vital work has not been raised since 1971. Given the magnitude of what jurors are asked to do, an increase in compensation is long overdue.

Additional funding for juror compensation should come from a broad-based source that reflects who utilizes the system. The present plan utilizes a narrow funding mechanism that is unlikely to prove sufficient. Answers need to be provided as to the likely number of cases involved and the costs of administration of the proposed fund.

Unintended consequences also seem likely if this bill is adopted. From the text of the bill, it is unclear if limited actions cases, which are often brought by small businesses, would be exempt, employers would no longer have as much incentive to continue paying workers on jury duty. Another burden which might exist would be given to already strained court personnel, and the potential for the fee escalating on the heels of already increased filing fees.

*Terry Humphrey, Executive Director*

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House Judiciary Committee

2-18-04

Attachment 12

Ideas that promote, enhance, or make juror service more convenient are desirable. Before imposing new record keeping requirements on the court system, there should be certainty that a problem exists with the way things are done now.

Two sections of the proposed bill raise particular concerns. In section 5, KTLA is unaware of evidence that judges are abusing the discretion which the present excuse standard allows them to use. In section 7, a heavy burden would be placed upon a juror seeking to be excused. To require a citizen to navigate the cumbersome and burdensome task of acquiring and paying for medical records and getting a setting on a docket, is too much to ask of our jurors.

In conclusion, while KTLA strongly believes that juror compensation in all types of cases needs to be increased, all ideas that impact upon our jury system must be acted upon only after careful consideration of the existing circumstances. In other words, if its not broken, why fix it?

Thank you again for the opportunity to express our opposition to HB 2846. We respectfully ask you to reject HB 2846.