

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on Wednesday, January 14, 2004 in Room 123-S of the Capitol.

All members were present except:

Senator Haley (E)  
Senator Pugh (E)

Committee staff present:

Mike Heim, Kansas Legislative Research Department  
Jerry Ann Donaldson, Kansas Legislative Research Department  
Lisa Montgomery, Office of the Revisor Statutes  
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Judge Nancy Parrish, Third Judicial District, Shawnee County, and The Kansas District  
Judges' Association  
Melissa Wangemann, Legal Counsel, Secretary of State's Office

Others attending:

See Attached List.

Chairman Vratil introduced Judge Nancy Parrish, representing The Kansas District Judges' Association. Judge Parrish gave a report on the "state of the courts". She identified one change that will impact the Judicial Branch as a whole. It is the direct submission of the Judicial Branch budget to the Legislature. Previously the budget was first submitted to the Director of the Budget for review and revisions.  
(Attachment 1)

Judge Parrish explained that the budget before the Legislature is the Judicial Branch maintenance budget as requested by the Judicial Branch. She explained that it was complicated because the Governor intended for Judicial Branch employees, like all other state employees, to receive the Governor's proposed 3% Cost of Living Allowance (COLA) which amounts to \$1.7 million. However, the COLA was not added to the Judicial Branch budget in the Governor's Budget Recommendation.

Judge Parrish said the maintenance budget is the amount of funding the Judicial Branch needs to fund existing Judicial Branch staff and programs, nearly all of which are mandated by the Kansas Constitution or federal or state statutes. It does not include any new positions or enhancements. She discussed how underfunding of the Judicial Branch budget reached a crisis situation by FY 2002, and the Supreme Court exercised its inherent authority to maintain court operations. It issued an emergency surcharge order in March of 2002. Judge Parrish added that while the emergency surcharge kept courthouse doors open in FY 2003 and FY 2004, the Judicial Branch budget for FY 2005 includes a request to fully fund the maintenance budget so that the surcharge is not necessary. She explained the majority of the Judicial Branch budget is for the district courts. It is the funding that keeps the staff in place in each of the counties, provides services to legislative constituents, and provides funding for court services officers who supervise probationers in each county.

Judge Parrish went over the four additional judicial positions requested in the Judicial Branch's budget. The positions included one district court judge and three district magistrate judges. In addition to the district judge position, she identified an administrative assistant and a court reporter as staff for the judge. Judge Parrish explained the need and location for the three district magistrates requested included the Eighth, Ninth, and 27<sup>th</sup> Judicial Districts.

Twenty new non-judicial positions in the district courts were requested primarily for judicial support staff and court services officers according to Judge Parrish. She elaborated on the need for the additional personnel and the justification of same, and included with her written testimony a spreadsheet showing a Summary of Caseload Filings and FTE Positions from FY 1987 through FY 2003.

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:30 a.m. on January 14, 2004 in Room 123-S of the Capitol.

Judge Parrish gave an update on existing programs and provided information on new and expanded programs of the Judicial Branch. The programs included new child support guidelines which were effective January 1, 2004, the death penalty audit which concluded that the estimated cost of 14 death penalty cases to date amounts to 25% of the \$14, 467,901 death penalty cost noted in the Post Audit report, implementation of a new and improved district court accounting and case management system, the increased expansion and use of alternative dispute resolution in domestic cases, the Stop Violence Against Women Grant obtained by the Kansas Supreme Court in October 2003, and the Parent Advocate Pilot Project.

In conclusion, Judge Parrish said the Statewide Summary of Caseload Filings does not include over 200,000 traffic cases, over 200,000 protection from property cases, or approximately 800,000 protection from abuse cases. She explained these were not included because the summary format was based on a prior audit covering 1987 through 1996, and showed where the court system was through 2003.

Following general discussion and questions, Chairman Vratil expressed his appreciation to Judge Parrish for her presentation.

The Chair called for introduction of bills. Melissa Wangemann, Legal Counsel, Secretary of State's Office, requested a bill to update statutory provisions governing notaries public and to incorporate cases and practices that have modified the provisions, and also added technological changes to recognize electronic transactions. (Attachment 2)

After brief discussion, Senator Schmidt made a motion to introduce the bill, seconded by Senator Umbarger, and the motion carried.

Chairman Vratil asked Mike Heim to continue his review of the interim report of the Special Committee on Judiciary. Mr. Heim told the Committee that the interim committee reviewed the Liquor Control Act and the Cereal Malt Beverage Law and the need for uniformity in both laws. In its review, the Committee examined the recent Wyandotte County District Court ruling that the Kansas Liquor Control Act was non-uniform. As a result, a number of cities chartered out of the Sunday sales and holiday sales prohibitions in the Act. He briefly went over the activities of the interim committee and the recommendations as outlined in the report. **SB 305** is the bill covering the interim committee's recommendations and was originally assigned to Senate Judiciary. (Special Committee on Judiciary's Interim Report can be accessed in the Legislative Research Department)

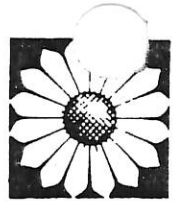
Chairman Vratil announced that **SB 305** might possibly be referred to the Senate Federal and State Affairs Committee, but if it remains in this committee he planned to schedule a hearing on it within the next two weeks and work the bill early in the session.

The Chair adjourned the meeting at 10:30 a.m. The next scheduled meeting is January 15, 2004.





# *The Kansas District Judges' Association*



January 14, 2004

## **Senate Judiciary Committee**

State of the District Courts

Judge Nancy Parrish  
3<sup>rd</sup> Judicial District, Shawnee County

### **Direct Submission and Other Budget Issues**

One change that will impact the Judicial Branch as a whole is direct submission of the Judicial Branch budget to the Legislature. This marks the first year since 1978 in which the Judicial Branch has directly submitted its budget to the Legislature rather than first submitting it to the Director of the Budget for review and revisions.

At this point, the Judicial Branch budget that is before the Legislature is the Judicial Branch maintenance budget, as requested by the Judicial Branch. However, there is one complicating factor. The Governor intends that Judicial Branch employees, like all other state employees, receive a 3% Cost of Living Allowance (COLA). Unfortunately, \$1.7 million of the funding needed for the COLA was not added to the Judicial Branch budget in the Governor's Budget Recommendation.

In recent years, the Judicial Branch had been placed in the position of requesting supplemental funding in order to avert extremely adverse personnel actions, such as furloughs, layoffs, and delaying or ceasing services important to the public. Before requesting supplemental funding, we had been forced for many years to use other difficult cost-cutting measures, such as hiring freezes, just to keep the courthouse doors open. We realize that the Legislature was also placed in the unenviable position of having to find that funding within tight budget in which all available funding had been allocated.

By FY 2002, the underfunding of the Judicial Branch budget had reached a crisis situation. Because of impending fiscal catastrophe, in March 2002 the Supreme Court exercised its inherent authority to maintain court operations and issued the emergency surcharge order. While the emergency surcharge kept the courthouse doors open in FY 2003 and FY 2004, the Judicial Branch budget for FY 2005 includes a request to fully fund the Judicial Branch's maintenance budget so that the surcharge is not necessary.

The maintenance budget is the amount the Judicial Branch needs to fund existing Judicial Branch staff and programs, nearly all of which are mandated by the Kansas Constitution or

federal or state statutes. The maintenance budget does not include any new positions or enhancements.

The majority of the Judicial Branch budget is for the district courts. It is the funding that keeps the staff in place in each of your counties, provides services to your constituents, and provides funding for court services officers who supervise probationers in your counties.

### **Requested Enhancements**

The Judicial Branch's budget request for FY 2005 includes several requests that will impact the operations of district courts across the state. Those requests are noted below.

#### **Judicial Positions**

The number of lawsuits filed continues to grow yearly, but there has not been a corresponding level of growth in judicial resources. We have included in our budget request four additional judicial positions, including one district judge and three district magistrate judges. The district judge position is requested for the Seventh Judicial District (Douglas County). This district's per judge caseload has increased so much that the Douglas County Commission is funding a full-time magistrate judge *pro tem* position. The magistrate judge handles all juvenile offender cases, all child support modification cases, all traffic cases, and also hears criminal first appearances daily. The district also has assigned to them two senior judges. Without this additional help, the district would not be able to process its case filings in a timely manner. As it is, speedy trial issues remain a concern. In addition to the district judge position, we request an administrative assistant and a court reporter as staff for the judge, which are the staff positions normally assigned to a district judge.

District magistrates are requested for the Eighth, Ninth, and 27<sup>th</sup> Judicial Districts. The Eighth Judicial District (Dickinson, Geary, Marion, and Morris Counties) currently has five district judges and two district magistrate judges. District judges are assigned to traffic and limited actions dockets and also hear approximately one-third of the district's preliminary hearings. All of these are within a district magistrate judge's jurisdiction. A third district magistrate judge would allow the district the ability to process cases in a more timely fashion to better serve the public. The new position would be stationed in Geary County, which has one of the highest limited actions dockets in the state.

The Ninth Judicial District consists of Harvey and McPherson Counties, and currently has three district judges and no district magistrate judges. This district has seen one of the largest percentage increases in case filings in the state over the last ten years. Over the last ten years, limited actions have increased 146 percent and felony filings have grown by 168 percent. Currently, there are no district magistrate judge positions in the Ninth Judicial District. The requested district magistrate judge is a cost-effective way to address the increase in filings.

The third district magistrate judge is requested for the 27<sup>th</sup> Judicial District (Reno County). The 27<sup>th</sup> Judicial District has four district court judges and a caseload that ranks near the top of caseload per judge in the state year after year. The district's case filings have steadily

increased over the years, resulting in a significant backlog of cases awaiting jury trials, particularly civil cases, as criminal cases take precedence. A few minor criminal cases have had to be dismissed for failure to meet speedy trial requirements. A minimum of 24 hours each week is set aside solely for docket calls, which could be managed by the requested district magistrate judge. With a district magistrate judge handling docket calls plus other matters within a magistrate judge's jurisdiction, the current district judges would be able to focus on reducing the backlog of jury trials and ensuring the speedy trial of all criminal cases.

### Nonjudicial Positions

We have included in our request twenty new nonjudicial positions in the district courts, primarily for judicial support staff and court services officers. From FY 1994 through FY 2003, felony case filings in Kansas increased by approximately 28.5 percent while no new court services officer positions were added to the Judicial Branch budget. Misdemeanor case filings increased by approximately 6.5 percent during the same period. Persons may be supervised by court services officers for periods exceeding one year, so case filings do not reflect the true growth in court services officers' caseloads. This is similar to the "stacking" effect legislators are familiar with in regard to prison beds because offenders placed on probation in one year may remain on court services officers' caseloads for several years. In fact, the adult felony supervision caseload for court services officers increased by 43.3 percent from FY 1994 to FY 2003. In addition, court services officers' duties in other areas, such as domestic cases, child in need of care cases, and juvenile cases have also greatly increased. The increase in criminal filings without a proportionate increase in staffing has resulted in extremely high caseloads for our court services officers. Supervision of convicted felons and misdemeanants who remain in our communities is a public safety issue. Additional court services officer positions are both justified and necessary to ensure meaningful supervision of offenders.

As the Legislature is well-aware, the need for additional judges and nonjudicial personnel has existed for some time and has not been addressed. The need continues. We urge your support for these new positions.

### PROGRAMS INFORMATION

Following are updates on existing programs and information on new or expanded programs of the Judicial Branch. These represent the efforts of Judicial Branch personnel to better meet the needs of Kansas citizens.

#### **The Updated Child Support Guidelines**

On October 30, 2003, Chief Justice McFarland signed a Supreme Court order updating the Child Support Guidelines, which are used as the basis to establish and modify the amount of child support ordered by Kansas Judges. The new guidelines became effective January 1, 2004. I was pleased to serve as the Chairperson of the Kansas Child Support Guidelines Advisory Committee, along with Representative Ward Loyd, Senator Greta Goodwin, and many other members who brought differing backgrounds and viewpoints to the committee. The committee spent two years obtaining input from those who pay and those who receive child support. The

committee surveyed judges and attorneys across the state, and conducted public hearings in six locations across the state in order to provide better public access to the committee. We also made a very thorough examination of the available economic data before submitting their recommendations to the Supreme Court.

During the summer of 2003, the committee conducted a second period of public comment, which resulted in 23 letters and e-mail messages with comments and suggestions. These suggestions were reviewed by the Child Support Guidelines Advisory Committee and a final report was provided to the Court on September 3, 2003.

The new child support guidelines are available online on the Judicial Branch Website (<http://www.kscourts.org>), providing easy access to judges, attorneys, and the public.

### **Death Penalty Audit**

The Court recently responded to Legislative Post Audit's performance audit concerning costs incurred for death penalty cases. Currently, seven cases are pending on appeal (*Kleypas, Marsh, Scott, Elms, Robinson, Carr, and Carr*). Both *Kleypas* and *Marsh* have been briefed and argued and are awaiting decision. As the Legislature is aware, death penalty cases place a tremendous burden upon the resources of the court system, both at the district court and Supreme Court level.

The Post Audit report helps to quantify the burden reinstatement of the death penalty has placed on the Kansas Judicial Branch. Although the report notes the dollars spent on death penalty cases by each of the affected entities, the Judicial Branch has had no new money added to its budget to deal with death penalty cases. Based on the hours spent on death penalty cases by Judicial Branch employees, the Post Audit report concludes that the estimated cost to the Judicial Branch of the 14 death penalty cases to date has been \$3,556,293. This figure represents approximately 25 percent of the total \$14,467,901 death penalty cost noted in the report.

The Judicial Branch will continue to deal with death penalty cases as they arise, but the overwhelming number of hours spent on these cases and the gravity and complexity of the issues take their toll on our staff, and may result in delay in other areas.

### **FullCourt Case Management System for District Courts**

The Judicial Branch has been busily implementing a new and improved district court accounting and case management system, financed primarily through federal funding. The system will create uniformity in the collection and maintenance of court information. By mid-2004, 100 or more district courts will be using the system. Reports from courts already using the new system have been very favorable.

### **Alternative Dispute Resolution**

Our courts have continued to expand the use of alternative dispute resolution in domestic cases, but the biggest increases have occurred in other civil cases. In 2001, the Legislature

authorized judges to use alternative dispute resolution methods when appropriate. In 2002, there was a 33 percent increase in the use of dispute resolution in general civil (non-domestic) cases and a 10 percent increase in the reported cases overall. Preliminary statistics indicate that this significant increase has continued into 2003.

The Office of Judicial Administration is involved in the evaluation of two permanency mediation pilot projects currently being operated in cooperation with the Sedgwick County District Court. These promising efforts are directed at cases in which children are recommended for removal from their homes and will hopefully increase the percentage of children who are placed with relatives, rather than with the state. Our evaluation will compare 100 cases that go through the mediation process with 100 similar cases that did not go through the mediation process. The results should be completed by February 2004. The Office of Judicial Administration is assisting with a similar permanency mediation project in the Shawnee County District Court.

We also are currently working on a manual to advise state agencies on the various dispute resolution statutes, rules, methods, and accompanying public policy issues. Last year, under the Dispute Resolution Act, the Office of Judicial Administration provided training for state and county government staff on resolving public policy and employment disputes.

### **THE STOP VIOLENCE AGAINST WOMEN GRANT**

In October 2003, the Kansas Supreme Court applied for and received a Stop Violence Against Women Grant. The purpose of the grant is to assist victims of domestic violence in understanding and navigating the often confusing forms and court processes in domestic violence cases, which can be confusing to petitioners. Under the grant, the Office of Judicial Administration, with the help of a multi-disciplinary advisory task force, will prepare an easy-to-understand written narrative explaining the court procedures and forms in domestic violence cases. A certified translator will then translate the narrative and domestic violence forms into Spanish. The narrative and forms will then be placed on a CD, with a voice-over of the narrative in both English and Spanish, for those victims unable to read it. The CD will be distributed to Kansas courts, domestic violence shelters, and related support organizations.

### **THE PARENT ADVOCATE PILOT PROJECT**

The 2003 Kansas Legislature enacted HB 2125, which directed the Office of Judicial Administration to establish an 18-month pilot project in one urban and one rural judicial district, through which each parent involved in Child of Need of Care cases can select up to two people to accompany them to Child in Need of Care hearings, even if another party objects. (Under current law, outside of the pilot projects, other persons may be present at a CINC hearing if the judge approves and if none of the other parties object.) A parent advocate may be the parent's friend, minister, neighbor, family member, or any other person chosen by the parent. Individuals interested in becoming parent advocates are required to participate in a parent advocate orientation program designed to educate the advocate about the child welfare system.



The Office of Judicial Administration has established sites for the pilot project and orientation program in the 18<sup>th</sup> (Sedgwick County) and 21<sup>st</sup> (Riley and Clay Counties) Judicial Districts. Each pilot site has a multidisciplinary advisory committee to help tailor the orientation programs so that they better serve the target parent population. The Office of Judicial Administration will attempt to have the pilot project evaluated by an outside party.

### CONCLUSION

District judges across the state strive to deliver timely, quality justice to Kansans in an efficient and cost-effective manner. Our court system is something to be proud of. On behalf of all the members of the Judicial Branch, I thank you for your continued support and wish you a successful and productive legislative session.

1-1

**STATEWIDE  
SUMMARY OF CASELOAD FILINGS AND FTE POSITIONS**

	<u>FY 87</u>	<u>FY 88</u>	<u>FY 89</u>	<u>FY 90</u>	<u>FY 91</u>	<u>FY 92</u>	<u>FY 93</u>	<u>FY 94</u>	<u>FY 95</u>	<u>FY 96</u>	<u>87 to 96</u> <u>% CHANGE</u>	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>	<u>FY 00</u>	<u>FY 01</u>	<u>FY 02</u>	<u>FY 03</u>	<u>87 to 03</u> <u>% CHANGE</u>
<b>CIVIL CASES</b>																			
Regular Actions	26,385	25,237	24,041	25,733	23,751	23,735	22,347	23,287	21,831	20,539	(22.2)	21,192	21,427	22,554	22,199	21,167	23,522	24,265	(8.0)
Domestic Relations	23,497	25,351	26,404	29,486	30,210	30,717	33,124	36,469	38,099	38,588	64.2	38,105	39,321	38,002	34,989	33,188	35,114	37,785	60.8
Limited Actions	54,526	57,070	62,051	68,525	77,480	84,514	80,404	90,044	99,030	104,752	92.1	115,764	121,463	124,820	125,995	120,391	149,553	155,080	184.4
<b>TOTAL, CIVIL</b>	<b>104,408</b>	<b>107,658</b>	<b>112,496</b>	<b>123,744</b>	<b>131,441</b>	<b>138,966</b>	<b>135,875</b>	<b>149,800</b>	<b>158,960</b>	<b>163,879</b>	<b>57.0</b>	<b>175,061</b>	<b>182,211</b>	<b>185,376</b>	<b>183,183</b>	<b>174,746</b>	<b>208,189</b>	<b>217,130</b>	<b>108.0</b>
<b>CRIMINAL CASES</b>																			
Felonies	11,500	12,188	12,631	12,197	11,436	13,412	13,229	14,423	15,267	17,150	49.1	17,832	17,653	19,007	17,234	16,876	17,437	18,527	61.1
Misdemeanors	13,369	13,234	14,171	15,362	16,919	16,986	16,386	17,762	18,850	18,523	38.6	18,395	18,553	19,977	21,259	20,947	19,854	18,914	41.5
<b>TOTAL, CRIMINAL</b>	<b>24,869</b>	<b>25,422</b>	<b>26,802</b>	<b>27,559</b>	<b>28,355</b>	<b>30,398</b>	<b>29,615</b>	<b>32,185</b>	<b>34,117</b>	<b>35,673</b>	<b>43.4</b>	<b>36,227</b>	<b>36,206</b>	<b>38,984</b>	<b>38,493</b>	<b>37,820</b>	<b>37,291</b>	<b>37,441</b>	<b>50.6</b>
<b>TOTAL CIVIL AND CRIMINAL CASES</b>	<b>129,277</b>	<b>133,080</b>	<b>139,298</b>	<b>151,303</b>	<b>159,796</b>	<b>169,364</b>	<b>165,490</b>	<b>181,985</b>	<b>193,077</b>	<b>199,552</b>	<b>54.4</b>	<b>211,288</b>	<b>218,417</b>	<b>224,360</b>	<b>221,676</b>	<b>212,566</b>	<b>245,480</b>	<b>254,571</b>	<b>96.9</b>
LESSER JURISDICTION Without Traffic	54,143	54,632	54,807	56,808	56,647	57,224	53,186	54,285	56,317	56,539	4.4	57,361	58,470	59,252	56,945	54,707	51,580	48,601	(10.2)
<b>GRAND TOTAL WITHOUT TRAFFIC</b>	<b>183,420</b>	<b>187,712</b>	<b>194,105</b>	<b>208,111</b>	<b>216,443</b>	<b>226,588</b>	<b>218,676</b>	<b>236,270</b>	<b>249,394</b>	<b>256,091</b>	<b>39.6</b>	<b>268,649</b>	<b>276,887</b>	<b>283,612</b>	<b>278,621</b>	<b>267,273</b>	<b>297,060</b>	<b>303,172</b>	<b>65.3</b>
<b>DISTRICT COURT</b>																			
JUDGES (FTE)	216	216	217	218	218	218	218	218	221	225	4.2	225	225	228	233	234	234	234	8.3
<b>DISTRICT NONJUDICIAL FTE</b>																			
	1,301	1,341	1,395	1,402	1,404	1,349.50	1,348.50	1,367	1,380	1,387	6.6	1,389	1,404	1,419	1,434	1,433	1,433	1,433	10.1

"87 to 96" column reflects the statistics used in the 1997 Legislative Post Audit report, "Reviewing the Kansas Court System's Allocation of Staff Resources to the District Courts."

RON THORNBURGH  
Secretary of State



Memorial Hall, 1st Floor  
120 S.W. 10th Avenue  
Topeka, KS 66612-1594  
(785)296-4564

STATE OF KANSAS  
M E M O

TO: SENATE JUDICIARY COMMITTEE

FROM: MELISSA WANGEMANN, LEGAL COUNSEL

DATE: 14 JANUARY 2004

RE: INTRODUCTION OF MODEL NOTARY PUBLIC ACT

The Model Notary Public Act of 2002 was drafted by a group of experts impaneled by the National Notary Association. The drafting committee included lawyers, professors, bankers, representatives from the real estate industry and electronic commerce, a Secretary of State, an Attorney General, and Sara Ullman, the former Register of Deeds of Johnson County.

The 2002 model act modernizes laws governing notaries public. It is the latest of three model acts promulgated by the National Notary Association since 1973. The drafting committee updated statutory provisions to incorporate cases and practices that have modified the provisions, and also added technological changes to recognize electronic transactions.

The Secretary of State believes the 2002 model act will be beneficial to both Kansas notaries and consumers, and would appreciate the committee's consideration of the model act.