

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Arlen Siegfroid at 1:30 P.M. on February 13, 2007 in Room 313-S of the Capitol.

All members were present except:

Representative Richard Carlson- excused
Representative Ted Powers- excused

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mike Heim, Revisor of Statutes Office
Carol Doel, Committee Assistant

Conferees:

Representative Lance Kinzer
Chris Kobach, Professor of Constitutional Law University of Missouri (Kansas City)
William Richards, Sr. NAACP
Bill McKean, Concerned Citizen
Alan Cobb, Americans For Prosperity - Kansas State Director
Richard Hayse, Kansas Bar Association
Richard Hite, Chair Supreme Court Nominating Commission
Justice Fred Six (Ret)
Thomas Wright, Secretary Treasurer of the Kansas Bar Association
Janis McMillen, League of Women Voters of Kansas
David Shriver, Attorney, Kansas Association of School Boards
F. James Robinson, Kansas Association of Defense Counsel

Others attending:

See attached list

The Chairman opened the meeting for bill introductions and recognized Phil Bradley who requested a bill regarding the licensing of micro breweries. The Chairman moved the motion seconded by Representative Peterson. With no objections, the bill will be accepted.

Chairman Siegfroid moved a bill requested by Representative Landwehr concerning children in need of care: relating to access of records. The motion was seconded by Representative Peterson. With no objections, the bill will be accepted.

The Chair opened the floor for hearing on **HCR - 5008** - Governor would appoint supreme court justices, senate would consent; abolishing the supreme court nominating commission and asked Kathie Sparks of Legislative Research to give an overview of the bill.

Ms. Sparks related that **HCR - 5008** would do the following:

- Eliminate the Supreme Court Nominating Commission
- The Governor would have 60 days to recommend to the Kansas Senate a person to fill a vacancy on the Kansas Supreme Court
- The Chief Justice of the Supreme Court would make the recommendation of a person to fill a vacancy on the Kansas Supreme Court if the Governor fails to make the recommendation within the 60 days.
- The Office of Justice of the Kansas Supreme Court could not be assumed until the Senate confirms the individual by an affirmative vote of the Senate
- The House Concurrent Resolution must receive a two-thirds majority vote prior to the resolution being added to the ballot for the general election in 2008, unless a special election is called for by a concurrent resolution of the Legislature. (Attachment 1)

Representative Kinzer addressed the committee in support of **HCR 5008** which proposes changing the current method of Supreme Court judicial selection in Kansas. Representative Kinzer related that the basic rational for the proposed change is simple. When the President fills a U.S. Supreme Court vacancy, he is not

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left to choose from among a list submitted by the American Bar Association or some other group. He or she is free to select the best available person for the job. The Representative opined that the Governor should have the same authority; subject to review by the Senate to avoid cronyism or other abuse of power. ([Attachment 2](#))

Kris W. Kobach, Professor of Constitutional Law, University of Missouri (Kansas City), came before the committee with testimony favoring **HCR 5008**. Mr. Kobach cited two factors that he believed weigh strongly in favor of the resolution. (1) the understandings of the Framers of the U.S. Constitution when they proposed the federal model on which **HCR 5008** is based, and (2) an argument that the federal model produces better Justices. He also provided some background information for the committee to consider. In conclusion, Mr. Kobach stated that the quality of Justices produced by the federal system is hard to deny. ([Attachment 3](#))

Mr. Kobach also supplied copies of Justice Biographies from the states of Kansas, New Jersey, and Maine for committee review. ([Attachment 4](#))

Representing the NAACP (National Association for the Advancement of Colored People) in support of **HCR 5008**, was William E. Richards, Sr. His testimony related that upon review of Article 3, paragraph 5, of the Kansas Constitution and the Record of Nominations for Kansas Supreme Court Justices, it is found that historically no Kansas Citizen of African-American extraction, regardless of how highly qualified legally and otherwise, has been submitted as a nominee for possible appointment as a Kansas Supreme Court Justice by the Kansas Supreme Court Nominating Commission. It is the opinion of the NAACP that the passage of **HCR 5008** would appear to provide a better method for the nomination and appointment of our Supreme Court Justices. ([Attachment 5](#))

Mr. Richards also presented a biographical sketch of Judge Cordell D. Meeks, Jr. who was appointed by the Governor of Kansas to serve as District Court Judge for the 29th Judicial District of Kansas. ([Attachment 6](#))

Bill McKean a citizen of Wichita favors the passage of **HCR 5008** stating that since the 2004 primaries, he has actively lobbied the reporters and editors of the Wichita Eagle, elected officials, politicians, judges, prominent attorneys and law professors throughout Kansas to reduce the effects of nepotism and cronyism in the Kansas judiciary by increasing accountability and transparency. Mr. McKean further opined that the problems originate at the Supreme Court and infect the Office of Judicial Administration, the Kansas Judicial Council and the Kansas Bar Association and the local bar associations. ([Attachment 7](#))

Mr. McKean also submitted information about Nick Badgerow, a member of the Kansas Judicial Council. ([Attachment 8](#)), copies of e-mails which he had sent to various people ([Attachment 9](#)), a copy of an article entitled, *The Committee For Judicial Ethics Finds Judge Janice D. Russell: Guilty* ([Attachment 10](#)), and numerous other articles regarding the judicial system. ([Attachment 11](#))

Alan Cobb, Kansas State Director, Americans for Prosperity, testified in support of **HCR 5008**. Mr. Cobb gave the opinion that the nominating committee is controlled by a majority of Kansas lawyers. The group has become a powerful gatekeeper to one-third of our state government, all the way from the recruitment and screening of applicants through to the final selection and appointment. Mr. Cobb feels that a system of gubernatorial appointment with Senate consent does not threaten judicial independence, but does level the political playing field. ([Attachment 12](#))

There were no other proponents of **HCR 5008** and the Chair recognized opponents with Richard Hayse, of the Kansas Bar Association addressing the committee. Mr. Hayse related that this legislation would allow the Governor to appoint any person, including a person with no qualifications whatsoever, subject only to confirmation by a majority of the Kansas Senate. In place of a well-tested selection system, this legislation would substitute a purely political process. ([Attachment 13](#))

Richard Hite, Chair, Supreme Court Nominating Commission, appeared before the committee opposing **HCR 5008**. The members of the Commission unanimously agree that the present merit selection of Supreme Court Justices works well and should not be changed. The members of the Commission are very concerned about the effect of a requirement that the Governor's appointments be ratified by the Senate. ([Attachment 14](#))

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Mr. Hite also presented copies of the forms which need to be completed by a nominee. (Attachment 15)

Retired Justice Fred Six presented testimony in opposition to **HCR 5008**. Justice Six gave the opinion that this legislation would discourage judges and lawyers in Kansas from becoming nominees for consideration as members of the Supreme Court. It also has the potential for damaging the working relationship between the Executive Branch and the Legislative Branch. It is the feeling of Justice Six that **HCR 5008** does not support an impartial judiciary. (Attachment 16)

Justice Six also provided copies of "*Judicial Selection in the States*" (Attachment 17), and "*The Bureau of Justice Statistics - State Court Organization 1998*". (Attachment 18)

Thomas Wright, Secretary Treasurer of the Kansas Bar Association and former member of the Supreme Court Nominating Commission came before the committee opposing the legislation in **HCR 5008**. In his testimony, Mr. Wright stated that the independence of the Judiciary should be paramount to all of us and that judicial independence is not advanced by **HCR 5008**. (Attachment 19)

Janis McMillen, President, League of Women Voters of Kansas, represented the League in opposition to **HCR 5008**. The members of the League feel that we must maintain the independence of the judiciary by keeping politics out of the selection system - to keep politics out of the courts. (Attachment 20)

David Shriver, Attorney, Kansas Association of School Boards, strongly opposes the passage of **HCR 5008**. The KASB does not believe sufficient facts exist to justify changing a system of selection of justices to the Kansas Supreme Court that has produced a non-partisan, highly qualified bench of jurists. (Attachment 21)

The Kansas Association of Defense Counsel was represented by F. James Robinson in opposition to **HCR 5008**. Mr. Robinson summed his testimony by stating that the citizens of Kansas do not need, nor should they want, to replace the present system that is working very well with a Senate Confirmation process that is fraught with problems. (Attachment 22)

Callie Denton Hartle of the Kansas Trial Lawyers submitted written testimony opposing **HCR 5008**. (Attachment 23)

With no further business before the committee, Chairman Siegfried adjourned the meeting.

HCR No. 5008

HCR 5008 would make the following changes to the Kansas Constitution:

- Eliminate the Supreme Court Nominating Commission;
- The Governor would have 60 days to recommend to the Kansas Senate a person to fill a vacancy on the Kansas Supreme Court.
- The Chief Justice of the Supreme Court would make the recommendation of a person to fill a vacancy on the Kansas Supreme Court if the Governor fails to make the recommendation within the 60 days.
- The Office of Justice of the Kansas Supreme Court ^{could not} cannot be assumed until the Senate confirms the individual by an affirmative vote of the Senate.
 - The Senate would be required to vote to consent to any such appointment not later than 30 days after the appointment is received by the Senate.
 - If the Senate is not in session, then the President of the Senate would be required to convene the Senate in order to take action on the appointment and no other action would be allowed during this special session of the Senate.
 - If a majority of the Senate members do not vote to consent to the appointment, the Governor, within 30 days after the Senate vote, would be required to appoint another individual and the Senate time frame begins again. In addition, once a person fails to receive a majority vote by the Senate that person could not be reconsidered for the same position again.
- The House Concurrent Resolution must receive a two-thirds majority vote prior to the resolution being added to the ballot for the general election in 2008, unless a special election is called for by a concurrent resolution of the Legislature.

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TOPEKA

LANCE KINZER

REPRESENTATIVE, 14TH DISTRICT

TESTIMONY REGARDING HCR 5008

COMMITTEE ASSIGNMENTS
TAXATION
JUDICIARY
FEDERAL AND STATE AFFAIRS

Thank you for this opportunity to discuss the important issue of judicial selection. HCR 5008 proposes changing the current method of Supreme Court judicial selection in Kansas. Under this proposal the Governor would be allowed to nominate any licensed Kansas attorney over the age of 30 to serve on the Supreme Court of Kansas. The Governor's nomination would be subject to Senate Confirmation. Members of the Court would still stand for retention under the same criteria as the current system. The current judicial nominating commission process under which a commission of attorneys and political appointees select three candidates from which the Governor must choose in filling an appellate court vacancy would be eliminated. These proposals would leave the selection process for District Court Judges unchanged.

My basic rationale for this proposal is simple. When the President fills a U.S. Supreme Court vacancy he is not left to choose from among a list submitted by the American Bar Association or some other group. He or she is free to select the best available person for the job. The Governor should have this same authority; subject to review by the Senate to avoid cronyism or other abuse of power.

The current system is intended to heighten confidence in the judiciary by isolating it from political influence. I would contend that in reality this isolation serves to exacerbate public frustration with and alienation from a process they see as insular and elitist. Placing clear responsibility for judicial selection in the hands of politically accountable elected officials will provide an appropriate mechanism by which the people may at least indirectly participate in the process of judicial selection.

States currently use a wide variety of methods to select appellate court judges. Twenty-four states use some form of nominating commission process. Thirteen states utilize nonpartisan elections, eight States utilize partisan elections. Four states select judges via gubernatorial appointment and two states follow the practice of legislative appointment.

This proposal is not radical in any way but rather follows the familiar pattern of the appointment process to the federal judiciary. For those who desire a more detailed discussion of the numerous advantages of this system I would direct your attention Federalist # 76 by Alexander Hamilton. For now I would simply suggest that we have nothing to fear from allowing the people at least an indirect influence over the judicial selection process. The Governor would remain free to consult with whatever experts she might choose in aiding her in the selection process. The Senate would be well positioned to serve as a check against any rash or ill advised appointment by the Governor. And the people would be empowered to demand that candidates for the office of Governor or Senator give an account of the standards and principles they would apply in serving their appointed roles in this process

Federal and State Affairs
Attachment 2
Date 2-13-07

**Testimony of
Kris W. Kobach
Professor of Constitutional Law
University of Missouri (Kansas City)**

**Committee on the Federal and State Affairs
Kansas House of Representatives**

February 13, 2007

Federal and State Affairs.

Attachment 3

Date 2-13-07

Introduction

Mr. Chairman and Members of the Committee, I come before you today in my capacity as a Professor of Constitutional Law at the University of Missouri (Kansas City). It is an honor and a privilege to testify before you today regarding what is one of the most important votes that you will take as Representatives of the People of Kansas—a vote on the method of selecting Supreme Court Justices. My testimony should not be taken as an official position of the UMKC School of Law, because the UMKC School of Law does not take positions on pending legislation.

I will present two factors that I believe weigh strongly in favor of HCR 5008: (1) the understandings of the Framers of the U.S. Constitution when they proposed the federal model on which HCR 5008 is based—understandings that proved completely correct; and (2) an argument that should be persuasive no matter what your political party or judicial philosophy—that the federal model produces better Justices. Before I do so, let me provide some background information that may be useful to the committee.

The Various Systems

In the 1950s, Kansas got caught up in a wave of judicial reform that was sweeping the nation as state after state abandoned systems of judicial election or selection by the executive or legislative branch and replaced such systems with judicial selection commissions. The theory behind the selection commissions was that they would produce courts free of political bias. That theory has proven false after half a century of experience.

Today, the methods of selecting supreme court justices in the 50 states are as follows. 23 states use some system of selection by nominating commission, most with retention elections thereafter. 21 states elect their supreme court justices. And the remaining six states use some variation of the federal model of appointment and confirmation by the political branches of government. (Those six states are California, Maine, New Hampshire, New Jersey, South Carolina, and Virginia.) HCR 5008 would bring the federal model to Kansas.

The Virtues of the Federal Model

The Founding Fathers of the United States spent a great deal of time and ink on the subject of judicial nominations. They arrived at the system of executive appointment and Senate confirmation after extensive deliberation. This was not an aspect of our federal system that arose by accident or compromise.

The most famous defense of the federal model of judicial appointment was written by Alexander Hamilton in *Federalist Paper No. 76*. Hamilton compared the system of executive appointment to every other framework conceivable. His words ring as true today as they were in 1788.

Of particular relevance to our discussion today is Hamilton's reasoning as to why it is better that a single executive be charged with the responsibility of coming up with a nominee, rather than vesting that responsibility in a body of multiple people—or a commission:

“I proceed to lay it down as a rule, that one man of discernment is better fitted to analyze and estimate the peculiar qualities adapted to particular offices, than a body of men of equal or perhaps even of superior discernment. The sole and undivided responsibility of one man will naturally beget a livelier sense of duty and a more exact regard to reputation. He will, on this account, feel himself under stronger obligations, and more interested to investigate with care the qualities requisite to the stations to be filled, and to prefer with impartiality the persons who may have the fairest pretensions to them.”

Hamilton correctly surmised that by vesting the responsibility of selecting a nominee in one person—the executive—that executive would realize that his or her own political reputation was on the line. This would serve to focus the attention of the executive on merit, and exclude nominees of dubious quality. As every member of this committee knows, elections compel an officeholder to be accountable and to take responsibility for his or her decisions. Hamilton also maintained that the possibility that the Senate would reject the executive's choice would weigh heavily upon on any nomination:

“The possibility of rejection would be a strong motive to care in proposing. The danger to his own reputation, and, in the case of an elective magistrate, to his political existence, from betraying a spirit of favoritism, or an unbecoming pursuit of popularity, to the observation of a body whose opinion would have great weight in forming that of the public, could not fail to operate as a barrier to the one and to the other. He would be both ashamed and afraid to bring forward ... candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being in some way or other personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure.”

In short, Hamilton surmised that Senate confirmation “would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters...” Plainly the 217 years that this system has been in operation have proven Hamilton correct. Although we have our favorite Justices and there may be others whose opinions we dislike, it is difficult to make the case that the Justices of the U.S. Supreme Court have been unqualified or mediocre. On the contrary the federal model has elevated many of the greatest legal minds in history to that august tribunal.

Moreover, it is also correct that the possibility of Senate rejection has pushed U.S. Presidents to nominate Justices with unassailable credentials. Executives whose nominees do not have to run the gauntlet of Senate confirmation may be tempted to nominate judges on the basis of personal loyalty, rather than on the basis of qualifications and experience.

Nominating Commissions: Mediocre Results

In contrast, nominating commissions have proven to be less successful at selecting the best judicial minds that a state has to offer. Although there are certainly some cases in which judges of truly outstanding qualifications rise to the top through the nominating commission process, such cases are the exception and not the rule. This stands in stark contrast to the situation in those states that use the federal model. In those states, a significantly higher percentage of justices are of exceptional caliber.

Placing a “qualified” or “unqualified” label on a judge is a difficult task that inevitably involves some subjectivity. Nevertheless, there are some hallmarks of judicial quality that are relatively objective. The American Bar Association Standing Committee on the Judiciary attempts to identify such objective factors in assessing the qualifications of federal judges in order to produce its well-known ratings. In evaluating the professional competence of appellate judicial nominees, the ABA Standing Committee on the Judiciary looks to academic talent, scholarship, the “ability to write lucidly and persuasively,” and “an unusual degree of overall excellence.”

Some of these qualifications are evident on the surface of a Justice’s resume, such as academic talent and positions held prior to elevation to the Supreme Court. I have presented to this committee the biographies of the Justices of the Kansas Supreme Court, as well as the biographies of the Justices of two states that use the federal model—New Jersey and Maine. I invite you to compare the qualifications of the Justices on the three courts, then rank the three Courts according to the number of highly qualified Justices on each. Most people conclude that New Jersey and Maine both possess a higher percentage of Justices of exceptional caliber than does Kansas.

This is not an accident. The federal model forces a governor to place his or her reputation on a judicial nominee. The consequences of rejection by the state Senate, or by the voters are significant. Consequently, governors naturally seek those nominees with unassailable credentials. Their own political survival may depend on it.

In contrast, the nominating commission system operates behind closed doors; and the members of the commission are unknown to the vast majority of people in the state. Indeed, my guess is that most state legislators—people very well acquainted with Kansas government—would be hard pressed to name even one member of the nominating commission. No elected official has to stand up and take credit or blame for the nominee. The Governor escapes responsibility because he or she is limited to the names put forward by the commission. Moreover, the size of the commission means that no single member feels the “sole and undivided responsibility” of which Hamilton wrote.

It is an open invitation to dwell on a nominee's connections and politics rather than on his or her credentials. Thus we have the two great ironies of the nominating commission system. First, a system that was sold to the public as a way of producing candidates of the highest merit has had the opposite effect. Second a system that was supposed to remove politics from judicial selection makes it possible for political biases to dominate the system, because there is no public scrutiny of nominees and no single individual must take responsibility before the choice.

In conclusion, let me simply state that Hamilton and the Framers were correct. The quality of Justices produced by the federal system is hard to deny. This is a consideration that should be equally compelling to all, no matter where you sit on the political spectrum.

Kansas Supreme Court Justice Biographies

Hon. Kay McFarland

Chief Justice Kay McFarland was born on July 20, 1935, in Topeka. She was graduated magna cum laude from Washburn University with dual majors in English and history-political science in 1957. She is a 1964 graduate of the Washburn University School of Law and was admitted to the Kansas Bar the same year. She was in the private practice of law until January 1971 when she became judge of the probate and juvenile courts of Shawnee County. She defeated the incumbent to attain this position. Justice McFarland delivered the court reforms pledged in her campaign and reduced serious juvenile offenses by more than half in the two years she held that office. Justice McFarland was the first woman to be elected to a judgeship in Shawnee County. In January 1973, she became judge of the newly created Fifth Division of the District Court in Topeka, thereby becoming the first woman to be a district judge in the history of Kansas. Her election to this high office came after her victories over opponents in both the primary and general elections. On September 19, 1977, she was appointed by the governor to be a justice of the Kansas Supreme Court and was the first woman to hold that office. She became Chief Justice of the Supreme Court on September 1, 1995, upon the retirement of Hon. Richard W. Holmes.

Hon. Donald L. Allegrucci

Justice Allegrucci was born September 19, 1936, in Pittsburg, Kansas. He was graduated from Pittsburg State University with an AB degree in 1959 and from the Washburn University School of Law with a JD degree in 1963. Upon his admission to the bar, he entered into private practice from 1963 to 1982 in El Dorado and Pittsburg. His practice included serving as an assistant county attorney in El Dorado from 1963 to 1967 and as executive director of Mid-Kansas CAP Inc. from 1967-68. He also was an instructor of business and criminal law at Pittsburg State University from 1969 to 1972.

He was a member of the Democratic State Committee from 1974-1980 and served as a state senator from 1976-80. He was a Democratic candidate for the Fifth Congressional District in 1978. Gov. John Carlin appointed him to the Public Employee Relations Board in 1981 and as District Court Judge of the 11th District in 1982. He was appointed administrative judge of the 11th District by the Supreme Court in December 1983. While a district judge, Justice Allegrucci served as a member of the executive committee of the Kansas District Judges Association from 1982-1987, chairman of the KDJA Legislative Coordinating Committee from 1982-1986, and as a member of the Judicial Council Court Unification Advisory Committee from 1984-85. He also served as former president and member of the Crawford and Butler County Bar Associations. He is a veteran of the Air Force and served on active and reserve duty from 1959-66. He was appointed by Gov. John Carlin to the Supreme Court in January 1987.

Hon. Robert E. Davis

Justice Davis was born August 28, 1939, in Topeka. He was graduated from Creighton University, Omaha, Neb. with a bachelor's degree in 1961 and received his law degree from Georgetown University Law School, Washington D.C. in 1964. He engaged in private practice in Leavenworth from 1967 to 1984 when he was appointed associate district judge. While in private practice he served as Leavenworth County attorney from 1981 to 1984, and as an attorney for the State Board of Pharmacy from 1972 to 1984. Justice Davis also served as a magistrate judge in Leavenworth County from 1969 to 1976. After serving as an associate district judge for two years, Justice Davis was appointed to the Kansas Court of Appeals in 1986. He served in that capacity until his appointment to the Supreme Court.

Federal and State Affairs

Attachment 4

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A member of the U.S. Army Judge Advocate General's Corps, Justice Davis served as trial counsel in the Republic of Korea and as government appellate counsel in Washington D.C. from 1964- 1967.

Hon. Lawton R. Nuss

Justice Nuss was born in Salina, Kansas, on December 30, 1952. After graduating from Salina High School in 1970, he attended the University of Kansas on a Naval ROTC scholarship and graduated in January 1975 with a Bachelor of Arts in English and History. Following graduation, he served four years in the Marine Corps as a combat engineering officer. After his discharge, he entered law school at the University of Kansas and graduated in May 1982.

He began his law practice with the Salina firm of Clark Mize & Linville, Chartered in August 1982. For the next 20 years, he was involved in a wide range of legal issues and proceedings. He represented corporations and individuals as plaintiffs as well as defendants in civil cases. He also represented the government as well as defendants in criminal cases. During this time his professional activities included serving as a mediator for the U.S. District Court for the District of Kansas, as Chairman of the Board of Editors for the Journal of the Kansas Bar Association, and as President of the Kansas Association of Defense Counsel. He was appointed to the Supreme Court by Governor Bill Graves in August 2002, becoming the first Court member in more than 20 years to move directly from the bar to the bench.

Hon. Marla J. Luckert

Justice Luckert was born July 20, 1955, in Goodland, Ks. She received a bachelor of arts in history in May 1977 and her juris doctorate in 1980 from Washburn University of Topeka. While in law school, she served as technical editor of the Washburn Law Journal and received the faculty and alumni awards for best student note.

Upon her admission to practice in 1980, she joined the Topeka firm of Goodell, Stratton, Edmonds and Palmer. She had a general litigation and health law practice. She was selected by her peers for inclusion in The Best Lawyers in America. She also served as an adjunct professor of law at Washburn University. In 1992 she was appointed by Governor Joan Finney to the Third Judicial District Court. She was appointed by the Kansas Supreme Court to the Kansas Judicial Council where she served as chair of the Criminal Law Advisory Committee. In 2000 she became chief judge of the Third Judicial District. Governor Bill Graves appointed her to the Kansas Supreme Court effective January 13, 2003.

She has served as president of the Kansas Bar Association, the Kansas District Judges Association, the Kansas Women Attorneys Association, the Topeka Bar Association, the Sam A. Crow Inn of Court, and the Women Attorneys Association of Topeka. She is a fellow of the American Bar Foundation and the Kansas Bar Foundation. She has served as a delegate to the American Bar Association's (ABA) Conference of State Trial Judges and of the Young Lawyer's Division Assembly.

Hon. Carol A. Beier

Justice Beier was born in Kansas City, Kansas, on September 27, 1958. She attended Benedictine College in Atchison and the University of Kansas, Lawrence, where she obtained a B.S. in Journalism in 1981. Before law school, she worked as an editor at The Kansas City Times. Justice Beier received her law degree from the University of Kansas in 1985. She graduated from the University of Virginia School of Law, Graduate Program for Judges in 2004, with an LL.M., Masters of Law in the Judicial Process. Before joining the Court on September 5, 2003, she had served as a judge of the Court of Appeals since February 2000.

She spent eleven years before joining the Court of Appeals at Foulston & Siefkin, L.L.P., in Wichita, where her trial and appellate practice focused on commercial disputes. Justice Beier also spent one year teaching and directing two student clinical programs at the University of Kansas School of Law. Prior to joining Foulston & Siefkin, Justice Beier practiced in Washington D.C., first as a staff attorney at the National Women's Law Center through the Women's Rights and Public Policy fellowship program of the Georgetown Law Center, and then at Arent, Fox, Kintner, Plotkin & Kahn, where her practice focused on white collar criminal defense. Immediately after law school graduation, Justice Beier had served as a clerk to then Judge James K. Logan of the U.S. Court of Appeals for the Tenth Circuit.

Hon. Eric S. Rosen

Justice Rosen was born in Topeka, Kansas, on May 25, 1953. He earned both a Bachelors and a Masters Degree with honors from the University of Kansas. Prior to law school Justice Rosen was employed by the Topeka Public Schools as a school social worker for 3 years and for 2 years chaired the social work department. He received his law degree from Washburn University in August of 1984.

He was sworn in as the newest member of the Kansas Supreme Court in November of 2005. Prior to his appointment to the Supreme Court he served as a State District Court Judge for the Third Judicial District, Shawnee County, Kansas from 1993 to 2005. His assignments included criminal and civil cases and he also headed the District Court's Domestic Division from 1993 to 1995. Justice Rosen was also appointed by the Governor in 1994 as one of the initial members of the Koch Crime Commission. Further, he served as lecturer at the Menninger School of Law and Psychiatry. Additionally, in 1996, 1997, 1999 and 2004 Justice Rosen was appointed to hear cases on the Kansas Court of Appeals. In July of 2002, he was appointed by the Chief Justice to the Kansas Sentencing Commission.

In September of 2002, Justice Rosen was appointed to the twenty-four person Presidential commission charged with commemorating the 50th Anniversary of the Brown v. The Board of Education decision of the U. S. Supreme Court. Also, in January of 2002, Justice Rosen received the Martin Luther King Living the Dream Humanitarian Award. In March of 2001, he was awarded an honorary diploma and certificate of honor for his many contributions made to Topeka High School. In April of 2000, he received the Attorney General's Victim's Service Award for Outstanding Judge and further was recognized as Kansan of Distinction For Law in 1999 by the Topeka Capital Journal.

Justice Rosen has previously worked as an adjunct professor for Washburn University School of Law. Prior to his appointments, he was a partner in the law firm of Hein, Ebert and Rosen. In addition, he previously served as Associate General Counsel for the Kansas Securities Commissioner, as an Assistant District Attorney and Assistant Public Defender in Shawnee County, Kansas.

New Jersey Supreme Court Judicial Biographies

Chief Justice Deborah T. Poritz

Chief Justice Poritz was nominated by Governor Christine Todd Whitman on June 20, 1996 to serve on the Supreme Court and was confirmed on June 27, 1996. On July 10, 1996, she was sworn in as the first female Chief Justice of the New Jersey Supreme Court. Prior to assuming this position, she served as New Jersey's first female Attorney General.

Justice Poritz was born on October 26, 1936 in Brooklyn, New York. She graduated from Brooklyn College in 1958, and taught at Ursinus College in Collegeville, Pennsylvania. She was a Woodrow Wilson Fellow in English and American Literature at Columbia University. After graduating from the University of Pennsylvania Law School in 1977, Chief Justice Poritz began her career as a Deputy Attorney General in the New Jersey Department of Law and Public Safety. In 1981, she was named Assistant Chief of the Environmental Protection Section and subsequently served as Deputy Attorney General in Charge of Appeals, Chief of the Banking, Insurance and Public Securities Section, and Director of the Division of Law. From February 1989 to January 1990, she was Chief Counsel to Governor Thomas Kean. From 1990 to 1994, Chief Justice Poritz was a partner in the Princeton law firm of Jamieson, Moore, Peskin & Spicer.

Justice Virginia Long

Justice Long was nominated to serve on the Supreme Court by Governor Christine Todd Whitman on June 17, 1999. Her appointment was confirmed by the Senate on June 21, 1999 and she was sworn in as an Associate Justice on September 1, 1999, by then-Justice Marie L. Garibaldi. At the time of her nomination, she was serving as a presiding judge of the Appellate Division of the Superior Court.

Justice Long was born on March 1, 1942 and attended parochial schools in Elizabeth. She graduated from Dunbarton College of the Holy Cross in 1963, where she was a dean's list student, and Rutgers Law School in 1966, where she was captain of the Appellate Moot Court team and winner of the competition prizes for Best Oralist and Best Brief.

A member of the bar for more than 30 years, she has served as a Deputy Attorney General; a litigation associate at Pitney, Hardin, Kipp and Szuch; Director of the New Jersey Division of Consumer Affairs and Commissioner of the former New Jersey Department of Banking. In 1978, Governor Brendan T. Byrne appointed her to the Superior Court, where she presided over civil, criminal and family law cases. From 1983 to 1984, she was the General Equity judge for the Mercer, Somerset and Hunterdon vicinages. In 1984, then-Chief Justice Robert N. Wilentz elevated her to the Appellate Division. During her tenure there, she penned more than 2,000 opinions. She became a presiding judge in 1995. She has also chaired and served as a member of numerous Supreme Court committees including Extra-judicial Activities and Judicial Performance.

Justice Jaynee LaVecchia

Justice LaVecchia was nominated by Governor Christine Todd Whitman to serve on the Supreme Court on January 6, 2000. She was confirmed by the Senate on January 10, 2000 and sworn in for a term to begin February 1, 2000. At the time of her nomination, Justice LaVecchia had been serving as the New Jersey Commissioner of Banking and Insurance since August 24, 1998. Prior to her appointment as commissioner, Justice LaVecchia had been the Director of the Division of Law within the Department of Law and Public Safety since August 1, 1984. As director, she was responsible for the legal work of all lawyers assigned to the civil side of the New Jersey Attorney General's Office.

In addition, Justice LaVecchia served as Director and Chief Administrative Law Judge for the Office of Administrative Law from 1989 through July 1994. She also served in the Office of Counsel to Governor Thomas H. Kean, first as an Assistant Counsel and then as Deputy Chief Counsel. She also has been in private practice and worked as a deputy attorney general in the Division of Law. Justice LaVecchia was born in Paterson on October 9, 1954. She is a 1976 graduate of Douglass College and graduated in 1979 from Rutgers School of Law in Newark. She has been a member of the New Jersey Bar since 1980. In 1996, she was elected a Fellow of the American Bar Association. She has chaired or served on various Supreme Court Committees, subcommittees, and other Court-assigned projects. She has been an active member of the Douglass College Alumnae Association.

Justice James R. Zazzali

Justice Zazzali was nominated by Governor Christine Todd Whitman to serve on the Supreme Court on May 18, 2000. He was confirmed on May 25, 2000 and sworn in on June 14, 2000 by Chief Justice Deborah T. Poritz. Justice Zazzali was born in Newark on June 17, 1937. He attended Seton Hall Preparatory School and was graduated from Georgetown College in 1958 and Georgetown Law Center in 1962. He served his clerkship with the Honorable Lawrence A. Whipple. He is admitted to the New Jersey, New York and District of Columbia bars.

Justice Zazzali served as Chief of the Appeals Division of the Office of the Essex County Prosecutor; General Counsel to the New Jersey Sports and Exposition Authority; Receiver for Bloomfield College; Chairman of the New Jersey State Commission of Investigation; Vice-Chairman of the Disciplinary Review Board, and as New Jersey Attorney General.

He was appointed by the United States District Court as Special Master for the county jails in Essex, Monmouth and Bergen Counties. He also served, at the request of the United States State Department, on delegations to the United Nations conferences. He was engaged in the practice of law in Newark and Trenton in the firm founded by his late father and his brother – Zazzali, Fagella & Nowak.

He is a former Adjunct Professor at Seton Hall Law School, former Associate Editor of the New Jersey Law Journal, and a contributor to various magazines, newspapers and law journals.

Justice Barry T. Albin

Justice Albin was nominated by Governor James E. McGreevey on July 10, 2002 to serve on the Supreme Court. He was confirmed by the Senate on September 12, 2002 and was sworn in as an Associate Justice by Chief Justice Deborah T. Poritz at a private ceremony on September 18, 2002. On October 3, 2002, he reaffirmed the oath of office in a public ceremony at the Trenton War Memorial. At the time of his nomination, Justice Albin was a partner in the Woodbridge law firm of Wilentz, Goldman and Spitzer.

Justice Albin was born on July 7, 1952, in Brooklyn, New York. He graduated from Rutgers College in 1973. After graduating from Cornell Law School in 1976, he began his career as a Deputy Attorney General in the Appellate Section of the New Jersey Division of Criminal Justice. Justice Albin then served as an Assistant Prosecutor in Passaic and Middlesex counties from 1978 to 1982. He began his association with the Wilentz firm in 1982, and was named a partner in 1986.

Justice Albin is a past President of the New Jersey Association of Criminal Defense Lawyers (1999-2000) and served as a member of the New Jersey Supreme Court Criminal Practice Committee from 1987 to 1992. He was selected by his peers to be included in the publication "Best Lawyers in America" (2000-2001).

Justice John E. Wallace, Jr.

Justice Wallace was nominated by Governor James E. McGreevey on April 12, 2003 to serve on the Supreme Court. He was confirmed by the Senate on May 19, 2003 and was sworn in as an Associate Justice by Chief Justice Deborah T. Poritz at a private ceremony on May 20, 2003. On June 4, 2003, he reaffirmed the oath of office in a public ceremony at Rowan University in Glassboro, New Jersey.

At the time of his nomination, Justice Wallace was a New Jersey Superior Court Judge, sitting in the Appellate Division. Appointed to the Superior Court in 1984, Justice Wallace was promoted to the Appellate Division in 1992. As a trial judge, Justice Wallace sat in Criminal and Civil Divisions, as well as the Family Part, in the Gloucester County vicinage. Prior to being appointed to the New Jersey Superior Court, Justice Wallace was a partner in the law firm of Atkinson, Myers, Archie & Wallace. During that time he also served as the Municipal Judge for Washington Township in Gloucester County. He was also an Associate at the Philadelphia law firm of Montgomery, McCracken, Walker & Rhodes, and an attorney for the Trustees of the Penn Central Transportation Co.

Justice Wallace was born in 1942 in Pitman, New Jersey. He received his B.A. from the University of Delaware in 1964 and his J.D. from Harvard Law School in 1967. Justice Wallace served in the United States Army from 1968 to 1970, attaining the rank of Captain. Justice Wallace is a member of the Gloucester and Camden County Bar Associations, the American Bar Association, the National Bar Association, the New Jersey State Bar Association, and the Garden State Bar Association. He has also served on the New Jersey Supreme Court Task Force for Minority Concerns, the New Jersey Ethics Commission, the Judiciary Advisory Committee on Americans with Disabilities Act, the Supreme Court Special Committee on Matrimonial Litigation, and the Appellate Division Rules Committee, and was the Chairman of the Supreme Court Ad Hoc Committee on Admissions.

Justice Wallace has received numerous honors from respected civic and legal organizations, including the Association of Black Women Lawyers of New Jersey (2001); the Orient of New Jersey Dedicated Service Award from the Valley of Camden (2000); the Washington Township Board of Education Appreciation Award (2000); and the Van J. Clinton award from the Garden State Bar Association (2002).

Justice Roberto A. Rivera-Soto

Justice Rivera-Soto was nominated by Governor James E. McGreevey on April 20, 2004 to serve on the Supreme Court. He was confirmed by the Senate on June 10, 2004, and was sworn in as an Associate Justice by Justice Virginia Long on September 1, 2004 in a private ceremony. On September 14, 2004, he reaffirmed the oath of office in a public ceremony at the Trenton War Memorial.

At the time of his nomination, Justice Rivera-Soto was a partner at Fox Rothschild, with offices in Princeton, New Jersey and Philadelphia, Pennsylvania. He had previously served as senior vice president, general counsel and corporate secretary of Caesars World, and as vice president, general counsel and corporate secretary of Greate Bay Hotel and Casino in Atlantic City. From 1980 to 1983, he was a litigation associate at Fox Rothschild, O'Brien & Frankel. From 1978 to 1980, he served as an Assistant United States Attorney in the Criminal Division of the United States Attorney's Office for the Eastern District of Pennsylvania. During 1977, Justice Rivera-Soto interned in the Office of the District Attorney of Delaware County, Pennsylvania.

Justice Rivera-Soto graduated from Colegio Nuestra Señora Del Pilar, Rio Piedras, Puerto Rico in 1970. He is a 1974 honors graduate of Haverford College, where he was the Jose Padin Scholar of the Class of 1974. He received his J.D. in 1977 from Cornell University School of Law, where he was a Charles K. Burdick Scholar, and a member of the Moot Court Board. Justice Rivera-Soto is a Certified Mediator in the U.S. District Court for the District of New Jersey; he also is a member and the current chair of the

District VII Ethics Committee of the Supreme Court of New Jersey; a former member of the Board of Directors of the Please Touch Museum; a former member of the Board of Directors of the New Jersey Development Authority for Small Businesses, Minorities and Women's Enterprises; a former alternate member of the Southern Nevada Disciplinary Board of the State Bar of Nevada; and a former Instructor in Trial Advocacy at Rutgers (Camden) School of Law.

Justice Rivera-Soto's work as an Assistant United States Attorney was recognized by the Attorney General of the United States when, in 1980, he was awarded the United States Department of Justice's "Director's Award for Superior Performance as an Assistant United States Attorney." Additionally, he received commendations from the Federal Bureau of Investigation of the United States Department of Justice, the Bureau of Alcohol, Tobacco & Firearms of the United States Department of the Treasury and the United States Custom Service.

Maine Supreme Court Justice Biographies

Hon. Leigh Ingalls Saufley

Chief Justice, Maine Supreme Judicial Court

Chief Justice Saufley graduated from the University of Maine at Orono, Phi Beta Kappa, in 1976. She is a 1980 graduate of the University of Maine School of Law. She was with Maine's Attorney General's Office for approximately ten years, becoming one of Maine's first female deputy attorneys general. Chief Justice Saufley was appointed to Maine District Court in 1990 and appointed to Maine Superior Court in 1993. She was appointed an Associate Justice of the Supreme Judicial Court in October of 1997. On December 6, 2001, she was sworn in as Maine's first female Chief Justice of the Supreme Judicial Court by Governor King.

Hon. Robert W. Clifford

Robert W. Clifford was born and raised in Lewiston, Maine. He graduated from Bowdoin College, and earned a law degree from Boston College Law School. He served in the United States Army in Europe from 1962 until 1964, attaining the rank of Captain. Justice Clifford practiced law in Lewiston-Auburn from 1964 until 1979. During this period he also served three terms on the Lewiston Board of Aldermen, one term as its President, and was elected to and served two terms as Lewiston's Mayor. He was elected to the Maine Senate and served in the 106th and 107th Legislatures. He was a representative from the Senate on the Commission to Revise Maine's Probate Laws, which drafted Maine's current Probate Code. In 1978 and 1979 he served as Chairman of the Lewiston Charter Commission, which drafted Lewiston's current City Charter.

He was appointed a Justice of the Superior Court by Governor Joseph E. Brennan in 1979. He became the first Chief Justice of the Maine Superior Court, being appointed to that position by Chief Justice Vincent L. McKusick in 1984. He served in that capacity until August 1, 1986, when he became an Associate Justice of the Supreme Judicial Court, being named to that position by Governor Brennan. Justice Clifford was reappointed to the Court in 1993, and in 2000. He was awarded an LLM in the Judicial Process from the University of Virginia School of Law in 1998. Justice Clifford serves as the Court's liaison to the Advisory Committee on the Rules of Criminal Procedure, and to the Maine Assistance Program. He also serves as an advisor to the Criminal Law Advisory Commission.

Hon. Howard H. Dana

Howard H. Dana, Jr. resides in Portland with his wife, Susan. He graduated from Bowdoin College in 1962 and received a law degree and Master's in public administration from Cornell in 1966 and a masters in judicial process from the University of Virginia in 1998. Following a clerkship with Judge Edward T. Gignoux, he practiced law with Verrill & Dana primarily in the field of corporate litigation until joining the Court in 1993. While a lawyer, he was appointed by Presidents Reagan and Bush to serve on the Board of Directors of the Legal Services Corporation (1982, 1990-93). He presently serves as the vice-chair of the Justice Action Group (JAG), chair of the Court Alternative Dispute Resolution Committee (CADRES) and co-chair of the JAG's Self-Represented Task Force. Justice Dana is the Court's liaison to the Lawyers' Fund for Client Protection. He represents the lawyers of Maine, New Hampshire, Vermont and Rhode Island on the American Bar Association's Board of Governors (2002-2005).

Hon. Donald G. Alexander

Donald G. Alexander was appointed to the Maine Supreme Judicial Court in 1998 by Governor Angus S. King. He previously served on the Maine Superior Court and the Maine District Court and as a Deputy Attorney General for the State of Maine. He served in Washington, D.C. as an assistant to Maine Senator Edmund S. Muskie and as Legislative Counsel for the National League of Cities. Justice Alexander is a

graduate of Bowdoin College and the University of Chicago Law School. He is the author of *The Maine Jury Instruction Manual* (4th ed. 2005); and *Maine Appellate Practice* (2nd ed. 2004), and the editor of *The Maine Rules of Civil Procedure with Advisory Committee Notes and Commentary* (2005 ed.). He is the Court's liaison to the Advisory Committee on the Maine Rules of Probate Procedure, the State Court Library Committee, and the Maine State Bar Association Continuing Legal Education Committee.

Hon. Susan W. Calkins

Susan Calkins resides in Portland with her husband. She is a graduate of the University of Maine School of Law and attended the University of Colorado School of Law. She received a Master's Degree from the University of Virginia School of Law. Justice Calkins received her undergraduate degree from the University of Colorado. She practiced law with Pine Tree Legal Assistance and is a former Executive Director of that organization. She has been an Associate Justice of the Maine Supreme Judicial Court since 1998. She previously served as a Superior Court Justice, Chief Judge of the District Court, and District Court Judge in District 13. Justice Calkins is the Court's liaison to the Board of Bar Examiners, the Judicial Ethics Committee, and the Advisory Committee on the Rules of Evidence. She is a member of the American Bar Association's Commission on IOLTA.

Hon. Jon D. Levy

Jon D. Levy resides with his family in York. He is a graduate of Syracuse University and the West Virginia University College of Law. Following law school Justice Levy served as a law clerk for U.S. District Judge John T. Copenhaver, Jr. in Charleston, W. Va. He was next appointed to the position of court monitor by U.S. District Judge William W. Justice in the Texas prison conditions class action *Ruiz v. Estelle*. He then practiced law in York, Maine for 13 years. He was confirmed as an Associate Justice of the Maine Supreme Judicial Court in 2002. Justice Levy previously served as the Chief Judge of the District Court, Deputy Chief Judge of the District Court and as a District Court Judge sitting in District Ten. As a District Court Judge, Justice Levy was one of the presiding judges in the Juvenile Drug Treatment Court. From 1996 to 2000 Justice Levy served as the chairperson of the Maine Family Law Advisory Commission. He is the author of the book *Maine Family Law*, which was first published in 1988. Justice Levy is the Court's liaison to the Advisory Committee on Professional Responsibility, Committee on Judicial Responsibility and Disability, and the CASA Advisory Board. He also serves as the chairperson of the Judicial Resource Team which is examining scheduling and resources in Maine's trial courts.

Hon. Warren M. Silver

Warren M. Silver was appointed to the Court by Governor John E. Baldacci in 2005. Justice Silver is a graduate of Presque Isle High School and Tufts University. He received his law degree from the Washington College of Law at American University in 1973 and has been in private practice in Bangor since 1977. Justice Silver had an active trial practice before assuming the bench. Justice Silver served on the Board of Governors of the Maine Trial Lawyers Association and also served as its President, and as Chairman of the Maine Supreme Judicial Court's Civil Rules Committee, and the Governor's Judicial Selection Committee. His wife, Dr. Evelyn Silver, is the senior adviser to University of Maine President Robert Kennedy. Justice Silver has also been active in many bar and civic organizations. The Silvers reside in Bangor.



NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
NAACP, TOPEKA BRANCH
P.O. BOX 1451
TOPEKA, KANSAS 66601

BRANCH SLOGAN: "Come Together As One and Get The Job Done"

February 6, 2007

Testimony to
Kansas House Federal and State Affairs Committee
by
William E. Richards, Sr., Lobbyist,
Topeka Branch, NAACP

Mr. Chairman, Members of the Committee:

It is a pleasure to be here today. The Topeka Branch of the National Association for the Advancement Colored People (NAACP) urges your affirmative support and vote for passage of House Concurrent Resolution No. 5008, an Act that would permit the Governor to appoint Supreme Court Justices; the Senate would consent; and, the Supreme Court Nominating Commission would be abolished.

The Preamble of our Kansas State Constitution states that, "We the People of Kansas, grateful to Almighty God for our civil and religious priveleges, in order to insure the full enjoyment of our rights as American Citizens, do ordain and establish this Constitution of the state of Kansas,..."

We the People of Kansas includes all of the ethnic diversity that our Citizens represent! Additionally, these are new times and new conditions! Respect for Diversity is a Kansas commitment! Even though HCR No. 5008 may not change ~~concerns~~ the concerns about the current process by which Kansas Supreme Court Justices are selected, it does appear to be more Constitutionally defensible!

Upon review of Article 3, paragraph 5, of the Kansas Constitution and the Record of Nominations for Kansas Supreme Court Justices, we find historically no Kansas Citizen of African-American extraction, regardless of how highly qualified legally and otherwise, is being submitted as a nominee for possible appointment as a Kansas Supreme Court Justice, by the Kansas Supreme Court Nominating Commission! This Commission's actions, even ^{then they} they may have the appearance of bias or outright discrimination are irreversible! This needs to be changed! We need to put an end to the current scenario which diminishs the function of making these appointments by the Governor's office to a "rubber stamp" operation, and, eliminates the Kansas Senate, altogether, from this highly important process! The will of the Kansas Electorate is represented by an elected Governor and Senate members, not by an extra-legal Commission that is practically

Federal and State Affairs

Attachment 5

Date 2-13-07

accountable to no one!

House Concurrent Resolution No. 5008 appears to provide a better method for the nomination and appointment of our Supreme Court Justices; and, furnishes needed oversight and accountability for the Kansas Electorate! Additionally, the process outlined in HCR No. 5008 is a duplicate of similar procedures used by the Federal government.

Vote favorably for HCR No. 5008.

William E. Richards, Sr.

William E. Richards, Sr.

Biographical Sketch

Judge Cordell D. Meeks, Jr.

Current Position

In 1981, the Governor of Kansas appointed Cordell D. Meeks, Jr., District Court Judge for the 29th Judicial District of Kansas. He was formerly senior partner in the law firm of Meeks, Sutherland & McIntosh, and served part-time as presiding judge of the Kansas City, Kansas Municipal Court. He was elected president of the Kansas Municipal Judges Association.

Education

Born and raised in Kansas City, Kansas, Judge Meeks attended Douglass elementary, and Northeast Junior High schools. In 1960, he graduated from Sumner High School, where he was valedictorian, president of his junior and senior classes, and president of the Student council for two years.

He received a Bachelor of Arts degree in Political Science in 1964, and a Juris Doctor degree in 1967, from the University of Kansas and its law school. He received an honorary Doctor of Laws degree from Baker University in 2005.

At Kansas University, he was inducted into Sachem Circle of Omicron Delta Kappa, senior men's honor society. He was also elected a representative to the All Student Council, and president of Alpha Phi Alpha social fraternity. In law school, he was chairman of the Honors Committee and elected president of his senior class. He was one of the first 50 students selected to do postgraduate work in poverty law at the University of Pennsylvania law school in 1967, as part of the Reginald Heber Smith community Lawyer Fellowship program. In 1978, he was selected to attend a course on "The Practicalities of Judging: Jurisprudence and the Humanities", sponsored by the American Academy of Judicial Education at the Harvard Law School. In 1981, he graduated from the General Jurisdiction program of the National Judicial College.

Service to Universities

He is a member of the KU Medical Center Advancement Board. He is a former member of the K.U. Lied Performance Fund board of governors. He is a past chairman and past member of the national board of directors of the K.U. Alumni Association. He is a former member of the Board of Governors of the Adams Alumni Center at K.U. He is a former member of the Campaign Organizing Committee of the K.U. Endowment Association for Campaign Kansas. He is past president of the Board of Governors of the K.U. Law School Society where he continues to serve as an honorary lifetime member. He is a former member of the K.U. Chancellor's associates and a current member of the Chancellor's Club. He is a former member of Jayhawks for Higher Education (formerly the K.

Development Committee), and a past member of the Advisory Board of the Greater University Fund of the K.U. Alumni Association. He is a life member of the K.U. Alumni Association. He is a former member of the Advisory Board for Minority Development, and presently a member of the Advisory Board of Directors for the K.U. School of Nursing. He serves on the advisory board for the Juniper Gardens Children's Project.

He is presently a member of the Board of Trustees of Rockhurst University and a former member of its Board of Regents. He is a member of the Board of Trustees of William Jewell College. He is a member of the Board of Counselors of Avila College. He is a former co-chair of the Gift Recognition Committee for the capital campaign for Park University. He taught "History of Civilization", and "How to Buy and Sell Real Estate" at the Kansas City Kansas Community College. He is a faculty member of the National Institute for Trial Advocacy, which trains newly licensed lawyers on the techniques of trying jury trials.

Local Community Service

He is chair of the Board of Directors of Children's Mercy Hospital. He is co-chair of the Advisory Board of Kansas City Friends of Alvin Ailey and vice-chair of the Ailey board. He is Vice Chair of the Board of Directors of YouthFriends, vice-chair of the Board of Directors of Swope Health Services, and vice-chair of the Board of Directors of the Midwest Center for Holocaust Education. He is secretary of the board of directors of the Harry S. Truman Presidential Museum and Library and secretary of Friends of the Aquarium. He is treasurer of the board of directors of the Native Sons of Greater Kansas City.

He is a member of the Board of Directors of Midwest Research Center, Heart of America United Way, the Harry S. Truman Good Neighbor Award Foundation, Kansas City Friends of Alvin Ailey, Wyandotte Health Foundation, Swope Community Enterprises, which operates the Swope Health Center in Missouri and the Bethany and Brown Avenue Community Health Centers in Kansas City, Kansas. He is a member of the Board of Trustees of the Eye Foundation of Greater Kansas City. He is a member of the board of governors and a trustee of the Liberty Memorial Association. He is a member of the KCK chapter of the NAACP. He is a member of the local chapter of the National Association of Corporate Directors.

Past Local Chairmanships

He is immediate past chairman of the Board of Directors of the Wyandotte Health Foundation, and past Vice Chair of the Board of Directors of the Greater Kansas City Community Foundation and Affiliated Trusts, and a former chairman of the Wyandotte Youth Care Foundation, and the Economic Opportunity Foundation. He is a past co-chair of the Steering Committee of the Partnership for Children, which releases an annual report card on the status of children in the metropolitan Kansas City area. He is a former vice president of operations for

the Heart of America Council of the Boy Scouts of America, comprised of 19 counties in Kansas and Missouri. He is past chairman of the Kaw District of the Boy Scouts (comprised of Wyandotte, Leavenworth and Douglass counties), past chairman of the Urban Scouting committee, and served as Honorary Chairman of the Crime Prevention Program of the Heart of America Council. He is a former co-chair and continues to serve on the advisory board of the Greater Kansas City Region of the National Conference for Community and Justice, formerly the National Conference of Christians and Jews (NCCJ). He is past chairman of the Board of Directors of El Centro, and past vice-chairman of the Board of Directors of the former Kansas City Camerata, a classical orchestra which played at Unity Temple on the Country Club Plaza.

He has served as president or chairman of the board of the following organizations; the United Way of Wyandotte County, the Wyandotte County chapter of the American Red Cross, the Wyandotte County Legal Aid Society, the Mental Health Association in Wyandotte County, Junior Achievement of Wyandotte County, the Substance Abuse Center of Eastern Kansas (SACEK), and the Visiting Nurse Association of Greater Kansas City.

He has served on the boards of the Northeast Optimist Club, Family and Children's Service (now Heart of America Family Services), the Crippled Children's Nursery School (now TLC), Sociedad Hidalgo, the Board of Trustees of the Kansas City, Kansas Y.W.C.A., the UMKC Family Studies Center, the Advisory Board of Twenty Good Men, the Northeast Advisory Board of the Wyandotte Mental Health Center, the Wyandotte County Unit Board of Directors of the American Cancer Society Kansas Division, and the Board of Directors of the Greater Kansas City chapter of the American Red Cross. He is a former member of the Board of Directors of Kaw Valley Arts and Humanities. He is a former Council member for Parents University. He was formerly on the Board of Directors of the Southern Christian Leadership Conference (SCLC) of Greater Kansas City. He was a member of the KC 150 Ten Great Ideas Committee.

Law Memberships

He is Editorial Delegate and past president of the Military Law section of the Kansas Bar Association. He is a member of the American Bar Association, the Kansas Bar Association, the Wyandotte County Bar Association where he has served as secretary, and the Kansas City Kansas Bar Association. He is a past member of the Board of Editors of the *Kansas Bar Journal*, the official publication of the Kansas Bar Association. He is a member of the committee on Ethics and Professional Responsibility; the membership, By-laws, Credentials, and Communications committee; the Alternative Dispute Resolution Committee, and Bio-Ethics committee of the National Conference of State Trial Judges, which is the Judicial Administration Division of the American Bar Association. He is a past member of the American Judges Association, where he has served on the Education committee. He has served as a Selection Day Judge for the

Coro/Kansas city Public Affairs Intern program, a member of the judging panel for selection of the 1996 Olympic Torchbearers representing Kansas City, and served as chairman of the Award Jury for the Best of Wyandotte Awards Program. He is a member of the Minority Recruiting Advisory committee of the National Center for State Courts. He is past president of the Wyandotte County Law Library, and past chairman of Law Day for the Wyandotte County Bar Association. He is a former co-chair of the Bench-Bar Conference Committee of the Kansas City Missouri Bar Association.

State and National Boards

He is a past member of the Kansas Commission on Veterans Affairs. He is a past chairman of the national Board of Directors of the American Lung Association and its Strategic Planning committee. He is a past president of the state-wide American Lung Association of Kansas. He is a former member of the board of directors of the American Thoracic Society. He is a former associate member of the Council of Public Representatives for the National Institutes of Health. He is a former member of the national Board of Trustees of the NCCJ, and the national Board of Directors of the Mental Health Association. He is a former local council representative to the National Council of the Boy Scouts of America. He is a former member of the Kansas Commission on the Bicentennial of the U.S. Constitution, the Kansas Advisory Committee on Prison Overcrowding, the Advisory Committee to the State Board of Indigent's Defense Services, the Kansas Advisory Committee for the National Legal Services Corporation and the Governor and Attorney General's committees on Crime Prevention.

Religion and Fraternities

He is a member of the Board of Trustees of First A.M.E. Church. He is a member of the Fast Forward Committee, a think tank for solutions to problems in the metropolitan Kansas City area. He is past Sire Archon (President) of Theta Boule chapter of Sigma Pi Phi fraternity. In 1998, he was inducted into the Man-of-the-Month Fraternity, which recognizes leaders in community affairs in the Greater Kansas City area.

Lecture Circuit

He has been the speaker or lectured for the following organizations: The Kansas/Missouri Chapter of the National Forum of Black Public Administrators, the 17th and 30th Annual Kansas Governor's Prayer Breakfast's, the 3rd and 4th Annual Kansas City, Kansas, Mayor's Prayer Breakfast's, the Kansas City District of the U.S. Army Corps of Engineers, Region VII Diversity Lecture Series of the U.S. Environmental Protection Agency, Greater Kansas City Panhellenic Council, Vernon Multipurpose Center, Central Region of the Boy Scouts of America in Chicago, Northeast Optimist Club, K.C.K. Kiwanis Club, K.C.K. Rotary Club, St. Peter C.M.E. Church, First Baptist Church, First A.M.E. Church, Miracle Temple Church of God in Christ, Bethesda Baptist Church, Bryant Elementary School,

Douglass Elementary School, Hawthorne Elementary School, Lindbergh Elementary School, Grant Elementary School, Sumner High School, Washington High School, Wyandotte High School, Schlagle High School, Kansas Black Legislative Caucus, Salina, Kansas Black History Month Celebration, the K.U. Black Faculty and Students Award Dinner, the 40th Anniversary Celebration of the Juniper Garden's Children's Project, the Turtle Hill Neighborhood Association, and Baker University Commencement.

Military Service

In 1968, he was federally activated with the 69th Brigade of the Kansas National Guard and served on active duty for nineteen months where he received the Army Commendation Medal as a Legal Clerk for Support Command. He has served as Judge Advocate General and has retired as Senior Military Judge for the Kansas National Guard where he attained the rank of full Colonel. At retirement, he was awarded the Legion of Merit Medal for outstanding service. In 1981, he graduated from the Command and General Staff College at Ft. Leavenworth. In 1997, he graduated from the U.S. Army War College where he was vice-president of his class. He has also served on the Board of Directors of STARBASE. He is a founding member of the board of trustees of the Command and General Staff College Foundation.

Honors and Awards

In 1978, he received the Gold Award from the United Way. In 1986, he received the Distinguished Service Award from the Kansas City, Kansas chapter of the NAACP. In 1986, he received the Loyalty Day Award from the VFW. In 1986, he was selected Boss of the Year by the Wyandotte County Legal Secretaries Association. In 1982 and 1987, he was honored by the Friends of Yates Black Men and Women of Distinction program, and in 1993, named Man of the Year. In 1989, he received the Distinguished Service Award from Blacks in Government. In 1990, he received the President's Award, the highest award presented by the Greater Kansas City Chapter of the SCLC. In 1990, he also received the Friend of Mental Health Award from the Kansas City Association for Mental Health. In 1991, he received the Distinguished Service Award from the Sumner High School Alumni Association. For six consecutive years, he was honored as one to the 100 Most Influential African-Americans in Greater Kansas City by the *Kansas City Globe* newspaper. In 1994, he was a recipient of the Kansas City Spirit Award. In 1994, the Mo-Kan Chapter of the National Association of Social Workers also named him the Kansas Citizen of the Year. In 1995, he received the Distinguished Service Citation from the University of Kansas, the highest award bestowed by the university, and the Distinguished Community Service Award from Park University. In 1995, he also received the Meritorious Service Medal for distinguished legal service in the Kansas Army National Guard. In 1996, he received the Honorary Alumnus Award from the University of Kansas School of Nursing. In 1996, he also received the Silver Beaver Award, the highest award given by the Heart of America Council of the

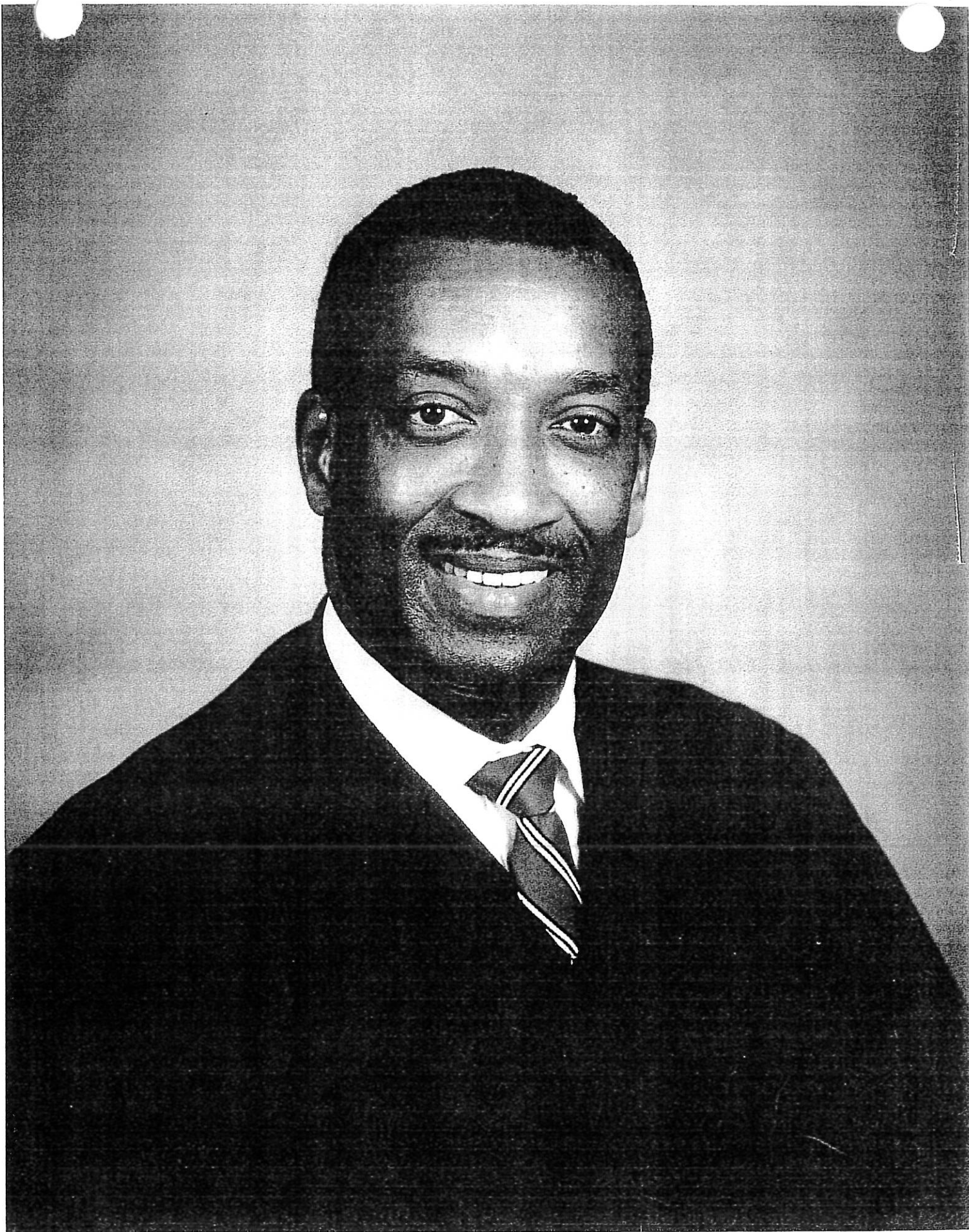
Boy Scouts of America. In 1996, he received the Humanitarian Award from the Indian Missionary Society. In 1997, he received the Volunteer of the Year Award from the United Way of Wyandotte County for his work with the Heart of American Council of the Boy Scouts of America. In 1998, he received the Most Influential African American in the State of Kansas Award from the *Kansas City Globe* newspaper. In 1998, he also received the Theo Cribbs Humanitarian Award from the Kansas Congressional Black Caucus. In 1998, *Ingram's*, Kansas City's leading business magazine, named him a "Local Hero". In 1999, he was named to *Ingram's* Power Elite Class of 1999, or KC's 100 most influential. In 2001, he was chosen for induction into the Mid-America Education Hall of Fame sponsored by the Kansas City Kansas Community College. In 2001, he was also presented the Distinguished Service Award from the University of Kansas Law School. And, in 2001, he was honored with the Distinguished Citizen Award from the National Conference of Community and Justice. In 2002, he was made an honorary life member of the board of directors of the American Lung Association of Kansas. In 2002, he received the Fred Ellsworth Medallion from the KU Alumni Association for providing unique and significant service to the University of Kansas. In 2002, he also received an award for his vision, judicial leadership, commitment and advocacy to improve the lives of victims of domestic violence from the Metropolitan Family Violence Coalition. In 2003, he received the Distinguished Civic Service Award from Baker University. In 2004, he received the Vision to Action Award from the Midwest Bioethics Center.

He has been listed in Who's Who in American Law, Who's Who in the Midwest, Who's Who in the United States, Who's Who of Emerging Leaders in America, Who's Who in the World, and Who's Who Among Black Americans.

Hobbies and Family

His hobbies are crossword puzzles, jazz piano, and table tennis. He is married to the former Mary Ann Sutherland. They are the parents of one son, Cordell, III, and one grandson, Cordell, IV.

Last Updated 5-24-06



TESTIMONY OF WILLIAM MCKEAN IN SUPPORT OF HCR 5008

My name is Bill McKean and I am a constituent of Representative Mario Goico. Since the 2004 primaries, I have actively lobbied the reporters and editors at the Wichita Eagle, elected officials, politicians, judges, prominent attorneys and law professors through out Kansas to reduce the effects of nepotism and cronyism in the Kansas judiciary by increasing accountability and transparency. The problems originate at the Supreme Court and infect the Office of Judicial Administration, the Kansas Judicial Council and the Kansas Bar Association and the local bar associations.

I have driven up this morning from Wichita to provide you with anecdotal evidence about the lack of accountability and inherent conflicts of interest due to the political nature of the Office of Judicial Administration, the Kansas Judicial Council and the Board of Healing Arts. More importantly I also want to encourage this committee early in the legislative session to enact many wide-sweeping reforms on a bi-partisan basis. I truly believe that the current political climate is such that the governor, incoming attorney general, the judiciary committee chairmen and the Senate & House leadership can create political legacies for themselves by enacting reforms so that Kansas legal system will be the model for the rest of the United States. I not only strongly encourage this committee to pass HCR 5008, I also request that this committee requests the Post-Legislative Audit Committee to conduct studies to confirm the cronyism in all of the disciplinary investigative functions by all of the professional boards and then to enact legislation to consolidate all of these functions under a special unit of the Post-Legislative Audit Department.

HCR 5008 must be enacted for the following reasons:

1. The ethics experts at the Kansas Bar Association, Nick Badgerow and the Washburn University and University of Kansas Schools of Law are apologists for unethical behavior.
2. The corruption in the legal profession is spilling over to the medical & mental health professions. Doctors being investigated and prosecuted by the Board of Healing Arts hire administrative attorneys or politically powerful attorneys to represent them before the Board of Healing Arts (Richard Egeloff hired Randy Forbes who is the general counsel for Kansas Dental Board, Board of Pharmacy & Board of Examiners in Optometry/ Forbes is the KBA Section President for Administrative Law)
3. The Wichita Bar Association & the Judges in the 18th Judicial District Court in Wichita are ignoring unethical behavior by family law attorneys and judges and supporting a corrupt case management system.

I hope that you will take the time to review the written material that I have submitted..

Bill McKean
Wichita, Kansas

Federal and State Affairs
Attachment 7
Date 2-13-07

DOES NICK BADGEROW HAVE THE PROFESSIONAL INTEGRITY TO OBJECTIVELY EVALUATE THE PROFESSIONAL CONDUCT OF RETIRED JUDGES?

Point #1 Badgerow is a member of the Kansas Judicial Council which is appointed by the Supreme Court. He is also the chairman of the Kansas Ethics Advisory Committee which publishes opinions about hypothetical ethical violations for the members of the Kansas Bar Association. Ironically the general public are not allowed to read Badgerow's opinions. The KBA is probably afraid that an informed public will file more complaints against attorneys.

http://www.ksbar.org/public/legislative/ethics_request.shtml

Badgerow routinely represents powerful politicians. He could use his position on the Kansas Judicial Council for political purposes to increase his ability to peddle influence

http://findarticles.com/p/articles/mi_qn4179/is_20060110/ai_n16005647/print

Attorney: Kline on both sides Abortion suit may put A.G. in odd

Attorney General Phill Kline may have indirectly sued himself in a lawsuit challenging the legality of Medicaid payments to fund abortions, an attorney representing Gov. Kathleen Sebelius told Shawnee County District Court Judge David Bruns on Monday.

Kline v. Sebelius was filed in August. The lawsuit is based on a resolution passed Jan. 24, 2002, by the Kansas House of Representatives and seeks a court opinion saying state-funded abortions are unconstitutional. Medicaid provides health care for the poor and disabled.

*Sebelius, represented Monday **by Overland Park attorney Nick Badgerow**, is asking Bruns to dismiss the lawsuit. Bruns took the motion to dismiss under advisement and will rule on the issue later. Neither Sebelius nor Kline were in Shawnee County District Court on Monday.*

*The Medicaid budget in Kansas is about \$2.2 billion, of which 60 percent --- \$1.32 billion --- is federal money. Kansas would risk losing Medicaid funding if it didn't follow provisions of the federal law tied to the program, **Badgerow said.***

*In about the past year, there have been 10 abortions performed in Kansas that received \$3,000 from Medicaid, **Badgerow said.***

Federal and State Affairs

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He also noted that Kline administers the Crime Victims Reparations Board, which also could administer funding for abortions if a rape victim sought to recover medical costs for the procedure.

Kline was represented Monday by Olathe attorney Lance Kinzer, a member of the Kansas House who filed the lawsuit on behalf of Kline in August.

If the Crime Victims Reparations Board became an issue, representing Kline would create an "interesting" situation, Kinzer said.

Badgerow argued that Bruns should dismiss the case, saying the U.S. Constitution is the supreme law of the land and wins any conflict between federal and state law. **Badgerow** also said there isn't a cause of action or a controversial issue before the court for Bruns to decide.

Medicaid funds abortions in only three instances: to victims of rape or incest or where the mother's life is in danger, **Badgerow** said.

"It has to be medically necessary as defined by regulations," **Badgerow** said.

Medicaid doesn't provide elective abortions, just as it doesn't provide nose jobs, **Badgerow** said.

Medicaid, which originated in 1965, was adopted in Kansas in the early 1970s, **Badgerow** said. Once Kansas opted to join the program, the state was obligated to follow all of its provisions, **Badgerow** said.

Badgerow represented Supreme Court Justice Nuss before the Kansas House Committee and defended him against a complaint filed by the Commission on Judicial Qualifications while continuing to serve on the Kansas Judicial Council under the authority of the Supreme Court supposedly simultaneously serving the best interests of Nuss and the citizens of Kansas. Per the 8/10/06 article from the Topeka Capital Journal:

http://findarticles.com/p/articles/mi_qn4179/is_20060810/ai_n16637840

A Kansas Supreme Court justice who has come under unprecedented scrutiny will get his own day in court today to try to fight off allegations he violated judicial ethics in the recently dismissed school finance lawsuit.

Justice Lawton Nuss will testify in an open hearing before the Kansas Commission on Judicial Qualifications. The judge faces formal allegations he improperly discussed the school finance case with two state senators.

He has admitted to the conversation and apologized for the "lapse of judgment." Judges generally are forbidden from discussing ongoing cases with outsiders.

Nuss has said he didn't intentionally violate any judicial ethics. His legal team declined to discuss the case.

*"I think I'll leave that for my opening statement on Thursday," said **Nick Badgerow**, an Overland Park attorney representing Nuss.*

Key witnesses in the hearing, which will run like a trial, are Nuss and the two senators he had lunch with on March 1 - Senate President Steve Morris, R-Hugoton, and Sen. Pete Brungardt, R- Salina. None of them has testified under oath regarding the lunch, and Nuss never has spoken publicly about the meeting.

Nuss generated controversy this spring when he admitted to having a lunch meeting with the two senators. Nuss said he brought a spreadsheet to the March 1 meeting to ask the senators to clarify figures in a recently introduced school finance bill.

The Legislature had been under court mandate to increase public school funding. Nuss has said he was following closely legislation that was being drafted to comply with the court's orders.

The justice admitted to the conversation six weeks later after a Topeka Capital-Journal reporter inquired about any talks between the court and the Legislature. Nuss also recused himself from the school finance litigation.

Without Nuss, the high court last week approved a three-year, \$541 million school spending package passed by the Legislature this year, dismissing the school lawsuit.

House panel waits

The investigations continue.

While the Commission on Judicial Qualifications is examining Nuss' ethical behavior, a special investigative committee in the House is trying to determine whether the justice's acts influenced school finance legislation.

Morris had justified voting against one school finance plan by telling senators he had had back-channel talks with the court and that the plan wasn't up to its standards.

Some senators left that meeting with the impression Morris had had ongoing talks with the court, not a single conversation with a lone judge.

For his part, Morris has said that Nuss indicated a bipartisan school finance plan would be viewed favorably by the court but offered no clearer direction. Nuss has said through his attorneys that he offered the senators no guidance.

Sen. John Vratil, R-Leawood, who is an attorney representing Morris and Brungardt, said the senators will testify today voluntarily. Under the state constitution, Vratil argues, state lawmakers aren't required to answer questions about where they get their information or private conversations they have.

But he said Tuesday the men were willing to cooperate after they received assurances from Nuss' attorneys and the attorney for the Judicial Qualifications Commission that questions wouldn't stray beyond the March 1 lunch.

"They're appearing voluntarily," Vratil said. "We don't then get into questions about their immunity."

That is important because the men also have turned down requests to testify before the House committee. Democrats and some moderate Republicans have said the committee is politically oriented, trying to embarrass the senators, the court and Gov. Kathleen Sebelius.

Rep. Mike O'Neal, R-Hutchinson, chairman of the committee, has halted the panel's work until after Nuss, Brungardt and Morris testify today.

"We are just going to wait and see what the commission turns up," he said. "At least this will be some testimony from them."

He says the stories about the lunch from Nuss and Morris have differed.

"They, frankly, don't jibe in my book," O'Neal said.

New proceeding

Today's hearing will operate like a trial.

Nuss' attorneys will call witnesses and present evidence to the seven-member hearing panel about why he should be acquitted of violating judicial ethics.

The attorney for the commission, meanwhile, will try to approve his own allegations that Nuss was in the wrong.

This is the first time any Kansas Supreme Court justice has faced a hearing before the ethics panel, which was formed in 1974. If the panel finds Nuss violated judicial rules, it could admonish the justice or order him to cease improper behavior. The high court, meanwhile, has the authority to discipline Nuss through public censure or suspension.

Only the Legislature can impeach a justice.

After today's hearing, a member of the commission will write an opinion on the matter, possibly handing down discipline or recommending the high court take action. It wasn't clear how long that process would take.

PER HIS LAW FIRM'S WEBSITE, BADGEROW IS SUPPOSED TO BE AN EXPERT ON PROFESSIONAL ETHICS:

<http://www.spencerfane.com/content/content/2002-93655-365.asp>

J. Nick Badgerow

His practice focuses on litigation of business and employment matters, including construction, trade secrets/non-competes/intellectual property, professional responsibility and negligence, and employment discrimination and wrongful termination (for employers only). In addition, He is frequently retained to give opinions and testimony as an expert witness in attorney liability suits. Nick's responsibilities with the firm include serving as the Kansas office Partner-in-Charge and as the firm's Professional Responsibility Counsel. He speaks at many seminars and programs on the subjects of litigation, construction and engineering, civil rights and employment, and professional ethics.

<http://www.spencerfane.com/content/content/2005-144939-777.asp>

Nick Badgerow's Article, *Rattling the Saber: The Ethics of Threatening Criminal and Disciplinary Prosecution* is Published

By: J. Nick Badgerow

Practice Group(s): Labor & Employment
and Litigation & Dispute Resolution

In his 20th published article, Nick Badgerow has written on the ethics of threatening criminal prosecution and disciplinary complaints in the January 2005 edition of the Journal of the Missouri Bar. The article, *Rattling the Saber: The Ethics of Threatening Criminal and Disciplinary Prosecution*.

<http://www.mobar.org/11dde125-8e64-40f5-82f0-865a999fdf4a.aspx>

Excerpts from Badgerow's article acknowledges that attorneys usually do not report ethical violations against opposing attorneys if they have to work with each in the future. Yet he also writes that because Kansas attorneys are required to report ethical violations of other attorneys and judges, they should not threaten to expose the unethical behavior of judges or opposing attorneys as leverage to advocate a better settlement for their client:

"A larger bar reduces the opportunity for individual lawyers to meet, confer, get to know each other, and develop a relationship of respect and mutual cooperation. The Golden Rule and the "whatever goes around . . ." rule have less chance for consideration between lawyers who have not met or opposed each other in the past, and feel it is unlikely that they will do so in the future".

A lawyer having knowledge of any action, inaction, or conduct which in his or her opinion constitutes misconduct of an attorney under these rules shall inform the appropriate professional authority.⁴⁰

An agreement to violate the MRPC is a violation of Rule 8.4(a).⁴¹ As the ABA Ethics Committee reasoned, "Because an agreement not to file a[n ethics] complaint if a satisfactory settlement is made is the logical corollary of a threat to file a complaint in the absence of such a settlement, we conclude that a threat to file disciplinary charges is unethical in any circumstance where a lawyer would be required to file such charges by Rule 8.3(a)."⁴²

The code of ethics are not being practiced or enforced. Otherwise there would not be wide spread complaints about unethical behavior of judges and attorneys in the family law courts if attorneys are required to report violations of other attorneys & judges.

DOES THE KANSAS JUDICIAL COUNCIL HAVE THE PROFESSIONAL INTEGRITY TO OBJECTIVELY EVALUATE THE PROFESSIONAL CONDUCT OF RETIRED JUDGES?

Per excerpts from the 8/11/06 follow up story on the Nuss hearing in the Lawrence World Journal:

http://mobile.ljworld.com/news/2006/aug/11/nuss_offers_apology_hearing/

It was the first time in history that a Kansas Supreme Court justice was required to explain his conduct before the Kansas Commission on Judicial Qualifications.

The dispute stems from a March 1 lunch at a Topeka restaurant between Nuss and Brungardt, R-Salina. Later, they were joined by Senate President Steve Morris, R-Hugoton.

At the time, the school finance lawsuit was the most high-profile case before the Kansas Supreme Court. The court had declared the school funding system unconstitutional because it shortchanged all students, especially low-income districts. It also had ordered lawmakers to increase funding.

Last month, the court approved the Legislature's new \$466 million, three-year funding increase.

During the lunch meeting, Nuss asked both legislators if a newspaper account of a proposed House bill on school finance had the accurate amount of funding. He had a sheet of paper that listed the funding amount of the House bill and two education cost studies.

Nuss said he asked about it because he wanted to stay on top of developments in the case so that when the court acted on whatever the Legislature did, it could work quickly and not inconvenience the school system.

He said he initially sought out his friend Brungardt for a talk because he was concerned about some lawmakers making disparaging comments about the court after it ruled against the state in school finance and the death penalty.

Nuss is accused of violating the Kansas Canons of Judicial Conduct, which prohibit judges from meeting with select, interested parties in a pending case and from doing research on cases that is independent of what has been entered into the record of a lawsuit.

Both Brungardt and Morris testified after first being subpoenaed but later agreeing to speak voluntarily.

Their version of the lunch conversation agreed with what Nuss had said, which produced a major conflict with earlier comments. After news of the lunch broke in April, Morris publicly stated that Nuss had said he was pleased to hear reports that legislative leaders were seeking a bipartisan school finance plan.

Critics have said Morris' comment helped defeat a smaller school finance proposal in the Senate that was supported only by Republicans. But on Thursday, Morris backed off that statement.

"I can't say for sure" that Nuss had said that, Morris testified.

Nuss denied saying that he told the two senators that he or anyone else on the court favored a bipartisan plan.

Sen. Jim Barnett, R-Emporia, author of that failed school plan, said Morris had changed his story.

"In meetings with me and other colleagues in the Senate, he did state that a bipartisan plan was one of the specific requirements that was put forth," said Barnett, who now is the Republican Party candidate for governor.

Nuss' attorneys argued that the justice suffered a "brief lapse" from observing the judicial code, and that no harm was done because the conversation didn't influence Morris or Brungardt, and the House bill never was approved.

"This was a single, simple mistake with no intent to do wrong," said attorney Nick Badgerow.

The incident stoked criticism of the court as overreaching and heightened speculation of "back-door" communications between the court and state officials.

But Badgerow urged the commission to ignore the political storm, which he said was fueled by election-year rhetoric.

The Nuss controversy creates the appearance that the Senate President was not honest and had to be represented by Sen. Vrtil, another member of the Kansas Judicial Council. It also creates the appearance that the Edward Collister, the counsel for the Commission on Judicial Qualifications did not aggressively investigate if other communications had occurred between Morris and the Supreme Court. Why should the citizens of Kansas trust that the Kansas Judicial Council will not cover up corruption and cronyism?

The unethical behavior by the so-called experts in the legal ethics set a poor example and demonstrates the hypocrisy and cronyism that exists in our law schools:

Per a 5/16/06 article in the Kansas City Business Journal, a federal judge removed **Badgerow** from a high profile criminal trial for unethical behavior:

<http://www.bizjournals.com/kansascity/stories/2005/05/16/story3.html>

*Overland Park lawyer **Nick Badgerow** has made a career of monitoring other Kansas lawyers' ethical conduct.*

He serves on at least two boards that discipline attorneys. He has trained hundreds of area lawyers on ethics in 150 seminars and written 20 journal articles on the topic.

*On May 6, acting on what **Badgerow** called a false but "very serious allegation" that he had violated ethics rules, federal Judge Julie Robinson removed **Badgerow** from the defense team of former Westar Energy Inc. executive Douglas Lake.*

*Robinson found a conflict of interest: As recently as 2003, **Badgerow** was an attorney for Westar and has a continuing duty to protect the interests of the company, which Lake allegedly looted.*

***Badgerow** surprised the prosecution by being the first lawyer to make arguments at an April 4 hearing without first addressing the conflict, said Richard Hathaway, senior litigation counsel for the Kansas U.S. Attorney's Office.*

*"Mr. **Badgerow** made a belated contact with his former client in which he simply made the patently incredible statement that the interests of Westar and Mr. Lake are not adverse," Hathaway wrote in a motion seeking **Badgerow's** disqualification.*

*Hathaway said **Badgerow's** presence could undermine a conviction by allowing both men to argue on appeal that **Badgerow** offered ineffective counsel because of his continuing duty to protect Westar's interests while defending Lake's.*

***Badgerow** replied that Westar has no "adverse interest" at stake in the criminal case because it pits the government versus Lake, not Westar versus Lake.*

But Westar General Counsel Larry Irick said Westar and Lake do have nearly a quarter-billion dollars in adverse interests at stake in opposing civil claims that are lying dormant in an arbitration forum during criminal proceedings.

"If Wittig and Lake are convicted in the criminal case, the company is very likely to prevail in the arbitration," Irick said.

Included in that dispute is nearly \$8 million Westar has advanced for Lake's and Wittig's legal bills so far. Hathaway's filings included a letter from Westar objecting to advancing money for **Badgerow's** fees.

Robinson's order didn't discuss the arbitration. Instead, she ruled that the facts in the criminal trial are "substantially related" to both previous cases **Badgerow** handled for Westar, making disqualification necessary.

Robinson also commented on **Badgerow's** unsuccessful efforts before the Kansas Corporation Commission in 2002 to disqualify another Topeka lawyer, Glenda Cafer. She represented a corporate client that opposed Wittig's and Lake's efforts to saddle Westar's public utilities with debts from subsidiaries while spinning off the subsidiaries into a debt-free company -- of which the two executives would be big shareholders.

"The attempt of defendants, including Lake, to split the regulated business from the unregulated businesses was one of the major focuses of the government's case," Robinson wrote.

Cafer, who was a KCC lawyer before resigning and eventually taking the case opposing Westar, remains angry about **Badgerow's** actions. She said another Westar lawyer in 2002 forwarded **Badgerow's** motion for her disqualification to the Board of Discipline for Attorneys as an ethics complaint, which was rejected.

"In my opinion, it was an impermissible trial tactic, and they failed," she said. "Every time I see his articles and hear him referred to as Mr. Ethics, it really hits me wrong."

But Michael Hoeflich, a former University of Kansas Law School dean, said **Badgerow's** reputation is deserved.

"I have shared the podium with him numerous times, and I have the utmost respect for his ethics, his expertise, his lawyering skills and his integrity," Hoeflich said in a written statement.

Unlike **Badgerow**, Cafer said, she had obtained permission from her former "client," the KCC, and even from Westar before taking a client adverse to Westar.

"He's got a little different definition of things when it comes to his own practices," she said.

The defense of Badgerow's conduct by the former Dean of the University of Kansas Law School and current legal ethics professor Michael Hoeflich's is another example of the Kansas legal experts and power brokers making excuses to cover up for each other.

Per the website for Kansas University Law School, Professor Hoeflich was educated in England at Cambridge and is an expert in legal history.

<http://www.law.ku.edu/faculty/hoeflich.shtml>

His most recent contributions to the body of knowledge for legal ethics are:

"Roman Law and Forensic Oratory in Antennellum America," 120 Zeitschrift der Savigny-Stiftung fur Rechtsgeschichte 189 (2003); "Translation and the Reception of Foreign Law in Antebellum American," 50 American Journal of Comparative Law 753 (2003); "The Lawyer as Pragmatic Reader: The History of Legal Common-Placing," 55 Arkansas Law Review 87 (2002); "Lawyers, Fees & Anti-Lawyer Sentiment in Popular Art, 1800-1925," 4 The Green Bag 147 (2001).

It is noteworthy that the other two instructors teaching legal ethics courses at Kansas University law school are Shawnee District Court Judge Terry Bullock who originally ruled that the legislature's level of public school funding was unconstitutional and Stanton Hazlett, the Disciplinary Coordinator for the Office of Judicial Administration

Fortunately there are a few patriotic citizens and attorneys in Wichita Kansas willing to fight the arrogant, imperial legal establishment at the Supreme Court, Kansas Judicial Council, Office of Judicial Administration and both law schools that promotes cronyism & nepotism and attempts to minimize unethical behavior and scandals by politicians, attorney generals and judges.

Incumbent district court judges can be defeated in Wichita, Kansas by reform minded candidates. Merit appointed judges in the district and appellate courts are never voted out of office.

Newly elected judge Robb Rumsey filed a federal law suit to allow judicial candidates to answer questions at public forums.

<http://www.jamesmadisoncenter.org/JudicialAP/KS/KS%20Amended%20Complaint.pdf>

Future candidates will be required to publicly deny or acknowledge if corruption, cronyism and sexual harassment exists in the Sedgwick County Courts.

Due to constant lobbying by a concerned citizen, the Sedgwick County District Court and the Wichita Eagle have agreed to conduct attorney surveys to evaluate judges.

http://www.findarticles.com/p/articles/mi_km4479/is_200608/ai_n16608535

The 10/19/06 press release by the Kansas Republican Party, former Attorney General Bob Stephan were accused of sexual harassment. Incoming Attorney General Paul Morrison was accused of sexual harassment while serving as district attorney. Morrison was defended by an attorney-politician, Mark Parkinson who was recently elected Lt. Governor.

<http://www.ksgop.org/News/Read.aspx?ID=2654>

The members of the Senate Judiciary Committee need to accept that the internet is so powerful that they can not silence citizens demanding reform.

Instead of trying to silence free speech that criticizes powerful elected officials and judges, the committee should repeal the criminal defamation laws that exist in Kansas by reintroducing Senator Schmidt's 2004 Senate Bill 3:

<http://www.kslegislature.org/bills/2004/3.pdf>

Information about the current criminal laws against defamation:

http://lawprofessors.typepad.com/crimprof_blog/2005/05/kansas_criminal.html

From Reporters Committee for Freedom of the Press: "A Kansas criminal defamation law is not unconstitutionally vague or overly broad because the law only punishes speech that can be proven false and is spoken with actual malice -- meaning that the speaker knew it was false or recklessly disregarded whether it was true or not, a federal judge in Kansas City, Kan., ruled last week in two separate cases. The nearly identical rulings by U.S. Chief District Judge John W. Lungstrum in two related cases arose from a 2003 mayoral election in Baxter Springs, Kan. The Baxter Springs published a March 2003 letter-to-the-editor by local businessman Charles How and a guest editorial by columnist Ronald Thomas criticizing City Clerk Donna Wixon. How later became a mayoral candidate. Two days after the letter and editorial ran, Wixon swore out a criminal complaint against How, Thomas and the newspaper's publisher for violating the city's criminal defamation ordinance. The ordinance, which is adapted from a state criminal defamation law, carries a maximum penalty of a \$2,500 fine and one-year imprisonment. The law defines criminal defamation as "communicating to a person orally, in writing, or by any other means, information, knowing the information to be false and with actual malice, tending to expose another living person to public hatred, contempt or ridicule; tending to deprive such person of the benefits of public confidence and social acceptance; or tending to degrade and vilify the memory of one who is dead and to scandalize or provoke surviving relatives and friends."

From: bill mckean

To: Mike Herd

Date: Tuesday, February 13, 2007 8:55:43 AM

Cc: Ann Soderberg; Assteditorwichtiaeagle; Becky Brewer; Ben Burgess; bill Mckean; Bill Vickery; Boyd McPherson; Brent Castillo; Carol Beier; Conrad Braun; courtreporterwichtiaeagle; courtreproterwichtiaeagle; Dale Ward; David Dewey; David Rapp; Deb Gruver; Diane Sherwood; Dion Lefler; editorwichtiaeagle; Hurst Laviana; james beasley; James Fleetwood; John Foulston; John Rapp; Joni Franklin; Judge Terry Pullman; Julie Ariagno; Knute Fraser; Lawrence Williamson; Lisa McPherson; Lou Heldman; Lynn Ward; managingeditorwichtiaeagle; Meg Matthewson; Mich Sigg; opinioneditorwichtiaeagle; Patty Gilman; Richard Ballinger

Subject: Quesitonable Ethics For amily Law Attorneys

Dear Mr. Michael Herd:

I am writing to respond to your presentation that you made last Thursday at the Wichita Bar Association's Annual Family Law Seminar entitled "Ethics for Family Law Attorneys. As I told you during the question & answer portion of your presentation, even though I am not an attorney I have attended last year's family law seminar and the 2005 Kansas Family law Seminar in which Julie Ariagno made the presentation on ethics.

I hope that you and the other leaders in the Wichita Bar Association will carefully consider my comments and suggestions. When institutions become completely dysfunctional and non-transparent, it takes an outsider to point out the problem in a constructive way.

I have copied this e-mail to Judge Powell & Judge Corrigan, Justice Carol Beier, Washburn Law Professors Linda Elrod, Sheila Reynolds & Bill Rich and several attorneys or judges that were present at either the 2006 or 2007 seminars. I have copied this e-mail to the current & prior presidents of the Wichita Bar Association, Laura Ice and Stephan Ariagno, and to certain members of the Wichita Bar Association that have recently applied for the opening on the court of appeals. I have also copied this to retired Judge Jim Beasley who I believe is responsible for designing and organizing the family law courts in Sedgwick County .

SYSTEMIC VIOLATION OF ETHICAL CODE OF CONDUCT

As you recall, I asked you if you were aware that at last year's seminar, one of the presenters, David Johnson, informed the family law bar that the family law judges had issued a directive that the attorneys were not to advocate for their clients against a negative evaluation by a court ordered custody evaluation. I believe that Johnson stated that Lynn Ward was also the other attorney representing the Wichita Bar Assocaition's family law committee that interviewed the incoming judges. At last week's seminar I told you that the directive was a blatant violation of Rule 1.3 that "A lawyer shall act with reasonable diligence and promptness in representing a client." And Rule 8.4 (f) that "It is unprofessional for an attorney to knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law."

You told me that you would not dignify my question with a response even though I told you that several of the same family attorneys (i.e. Ross Alexander , Patty Gilman, Tripp Shawver, Ann Soderberg) were present at both he 2006 & 2007 seminars.

As I recall there was a 5 – 10 minute debate among several attorneys including Meg Matthewson & Stacy Ortega who stated that this directive was a violation of an attorney's code of ethics. When the panel of 3 family law judges, Fleetwood, Pilshaw & Wilbert arrived in the afternoon and were available

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for questions, not one participant asked the judges to confirm the informal directive that had been made. Perhaps the audience were too distracted by Judge Fleetwood amusing graphic series of "spousechotomy" cartoons showing a husband & wife murdering each other.

I was seated to the left of John Rapp who directly behind Sheila Floodman. I am very disappointed to hear that you were not aware of the controversial comments especially since John Rapp's father, David Rapp is your law partner and Lynn Ward's husband, Dale is your managing partner at Hinkle Elkouri.

After last week's seminar, I visited with Ann Soderberg, the current chairman of the WBA's family law committee who told me that it is standard operating procedures for family law attorneys in Wichita to attack custody evaluations. It has been my experience that prominent family law attorneys refuse to attack the credibility of case managers and forensic psychologists and also are willing to commit perjury and conspire to obstruct justice to cover up for the unethical behavior of attorneys, judges, case managers and forensic psychologists in the family law court. I also have been contacted by pro se litigants that were betrayed by family law attorneys.

Recommended Follow Up Action:

The Post-Legislative Audit Committee should contact the members that attended the 2006 WBA family law seminar to verify if these controversial comments were made.

FAILURE OF DISCIPLINARY SYSTEM DUE TO CODE OF SILENCE

You indignantly responded to my question by stating (on video tape that attorneys do a better job of policing themselves for unethical behavior than any other profession. I disagree with your self-assessment based on the statistics that you provided in your hand out materials:

On page 3 you stated that the sources of the 1,000 estimated complaints each year were from clients (60%), citizens (25%) and judges (15%). According to your statistics, attorneys refuse to report other attorneys. I recently was contacted by former client of Jim Walker who hired David Tripp to serve as an expert witness to state that the client's prior attorneys had acted unethically in a divorce case. The former client told me that Walker initially refused to report the Office of Judicial Administration. The former client's story and your statistics appear to support my allegation that a code of silence exists in which attorneys in Wichita do not sue each other or report ethical violations against each other.

Recommended Follow Up Action:

The Post-Legislative Audit Committee should perform a study of complaints made by clients and citizens to determine if attorneys are routinely failing act with diligence or are engaging in dishonesty.

FAILURE OF DISCIPLINARY SYSTEM DUE TO LACK OF TRANSPARENCY

On pages 4 - 9 of your hand out, you report that 70% of the complaints are informally resolved with no investigation, but that 30% are docketed after an investigation by the members of the local bar association. Only 1 out of 5 or 60 of the 300 docketed cases result in some form of attorney discipline. Your materials did not state how many of the 60 discipline actions were unpublished censures.

9-2

However based on the 3/8/96 disbarment proceeding of Wichita family attorney Jerry Berg sheds some light on the discipline process involving complaints by 4 clients:

<http://www.kscourts.org/kscases/supct/1998/19980306/79816.htm>

K.L.C.'s complaint

K.L.C. retained respondent in 1988 to represent her in a divorce. She had been married for 17 years, had two children, and had not completed her college degree. K.L.C. was suffering psychological and physical abuse from her husband and was suicidal.

After this hearing, K.L.C. was emotionally and physically exhausted and believed respondent was going to protect her. Respondent suggested having lunch, where they drank alcoholic beverages. Respondent discussed his sexual relationships with his former and current wives. Respondent propositioned K.L.C., and the two had sex in a hotel across the street from respondent's office. Respondent admitted he solicited the sexual relationship and instituted the first physical contact with K.L.C.

During the pendency of the divorce proceedings, K.L.C. continued to be harassed by her husband, and respondent initiated three other encounters where sex occurred. Two were at his office, and one occurred when he went to her house on an afternoon while the children were at school. Feeling used and unhappy with the relationship and the progress of her divorce proceedings, K.L.C. ceased contact with respondent and employed attorney Don Lambdin to complete her divorce.

Lambdin testified K.L.C. was emotional and cried at his first meeting with her when she told him about her sexual encounters with respondent. Lambdin said K.L.C.'s husband was controlling and intimidating and K.L.C. was concerned about losing custody of her children and finances. Lambdin also told how respondent had warned him that K.L.C. might come on to him, which he had told K.L.C. he knew was not true.

The case does not state if and when the second attorney, Don Lambdin took over the case and if and when he reported the violation to the Office of Judicial Administration.

However it seems tragic that it would take 10 years for the process to intervene to punish Berg.

In aggravation, the panel found:

"(A) Prior disciplinary offense; Respondent was previously informally admonished for improper sexual behavior exhibited in earlier complaints; subsequent to receiving the informal admonishment Respondent engaged in two or more of the sexual acts which are the subject of this complaint.

"(B) Dishonest or selfish motives; Respondent's conduct was motivated solely by his selfish motives.

"(C) A pattern of misconduct; three of the complaints before this panel involve a substantially similar pattern of misconduct.

"(D) Multiple offenses; the panel has found multiple offenses under each complaint.

"(E) Vulnerability of victims; the panel cannot imagine more vulnerable victims.

"(I) Substantial experience in the practice of law; Respondent has been a lawyer for some 23 years and claims that 55 to 60% of his practice is devoted to the practice of domestic law; the panel finds that Respondent has had substantial experience in the practice of law.

"(K) Illegal conduct; Respondent procured and served alcohol to a minor on two occasions, knowing that the person was a minor and knowing that the minor had previously been hospitalized on one or more occasions for alcohol abuse. Impersonating a social worker may or may not constitute a crime."

In my opinion the case indicates that the Disciplinary Administrator's Office informally admonished Berg for the multiple minor offenses over a 8 year period of being a sadistic sexual predator. However they had no choice but to disbar Berg when the police caught him impersonating a social worker to intimidate one of the woman who had filed a complaint. The case proves that either mental health professionals in Wichita are afraid to report violations of misconduct against attorneys or the disciplinary system does not take these complaints seriously.

Recommended Follow Up Action:

The Legislature should enact laws to consolidate into a special investigative unit of the Post-Legislative Audit Department all of the investigative and prosecutorial functions for all professionals boards including the Office of Judicial Administration, the Commission on Judicial Qualifications, Board of Healing Arts, Behavioral Science Board to protect the public from cronyism by long-time employees and outside legal counsel performing the investigations for these boards.

FAILURE OF DISCIPLINARY SYSTEM DUE TO THE CRONYISM ON THE OFFICE OF JUDICIAL ADMINISTRATION & KANSAS JUDICIAL COUNCIL

Court of Appeals Case 85418 concerning the abuse of power by a family law case manager, Kathy Kirk and a Johnson County District Judge Janice Russell. The Supreme Court conveniently refused to designate the case for publication to avoid embarrassment for the Russell & Kirk. Because the father was concerned about his 4 year old son's emotional well being and continually complained about the care he was receiving from the child psychologist, the case manager, Kathy Kirk, recommended to Judge Russell that father be treated like a criminal and perform community service *"because he had too much time on his hand"* and to encourage him to *"get a life."* Judge Russell also forced the father to pay for the fees of the opposing attorney. Because the father hired a new attorney, Ron Nelson, to appeal the case, the Appellate court reversed Kirk's order that he perform community service. However the Court required him to pay the attorneys fees.

I also listed documentation that Kathy Kirk received the outstanding service award from the KBA in 2005. Even more alarming was the fact that Kathy Kirk was the Director for Alternative Dispute Resolution for the Office of Judicial Administration in 1996 & 1997 who wrote all of the ADR rules for the Supreme Court. Once again my testimony proves that the Kansas Bar Association routinely recognizes attorneys and judges that act arrogantly and unethically.

LOCAL RULES OF 18TH JUDICIAL DISTRICT ALLOW FAMILY LAW JUDGES & CASE MANAGERS TO INTIMIDATE PRO SE LITIGANTS

Per the Sedgwick County District Court's local rules for its family law court, a pro se may never file a motion in court again if a party becomes upset at a dishonest case manager and refuses to pay their attorneys fees. An even more dangerous is the ability for the case manger to suspend case management services for the Party that is not paying the case manager fees while continuing to provide services for the other Party. As demonstrated in the Jagoda case, a dishonest case manager like Kirk may require one party to pay all of the fees. If Jagoda lived in Wichita and had not paid his fees, his ex-wife could continue to request Kirk to issue orders against Jagoda and bill Jagoda for Kirk's fees to rule against him. The case management system is truly evil because it encourages case managers to arbitrarily punish one party to beat them into submission and give up trying to protect the best interests of their children so every one can "*move on with their lives*" so that the district court judges do not have to be bothered with a busy family law docket.

Recommended Follow Up Action:

The Legislature should abolish the case management system that provides a financial incentive to private case mangers to force a settlement with in a short period of time and enact laws to create a state-wide system of family law courts with uniform rules and practices.

FAILURE OF SUPREME COURT JUSTICES TO MONITOR PROBLEMS IN THE DISTRICT COURTS DUE TO THE CRONYISM & POLITICS INVOLVED IN THE MERIT SELECTION PROCESS

The 3/18/06 Wichita Eagle article reports that the Commission on Judicial Qualifications investigated a sexual harassment complaint and publicly admonished Sedgwick County district court Judge Warren Wilbert because he "pursued a personal relationship with a subordinate employee beyond the appropriate boundaries." The article states that only a few such orders are handed down each year and nearly all closed to the public. The article quoted Wilbert's attorney, Dan Monnatt, as saying that the commission did not find that sexual harassment had occurred.

One month later, the 4/18/06 Wichita Eagle article reported that Richard Ballinger, the Chief Judge of the Sedgwick County District Court was publicly admonished for not interfering with and even encouraging the inappropriate relationship between Judge Wilbert and the family law department employee. The order reported that Ballinger also admittedly fraternizes with subordinate employees. However the article reported that neither cease and desist order for Wilbert or Ballinger gave details of the inappropriate conduct. The article stated that the admonishment would not affect Ballinger's appointment as the district chief judge. The Eagle never verified Monnatt's claim that the commission determined that no sexual harassment occurred.

After the editors of the Wichita Eagle, the Eagle reran the Wilbert-Ballinger story on the front page of the 5/21/05 Sunday edition and wrote about the lack of transparency at the Commission on Judicial Qualifications, three days later Ballinger resigned his position as chief judge. On 5/23/06 I e-mailed the Senate & House Judiciary Committee Chairmen Vrtil & O'Neal, the Sedgwick County delegation & the Wichita Eagle Senator Vrtil & Wichita Eagle suggesting reforms that the district court judges be allowed to elect their own administrative judge and to require that attorneys complete confidential surveys to publicly evaluate the performance of judges. The Wichita Eagle and the Sedgwick County District Court finally implemented my suggestion to conduct a survey and posted the results shortly before the August 2006 primary.

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In 2004 I challenged Sedgwick County delegation in a public forum to contact their former colleague, Tony Powell, to investigate my allegations of corruption and misconduct in the family law courts. I have also attached a 6/10/03 press release from the Kansas Bar Association honoring Judge Pilshaw for her outstanding service to the legal profession. . There is a huge discrepancy between Pilshaw's poor ratings in the confidential survey per the Wichita attorneys and her award by the Kansas Bar Association. In my opinion the Kansas Judicial Council, the Kansas Bar Association and the commission on Judicial Qualifications are merely political organizations that allow ambitious attorneys and judges to be rewarded for volunteering to serve investigative committees to cover up and minimize the corruption in the Kansas judiciary in return for being considered for judicial appointments.

A 5/7/05 Wichita Eagle article reported how my civil rights attorney, Michael Lehr, was forced to take a drug test during a second degree murder trial. I had previously hired Lehr to investigate filing a federal civil rights lawsuit against the Sedgwick County district court due t the dishonesty and/or obstruction of justice by attorneys, judges, case managers and forensic psychologists. The article about Lehr states that an Eagle reporter contacted Chief Judge Ballinger who contacted the trial judge. As a result of the intervention by the Wichita & Ballinger, Ballinger was able to negotiate a deal with Lehr to voluntary suspend practicing law with 3 months which precluded Lehr from representing me. Lehr was later disbarred earlier this year. It is note worthy that Lehr denied being under the influence of drugs and that the defendant's family were angry by the mistrial because they thought that Lehr was doing a good job. It is note worthy that the disciplinary system can quickly respond to intimidate an attorney trying to defend his client's constitutional rights, but will take several 10 years to discipline a sexual predator.

Per a contract renewal form dated May 6, 2004, Lawrence attorney, Edward Collister is serving as the attorney-investigator for the Commission on Judicial Qualifications through June 30, 2007. Collister has served in this position since 1993 and is only charging \$75 per hour for his services. The procurement officer, Galen Greenwood told me that the next highest bid was \$135 per hour. In my opinion the failure to change attorneys over a 14 year period and the attorney's willingness to provide service at a bargain rate are symptoms of the cronyism that exists in the dysfunctional commission.

The Office of Judicial Administration recently stated that the chief administrative judges should continue to be selected by the Supreme Court because the justices keep a close tab on what is occurring in the district court. However the reappointment of Ballinger for a 2 year term at the end of 2006 given the pending investigation of Wilbert & Ballinger indicates that either the current district court judges were not consulted, the district court judges were not concerned enough about the sexual harassment to complain to Justice Beier or that the Supreme Court did not think that the public would be concerned about the sexual harassment scandal to require the appointment of a new chief administrative judge. Regardless the reasons why Ballinger was reappointed, the district court judges and attorneys do report ethical violations to keep each other out of trouble. In fact one of my former attorneys, Elaine Reddick, wrote me an e-mail in 10/2006 stating that the legal system would retaliate against me if continued to complain against unethical behavior of attorneys, case managers and forensic psychologists.

Recommended Follow Up Action:

The Legislature should enact a law to abolish the merit appointment for appellate and supreme court judges and allow the governor to make these appointments with confirmation by the Senate. The Post-Audit Legislative Department rather than the Office of Judicial Administration should be responsible for conducting the confidential survey of clients and attorneys regarding the performance of judges and forensic psychologists appointed by the courts.

CONCLUSION

The Kansas district court and appellate court system and the Press must evolve to keep pace with the revolution in information technology and the demands of the citizens that the legal system will be more accountable to the people and more transparent. Due to last year's federal lawsuit, candidates for elected judicial positions will be unable to dodge uncomfortable questions about adulterous relationships between judges and attorneys or about dishonest case managers or forensic psychologists who fabricate evidence. The ethical standards and practices that were acceptable to the older generation of attorneys are no longer acceptable due to ability of clients to demand accountability and clear specific communication through e-mails. It does not make any sense for judges, attorneys and the press to minimize ethical violations when the truth will eventually be broadcast on websites and e-mails. Attempts to muzzle or cover up the public allegations of corruption will be unsuccessful.

Bill McKean

From: "Bill McKean" <bmckean@sctelcom.net>
To: "Linda Elrod" <linda.elrod@washburn.edu>; "Sheila Reynolds" <sheila.reynolds@washburn.edu>
Sent: Wednesday, April 07, 2004 4:52 PM
Subject: Request For Legal Research Project

Dear Professors Elrod & Reynolds:

I am writing to inquire if either of you might know of a student or a professor who would be interested doing research that could result in:

- Reporting the serious problems that exist in the Family Law and Case Management Program in Wichita Kansas (specifically including the high turn over of judges and the lack of accountability by case managers).
- Analyze if the incestuous program results in an unavoidable conflict of interests for attorneys who are reluctant to aggressively represent their client if it would require criticizing case managers because the attorney is afraid of retaliation.
- Reporting how the legal ethics committee and the State Behavior Science Review Board disciplines attorneys and social workers.

About six weeks ago I spoke with Professor Reynolds by telephone for about 10 minutes to explain that I could prove that the dispute resolution mediator (a licensed family & marriage therapist) had intentionally provided false information to the most critical witness (our marriage counselor) to manipulate the witness to recommend that my wife receive residential custody. The witness also repudiated certain statements that the case manager had attributed to the witness. After I fired my first attorney for unprofessional behavior, no attorneys would take my case after I told them that the case manager had lied. The only attorney who agreed to take my case told me that he had an excellent relationship with the case manager so that he could influence the case manager's opinion. Even an attorney who thought very poorly of the case manager recommended that I use the attorney who was in the mediator's camp.

Four months later the case manager tried to undermine my credibility with my second attorney and my wife's attorney by telling both attorneys that the child psychologist (chosen by the case manager in 4/2003 against my objections) had denied my allegation that the child psychologist suggested in 8/2003 that my wife and I consider placing my 6 year old son in a 24 hour psychiatric unit for evaluation in early 9/2003 after he was expelled from school. Only four weeks earlier the child psychologist told us that my son's weekly therapy sessions could be reduced to every other week. During her testimony in 11/2003, my wife confirmed my allegation and also reluctantly acknowledged that my other son had been physically abused by her 17 year old son. However my second attorney refused to honor my specific written instruction to ask my wife if she ordered my 7 and 8 year old sons to cover up the physical abuse. After the negative testimony came out, my second attorney refused to honor his commitment to change my petition from requesting shared custody to requesting primary custody. My second attorney told me that it was only human nature for him not to want to attack the credibility of the case manager for fear of retaliation on the next case.

After I complained that the case manager had misstated the witness's testimony, the case manager ignored the marriage counselor's written recommendation that a custody evaluation take place. Based on the case manager's initial verbal report, my 6 year son's principal told the case manager that my son was doing relatively well in school in 4/2003. Five weeks later my son is suspended from kindergarten, and another teacher refused to let her daughter go to the same after school day care because she accused my six year old son of being a sexual predator. After receiving heavy doses of an anti-depressant, Zoloft, and then a bi-polar drug, Depict, the child psychologist recommended that my son was being successfully treated despite my warnings about the ongoing physical abuse. After my son was expelled in 9/2003 a new diagnosis of ADHD was made. When I complained the child psychologist resigned, and the case manager tried to replace him with the licensed social worker who had served as the case manager's supervisor during her licensing accreditation training. After I complained, the other alternative was a psychologist who is also on the short list of preferred case managers.

I gave up my custody fight because my 2nd attorney refused to change my petition even after more and more

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...evidence came out that would justify that a custody evaluation occur. Since being expelled six months ago, my son is now going to a public school where my ex-wife is the assistant principal. His behavior in school has not improved, and the second psychologist has not made any formal diagnosis. I believe that I can easily prove that the two mental health professionals (the 1st psychologist and the case manager) and my two attorneys have lied to me to undermine my request that a custody evaluation take place.

I am ready to start complaining to every judge in the 16th judicial district because Terry Moore has told me that the ethics boards for attorneys and psychologists will not take any actions. I do not understand why judges in Wichita should be allowed to set up a systems to give case managers large financial incentives to abort legitimate custody disputes. I do not understand why the case manager can lie and distort the facts with immunity. In my opinion the systemic problem is due to the judges' reluctance to serve on the family law bench either as a judge or as a supervising judge. Because the judges on serve on a temporary, short-term basis (12 - 18 months), too much power is delegated to the court administrator and huge financial incentives are paid to the two private mediators that conduct the dispute resolution.

Please contact me at my cell phone number (316) 655-8150 if you know of someone who is interested in this research. Although exposure would be embarrassing, it may cause the judges to change the system to eliminate the conflicts of interest for attorneys. Your research could have a major impact on the family law courts in Wichita if it resulted in recommendations that could not be ignored.

Bill McKean

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Bill McKean

From: "Linda Elrod" <linda.elrod@washburn.edu>
 To: "Bill McKean" <bmckean@sctelcom.net>
 Sent: Thursday, April 08, 2004 11:07 AM
 Subject: Re: Request For Legal Research Project

At the risk of making you very angry and coming from the position of a child advocate, have you considered expending your energies toward building a stronger relationship with your child? I see so many of these custody contests where the parents spend so much time and energy fighting each other (and the system) that they forget the child and the child's interests. As long as you are "stirred up" your child will be too --- is there a way to reduce the conflict at least as far as the child's is concerned??? In other words, what can you do with the existing situation to make life better for your child? I don't need a response. . . just some food for thought.
 Good luck.. .

----- Original Message -----

From: "Bill McKean" <bmckean@sctelcom.net>
 To: "linda elrod" <linda.elrod@washburn.edu>
 Cc: "Sheila Reynolds" <sheila.reynolds@washburn.edu>
 Sent: Thursday, April 08, 2004 10:25 AM
 Subject: Re: Request For Legal Research Project

> Dear Professor Elrod:

>

> Thank you for your prompt response. I will move forward to file complaints

> against my two attorneys, the DRC mediator and the child psychologist
 > assigned by the mediator. I spoke with Roger Scurlock, the investigator
 > with the Behavioral Science Board who told me that his agency may not have
 > any authority over the mediator if she was performing a service for the
 > courts rather than serving as a mental health professional. If you do not
 > mind, I will give you and Professor Reynolds an update in July.

>

> Bill McKean

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>

> ----- Original Message -----

> From: "linda elrod" <linda.elrod@washburn.edu>
 > To: "Bill McKean" <bmckean@sctelcom.net>
 > Sent: Wednesday, April 07, 2004 5:27 PM
 > Subject: Re: Request For Legal Research Project

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>

>> Your major problem in getting research assistance is timing. We are two
 >> weeks away from finals -- students are doing papers, research, and
 >> studying for finals. We have only a few students over the summer . . .
 >> and I won't be here to supervise. There are some serious concerns about
 >> case management...both in Wichita and Johnson County . . . there is a

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12/7/2004

> committee looking at legislation . . .

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12/7/2004

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Bill McKean

From: "Bill McKean" <bmkcan@sctelcom.net>
 To: "Elaine Reddick" <ereddick@powellbrewer.com>
 Sent: Tuesday, August 24, 2004 12:42 AM
 Subject: Representation on McKean Case

Dear Elaine:

Thank you for having the courage to represent me despite my allegations about the unethical behavior by Kim Kadel and Charlie Harris and the cover up and conflict of interests by Bud Bryant and John Foulston.

To avoid any misunderstanding I want to restate my goals of your representation:

I want you to aggressively advocate that my John should not attend ~~XXXXXX~~ Elementary in the event that he is expelled from his new school in ~~XXXXXX~~. I believe that we should force Foulston to make a recommendation on a contingency basis. I am afraid that if my son is expelled, there will be a 5 day delay to file a motion. To get my son into a new school ASAP, the court may feel pressured to order my son to attend my ex-wife's school instead of ordering an evidentiary hearing to include testimony from Bryant or other witnesses.

I also want you to aggressively advocate that Bud Bryant, PHD and Mark Romerreim, MD are replaced as my son's psychologist and psychiatrist by Rick Volweral, PHD and DeAnn Jenkins, MD at Prairie View -Reflection Ridge. These changes make a lot of sense from a logistical stand point and also would avoid the conflicts of interests from having to cover up my sons' problems because to help cover up the dishonesty by Kim Kadel.

It will be absolutely critical that you will aggressively represent me in the event that Foulston or Bryant would ever retaliate against me for complaining about their conflict of interests.

I can't remember if we discussed that I had paid another attorney, Michael Lehr, a retainer to investigate whether or not I had a malpractice lawsuit against Kim Kadel and/or my son's first psychiatrist, Dr. David Seifert. I noted this representation on your input sheet for new clients. Three weeks ago Michael Lehr suggested that I talk to Tripp Shawver, who I met for 4 hours late this afternoon. As you can imagine Tripp was very interested in my story and validated my concerns about the emotional immaturity and lack of professionalism of my former pastor, Fr. Setter, and also about the propensity of John's psychiatrist, Romereim, to diagnose that every child with an emotional problem has ADHD. Although Tripp was sympathetic to my concerns about the unethical behavior by Kadel and harris, he was also an apologist for the current DRC and case management system. He explained to me that in one instance he was afraid to file a motion that would benefit his client to take advantage of a mistake by a judge because he was afraid that the judge would retaliate against him on future cases.

Tripp also told me the judges had a lot of confidence in ~~XXXXXX~~, Bryant and Kadel, but admitted that the list of DRC mediators and case managers was controlled by the presiding family law judge. I challenged Tripp by telling him that you, Charlie Harris and ~~XXXXXX~~ had completely opposite views about the competence of ~~XXXXXX~~ and Kadel. I told him that as long as the DRC mediators stuck together to support each other that they would always have the leverage over the attorneys. I also suggested that there could be unavoidable conflicts of interests when the DRC mediator or case manager is an attorney who has other cases in which the attorneys are the opposing counselor. I also argued that the mediators become influence peddlers when the attorneys get to chose the DRC mediator. I argued that Kim Kadel's dishonesty could never be rationalized even if it was done to cover up either Sheila Floodman's emotional impairment or to protect the DRC system because Floodman admitted to me about the gossip that occurs between Floodman, Kadel and Armstrong. In the end Tripp tried to convince me that my children would be hurt if I become a martyr. Tripp repeated Floodman's original warning that professional experts do not like their recommendations and actions to be questioned. He specifically told me that Foulston and Bryant could retaliate against me to have my parenting rights or visitation restricted if I continued to fight the system.

I tried to offer the following reforms:

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Have all DRC mediators and case managers randomly assigned,

Have the attorneys (rather than the judges) fill out an annual survey to confidentially evaluate the mediators and case managers to see who should be dropped from the list. The list should be robust so that at least one person is dropped off and replaced each year.

My only concern about your representation is that you may be unwilling to attack Bryant's questionable decisions (failing to take a family history, failing to recommend my older son to get counseling, stating that abuse against my son two years ago was an isolated occurrence despite evidence to the contrary) if Bryant attacks my credibility. I tried to explain to Tripp that the system will only work if the performance of the "Experts" can be criticized by one of the opposing attorneys. The system can not function if attorneys are afraid that a case manager or DRC mediator will retaliate if they are criticized.

I am not interested in taking my wife back to court to change custody unless my son has emotional problems that would cause him to be expelled from Andale and the court orders my son to go to my wife's school with out a full evidentiary hearing. It is my hope that with a little bit of prodding by Foulston that my son will start receiving therapy from an unbiased professional.

I think that we are in this battle for the long haul. Ideally you can act as the good cop to deal with Foulston to protect my interests and Lehr can act as the bad cop to help reform the system. I think that someone like Bud Bryant could do much more good if he was operating in a case management system with out the inherent conflicts of interest.

Please respond by e-mail or give me a call.

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Bill McKean

From: "Bill McKean" <bmckean@sctelcom.net>
 To: "Julie Lange" <jlange@powellbrewer.com>; "Elaine Reddick" <ereddick@powellbrewer.com>
 Sent: Friday, October 01, 2004 4:24 PM
 Subject: Questions On McKean Representation

Dear Elaine:

I have forwarded the e-mail that I received from Foulston last week about 2 hours after I met with you. The day before I met you I sent my original e-mail to Foulston & copied to my ex-wife, C. Harris, Bryant, Romereim, Fr. Setter. (I gave you a copy of my e-mail last week). My ex-wife responded to that evening & copied Foulston & me. The next day after I spoke with you, I forwarded my original e-mail along with a notice that you were representing me (I did not copy anyone else). I pissed off Foulston by stating that he had not read my e-mail from the previous day (because he had never opened my original e-mail). At the time I did not know if he had read Tammy's e-mail.

As you can read, Foulston has continued to escalate the conflict by stating:

I do not agree with all of the factual assertions which Bill has made where my actions or statements are involved. I trust his statements that "Obviously the stakes for both of us will get higher as the system starts fighting back against me" are not to be construed as threats of physical violence towards Tammy or the boys. I believe they could be read as such a threat and that gives me a good deal of concern.

I recently received a bill from Foulston that documents that he spoke with ~~_____~~ by phone a couple of days earlier. I am very concerned when you told me that Dewey booted ~~_____~~ off of the list of case managers (I assume after Dewey took over for Beasely). Since we met, I have heard a rumor that ~~_____~~ had a drug problem with Xanax, a highly addictive sedative drug. I am alarmed that Foulston would order a psychological study that will be kept secret unless both Foulston & Lane agreed to release the report.

It is absolutely essential that I have complete confidence that you will be an assertive advocate for me. On one hand, you validated my concerns when you told me that "all of these case managers lie on the stand." However I know that you must deal with Kadel, Foulston, Harris & Bryant in the future on other cases. When I met with you over a month ago, I clearly communicated to you that I had proof that Kadel had lied and Harris had sold me out. I have heard that you are an assertive attorney. I hope that you will share my concern that it is extremely important for my sons' emotional health and for my future relationship with my ex-spouse that my sons receive counseling unbiased mental health professionals.

When we met you only committed to helping me change my sons' mental health providers.

Now I need your help to protect my rights by making sure that ^{SIB SUPERBERG} an unbiased & competent psychologist performs the psychological evaluation. I do not want you and Kadel to agree on any one unless I have time to check out the psychologist's back ground with my information sources in the legal & mental health community.

Finally I need to ask for you help to remove Foulston as case manager. I would like to replace him with Dr. Alicia Landsverk (if she will agree) who performed case management in the past. Supposedly my ex-wife trusts Landsverk. I believe that Landsverk would support my positions regarding my two biggest concerns (that John's medication is reduced not increased) and that my kids never go to school where my ex-wife is the building principal. If Landsverk will not agree to serve as case manager, I want you to argue that no case manager can be unbiased since they were all installed by Beasely, Liz Armstrong, Jeanne Erickson.

I do not want to insult you, but I want you to be realistic and tell me if you will have any potential conflicts of interests that would limit your ability to:

1. Attack the credibility or objectivity of Foulston, Bryant, ~~_____~~, Romereim, Harris, Seifert or Fr. Setter.
2. Expose the corruption & inherent conflicts of interests in the DRC- case management system.

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It is human nature to want to solve a problem that will allow every one to save face. I repeatedly tried to offer compromises before the divorce and after the divorce. However I think that it is too late for that now that I have retained Michael Lehr to help me file ethics complaints & possibly file lawsuits. Foulston & Bryant have purposely minimized my input into my sons' counseling, and Foulston has proven his bias. In my opinion the case managers are afraid that I will expose the corruption in the case management system which could expedite reforms that could eliminate their power.

I plan to be assertive to reform the system no matter what happens. I hope that I can count on you to be equally assertive to protect my parental rights, insure that my children are receiving the best care and to help reform the system. However I realize that your practice could be negatively affected if the judges do not want the corruption to be exposed. Please let me know if you have any problems fighting the system that you had to work in for the past 10 years.

Bill McKean

----- Original Message -----

From: John Foulston
To: TAMMY MCKEAN ; bmckean@sctelcom.net
Cc: Charlie Harris ; Bud Bryant ; Ann Soderberg
Sent: Wednesday, September 22, 2004 5:15 PM
Subject: RE: Status Report

Bill and Tammy:

As I understand the Dr. Romerein issue: Bill claims that the insurance is not paying for Dr. Romerein. Tammy says they do pay, but that they will not submit the insurance forms. If they are paying, I do not want to change Drs. for John at this time. It appears that things are working at the moment and I do not want to disturb that. If BCBS is not paying then I think we should consider making sure that we have a provider that the insurance will pay. Bill, please furnish evidence to me that BCBS is not paying.

I am disturbed by Bill's email. I have previously asked that the parties stop rehashing the past and deal with the current issues. Bill has violated that request. Further I am concerned about Bill's ability to relate calmly to the boys and keep them out of these issues. If there are any apparent adverse affects upon the boys, I may have no alternative but to restrict Bill's access to them.

This should not be viewed as punishment or concern about Bill's accusations towards me or the system. As I have repeatedly said my job is to look out for the boys and to try to keep the matters as calm as possible, at a personal level, it doesn't matter whether Bill or Tammy like me or my recommendations.

For the record this email is in response to the email earlier sent by Bill and forwarded to me by Tammy and Bill's email concerning his new attorney which attached the same email and alleged that I had not read it. I also have read the email which Bill sent Tammy about the psychological evaluation. I do not agree with all of the factual assertions which Bill has made where my actions or statements are involved. I trust his statements that "Obviously the stakes for both of us will get higher as the system starts fighting back against me" are not to be construed as threats of physical violence towards Tammy or the boys. I believe they could be read as such a threat and that gives me a good deal of concern.

In short please restrict the emails to the questions at hand. Please both of you focus on keeping the boys doing well in school and not involved in the issues between you two. Bill should do whatever he thinks necessary in the way of hiring lawyers, filing claims or objecting to any recommendation that I make, however it should not be the subject of continual emails.

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Bill McKean

From: "Elaine Reddick" <ereddick@powellbrewer.com>
To: "Bill McKean" <bmckean@sctelcom.net>
Sent: Monday, October 11, 2004 1:54 PM
Subject: RE: Final Issues - McKean Case

I can't confirm in writing or any other way that I said all case managers lie, because I never said that, and I don't believe that. I did tell you that I have had a couple cases where I didn't believe the case manager/drc/mediator person did their job, and I questioned their ethics/ honesty and potential unbiased in the reports or outcome of the case. I would imagine every family law practitioner has had this occur, while infrequent. These are cases that usually have to be tried to the court. In one instance, the person I complained about was removed from the court approved list, not just based on my complaint, but I suppose the complaints of other attorneys as well. In another instance, the Judge didn't seem to put any weight in the concern we brought forward. The court makes the ultimate decision as to whether there is dishonesty or bias, or failure to consider pertinent information. Usually, I question what I call "flawed logic", if I challenge a report. At any rate, I am certainly not afraid to bring this to the court's attention, when I believe it is occurring and my client wants to challenge. I believe that is my job and my ethical duty. As for your case, however, you never provided me with the information (proof) you said you had that anyone "lied". I will not make these kinds of allegations against anyone, without compelling proof. For one thing, such allegations are likely to do YOU more harm than good in the long run, and without proof, I won't act in a manner that I believe is unprofessional and possibly unethical conduct. In fact, if I make those allegations, and they can't be proven, doesn't that then make me a "liar"?

As for seeing any of Bryant's reports, no, Foulston did not provide me with any of that information, nor did I know Anne Soderberg saw any reports. Are you sure it wasn't before I became involved? As I told you, I believe you are entitled to the same access to information that your ex wife has, so if her attorney has something that you or I do not, that is a valid concern. I'm sure you have everything in my file, because everything I have came from you, excepting Foulston's amended or supplemental report, which I sent you and/or he sent you. Obviously, I was only involved in your case for a limited reason and a limited amount of time.

As for speaking my mind about the system and any reforms needed, we all, as family law practitioners have a forum where these issues are discussed. I attend that forum frequently and participate in discussions. Many family law lawyers attend this forum and participate in the discussions. Sometimes reforms are made that I agree with, sometimes they are not, but that is the whole process, most times, the majority rules the ultimate outcome that's just the way it is. Other times, changes are made because of a legislative change. Perhaps you should consider talking to your legislators, as the authority for case management is statutory. *

I'm sorry you felt the hearing didn't go well. I told you that I thought the e-mail you sent to Foulston was damaging. I do know, from the one conversation I had with Foulston before the hearing on the day of the hearing, that he thought you might be overly "paranoid" and that was something he wanted to find out through the psychological evaluations. I wasn't surprised by that, as I had predicted that would be inferred after I read your e-mail, I believe I even conveyed that concern to you before the hearing. Foulston did say he only wanted the reports confidential until further court order. I would imagine that if you get another attorney, those reports could be examined "in camera" and the Judge could later change his mind or order those reports released, either with or without restrictions. That is for you and/or your subsequent attorney to figure out. I have withdrawn from your representation, per your request. Therefore, I am not interested in further communication with you about your case. If you need anything from your file, please call the office and speak with Julie, we will arrange to have it copied for you to pick up. I will not be responding to any further e-mails from you, as such is too time consuming, and I no longer represent you. I do wish you the best of luck in your endeavors and hope that ultimately, this fight with the system does not adversely effect your time and relationship with your children. I agree with Mr Shawvers concern in this regard. *

Thank You

Elaine Reddick

30

9-16

Bill McKean

From: "Scurlock, Roger" <roger.scurlock@bsrb.state.ks.us>
To: "Bill McKean" <bmckean@sctelcom.net>
Sent: Friday, October 15, 2004 7:42 AM
Subject: RE: Complaints Against Case Managers & DRC Mediators

Bill,

I do not mind if you forward my e-mail.

Roger

From: Bill McKean [mailto:bmckean@sctelcom.net]
Sent: Thursday, October 14, 2004 3:09 PM
To: Scurlock, Roger
Cc: Art Thompson
Subject: Re: Complaints Against Case Managers & DRC Mediators

Roger

Thank you so much for your prompt response. It really helps give me some direction. If you do not mind, I will forward your e-mail to Mr. Art Thompson of the Office of Judicial Administration.

Thnaks Again

Bill McKean

w (316) 267-4379 x109
h (316) 729-9949
c (316) 655-8150

----- Original Message -----

From: Scurlock, Roger
To: Bill McKean
Sent: Thursday, October 14, 2004 2:58 PM
Subject: RE: Complaints Against Case Managers & DRC Mediators

Mr. McKean,

In case number 729, a complaint was made against a licensee who was acting as a court appointed case manager. Our general counsel, an Assistant Attorney General, reviewed the materials and advised the board to close the case due to a lack of jurisdiction over the licensee while serving in the role of a court appointed case manager. The board did dismiss that case. To the best of my knowledge, every complaint since then which involved a licensee acting as a court appointed case manager has been dismissed.

The role of the case manager as described in K.S.A. 23-1001 is to assist "the parties by providing a procedure, other than mediation, which facilitates negotiation of a plan for child custody, residency or visitation or parenting time. In the event that the parties are unable to

reach an agreement, the case manager shall make recommendations to the court."

K.S.A. 23-1002 states: "To qualify as an appointed case manager, an individual shall: Be qualified to conduct mediation; have experience as a mediator; attend a workshop, approved by the district court in which the case is filed, on case management; and participate in continuing education regarding management issues."

The case manager's duties are described in K.S.A. 23-1003. They are: "Meet with the parties, and other individuals deemed appropriate; gather information necessary to assist the parties in reaching an agreement or making recommendations, including medical, psychological, education and court records, including child custody investigations and child custody psychological evaluations, of the parties and children; report to the court as directed by court order; keep a record by date and topic of all contacts with the parties in the case. When requested, this record shall be made available to the court in total or summary form without the express consent of the parties and shall not be considered a medical or psychological record for purposes of confidentiality; notify the court when a party fails to meet the financial obligations of the case management process; file for collection of costs as necessary. The court shall assist in such filing or collection efforts, or both; be authorized by the court to report threats, imminent danger, suspected child abuse, fear of abduction and suspected or actual harm to any party or child involved in case management either directly to the court and to other authorities, or both. Such action shall be followed by a written summary within five business days of the initial filing of such report which shall be sent to the judge or the judge's designee and included in the court file; and directly contact the court with any other information the case manager determines that the court should know."

Our general counsel determined that while the licensee's training and experience may have been valuable in the licensee's role as a case manager, the licensee was fulfilling the above described duties to the court and was not practicing the licensee's profession.

However, I encourage everyone who believes that a licensee has acted in violation of the statutes and/or regulations to make a complaint. In some situations a court appointed case manager may act outside of statutory duties by providing mental health or counseling services which would be within BSRB's jurisdiction. To comply with the policy and procedures for investigations, I need a completed, signed report of alleged violation or "other reasonably reliable written information". This is required by the procedures approved by the board on January 13, 2003 and K.S.A. 74-7508. Through usage "other reasonably reliable written information" has been defined as something printed, published, or a letter on a state agency's letterhead. I ask that you complete and submit a report of alleged violation if you wish. I have attached a copy to this e-mail which will print from Microsoft Word. You may also download the form at <http://www.ksbsrb.org/pdf/RAV.pdf> or I can mail a copy to you. Please let me know if you need me to mail a form to you.

Please feel free to contact me if you have further questions.

Roger Scurlock
Special Investigator
785-296-8341

From: Bill McKean [mailto:bmckean@sctelcom.net]
Sent: Wednesday, October 13, 2004 5:21 PM

32
12/7/2004

9-18

To: Scurlock, Roger
Subject: Complaints Against Case Managers & DRC Mediators

Mr. Scurlock:

I am following up on our telephone conversation last week in which I inquired about the proper channel to file a complaint about unethical behavior by a mental health provider that occurred while they were serving as a court-appointed case manager or DRC mediator. As you recall, you referred me to Art Thompson of the Office of Judicial Administration because you told me that your office only investigated complaints concerning conduct individuals while they are providing mental health services (counseling).

When I spoke with Mr. Thompson, he told me to file the complaint with the district court judges in Wichita. Last night I spoke with a senior judge after a candidates forum put on by the Wichita Bar Association. I did not discuss any particulars about my allegation. I only told the judge that you referred me to Mr. Thompson and that Mr. Thompson referred me to the Administrative Judge in Wichita. The senior judge told me that he was surprised that the Behavioral Sciences Board would not retain jurisdiction to investigate complaints. To avoid the possibility of any unintentional "run around" when I file my complaint, I would appreciate it if you would confirm by e-mail that your office does not have jurisdiction to investigate complaints about unethical behavior by mental health providers who are serving as an agents of the court.

Thanks you so much for your courteous and prompt responses in the pst to my inquiries.

Very truly yours,

Bill McKean
825 N. Bay Country Cir.
Wichita, KS 67235

work (316) 267-4379 x109
cell (316) 655-8150
home (316) 729-9949

33

12/7/2004

9-19

Bill McKean

From: "Art Thompson" <thompsona@kscourts.org>
To: <bmcckean@sctelcom.net>
Sent: Friday, October 22, 2004 12:26 PM
Subject: Re: Complaints About Case managers - DRC Mediators

Mr. McKean

The statute which addresses case management, K.S.A. 23-1003, indicates that:

(c) A disputant party may request reassignment of a case manager by filing a motion with the court. The court shall consider such requests upon review. Repeated requests may raise a presumption of lack of parental cooperation and the court may consider sanctions against the uncooperative parent or parents.

(6) If a disputant party disagrees with a recommendation such party may file a motion before the court for a review at which time an order shall be made by the court. The case manager shall explain to the court either by report or testimony the reasons for such recommendation or recommendations.

The Office of Judicial Administration does hear complaints about "dispute resolution" which are included in the Dispute Resolution Act, K.S.A. 5-502, but this does not include case management. Please let me know if I can be of further assistance.

Art Thompson
Dispute Resolution Coordinator
Office of Judicial Administration
301 W. 10th
Topeka, KS 66612-1507
thompsona@kscourts.org
785-291-3748

>>> "Bill McKean" <bmcckean@sctelcom.net> 10/13/04 04:28PM >>>

Dear Mr. Thompson:

I am writing to follow up on our telephone conversation from last week. As you recall, Roger Scurlock, the investigator for Behavioral Sciences Board, referred me to your office because I wanted to file a complaint about unethical behavioral by a mental health provider that occurred when the provider was serving as a court appointed dispute resolution mediator for the family law judges in Sedgwick County. You specifically told me that I would need to file the complaint with the administrative judge in the 18th District.

I want you to confirm by e-mail that your office has no jurisdiction to investigate alleged misconduct by case managers or dispute resolution mediators while they are serving as court-appointed agents of the family law court.

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9-20

12/7/2004

16. Nothing in this rule shall be construed as a prohibition of the right of any party to employ private counsel, at their own expense, to enforce or modify orders of support. However, in every case which is monitored and enforced by the Office of the District Court Trustee, counsel shall furnish the Office of the District Court Trustee notice of all proceedings affecting support and copies of all motions, pleadings and orders affecting support.

Rule 424
ALTERNATIVE DISPUTE RESOLUTION

Overview: Alternative dispute resolution (ADR) is available to all parties. ADR includes mediation, case management, limited case management, arbitration and collaborative family law. Mediation, case management, or limited case management can be ordered upon motion of a party, or upon the Court's own motion, contingent on the Court finding that the parties can afford to participate. Arbitration or collaborative family law can be entered into only with the approval of all parties.

The Hearing Officer may enter an order for ADR in any contested issue over which the Hearing Officer has jurisdiction.

The ADR program will be administered through the Mediation Coordinator, according to written procedures available in the Family Law Department on the 4th floor of the courthouse, and a copy of those procedures will be available to anyone who so requests. No case can be placed in any type of ADR without the Mediation Coordinator being notified.

Unless otherwise ordered by the Court, or contractually agreed to by the parties, once a case or issue has been fully submitted, the case manager, limited case manager or arbitrator has thirty (30) days to file a decision or recommendation. If said decision or recommendation is not filed within thirty (30) days, or within the time contractually agreed to by the parties, either party can file a motion for a new case manager, limited case manager or arbitrator, and the Court shall grant said motion.

A case manager, limited case manager or arbitrator can require payment of fees in advance of services rendered. If he or she chooses to not require payment in advance, written decisions or recommendations cannot then be withheld for failure of one of the parties to pay fees.

In the event that the Court finds that a party has willfully failed to pay a case manager, limited case manager or arbitrator, the Court may impose as a sanction on that party a prohibition on filing any motion until the outstanding balance has been paid. This rule is intended to prevent a party from withholding fees for the purpose of causing the case manager, limited case manager or arbitrator to resign.

Committee For Judicial Ethics

The Committee For Judicial Ethics Finds Judge Janice D. Russell: GUILTY

This is Judge Janice D. Russell, of Olathe, KS. She was appointed (not elected),
by Governor John Carlin for the 10th Judicial District, Division #7.



- **GUILTY** - Of removing children from their father without reasonable cause. The Kansas Appeals Court stated in their ruling on this case: "No reasonable judge would have cut off the father's contact with his children in the manner determined by Judge Russell."
- **GUILTY** - Of requesting a litigant to perform a religious ceremony for a religion to which the litigant does not even belong.
- **GUILTY** - Of ordering children to live within a destructive cult, in opposition to testimony by a leading FBI cult expert.
- **GUILTY** - Of making emotional decisions affecting the mental health of children. Recommendations of three psychologists - one chosen by the petitioner, one chosen by the respondent, and one chosen by the courts, this Judge decided that all three psychologists were wrong and followed her emotions instead. Three years later with the children on drugs for depression, we now know who was right.
- **GUILTY** - Of showing disrespect to fellow attorneys in violation of the Kansas Bar ethics code. On regular occasions, it's been heard Judge Russell greeting the attorneys in her courtroom with: "What is it now!" or "Now what!"
- **GUILTY** - Of inattention to court proceedings. Judge Russell has repeatedly been observed making 'small talk' with her secretary (Judy Hamons) and

Federal and State Affairs

Attachment 10

Date 2-13-07

RECEIVED APR 30 2001

NOT DESIGNATED FOR PUBLICATION

No. 85,418

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

MYRA N. JAGODA n/k/a MYRA N. NEARENBERG,
Appellee,

and

RAY SCOTT JAGODA,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; JANICE D. RUSSELL, judge. Opinion filed April 27, 2001. Affirmed in part and reversed in part.

Ronald W. Nelson and Joseph W. Booth, of Rose & Nelson, of Overland Park, for appellant.

David J. Brown, of Law Offices of David J. Brown, of Lawrence, for appellee.

Before RULON, C.J., KNUDSON, J., and WAHL, S.J.

Per Curiam: In a post-divorce proceeding, Ray Scott Jagoda challenges orders entered by the district court implementing recommendations of a court-appointed

case manager and awarding attorney fees. The facts of this case are well known to the parties and will not be set out in detail in this decision. We shall address the issues raised by the appellant.

What is the appropriate burden of proof?

At the February 8, 2000, hearing, the district court informed Jagoda that the purpose behind appointing a case manager was for the case manager to make decisions, not the district court. Thus, Jagoda had a "very high barrier" to overcome the court's presumption in favor of the case manager's recommendations. Jagoda's attorney said she understood and made no objection to that "burden of proof" in the district court. Jagoda raises this issue for the first time on appeal. A new legal issue may not be asserted for the first time on appeal. *Jarboe v. Board of Sedgwick County Comm'rs*, 262 Kan. 615, 622, 938 P.2d 1293 (1997).

Did the district court abuse its discretion in ordering the parties to perform community service?

This court reviews decisions of the district court to adopt recommendations of a case manager for an abuse of discretion. *In re Marriage of Gordon Hanks*, 27 Kan. App. 2d 987, 989, 10 P.3d 42 (2000). Judicial discretion is abused only when no reasonable person would take the view adopted by the district court. *State v. Williams*, 268 Kan. 1, 8, 988 P.2d 722 (1999).

The discretion vested in the district court "must be exercised in whole-hearted good faith and be guided by the statutes, not by the court's private opinion of what the statute ought to be." *LaRue v. LaRue*, 216 Kan. 242, 250, 531 P.2d 84 (1975). While the case manager's recommendations may be considered innovative, she had no authority to impose this obligation on the parties. The parties had an alarming number of petty disputes which they could not, or would not, resolve without the case manager. Undoubtedly, the case manager thought the best way to decrease the number of future disputes between the parties would be to distract them with other activities--force them to "get a life." However, the community service order reaches beyond the scope of dispute resolution and encroaches too far into the parties' private lives. The case manager exceeded her statutory authority and the court abused its discretion in ordering Jagoda to perform community service.

Did the district court err in assessing attorney fees?

Jagoda paid the attorney fees, and Nearenberg filed a complete satisfaction of judgment on May 26, 2000. Generally, a party who voluntarily complies with a judgment cannot thereafter adopt an inconsistent position and appeal that judgment. To find acquiescence in a judgment, appellate courts must be shown that the appellant either assumed burdens or accepted benefits of the judgment contested

in the appeal. *State v. Hills*, 264 Kan. 437, 439-40, 957 P.2d 496 (1998). This rule is not strictly applied in divorce cases "because of the peculiar situations of the parties and the equitable considerations involved." *In re Marriage of Powell*, 13 Kan. App. 2d 174, Syl. ¶ 1, 766 P.2d 827 (1988), *rev. denied* 244 Kan. 737 (1989).

We find no "peculiar situations" or "equitable considerations" in this case for not applying the acquiescence rule. The order for fees is affirmed.

Was the April 27, 2000, hearing conducted properly?

Jagoda complains that he was not given adequate notice of the hearing date. The April 27 hearing date was set in March, and the parties were to address several outstanding issues at that hearing. While Jagoda objected at the hearing to the lack of preparation time and requested a continuance, his attorneys had filed a lengthy and detailed response to Nearenberg's motion on April 25, 2000. Jagoda makes no showing that his attorneys were unprepared at the hearing and gives no guidance as to what he feels would have been an appropriate amount of notice. This argument is without merit.

Jagoda next argues that the district court erred when it failed to allow a full evidentiary hearing on April 27, 2000. The record indicates that many issues were considered at this hearing, including the case manager's recommendations and

Nearenberg's motion to limit Jagoda's contact with Dr. Huk to written communications.

It is clear from the record that the hearing was effectively a review of the case manager's recommendations. Jagoda's objection to Nearenberg's motion to limit his contact with Dr. Huk was essentially the same as his objection to the case manager's recommendation. Since the district court was considering this issue of Jagoda's contact with Dr. Huk in light of the manager's recommendation, it was appropriate for the court to base its decisions solely on the statements of counsel and the case manager. K.S.A. 2000 Supp. 23-1003(d)(6). Moreover, the court found that exigent circumstances existed which required the issue to be resolved presently--the psychiatric treatment of Jagoda's child.

The case management statutes do not provide that a party objecting to a case manager's recommendation is entitled to an evidentiary hearing. The April 27 proceeding was, in substance, a hearing on Jagoda's objections to Kathy Kirk's recommendations, and the proper procedures were followed. Perhaps a more defined and organized hearing would have been the better practice, but the issues were all addressed and determined, and a new hearing is not necessary.

*Did the district court abuse its discretion in limiting
Jagoda's contact with his child's psychiatrist?*

The district court adopted the case manager's recommendation that Jagoda should limit his contact with Dr. Huk to communications via mail or fax. Jagoda argues this order constituted an abuse of discretion.

Jagoda's child, J.J., has been under Dr. Huk's care for several years, and according to Nearenberg, J.J. has a "wonderful relationship" with Dr. Huk. The record is not altogether clear as to what Jagoda said or did to Dr. Huk, but their relationship so upset Dr. Huk that he was going to refuse to treat J.J. if Jagoda did not keep his distance. He evidently agreed to continue as J.J.'s physician if Jagoda ceased his offensive behavior. The case manager believed it to be in J.J.'s best interests that he remain under the care of Dr. Huk, hence, her recommendation to the court to limit Jagoda's contact with the doctor to written communications.

Considering the evidence presented to the district court, the order limiting Jagoda's contact with Dr. Huk to written communications was not an abuse of discretion by the court. We affirm that order.

Affirmed in part and reversed in part.

CJOnline.com / Topeka Capital-Journal

Published Saturday, May 7, 2005

Attorney causes mistrial

Defense attorney fails ordered drug screen

The Associated Press

WICHITA -- A judge troubled by a defense attorney's behavior in a murder case declared a mistrial after a urine test indicated the attorney had used marijuana and cocaine.

Sedgwick County District Judge Ben Burgess took the action Thursday, a day after he sent jurors home for the day and held a hearing on the performance of the attorney, Michael Lehr.

Lehr was representing Joseph Sutton, charged with second-degree murder in the shooting Dec. 5 of Tyrone "Anthony" Lewis.

The judge was concerned after getting three reports suggesting that the attorney could have been under the influence of alcohol or drugs on the first two days of the trial.

One was an inquiry that a reporter for The Wichita Eagle sent to Chief Judge Richard Ballinger, asking if an attorney who is impaired can continue with a trial. An aide to Burgess also told him that when jurors were informed they could go home Wednesday, one of them joked, "What are they doing, taking Mr. Lehr to jail?"

Burgess had his own concerns about Lehr's courtroom behavior.

"The impression I was left with was that he was very deliberate in enunciating his words," the judge said, according to the transcript of the hearing. "His tongue seemed to be swollen. And that type of speech pattern I've observed when people are under the influence of drugs or alcohol, or perhaps sometimes both."

During the trial, Lehr frequently asked questions that drew objections from the prosecution, with Burgess ruling many of them improper.

When Burgess told Lehr he was ordering a drug test, the attorney objected, saying he would refuse until he consulted another lawyer.

Lee McMaster was then brought in to represent Lehr at the hearing. He asked that Lehr be allowed to withdraw from the case, refrain from practicing for two or three months, undergo a drug evaluation and get treatment. Ultimately, he agreed that Burgess had the power to order the drug test and that Lehr could be found in contempt if he refused.

A probation officer conducted the drug test and told the judge he got a positive result.

On Thursday, Sutton said he wanted his trial to continue. But prosecutor Kevin O'Connor said it would be "impossible for another lawyer to step in the middle of a murder trial."

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Lehr made his own motion for a mistrial, saying the court was prejudiced against the defense and had "become an advocate for the state of Kansas."

"I would, for the record, state that at no time during my appearance in this courtroom have I been impaired," the attorney said. "This trial has been tried to the very best of my ability, and I've given everything I can to the effective assistance of Mr. Sutton."

Declaring the mistrial, Burgess appointed another attorney to represent Sutton. Members of Sutton's family were angered about the mistrial, saying they thought Lehr had been doing a good job.

Lehr will be reported to the Office of the Kansas Disciplinary Administrator, which investigates complaints about lawyers and makes recommendations to the Kansas Supreme Court.

That office said Lehr was admonished informally in May 1999 and June 2000 for activities such as "conduct that is prejudicial to the administration of justice." Janith Davis, the deputy disciplinary administrator, said there was no indication that either of those cases involved drug use.

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10/10/07

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Supreme Court Removes Judge For Viewing Porn On Court Computer

Oct 7, 2005 11:06 AM CDT

By JOHN MILBURN
Associated Press Writer

TOPEKA, Kan. (AP) -- The Kansas Supreme Court on Friday ousted Saline County District Judge George R. Robertson for viewing Internet pornography on his office computer. He is the third judge removed in the past 30 years since the court began using its present disciplinary system.

Robertson, 56, had been on the bench for 10 years and on administrative leave since June when the Commission on Judicial Qualifications recommended to the court that he be removed for violating the canons of judicial conduct against impropriety and demeaning the integrity and impartiality of the court.

"The most serious aggravating factor is the effect the misconduct had upon the integrity of and respect for the judiciary," the court wrote.

Justices noted that the canons state that "public trust is essential to an effective judiciary and one judge's conduct may have a significant impact upon the public's perception of the entire judicial system. A judge must expect to be the subject of constant public scrutiny."

A person answering the telephone at Robertson's home said the judge wasn't immediately available for comment.

The 28th Judicial District Nominating Commission will interview candidates and submit two or three names to Gov. Kathleen Sebelius, who will make the appointment. The person selected will serve the remainder of Robertson's four-year term, which expires in January 2009. To remain on the bench past then, the person must stand for retention in November 2008.

A county computer technician discovered last December that Robertson was viewing pornography on his county-owned computer and reported it to county officials.

Robertson continued to receive full pay since Feb. 9, when he was restricted to administrative duties. His annual salary is \$104,522, but other benefits, such as pension contributions and health insurance, push his total compensation to more than \$139,000.

Robertson told the commission he spent countless hours as an elder of his church and had spread himself too thin between his judicial work and his church obligations. He has since left his position at the church.

He told the panel that adult Web sites provided a diversion over nine months. Court documents said that Robertson had been treated for depression and received therapy.

Robertson's attorney told the court last month it should be cautious in removing judges "because doing so disrupts the public's choice of who should serve in the judiciary."

Justices agreed to a point.

"The public has also expressed a choice to have a system of discipline which can result in a

judge's removal from office," the court wrote.

The justices said their decision was based on the fact that Robertson viewed pornographic material for nine months and that the computer was not his personal property and was used inappropriately during official court hours.

Robertson was disciplined in 1997 after placing a probation condition on a juvenile that he not have contact with Hispanic males under the age of 21 unless in the company of an adult or unless they were family members. The commission ordered him to stop that practice.

The court was unanimous in its decision. Justice Lawton Nuss, who's from Salina, didn't participate because he knows Robertson.

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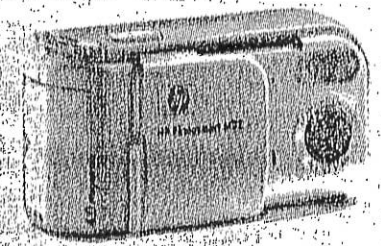


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LOCAL & STATE

Federal and State Affairs
Attachment 11
Date 2-13-07

Now you know.

Judge reprimanded for conduct

District Judge Warren Wilbert
has been given a cease-and-desist order
over inappropriate personal
relations with an employee.

BY RON SYLVESTER
The Wichita Eagle



Wilbert

A Sedgwick County district judge
received a public admonishment Friday
for having inappropriate personal rela-
tions with a courthouse employee.

The state's Commission on Judicial
Qualifications sent Judge Warren Wilbert
a cease-and-desist order, stemming from

a sexual harassment
complaint.
Only a handful of
such orders are handed
down each year, and
nearly all closed to the
public. Even rarer are
findings regarding per-
sonal interoffice rela-
tionships, said Ron
Keefover, spokesman
for the Office of
Judicial Administration.

Dan Monnat, Wilbert's lawyer, said he
hoped the action wouldn't tarnish the
judge's record on the bench.

"He has an exemplary reputation as a
judge for more than 10 years, and none of
that should change because of this one
incident," Monnat said.

The seven-member committee of judges
and lawyers found that Wilbert, 53, last
summer "pursued a personal relationship
with a subordinate employee beyond the
appropriate boundaries" of professional
conduct.

"You should note that the commission
did not find sexual harassment had
occurred," Monnat said. "He accepts full
responsibility for his actions, just as he
expects others to be responsible for
theirs."

In 2004, the most recent year available,
the commission received 360 complaints
against judges. There were five cease-
and-desist orders issued. All were private.
"Occasionally," Keefover said, "at the
discretion of the committee, it issues a
public order."

Wilbert, a graduate of Washburn
University, returned to his hometown of
Wichita to practice law in 1977.

After a failed campaign for the bench
against Judge Rebecca Pilshaw in 1994,
Wilbert received an appointment the next
year from Gov. Bill Graves. Wilbert has
run unopposed as a Republican in two
subsequent elections.

Spring cleaning

Youths from Wichita-area
churches are going to
post-Katrina New Orleans
to help residents...

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CJOnline.com / Topeka Capital-Journal

Published Tuesday, April 18, 2006

Chief judge cited over colleague's conduct

The Associated Press

WICHITA -- The chief judge of the Sedgwick County District Court has been cited by the Commission on Judicial Qualifications over another judge's relationship with an employee.

The cease-and-desist order to Judge Richard Ballinger admonished him for not interfering with and even encouraging the relationship between Judge Warren Wilbert and an employee.

A similar order was issued to Wilbert on March 17, with the commission finding that last summer he "pursued a personal relationship with a subordinate employee beyond the appropriate boundaries" of professional conduct.

On Monday, the commission said Ballinger "had knowledge of that relationship and failed to intervene, even fostering that inappropriate activity."

The order also said that Ballinger also "admittedly fraternizes with subordinate employees."

Neither order gave details of the conduct.

Wilbert's lawyer said the order to his client involved after-hours socializing.

"For the sake of the judge's family and his lengthy and distinguished career, we are anxious that this matter not be blown out of proportion," said the attorney, Dan Monnat. "The case involved no sexual or physical contact whatsoever. The judge socialized with courthouse employees after business hours in a manner that might appear to lack the professional decorum and distance expected of judges.

"Simply put, judges cannot interact with employees after hours the way individuals in the private sector can," Monnat said.

Orders involving judicial conduct are rarely made public, but both of these were released. In 2004, the Commission on Judicial Qualifications received 360 complaints about Kansas judges. It issued five cease-and-desist orders but made none public.

After the order to Wilbert, he was transferred out of hearing divorces and other cases involving domestic relations, said Ron Keefover, spokesman for the Office of Judicial Administration. Keefover said Monday's order would not affect Ballinger's appointment as the district's chief judge.

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Judicial Ethics: Cases do not enter public eye

The Wichita Eagle
 BY RON SYLVESTER
 May 20, 2006

A robe of secrecy cloaks Kansas judges who commit ethical violations.

Only eight of 65 cases involving violations of the Kansas Supreme Court's Code of Judicial Conduct in the past six years were made public to the voters who elect and retain judges.

“ First, our role is to help educate judges about their behavior and what is permissible and acceptable

In some of those eight cases, including two from Sedgwick County, scant information is available to the public to help it decide the seriousness of the violation.

In the other 57 cases, the public doesn't even know the name of the judges or what they did wrong.

Those cases are deemed by the state's Commission on Judicial Qualifications to be minor violations. They have included questions over judges paying taxes, improperly discussing cases outside of court and filing personal financial disclosure statements late.

By contrast, when someone in the legislative or executive branches breaks financial or conflict-of-interest policies, those findings always become public. The Kansas Governmental Ethics Commission has revealed more than a dozen such infractions during public meetings over the past three years.

Those findings are made public because the law says they should be, said Carol Williams, executive director of the ethics commission. 'We don't issue private letters.'

Judicial panel decides

With judges, the judicial qualifications panel decides what should be made public.

'My personal feeling is, when it comes to public officials, the public ought to be able to sort out what it thinks is important,' said Steve Joseph, a Wichita lawyer.

When the panel chooses to release findings from an investigation -- as it did with two Sedgwick County District Court judges -- the judge can limit the information given to the public by simply agreeing with the decision.

Judge Warren Wilbert and Chief Judge Richard Ballinger each received cease-and-desist orders related to a sexual harassment complaint by a courthouse employee earlier this year.

Because the judges didn't dispute the decision, the cases didn't go to public hearing, and the commission released reports with skeletal facts.

Some judges at the Sedgwick County Courthouse said privately they didn't know that their two colleagues, including their chief, had received public admonishments until they read about it in The Eagle.

Most states keep some judicial conduct reports confidential; 33 other states have

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procedures similar to Kansas.

Cynthia Gray, director of the Center for Judicial Ethics in Chicago, contends: 'These are minor instances of misconduct where the judges have admitted doing something wrong.'

Gray declined to address why judges' conduct receives different treatment from other public officials.

'That's something I don't think has ever been studied,' she said.

Harsher penalties

In all cases, the investigative process remains private.

But when the Governmental Ethics Commission finds reason to go forward with a case against a lawmaker, it goes to a public hearing.

The ethics commission does meet in private to deliberate sanctions and fines; decisions are reported in an open session. Evidence is presented and exhibits and transcripts are available to the public, Williams said.

But judges who breach the code of ethics benefit from a code of silence.

Evidence and testimony come out only when the judicial committee takes the case to a public hearing. That happens only if a judge disputes the findings.

There have been only three such proceedings in six years.

It's been that way in Kansas since 1973.

Lawyers such as Wichita's Jack Focht say judges face harsher penalties from their ethics commission than do lawmakers.

'Legislators or the governor don't get removed from office for ethical violations -- judges do,' said Focht, a board member of the Kansas Appleseed Law Center, a public-policy group.

Four Kansas judges have been publicly removed from office in the past five years.

'I think it works the way it should,' Focht said. 'The public finds out about the most serious cases, the judge finds out about the minor ones.'

The state judicial commission decides whether to admonish a judge publicly or privately.

'Personally, I think there probably needs to be some criteria about when something is made public,' Focht said.

But he added that requiring disclosure of all violations could result in the commission being more hesitant to make a finding against a judge.

Issues could be cloudy

Although members of the judicial commission can't discuss specific cases, they acknowledge public information is sketchy.

'When those cases make the newspaper, they don't sound nearly as bad as they really were,' said Ted Ice, a retired district court judge in Newton who has served on the judicial qualifications commission since 1994.

But Ice added that releasing full complaints may cloud issues more than clarify them.

'I've seen complaints that were 18 pages, single-spaced typed, and you had to look really hard to find the ethical violations,' he said. 'Those complaints would reveal more about mannerisms and speech patterns. Some of those may indeed be ethical violations but most may not be.'

In deciding whether to make a report public, the commission considers if publishing the report will help other judges, said Jennifer Jones, chairwoman of the judicial qualifications panel.

'First, our role is to help educate judges about their behavior and what is permissible and acceptable,' said Jones, administrative judge for Wichita Municipal Court. 'To me, the

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whole purpose of making findings public is to help other judges improve their own behavior and recognize what is inappropriate or bordering on ethical violations.'

Nuss case gives insight

The public rarely receives the kind of insight it has in a recent ethics investigation of a Kansas Supreme Court justice.

Lawton Nuss is under scrutiny by the committee for discussing a school finance case with lawmakers. The state's high court has the power to rule on whether the Legislature adequately funds the schools.

Chief Justice Kay McFarland, who initiated the complaint against Nuss, also made it public.

But if both the person who complains and the judge remain silent, the case will most likely stay that way.

Jones said private censures involve minor infractions from an individual judge. Those orders, she said, are meant to point out small ethical breaches that may have been simply an inadvertent mistake or oversight.

Although the panel meets behind closed doors, judicial ethics have some public oversight.

Four of the 14 members on the judicial qualification panel come from outside the legal profession -- currently, an educator, two journalists and a former lawmaker.

The rest are judges, retired judges or lawyers. The Supreme Court appoints members to serve on the panel for four-year terms.

Nationwide, 234 judges or former judges received public sanctions last year, according to the Center for Judicial Ethics.

Eleven judges were removed from office and 14 resigned or retired under pressure. Thirteen were suspended without pay, anywhere from 3 1/2 days to four years.

'For the most part,' Jones said, 'I think my colleagues do a very good job judging themselves.'

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CJOnline.com / Topeka Capital-Journal

Published Thursday, May 25, 2006

Sedgwick County judge leaves head post

The Associated Press

WICHITA -- The chief judge of the Sedgwick County District Court has resigned the leadership post after a judicial ethics panel cited him for encouraging another judge's relationship with an employee.

Judge Richard Ballinger, who also was admonished for fraternizing with courthouse employees, will remain a trial judge.

He will give up his current job, primarily an administrative position, effective June 1.

Kansas Supreme Court Chief Justice Kay McFarland received Ballinger's letter of resignation Tuesday. In it, Ballinger said he wants to spend more time with his children and work as a trial judge.

"I will be eager to wake up in the mornings and look forward to working in the courtroom again," Ballinger wrote.

Ballinger, 54, was the subject of a rare cease-and-desist order in April from the Kansas Commission on Judicial Qualifications. One month earlier, the commission admonished Judge Warren Wilbert for pursuing "a personal relationship with a subordinate employee beyond the appropriate boundaries" of professional conduct.

Both orders were related to a sexual harassment complaint filed against Wilbert by a courthouse employee.

After the order to Wilbert, he was transferred out of hearing divorces and other cases involving domestic relations.

Ballinger has been on the district court bench since 1992 when Gov. Joan Finney appointed him to serve the remainder of his father's term upon his retirement.

Ballinger, previously a municipal judge in Derby, had helped lead Finney's election campaign two years earlier.

The younger Ballinger won a contested election two months after his appointment. He had served as chief judge since January 2003.

emotional & stressful court.

- 4. 3. Requiring attorneys to submit biennial confidential performance evaluations of all judges which would be published on the internet for all voters to review.

I have enclosed a link to a website by the Dallas Bar Association which implemented judicial evaluations surveys after a 17 year absence. The specific links are to the son and daughter-in-law of the famous Dallas district attorney - Henry Wade of Roe v. Wade fame.

https://www.dallasbar.com/judiciary/poll_detail.asp

2005 Poll Details for Henry Wade Jr.

Court: 292nd District Court
Judge type: Criminal District Judges
Total Number of Ballots: 178

Poll Question	Number of Responses	Yes Percentage	No Percentage
Is this judge hard-working?	118	69 %	31 %
Is this judge impartial?	119	58 %	42 %
Does this judge demonstrate adequate knowledge of the law?	115	74 %	26 %
Does this judge demonstrate a proper judicial temperament and demeanor?	119	53 %	47 %
Do you approve of this judge's overall performance?	115	64 %	36 %

2005 Poll Details for Kristin S. Wade

Court: Appeals No. 1
Judge type: County Criminal Court Judges
Total Number of Ballots: 154

Poll Question	Number of Responses	Yes Percentage	No Percentage
Is this judge hard-working?	93	73 %	27 %
Is this judge impartial?	93	72 %	28 %
Does this judge demonstrate adequate knowledge of the law?	96	73 %	27 %
Does this judge demonstrate a proper judicial temperament and demeanor?	93	80 %	20 %
Do you approve of this judge's overall performance?	93	72 %	28 %

Return to Search Results...

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REBECCA PILSHAW

Age: 54
 Judge since: 1993
 Party: Democrat
 Next election: 2008
 Current assignment: Family law

The judge ...	Responses 125	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
is fair		11%	18%	14%	30%	26%
is ethical		12%	32%	16%	22%	18%
demonstrates knowledge of the law		11%	25%	21%	28%	15%
communicates clearly		12%	28%	26%	20%	14%
explains rulings in a clear and logical manner		10%	18%	18%	32%	22%
is prepared for court		9%	12%	12%	24%	43%
is courteous and professional		7%	14%	14%	24%	42%
demonstrates a fair work ethic		9%	22%	26%	25%	18%
applies the law appropriately		15%	22%	23%	19%	20%
treats people fairly without regard to race, gender, sexual orientation		11%	25%	33%	15%	16%



ANTHONY POWELL

Age: 44
 Judge since: 2003
 Party: Republican
 Next election: 2006 (unopposed)
 Current assignment: Criminal

The judge ...	Responses 88	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
is fair		35%	42%	10%	7%	6%
is ethical		31%	34%	14%	16%	6%
demonstrates knowledge of the law		33%	42%	15%	6%	5%
communicates clearly		32%	44%	10%	9%	5%
explains rulings in a clear and logical manner		43%	34%	14%	5%	5%
is prepared for court		52%	32%	5%	6%	6%
is courteous and professional		45%	36%	11%	2%	5%
demonstrates a fair work ethic		26%	39%	16%	13%	7%
applies the law appropriately		35%	43%	13%	5%	5%
treats people fairly without regard to race, gender, sexual orientation		45%	38%	11%	1%	5%

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Kansas Bar Association Honors Pilshaw for Distinguished Government Service

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(June 10, 2003) Topeka, KS—The Kansas Bar Association (KBA) recognizes Hon. Rebecca L. Pilshaw, Sedgwick County District Court, Wichita, for outstanding service to the legal profession in Kansas. Judge Pilshaw was honored at an awards luncheon on June 9 in Wichita.

[Hallmarks of Professionalism](#)

Judge Pilshaw has served as a district court judge since 1993. She graduated from the University of Kansas School of Law in 1984 and worked at the Wichita City Prosecutor's office; the Sedgwick County District Attorney's office; the offices of Render, Kamas & Hammond; and as a sole practitioner before becoming a judge. Judge Pilshaw has been a member of the KBA since 1993 and has served on the Annual Meeting Planning Committee.

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The Distinguished Government Service Award recognizes a Kansas lawyer preferably a member of the KBA, who has demonstrated accomplishments above and beyond those expected from persons engaged in similar government service. The award is only given in those years when it is determined that there is a recipient worthy of such an award.

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About the Kansas Bar Association

The Kansas Bar Association was founded in 1882 as a voluntary association of dedicated legal professionals and has approximately 6,200 members, including lawyers, judges, law students, and legal assistants. The KBA is dedicated to advancing the professionalism and legal skills of lawyers, promoting the integrity of the legal profession, providing services to its members, advocating positions on law-related issues, encouraging public understanding of the law, and promoting the effective administration of our system of justice.

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Bill McKean

From: Bill McKean [bmckean@woolseyco.com]
Sent: Thursday, September 07, 2006 11:58 PM
To: 'dlefler@wichitaeagle.com'
Subject: Story on Court House Corruption

Dion:

I haven't heard back from you since we spoke last week. I thought that you were going to call me to set up a meeting.

Bill McKean
Cell 655-8150

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Still no need to politicize courts

When Democratic Gov. Kathleen Sebelius appointed a Republican, Kansas Court of Appeals Judge Lee Johnson, to the state Supreme Court earlier this month, she got no props from House Speaker Melvin Neufeld, R-Ingalls. He's still pushing for Kansas Senate hearings and confirmation of appointees to both state courts — a fading reform idea that didn't even get as many senators' votes last March as it had sponsors the year before. Many realize it would needlessly politicize these courts and deter top lower-court jurists and attorneys from applying.



KANSAS

CHRIS HOWE, DIRECTOR

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CONTRACT RENEWAL

Date of Renewal: May 6, 2004

Contract Number: 04891

PR Number: 007070

Procurement Officer: Galen D. Greenwood
Telephone: 785-296-2401
E-Mail Address: galen.greenwood@da.state.ks.us
Web Address: <http://da.state.ks.us/purch>

Item: Legal Services

Agency: Clerk of the Appellate Court
Location(s): Topeka, KS

Period of Contract: July 1, 2005 through June 30, 2007

Contractor: Edward G. Collister Jr.
Collister & Kampschroeder
3311 Clinton Parkway Court
Lawrence, KS 66047-2631
Telephone: 785-842-3126
Fax: 785-842-5876
FEIN: 48-6170538
Contact Person: Edward G. Collister

Prices: As per original contract dated October 26, 1993
and any addenda thereafter issued.

Political Subdivisions: Pricing **is not** available to the political subdivisions of the State of Kansas.
Procurement Cards: Agencies **may not** use State of Kansas Business Procurement Card for purchases from this contract.

Administrative Fee: **No** Administrative Fee will be assessed against purchases from this contract.

Conditions:

This renewal is made in accordance with the "Renewal Clause" contained in the original contract dated October 26, 1999 and any addenda issued thereafter. Approval of this renewal has been expressed by the contractor and the Director of Purchases for the State of Kansas.

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June 5, 2002

CONTRACT FOR PROFESSIONAL SERVICES

This contract for professional services is by and between **Clerk of the Appellate Court**, (hereinafter referred to as AGENCY), and **Edward G. Collister Jr., of the firm of Collister & Kampschroeder** (hereinafter referred to as ATTORNEY), an attorney licensed to practice law in the State of Kansas. The purpose of this contract is for ATTORNEY to take assignments as needed in the investigative process for the Kansas Commission on Judicial Qualifications. The ATTORNEY will work independently under the general supervision of the panel and will report results of judicial investigations to the panel. If formal proceedings are instituted against a judge, the Examiner will represent the Commission during the formal hearing before the panel and present oral arguments to the Supreme Court when appropriate. The time commitment varies from year to year, depending upon the activity before the commission

1. **DURATION.** This Contract shall be in effect for fiscal year 2003, commencing on July 1, 2003, through June 30, 2005. This Contract may be renewed for one (1) subsequent two year period by written amendment by the parties.

2. **TERMS AND CONDITIONS.**

A. AGENCY agrees:

1. To compensate ATTORNEY for actual services performed, as substantiated by itemized billings, at the rates as follows:

Hourly rate for lead attorney	\$ 75.00
Hourly rate for other attorneys	\$ 75.00
Hourly rate for law clerk	\$ 7 to \$ 10 (Billed at actual cost)
Hourly rate for paralegal assistant	N/A
Hourly rate for private (lay) investigator	\$ 50 to \$ 60 (Billed at actual cost)
Hourly rate for travel time for attorney	\$ 75.00
Cost per mile for automobile	\$ 0.33
Costs for Copies (Internally produced)	No Charge
Costs for Copies (externally produced)	Billed at actual cost
Long Distance Telephone Charges	Billed at actual cost

2. To reimburse ATTORNEY for expenses incurred during the performance of this Contract based upon itemized documentation reflecting such expenses were incurred.

3. To reimburse ATTORNEY, or to pay to third parties, compensation and expenses incurred in relation to work performed under this Contract by private investigators, (Kansas licensed) technical investigators, where such third persons have been approved by AGENCY and upon receipt and review of itemized billing statements.

B. ATTORNEY agrees:

1. To keep the AGENCY advised of the progress of all investigations and legal proceedings and work related to this Contract.

2. To submit billings for compensation and expenses at thirty (30) day intervals. Such billings shall include all fees and expenses due or incurred at the time of the billings. Failure to provide such billings in the time specified may result in the denial of the billing. Further, ATTORNEY agrees to keep in his/her office and furnish AGENCY an itemized accounting of all services performed by ATTORNEY, or anyone under the direction of ATTORNEY for whom billings are submitted.

3. To return any original files compiled in relation to the work performed at any time upon request of the AGENCY.

4. Not to accept employment from any person regarding any matter in conflict with AGENCY during the existence of the Contract.

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Kansas Bar Association Honors 16 Individuals and One Organization for Contributions to the Legal Profession

[Calendar of Events](#)

(June 16, 2005) Topeka, KS—The Kansas Bar Association (KBA) recently recognized the following 16 individuals and one organization for their contribution to the legal profession:

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[CLE Seminars](#)

PHIL LEWIS MEDAL OF DISTINCTION
Kansas Army and Air National Guard, Topeka

[Contact KBA Staff](#)

[Hallmarks of Professionalism](#)

DISTINGUISHED SERVICE AWARD
John C. Tillotson, Murray, Tillotson and Wiley Chtd., Leavenworth

[Join the KBA](#)

COURAGEOUS ATTORNEY AWARD
Hon. Terry L. Bullock, Shawnee County Courthouse, Topeka

[Journal Index](#)

PROFESSIONALISM AWARD
Frank C. Norton, Norton, Wasserman, Jones, and Kelly LLC, Salina

[Kansas Bar Foundation](#)

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OUTSTANDING SERVICE AWARD
James L. Bush, Citizens State Bank and Trust, Hiawatha;
Stanton A. Hazlett, Disciplinary Administrator, Topeka;
Katherine L. Kirk, Law Offices of Jerry Levy PA, Lawrence;
David H. Moses, Case, Moses, Zimmerman and Wilson PA, Wichita;
Ronald E. Wurtz, Federal Public Defender, Topeka

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OUTSTANDING YOUNG LAWYER AWARD
Joni Jeanette Franklin, Alexander, Dwyer, McPherson, and Franklin, Wichita

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DISTINGUISHED GOVERNMENT SERVICE AWARD
Robert V. Talkington, Talkington Law Offices, Iola;
Nick A. Tomasic, Wyandotte County Courthouse, Kansas City

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PRO BONO AWARD
Carol L. Boorady, Conlee, Schmidt, Emerson LLP, Wichita; Jim L. Lawing, Wi

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PRO BONO CERTIFICATE OF APPRECIATION
Eric A. Hartenstein, Wichita;
Mira Mdivani, The Mdivani Law Firm LLC, Overland Park;
Charles G. Stewart, Oakley

[Raising the Bar](#)

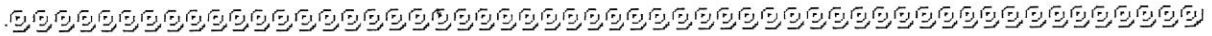
[Questions?](#)

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To list of committees

Kansas Judicial Council Family Law Advisory Committee



Members:

Charles F. Harris, Chair; Wichita
 Sara S. Beezley; Girard
 Hon. Sam K. Bruner; Overland Park
 Dr. Sharon E. Cain; Overland Park
 Prof. Suzanne Valdez Carey; Lawrence
 Joyce Grover; Topeka
 Sen. Janis Lee; Kensington
 Prof. Nancy Maxwell; Topeka
 Hon. Jerry L. Mershon; Manhattan
 Ann Miller; Manhattan
 Brian J. Moline; Topeka,
 Ardith R. Smith-Woertz; Topeka

Function:

The Family Law Advisory Committee monitors the general area of family law and conducts specific studies in that area.

Assignments:

None beyond ongoing function.

Meeting Dates:

No meetings are currently scheduled.

Updated: June 10, 2004

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MINUTES OF THE MEETING OF THE JUDICIAL COUNCIL
FAMILY LAW ADVISORY COMMITTEE HELD SEPTEMBER 22, 2006

The Family Law Advisory Committee met Friday, September 22, 2006, in Conference Room 269, Kansas Judicial Center, Topeka, Kansas, at 9:30 a.m.

The following members were present:

Charles F. Harris, Chair;
Joyce Grover;
Sen. Janis Lee;
Suzanne Carey McAllister;
Anne Burke Miller;
Brian J. Moline;
Ronald W. Nelson;
Ardith Smith-Woertz; and
Christy Molzen, Reporter.

Members Sara S. Beezley, Hon. Sam K. Bruner, Dr. Sharon E. Cain, and Prof. Nancy Maxwell were unable to attend.

MINUTES

The minutes of the July 29, 2005, meeting were approved with the caveat that Ms. Molzen will double-check on some of the dates mentioned in the minutes that seem inconsistent.

PROTECTION FROM ABUSE FORMS

Joyce Grover explained to the Committee that she had requested this agenda item be postponed until a future meeting because she will be attending a national conference next week with a team of people from Kansas, including two judges, to discuss domestic violence and firearms issues. Ms. Grover stated that one of issues that the Committee will be asked to address at a future meeting is whether our PFA orders should be clarified so that it is readily apparent to the persons entering the order into the NCIC whether Brady indicators are present, *i.e.*, whether the order is a qualifying order implicating firearms restrictions under federal law. The Committee also discussed other enforcement issues regarding PFA orders.

NEW JUDGE MEMBER

Miss Molzen asked Committee members for suggestions on a new district judge to replace Committee member Judge Jerry Mershon who has resigned from the Committee. Preferably, the Council would like to appoint someone from an area not already represented by another member of the Committee. The Committee suggested the following judges as possible new Committee members: Judge Derek Stutzman of Manhattan; Judge David Kaufman of Wichita; Judge Bill Elliott of Norton; Judge Jean Schmidt of Topeka; retired Judge Jim Beasley of Wichita; and Judge Maritza Segarra of Junction City. The Committee would also be interested in having more than one judge appointed if possible.

NORTH CAROLINA CHILD SUPPORT ENFORCEMENT PROGRAM

Next, the Committee reviewed materials provided by North Carolina Judge Kristin Ruth describing a North Carolina child support enforcement program emphasizing alternatives to incarceration. The North Carolina program includes elements such as use of an employment service organization to work with non-custodial parents who are unemployed or underemployed; cost-free mediation services to resolve disputes where a non-custodial parent has been unable to see his or her children; and electronic monitoring as an alternative to incarceration.

The Committee discussed similar programs that have been used in different Kansas counties until funding ran out, *e.g.*, Topeka Job Service, or other SRS programs. It was noted that channeling all payments through the Kansas Payment Center and requiring income withholding orders have been reasonably successful, although these options make no difference in cases where a non-custodial parent is unemployed. In the case of low or no income non-custodial parents, there are simply not enough resources available in the form of job training and education. To change this situation would require a major policy shift at both the state and federal levels in terms of the availability of funding. The Committee agreed that while the North Carolina program has been successful, that success appears to be dependent on the commitment of the individual who is leading it, Judge Ruth, and on the availability of funding for the other programs which support it. Any attempt to mirror the North Carolina program in Kansas would have to be instigated by a legislative policy decision to devote more funds to child support enforcement. There is no specific legislation or change in court rules that the Committee can recommend.

REVOCATION OF LIFE INSURANCE BENEFICIARY DESIGNATION UPON DIVORCE

Next, the Committee reviewed Kansas law regarding divorce and change of life insurance beneficiary designations. It was noted that the Judicial Council introduced a bill in 1995 dealing with revocation of probate and nonprobate transfers (*e.g.*, life insurance beneficiary designations) upon divorce. That bill did not pass. A similar bill was introduced in 2005 by the House Judiciary Committee, but it did not receive a hearing. The Committee discussed



State of Kansas

Office of Judicial Administration

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

(785) 296-2256

Senate Judiciary Committee
Monday, January 22, 2007

Testimony in Opposition to SB 45

Kathy Porter
Office of Judicial Administration

SB 45 would amend current law to provide that the district judges of each judicial district would elect the chief judge. Under current law, the Supreme Court appoints the chief judge of each of the 31 judicial districts.

SB 45 would create procedural difficulties. The bill includes no provision regarding what would happen in the case of a tie vote in those judicial districts with an even number of district judges. Currently, 16 judicial districts have an even number of district judges. The four judicial districts that have two district judges pose an even greater risk of a tie vote. An election would not be necessary in the three judicial districts that have only one district judge.

More importantly, SB 45 appears to conflict with the provisions of Article 3, Section 1, of the *Constitution of the State of Kansas*, which provides:

The judicial power of this state shall be vested exclusively in one court of justice, which shall be divided into one supreme court, district courts, and such other courts as are provided by law; and all courts of record shall have a seal. The supreme court shall have general administrative authority over all courts in this state.

The appointment of chief judges is within the administrative authority of the Supreme Court. The appointment of chief judges by the Supreme Court is necessary for the smooth administration of the court system. The current process helps to ensure statewide uniformity in all significant matters of administration, rather than creating 31 separate fiefdoms. An important reason for the enactment of court unification in the 1970's was statewide uniformity, and this bill is not consistent with that goal.

Because each associate justice serves as a departmental justice, the justices have a close working relationship with the judges within their departments and are able to gauge each judge's experience, abilities, and desire to serve as chief judge. Departmental justices always seek input from the judges within a district regarding the appointment of the chief judge, and the matter is

11-18 64

discussed by the Court as whole. While this process may occasionally leave one or more judges within a district unhappy about the appointment, the process defined in SB 45 certainly does not guarantee that all judges will be happy with the elected chief judge or with the election process. The chief judge would be the winner of a popularity contest, rather than the person objectively selected on the basis of possessing the ability to best perform the job. In addition, the current system helps to ensure a good working relationship between the departmental justice and the chief judge.

Amending current law regarding the Judicial Branch to have district judges elect their chief judge would be analogous to amending current law regarding the Executive Branch to have the division heads within the Department of Administration elect the Secretary of Administration, or having all of the employees of the Department of Administration elect the Secretary. There certainly is no guarantee this would result in better leadership or a better working relationship between the Secretary and the Governor, but it is almost certainly guaranteed to take time away from the employees' work duties and could result in divided loyalties.

In private sector businesses, it is difficult to imagine a scenario under which employees would select their supervisors, or lower level managers would select the company president. Those vested with the authority and responsibility for carrying out a corporate mission should be able to choose those persons they trust and know will best carry out supervisory or administrative responsibilities.

Following the introduction of this bill, I spoke with several chief judges, all of whom expressed concerns about the bill. One chief judge stated that he enjoys knowing he is appointed by the Supreme Court to carry out administrative duties as prescribed by the Court. If he were to be popularly elected, he could foresee a conflict under some circumstances between what he knew to be his duty as chief judge, to carry out administrative duties as prescribed by the Supreme Court, and what he knew would be pleasing to the judges of his district who elected him. He did not want that conflict, and he much prefers the current appointment process.

As a practical matter, chief judges are the administrators or managers of their judicial districts. Their job is easiest when the employees they manage are happy, and when those who have placed them in a managerial position are happy. While this is difficult to achieve, managers constantly strive to attain this balance. The current system has worked well for decades and is not broken.

Thank you for the opportunity to testify, and I would be happy to stand for any questions.

[\[to Judicial Branch home page\]](#)
[\[to the What's New page\]](#)

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1/23/07 | 2/6/07

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For more information
contact Ron Keefover
Education-Information Officer

FOR IMMEDIATE RELEASE: February 6, 2007

The names of 20 persons were submitted by the noon Tuesday deadline as applicants to fill a vacancy on the Kansas Court of Appeals created by appointment of Judge Lee A. Johnson to the Supreme Court. Justice Johnson filled a vacancy on the Supreme Court created by the retirement of Justice Donald L. Allegrucci.

The Supreme Court Nominating Commission will review the applications and conduct interviews February 20-21st, with the names of three on the list to be submitted to Governor Kathleen Sebelius shortly after for appointment. Sebelius will have 60 days in which to make her selection.

Applying for the position are Rick E. Bailey, Wichita; Terry E. Beck, Topeka; Glenn R. Braun, Hays; Martha J. Coffman, Lawrence; Henry Reid Cox, Shawnee; Douglas M. Crotty III, Garden City; Sharon L. Dickgrafe, Wichita; Roger L. Falk, Wichita; W. Scott Hesse, Topeka; Randall L. Hodgkinson, Topeka; James R. Howell, Andover; Robert E. Keeshan, Topeka; Judge Steve A. Leben, Fairway; Ward E. Loyd, Garden City; Suzanne Carey McAllister, Lawrence; Timothy J. Moore, Wichita; Steven J. Obermeier, Olathe; Steven P. Smith, Wichita; Melissa Taylor Standridge, Overland Park; and Gaye Birkhead Tibbets, Wichita.

Members of the public are encouraged to comment on the qualifications of any of the applicants by writing to Richard C. Hite, c/o Carol G. Green, 301 S.W. 10th Avenue, Topeka, Kansas 66612. All written comments will be distributed to the full Commission for their review.

The Supreme Court Nominating Commission is chaired by lawyer Richard C. Hite of Wichita. Others on the Commission include: First Congressional District, Kerry E. McQueen of Liberal (lawyer member) and Dr. Janet A. Juhnke of Salina (lay member); Second Congressional District, Patricia E. Riley of Topeka (lawyer member) and Dale E. Cushinberry of Topeka (lay member); Third Congressional District, Thomas J. Bath Jr. of Overland Park (lawyer member) and Vivien B. Jennings of Fairway (lay member); Fourth Congressional District, Lee H. Woodard of Wichita (lawyer member) and David N. Farnsworth of Wichita (lay member).

For more information

Prairie View, Inc.

Date: 4/13/06 Last Visit: 3/14/06 Seen: with his mother Start Time: 1421 End Time: 1501
Wt: 60 lbs BMI: HR: BP:
Current Medications: Adverse Effects: Compliance:
Stopped Strattera on 3/16. decreased appetite good.

Progress since Last Visit: Teacher has really noticed a change in his behavior: more hyperactive, out of his seat, excessive talking, less able to concentrate, more argumentative. Still able to get work done because he is so bright. Grades have not dropped yet. No clear difficulty with peer relationships yet.

Home: Mother has noticed much more arguing with her.

Yesterday afternoon when he was in his room, he tied a power cord around his top bunk and around his neck. There was a resultant red mark on his neck. At the time he did comment that he did try to hang himself. Later when mother was closely observing him during the evening he denied wanting to kill himself. Three years ago he talked about killing himself.

The babysitter called mother almost every day in the last few weeks. The concerns included physical altercations with siblings, not listening to directions, won't comply, won't go to his room, and argues. He hit her once with a toy gun on her hand, perhaps accidentally, but at least not paying attention. Prior to spring break, these behaviors were not observed and mother did not receive phone calls.

The teacher did not know he had stopped his medication but she had noticed deterioration in his behavior during the first week. Mother returned the Symptom Questionnaire, Checkmate Plus Inventory and ADDES from School (teacher) that was completed just prior to stopping Strattera and another set that was completed after four weeks off the medication. There was a clear increase in the frequency of observed ADHD symptoms from one set of forms to the next.

Mother returned the Symptom Questionnaire, Checkmate Plus Inventory and ADDES from Home (mother) that she had completed after the patient was off Strattera for four weeks. There was a clear increase in the frequency of symptoms observed.

Mental Status: Initially he thought there was some difference on the medication. Immediately Briefly he wasn't sure. Then after that he thought maybe worse. He can't recall any recent warnings from the teacher about his behavior. I reviewed the changes in behavior noted by the teacher, mostly hyperactivity.

has noticed that he has been hungrier since spring vacation.

was observed to be fidgety in his seat. After 15 minutes he has slid out of this chair and turned around with his head in the cushion. He said spontaneously, "I think I have too much energy." He continued to be frequently fidgety through out the rest of the appointment.

Suicidal:

Diagnosis: ADHD 314.01 Current GAF: 62
 ODD 313.81

Plan: Restart RX: Strattera 10 mg capsules (#100), to be taken three in the morning. At next appointment we will consider splitting to a twice a day regimen. The total daily dose could be increased to 40 mg (1.4 mg/kg)

I provided mother with Symptom Questionnaire, Checkmate Plus Inventory and ADDES for Home (mother) and School (teacher) to be completed just prior to next appointment and returned at that time.

Next Appointment: 4 weeks.



John F. Bober, M.D.
Child & Adolescent Psychiatrist

signed 4/17/06

JFB/sdh
Dictated: 4/13/06
Typed: 4/17/06
Printed: 4/17/06

Med-R 20003

Medication Management Progress Note

Client Name: MCKEAN, John P.
Case Number: 108325

FACULTY

N. TRIP SHAWVER
Attorney at Law
Approved Mediator, Trainer

DIANE SHERWOOD
Attorney at Law
Approved Mediator, Trainer

JAMES W. WILSON
Attorney at Law
Approved Mediator

STACY L. ORTEGA
Attorney at Law
Approved Mediator

ANDREW B. FLETCHER
Attorney at Law
Approved Mediator

JOHN E. FOULSTON
Attorney at Law
Approved Mediator

NAOMI PETERSON
Approved Mediator, Trainer

DON C. HAMPTON
Approved Mediator

COLUMBUS (BUD) BRYANT, PHD
Clinical Psychologist
Mediator

ART THOMPSON
Director, Office of Judicial Administration
Topeka, Kansas

HON. ANTHONY J. POWELL
District Court Judge, Division 18

LIZ ARMSTRONG
ADR Coordinator, 18th Judicial District

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11-22



AMERICANS FOR PROSPERITY

K A N S A S

Testimony in Support of HCR 5008

Controversy surrounding the way judges are selected is nothing new. In fact, the colonists listed as one of their grievances against George III in the Declaration of Independence the way the Crown unilaterally and without input from the Colonies selected and controlled colonial judges. In our democratic system of “equal justice under the law,” no one wants to think that the judiciary charged with interpreting and applying the law is in some way beholden to or controlled by any special interest or is completely isolated from the democratic will of the people.

We are currently experiencing in Kansas a crisis of confidence among the people in their government’s ability to provide equal justice under the law. A primary factor contributing to lagging public confidence in the basic fairness of our judiciary is the growing sense that judicial selection in Kansas is controlled by an elite group of societal managers who, while purporting to be objective and neutral, in fact exercise political control over one-third of our government. Kansans, with our basic faith in our democratic institutions of government, are generally quite accepting of the judicial rulings handed down by our courts, even when they are adverse, so long as the system does not violate our fundamental common sense of fair play. The recent political acrimony over certain important judicial decisions in Kansas does not stem, as some have suggested, from an unwillingness or inability to be gracious in political defeat, but rather from an impression that the playing field is no longer level. Thus, one of the most important reforms this government can enact to restore public confidence in our judiciary is to adopt House Concurrent Resolution No. 5008 which would return the selection of Kansas Supreme Court justices to the democratic branches of government.

The procedure currently used in Kansas for the selection of judges, the so-called “merit system,” is dominated by a small special interest group—Kansas lawyers. Because the nominating committee is controlled by a majority of Kansas lawyers, that group has become a powerful gatekeeper to one-third of our state government, all the way from the recruitment and screening of applicants through to the final selection and appointment. When the merit system was introduced and adopted in Kansas, its intent was to remove the process of judicial selection from the political realm. However, it is unrealistic and unwise to expect any powerful group—as Kansas lawyers have become—to function in a political vacuum. The founders of our great democracy understood this well and created a system of political checks and balances to overcome the divisiveness of political faction; and the greatest of these checks was, of course, accountability to *the people*. The merit system of selection in Kansas has delivered political power to Kansas lawyers far disproportionate to their numbers. And it should come as no surprise that as with any special interest group, Kansas lawyers have an emerging political bias and ideology. Because prospective judges in Kansas must curry favor with the Kansas Bar in order to have a chance at getting through the gate, they must either conform themselves to the political expectations of the Bar or cease to be candidates.



KANSAS BAR
ASSOCIATION

BEFORE THE
FEDERAL AND STATE AFFAIRS COMMITTEE OF
THE KANSAS HOUSE OF REPRESENTATIVES
TUESDAY, FEBRUARY 13, 2006

TESTIMONY IN OPPOSITION TO HCR 5008
PRESENTED BY RICHARD F. HAYSE
PAST PRESIDENT, KANSAS BAR ASSOCIATION

The Kansas Bar Association appears before this Committee in emphatic opposition to HCR 5008. This resolution represents a really bad idea: abolishing a time-tested system for selecting justices of the Supreme Court based upon their individual merits and qualifications, and in its place reverting to a previously-rejected political selection system with no merit qualifications.

Our independent Supreme Court Nominating Commission was created to remove the influence of politics from our courts. This merit-based selection process is premised on an unwavering commitment to the principle that a non-political court system is the individual citizen's best defense against government power, big money and intimidation by other elements of society. The overriding imperative is that each judicial decision should be dictated by the facts of each case and the law applicable to those facts – not to any other influence or power.

The current method of selecting justices is intentionally designed to insulate them from political winds, popular whim and from the other two branches of government. Let's remind ourselves that the judicial branch of government is intentionally structured differently from the legislative and executive branches. By constitutional design, those two branches are intended to be responsive to the electorate. By constitutional design, the courts are *not* intended to change by the whim of the voter, but rather to independently administer a system of justice based on legal precedent and the rule of law.

The Supreme Court Nominating Commission currently conducts a rigorous review of the qualifications of anyone who aspires to be a justice of the Kansas Supreme Court. The Commission selects the three best candidates and forwards those names to the Governor. The Governor then selects the nominee from among the three whom the Governor believes to be the best person for the position. This system is the envy of those states with partisan selection processes.

HCR 5008 would revoke the use of the Supreme Court Nominating Commission (page 1, lines 30-33, and page 3, lines 5-27). Instead, this legislation would allow the Governor to appoint any person, including a person with no qualifications whatsoever, subject only to confirmation by a majority of the Kansas Senate. In the place of a well-tested merit selection system, this legislation would substitute a purely political process. Senate confirmation of judicial nominees would be similar to the federal process that so frequently leads to a highly politicized, circus-like confirmation hearing.

Federal and State Affairs
Attachment 13
Date 2-13-07

**Before the House Federal and State Affairs Committee
Hearing on HCR 5008
Tuesday, February 13, 2007**

**Testimony of Richard C. Hite, Chair
Supreme Court Nominating Commission
316-265-7741**

My name is Richard C. Hite. I appear today on behalf of the Supreme Court Nominating Commission and also as a long-time attorney vitally interested in the Kansas judicial system.

Almost fifty years ago the citizens of this State mandated by constitutional amendment that election of Supreme Court Justices should be taken out of the political arena and based solely on merit. The constitutional amendment created the Supreme Court Nominating Commission as the entity charged with achieving this goal. As recently as 2003, the legislature reaffirmed that members of the Commission should recommend for appointment "only lawyers or judges of recognized integrity, character, ability and judicial temperament, and whose conduct will conform to the letter and spirit of the constitutional amendment." K.S.A. 20-133.

The Supreme Court Nominating Commission is comprised of nine individuals. Four are non-lawyers appointed by the Governor, one from each congressional district. The lawyers in each congressional district elect a member. The chairperson is elected by lawyers on a statewide basis.

I was admitted to the Bar of this State in 1953. Since then I have been privileged to serve on legal committees, boards and commissions at the local, state and national levels. I have been a member of this Supreme Court Nominating Commission for the last six years. The dedication of the members of the Commission, in my experience, is without equal. Without exception the Commission has sought to conduct the nomination process to fulfill the obligations imposed by the constitution and by the legislature to nominate highly qualified, temperamentally suited individuals. The Commission strives to place the Governor in a position where the Governor cannot make a mistake in the appointment of Supreme Court Justices. This has been the case regardless of whether the lay members of the Commission were appointed by Governor Graves or by Governor Sebelius.

Federal and State Affairs
Attachment 14
Date 2-13-07

Any candidate for nomination faces a very rigorous process. The application forms require submission of detailed information regarding an applicant's legal education and experience. The Commission's investigation includes interviews of the applicant's colleagues, attorneys who have been adverse to the applicant, community members, members of the judiciary and a review of the legal writings of the applicant. This is followed by personal interviews of applicants which can become quite intense.

The members of the Commission unanimously agree that the present merit selection of Supreme Court Justices works well and should not be changed. Experience in Kansas and in other states shows that the merit selection system is the superior way to select an impartial judiciary that makes decisions based solely upon the facts and the rule of law. The judiciary must be willing to make hard decisions and even unpopular decisions when required by the law.

In addition to our belief that the present system works well, members of the Commission are very concerned about the effect of a requirement that the Governor's appointments be ratified by the Senate. Members of the Commission are charged by the legislature to encourage individuals who appear to have the qualifications for judicial office to submit applications. We have done that. During the past two years when proposed constitutional amendments requiring the appointment of Supreme Court Justices to be subject to Senate ratification surfaced, we have been told by highly respected members of the Bar that they will have no interest in applying for nomination to a vacancy on the Supreme Court if Senate confirmation of the Governor's appointment is required.

In 1958 the citizens of Kansas correctly decided to base the selection of Supreme Court Justices on merit rather than political considerations. The merit selection system has served Kansas well for the last fifty years. The introduction of politics into the selection process would be a step backward.

Thank you for the opportunity to submit the view of the Commission.

Respectfully,
Richard C. Hite, Chair
Supreme Court Nominating Commission

SUPREME COURT NOMINATING COMMISSION

Date _____

Full Name _____

Residence Address _____

City, State, Zip _____ Telephone No. _____

Office Address _____

City, State, Zip _____ Telephone No. _____

If applying for a Supreme Court vacancy, are you between the ages of 30 and 70? _____

If applying for a Court of Appeals vacancy, are you between the ages of 30 and 75? _____

Place of Birth _____

Are you a citizen of the United States? _____

Are you a resident of Kansas? _____

How many years have you been a practicing lawyer and/or judge of a court of record or any court in the state of Kansas and/or a full-time teacher of law in an accredited law school? See K.S.A. 20-105 and K.S.A. 20-3002(a). _____

If requested to do so, are you willing to be personally interviewed by one or more of the members of the Supreme Court Nominating Commission? _____

If you should be one of three nominated for one of the Kansas Appellate Courts, would you agree to serve if appointed by the Governor? _____

[NOTE: The Kansas Bureau of Investigation release form authorizes an investigation should you be one of three nominated. One notarized copy must be attached to the original of your nomination forms. The Commission will conduct a preliminary investigation of credit, criminal, and traffic history of all potential nominees.]

The personal data information shown on the attached form or previously submitted is incorporated herein. (Attach any modifications to previously submitted data forms.)

I hereby waive any privilege of confidentiality I may have concerning information which the Supreme Court Nominating Commission may desire to obtain from any source concerning my qualifications.

Signature of Nominee

September 2006

Federal and State Affairs

Attachment 15

Date 2-13-07

An original and nine copies of this form and its attachments should be submitted to:

Carol G. Green
Clerk of the Kansas Appellate Courts
Kansas Judicial Center
301 SW 10th Avenue, Room 374
Topeka, Kansas 66612-1507

If letters in support of the nomination are submitted, they should be addressed to the Commission Chair Richard C. Hite and mailed to the attention of Carol G. Green at the above address. Such letters may accompany the nomination form or may be submitted separately.

Please answer the following questions on 8 1/2 x 11 paper. State the question, then give the answer.

Personal Data of: _____

1. List each college and law school you attended, degrees earned, scholastic honors, major academic activities. Please also state your class ranking and grade point average on graduation from law school.
2. List all courts and administrative bodies before which you have been admitted to practice.
3. (a) List chronologically your legal and other work experience since your graduation from law school, including non-legal occupations. See K.S.A. 20-105 and 20-3002, which require a potential nominee to have been engaged in the "active and continuous practice of law" for at least ten years prior to the date of appointment. Include in your list the months and years of legal experience to verify that you meet this statutory requirement.
(b) List published articles on legal subjects. Include as an attachment to this nomination form a sample of your legal writing in the form of a brief, memorandum, opinion, etc.

4. Summarize your experience in courts and describe the most significant litigated matter(s) you have personally handled.
5. (a) Have you ever held judicial office? If so, provide copies or give citations to significant opinions.

(b) Have you ever submitted your name for a vacancy on one of the Kansas Appellate Courts? If so, when?
6. State your approximate individual net worth and the nature of your substantial financial interests.
7. If appointed, are there any business interests, offices, or positions you now hold from which you would be unwilling to resign or divest yourself if required by the Canons of Judicial Conduct?
8. Have you ever been charged or convicted of a violation of any law except traffic offenses? [DUI violations and reckless driving offenses should be included.] If you answer "yes" to this question, please supply the information requested in Footnote 1.
9. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? If you answer "yes" to this question, please supply the information requested in Footnote 1.
10. Have you ever been sued by a client or been a real party defendant in interest in any other legal proceedings? If you answer "yes" to this question, please supply the information requested in Footnote 1.
11. Have you ever been disciplined or cited for a breach of ethics or professional conduct at the state disciplinary level? If you are a judge, have formal proceedings ever been instituted against you by the Commission on Judicial Qualifications? If you answer "yes" to this question, please supply the information requested in Footnote 1.
12. List all bar associations, professional associations, or professional societies of which you are or have been a member.
13. If you have been in the military service, state the length of service, the branch and dates you served, your rank on discharge, and the type of discharge.

14. State any other information which you believe should be disclosed in connection with the Commission's consideration of your potential nomination to the Appellate Courts.
15. List the names, addresses, and telephone numbers of five persons who are well acquainted with your legal ability and of whom inquiry may be made by the Commission.

In addition, if you are a practicing attorney, list the names, addresses, and telephone numbers of three judges before whom you have made an appearance in the last five years and three lawyers who have been adverse to you in litigation or negotiations within the last five years. If you are a judge, list the names, addresses, and telephone numbers of at least five lawyers who have appeared before you within the last five years.

Footnote 1.

1. The title of the proceedings.
2. If formal proceedings have been filed, the style of the case and the court or tribunal in which the case was filed and the location of same.
3. The date of the alleged violation or incident giving rise to the charge.
4. A statement of the relevant facts.
5. The identity of the principal parties involved.
6. The outcome of the proceedings, specifying any sentence, decision, and/or judgment entered.

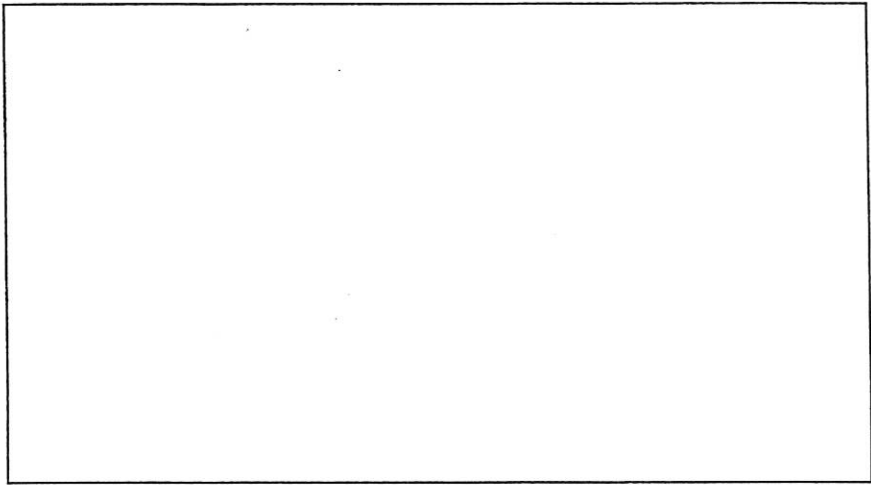
**SUBMIT ONLY ONE COPY OF THE FOLLOWING TWO
PAGES (DRIVER'S LICENSE PAGE AND KBI RELEASE
FORM) WITH YOUR ORIGINAL APPLICATION.**

In order to facilitate background investigations, the Commission requests that you complete the form below and attach a copy of your current driver's license in the space provided.

Driver's License Number: _____

Issuing State: _____

Expiration Date: _____





Kansas Bureau of Investigation

Larry Welch
Director

Paul J. Morrison
Attorney General

(Date)

I hereby authorize and request any former and present employer, creditor, bank, savings and loan, credit union, finance company, collection agency, school, college, university, agencies in the criminal justice system, or any other person, company or corporation employment, personnel records, evaluations, credit, financial character, integrity, criminal history including expunged records, and any other information whatsoever to any agent of the Kansas Bureau of Investigation.

(Signature)

Typed Name

Social Security Number

Subscribed and sworn to before me this _____ day of _____, _____

(Notary)

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

Hearing on HCR 5008
February 13, 2007, 1:30 PM
Hearing Room 313-S

Submission of Justice Fred N. Six (Ret.)
1180 East 1400 Road, Lawrence, KS 66046
785-843-8445
newtonsix@aol.com

1. **Judicial Experience:** One year, Kansas Court of Appeals, 1987-88; Fourteen years, Kansas Supreme Court, retiring 2003.
2. **Education:** BA, History, University of Kansas, 1951; JD, University of Kansas 1956; LLM, Masters in the Judicial Process, University of Virginia, 1990.
3. **Military:** United States Marine Corps, 1951-1953; Korean War Service, 1952-1953.
4. **Professional:** Private practice of law, 1956-1987; Assistant Attorney General, Kansas, 1957-1958. An attorney member of the Commission on Judicial Qualifications from the Commission's creation in 1974 until appointment to Kansas Court of Appeals in 1987. Two terms as Chair. Member, Kansas Commission on Judicial Performance, 2006 – (Commission created by the Legislature in 2006 House Substitute for SB 337).

COMMENTS IN OPPOSITION TO HCR 5008

1. **The Birth of Kansas Merit Selection – “The Triple Play of 1957” – Politics, The Supreme Court, and Governor Fred Hall’s “Why Not Me?” 50 Years Ago.**

In 1957 a series of events combined to so outrage the Kansas citizenry that a fundamental change was made in the manner in which Supreme Court justices are chosen. The story is well known. Chief Justice William Smith was hospitalized, an invalid. He announced his intention to resign but coordinated that resignation with Governor Fred Hall in order to effect Hall's appointment to the Supreme Court. In discussing with Smith possible replacements, the Governor is reported to have said, “Why not me?” On January 3, 1957, Smith resigned from the Supreme Court, Hall resigned as Governor, and the former Lieutenant Governor, now Governor, John McCuish appointed Hall to the Supreme Court. All of this occurred just days before the incoming Governor Docking took office. *The Constitutional Amendment authorizing the judicial selection system we now have banished politics from its seat on the 50-yard line of the judicial playing field.*

Justice John Fontron, of Hutchinson, a Reno County District Judge, appointed by a Republican Governor, John Anderson, Jr., was the first merit selection appointment to the Kansas Supreme Court.

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2. Kansans Desire a Supreme Court that Is Independent and Accountable.

We now have such a Court. A nine member Supreme Court Nominating Commission of laypersons and lawyers examines, investigates, interviews, and ponders. The Governor must appoint one of the three names submitted by the Nominating Commission. Judicial accountability is tested at the next general election and again at the end of each justice's six-year term. The justice's name is on the ballot. The voters give either a "thumbs up" or "thumbs down" for retention.

3. HCR 5008 Will Discourage Judges and Lawyers in Kansas from Becoming Nominees for Consideration as Members of the Supreme Court.

Under HCR 5008, if a majority of the Kansas Senate declines to consent to the Governor's Supreme Court appointment, failure to consent has the potential of damaging that person's professional reputation. Also, such failure to consent will discourage other persons from submitting their names for a future vacancy. The result will be fewer judicial applicants.

Reflect please on the contentious and battering Senate confirmation hearings of Judge Robert Bork and Justice Clarence Thomas, the nomination and withdrawal of Harriet Miers, and the recent confirmation hearing for Justice Samuel Alito.

Also, please consider the enormous time delays between the date of appointment and the date of the consent hearings encountered by lower court federal judicial appointees of both President Clinton and President Bush.

4. HCR 5008 Has the Potential For Damaging the Working Relationship Between the Executive Branch and the Legislative Branch.

In the event the Senate should fail to "consent" to the appointment, the failure of the appointment will reflect directly on the Governor. Is not such a denial of a Governor's appointment also an affront to the Governor? Is not the working relationship between the Legislative and the Executive impaired? Is not a harmonious relationship between the Legislature and the Executive a goal of good government for Kansas?

Under our current merit selection system, because of the vetting done by the Nominating Commission at the front end and the retention election after each six-year term, a requirement of Senate consent is unnecessary.

5. The Current Merit Selection System, as the Kansas Judicial Vehicle, Has a “Track Record” of Decisions Based on the Law, the Facts, and the Record From the Trial Court – My 14 Years on the Supreme Court.

During my time on the Court, I served with colleagues appointed by Governors Bennett, Hayden, Carlin, Finney, and Graves. My observation is that, at all times, each justice approached the task at hand earnestly. The black robe worn by each justice spoke for an impartial Third Branch of Government, the Judiciary, free from political ebbs and flows. We came to the Court with past party affiliations appointed by both Republican and Democrat governors. We served on the Court as judges, not as Republicans or Democrats. Kansas has a recent history of electing governors from both parties. Grafting a requirement of Senate consent to an ongoing working system of judicial selection and abolishing the nominating commission has the potential of politicizing the selection process.

6. The Kansas Current Merit Selection System Is in “Good Midwest Company.”

Our surrounding sister states, Missouri, Nebraska, Colorado, and Oklahoma, as well as Iowa, all have adopted a method similar to that used in Kansas for Supreme Court selection.

7. The Kansas Merit Selection System, Adopted by the Voters at the November Election in 1958, Is a Judicial Vehicle that Has Been “Road Tested” Over the Past 48 Years.

Fifteen states appear to have the Kansas system, *i.e.*, gubernatorial appointment of Supreme Court justices from judicial nominating commissions. At least eight other states use judicial nominating commissions to select justices or judges at some level. My information comes from: (a) the American Judicature Society’s web site, Current Methods of Judicial Selection, <http://www.ajs.org/js/>, (Attachment No. 1), and (b) Table 4, Selection of Appellate Court Judges, *State Court Organization 1998*, U.S. Department of Justice, Bureau of Justice Statistics, Office of Justice Programs (Attachment No. 2). A summary of the *State Court Organization* table by grouping based on the method of selection is also attached (Attachment No. 3). In two states that have gubernatorial appointment of Supreme Court justices, Delaware and Maryland, the governors have established a nominating commission by executive order to help with the selection process.

8. Will the Senate be in Session? It’s a Long, Long Time From April to December. The Cost Factor – Fiscal Impact – Additional Expense for the State Imposed by HCR 5008.

HCR 5008 requires the President of the Senate to convene the Senate for the sole purpose of voting on the appointment if the Senate is not in session or will not be in session within 30 days after the Senate receives the appointment (HCR 5008, page 2, Lines 4-7). How many days will the Senate be in special session? What will the Special Sessions cost the state?

The Kansas tradition is that of a citizen legislature. The 40 members of the Senate serve the people of Kansas part time as Senators and not as full time government employees. Members of the United States Senate are full time federal employees.

The United States Constitution, Art II, Sec 2 (powers of the President) requires a presidential judicial appointment to be made “with the advice and consent” of the Senate. The federal Senate Judiciary Committee has 18 members. Consider the recent confirmation hearings of Chief Justice John Roberts and Justice Samuel Alito. “Squads” of full time Senate employees were utilized to prepare the 18 federal Senate Judiciary Committee members for the confirmation hearing vetting process. In addition, each Senator had his or her own staff team. Query: What is the staff employee situation for each member of the Kansas Senate?

9. The Following Justices, No Longer on the Court, Have Served on the Kansas Supreme Court. The Date After Each Name Represents the Date “Such Vacancy Occurred or Position Became Open” (HCR 5008, Page 1, Line 37).

Justices Fontron (9-17-75), Fatzer and Kaul (9-16-77), Owsley (12-30-78), Fromme (10-25-82), Schroeder (1-11-87), Prager (8-31-88), Miller (9-2-90), Herd (1-11-93), Holmes (8-31-95), Larson (9-4-02), Lockett and Six (1-13-03), Abbott (6-6-03), Gernon (3-30-05), and Allegrucci (1-8-07).

A total of 16 justices have left office in the 32 years. Of the 16, only five (Schroeder, Herd, Lockett, Six, and Allegrucci) vacated a position on the bench at the end of their final six-year term, when the Legislature was in session.

Assuming HCR 5008 had been in place, it would appear that a special session of the Senate would have been required to hold confirmation hearings for 11 of those 16 justices. Three appear to be marginal, *i.e.*, they may have been subject to a confirmation hearing during a regular session of the Legislature but a special session could have been required, and only three would appear to have been subject to confirmation during a regular session.

HCR 5008 gives the Governor sixty days to make the appointment (HCR 5008, page 1, lines 35-37). The Senate then has to vote on the appointment no later than thirty days after the appointment (HCR 5008, page 2, lines 2-3).

10. What About the District Court Nominating Commissions Under HCR 5008?

HCR 5008 mandates the abolition of the Nominating Commission for Kansas Appellate Judges. Kansas has 31 judicial districts. Seventeen are merit selection districts and 14 are partisan political districts. Under HCR 5008, Kansas would have three methods of selecting judges. Such a concept is a “giant leap” backwards that goes counter to the efforts to effect statewide judicial unification in the 1970’s.

11. Abolition of the Nominating Commission After Almost a Half-Century of Service Would Appear To Be an Unprecedented Move.

My inquiry reflects that, since the reform movement endorsing the independence of the Judiciary known as the “Missouri Plan” picked up momentum almost 50 years ago, no state that adopted merit selection has subsequently abolished its nominating commission.

12. HCR 5008 Does Not Support an Impartial Judiciary. Why Abolish the Nominating Commission and Merit Selection and Institute the Senate Consent Requirement Now in 2007 After Nearly a Half Century of Merit Selection for Supreme Court Justices and 30 years of Merit Selection for the Court of Appeals?

Two cases, *Marsh* (the death penalty case) and *Montoy* (the school finance case).

Since Justice John Fontron wrote his first published opinion as a merit selected Justice of the Kansas Supreme Court, the Court under merit selection has issued **8,511** published opinions. (These opinions appear in the *Kansas Reports* 192 Kan. through 283 Kan.).

The Kansas Court of Appeals, since its creation in 1977, has issued **3,361** published opinions (1 Kan. App. 2nd through 37 Kan. App. 2nd).

This represents a total of **11,872** published merit selection opinions. Both courts have written hundreds of unpublished opinions as well.

Marsh and *Montoy*, two published opinions, vs. 11,870 other published opinions, and HCR 5008 and its earlier counterparts surface in 2005, 2006, and 2007 to abolish a nationally recognized judicial reform, merit selection, after almost one-half century of exemplary service to the citizens of Kansas.

“Never is there more potential for judicial accountability being distorted and judicial independence being jeopardized than when a judge [or court] is campaigned against because of a stand on a single issue or even in a single case. In such a situation, it is particularly important for lawyers to support the judicial process and the rule of law.” [From American Bar Association Task Force on Lawyers’ Political Contributions, Report (Part 2 of 6) (1998)].

Thank you for the opportunity to appear before the Committee. I appear as an individual, a retired Supreme Court Justice. The comments in this submission are my own.

Respectfully Submitted,
Fred N. Six



Judicial Selection in the States

Appellate and General Jurisdiction Courts

“Initial Selection: Courts of Last Resort”

Merit Selection (24)	Partisan Election (8)	NonPartisan Election (13)	Gubernatorial Appointment (4)	Legislative Appointment (2)
Alaska	Alabama	Arkansas	California	South Carolina
Arizona	Illinois	Georgia	Maine	Virginia
Colorado	Louisiana	Idaho	New Hampshire	
Connecticut	Michigan ¹	Kentucky	New Jersey	
Delaware ²	Ohio ³	Minnesota		
District of Columbia	Pennsylvania	Mississippi		
Florida	Texas	Montana		
Hawaii	West Virginia	Nevada		
Indiana		North Carolina		
Iowa		North Dakota		
Kansas		Oregon		
Maryland ²		Washington		
Massachusetts ²		Wisconsin		
Missouri				
Nebraska				
New Mexico				
New York				
Oklahoma				
Rhode Island				
South Dakota				
Tennessee				
Utah				
Vermont				
Wyoming				

1. Candidates appear on the general election ballot without party affiliation but are nominated at political party conventions.
2. Merit selection is established by executive order.
3. Candidates appear on the general election ballot without party affiliation but are nominated in partisan primary elections.

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Judicial Selection in the States

Appellate and General Jurisdiction Courts

“Initial Selection, Retention, and Term Length”

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
Alabama						
Supreme Court			X		6	Re-election (6 year term)
Court of Civil App.			X		6	Re-election (6 year term)
Court of Criminal App.			X		6	Re-election (6 year term)
Circuit Court			X		6	Re-election (6 year term)
ALASKA						
Supreme Court	X				3	Retention election (10 year term) ¹
Court of Appeals	X				3	Retention election (8 year term)
Superior Court	X				3	Retention election (6 year term)
ARIZONA						
Supreme Court	X				2	Retention election (6 year term)
Court of Appeals	X				2	Retention election (6 year term)
Superior Court (county pop. greater than 250,000)	X				2	Retention election (4 year term)
Superior Court (county pop. less than 250,000)			X		4	Re-election (4 year term)
ARKANSAS²						
Supreme Court			X		8	Re-election for additional terms
Court of Appeals			X		8	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
CALIFORNIA						
Supreme Court		X(G)			12	Retention election (12 year term)
Courts of Appeal		X(G)			12	Retention election (12 year term)
Superior Court ³			X		6	Nonpartisan election (6 year term) ⁴

1. In a retention election judges run unopposed on the basis of their record.
2. In November 2000, Arkansas voters passed an amendment to the Arkansas constitution shifting judicial elections to a nonpartisan system.
3. The California constitution provides that local electors may choose gubernatorial appointments instead of nonpartisan election to select superior court judges. To date, no counties have chosen gubernatorial appointments.
4. If the election is uncontested, the incumbent's name does not appear on the ballot.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
COLORADO						
Supreme Court	X				2	Retention election (10 year term)
Court of Appeals	X				2	Retention election (8 year term)
District Court	X				2	Retention election (6 year term)
CONNECTICUT						
Supreme Court	X				8	Commission reviews incumbent's performance on noncompetitive basis; governor renominates and legislature confirms
Appellate Court	X				8	Same
Superior Court	X				8	Same
DELAWARE⁵						
Supreme Court	X				12	See Footnote 6
Court of Chancery	X				12	See Footnote 6
Superior Court	X				12	See Footnote 6
DISTRICT OF COLUMBIA						
Court of Appeals	X				15	Reappointment by judicial tenure commission ⁷
Superior Court	X				15	Reappointment by judicial tenure commission ⁷
FLORIDA						
Supreme Court	X				1	Retention election (6 year term)
District Court of Appeal	X				1	Retention election (6 year term)
Circuit Court			X		6	Re-election for additional terms
GEORGIA						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Superior Court			X		4	Re-election for additional terms
HAWAII						
Supreme Court	X				10	Reappointed to subsequent term by the Judicial Selection Commission (10 year term)
Intermediate Court of Appeals	X				10	Reappointed to subsequent term by the Judicial Selection Commission (10 year term)
Circuit Court and Family Court	X				10	Reappointed to subsequent term by the Judicial Selection Commission (10 year term)

5. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.

6. Incumbent reapplies to nominating commission and competes with other applicants for nomination by the governor. The governor may reappoint the incumbent or another nominee. The senate confirms the appointment.

7. Initial appointment is made by the President of the United States and confirmed by the Senate. Six months prior to the expiration of the term of office, the judge's performance is reviewed by the tenure commission. Those found "Well Qualified" are automatically reappointed. If a judge is found to be "Qualified" the President may nominate the judge for an additional term (subject to Senate confirmation). If the President does not wish to reappoint the judge, the District of Columbia Nomination Commission compiles a new list of candidates.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
IDAHO						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
District Court			X		4	Re-election for additional terms
ILLINOIS						
Supreme Court				X	10	Retention election (10 year term)
Appellate Court				X	10	Retention election (10 year term)
Circuit Court				X	6	Retention election (6 year term)
INDIANA						
Supreme Court	X				2	Retention election (10 year term)
Court of Appeals	X				2	Retention election (10 year term)
Circuit Court				X	6	Re-election for additional terms
Circuit Court (Vanderburgh County)			X		6	Re-election for additional terms
Superior Court				X	6	Re-election for additional terms
Superior Court (Allen County)			X		6	Re-election for additional terms
Superior Court (Lake County)	X				2	Retention election (6 year term)
Superior Court (St. Joseph County)	X				2	Retention election (6 year term)
Superior Court (Vanderburgh County)			X		6	Re-election for additional terms
IOWA						
Supreme Court	X				1	Retention election (8 year term)
Court of Appeals	X				1	Retention election (6 year term)
District Court	X				1	Retention election (6 year term)
KANSAS						
Supreme Court	X				1	Retention election (6 year term)
Court of Appeals	X				1	Retention election (4 year term)
District Court (seventeen districts)	X				1	Retention election (4 year term)
District Court (fourteen districts)				X	4	Re-election for additional terms
KENTUCKY						
Supreme Court			X		8	Re-election for additional terms
Court of Appeals			X		8	Re-election for additional terms
Circuit Court			X		8	Re-election for additional terms
LOUISIANA						
Supreme Court				X	10	Re-election for additional terms
Court of Appeals				X	10	Re-election for additional terms
District Court				X	6	Re-election for additional terms

8. Three of the judges run in partisan elections for 6 year terms then have to be re-elected for additional terms.

9. Louisiana judicial elections are partisan inasmuch as the candidates' party affiliations appear on the ballot. However, two factors lead a somewhat nonpartisan character to these elections: (1) primaries are open to all candidates; and (2) judicial candidates generally do not solicit party support for their campaigns.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
MAINE						
Supreme Judicial Court		X(G)			7	Reappointment by governor, subject to legislative confirmation
Superior Court		X(G)			7	Reappointment by governor, subject to legislative confirmation
MARYLAND¹⁰						
Court of Appeals	X				See fn 11	Retention election (10 year term)
Court of Special Appeals	X				See fn 11	Retention election (10 year term)
Circuit Court	X				See fn 11	Nonpartisan election (15 year term) ¹²
MASSACHUSETTS¹³						
Supreme Judicial Court	X				to age 70	
Appeals Court	X				to age 70	
Trial Court of Mass.	X				to age 70	
MICHIGAN						
Supreme Court					X ¹⁴ 8	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
MINNESOTA						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
District Court			X		6	Re-election for additional terms
MISSISSIPPI						
Supreme Court			X		8	Re-election for additional terms
Court of Appeals			X		8	Re-election for additional terms
Chancery Court			X		4	Re-election for additional terms
Circuit Court			X		4	Re-election for additional terms
MISSOURI						
Supreme Court	X				1	Retention election (12 year term)
Court of Appeals	X				1	Retention election (12 year term)
Circuit Court				X	6	Re-election for additional terms
Circuit Court (Jackson, Clay, Platte, Saint Louis Counties)	X				1	Retention election (6 year term)
MONTANA						
Supreme Court			X		8	Re-election; unopposed judges run for retention
District Court			X		6	Re-election; unopposed judges run for retention
NEBRASKA						
Supreme Court	X				3	Retention election (6 year term)
Court of Appeals	X				3	Retention election (6 year term)
District Court	X				3	Retention election (6 year term)

10. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.

11. Until the first general election following the expiration of one year from the date of the occurrence of the vacancy.

12. May be challenged by other candidates.

13. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.

14. Although party affiliations for Supreme Court candidates are not listed on the general election ballot, candidates are nominated at party conventions.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
NEVADA						
Supreme Court			X		6	Re-election for additional terms
District Court			X		6	Re-election for additional terms
NEW HAMPSHIRE¹⁵						
Supreme Court		X(G) ¹⁶			to age 70	
Superior Court		X(G) ¹⁶			to age 70	
NEW JERSEY						
Supreme Court		X(G)			7	Reappointment by governor (to age 70) with advice and consent of the Senate
Appellate Division of Superior Court		X(G)			7	Reappointment by governor (to age 70) with advice and consent of the Senate
Superior Court		X(G)			7	Reappointment by governor (to age 70) with advice and consent of the Senate
NEW MEXICO						
Supreme Court	X				until next general election	See Footnote 17
Court of Appeals	X				until next general election	See Footnote 17
District Court	X				until next general election	See Footnote 17
NEW YORK						
Court of Appeals	X				14	See Footnote 18
Appellate Division of the Supreme Court	X				5	Commission reviews and recommends for or against reappointment by governor
Supreme Court				X	14	Re-election for additional terms
County Court				X	10	Re-election for additional terms
NORTH CAROLINA						
Supreme Court			X ¹⁷		8	Re-election for additional terms
Court of Appeals			X ¹⁷		8	Re-election for additional terms
Superior Court			X		8	Re-election for additional terms
NORTH DAKOTA						
Supreme Court			X		10	Re-election for additional terms
District Court			X		6	Re-election for additional terms

15. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.

16. The governor's nomination is subject to the approval of a five-member executive council.

17. Partisan election at next general election after appointment for eight-year term for appellate judges, six-year term for district. The winner thereafter runs in a retention election for subsequent terms.

18. Incumbent reapplies to nominating commission and competes with other applicants for nomination to the governor. The governor may reappoint the incumbent or another nominee. The senate confirms the appointment.

19. Beginning in 2004, these elections will be nonpartisan.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
OHIO						
Supreme Court				X ²⁰	6	Re-election for additional terms
Court of Appeals				X ²⁰	6	Re-election for additional terms
Court of Common Pleas				X ²⁰	6	Re-election for additional terms
OKLAHOMA						
Supreme Court	X				1	Retention election (6 year term)
Court of Criminal Appeals	X				1	Retention election (6 year term)
Court of Appeals	X				1	Retention election (6 year term)
District Court			X		4	Re-election for additional terms
OREGON						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
Tax Court			X		6	Re-election for additional terms
PENNSYLVANIA						
Supreme Court				X	10	Retention election (10 year term)
Superior Court				X	10	Retention election (10 year term)
Commonwealth Court				X	10	Retention election (10 year term)
Court of Common Pleas				X	10	Retention election (10 year term)
RHODE ISLAND						
Supreme Court	X				Life	
Superior Court	X				Life	
Worker's Compensation Court	X				Life	
SOUTH CAROLINA						
Supreme Court		X (L) ²¹			10	Reappointment by legislature
Court of Appeals		X (L) ²¹			6	Reappointment by legislature
Circuit Court		X (L) ²¹			6	Reappointment by legislature
SOUTH DAKOTA						
Supreme Court	X				3	Retention election (8 year term)
Circuit Court			X		8	Re-election for additional terms

20. Although party affiliations for judicial candidates are not listed on the general election ballot, candidates are nominated in partisan primary elections.

21. South Carolina has a 10 member Judicial Merit Selection Commission that screens judicial candidates and reports the findings to the state's General Assembly. Since 1997, the Assembly is restricted to voting only on those candidates found qualified by the Judicial Merit Selection Commission. However, the nominating commission itself is not far removed from the ultimate appointing body, and cannot be considered to be nonpartisan as control over member nominations is vested in majority party leadership. Although most nominating commissions contain members appointed by the governor or legislature, no other commissions actually contain the governor or current legislators who have final approval over the candidate as voting members of the commission. In contrast, the Judicial Merit Selection Commission in South Carolina contains 6 current members of the General Assembly appointed by the Speaker of the House of Representatives, the Chairman of the Senate Judiciary Committee, and the President Pro Tempore of the Senate. State legislators also choose the remaining 4 members of the Commission who are selected from the general public.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
TENNESSEE						
Supreme Court	X				until next biennial general election	Retention election (8 year term)
Court of Appeals	X				until next biennial general election	Retention election (8 year term)
Court of Criminal Appeals	X				until next biennial general election	Retention election (8 year term)
Chancery Court						
Criminal Court				X	8	Re-election for additional terms
Circuit Court				X	8	Re-election for additional terms
TEXAS						
Supreme Court				X	6	Re-election for additional terms
Court of Criminal Appeals				X	6	Re-election for additional terms
Court of Appeals				X	6	Re-election for additional terms
District Court				X	4	Re-election for additional terms
UTAH						
Supreme Court	X				First general election	Retention election (10 year term)
Court of Appeals	X					Retention election (6 year term)
District Court	X					Retention election (6 year term)
Juvenile Court	X				3 years after appointment	Retention election (6 year term)
VERMONT						
Supreme Court	X				6	Retained by vote of General Assembly (6 year term)
Superior Court	X				6	Retained by vote of General Assembly (6 year term)
District Court	X				6	Retained by vote of General Assembly (6 year term)
VIRGINIA						
Supreme Court		X(L)			12	Reappointment by legislature
Court of Appeals		X(L)			8	Reappointment by legislature
Circuit Court		X(L)			8	Reappointment by legislature
WASHINGTON						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Superior Court			X		4	Re-election for additional terms
WEST VIRGINIA						
Supreme Court				X	12	Re-election for additional terms
Circuit Court				X	8	Re-election for additional terms

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
WISCONSIN						
Supreme Court			X		10	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
WYOMING						
Supreme Court	X				1	Retention election (8 year term)
District Court	X				1	Retention election (6 year term)



Bureau of Justice Statistics

State Court Organization 1998

Courts and judges
Judicial selection and service
Judicial branch
Appellate courts
Trial courts
The jury
The sentencing context
Court structure

Federal and State Affairs
Attachment 18
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Table 4. Selection of Appellate Court Judges

	Method of selection for unexpired term	Method of selection for full term	Method of retention	Geographic basis for selection
Alabama Supreme Court, Court of Criminal Appeals, Court of Civil Appeals	Gubernatorial appointment	Partisan election	Partisan election	Statewide
Alaska Supreme Court, Court of Appeals	Same as full term	Gubernatorial appointment from judicial nominating commission	Retention election ¹	Statewide
Arizona Supreme Court, Court of Appeals	Gubernatorial appointment from judicial nominating commission	Gubernatorial appointment from judicial nominating commission	Retention election	Statewide (Supreme Court) County/region within division (Court of Appeals)
Arkansas Supreme Court, Court of Appeals	Gubernatorial appointment	Partisan election	Partisan election	Statewide (Supreme Court) District (Court of Appeals)
California Supreme Court, Court of Appeals	Gubernatorial appointment	Unopposed retention election	Unopposed retention election	Statewide (Supreme Court) District (Courts of Appeal)
Colorado Supreme Court, Court of Appeals	Gubernatorial appointment from judicial nominating commission	Gubernatorial appointment from judicial nominating commission	Retention election	Statewide
Connecticut Supreme Court, Appellate Court	Legislative appointment ²	Legislative appointment ²	Legislative appointment ²	Statewide
Delaware Supreme Court	Gubernatorial appointment from judicial nominating commission with consent of senate	Gubernatorial appointment from judicial nominating commission with consent of senate	Gubernatorial appointment from judicial nominating commission with consent of senate	Statewide
District of Columbia Court of Appeals	Presidential appointment from judicial nominating commission with senate confirmation	Presidential appointment from judicial nominating commission with senate confirmation	Judicial nominating commission or Presidential appointment with senate confirmation	District of Columbia
Florida Supreme Court, District Courts of Appeal	Gubernatorial appointment from judicial nominating commission	Gubernatorial appointment from judicial nominating commission	Retention election	Regional (5) Statewide (2) Regional based on District Courts of Appeal (Supreme Court) District (District Courts of Appeal)
Georgia Supreme Court, Court of Appeals	Gubernatorial appointment from judicial nominating commission	Nonpartisan election	Nonpartisan election	Statewide
Hawaii Supreme Court, Intermediate Court of Appeals	Gubernatorial appointment from judicial nominating commission with consent of senate for a full term	Gubernatorial appointment from judicial nominating commission with consent of senate	Judicial nomination commission reappoints	Statewide
Idaho Supreme Court, Court of Appeals	Gubernatorial appointment from judicial nominating commission	Nonpartisan election	Nonpartisan election	Statewide

NOTE: This 1998 table, the most recent published edition of State Court Organization, does not reflect a change from partisan election to nonpartisan election in Arkansas and North Carolina.

Table 4. Selection of Appellate Court Judges

	Method of selection for unexpired term	Method of selection for full term	Method of retention	Geographic basis for selection
Illinois Supreme Court, Appellate Court	Court selection (Supreme Court) COLR selection (Appellate Court)	Partisan election	Retention election	District
Indiana Supreme Court, Tax Court, Court of Appeals	Gubernatorial appointment from judicial nominating commission	Gubernatorial appointment from judicial nominating commission	Retention election	Statewide (Supreme Court, Tax Court) District (Court of Appeals)
Iowa Supreme Court, Court of Appeals	Gubernatorial appointment from judicial nominating commission	Gubernatorial appointment from judicial nominating commission	Retention election	Statewide
Kansas Supreme Court, Court of Appeals	Gubernatorial appointment from judicial nominating commission	Gubernatorial appointment from judicial nominating commission	Retention election	Statewide
Kentucky Supreme Court, Court of Appeals	Nonpartisan election	Nonpartisan election	Nonpartisan election	District
Louisiana Supreme Courts, Court of Appeals	Supreme Court selection ³	Nonpartisan election	Nonpartisan election	District
Maine Supreme Judicial Court	Gubernatorial appointment	Gubernatorial appointment	Gubernatorial reappointment	Statewide
Maryland Court of Appeals, Court of Special Appeals	Gubernatorial appointment from judicial nominating commission with consent of senate	Gubernatorial appointment from judicial nominating commission with consent of senate	Retention election	Circuit
Massachusetts Supreme Judicial Court, Appeals Court	⁴	Gubernatorial appointment from judicial nominating commission with approval by Governor's council ⁵	⁶	Statewide
Michigan Supreme Court, Court of Appeals	Gubernatorial appointment	Nonpartisan election	Nonpartisan election	Statewide (Supreme Court) District (Court of Appeals)
Minnesota Supreme Court, Court of Appeals	Gubernatorial appointment	Nonpartisan election	Nonpartisan election	Statewide
Mississippi Supreme Court, Court of Appeals	Gubernatorial appointment	Nonpartisan election	Nonpartisan election	District
Missouri Supreme Court, Court of Appeals	Gubernatorial appointment from judicial nominating commission	Gubernatorial appointment from judicial nominating commission	Retention election	Statewide (Supreme Court) District (Court of Appeals)
Montana Supreme Court	Gubernatorial appointment from judicial nominating commission	Nonpartisan election	Nonpartisan election (if unopposed, retention election)	Statewide

Table 4. Selection of Appellate Court Judges

	Method of selection for unexpired term	Method of selection for full term	Method of retention	Geographic basis for selection
Nebraska Supreme Court, Court of Appeals	Gubernatorial appointment from judicial nominating commission	Gubernatorial appointment from judicial nominating commission	Retention election	Statewide: chief justices; district: associate justices (Supreme Court) All by district (Court of Appeals)
Nevada Supreme Court	Gubernatorial appointment from judicial nominating commission	Nonpartisan election	Nonpartisan election	Statewide
New Hampshire Supreme Court	Same as full term	Gubernatorial appointment with approval of elected executive council	Gubernatorial reappointment	Statewide
New Jersey Supreme Court, Superior Court-Appellate Division	Gubernatorial appointment	Gubernatorial appointment with consent of senate (Supreme Court) Chief Justice designation of Superior court judge (Superior Court, Appellate Division)	Gubernatorial reappointment with consent of senate (Supreme Court) Annual assignment by the Chief Justice (Superior Court, Appellate Division) ⁷	Statewide
New Mexico Supreme Court, Court of Appeals	Gubernatorial appointment ⁸	Partisan election	Nonpartisan retention election	Statewide
New York Court of Appeals	Gubernatorial appointment from judicial nominating commission	Gubernatorial appointment from judicial nominating commission	Gubernatorial reappointment with consent of senate	Statewide
Supreme Court, Appellate Divisions	Gubernatorial appointment	Gubernatorial appointment	Gubernatorial reappointment	Statewide ⁹
North Carolina Supreme Court, Court of Appeals	Gubernatorial appointment	Partisan election	Partisan election	Statewide
North Dakota Supreme Court	Gubernatorial appointment from judicial nominating commission or elections ¹⁰	Nonpartisan election	Nonpartisan election	Statewide
Ohio Supreme Court, Court of Appeals	Gubernatorial appointment	Nonpartisan election	Nonpartisan election	Statewide (Supreme Court) Appellate District (Court of Appeals)
Oklahoma Supreme Court, Court of Criminal Appeals, Court of Civil Appeals	Gubernatorial appointment from judicial nominating commission	Retention election	See full term	District
Oregon Supreme Court, Court of Appeals	Gubernatorial appointment	Nonpartisan election	Nonpartisan election	Statewide
Pennsylvania Supreme Court, Superior Court, Commonwealth Court	Gubernatorial appointment with consent of senate	Partisan election	Retention election	Statewide
Rhode Island Supreme Court	Gubernatorial appointment from judicial nominating commission	Life tenure	Life tenure	Statewide

Table 4. Selection of Appellate Court Judges

	Method of selection for unexpired term	Method of selection for full term	Method of retention	Geographic basis for selection
South Carolina Supreme Court, Court of Appeals	Legislative election	Legislative election	Legislative election (Supreme Court) Legislative reelection (Court of Appeals)	Statewide
South Dakota Supreme Court	Gubernatorial appointment from judicial nominating commission	Retention election	Retention election	Initial District Retention-Statewide
Tennessee Supreme Court, Court Appeals, Court of Criminal Appeals	Gubernatorial appointment from judicial nominating commission	Retention election	Nonpartisan election	Statewide
Texas Supreme Court, Court of Criminal Appeals, Court of Appeals	Gubernatorial appointment	Partisan election	Partisan election	Statewide (Supreme Court, Court of Criminal Appeals) District (Courts of Appeals)
Utah Supreme Court, Court of Appeals	Gubernatorial appointment from judicial nominating commission with consent of senate	Gubernatorial appointment from judicial nominating commission with consent of senate	Retention election	Statewide
Vermont Supreme Court	Gubernatorial appointment from judicial nominating commission with consent of senate	Gubernatorial appointment from judicial nominating commission with consent of senate	Legislative election	Statewide
Virginia Supreme Court, Court of Appeals	Legislative appointment	Legislative appointment	Legislative appointment	Statewide
Washington Supreme Court, Courts of Appeals	Gubernatorial appointment	Nonpartisan election	Nonpartisan election	Statewide (Supreme Court) District (Courts of Appeals)
West Virginia Supreme Court of Appeals	Gubernatorial appointment ¹¹	Partisan election	Partisan election	District
Wisconsin Supreme Court, Court of Appeals	Gubernatorial appointment from judicial nominating commission	Nonpartisan election	Nonpartisan election	Statewide (Supreme Court) District (Court of Appeals)
Wyoming Supreme Court	Gubernatorial appointment from judicial nominating commission	Gubernatorial appointment from judicial nominating commission	Retention election	Statewide
Federal U.S. Supreme Court, U.S. Courts of Appeals	Nominated and appointed by the President with the advice and consent of the Senate	Nominated and appointed by the President with the advice and consent of the Senate	—	United States (U.S. Supreme Court) Circuit (U.S. Courts of Appeals)

Summary of Methods of Selection of State Supreme Courts

According to the American Judicature Society website at http://www.ajs.org/selection/selection_stateselect.asp, merit selection through a nominating commission process is used in 24 states to select justices and judges of the court of last resort. This would include the methods of selection for both unexpired terms and full terms of office. The following summary of the table, "Selection of Appellate Court Judges" from *State Court Organization 1998*, published by the U.S. Department of Justice, Bureau of Justice Statistics, provides more information about the methods of selection for full terms of office for justices and judges of the courts of last resort in each of the 50 states. A copy of the complete table also is attached.

Gubernatorial appointment from judicial nominating commission: 15 states

In addition to Kansas, these 14 states include the neighboring states of Colorado, Iowa, Missouri, Nebraska, and Oklahoma. (The remaining nine are Alaska, Arizona, Florida, Indiana, New York, Rhode Island, South Dakota, Tennessee, and Wyoming.)

Gubernatorial appointment from judicial nominating commission with consent of the senate: 5 states: Delaware (nominating commission is established by executive order), Hawaii (with retention by reappointment by the judicial nominating commission), Maryland (nominating commission is established by executive order), Utah, and Vermont (with retention by legislative election, rather than by retention election)

Gubernatorial appointment with other variations: 5 states: California (with unopposed retention election), Maine (with gubernatorial reappointment), Massachusetts (from judicial nominating commission with approval by governor's council), New Hampshire (with approval of elected executive council), New Jersey (with consent of the senate, subject to gubernatorial reappointment and consent of the senate after an initial seven-year term)

Partisan election: 6 states: Alabama, Illinois, New Mexico, Pennsylvania, Texas, and West Virginia

Nonpartisan election: 16 states: Arkansas, Georgia, Idaho, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nevada, North Carolina, North Dakota, Ohio, Oregon, Washington, and Wisconsin

Legislative appointment: 2 states: Connecticut (following Governor's nomination from candidates submitted by Judicial Selection Commission) and Virginia

Legislative Election: 1 state: South Carolina

Testimony in opposition to HCR 5008.

Presented by Thomas E. Wright, Secretary Treasurer of the Kansas Bar Association and former member of the Supreme Court Nominating Commission.

Following an unpopular Judicial decision attempts to curtail the Judiciary have been common. The *Brown v. Board of Education* decision in the 50's led to many calls to strip the Court of jurisdiction in such matters.

The Kansas Bar Association opposes HCR 5008. By way of background, I served for eight years on the Supreme Court Nominating Commission. During those eight years, nine of the current Judges and Justices were selected from our nominations by two different Governors. During that time, we interviewed hundreds of candidates. A detailed system has evolved that searches out qualifications, but protects judicial independence. No matter who interviews Judicial Candidates, the rules are the same. Judges can't promise to vote a certain way on certain cases or issues.

Canon 5 Title of the Rules Relating to Judicial Conduct is entitled "A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity."

Under Commentary for "Candidates for Judicial Office."

Candidates shall not:

"Make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office.

Make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court."

This is not a gag order for Judicial Candidates. Judicial Candidates can explain personal histories, experience, how they would organize their office, how they would manage and administer their office, how they would dispose of case back loads, how they would avoid the appearances of favoritism, how they would improve conditions for jurors, how they would improve public confidence in courts and how they would deal with racial and gender considerations and more.

The Candidates just can't promise to vote a certain way and at the same time remain independent.

The independence of the Judiciary should be paramount to all of us. That judicial independence is not advanced by HCR 5008.

Federal and State Affairs
Attachment 19
Date 2-13-07



LEAGUE OF WOMEN VOTERS® OF KANSAS

February 13, 2007

President
Janis McMillen
Overland Park

Honorable Arlen Siegfried, Chair
House Federal and State Affairs Committee
The Kansas House of Representatives

Chairman Siegfried and members of the committee:

1st Vice President
Sharon Ailsieger
Wichita

2nd Vice President
Cathy Hoy
Emporia

Secretary
Carol Snyder
Overland Park

Treasurer
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Linda Johnson
Manhattan

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Manhattan

Janice Norlin
Salina

Nona Ponder
Wichita

Webmaster
Carol Yoho
Topeka

I appreciate the opportunity to speak on behalf of the League of Women Voters of Kansas, in opposition to HCR 5008. Following several studies of the Kansas Court Systems, members of the League of Women Voters of Kansas adopted a position supporting merit selection of judges, a position we continue to support. Our issue is simply this: we must maintain the independence of the judiciary by keeping politics out of the selection system - to keep politics out of the courts. To do away with the current, non-partisan selection/ appointment process for Supreme Court Justices, as provided in this Resolution, would bring us a step closer to experiencing the impact of politics on fair and impartial courts.

- The non-partisan merit selection system, based on judicial qualifications, has served us well for 50 years. This system is not broken; it does not need to be fixed.
- There has been minimal, if any, interest in modifying the current process. When some want to amend our state Constitution in reaction to one or two of numerous Supreme Court rulings, it requires that we proceed with great caution.
- Over 30 states have adopted the merit system; none have found it necessary to change.
- The public expects judges to be "above the political fray", and rightly so. If they are not, the perception, if not the reality, is that judges are susceptible to political pressure that may compromise their ability to be fair and impartial to *all* citizens.

To address this latter point, I would like to share with you the results of two national surveys that were conducted in 2002-2003 by Greenberg Quinlan Rosner Research, and by American Viewpoint, in states where judges are elected. And I point this out, because there are concerns that the proposal put forward in HCR 5008 is but the first step on a slippery slope to judicial election in Kansas. Survey respondents noted the following:

- 70% of voters and 59% of state Supreme Court justices support a general merit selection and retention proposal
- 76% of voters believe that donors to judges' campaigns get special treatment in court, and even 26% of judges agree
- 90% of voters and 80% of state judges say they are quite concerned about special interests trying to use the courts to shape policy on a range of economic and social issues
- 90% of voters and 87% of judges say they are concerned that "because voters have little information about judicial candidates, judges are often selected for reasons other than their qualifications."

A non-political court system, as we have now, is the citizen's best defense against government power and the only assurance that he or she is entitled to a fair and impartial day in court.

We urge you not to support HCR 5008.

Janis McMillen

Federal and State Affairs

Attachment 20

Date 2-13-07

Testimony on **HCR 5008**
before the
House Federal and State Affairs Committee

by

David G. Shriver, Attorney
Kansas Association of School Boards

February 13, 2007

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to appear today on HCR 5008, which proposes to amend section 5 of article 3 of the Constitution of the State of Kansas by changing the manner of selection for justices of the Kansas Supreme Court. We strongly oppose this proposal.

As I am sure most of you are aware, the Kansas Association of School Boards represents 294 of the 296 school districts in the state. The membership of our organization annually reviews potential issues that may come before the legislature and adopts positions reflecting the beliefs of the member districts. In December, our Delegate Assembly adopted the following position: "KASB supports the role of an independent judiciary in enforcing constitutional provisions." As a group, KASB opposes either changing the selection process for judges or limiting the ability of the courts to enforce those provisions, which would weaken the traditional separation of powers in Kansas.

KASB does not believe sufficient facts exist to justify changing a system of selection of justices to the Kansas Supreme Court that has produced a non-partisan, highly qualified bench of jurists.

Thank you and I would be happy to answer any questions.

Federal and State Affairs
Attachment 21
Date 2-13-07



KANSAS ASSOCIATION OF DEFENSE COUNSEL

825 S. Kansas Avenue, Suite 500 • Topeka, KS 66612

Telephone: 785-232-9091 • FAX: 785-233-2206 • www.kadc.org

TO: HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

FROM: F. JAMES ROBINSON
KANSAS ASSOCIATION OF DEFENSE COUNSEL

RE: HCR 5008

DATE: FEBRUARY 13, 2007

Chairman Siegfried, members of the committee, thank you for the opportunity to appear today and comment on your review of House Concurrent Resolution 5008. My name is Jim Robinson. I have practiced law in Wichita for 23 years. I am on the Board of Directors of the Kansas Association of Defense Counsel (KADC), and appear today as a representative of that group. KADC is a statewide association of lawyers who defend civil damage suits. KADC supports the current merit selection process for selecting appellate judges.

What is merit selection of judges?

Merit selection focuses on the intellectual and technical abilities of candidates who seek the important job of interpreting the law. As with any position that requires rigorous analytical ability, the goal of those making the selection is to sift out less qualified and less experienced applicants and search out the most qualified.

The linchpin of merit selection in Kansas is the Supreme Court Nominating Commission. This is a nonpartisan commission composed of four lawyer members who are elected by their peers in each congressional district, four nonlawyer members who are appointed by the governor, and one additional lawyer member who serves as chairperson and who is elected by peers in a statewide election. Each member's term is four years and terms are staggered so that the terms of only two members' – one a lawyer and one a nonlawyer – expire each year. Currently there are nonlawyer members who were appointed by both Governors Graves and Sebelius.

The Commission's work is familiar to anyone who has made an important hiring decision. It initially reviews resumes and an extensive application that must be completed by all applicants for the Supreme Court and the Court of Appeals. It then screens candidates and interviews the most qualified and investigates their references. After the applicants have been thoroughly vetted, the Commission submits the names of

the three that in its consensus are the most technically able and experienced to the Governor, who must select an applicant from the list. Judges are selected for retention by the voters statewide in an uncontested election every six years for the Supreme Court and every four years for the Court of Appeals.

How does “merit selection” promote fair and impartial justice for all Kansans?

Courts have a duty to protect individual rights, including the rights of political, racial and ethnic minorities, no matter how unpopular their rulings may be. The legislative and executive branches may use focus groups or public opinion polls to make decisions; judges may not. The role of the courts is to enforce the law, whether it is the First Amendment rights of some radical group on either end of the spectrum to publish political views which most people find offensive, or the right of a child murderer to a fair and impartial trial. Courts necessarily make tough decisions regardless of whether they are popular at the time.

Fair criticism is essential in our democracy even with respect to improving the quality of the courts. But political attacks on the judiciary diminish its independence and the public’s confidence in it. When state court judges are perceived as giving in to political pressures, the credibility of the judiciary suffers. When those responsible for nominating or confirming judges stack the courts with judges who are there to produce certain results, the quality of justice is diminished.

The real value of merit selection is in minimizing the role of politics in selecting judges, which in turn limits the political influences that may hinder fair and impartial justice.

Does “merit selection” eliminate politics from judicial selection?

No, because one assumes that politics will play into any gubernatorial appointment. However, merit selection minimizes the interplay between partisan politics and judicial selection because the Supreme Court Nominating Commission nominates candidates on the basis of their qualifications, not political affiliation. More importantly, the applicant is not required to raise funds, advertise, stump, or articulate a platform, all of which create a risk that judicial independence could be compromised.

Why should “merit selection” in Kansas differ from the federal selection process used for the United States Supreme Court and the United States Courts of Appeals?

Under the federal process, unlike the state process described above, the President screens and then nominates a candidate. Senate confirmation in the federal process is a check against the President’s exercise of appointment power. Shortly after the Constitutional Convention, Alexander Hamilton wrote in No. 76 of *The Federalist Papers* that the role of the Senate was “an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit character.” In

other words, Senate confirmation was put in place at the federal level as a check against nepotism or cronyism, ensuring that nominees are qualified for their jobs.

Kansas does not need this check. The Governor does not screen the candidates; rather, this important work is done by an independent nonpartisan nominating commission. Furthermore, the state process, unlike the federal process, does not grant lifetime judgeships. Finally, state judges, unlike federal judges, are held accountable to the voters in retention elections.

Senate confirmation introduces an unwanted political element into the selection process.

Using the federal system as the model, it is worth considering what the Senate confirmation process would look like in Kansas, and how it could be abused.

Once the Governor announces her nominee, Senate staff will begin the behind-the-scenes work researching the nominee's public record and past legal work, the KBI will conduct a thorough background investigation, and the Kansas Bar Association is likely to weigh in on the nominee's qualifications.

The investigation process may become mired when the opposition demands reams of additional documentation from the nominee or the investigators. This information may be beyond the scope of a normal Senate process, unnecessary or simply irrelevant. There may be objections that the Governor is deliberately withholding information that Senators have a right to review. Thereafter, "information deprivation" becomes a familiar refrain throughout the process.

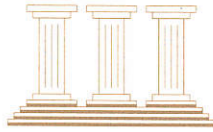
After the initial work is completed the Senate Judiciary Committee will hold lengthy hearings. Committee members will make statements, the nominee will testify and answer questions, and other witnesses may provide their views. The opponents through their statements and questions will suggest that the nominee is "out of the mainstream," "too far left," "too far right," "soft on crime" *etc.* They will try to goad the nominee into pre-judging hot button issues likely to come before the courts or making an embarrassing guffaw. There will be much frustration with the process when nominees invoke the sacred mantra of judicial nominees and refuse to comment on issues that might come before the court. As we have seen at the federal level these discussions can devolve into questioning about points of prejudice and personal pique that are calculated to tarnish the judge in the court of public opinion, all of which can be exacerbated when coupled with a highly politicized relationship between the Governor and the Legislature.

The Judiciary Committee will deliberate and then vote. The recommendation will go to the floor of the Senate. The opponents will likely use this opportunity to lay out their case against the nominee. If there is no agreed time limit, the hearings could continue for an indefinite period.

It shouldn't be this way. The Kansas Senate is a dignified institution. But we have no reason to expect that Kansas can adopt the Senate confirmation process without the results that have played out in the U.S. Senate.

The candidates don't deserve this protracted and combative process. They deserve to be treated with the dignity and respect befitting a Supreme Court Justice or a Court of Appeals Judge. Many of the most qualified candidates who are already successful in what they do may be discouraged from participating because of the name-calling, insults, smears and demeaning attacks that have lately besmirched the federal nomination process.

The citizens of Kansas do not need, nor should they want, to replace the present system that is working very well with a Senate confirmation process that is fraught with problems.



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

To: Representative Arlen Siegfried, Chairman
Members of the House Federal & State Affairs Committee

From: Callie Denton Hartle
Kansas Trial Lawyers Association

Date: February 13, 2007

Re: HCR 5008

I appear today on behalf of the Kansas Trial Lawyers Association, a statewide nonprofit organization of attorneys who serve Kansans who are seeking justice. I appreciate the opportunity to provide testimony in opposition to HCR 5008, relating to the selection of justices of the Kansas Supreme Court.

The importance of an independent judiciary cannot be overstressed in our system of checks and balances. Our current merit selection of judges is the best means to protect judicial independence. Requiring confirmation by the Kansas Senate of nominations for the court inherently politicizes the process, and potentially discourages qualified individuals from seeking judgeships.

It is important to remember that Kansas has a history of disdain for politics in the courts. One need only remember the infamous "triple play", engineered by outgoing governor Fred Hall in 1956, which outraged Kansas citizens and led to the merit system for selection of judges that we have today.

HCR 5008 would eliminate the nonpartisan Supreme Court Nominating Commission. Yet no one has suggested that confirmation by the Senate would involve a more careful review of a nominee's qualifications for office or search of integrity than can be accomplished by the Nominating Commission process.

Kansas' merit selection process has stood the test of time and was crafted to embrace the value of an independent judiciary. Changing this time-honored process is shortsighted. On behalf of the members of the Kansas Trial Lawyers Association and their clients, I respectfully request that the Committee oppose HCR 5008.

Terry Humphrey, Executive Director

Fire Station No. 2 • 719 SW Van Buren Street, Suite 100 • Topeka, Ks 66603-3715

E-Mail: triallaw@ink.org

Federal and State Affairs

Attachment 23

Date 2-13-07