Approved: February 7, 2007
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:32 A.M. on January 22, 2007, in Room 123-S of the Capitol.

All members were present except:
Barbara Allen arrived, 9:38 A.M.
Donald Betts arrived, 9:38 A.M.
Derek Schmidt- excused
David Haley- excused

Committee staff present:
Athena Anadaya, Kansas Legislative Research Department
Bruce Kinzie, Office of Revisor of Statutes
Nobuko Folmsbee, Office of Revisor of Statutes
Karen Clowers, Committee Assistant

Conferees appearing before the committee:
Bill McKean
Kathy Porter, Office of Judicial Administration

Others attending:
See attached list.

Bill Introductions

Jim Clark, Kansas Bar Association, requested the introduction of a bill regarding corporations and the elimination of return receipt notifications. Senator Umbarger moved, Senator Donovan seconded, to introduce the bill. Motion carried.

Senator Vratil introduced two bills. The first concerns criminal procedure relating to appearance bonds. The second bill concerns civil procedure relating to attorney's fees which would require a judge to award attorney's fees to the prevailing party in all civil actions and appeals except personal injury actions. Senator Vratil moved, Senator Goodwin seconded, to introduce the bills.

The hearing on **SB 32--Health care; medical assistance repayment; discretionary trusts** was opened.

There were no conferees listed or present to testify on the bill. Senator Vratil gave a brief description of the bill and indicated Senator Emler had brought forth the bill. Senator Goodwin requested the hearing be continued at a later date. The Chairman continued the hearing until a later date.

The hearing on **SB 41--Negligence; ordinary care required when gun possession at issue in personal injury or wrongful death action** was opened.

Senator Journey testified as author of the bill, indicating the act is intended to overturn the holding in the Kansas Supreme Court case, Wood v. Groh, 269 Kan. 420 (Attachment 1). Senator Journey provided background on the case and urged adoption of the bill.

There being no other conferees, the hearing on **SB 41** was closed.

The Chairman opened the hearing on **SB 45--Chief judge of the judicial district elected by district judges, not designated by the supreme court.**

Senator Journey spoke in support, indicating this legislation would put selection of the Chief Judge at the local district court level (Attachment 2).

Bill McKean appeared in support, stating the most effective and responsive leaders for any organization are chosen from a pool of willing candidates in a democratic vote (Attachment 3).

MINUTES OF THE Senate Judiciary Committee at 9:32 A.M. on January 22, 2007, in Room 123-S of the Capitol.

Kathy Porter testified in opposition, stating **SB 45** would create procedural difficulties such as tie votes in districts with an even number of judges (Attachment 4). Ms. Porter also voiced concern that the bill appears to conflict with the provisions of Article 3, Section 1, of the *Constitution of the State of Kansas*. There was also concern that popularly elected judges could encounter conflict between administrative duties as prescribed by the Supreme Court and what would be pleasing to judges in his district. The current system has worked well for decades.

Written testimony in support of **SB 45** was submitted by:
Hon. Jeffrey E. Goering, Hon. Anthony Powell, Hon. Robb Rumsey, and Hon. Eric Yost, District Judges, 18th Judicial District (Attachment 5)

There being no further conferees, the hearing on **SB 45** was closed.

Approval of Minutes

Senator Umbarger moved, Senator Bruce seconded, to approve the committee minutes of January 10, 2007 and January 11, 2007. Motion carried.

Chairman Vratil stated that **SB 37--Concerning the crime of smoking in indoor areas** was scheduled for final action next week and urged the committee members to consider any amendments they may wish to may and work with the revisors to have balloons ready.

The meeting adjourned at 10:27 A.M. The next scheduled meeting is January 23, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1/22/07

NAME	REPRESENTING
Jeff Bo Henborg	Polsinelli
Kathy Damm	KS District Judges.
Kathy Porter	Judicial Branch
Jamie Rae	KS Children's Service League
Ted Harper	KS Govs. Consulting
Callie Denton Hurtle	KTLA
Whitney Damron	KS Bar Assn.
Dan Morin	KS Medical Society

STATE OF KANSAS

SENATOR PHILLIP B. JOURNEY
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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
MEMBER: SPECIAL CLAIMS AGAINST THE STATE (JOINT), CHAIR .
HEALTH CARE STRATEGIES
JUDICIARY
PUBLIC HEALTH AND WELFARE
TRANSPORTATION

CORRECTIONS AND JUVENILE JUSTICE OVERSIGHT (JOINT)

SOUTH CENTRAL DELEGATION, CHAIR

Testimony Before the Kansas Senate Judiciary Committee
January 22nd, 2007
in Support of Senate Bill 41

Mr. Chairman, members of the committee it is truly an honor to appear before your committee regarding Senate Bill 41. Senate Bill 41 is a response intended to clarify the holding in the Kansas Supreme Court case Wood v. Groh 269 Kan. 420. A copy of the opinion is attached for the convenience of the committee's review.

The facts as stated in the Kansas Supreme Court case are that on May 27th, 1995, Ed Groh, age 15, broke into a locked firearms storage facility, removed a handgun, loaded it with ammunition from the locked storage cabinet, took it to a friend's house where he drank some beer, discharged the firearm and then later that night went to a party that had no adult supervision. He arrived at the party around midnight, alcoholic beverages were consumed at the residence. Between 1:30 and 2:00 am, he left the party to drink more beer at another friend's house, returned to the party at approximately 2:30, the gun accidentally discharged striking a girl with the bullet. The parents at the home where the party occurred and where the alcoholic beverages were illegally consumed were dismissed through a summary judgment motion as defendants. The parents of Ed Groh specifically forbade their son from possession of the firearm without adult supervision. The father, Derry, was the only person with a key to the gun cabinet, and kept the key with him at all times. The Kansas Supreme Court held "this court determined in Long (v. Turk 265 Kan. 855) that firearms are inherently dangerous instrumentalities and commensurate with the dangerous character of such instrumentalities, the reasonable care required was the highest degree of care." Firearms are no more dangerous instrumentalities than automobiles and other machines that we deal within our everyday lives. To apply the same standard of care to parents to allow their children to operate motor vehicles would have catastrophic effects upon our society.

I would urge the committee to adopt Senate Bill 41 and place and ordinary standard of care as the appropriate burden of duty for all Kansans in the same manner as we do automobiles and other machines in our society.

Respectfully submitted,

Phillip B Journey

Senator Phillip B. Journey
State Senator 26th District

Senate Judiciary
1-22-07
Attachment 1

WOOD v. GROH, 269 Kan. 420 (2000)
7 P.3d 1163
SARAH WOOD, LINDA WOOD, and WARREN WOOD, *Appellants/Cross-appellees,* v.
DERRY GROH and CHOON GROH, *Appellees/Cross-appellants.*
No. 81,826
Supreme Court of Kansas
Opinion filed June 9, 2000.

SYLLABUS BY THE COURT

1. TRIAL - *Jury Instructions - Appellate Review.*
The trial court is required to properly instruct the jury on a party's theory of the case. Errors regarding jury instructions will not demand reversal unless they result in prejudice to the appealing party. Instructions in any particular action are to be considered together and read as a whole, and where they fairly instruct the jury on the law governing the case, error in an isolated instruction may be disregarded as harmless. If the instructions are substantially correct and the jury could not reasonably have been misled by them, the instructions will be approved on appeal.

2. SAME - *Jury Instructions - Clearly Erroneous Instruction - Appellate Review.*
Reversal is required where the appellate court reaches a firm conviction that if an instructional error had not occurred, there is a real possibility that the jury would have returned a different verdict.

3. NEGLIGENCE - *Dangerous Instrumentality Doctrine - Firearms Inherently Dangerous - Highest Degree of Reasonable Care.*
Those who deal with firearms are always required to use reasonable care. This standard never varies, but the care which it is reasonable to require of the actor varies with the danger involved in his or her act and is proportionate to it. The greater the danger, the greater the care which must be exercised. Firearms are inherently dangerous instrumentalities and commensurate with the dangerous character of such instrumentalities, the reasonable care required is the highest degree of care.

4. STATUTES - *Construction - Appellate Review.*
The interpretation of a statute is a question of law, and the appellate court's scope of review is unlimited.

5. COMPARATIVE NEGLIGENCE - *Joint Tortfeasors - Apportionment of Fault - Joint and Several Liability Not Applicable.*
Where joint tortfeasors are liable on a theory of negligence, their fault must be compared pursuant to K.S.A. 60-258a. The concept of joint and several liability between joint tortfeasors does not apply in comparative negligence actions.

6. CIVIL PROCEDURE - *Frivolous Claims, Motions, or Defenses - Sanctions Appellate review.*
The imposition of sanctions pursuant to K.S.A. 1999 Supp. 60-211 is discretionary with the trial court, and its ruling on sanctions will not be disturbed on appeal absent an abuse of discretion.

7. SAME - *Frivolous Claims, Motions, or Defenses - Sanctions - Attorney Fees as Sanctions.*
K.S.A. 1999 Supp. 60-211(c) requires that a district court shall

impose a sanction when a violation of K.S.A. 1999 Supp. 60-211(b) is found. The statute does not require a sanction of attorney fees but allows courts to impose nonmonetary sanctions in the form of admonitions as well as monetary sanctions.

8. APPEAL AND ERROR - *Sufficiency of Evidence - Appellate Review.*
When a verdict is challenged for insufficiency of evidence or as being contrary to the evidence, the appellate court does not weigh

th idence or pass on the credibility of the witnesses. If the evidence, with all reasonable inferences to be drawn therefrom, when considered in the light most favorable to the prevailing party, supports the verdict, it will not be disturbed on appeal.

9. TORTS - *Negligence of Parent for Malicious Conduct of Child - Duty to Exercise Reasonable Care to Control Child.* A parent is under a duty to exercise reasonable care to control his or her minor child to prevent the child from intentionally harming others or from so conducting himself or herself as to create an unreasonable risk of bodily harm to others if the parent knows or has reason to know that he or she has the ability to control the child and knows or should know of the necessity and opportunity for exercising such control.

10. APPEAL AND ERROR - *Issues Not Raised before Trial Court Will Not Be Heard on Appeal.* Issues not raised before the trial court cannot be raised on appeal. A new legal theory may not be asserted for the first time on appeal or raised in a reply brief.

Appeal from Lyon district court, W. LEE FOWLER, judge. Opinion filed June 9, 2000. Reversed and remanded for further proceedings.

David R. Cooper, of Fisher, Patterson, Sayler & Smith, L.L.P., of Topeka, argued the cause, and *David P. Madden*, of the same firm, of Overland Park, and *Don C. Krueger*, of Krueger & Huth Law Office, of Emporia, were with him on the briefs for appellants/cross-appellees.

Paul Hasty, Jr., of Wallace, Saunders, Austin, Brown & Enochs, Chtd., of Overland Park, argued the cause, and *Jeffrey W. Deane*, of the same firm, was with him on the briefs for appellees/cross-appellants.

The opinion of the court was delivered by

DAVIS, J.:

The primary question in this appeal involves the civil standard of care required of those persons having ownership or control of a firearm. The defendant parents kept a .22 caliber handgun in their home. Their minor son obtained the gun and later accidently shot the plaintiffs' minor daughter. In the plaintiffs' personal injury action against the parents, the jury was instructed that the standard of care required of the parents was that of reasonable

care. However, the standard of care required in this state is the highest degree of care. We reverse and remand for further proceedings.

On the afternoon of May 27, 1995, Ed Groh, age 15, used a screwdriver to open his father's locked gun cabinet and removed a .22 caliber handgun. The gun was not loaded; however, the loaded ammunition clip, as well as additional ammunition, was stored in the cabinet along with the gun. Ed took the gun and ammunition to a friend's house where he and some friends drank beer and practiced "target shooting with some cans." Later that night, Ed went to a party at the Archdekins' house. There were no adults present at the party. Ed carried the gun with him and showed it to others at the party. Sarah Wood, age 15, arrived at the party around midnight. Both Sarah and Ed consumed alcoholic beverages at the party.

At about 1:30 or 2 a.m., Ed left the party to drink more beer at another friend's house. He returned to the party and at approximately 2:30 a.m., as Sarah and Ed proceeded up the stairs at the Archdekins' house, the gun accidentally discharged, striking Sarah in the left buttock.

Sarah and her parents, Linda and Warren Wood, filed suit against Ed's parents, Derry and Choon Groh, alleging negligent parental supervision and negligent safeguarding of a gun. The Archdekins were also named defendants in the suit but were dismissed on summary judgment and are not

involved in this appeal.

Trial testimony established that Derry Groh had taken his son target shooting with the gun five or six times. Derry specifically forbade Ed from using the gun without strict parental supervision. Ed knew that he was not to take any of the weapons from the cabinet without Derry's permission. Derry was the only person with a key to the gun cabinet and he kept the key on his personal key ring at all times.

Linda Wood testified, however, that Ed told her that Derry knew he had the gun and that Derry knew that he occasionally took the gun from the cabinet and shot it. Testimony also revealed that Ed had been arrested prior to the shooting for taking someone's car without permission and "joyriding." Under the terms of his
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probation from that incident, Ed was not to possess a firearm without the permission of his probation officer. Derry took Ed target shooting with the gun shortly after the joyriding incident. Ed had a curfew of 11 to 11:30 p.m. on weekends, which he violated by being at the party well past midnight on the night of the shooting. Neither of the Grohs knew where Ed was the night of the shooting.

A jury returned a verdict in favor of the Woods, finding the Grohs 10% at fault, Sarah 20% at fault, and Ed, who was not a party to the lawsuit, 70% at fault. The jury awarded $100,000 in damages to Sarah and $9,162.50 to her parents, Linda and Warren Wood. Judgment was, therefore, entered in favor of Sarah in the amount of $10,000 and in favor of Linda and Warren in the amount of $916.25.

The Woods raise two issues on appeal: (1) whether the district court erred in refusing to instruct the jury that the Grohs owed the highest degree of care in safeguarding a handgun; and (2) whether the district court erred by refusing to find the Grohs jointly and severally liable for the combined fault of themselves and their son. The Grohs raise three issues on cross-appeal: (1) whether the district court erred by refusing to impose sanctions for the Woods' post-trial filings; (2) whether the district court properly instructed the jury on the issue of negligent parental supervision of their son; and (3) whether the district court erred by instructing the jury that the Grohs could be found negligent for failing to prevent their son from breaking into a locked gun cabinet.

(1) Whether the district court erred in refusing to instruct the jury that the Grohs owed the highest degree of care in safeguarding a handgun.

Standard of Review

The trial court is required to properly instruct the jury on a party's theory of the case. Errors regarding jury instructions will not demand reversal unless they result in prejudice to the appealing party. Instructions in any particular action are to be considered together and read as a whole, and where they fairly instruct the jury on the law governing the case, error in an isolated instruction may be disregarded as harmless. If the instructions are substantially
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correct and the jury could not reasonably have been misled by them, the instructions will be approved on appeal. *Hawkinson v. Bennett*, 265 Kan. 564, 577-78, 962 P.2d 445 (1998). Where, however, the appellate court reaches a firm conviction that if the trial error had not occurred, there is a real possibility that the jury would have returned a different verdict, the appellate court must reverse and remand. *Jackson v. City of Kansas City*, 263 Kan. 143, 148, 947 P.2d 31 (1997).

Discussion and Analysis

The Woods objected to jury Instruction No. 14, which stated:

"The plaintiffs, Sarah Wood, Warren Wood and Linda

Woo[illegible]laim that they sustained damages due to the negligence of Ed Groh.

"The plaintiffs also claim that they sustained damages due to the fault of Derry Groh and Choon Groh as follows:

(a) *Derry Groh and Choon Groh failed to exercise reasonable care to prevent their son, Ed Groh, from gaining access to the gun;*

(b) Derry Groh and Choon Groh failed to exercise reasonable care to ascertain the whereabouts of their minor child, Ed Groh; and

(c) Derry Groh and Choon Groh failed to properly exercise reasonable care in the parental supervision over their minor child, Ed Groh." (Emphasis added.)

In place of Instruction 14, the Woods proposed the following instruction:

"The duty of one owning a handgun is that of the *highest degree of care* in safekeeping the handgun because a handgun is considered an inherently dangerous instrument. [Citations omitted.]" (Emphasis added.)

The proposed instruction was denied based upon the district court's conclusion that a handgun is "not a dangerous instrumentality when it's in an unloaded state."

Recently, in *Long v. Turk*, 265 Kan. 855, 962 P.2d 1093 (1998), this court addressed the standard of care required when dealing with a dangerous instrumentality. In *Long*, the defendant's minor son, Matthew, was driving his car when he encountered the plaintiff's minor son, Tony, driving a van. Matthew and Tony shouted at each other while the vehicles drove side-by-side for a few blocks. Matthew eventually reached under the floor mat and pulled out his father's .357 Magnum handgun and fired one shot out the
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passenger side window. The hollow point slug went through the window of Tony's van, killing him.

Matthew's father owned several guns which were kept in a locked safe, although Matthew knew where the keys were kept. A .357 Magnum and the hollow point bullets for the gun were kept in a gun cabinet. Testimony conflicted as to whether Matthew had permission to take the gun out of the locked cabinet. After depositions were taken of Matthew and his father, Matthew's father moved for summary judgment, asking the court to dismiss the case. The district court granted the motion for summary judgment.

On appeal, this court reversed the summary judgment, concluding that genuine issues of material fact existed. We concluded that the .357 Magnum handgun was a dangerous instrumentality requiring the highest degree of care. 265 Kan. at 860. We examined the history in this state regarding the standard of care required in dealing with a dangerous instrumentality. Quoting from an earlier opinion of *Wroth v. McKinney*, 190 Kan. 127, 373 P.2d 216 (1962), we stated:

"`Kansas has long followed the rule that the highest degree of care is required of all responsible persons having ownership or control of dangerous explosives such as dynamite *and firearms*. . . . [T]he degree of care has to be commensurate with the dangerous character of the instrumentality and a duty to exercise the highest degree of care never ceases.'" 265 Kan. at 861.

Long rred to and quoted from Comment b of the Restatement (Second) of Torts § 298 (1964):

> "`Care required. The care required is always reasonable care. This standard never varies, but the care which it is reasonable to require of the actor varies with the danger involved in his act, and is proportionate to it. The greater the danger, the greater the care which must be exercised.'
>
> "`. . .*Thus, those who deal with firearms . . . are required to exercise the closest attention and the most careful precautions, not only in preparing for their use but in using them.*'" 265 Kan. at 861-62.

This court determined in *Long* that firearms are inherently dangerous instrumentalities and commensurate with the dangerous character of such instrumentalities, the reasonable care required was the highest degree of care. *Long* had not been decided at the time this case was submitted to the jury. Nevertheless, consistent
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with *Long* and the cases cited therein, we conclude that the district court erred by not instructing the jury that the highest standard of care is required when dealing with a dangerous instrumentality.

The instructional error in this case goes to the heart of the controversy. The factual issue to be decided by the jury was whether the Grohs were negligent in storing the gun. There is a substantial difference between the two standards proposed: ordinary care or the highest degree of care. Other jurisdictions considering instructional errors concerning the standard of care to be applied by the jury in its evaluation of the defendant's conduct have concluded that such an error requires reversal. See *Ruth v. Rhodes*, 66 Ariz. 129, 137, 185 P.2d 304 (1947) (noting generally that failure to instruct on the proper standard of care to which a defendant should be held is usually reversible error, for it is improper that a jury should be allowed to hold against a party when it was given the wrong standard by which to measure the party's conduct); *Bailey v. Rose Care Center*, 307 Ark. 14, 19, 817 S.W.2d 412 (1991) (holding that reversal was required where the court instructed the jury on the wrong standard of care); *Wilson v. City & County of S. F.*, 174 Cal.App.2d 273, 277, 344 P.2d 828 (1959) (reversal required where jury instructions misled jury into applying ordinary care standard instead of heightened standard of care to carrier); *Blackwell's Adm'r v. Union Light, Heat & Power Co.*, 265 S.W.2d 462, 464-65 (Ky.App. 1953) (holding that instruction which erroneously defined the "highest degree of care" so as to mislead jury into believing that the defendant was held to standard of ordinary care was error requiring reversal); *Lindstrom v. Yellow Taxi Co.*, 289 Minn. 224, 230, 214 N.W.2d 672 (1974) (affirming the trial court's decision to grant a new trial where the trial court had erroneously instructed the jury in a way that led the jury to believe that the defendant was held to an ordinary care standard rather than the "highest degree of care" standard); *Urban v. Minneapolis Street Ry. Co.*, 256 Minn. 1, 6, 96 N.W.2d 698 (1959) (holding that the instructions were confusing as the jury was likely to evaluate the defendant's actions under an ordinary care standard rather than the "highest degree of care" standard); *Woods v. Chinn*, 224 S.W.2d 583, 587 (Mo.App. 1949) (giving of instruction which
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placed ordinary care standard on party rather than "highest degree of care" was erroneous, thereby requiring reversal); *Jones v. Port Authority*, 136 Pa. Commv. 445, 448-49, 583 A.2d 512 (1990) (noting that carriers owe a heightened duty of care to their fare paying passengers and holding that the trial court erred in instructing the jury in such a way as to mislead it into applying an ordinary care standard); *Magbuhat v. Kovarik*, 382 N.W.2d 43, 46 (S.D. 1986) (noting that it is prejudicial to instruct the jury on the wrong standard of care); and *Coyle v. Metro Seattle*, 32 Wn. App. 741, 747, 649 P.2d 652 (1982) (holding that instructions were confusing to jury and that jury could have been misled

into king that the defendant only had a duty of ordinary care when jury should have evaluated defendant under a "highest degree of care" standard).

We have concluded that the parents in this case owed the highest duty to protect the public from the misuse of the gun, a dangerous instrumentality, stored in their home. The fact that the gun was not loaded is insignificant, for the ammunition was kept in the same locked cabinet as the gun. Once access to the gun was obtained, access to the ammunition immediately followed. Storage of the ammunition in the same location as the gun in this case resulted in the gun being easily loaded and made it a dangerous instrumentality.

The parents took significant steps to prevent their son from obtaining possession of the gun. The gun cabinet was locked at all times. Derry Groh was the only person with a key to the cabinet. The key was on his key ring and in his possession at all times. Their son was told and was aware that he was not to use the guns without parental supervision. Their son had attended and passed a hunter safety class. Their son, however, only had to use a screwdriver to gain access to the cabinet and was able to obtain possession of both the gun and the ammunition by doing so.

We conclude, under the facts of this case, that the instructional error did result in prejudice to the plaintiffs. There is a real possibility that the jury would have returned a different verdict had the correct standard been given to the jury in measuring the conduct of the parents. We, therefore, reverse and remand for further proceedings.
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(2) Whether the district court erred by refusing to find the Grohs jointly and severally liable for the combined fault of themselves and their son.

The Woods argue that the district court erred by refusing to find the Grohs jointly and severally liable for the acts of their son.

Standard of Review

The interpretation of K.S.A. 60-258a is a question of law and, thus, this court's scope of review is unlimited. See *Hamilton v. State Farm Fire & Cas. Co.*, 263 Kan. 875, 879, 953 P.2d 1027 (1998) (noting that our review is unlimited where the issue is interpretation of a statute).

Discussion and Analysis

The Woods objected to submission of this case on a theory of comparative fault pursuant to K.S.A. 60-258a. They argue that the Grohs should be jointly and severally liable for the 70% fault found on the part of their minor son, Ed. They rely on several cases dealing with the duty to control one who intentionally injures another. See *Kansas State Bank & Tr. Co. v. Specialized Transportation Services, Inc.*, 249 Kan. 348, 374-76, 819 P.2d 587 (1991) (imposing joint liability upon those whose duty is to prevent third parties from inflicting injury); *Gould v. Taco Bell*, 239 Kan. 564, 571, 722 P.2d 511 (1986) (intentional acts of a third party cannot be compared with the negligent acts of a defendant whose duty it was to protect the plaintiff from the intentional acts committed by the third party); *M. Bruenger & Co. v. Dodge City Truck Stop, Inc.*, 234 Kan. 682, 686-87, 675 P.2d 864 (1984) (holding the district court should not have permitted the fault of the negligent bailee to be compared with that of the intentional act of the thief).

The above-cited cases provide no support for the plaintiffs' argument. The shooting in this case was accidental. The record confirms this and provides no evidence otherwise. Where joint tortfeasors are liable on a theory of negligence, their fault must be compared pursuant to K.S.A. 60-258a. The concept of joint and several liability between joint tortfeasors does not apply in comparative negligence actions. *Brown v. Keill*, 224 Kan. 195, Syl. ¶ 5, 580 P.2d 867 (1978).

Cross-petition: (1) Whether the district court erred by refusing to impose sanctions for the Woods' post-trial filings.

Following the trial, the Woods filed a motion to amend to conform to the evidence, a motion to substitute parties, and an objection to the entry of judgment. The thrust of the Woods' motions was to attempt to make the Grohs responsible for the fault of Ed, as the jury had apportioned his fault at 70% and apportioned only 10% fault on the Grohs. A hearing was held and the district court denied the motion to amend and motion to substitute parties. The district court overruled the objection to the entry of judgment. The district court found that the motions "were unnecessary enough to what I consider, without mincing words, garbage. I think they were not appropriate . . . ." The court further noted that it was "convinced that some of the documents filed in this case are an attempt to backdoor judgment against a party [Ed] who has been denied his due process rights." The court also noted that the motions filed by the Woods "rise to the level of legal garbage." Although the court found that the three post-trial filings violated K.S.A. 1999 Supp. 60-211(b), the court chose to verbally admonish the Woods' counsel instead of awarding attorney fees as the Grohs had requested.

Standard of Review

The imposition of sanctions pursuant to K.S.A. 1999 Supp. 60-211 is discretionary with the trial court, and its ruling on sanctions will not be disturbed on appeal absent an abuse of discretion. *Summers v. Montgomery Elevator Co.*, 243 Kan. 393, 399, 757 P.2d 1255 (1988); *Cornett v. Roth*, 233 Kan. 936, 945, 666 P.2d 1182 (1983). Judicial discretion is abused only where no reasonable person would take the view adopted by the trial court. If reasonable persons could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion. *Stayton v. Stayton*, 211 Kan. 560, 562, 506 P.2d 1172 (1973).

The Grohs argue that because the court made a finding that K.S.A. 60-211(b) was violated, the statute requires that the court "shall" award sanctions. Because this is a question involving the
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interpretation of 60-211, the standard of review is unlimited, as the interpretation of a statute is a question of law. *Smith v. Printup*, 262 Kan. 587, 603-04, 938 P.2d 1261 (1997).

Discussion and Analysis

The Grohs argue that because the district court found that the Woods' post-trial filings were "unnecessary" and "not appropriate," the court was required to award sanctions in the form of attorney fees.

K.S.A. 1999 Supp. 60-211 provides in pertinent part:

> "(c) . . . If a pleading, motion or other paper provided for by this article is signed in violation of this section, the court, upon motion or upon its own initiative upon notice and after opportunity to be heard, *shall impose* upon the person who signed it or a represented party, or both, an appropriate sanction, which *may include* an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including reasonable attorney fees." (Emphasis added).

The plain wording of K.S.A. 1999 Supp. 60-211(c) requires that a district court "shall impose" a sanction when a violation of K.S.A. 1999 Supp. 60-211(b) is found, as in this case. The statute, however, does not specifically require a sanction of attorney fees, as it gives the district

court discretion to apply "an appropriate sanction." Further, the statute indicates that the sanction "may include" attorney fees. The statute does not require a district court to award monetary sanctions for a violation of 60-211(b). The word "sanction" does not require courts to award "fees" as the Grohs argue.

Kansas courts often look to the case law on the federal rules as guidance for interpretation of our own rules, as the Kansas rules of civil procedure were patterned after the federal rules. See *Stock v. Nordhus*, 216 Kan. 779, 782, 533 P.2d 1324 (1975) (noting that the Kansas courts have traditionally followed the interpretation of federal procedural rules and that the federal case law is highly persuasive). Although Fed.R.Civ.Proc. 11 is not identical to K.S.A. 1999 Supp. 60-211, the intent behind the rules is the same. The purpose of both rules is to deter "repetition of improper conduct." *Waltz v. County of Lycoming*, 974 F.2d 387, 390 (3d Cir.
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1992). An award of attorney fees "should not automatically be the sanction of choice." 974 F.2d at 390.

Courts should take the following factors into consideration when determining whether to sanction a party and what kind of sanction to impose:

(1) whether the improper conduct was willful or negligent;

(2) whether it was part of a pattern of activity or an isolated event;

(3) whether it infected the entire pleading or only one particular count or defense;

(4) whether the person has engaged in similar conduct in other litigation;

(5) whether it was intended to injure;

(6) what effect it had on the litigation process in time or expense;

(7) whether the responsible person is trained in the law;

(8) what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; and

(9) what amount is needed to deter similar activity by other litigants.

Fed.R.Civ.Proc. 11, Advisory Committee notes 1993.

We hold that the plain meaning of K.S.A. 1999 Supp. 60-211(c), coupled with the legislative intent of the statute, allows courts to impose nonmonetary sanctions in the form of admonitions, as well as monetary sanctions. Courts are not required to award attorney fees when a violation of K.S.A. 1999 Supp. 60-211(b) is found. The district court has the discretion to determine what type of sanctions are appropriate in a given case. The district court did not abuse its discretion in admonishing the Woods for the filing of the three post-trial motions.

(2) Whether the district court properly instructed the jury on the issue of negligent parental supervision.

The Grohs, in their cross-appeal, argue that there was insufficient evidence to justify a jury instruction on the issue of negligent parental supervision. Although the Grohs frame this issue as one

of an incorrect jury instruction, the argument actually concerns a sufficiency of evidence question.

Standard of Review

"[W]hen a verdict is challenged for insufficiency of evidence or as being contrary to the evidence, [the appellate court] does not weigh the evidence or pass on the credibility of the witnesses. `If the evidence, with all reasonable inferences to be drawn therefrom, when considered in the light most favorable to the prevailing party, supports the verdict, it will not be disturbed on appeal.'" *Brown v. United Methodist Homes for the Aged*, 249 Kan. 124, 127, 815 P.2d 72 (1991).

Analysis and Discussion

The Restatement (Second) of Torts § 316 (1964) sets forth the tort of negligent parental supervision and states:

"A parent is under a duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others or from conducting itself as to create an unreasonable risk of bodily harm to them, if the parent

(a) knows or has reason to know that he has the ability to control his child, and

(b) knows or should know of the necessity and opportunity for exercising such control."

The jury was given Instruction No. 14A, which states:

"A parent is under a duty to exercise reasonable care to control their minor child as to prevent said child from intentionally harming others or from so conducting themselves as to create an unreasonable risk of bodily harm to others, if the parents know or have reason to know that they have the ability to control their child and know or should know of the necessity and opportunity for exercising such control."

Contrary to the Grohs' argument, Instruction No. 14A is a correct statement of the tort of negligent parental supervision. The instruction given is consistent with the Restatement (Second)of Torts and with the Court of Appeals' decision in *Mitchell v. Wiltfong*, 4 Kan. App. 2d 231, 604 P.2d 79 (1979), and properly framed the question raised by the evidence.

(3) Whether the district court erred by instructing the jury that the Grohs could be found negligent for failing to prevent Ed from breaking into a locked gun cabinet to obtain the .22 caliber handgun.
Page 433

The Grohs make an additional argument concerning Instruction No. 14A. They argue that there was insufficient evidence adduced at trial to support Instruction No. 14A. The only real issue concerns the second element of the tort concerning the question of whether the Grohs "knew or should have known of the necessity and opportunity for exercising such control."

Although the evidence at trial revealed that Ed had only one previous run-in with the law, the Grohs knew that Ed had a curfew and that it was a violation of his probation to possess a gun without the permission of his probation officer. Linda Wood testified that at the hospital after

the i[illegible]ent, she asked Ed if Derry Groh knew he had the gun, and that Ed told her, "[H]e knows I take it sometimes and shoot it." The evidence, with all reasonable inferences to be drawn therefrom, when considered in the light most favorable to the prevailing party, was sufficient to support the giving of Instruction 14A. See *Brown v. United Methodist Homes for the Aged*, 249 Kan. at 127.

The Grohs argue that the "case should never have been submitted to the jury and a judgment should have been entered in favor of Defendants and against Plaintiffs on all counts." The Grohs further suggest that this court "remand the case to the Trial Court with instructions to enter judgment in favor of Defendants and against Plaintiffs on all counts as the case was improperly submitted to the jury when, in fact, it was a question of law to be resolved in Defendant's favor by the Trial Court." The Grohs claim that there was insufficient evidence adduced at trial to show that the Grohs breached a duty of ordinary care in the safeguarding of the gun and, therefore, the case should have been dismissed.

A review of the record reveals that the Grohs did not raise this issue in the district court. An objection was made to Instruction No. 14 in which the Grohs argued that the evidence did not show they breached any duty of care in the safekeeping of the gun, but no motion was made to dismiss the case. Their trial objection related solely to the language used in the instruction. They did not move for dismissal, nor did they seek summary judgment on this issue. Issues not raised before the trial court cannot be raised for the first time on appeal. *Ripley v. Tolbert*, 260 Kan. 491, 513,
Page 434
921 P.2d 1210 (1996). A new legal theory may not be asserted for the first time on appeal or raised in a reply brief. *Jarboe v. Board of Sedgwick County Comm'rs*, 262 Kan. 615, 622, 938 P.2d 1293 (1997).

The Grohs further argue that the issue of negligence in the safekeeping of the gun was improperly before the jury because they cannot be negligent in keeping a gun locked in a cabinet where the only way to access the cabinet was by breaking into it with a screwdriver. In other words, the Grohs argue that they cannot be negligent for locking a gun in a gun cabinet. The Grohs correctly note that owners of firearms are not strictly liable for their misuse.

However, although the gun was kept in a locked cabinet, the gun was taken from the cabinet when Ed used a screwdriver to easily break into the cabinet. Even though the ammunition was stored in a separate compartment within the cabinet, it was still accessible by breaking into the cabinet with a screwdriver. It was a simple process for their minor child to break into the cabinet and load the ammunition clip into the gun once the cabinet was open. The question to be resolved is whether the parents used the highest degree of care is storing the gun their son used in accidentally injuring the plaintiff. There are sufficient disputed facts in this case to require that the matter be resolved by the jury on appropriate instruction.

Reversed and remanded.

ABBOTT, J., dissenting:

As I read the record, Linda Wood asked whether Derry Groh knew Ed Groh had the gun and Ed replied, "[H]e knows I take it sometimes and shoot it." The testimony was consistent throughout that Ed only shot the gun when Derry was along and supervising. I find nothing in the briefs which indicate that Derry ever allowed Ed to have the gun unsupervised. Ed's comment that he occasionally took the gun from the cabinet and shot it can only be interpreted as having the gun when he was with his father.

Here, the gun was under lock and key, and Derry kept control of the key. The majority, in my opinion, makes it almost absolute
Page 435

liabi to own a gun. What more can a gun owner do than lock up an unloaded gun and keep control of the key.

I would hold the Grohs were not negligent as a matter of law.

McFARLAND, C.J., joins in the foregoing dissenting opinion.
Page 436

STATE OF KANSAS

SENATOR PHILLIP B. JOURNEY
STATE SENATOR, 26TH DISTRICT
P.O. BOX 471
HAYSVILLE, KS 67060

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TOPEKA, KANSAS 66612-1504
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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
MEMBER: SPECIAL CLAIMS AGAINST THE STATE (JOINT), CHAIR .
HEALTH CARE STRATEGIES
JUDICIARY
PUBLIC HEALTH AND WELFARE
TRANSPORTATION

CORRECTIONS AND JUVENILE JUSTICE OVERSIGHT (JOINT)

SOUTH CENTRAL DELEGATION, CHAIR

Testimony in Support of Senate Bill 45
Before the Senate Judiciary Committee
January 22nd, 2007

It is a privilege and an honor to have the opportunity to address the Senate Judiciary Committee and offer comments and support of Senate Bill 45. Senate Bill 45 amends K.S.A. supplement 20-329 and modifies the methodology by which the chief judge of the judicial district is appointed to fill that position.

Kansas has a strong tradition of local control and this legislation modifies the method from the current regimen where the Supreme Court in the State of Kansas designates a district court judge as the chief judge, to a process where district court judges in a given judicial district elect the chief judge for a term of two years.

This legislation was specifically requested by members of the bench in my county of residence and considering the controversies that have occurred in the last two years in Sedgwick County involving the Chief Judge of the 18th Judicial District, I believe that this legislation would make the court system more responsive for the public, the concerns of judicial colleagues, and allow for more efficient operation of the judicial system.

Respectfully submitted,

Senator Phillip B. Journey
State Senator 26th District

Senate Judiciary
1-22-07
Attachment 2

TESTIMONY OF BILL MCKEAN IN SUPPORT OF SENATE BILL 45

My name is Bill McKean and I am a constituent of Senator Les Donovan. Since the 2004 primaries, I have actively lobbied the reporters and editors at the Wichita Eagle and elected officials, politicians, judges, prominent attorneys and law professors through out the state to reduce the effects of nepotism and cronyism and in the Kansas judiciary by increasing accountability and transparency.

I have driven up this morning from Wichita to provide you with anecdotal evidence of the lack of accountability that exists in the Sedgwick County District Court so that you do not kill Senate Bill 45 by sending to the Kansas Judicial Council for further study. More importantly I also want to encourage this committee early in the legislative session to enact many wide-sweeping judicial 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.

Senate Bill 45 makes sense because it allows the local judges rather than the Supreme Court to choose the district's administrative judge. Politics is a natural & healthy human phenomenon that exists in every organization (corporation, church council, PTA board). Logically the most effective, respected and responsive leaders for any organization are chosen from a pool of willing candidates in a democratic vote.

During the last political campaign, a couple of Wichita lawmakers told me that there is a saying in Topeka: "That the issue is never the issue." I believe that the real issue behind Senate Bill 45 is the recognition that there has been a systemic failure by the Supreme Court, Kansas Judicial Council, Commission on Judicial Qualifications, leadership of the Wichita Bar and Kansas Bar Associations, laws schools and the Wichita news media to acknowledge unethical behavior by district court judges. In my opinion the Supreme Court consciously wants to reinforce that district court judges are bullet proof for their unethical behavior. Unfortunately this sets a terrible example for attorneys, court-appointed experts and journalists are tempted to rationalize that their professional canons of ethics are not applicable.

I have attached news articles to demonstrate the hypocrisy of the Commission on Judicial Qualifications:

The 10/7/05 Associated Press article reports that Saline County Judge George Robertson was removed from the bench because he viewed internet porn on his office computer during official court hours over a 9 month period. The article reports that Robertson was only the 3rd judge removed from office during the past 30 years. The Supreme Court wrote: "The most serious aggravating factor is the effect the misconduct had upon the integrity of and respect for the judiciary." In my opinion the Commission acted very severely against Robertson.

Senate Judiciary
1-22-07
Attachment 3

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. I am disappointed that the Eagle never verified Monnatt's claim that the commission determined that no sexual harassment occurred.

After I made several telephone complaints to 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.

Attached is my 5/23/06 e-mail to the Chairmen Vrtil & O'Neal, the Sedgwick County delegation & the Wichita Eagle Senator Vrtil & Wichita Eagle suggesting that the reforms contained in Senate Bill 45 be implemented and to require that attorneys complete confidential surveys to publicly evaluate the performance of judges. Due to my constant criticism on the Wichita Eagle's intentional failure to investigate my allegations of corruption in Sedgwick County District Court., the 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.

I have enclosed a copy of the results for Judge Pilshaw and Judge Tony Powell who was the House Majority Leader in 2002. 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. I have made allegation of misconduct by Judge Pilshaw and 2 other judges, 2 court appointed experts and 4 attorneys. There is a huge discrepancy between Pilshaw's horrible ratings in the confidential survey per the Wichtia 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.

I have also attached a copy of a 9/7/06 e-mail to Wichita Eagle reporter, Dion Leffler. Lefler initially agreed to review my documentation of obstruction of justice, but later reneged on his verbal commitment. In my opinion, the editors of the Wichita Eagle probably told him not to investigate the story because it would hurt Sebellius and Morrison's chances for election.

I have attached a 5/7/05 Wichita Eagle article reporting 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 because I had documented that 2 attorneys, 1 judge, 2 two court appointed case managers and 2 court appointed psychologist had obstructed justice or acted dishonestly. The article about Lehr states that an Eagle reporter contacted Chief Judge Ballinger who contacted the trial judge. As a result of the Eagle 7 Ballinger's intervention, , Ballinger was able to negotiate a deal with Lehr to voluntary suspend practicing law 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.

Also attached is a copy of a contract renewal form dated May 6, 2004 for Lawrence attorney, Edward Collister to serve 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.

I hope that the Senators on this committee will make their own private inquiries to Dion Leffler or to their former House colleagues Judge Tony Powell or Judge Jeff Goering. I hope that Chairman Vrtil will contact Wichita attorney, Steve Robison, who serves with Senator Vrtil on the Kansas Judicial Council.

Due to human nature, cronyism, nepotism and even sexual harassment occurs in every organization in U.S. society. I am very optimistic that this committee will recognize the opportunity to implement wide-sweeping reforms. We are blessed in Kansas because it is difficult to cover up corruption given the state's relative small population, its passionate citizens and the wide use of the internet for muck-raking. I think that every one involved in the legal system will be relieved if major reforms are made. I hope that this committee will fight to implement Senate Bill 45 and other major reforms so that Kansas laws will be the model for judicial accountability that will be implemented in the other 49 states.

<<Back

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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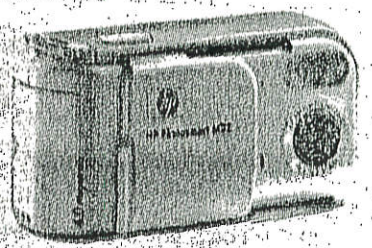

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LOCAL & STATE

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Judge reprimanded for conduct

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

BY RON SYLVESTER
The Wichita Eagle

A Sedgwick County district judge received a public admonishment Friday for having inappropriate personal relations 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.

Wilbert

Only a handful of such orders are handed down each year, and nearly all closed to the public. Even rarer are findings regarding personal interoffice relationships, 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 try to

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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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.

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YAHOO! MAIL

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Date:	Tue, 23 May 2006 16:50:21 -0700 (PDT)
From:	"bill mckean" <kiakahahaha@yahoo.com>
Subject:	Recommendations For New Chief Judge & Status of Judge Beasely
To:	"Senator Carl Betts" <betts@senate.state.ks.us>, "Rep. Steven Brunk" <brunk@house.state.ks.us>, "Rep. Willa DeCastro" <decastro@house.state.ks.us>, "Rep. Nile Dilmore" <dillmore@house.state.ks.us>, "Senator Les Donovan" <donovan@senate.state.ks.us>, "Rep. Oletha Faust-Goudeau" <Faust-Goudeau@house.state.ks.us>, "Rep. Delia Garcia" <garcia@house.state.ks.us>, "Rep. Steven Huebert" <huebert@house.state.ks.us>, "Rep. Dale Swenson" <swenson@house.state.ks.us>, "Sen. John Vratil" <vratil@senate.state.ks.us>, "Senator Susan Wagle" <wagle@senate.state.ks.us>, "Rep. Jim Ward" <ward@house.state.ks.us>, "Rep. Jason Watkins" <watkins@house.state.ks.us>, "Sen. Tim Huelskamp" <huelskamp@senate.state.ks.us>, "Rep. Bonnie Huy" <huy@house.state.ks.us>, "Senator Phil Journey" <journey@senate.state.ks.us>, "Rep. Richard Kelsey" <kelsey@house.state.ks.us>, "Rep. Brenda Landwehr" <landwehr@house.state.ks.us>, "Doug Mays" <mays@house.state.ks.us>, "Senator Carolyn McGinn" <mcginn@senate.state.ks.us>, "Rep. Joe McLeland" <mcleland@house.state.ks.us>, "Rep. Melody Miller" <millerm@house.state.ks.us>, "Re. Michael O'Neal" <o'neal@house.state.ks.us>, "Senator Peggy Palmer" <palmer@senate.state.ks.us>, "Sen. Mike Peterson" <petersen@senate.state.ks.us>, "Rep. Joann Pottorff" <pottorff@house.state.ks.us>, "Rep. Ted Powers" <powers@house.state.ks.us>, "Rep. Tom Sawyer" <sawyer@house.state.ks.us>, "Senator Derek Schmidt" <schmidt@senate.state.ks.us>, "Senator Jean Schordorf" <schodorf@senate.state.ks.us>, "Roger Scurlock" <Roger.Scurlock@bsrb.state.ks.us>
CC:	"Ron Sylvester" <rsylvester@wichitaeagle.com>

Note: forwarded message attached.

Forwarded Message

Date:	Tue, 23 May 2006 16:38:42 -0700 (PDT)
From:	"bill mckean" <kiakahahaha@yahoo.com>
Subject:	Recommendations For New Chief Judge & Status of Judge Beasely
To:	"Richard Ballinger" <rballing@dc18.org>, "Joseph Bribiesca" <jbribies@dc18.org>, "Dan Brooks" <dtbrooks@dc18.org>, "Ben Burgess" <bburgess@dc18.org>, "James Burgess" <jburgess@dc18.org>, "Paul Clark" <pclark@dc18.org>, "Michael Corrigan" <mcorriga@dc18.org>, "Harold Flaigle" <hflaigle@dc18.org>, "James Fleetwood" <jfleetwo@dc18.org>, "Karl Freidel" <kfriedel@dc18.org>, "Jeffrey Goering" <jgoering@dc18.org>, "Timothy Henderson" <thenders@dc18.org>, "David Kaufman" <dkaufman@dc18.org>, "David Kennedy" <dkennedy@dc18.org>, "Joe Kisner" <jkisner@dc18.org>, "Tim Lahey" <tlahey@dc18.org>, "Clark Owens" <cowens@dc18.org>, "Judge Anthony Powell" <tpowell@dc18.org>, "Judge Terry Pullman" <tpullman@dc18.org>, "Doug Roth" <droth@dc18.org>, "Mark Vining" <mvining@dc18.org>, "Greg Waller" <gwaller@dc18.org>, "Warren Wilbert" <wwilbert@dc18.org>, "William Wooley" <wwoolley@dc18.org>, "Judge Eric Yost" <eyost@dc18.org>
CC:	"Liz Armstrong" <larmstro@dc18.org>, "Carol Beier" <beier@kscourts.org>

HTML Attachment

For the past three years I have been complaining about the unethical behavior and the lack of accountability in the family law department. I think that the recent scandals are more a reflection of a systemic failure of judges and attorneys to enforce ethical standards than a reflection of the personal character of the individuals invovled. I have enclosed a list of reforms that I would like to see implemented even if it woudl take a constitutional amendment.

The 4 reforms most germane to the recent problems in Wichtia are:

1. Allowing the 26 district court judges to elect their own chief judge for a 2 year term. The chief judge should be accountable to the jduges that he oversees rather than the Supreme Court.

2. Offerring court employees better protection against retaliation if they report unethical behavior by judges.

3. Setting up a separate court for family-juvenile law to attract jduges tht actually enjoy working in this highly

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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 abscence. 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...

3-10

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

REBECCA PILSHAW

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%

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

ANTHONY POWELL

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%

Kansas Bar Association
1200 SW Harrison • Topeka, KS 66612-1806 • (785) 234-5696 • Fax: (785) 234-

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Kansas Bar Association
1200 S.W. Harrison St.
P.O. Box 1037
Topeka, KS 66601-1037
Phone: 785-234-5696

Kansas Bar Association Honors Pilshaw for Distinguished Governme Service

(June 10, 2003) Topeka, KS—The Kansas Bar Association (KBA) recogni 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.

Judge Pilshaw has served as a district court judge since 1993. She gradua from the University of Kansas School of Law in 1984 and worked at the Wi 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 19 and has served on the Annual Meeting Planning Committee.

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

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

-30-

3-12

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

WE BLOG

BLOG EXCERPTS

HTTP://BLOGS.KANSAS.COM

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.

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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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K A N S A S

CHRIS HOWE, DIRECTOR

DEPARTMENT OF ADMINISTRATION
DIVISION OF PURCHASES

KATHLEEN SEBELIUS, GOVERNOR
DUANE A. GOOSSEN, SECRETARY
CAROL L. FOREMAN, DEPUTY SECRETARY

LANDON STATE OFFICE BUILDING, 900 SW JACKSON ST., RM 102N, TOPEKA, KS 66612-1286
Voice 785-296-2376 Fax 785-296-7240 http://da.state.ks.us/purch

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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Clerk of the Appellate Court

Contract Requirements for Legal Services

The Kansas Commission on Judicial Qualifications, a fourteen member commission composed of lawyers, judges and lay members, is charged with assisting the Supreme Court in the exercise of the Court's responsibility in judicial disciplinary matters. The fourteen member Commission is divided into two (2) seven-member panels, one panel meeting each month. In formal matters, one panel investigates the complaint, while the other conducts the hearing, thus separating the investigative and judicial functions.

The Commission is seeking an Investigator / Examiner at an hourly rate to take assignments as needed in the investigative process before either panel. This person 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.

1.1. Attorney qualifications:

a. Currently licensed to practice law in the State of Kansas;
b. An attorney in good standing in any state in which admitted;
c. Have had no public disciplinary action taken upon a law license in this or any other state;
d. Experience and ability in the following areas:
    1. A minimum of ten years of legal experience following admission to any state bar;
    2. Administrative law
    3. Handling matters at the district court level and in appellate courts
    4. Demonstrable investigative background and experience working with investigators;
    5. Familiarity with issues in the area of professional ethics and / or judicial misconduct.
e. Sufficient financial resources to advance payment for on-going monetary requirements for future reimbursement by the Board, including but not limited to:
    1. Process service to witnesses
    2. Copying
    3. Reproducing exhibits
    4. Witness fees and expenses, including lay and expert witnesses
    5. Investigative fees and expenses, including lay and experts
    6. Transcript costs (written document from court reporter)
f. Malpractice insurance for any attorney at a minimum of one million dollars per claim and one million for all claims arising out of the same, related or continuing professional services.

2.

1.2 Other Terms of Contract

a. Attorney shall not be prohibited from engaging in the private practice of law during course of contract, so long as the said practice does not interfere or conflict with the matters or activities of the Office of Judicial Administration.

b. Attorney fees; investigative and witness fees and expenses; itemized and billed at 1/10 hour increments to be paid on a monthly basis.

3. 1.3. Reimbursement for services

a. Reimbursement for professional services shall include sufficient clerical and support staff to produce finished products such as investigative reports, correspondence, orders, briefs, hearing notices, complaints, etc.
b. Reimbursement under the terms of the contract shall include an hourly rate for the attorney, law clerk, paralegal, private and technical investigators, and travel expenses, such as mileage.

Contract Reference Number: The above-number has been assigned to this Request and MUST be shown on all correspondence or other documents associated with this Request and MUST be referred to in all verbal communications.

Contract Documents: In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

1. Form DA-146a;
2. written modifications to the executed contract;
3. written contract signed by the parties;
4. this Request including any and all addenda; and
5. contractor's written proposal submitted in response to this Request as finalized.

Reimbursement costs (includes all support services)

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

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.

5. Not to have direct, indirect, present, contemplated, or future interest in proceedings or any matters related to the subject of this Contract.

C. Both Parties Agree:

1. It is understood between the parties that the compensation rate as stated above will include stenographic services, stationary, postage, and other normal office overhead items. It is further understood between the parties that ATTORNEY will be reimbursed, based upon receipts and detailed statements approved in advance by the AGENCY, for photocopying expenses, delivery charges, long distance telephone calls, facsimile transmissions, or other approved out-of-pocket expenses, and those actual travel expenses. The reimbursement of travel expenses will include mileage at the current state reimbursement rate for privately owned vehicles, lodging, and meals. Travel expenses must be approved in writing by AGENCY.

2. The AGENCY reserves the right to cancel this Contract at any time in the event AGENCY considers the services being performed are unsatisfactory, for lack of funding or budgeting limitation, or for any cause deemed appropriate by the AGENCY. In the event of cancellation of this Contract, ATTORNEY shall furnish copies of all materials related to performance hereunder, whether finished or in preparation at the time of termination. ATTORNEY shall be reimbursed for work which has been accomplished and is acceptable to AGENCY. Reimbursement will be an amount decided upon by the AGENCY and will be consistent with the Contract payment provisions.

4. The provisions found in Contractual Provisions Attachment Form DA-146a, which is attached thereto and executed by the parties to this Contract, are hereby incorporated and made a part of this Contract.

5. This Contract may be amended by the mutual consent of the parties. Any amendment to be effective must be in writing and signed by the AGENCY head or designee and the ATTORNEY.

6. The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas, District Court of Shawnee County. The United States District Court for the State of Kansas sitting in Topeka, Shawnee County, Kansas, shall be the venue for any federal action or proceeding arising hereunder in which the State is a party.

7. This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof.

8. The provisions of the office of Attorney General, Carla Stovall, guidelines for contracts for legal services are hereby incorporated by reference to this contract except that reference to the Attorney General shall be interpreted to refer to the Office of Judicial Administration.

The parties execute this Contract by their authorized representatives on the date stated below:

AGENCY: _____ _____
Office of Judicial Administration Date

ATTORNEY: _____ _____
Edward G. Collister, Jr. Date

3-20

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

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.

TESTIMONY IN SUPPORT OF SB 45
BEFORE THE SENATE JUDICIARY COMMITTEE

January 22, 2007

Hon. Chairman Sen. Vratil:

Thank you for the opportunity to submit written testimony in favor of SB 45. The district court trial bench in Kansas is, for the most part, a fairly close group. Trial judges work with each other on a daily basis, which we believe places us in the best position to select the administrative judge.

We are in support of SB 45, which simply allows the trial judges to determine for themselves who they want to be the administrative judge for each judicial district. We are, after all, the judges who are directly impacted by this decision. Moreover, we believe that when the administrative judge is elected by the trial judges within the respective judicial district, the administrative judge will be directly accountable to the trial judges for the decisions he or she makes, which will foster greater communication between the administrative judge and the trial judges he or she supervises.

Nothing in our written testimony should be construed as a complaint against our current administrative judge. Rather, when evaluating the method by which an administrative judge is selected, we believe that SB 45 is preferable to the current statute, and we urge the Senate Judiciary Committee to pass this bill out of committee favorably.

Hon. Jeffrey E. Goering, District Judge
18th Judicial District

Hon. Anthony J. Powell, District Judge
18th Judicial District

Hon. Robb Rumsey, District Judge
18th Judicial District

Hon. Eric Yost, District Judge
18th Judicial District

Senate Judiciary
1-22-07
Attachment 5