Approved: 3-13-08
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 18, 2008 in Room 313-S of the Capitol.

All members were present except:
Annie Kuether- excused
Marti Crow - excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:
Randy Combs, D.A.R.E. Officer with Kearney County Sheriff's Office
Marci Ralston, Chief Bureau of Department of Division of Motor Vehicle
Cindy Kelly, Kansas Association of School Boards
Representative Joe Patton
Kathy Porter, Office of Judicial Administration
Representative Lance Kinzer
Kent Cornish, Kansas Association of Broadcasters
Rich Gannon, Kansas Press Association
John Lewis, Self
Alan Cobb, Director American for Prosperity
Anne Kindling, Kansas Association of Defense Counsel

The hearing on **HB 2816 - driver's license suspension; possession of illegal drugs or weapons in school**, was opened.

Randy Combs, D.A.R.E. Officer with Kearney County Sheriff's Office, explained that the 2007 bill was passed through the Education Committee but once it was used they found out that it violated the Federal Right to Privacy Act. The Act prohibits schools from disclosing certain information including suspensions or expulsions of students for disciplinary reasons. The proposed bill would return the statute as it was before the passage of legislation in 2007. He requested an amendment to have the reporting done to a law enforcement agency "as soon as possible but not to exceed 10 days." (Attachment #1)

Marci Ralston, Chief Bureau of Department of Division of Motor Vehicle, explained that they had not received notification till one year after the incident and that was the cause of legislation last year.

Staff explained that **HB 2816** puts the statute back the way it was originally, before the 2007 legislation, and keeps the notification within 10 days of the violation. Pupils have the right to request and challenge their violation with DMV before their license is suspended.

Cindy Kelly, Kansas Association of School Boards, appeared before the bill as a proponent. It solves the violation of the federal act by allowing the reporting of observed misconducts to law enforcement. (Attachment #2)

The hearing on **HB 2816** was closed.

The hearing on **HB 2825 - closing court proceedings & sealing court records**, was opened.

Representative Lance Kinzer appeared as the sponsor of the proposed bill. He explained that the bill would not allow the court to close a hearing or allow pleadings to be filed under seal unless it makes findings on the record that the identified safety, property or privacy interest predominates the case and outweighs the public

interest and access to the court record. It does not allow the court to conduct business behind close doors. A lot of judges are currently doing this, it would just clarify what the standard is. (Attachment #3)

Kent Cornish, Kansas Association of Broadcasters, appeared as a proponent of the bill. The Association has always supported open government & open courts. (Attachment #4)

Rich Gannon, Kansas Press Association, appeared in support of the proposed bill. The bill recognizes that there are times case files need to be closed but the reason for the closed file needs to be on filed on the record. (Attachment #5)

John Lewis, Self, likened the bill to the current statute that requires school boards to disclose why they are going into executive session. This would place the same requirements on the courts. (Attachment #6)

Alan Cobb, American for Prosperity, stated that the rules are already in place in Federal Court and should also apply to state courts. (Attachment #7)

Anne Kindling, Kansas Association of Defense Counsel, brought to the committees attention an unintended consequences of the bill, i.e. settlements in lawsuits are sometimes closed as to the amount awarded (Attachment #8)

Written testimony in opposition to the bill was provided by the Kansas County & District Attorneys Association. (Attachment #9)

The hearing on **HB 2825** was closed.

The hearing on **HB 2813 - retired judges, retention election**, was opened.

Representative Joe Patton explained that the proposed bill would allow citizens to vote on whether to retain senior judges. The vote would be in the county where the judge originally served. The main concern is that every judge is either retained or approved by merit selection and currently a senior judge is just appointed by the Supreme Court.

Kathy Porter, Office of Judicial Administration, informed the members that the senior judge program has been a bargain for the state. The judges who serve in this program only receives 25% of the salary they received when they were on the bench full time. There are normally 10 senior judges across the state. It is basically the Supreme Court decision as to who is asked to be a senior judge. They receive input from the judges district before the appointment is made. They cannot serve more than 12 years, they are usually appointed for two years at a time. (Attachment #10)

Written testimony, in opposition, was provided by the Kansas District Judges' Association. (Attachment #11)

The hearing on **HB 2813** was closed.

The committee meeting adjourned at 5:15 P.M.. The next meeting was scheduled for February 19, 2008.

Mr. Chairperson & Committee members

Thank you for the opportunity to testify regarding House Bill 2816 that relates to KSA 72-89c02 **Suspension of driver's license or privilege upon certain school safety violations.**

My Name is Randy Combs. I am a deputy with the Kearny County Sheriff's Office in Lakin, Kansas. I have 23 years of law enforcement experience including 8 years as a security policeman in the United States Air Force, and over 14 years in civilian law enforcement. I have been a DARE Officer and School Resource Officer for the last 10 years. I currently work in two Unified School Districts within Kearny County in Southwest Kansas. I serve on the board of education for one of those districts. I am also the region 4 representative for the Kansas Association of School Resource Officers.

Prior to July 1 2007, the afore mentioned statute stated that when a student brought drugs or a weapon to school, the school was required to make a report to law enforcement, who would, in turn, investigate the matter. If the law enforcement investigation found basis for the report and verified that illegal drugs or weapons had been brought onto school property, the officer would then make written notice to the Kansas Department of Revenue within three days, and the student's driving privilege would be suspended for one year. This was an administrative sanction only, and was separate and distinct from any criminal prosecution and / or school punishment. There was an ability of the prospective suspendee to request a hearing on the matter, with a final determination being made after satisfying due process requirements set forth by the department of revenue.

This was a valuable tool for law enforcement, especially school resource officers. From my personal experience, the driving sanction had a greater impact in some cases than the school's disciplinary action or the filing of a criminal case. For some reason, it was not a widely publicized statute. I only became aware of it in the two to three years prior to 2007. I began "spreading the word" for this tool at local, regional, and state training seminars. I received enough inquiries from other officers about utilizing the statute and requesting sanctions for the violations, that we eventually included a training and informational link on the website for the Kansas Association of School Resource Officers. This included a sample letter to use in the request.

The law changed on July 1, 2007. The primary change in the language is that now, instead of schools reporting a violation of the law and the officer initiating the request for driving privilege sanctions based on the investigation, schools are now to report to law enforcement that the student was expelled or suspended for bringing drugs or weapons to school. After the notification of the suspension or expulsion, an officer may then request the driving privilege sanction authorized under the law. On first glance, this appears to be a very minor technical change. In fact, it all but renders this statute unusable.

The Federal Right to Privacy Act (FRPA) prohibits school personnel from disclosing certain information including suspensions or expulsions of students for disciplinary reasons. In

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Attachment # 1

order for a law enforcement officer to receive the required information to initiate the sanction outlined in this statute, federal law must be violated. With a parental waiver, the information can be released to law enforcement. In my opinion, the types of parents who would be willing to give that waiver are probably not the ones whose children are bringing drugs and weapons to school in the first place. The change in the law places schools in the unenviable position of having to choose between violating state law or federal law, with no way of complying with both. The school could expose itself to civil litigation for violating the federal law, but there appears to be no consequences for violating the state law.

I have been in contact with Mark Tallman, Assistant Executive Director/Advocacy with the Kansas Association of School Boards. Mr. Tallman agrees that the recent change in the law may open liability for schools that don't obtain a waiver from parents to release this information. In my capacity as a school board member, I am privy to correspondence from the Kansas Association of School Boards advising schools not to comply with the Kansas statute until this conflict is resolved. This directive was issued to prevent violating federal law and incurring sanctions relating thereto.

As an interesting side note, the legislative change noted does not prevent schools from notifying law enforcement of possible drug or weapons violations in order to investigate or make arrests for those violations. It effectively eliminates the ability of law enforcement to legally request a student's driving privileges be suspended, as authorized in KSA 72-89c02.

I do not know why the law was changed last year. I have heard of possible complaints from persons whose licenses were suspended outside the time constraints outlined in the statute's language. I have heard that the sanctions sometimes trail the disciplinary action from the school by some months.

Most people I have spoken with about this agree that the situation needs to be addressed to insure that this type of sanction will not occur long after the criminal case (if any) and the school disciplinary action (if applicable) have concluded.

I propose a simple remedy to this situation: 1) return the language of the law to what it read prior to the most recent amendment; 2) require that the Kansas Department of Revenue ignore requests for suspensions which are received outside the time constraints established in the wording of the law. The Kansas Department of Revenue has used this formula in dealing with chemical test refusals and failures in DUI cases for a number of years. It seems to work in those instances.

I have read House Bill No. 2816 and Senate Bill 470 as posted on the Kansas Legislature web site. I believe both bills have adequately addressed the issue of timely reporting to law enforcement and to the Kansas Department of Revenue, and will eliminate the above mentioned problem of student's driving privileges being suspended within a reasonable time frame. In regards to the portion about reporting to law enforcement, I would like to respectfully ask that the wording be changed from "The notice shall be given within 10 days excluding holidays and weekends to the appropriate law enforcement agency" to " Notice of the violation

shall be given to the appropriate law enforcement agency as soon as possible not to exceed 10 days."

Again, this was a great additional tool for law enforcement and SRO's to use in the fight against drugs and violence in the school setting. Thank you for your consideration.

Respectfully,

Randy L. Combs, Deputy /SRO / DARE
Kearny County Sheriff's Office.

KANSAS ASSOCIATION OF SCHOOL BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
785-273-3600

Testimony before the
House Judiciary Committee

on
Testimony on HB 2816

by

Cynthia Lutz Kelly, Attorney
Kansas Association of School Boards

February 18, 2008

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you on behalf of our membership to speak in support of **HB 2816.** Because the federal Family Educational Rights and Privacy Act (FERPA) prohibits disclosure of information contained in student records without parental consent, or consent of the student at age 18, reporting a student's suspension or expulsion to DMV under current law requires a school administrator to either obtain consent or violate FERPA.

The proposed amendment solves the problem by allowing reporting of observed misconduct to law enforcement. FERPA does not prohibit disclosure of information obtained through observation. The amendment will allow school officials to comply with both state and federal law. We urge you to recommend **HB 2816** favorably for passage.

Thank you for your consideration.

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Attachment # 2

12549 S. BROUGHAM DR.
OLATHE, KS 66062
(913) 461-1227

STATE CAPITOL
(785) 296-7692
kinzer@house.state.ks.us

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

TOPEKA

LANCE KINZER
REPRESENTATIVE, 14TH DISTRICT

COMMITTEE ASSIGNMENTS
TAXATION
JUDICIARY
FEDERAL AND STATE AFFAIRS

TESTIMONY REGARDING HB2825

HB 2825 is a short bill about a serious topic: The right of the people to open court proceedings. In the case of RICHMOND NEWSPAPERS, INC. v. VIRGINIA, 448 U.S. 555 (1980), the United States Supreme Court expressed the high stakes associated with this issue. The following quotes from the majority and concurring opinions in that case are illustrative of the gravity that attaches to this matter.

According to Chief Justice Burger:

"The Bill of Rights was enacted against the backdrop of the long history of trials being presumptively open. Public access to trials was then regarded as an important aspect of the process itself; the conduct of trials "before as many of the people as chuse (SIC) to attend" was regarded as one of "the inestimable advantages of a free English constitution of government." 1 Journals 106, 107. In guaranteeing freedoms such as those of speech and press, the First Amendment can be read as protecting the right of everyone to attend trials so as to give meaning to those explicit guarantees."

According to Justice Brennan:

"Tradition, contemporaneous state practice, and this Court's own decisions manifest a common understanding that "[a] trial is a public event. What transpires in the court room is public property." Craig v. Harney, 331 U.S. 367, 374 (1947). As a matter of law and virtually immemorial custom, public trials have been the essentially unwavering rule in ancestral England and in our own Nation. See In re Oliver, 333 U.S., at 266 -268; Gannett Co. v. DePasquale, 443 U.S., at 386 , n. 15; id., at 418-432, and n. 11 (BLACKMUN, J., concurring and dissenting). 18 Such abiding adherence to the principle of open trials "reflect[s] a profound judgment about the way in which law should be enforced and justice administered." Duncan v. Louisiana, 391 U.S. 145, 155 (1968)."

In recent months I have been troubled by the fact that the Kansas Supreme Court has been conducting at least two important judicial proceedings in complete secrecy. (Planned Parenthood v. Kline & State of Kansas, EX REL., Paul Morrison v. The Honorable Richard Anderson, Judge of the Third Judicial District). For the very reasons cited by Justices Burger and Brennan I believe that the public has a fundamental interest in all cases that are submitted to a court for resolution, and that restricting media coverage and other public access to court proceedings should only be allowed under very rare circumstances.

Under HB 2825, a court could not close a hearing or allow pleadings to be filed under seal unless it first made a finding on the record that an identified safety, property or privacy interest predominates the case and outweighs the strong public interest in access to the court record and proceedings. It is an unfortunate reality that many of the most important public policy issues facing our State are being decided by courts. As such it is more important than ever that out judicial process be open and accessible.

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MEDIA COVERAGE

Planned Parenthood chapter sues Kline No details available on lawsuit against Johnson County district attorney

By John Hanna
The Associated Press
Published Friday, July 06, 2007

A Planned Parenthood chapter providing abortions through an Overland Park clinic has filed a lawsuit with the Kansas Supreme Court against Phill Kline, who investigated the clinic's activities while attorney general.

Court records said the lawsuit and other documents from Planned Parenthood of Kansas and Mid-Missouri are under seal, meaning no details were available about why the group is suing Kline, now the Johnson County district attorney.

Planned Parenthood filed its lawsuit last month, as Attorney General Paul Morrison was finishing up his own investigation of its clinic. Morrison, an abortion-rights Democrat, defeated Kline, an anti-abortion Republican, in the November general election.

Morrison sent a Planned Parenthood attorney a letter last week saying he had found no wrongdoing by the clinic or its personnel. But his letter also said Kline, as district attorney, had copies of edited medical records from the clinic.

Kline declined to comment, as did Planned Parenthood's attorney, Pedro Irigonegaray, of Topeka.

Asked for details about the case, Peter Brownlie, the group's chief executive officer, said, "It's under seal."

However, during a news conference last week, Brownlie said, "We don't believe that Mr. Kline has a right to any of the records in this case and had no right since he left the attorney general's office, and all I can say at this point is that we are pursuing all appropriate legal remedies."

Supreme Court records said the lawsuit is a request for the court to force a public official to do his official duty. The state constitution says such cases are filed with the high court, rather than a district court.

Records said Planned Parenthood filed the case June 6, along with a memo in support of its legal position and a memo asking whether the case should go forward under seal. The Supreme Court sealed the records the next day.

On June 22, the court told Kline he had until July 12 to respond. Four days after the deadline was set, Morrison sent his one-page letter to Irigonegaray.

Kline wouldn't confirm whether he has patient records from Planned Parenthood or discuss whether he is planning to investigate its clinic.

In his letter last week, Morrison said his office would seek the return of medical records being held by Shawnee County District Judge Richard Anderson. The judge supervised Kline's investigation into the Planned Parenthood clinic and one operated in Wichita by Dr. George Tiller.

"Of course, be advised that Mr. Kline retains a copy of those records," the letter to Irigonegaray said.

Morrison served as Johnson County district attorney before winning the attorney general's race. But he held the county office as a Republican, switching parties to challenge Kline, and under state law, GOP activists chose Morrison's replacement — naming Kline.

According to Morrison, Kline forwarded copies of records from Planned Parenthood patients to the Johnson County district attorney's office on Jan. 5 — only three days before he left office as attorney general.

Morrison spokeswoman Ashley Anstaett said she didn't know what Planned Parenthood's lawsuit was about.

The lawsuit was the latest twist in a lengthy legal dispute between Kline, Tiller and Planned Parenthood over the records of 90 patients — two-thirds of them from Tiller's clinic.

Kline began an investigation involving the two clinics in 2003. He said repeatedly he was looking into potential sex crimes against children as well as possible wrongdoing by the clinics.

In September 2004, Kline sought subpoenas for the patient records, and Anderson issued them, concluding he had probable cause to believe they might contain evidence of crimes. The clinics appealed to the Supreme Court, which in February 2006 set guidelines on how the records would be handled to protect patients' privacy, but didn't block Kline from obtaining information from them.

Anderson turned over copies of the records to Kline in October 2006, edited to remove patients' names and other identifying information. Morrison made Kline's pursuit of the records a major issue in his successful campaign.

Kline didn't file any criminal charges against Planned Parenthood. But he did file 30 misdemeanor counts against Tiller in December in Sedgwick County District Court, alleging Tiller performed illegal late-term abortions and failed to report the details of the procedures to state health officials.

A Sedgwick County judge dismissed the charges against Tiller for jurisdictional reasons. Morrison launched his own investigation after taking office Jan. 8.

Last week, Morrison said Kline's charges were without merit but filed 19 misdemeanors of his own. Morrison alleges Tiller consulted with a doctor with whom he had a business relationship on late-term procedures, when state law requires the provider and another, unaffiliated doctor to sign off.

Associated Press Writer Heather Hollingsworth in Kansas City, Mo., contributed to this report.

Morrison in Planned Parenthood case, sues judge

*EXCERPT/*Sept. 5, 2007 By JOHN HANNA, Associated Press Writer http://www.kansas.com/news/ updates/story/ 166178.html

TOPEKA, Kan. - **Attorney General Paul Morrison has become a party to a lawsuit** filed against his predecessor by an abortion clinic's operator. **He's also suing a judge who supervised an investigation of the clinic.** The latest developments are part of a legal dispute that began in 2003, a few months after Phill Kline became attorney general. Morrison, an abortion-rights Democrat, defeated Kline, an anti-abortion Republican, in last year's election. **Planned Parenthood of Kansas and Mid-Missouri sued Kline in June, and the Kansas Supreme Court issued a ruling Wednesday saying Morrison could join the lawsuit.**

Morrison's case, filed in August, names Shawnee County District Judge Richard Anderson as the defendant. Anderson did not immediately return a call seeking comment Wednesday. **Both cases are before the Supreme Court. The records are under seal,** and there's been no public explanation of what the group or Morrison want. But one possible explanation is that Planned Parenthood is trying to force Kline to return patient records and Morrison believes the records should be returned because he found no wrongdoing by the clinic.

Ex-Kansas AG Still Anti-Abortion Leader

EXCERPT/ Oct. 18, 2007, AP By JOHN MILBURN – http://ap.google.com/article/ALeqM5jkhRA00tlwQ15GWkcGpi8cSKFndwD8SBV6900

Months after taking office in January 2003, he launched an investigation of the Overland Park clinic and another operated in Wichita by Dr. George Tiller. After a court battle, he eventually gained access to patient medical records. Morrison, an abortion-rights Democrat who defeated Kline in November, has often criticized his predecessor for his pursuit of patient records, saying it was an abuse of the attorney general's power.

Morrison cleared the Planned Parenthood clinic of wrongdoing less than four months ago after examining the patient records Kline collected. But he told the clinic's attorneys that

he thought Kline made copies of the records. **Planned Parenthood has filed a lawsuit against Kline with the Kansas Supreme Court. Details of the lawsuit are sealed.**

Morrison allowed to intervene in Planned Parenthood dispute with Kline

By DAVID KLEPPER, The Star's Topeka correspondent
http://www.kansascity.com/115/story/262443.html

TOPEKA | The Kansas Supreme Court this week granted Attorney General Paul **Morrison's request to intervene in a legal fight between Planned Parenthood and Johnson County District Attorney Phill Kline.** The Planned Parenthood clinic in Overland Park is seeking the return of private medical records that Kline, when he was attorney general, used in his investigation of the clinic and a Wichita abortion clinic. Morrison, who cleared Planned Parenthood of any wrongdoing, has likewise vowed to seek the return of the files to protect patient privacy.

Records in the case were sealed by the Supreme Court, so no information about the contents of the Planned Parenthood lawsuit, Kline's response or Morrison's request to intervene is available.

It's widely speculated that the case is an attempt to force Kline to return the files, which contain the medical information of 90 women who received abortions at the Overland Park clinic and George Tiller's Wichita clinic.

Morrison has long criticized Kline's handling of the abortion records case, and upon taking office he vowed to seek the return of the files. The records were the subject of a long legal battle between Kline and the clinics.

Now, Kline may have to fight again to keep any records he still has. Though he won't discuss details of the case, Kline maintains that prosecutors shouldn't return evidence to the subjects of an investigation.

Morrison asked the Supreme Court last month for permission to intervene in the case. With the court's authorization in hand, Morrison's office may read the sealed court filings, respond to motions and file its own legal arguments.

Peter Brownlie, president of Planned Parenthood of Kansas and Mid-Missouri, said Morrison's involvement is good news to him. "Since he's been privy to many of the things that have happened, it's appropriate that he is involved in this case," he said.

In a second lawsuit, Morrison is suing the Shawnee County district judge who oversaw Kline's investigation. Records in that case also are sealed, but Morrison's petition could be an attempt to force the judge to return the files. If that's true, Kline said, it would be "unprecedented, bizarre and contrary to the responsibilities of a prosecutor." Morrison spokeswoman Ashley Anstaett wouldn't comment on the details of either lawsuit. She did say that because of the court seal, Morrison's office couldn't review the Planned Parenthood lawsuit without getting permission to intervene.

Kline's investigation and Morrison's charges against Tiller prompted state lawmakers to take a deeper look at late-term abortion. A committee was asked to review state law on the procedure this summer. Today, that committee will hear from physicians, psychiatrists and groups on both sides of the abortion debate.

KANSAS APPELLATE COURTS

Clerk of the Appellate Courts - Case Search Result

Query Attorneys and/or Parties
Helpful filing tips

Appellate Case Number	98747
District Case #	
Court Type	SUPREME COURT
Case Type	ORIGINAL
Case Sub-Type	MANDAMUS ORG ACTION
County	
Date Docketed	06-JUN-07
Case Caption	COMPREHENSIVE HEALTH OF PLANNED PARENTHOOD OF KANSAS AND MID-MISSOURI, INC., PETITIONER, V. PHILL KLINE, JOHNSON COUNTY DISTRICT ATTORNEY, RESPONDENT.

New Case Query
Judicial Branch Home Page
Helpful filing tips

Case Event Detail

Date	Description
12-FEB-08	MEMO ORDER- GRANTING MOTION / SUBSTITUTION - INTERVENOR
07-FEB-08	MEMO MOTION / SUBSTITUTION - INTERVENOR
24-JAN-08	RESPONSE- / PETITIONER
24-JAN-08	MEMO ORDER- GRANTING MOTION / TO FILE RESPONSE TO MTN OOT
18-JAN-08	MEMO MOTION / TO FILE RESPONSE TO MTN - PETITIONER
18-JAN-08	RESPONSE- / TO MTN TO DISMISS - COMPREHENSIVE HEALTH
17-JAN-08	MEMO MOTION / PETITIONER
14-JAN-08	MEMO MOTION / RESPONDENT
10-JAN-08	MEMO NOTATION / REPORT & ATTACHMENTS
04-JAN-08	MEMO ORDER- GRANTING MOTION / DUE 1/20/08-PETITIONER
21-DEC-07	MEMO MOTION / FOR EOT - COMPREHENSIVE HEALTH
21-DEC-07	RESPONSE- / INTERVENOR

3-4

18-DEC-07	MEMO ORDER- GRANTING MOTION / EOA GAMMILL PRO HAC VICE
14-DEC-07	MOT.FOR INVOLUNTARY DISMISSAL OF APPEAL / RESPONDENT
06-DEC-07	MEMO MOTION / TO UNSEAL CASE - RESPONDENT
05-DEC-07	ENTRY OF APPEARANCE / GAMMILL PRO HAC FOR RESPONDENT
19-NOV-07	MEMO ORDER- GRANTING MOTION / WHITE PRO HAC FOR RESPONDENT
19-NOV-07	ENTRY OF APPEARANCE / WHITE PRO HAC FOR RESPONDENT
16-NOV-07	RESPONSE- / RESPONDENT
16-NOV-07	MEMO ORDER
14-NOV-07	MEMO MOTION / INTERVENOR
13-NOV-07	RESPONSE- / RESPONSE
09-NOV-07	RESPONSE- / EMERG MTN
09-NOV-07	RESPONSE TO COURT ORDER / TO 10/17/07 ORDER
09-NOV-07	RESPONSE TO COURT ORDER / TO 10/17/07 ORDER
09-NOV-07	MEMO NOTATION / LIST 2
09-NOV-07	MEMO NOTATION / LIST 1
08-NOV-07	RESPONSE TO COURT ORDER / TO 10/17 ORDER
08-NOV-07	MEMO ORDER / NOTED. ENTRY OF APPEARANCE BY GRAVES AND GREIM
08-NOV-07	MEMO ORDER- GRANTING MOTION / TO AMEND
07-NOV-07	MEMO NOTATION / RETURN
07-NOV-07	MEMO MOTION / TO AMEND
07-NOV-07	ENTRY OF APPEARANCE / GRAVES LEAD, GREIM CO-CNSL FOR RESPONSENT
07-NOV-07	MEMO ORDER / NOTED-ENTRY OF APPEARANCE BY CALEB STEGALL.
07-NOV-07	MEMO ORDER-DENYING MOTION / TO INTERVENE (RESP NOTED)
07-NOV-07	MEMO ORDER- GRANTING MOTION / GHERTNER PRO HAC FOR PETITIONER
05-NOV-07	RESPONSE- / TO INTEREVENE
02-NOV-07	ENTRY OF APPEARANCE / STEGALL FOR RESPONDENT
30-OCT-07	ENTRY OF APPEARANCE / GHERTNER PRO HAC FOR PETITIONER
30-OCT-07	ENTRY OF APPEARANCE / STOPPERAN CO-CNSL FOR PETITIONER
25-OCT-07	MEMO MOTION / TO INTERVENE
24-OCT-07	MEMO ORDER
19-OCT-07	RESPONSE- / TO PETITION W/EXHIBITS - PHILL KLINE JO CTY DISTRICT ATTY
17-OCT-07	MEMO ORDER / DUE 11/9/07 PARTIES ANSWERS TO QUESTIONS

05-OCT-07	MEMO ORDER / NOTED-RESPONSE TO MOTION TO CONSOLIDATE
05-OCT-07	MOTION FOR CONSOLIDATION- DENIED / ATTY GENERAL PAUL MORRISON
05-OCT-07	RESPONSE- / TO MTN FOR EOT/RELEASE RECORD - COMPREHENSIVE HEALTH
05-OCT-07	MEMO ORDER-DENYING MOTION / FOR EOT/RELEASE RECORDS
05-OCT-07	MEMO ORDER / RESPONSE DUE 10/19
27-SEP-07	MEMO MOTION / TO RELEASE RECORDS & EOT TO RSPND - PHILL KLINE JO CTY DA
25-SEP-07	MEMO NOTATION / MEMORANDUM IN SUPPORT (W/APPENDIX) - PAUL MORRISON, ATTY GENERAL
25-SEP-07	RESPONSE- / TO MTN TO CONSOLIDATE - COMPREHENSIVE HEALTH
14-SEP-07	MOTION TO CONSOLIDATE / W/99050 - PAUL MORRISON, ATTY GENERAL
04-SEP-07	MEMO ORDER- GRANTING MOTION / TO INTERVENE BY ATTY GEN-CAN REVIEW REC/FILE ON OR BEFORE 9/25 & FILE BRF/RESP
27-JUL-07	MEMO NOTATION / REPLY TO RSPNS - COMPREHENSIVE HEALTH
18-JUL-07	MEMO MOTION / TO INTERVENE - PAUL MORRISON, ATTY GENERAL
12-JUL-07	RESPONSE- / TO PET FOR WRIT OF MNDMS - PHILL KLINE JOHNSON COUNTY DISTRICT ATTY
10-JUL-07	MEMO NOTATION / (AMENDED) NOTICE - COMPREHENSIVE HEALTH
10-JUL-07	MEMO NOTATION / NOTICE - COMPREHENSIVE HEALTH
22-JUN-07	MEMO ORDER / DUE 7/12/07 RESPONDENT RESPONSE TO WRIT OF MANDAMUS
22-JUN-07	MEMO NOTATION / CERTIFICATE OF SERVICE - COMPREHENSIVE HEALTH
07-JUN-07	MEMO ORDER- GRANTING MOTION / TO PROCEED UNDER SEAL
06-JUN-07	MEMO MOTION / MOT - SHOULD CASE PROCEED UNDER SEAL
06-JUN-07	MEMO NOTATION / MEMORANDUM IN SUPPORT - COMPREHENSIVE HEALTH OF PLANNED PARENTHOOD KS & MID-MO
06-JUN-07	PETITION FOR WRIT OF MANDAMUS FILED / COMPREHENSIVE HEALTH OF PLANNED PARENTHOOD KS & MID-MO

New Case Query
Judicial Branch Home Page
Helpful filing tips

KANSAS APPELLATE COURTS

Clerk of the Appellate Courts - Case Search Result

Query Attorneys and/or Parties
Helpful filing tips

Appellate Case Number	99050
District Case #	
Court Type	SUPREME COURT
Case Type	ORIGINAL
Case Sub-Type	MANDAMUS ORG ACTION
County	
Date Docketed	02-AUG-07
Case Caption	STATE OF KANSAS, EX REL., PAUL J. MORRISON, ATTORNEY GENERAL OF THE STATE OF KANSAS, PETITIONER, V THE HONORABLE RICHARD ANDERSON, JUDGE OF THE THIRD JUDICIAL DISTRICT, SHAWNEE COUNTY, KANSAS, RESPONDENT.

New Case Query
Judicial Branch Home Page
Helpful filing tips

Case Event Detail

Date	Description
12-FEB-08	MEMO ORDER- GRANTING MOTION / SUBSTITUTION - PETITIONER
07-FEB-08	MEMO MOTION / SUBSTITION - PETITIONER
09-NOV-07	RESPONSE TO COURT ORDER / 10/17/07 ORDER - PETITIONER
09-NOV-07	MEMO NOTATION / NOTICE - RESPONDENT
07-NOV-07	RESPONSE TO COURT ORDER / 10/17 ORDER
19-OCT-07	RESPONSE- / TO PETITION W/ADDITIONAL RESPONSE
17-OCT-07	MEMO ORDER / DUE 11/9/07
05-OCT-07	MEMO ORDER-DENYING MOTION / FOR EOT/RELEASE OF RECORDS
05-OCT-07	MOTION FOR CONSOLIDATION- DENIED / ATTY GENERAL PAUL MORRISON

05-OCT-07	MEMO ORDER / RESPONSE DUE 10/19
24-SEP-07	MEMO ORDER / NOTED-ENTRY OF APPEARANCE BY WAYNE STRATTON AND NATHAN LEADSTROM.
24-SEP-07	MEMO MOTION / FOR RELEASE OF RCRDS & EOT TO RSPND - HON RICHARD ANDERSON
24-SEP-07	ENTRY OF APPEARANCE / STRATTON & LEADSTROM FOR HON RICHARD ANDERSON
14-SEP-07	MOTION TO CONSOLIDATE / W/98747 - STATE, EX REL, PAUL J. MORRISON, AG
03-AUG-07	MEMO ORDER- GRANTING MOTION / FOR LEAVE TO FILE PET AND APPENDIX UNDER SEAL - STATE
02-AUG-07	MEMO MOTION / TO FILE PETITION & APPNDX UNDER SEAL - STATE
02-AUG-07	PETITION FOR WRIT OF MANDAMUS FILED / AND APPENDIX IN SUPPORT

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United States District Court,

D. Kansas.

Michael ALLEN, et al., Plaintiffs,
v.
Phill **KLINE**, Defendant.

No. 07-2037-KHV.

Nov. 13, 2007.

Elizabeth A. Hanson, Joseph R. Colantuono, Katherine I. Tracy, Colantuono & Associates LLC, Shawnee, KS, for Plaintiffs.

Jeffrey A. Bullins, Michael T. Jilka, Reid F. Holbrook, Holbrook & Osborn, PA, Overland Park, KS, for Defendant.

ORDER

JAMES P. O'HARA, United States Magistrate Judge.

***1** This case comes before the court on the motion of the defendant, Phill **Kline**, for leave to file a separate motion for protective order and related documents **under seal (doc. 49).** The instant motion indicates the plaintiffs, Michael Allen, Jennifer Barton, Norah Clark, Bryan Denton, John Fritz, Steve Howe, Kristiane Gray, and Kendra Lewison, have no objection to seal the record in the limited manner requested. Nevertheless, for the reasons explained below, the court respectfully denies the motion to seal.

For the sake of decorum, instead of getting into any detail, the court simply notes here that the predicate allegation of the underlying motion for protective order is that a "third-party has tampered with Defendant's witnesses." Defendant's motion to seal asserts that, "[i]f left unaddressed, the witness tampering may affect the integrity of these judicial proceedings." Defendant seeks leave to file the underlying motion for protective order **under seal** on the grounds the circumstances giving rise to the request for a protective order are "of a very serious nature and the disclosure of such information may cause grave harm." The harm is unspecified in the motion to seal. But indulging defendant the benefit of the doubt, the court infers the only "grave harm" would involve embarrassing the witness who has been the subject of alleged tampering.

Defendant's papers, conspicuously so, cite no legal authority with regard to the standards that govern motions to seal the record or, for that matter, what constitutes witness tampering. On the former, limited procedural issue, the court does not write a clean slate. The following discussion from *Bryan v. Eichenwald,* 191 F.R.D. 650 (D.Kan.2000) (Rushfelt, M.J.), is instructive and persuasive in analyzing the matter at hand:

That the parties all agree to the requested protective order does not dispense with the requirement to show good cause. The "law requires" the court to make a determination of good cause, before entering a protective order that seals "any part of the record of a case." *Citizens First Nat'l Bank v. Cincinnati Ins. Co.*, 178 F.3d 943, 944 (7th Cir.1999) (citations omitted). Although a litigant may have a property or privacy interest that requires protection from unnecessary dissemination or disclosure, the public has an interest in everything that occurs in the case, whether at trial or during the discovery stage of litigation. To protect the interest of the public, parties seeking to seal documents relating to discovery must demonstrate good cause for such action. Good cause to override the public's interest in the case by sealing a part or the whole of the record of the case generally does not exist unless a property or privacy interest of a litigant predominates the case. *Id.* at 945. "The judge is the primary representative of the public interest in the judicial process and is duty-bound therefore to review any request to seal the record (or part of it). He may not rubber stamp a stipulation to seal the record." *Id.* (citations omitted). The determination of good cause cannot be left to mere agreement of the parties.

***2** In a non-discovery context, furthermore, this court has addressed the propriety of sealing the record in a case. *See* *Ramirez v. Bravo's Holding Co.*, No. Civ.A. 94-2396-GTV, 1996 WL 507238, at *1 (D.Kan.Aug.22, 1996) (addressing the matter nine to ten months after dismissing the action on stipulation of the parties). *Ramirez* states in pertinent part:

Federal courts recognize a common-law right of access to judicial records, although that right is not absolute. Whether to allow access at the district court level is left to the discretion of the district court, which has supervisory control over its own records and files. In exercising that discretion, the district court must consider the relevant facts and circumstances of the case and balance the public's right of access, which is presumed paramount, with the parties' interests in sealing the record. The public has an interest "in understanding disputes that are presented to a public forum for resolution" and "in assuring that the courts are fairly run and judges are honest." Courts have denied access in cases in which the court files have been sought for improper purposes such as promoting public scandal or harming a business litigant's competitive standing.

Id. (citing *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597-99, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978) among other cases). Unless a party establishes a "public or private harm sufficient to overcome the public's right of access to judicial records," the court declines to seal any part of the record in the case. *Id.* "The fact that all litigants favor sealing the record is of interest, but not determinative." *Id.*

Although cognizant of the inapplicability of Fed.R.Civ.P. 26(c) in non-discovery contexts and recognizing the differing contexts of *Ramirez* and *Citizens First Nat'l Bank,* the court, nevertheless, views the standards for permitting documents to be filed **under seal** to be the same regardless of the stage of litigation the issue arises. At the discovery stage, the

court may speak in terms of "good cause." At other stages, the court may simply refer to its discretion to supervise its own records and files. At whatever stage of the litigation, however, the movant must demonstrate a public or private harm sufficient to overcome the public's right of access to judicial records.

Id. at 652-53. *See also* Williams v. Sprint/United Management Co., 222 F.R.D. 483, 489 (D.Kan.2004) (Lungstrum, J.) (citing *Bryan*).

Upon review of the instant motion and the underlying motion and attachments, it is clear *none* of the parties to this case would be harmed in any legally significant way by leaving the entire record open to the public. It does appear there may be negative *political* consequences for the non-party whom defendant has accused of witness tampering, and quite possibly for defendant as well. But such political consequences do not amount to a public harm that would be suffered if the underlying motion were filed on an unsealed basis. And, even assuming for the sake of discussion there is any *private* harm (e.g., embarrassment of the witness who has been the subject of the alleged tampering), the court finds harm to be strongly outweighed by the public's right of access to judicial records.

*3 Of course, the court's findings just above are not intended and should not be construed as implicitly approving witness tampering, if indeed any has occurred here. That issue is for another day. *If* defendant decides to proceed further, entry of a protective order, even if unopposed by plaintiffs, presumably would require sworn, in-court testimony by the witness and by the non-party accused by defendant.

As defendant decides whether to re-file his motion on an unsealed basis, the court would respectfully question whether a formal protective order is necessary. That is, as a practical matter, the court would need to be convinced there is some reason to believe an informal request by defendant to cease contact with the subject witness would not be honored by the non-party.

In sum, based on the scant record presented, the court cannot find the purpose of the underlying motion is to promote a public scandal or harm the witness involved in the alleged tampering. It follows that defendant has not shown good cause to seal the record. Therefore, defendant's motion to seal **(doc. 49)** is denied. Should defendant wish to pursue the motion for protective order, he must do so without that motion being sealed. If defendant so proceeds, even though plaintiffs have indicated they have no objection to the requested protective order, defendant shall contemporaneously provide the non-party with a copy of the motion for protective order (and all supporting documents), so the latter has a reasonable opportunity to contest the motion on the merits.

IT IS SO ORDERED.

KAB
KANSAS ASSOCIATION OF BROADCASTERS

2709 SW 29th St, Topeka KS 66614
TEL (785) 235-1307 FAX (785) 233-3052
e-mail: kent@kab.net
web site: www.kab.net

Written Testimony
HB 2825
House Judiciary Committee
February 18, 2008
By
Kent Cornish, President
Kansas Association of Broadcasters

The Kansas Association of Broadcasters serves a membership of free-over-the-air radio and television stations in Kansas – nearly 230 in all. Most of those stations have news departments that try hard to keep their listeners and viewers informed.

House Bill 2825 would require justification by the court as to why records or a hearing should be closed. It also clearly spells out that the interest of the public should be taken into account when making such a ruling. The KAB encourages legislation that keeps government –and in this case the courts – open, and it's why we support House Bill 2825. Thank you members of the committee for your time and consideration.

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House Judiciary
Date 2-18-08
Attachment # 4

Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

5423 SW Seventh Street • Topeka, Kansas 66606 • Phone (785) 271-5304 • Fax (785) 271-7341 • www.kspress.com

Feb. 18, 2008

To: Mike O'Neal, chairman, House Judiciary Committee

From: Rich Gannon, director of governmental affairs, Kansas Press Association

Re: HB 2825

Mr. Chairman and members of the Committee:

I'm Rich Gannon, director of government affairs for the Kansas Press Association. Thank you for this opportunity to address a bill that we believe is designed to make the Kansas court system more accessible to the people of our state.

House Bill 2825 is a good remedy for a system that, we believe, overuses procedures such as closing court proceedings, sealing records or redacting those records so the public's constitutional right to be informed of what its government is doing is placed in jeopardy.

While we recognize there are times when such decisions are necessary to ensure a fair trial or to protect sensitive information, those situations should are quite rare.

HB 2825 would create a procedure that would require the courts to enter a written finding of good cause before shutting the public out of the process. We think this is simply good government because it requires the parties involved to think through their request for closure, seal or redaction and to be willing to put those justifications in writing so that interested parties can challenge the decisions or, at the least, know why they were requested in the first place.

Too often, we see the prosecution and the defense agreeing to such limits, and in almost every single case, the court agrees to shield evidence from the public. The public virtually has no say if the two sides approach the court in agreement.

The public's interest in its court system is too important to continue to allow courts to close hearings or seal or redact records without good cause.

Therefore, we stand in support of HB 2825 and urge its passage.

Thank you.

House Judiciary
Date 2-18-08
Attachment # 5

Testimony of John Lewis
20605 W. 96th St., Lenexa, KS 66220

H.B. 2825

As a former president of the Kansas Sunshine Coalition for Open Government, I admit my bias towards maximum possible disclosure of government activity. There are, of course, instances in judicial proceedings when discretion must be exercised in making information available for public inspection. However, H.B. 2825 does not violate such a judicial standard.

This bill merely requires the court to publicly justify the reason for not disclosing the information. Those reasons would now be specifically identified for the purpose of good government. While still protecting the legitimate interests of parties involved in the case, the bill merely requires the judge to assert that such nondisclosure is for an identifiable reason that this legislature has approved and not for any other subjective reason. What can be wrong with that?

In recent years, citizens across America have become acquainted with the expression, "legislating from the bench." This perception has created skepticism, from both liberals and conservatives, about our court system. This bill serves to mitigate that growing lack of trust by giving the public more confidence that any undisclosed information in a case is, at least in the announced opinion of the judge, for a lawfully approved reason.

This bill promotes both open government and good government, while protecting legitimate privacy interests.

AMERICANS FOR PROSPERITY
KANSAS

February 18, 2008

On behalf of the more than 13,000 Kansas members of Americans for Prosperity, we support HB 2825 as a way to make more transparent our Kansas courts.

This bill would make Kansas rules concerning secret court proceedings conform to current Federal Court rules.

These rules are already in place in Kansas' Federal Courts.

This bill simple provides the notice be given before a closed hearing occur or before a court record is sealed.

The bill outlines several common sense steps a court must go through before judicial information is hidden from the public, including a requirement that "good cause" exists.

Thank you for you time.

Alan Cobb
AFP Kansas State Director

2348 SW Topeka, Suite 201 Topeka, Kansas 66611
785-354-4237 785-354-4239 FAX
www.afpks.org

House Judiciary
Date 2-18-08
Attachment # 7

KANSAS ASSOCIATION OF DEFENSE COUNSEL
825 S. Kansas Avenue, Suite 500 • Topeka, KS 66612
Telephone: 785-232-9091 • FAX: 785-233-2206 • www.kadc.org

MEMORANDUM

TO: **House Judiciary Committee**

FROM: **Anne M. Kindling**
President, Kansas Association of Defense Counsel

DATE: **February 18, 2008**

RE: **HB 2825**

Chairman O'Neal and Members of the Committee:

My name is Anne Kindling and I submit this written testimony on behalf of the Kansas Association of Defense Counsel. The KADC consists of more than 220 practicing attorneys who devote a substantial portion of their professional time to the defense of civil lawsuits. The KADC maintains a strong interest improving the adversary system and the efficient administration of justice. We believe that HB 2825 has some unintended consequences in subsection (e) which the committee should take into consideration.

The KADC stands neutral on HB 2825. This legislation provides a mechanism for sealing or redacting pleadings and closing court proceedings, but requires a finding of "good cause" to do so. The court is to balance the public interest in access to court records and proceedings against the safety, property, or privacy interests of the litigants in determining whether or not good cause exists.

Subsection (e) states that an agreement between the parties does not constitute a sufficient basis to seal or redact court records or close court proceedings. This provision may have some unintended consequences that will affect the settlement of lawsuits, and the KADC urges the committee to consider these consequences in evaluating the legislation.

In furtherance of judicial economy, a large number of lawsuits are now settled by agreement of the parties rather than proceeding to trial. Frequently, such settlements include confidentiality provisions. These provisions can benefit plaintiffs and defendants alike and are a matter of negotiation as the settlement is negotiated and entered into. Once a confidentiality clause is agreed to, the settlement document is generally placed under seal if it is submitted to the court for approval. This happens frequently in medical malpractice cases which require court approval.

House Judiciary
Date 2-18-08
Attachment # 8

The finality of settlement agreements may be inadvertently impacted by the provisions of subsection (e) of this legislation. If the court does not place the settlement agreement under seal despite agreement of the parties, then the parties may well have the right to void the settlement. In that case, the validity of the entire settlement will be called into question. The effect is that the settlement may need to be re-negotiated, the matter may proceed to trial, or fewer cases may be settled in the long run.

Kansas has a strong public policy supporting the freedom of contract. As long as there is no coercion, our courts traditionally uphold the right of all persons to enter into contracts or agreements, whether or not the terms are favorable. While it is understood that the freedom of contract needs to be weighed against the competing public interest in access to information about court proceedings, the KADC urges that some mechanism be considered by the committee to avoid the potential adverse impact on the agreed resolution of civil litigation.

Thank you for the opportunity to present these concerns.

Kansas County & District Attorneys Association
1200 SW 10th Avenue
Topeka, KS 66604
(785) 232-5822 Fax: (785) 234-2433
www.kcdaa.org

TO: The Honorable members of the House Judiciary Committee

FROM: Thomas R. Stanton
Deputy Reno County District Attorney
President, KCDAA

DATE: February 18, 2008

RE: Written Testimony in Opposition to House Bill 2825

Chairman O'Neal and members of the committee:

Thank you for giving me the opportunity to submit written testimony regarding House Bill 2825. This legislation would allow "the court, any party or any interested person" in a criminal case to request the closing of a court proceeding normally open to the public. The legislation would also allow for the sealing or redaction of court records upon motion of the court, any party or any interested person.

The Kansas County and District Attorneys Association strongly opposes this legislation. It has long been a standard of the American and Kansas judicial systems that all hearings are open to the public. This allows the citizens of our nation and our state to monitor the proceedings in any adult criminal case, and is an important tool for insuring the integrity of the criminal justice system. This legislation would alter that time-honored citizen oversight aspect of the system. Prosecutors feel this is an important aspect of the judicial system, and it should be preserved.

There are several troubling aspects of this legislation. First, the question arises as to who constitutes an "interested party." Are not all citizens "interested parties" when the State of Kansas is the plaintiff in a criminal case? Therefore, any citizen could call for the closure of a criminal proceeding under the language of this legislation. This language is overly broad, and will most certainly lead to a situation where the court would be required to entertain motions to close hearings, as well as motions to seal or redact records, from anyone in the community.

Subsection (b) of the legislation requires a finding of good cause to close a proceeding or

to seal or redact the record. Subsection (d) defines good cause, but only as to the motion of a party or the court. The legislation does define good cause in relation to the motion of an "interested party." This flaw in the language of the proposed statute results in a situation where there is no limit to what may be considered good cause in the case of a motion brought by an "interested party."

The next serious issue is the concept of sealing or redacting court records. Law enforcement officers and prosecutors rely on the records of criminal suspects to properly perform the duties required of them by the public. Many scenarios can be envisioned wherein law enforcement officers would rely on certain portions of criminal cases to identify or locate persons involved in criminal activities. Information important to criminal investigators may be unknown or unavailable at critical stages of ongoing investigations if records are sealed or redacted. In cases where time is of the essence in identifying or locating a suspect, delays caused by the lack of knowledge or by the time consuming process of obtaining a court order to reverse a prior order of seal or redaction could very well result in the escape of a suspect or further risk to the citizens of our communities.

The broad language of HB 2825 might also be interpreted to allow the redaction of criminal convictions. Prosecutors use criminal convictions in a number of situations to facilitate their duties to the public. The most obvious use of convictions is in the determination of a convicted defendant's criminal history for purposes of sentencing. The redaction of criminal records could have serious detrimental consequences to the accurate determination of a defendant's criminal history. Another aspect of this concern is that a defendant, knowing his or her records have been sealed or redacted, may fail to see the importance in informing his or her attorney of the existence of a prior conviction. This could have a detrimental effect on the defendant if the records were subsequently discovered and opened before sentencing. The existence of a higher than expected criminal history could easily effect the strategy employed by a defendant in the process of the criminal case. Prosecutors also use prior convictions, under the proper circumstances, to prove elements of a current crime at trial. Prior convictions, as well as specific details regarding those prior convictions, are sometimes used to establish motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, accident or other relevant material fact or element of a case. Sealing or redacting court records could inhibit the proper use of prior conduct to prove current criminal charges.

Finally, the courts already possess an inherent power to review the circumstances of a case, and issue protective orders when appropriate. This power is currently exercised in very limited circumstances. The passage of this legislation would encourage a significant increase in the request for the closure of public hearings, and for the sealing or redaction of court records. The justice system has a mechanism for obtaining proper relief under extraordinary circumstances, and there is no need for legislative action of the type contemplated by HB 2825.

We appreciate the opportunity to provide written testimony on HB 2825 and urge your consideration of our concerns. We would be happy to answer any questions upon request.

State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507 (785) 296-2256

House Judiciary Committee
Monday, February 18, 2008

Testimony in Opposition to HB 2813
Kathy Porter

HB 2813 would require retired district judges who participate in the Senior Judge Program to stand for retention election in the district from which the retired district judge retired. It is unclear what problem or perceived problem the bill would alleviate, but it is feared that the bill could decrease the number of retired judges willing to participate in the program.

Since 1995, the Senior Judge Program has benefitted the citizens of Kansas through the services of retired judges who enter into contracts to perform judicial duties for 40% of each year at a pay rate of 25% of the monthly pay rate for judges. The contracts are for a period of two years, and the aggregate of these agreements shall not exceed 12 years. While a few senior judges may provide the majority of their service with the Court of Appeals or in the district from which they retired, the majority of senior judges make themselves available to hear cases anywhere within the state. They provide services in districts with high caseloads, in cases in which other judges must recuse themselves, and in areas in which they have developed a high level of expertise through years of experience. In short, senior judges are a bargain for the taxpayers of Kansas.

HB 2813 would impose an additional requirement that senior judges stand for retention in the district from which the judge retired. This provision does not distinguish between judges who retired from districts in which judges are selected through the merit selection process, or from districts in which judges are elected. Moreover, this provision would not appear to take into account the fact that a senior judge may hear few, or even no cases in the district from which he or she retired. An example of this is Judge John Bukaty, who retired as a district judge from the 29th Judicial District (Wyandotte County), which is a district that elects its district judges. Since he entered into his senior judge contract, Judge Bukaty has sat on panels with the Court of Appeals, filling in as needed. HB 2813 would require the citizens of Wyandotte County, who are accustomed to electing district judges rather than voting to retain them, to vote to retain Judge Bukaty, who in fact does not hear cases in the Wyandotte County District Court. Similarly, other district judges may hear few, if any, cases in the district from which they retired.

House Judiciary
Date 2-18-08
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The Kansas Supreme Court has successfully administered the Senior Judge Program for 18 years. Senior judge contracts are not awarded to all judges who seek them. The Supreme Court carefully considers each applicant before awarding a contract. The Court is in a position to receive feedback from the districts to which senior judges are assigned, and members of the Court have regular contact with senior judges throughout the year. At this stage in a retired judge's life, standing for a retention election may be viewed as a significant enough burden that it influences the judge's decision as to whether to seek a senior judge contract.

The Kansas District Judges' Association

Hon. Robert J. Fleming, President
Phone: 620-421-1410

Hon. Meryl D. Wilson, President-Elect
Phone: 785-537-6372

Hon. Nancy E. Parrish, Secretary
Phone: 785-233-8200 x4067

Hon. Warren Wilbert, Treasurer
316-660-5625

House Judiciary Committee
Monday, February 18, 2008

Written Testimony in Opposition to HB 2813

The Kansas District Judges Association Executive Committee has voted to oppose the provisions of HB 2813. The committee is aware of the concerns expressed in the testimony from the Office of Judicial Administration, and committee members share those concerns.

Thank you for the opportunity to address this issue.

House Judiciary
Date 2-18-08
Attachment # 11