

Approved: 2/25/09

Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on February 4, 2009, in Room 143-N of the Capitol.

All members were present except:

Representative Marvin Kleeb- excused
Representative Jason Watkins- excused
Representative Kevin Yoder- excused

Committee staff present:

Melissa Doeblin, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Jerry Donaldson, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the committee:

Randy Hearrell, Kansas Judicial Council
Richard Hayse, Chairman Commission on Judicial Performance
Judge Stephen Hill, Chairman of Judicial Performance Drafting Committee
Judge Gary Rulon, Chief Judge Kansas Court of Appeals
Whitney Damron, Kansas Bar Association
Representative Robert Olson
Jon Bauman, Chairman of the Truth in Music Committee at the Vocal Group Hall of Fame

Others attending:

See attached list.

The hearing on **HB 2082 - Musical performing groups; advertising; restrictions.** was opened.

Representative Robert Olson, introduced the bill after hearing from both musical artists whose livelihoods and identities are being stolen and Kansans who are being deceived by performers who claim to be someone they are not. At least 27 other states have passed this legislation.(Attachment 1)

Jon Bauman, Chairman of the Truth in Music Committee at the Vocal Group Hall of Fame, a performer best known as "Bowzer", formerly of Sha Na Na musical group and currently Bowzer's Rock 'n' Roll Party, spoke in support of this bill to stop this nationwide sophisticated form of identify theft. He stated unscrupulous promoters make specious claims using the names of famous groups, use multiple units of these groups and dare anyone to stop them. He added this bill addresses live performances and requires the need to have at least one authentic member of the recording group on stage in the group that is performing that night, unless you have a valid federally registered trademark or that you clearly advertise the performance as a tribute or a salute.(Attachment 2)

In response to questions, Mr. Bauman stated the Consumer Protection Act and Trademark Name Protection laws do not seem to work very well and this bill would give the Attorney General a specific law to enforce. He also stated this law has been passed in the most populous states and all the most significant live performance states.

There were no opponents.

The hearing on **HB 2082** was closed.

The hearing on **HB 2111 - Removing sunset provision from Kansas commission on judicial performance statutes; retaining increase in docket fees to fund commission.** was opened.

Proponents:

Randy Hearrell, Kansas Judicial Council, opened the hearing by introducing Richard F. Hayse.

Richard Hayse, Chairman Commission on Judicial Performance, provided the background of the

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 4, 2009, in Room 143-N of the Capitol.

establishment of the Kansas Commission on Judicial Performance in 2006 and the program to evaluate performance of all Kansas appellate and trial judges. The Legislature funded the program with docket fees rather than general fund revenue but added a sunset provision set to expire June 30, 2010. Mr. Hayse further provided documentation and evaluation in support of the programs success. He also explained the sunset needs to be removed now instead of waiting until 2010 as they will be working and spending money on evaluations for Judges for the November 2010 Election and would be releasing this information in August 2010, however, the sunset provision expires on June 30, 2010, thus the work would be in vain. ([Attachment 3](#))

Judge Stephen Hill, Chairman of Judicial Performance Drafting Committee, spoke in support of the bill. He also testified to the usefulness, in not only collecting and distributing the information about judges to the Kansas voters, but the valuable feedback on the performance of judges is being used to help improve their performance through further training and education. Programs are set up for their Judicial semi-annual meetings that address concerns that have been raised in these evaluations. ([Attachment 4](#))

Judge Gary Rulon, Chief Judge Kansas Court of Appeals stated the Kansas Court of Appeals unanimously endorse removal of the sunset provision. The evaluation process provides information in several areas, including legal ability, integrity, impartiality, communication skills, professionalism, temperament and administrative capacity. Four Court of Appeals Judges were evaluated by the Commission in 2008 and nine more will be evaluated in 2010. He further advised the reports and recommendations of the Commission are taken very seriously by the Judges. ([Attachment 5](#))

Whitney Damron spoke on behalf of the Kansas Bar Association in support of removing the sunset provision and believes it is appropriate to provide some permanency to the work provided by the Kansas Commission on Judicial Performance. He also provided several news articles that appeared as illustrative of the Commission's efforts to communicate their work to the general public. ([Attachment 6](#))

Proponent Written Only Testimony :

Robert E. Davis, Chief Justice of the Supreme Court of Kansas provided written testimony to support to remove the sunset provision and make the program permanent. ([Attachment 7](#))

Meryl Wilson, President of the Kansas District Judge's Association provided written testimony in support of the bill. ([Attachment 8](#))

Opponents:

Douglas E. Smith, on behalf of the Kansas Credit Attorneys Association and Kansas Collectors Association, Inc. provided written testimony as an opponent to the bill. He stated although the Commission put tremendous work into the report and their work product was extremely well done, he questioned how the citizens utilize the information and if it affected their action in the voting booth. Since the decline of finances for the State are projected to decline further in 2010, and if the taxpayers aren't utilizing the report or services being provided, suggested the State contemplate discontinuing the performance report. ([Attachment 9](#)).

The hearing on **HB 2111** was closed.

The hearing on **HB 2110 - Increase in property damage amount in actions involving negligent motor vehicle operation**, was opened.

Randy Hearrell, Kansas Judicial Council, provided testimony in support of this bill to amend K.S.A. 60-2006, concerning civil procedure, to increase from \$7500 to \$15,000, the amount Kansans may seek recovery of property damages caused by the negligent operation of a motor vehicle, which concerns attorney fees taxed as costs in certain actions involving negligent motor vehicle operation. In addition, the Judicial Council proposes the statute be amended to include an annual inflation adjustment provision. ([Attachment 10](#))

Steven J. Borel, Attorney at Law, provided written testimony on behalf of the Kansas Association for Justice supporting the increase and the annual inflation adjustment. ([Attachment 11](#))

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After discussion, Chairman Kinzer asked the staff to provide additional information regarding the CPI proposed adjustment as to how often this indexing appears in the code and the consistency of it.

The hearing on **HB 2110** was closed.

The next meeting is scheduled for February 7, 2009.

The meeting was adjourned at 5:10 p.m.

JUDICIARY COMMITTEE GUEST LIST

DATE: 2-4-09 Wednesday

NAME	REPRESENTING
Sick Wilborn	Farmers Alliance
Mark Johnston	NAMIC
Uma White	Judicial Branch
Amy W. Kulow	Kansas Court of Appeals
Stephen D. Hill	COA Judge
Christy Motzen	KS Judicial Council
Amy Wolf	KSNT
Kathleen Utgen	KGC
Richard Sweeney	Kansas Assoc.
Anthony Janner	KS Bar Assn.
Joseph Miller	KS Bar Assn.

State of Kansas



Representative Rob Olson
Kansas House of Representatives
26th District

Docking Building, 7th Floor
Topeka, KS 66612

785/296-7632
Robert.Olson@house.ks.gov

House Bill 2082
Testimony of
Representative Rob Olson
to the
House Judiciary Committee

February 4, 2008⁹

Chairman Kinzer and Members of the Committee,

House Bill 2082, the Truth In Musical Performance Advertising Act, is rooted in truth and consumer protection.

I decided to request the introduce this bill after hearing from both musical artists whose livelihoods and identities are being stolen and Kansans who are being deceived by performers who claim to be someone they're not.

You may think this is not a necessary law in Kansas but please believe me when I say imposter groups are everywhere. Those pretenders and their promoters are in fact stealing the identities of the originals and performing across the state at theaters, county fairs and music festivals. To get the jobs, these imposters charge a cheaper rate than original performers. This form of identity theft allows them to steal the authentic artists' jobs, their money, their hard-earned legacy and their applause.

Fundamentally, this is a consumer protection bill. Think of your constituents who spend their hard-earned money to see musical performers who they have idolized since childhood. They assume that at least one of the performers up on the stage was part of the original group. Instead they are being duped by a group of liars.

At least 27 states have passed similar legislation.

This bill requires that either an authentic member of the recording group must appear in the performing group - or the performing group owns a legitimate federally registered trademark to the group's name.

It requires the performing group to provide proof that they have actual rights to the group name. It requires them to be who they say they are. Otherwise, the act must be billed as a "tribute" or a "salute" so the public will know exactly what it is paying for.

This will not punish singers performing other artists' songs provided they don't use the artist's name.

This bill is not meant to go after innocent Kansas venues who also are duped by these imposters.

This legislation provides clear direction for Kansas venues booking the musical acts and for the Attorney General's Office and county or district attorneys as to what is a violation.

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The Attorney General's Office and the Office of Judicial Administration have indicated this bill would not require additional resources to enforce.

Any performer or promoter who violates the Truth in Musical Performance Advertising Act will be ordered to pay civil penalties of \$5,000 - \$15,000 per violation.

This bill is very simple – performers cannot claim to be someone they are not and Kansas audiences have the right to know just who is singing and playing.

Thank you for the opportunity to appear in support of HB 2082. I will be happy to stand for questions at the appropriate time.



My name is Jon Bauman. I am Chairman of the Truth in Music Committee at the Vocal Group Hall of Fame. I'm best known as "Bowzer", formerly of Sha Na Na, and currently "Bowzer's Rock 'n' Roll Party", and I'm here today in support of HB 2082. For years, impostor musical groups have been duping consumers out of their hard-earned entertainment dollars and cheating the pioneers of rock music of their rightful legacy. These impostor groups need to: "Yip-yip-yip- etc.- Get a Job!"

What has been going on nationwide is a sophisticated form of identity theft. Unscrupulous promoters make specious claims which they cannot back up to names of famous groups, like The Coasters, Drifters and Platters. They put out multiple underpriced units which net these promoters huge amounts of money, and then dare anyone to try to stop them. Unfortunately, existing law has failed miserably in that regard, which is the reason for HB 2082. This law shifts the burden to the impostors to either back up their claims of association with the authentic groups or stop duping the public. We have now passed 27 states- over half the country- including all the most populous states and all the most significant live performance states.

Simply put, HB 2082 addresses live performance and states that you need to have an authentic member of the recording group on stage in the group that's performing that night, unless you have a valid federally registered trademark or you clearly advertise as a tribute or a salute.

This law will finally protect concert-goers from being duped by impostors and the unscrupulous promoters who foist them on the public without revealing who they truly are. Or, I should say, who they truly aren't!

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Finally, on a personal note, I've been really lucky. Ever since my old group Sha Na Na began the Rock 'n' Roll revival, I've lived my childhood as an adult. When I was growing up, I loved that new kind of music, especially the street corner Doo-Wop sound. I've met almost every one of my childhood idols, the people who sang those songs. I'm honored to call them my friends. But I've seen so many of them suffer while impostors take their livelihood and, what's worse, their glory. If you want a gut-wrenching experience, try watching a baby boomer audience leap to its feet at the end of an impostor group show. The audience so clearly thinks its honoring the body of work, the legacy, the deep pleasure this music has given them since their youth. The way this music brought races together in America, leading ultimately to the incredible result we had in the most recent election, a symbolic result of which, regardless of party, the country is rightly proud. This music helped change the world. And when the audience members leap to their feet at the end of the show, many of them don't even know they're applauding the wrong people!

Please support HB 2082. Thank you.



KANSAS COMMISSION ON JUDICIAL PERFORMANCE

RICHARD F. HAYSE, Chair, Topeka
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NANCY KINDLING, Topeka
HON. LARRY McCLAIN, Overland Park
REP. MICHAEL R. O'NEAL, Hutchinson
DR. MALIA REDDICK, Des Moines, IA

Kansas Judicial Center
301 S.W. Tenth Street, Suite 140
Topeka, Kansas 66612-1507

RANDY M. HEARRELL
Executive Director

Telephone (785) 296-8949
Facsimile (785) 296-1035

kcjp@kcjp.ks.gov
www.kansasjudicialperformance.org

TO: House Judiciary Committee

FROM: Kansas Judicial Council – Richard F. Hayse

DATE: February 4, 2009

RE: 2009 HB 2111 Relating to Removal of Sunset Provision from Judicial Performance Evaluation Statutes

Introduction

In 2006, the Legislature passed 2006 SB 337 which established the Kansas Commission on Judicial Performance and created a program of judicial performance evaluations for all Kansas appellate and trial judges. The legislation established the qualifications, duties and procedures of the Commission. The Legislature funded the program with docket fees, rather than state general fund revenue. The concept was that the evaluation of the judges would be funded by the persons who are using the court system.

When the Legislature passed SB 337 in 2006, it was willing to approve the concept of judicial performance evaluations, but wanted to wait until actual evaluations had been conducted before considering making the program permanent. For this reason the Legislature put language in K.S.A. 20-3201 which will allow the program to expire on June 30, 2010 (this is called the sunset provision). HB 2111 removes this sunset provision and makes the program permanent, unless the program is repealed by a future Legislature.

Background

Currently, 20 states (including Kansas) and the District of Columbia have officially sanctioned judicial performance evaluation programs. Six additional states are developing

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programs, and 12 states do not have formal judicial performance evaluation programs but have evaluations that are conducted independently by state or local bar associations.

While judicial performance evaluation programs vary from state to state, they also have many similar identifying characteristics. Judicial performance evaluations are generally centered around responses to standardized, scaled surveys provided by individuals who have dealt with a judge during an evaluation period. The questionnaires ask these individuals (who may include attorneys, jurors, witnesses, court staff, and litigants) to rate the judge on behavior-based items related to process and demeanor. The survey response data, along with other information such as court management data, courtroom observations, interviews with the judges, and disciplinary filings are considered by a non-partisan commission made up of attorneys and non-attorneys. After considering the information about a judge the commission prepares a report about the judge which, in some cases is only provided to the judge for self-improvement, and in some cases is made public. If the report is made public it usually contains a recommendation of whether or not the commission recommends the judge to be retained in office.

Judicial Performance Evaluations Generally

Judicial performance evaluation programs generally have the goals of promoting judicial accountability and independence, improving judicial performance and improving voter knowledge.

Judicial performance evaluation programs promote accountability and independence by measuring process rather than outcome. In other words, judicial performance evaluation programs focus on a judge's competence and impartiality rather than specific decisions a judge has made. By setting objective measurable standards for judges, it makes it easier for the public to identify the qualities that make a good judge and makes it easier to distinguish between judges whose performance is outstanding and those whose performance needs improvement. The characteristics measured by judicial performance evaluations are usually impartiality, temperament, knowledge of law, fair application of the law and efficiency. Widely disseminated information about the performance of judges from a non-partisan, objective source can enhance judicial independence by educating the public about the qualities that make a good judge and help protect a judge from the effects of an unfair attack.

Judicial performance evaluations permit a judge to see how he or she has performed against predetermined benchmarks, relative to his or her peers on the court and to identify areas of strength and weaknesses. Judicial performance evaluations also improve judicial performance by providing constructive criticism that would not be available to the judge in any other way. This is especially true for interpersonal performance issues such as treatment of people in the courtroom. Judicial performance evaluations also allow the judge to receive positive feedback about his or her performance, which a lawyer or litigant might otherwise withhold for fear it will be interpreted as an improper attempt to gain favor from the judge. Judges in many judicial performance evaluation programs have commented positively on the feedback they received and have acknowledged that, without the feedback, which was only possible through formal, anonymous evaluations, they would not have received the information that led to their self-improvement.

Judicial performance evaluations improve voter knowledge by disseminating to voters relevant information about a judge's overall performance and, often, by making a recommendation on whether the judge should or should not be retained in office. Thus, judicial performance evaluation programs result in more informed decision-making by voters. In addition to producing more informed voters, judicial performance evaluation programs can also increase the number of voters. Multiple studies have shown that, when voters have more information about a judicial candidate, they are more likely to vote in a judicial election. In contrast, when information about judges is lacking, voters are less likely to vote on judicial retention, and when they do vote, they are more prone to base their decisions on factors such as ethnicity, gender, name recognition, length of time on the bench, or no rationale whatsoever.

The Kansas Program

How Established

In November of 2004 the Judicial Council was requested to undertake a study of judicial performance evaluations. The Council agreed to the request and appointed a special advisory committee to undertake the study.

The study committee was chaired by Court of Appeals Judge Stephen D. Hill and included judges, lawyers, a legislator, a law professor, and a representative of the League of Women Voters. The Judicial Council also appointed to the committee representatives of groups which had been critical of the courts including the business community, faith based groups, domestic violence groups, and the media.

After a one-year study, the committee made a number of findings and recommendations and proposed Kansas adopt a system of judicial performance evaluations. The committee proposed legislation that served as the basis for 2006 SB 337. SB 337, as originally proposed, did not include a sunset provision. The bill was supported by the Supreme Court, the Court of Appeals, the District Judges Association, the District Magistrate Judges Association, and the Kansas Bar Association and was passed by the 2006 Legislature.

Goals

The specific goals of the Kansas judicial performance evaluation program are set out in K.S.A. 20-3203. Those goals are:

- (a) To improve the judicial performance of individual judges and justices and thereby improve the judiciary as a whole;
- (b) where judges and justices are subject to retention elections, to disseminate the results from the judicial performance evaluation process to enable voters to make informed decisions about continuing judges and justices in office; and
- (c) to protect judicial independence while promoting public accountability of the judiciary.

Implementation

Since the effective date of the 2006 legislation creating a program of judicial performance evaluations, the Kansas Commission has undertaken a number of steps to establish the Kansas program. Examples of work by the Commission to implement the program include: studied other states' programs to design the best format for Kansas; drafted the Commission's rules; prepared RFP's for the Commission's survey contractor; prepared and installed software in each courthouse to facilitate automated gathering of case file information so information would not have to continue to be gathered manually; established databases of all Kansas Judges and all Kansas attorneys for use in surveying; manually gathered information for mailing to jurors; manually gathered information for mailing to courthouse employees; sought and received statutory amendment to allow access to case information that was previously considered confidential; and reviewed 1,600 pages of comments about judges and removed any references that might identify the author. These are examples of a few of the dozens of task accomplished by the Commission to establish a "start up" program.

After the program was established the Commission began evaluating 87 judges and justices, of whom 80 stood for retention election in November of 2008.

How the Kansas Program Works

The Kansas program works very much like the description of judicial performance evaluation programs I previously gave. A great deal of detail about the Kansas program appears on the Commission's website. The web address is "www.kansasjudicialperformance.org". On the Commission's website the Commission statutes, rules, and questionnaires are posted along with a complete narrative description of how the Commission performs its statutory duties. Also, biographical information about the Commissioners, Commission meeting schedules, frequently asked questions, and the Commission's archives are on the website.

The end product of the Commission's evaluation of judges is the narrative profile and the report and the recommendations which also appear on the Commission's website. I have attached a copy of a narrative profile at page 9 of this testimony and a few pages from the report of Judge Jeff Jack of Labette County at pages 11-14. I chose to provide this example because many of you may have known Judge Jack when he served in the legislature prior to his appointment to the district court bench. I could have provided a copy of any of the evaluated judges' reports as an example because they are all in the public domain.

What is not in the public domain are the answers to the open-ended questions about the judge's strengths and weaknesses which the Commission refers to as "comments." Each judge received an average of 20 pages of comments. This material is confidential (only seen by the Commission and the judge). I have included examples of these comments at pages 15-18 of this testimony.

Dissemination of Results

K.S.A. 20-3204 directs that the Commission shall, with the aid of professionals where appropriate, make the evaluation results widely available when they are used to assist voters in evaluating the performance of judges and justices subject to retention elections.

The Commission widely circulated media kits and worked hard to provide information to the media. There was media interest in the program, partly because it was new. There were a number of non-paid newspaper, television, and internet placements about the program. Prior to the release of reports on judges there were stories in 25 newspapers (including four major dailies), one television report and two internet story placements.

The Commission also created a website on which the reports and recommendations and information about the Commission were posted. The Commission purchased internet advertising and print advertising in the state's four major dailies. In addition, paid advertisements which informed the public about the evaluations and the website were purchased in two separate editions of one newspaper in each county in which an evaluated district or district magistrate judge was on the ballot.

As a result of these dissemination efforts the total confirmed media placements including those preceding release of the reports, those when the reports were released, and those preceding Election Day were as follows:

Confirmed Kansas Placements	1,081,536
*Confirmed Out of State Placements	2,876,221
Television Stations	52,000
Internet Placements	334,321

*Number is high because on 8/4/08 USA Today picked up the story and this accounts for 2,228,439 of the placements.

In addition the Commission's website showed 107,422 "total downloads" and 1,739,881 "total webpage hits."

The Commission also distributed over twenty thousand brochures about the program. The brochures were provided to every library in the state, to each district court clerk's office, and to every Kansas attorney.

Evaluation of Program

Available information relating to judicial performance evaluation programs suggests there are two ways to evaluate the success of the programs. "process evaluations" are an assessment of whether the program is operating as it was intended and "impact evaluations" are an assessment of whether the program objectives are being attained and the overall impact of the program.

Process Evaluation

A review of the Kansas Statutes and the Commission's rules confirms that the Commission has carefully followed the process as set forth in the Commission's statutes and rules.

Beginning with selection of the Commission and concluding with dissemination of the judicial performance evaluation results to assist voters in evaluating the performance of judges subject to retention elections, the Judicial Council and the Commission have followed the statutes and the rules.

Impact Evaluation

While the process evaluation is relatively easy, evaluation of the impact of the program is more difficult. I have heard dozens of positive comments and reports about the program. While these reports are anecdotal they have convinced me that the program is improving the judicial performance of individual judges and justices.

A more substantive measure of the success of the judicial performance evaluation program is the decrease in voter falloff in judicial elections. Dr. Richard Heil, former Chair of the Political Science Department at Fort Hays State University and a member of the Commission, prepared a paper titled "Report on Voter Falloff in 2008 Judicial Elections."

Dr. Heil analyzes the effect the Commission's recommendations and reports had on voter falloff in the 2008 judicial elections. Voter falloff for the purpose of Dr. Heil's report is defined as the difference in the number of voters who voted for the top office on the ballot (in 2008 this was President) and who voted in judicial retention elections. Dr. Heil's report concluded by stating:

"In the three Presidential elections preceding 2008 the average falloff in Supreme Court elections was 25.3%. In 2008 that number was 21.3% a 4.0% difference. Similarly, the average falloff in Court of Appeals elections was 26.6%. In 2008 that number was 23.0% a difference of 3.6%. Now 4.0% and 3.6% do not sound that impressive at first. However, in 2008 if the usual 25.3% had fallen off in the Supreme Court vote that would translate into 312,676 fewer votes instead of the 263,803 that actually occurred (an improvement of 48,873). Similarly, in 2008 if the usual 26.6% had fallen off in the Court of Appeals vote that would translate into 328,742 fewer votes instead of the 284,423 that actually occurred (an improvement of 44,319).

Tables B and C also reveal another important fact. The columns labeled Falloff represent the average number of voters who do not vote on the judicial retention questions. Note that in both tables the smallest number occurs in 2008. However the data is analyzed, what is clear is that the election of 2008 saw more voters expressing opinions on retention of judges in Kansas than in the previous decade. While it is not possible to prove that the reason for this improvement was the existence of the Kansas Commission on Judicial Performance I know of no other factors that would explain the fact that more voters than would be expected, based upon previous electoral behavior, did vote on judicial retention questions in 2008. If forty-some thousand Kansans benefited from the information provided by the Kansas Commission on Judicial Performance and cast a more informed vote, then one of the goals of the Commission has been accomplished."

Summary

The Kansas judicial performance evaluation program has had a successful start. Despite the effort that it took to establish the program and nearly simultaneously conduct the initial performance surveys for dissemination prior to the 2008 elections, the initial reports were of high quality and were accepted by the judges and the public.

Building on the quality of the initial evaluations, the Commission has already made changes to improve future surveys and will continue to make improvements in the process as it gains experience. The Kansas judicial performance evaluation program is in place, is functioning well, is meeting expectations and the program should be made permanent.

Kansas Commission on Judicial Performance



Honorable Jeffrey L. Jack

2008 Review

District: 11

County: Labette

The Kansas Commission on Judicial Performance recommends that Judge Jeffrey L. Jack BE RETAINED.

Judge Jack took the bench as District Judge in the 11th Judicial District in 2005. He handles a mixed docket of civil, criminal, juvenile and other cases in Labette County. A graduate of Harvard University and the University of Kansas School of Law, Judge Jack spent 16 years in the private practice of law before his appointment to the bench. He was also a Kansas State Representative from 2003 to 2005 and is a retired Major with the US Army Reserve/Kansas Army National Guard serving from 1984 to 2004.

Judge Jack was named State of Kansas Big Brother of the Year in 2008. He serves on a number of boards including the Labette County Big Brothers/Big Sisters Board of Directors, the Labette Correctional Conservation Camps Advisory Board, the Labette Community College Criminal Justice Advisory Board, the Juvenile Corrections Advisory Board, and the Labette County Law Library Board of Trustees.

Judge Jack lists compassion, integrity, intellectual ability, empathy and common sense as his greatest strengths. He recognizes that he could improve docket management and timeliness of written opinions. His professional goals are to improve his time management and his written opinions.

The Commission received survey responses from 21 attorneys and 138 non-attorneys. Survey results showed that 95% of the attorneys and 81% of the non-attorneys recommended that Judge Jack be retained in office. Judge Jack received an overall average score from attorneys of 3.47 on a 4.0 scale and an overall average score from non-attorneys of 3.20. Judge Jack's scores exceed the required minimum average grade of 2.0 from each category of respondents. The Commission recommends that he BE RETAINED.

View the complete Judicial Performance Report for the Honorable Jeffrey L. Jack in PDF format.

Survey of Non-Attorneys Regarding Trial Judges

Judge Jeffrey L. Jack

Sample Size = 138

Average

Jeffrey L. Jack

All Trial Judges

A B C D Fail DK/NA

1. Performance Grade:

1a. Overall performance as a judge.	48%	28%	12%	8%	4%	1%	3.1	3.1
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2. Integrity:

2a. Conducts court free from impropriety or appearance of impropriety.	53%	24%	11%	7%	3%	2%	3.2	3.3
2b. Willing to make decisions even if they are politically unpopular.	37%	22%	10%	10%	3%	18%	3.0	3.1

Overall Integrity 3.1 3.2

3. Impartiality:

3a. Gives all participants a fair opportunity to be heard.	64%	16%	9%	4%	5%	1%	3.3	3.3
3b. Treats people fairly who represent themselves.	42%	19%	4%	4%	5%	25%	3.2	3.2
3c. Does not prejudge the outcome of cases.	45%	21%	12%	4%	4%	14%	3.1	3.1
3d. Presents a neutral presence on the bench.	58%	19%	12%	6%	3%	2%	3.3	3.2
3e. Treats everyone fairly regardless of who they are.	56%	18%	9%	4%	5%	7%	3.2	3.2

Overall Impartiality 3.2 3.2

4. Professionalism:

4a. Maintains appropriate control over proceedings.	60%	23%	11%	3%	1%	3%	3.4	3.4
4b. Is prepared for cases.	52%	23%	13%	3%	2%	7%	3.3	3.3
4c. Gives court proceedings a sense of dignity.	56%	20%	13%	2%	4%	4%	3.3	3.3

Overall Professionalism 3.3 3.4

5. Communication Skills:

5a. Makes sure participants understand what's going on in the courtroom.	61%	20%	8%	6%	4%	2%	3.3	3.4
5b. Uses language that everyone can understand.	60%	24%	8%	4%	3%	1%	3.4	3.4
5c. Speaks so everyone in the courtroom can hear what's being said.	61%	20%	11%	4%	2%	1%	3.4	3.4
5d. Gives reasons for rulings.	51%	22%	8%	7%	4%	7%	3.2	3.2

Overall Communication Skills 3.3 3.3

6. Temperament:

6a. Demonstrates a sense of compassion and human understanding for those who appear before the court.	52%	24%	8%	7%	7%	2%	3.1	3.1
6b. Is attentive during the proceedings.	57%	25%	11%	2%	2%	3%	3.4	3.4
6c. Acts with patience and self control.	61%	15%	16%	8%	0%	0%	3.3	3.4

Overall Temperament 3.3 3.3

7. Administrative:

7a. Begins court on time.	40%	36%	12%	6%	4%	3%	3.1	3.2
7b. Sets reasonable schedules for cases.	39%	25%	16%	3%	5%	12%	3.0	3.2
7c. Manages court proceedings to reduce wasted time.	41%	29%	13%	5%	4%	8%	3.1	3.2
7d. Provides prompt access to the court in emergency matters.	23%	17%	7%	2%	6%	45%	2.9	3.2

Overall Administrative 3.0 3.2

Overall Average Grade: 3.2 3.3

Judge Jeffry L. Jack
Questions 8 & 9

Jeffry L. Jack All Trial
 Judges

8. Biased in favor of prosecution/defense.

Very biased in favor of the prosecution	10%	10%
Somewhat biased in favor of the prosecution	6%	10%
Completely Neutral	71%	71%
Somewhat biased in favor of the defense	6%	6%
Very biased in favor of the defense	6%	3%

9. How strongly do you recommend that Judge be retained or not retained in office?

Strongly recommend retain in office	66%	70%
Somewhat recommend retain in office	15%	13%
Somewhat recommend not retain in office	8%	5%
Strongly recommend not retain in office	12%	11%

Survey of Attorneys Regarding Trial Judges

Judge Jeffrey L. Jack Sample Size = 21							Average	
	A	B	C	D	Fail	DK/NA	Jeffrey L. Jack	All Trial Judges

1. Performance Grade:

1a. Overall performance as a judge.	57%	24%	5%	5%	0%	10%	3.5	3.3
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2. Legal Ability:

2a. Bases decisions on the relevant evidence.	43%	29%	5%	5%	0%	19%	3.4	3.4
2b. Has knowledge of rules of procedure.	48%	29%	5%	5%	0%	14%	3.4	3.5
2c. Follows legal precedent in decisions.	48%	24%	5%	5%	0%	19%	3.4	3.4
2d. Uses judicial discretion to reach a fair decision.	43%	24%	10%	0%	0%	24%	3.4	3.4
Overall Legal Ability							3.4	3.4

3. Integrity:

3a. Conducts court free from impropriety or appearance of impropriety.	71%	14%	5%	0%	0%	10%	3.7	3.6
3b. Does not engage in inappropriate ex parte communications.	67%	10%	10%	0%	0%	14%	3.7	3.7
Overall Integrity							3.7	3.6

4. Impartiality:

4a. Does not prejudge the outcome of cases.	62%	24%	5%	0%	0%	10%	3.6	3.3
4b. Treats pro se parties fairly.	24%	14%	5%	0%	0%	57%	3.4	3.6
4c. Makes decisions and rulings without regard to the identity of the parties.	57%	14%	14%	0%	0%	14%	3.5	3.4
4d. Makes decisions and rulings without regard to the identity of counsel.	57%	24%	5%	0%	0%	14%	3.6	3.4
4e. Treats attorneys equally regardless of sex or race.	67%	14%	5%	0%	0%	14%	3.7	3.7
Overall Impartiality							3.6	3.5

5. Communication Skills:

5a. Makes sure participants understand the proceedings.	57%	19%	10%	0%	0%	14%	3.6	3.5
5b. Issues clear and logical oral communication while in court.	67%	14%	10%	0%	0%	10%	3.6	3.4
5c. Provides rulings that are clear, thorough and well reasoned.	57%	19%	14%	0%	0%	10%	3.5	3.3
Overall Communication Skills							3.6	3.4

6. Professionalism:

6a. Does the necessary homework and is prepared for cases.	52%	14%	5%	5%	0%	24%	3.5	3.4
6b. Maintains proper order, decorum and civility in the courtroom.	62%	19%	5%	0%	0%	14%	3.7	3.6
6c. Appropriately enforces court rules, orders and deadlines.	62%	14%	10%	5%	0%	10%	3.5	3.5
6d. Uses common sense and is resourceful in resolving problems that arise during proceedings.	62%	14%	14%	0%	0%	10%	3.5	3.5
6e. Promptly makes decisions and rulings.	35%	45%	5%	0%	5%	10%	3.2	3.5
Overall Professionalism							3.5	3.5

Judge Jeffrey L. Jack							Average	
	A	B	C	D	Fail	DK/NA	Jeffrey L. Jack	All Trial Judges

7. Temperament:

7a. Gives proceedings a sense of dignity.	71%	14%	5%	0%	0%	10%	3.7	3.6
7b. Treats everyone in the courtroom with respect.	67%	14%	10%	0%	0%	10%	3.6	3.5
7c. Is attentive during the proceedings.	71%	14%	5%	0%	0%	10%	3.7	3.7
7d. Acts with patience and self-control.	71%	10%	10%	0%	0%	10%	3.7	3.4
Overall Temperament							3.7	3.5

8. Administrative:

8a. Begins court on time.	48%	33%	5%	0%	5%	10%	3.3	3.5
8b. Allots an adequate amount of time for presentation of cases.	57%	10%	14%	0%	5%	14%	3.3	3.5
8c. Manages court proceedings to reduce wasted time.	48%	10%	5%	14%	5%	19%	3.0	3.4
8d. Provides prompt access to the court in emergency matters.	29%	14%	5%	5%	5%	43%	3.0	3.5
8e. Appropriately uses settlement conferences and alternative dispute resolution mechanisms.	14%	14%	5%	5%	0%	62%	3.0	3.4
8f. Complies with time limits for rulings in Supreme Court Rule 166 relating to all civil matters taken under advisement.	19%	14%	10%	0%	0%	57%	3.2	3.5
Overall Administrative							3.1	3.5

Overall Average Grade: 3.5 3.5

Questions 9 & 10	Jeffrey L. Jack	All Trial Judges
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9. Biased in favor of prosecution/defense.

Very biased in favor of the prosecution	0%	5%
Somewhat biased in favor of the prosecution	20%	22%
Completely Neutral	60%	67%
Somewhat biased in favor of the defense	20%	5%
Very biased in favor of the defense	0%	1%

10. How strongly do you recommend that Judge be retained or not retained in office?

Strongly recommend retain in office	79%	79%
Somewhat recommend retain in office	16%	12%
Somewhat recommend not retain in office	0%	4%
Strongly recommend not retain in office	5%	5%

Judge Example Attorney Comments

11. Judge's Strengths

<u>Respondent</u>	<u>Comments</u>
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- | | |
|----|---|
| 1 | Courteous to litigants and counsel. He also appears to be pretty well prepared when hearing contested matters |
| 2 | Familiarity with computer processing and jargon. |
| 3 | He looks, talks and acts like a judge should. He is courteous and clearly intelligent and well prepared. |
| 4 | Pleasant demeanor. Informed. Uses common sense applied to law and facts. Treats everyone appearing before with respect. |
| 5 | Judge Example is fair, intelligent, and possesses a judicial demeanor which commands respect but does not make him unapproachable. He uses common sense and is clearly attentive during hearings which attitudes is reflected in his well reasoned decisions and rulings. |
| 6 | He is very intelligent and he is extremely courteous gentleman. He is reality based. |
| 7 | Fair and impartial. Does his best to manage the court and not manage the outcome of the case. Treats everyone with respect. |
| 8 | Fairness. |
| 9 | Fairness and willingness to listen to both sides and willingness to take the time to research legal issues to insure his ruling is based upon the law. I just think maybe his willingness to take time for last minute issues and motions is never demeaning to counsel. |
| 10 | He appears to be patient, listens to the comments of counsel and litigants, and never seems to get rattled. |
| 11 | I can always count of Judge Example to always try and render a decision that he believes is fair and based on the law, after giving me ample opportunity to present my client's position. He has always treated me with the utmost respect and courtesy. |
| 12 | Patience. Respect for parties rights Attempts to be thorough. |
| 13 | In my opinion Judge Example is deeply committed to fairness. He always goes that extra mile to make sure that each party has the opportunity to fully present his case, and my experience is that he makes his decisions on the facts and the law, without prejudice to either side. He treats all lawyers with respect both in and out of the courtroom, and has what I would call a perfect judicial temperament. In addition, he knows the law and is quite skilled in applying it to the facts before him. One has the confidence that he, and no one else, is the person in charge in his courtroom. |
| 14 | Judge Example combines a skill at efficient proceedings with a true concern that the results are very fair. This means my cases are handled effectively, but I still get personal attention. I always have confidence in his decisions. |
| 15 | Fair and unbiased. |
| 16 | He seems to be unusually prepared on the knowledge of the law and issues, you can see him pick up on what attorneys miss, he handles his case load very well and moves the case along without cutting you off. |
| 17 | Well versed in the law. Makes good decisions and rulings. |
| 18 | The fact is that he is very patient and gives all parties leeway to solve the problem and tries not to get in the middle |
| 19 | Overall understanding of the issues. |
| 20 | He is accommodating on things that are short set, his schedule is very flexible. |
| 21 | Communication skills. Common sense. |

Judge Example Attorney Comments

11. Judge's Strengths

<u>Respondent</u>	<u>Comments</u>
1	Not applicable.
2	He displays great patience, conducts the court's business in a dignified fashion and applies with good common sense his thorough knowledge of the law.
3	Straight forward, approachable, and fair – applies common sense.
4	Knowledge of the law and rules. Promptness.
5	He is very patient with all participants in any case. He has the type of decorum that you would want with a judge. He treats everyone with respect and dignity – even those who sometimes don't deserve it.
6	Brevity.
7	Generally patient, especially with pro se litigants and young lawyers; will let the parties try their case.
8	He knows and applies the law correctly and has abundant common sense.
10	Judge Example has a good mind; he's a lot "brighter than the average bear." He's dedicated to keeping cases moving – daily and over the long haul.
11	Good work ethic. Common sense. Good judicial demeanor in courtroom.
12	Judge Example has good common sense and applies that to each case and comes out with rulings that are appropriate for the parties. He very courteous to the attorneys and litigants.
13	Knowledge of the law and legal procedure. Willingness to give guidance to newer attorneys. Experience.
14	Most of the time he makes a fair decision. When he treats people badly he generally treats everyone badly.
15	Common sense rulings in cases involving best interests of children. Does not suffer fools gladly.
16	Judge Example moves cases through on a timely manner. He is insistent that attorney are ready to address cases on time.
17	Efficiency.
18	Since I've appeared in front of Judge Example only twice, both times involving the same case, which he mediated, I've had limited contact. But I thought he ran a very professional court and did an excellent job during the mediation.
19	His judicial decorum and knowledge of the law. His experience on the bench is an asset. He is civil to attorneys and clients and yet very businesslike. He is also fairly prompt in rendering decision.
20	Fair decisions.
21	Good temperament and treats everyone fairly.
22	Experience and ability to evaluate the facts and precedent and make a reasoned decision.
23	Order and dignity in the courtroom.
24	Knowledge of the law, appropriate review of applicable cases, and making decisions based on the law not the participants.
25	Clearly communicates, decides promptly, bases decisions on the law and facts.
26	He relates well to parties and makes good decisions.
27	Keeps good command of his division and the courtroom.

Judge Example Attorney Comments

12. Judge's Weaknesses

<u>Respondent</u>	<u>Comments</u>
1	Thinks his court is the only one that matters. Very rude if counsel has conflict. Distant and withdrawn outside courtroom. Obviously does not have much experience in the private practice of law.
2	Frankly, Judge Example does not have a judicial weakness that I see. There are some times where his patience may be strained but even then, he remains patient. I believe it takes someone who appears before his frequently to see when his patience is being tested.
3	His are insignificant.
5	None.
6	I lack sufficient knowledge to give my opinion as to weaknesses.
7	Allows pro se litigants too much time at scheduled court docket calls.
8	Failure to impose sanctions and attorney fees in circumstances where they should be imposed unfairly burdens the innocent who have no control over the other party's behavior and encourages behavior and lack of client control by certain attorney's who repeatedly engage in litigious behavior and take positions clearly not justified by the circumstances. It is general knowledge that he will not award fees, so there is no deterrent to and no risk from engaging in unacceptable behavior.
9	None.
10	Have not observed any.
11	For one, his administrative assistant. She is lazy, uncooperative, unhelpful, obstructionist and anti-lawyer. In my opinion, Judge Example needs to enforce the orders of the court, make the proceedings more gender-natural, establish a partnership with attorneys in the domestic process instead of being biased against them and not be intimidated by those practitioners who consider themselves to be 'established.'
12	Has some biases that sometimes clouds his approach – but he has been forthright in acknowledging those biases and does attempt to not let them overly influence his decisions.
13	None known.
14	I don't have enough time in Judge Example's court to know; he was definitely top notch in the matter I had before his.
16	Vaguely biased toward mothers over fathers. Seeks to maintain jurisdiction over the children of the parties, no matter where the parties may move their respective domiciles.
17	Has favorites: communicates openly about cases outside the courtroom.
18	In some instances, I am aware that he has been short with or rude to litigants and witnesses.
19	None.
20	Relies too heavily on reports from court services officers at times.
21	Don't know.
22	I can't think of any.
23	Could permit additional time to develop factual positions of parties, however docket restraints are a reality.
24	Over books cases. I have spent a lot of time waiting for a hearing. My client is required to incur greater expenses and I lost a witness who left after several hours of waiting.

Judge Example Attorney Comments

12. Judge's Weaknesses

<u>Respondent</u>	<u>Comments</u>
1	He can be a little short with people.
2	He is not an approachable person. He does not understand technical legal issues and as a result, many of his rulings are incorrect. As a result, he is often the topic conversation when members of the bar share their 'war stories.'
3	Sometimes confusing in his logic and basis for his rulings and answers.
4	Does not treat attorneys as equals in the legal system, treats them as inferiors. Makes rulings without notice to all parties.
5	Inattentive during trials or hearings. Unprepared for some hearings.
6	To full of his authority, does not let family law people run their own lives when there is agreement – judicial overreaching.
7	Not sure that I saw any in my case.
8	He can be impatient, or gives the appearance of impatience, to the point of being almost rude on occasion. On other occasions, he can be abrupt and not all engaging in looking for ways to diminish conflict in domestic cases.
9	His rulings are not always clear and sometimes actually contradictory. He sometimes makes snap decisions without thinking things through.
10	Requires too many hearings, including status conferences on all cases, instead of just where they are needed. Also one of few judges who requires hearing in settled divorce proceedings. He says that he wants to check to make sure everything is in order, but much of this could be done just as effectively with a checklist. As a result, his docket is often overscheduled with matters that don't really need to be heard, making it more difficult to be heard when it is necessary. Too many of these routine hearings are scheduled for the time allotted, and as a result, he routinely runs late. One often see lawyers and clients stacked up in the hall, waiting. This needlessly makes cases more expensive for clients, having to pay for their lawyers to attend hearing which weren't necessary in the first place, then run late and take more time than they should. His clerk is efficient and accommodating via e-mail, but rarely answers the phone and is often rude or indifferent (does not acknowledge you when you walk in, just keeps working at her computer). I have not tried a case in front of him with complicated financial facts, but many lawyers feel that he does not have good understanding of complex financial issues and makes bad rulings.
13	Is to rigid in requiring things be done in manner he desires.
14	Predictability – he is not predictable. He is moody.
15	Will not allow counsel to present motions, in person, to be heard by the court. One must submit motions to him through his AA for him to later decide if he will hear oral arguments, or not. Clients do not feel that they are receiving their 'day in court'. We do recognize the 'time constraints' facing all of the family law judges.
16	He is terribly overworked and busy.
17	I really do not think Judge Example has any weaknesses.
18	Inability to bring a case to a conclusion and inaccessibility.
19	He demands more from our agency and staff than what state regulations requires.
20	None really.
21	Hard to get a hold of. And his bailiff also.



The Kansas Judicial Report Card is an educational tool available to voters in judicial retention elections.

The Kansas Judicial Report Card

is a non-partisan evaluation system for Kansas judges, based on *independent, confidential surveys* of lawyers, jurors, witnesses and others who have had *direct experience* with a judge's professional performance.

This resource provides voters:

- Evaluations of Supreme Court justices and judges of the Court of Appeals and the district courts of the state.
- Unbiased information on which to base retention voting decisions.
- Separate performance evaluation of Supreme Court justices, Court of Appeals judges and trial court judges in multiple categories of performance as follows:
 - Ability
 - Professionalism
 - Integrity
 - Temperament
 - Impartiality
 - Administrative capacity
 - Communication skills

See the ratings here:

www.kansasjudicialperformance.org

Only judges in retention elections (yes/no), not those in partisan elections, have report cards posted online.

The Kansas Judicial System includes all justices of the Kansas Supreme Court and judges of the Kansas Court of Appeals, plus 246 district judges and district magistrate judges statewide.

Kansas law provides that all justices of the Kansas Supreme Court and judges of the Kansas Court of Appeals are initially appointed. At the district court level, counties choose the judges and magistrate judges either by **merit selection with retention vote** or by **partisan elections**.

To improve the performance of justices and judges and the judiciary as a whole, the Kansas Legislature authorized an evaluation system based on surveys of persons who have had experience with the courts. The system enables voters to make informed retention election decisions about justices and judges who are appointed to the bench.

The 13-member Kansas Commission on Judicial Performance reviews survey results and makes a recommendation on whether appointed justices and judges should be retained. Best of all, voters can review survey results and make up their own minds.

Be an informed voter. Visit the Web site, learn about your Kansas justices and judges, and be sure to vote in judicial retention elections in the November general election.

www.kansasjudicialperformance.org



KANSAS
Commission
on Judicial
Performance

301 SW 10th Avenue
Topeka, Kansas 66612-1507
785-296-8949 or kcjp@kcjp.ks.gov



KANSAS
Commission
on Judicial
Performance

Kansas Judicial Report Card

**Independent information
on judges standing
for retention election is
available to Kansas voters at:**

www.kansasjudicialperformance.org



STEPHEN D. HILL
JUDGE

KANSAS COURT OF APPEALS
301 SW 10TH AVENUE
TOPEKA, KS 66612-1507

(785) 296-5410
FAX (785) 296-7079
E-MAIL: hills@kscourts.org

Testimony of Hon. Stephen D. Hill
Kansas Court of Appeals
Before the House Judiciary Committee
4 February 2009

Mr. Chairman and distinguished members of the Committee:

I again appreciate the opportunity to come and speak with you about judicial evaluations. I understand H.B. 2111 has a provision that strikes the sunset clause in the prior enactment. I stand before you today in support of the elimination of the sunset clause.

Frankly, judicial performance evaluations are just now getting started in Kansas. The first round of evaluations proved to be more challenging to get up and running than I thought. They served the purpose of a "shake-down" cruise, providing an opportunity to learn how to do the job. The logistics to put together evaluations in all of the districts that were covered as well as state wide judicial positions was enormous, but I think the task of developing adequate procedures has now been accomplished. Obviously improvements can be made and are being made. This process is no different than many governmental tasks, with constant feedback, constant adjustments to methods and procedures can be made implementing efficiencies of scale can be accomplished and a history of

information can be developed.

In my prior testimony to this committee in 2006, I pointed out the two-fold goal of the Judicial Council Advisory Committee on Judicial Evaluations, which I was fortunate enough to chair. First, we wanted to collect and distribute to the decision makers of Kansas, the voters, accurate information about judges and the judicial process. Judging is not about the outcome of cases—it is more important than that. I have defined the judicial function as the proper application of the correct rules of law to a set of facts that are determined by an unbiased factfinder. Obviously, to perform this function a judicial officer must exhibit great skill and care in many different ways.

For example, questions such as how learned in the law is the judge, is the judge methodical and careful in handling his or her cases, and is the judge patient and listen to all sides of a case before deciding the matter, are more proper questions than how did she rule on this case or how long a sentence did she impose in a that case. The many skills a Kansas judge must master are considerable but all are necessary to perform adequately. Those skills require training and education to achieve and maintain.

That training and education for judges was the second goal of our Committee for the judicial performance evaluations. All judges, no matter how great the office, need reliable feedback in the performance of their duties if they are to improve their performance. I can tell you unequivocally that you do not get feedback as a judge. Every one laughs at your jokes, those that agree with you decision heap praise upon you, and those that don't simply appeal because they think if they do otherwise it might jeopardize their next appearance before you.

Furthermore, the governor doesn't just strike the ground with her walking stick and

up from the dust arises a judge. There is a tremendous change from being an advocate to becoming a judge. After all, one practices law; the other makes it. The responsibility can seem to be overwhelming at times. I know for a fact that information gleaned from our first set of judicial evaluations, no matter how small, is being used to shape our upcoming judicial conferences. Our hope here is to match education and training to any perceived deficiencies of the judges. It helps us understand, in real terms, what is needed and then we can go about creating our education of judges to correct problems and enhance skills.

Finally, I would like to offer some personal observations. I travel throughout Kansas during the year when our court travels outside Topeka. That gives me the opportunity to see what is going on in the districts. Further, twice a year our judicial meetings afford opportunities to talk and mingle with judges of all rank. Some judges don't like evaluations, some judges do. Some judges say they don't care one way or another. But all know that an evaluation either has just occurred or is upcoming. All of a sudden some judges don't ask questions with an intimidating, arrogant demeanor. The 60-day list of pending opinions in our court goes to zero for the first time since the court has kept such a record. Judges are taking time to explain their decisions more thoroughly. Opinions are written with more clarity. Improvements are being made.

It has been said, "a job well begun is half done." I think the job of judicial evaluations has begun well in Kansas, let us not leave it half done. I will be glad to answer any questions you might have.



KANSAS COURT OF APPEALS

GARY W. RULON
CHIEF JUDGE

301 WEST TENTH
TOPEKA, KANSAS 66612-1507

(785) 296-6184
FAX: (785) 296-7079

TESTIMONY OF
CHIEF JUDGE GARY W. RULON
OF THE
KANSAS COURT OF APPEALS
BEFORE THE HOUSE JUDICIARY COMMITTEE

February 4, 2009

The Kansas Court of Appeals unanimously endorses HB 2111 which is proposed to remove the 'sunset' provision from the statutes that have implemented the statewide program of judicial performance evaluations.

The Court of Appeals Judges are aware of the value of these evaluations which provide the judges information to be used for self-improvement, and which provide voters with information about the Court of Appeals Judges in retention elections. The evaluation process provides information about the Court of Appeals Judges' performance in several areas, including legal ability, integrity, impartiality, communication skills, professionalism, temperament, and administrative capacity.

These evaluations are conducted by the Kansas Commission on Judicial Performance which consists of non-lawyers, lawyers, and retired judges who have outstanding credentials.

Four Court of Appeals Judges were evaluated by the Commission in 2008, and I can report that those judges have closely reviewed and taken the reports and recommendations of the Commission seriously. In 2010, nine more Court of Appeals Judges will be evaluated by the Commission.

House Judiciary
Date 2-4-09
Attachment # 5



**KANSAS BAR
ASSOCIATION**

1200 S.W. Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Phone: (785) 234-5696
Fax: (785) 234-3813
E-mail: info@ksbar.org
Website: www.ksbar.org

TESTIMONY

**TO: The Honorable Lance Kinzer, Chair
And Members of the House Judiciary Committee**

**FROM: Whitney Damron
On behalf of the Kansas Bar Association**

**RE: HB 2111 Removing the sunset provision from Kansas
Commission on Judicial Performance Statutes; retaining
increase in docket fees to fund commission.**

DATE: February 4, 2009

Good afternoon Chairman Kinzer and Members of the House Judiciary Committee. I am Whitney Damron and I appear before you today on behalf of the Kansas Bar Association in support of HB 2111 removing the sunset provisions on the Kansas Commission on Judicial Performance.

The KBA has been a longstanding advocate of judicial performance review and supported the creation of the Kansas Commission on Judicial Performance through the enactment of enabling legislation in 2006. As previous testimony has demonstrated, a significant amount of preparation was undertaken by the Commission prior to their first judicial evaluation being performed.

Anecdotally, as attorneys and legislators, we have all been placed in the situation of being asked for an opinion on the retention vote for a particular judge. Most often, unless someone has a working relationship with a particular judge, that opinion more closely reflects whether the judge has a good personality, is well-known in the courtroom or the community, rather than whether they are a competent jurist. The Kansas Commission on Judicial Performance sought to fill the void of information on a judicial retention and has developed a comprehensive evaluation process modeled after those successfully implemented in other states.

Given the extensive work of the Commission and their mission, the KBA believes it is appropriate to provide some permanency to their work and remove the sunset provisions in state law. Should there ever be reason or need to alter, amend or repeal the Kansas Commission on Judicial Performance; the Legislature is certainly able to revisit such matters at the appropriate time.

In conclusion, I would call your attention to several news articles that appeared in August of 2008 as the Commission was preparing to release their

House Judiciary
Date 2-4-09
Attachment # 6

first evaluations. These articles appeared throughout the state and are illustrative of the Commission's efforts to communicate their work to the general public.

On behalf of the Kansas Bar Association, I thank you for your time this afternoon and would be available to respond to questions at the appropriate time.

WBD

About the Kansas Bar Association:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 6,900 members, including lawyers, judges, law students, and paralegals.

www.ksbar.org

Attachments

Kansas judge evaluations now available to voters

Friday, August 29, 2008

Special To The Tribune

Topeka -- Kansas voters today obtained access to detailed and relevant information about district and appellate judges and justices standing for retention on election ballots this November, the Kansas Commission on Judicial Performance said.

"For years, voters have been asked to vote on whether to retain judges without the benefit of non-partisan information about their performance," said Randy Hearrell, executive director of the commission and the Kansas Judicial Council. "The Legislature created the commission to provide information so voters can be better informed."

Beginning today, Kansas citizens and voters are able to read individual evaluations of incumbent district judges, district magistrate judges, Court of Appeals judges and Supreme Court justices who are subject to a retention election on the Nov. 4 general election ballot. The evaluations, available at www.kansasjudicialperformance.org, are based in part on surveys of people who had business with the courts.

The Kansas Commission on Judicial Performance, an appointed state body, reviewed all survey results along with other information and recommended that all judges and justices standing for retention this year be retained on the bench.

"Judges who are now standing for retention election have previously passed a rigorous review process regarding their qualifications for appointment to the bench," said Fred N. Six, a retired Kansas Supreme Court justice and a member of the commission. "Our commission reviewed the attorney and non-attorney survey results and other information about the performance of these merit-selected judges to reach our recommendations."

Another commissioner, Mike O'Neal, a state representative from Hutchinson for 24 years and chairman of the Kansas House Judiciary Committee, said the commission carefully studied and discussed the recommendation for each individual judge.

"In this initial year of implementation of the evaluation process passed by the Legislature in 2006, we've laid a strong foundation for an improved judiciary statewide," O'Neal said. "As the phase-in of the process continues in 2010 and thereafter, our state's judicial system will only continue to get stronger."

Richard F. Hayse, a Topeka attorney and chairman of the commission, said the 2008 evaluations represent the beginning of a long-range process.

"Data will be gathered over a four-year period, and judges' ratings in the future will be based on a rolling average of survey results," Hayse said.

The surveys of attorneys and non-attorneys ask respondents' opinions of a judge's overall legal ability, impartiality, temperament and communication skills, among other categories.

"The commission's report, referred to as the Kansas Judicial Report Card, is designed to give judges feedback from the public on judicial performance and to give voters information on which to base their votes on whether to retain appointed judges and justices," Hayse said.

Among those who completed confidential surveys are attorneys, litigants, witnesses, court staff, jurors, law enforcement personnel, probation officers, social services caseworkers, appellate-level judges, and other people who have appeared before or had professional contact with the judge being evaluated.

To assure fairness and independence, all surveys are conducted and tabulated by Talmey-Drake Research & Strategy Inc., a professional public opinion research firm based in Boulder, Colo. Individual surveys are confidential, and judges and justices don't know who returns the surveys. The process is funded through Kansas court fees, not taxpayer dollars.

The commission includes six non-lawyers; six others who are lawyers, including retired judges and justices; and a chairman, who is a lawyer. At least one non-lawyer commission member and at least one lawyer commission member live in each of the state's four congressional districts.

The commission is appointed by the Kansas Judicial Council, a body established by the Legislature in 1927 to conduct an ongoing study of the judicial branch of government and recommend justice administration improvement options to both the Legislature and the Kansas Supreme Court.

Hayse said the process will play a key role in maintaining judicial independence.

"Like all who serve the public, judges and justices must be accountable," Hayse said. "This system enhances accountability while preserving the judicial independence that is the greatest strength of our judicial system."

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Story URL: <http://www.fs Tribune.com/story/1456818.html>

LJWorld.com

Reports on Kansas judges to go online this month

By John Hanna - Associated Press Writer

August 5, 2008

Topeka — Some of the state's appellate and district court judges are being graded, and their report cards will be posted online Aug. 29 to help voters determine whether they should keep their jobs.

The evaluations are being compiled by the state Commission on Judicial Performance. Its reports will cover Kansas Supreme Court justices, Court of Appeals judges and appointed district judges who are on the ballot this year.

Supreme Court justices are appointed but voters decide every six years whether they remain on the bench. Court of Appeals judges are appointed for four-year terms. A little more than half of the district court judges are appointed to four-year terms, while the others run in partisan elections.

In the past, even some supporters of appointing judges have acknowledged that most voters get little information about how well justices or judges perform. Legislators created the commission in 2006 to help correct that problem.

"Now we have information, based upon surveys, that can be used to help voters decide how to vote," commission spokesman Michael Grimaldi said Monday, adding that regular evaluations also should improve judicial performance.

According to the commission, six other states have such an evaluation system, with Alaska creating the first one in 1976. The others are Arizona, Colorado, New Mexico, Tennessee and Utah.

The Kansas commission has a budget of about \$813,000, financed from court fees. Its 13 members include six non-lawyers; one, Fred Six, is a retired Supreme Court justice and the father of Attorney General Steve Six.

Before legislators created the commission, a few local bar associations rated judges. But Senate Judiciary Committee Chairman John Vratil, a Leawood Republican, said a statewide system will make the ratings more professional - and widespread.

"There were a lot of judges who were never evaluated," Vratil said.

To grade the judges - on a 4-point scale - the commission is surveying attorneys, other judges and a random selection of people who've had cases before a particular judge. It's hired a Boulder, Colo., firm, Talmey-Drake Research & Strategy Inc., to conduct the surveys; the firm does similar surveys in its home state.

Originally published at: http://www2.ljworld.com/news/2008/aug/05/reports_kansas_judges_go_online_month/



Powered by Clickability

Kansas Judicial Evaluations Available Online

Posted: 1:40 PM Aug 28, 2008

Last Updated: 1:40 PM Aug 28, 2008

Reporter: AP

TOPEKA, Kan. (AP) _ As of Friday, evaluations will be online for every judge in Kansas who faces a retention vote in the November 4th general election.

[A](#) | [A](#) | [A](#)

The Kansas Judicial Report Card is designed to provide the information voters need in a non-partisan manner.

The evaluations are based on confidential surveys of attorneys, witnesses and others who have worked with the judges.

Find this article at:

<http://www.wibw.com/home/headlines/27614679.html>

Check the box to include the list of links referenced in the article.

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Supreme Court of Kansas

KANSAS JUDICIAL CENTER
301 S.W. 10TH AVENUE
TOPEKA, KANSAS 66612-1507

ROBERT E. DAVIS
Chief Justice

785-296-5322

House Judiciary Committee

February 4, 2009

Statement in Support of 2009 HB 2111

The Kansas Supreme Court supports HB 2111, the bill recently introduced to remove the "sunset" provision from K.S.A 20-3201, et seq, the statutes authorizing the Kansas Commission on Judicial Performance, and to make the program permanent.

We understand that the sunset provision was added because, while legislators were willing to approve the concept of judicial performance evaluations, they wanted an opportunity to review the actual evaluations before making the program permanent.

Since the creation of the judicial performance evaluation program authorized in 2006, the Commission on Judicial Performance has worked diligently to establish a high quality system of judicial performance evaluations, and has been successful in those efforts. Though the sunset provision does not take effect until June 30, 2010, we agree with the Commission that 2009 is the appropriate time to remove the sunset provision so that the program can continue with no disruption.


Thank you for the opportunity to provide this statement in support of the bill, and for your time and attention in considering this issue.

House Judiciary
Date 2-4-09
Attachment # 7

**House Judiciary Committee
Testimony in Support of 2009 HB 2111**

The Kansas District Judges' Association joins with the Kansas Supreme Court and the Kansas Court of Appeals in supporting the removal of the sunset provision on Judicial Performance in 2010. We understand the public's desire to have more information about the judges and justices they are voting to retain. The Judicial Performance Advisory Committee's recommendations provide relevant, meaningful information to the voters. In addition, it appears that the recommendations also provide valuable feedback to both merit selected and elected judges.

The Kansas District Judges' Association was pleased to participate in the Judicial Performance Advisory Committee process through the participation of district judges, and we would be pleased to continue to participate in ongoing discussions of this issue. Thank you for the opportunity to support these recommendations, and please do not hesitate to contact us if any additional information or input would be helpful to you.



MERYL D. WILSON
President, KDJA

House Judiciary

Date 2-4-09

Attachment # 8

**KANSAS CREDIT ATTORNEYS ASSOCIATION
AND KANSAS COLLECTORS ASSOCIATION, INC.**

REMARKS CONCENING HOUSE BILL NO. 2111

HOUSE JUDICIARY COMMITTEE

February 4, 2009

Chairman Kinzer and Members of the House Judiciary Committee:

Thank you for the opportunity to present remarks regarding House Bill No. 2111 on behalf of the Kansas Credit Attorneys Association and Kansas Collectors Association, Inc. The Kansas Credit Attorneys Association is a statewide organization of attorneys, representing law firms, whose practice includes considerable collection work, and Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas.

The KCAA and KCA appear today as opponents to House Bill No. 2111, which seeks to remove the sunset provision for the Commission on Judicial Performance.

The Commission was created in 2006 and is set to sunset in July of 2010. Since the Commission's first and only report was provided to voters in August for the 2008 general election we don't see the urgency for this legislation at this point and respectfully request that you consider House Bill No. 2111 next legislative session. The Commission can continue their work and if necessary the sunset can be addressed by the 2010 Legislature, prior to its expiration.

The Legislature should look at directing the Commission to gauge the success of that initial effort and reporting their findings. Before the sunset is removed it should be determined how the citizens utilize the information provided and whether the information affect their action in the voting booth? We understand that the success might be difficult to quantify, but believe that it is important to look at some measurement of effectiveness. At this time the Judicial Performance website provides no review of the recommendations made to Kansas voters on the retention of judges across Kansas.

The Commission put tremendous time and effort into the report and their work product was extremely well done, but did it meet the needs of the voters? As we all know the finances for the State are projected to decline further in 2010. If the taxpayers aren't utilizing the report or services being provided the State should contemplate discontinuing the performance report.

Thank you for your time and consideration.

Douglas E. Smith
For the Kansas Credit Attorneys Association
and the Kansas Collectors Association, Inc.

House Judiciary
Date 2-4-09
Attachment # 9



KANSAS JUDICIAL COUNCIL

JUSTICE ROBERT E. DAVIS, CHAIR, LEAVENWORTH
JUDGE JERRY G. ELLIOTT, WICHITA
JUDGE ROBERT J. FLEMING, PARSONS
JUDGE JEAN F. SHEPHERD, LAWRENCE
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Kansas Judicial Center
301 S.W. Tenth Street, Suite 140
Topeka, Kansas 66612-1507

Telephone (785) 296-2498
Facsimile (785) 296-1035

judicial.council@ksjc.state.ks.us
www.kansasjudicialcouncil.org

EXECUTIVE DIRECTOR
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TO: House Judiciary Committee

FROM: Kansas Judicial Council – Randy M. Hearrell

DATE: February 4, 2009

RE: 2009 HB 2110 Relating to Civil Procedure and Amending K.S.A. 60-2006 which Concerns Attorney Fees Taxed as Costs in Certain Actions Involving Negligent Motor Vehicle Operation

The Legislature requested that the Judicial Council study 2008 SB 537 which contained three sections, each of which amended a civil procedure statute. The study of the bill was assigned to the Judicial Council's Civil Code Advisory Committee (the Committee members are listed at the end of this testimony) and that Committee's report was approved by the Judicial Council.

The Civil Code Advisory Committee recommended against enactment of SB 537 but, in reviewing the testimony on the bill by Independence attorney W. J. Fitzpatrick, the Committee noted that he suggested, as an alternative to adopting section 3 of SB 537, that the dollar amount contained in K.S.A. 60-2006 be increased.

The Judicial Council agrees with this suggestion. The limit in the statute was last changed in 1990 when it was increased from \$3,000 to \$7,500. The dollar amount contained in the statute has been changed three times since it was enacted in 1969. Given the length of time since the last increase, the increase in the consumer price index since that time, and the increase in the cost and complexity of motor vehicle repair, the Judicial Council proposed HB 2110 which increases the amount in K.S.A. 60-2006 from \$7,500 to \$15,000. In addition, the Judicial Council proposes the statute be amended to include an annual inflation adjustment provision.

House Judiciary

Date 2-4-09

Attachment # 10

LAW OFFICE OF
STEVEN J. BOREL
ATTORNEY AT LAW
1580 MAHAFFIE CIRCLE
OLATHE, KS 66062
ADMITTED IN KANSAS AND MISSOURI

Telephone: (913) 782-2400
(800) 748-7100
Facsimile: (913) 782-1490
E-MAIL: sborel@borelfirm.com

February 3, 2009

House Judiciary Committee
Topeka, KS

RE: House Bill 2110

I am writing this letter on behalf of the Kansas Association for Justice (KsAJ).

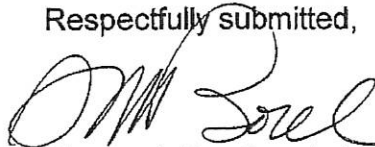
KsAJ is a statewide, non-profit organization of consumer lawyers dedicating to protecting the civil justice system and the rights of Kansans.

KsAJ supports House Bill 2110. The bill increases the amount of property damage covered by K.S.A. 60-2006 from \$7,500 to \$15,000. Under the bill, Kansans will be able to seek recovery for property damage to their automobiles up to \$15,000 under the provisions of K.S.A. 60-2006. This is a modest and reasonable change to a statute which is limited in its application to property damage claims.

There is also a cost of living provision included in the bill which is a good idea as it will allow the coverage limit of \$15,000 to increase slightly each year with the cost of living rather than have to deal with the issue legislatively from time to time in the future.

KsAJ urges the House Judiciary Committee to approve House Bill 2110.

Respectfully submitted,



Steven J. Borel, on behalf of the
Kansas Association for Justice

SJB/kb

House Judiciary
Date 2-4-09
Attachment # 11