

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on February 3, 2010, in Room 346-S of the Capitol.

All members were present except:

Representative Jeff King- excused  
Representative Marvin Kleeb- excused  
Representative Kay Wolf- excused

Committee staff present:

Jason Long, Office of the Revisor of Statutes  
Matt Sterling, Office of the Revisor of Statutes  
Jill Wolters, Office of the Revisor of Statutes  
Athena Andaya, Kansas Legislative Research Department  
Jerry Donaldson, Kansas Legislative Research Department  
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

Judge Tony Powell, 18<sup>th</sup> District (Sedgwick County)  
Judge Tom Foster, 10<sup>th</sup> District (Johnson County)  
Judge Charles Hart, 13<sup>th</sup> District (Butler County)  
Richard Hayse, Commission on Judicial Performance  
Whitney Damron, Kansas Bar Association

Others attending:

See attached list.

**The hearing on HB 2531 - Courts; for fiscal year 2011, docket fee percentage from judicial performance fund to go to judicial branch non-judicial salary initiative fund was opened.**

Representative Joe Patton spoke before the committee in support of the bill which would suspend funding for the Kansas Commission on Judicial Performance for a year. K.S.A. 20-367 provides the judicial performance fund with three percent of the court docket fees which amounted to \$717,312 for the Fiscal FY 2009. He stated with the state's budget shortfall, we must be creative when evaluating state priorities. While he agreed it is important to evaluate judges, it does not make much sense to spend nearly a million dollars to do judge evaluations at the same time they are talking about putting judicial branch employees on furlough. (Attachment 1).

Judge Tony Powell, District Court Judge, Division 18, (Sedgwick), addressed the committee in support of the bill. He stated he strongly supports this bill because in an era of tight budgets, priorities must be set and first on those priorities should be to protect hard working court employees. He recognizes the staff is what keeps the courts working smoothly. In addition he pointed out flaws in the evaluation system that provides limited accountability and believes the evaluations are a luxury that we cannot afford in these financial times. He suggested instead, that the bar associations around the state conduct evaluations in conjunction with their local news outlets, like what has been done in Wichita and has been very successful, all without any cost to the taxpayers. (Attachment 2)

Judge Tom Foster, Tenth Judicial District, (Johnson County), spoke in support of the bill and explained the impact the unprecedented fiscal crisis has had on the Judicial Branch. He stated, the Court's budget is 98% salaries while the counties provide the buildings, furnishings, etc., for the Courts and therefore to deal with the crisis the Court has had eliminated approximately 193 temporary part-time hours leaving no one available to fill in when employees are ill or on leave; froze all vacant positions which currently leaves 96.5 vacant positions due to retirements and resignations during the past year; reduced the use of retired judges to fill in when judges are ill, vacancies and to handle conflict of interest cases; obtained a Federal Stimulus Grant. He also suggests suspending the evaluations performed on elected judges and use other means to evaluate the judges. He stated the Johnson County Bar Association (JCBA) has sponsored judicial evaluations for many years and spend approximately \$250 per year per judge compared to the current valuations that he estimates to be in the \$3000 to \$4000 range per judge. He said it is time to keep the courthouse doors open and return

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 3, 2010, in Room 346-S of the Capitol.

the courts to proper staffing levels. (Attachment 3)

Judge Charles Hart, Thirteenth Judicial District, Butler County, addressed the committee in support of the bill also spoke of some of the flaws in the evaluations performed by the Judicial Council that distort the results. He also spoke of the hardship of losing some of their experienced employees due to the cutbacks and losing employees to other agencies. (Attachment 4)

Richard Hayse, an attorney in private practice in Topeka, appeared before the committee as an opponent to this bill, in the capacity as Chair of the Kansas Commission on Judicial Performance. He explained the Commission is funded entirely by a docket fee and that the organization of the Commission began in August, 2006 to design and implement a judicial performance evaluation form scratch. He stated diverting the funding for a year would be a disservice to the public and the Kansas Judiciary and mean that thousands of dollars already spent would essentially be wasted, and without the funding for salaries they would also lose the expertise and experience of three of the Commission's staff who are essential to completing the statutory functions but would be forced to seek employment elsewhere. (Attachment 5)

Whitney Damron spoke to the committee as an opponent, on behalf of the Kansas Bar Association. He stated they supported the creation of the Kansas Commission on Judicial Performance and is concerned that any withdrawal of funding for the commission could jeopardize the entire program, as the evaluation process is an ongoing process that simply cannot be started and stopped between elections. (Attachment 6)

Neutral written testimony was submitted by the Kansas Department of Health and Environment, however, this bill would have no affect on the allocated 1.25% of docket fees used to support the Trauma Fee Fund and it appears the testimony may have been submitted due to a misunderstanding of the intent of this bill. (Attachment 7)

Chairman Kinzer stated he would recognize Randy Hearrell as a neutral of the bill and asked if he could address some of the questions that were asked during the meeting. Randy briefly told of how the program works, commented on monies being spent on computer software; plans to perform some functions in house this year rather than out-source; plans to use newspapers and the Kansas Association radio to provide results of the surveys of the judges and stories to each county. Chairman Kinzer also asked if he would later provide some additional information regarding monetary questions.

The hearing on **HB 2531** was closed.

The next meeting is scheduled for February 4, 2010.

The meeting was adjourned at 4:40 p.m.

# JUDICIARY COMMITTEE GUEST LIST

DATE: 02-03-10

NAME	REPRESENTING
SEAN MILLER	CAPITAL STRATEGIES
C. David Rounet	Kegney & Assoc.
<del>Chris Carey</del>	GBA
leigh keck	Hein law firm
Chris Tilden	KDHE
Christy Molzen	Commission on Judicial Performance
Natalie Gibson	" " "
Brandy Wheeler	" "
Whitney Damm	KS Bar Assn
Joseph Molina	KS BAR ASSN
R.S. Wilson	KSAS
Randy M. Hamel	Judicial Council
Lan Wick	J.A. Bruner



TOPEKA

HOUSE OF  
REPRESENTATIVES

**JOE PATTON**

REPRESENTATIVE, 54TH DISTRICT  
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COMMITTEE ASSIGNMENTS

VICE CHAIRMAN: CORRECTIONS AND JUVENILE  
JUSTICE

MEMBER: JUDICIARY  
ADMINISTRATIVE RULES AND  
REGULATIONS

**Testimony in support of HB 2531**

February 1, 2010

Chairman Kinzer and Committee members, thank you for the opportunity to appear before you today in support of HB 2531.

In dealing with the state's budget shortfall, we must be creative when evaluating state priorities. Some programs created or funded when the state's economy is strong may not be as important when the state struggles to pay for essential services.

This bill is intended to suspend funding for the Kansas Commission on Judicial Performance for a year. Fiscal FY 2009, I'm told the amount is \$717,312. KSA 20-367 provides the judicial performance fund gets 3% of the court docket fees. KSA 20-3201 is the statute that created the Commission to create evaluations of the performance of individual judges.

As important as it is to evaluate judges, it does not make much sense to spend nearly a million dollars to do judge evaluations at the same time they are talking about putting judicial branch employees on furlough.

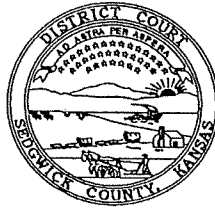
I hope the Appropriations Committee will make a complete evaluation of all special revenue funds. Millions of dollars are pre-allocated and never go into the State General Fund. Perhaps many of the funds are for worthy causes, but in light of the current fiscal problems, we need to carefully evaluate our priorities.

House Judiciary

Date 2-3-10

Attachment # 1

Anthony J. Powell  
District Court Judge  
Division 18



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DISTRICT COURT  
EIGHTEENTH JUDICIAL DISTRICT  
SEDGWICK COUNTY COURTHOUSE  
525 N. MAIN, 5th FLOOR  
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67203

February 3, 2010

Testimony in Support of HB 2531

Mr. Chairman,

I am Judge Anthony Powell of the Sedgwick County District Court, and I want to thank you for the opportunity to appear today in support of HB 2531, legislation that would divert filing fee proceeds from the judicial evaluation fund to the non-judicial salary fund.

I strongly support this bill because in an era of tight budgets, priorities must be set, and first on those priorities should be to protect hard working court employees.

As well all know, the judiciary's budget faces a shortfall, and due to that shortfall, there exists the possibility of furloughs for court employees. For court employees, many of whom are not highly paid, a furlough of any length could be financially devastating. In addition, any furlough would greatly impact on the court's ability to serve the public, because as we all know, the judiciary cannot really function without its support staff. This bill would help reduce the risk of furloughs.

This bill also makes sense because spending money on an evaluation system that doesn't work and provides limited accountability in a season of budget cutting doesn't make sense. The evaluation system as currently created is not statistically valid, allows criminal defendant's to evaluate judges, and does not subject each judge to the same pool of evaluators, thereby making any comparison of the results between judges totally meaningless. For example, while I was evaluated by a pretty good sample, many of my colleagues were only evaluated by a handful of persons. In one case, a judge had only two persons evaluate him. In another, the bulk of the persons who evaluated him were criminal defendants. I question the usefulness of such a process to the judges and to the public. I suggest instead, that bar associations around the state conduct evaluations in conjunction with their local news outlets, like what has been done in Wichita and has been very successful, all without any cost to the taxpayers.

As an elected judge, I am not afraid accountability or evaluations. I face the voters every four years, and I consider that to be the most important evaluation of all. I propose that in a season of tough economic times and tight budgets, we save the taxpayers' money, and shift limited funds from being spent on a flawed evaluation system, and instead spend money on the court's most valuable resource, its hardworking support staff. I am happy to answer any questions you may have.

House Judiciary

Date 2-3-10

Attachment # 2

**HOUSE COMMITTEE ON JUDICIARY**

**Hon. Lance Kinzer, Chairman  
Hon. Jeff Whitham, Vice Chairman  
Hon. Janice Pauls, R.M. Member**

**February 3, 2010  
3:30 p.m.  
Room 346-S**

**Chief Judge Thomas E. Foster  
Tenth Judicial District  
Olathe, Kansas 66061  
913-715-3860  
[thomas.foster@jocogov.org](mailto:thomas.foster@jocogov.org)**

**TESTIMONY IN SUPPORT OF HB 2531**

Good afternoon. My name is Tom Foster. I am the Chief Judge for the Tenth Judicial District. I appreciate the opportunity to speak to you this afternoon. Our citizens, businesses, and government are currently experiencing an unprecedented fiscal crisis which seems to get worse every month. The Judicial Branch of the State of Kansas is experiencing a financial crisis 'double whammy.' First, this year's Judicial Branch budget was intentionally trimmed due to the fiscal crisis facing our state last year. Second, by mistake, the Judicial Branch budget was unintentionally cut an additional \$10,000,000.00 for this year. It is readily apparent to me that the Court and the Legislature are making good faith efforts to correct the error, but the continuing downward state revenue spiral is making it more and more difficult for the error to be corrected.

The Court's budget, as you are well aware, is 98% salaries. The counties provide the buildings, tables, chairs, computers, or other necessities for the Courts. We are also cutting our operations budgets back in our home counties. To deal with the financial crisis the Court has:

- Eliminated approximately 193 Temporary Part-time hours. This means that there is no one to fill in for an employee who is on maternity leave, military leave, or other temporary vacancies.
- Frozen all vacant positions. There are currently 96.5 vacant positions in the Judicial Branch due to retirements and resignations during the past year. These vacancies have hit certain districts harder than others.
- Reduced the use of retired judges. Retired judges are often used to fill in when judges are ill, to fill in for judicial vacancies, and to handle conflicts of interests.
- Obtained a Federal Stimulus Grant.

House Judiciary  
Date 2-3-10  
Attachment # 3

The legislature is currently considering an emergency funding bill, filing fee surcharges, and this bill, HB #2531, which proposes that monies collected from filing fees dedicated to the judicial performance fund be temporarily diverted to help pay non judicial salaries.

The Legislature modeled its judicial performance evaluation procedure on the Colorado method of evaluation. Mr. Randy Hearrell, his excellent staff, and the dedicated Commissioners have earnestly worked to implement the legislature's mandate for judicial evaluations. I have great respect for their efforts to establish this statewide judicial evaluation system in Kansas. The Kansas Justice Commission in its June 11, 1999 Final Report made 23 specific recommendations for the improvement of the justice system in Kansas. Recommendation number 1(b) was to establish a statewide Kansas Judicial Evaluation Commission. Therefore, I do not make my suggestions and comments lightly. They are:

1. **Suspend the evaluations performed on elected judges.** The evaluations on elected judges are confidential and are provided for self improvement only. There are other means to improve judicial improvement, such as mandatory continuing education programs.

2. **Suspend the midterm evaluations for all judges.** The midterm evaluations on appointed judges are confidential and provided for judicial self improvement only. There are other means to improve judicial improvement, such as mandatory continuing education programs.

3. **Initial evaluation results.** Generally, the results of the evaluations have indicated that we have good judges in Kansas regardless of whether they are elected or appointed. Do we need continuing evaluations to provide continuing verification of good judicial performance?

4. **Cost benefits analysis.** The Johnson County Bar Association (JCBA) has sponsored judicial evaluations for many years. The JCBA surveyed all registered attorneys in Johnson County in order to assess judges' performance in key areas. JCBA spent approximately \$250.00 per year per judge to evaluate the judges' performance. While I cannot tell you the exact cost of the current evaluations I estimate them to be in the \$3,000.00 to \$4,000.00 per judge range.

5. **Prioritizing needs.** The Judicial Branch has eliminated or frozen close to 300 permanent or part time positions during this fiscal year. Even if emergency funds are provided to avoid court closings, the emergency funds will not allow the Court to begin filling the many vacancies that currently exist. At some point, many of these vacancies need to be filled.

I respectfully suggest that the Court's greatest need at this time is to keep the courthouse doors open and return the courts to proper staffing levels.

Respectfully Submitted,

Thomas E. Foster



DISTRICT COURT  
THIRTEENTH JUDICIAL DISTRICT  
STATE OF KANSAS

CHAS. M. HART  
DISTRICT JUDGE, DIV. II  
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RESIDENT CHAMBERS  
BUTLER COUNTY JUDICIAL CENTER  
201 W. PINE, SUITE D  
EL DORADO, KANSAS 67042

February 3, 2010

House Judiciary Committee

Support of H.B. 2531 Re: KSA 20-3201, et seq.  
Transfer of Docket Fees from Kansas Commission  
On Judicial Performance to Kansas non Judicial Employee  
Salary Initiative

1. Pursuant to Supreme Court estimate, approximately \$800,00 annually would fund over three (3) days of non judicial employee salaries.
2. Issues of Quality Control
  - a. Current computer program capabilities, Full Court vs. Johnson and Shawnee County's Data Bases.
  - b. Discretion per KSA 20-3204 of Commission to conduct Surveys of such persons as the Commission determines to be appropriate
  - c. Integrated Calendering Systems for Trial Dockets
  - d. Judicial Resource Assignment
  - e. Probationer, Parolee and inmate concerns
  - f. Samples sizes
3. 2008 Results
  - a. Governor appointed Justices, Court of Appeals Judges Seventeen (17) Judicial District Trial Judges (District Judges and Magistrate Judges) Commission recommended 100% retention of all judges and justices.
  - b. Elected Judges, Fourteen (14) Judicial District Trial Judges (District Judges and District Magistrate Judges), subject to election, with some incumbents being reelected and some challengers being elected. No Commission recommendations.

House Judiciary

Date 2-3-10

Attachment # 4



(c) As used in K.S.A. 20-3201 through 20-3207, and amendments thereto:

(1) "Lawyer" means an attorney registered as active pursuant to supreme court rule.

(2) "Judge" means: a current or retired Kansas judge of the district court; and a current or retired judge of the Kansas court of appeals.

(3) "Justice" means a current or retired justice of the Kansas supreme court.

**History:** L. 2006, ch. 195, § 2; L. 2008, ch. 145, § 2; L. 2009, ch. 116, § 8; July 1.

**Law Review and Bar Journal References:**

"The Life and Times of the Kansas Judicial Council", J. Lyn Entrikin Goering, 78 J.K.B.A. No. 2, 19 (2009).

**20-3203.**

**Attorney General's Opinions:**

Statute prohibiting disclosure of judicial survey data of elected judges violates first amendment. 2007-27.

**20-3204. Same; surveys; performance standards; plans and procedures; public recommendations; adoption of rules; immunity; indemnification.** (a) The commission shall, with the aid of professionals where appropriate:

(1) Conduct surveys of such persons as the commission determines to be appropriate who have had sufficient experience with a judge or justice to form an opinion about the performance of the judge or justice, such as attorneys, litigants, jurors, witnesses, court staff and others. The surveys shall be dispersed, collected and tabulated by an independent organization or in any other manner that insures confidentiality. The surveys shall ask those surveyed to evaluate the judges and justices on such judge's or justice's ability, integrity, impartiality, communication skills, professionalism, temperament and administrative capacity suitable to the jurisdiction and level of court;

(2) develop clear, measurable performance standards upon which the survey questions are based;

(3) develop dissemination plans that:

(A) Protect confidentiality when the judicial performance evaluation is used only for self-improvement;

(B) make the judicial performance evaluation results widely available when they are to be used to assist voters in evaluating the performance of judges and justices subject to retention elections; and

(C) make public recommendations regarding whether or not to retain judges and justices subject to retention elections;

(4) develop a procedure for judges and justices to receive and respond to survey results before such results are made public;

(5) establish a mechanism to incorporate evaluation results in designing judicial education programs; and

(6) adopt rules for implementation of the judicial performance evaluation process, subject to approval by the Kansas supreme court.

(b) The supreme court, the Kansas judicial council, the commission on judicial performance, and the staff or any committee of the commission shall be immune from suit and liability in any civil action for any act, error or omission occurring within the scope of their official duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto.

(c) Any agent under contract with the commission on judicial performance shall be indemnified and held harmless by the state in any cause of action arising out of such agent's use of information provided by the state within the scope of their contractual duties. Any such agent shall not be indemnified or held harmless by the state in any cause of action arising out of such agent's intentional or negligent acts.

**History:** L. 2006, ch. 195, § 4; L. 2008, ch. 145, § 3; May 22.

**Law Review and Bar Journal References:**

"The Merits of Merit Selection; A Kansas Judge's Response to Professor Ware's Article," Janice D. Russell, 17 Kan. J.L. & Pub. Pol'y, No. 3, 437 (2008).

**Attorney General's Opinions:**

Statute prohibiting disclosure of judicial survey data of elected judges violates first amendment. 2007-27.

**20-3205. Same; confidentiality of surveys and results; exceptions; subject to rules.**

(a) The surveys of court users, survey results and judicial performance evaluation results are confidential and shall not be disclosed except as provided in subsection (d)[\*] or in accordance with the rules of the commission or the Kansas supreme court.

(b) Any statute or rule that restricts public access to certain types of court records or certain types of information contained in court records shall not prohibit the commission or agents of the commission from having access to the names and addresses of appropriate persons named in such records and other information necessary for the discharge of the commission's duties pursuant to article 32 of chapter 20 of the Kansas Statutes Annotated, and amendments thereto. No confiden-



## KANSAS COMMISSION ON JUDICIAL PERFORMANCE

RICHARD F. HAYSE, Chair, Topeka  
SARA S. BEEZLEY, Girard  
A. DALE CHAFFIN, Mission  
PROF. JAMES CONCANNON, Topeka  
HON. MICHAEL CORRIGAN, Wichita  
GLORIA FARHA FLENTJE, Wichita  
MARTHA GARCIA, Wichita  
REP. KASHA KELLEY, Arkansas City  
HON. LARRY McCLAIN, Overland Park  
REP. MICHAEL R. O'NEAL, Hutchinson  
DR. MALIA REDDICK, Des Moines, IA  
DR. TERRY SANDLIN, Topeka

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**TESTIMONY OF RICHARD F. HAYSE, CHAIR  
KANSAS COMMISSION ON JUDICIAL PERFORMANCE  
BEFORE THE KANSAS HOUSE JUDICIARY COMMITTEE  
IN OPPOSITION TO 2010 HB 2531  
FEBRUARY 3, 2010**

My name is Rich Hayse, an attorney in private practice. I am here today in my capacity as Chair of the Kansas Commission on Judicial Performance to share with you the reasons why HB 2531 should not be reported favorably.

The Kansas Commission on Judicial Performance was authorized by the 2006 Legislature under statutes now found at K.S.A. 20-3201 *et seq.*

The Commission is funded entirely by a docket fee; no tax money is utilized.

We began organization of the Commission in August, 2006 to design and implement a judicial performance evaluation program from scratch.

The Commission contracted with a private survey firm to sample opinion about jurists from both attorneys and non-attorneys who had appeared in their courtrooms or who had sufficient contact to form an opinion about the judge or justice.

In August, 2008, we issued the first judicial performance reports for trial and appellate judges who were on the ballot for retention in the November, 2008 elections. You have a sample in our handout.

Through various media outlets we publicized the online availability of those reports to the general public throughout the State of Kansas.

The Judicial Performance website had over 107,000 total downloads and over 1.7 million total web page hits in 2008.

This year we have distributed evaluation reports for elected judges up for election in 2010. These are not publicly disseminated pursuant to K.S.A. 20-3205.

We are engaged in a continuous cycle of opinion sampling about Kansas judges on a quarterly basis for compilation into either election year or mid-term reports.

We are now in the process of compiling data for reports in 2010 on 56 trial judges, nine Court of Appeals judges and four Supreme Court justices – a majority of both appellate benches.

The effect of HB 2531 would be to delete all funding for the Commission and thus halt all expenditures after July 1, 2010 for one year by diverting the Commission's revenues.

The timeline in our handout illustrates the functions of the Commission which would be discontinued during this period.

Most significantly, the Commission would be unable to release and disseminate survey results from September through November of this year for all the judges and justices who are subject to a retention election in November, 2010, leaving the voting public without an unbiased source of information about the performance of those judges.

Without funding for salaries we would also lose the expertise and experience of three of the Commission's staff who are essential to completing the statutory functions but would be forced to seek employment elsewhere.

In addition, our contractor would be unable to continue quarterly surveys for a year, meaning there would be a one-year gap in survey results for all trial and appellate jurists in Kansas.

The Commission would essentially restart its operations from a full stop in July, 2011, meaning there would be no mid-term reports in 2011 and little time to sample opinion to compile for reports for the next round of retention elections in 2012.

Advising the public about the judicial performance results prior to retention elections is at the heart of the Commission's work, along with providing the judges with feedback about their performance.

Interrupting this cycle of surveying and reporting would be a serious disservice to the public and the Kansas judiciary. It would also mean that thousands of dollars already spent on surveys prior to June 30, 2010 would essentially be wasted, since the data would be outdated by the 2012 election because of the one-year survey gap.

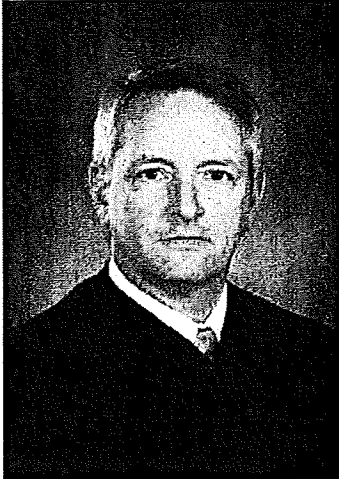
In light of all these facts I respectfully suggest that it would be pennywise and pound foolish to divert funding of the Commission for a year, especially a retention election year.

**COMMISSION ON JUDICIAL PERFORMANCE  
2010/2011 TIMELINE**

- June 18, 2010      Deadline to provide drafts of narrative profiles and reports to 2010 retention election judges (the deadline is 45 days before the last day to declare intent to stand for retention).
- June 28, 2010      Deadline for judges to respond in writing to draft reports (within 10 days of receipt of judicial performance evaluation report).
- July 2010**              **Commission considers responses to drafts of reports and conducts interviews with judges. Commission makes decisions about revision of reports. Final reports provided to judges.**
- Surveying begins for 2<sup>nd</sup> quarter.**
- August 2010**              **Commission will contact media prior to release, prepare and distribute media guide, purchase radio and print advertising timed to both advance voting and election day. Provide press release tailored to each county to newspapers along with guest editorials. Distribute brochures to all libraries, courthouses and other public places. Consider use of appropriate social media.**
- Efforts to widely disseminate judicial performance evaluation results for retention election judges will continue until election day.**
- September 2010**              **Contractor will deliver and Commission will review and disseminate mid-term reports for judges and justices scheduled to stand for retention election in 2012.**
- September 1, 2010**              **Date of scheduled release of narrative profiles, retention recommendations and survey results for 2010 retention election judges.**
- September 17, 2010      Deadline for absentee ballots to be sent out (45 days before election). K.S.A. 25-1220.
- October 2010**              **Surveying begins for 3<sup>rd</sup> quarter.**
- October 13, 2010              Advance voting ballots transmitted (not more than 20 days before election). K.S.A. 25-1123
- November 2010**              **Commission reviews process for possible improvements, prepares an analysis of election to see if reduction in voter fall-off continues.**

November 2, 2010	General election.
January 2011	Surveying begins for 4 <sup>th</sup> quarter.
February 2011	Self-evaluation and personal information forms sent to judges who will stand for election in 2012.
March 2011	Self-evaluation and personal information forms returned by judges who will stand for election in 2012. Commission reviews.
April 2011	Contractor will provide tables, comments and summary reports for 2012 elected judges.
May 2011	Commission reviews tables, comments and survey reports for 2012 elected judges.
June 2011	Commission approves reports for 2012 elected judges. Reports sent to judges.
July 2011	Commission receives mid-term reports for 2014 elected judges from contractor.  Commission reviews mid-term reports for 2014 elected judges.
August 2011	Commission approves mid-term reports for 2014 elected judges. Reports sent to judges.

## *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

<b>Judge Jeffry L. Jack</b> Sample Size = 138							Average	
	A	B	C	D	Fail	DK/NA	Jeffry L. Jack	All Trial Judges

### 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
<b>Overall Integrity</b>							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
<b>Overall Impartiality</b>							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
<b>Overall Professionalism</b>							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
<b>Overall Communication Skills</b>							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
<b>Overall Temperament</b>							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
<b>Overall Administrative</b>							3.0	3.2

**Overall Average Grade:      3.2      3.3**



**Judge Jeffrey L. Jack**  
**Questions 8 & 9**

Jeffrey 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

<b>Judge Jeffry L. Jack</b> Sample Size = 21							Average	
	A	B	C	D	Fail	DK/NA	Jeffry 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
<b>Overall Legal Ability</b>							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
<b>Overall Integrity</b>							3.7	3.6

### 4. Impartiality:

4a. Does not prejudice 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
<b>Overall Impartiality</b>							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
<b>Overall Communication Skills</b>							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
<b>Overall Professionalism</b>							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
<b>Overall Temperament</b>							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
<b>Overall Administrative</b>							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%



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**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 2531 – An Act concerning the courts; relating to docket fees.

**DATE:** February 3, 2010

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 opposition to HB 2531. This legislation would redirect the current funding stream for the judicial performance fund for a period of one year. The proposed redirected funds are intended to provide additional monies for the judicial branch.

The KBA supported the creation of the Kansas Commission on Judicial Performance as well as extending its sunset date that was adopted by the Legislature in 2009.

Since its creation in 2006, the Commission has developed and implemented a comprehensive evaluation process that has been well-received by the public as evidenced by the news articles attached to my remarks.

Legislators may recall the impetus for the creation of the commission to provide meaningful, nonpartisan information to the public on the performance of incumbent district judges, district magistrate judges, Court of Appeals judges and Justices of the Kansas Supreme Court. Prior to the creation of the commission, there simply was no substantive way for citizens to obtain information on judges and justices prior to casting their votes at retention elections.

The Kansas Bar Association is concerned that any withdrawal of funding for the commission could jeopardize the entire program, as the evaluation process is an ongoing process that simply cannot be started and stopped between elections.

The Judicial Branch is facing a significant budget shortfall and we recognize that the sponsor of this legislation intended to help the judicial branch by transferring additional funds during this challenging time. However, we believe other funding options should be considered before diverting funding that has been designated for the Kansas Commission on Judicial Performance.

On behalf of the Kansas Bar Association, I thank you for your consideration of our comments today and am available to respond to questions at the appropriate time.

WBD

House Judiciary  
Date 2-3-10  
Attachment # 6

## Attachments

### *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.

## 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](http://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

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# Reports on Kansas judges to go online this month

By John Hanna - Associated Press Writer

August 5, 2008

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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.

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Originally published at: [http://www2.ljworld.com/news/2008/aug/05/reports\\_kansas\\_judges\\_go\\_online\\_month/](http://www2.ljworld.com/news/2008/aug/05/reports_kansas_judges_go_online_month/)





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### Kansas Judicial Evaluations Available Online

Posted: 1:40 PM Aug 28, 2008

Last Updated: 1:40 PM Aug 28, 2008

Reporter: AP

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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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Mark Parkinson, Governor  
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH  
AND ENVIRONMENT

www.kdheks.gov

**Written Testimony on House Bill 2531**

**Presented to  
House Judiciary Committee**

**By  
Dr. Jason Eberhart-Phillips  
State Health Officer and Director, Division of Health  
Kansas Department of Health and Environment**

**February 3, 2010**

Chairman Kinzer and members of the committee, I am Dr. Jason Eberhart-Phillips, State Health Officer and Director of Health for the Kansas Department of Health and Environment. Thank you for the opportunity to provide written testimony on the use of funds from docket fees that are allocated to the state trauma program.

In 1999 the Kansas legislature recognized that injuries were a significant public health threat to Kansans, and established the Kansas Trauma Program. The legislation established an Advisory Committee on Trauma (ACT) to provide input to KDHE on the development of this system. At that time they established the trauma fee fund and allocated 1.25% of docket fees to support the development and implementation of a statewide trauma system.

Before the trauma program was created, a trauma system in Kansas was virtually non-existent. Today we have a state trauma plan that includes training and education of emergency personnel, a statewide trauma registry, and six regional trauma councils that meet to explore means to improve the quality of emergency care in their respective areas. Regional trauma council membership includes over 850 members representing 409 organizations. Regional trauma councils receive trauma program funds to support their activities, which includes regional trauma plan development, education, training and injury prevention programs. Funding is also used to maintain the statewide trauma registry, to which all hospitals in the state with emergency departments report data. There are over 43,000 records in the trauma registry, of which 9,000 were reported in 2009.

Funds have also been used to support trauma center development. When the trauma program began in 1999, there were no trauma centers in the state outside of Kansas City and Wichita. Research showed, however, that high-performing trauma systems were "inclusive" systems, systems that employed multiple levels of trauma designation to encourage formal involvement

by even the smallest community hospitals. Today we have seven verified trauma centers in the state in Wichita, Kansas City, Overland Park, Topeka, Parsons and Pittsburg. Hospitals in Salina, Hays and Hutchinson are currently working towards trauma center designation. We are excited to now be poised to move ahead with development of Level IV trauma centers in more rural areas of our state, where more than 70% of the road traffic deaths occur.

KDHE receives approximately \$299,000 a year from this revenue source to manage the state trauma program. These funds represent more than 30% of the annual trauma program budget. Stable funding is critical in order to continue the work that has evolved over the last nine years. We're grateful for the legislature's demonstrated interest in advancing trauma care in Kansas.

Thank you for your continued support.