

# HOUSE COMMITTEE ON JUDICIARY

Hon. Lance Kinzer, Chairman  
Hon. Rob Bruchman, Vice Chairman  
Hon. Janice Pauls, R.M. Member

February 7<sup>th</sup>, 2013  
3:30 p.m.  
Room 112-N

Chief Judge Richard M. Smith  
Sixth Judicial District  
P.O. Box 350  
Mound City, Kansas 66056-0350  
[judgeIndc@earthlink.net](mailto:judgeIndc@earthlink.net)

## TESTIMONY IN SUPPORT OF HB 2016 AND HB 2113

### SUMMARY

- All statutes that arbitrarily prescribe judges and/or the number of judges to a location represent a permanent impediment to the efficient allocation of judicial resources.
- History proves that the political, social and practical issues presented by the repeal of the “one judge per county statute” have been insurmountable despite potential justifications.
- Any allocation of judicial resources should include Weighted Caseload Analysis BUT such analysis must not be solely mathematical. Qualitative concerns as well as the uniqueness of each location must be taken into account.

### WRITTEN TESTIMONY

Thank you, Mr. Chairman and this honorable committee for extending the opportunity to appear and present testimony in support of HB 2016 and 2113. I am Richard M. Smith, Chief Judge of the Sixth Judicial District and pertinent here, I

believe, a former member of the JNAC group that produced the Weighted Caseload Study.

The Weighted Caseload Study is the work product of two committees tasked with reviewing the district courts of this state. I would like to draw attention to that effort in my support for the general concept of elimination of all statutes that prescribe a certain number of judges irrespective of need (HB 2016 and HB 2113) while making the respectful suggestion that the formula applied as part of making that determination be made on cases and case weights not just a certain number of cases. Therefore, I would like to briefly discuss three issues. First, should the statutes that prescribe a minimum number of judges to a particular location be repealed? Secondly, if it is true that such repeal has been repeatedly recommended and the savings are obvious, why hasn't it happened before? Third, I would like to address one aspect of HB 2016. In doing so I would like to discuss the difference between measuring a court's workload based on the number of total cases as compared to a judge's workload based both on the number **and types** of cases they hear.

As to the first question, simply put, you must decide whether an initiative to make the operation of the court system more efficient and cost effective is justified. Concern over whether judicial resources are being appropriately allocated should always be a concern of both the legislature and the courts; not just during difficult budgetary times. Obviously, during times of financial difficulties

these issues tend to come to the forefront. Nevertheless, no matter how much importance we ascribe to “efficiency” we should remember that the overriding concern should be access to justice. The system of justice our citizens enjoy provides consistent and prompt access. Access to justice is, and should remain, the fundamental concern.

The most recent comprehensive study of the District Courts of the State of Kansas was the Supreme Court’s “The Blue Ribbon Commission.” The Blue Ribbon Commission’s recommendation - that all statutes which specifically require that a judge be located in a particular county be repealed - should be no surprise to anyone who has reviewed the many studies of the Kansas Judicial Branch. In 1999, the final report of the Kansas Justice Commission, entitled Kansas Citizens Justice Initiative, chaired by former Governor Robert Bennett strongly recommended “[T]he Kansas Supreme Court should be granted authority to allocate all judicial resources, including the location of judges and judges’ offices....” That final report flatly recommended that the one judge per county statute be repealed. The report recognized that there were social, economic and political reasons which had caused previous legislatures to reject the repeal of this statute, but that report specifically stated **“It is an extravagant use of resources to require that there be a resident judge in every county, regardless of population or the number of cases to be adjudicated.”** An analogy recognized by the Kansas Citizens Justice Initiative was to the Kansas Department of

Transportation, which has the authority to staff its regional offices without legislation or oversight.

With the express understanding that it was a statistical study only, the Weighted Caseload Study indicated that approximately 22 judges in the State of Kansas are not located in the most efficient manner. In other words, based only on weighted caseload statistics, it can be argued that there are jurisdictions in need of more judges and jurisdictions with too many judges. But I would like to stress that this is a statistical analysis only and I will address additional concerns later in this testimony.

The 1999 commission recognized that the repeal of the one county, one judge requirement was “[B]y far the most fiscally conservative and most logical course of action from an economical point of view.” That commission stated, however, that the legislature may choose to retain the requirement of a resident judge in each county for political, social or other reasons but that such a choice should be made only if the legislature provides funding for additional judges and non-judicial personnel in the States’ most populous judicial districts.

Technology has certainly advanced since 1999. Judges at the district court level now take much greater advantage of the use of such technologies as facsimile transmissions, emails, electronic signatures and video conferencing. These technologies make it even less necessary to have a judge in each county to address immediate needs and concerns such as search warrants, arrest warrants, probable

cause detention affidavits and even hearings which have to be held in a short amount of time due to statutory necessity. All of these procedures are much more commonplace than they were in 1999.

The goal of an efficient judicial system should be to keep the courts accessible to all people in Kansas with a minimum of waste and delay. But let me be candid. The suggestion that compelling statistics will result in a re-allocation of judicial resources ignores history. The legislative requirement that there be one resident judge whose primary office is located in each county was enacted in 1983. Multiple studies by various commissions, post audit reports and other authorities have recommended and suggested that it be repealed. Nevertheless, that requirement has remained, despite efforts to repeal it in 1991, 1992, 1996, 2009, 2010 and 2012. (And I do not believe that those dates include all the years that such a proposal failed to get past committee.) This all begs the simple question “What acceptable course of action can be taken that will maximize the efficient use of judicial resources, save unnecessary expenditures, and provide access to justice?”

History might suggest that simply proposing to repeal these statutes may result in no effective changes, leaving us in the position of kicking the same old can down the same old road. Therefore, if simple and immediate repeal is not the answer, I would suggest the issue deserves study and an acceptable solution.

As I stated at the outset, one concern I do have with the language of HB 2016 is that it establishes a threshold justifying the continuation of a judicial position based solely on a certain number of cases filed. We now have the advantage of a Weighted Caseload Study. That is an established methodology to assign “weights” to different types of cases to account for their varying perplexity, and, hence, their demand for judicial resources. Case weights recognize that different types of cases take different amounts of time to process effectively. This manner of determining a judicial workload is far more accurate than simply relying on case filing data. Any re-allocation of judicial resources should employ a weighted caseload analysis as opposed to a simple head count of total case filings.

It is vital that I stress that any analysis as to the need for judicial resources must employ much more than a statistical evaluation, no matter how accurate that statistical evaluation may be. The re-allocation of judicial resources must take into account reasonable access to justice, local legal culture, economies of scale, and the effective use of available technology and caseload trends. In addition to these difficult factors, one must realize that every judicial district is unique. Due consideration has to be given to geographic size, population growth trends, exclusive venue and travel requirements. There are still other factors, such as the presence of population centers, prisons and mental health hospitals which affect the number and complexity of cases to be adjudicated. The net effect of all these

factors is that no re-allocation of judicial resources should occur without a specific study and analysis of each particular locale.

Unfortunately this results in more questions than answers. Who is best equipped to analyze each individual judicial district and county court and apply the statistical analysis of the Weighted Caseload Study? Who has the personnel necessary to go out, review a court and give due consideration, not only to access to justice, but also to the local characteristics of each court and then make decisions as to the allocations of judicial resources?

In summary I would respectfully suggest substantial savings might be realized if judicial resources could be allocated to meet the demand rather than being allocated under the mandates of current law. I am suggesting that those savings justify continued study and analysis with the goal of a cost-efficient system that, most importantly, provides access to justice for all Kansas Citizens, giving due regard to all those concerns involved in this process.

Thank you for this opportunity to present this position.

Respectfully submitted,

Richard M.(Dick) Smith  
Chief Judge, Sixth Judicial District