

MINUTES

SPECIAL COMMITTEE ON JUDICIARY

October 14, 2003
Room 123-S—Statehouse

Members Present

Senator John Vratil, Chairperson
Representative Michael R. O'Neal, Vice Chairperson
Senator Derek Schmidt
Representative Donald Betts
Representative Marti Crow
Representative Bill Mason
Representative Rick Rehorn
Representative Daniel Williams

Staff Present

Jerry Donaldson, Kansas Legislative Research Department
Mike Heim, Kansas Legislative Research Department
Jill Wolters, Kansas Revisors of Statutes Office
Cindy O'Neal, Committee Secretary

Conferees

Kathy Porter, Office of Judicial Administration
Randy Hearrell, Kansas Judicial Council

Morning Session

The Committee minutes from August 25 and 26, 2003, and September 9 and 10, 2003, meetings were distributed. *Representative Williams made the motion to approve the minutes. Representative Mason seconded the motion. The motion carried.*

The Office of Judicial Administration provided the Committee with a handout which answered questions and addressed requests that the Committee had at previous meetings (Attachment 1).

Topic No. 3 – Allocation of Judicial Resources

At the request of Chairperson Vratil, a policy issue worksheet was provided by the Kansas Legislative Research Department in an effort to help facilitate discussion on the issue of allocation of judicial resources (Attachment 2).

Committee discussion centered around the issue of repealing KSA 20-301b, which requires one judge per county. Most members felt that it is the Legislature's responsibility to properly fund what is needed by the Judiciary, and probably should not be an outright repeal of the statute, but that the courts need to have more ability to move judges where the caseloads are located. It was suggested that some counties could use part-time district magistrate judges and they could cover two counties.

Other members were supportive of keeping the statute because it is a commitment to the counties that they will have a courthouse, and suggested that in order to cut costs the Judiciary should use district magistrate judges more instead of district judges.

Members suggested that the Judiciary should be receiving a lump sum of money like state agencies and then they should decide where the money should be spent instead of the Legislature limiting their flexibility to allocate their resources. Other members were frustrated because the Judiciary sees the issue of assignment of judges as a legislative issue and the Legislature sees the issue as one for the Judiciary to address.

Many expressed their disappointment that the Legislature has approved additional judges but, due to funding problems, there has been a delay in the appointment of those judges, and most courts across the state have reduced the number of personnel and hours that the courthouse is open as a way to save money.

Representative O'Neal explained 2003 HB 2307 which would allow the Supreme Court to reassign district magistrate judges from one district to another depending on caseload. There would be four districts affected. Representative Rehorn suggested that the reassignment not be tied to caseload and just allow the Chief Judge the ability to reassign whenever she sees fit. Representative O'Neal responded that the legislators would want to know if it will impact their district before they vote on it.

The Committee turned its attention to the issue of amending KSA 20-329 which gives the Chief Judge the ability to assign cases in the district court to any county within the judicial district. It was suggested by Kathy Porter, Office of Judicial Administration, that the Chief Judge already has the ability to do that by change of venue, but it has to meet the statutory requirements. Members did not like the idea of a jury coming from a county where the case was not filed and did not support this suggestion.

While the appointment of part-time judges was not the best solution to funding, it would allow each county to keep a district magistrate judge part-time and if a county wanted a full-time judge they could pay the salary for the other half. The Committee was aware that in rural counties there would be a concern about the decline in services. Many rural counties are closing schools and Social and Rehabilitation Services offices, and now they would be facing less access to the courts.

The issue of redistricting the judicial districts was discussed. Randy Hearrell, Kansas Judicial Council, commented that they did the re-alignment in the 1980's.

The Committee recommended that the report reflect that they believe that it is the Legislature's responsibility to adequately fund the co-equal branch of the Judiciary and that the Judicial Branch can be more efficiently run if they had the resources to perform their judicial duties.

The Committee broke for lunch at 12:00 noon.

Afternoon Session

Topic No. 3 – Allocation of Judicial Resources

Representative Crow suggested that the Committee take a look at having the same number of judges as there are counties in a judicial district and take away the requirements in KSA 4-202 to 4-232 as to where a district judge and district magistrate judge must reside.

Representative O'Neal made the motion that the Committee recommend amending KSA 4-202 to 4-232 by eliminating the statutory residency and position requirements, making the same changes to KSA 20-338 with respect to district magistrate judges, and allowing the courts to appoint part-time district magistrate judges. Representative Crow seconded the motion. The motion carried.

Topic No. 4 – Judicial Docket Fees

At the request of Chairperson Vratil, a policy issue worksheet was provided by staff in an effort to help facilitate discussion on the issue of judicial docket fees (Attachment 3). He proceeded to remind members that the Legislature increased docket fees significantly two years ago and that the Chief Justice implemented a \$5 surcharge.

Committee members expressed dislike for increasing docket fees because it limits the access to the court system and the belief that it is the Legislature's responsibility to fund the Judiciary. The Committee by consensus recommended a \$5 docket fee be added to the filing of a garnishment. Currently, there is no docket fee to file a garnishment.

The Committee also recommended that the Legislature support the passage of 2003 HB 2293 which allows for the collection of a \$10 docket fee for service of process when using the Sheriffs Department. The Sheriffs, however, would collect the fee and keep the entire amount.

The Committee expressed concern about all the funds which docket fees go toward (Attachment 4). Members felt that docket fees should be covering the cost of helping operate the courts, not "fund-raisers" for other funds. The docket fees that are collected are being directed, once again, by the Legislature. If the Legislature believes that the Judiciary should allocate their resources, then they should also be able to direct their docket fees so they go to the State General Fund and then return to the courts.

The 2003 Legislature created a Judicial Council Fund which receives a portion of docket fees through FY 2005. *Representative O'Neal made the motion to have the report reflect that the Legislature should strike the sunset provision and allow the Judicial Council Fund to continue to operate. Representative Betts seconded the motion. The motion carried.*

The Committee meeting adjourned at 3:00 p.m. The next Committee meeting was scheduled for November 24, 2003.

Prepared by Mike Heim

Approved by Committee on:

January 29, 2004
(date)