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**TO: Senate Judiciary Committee**

**FROM: Kansas Judicial Council – Professor Richard Levy**

**DATE: January 22, 2015**

**RE: Testimony in support of SB 19 relating to electronic communications in administrative proceedings**

Senate Bill 19 is intended to encourage and facilitate electronic communication in administrative proceedings. The Judicial Council recommends this bill because it believes that expanding the use of electronic communications will improve the administrative process and save the state money. The bill is the work product of the Judicial Council's Administrative Procedure Advisory Committee, which conducted a study in 2013 of the use of electronic communications in administrative proceedings. In conducting its study, the Committee solicited input from state agencies on how they currently use electronic communications and any issues they are facing as a result.

The bill is identical to last year's 2014 HB 2466 as amended by the House Judiciary Committee. HB 2466 passed the House, but did not receive a hearing in the Senate because of time constraints.

The need for a study of electronic communications in administrative proceedings came to the Committee's attention in part because of a similar bill introduced in 2013 at the request of the Department of Children and Families: 2013 SB 122. That bill passed both the House and Senate unanimously but was gutted in conference committee and used for an unrelated purpose.

The following comments are included to more fully explain the proposed amendments contained in each section of the bill:

### **Section 1, amending K.S.A. 77-502**

A definition of “writing,” “written” or “in writing” has been added to clarify that these terms encompass electronic communication but not oral communication.

### **Section 2, amending K.S.A. 77-519**

The amendment authorizes parties in administrative proceedings to serve any filed item by electronic means if: (1) the person to be served has consented to that type of service, and (2) the agency has a rule or regulation allowing electronic service or the presiding officer adopts an order allowing electronic service. The amendment is a clarification and reflects current agency practice.

### **Sections 3, 5, 6, and 7**

The amendments in these sections of the bill are intended to clarify that electronic communication is permissible in addition to communication by mail.

### **Section 4, amending K.S.A. 77-531**

The amendments in this section authorize service by electronic means as a third alternative method of service of an order or notice in a proceeding under the Kansas Administrative Procedure Act, but only if the person to be served has consented to service by electronic means. At the suggestion of the Office of Administrative Hearings, the Committee agreed to add the language stating that any consent to electronic service must state when that service is deemed complete.

The amendment in line 29 provides that the 3-day mailing rule applies to service by electronic means as well as by mail. Although it may seem counterintuitive to allow the extra 3 days’ response time when service is by electronic means (since electronic transmission is generally instantaneous), the Committee believes that extending the 3-day mailing rule to electronic service is important for several reasons. First, allowing 3 extra days of response time will encourage people to consent to service by electronic means. Second, it will keep KAPA parallel to the code of civil procedure, which includes a 3-day mailing rule for both service by mail and by electronic means. Third, it will allow some extra time to cure any problems that might arise with electronic transmission and will account for the fact that electronic service can occur at any time, such as over a weekend when the recipient is not checking email.

### **Section 8, amending K.S.A. 77-613**

The amendments in this section authorize service by electronic means as a third alternative method of service of an order, pleading or other matter in a proceeding under the

Kansas Judicial Review Act, but only if electronic service has been authorized by Supreme Court rule or a local court rule. Currently, Supreme Court Rule 122 states that electronic service of papers under K.S.A. 60-205 is authorized in any district court that has implemented an approved electronic filing system.

The amendments to K.S.A. 77-613 are slightly different from the amendments to K.S.A. 77-531. Because a judicial review action under K.S.A. 77-613 involves a court proceeding (whereas K.S.A. 77-531 involves administrative proceedings), the amendments have been drafted to parallel similar provisions in K.S.A. 60-205 and 60-206 of the code of civil procedure.

### **Committee Members**

The following members of the Administrative Procedure Advisory Committee participated in the study of electronic communications in administrative proceedings:

Carol Foreman, Chair; Topeka  
Athena Andaya; Topeka  
Martha Coffman; Lawrence  
Tracy T. Diel; Topeka  
James G. Flaherty; Ottawa  
Jack Glaves; Wichita  
Hon. Steve Leben; Fairway  
Prof. Richard E. Levy; Lawrence  
Steve Schwarm; Kansas City  
Mark W. Stafford; Topeka  
Michele L. Tunnell; Topeka