

Minutes of the Kansas Judicial Branch Blue Ribbon Commission

Wednesday, July 13, 2011

Members Present:

Constance Alvey
Bob Boaldin
Richard Boeckman
Blaine Carter
Kim Cudney
Donna Elliott
Richard Flax
Joseph Harkins
Karen Hester
Martha Hodgesmith
Jeffrey King
Susan Lynn
Patrick McAnany
Doris Miller
Mike Padilla
Linda Parks
Reggie Robinson
Gerald Schultz
Sam Sheldon
John Vratil
John Wheeler
Cal Williams
Sam Williams

Members Absent

Kasha Kelley
Meryl Wilson

9:00 a.m. Meeting Began

The Chairman of the Commission, Judge Patrick D. McAnany of the Kansas Court of Appeals welcomed the Commission members. He gave special recognition to the members of the OJA staff for their work in compiling information for the Commission and the various work groups.

Technology Overview

Kelly O'Brien, Director of Information Services, presented an overview of Information Technology (IT) issues. He first reminded the Commission that the operations budgets of the district courts are essentially the responsibilities of the counties, while the salaries of the people working in the courts are the responsibility of the Judicial Branch. He then summarized the state of the e-filing, case management, and document management systems.

There are 105 counties, with 107 FullCourt servers throughout the state. Johnson and Shawnee do not use FullCourt. However, in the Spring of 2013, Shawnee County will convert to FullCourt. Under the current case management configuration, a case is filed with the clerk, the clerk then enters the information in the case management server, and the documents are scanned and stored on a document management server. Both of these systems could reside on the same server. The paper document is then filed. There are only a few places where the filing is not kept. On a nightly basis, the Office of Judicial Administration (OJA) collects the files for statistical reporting and files are also sent electronically from the district court to INK (Kansas.gov) so that the record of action in a case can be accessed electronically. However, the actual documents are not available electronically through the internet. In order to access a document, a person must go to the court house and request it. Nor can persons from one office get access to documents on other servers.

The E-Filing Committee has studied two models for e-filing. The current favored model, for financial reasons, involves a centralized e-filing system in Topeka, with two redundant systems. Each county would still have its own case management and document management system. This distributed case management model is not the perfect model, but it is the less expensive. Under this system, whoever files a document (attorney, district attorney's office, etc.) would connect to the e-filing server. They would pay the filing fee through the CitePay system. Then the information would be sent from the e-filing server to the appropriate county's system. The limitation in this system is that the document management system could still be at the county level. Public accessibility would also be at the case management level, which is kept at the county.

O'Brien was asked whether a fee would be charged through Information Network Kansas (INK). **O'Brien** opined (and noted this was his personal view and should not be viewed as that of the Court) that information currently available on INK could be given to the user for free, but there would be a charge for access to the actual documents. The revenue is currently split 50/50 between INK and the county. The money going to the county does not necessarily go to the courts in the county. It is expected that the split might change as volume becomes higher, with INK getting a lesser split.

Ideally, the court system should centralize e-filing, records access, and case management, (with redundancies, of course). Currently, it takes approximately two weeks for staff to make all of the statutory fee and law changes to the system every year. A centralized model would allow persons to connect to the system and be able to work from different places to help share staff across the state. As it is, it is virtually impossible to share staff from different counties. Unfortunately, to get such a centralized system, along with its infrastructure, would require a

substantial financial outlay. To acquire a centralized case management system would cost approximately \$6 million using the current vendor.

O'Brien was asked whether KanEd, the fiber-optic educational network between school districts, libraries and hospitals, could play a part. Such a system is funded by the universal service fee. **O'Brien** stated that they are looking to see whether KanEd could be incorporated into this network.

O'Brien was asked whether this figure includes an annual maintenance cost. He stated that it does not. However, the maintenance cost probably would not be much more than the court pays for maintaining current system if we went to enterprise case management. It does not include e-filing maintenance, which would be in addition to case management maintenance. **O'Brien** was asked about the fees in a centralized system. He stated that currently e-filing would not cost more than doing it publicly. A centralized system could result in a different payment distribution.

It was noted that there would have to be a reserve for new equipment because of obsolescence. **O'Brien** stated that court systems have generally been slower to follow trends than some other industries. Web-based case management systems are relatively new technologies.

O'Brien was asked whether there would be an extra charge for document management. He stated that while the model could be changed to allow the courts to charge extra for retrieval of documents, there would have to be infrastructure set up to handle the payment systems rather than the way the payments are handled under INK.

O'Brien was asked whether the high volume users would be able to pay the public access fee without destroying their business model. He stated that this would have to be figured in to the system model. The court's E-Filing Committee is looking into this and is concerned about the system not being a burden on the users.

O'Brien was asked about the costs for the distributed case management system. He stated that it would be around \$2 million plus annual maintenance.

Overview of Weighted Caseload Study

Steve Grieb presented an overview of the Weighted Caseload Study. He noted that the information currently available is preliminary, and most of it is from June. The study committee will release some of the data to judges and clerks in mid-August. The case-weights may change a little bit because some case-weight adjustments may need to be made based on the sizes of different courts and their related efficiencies.

The study breaks down the information into types of cases and types of work tasks to allow analysis of the information. The current information probably overstates the need for personnel in urban districts, and understates the need in smaller-population districts.

David Sigmon from the **Office of Judicial Administration (OJA)** clarified that case-weights are the approximate time it takes to process a particular case through the system.

Grieb was asked about the usefulness of the information, given the fact that it is preliminary, and whether any changes would affect its use now. **Grieb** stated that the numbers are pretty solid but could change.

Four Overviews of Regional Meetings

1. **John Vratil** presented an overview of the second Topeka, the Overland Park, and the Junction City community meetings. He stated that the meetings were generally well-publicized, but meeting attendance was mediocre. Those who spoke in the community meetings had a particular case or experience to complain about. There was unanimous public support and encouragement for e-filing, both to save money and improve access to justice. Video-conferencing was also supported, although there were concerns about using it for CINC and juvenile cases. There were also concerns about the availability of interpreters in court. One comment was that all judges should be law-trained. There were a number of comments supporting funding the courts through user fees. One person discussed providing law clerks to district court judges, and of the wisdom of using specialty courts. There was good support for use of audio-recordings. A local attorney from Overland Park commented that the BRC needs to recognize and accommodate geographic and demographic differences across the state. There were comments about consolidating court trustee officers. There was support for a general depository of traffic tickets and the use of library fees for technology.

There was an undercurrent that people wanted more and better programs and services, but really did not want them to be taxpayer funded.

Vratil was asked whether there was a difference between the various locales. He responded that there were not stark differences between locales.

2. **Martha Hodgesmith** spoke on the first Topeka and the Overland Park meetings. She noted that it would have been better to have more participation from state government partners at these meetings. Legal Aid, BIDs, and KBI did participate, but few others were there to comment on the issues.

There were key things that people wanted to communicate: the need for a system that was accessible, just, transparent, responsive, and accountable. The measure of judicial competency was also an issue that people felt strongly about. There is a lot of public recognition of the financial burdens faced by state and county courts.

3. **Sam Williams** spoke about the Wichita and Dodge City meetings. His impression was that they were two very different meetings. There was very good participation in Dodge City by both city and county officials. In Wichita, there was very little participation from such officials.

In the area of technology, there is total agreement that the court system needs to use technology to be more efficient. People wondered whether the money would be provided for technology and maintenance. In Dodge City, there was concern about the cost of technology, which would be higher there. There was also concern about whether video-conferencing should be used in CINC and juvenile cases. People want to use technology, but they want it to be done correctly.

Williams stated that at the Dodge City meeting there is a lot of concern about consolidation and the fear that the BRC will seek to take courthouses away from the community. There was concern in both places regarding the quality of justice. People want to know that they are being treated fairly. They want more recording of court proceedings through audio and video technology. They want accountability in the court room.

There was concern for fair access for pro se litigants, especially in Dodge City. There was also a discussion regarding better use of business practices in the court system.

4. Cal Williams presented an overview of the meetings in Colby, Liberal and Salina. He stated that the overriding emotion in Colby and Liberal was fear of what the Commission would recommend and suspicion and general distrust of state government. There was high attendance in both Colby and Liberal. They were supportive of technology, but they worried about cost and where the money would come from, as the counties do not have a lot of money. There were also concerns about reliability of the systems.

One-judge-per-county was a particularly hot topic. Judges are often looked at as the pillars of the communities and their loss would be significant.

Williams stated that there was also a misconception among the people attending the meetings in Colby and Liberal that the purpose of the Commission was to close courthouses, even though this would not happen. It will be difficult to get this point across to people who are terrified that they will bear the sole brunt of any reform and change.

Salina was a different situation. No one attended the evening meeting, although the afternoon meeting was fairly well-attended. Suggestions paralleled what others have said.

Work Group Reports

At this point the chairs of the Commission's three Work Groups reported on their activities since the conclusion of the statewide community meetings.

Process/ Technology Work Group

John Wheeler presented the report of the Process and Technology Work Group which met on June 23. The Work Group considered 72 separate questions, but the highest priority was e-filing. The group discussed the form of e-filing. A centralized case management system was preferred, because that was the only way that the counties could make e-filing work effectively. It was determined that all records and documents should be accessible statewide, subject to security for

certain cases that are not open to the public. FullCourt should be made available state-wide to judicial personnel. There should be state-wide standardization.

A Commission member noted that standardization and equal access statewide are imperative.

Wheeler observed that there is some concern about ensuring that there is true public access to the system and that people are trained in its use.

The Work Group also considered the issue of access to justice. There was discussion of training librarians to help people use the system. This is also a concern regarding getting access for jail inmates who need to be able to use the system.

A question was raised about how to standardize given that two big counties – Johnson and Shawnee -- do not have FullCourt. Will there be an interface between them and FullCourt, or will FullCourt replace these other systems? **O'Brien** stated that there would be some sort of interface rather than replacement. However, this might not give those counties the ability to work throughout the state.

A Commission member observed that we should use the same statewide system rather than isolating one particular system. **O'Brien** stated that the Johnson County system was in place sooner than FullCourt and that system is good for what it does. Johnson County has done a great job of taking on the cost and burden to get the information on to the state system. Johnson County owns the source code to its system, so it is not a vendor-provided system.

Wheeler stated that courthouse filings in the entire state should become paperless. **Paul Embley** from the **National Center for State Courts** noted that “paper on demand” is a more realistic and accurate description. It emphasizes that persons can have access to paper, but the official record is kept on a computer server.

A Commission member asked how users would be able to ensure that they have a record similar to a file-stamped copy. It was explained that the system would have the same feature as in the federal system where there is email verification of filings which provides an adequate safeguard.

Embley stated that there needs to be a strong definition of what e-filing is, and that people need to recognize that there needs to be the same process across the state. Otherwise the State loses many of the benefits of e-filing.

Wheeler stated that audio/visual technology was discussed. The Work Group is considering recommending that the courts implement such technology as soon as possible consistent with financing, and that OJA should study what types of hearings are amenable to this technology.

Wheeler also discussed the question of court reporters. Because of the possible failure of technology, the Work Group was not considering the elimination of court reporters. Even with audio recordings of hearings, there remains the need for someone to be present to monitor the technology.

Lee Suskin of the **National Center for State Courts** noted that some other states have a person listening to the tape to make sure that the technology is working and also keeping a log as to who is talking where for read-back purposes. Some states contract with persons to produce transcripts from the recording. A Commission member observed that it is harder to make a transcription from recordings.

Wheeler noted that the persons most resistant to audio/visual technology are the judges. A Commission member suggested that the use of recordings might be tailored to the type of cases. It was noted that the district courts are courts of record; however, most cases do not require a court reporter. A recording would suffice there. Further, court reporters are becoming rare.

Wheeler stated that the best the Commission might be able to do is encourage more use of audio/visual technology, because there is not a good way to finance it.

It was noted that statutes and rules can be changed to provide more flexibility, and the main issue is not whether there is access to a record, but what form the record takes.

Wheeler noted that the cost savings from audio/visual technologies will be more local savings, rather than savings to the court system as a whole.

The Work Group also discussed the possibility of eliminating the Kansas Reports and Kansas Court of Appeals Reports. **Grieb** stated that the statute now requires production of the hard copies and providing copies to law libraries, judges, and other entities throughout the state. Subscriptions are sold, but their numbers are declining. West Publishing Co. is already printing Kansas-only versions of their Pacific Reporters. It costs roughly \$100,000 per year for the redundancy. Many states are eliminating their state reports.

It was noted that there is a continuing discussion in the legislature to do away with the state printer.

Wheeler stated that standardization of IT issues is still being studied by OJA, as more information is needed as to how much IT time is spent on court issues rather than county issues.

Centralization of IT hardware used by the courts (e.g., centralized server or servers for FullCourt) is also preferred. This will be investigated by OJA.

There was also discussion of an automated calling system to notify lawyers about court dates to reduce absenteeism in cases on a high volume docket or in juvenile or CINC cases where there can be a multitude of interested parties.

There was a question whether the centralization would be in the individual hardware or the server. **Wheeler** noted that it would be easier if the software was centrally located. Centralization of desktop hardware would be difficult to provide from Topeka.

The Work Group also looked at the ability of offender services to access records. The work group determined that it would be good to adopt a state-wide standardized assessment instrument

to triage cases. It was noted that the LSI-R risk-assessment has been piloted in Johnson County and can be used state-wide. **Mark Gleeson of OJA** stated that money has now been allocated to use that system state-wide. It should be rolled out state wide by the end of the year, and can now be taken off the list of things to consider. The work group recommended that OJA continue with its current technology efforts.

The Work Group is also examining whether there should be mediation in cases on appeal to the Kansas Court of Appeals and the Kansas Supreme Court. A Commission member noted that in most civil cases mediation has already been done at the district court level, and there is a question whether mandating it at the appellate level would be effective.

The Work Group is examining whether remote translators and interpreters might be useful, noting however that there are problems with authentication of witnesses. **Wheeler** stated that competency of interpreters is an issue.

Wheeler stated that OJA will investigate whether some staff training can be done electronically, with possibly more use of conference calls, go-to-meetings, and webinars. The Work Group also discussed training attorneys to use technology.

There is also an opportunity to use bar coding in clerks offices to better track documents where there is no e-filing.

OJA will continue to provide information on the FullCourt motions tickler system.

A Commission member asked whether there should be a study of whether attorneys could help pro se litigants in a limited manner. **Gleeson** stated that OJA is looking at it, and some work is being done in that area already.

Finance Work Group

Jeffrey King presented the report of the Finance Work Group. He stated that the highest priority for funding was making sure that the funding stream was available to implement e-filing as soon as possible in the most effective way possible. There is a fear that there is a lack of reliability in judicial funding from the state general fund. Thus, while e-filing should be paid from the general fund, it may not be done in a timely manner. There is, therefore, a sense of the Work Group that the money to start this should be found within the system by making e-filing a user-pay system. It is feasible to use user-fees to pay for the maintenance and upgrade of the system. The bigger issue is determining how to fund the start-up of the system through a user-pay system. One way to do that is to have a larger cost at the front-end for document access. Another type of fee might be to attach a cost to the electronic filing process itself.

King was asked whether there would be an extra fee if e-filing becomes mandatory. He noted that such an arrangement is not unusual but that this would be an issue to be examined.

A Commission member asked where the money for the start up of the system would come from. **King** stated that one thing discussed was asking local law libraries to contribute from the funds they have accumulated.

Another Commission member suggested that the Kansas Development Financing Authority could issue bonds to be underwritten by prospective fees.

It was suggested that the legislature and taxpayers are going to become a less and less reliable source of funding over time, and so it is imperative to look at a system of funds over which the court system has control.

A Commission member noted that the counties, particularly those in western Kansas, cannot afford to make up any funding deficits. **King** noted that the whole funding system is antiquated due to the dual system of funding from the county and the state. There is no good way to change this, however, so changes must work within the system. He suggested that more state funding is not realistic.

King stated that one problem with the roll-out for electronic filing is that the cost savings are dispersed throughout the system. They will not show up in any one budget. Probably the biggest savings will come from private attorneys. Part of the job of the finance group is figuring out how to capture those savings so that the judicial system as a whole can benefit.

It was suggested that if different fees scales were introduced for e-filing, it would constitute a transaction cost for e-filers, but might be more cost-effective in the long run. However, it was noted that the court system, as a branch of the government, should not depend on user fees for its operation. **King** opined that part of that increased reliance on user fees is already a reality; the question is only how to plan for it.

One aspect the work group addressed was how to fund the everyday operations of the court system with regard to technology. Ideally, the state would pay for everything, but that's not going to happen. As centralization of filing and technology occurs, the financing will have to come from the state level. Counties cannot be forced to pay for this system.

Suskin stated that the National Center for State Courts has compiled information on what other states are doing to fund the ongoing use (but not the up-front costs) of IT. **Suskin** stated that one general approach for the initial implementation expense is to use bonds. **Paul Embley** stated that NCSC has done a study in New Hampshire, and the break-even point for e-filing is two and half years based on their fee structure and savings on personnel. NCSC will provide more information on start-up costs.

It was noted that the State does this for other areas, such as motor vehicle registration. Some of this came from KDOT money.

In other areas, the Work Group recognized that increased taxpayer funding for general costs of the system is unlikely. The work group recommended reallocation of what fees are used for. A large amount, 48%, of fees, currently goes to other entities, many of which are not judicially

related. The work group is examining the idea of all docketing fees going to the court system as a secure revenue stream.

The Work Group also looked at additional sources of revenue. The recommendation is for additional fees for certain types of filing in civil cases with the overall goal of parties paying more when they impose more costs on the judicial system. Another method might be a fee structure based upon the number of filings. OJA will look at national data to see how other states use user-pays fees to generate revenue. However there may be a problem with this being punitive for the poor. It was noted that there should be ways to work around this. **King** stated that the Work Group examined the need to revise the poverty affidavit standards to make sure that access to justice is still maintained.

The Work Group is examining what other states charge for docket fees in relation to the fees charged in Kansas.

King stated that other funding sources include more effective collection of the outstanding unpaid receivables owed to the court. Collectable fees should be pursued. Substantial amounts are owed at the moment.

A Commission member asked whether the majority of uncollected fees are from criminal or civil. Apparently a lot of them are in fact traffic or criminal fines, fees, or penalties. Also, they include restitution which is ordered to be paid to the victim of a crime, not to the courts. A commission member observed that hiring collection contractors has not been very effective in the past.

The question arose whether there are alternatives to the use of collection agencies. **King** stated that it is possible to do this now, through such things as withholding state income tax refunds, but there is a question as to whether it is being done. Further, there are a lot of entities making claim to tax refunds. Collectable funds actually going to the courts should be identified. If uncollectable funds are not well-identified, legislators might mistakenly think these are a real source of court funding.

Another issue the Work Group addressed is getting additional revenue for other court services, such as child custody evaluations.

Structure Work Group

Cal Williams presented the report of the Structure Work Group in place of Judge Meryl Wilson who was absent due to a family medical emergency.

On consolidation of judicial districts, the Work Group stated that it had not yet identified any real benefit to changing the districts. Further, consolidation may create more problems than it solves. OJA will look at this.

The Work Group is examining the issue of whether the requirement that there be one resident judge in each county should be eliminated. Elimination of this restriction would allow the Supreme Court to manage the placement, assignment, and travel of district judges and district magistrate judges within and among the judicial districts according to need. If the restriction on the placement of judges were lifted, each county courthouse would still remain open and court business would be conducted there during those days during the week that are needed. In determining need the Supreme Court would have the use of the results from the NCSC-supervised weighted caseload study to be completed later this year. Judges and clerks would continue to provide services in those courthouses.

If the current restriction on the placement of judges were eliminated, any reduction in the number of judges could be accomplished only at the end of existing terms at the earliest, and preferably only through attrition or retirement with possible incentives, such as enhanced retirement benefits, to encourage early retirements. OJA will assemble information on the ages and years of service of current judges to aid in the consideration of this difficult issue.

The Work Group is also considering whether urban districts need more magistrates and fewer district judges.

Williams was asked how the positions would be allocated if the residency restriction were eliminated. He responded that if any change is made, it should be made in a graduated way to make sure that resources are efficiently allocated.

A Commission member observed that in business, there is not an ability to do soft landings. He noted that our work force is changing, and people are staying on the job later. He thought that the productive work life of people should be taken into account so that we are not just shifting the cost from the judicial system to the retirement system. It was mentioned that eliminating the current restriction on locating judges might not result in a cost savings so much as a more efficient reallocation of judicial resources.

The Work Group is also examining whether magistrates in elected district should be elected on a district-wide rather than on a county-wide basis.

There was a question about whether there is any constitutional impediment to eliminating the one-judge-per-county restriction. One commission member noted that with any change a magistrate's authority would be district-wide.

A Commission member expressed his concern about how often judges would visit each county to assure access to justice. It was noted that under any possible system each county would still have a judge accessible to hear cases on an as-needed basis.

A Commission stated that elimination of the one-judge-per-county restriction was one of the main concerns of everyone he talked to. It was noted that if any change is made, there is an obvious requirement to fairly apportion judges, and this is especially true in places where there are more judges than counties. If any change is made, multi-county elections may be better than district-wide elections.

Commission members observed that the BRC needs to examine the efficiency of all court system operations, not just in the district courts. Efficiencies may be found in other places. One Commission member noted that he gets a lot of questions on the efficiency of the Judicial Center.

Kim Fowler of OJA noted that the judicial building itself is not paid for by the judicial branch, but is part of the Capitol complex paid for by the state. A Commission member noted that the size and design of the Judicial Center is symbolic of the importance in our society of the judicial branch and the rule of law.

It was noted that because the BRC's work involves a top-to-bottom analysis, the Commission should look at all aspects of the judicial branch.

Another issue that the Work Group considered was a possible move toward having only law-trained district magistrate judges. A question arose about the fiscal impact of having only law-trained judges, which is a matter for further study. The Work Group also considered recommending an increase in the jurisdiction of district magistrates and providing for direct appeal to the appellate courts from decisions of law-trained magistrates in cases tried on the record. Broader travel rights should be encouraged.

The Work Group is also examining the consolidation of field services.

A Commission member suggested that access to justice could be assured by combining the positions of clerk of the court and magistrate judge in some counties and giving the clerk/magistrate limited authority to handle emergency or non-contested matters. This idea engendered little support from other Commission members. Currently there are 79 magistrate judges, 34 of which are law-trained. The trend appears to favor law-trained magistrates. It was noted that in the 25th district, 8 of 9 of the last magistrate vacancies have been filled with lawyers.

It was noted that any change in the organization of the courts would probably require more travel by magistrates, and possibly by district judges. A question was asked about the option of allowing counties to pay for their own magistrates. The Work Group indicated it was looking at all options.

It was pointed out that while the Commission needs to consider the feasibility of any recommendations, BRC recommendations will be made to the Supreme Court for consideration rather than directly to the legislature.

A Commission member inquired about therapeutic courts. It was noted that the Work Group decided that the authority already exists for such courts.

Lee Suskin stated that while there is anecdotal evidence that specialty courts reduce recidivism, it is questionable whether this is backed up by empirical evidence. He will look into this.

Other Issues

There was a general discussion about the standards by which the BRC should evaluate its recommendations. It was the sense of the Commission that the following criteria should be used to evaluate recommendations:

Is the recommendation within the charge of the Commission and does it follow the principles given to the BRC by the Supreme Court?

Does the recommendation increase efficiency?

Does the recommendation promote or hinder access to justice?

What long-term impact will the recommendation have?

How much will the recommendation cost and how will it be funded?

Feasibility of passing the recommendation will be considered, but is not in itself determinative.

The Commission decided that the Work Groups will meet again in August to further develop and refine their recommendations.

Finance Work Group: Tuesday, August 23, 2011

Structure Work Group: Wednesday, August 24, 2011

Process/Technology Work Group: Thursday, August 25, 2011

On Wednesday, September 28, 2011, the entire Commission will meet again to consider further the recommendations of the Work Groups.

3:05 p.m. The meeting was adjourned.

Jeffrey D. Jackson. Reporter