



# Kansas Courts News Release

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## *Office of Judicial Administration*

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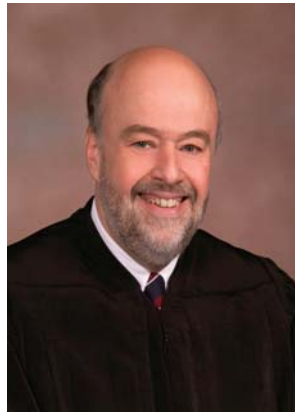
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Contact:

Lisa Taylor  
Public Information Director  
785-296-4872  
[taylorl@kscourts.org](mailto:taylorl@kscourts.org)



*Judge G. Gordon  
Atcheson*



*Judge Michael B.  
Buser*



*Judge James  
Burgess*

## **Kansas Court of Appeals to mark Constitution Day with session at Friends University**

TOPEKA — A three-judge panel of the Kansas Court of Appeals will hear five cases September 19 at Friends University in Wichita as part of the court's observance of Constitution Day.

The court will hear cases in two sessions beginning at 9 a.m. and at 1:30 p.m. in the Marriage and

Family Therapy Building, 2100 W. University Ave.

Judges G. Gordon Atcheson, Michael B. Buser, and James Burgess comprise the panel. Atcheson is the presiding judge, and Burgess is a senior judge joining the court for the hearings.

"Our court has traditionally observed Constitution Day by having panels hear cases on college and university campus around the state," Atcheson said. "Students and faculty can see firsthand how the appellate courts and skilled lawyers handle challenging legal issues. The visits also give the judges an opportunity to interact with the students and answer their questions about what we do. We appreciate the gracious invitation from Friends University and look forward to meeting with members of the university community during our visit there."

During the panel's sessions, attorneys for each side will have an opportunity to present arguments to the judges, and the judges will have a chance to ask questions. After the hearings, the court will take each case under consideration and will issue a written decision at a later date.

When the oral arguments are complete, the judges will be available to talk with students.

These hearings are part of Constitution Day observance activities this year at Friends University, Washburn University, and Kansas State University. Congress directed federally funded educational institutions to host educational events about the U.S. Constitution on or about September 17 each year. The Constitution was signed September 17, 1787, by a majority of delegates to the Constitutional Convention.

Among the cases to be heard by the Court of Appeals panel in Wichita, and their summaries:

**9 a.m.**

**Appeal No. 117, 293: *Leigh Ann Ziebart v. Chad Ziebart***

Meade County: Following their divorce, the mother filed a motion to change the custody arrangements for the couple's daughter from shared custody to primary custody with her. The father requested the district court retain the shared custody plan. After an evidentiary hearing, the district court gave the father primary custody and ultimate authority to make decisions regarding the daughter's care and well-being. Issues on appeal include 1) whether the court exceeded its authority; and 2) whether the ruling was unwarranted based on the evidence.

**Appeal Case No. 117,277: *Care and Treatment of Valdie T. Barnett***

Ellsworth County: The state filed a petition to have Barnett adjudicated as a sexually violent predator and committed to the treatment program at Larned State Hospital. After trial, the district court granted the petition. In an earlier appeal, this court determined the mental health professional who conducted a legally required evaluation finding Barnett to be a sexually violent predator was not qualified to perform the evaluation. This court reversed the adjudication and sent the case back to district court for further proceedings. The district court dismissed the case and ordered Barnett's release. Issues on appeal include 1) whether the district court misapplied the appellate court's earlier ruling; and 2) whether Barnett can be re-evaluated since he has been released.

**Appeal No. 116,334: *Elizabeth Clarkson v. Tabitha Lehman, Sedgwick County Elections Commissioner***

Sedgwick County: Elizabeth Clarkson, a registered voter, sought access to data compiled by electronic voting machines used in the 2014 general election, claiming she should be permitted to review the information either as part of a statutory recount or under the Kansas Open Records Act.

The district court denied her request, and she appealed.

1:30 p.m.

**Appeal No. 116,634: *State of Kansas v. Catherine Lynn Deaver***

Butler County: Deaver was convicted of possession of methamphetamine. A Kansas Highway Patrol trooper had detained and questioned her about medications she was taking and then to asked her to produce the medications for his inspection. After seeing what he believed to be drug paraphernalia in one of the vials, the trooper searched her car, where he found methamphetamine. On appeal, Deaver contends the district court should have prohibited the admission of the drugs as evidence against her because the trooper's actions amounted to an unreasonable government search and seizure violating the Fourth Amendment to the U.S. Constitution.

**Appeal No. 115,812: *State of Kansas v. Hershel A. Kemp***

Lyon County: A jury convicted Kemp of nine felony sex offenses against his stepdaughter. After the trial, the district court dismissed three of the convictions because it was unclear that the jury had reached a unanimous verdict as to a particular incident supporting each of those convictions. The state appealed that ruling. Kemp has cross-appealed the remaining convictions, arguing his trial was fundamentally unfair for multiple reasons, including the state's presentation of improper expert testimony regarding computer programs, the state's improper questioning of witnesses, and the state's improper closing argument.



*The Kansas Court of Appeals is celebrating its 40th anniversary this year. It was established in 1977 to provide a resource for more accessible, speedier, and less costly appellate review for Kansas litigants. With 14 judges sitting monthly in panels of three, the court is able to decide more than 1,800 appeals every year. Chief Judge Karen Arnold-Burger said, "We continue to achieve goals the Legislature set for us in 1977. We've heard cases in every judicial district statewide and we remain a traveling court. We often hold sessions in local schools and courthouses to increase public accessibility. And, we are particularly proud that we routinely issue decisions within 60 days of oral argument."*

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State of Kansas  
**Office of Judicial Administration**  
Kansas Judicial Center  
301 SW 10th  
Topeka, Kansas 66612-1507  
785-296-2256  
[www.kscourts.org](http://www.kscourts.org)