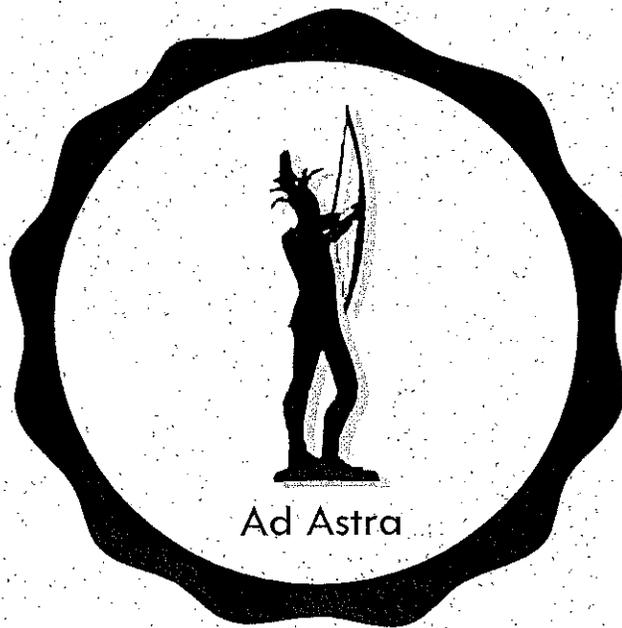


STATE OF THE JUDICIARY



2013

ANNUAL REPORT OF THE CHIEF JUSTICE OF THE KANSAS SUPREME COURT
LAWTON R. NUSS, CHIEF JUSTICE

State of the Judiciary

**2013 Annual Report of the Chief Justice
of the Kansas Supreme Court**

**Lawton R. Nuss
Chief Justice**

Submitted pursuant to K.S.A. 20-320

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**Delivered by the Honorable Lawton R. Nuss
Chief Justice of the Kansas Supreme Court
Thursday, January 31, 2013**

In 1862, when Kansas was but a year old, our country's first Republican President told Congress that "we must think anew, and act anew."

In June 2010 the Kansas Judicial Branch followed that good advice from President Abraham Lincoln. Several weeks earlier the Kansas Supreme Court had closed all state courts for lack of money—for the first time in the 149-year history of our state. While virtually unavoidable due to the poor state of the economy, this unfortunate restriction on Kansans' access to justice also had a positive effect. It helped convince the Supreme Court to be even more efficient, to make the best use of the hard-earned money of our taxpayers, and to continue to improve our administration of justice. So we started "Project Pegasus."

Project Pegasus was perhaps the largest undertaking in the history of the Kansas court system. It consisted of two parts: (1) a weighted caseload study to measure the actual workloads of all district courts in our 105 counties and (2) a blue ribbon commission to review the Judicial Branch operations statewide.

The weighted caseload study required certain Judicial Branch personnel—all judges in our more than 100 district courts and approximately 700 employees in the offices of the clerk of each court—to record all their tasks and the time needed to perform them during two four-week periods. The blue ribbon commission, by contrast, was composed of 24 Kansas citizens from a variety of backgrounds and leadership positions across the state. Its broad mission was to consider the results of the weighted caseload study, to review operations, and to make recommendations to the Supreme Court for Judicial Branch improvements.

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Although repeatedly recommended in Kansas since 1944, this weighted caseload study was the first one ever performed in our state history. Based upon information from the National Center for State Courts—whose professionals had assisted us throughout the study—our completed study may contain the most reliable data in the history of the National Center. This means that for the first time ever Kansas has a legitimate, fact-based study whose data can be the valuable basis for many management decisions regarding Judicial Branch operations statewide.

As for the blue ribbon commission, it performed the most extensive review of our operations since the 1970s. After reviewing those operations for almost a year, receiving citizen input at 19 community meetings throughout the state, and analyzing the weighted caseload study report, the commission completed its own report. Both reports were presented to the Governor and the joint session of the Legislature last January. Both were also posted that same day on the Judicial Branch website for all the people of Kansas to review and comment on—consistent with our intention to be open and accountable in our goal to improve the Judicial Branch of Kansas government. The blue ribbon commission report remains available at:

<http://www.kscourts.org/BRC-Report/BRC%20Report%20Hyperlinked%202.3.12.pdf>

and the weighted caseload study report remains available at:

<http://www.kscourts.org/Weighted-Caseload-Study/>

During my State of the Judiciary address to the joint session of the Legislature last January, I highlighted some of the blue ribbon commission's recommendations. In my report today, I will identify the milestones we have reached regarding some of those recommendations during the past 12 months. I will also report on other items not necessarily contained in the blue ribbon commission's recommendations. Like last year's demonstration of our accountability to the people of Kansas, this report will be posted this same day on the Judicial Branch website for them to review and provide comment. See <http://www.kscourts.org/State-of-Judiciary/>

Updates on the blue ribbon commission's recommendations, which the commission grouped into 11 main categories, are as follows:

I. Structural Changes

The extensive weighted caseload study revealed that while Kansas has enough judges, some are not placed where they are most needed. That is partially due to a 30-year-old statute that absolutely requires at least one judge to reside in, and have principal office in, each county—regardless of the existing demands of the legal market there. Consistent with the blue ribbon commission recommendation, last session the Supreme Court sought to eliminate judicial placement statutory restrictions. We wanted to obtain managerial flexibility so we could apply our limited resources to meet the demands made on our branch of government, both as the demands exist today and as they change in the future. This increased managerial flexibility would allow the Court to better fulfill its constitutional mandate from the people of Kansas as the exerciser of "general administrative authority over all courts in this state." That legislation failed.

For fiscal year 2014, the Supreme Court first proposes that rather than eliminating these statutory restrictions on judge transfers, the Legislature instead can create and fund the 22 new judicial positions and accompanying staff needed to meet judicial needs in the underserved areas identified by the weighted caseload study. If the Legislature chooses not to do so, however, then these statutory restrictions should be removed. Removal will allow the Court to apply sound principles of business management—to run the Judicial Branch of government more efficiently and effectively, and better meet the justice needs of Kansas citizens. This flexibility means that we would not need to bother the Legislature each time caseloads might substantially change and when other judicial assignments might need to be made in the district courts. Choosing from these options involves policy decisions by the Legislature.

II. District Magistrate Judges

The Supreme Court is currently taking no action on any of the commission recommendations concerning district magistrate judges. This is primarily because many of those

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actions could be affected by changes in the statutory restrictions on placement of judges as discussed in Section I. The Court continues to consider the recommendations and may later form a committee, with magistrate judge representation, to explore options in detail.

III. Electronic Filing and Enhanced Use of Computer Capabilities

Electronic filing (e-filing or EFS) allows lawsuits and related legal documents to be filed with the courts electronically—from one's office or home. This system is designed with the basic business philosophy in mind: invest money now to save more money in the future through increased efficiencies and related cost savings. Development and implementation of the first statewide EFS for cases are underway in several locations. Current funding (through FY 2013 legislative appropriations and nonrenewable federal grants) will cover the pilot projects (Douglas, Leavenworth, and Sedgwick counties) and Shawnee County in the district courts, as well as the appellate courts. Additional legislative funding (State General Funds—SGF) is being sought for fiscal year 2014 to allow full statewide implementation of EFS by the end of calendar year 2015.

The Supreme Court ultimately intends to develop and implement a complete centralized statewide e-courts environment—EFS plus electronic case management systems (CMS) and document management systems (DMS). Beginning steps include a recent assessment by the Gartner Group of our technology infrastructure and operations in support of an e-courts environment—with the goal of making all court records and documents electronically accessible statewide, subject to certain privacy protections. Gartner's comprehensive assessment was completed at no cost to the Kansas taxpayers through a Justice Assistance Grant.

Upon completion, such a combination of statewide systems could allow court personnel in any location to work virtually on court business in any other location, once again allowing the Supreme Court to more effectively and efficiently manage the state's court system. Properly used, such statewide systems could help us to keep a functioning "open for business" court clerk's office in all 105 counties. It might be suggested that these electronic systems are absolutely critical to keeping some of these offices open, and further suggested that keeping

these offices open is absolutely critical to providing access to justice for our fellow Kansans living in those areas. The original investment in these statewide court information systems should come from SGF, or possibly from a combination of SGF and user fees.

The Supreme Court did seek in the 2011 legislative session \$2 million to fully fund EFS statewide. Our request died the last day the budget conference committees met. In the 2012 legislative session we also sought funding by alternatively asking for the authority to assess fees against EFS users. This also did not pass. Such legislation will be pursued again in the 2013 session.

History shows that in the late 1970s, the Legislature unified the Kansas courts structurally to increase efficiency. Using that same logic, the Judicial Branch proposes the Legislature should now support the courts financially to unify our more than 100 independent information systems in the district courts.

IV. Increased Use of Other Technology

The Kansas Court of Appeals is currently developing a pilot project to use video conferencing, instead of personal appearances, for certain activities in the appellate courts. Video conferencing should result in considerable savings for attorneys' clients because attorney trips to the Court of Appeals in Topeka will be substantially reduced. A related project concerning the use of video conferencing in the district courts statewide is also being developed by the Supreme Court's administrative arm—the Office of Judicial Administration (OJA). A committee to study that subject has been formed and will address both procedural standards and technical requirements.

In 2012, the Supreme Court installed in its courtroom cameras and affiliated hardware for transmitting proceedings live over the internet. Since August, our proceedings have been viewable by anyone with an internet connection from anyplace in the world. The digitized proceedings are archived for future reference. The courtroom hardware has also been used for

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training Judicial Branch employees at other participating sites, eliminating the expense and time lost from work caused by round-trip travel to Topeka.

In addition to the Supreme Court making its proceedings more accessible to the people of Kansas through technology, *e.g.*, cameras in the courtroom, it has also taken its proceedings directly to the people's locations. For the first time in its 150-year history, in 2011 the Supreme Court left its Topeka courtroom to hear cases in different cities: Salina in the spring, plus Wichita and Greensburg in the fall. Overland Park was our next trip—in the fall of 2012. I am pleased to report we have been warmly welcomed in all locations. Similarly, the Kansas Court of Appeals continues to take its proceedings directly to the people. It recently met its goal of holding court in each of Kansas' 31 judicial districts.

With increased use of technology comes an increased need for guidelines concerning its use by legal participants and visitors in our state's courtrooms. With the assistance of Kansas journalists, the Supreme Court has developed a rule for use of technology, *i.e.*, electronic devices, by the media in our courtrooms. A similar rule is being developed addressing the use of electronic devices by nonmedia.

V. Docket Fees

Possibilities exist to increase Judicial Branch funding through fee revenues. Recently some legislators have recommended that statutes requiring splitting of court filing docket fees among various entities should be revised to provide that all docket fees should go to the Judicial Branch. Other legislative proposals considered include the further increase of all current docket fees, and/or that higher docket fees be assessed in civil cases requiring large amounts of court time and resources.

VI. District Court Functions and Procedures

Many of the blue ribbon commission's recommendations regarding the district courts share the same theme that is also contained in the EFS, DMS and CMS recommendations. More

specifically, the recommendations are to develop more uniformity—and thus increased efficiencies—among the district courts and their cases in our 105 counties. Associated activities include the following:

1. OJA is examining the collecting of court costs, fees, and fines, with the development of best practices and standardization of collection methods. OJA obtained funding—again, at no cost to the Kansas taxpayer—from the State Justice Institute allowing the National Center to provide technical assistance in reviewing the processes for collecting monies ordered by the courts. The National Center’s report with recommendations for improvements is currently under review by OJA and the Kansas Collections Review Committee. Implementation benefits include: (1) assuring that court orders are taken seriously and will be enforced; and (2) increasing the receipts going into our public treasuries.

2. Re-examining the case types entitled to district court priority and expedited disposition, with accompanying time standards, may be addressed in the near future.

3. Specialty courts, sometimes called problem-solving courts such as drug courts and truancy courts, are active in several locations around the state. In late 2012 the Supreme Court created a commission which next month will begin examining the current and future operations of these courts to develop standards for uniformity. As resources allow, this commission will also examine the possibility of creating courts to serve the unique needs of Kansas veterans.

4. Statewide best practices with uniform court processes and procedures in all district courts will be considered during and after statewide implementation of the EFS because that system alone will likely modify some existing court practices and procedures.

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5. OJA has been working on the nationwide issue of language access to the state courts. Its activities include working with the National Center and the Interpreters Subcommittee of the Access to Justice Committee.

VII. Functions and Procedures Applicable to both District Courts and Appellate Courts

In 2011 OJA began emphasizing the resolution of civil and criminal cases that have been pending in the district courts for long periods of time. Lists of these cases are compiled and forwarded to the chief judges of the 31 judicial districts for explanation. This emphasis has resulted in the majority of those cases being resolved. It has also reinforced the need for timely decisions of all pending cases. This process is now being conducted annually.

Current internal efforts are also underway in the Supreme Court and the Court of Appeals to assure completion and more timely release of their judicial decisions to the people of Kansas.

Both the Supreme Court and the Court of Appeals are improving their prioritization of cases and expediting the resolution of several types on appeal, *e.g.*, adoptions. A committee may further examine cases entitled to high priority appellate review and develop specific time standards for such review and disposition.

VIII. Appellate Court Functions and Procedures

The Court of Appeals, assisted by OJA, is developing a pilot project for the possible mediation of cases already on appeal. Mediation encourages the resolution of cases by the lawyers and their clients before decision and written opinion by the Court of Appeals. When successful, mediation would save resources of Kansans and the appellate courts—and permit the courts to concentrate efforts on the hundreds of cases that would remain on their dockets every year.

IX. Office of Judicial Administration (OJA)

In addition to managing the numerous projects mentioned in this report, and conducting its day-to-day work, this past year the administrative arm of the Kansas Supreme Court began conducting day-long strategic and project planning sessions in an effort to increase its efficiency and effectiveness.

OJA will also host a visit from the longtime executive director of the National Center for State Courts in 2013. Topics discussed may include OJA obtaining an operations review and accompanying management guidance from the National Center professionals.

X. Lawyers

The Supreme Court is considering ways to expand programs that permit lawyers to provide self-represented litigants and other users of the court system with limited advice and assistance.

XI. Legislation and Court Rules

As mentioned above, legislation has been requested, and rules made, to implement various blue ribbon commission recommendations. As work progresses on each item, further legislation and rules needed for effective implementation will be considered.

OTHER ACTIVITIES

Now that I have provided updates on the recommendations of the blue ribbon commission, here are updates on some other activities of our Judicial Branch.

The Supreme Court has partnered with the University of Kansas law school in a unique program that allows selected students—under the supervision of their professors—to perform legal research on certain topics for the Court. After review and acceptance by the Court, the

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completed research is catalogued and stored in electronic form for the Court's further use. This program allows the Supreme Court to receive additional legal research at no cost to the Kansas taxpayer. It also provides the students valuable experience in research and writing. A similar program is being pursued with Washburn University law school.

The Supreme Court has formed a committee composed of educators, lawyers and other professionals to further implement the iCivics program in more Kansas public schools. This is an entertaining series of interactive computer programs designed to educate older grade school and middle school students on the subject of civics. Championed by former U. S. Supreme Court Justice Sandra Day O'Connor, iCivics has proven successful in a number of states. It is already being used in some of our larger urban school districts.

My report obviously contains very little about our Judicial Branch budget already submitted to the Legislature for fiscal year 2014. But I emphasize that budget clearly is grounded on a number of sound business management principles. For example, it asked for a pay raise for approximately 1,600 Judicial Branch employees who have not received one for the last five years and remain well below market rates. Similarly, the budget asked for a 2% cost-of-living adjustment for approximately 250 judges, who also have not received any salary adjustment since 2008. Good business management requires maintaining good, experienced employees by paying them what they deserve.

CONCLUSION

Several themes have been emphasized recently in the State to set the course for the conduct of Kansas government. First, government should become more efficient, but still provide essential or core services to the people we all serve. Second, government should promote economic growth of existing businesses and those that Kansas hopes to attract to our state. The Kansas Judicial Branch is doing all of these.

If implemented, many of the blue-ribbon commission recommendations discussed above could indeed make the Judicial Branch more efficient and make the best use of the hard-earned

money of Kansas taxpayers. The weighted caseload study in particular provides valuable information and clearly invites the application of sound business management principles to Kansas courts operating on limited resources. After all, if customers now demand less of product X but demand more of product Y, business management principles would normally dictate that some of the business resources should be shifted from product X in order to produce more product Y. Whether to do so here is presently a policy decision for the Legislature.

As for balancing this efficiency with the need for government to provide essential services, it is clear that administering justice to all Kansans has been an original function of government performed by the Judicial Branch since 1861. Such an original function certainly qualifies as a core function, *i.e.*, an essential service. Indeed, since 1861 the Kansas Constitution Bill of Rights has provided that Kansans are entitled to "remedy by due course of law, and [civil] justice administered without delay." The Bill of Rights similarly guarantees "a speedy public trial by an impartial jury" to criminal defendants. Adequate court funding is critical to providing these essential services—while inadequate funding undermines not only access to justice, but also the people's belief in the justice system itself.

Many of these proposed improvements are directed toward all users of the court system—from a criminal defendant to an adopting parent. But special mention should be made of the positive impact these recommendations and activities have on business and promoting economic growth.

According to a 2012 survey of corporate attorneys and other senior executives conducted by the U.S. Chamber of Commerce's Institute for Legal Reform, Kansas courts rank fifth among the states in the overall ranking of state liability systems, as perceived by U.S. businesses. The U.S. Chamber's report states:

“The impact of a state's litigation environment has always been and continues to be important, with more than two-thirds (70%) reporting that it is likely to impact important business decisions at their companies, such as where to locate or do business. This is an increase from 67% in 2010 and 63% in 2008.”

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So if Kansas government's set course is to act to promote economic growth, then the Kansas Judicial Branch should be recognized as a vital factor in that formula for success. Among other things, Kansas courts historically have provided damages for breached contracts, protected trade secrets from misappropriation, and provided a forum for the collection of businesses' bad debts. Indeed, one of the first cases ever decided by the Kansas Supreme Court was a business dispute concerning the sale of hundreds of sacks of flour.

Inadequately funded courts, or otherwise stagnant courts, will cause Kansas to drop in these national rankings. More important, any decrease in those rankings will demonstrate to the business community that Kansas' abilities to administer justice have declined in comparison to other states, particularly those which may be competing with us in attracting new businesses.

In summary, the Judicial Branch of our state government has been performing a vital role for Kansans since 1861. Our 250 judges and 1,600 employees look forward to further serving the people of Kansas for years to come.