

**RECOMMENDATIONS  
FOR IMPROVING  
THE KANSAS JUDICIAL  
SYSTEM**

**REPORT OF THE  
KANSAS SUPREME COURT'S  
BLUE RIBBON COMMISSION**

**JANUARY 3, 2012**

# THE KANSAS SUPREME COURT'S BLUE RIBBON COMMISSION

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Chief Justice Lawton Nuss  
Kansas Supreme Court  
Kansas Judicial Center  
Topeka, Kansas 66612

Dear Chief Justice Nuss:

I am pleased to enclose with this letter the Commission's report containing recommendations for improving the judicial system in Kansas. The Supreme Court formed the Commission in late 2010. The Court charged us with reviewing the operations of our courts to determine how to improve their efficiency while maintaining access to justice for all Kansans.

Since then we have visited all parts of the state to solicit ideas and suggestions. We have consulted with experts in the administration of justice, business, and economics in order to find what we believe to be the proper balance for these competing interests.

Our investigation led us to the recommendations that make up the body of our report. Our work, which was completed in record time, was made possible only through the able assistance and tireless efforts of our staff and consultants, as well as the thoughtful suggestions of lawyers, judges, court personnel, litigants, private citizens, and community leaders from all across the state. We extend to them our thanks for their assistance in this important project for our judicial system and all that it serves.

Yours very truly,

Patrick D. McAnany  
Chairman



**REPORT OF THE KANSAS SUPREME COURT'S  
BLUE RIBBON COMMISSION**

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# **REPORT OF THE BLUE RIBBON COMMISSION ON THE JUDICIARY**

January 3, 2012

## **Introduction and Executive Summary**

The various courts that formerly made up the Kansas Judicial Branch were unified in the 1970s. They are now under the administrative supervision of the Kansas Supreme Court. Unification brought many benefits to the Kansas Judicial System, but there remain impediments to the Supreme Court's efficient management.

### *Management of Judicial Personnel*

A recent comprehensive study of the workload in our district courts, the 2011 Weighted Caseload Study, shows that statewide the total number of judges is appropriate. But in some instances, our statutes require that judges be located in places where the volume of court business does not warrant a judge being permanently assigned, while other areas of the state have workloads that justify additional judges. The solution does not lie in consolidation or redistricting of the state's judicial districts. Rather, the requirement of one resident judge per county and related statutory impediments to the efficient placement of judges should be eliminated, and the management of the judicial system should be left to the Supreme Court as provided in Article 3, § 1, of the Kansas Constitution.

### *District Magistrate Judges*

District magistrate judges are an important component of the Kansas Judicial System. They add to the efficiency of our courts. Accordingly, the number of district magistrate judges should increase in relation to the number of district court judges. Further, the authority of our district magistrate judges should be expanded. They should be appointed or elected from the ranks of our licensed Kansas lawyers, rather than coming to the bench without the training of a lawyer. They should be employees of the Kansas Judicial System, and not employees of a county where they hold court. With their expanded authority and lawyer background,

when a district magistrate judge decides a case on the record and the decision is appealed, the appeal should be heard by our appellate courts rather than by a district court judge.

### *Technology*

Our courts should adopt new technologies that will make the courts not only more efficient but also more accessible to the public.

The Supreme Court has undertaken a project for electronic filing of documents in our district courts. This project should lead to mandatory statewide electronic filing in all our district courts within three years. In order to help meet the cost of establishing and maintaining the system, the Supreme Court should impose a reasonable fee for filing and examining documents. The Court should adopt rules that deal with confidentiality and related security issues that arise when court documents can be examined from any internet-connected computer.

Our district courts should expand the use of audio recordings to preserve the record of court proceedings. Both our trial and appellate courts should use video conferencing as an efficient method of conducting hearings in appropriate cases. In time, as technology advances, the Supreme Court should consider the use of new technology rather than court reporters to preserve a record of court proceedings.

There is a growing need for language translators for those non-English speakers who use our courts. Our Supreme Court should seek additional funds from the Legislature to fund translator services. The Court should consider regionalizing available translator services. Further, the Court should consider new technologies that enable our district courts to obtain the services of language translators when none is available locally.

In the dual-funding system of our courts, counties are responsible for deciding what computers, audio and video equipment, and other technologies they will provide for the use of the district courts. The Supreme Court's Office of Judicial Administration should help the counties identify equipment that will be

compatible with the rest of the courts around the state, and help identify proceedings where the use of new technology will be appropriate.

### *Funding*

Our district courts are funded in part by the state and in part by the counties where they are located. The state has the primary responsibility to provide adequate funds for the operation of our courts. But it is appropriate to require those who use our state judicial system to contribute to the financing of our courts through user fees that go to the state judicial system. The Supreme Court should examine the fee structure of our courts and seek to increase them where appropriate. The Court should adopt uniform standards for waiving or deferring fees for those who need access to the courts but do not have the necessary financial resources. But when fines, fees, and restitution have been ordered by the district court, the court should undertake vigorous efforts to collect these outstanding receivables.

### *Procedural Changes*

Our district courts have used mediation and settlement conferences to efficiently resolve disputes short of a trial. Our appellate courts should use these same tools early in the appeal process to bring the parties to an acceptable resolution, saving the litigants time and money and enabling the appellate courts to resolve more quickly the remaining appeals.

The Supreme Court should examine the lists of case types that require priority handling in the district courts and in the appellate courts to determine if the lists should be expanded or shortened.

The Supreme Court should seek to make local district court rules uniform where possible, and should promote forums where judges and clerks can exchange ideas on best practices for handling various cases. The Court should expand training programs and take advantage of new technologies for conducting meetings and training sessions.

The Supreme Court should examine the efficiency of its Office of Judicial Administration and its Information Technology Department.

Finally, the Supreme Court should promote programs that enable lawyers to engage in a limited representation of pro se litigants. Lawyers should be encouraged to voluntarily devote a suggested number of hours to pro bono service.

## History of the Blue Ribbon Commission

The Kansas Supreme Court created the Blue Ribbon Commission in December 2010. The Supreme Court directed the Commission to examine the operation and structure of the courts of Kansas in order to evaluate ways in which to optimize the Supreme Court's stewardship of taxpayer funds and provide justice for all Kansans that is compassionate, swift, and accurate. The Court asked the Commission to think beyond "business as usual" in order to find ways to refine the system and make it more efficient.

The Supreme Court directed the Commission to be mindful of the goals of assuring open, affordable, and understandable court services appropriate to the characteristics of each case; equitable access to justice; and the timely resolution of disputes. The Court directed the Commission to review all operations of our courts, including: technology; the organization and structure of the courts; court record retention; administrative supervision; workload of judicial and nonjudicial personnel; financing of the court system; a centralized court data network; use of video conferencing and other methods for court hearings; and jurisdiction, qualifications, and compensation of district magistrate judges. The Court directed the Commission to consider, within the principles governing the study, the balancing of constitutional requirements, access to justice, and available finances.

### *The Current Kansas Judicial System*

The current Kansas Judicial System is the product of a court unification project undertaken between 1964 and 1978. Unification created the shape and financing of the court system as it now exists. The current system has enhanced justice in Kansas in some ways, while also creating impediments to the efficient delivery of justice in others.

### *A. Judicial Districts*

Kansas is divided into 31 judicial districts. These districts vary in size, population, and number of counties. These differences create a number of complexities in the delivery and cost of justice in the state.

Of the 31 judicial districts, seven are single-county districts:

Shawnee County (3rd Judicial District)  
Douglas County (7th Judicial District)  
Johnson County (10th Judicial District)  
Sedgwick County (18th Judicial District)  
Cowley County (19th Judicial District)  
Reno County (27th Judicial District)  
Wyandotte County (29th Judicial District).

At the other extreme, six districts have six counties, and the 15th Judicial District consists of seven: Cheyenne, Logan, Rawlins, Sheridan, Sherman, Thomas, and Wallace Counties.

The smallest district in terms of land area is the 29th Judicial District, Wyandotte County, with a land area of 156 square miles. The largest district is the seven-county 15th Judicial District, with a land area of 7,105 square miles.

Population also varies widely from district to district. The most populous district, Johnson County (10th Judicial District), has a population of 544,179 in its 480 square miles (1,134 persons per square mile). The least populous district, the 17th Judicial District, which is made up of Decatur, Graham, Norton, Osborne, Phillips, and Smith Counties, has a population of 24,582, spread out over 5,360 square miles (4.6 persons per square mile).

### *B. Judges*

There are two types of judges of the district courts in Kansas. District judges are judges of general jurisdiction empowered to hear all cases in district

court. They must be attorneys with five years of experience before joining the bench. District magistrate judges are judges of limited jurisdiction who are empowered to hear cases involving traffic infractions, cigarette and tobacco infractions, misdemeanor charges, and limited actions, as well as preliminary examinations and arraignments in felony cases. They do not have to be attorneys or have any experience in the law.

Each district judge or district magistrate judge is empowered to hear cases in any county in his or her judicial district, and in many judicial districts they frequently do so. As necessary, the Supreme Court may assign a judge to hear matters outside of the judge's district.

The distribution of district judges and district magistrate judges is governed by a number of constitutional and statutory restrictions and directives. Article 3, § 1 of the Kansas Constitution vests in the Kansas Supreme Court the general administrative authority over all Kansas courts.

Article 3, § 6 of the Kansas Constitution requires at least one district judge in each judicial district. However, the Legislature has enacted a more restrictive requirement that there be at least one resident judge of the district court, either a district judge or district magistrate judge, in each county in Kansas, regardless of the demand for judicial services in that county. Additionally, other statutes specify where judges will be located. K.S.A. 4-202 to 4-232 allocate district judges for each district. Some of these statutes not only specify the number of judges, but also where in the district they shall sit. K.S.A. 4-232, for example, specifies that, in the 31st District, court will be held in Iola, Chanute, Erie, Fredonia, and Yates Center. Similarly, K.S.A. 20-338 allocates district magistrate judge positions among the judicial districts.

The current statutory scheme for allocating district judges and district magistrate judges has adverse consequences for the efficient delivery of justice in Kansas. First, because the distribution is specified by statute, it cannot be changed without legislative approval. This reduces the ability of the court system to shift resources as needed to meet changing demand. Second, because the allocation is not part of a comprehensive plan, it has resulted in some anomalies. Some

districts, particularly those with smaller populations, operate with a majority of district magistrate judges and very few district judges. Others, such as the 10th Judicial District (Johnson County), have a majority of district judges but also a number of district magistrate judges. Still others, such as the 18th Judicial District (Sedgwick County), have only district judges and no district magistrate judges.

### *C. Financing the Judicial System*

The finance system for our courts affects the efficient delivery of justice in Kansas. Kansas operates a two-tiered system. The state pays for the salaries of all district court judicial and nonjudicial personnel, with some minor exceptions. The state also pays some of the travel expenses for district court personnel. Each county pays the operating expenses of the district court within its county, including any court staff the county chooses to hire in addition to those positions which the state funds. The expenses borne by the counties include the cost of maintaining the court facilities in the courthouse, office supplies, and equipment for operation of the courts.

Because the non-salary operating expenses are paid by the counties, the technologies available to the local district court, such as computers and audio recording devices, are dependent on the willingness and ability of each county to provide the necessary funds. Currently, the counties contribute approximately \$32 million annually for the maintenance of local court facilities. While there have been recommendations in the past to shift the entire expense for the operation of the courts to the state, to date the Legislature has been unwilling to do so and there is no indication that the dual funding system is likely to change in the near future.

State funding of the judiciary comes from a variety of sources. The majority comes from the State General Fund. In turn, the district courts collect revenue through a variety of sources, including docket fees, the current surcharge on filing fees, fines, penalties, and forfeitures. Approximately two-thirds of the collected fines, penalties, and forfeitures are paid into the State General Fund. About 47% of the docket fees collected by the district courts are paid into the State General Fund. The remainder goes to other funds, only some of which benefit the courts.



Approximately 98 % of the State General Fund appropriation for the courts is used for payroll expenses. Approximately 2% is used for other operating expenditures not addressed by the counties. Nonjudicial salaries account for 62% of the judicial payroll budget, and judges' salaries account for 38%. The current fiscal year 2012 judicial budget derived from the State General Fund is approximately \$102.3 million.

Since unification of the court system, the financing system and structure of the Kansas Judiciary has remained essentially unchanged. The judicial budget has not been immune to the downturn in state revenues caused by a plummeting economy in 2008.

The fiscal restraints facing the Kansas Judiciary became acute in December of 2008, when the Supreme Court imposed a hiring delay. That delay later became a hiring freeze, resulting in positions that became vacant due to terminations or retirements remaining unfilled. In 2009, for the first time in the history of the state, the Supreme Court was forced to close all state courts and furlough nonjudicial personnel for four days. The budget for fiscal year 2010 allowed the courts to stay open, but required the Court to leave 75 to 80 positions (about 5% of the entire support staff) vacant for the full year.

In January 2010, the Legislative Division of Post Audit delivered its report, *Judicial Districts in Kansas: Determining Whether Boundaries Could be Redrawn to Increase Efficiency and Reduce Costs*, to the Legislative Post Audit Committee. The report recommended that Kansas' existing 31 judicial districts be consolidated into 13 districts for a purported savings of \$6.2 million or be consolidated into seven districts for a purported savings of \$8.1 million. These recommendations included changes in number and location of many judges and their support staff.

Although the Judicial Branch disputed many of the assumptions of the Post Audit report, as well as the report's conclusions regarding the significant savings that could be realized from consolidation, it became apparent that a more in-depth study of all aspects of the judicial system was needed to address the question of whether and how the system could operate more efficiently. The Supreme Court moved to meet this need by undertaking the *Pegasus* Project. The *Pegasus* Project

consists of two elements: (1) the commissioning of a weighted caseload study to measure actual court workloads; and (2) the formation of an independent Blue Ribbon Commission to review the operations of the entire Judicial Branch.

### *Weighted Caseload Study*

Since 1944 there have been recommendations to the Legislature that a weighted caseload study be undertaken in order to accurately determine the workload of the courts based on not only the number of cases processed, but also the relative complexity and time requirements of different types of cases.

In August 2010, the Kansas Supreme Court engaged the National Center for State Courts to perform the first-ever Weighted Caseload Study in Kansas history. The purpose of the study was to accurately measure the amount of time it takes judges and clerical staff to process court cases from initial filing to final resolution. The study took into account the time necessary for judges and clerical staff to travel from court to court in multi-county districts. The study also took into account the economies of scale enjoyed in urban districts by judges who are able to repeatedly handle similar types of cases. By taking these and other factors into account, the caseload study made an "apples to apples" comparison of the workloads in courts across the state.

In addition, the Supreme Court appointed two 14-member committees of Judicial Branch personnel to assist the National Center. The Judicial Needs Assessment Committee (JNAC) was composed of district judges and district magistrate judges. It was charged with advising the National Center regarding judges' work. Another committee of court administrators, court clerks, and other nonjudicial personnel, the Staffing Needs Assessment Committee (SNAC), was charged with advising the National Center with regard to clerk staff work.

As a part of the Weighted Caseload Study, all district judges and district magistrate judges, as well as many nonjudicial staff members, kept track of their working hours according to case and task type through two data collection periods: January-February 2011 and April-May 2011. One hundred percent of judges and 99% of clerk staff participated in the survey.

*Formation of the Blue Ribbon Commission*

As the Weighted Caseload Study got underway, work also began on the formation of the Blue Ribbon Commission. In November 2010, the Supreme Court invited then-Governor Mark Parkinson, Governor-elect Sam Brownback, President of the Senate Steve Morris, and Speaker of the House Mike O'Neal to appoint one member each to the Commission. The Court also invited local bar associations and professional organizations to nominate members. From a nominee list of more than 150 persons from 63 nominating entities, the Court selected 21 of the nominees to be commission members.

The members of the Commission are listed earlier in this report. Nevertheless, it is worthwhile to note their professional backgrounds and leadership positions:

Hon. Constance Alvey  
Wyandotte County District Court Judge  
Kansas City

Hon. Kim Cudney  
Chief Judge of the 12th Judicial District  
Washington

Bob Boaldin  
Owner of Epic Touch  
Telecommunications  
Elkhart

Donna Elliott  
Graham County  
Clerk of the District Court  
Hill City

Richard A. Boeckman  
Barton County Counselor/Administrator  
Great Bend

Hon. Richard Flax  
Trego County  
District Magistrate Judge  
Wakeeney

Hon. Blaine A. Carter  
Wabaunsee County  
District Magistrate Judge  
Alma

Joseph F. Harkins  
Former Commissioner,  
Kansas Corporation Commission  
Lawrence

Karen Hester  
University of Kansas School of Law  
Director, Career Services and  
Diversity & Inclusion  
Lawrence

Linda Parks  
Attorney  
Hite, Fanning & Honeyman, L.L.P.  
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Martha Hodgesmith  
University of Kansas  
Associate Director for Disability Policy  
Lawrence

Prof. Reginald Robinson  
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Gerald O. Schultz  
Attorney  
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Susan Lynn  
Editor and Publisher, The Iola Register  
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Haley Title Company  
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Doris Miller  
Co-Owner of Rocking M Radio  
Manhattan

Sen. John Vratil  
General Counsel, Blue Valley  
School District;  
Kansas Senate  
Overland Park

Mike Padilla  
Chief Enforcement Officer  
Kansas Department of Revenue,  
Alcoholic Beverage Control  
Topeka

John P. Wheeler, Jr.  
Finney County Attorney  
Garden City

Calvin Williams  
Attorney  
Colby

Hon. Meryl D. Wilson  
Riley County  
District Court Judge  
Manhattan

Sam Williams  
Advertising/Public Relations  
Sullivan Higdon & Sink  
Wichita

As noted earlier, Professor Jeff Jackson of Washburn University School of Law was appointed Commission Reporter, and Dr. Keith Chauvin from the School of Business at the University of Kansas advised the Commission on matters of economics and business management.

The Commission also was assisted in its work by members of the Office of Judicial Administration and other staff personnel in the Kansas Judicial Center in Topeka, and representatives of the National Center for State Courts.

### *The Work of the Blue Ribbon Commission*

The work of the Blue Ribbon Commission began on March 9, 2011, when it met to receive its charge and to set its agenda. Commission members were divided into three-member panels for the purpose of conducting public meetings throughout the state to collect public comments on the state of the judiciary and suggestions on ways to improve judicial efficiency and access to justice. Those public meetings were held from April to June 2011 in 18 locations throughout the state: Norton, Colby, Liberal, Garden City, Beloit, Emporia, Hutchinson, Chanute, Hays, Topeka, Salina, Dodge City, Wichita, Overland Park, Junction City, Independence, Atchison, and Pittsburg. At each stop, panel members met with community leaders, frequent users of the judicial system, and members of the citizenry at large.

Upon completion of these public meetings, members were divided into three work groups to study different aspects of the Kansas court system. Those work groups consisted of the following:

Structure of the Courts

Judge Meryl Wilson, Manhattan, chairman

Finances and the Courts

Senator Jeffrey King, Independence, chairman

Technology and Processes of the Courts

John Wheeler, Finney County Attorney, chairman

Each work group met several times before submitting recommendations to the Commission as a whole for consideration.

The Commission met again on July 13 to study preliminary recommendations from the work groups, as well as preliminary results of the Weighted Caseload Study. The Commission again met on September 28. Following that meeting, a draft of this final report was prepared. The draft report was submitted to the Commission members and approved in December 2011.

As a result of its study and debate, the Commission arrived at the recommendations discussed below. The Commission examined and chose not to make recommendations on a number of issues, including the issue of salaries for district magistrate judges. This report refers to only a few of those matters that were considered but not recommended.

## RECOMMENDATIONS

### I. STRUCTURAL CHANGES

#### 1. The Supreme Court should recommend legislation to end the one-resident-judge-per-county restriction on the placement of judges.

**Other statutes requiring the placement of judges in specific districts and counties should also be eliminated.**

Along with the creation of this Commission, the Supreme Court commissioned the Weighted Caseload Study (WCLS) for the purpose of measuring the actual workload of trial judges and clerical personnel in the Kansas Judicial System. A rose may be a rose, but a case is not a case when it comes to the time required of judges and clerks to process it through the judicial system. The WCLS applied statistical principles to the day-to-day workload of our trial courts to determine how much actual time is devoted to various categories of cases. It used a statistical model which had been used in 33 other states before being used in Kansas.

Around the state, many judicial districts process thousands of traffic infractions cases every year. Statewide, these amount to an average of about 200,000 per year for the past decade. But the WCLS determined that, on an annual basis, each of those cases required only one minute of a judge's time. On the other hand, the most serious criminal cases each required, on average, over 25 hours a year of a judge's time.

The recently completed Kansas District Court Judicial and Clerk Staff Weighted Caseload Study contained in the report to the Supreme Court concludes:

"An empirical view of workload data indicates no net need for additional judges but does indicate a reallocation should be

considered. Current statutory limitations preclude the reallocation of judicial resources."

The WCLS discloses a misallocation of judicial resources in several judicial districts. Some have too many judges to meet current workloads. Others have too few, as shown in Appendices M, N, Q, and R to the report. The one-resident-judge-per-county and other statutes requiring placement of judges in specific districts and counties without regard to need impair the Supreme Court's ability to efficiently manage the judicial system by correcting these misallocations.

The WCLS, Appendix R, calculates that system-wide there is one more judge than needed to manage the state's current judicial workload. However, the district-by-district analyses of the data show that there is a need in several districts for 22 more judges, while other districts have a total of 23 judges in excess of those needed to meet current workloads. Eighteen of those 23 judges are located in counties in which their presence is mandated by the one-resident-judge-per-county statute and other statutes requiring the placement of a judge in a specific county.

While similar misallocations exist in the placement of some nonjudicial personnel, the Court can correct those misallocations. They are not subject to the same artificial constraints that apply to judges. The Supreme Court and its Office of Judicial Administration have already begun using WCLS data to make decisions on nonjudicial staffing.

Since the time of statehood in 1861, the organization of the trial courts of Kansas has changed from time to time to meet changing conditions that have an effect on providing efficient access to justice for all Kansans.

In the century and a half since Kansas joined the Union, the state has periodically suffered tough economic times. Kansans experienced the economic chaos that prevailed from time to time in the latter portion of the 19th century. Kansans went through World War I and the Depression that



followed the stock market crash in 1929. Kansans weathered the dust bowl days of the 1930s, World War II, and the periodic economic recessions that followed in the latter half of the 20th century. During all of those times the courts of Kansas remained open every business day. This held true until 2010.

Though the courts stayed open every business day, in recent years they were often required to do so with a staff that was insufficient to adequately serve the needs of the courts and the citizens of Kansas. For several years, the Judicial Branch has been required to leave many clerical and support staff positions vacant because of inadequate funds to pay the salaries of staff for those positions.

In order to keep Kansas courts open under the current financial conditions, the Kansas Supreme Court is required to maintain approximately 75 to 80 positions vacant at any given time. As a result, some offices are left with one clerk, creating not only considerable personal stress but a logistical quandary when that employee is sick or takes a day of vacation. Staff shortages have caused the timely maintenance of court files and records to suffer, along with basic services to the judges and to the members of the public they serve.

In 2010, for the first time in Kansas history, the Supreme Court was required to close the courts throughout the state for several days for lack of adequate funds. This was an embarrassment for all Kansans and should never be permitted to happen again. The Legislature must meet its duty to properly fund the courts, and the Supreme Court should have the authority to administer those funds in a prudent and businesslike manner consistent with the mission of the Judicial Branch. This can occur only if the Supreme Court has authority over the placement of its personnel for whom the vast majority of the Court's budget is allocated.

Article 3, § 1, of the Kansas Constitution vests the judicial power in one court of justice, divided into the Supreme Court, the district courts, and

other courts as provided by law. From the time of statehood, the primary trial court has been the district court.

The Kansas Constitution, Article 3, § 6, establishes that the state shall be divided into judicial districts with at least one district judge per district. The various legislatively-created judicial districts are defined in K.S.A. 4-202, *et seq.* Over the years, a number of multi-county judicial districts have been served by only one district judge. In fact, by 1974 there were only 63 district judges for the 105 counties in the state.

Among the various trial courts, only the district courts and the probate courts go back to the time of statehood. Beginning in 1897 and in subsequent years, the county courts, magistrate courts, city courts, courts of common pleas, and juvenile courts came into existence.

- Probate courts had jurisdiction over decedents' estates, the estates of minors and incapacitated persons, conservatorships, trusts, adoptions, and the care and treatment of the mentally ill.
- Juvenile courts had jurisdiction over child offenders and children in need of care.
- County courts, magistrate courts, city courts, and courts of common pleas had jurisdiction over smaller civil actions and misdemeanor criminal actions.
- Municipal courts had (and still have) jurisdiction over municipal ordinance violations.

Over the years, various commissions and committees have been formed to review and recommend changes to reform and modernize the structure of the Kansas Judicial System.

In 1927, the Kansas Judicial Council reported to the governor its recommendations for improving the judicial system, including the transfer of judges from one district to another to accommodate caseload demands.

In 1944, the Kansas Legislative Council reported that the "first objective to be sought was an equitable distribution of judicial work among the various courts and judges." Its second objective was to determine the proper number of district courts and judges necessary to handle the volume of business before the courts. As a part of its recommendations, the council recommended a weighted caseload study.

In 1958, the Kansas Legislative Council noted:

"It is not surprising, consequently, that the great variance in the amount of work of various district court judges over the state has been a matter of general comment for more than 15 years. However, to the present time no method has been discovered for improving the situation in a manner which would be satisfactory to most of those concerned."

In discussing the need for a weighted caseload study, the council stated:

"On three separate occasions in the past twenty years, 1938, 1943, and 1947, and in the present study, attempts were made to give a more careful estimate of a judge's time per type of case. It was ultimately found necessary to fall back upon the relatively simple measurement of the number of cases terminated per year."

In 1964, the Citizens' Conference on Modernization of the Courts noted the lack of central administration of the courts. This led to the 1965 Judicial Reform Act, which placed the district courts under the administration of the Supreme Court. In 1972, the voters approved a constitutional change that unified the court system.

In 1968, an advisory committee of the Kansas Judicial Council reported on judicial districting and observed that its first issue was "equalization of workload of district judges throughout the state with consideration given to such factors as necessary travel time in addition to actual caseload." The committee suggested:

"[W]hen a judgeship is vacated, consideration be given to the population of the district and the number of cases filed per year (average over the previous three years) and if the Judicial Administrator, with the approval of the Supreme Court, determines that it is in the interest of the judicial system of the state to realign the boundaries of such district, to merge two or more districts, or to divide a previously existing district, then the office of the judge shall terminate and the vacancy shall not be filled."

Pursuant to a resolution of the Kansas Legislature, in 1973 the Supreme Court created the Kansas Judicial Study Advisory Committee, a group similar to the current Blue Ribbon Commission. The Advisory Committee was to study and make recommendations on ways to modernize the Kansas court system.

In its 1974 report, the Advisory Committee recommended that there should be a unified district court and that the probate, juvenile, county, magistrate, city, common pleas, and municipal courts should be eliminated and their jurisdiction vested in the district court. It also recommended that an intermediate appellate court, the Kansas Court of Appeals, be created and that the Kansas Supreme Court should supervise this new unified judicial system. It recommended: "The fiscal affairs of the unified courts system should be determined through a single budget financed by the State of Kansas with the localities of Kansas responsible for providing only physical facilities."

The Advisory Committee proposed that there would be three classes of trial judges: district, associate district, and magistrate. All would be

judges of the district court. Under this scheme, the present district judges would remain. The various other judges with countywide jurisdiction, such as probate and juvenile judges, would become associate district judges. The remaining nonlawyer judges would become district magistrate judges. The committee also recommended abolition of all municipal courts over time and the transfer of their jurisdiction over city ordinance violations to the district court.

"Under these recommendations each Kansas county would have either a resident associate district or district magistrate judge, with a substantial number of the magistrates being nonlawyers. Although it might be preferable to eliminate nonlawyer judges, this does not appear practical at the present time. Many western counties of Kansas have relatively light caseloads and few attorneys. To attract attorneys, salaries would have to be raised substantially. To justify this increase in compensation the caseloads of individual counties would have to be consolidated and handled by a single lawyer judge because it would be difficult to defend paying a judge a lawyer's salary for handling 200-300 cases per year. In a number of instances this would mean one judge serving three or four counties. Particularly in view of the proposed elimination of municipal courts, this might unreasonably limit the accessibility of the courts to the litigants. Therefore, rather than adopt such a plan, the committee determined that each county should continue to have its own judge."

The recommendations of the committee were, for the most part, well received by the Legislature. The Legislature enacted statutory changes to further unify the court system under the supervision of the Supreme Court. An exception was the recommendation for the elimination of municipal courts. The Legislature rejected that recommended change. Included in the legislative changes was the enactment of K.S.A. 20-301b which provides:

"In each county of this state there shall be at least one judge of the district court who is a resident of and has the judge's principal office in that county."

This legislation has had a lasting effect on the ability of the Supreme Court to effectively manage court resources. Of the 105 counties in the state, 64 counties currently have only one resident judge.

In 1991, a committee of the Kansas Judicial Council studied the matter further and determined that some judicial districts had more judges than were needed and other judicial districts had fewer than were needed.

In 1997, the Legislative Division of Post Audit determined that, "because the location of each judge is specified by statute, the Judicial Branch can't permanently reallocate existing judgeships to help equalize their workloads." Further, "[b]ecause of the statutory constraints on moving judges permanently to areas where caseloads are higher, districts with fewer cases filed still have proportionately more judges than districts with a greater number of cases filed."

In 1999, the Citizens' Justice Initiative found that the one-resident-judge-per-county legislation was unneeded, but the Legislature was reluctant to change it. The Legislature concluded that it is sufficient to require that every county have a judge assigned to the county and that specified services be available at the courthouse, but the assigned judge could cover more than one county.

Finally, in 2010, a legislative post audit study recommended abolition of the one-resident-judge-per-county statute.

In considering the Supreme Court's management responsibilities over the judicial system, one must be mindful of the most important reality: 98% of the State General Fund judicial budget is allocated to salaries and benefits for judges, staff, and clerical personnel, the vast majority of whom are located at the local county courthouses.

The other expenses necessary for the operation of the courts are paid by the individual counties. Counties pay for the construction and maintenance of courtrooms and offices for court personnel in the courthouse. This includes the space for the clerk of the district court and the clerical staff, as well as offices for the various court services officers who supervise juveniles and adult criminal defendants under the jurisdiction of the courts. Counties pay for and maintain computers, copy machines, and office supplies for the operation of the courts located in the courthouse. Counties pay the utilities and security expenses for their local courts.

To effectively manage the judicial budget, the Supreme Court needs to have the authority to place judicial personnel where they are needed.

The notion of one resident judge per county memorialized in K.S.A. 20-301b rests on two considerations: (1) the practical considerations discussed by the committee in 1974, and (2) preservation of access to justice for all Kansans.

First, the 1974 recommendations were predicated on the notion that local municipal courts would be closed and their jurisdiction transferred to the district court in the judicial district where the city was located. The committee concluded that having at least one resident judge per county would alleviate the loss of all municipal courts.

The Advisory Committee's municipal court recommendation was rejected by the Legislature. Local municipal courts throughout Kansas remain intact. Not all municipalities have municipal courts. Some communities are too small to justify establishing them. However, municipal courts remain a significant adjunct to law enforcement in judicial districts throughout Western Kansas where populations are small and caseloads are light. Traveling west to east, the number of municipal court cases for 2010 in Western Kansas are as follows:

15th Judicial District (Cheyenne, Rawlins, Sherman, Thomas, Sheridan, Wallace, and Logan Counties) – 981 cases

25th Judicial District (Greeley, Wichita, Scott, Hamilton, Kearny, and Finney Counties) – 1,218 cases.

26th Judicial District (Stanton, Grant, Haskell, Morton, Stevens, and Seward Counties) – 317 cases.

17th Judicial District (Decatur, Norton, Phillips, Smith, Graham, and Osborne Counties) – 489 cases.

23rd Judicial District (Gove, Trego, Ellis, and Rooks Counties) – 3,495 cases.

24th Judicial District (Lane, Ness, Rush, Hodgeman, Pawnee, and Edwards Counties) – 378 cases.

16th Judicial District (Gray, Ford, Kiowa, Meade, Clark, and Comanche Counties) – 5,492 cases.

30th Judicial District (Pratt, Kingman, Barber, Harper, and Sumner Counties) – 1,744 cases.

20th Judicial District (Russell, Barton, Ellsworth, Rice, and Stafford Counties) – 3,495 cases.

12th Judicial District (Jewell, Republic, Washington, Mitchell, Cloud, and Lincoln Counties) – 981 cases.

Second, in 1974 the committee recognized the difficulty in justifying a full-time judge who is a lawyer to handle an annual case volume of only 200 to 300 cases in some rural counties. Such a judge would have to consolidate case dockets from several counties to create a large enough docket to justify the judge's pay. Implicit in this analysis is the questionable notion that the inequity and inefficiency of the status quo is moderated by



having a lesser-paid, non-lawyer magistrate handle such a small annual case volume.

Third, there was a concern that lawyers would have no interest in becoming district magistrate judges. Recent history has proven otherwise. Since 1998, 10 new district magistrate judge positions have been created. All the judges filling those positions have been attorneys.

Fourth, the concerns regarding access to justice were predicated on the unavailability of technological alternatives to traveling to the county courthouse to engage the courts.

- While Motorola demonstrated the cellular telephone to the FCC in 1972, two years before the Advisory Committee's report, it did not introduce its first "pocket" cellular telephone until 1989. The explosion in available telecommunications alternatives did not occur until after the 1982 breakup of AT&T and the creation of the "Baby Bells."
- The first consumer computers came on the market in 1974-75. The earliest word processing software was not commercially available until the late 1970s – early 1980s. The IBM PC home computer was introduced in 1981. That same year Microsoft's MS-DOS operating system was developed.
- While research was done in the 1960s on interconnecting computers, the notion of an internet was not introduced until 1982. Internet service providers did not begin to emerge until the late 1980s.
- Fax machines did not come into popular use until 1985.
- Video conferencing has not become a practical reality until very recently.

It is clear that the Advisory Committee in 1974 did not contemplate the application of technological innovations to the access to justice issue.

It is a basic principle of economics that the efficient use of an organization's workforce requires allocating the workforce across departments, plants, branches, or, as in the case of the judiciary, across the various districts courts, in proportion to the work that needs to be done. Minimum staffing rules or other constraints that reduce an organization's flexibility to match its workforce to its workload create inefficiencies. From the perspective of economic efficiency, the rule that there must be one resident judge per county regardless of the caseload clearly restricts the Supreme Court's ability to make effective use of its limited resources.

This rather self-evident concept is the guiding principle for the optimal combination of inputs and technological efficiency discussed in most microeconomics textbooks. (For example, Chapter 8 of *Managerial Economics*, Twelfth Edition, by Mark Hirschey, Mason, OH: South-Western Cengage Learning, Inc., 2009.)

Jeffrey Liker, Professor of Industrial and Operations Engineering at the University of Michigan, illustrates how Toyota's use of practices that provide for flexible movement of its workforce contributes to the efficiency of Toyota's production processes. (Chapter 12, *Toyota Culture: The Heart and Soul of the Toyota Way*, by Jeffrey K. Liker and Michael Hoseus, New York, NY: McGraw-Hill, 2008.)

This principle applies not only to the effective management of manufacturing organizations, but also to service organizations such as the Kansas Judicial System. In applying this principle to the service sector, Andris Zoltners, Professor of Marketing at Northwestern's Kellogg Graduate School of Management, finds that the first step for a sales organization seeking to optimize the effectiveness of its sales force is to "balance the workload across territories so that sales force coverage" is proportional to the number of customers and prospects per territory. (Sales Territory

Alignment: An Overlooked Productivity Tool, *Journal of Personal Selling and Sales Management*, vol. 20, no. 3 [Summer 2000], pages 139-150.)

The Kansas Judicial System is not a for-profit entity. Unlike a private enterprise, the Kansas courts cannot simply abandon a consumer market that exhibits a rather small demand for its judicial services. For this reason, the Supreme Court directed the Commission to examine the efficiency of the Kansas Judicial System in light of the principle that the Supreme Court is required to "[p]rovide for an organizational structure for state judicial districts and their component district courts and for state appellate courts that will maximize equitable and timely access to justice for all Kansas citizens and efficiently allocate available resources."

Access to justice is of critical importance to citizens in the large, less populated judicial districts in Kansas. The largest judicial district is the 15th Judicial District, which is located in northwest Kansas and consists of Cheyenne, Rawlins, Sherman, Thomas, Sheridan, Wallace, and Logan Counties. This judicial district consists of over 7,000 square miles. It is over 1,000 square miles larger than the states of Connecticut and Rhode Island combined. However, the total population of the judicial district is less than 25,000 persons. By way of contrast, in the more populated eastern part of the state, Wyandotte County, the 29th Judicial District consists of 151 square miles and has a population of about 158,000 persons.

On average, each of the counties in the 15th Judicial District has lost about 15% of its population during the past decade. In each of those counties, traffic cases constitute the greatest number of cases by far, each of which, according to the Weighted Caseload Study, takes approximately one minute of judicial time to process.

The 15th Judicial District is not unique. Of the 105 counties in the state, 9 counties currently have a population which is smaller now than when the first census was taken in the county in the 1800s. Overall, Kansas has experienced a growth in population from 1.47 million in 1900 to 2.85

million in 2010. However, 54 of the 105 counties in Kansas have a smaller population now than they had in 1900.

The Weighted Caseload Study shows a not-surprising correlation between the population of a county and the need for judicial resources in the county. While Kansas has done a fairly good job overall in providing judicial resources for the state, it is clear that, with declining populations and demand for judicial services in some regions of the state and increasing populations and demand for judicial services in other regions, the state has failed to provide for an efficient allocation of those judicial resources. By any economic measure, to require a resident judge in each county in spite of an insufficient demand for judicial services in the county assures an inefficient court system.

But there remains the overriding concern of access to justice. Given the vast size of the 15th Judicial District, for example, the concern expressed by citizens in that area is that a reduction of judicial positions will deny them reasonable access to justice.

In response to this legitimate concern for access to justice, the pre-technological era Advisory Committee in 1974 set aside concerns for efficiency and recommended adoption of the one-resident-judge-per-county requirement. But technological developments since then make it possible to efficiently manage the court system and provide access to justice for all Kansans without a resident judge in each county. As recommended elsewhere in this report, access to our courts can be enhanced and efficiency improved through the use of e-filing, video conferencing, and changing the jurisdictional limits of our magistrate judges.

While elimination of the one-resident-judge-per-county requirement will enable the Supreme Court to efficiently manage the court system in a manner that meets changing demands on the courts, such a change does not require any court to be closed or the wholesale elimination of judicial positions. To the contrary, the conclusion of the Weighted Caseload Study is

that the system is not grossly overstaffed with judges. Rather, the study shows that the major problem is not the number of judges but their location.

Elimination of the one-resident-judge-per-county requirement would enable the Supreme Court to assign a judge to hear cases in a particular courthouse for the number of days per week consistent with the caseload in that particular county, freeing that judge for additional assignments where needed for the remainder of the week. With this change, flexibility to meet changing demands will be the hallmark, not the rigid assignment of judges without regard to demand.

Elimination of the one-resident-judge-per-county requirement does not compel the elimination of any judicial positions or the elimination of access to the courts in any county. Elimination of this artificial impediment to effective court management will simply enable the Supreme Court to assign judicial resources to where they are needed and for however long they are needed. Further, the office of the Clerk of the District Court would remain open and available in every county. With this change, technological innovations and modern methods of case and personnel management can assure citizens reasonable access to the courts whenever citizens need the courts to intervene.

Finally, the Commission strongly encourages that any reduction in the number of judges that may result from the elimination of the one-resident-judge-per-county restriction should occur through natural attrition.

## **2. Judicial districts should not be consolidated.**

**Consolidation or redistricting of judicial districts is not a viable alternative to eliminating the one-resident-judge-per-county restriction.**

There is no compelling reason to change the geographic layout of judicial districts. The hypothetical cost savings from consolidation, such as a reduction in administrative costs, do not offset the detriments that

consolidation would cause. Increased travel costs will make savings illusory while larger districts will cause more administrative work for chief judges and their administrative staff. Decreasing the number of districts does not solve the problem of district court operating budgets being divided among 105 separate county budgets.

The January 2010 Legislative Post Audit report concluded that significant cost savings could be realized from district consolidation. The report analyzed caseloads for the year 2008 and concluded that, had the Kansas district courts consolidated to seven judicial districts, \$8.1 million could have been saved statewide. Had they consolidated to 13 judicial districts, \$6.2 million would have been saved.

These claimed cost savings resulted from two main factors: (1) elimination of a large number of staff positions due to consolidation; and (2) elimination of a smaller, but still significant, number of judicial positions statewide. The report concluded that consolidation into 13 judicial districts would eliminate 70 staff positions and 19 judicial positions. Consolidation into 7 districts would eliminate 123 staff positions and 19 judicial positions.

The Legislative Post Audit report based its conclusions on the number of case filings in a particular district rather than a "weighted" caseload. In the Post Audit study, a case is a case. Studies based solely on case filings are of limited value when attempting to allocate resources. They assume all cases consume the same amount of judicial resources regardless of complexity.

This defect in the Legislative Post Audit report was one of many factors that prompted the Supreme Court to commission a weighted caseload study, the type of study that had been recommended for over half a century.

The Legislative Post Audit report calculated savings from the number of nonjudicial and judicial positions it believed consolidation would eliminate. In doing so, the report ignored fundamental facts about the operation of the Kansas Judicial System.

The Post Audit report allocated the number of judicial and nonjudicial positions according to the number of cases filed in the proposed consolidated judicial district. This ignored the fact that district-wide case statistics are derived from case statistics in the individual counties in the judicial district. The Post Audit report used district-wide filing data to allocate the distribution of judicial resources in the various counties.

For example, in the Post Audit report's 13 judicial districts model, District A1 in the northwest part of the state would have 44 full-time nonjudicial employees, each handling approximately 238 cases. The 238 cases is a district-wide average. But cases are filed and handled by county. Cheyenne County had 233 nontraffic cases, requiring one nonjudicial employee in the county. This one employee would constitute the entire nonjudicial staff for Cheyenne County. Similarly, Rawlins County had 139 nontraffic cases. Using district averaging, one part-time employee would constitute the entire staff for Rawlins County. Using realistic calculations of staff needs, the nonjudicial staff needs for District A1 would be 52 employees, not 44.

The Weighted Caseload Study calculates clerk staff needs on a per-county basis, thereby providing a more accurate measure of what district consolidation might achieve.

At the request of the Commission, the Office of Judicial Administration used data from the Weighted Caseload Study in a number of consolidation models. The results show very little savings from consolidation of judicial districts. For example, 2 nonjudicial staff per county for the proposed District A1 would require 38 nonjudicial staff positions. Currently, the counties that make up the proposed District A1 have 38 nonjudicial clerk staff positions.

Over the decades, various committees and commissions have looked at redistricting as a means of equalizing judicial workloads. Since the enactment of K.S.A. 20-301b, any such recommendations were for a make-do fix that ignored the underlying impediment to effective court

management created by the one-resident-judge-per-county requirement. To the contrary, the solution lies with abandonment of the one-resident-judge-per-county requirement, rather than in realigning judicial districts.

The models examined by the Commission demonstrate no compelling reason to change the current judicial districts. While there may be cost savings from consolidation, such as reducing some administrative costs, these benefits are outweighed by the detriments that consolidation would cause. Increased travel costs, more administrative work for chief judges, and the need for additional administrative staff would nullify any cost savings from consolidation. Further, consolidation or redistricting may cause unnecessary disruptions that impede access to justice.

Consolidation or redistricting would create unmanageable burdens on the chief judges of the district courts in dealing with a multitude of boards of county commissioners on local court funding issues within their judicial districts.

Currently, some chief judges have to deal with county commissioners from as many as seven different counties in order to obtain funding for the local operations of the courts in the judicial district. The 2010 Legislative Post Audit Performance Audit Report recommends consolidation of the current 31 judicial districts into either 13 or 7 judicial districts. Such an arrangement would result in one chief judge having to deal with as many as 27 different boards of county commissioners in the judicial district, to manage courts in 27 counties, to supervise clerical personnel in 27 different courthouses, and to prepare and administer 27 different court budgets. It is likely that county commissioners would hear from the chief judge overseeing their district court only on an annual basis when the chief judge asked for money to fund local court operations. Such an arrangement does not bode well for a cordial and beneficial relationship between the courts and the counties they serve.

So long as the financing of the state judicial system remains split between the state (for funding of salaries and benefits of court employees)



and the counties (for funding of the physical operation of its local district courts), the consolidation of judicial districts will place unrealistic management burdens on the chief judges of the various judicial districts.

The solution lies in abandonment of the one-resident-judge-per-county constraint, not consolidation of districts.

## **II. DISTRICT MAGISTRATE JUDGES**

### **1. The ratio of district magistrate judges to district judges should be increased.**

**Consistent with the Weighted Caseload Study, this should be achieved by increasing the number of district magistrate judges while reducing (through attrition) the number of district judges.**

All judicial districts should have district magistrate judges and use them for less complex matters. When district magistrate judges are on the quadrennial election or retention ballot, they should be on the ballot in each county in the judicial district in which they serve, just as is the case for district judges.

Over the years, the addition of new judge positions, whether for a district judge or a district magistrate judge, has begun with the local judicial district. The local judicial district makes a request to the Supreme Court during the budget preparation process. Diverse judicial district needs cause different districts to reach different, yet very reasonable and appropriate, solutions concerning the type of judges needed and how those judges should be used. Because of these local considerations, the Supreme Court gives a great deal of deference to a local judicial district's determination of the type of judge that would best serve its needs.

Before court unification in the late 1970's, all district court operations were funded by the counties, with the exception of district judges and court reporters who were paid by the state. Local judicial districts were free to

establish and fund county judge positions. The decision as to the type of judge needed was made on a local basis and could be funded on a local basis.

With court unification, the state assumed the cost of all district court salaries, including those of judges who previously were paid by their local counties. The Supreme Court became involved in the process of determining the need for new judge positions. Approving funding for all new judge positions became the role of the Legislature.

The judicial positions present in the Judicial Branch today are those that were present at the time of court unification plus those positions that have been specifically added by the Legislature since the time of unification. Prior to 1998, there was no statutory provision allowing the addition of district magistrate judge positions. In 1998 the Legislature amended K.S.A. 20-355 to provide that the Supreme Court shall examine the need for additional district magistrate judge positions, as well as the need for additional divisions of the district court (*i.e.*, additional district judge positions). The Supreme Court sought this amendment because the Court's budget request for that year included two district magistrate judge positions for Shawnee County. These were the first district magistrate judge positions requested since the time of court unification and would have been the first district magistrate judge positions located in an urban judicial district.

The request for district magistrate judges in Shawnee County was not without controversy. The bill authorizing the district magistrate positions passed the Senate but failed in the House. Topics raised in the House Judiciary Committee included the fact that district magistrate judges are not required to be attorneys; and the fact that decisions of district magistrate judges may be appealed to district judges, thereby requiring some cases to be heard and decided twice at the district court level. These issues are addressed later in this report.

Since 1998, the Supreme Court has supported adding district magistrate judges where caseload and other factors permit because the

district magistrate judge salary is less than that of a district judge, and every effort has been made to keep budget requests to a minimum.

Both Shawnee and Sedgwick Counties fund judges pro tem to hear many types of cases that are within the jurisdiction of a district magistrate judge. In Sedgwick County these include the child support docket, small claims, protection from abuse, and protection from stalking cases. In Shawnee County, these include limited actions, small claims, and traffic cases (including DUIs). In both Shawnee and Sedgwick Counties district judges hear child in need of care and juvenile offender cases, cases heard by district magistrate judges in some other districts.

The 18th Judicial District, Sedgwick County, requested two additional district judge positions in fiscal year 2009. In addition to political considerations, the 18th Judicial District sought district judges rather than district magistrate judges because magistrates are not required to be attorneys, and it was believed that non-attorney judges would not be accepted in the community.

Kansas currently has 246 authorized permanent judge positions for the 31 judicial districts. As shown in the chart below, 167 of these judicial positions are for district judges and 79 are for district magistrate judges.

<b>County</b>	<b>Jud. Dist.</b>	<b># District Judges</b>	<b># Magistrate Judges</b>	<b>Total</b>
<b>Atchison</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>2</b>
<b>Leavenworth</b>	<b>1</b>	<b>4</b>	<b>0</b>	<b>4</b>
<b>Jackson</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>Jefferson</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Pottawatomie</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Wabaunsee</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Shawnee</b>	<b>3</b>	<b>15</b>	<b>0</b>	<b>15</b>
<b>Anderson</b>	<b>4</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>Coffey</b>	<b>4</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>Franklin</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Osage</b>	<b>4</b>	<b>0</b>	<b>1</b>	<b>1</b>

<b>County</b>	<b>Jud. Dist.</b>	<b># District Judges</b>	<b># Magistrate Judges</b>	<b>Total</b>
<b>Chase</b>	<b>5</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Lyon</b>	<b>5</b>	<b>3</b>	<b>0</b>	<b>3</b>
<b>Bourbon</b>	<b>6</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Linn</b>	<b>6</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>Miami</b>	<b>6</b>	<b>2</b>	<b>0</b>	<b>2</b>
<b>Douglas</b>	<b>7</b>	<b>6</b>	<b>0</b>	<b>6</b>
<b>Dickinson</b>	<b>8</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Geary</b>	<b>8</b>	<b>3</b>	<b>1</b>	<b>4</b>
<b>Marion</b>	<b>8</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>Morris</b>	<b>8</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Harvey</b>	<b>9</b>	<b>2</b>	<b>0</b>	<b>2</b>
<b>McPherson</b>	<b>9</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Johnson</b>	<b>10</b>	<b>19</b>	<b>4</b>	<b>23</b>
<b>Cherokee</b>	<b>11</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Crawford</b>	<b>11</b>	<b>3</b>	<b>0</b>	<b>3</b>
<b>Labette</b>	<b>11</b>	<b>2</b>	<b>0</b>	<b>2</b>
<b>Cloud</b>	<b>12</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Jewell</b>	<b>12</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Lincoln</b>	<b>12</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Mitchell</b>	<b>12</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Republic</b>	<b>12</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Washington</b>	<b>12</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Butler</b>	<b>13</b>	<b>4</b>	<b>0</b>	<b>4</b>
<b>Elk</b>	<b>13</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Greenwood</b>	<b>13</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Chautauqua</b>	<b>14</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Montgomery</b>	<b>14</b>	<b>3</b>	<b>0</b>	<b>3</b>
<b>Cheyenne</b>	<b>15</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Logan</b>	<b>15</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Rawlins</b>	<b>15</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Sheridan</b>	<b>15</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Sherman</b>	<b>15</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>Thomas</b>	<b>15</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Wallace</b>	<b>15</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Clark</b>	<b>16</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Comanche</b>	<b>16</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Ford</b>	<b>16</b>	<b>3</b>	<b>0</b>	<b>3</b>

<b>County</b>	<b>Jud. Dist.</b>	<b># District Judges</b>	<b># Magistrate Judges</b>	<b>Total</b>
<b>Gray</b>	<b>16</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Kiowa</b>	<b>16</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Meade</b>	<b>16</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Decatur</b>	<b>17</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Graham</b>	<b>17</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Norton</b>	<b>17</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Osborne</b>	<b>17</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Phillips</b>	<b>17</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Smith</b>	<b>17</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Sedgwick</b>	<b>18</b>	<b>28</b>	<b>0</b>	<b>28</b>
<b>Cowley</b>	<b>19</b>	<b>3</b>	<b>0</b>	<b>3</b>
<b>Barton</b>	<b>20</b>	<b>2</b>	<b>0</b>	<b>2</b>
<b>Ellsworth</b>	<b>20</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Rice</b>	<b>20</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Russell</b>	<b>20</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Stafford</b>	<b>20</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Clay</b>	<b>21</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Riley</b>	<b>21</b>	<b>3</b>	<b>1</b>	<b>4</b>
<b>Brown</b>	<b>22</b>	<b>2</b>	<b>0</b>	<b>2</b>
<b>Doniphan</b>	<b>22</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Marshall</b>	<b>22</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Nemaha</b>	<b>22</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Ellis</b>	<b>23</b>	<b>2</b>	<b>0</b>	<b>2</b>
<b>Gove</b>	<b>23</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Rooks</b>	<b>23</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Trego</b>	<b>23</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Edwards</b>	<b>24</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Hodgeman</b>	<b>24</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Lane</b>	<b>24</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Ness</b>	<b>24</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Pawnee</b>	<b>24</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Rush</b>	<b>24</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Finney</b>	<b>25</b>	<b>4</b>	<b>2</b>	<b>6</b>
<b>Greeley</b>	<b>25</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Hamilton</b>	<b>25</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Kearny</b>	<b>25</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Scott</b>	<b>25</b>	<b>0</b>	<b>1</b>	<b>1</b>

<b>County</b>	<b>Jud. Dist.</b>	<b># District Judges</b>	<b># Magistrate Judges</b>	<b>Total</b>
<b>Wichita</b>	<b>25</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Grant</b>	<b>26</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Haskell</b>	<b>26</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Morton</b>	<b>26</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Seward</b>	<b>26</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>Stanton</b>	<b>26</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Stevens</b>	<b>26</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Reno</b>	<b>27</b>	<b>4</b>	<b>1</b>	<b>5</b>
<b>Ottawa</b>	<b>28</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Saline</b>	<b>28</b>	<b>4</b>	<b>0</b>	<b>4</b>
<b>Wyandotte</b>	<b>29</b>	<b>16</b>	<b>0</b>	<b>16</b>
<b>Barber</b>	<b>30</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Harper</b>	<b>30</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>Kingman</b>	<b>30</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Pratt</b>	<b>30</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>Sumner</b>	<b>30</b>	<b>2</b>	<b>0</b>	<b>2</b>
<b>Allen</b>	<b>31</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Neosho</b>	<b>31</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>Wilson</b>	<b>31</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>Woodson</b>	<b>31</b>	<b>0</b>	<b>1</b>	<b>1</b>
<b>TOTAL</b>		<b>167</b>	<b>79</b>	<b>246</b>

Thirty of the 105 Kansas counties do not have a district magistrate judge. Of the 31 judicial districts, 6 judicial districts (the 1st, 3rd, 7th, 18th, 19th, and 29th) have no district magistrate judge but they do have 74 district judges.

The remaining 25 judicial districts have a total of 172 judges of the district court; 93 district judges (54%) and 79 district magistrate judges (46%).

The four largest judicial districts are single-county districts. They are: the 18th (Sedgwick County), the 10th (Johnson County), the 3rd (Shawnee County), and the 29th (Wyandotte County). Of these only Johnson County

has district magistrate judges. It has 19 district judges (83%) and 4 district magistrate judges (17%). The other 3 urban districts have a total of 59 district judges and no district magistrate judges.

Johnson County has shown that district magistrate judges can be effectively used in an urban district. Its district magistrate judges preside over protection from abuse, civil limited actions, some misdemeanor, juvenile offender, child in need of care, truancy, probate, misdemeanor domestic violence, and traffic cases. They also conduct first appearance hearings in criminal cases.

A number of district magistrate judges could be used in the urban and nonurban districts which currently do not have a district magistrate judge, with the number of district judges reduced by a corresponding number.

The current salary of a district judge is approximately \$120,000. When fringe benefits, including family health insurance, are added, the total cost is approximately \$169,000 per judge. The salary of a district magistrate judge (excluding supplemental pay paid by some counties) is approximately \$62,000. When fringe benefits, including family health insurance, are added, the total cost is approximately \$92,000 per district magistrate judge.

Reducing the number of district judges and increasing the corresponding number of district magistrate judges would result in a savings of approximately \$77,000 per judicial position.

If the mix of district judges and district magistrate judges in the 25 judicial districts noted earlier (54%/46%) existed in the 6 judicial districts where there are no district magistrate judge positions, the savings in salaries and benefits would be over \$2.6 million without any overall change in the total number of judicial positions.

When combined with other recommendations in this report regarding abandonment of the one-resident-judge-per-county restriction, expansion of the jurisdiction of district magistrate judges, and all future district magistrate

judges being lawyers, an increase in the overall number of district magistrate judges would yield not only cost savings (which might be less should the salaries of district magistrate judges be increased), but also more efficient case management.

## **2. All future district magistrate judges should be lawyers.**

**The selection of lawyers to become district magistrate judges will increase flexibility and public faith in the judicial system.**

**Existing district magistrate judges who are not lawyers should be able to continue in office and to run for reelection or retention.**

**Current non-lawyer district magistrate judges who leave the bench should not be eligible to hold future judicial positions unless they become lawyers.**

District magistrate judges who are not lawyers bring to the bench valuable life experiences from careers in fields outside the law. All district magistrate judges pursue continuing judicial education courses that expand and strengthen their knowledge of the legal process. However, when future vacancies occur in district magistrate positions, they should be filled by candidates who are qualified lawyers.

Non-lawyer district magistrate judges must successfully complete an examination within 18 months after taking office and be certified by the Supreme Court as required by K.S.A. 20-337. The training of a new non-lawyer district magistrate judge typically consists of at least 20 hours of training. The new judge is given an extensive manual of materials covering all aspects of the law confronted by district magistrate judges. The new judge is tested on these materials and must successfully complete the test within 18 months after taking office. If the new judge fails the test, he or she is given the opportunity to retake the same test. Some district magistrate judges have failed the test twice before eventually passing. In the meantime,



and for as long as a year and a half, the new judge continues to hear and decide cases throughout this testing and certification process.

The municipal courts in the 24 cities of the first class in Kansas are required by law to be staffed with lawyer-judges. Our municipal court judges preside over violations of municipal ordinances. They have no authority to hear any other matters. Our non-lawyer district magistrate judges, on the other hand, preside over a broad variety of civil and criminal cases involving much more than the construction and application of city ordinances.

Article 3, § 7 of the Kansas Constitution requires all judges of the district court to be at least 30 years of age, to be duly authorized to practice law in Kansas, and to satisfy any other requirements imposed by law. K.S.A. 20-334 adds the requirement that a district court judge must have spent five years in the practice of law or teaching full-time in an accredited law school. Admission to practice law in Kansas requires a degree from an accredited law school and passing a rigorous two-day bar examination. A lawyer can use time in service as a district magistrate judge to satisfy the five-year requirement of K.S.A. 20-334. But a non-lawyer district magistrate judge need only have a high school education or high school equivalency plus certification by our Supreme Court.

As expressed by De Tocqueville:

"Men who have made a special study of the laws derive from occupation certain habits of order, a taste for formalities, and a kind of instinctive regard for the regular connection of ideas, which naturally render them very hostile to the revolutionary spirit and the unreflecting passions of the multitude."

The training provided new non-lawyer district magistrate judges is an inadequate substitute for the rigors of a three-year law school curriculum.

The cadre of lawyer-judges in our courts have spent, for the most part, their professional lives in the practice of dispute resolution. Judges spend their days applying a broad range of legal principles, common law precedents, administrative regulations, and statutes to resolve disputes between litigants and often between their lawyers. Our lawyer-judges have acquired the tools and skills to do so through their rigorous academic training and real-life experiences in the practice of law. The same cannot be said of all our lay district magistrate judges. Some came to the bench with experience in the court system, but not necessarily involving dispute resolution. Our lay district magistrate judges have come from the ranks of our court clerks; some come from agriculture, from law enforcement, or from commercial enterprises. None joined the bench with the academic and practical experience in dispute resolution which district magistrate judges engage in every day.

As early as 1927, the Kansas Judicial Council recommended that judges of all courts of the state be qualified lawyers.

Requiring district magistrate judges to be lawyers will increase flexibility in judicial assignments because, as noted in more detail in recommendation No. 3 below, the jurisdiction of law-trained district magistrate judges then could be expanded so as to allow them to hear more types of cases.

De Tocqueville observed (more probably true today than when first expressed): "Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question." Many of the cases currently heard by district magistrate judges have become more complex over the years with new statutory and case-created requirements. An example is child in need of care cases in which substantive and procedural rights have been extended to interested parties beyond the child and the natural parents.

Rulings in child in need of care cases affect the most fundamental of human relationships. Proceedings in these cases are often the bases for later

proceedings to terminate the parental rights of the natural parents. Thus, the law demands that all have legal representation. There are usually separate attorneys for the parents; an attorney serving as guardian ad litem for the child; a separate attorney for the child pursuant to K.S.A. 2010 Supp. 38-2205(a) when the child's position is contrary to that of the guardian ad litem regarding the child's best interests; and attorneys for interested parties as defined by K.S.A. 38-2241, such as grandparents, persons with whom the child has resided, persons with whom the child has close emotional ties, and others. Prudence would seem to dictate that the judge ruling on the many varied issues raised by the lawyers in these important proceedings should also have graduated from an accredited law school and passed the rigorous two-day state bar examination before joining the bench.

If Recommendation No. 4 below is implemented, an appeal from the decisions of a district magistrate judge to a district judge following a hearing on the record would be eliminated if the district magistrate judge was a lawyer.

It has been argued that lawyers are not interested in or available to fill district magistrate judge positions. Recent experience suggests otherwise. Of the 79 current district magistrate judges, 33 (approximately 42%) are attorneys. An increasing number of attorneys serve as district magistrate judges. In 1998 the Supreme Court obtained a statutory amendment, SB 577, to accommodate its budget request for new district magistrate judge positions. Since then, 10 district magistrate judge positions have been added statewide. The judges who have filled those positions have all been attorneys:

- 10th Judicial District (Johnson County) – 4
- 25th Judicial District (for Finney County) – 2
- 8th Judicial District (for Geary County) – 1
- 9th Judicial District (for Harvey and McPherson Counties) – 1
- 27th Judicial District (Reno County) – 1
- 21st Judicial District (for Riley County) – 1.

Our district magistrate judges frequently preside over high volume dockets. For most citizens, their only contact with the judicial system is in proceedings presided over by a district magistrate judge. The average citizen's view of the judicial system as a whole is formed by appearances before a district magistrate judge. Prudence dictates that the presiding judicial officer in such cases should have at least the training we demand for the advocates appearing in that court.

**3. The Supreme Court should seek to expand the subject matter jurisdiction of district magistrate judges.**

**District magistrate judges should be permitted to hear uncontested or less complicated matters which they are currently not permitted to hear.**

**Expanded district magistrate judge subject matter jurisdiction should not include more complex issues, except by consent of the parties involved.**

District judges and district magistrate judges both have jurisdiction within their districts. K.S.A. 20-301a provides that the judicial power and authority of a judge of the district court in each judicial district may be exercised anywhere within such judicial district and may be exercised anywhere within any other judicial district when assigned to hear any proceeding or try any cause in such judicial district, as provided in K.S.A. 20-319 and amendments thereto. The issue here is the types of cases that a district magistrate judge may hear within the judicial district.

The WCLS Report to the Supreme Court, Appendix H, addresses expansion of the subject matter jurisdiction of district magistrate judges:

"Many focus group participants agreed that the job duties of magistrates could be expanded. For example, magistrates could conduct all (instead of some) felony first appearance hearings and misdemeanor arraignments, and a host of other hearings

such as uncontested divorces they are currently prohibited by statute from conducting. This expansion of magistrates' roles would allow for a better use of the judicial resources that currently exist in Kansas. . . ."

The Supreme Court should consider expanding the subject matter jurisdiction of district magistrate judges to permit them to hear uncontested or less complicated matters which they are currently not permitted to hear. An example is authorizing district magistrate judges to hear uncontested divorces. In some judicial districts the sole district judge travels a great distance to a remote county in the judicial district to conduct a default divorce that takes about ten minutes of actual court time. If permitted to do so, a district magistrate judge could easily conduct such a hearing.

Increasing the subject matter jurisdiction of district magistrate judges would increase both the number and types of cases that could be heard by magistrates. This would make better use of the time of both district magistrate judges and district judges. District judges in multi-county districts would not have to travel as often to counties served by a district magistrate judge to hear cases and motions of a more routine nature. These cases and motions could instead be heard by a district magistrate judge.

A Judicial Council advisory committee could be an appropriate vehicle for receiving additional comments from district magistrate judges, practitioners, and other interested parties. Additional types of cases or motions that could be heard by district magistrate judges could be identified and submitted to the Supreme Court for further review and submission to the Legislature for its consideration.

District magistrate judges have commented that they are both willing and able to take on additional types of cases and motions. The willingness and ability of district magistrate judges to meet the challenge of expanded subject matter jurisdiction was demonstrated in 1999 when they were successful in expanding their jurisdiction to include felony arraignments subject to assignment by their chief judge. See 1999 Session Laws of

Kansas, Ch. 159, Sec. 1. The Kansas District Magistrate Judges Association sought the 1999 amendment and lobbied for its passage. The rationale for the amendment was to make district magistrate judges more responsive to the needs of their judicial districts.

The Commission's recommendation also would allow district magistrate judges to hear some more complex issues with the consent of the parties involved. This would provide litigants with a choice between a district judge and a district magistrate judge at the outset of a case. K.S.A. 20-302b (d) provides another option at any stage of the case by allowing a chief judge to reassign an action from a district magistrate judge to a district judge upon the motion of a party. In the federal system, and with the consent of the parties, federal magistrates conduct trials on matters typically reserved for the federal district court. The Court should consider a similar expansion of the jurisdiction of the district magistrate judges of Kansas.

**4. There should be no automatic de novo appeal to a district judge from a final order or decision on the record by a lawyer district magistrate judge.**

**Appeals from final decisions of district magistrate judges who are lawyers should follow the normal appeal process to the Court of Appeals or Supreme Court.**

**All final orders and decisions by any district magistrate judge (lawyer or not) should be on the record.**

By statute, decisions of Kansas district magistrate judges can be appealed to district judges. Several statutes address whether the appeal is (1) trial de novo, which requires the case to be retried before the district judge, or (2) an on-the-record review, which requires the district judge to read the transcript or listen to the audio recording of the proceedings before the district magistrate judge and then decide the case anew. The general statutory provision is K.S.A. 20-302b, which provides in relevant part:

"In accordance with the limitations and procedures prescribed by law, and subject to any rules of the supreme court relating thereto, any appeal permitted to be taken from an order or final decision of a district magistrate judge shall be tried and determined de novo by a district judge, except that in civil cases where a record was made of the action or proceeding before the district magistrate judge, the appeal shall be tried and determined on the record by a district judge."

Other statutory provisions also address appeals from district magistrate judges and expressly provide for either de novo or on-the-record review.

An appeal from a district magistrate judge to a district judge means that the same issues are litigated twice, a practice that may not result in the most efficient use of a district judge's time.

No record is maintained of the total number of Kansas cases appealed each year from district magistrate judges to district judges. The FullCourt case management system identifies the number of appeals from district magistrate judges to district judges in three types of cases: criminal misdemeanors, traffic, and fish and game cases. In the aggregate, the appeal rate is exceedingly low in these cases.

<b>Type of Case</b>	<b>Number of Appeals from District Magistrate Judges to District Judges in FY 2010</b>	<b>Total Case Type Filings FY 2010</b>	<b>Percentage of Appeals</b>
Criminal Misdemeanors	6	17,038	0.04%
Traffic	36	177,029	0.02%
Fish and Game	2	2,683	0.07%
Total Criminal, Traffic, and Fish and Game	44	196,750	0.02%

But data are not available for appeals in other case types to a district judge. District magistrate judges hear a significant number of cases, including juvenile, limited action civil cases, and probate cases. The experiences of district judges suggest that de novo appeals to the district judge in these cases represent a significantly greater number than those reported here.

**5. Counties should not be allowed to hire their own district magistrate judges.**

**Counties should continue to be able to hire and pay for lawyers to serve as pro tem judges.**

**Counties should continue to be able to supplement the pay of district magistrate judges.**

One of the issues arising out of the decision to recommend repeal of the one-resident-judge-per-county requirement is whether counties should be allowed to hire their own district magistrate judge. That option had been a part of previous bills to repeal the one-resident-judge-per-county requirement. Allowing counties to hire their own district magistrate judge would create a dual system that harkens back to the court structure that existed before court unification in the 1970's.

Nevertheless, under current law counties in any judicial district may hire pro-tem district court judges to fill special needs. A number of counties currently do so. Such an arrangement allows counties to meet their needs without creating judicial positions that are accountable to different constituencies.



### **III. ELECTRONIC FILING**

- 1. Electronic filing and centralized case and document management systems should be developed and implemented statewide as soon as possible.**

**The costs for the systems should be paid by state funds and user fees.**

**E-filing should be implemented first.**

**Modifications to permit statewide accessibility of the case management and document management systems should follow as quickly as possible.**

The district courts in Kansas hear a wide variety of cases involving criminal charges, traffic infractions, civil disputes, family and marital disputes, juvenile offenders, children in need of care, probate matters involving estates and trust, guardianships for minors and incompetent persons, and the care and treatment of the mentally ill. As stated in the *Annual Report of the Courts of Kansas*, in fiscal year 2011 482,344 cases were filed in Kansas district courts, including 213,844 civil and domestic cases and 36,754 criminal cases.

Statewide electronic filing, case management, and document management systems will enable courts to manage more efficiently the flow of documents that contain the claims, defenses, and the record of court proceedings that make up each case filed in the district courts. Judges, parties, attorneys, sheriffs serving process, court services officers, court clerks, and others will be able to file and view court documents electronically. Public authorities will be able to use bulk data transfers to file cases such as those originating with traffic citations or tax warrants. An e-filed document will be automatically routed into the court document management system, which will allow the court to electronically issue notices, subpoenas, orders, journal entries, and other documents. An e-filing

system will permit the clerk of the court to transmit court documents from the district court to the appellate courts, to other courts, to members of the public, to other governmental entities, and to law enforcement and corrections authorities.

When the various statewide electronic systems are fully implemented, Kansas courts will include the following characteristics:

- The courts will receive all filings electronically.
- Each transaction will be entered only once (by the attorney, self-represented litigant, or court personnel) and transmitted electronically to all appropriate parties.
- Most transactions will be completely electronic and will not require a paper document. The use of paper documents will be the exception rather than the norm. Information will be available in a standard format to all appropriate parties.
- Court workflows will be highly automated. Electronic transfer of documents will replace paper routing.
- Clerks in any office will be able to assist in processing cases in any other courthouse in the state, allowing clerks across the state to share workloads and resources.

Fully implemented, these systems will improve court efficiency, improve access to court information, and reduce costs. Kansas' 3rd Judicial District, Shawnee County, has used e-filing for civil debt collection cases for several years. The use of e-filing in Shawnee County has permitted the court to forego hiring additional clerks. Based on data captured during the weighted caseload study, in fiscal year 2010 Shawnee County was able to process on average 3,073 e-filed limited actions cases per assigned clerk. This compares with an average of 1,354 non-e-filed limited actions cases per

assigned clerk in the ten counties with the next highest totals of limited actions filings.

Statewide, during fiscal year 2010, there were more than 140,300 limited actions cases filed. Subtracting Shawnee County's e-filed cases leaves a total of approximately 115,700 non-e-filed limited actions cases. Had these cases been filed electronically and been processed using the Shawnee County model, a potential savings of 4 staff positions per 10,000 cases would have been possible. If the statewide judicial system enjoyed only half of the gain in efficiency experienced in Shawnee County, 24 clerk positions across the state could be reassigned or eliminated.

Johnson County has recently implemented its own e-filing system which applies to all types of cases. Preliminary data show a significant reduction in the time clerks spend processing e-filed Johnson County cases. Implementation of statewide e-filing should result in comparable reductions in the time clerks spend processing all types of cases.

Approximately nine years ago, the Kansas Supreme Court and the Office of Judicial Administration adopted a long-term goal of having a fully integrated electronic court system in all 31 Kansas Judicial Districts and the appellate courts. E-filing is the next step in achieving this goal.

Previous steps have included implementation of case management systems used in every district court. A case management system manages the receipt, processing, storage, and retrieval of data associated with a case and performs actions on the data allowing uniform reporting and accounting to the Office of Judicial Administration and the transfer of data to other entities, such as to the Department of Revenue for the suspension of drivers' licenses.

Other steps included implementation of document imaging and management systems and implementation of methods for paying fees and fines online using CitePay USA. After a pilot project in three judicial districts, CitePay became available statewide for online payments in traffic

cases in 2010. Any servicing or processing fees for electronic payments are paid by the payor.

Eventually, parties will be able to make electronic transfers to pay all fines, costs, and fees. A pilot project for these electronic payments began in selected court locations in May 2011, and statewide installation is to be completed in early 2012.

E-filing is critical technology in a time of limited resources. Implementation of e-filing will enable the Judicial Branch to streamline its processes and realize efficiencies that will continue into future years.

Statewide e-filing, case management, and document management systems will have several cost-saving advantages over current systems. These statewide systems will:

- reduce the time and effort dedicated to data entry. Information can be automatically extracted from the documents submitted.
- create an accurate electronic record without the need to scan documents into the court's system.
- reduce the time spent manually searching for lost case files or retrieving files from lawyers who checked court files out of the clerk's office.
- allow clerks, judges, and others to access court files at any time from any location.
- reduce the need for clerks' offices to provide records to attorneys and title companies.
- reduce the chance of data error by eliminating the need for multiple re-entries of the same data.

- reduce the amount of walk-in traffic seeking to file papers, obtain docket information, or obtain documents, freeing clerks to perform other tasks.
- eliminate or minimize costs for postage, delivery, photocopying, file assembly, and similar expenses for the court, attorneys, and litigants.
- allow 24-hour access to the courts 7 days a week for the purpose of e-filing pleadings, motions, and other documents. No longer will lawyers and litigants be restricted to the business hours of the clerk of the district court.
- benefit lawyers and litigants from the quick turnaround of documents submitted electronically for the court's approval and signature.
- reduce file storage costs.
- allow districts to share personnel. Judicial Branch employees throughout the state will be able to provide remote assistance.
- allow efficient transfer of documents and information between courts, such as between district and appellate courts when a case is appealed and between two district courts when a case is transferred.
- allow law enforcement, prosecutors, and state agencies to efficiently transmit to and receive information from the courts.

**2. Statewide e-filing should be mandatory (with exceptions only for pro se, small claims, and indigent litigants).**

**There should be an e-filing fee for civil cases to supplement state funds for development, maintenance, and enhancement of the e-**

**filing, case management, and document management systems, and to establish a fund for future updating of software and hardware.**

The Supreme Court should require the statewide use of e-filing. The ultimate responsibility for funding the courts lies with the Legislature. The increased efficiencies that come with e-filing merit financial support from the Legislature. Nevertheless, users of the system derive benefits that justify their contribution to the overall cost of acquiring, maintaining, and eventually upgrading an e-filing system.

Attorneys and other e-filers will derive substantial benefits from e-filing. Litigants will be able to file documents outside of regular business hours of the clerk's office. Filing will not require a trip to the courthouse by the lawyer, staff, or courier. Documents previously delivered by mail for filing will not need to be sent days in advance to assure delivery to the clerk by a deadline. Copying expenses for documents being filed, their attachments, and for service copies will be eliminated. Traditional file storage space will become unnecessary. Clerical time for sorting, filing, and physically retrieving documents will be eliminated. These savings will come at a cost to the court to establish, maintain, and periodically update the e-filing system. Accordingly, it is reasonable and equitable to require e-filers who benefit from the system to contribute to its cost and upkeep.

In determining how to allocate the costs of creating, maintaining, and updating an e-filing system, the Supreme Court should take into account not only the benefits to the various users and their increased access to the judicial system through e-filing, but also the danger of undermining access to the courts by imposing a prohibitive user fee. The Court should consider any net cost that an e-filing fee will add to a litigant's total costs.

An examination of user e-filing fees in other states suggests that a per document filing fee could be as much as \$5 or \$6. Alabama charges a \$5 per document e-filing fee. Colorado charges \$6. New Mexico charges \$6. Wisconsin charges \$5.

The Supreme Court also should examine the document retrieval fee used in the United States District Court's PACER system. Under that system litigants may examine, and download for later use, any filed document one time at no cost. Thereafter, a fee of \$0.08 per page, up to a maximum of \$2.40 per document, is charged for later access to the document. Fees totaling less than \$10 in any given quarter are waived.

The Supreme Court should review e-filing fees on a regular basis with a view to reducing them when original acquisition expenses are satisfied and funds from the Legislature and accumulated e-filing fees are sufficient to cover ongoing maintenance and replacement costs for the e-filing, case management, and document management systems.

**3. All e-filers, including pro se litigants, small claims litigants, and indigent litigants who choose to e-file, should be required to pay civil e-filing fees.**

Parties to a criminal prosecution should not be required to pay for use of the e-filing system. Parties to civil litigation should be required to pay for use of the system.

Attorneys should be required to use the e-filing system. Pro se and indigent litigants should not be required to use e-filing, but if they choose to do so they should pay the standard document filing fee. Pro se litigants who use e-filing enjoy, for the most part, the same benefits as other e-filers. They have 24-hour access to the clerk's office for the purpose of filing or examining certain documents. Indigent plaintiffs may be excused from an up-front payment of the docket fee when a case is filed, but if such a plaintiff wishes to take advantage of the ease and convenience of optional e-filing, he or she should pay the standard e-filing fee.

**4. All e-filing fees, without exception, should go to the Judicial Branch.**

Fees generated from the e-filing system will be needed to support its maintenance and the future enhancement of the court's e-filing, case

management, and document management systems. Accordingly, e-filing fees should be dedicated to these purposes and not diverted to some other use. By doing so, and with help from the Legislature, e-filing fees may be set at the lowest reasonable rate and reduced in time once acquisition costs are satisfied and ongoing maintenance and upgrading is the principal expense, thereby assuring reasonable electronic access to the courts.

**5. The e-filing system should be phased in to eventually cover all counties and judicial districts and the appellate courts.**

**In order to generate e-filing fees quickly, high volume courts should be phased in first, followed by courts with a lower volume of cases, followed by the appellate courts.**

The efficiencies and streamlined processes e-filing will permit will benefit the entire court system. E-filing eventually will allow the Supreme Court to reduce the number of clerical personnel or reassign them to new positions, resulting in cost savings over time and more efficient court operations. Statewide e-filing with e-storage of documents will have many cost-saving advantages over the current manual paper-filing environment.

The implementation of statewide e-filing, case management, and document management systems is of the highest priority. The estimated cost for these systems will be approximately \$8 to \$9 million. The Supreme Court should explore all means of raising revenues as rapidly as possible to implement these systems, primarily by seeking direct funding from the Legislature.

The Judicial Branch fulfills a core function of government. It has never been and should never be a self-funding enterprise. It exists to serve the citizens of Kansas, and the funds necessary for its operations are borne by the citizenry through their taxes. Its existence benefits not only its users, but also those who are able to settle their disputes short of court action but with the knowledge that the courts are there as an institution of government to resolve disputes and administer justice when called upon to do so.



Providing adequate funding for the Judicial Branch is the constitutional duty of the Legislature. Nevertheless, while the legislative process of appropriating funds is underway, the partial funding of an e-filing system can be achieved by imposing e-filing fees and introducing e-filing first in those counties and districts with the highest volumes of cases.

As noted in the WCLS Report to the Supreme Court, the highest number of cases by far are filed in the four urban judicial districts which are all single county districts: Sedgwick (18th Judicial District), Johnson (10th Judicial District), Shawnee (3rd Judicial District), and Wyandotte (29th Judicial District). Here are the Weighted Caseload Study statistics for cases filed in 2011 by judicial districts:

<u>Judicial District</u>	<u>2011 Case Filings</u>	<u>% of Total</u>	<u>Cumulative % of Total</u>	<u>Judicial District</u>	<u>2011 Case Filings</u>	<u>% of Total</u>	<u>Cumulative % of Total</u>
18	84,406	16%	16%	23	12,014	2%	77%
10	60,147	11%	27%	31	11,338	2%	79%
3	52,657	10%	37%	9	11,314	2%	81%
29	34,036	6%	44%	5	11,151	2%	83%
8	17,050	3%	47%	26	10,908	2%	85%
28	15,361	3%	50%	21	10,339	2%	87%
30	14,194	3%	53%	2	9,925	2%	89%
20	13,325	3%	55%	6	9,398	2%	91%
27	12,971	2%	58%	15	9,224	2%	93%
25	12,906	2%	60%	14	8,310	2%	94%
7	12,885	2%	63%	19	7,839	1%	96%
4	12,818	2%	65%	12	7,576	1%	97%
11	12,768	2%	67%	22	6,338	1%	98%
1	12,598	2%	70%	24	4,824	1%	99%
16	12,234	2%	72%	17	<u>4,180</u>	1%	100%
13	12,069	2%	74%	<b>Total</b>	<b>527,103</b>		

Six judicial districts account for half of the caseload for the entire state. Revenues from e-filing fees can be optimized by implementing e-filing as quickly as possible in high caseload districts.

A new e-filing system should be tested in a number of environments before being implemented statewide. The Supreme Court's initial pilot projects for Sedgwick County (18th Judicial District), Douglas County (7th Judicial District), and Leavenworth County (part of the 1st Judicial District) provide a means of testing the e-filing system in high, medium, and relatively low volume courts. Upon completion of the pilot projects, the Court should expedite implementation of e-filing throughout the remainder of the state, giving priority to courts with higher volumes of cases over those with lower volumes.

**6. Statewide implementation of e-filing should be accomplished within three years.**

E-filing will increase the efficiency of the courts, attorneys, and the litigants and others who appear in court. Therefore, there is no reason to delay its implementation. Rapid implementation will result in e-filing revenues that will help the Court amortize the costs of the system in as short a time as possible.

**7. If leasing would result in quicker statewide implementation, the Supreme Court should consider leasing the e-filing system rather than using a purchase/license payment structure.**

The objective of implementing a statewide e-filing system should be met as quickly as possible. If leasing allows implementation sooner, that solution should be explored.

Advantages of leasing an e-filing system generally include speed of implementation and subject matter expertise provided by the leasing company. But a major factor affecting the speed of statewide implementation of an e-filing system for Kansas is the recent completion of

the State of Kansas purchasing process for a traditional vendor-supplied electronic filing system. Abandoning the current purchasing agreement and beginning the state process for securing a leasing arrangement could potentially result in delaying the scheduled implementation of electronic filing in Kansas.

## **8. Decisions on hardware acquisitions should be left to the counties.**

### **But the Court's Office of Judicial Administration should develop a list of recommended hardware.**

As noted elsewhere in this report, a portion of the funds needed to maintain the Judicial Branch is provided by the state and a portion is provided by the counties. The state assumes the cost of Judicial Branch personnel, and the counties pay for the operating costs of the district courts. The operating costs paid by the counties include the hardware used by the district courts, such as servers, computers, printers, copy machines, routers, internet connections, and the like. Under the present economic conditions, the dual funding of the district courts is unlikely to change, and the counties will continue to pay for the operating costs of the district courts.

Each county should be able to make decisions regarding its district court hardware needs based on local circumstances. But it is in the best interests of the Judicial Branch that county-funded hardware used by the courts meets certain uniform statewide standards in order to permit efficient statewide sharing of data in all systems.

The Office of Judicial Administration has provided recommended hardware specifications to the district courts since 2002, the first year of the FullCourt statewide case management project. This process ensures that all district courts use similar hardware and operating systems so that Office of Judicial Administration's Information Services personnel can provide technical support to the district courts. These recommendations are reviewed on an annual basis and are updated as needed.

This is a useful practice that should expand to other types of hardware. Various district court personnel have expressed the desire that the Office of Judicial Administration provide support for their computer hardware and systems. While the Office of Judicial Administration provides a helpdesk and support services for the FullCourt software used in the district courts, it is not staffed in a manner that would allow it to provide the level of hardware support needed on a statewide basis. The Office of Judicial Administration should continue to explore ways in which to further support the district courts in their acquisition and maintenance of computer hardware.

**9. The Supreme Court should permit e-filing access for pro se and inmate litigants that assures access to justice without abuses or breaches of privacy rights.**

**The Court should consult with the National Center for State Courts for information regarding pro se and inmate use of e-systems.**

By its very nature, e-filing increases public accessibility to the courts. This is true for parties represented by counsel as well as self-represented civil litigants and prison inmates who are self-represented. With respect to prisoners and self-represented parties, the ability to file and retrieve court documents from any remote computer presents a higher level of risk than traditionally experienced when filing or gaining access to court documents requiring a trip to the courthouse. These new e-risks must be identified, quantified, and resolved to the greatest extent possible in a manner that preserves the convenience and efficiency of e-filing.

Our district courts have experienced instances in which prison inmates or pro se litigants file frivolous actions or file documents with the court which contain confidential, scandalous, or defamatory assertions or statements. E-filing will make such abuses easier.

Lawyers who file documents with the court on behalf of their clients are subject to the constraints of the Kansas Rules of Professional Conduct,

Kansas Supreme Court Rule 226 *et seq.* Lawyers who violate the Rules of Professional Conduct are subject to consequences that range from an informal admonition to losing the privilege to practice law in Kansas. See Kansas Supreme Court Rule 203.

Pursuant to Rule 3.1 of the Kansas Rules of Professional Conduct, a lawyer shall not "bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous." A lawyer must be candid in communications with the court, and shall not make false statements of fact or law to the court or offer evidence that the lawyer knows to be false. Rule 3.3.

Self-represented inmates and other pro se litigants are not bound by these ethical constraints. However, they are bound by the provisions of K.S.A. 60-211 that require pleadings, motions, and other papers filed with the court to be signed by the pro se litigant. The signature of a pro se litigant constitutes a representation that the contents of the filing is not frivolous, is not being presented for an improper purpose, and has (or is likely to have after discovery) evidentiary support. The court may impose sanctions on pro se litigants for violating K.S.A. 60-211. Nevertheless, with e-filing it is possible that any computer with access to the internet may have immediate access to documents filed with the court. Thus, there is a significant risk of widespread circulation of improper, scandalous, or defamatory statements, or private or confidential information contained in an e-filed document before the court has the opportunity to take corrective action under K.S.A. 60-211. Closing the barn door after the horse has escaped is of little value.

**10. The Supreme Court should develop appropriate rules to allow late filings by litigants who are unable to timely e-file because of the unavailability of e-filing systems due to technical or other problems.**

Lawyers are mindful that their time and effort normally translate into a monetary cost to the client. The preparation of pleadings, motions, and the like may prove unnecessary as circumstances change and cases settle. Accordingly, lawyers tend to delay court filings until the filing deadline

approaches. With e-filing, the filing lawyer or pro se litigant need not physically deliver the document to the clerk of the district court by office closing time on the day of the deadline. Timely e-filing can be accomplished by the click of the mouse at an office or home computer as late as 11:59 p.m. that day.

Litigants count on 24-hour availability of the court's e-filing system. E-filing systems suffer from the same occasional interruptions experienced by other computer systems when confronted with power or system failures. Court rules should be adopted to permit late e-filing of documents when such an interruption occurs. Without such a rule, an essential advantage of e-filing will be compromised.

#### **11. All court records and documents should be e-accessible statewide.**

**The Supreme Court should establish access standards for both represented parties and pro se litigants.**

**Before making e-access available to the public and to litigants, the Court should adopt policies and procedures designed to protect privacy rights.**

Making court records and documents e-accessible statewide will greatly enhance internal efficiencies in the courts' operations. Court records will be accessible from anywhere by means of an internet connection. District court clerks in any county or district in the state will be able to assist courts in other counties or districts in processing their case documents and records.

E-filing and other e-access systems increase public accessibility to the courts. This is true for parties represented by counsel, for self-represented civil litigants, and for prison inmates who are self-represented. As noted earlier, the ability of prisoners and self-represented parties to file and retrieve court documents from any remote computer presents a higher level

of risk than traditionally experienced when filing or gaining access to court documents required a trip to the courthouse.

E-access to documents will eliminate one of the traditional methods of assuring that the privacy rights of individuals involved in judicial processes are maintained: the presence of court staff to serve as gatekeeper for court documents. This is of particular importance with respect to documents filed under seal or documents containing confidential, proprietary information. With e-access to court documents, the Court must find a substitute gatekeeper.

Security mechanisms implemented in the e-filing, case management, and document management systems should assure that only individuals having the right to access a particular document are provided access.

**12. The Supreme Court should adopt rules or propose legislation to recognize the courts' electronic version of documents as the official court record.**

It is essential that an e-document filed with the court is recognized as *the* official document. The Supreme Court should adopt appropriate rules and propose legislation to assure this happens.

Supreme Court Rule 122, adopted in 2000 and subsequently amended in September 2006, provides for the electronic filing and transmission of district court documents. The rule provides that a district court may, by local rule, require documents to be filed, signed, or verified by electronic means that are consistent with technical standards for electronic filing and transmission as approved by the Supreme Court. The local rule may impose a reasonable fee for electronic filing and/or remote access viewing, if available, to support the expenses associated with the e-filing system. An accompanying Order Adopting Technical Standards provides guidelines for implementation of electronic filing and transmission systems in Kansas district courts pursuant to Supreme Court Rule 122.

The Supreme Court Electronic Filing Committee has recognized the need to revise the current rule and standards. The Kansas Judicial Council is studying this issue and expects to have a rule ready for Supreme Court review early in 2012.

The Supreme Court should adopt a rule that recognizes e-filed documents as official documents for all purposes. This issue is addressed to some extent in the current technical standards, but it may need to be revised. It is important that the convenience and efficiency of e-filing not create additional issues for litigants or the court in identifying authentic court documents.

#### **IV. OTHER TECHNOLOGY**

- 1. The Supreme Court should encourage district courts and counties to use video equipment and strongly encourage them to use audio equipment in order to preserve a record in the event a court reporter is not available in the courtroom.**

**Appellate courts should examine the use of video conferencing for some appellate arguments.**

**The Supreme Court should set mandatory standards for audio/visual equipment to be used by counties in their purchasing decisions.**

**The Office of Judicial Administration should develop for the district courts a list of the types of hearings appropriate for audio/visual use.**

**The Office of Judicial Administration should explore the possibility of statewide purchasing agreements which would give counties financing options that are not currently available.**



The purpose of a verbatim record of court proceedings is to preserve the events for later review should an aggrieved party appeal. It is not always apparent at the outset of a court hearing or conference whether issues might arise that could be the subject of a future appeal. But it is not the practice in some district courts to conduct all court proceedings on the record.

Not all judges of the district courts in Kansas have the use of an official court reporter for their court proceedings. But they all have access to either a court reporter or an audio recording device to preserve a record of court proceedings. When an official court reporter is not available, the judge should make use of available audio recording devices to preserve a record of the court's proceedings.

In the western and other rural parts of the state, lawyers and litigants often travel great distances to attend relatively short court meetings, conferences, and hearings. The time and expense involved presents a significant impediment to access to the court system for litigants of average means. Using video conferencing equipment could greatly reduce the costs to these users of the court system by permitting them to participate in court meetings, conferences, and hearings without the need to travel great distances to the courthouse. This technology is already being used in certain types of hearings in some courts.

Not all types of hearings should be conducted by video conference. For example, in conducting juvenile proceedings there is a salutary effect in having a young offender appear in court and experience the seriousness and formality of proceedings conducted by a robed judge sitting behind an elevated bench. Nevertheless, there are many types of proceedings in which the parties could enjoy substantial savings in time and expense if they were held by video conference. The Supreme Court should help identify those proceedings and encourage the use of video conferencing when appropriate to the proceedings.

Counties pay for the district court's audio/visual equipment. In order to facilitate and encourage the use of this technology, the Office of Judicial

Administration should develop guidelines and equipment standards that aid counties in their equipment selections. To moderate the costs to the counties, the Office of Judicial Administration should develop a statewide purchasing agreement which would permit counties to join together in purchasing equipment from a single supplier and thereby benefit from the economies of scale of group buying.

The time and travel costs to litigants and counsel apply equally, if not more so, in appellate proceedings. While the Court of Appeals regularly travels around the state to hear appellate arguments and is expanding the communities it visits for hearings, parties to an appeal frequently must travel significant distances to participate. Attorneys from Western Kansas often find it necessary to travel to the hearing site the day before the hearing in order to appear on time to argue their appeals. Counsel's travel and lodging expense to attend oral arguments is a cost to the client. Oral argument in the Kansas Court of Appeals is typically limited to 15 minutes per side. The use of video conferencing equipment to hear selected appeals would provide certain litigants with a more efficient and economical appellate review of their cases.

For quite some time the business, academic, and professional communities have used video conferences as an economical alternative to face-to-face meetings. Video conferencing facilities are widely available around the state. Kansas high schools and community colleges have used video conferencing for many years. There are video conferencing sites relatively close to most litigants and their counsel. These sites could be used for appellate arguments in selected cases.

The United States Circuit Court for the Tenth Circuit is experimenting with the use of video conferencing for appellate arguments. The Tenth Circuit guidelines for oral argument note:

"The court has experimented with and may continue to use video technology to hear oral arguments. The potential savings to the government of letting counsel whose travel

would be paid by the United States argue cases without leaving their home towns is immense. While the experience is not quite the same as being in the room with the panel judges, it is very close. . . . When arguments are being videoconferenced, attorneys can see the panel judges on the monitor and hear them through connected speakers. With similar equipment installed in our Denver courtroom, the panel judges can see and hear the arguing attorneys."

It is important that the Kansas Court of Appeals continue to visit communities around the state to hear cases. However, because of the low volume of appeals originating in western Kansas and other rural parts of the state, it is often difficult to create a docket with sufficient cases to justify traveling to those areas for hearings. With video conferencing, a smaller docket of cases originating in a less populous region of the state can be augmented with cases argued by video conferencing from more populous regions.

Until very recently, the Kansas Supreme Court has heard oral arguments of appeals only at the Kansas Judicial Center in Topeka. For a number of policy reasons, the Supreme Court should hold most hearings in its courtroom in the Judicial Center. Because oral argument before the Kansas Supreme Court is a relatively rare occurrence for most lawyers, travel to Topeka for oral argument is not a major concern. Nevertheless, the economies available from video conferencing of oral arguments before the Kansas Court of Appeals also apply for arguments before the Kansas Supreme Court. Therefore, the Court should examine the future use of this technology in hearing oral arguments in selected cases.

## **2. As recording technology advances, the Supreme Court should review the number and use of court reporters in Kansas.**

The use of audio recording devices will increase if there are: (1) an increased use of district magistrate judges; (2) expanded jurisdiction of district magistrate judges; (3) a requirement that all final orders and

decisions by a district magistrate judge be on the record; and (4) elimination of an automatic de novo appeal to a district judge from a final order or decision on the record by a lawyer district magistrate judge.

A primary function of the court reporter's record of district court proceedings is to enable an appellate court to review the proceedings if there is an appeal. Court reporter delays in the preparation of transcripts result in substantial delays in the final disposition of appeals.

The majority of appeals from the district courts in Kansas are heard by the Kansas Court of Appeals. The current average disposition time for all cases in the Court of Appeals, from the time the appeal is docketed with the Clerk of the Appellate Courts to its final disposition, is 367 days. Of those 367 days, an average of 238 days pass before the case can be set on a docket to be heard by the Court of Appeals.

Before a case is ready to be placed on a docket for disposition by the Court of Appeals, the parties have to compile the record of the proceedings in the district court and then submit briefs to the appellate court addressing the issues raised in the appeal. The majority of the 238 days it typically takes to get a case ready to be argued in the Court of Appeals is consumed in delays in obtaining transcripts of district court proceedings.

Court reporters are often the only persons who can transcribe their own notes of a trial or hearing. When a court reporter is busy recording proceedings in court, he or she is unavailable to prepare a transcript of proceedings in another case that is on appeal. When audio recordings of court proceedings are made, any transcriptionist or trained court clerk can prepare the record and submit it to the appellate court for review.

Official Court Reporters record and transcribe verbatim reports of judicial trials, conferences, and hearings. Transcriptionists prepare certified copies of court proceedings from tape recordings. A Trial Court Clerk II can fulfill these duties if audio recordings are employed.

The current annual costs for persons in these positions (with fringe benefits, including single health insurance) are:

Court Reporter – \$58,000;  
Transcriptionist – \$40,000;  
Trial Court Clerk II – \$35,000.

Every judicial district in Kansas currently has at least one approved full-time court reporter position. There are 127.5 approved Official Court Reporter positions and 4 approved Managing Court Reporter positions in the Judicial Branch budget at an approximate annual cost of \$9 million. While all recognize the value of an accurate court record that court reporters provide and the other assistance they provide to our judges and district court clerks in times of need, court reporter costs are relatively high. New technologies may reduce these costs. Court reporters could eventually be replaced with Transcriptionists or Trial Court Clerk IIs.

Using a Transcriptionist to replace a court reporter who leaves the judicial system would save \$18,000 annually. Replacing that Official Court Reporter with a Trial Court Clerk II would save \$23,000 annually. Replacing all 131.5 court reporters with transcriptionists would save nearly \$2.4 million each year. Replacing court reporters with Trial Court Clerk IIs would save about \$3 million each year.

Court reporters traditionally provide their own transcription equipment and software. Therefore, any savings from the replacement of a court reporter would be less when taking into account the cost of necessary transcription. Further, the judge's administrative assistant or other clerical personnel may have to be available to assist with ministerial tasks during a trial or hearing, and someone other than the judge is usually involved in monitoring the recording process to assure a complete record. These costs must be taken into account.

While making an accurate record of court proceedings is crucial to the process, it is becoming increasingly more difficult to provide court reporters

for all hearings and trials. Many court reporter schools have closed. Butler Community College has recently disbanded its voice writing program because the Butler administrators perceived limited job opportunities because of hiring freezes.

In a 2005 report to the Supreme Court, an Advisory Committee on Court Reporting noted similar issues. The impetus for that committee's report was "a shortage of official reporters which adversely affects the operations of the district courts and the appellate courts in this State." This shortage continues today.

That Advisory Committee addressed structural changes, reporter qualifications, alternatives in technology, financial issues, and rules governing court reporters. Some of the solutions discussed involved pooling of reporters, roving reporters, shared assignments, and travel of reporters outside the particular judicial district where they were employed.

The Committee recommended electronic recording as an alternative means of providing a record of certain types of court proceedings. The Committee noted:

"[L]imited use of electronic recording has occurred since the adoption of Rule 360, *et seq.*, in 1977, subject to criticism especially regarding quality of sound and difficulties in recording. A revolution has occurred in recent years, however, in the quality and capabilities of sound recording equipment. The technology in both the quality and capabilities of sound recording equipment has dramatically improved since most equipment now in use was purchased. The Committee recognizes that the purchase of electronic sound recording equipment is, under our bifurcated funding of court operations, dependent on local funding. Some judicial districts have begun to upgrade equipment from analog to digital and others, such as the Fifth Judicial District, have been fortunate enough to experience new construction which encompasses total

replacement of existing sound recording systems. State-of-the-art digital recording equipment offers quality multi-track sound reproduction, coupled with ease of operation. Digital systems also offer integrated software options which allow a courtroom monitor to key witnesses and events to the recording. These extensive log notes facilitate transcript production from recordings. New purchases of equipment should reflect what is, at this point in development, the standard. The Committee recommends that the purchase of new sound recording equipment be digital, four-channel equipment. A number of reputable companies offer this equipment, and this Committee has chosen not to single out specific vendors."

Automated audio equipment and technologies have continued to improve. According to the National Center for State Courts, several court systems around the country have reduced their dependency on court reporters through the use of such technology. It is now possible to reduce Judicial Branch costs by making use of technology as a stand-by for, or complete replacement of, court reporters. The Supreme Court should explore these alternatives for providing an accurate record of court proceedings.

The Office of Judicial Administration should develop, update, and provide the district courts and the counties with a list of recommended audio recording hardware. Each county must continue to make decisions on its needs based on local circumstances. But a county's choice of recording equipment should be made from the Office of Judicial Administration hardware list in order to assure compatibility of recording systems throughout the state.

As recommended elsewhere in this report, the Office of Judicial Administration should develop a statewide purchasing agreement which would give counties purchase and financing options for audio recording equipment in particular.

**3. The Supreme Court should monitor developments in the use of electronic versions of appellate decisions for official reports as an alternative to the current published bound volumes of the Kansas Supreme Court Reports and the Kansas Court of Appeals Reports.**

Currently, the District of Columbia and 27 states, including Kansas, publish their own volumes of state court appellate decisions.

There are approximately 287 bound volumes of the Kansas Supreme Court Reports and approximately 40 bound volumes of the Kansas Court of Appeals Reports. These volumes are the official reports of the opinions of the appellate courts of Kansas. They are printed by the State Printer, as required by statute.

The State Printer charges the Judicial Branch an average of \$20,000 per published volume. Advance sheets containing copies of appellate opinions before they are published in the bound volumes are issued from time to time. Each advance sheet costs approximately \$7,000: \$3,500 for the Supreme Court opinions and \$3,500 for the Court of Appeals opinions. The annual cost to the Judicial Branch for the publication of advance sheets and bound volumes is approximately \$34,000.

K.S.A. 20-201, *et seq.*, require that copies of the reports be provided to the Kansas Judicial Center Law Library for distribution. K.S.A. 20-208 requires that free copies be provided to active judges (239), retired judges (5), federal judges (6), other states (13), state agencies (37), University of Kansas School of Law (30), Washburn Law School (22), and the Judicial Center (92) for internal distribution.

Currently, there are approximately 450 paid subscribers for the Kansas Supreme Court Reports, and approximately 430 paid subscribers for the Kansas Court of Appeals Reports. The number of subscribers has decreased with each subscription (\$65 per volume currently, including approximately four advance sheets per volume). Subscription prices have increased recently. Subscriptions produce approximately \$28,600 per



volume. With an average of four bound volumes per year, this is an annual deficit of approximately \$21,600 for the production of the Kansas Supreme Court Reports and Kansas Court of Appeals Reports. While this net annual deficit is not overly burdensome, there is a net cost to the Judicial Branch for maintaining the bound volumes of Kansas appellate decisions.

Every year, fewer users rely on the bound volumes of Kansas appellate decisions. Legal research using a web-based database is now an essential element of every law school education. Current published opinions of both appellate courts are available online at the Judicial Branch website. All Kansas appellate opinions, both published and unpublished, are available through online services provided by Westlaw, Lexis/Nexis, and others.

The National Conference of Commissioners on Uniform State Laws has recently proposed a uniform law entitled the "Authentication and Preservation of State Electronic Legal Materials Act." It recommends adoption of its protocol for electronic legal material for Executive and Legislative Branches. It recommends that implementing the protocol for the Judicial Branch is optional.

Twenty-one states do not publish and issue bound volumes of their appellate opinions, but rely on state-specific publications of the regional reporter system of Thomson-Reuters (formerly West Publishing Company). These include neighboring states of Colorado, Iowa, Missouri, and Oklahoma.

Two states have abandoned bound volumes of appellate reports as their official reports in favor of an online electronic version. In 2009, the Arkansas Reporter discontinued publication of bound volumes of appellate decisions and replaced them with an electronic online version. In July 2011, Illinois did likewise.

The Kansas Supreme Court and its Official Reporter should closely monitor the success of online official reports in Arkansas and Illinois and

other states that may adopt electronic versions as their official reports of appellate decisions.

The National Association of State Reporters (NASR) has expressed concerns regarding authentication, security, and preservation of appellate decisions when switching to electronic official reports. The Supreme Court and its Official Reporter should monitor NASR's further examination of this issue. The Supreme Court should be prepared to replace the bound volumes with an electronic online version when the experiences of other states and advances in technology and security protocols adequately address concerns regarding the authentication, security, and preservation of online electronic versions of Kansas appellate decisions.

## **V. DOCKET FEES**

### **1. The Supreme Court should promote legislation to require all docket fees without exception to go to the Judicial Branch.**

Docket fees should be used to fund the Judicial Branch. Currently, docket fees are automatically distributed to various groups and entities by statute. These groups and entities do not have to justify to the Legislature their need for these funds. They very likely are worthy of funding, but their funding should follow the normal annual legislative funding process.

The Kansas docket fee system is a creature of statute. Statutes specify who will pay the docket fee, what amount will be paid, when it will be paid, and how it will be distributed. With some exceptions, docket fees are collected from a plaintiff as each case is filed.

Pursuant to K.S.A. 2010 Supp. 60-2001(b), payment of the docket fee may be excused upon the filing of a poverty affidavit. Another payment exception is provided in K.S.A. 2010 Supp. 60-2005, which exempts from payment of the docket fee cases filed by the State of Kansas and its municipalities. These cases include criminal, child in need of care, and juvenile offender cases, and also include a growing number of civil debt

collection cases filed for county and district hospitals and other municipal entities.

A portion of each docket fee is retained by the local district court, and the balance is remitted to the State Treasurer pursuant to K.S.A. 2010 Supp. 20-362 for distribution to a variety of funds as provided in K.S.A. 2010 Supp. 20-367. The amounts that stay with the local district court include \$10 from each Chapter 60 docket fee, which is remitted to the County Treasurer for credit to the County General Fund. From each Chapter 61 limited actions docket fee, either \$10 or \$5, depending upon the amount in controversy, is credited to the County General Fund.

Where there is a county law library, a law library fee may be imposed in an amount determined by the trustees of the county law library. With the exception of Johnson and Sedgwick Counties, which may charge higher fees, the law library fees are set by K.S.A. 20-3129 between \$2 and \$10 for Chapter 60 civil cases and felony criminal cases, and between \$.50 and \$7 in all other cases.

Pursuant to K.S.A. 20-362(c), \$2 is paid into the county treasury for the Prosecuting Attorneys' Training Fund from each docket fee in criminal, tobacco, and fish and game cases and municipal court appeals. The county is paid \$1 of each docket fee in child in need of care, juvenile offender, and care and treatment cases. From the same types of cases, \$.50 is deducted from the docket fee for credit to the Indigents' Defense Services Fund pursuant to K.S.A. 28-172b.

The Law Enforcement Training Center Fund receives \$15 from each docket fee in criminal, tobacco, and fish and game cases and municipal court appeals pursuant to K.S.A. 20-362(e).

The balance of the docket fee is remitted to the State Treasurer pursuant to K.S.A. 20-362. Specified percentages of this balance are then distributed to a variety of funds, as provided by K.S.A. 20-367 and as noted in the second table below. For illustration purposes, the following two

tables show how a traffic docket fee is distributed. The first table shows the funds that remain with the local district court, and the second shows how the balance remitted to the State Treasurer is distributed.

<b>Traffic Docket Fee Distribution: Amounts that Stay Local</b>	<b>Docket Fee</b>	<b>Surcharge</b>	<b>Total</b>
	\$76	\$17.50	\$93.50
Judicial Branch Surcharge Fund			\$17.50
County			\$0.00
Law Library Fund			\$7.00
Prosecuting Attorneys Fund			\$2.00
Indigents' Defense Services Fund			\$0.50
Law Enforcement Training Center Fund			\$15.00
Balance Remitted to the State Treasurer			\$51.50

<b>How the \$51.50 Traffic Docket Fee Balance Remitted to the State Treasurer Is Distributed</b>		
<b>Percentage Split</b>	<b>Fund</b>	<b>Dollar Amount</b>
3.05%	Judicial Performance Fund	\$1.57
4.24%	Access to Justice Fund	\$2.18
2.35%	Juvenile Detention Facilities Fund	\$1.21
1.81%	Judicial Branch Education Fund	\$0.93
0.48%	Crime Victims Assistance Fund	\$0.25
2.31%	Protection from Abuse Fund	\$1.19
3.66%	Judiciary Technology Fund	\$1.88
0.29%	Dispute Resolution Fund	\$0.15
1.07%	Kansas Juvenile Delinquency Prevention Trust Fund	\$0.55
0.18%	Permanent Families Account	\$0.09
1.27%	Trauma Fund	\$0.65
0.96%	Judicial Council Fund	\$0.49
0.58%	Child Exchange and Visitation Centers Fund	\$0.30
15.54%	Judicial Branch Nonjudicial Salary Adjustment Fund	\$8.00
15.37%	Judicial Branch Nonjudicial Salary Initiative Fund	\$7.92
46.84%	State General Fund	\$24.12

A number of these funds are not maintained for the operation of the Judicial Branch. Here is a description of the various funds that receive a portion of the docket fee:

**Judicial Performance Fund. K.S.A. 20-3207.** This fund was established by the 2006 Legislature to be used for the judicial performance evaluation process. Under 2011 Senate Substitute for House Bill 2014, the amount of \$778,518 is to be transferred in fiscal year 2012 from the Judicial Performance Fund to the Judicial Branch Surcharge Fund. For all practical purposes, this bill eliminates the judicial performance program for fiscal year 2012.

**Access to Justice Fund. K.S.A. 20-166.** This fund is administered by the Chief Justice of the Kansas Supreme Court. Its purpose is to "[make] grants for operating expenses to programs, including dispute resolution programs, which provide access to the Kansas civil justice system for persons who would otherwise be unable to gain access to civil justice." In practice, these funds pass through the Judicial Branch budget to Kansas Legal Services in the form of annual grants.

**Juvenile Detention Facilities Fund. K.S.A. 79-4803.** This fund is administered by the Commissioner of Juvenile Justice. It was created to make grants for the retirement of debt on juvenile detention facilities or for the construction, renovation, remodeling, or operational costs of such facilities. The fund also receives a percentage of the money credited to the State Gaming Revenues Fund.

**Crime Victims Assistance Fund. K.S.A. 74-7334.** This fund is administered by the Attorney General. It was created to make grants for ongoing operating expenses for public and private programs, including court-appointed special advocate programs. Money from the fund may be used by the Attorney General for administrative expenses related to victims' rights programs under the Attorney General's jurisdiction, to make grants to existing programs, and to establish and maintain new programs that provide services to crime victims. The fund also receives revenue from fines, penalties, and forfeitures and from marriage license fees.

**Protection From Abuse Fund. K.S.A. 74-7325.** This fund is administered by the Attorney General and was established for the purpose of making grants for ongoing operating expenses of domestic violence programs. The fund also receives marriage license fees and any other money, such as federal grants, that may be spent for purposes of the fund.

**Kansas Juvenile Delinquency Prevention Trust Fund. K.S.A. 75-7021.** This fund is administered by the Commissioner of Juvenile Justice. It is used to make grants to further juvenile justice reform, including prevention, treatment, and rehabilitation programs and programs that further the partnership between state and local communities. Eligible programs combine accountability and sanctions with intensive treatment and rehabilitation services.

**Trauma Fund. K.S.A. 75-5670.** This fund is under the administration of the Secretary of Health and Environment and supports activities of the Secretary related to the duties under K.S.A. 75-5664 *et seq.* These activities include developing a statewide trauma system plan, supporting the regional trauma councils, providing trauma education, and developing and maintaining a statewide trauma registry.

**Judicial Council Fund. K.S.A. 20-2208.** This fund is administered by the Judicial Council to pay its operating expenses, which formerly were funded primarily from the State General Fund and a special revenue fund.

**Child Exchange and Visitation Centers Fund. K.S.A. 75-720.** This fund is administered by the Attorney General. It is used to provide grants for centers across Kansas for victims of domestic or family violence and their children, and to allow court-ordered child exchange or visitation in a manner that protects the safety of all family members.

While the mechanics of the docket fee are somewhat complex, the end result is not. The majority of the docket fees collected by clerks of the district court does not remain within the court system. The docket fee is distributed to a variety of local and state entities in addition to a few funds which are included in the Judicial Branch budget, which are the Judicial Branch Education Fund, the Judiciary Technology Fund, the Dispute Resolution Fund, the Permanent Families Account, the Judicial Branch Nonjudicial Salary Adjustment Fund, and the Judicial Branch Nonjudicial Salary Initiative Fund. While the Access to Justice Fund is included in the Judicial Branch budget for purposes of awarding the grant, the funds are not spent for Judicial Branch operations.

It is likely that the other entities receiving a portion of the docket fees are worthy of funding. Each of the entities made its case to the Legislature for a portion of the docket fees, and the Legislature approved each entity's percentage share of the docket fees. What this means in practice, however, is that a portion of the docket fee is paid automatically to the entity each year. Each entity does not have to appear annually before the Legislature to justify continued funding, as does the Judicial Branch. Each of these entities has an annual source of funds that is both automatic and which cannot be changed without a legislative change. Under the present system, the amount each entity receives from docket fees is a function of the volume of court business, not a function of the volume of the recipient-entity's business.

Implementation of this recommendation does not preclude each of these entities from receiving state funds for their programs, but rather would require each entity to appear before the Legislature annually to make a case for state funds, as does the Judicial Branch and as do state agencies.

Previous attempts to implement this recommendation have not been successful. The 2005 Interim Special Committee on Judiciary studied the topic *Docket Fees in Kansas*, and discussed "whether the use of docket fees for other purposes than those related to the operation of the judicial system was appropriate." The Committee concluded that the other entities outside

the judicial system that receive docket fees should go through the regular appropriations process as do other agencies for funding purposes.

The 2006 Interim Special Committee on Judiciary studied the topic *Court Docket Fees*, and proposed to delete certain funds from district court docket fees, including:

- Indigents' Defense Services Fund;
- Crime Victims Assistance Fund;
- Protection from Abuse Fund;
- Kansas Juvenile Delinquency Prevention Trust Fund;
- Permanent Families Account in the Family and Children Investment Fund;
- Child Exchange and Visitation Centers Fund;
- Juvenile Detention Facilities Fund; and
- Trauma Fund.

The funds that would have continued to be funded by docket fees included the funds that are related to the functioning of the courts, as follows:

- Access to Justice Fund;
- Judicial Branch Nonjudicial Salary Initiative Fund;
- Judicial Branch Education Fund;
- Judicial Technology Fund;
- Dispute Resolution Fund;
- Judicial Council Fund; and
- Judicial Performance Fund.

In both 2005 and 2006, the recommendations of the interim special committee were not enacted into law.

This recommendation does not mean that the Judicial Branch should become a revenue center responsible for raising all funding necessary to maintain its operations. Justice is a fundamental right of all Kansas citizens,



and providing funding to ensure that the justice system is available to all citizens is a fundamental obligation of the state and its taxpayers. This has been acknowledged by at least two interim legislative committees that have studied Judicial Branch funding and docket fees. The 2000 Interim Special Committee on Judiciary studied the topic of *Revision of State Court Costs* and, as part of its conclusions and recommendations stated:

"[I]t is inappropriate for court funding to be driven by docket fees. The recommendation of the Committee is that court funding should be the responsibility of the state and the funding should come from the State General Fund."

The 2003 Interim Special Committee on Judiciary studied the topic of Judicial Docket Fees and noted, as part of its conclusions and recommendations:

"The Committee believes that the State Legislature has a responsibility to adequately fund the state judicial system and generally disfavors increasing docket fees because it believes this has a negative effect on access to justice."

The court system has fixed costs and variable costs. The volume of case filings that generate docket fees has a direct relationship with the system's variable costs. As the number of case filings increase, the courts' variable costs increase. Allowing the Judicial Branch to retain all docket fees will better align case filing revenues to the marginal costs they cause.

## **2. The Supreme Court should promote legislation or adopt Court Rules to increase all current docket fees.**

Current civil docket fees are relatively low, given historical levels and in comparison to national and surrounding states' fees. Voluntary users of the judicial system who have the ability to do so should pay an increased share of the costs of the system.

As stated by the Conference of State Court Administrators in its recently adopted policy paper entitled *Courts Are Not Revenue Centers*:

"Courts should be substantially funded from general governmental revenue sources, enabling them to fulfill their constitutional mandates. Court users derive a private benefit from the courts and may be charged reasonable fees to partially offset the cost of the courts borne by the public at large. Neither courts nor specific court functions should be expected to operate exclusively from proceeds produced by fees and miscellaneous charges."

While the availability of our courts is an obvious benefit to private litigants who use it to resolve their disputes, the availability of our courts to all citizens, including those who never avail themselves of the courts' services, is a substantial benefit. Courts are a core function of government. The existence of our courts and their availability to all give meaning to the notion that we are a nation governed by the Rule of Law. The cost of maintaining this core function of government is borne, for the most part, by the community at large through taxes. Thus, it is a fundamental duty of the Legislature to levy taxes necessary to maintain this core function of government. Just as we do not expect the legislative or executive branches of government to be self-funding, we do expect the Legislature to provide adequate funding for the Judicial Branch.

While docket fees have increased to fund a more significant portion of the Judicial Branch budget in recent years, docket fees are not a substitute for state funding of the judicial system. Our society has various for-profit entities that provide dispute resolution services, such as mediation, arbitration, and trial by rent-a-judge. The Kansas Judicial System is not one of these. The Judicial Branch is not a business profit center. It exists not to generate fees and earn money. It exists to give life to the principle that we are a nation of laws. Nevertheless, it is reasonable to expect those who engage the courts to resolve their disputes to contribute to the costs of the courts in doing so. The direct private benefit to litigants in

having access to the courts is the underlying justification for the imposition of docket and related fees.

Docket fees are not designed to cover the actual costs to the court for resolving a case. In most cases, the docket fee does not begin to pay for clerical time spent in filing documents, entering information into the case management system, and many other duties. Some, but not all, of this clerical time will be eliminated with the full implementation of statewide e-filing, case management, and document management systems.

But aside from clerical time, most cases require judges to spend considerable time hearing and deciding motions and the case itself. Court services officers often advise the court and supervise parties in high-conflict divorce actions and post-divorce custody disputes. They provide mediation services in some judicial districts. Courts employ administrative personnel to assist in the processing of cases. All of these costs cannot, and should not, be passed on to the litigants. Nevertheless, and consistent with the overriding duty to not create an insurmountable barrier to access to the courts, docket fees should be increased.

It is not a simple task to determine to what level docket fees should be increased. One measure that is frequently used is the docket fees of other nearby states. Because each state's docket fee is structured in a different manner, it is difficult to compare "apples to apples."

In most Kansas civil cases, the docket fee is the only fee paid, with the exception of a sheriff's service of process fee, and in domestic cases a domestic post-decree motion fee. Other costs specified by statute may be ordered at the conclusion of a case, but those are not in the nature of a docket fee.

In some other states, in addition to the docket fee filed at the inception of a case, a response or answer fee is charged when a defendant files a response to the plaintiff's petition. (It seems at odds with fundamental fairness to require a defendant who has been involuntarily dragged into court

to pay a fee to prevent a default judgment from being entered against him or her.) Other fees for motions, responses, and other types of filings are sometimes charged. A simple comparison of docket fees from one state to another does not provide an accurate or complete picture. Nevertheless, the following table shows the amounts charged in other midwestern states.

**Comparison of Fees Charged in a Typical Civil Suit**

<b>State</b>	<b>Petition Filed</b>	<b>Motion to Dismiss - Failure to State a Claim</b>	<b>Answer Filed</b>	<b>Summary Judgment Motion</b>	<b>Trial to Court or jury trial</b>	<b>Post-Trial Motions</b>	<b>Notice of Appeal</b>	<b>Other Fees Charged</b>
Colorado	\$224		\$158		Jury Fee - \$190			
Illinois *	\$40-\$60 \$150-\$190 \$190-\$240				Jury Fee – \$62.50-\$212 \$212-\$230	\$20-\$50 \$40-\$50 \$50-\$60		Filing An Appearance – \$15-60 \$50-75
Indiana	\$137							
Iowa	\$185				Jury Fee - \$100			Court Reporter Fee - \$45
Kansas	\$156							
Michigan	\$150	\$20		\$20	Jury Fee - \$85	\$20	\$25	
Minnesota	\$310	\$100	\$100	\$100	Jury Fee - \$100	\$100		
Missouri	\$83							Service Fee - \$20
Nebraska	\$82							
North Dakota	\$80		\$50					
Ohio	Set by County							
Oklahoma	\$206			\$50	Jury Fee - \$349			Garnishment - \$53 Other proceedings after judgment - \$58 Notice of renewal of judgment - \$48 Court Reporter Fee - \$20
South Dakota	\$70							
Texas	\$177.02 - \$277				Jury fee - \$30			
Wisconsin	\$265.50				Jury Fee - \$6 per juror		\$210	No money judgment fee - \$164.50

\*Illinois fees are set in categories, based on county population.

The recommendation that current docket fees should be increased goes hand in hand with the recommendation that all docket fees should go to the Judicial Branch. This recommendation is made with the expectation that some of the Judicial Branch's critical needs may be met by this means, and any other use of the proceeds from a docket fee increase would be contrary to the Commission's intent.

**3. The Supreme Court should promote legislation or adopt Court Rules to assess higher docket fees in civil cases which by their nature impose more costs on the court system by consuming an extraordinary amount of court resources.**

Docket fees are established by statute for several categories of cases, and within those categories the same docket fee is charged for all cases. For example, the same \$156 docket fee applies to all Chapter 60 civil cases, whether the action has one or two parties, multiple parties on either or both sides, or is a class action with a purported class of thousands of members. Similarly, the same \$111.50 docket fee is charged for all Chapter 59 cases filed to probate a will or administer an estate, regardless of whether the case involves a routine estate matter or a multi-million dollar estate with multiple parties raising numerous issues and conflicting interests.

Certain cases require more of the courts' time and resources than others. Complex litigation, class actions, and other types of cases may require more staff and judicial resources. While it is not clear from the outset of a case whether it will generate a multitude of time-consuming issues for the court or whether it will quickly settle without significant court intervention, the Supreme Court should examine the issue and devise a mechanism for shifting part of the extraordinary costs of complex civil litigation to the parties.

**4. The Supreme Court should promote legislation or adopt Court Rules which require the payment of a docket fee upon filing a civil action (Chapters 59, 60, and 61 only), unless excused due to the filing of a**

**poverty affidavit or an action for protection from abuse or protection from stalking.**

By statute, no case shall be filed or docketed in the district court in civil cases without payment of the docket fee in the amount specified by statute. See K.S.A. 2010 Supp. 59-104, K.S.A. 2010 Supp. 60-2001, and K.S.A. 61- 4001. In addition, no post-decree motion seeking a modification or termination of separate maintenance or for a change in legal custody, residency, visitation rights, parenting time, or child support shall be filed or docketed in the district court without payment of a docket fee.

Docket fees in other types of cases, such as traffic, criminal, child in need of care, and juvenile cases are also set by statute, but are collected at the time the traffic ticket is paid or at the conclusion of the case, if ordered by the court.

There are some exceptions to the docket fee requirement. As discussed in more detail in the next recommendation in this report, the docket fee may be waived or deferred by court approval based upon a party's poverty affidavit filed pursuant to K.S.A. 2010 Supp. 60-2001.

In addition, K.S.A. 2010 Supp. 60-2005 exempts municipalities from paying a docket fee, and K.S.A. 2010 Supp. 61-4001(b) extends the exemption to lawsuits brought under the Code of Civil Procedure for Limited Actions. "Municipality" is defined by K.S.A. 12-105a to include:

"county, township, city, school district of whatever name or nature, community junior college, municipal university, city, county or district hospital, drainage district, cemetery district, fire district, and other political subdivision or taxing unit, and including their boards, bureaus, commissions, committees and other agencies, such as, but not limited to, library board, park board, recreation commission, hospital board of trustees having power to create indebtedness and make payment of the same independently of the parent unit."

District courts often confront this situation: A private attorney hired by a county hospital files a Chapter 61 limited actions case against a former hospital patient to collect an unpaid hospital bill without paying the court's docket fee. At that point, there are at least three possible outcomes.

- The county hospital prevails in the lawsuit and is successful in collecting the judgment and court costs, including the docket fee. Supreme Court Rule 187 requires moneys received by the judgment creditor to be credited first to court costs, including the docket fee. Thus, court costs have priority and shall be paid to the clerk from the first moneys collected.
- The county hospital does not prevail in the lawsuit. Here, the judge has the discretion, but not the obligation, to assess costs, including the docket fee, against the county hospital pursuant to K.S.A. 60-2005.
- The county hospital prevails in the lawsuit but is unsuccessful in collecting the judgment. It is unlikely that the court would have assessed costs against the county hospital at the time of judgment. But after judgment is entered, there is no logical manner in which the case could be brought back before the judge so that costs could be assessed against the county hospital.

The current procedure for collecting docket fees was established in 2008 amendments to Supreme Court Rules 186 and 197. The amendments were drafted in response to requests for a remedy in those instances in which a judgment is collected, but payment of the docket fee to the court is not being pursued by the successful plaintiff. It was observed at the time that, once the judgment is collected, there is no requirement or incentive for a successful plaintiff to collect the docket fee. The Supreme Court Rule 186 and 187 procedure was crafted to collect the docket fee, and it works when collection efforts are successful. However, it would be far simpler to require payment of the docket fee at the time the case is filed.



Pursuant to K.S.A. 2010 Supp. 60-3104(d) and K.S.A. 2010 Supp. 60-31a04, no docket fee is assessed in protection from abuse and protection from stalking cases because of a federal requirement for immediate access to the courts in those types of cases. The Commission is mindful of this requirement and recommends no change in this area.

**5. The Supreme Court should use federal poverty guidelines as a model for poverty affidavits used to defer docket fees at the commencement of a case.**

**Any deferral of docket fees should be for an initial term of not more than 60 days after commencement of a case.**

**If the district court defers payment further, the court should make a final determination on the imposition of docket fees at the end of the case when more information is available regarding the financial resources of the parties.**

Access to justice for all citizens is an essential objective of the Kansas Judicial System. Payment of a docket fee can create a significant impediment to access to the judicial system for impoverished litigants.

In *Boddie v. Connecticut*, 401 U.S. 371 (1971), the United States Supreme Court determined that barring access to the judicial system to indigent persons who cannot pay a docket fee violates the due process clause of the Fourteenth Amendment to the Constitution.

Kansas law provides for the filing of a poverty affidavit in which the litigant swears that, by reason of poverty, he or she is unable to pay a docket fee. K.S.A. 60-2001 sets forth the poverty affidavit that is to be used. It further provides that at the conclusion of the case the court may order the plaintiff to pay the docket fee.

K.S.A. 60-2001(b)(2) provides that "[a]ny initial filing fees assessed pursuant to this subsection shall not prevent the court, pursuant to subsection

(d), from taxing that individual for the remainder of the amount required under subsection (a) or this subsection." The statute also states the amount of the docket fee that shall be assessed against inmates in the custody of the Secretary of Corrections, which in no event shall be less than \$3.

Statutes pertaining to the docket fee do not provide a definition of "poverty." Some local court rules address this issue. The 3rd Judicial District (Shawnee County) provides by local rule that "[a] civil action shall be filed on poverty affidavits only when counsel believes in good faith that the plaintiff is unable to pay a docket fee." The 5th Judicial District (Chase and Lyon Counties) has enacted Local Rule No. 29:

"No poverty affidavit in lieu of the filing fee may be filed in any case by parties possessing income or funds of any kind, unless approved by either the Administrative Judge or the Assigned Judge.

"A verified financial statement signed by the party shall accompany the poverty affidavit filed under this rule. The filing of a verified financial statement may be waived by the Administrative Judge or the Assigned Judge for good cause shown."

Other judicial districts have enacted local rules that address verifying the petitioner's ability to pay before a poverty affidavit is granted and providing that no attorney fees shall be paid until the docket fee is paid. Rule No. 7 of the 22nd Judicial District (Brown, Doniphan, Marshall, and Nemaha Counties) provides:

"In all civil cases filed with a poverty affidavit, inquiry will be made into the ability of the plaintiff to make the deposit to secure costs before the case is tried. If a plaintiff has sufficient property or income from which to pay the cost deposit, the case will not be tried until the cost deposit has been made. Diligent

inquiry by counsel shall be made before a client proceeds by poverty affidavit."

Rule No. 24 of the 11th Judicial District (Cherokee, Crawford, and Labette Counties) provides:

"A poverty affidavit submitted pursuant to K.S.A. 60-2001(b), or any other applicable chapter, shall include, or be accompanied by, an affirmation that no attorney fee has been paid and that none will be paid until such time as all docketing fees, including surcharges, have been fully paid."

Similarly, Rule 1102 of the 17th Judicial District (Decatur, Graham, Norton, Osborne, Phillips, and Smith Counties) provides:

"Pursuant to K.S.A. 60-201 (b), when a Poverty Affidavit is filed, the attorney for the plaintiff shall certify that no attorney fees will be accepted until the docket fee required by law has been paid. Exempted from this rule are referrals from Kansas Legal Services Corporation."

Several other Midwestern states provide for the payment of docket fees and court costs as follows:

**Colorado** Colorado recently implemented a pilot program that includes a three-month payment plan for collecting filing fees in divorce cases. The Colorado Administrative Office of the Courts states that the pilot program has been successful in increasing collections. The Colorado Supreme Court may implement this program statewide.

Colorado Chief Justice Directive 98-01 addresses costs for indigent persons in civil matters. The directive outlines the procedures for the waiver of court costs in civil cases on the basis of indigence. It specifies the criteria for indigence and the process for evaluating indigence.

- Illinois      There are no set statewide standards defining indigence. Each circuit court chief judge establishes the local rule for poverty guidelines. Parties can be ordered to pay pursuant to a payment schedule.
- Iowa          Standards used in criminal cases are also used in civil cases (based on the financial affidavit). Filing fees can be deferred and charged at the end of the case.
- Missouri      There are no statewide standards for determining indigence. Judges have the discretion to waive fees, and judges may assess fees at the time of case disposition.

The Colorado system applies income eligibility guidelines which are set at 125 percent of the poverty level as determined by the Department of Health and Human Services. The Colorado system also acknowledges that some plaintiffs submit a poverty affidavit when they are not truly indigent but simply lack the ready funds to initiate the suit. In those cases, the plaintiff is granted a 60-day deferral of the filing fee, rather than being excused from paying the docket fee.

Kansas should maintain the current poverty affidavit process, but should model it after the Colorado system. In particular,

- Judges should apply some percentage of the federal poverty guideline amount to determine indigence. A set percentage of the federal poverty guidelines will provide judges with an objective and uniform basis with which to determine indigence. Absent significant regional differences in the cost of living, the indigence standard should be applied statewide rather than varying from judicial district to judicial district based on local rules. K.S.A. 60-2001 should be amended to provide that the poverty affidavit form will be as promulgated by Judicial Council.

- Judges should distinguish between litigants who are truly indigent from those who are temporarily without funds at the commencement of the case but who can pay the docket fee within 60 days of filing or at the conclusion of the case. This practice will help protect against abuses of the poverty affidavit system, ensuring that only the truly indigent are excused from payment of the docket fee.

**6. The Supreme Court should promote legislation or adopt Court Rules to assess additional docket fees for the filing of motions that by their nature require an extraordinary amount of court resources.**

Because certain actions of litigants require more court time and resources than others, it is only reasonable to ask those who place extraordinary demands on judicial systems' resources to pay for them. Similarly, certain pretrial motions require more of the court time and resources than others. Current law allows a fee for only one type of motion – domestic post-decree motions filed pursuant to K.S.A. 60-1621, for which the docket fee is \$42 and the surcharge is \$22. The Supreme Court should consider encouraging the implementation of a fee for other types of motions, particularly those that require a great deal of court time.

Motions for summary judgment pursuant to K.S.A. 60-256 typically take a significant amount of the court time. Summary judgment proceedings permit the trial court to summarily dispose of an action, in whole or in part, if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Resolving a summary judgment motion usually consumes considerable court time in sifting through the record of the case to determine if facts material to the outcome of the case are in dispute and must be resolved later at trial. Then the court must do legal research to determine if the movant is entitled to judgment as a matter of law.

In seeking to identify suitable motions upon which to impose additional docket fees, the Supreme Court must balance the extra costs for the trial court to resolve the motion against the costs saved by doing so. The

granting of a summary judgment motion, for example, saves the cost of a trial. Thus, the parties obtain a benefit for which they should share in the costs. An order granting summary judgment also saves considerable time for the court by avoiding a trial. It also saves considerable costs to the county for jury per diem payments and juror travel expenses if the ultimate trial is by jury.

## **VI. DISTRICT COURT FUNCTIONS AND PROCEDURES**

### **1. The Supreme Court should encourage district courts to identify and vigorously pursue outstanding collectible court costs, fees, and fines.**

**Collection methods (including debt setoff and the like) should be developed and standardized.**

**Court personnel should be educated on collection processes.**

**The Supreme Court's Office of Judicial Administration should seek grant funding and the assistance of the National Center for State Courts to assist with implementation.**

Collecting money ordered to be paid to the victims of crime as restitution and to the courts for fines, penalties, docket fees, and other court costs and fees is an important function of the court system. As stated by the National Center for State Courts:

"Integrity and public trust in the dispute resolution process depend in part on how well court orders are observed and enforced in cases of noncompliance. In particular, restitution for crime victims and accountability for enforcement of monetary penalties imposed on offenders are issues of intense public interest and concern." National Center for State Courts. *Collection of Monetary Penalties*, [www.courtools.org](http://www.courtools.org).

A significant amount of money that has been ordered to be paid as restitution and as fines, penalties, docket fees, and other court costs and fees has not been paid. Some of this debt is decades old. A significant portion is not collectible even with vigorous collection efforts. Some judgment debtors are indigent, some are incarcerated prisoners, others are no longer living. These accounts should be examined and the clearly uncollectible debts written off.

The process used in every commercial enterprise, the writing-off of uncollectible debt, is available to provide the courts with an accurate measure of its collectible receivables. However, the courts have not used this process because once the statutory requirements have been met to write off uncollectible accounts, the accounts are assigned to the State's Division of Accounts and Reports and all subsequent collections, either by the Judicial Branch or by the Debt Setoff Program, belong to the Division of Accounts and Reports, not the courts.

The issue of outstanding debt should not overshadow the fact that each year the Kansas court system collects an impressive amount of funds for litigants and state entities. Here are the amounts collected for the benefit of state government in fiscal year 2011. These do not include amounts that are not remitted to the State Treasurer, such as restitution to crime victims and portions of the docket fee retained locally as specified by statute for the benefit of the counties, local law libraries, and the Prosecuting Attorneys' Training Fund.

<b>Revenues Collected by the District Courts for the Benefit of State Government in FY 2011</b>	
Fines, Penalties, and Forfeitures (K.S.A. 20-2801; 20-350)	\$19,727,209
Interest on Investment (K.S.A. 20-350)	\$54,681
Clerks' Fees (K.S.A. 20-362)	\$22,708,537
Cost Assessed on County Code Violations (K.S.A. 19-4707)	\$1,313
Law Enforcement Training Center Fund (K.S.A. 20-362)	\$2,426,653
Indigent Defense Services Fund (K.S.A. 20-362)	\$863,749
Marriage License Fee (K.S.A. 23-108a)	\$1,103,340
Drivers License Reinstatement Fee (K.S.A. 8-2110)	\$961,903
Judicial Branch Surcharge Fund (Ch. 87 of the 2011 <i>Session Laws of Kansas</i> )	\$8,482,507
Children's Advocacy Center Fund (K.S.A. 20-370)	\$6,793
Bar Disciplinary Fund	\$46,738
KBI DNA Database Fee (K.S.A. 2010 Supp. 75-724)	\$232,156
Correctional Supervision Fund (K.S.A. 2010 Supp. 21-4610a)	\$585,215
TOTAL	\$57,200,794

Increased collections of fines, penalties, and docket and other fees would benefit numerous state agencies and other entities that receive a portion of all fines, penalties, and docket fees collected. Recommendation No. V.1. explains in more detail the statutory distribution of docket fees, only a portion of which are retained by the Judicial Branch. By statute, fines are distributed to a variety of funds, none of which directly benefit the Judicial Branch budget. Those funds are:

- the Crime Victims Compensation Fund (10.94% of the total remitted to the State Treasurer);
- the Crime Victims Assistance Fund (2.24% of the total remitted);
- the Community Alcoholism and Intoxication Programs Fund (2.75% of the total remitted);
- the Department of Corrections Alcohol and Drug Abuse Treatment Fund (7.65% of the total remitted);
- the Boating Fee Fund (0.16% of the total remitted);



- the Children's Advocacy Center Fund (0.11% of the total remitted);
- the EMS (Emergency Medical Services) Revolving Fund (2.28% of the total remitted);
- the Trauma Fund (2.28% of the total remitted);
- the Traffic Records Enhancement Fund (2.28% of the total remitted);
- the Criminal Justice Information System Line Fund (2.91% of the total remitted); and
- the State General Fund (the remaining 66.4% of the total remitted).

District courts currently use several debt collection procedures.

**A. Traffic Tickets.** K.S.A. 8-2110(b) provides that, when an offender fails to comply with a traffic citation (except for illegal parking, standing, or stopping), the applicable district or municipal court shall notify the offender that failure to appear in court or to pay all fines, costs, and penalties within 30 days will result in the court notifying the Division of Motor Vehicles to suspend the offender's driving privileges. Court clerks send electronic notification to the Division of Motor Vehicles when traffic tickets are not paid.

**B. Debt Collection Contracts.** K.S.A. 75-719 permits district courts to use the services of debt collectors who have contracted with the Attorney General. Each contract provides for a debt collection fee not to exceed 33% of the amount collected. The collection fee is not deducted from the amount collected, but is added to the amount paid by the debtor.

Currently, 25 of the 31 judicial districts have entered into debt collection contracts through this program. All judicial districts should enter into debt collection contracts.

**C. Debt Setoff Program.** The Kansas Department of Administration's Debt Setoff Program allows the Director of Accounts and Reports to set off

funds the state owes as tax refunds and vendor, payroll, lottery, Kansas Public Employee Retirement System (KPERs), and other payments, against any funds owed to the state. Currently, 65 state agencies, 539 municipalities, and 18 district courts are participating in the program.

In fiscal year 2010, the program collected \$247,379 in court fines, costs, and restitution. After deducting administrative costs, \$205,324 was remitted to the district courts. It is important to note that these are not accounts written off by the courts as uncollectible as described earlier. These are accounts identified by the courts for the Debt Setoff Program.

The program's administrative cost for collections is 17% for district court debt. This reduces the courts' recoveries in spite of the fact that significant ministerial work in the process is borne by the courts and after an account is sent to the Debt Setoff Program, payments are often made directly to the courts without the intervention of the Department of Administration. 2011 SB 79 was introduced for the purpose of shifting the administrative cost of the program to the debtor. The bill would have required the 17% debt collection fee to be added to the amount of a debt owed to the court. The bill was not passed by the 2011 Legislature.

Debt collection practices in other states and at the federal level differ from those in Kansas. Debt collection efforts require an adequate level of district court staffing. Current staffing levels do not permit some judicial districts to participate in the Debt Setoff Program. The Office of Judicial Administration should explore some of the collection practices used by other states.

### **Texas Collection Improvement Program—Key Elements**

- Obligations are due at the time of sentencing or pleading
- Defendants unable to pay may apply for an extension
- Payment plans with strict terms are set for those who qualify
- Alternative enforcement options are available for those who do not qualify

- Close monitoring occurs for compliance
- Prompt action occurs for noncompliance

### **Arizona Fines/Fees and Restitution Enhancement—Program Services**

- Reminder notices
- Delinquency notices
- Web-based and voice recognition credit card payment (English and Spanish)
- Electronic skip tracing
- State tax intercept program
- Vehicle registration holds
- Credit bureau reporting
- Outbound phone calls

### **California Comprehensive Collection Program Criteria**

- Monthly billing statements
- Telephone contact with debtor
- Warning letters
- Credit reports to assist in locating debtors
- Access employment development department
- Monthly delinquent reports
- Use department of motor vehicles information to locate debtors
- Wage and bank account garnishments
- Liens on real property and proceeds of real estate sales
- Claims and objections in bankruptcy
- Coordination with probation department to locate debtors
- Driver's licenses suspensions
- Credit card payments
- Participation in court-ordered debt and tax interception programs
- Contract with private debt collectors
- Use of local and national skip-tracing locator resources

## **Federal Debt Intercept Legislation**

Federal debt intercept legislation was introduced in both the U.S. Senate and House of Representatives in April 2011. This marked the first time such legislation had been brought before both chambers on the same day with identical language. If enacted into law, the Crime Victim Restitution and Court Fee Intercept Act, S. 755 and H.R. 1416, would provide a federal debt collection process similar to the state Debt Setoff Program. The United States Department of Treasury would be authorized to intercept federal tax refunds to pay overdue court-ordered financial obligations such as fines, fees, and victim restitution.

- 2. The issue of court cash surety bonds was presented at a public hearing. While the Commission makes no recommendation at this time, the issue is not without merit and deserves further study and consideration.**

In the past, the district courts around the state had broad authority to use personal recognizance cash bonds to secure a criminal defendant's appearance in court and help satisfy court costs, fines, and court-ordered restitution. Several district courts did so and were able to recover substantial sums to help satisfy the defendant's financial obligations to the court. In 2007, the Legislature severely limited the ability of courts to recover these expenses.

In public hearings conducted by the Commission, the cash deposit bond program was described. When a criminal defendant is released from jail pending further proceedings in the case, the court can choose one of several types of bonds to assure the defendant's future appearances in court: (1) "own recognizance" (OR) bond, (2) a surety bond posted by a bondsman, or (3) a hybrid, which is an OR cash deposit bond.

A \$5,000 OR bond is based on the defendant's promise to pay \$5,000 if he or she fails to appear in court when ordered. For a \$5,000 professional

surety bond, the defendant usually pays 10% (\$500) to a bondsman in exchange for the bondsman's promise to pay into court \$5,000 if the defendant fails to appear in court when ordered. For a \$5,000 OR cash deposit bond, the defendant pays \$500 into the court and promises to pay the remainder, \$4,500, if he or she fails to appear in court when ordered. If the defendant is later convicted, the \$500 paid into the court is used to pay court costs, fees, fines, and any court-ordered restitution before any balance is returned to the defendant.

In 2007 the law was amended to severely limit the use of the OR cash deposit bonds. As a result of this amendment, an OR cash deposit bond can be used only for a bond of \$2,500 or less. Further, it can be used only for low-level felonies and misdemeanors. If a defendant failed to appear in court in the past, he or she is not eligible for an OR cash deposit bond.

Using Shawnee County as an example, prior to the 2007 amendment an average of over \$300,000 per year was collected through OR cash deposit bonds and applied to court costs, fines, and court-ordered restitution. Since the Legislature's 2007 restrictions on the use of OR cash deposit bonds, the funds available to satisfy court costs, fines, and court-ordered restitution have dropped from over \$300,000 per year to approximately \$40,000 per year in Shawnee County.

The Commission chose not to make a recommendation to the Court at this time regarding the restoration of the OR cash bond program to its pre-2007 status. However, the program is not without merit, and professional organizations engaged in the criminal justice system in Kansas should examine the issue further.

### **3. The Supreme Court should seek state funds for translators.**

**The Court should consider regionalizing translator services.**

**The Office of Judicial Administration should expand its current efforts to develop resources to provide qualified translators and**

**interpreters, including the use of Skype, Google Voice, or other newly developed services.**

There is an increasing need in the courtroom and in clerks' offices for translators and interpreters. The numbers of non-English-speaking and hearing-impaired parties and witnesses are increasing, and these persons are making increased use of the judicial system.

U.S. Census Bureau data disclose substantial changes between 2000 and 2009 in percentage of population who spoke a language other than English at home. Most dramatic is the increase in the percentage of counties in which 20 to 50% of the population spoke a language other than English at home.

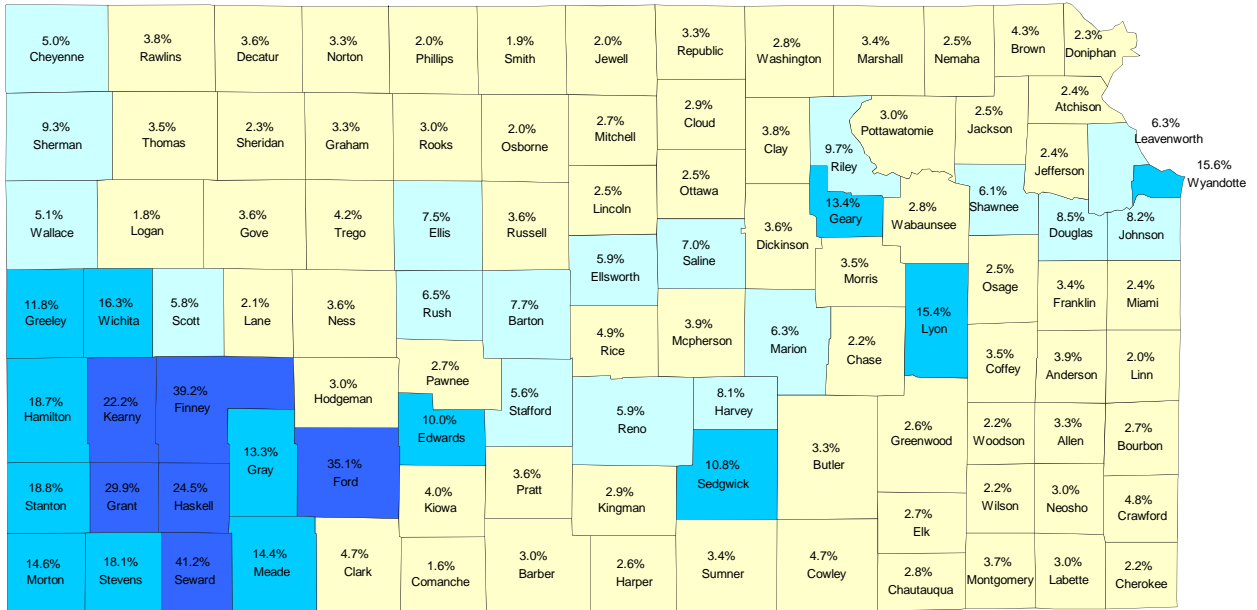
In 6 counties in the southwest part of the state, 20% to 50% of the population spoke a language other than English at home in 2000. By 2009, the number of counties in this 20 to 50% range doubled to 12, including one county in the northeast part of the state:

	2000	2009
<u>County</u>	<u>% of Pop.</u>	<u>% of Pop.</u>
Finney	39.2%	38.3%
Ford	35.1%	42.9%
Grant	29.9%	35.5%
Haskell	24.5%	22.5%
Kearny	22.2%	28.7%
Seward	41.2%	50.6%
Gray	13.3%	24.0%
Hamilton	18.7%	24.4%
Stanton	18.8%	29.8%
Stevens	18.1%	25.6%
Wichita	16.3%	25.3%
Wyandotte	15.6%	21.1%

In the past decade, 47 counties experienced an increase in the percentage of population who spoke a language other than English at home

and 57 counties experienced a decline. One county was unchanged. Between 2000 and 2009, the percentage of the population who spoke a language other than English at home increased statewide from 8.7% to 9.9%.

## Percentage of Population Who Spoke a Language Other Than English at Home - 2000



**Percentage of Pop. Who Spoke a Non-English Language at Home**

- 0.0% to 5.0%, 68 counties, 64.8% of counties**
- 5.0% to 10.0%, 18 counties, 17.4% of counties**
- 10.0% to 20.0%, 13 counties, 12.4% of counties**
- 20.0% to 50.0%, 6 counties, 5.7% of counties**





Here are the statistics for all Kansas counties that reflect the percentage of the population who spoke a language other than English at home:

<u>County</u>	<u>2000</u> <u>% of Pop.</u>	<u>2009</u> <u>% of Pop.</u>	<u>County</u>	<u>2000</u> <u>% of Pop.</u>	<u>2009</u> <u>% of Pop.</u>
Allen	3.3%	1.3%	Franklin	3.4%	2.6%
Anderson	3.9%	3.3%	Geary	13.4%	10.1%
Atchison	2.4%	2.1%	Gove	3.6%	2.0%
Barber	3.0%	2.4%	Graham	3.3%	1.6%
Barton	7.7%	10.8%	Grant	29.9%	35.5%
Bourbon	2.7%	2.0%	Gray	13.3%	24.0%
Brown	4.3%	3.9%	Greeley	11.8%	7.8%
Butler	3.3%	3.2%	Greenwood	2.6%	1.6%
Chase	2.2%	4.4%	Hamilton	18.7%	24.4%
Chautauqua	2.8%	3.1%	Harper	2.6%	3.1%
Cherokee	2.2%	2.5%	Harvey	8.1%	7.8%
Cheyenne	5.0%	3.6%	Haskell	24.5%	22.5%
Clark	4.7%	2.3%	Hodgeman	3.0%	1.0%
Clay	3.8%	3.0%	Jackson	2.5%	3.4%
Cloud	2.9%	2.3%	Jefferson	2.4%	2.4%
Coffey	3.5%	1.7%	Jewell	2.0%	0.8%
Comanche	1.6%	2.0%	Johnson	8.2%	10.3%
Cowley	4.7%	6.0%	Kearny	22.2%	28.7%
Crawford	4.8%	5.0%	Kingman	2.9%	3.1%
Decatur	3.6%	1.7%	Kiowa	4.0%	4.1%
Dickinson	3.6%	2.3%	Labette	3.0%	2.8%
Doniphan	2.3%	1.7%	Lane	2.1%	2.4%
Douglas	8.5%	8.3%	Leavenworth	6.3%	5.9%
Edwards	10.0%	12.7%	Lincoln	2.5%	3.4%
Elk	2.7%	1.6%	Linn	2.0%	2.2%
Ellis	7.5%	6.5%	Logan	1.8%	1.9%
Ellsworth	5.9%	4.2%	Lyon	15.4%	17.0%
Finney	39.2%	38.3%	Marion	6.3%	3.2%
Ford	35.1%	42.9%	Marshall	3.4%	4.5%

<u>County</u>	<u>2000 % of Pop.</u>	<u>2009 % of Pop.</u>	<u>County</u>	<u>2000 % of Pop.</u>	<u>2009 % of Pop.</u>
McPherson	3.9%	2.9%	Rush	6.5%	5.6%
Meade	14.4%	14.7%	Russell	3.6%	4.7%
Miami	2.4%	2.0%	Saline	7.0%	7.9%
Mitchell	2.7%	2.4%	Scott	5.8%	10.3%
Montgomery	3.7%	3.5%	Sedgwick	10.8%	11.8%
Morris	3.5%	3.4%	Seward	41.2%	50.6%
Morton	14.6%	15.5%	Shawnee	6.1%	7.7%
Nemaha	2.5%	1.8%	Sheridan	2.3%	1.9%
Neosho	3.0%	2.8%	Sherman	9.3%	7.5%
Ness	3.6%	2.8%	Smith	1.9%	0.5%
Norton	3.3%	4.8%	Stafford	5.6%	8.3%
Osage	2.5%	2.9%	Stanton	18.8%	29.8%
Osborne	2.0%	1.7%	Stevens	18.1%	25.6%
Ottawa	2.5%	2.2%	Sumner	3.4%	2.2%
Pawnee	2.7%	3.1%	Thomas	3.5%	4.0%
Phillips	2.0%	2.6%	Trego	4.2%	3.8%
Pottawatomie	3.0%	4.1%	Wabaunsee	2.8%	2.2%
Pratt	3.6%	5.1%	Wallace	5.1%	3.2%
Rawlins	3.8%	1.9%	Washington	2.8%	3.0%
Reno	5.9%	6.2%	Wichita	16.3%	25.3%
Republic	3.3%	1.8%	Wilson	2.2%	1.8%
Rice	4.9%	6.9%	Woodson	2.2%	2.0%
Riley	9.7%	7.8%	Wyandotte	15.6%	21.1%
Rooks	3.0%	2.7%			

The WCLS concluded that cases involving non-English-speaking parties or witnesses require at least 150% of the time and attention devoted to other cases. The WCLS Report, § VI.C., noted that "non-English-Speaking court participants have a significant effect on the operation of the courts." The report concluded that, "in assessing the effect of . . . non-English-Speaking participants on the work of the courts, in any case

involving such a party, the case weight should be increased by at least fifty percent." This impact on the courts is even greater when competent translators are not available to assist the courts. It is increasingly difficult to find qualified translators and interpreters in all communities. Accordingly, access to affordable translator and interpreter services should be increased.

Audio and video equipment can facilitate this objective. As an example, Nebraska judges in rural courts use Skype to access translators from Omaha on a regular basis. They use translators from as far away as Washington, D.C., to provide translations of less frequently encountered languages.

Audio-visual equipment (often as simple as a telephone conference call) is already being used in Kansas in hearings in some courts. This same technology can be employed for translation services.

The Office of Judicial Administration's Access to Justice Committee is currently discussing low-cost options to address the need for translator/interpreter services. Some of the committee's considerations include:

1. establishing a policy for clerks on how to deal with non-English speaking people who come into the court;
2. coordinating with other state and local agencies on sharing interpreters;
3. developing guidelines for interpreters and providing simple training which could be offered online (coupled with an interview by a qualified interpreter to ensure that the person can adequately speak and understand the foreign language);
4. determining how interpreter oaths could be given;
5. charging prospective interpreters a small fee to be on the court interpreter list (with generated funds being used to pay for training and interviewing interpreters); and
6. researching whether video conferencing technology can connect hard-to-find interpreters with courts.

Adequate funding for interpreters remains a concern. Our Supreme Court created a Committee on Interpreters in 1999 with directions to "concentrate on ideas that can be accomplished within existing resources." The Committee's October 2000 report to the Supreme Court made recommendations on six issues: (1) the qualifications of interpreters, (2) who should evaluate interpreters, (3) what form of employment should be used with interpreters, (4) the expected cost of interpreter usage, (5) who should pay, and (6) who pays the costs at present.

After polling all thirty-one districts, the Committee determined that the various courts employ 208 part-time interpreters for 26 different languages. The counties paid all interpreters who were not paid by the Board of Indigents' Defense Services.

The Committee stated that the trial court judge's responsibility included "the protection of the state's tax-paying citizens and guests who are, by reason of their inability to communicate in English, placed at jeopardy in our court system" but that "[u]nfortunately, the failure [of the Legislature] to appropriate funds has left the district courts with the problem of complying with a mandate given limited resources."

The Committee also noted that "the State of Kansas is required by existing law to be responsible for the compensation of interpreters." The Committee concluded that there is "a need for full-time positions being provided in addition to a pool of part-time interpreters" for use in the courts and in the offices of the court clerks. Further: "It is obvious local efforts have had only limited success in the past. Local efforts will not be likely to resolve the problem in the future. . . . A statewide structure is needed that provides for the recruitment, payment, training and certification of qualified interpreters." Finally, the state should provide the funds to hire interpreters and translators.

The Supreme Court should use the National Center for State Courts as a resource for determining ways to coordinate interpreter services among

courts, ways to efficiently train interpreters, and ways to set and to enforce standards and qualifications.

**4. The Supreme Court should review and seek to modify the case types entitled to priority in the district court and the time standards for expedited disposition of such cases.**

Court rules and statutes govern the expedited scheduling and disposition of certain types of cases in the district courts. The types of expedited cases have grown dramatically over the years. It may well be that many of these no longer require special treatment, or that other types of cases now do. Accordingly, the Supreme Court should conduct periodic reviews of the types of expedited cases and time standards applied to them.

Judges and nonjudicial personnel are mindful of the importance of the timely disposition of cases. They recognize the importance of every case to the litigants. Many cases also have consequences for society as a whole. The expedited time standards for certain cases present challenges to our busy courts, particularly those that have unfilled nonjudicial positions due to funding constraints. The Supreme Court's General Principles and Guidelines for the District Courts, referred to as the "time standards," state: "Justice is effective when it is fairly administered without delay by competent judges operating in a modern court system under simple and efficient rules of procedure." Regardless of case volumes or staff limitations, courts must schedule cases to meet statutory and constitutional time requirements; public safety concerns; and the need to protect the state's most vulnerable citizens, such as children in need of care and persons seeking protection from abuse and stalking.

Statutes and case authorities require that district court proceedings must be expedited in certain types of cases. A probable cause determination for a person arrested without a warrant must be within 48 hours of arrest. *Riverside v. McLaughlin*, 500 U.S. 44 (1991). Appearances before a magistrate must be held without unnecessary delay. K.S.A. 22-2901. Juvenile detention hearings must be held within 48 hours of arrest, excluding

Saturdays, Sundays, and legal holidays. K.S.A. 38-2343 (a). Temporary custody hearings must be held within 72 hours, excluding Saturdays, Sundays, and legal holidays, from the child being taken into protective custody. K.S.A. 38-2243(b). A probable cause hearing must be held within 72 hours after an alleged sexually violent predator is taken into custody. K.S.A. 59-29a059(b). A hearing must be held and a written decision filed within 48 hours of the filing of a petition regarding the performance of an abortion on a minor. K.S.A. 65-6705(f); Supreme Court Rule 173.

The Supreme Court should periodically examine whether the appropriate scheduling priorities have been set and whether other types of cases should be heard on a priority basis.

**5. The Supreme Court should promote statewide development of district court best practices.**

**In doing so, the Court should consider using the National Center for State Courts' CourTools.**

Not all courts are aware of certain practices that are successfully used in other courts. These include collections methods, the use of audio conferences in appropriate situations, and the use of pro tem and district magistrate judges in selected circumstances.

E-filing, case management, and document management systems, when fully implemented statewide, will enable court personnel in one county to work online on cases pending in another county. This practice will require consistency of processes between courts. Other state courts which have implemented e-filing systems have found that standardization of processes was essential to an effective e-filing system. In the process of developing these unified practices, the Supreme Court should pursue the identification and statewide distribution of court best practices.

There are few formal means for determining court best practices. Court personnel informally share ideas for more efficient operations. Clerks

of the District Court have two statewide conferences annually. The Office of Judicial Administration provides training every other year for new clerks in conjunction with the June Court Procedures Workshop. The Clerk's Advisory group helps develop policies and procedures for clerks across the state when statutes are vague or ambiguous. All of these processes could be used to identify and develop clerical best practices.

Judicial training sessions provide a good opportunity for judges to share information regarding best practices. The statewide judicial conferences have included round-table discussions which allow judges to share information on particular topics. In 2011, the Supreme Court held regional training sessions in four sites in the state. This smaller group format provided judges an opportunity to discuss specific issues of interest to judges in both urban and rural areas.

The Supreme Court should expand the sharing of best practice ideas during these training sessions. Online meetings to review best practices could augment current in-person training sessions. In doing so the Court should consider using the talents and experience of the members of the Staffing and Judicial Needs Assessment Committees (SNAC and JNAC). As they noted in Weighted Caseload Study Report to the Supreme Court (p. 15-17):

"Economies of scale exist in appropriately staffed courts with a high volume caseload that do not exist in courts with smaller caseloads. Frequently, in the more populated counties and larger urban courts, built-in efficiencies result in faster processing times and the ability to process more cases in a year. For example, a larger court can have a judicial and/or court staff division of labor that leads to specialization; they might also have additional support staff to assist in case processing.

.....



"The case weights developed by the district grouping validate that economies of scale exist in the Kansas district courts and should be taken into account in any personnel needs model."

But economies of scale are not related solely to the size of the district court's caseload. The speediest handling of case types does not always occur in the busy urban districts. The Weighted Caseload Study examined the processing time for various cases in heavy, medium, and light caseload courts. The study disclosed that court clerks and judges in less congested environments also have developed methods which could be more efficient in handling certain types of cases. Those are shown in *bold italics* in the charts below.

### CLERICAL CASE WEIGHTS

		<b>urban</b>	<b>non-urb-1</b>	<b>non-urb-2</b>
<b>PROBATE</b>	Adoption	166	<b>87</b>	<b>153</b>
	Decedent's Estate	243	<b>237</b>	246
	Care & T'mt – SVP	191	<b>79</b>	<b>116</b>
	Guardianship	399	489	642
	Other	100	<b>99</b>	117
<b>CIVIL</b>	Mortg Forecl're	106	126	155
	Other Chapter 60	315	<b>232</b>	358
	Small Claims	113	<b>110</b>	<b>107</b>
	Limited Civil Other	48	88	90
<b>DOMESTIC</b>	Protection fr Abuse	102	<b>97</b>	118
	Other	235	<b>275</b>	292
<b>CIVIL MISC</b>	Marriage Licenses	30	33	53
	Civil Misc. Statutory	29	32	37
<b>CRIMINAL</b>	Felony Off-Grid	1,420	<b>1,191</b>	2320
	Other Felony	403	<b>373</b>	<b>383</b>
	Misdemeanor	162	211	234
	Other Criminal	313	<b>133</b>	<b>125</b>
<b>TRAFFIC</b>	DUI (Misd. & Fel.)	165	<b>157</b>	181
	Misdem'r Traffic	42	57	60
	Traffic Infraction	23	<b>19</b>	25
<b>JUVENILE</b>	CINC	617	<b>369</b>	<b>451</b>
	Juvenile Offender	287	<b>203</b>	<b>215</b>
<b>PSC</b>	Prob Solving Courts	41	41	41

**JUDICIAL case weights**

		<b>urban</b>	<b>non-urb-1</b>	<b>non-urb-2</b>
<b>PROBATE</b>	Adoption	35	45	82
	Decedent's Estate	47	73	91
	Care & T'mt – SVP	52	<b>45</b>	72
	Guardianship	57	82	114
	Other	13	31	38
<b>CIVIL</b>	Mortg Forecl're	18	25	30
	Other Chapter 60	188	<b>177</b>	194
	Small Claims	24	31	43
	Limited Civil Other	2	12	14
<b>DOMESTIC</b>	Protection fr Abuse	27	43	65
	Other	80	98	135
<b>CIVIL MISC</b>	Marriage Licenses	1	1	2
	Civil Misc. Statutory	1	1	1
<b>CRIMINAL</b>	Felony Off-Grid	1,044	2,177	1,637
	Other Felony	265	<b>212</b>	<b>220</b>
	Misdemeanor	51	70	91
	Other Criminal	31	<b>26</b>	32
<b>TRAFFIC</b>	DUI (Misd. & Fel.)	64	76	100
	Misdem'r Traffic	3	13	12
	Traffic Infraction	1	1	1
<b>JUVENILE</b>	CINC	193	<b>174</b>	266
	Juvenile Offender	74	<b>69</b>	<b>71</b>
<b>PSC</b>	Prob Solving Courts	233	233	233

The Court should undertake a study of the more efficient courts and clerk's offices to determine whether and how their efficiencies can be implemented by other district courts around the state.

The Court should also examine local district court rules for best practices. The 31 judicial districts of Kansas vary in size, population, and the number of counties in each district. Each of these differences creates special complexities in the delivery and cost of justice, so not all practices in every courthouse need to be the same. But where uniformity is practical, best practice should be implemented. Some such local rules were noted in the WCLS report in Appendix H:

- E-mail copies of all documents to attorneys;
- Issue destruction orders to allow destruction of limited action, small claims, traffic, and fish and game case documents;
- Require attorneys to provide sufficient copies of prepared documents;
- Prohibit clerks from making refunds of less than \$30;
- Develop and use printed resource materials and lists of forms for self-represented litigants;
- Develop and implement partially complete Record of Action information for documents submitted and awaiting a judge's signature;
- Require that all county attorneys use FullCase software;
- Use the reminder function extensively in FullCourt;
- Use the one day/one trial method of juror summoning;
- When parties appear in court, provide them with cards listing the next appearance date and cost payment information (including address, reminder to put the case number on all checks and money orders, reminder to keep all receipts, and location of drop boxes);
- Provide information on the web to reduce questions at the counter and phone calls.

One possible resource for assistance in developing and sharing proven best practices is CourTools, which was developed by the National Center for State Courts. CourTools consists of ten trial court performance measures

which help courts evaluate how well they are conducting business. The 10 measures are:

1. Access and Fairness
2. Clearance Rates
3. Time to Disposition
4. Age of Active Pending Caseload
5. Trial Date Certainty
6. Reliability and Integrity of Case Files
7. Collection of Monetary Penalties
8. Effective Use of Jurors
9. Court Employee Satisfaction
10. Cost per Case.

CourTools could assist in identifying and implementing district court best practices. Several state court systems have, with the assistance of the National Center for State Courts, implemented their versions of CourTools. Some district courts in Kansas already have implemented the Trial Court Performance Standards, the precursor to CourTools. As described by the National Center for State Courts:

"In designing the CourTools, the NCSC integrated lessons from successful performance measurement systems in both the public and private sectors with its earlier work with the Trial Court Performance Standards.

"The ten CourTools measures reflect the fundamental mission and vision of the courts, focus on outcomes, and are feasible, practical, and few. Effective measurement is essential for managing court resources efficiently, letting the public know what your court has achieved, and helping identify the benefits of improved court performance. . . .

"CourTools supports efforts toward improved court performance by helping clarify performance goals, develop a measurement plan, and document success.

"Effective measurement is key to managing court resources efficiently, letting the public know what your court has achieved, and helping identify the benefits of improved court performance.

"This balanced set of court performance measures provides the judiciary with the tools to demonstrate effective stewardship of public resources. Being responsive and accountable is critical to maintaining the independence courts need to deliver fair and equal justice to the public.

"Each of the ten CourTools measures follows a similar sequence, with steps supporting one another. These steps include a clear definition and statement of purpose, a measurement with instruments and data collection methods, and strategies for reporting results."

**6. The Supreme Court should implement uniformity in court processes and procedures in all judicial districts.**

**The Court should examine local rules that (1) make it difficult for practitioners to function in courts in different districts and (2) may impede the uniform adoption of statewide e-filing.**

Consistency of processes and practices in every courthouse in Kansas will become essential with the implementation of statewide e-filing, case management, and document management systems. The systems will enable clerks with a lesser workload in one county to provide online assistance to overworked clerks in another county.

Other states that have implemented e-filing have found that standardization of processes is the key to efficiency in an e-filing environment. They also concluded that standardization of processes should be implemented before e-filing systems are in place.

The 31 judicial districts in Kansas vary in size, population, number of counties, and character of their local legal communities. Each of these differences creates special circumstances that affect the delivery and cost of justice in Kansas. These differences are the basis of many local court rules. All judicial districts but two – the 1st Judicial District (Atchison and Leavenworth Counties) and the 31st Judicial District (Allen, Neosho, Wilson, and Woodson Counties) – have local court rules. Practitioners who routinely appear in courts in several judicial districts report that they have to contend with what appear to be unnecessary, arbitrary, confusing, and conflicting local court rules. The Supreme Court should commission a study of local court rules in order to eliminate or reconcile needlessly idiosyncratic and conflicting rules.

Some preliminary work regarding local rules has recently been undertaken by a subcommittee of the Kansas Bar Association Bench/Bar Committee. Chaired by Johnson County District Judge Kevin Moriarty, the subcommittee reviewed all current local rules of all judicial districts and attempted to identify areas of commonality in local rules regarding civil, domestic, and criminal law. The subcommittee developed some model local rules and a suggested form. The work of this subcommittee should serve as a starting point for any additional work in this area.

If the judicial districts could reach agreement regarding how to address some of the topics currently covered by local rules, the Supreme Court could establish uniformity by addressing the matter in a Supreme Court Rule.

**7. The Supreme Court and its Office of Judicial Administration should continue examining the efficacy of specialty courts, including veterans' courts.**

There are pilot drug court programs in some Kansas judicial districts. The Office of Judicial Administration is examining other possible specialty and therapeutic courts such as veterans' courts. The Supreme Court should expand these explorations.

The Supreme Court ventured into specialty courts through the issuance of Supreme Court Rule 109A, Therapeutic or Problem Solving Courts. Supreme Court Rule 109A, adopted January 28, 2009, authorizes each district court to establish specialty courts. It gives each judge presiding over a specialty court the authority to initiate, permit, or consider ex parte communications and to preside over subsequent proceedings if the judge follows certain procedures regarding disclosure of the ex parte communications. The Supreme Court has also authorized specialty courts in criminal or juvenile cases.

By the end of 2010, there were drug courts in seven Kansas district courts, one municipal court, and one Indian Nation court. Since that time, one additional drug court has been developed in Reno County. Drug Courts in Kansas have more similarities than differences. Here are the various programs and their basic features:



Location	Administrator	Adult	Juvenile	Capacity or Current Enrollment	Fees	Accepts SB 123 Clients?
5th Judicial District (Chase and Lyon Counties)	Community Corrections	X		75		Yes
City of Wichita	City of Wichita	X	X	54	\$300	No
19th Judicial District (Cowley County)	Community Corrections	X		45	\$300	Yes
10th Judicial District (Johnson County)	Johnson County Juvenile Court Services		X	40	\$310	No
Potawatomi Nation	Prairie Band Potawatomi Nation Healing and Wellness Court	X		30	0	No
18th Judicial District (Sedgwick County)	Community Corrections	X		120	\$360	No
3rd Judicial District (Shawnee County)	Third Judicial District	X		Not specified	\$300	No
29th Judicial District (Wyandotte County)	Community Corrections		X	Not specified	0	No
8th Judicial District (Geary)	Community Corrections	X		Not specified	\$300	Yes
27th Judicial District (Reno County)	Community Corrections					

Interest in problem-solving courts has continued to increase. In addition to drug courts, there has been discussion of developing specialty courts focusing on mental health, veterans, business interests, domestic violence, and child welfare.

The Kansas Department of Social and Rehabilitative Services obtained a grant from the Annie E. Casey Foundation to develop a Family Drug Court. This project is in the very early stages of development. The first meeting between SRS and the Office of Judicial Administration occurred in December 2011. The target population for the SRS Family Drug Court project appears to be cases where children are removed from the home due, in part, to one or both parents' abuse of alcohol or drugs. Reports suggest that Family Drug Courts are highly effective at returning children home faster than traditional court programs. The Kansas Judicial Branch should have a significant role in the design and implementation of this project beginning with establishing standards and a structure for administering Family Drug Courts.

The Office of Judicial Administration, through the National Center for State Courts, applied for a Bureau of Justice Assistance 2011 Adult Drug Court Discretionary Grant. The application requested \$196,000 to enhance existing drug courts, and to develop statewide standards for drug courts in Kansas. Funding for this project was denied. One of the reasons for the denial was the state's inability to assure ongoing state funding for the project, which is typically required in order to receive federal funding assistance.

Two additional broad topic areas must be addressed before Kansas can embark on any statewide program: administrative structure, support, and accountability; and funding.

Administrative structure, support, and accountability should continue to be coordinated through the Office of Judicial Administration. The Court should encourage state funding for these projects in order to make them eligible for grant funds.

There has been some recent interest in establishing veterans' courts. As set up in other states, these typically are a drug court/mental health court hybrid that use the drug court model to help non-violent veteran offenders struggling with addiction and mental illness. When veterans' courts originated, they accepted veterans with other treatment needs, such as homelessness or unemployment, but these programs were discontinued in many locations because they received too many referrals.

Enabling legislation is probably not needed to establish veterans' courts in Kansas. Supreme Court Rule 109A, Therapeutic or Problem-Solving Courts, already authorizes individual judicial districts to establish therapeutic criminal court dockets,

"the purposes of which are to achieve a reduction in recidivism and to increase the likelihood of successful rehabilitation through early, continuous, and intense judicial supervision. Such therapeutic or problem-solving procedures may target offenders with a mental illness or with drug, alcohol, or other addictions. Procedures may include treatment, mandatory periodic testing for prohibited drugs and other substances, community supervision, and the use of appropriate sanctions and incentives, all as allowed by law." Supreme Court Rule 109A(a).

The WCLS conducted in 2011 captured judge and clerk staff time devoted to specialty courts established pursuant to Supreme Court Rule 109A. Statewide average judicial and clerical case weights for these courts and for other case types were developed. These are:

Judicial Statewide Case Weights			Clerical Statewide Case Weights		
<u>Case Type</u>	<u>Mins.</u>	<u>Rank</u> <u>Hi-Lo</u>	<u>Case Type</u>	<u>Mins.</u>	<u>Rank</u> <u>Hi-Lo</u>
Felony Off-Grid	1512	1	Felony Off-Grid	1579	1
Other Felony	236	2	Guardianship	490	2
Prob Solv'g Courts	233	3	CINC	488	3
CINC	204	4	Other Felony	388	4
Other Chapter 60	187	5	Other Chapter 60	303	5
Other Domestic	97	6	Other Domestic	259	6
Guardianship	79	7	Juvenile Offender	244	7
DUI Misd & Fel	79	8	Decedent's Estate	243	8
Misdemeanor	73	9	Misdemeanor	207	9
Juvenile Offender	72	10	Other Criminal	191	10
Decedent's Estate	71	11	DUI Misd & Fel	168	11
Care & Tmt - SVP	56	12	Adoption	143	12
Adoption	49	13	Care & Tmt – SVP	129	13
Protect'n fr Abuse	38	14	Mortgage Forecl're	119	14
Small Claims	34	15	Small Claims	110	15
Other Criminal	30	16	Other Probate	106	16
Other Probate	27	17	Protect'n fr Abuse	104	17
Mortgage Forecl're	22	18	Limited Civ Other	66	18
Misd Traffic	8	19	Misd Traffic	52	19
Limited Civ Other	7	20	Prob Solv'g Courts	41	20
Traffic Infraction	1	21	Cv Misc Marr Lic	37	21
Cv Misc Marr Lic	1	22	Cv Misc Statutory	31	22
Cv Misc Statutory	1	23	Traffic Infraction	23	23

The specialty "problem solving" court case weight is relatively low for the clerical case weights (20th out of 23 categories), but is relatively high (3rd out of those same 23 categories) for the judicial case weights, indicating a need for substantial judge time with each case. While efficiency of these courts is a factor to be considered, efficiency alone should not be permitted to outweigh access to justice concerns and other factors involved in establishing specialty courts.

The Supreme Court and the Office of Judicial Administration should continue their work developing problem solving specialty courts.

## **VII. FUNCTIONS AND PROCEDURES APPLICABLE TO DISTRICT AND APPELLATE COURTS**

**The Supreme Court should examine the timeliness of decisions of the district and appellate courts.**

**The Court should set standards and reevaluate and implement appropriate enforcement mechanisms to assure that decisions and opinions are issued timely.**

Anecdotal information provided to the committee and personal experiences of several committee members indicate a need to assure that decisions and opinions at the district court and appellate courts are issued in timely fashion in all cases. The Supreme Court's Charge to the Commission was to examine the structure and operations of the courts to assure that the administration of justice in Kansas is "compassionate, swift, and accurate." It is axiomatic that justice delayed is justice denied. Current guidelines, standards, and enforcement mechanisms where they exist need to be reviewed and updated for effectiveness. Access to justice requires access to timely and completed justice.

## **VIII. APPELLATE COURT FUNCTIONS AND PROCEDURES**

**1. Both the Supreme Court and the Court of Appeals should consider the use of mediation at the appellate level.**

Appellate mediation is not a new concept. According to the National Center for State Courts, appellate mediation through the use of settlement conferences was in use before 1990. The appellate courts in more than half the states and all of the federal circuit courts have appellate mediation.

Civil cases are typically the type mediated at the appellate level, though some criminal case mediation has been done. The Kansas appellate courts review a significant number of civil cases each year. Kansas has traditionally used settlement conferences on a frequent basis at the district court level. Some district courts demand that a settlement conference be held before a case can be scheduled for trial. Settlement conferences at the trial court level have proven quite effective in resolving disputes before time and money are spent preparing for trial. Similar efforts at the appellate level have proven to be effective when undertaken early in the appeal process.

Appeals are a costly and time consuming activity. They can result in considerable delay in bringing a dispute to a final resolution. The time limit for pursuing an appeal is quite short. The decision to appeal may not have a significant immediate cost. An appeal is initiated by the filing of a simple, short notice of appeal in the district court.

An aggrieved party often must make the decision whether to appeal a short time after the decision at the district court level. On occasion, the decision to appeal may be driven by emotions that overtake a reasoned cost-benefit analysis of the costs of an appeal in terms of time, money, and emotional energy, in exchange for the realistic likelihood of a more favorable outcome on appeal. Appellate mediation early in the appeal process before briefing has begun provides the parties an opportunity to step back from hurt feelings and wounded egos to rationally consider their chances on appeal and to resolve their conflict without incurring considerable additional expense and delays.

Appellate mediation also benefits the appellate courts. States that have adopted appellate mediation have experienced reductions in appeals that must be heard, decided, and communicated in multi-page appellate opinions. This can result in the quicker resolution of those cases that cannot otherwise be resolved through the mediation process. As one presenter at a 2007 American Bar Association convention expressed, "courts want appellate mediation for a simple reason: it works."

**2. The Supreme Court should examine the types of cases entitled to priority appellate review and the time standards for those reviews.**

Both the Kansas Supreme Court and the Kansas Court of Appeals address issues of great importance to individuals and to the public at large. In 2010, the Supreme Court disposed of 1,118 cases and issued 291 written opinions. The Court of Appeals disposed of 1,709 cases and issued 1,157 written opinions.

As with the district courts, our appellate courts must comply with priorities and time standards set by statute, rule, and case law. The Supreme Court should periodically examine whether the appropriate priorities have been set and whether other types of proceedings should be heard on a priority basis.

In recent years, both appellate courts have made a significant effort to expedite cases that address permanency and placements for children, including child in need of care cases, child custody appeals, and adoptions. Other appellate time standards are mandated by statute and case law, including:

- appeals by an interested party from any adjudication, disposition, or termination of parental rights or order of temporary custody in any proceedings pursuant to the Revised Kansas Code for Care of Children. K.S.A. 2010 Supp. 38-2273(d).
- Criminal interlocutory appeals. K.S.A. 22-3601(a) and 22-3603; Supreme Court Rule 4.02 (2010 Kan. Ct. R. Annot. 32-33).
- Habeas corpus proceedings involving extradition to another state. K.S.A. 2010 Supp. 60-1505(e). The statute requires the district court to send the transcript of the hearing to the appellate court within 21 days after the notice of appeal is filed. After review of the transcript, the court sets the time for filing of the record. After reviewing the record, the court sets deadlines for filing of briefs if briefs are desired.

- Appeals involving children, such as child custody appeals.
- Orders authorizing prosecution of a juvenile as an adult and other juvenile offender appeals. K.S.A. 2010 Supp. 38-2380(c).
- Waiver of parental notification for minors seeking an abortion. K.S.A. 65-6705(g).
- Board of Public Utilities cases on public utility water and electric rates. K.S.A. 13-1228h.
- An appeal of any agency action of the State Corporation Commission has precedence in the court in which it is pending. K.S.A. 66-118d. Agency actions arising from a rate hearing requested by a public utility or requested by the State Corporation Commission when a public utility is a necessary party are appealed directly to the Court of Appeals and must be decided within 120 days. K.S.A. 66-118g(b).
- Any action of the water transfer hearing panel of the Kansas water authority. K.S.A. 2010 Supp. 82a-1505(b).
- Civil interlocutory appeals. K.S.A. 2010 Supp. 60-2102a(b); Supreme Court Rule 4.01 (2010 Kan Ct. R. Annot. 30-31). This includes cases where a receiver has been appointed.
- Habeas corpus proceedings pursuant to K.S.A. 60-1501. K.S.A. 2010 Supp. 60-1503.
- Remands for ineffective assistance of counsel. *State v. Van Cleave*, 239 Kan. 117, 716 P.2d 580 (1986).
- Appeals from rulings on motions to set aside liens against real or personal property. K.S.A. 2010 Supp. 58-4301(b).
- Appeals by interested parties from any final judgment involving:
  - The Kansas adoption and relinquishment act. K.S.A. 59-2111 *et seq.*
  - the care and treatment act for mentally ill persons, K.S.A. 59-2945 *et seq.*
  - the sexually violent predator act, K.S.A. 59-29a01 *et seq.*
  - the care and treatment act for persons with an alcohol or substance abuse problem, K.S.A. 59-29b45 *et seq.*



- the act for obtaining a guardian or conservator or both, K.S.A. 59-3050 *et seq.*

The Supreme Court should conduct periodic reviews of these priority appeals to assure that the appropriate priorities have been set and to determine whether other types of proceedings should be heard on a priority basis.

## **IX. OFFICE OF JUDICIAL ADMINISTRATION**

### **1. The Office of Judicial Administration should conduct more of its training electronically, through conference calls, GoToMeeting-like processes, and webinars.**

Training is crucial to the development and efficiency of judges and court staff. Training has traditionally been conducted in a central location, requiring some attendees to travel a significant distance. Taking time off from regular court business to attend training sessions becomes more difficult for persons from courts with unfilled staff positions because of budget constraints.

Training is a relatively large item in the Judicial Branch's budget. For fiscal year 2013, the training budget is approximately \$400,000. This includes registration fees, mileage, room rental, food, and other costs associated with training. Travel for training also causes expenses for replacement personnel or the loss of services of persons away from their jobs for training. The need for training of personnel constantly increases while funds for travel become harder to obtain. In recent years some training for judges and nonjudicial personnel has been cancelled or reduced in order to conserve funds.

The Court Services Officers' Advisory Board has noted the difficulties in traveling to a central location for training, as have the WCLS's Staffing Needs Assessment Committee (SNAC) and its Delphi sub-group. The SNAC group used only two days for training per year in calculating the

work load of court clerks. While more annual training days are needed for each staff member, it settled on two days for training per year due to inadequate staff cross-training, chronic unfilled staff positions, and budgetary constraints on travel. In its Report to the Supreme Court, Page 23, Footnote 28, the SNAC group observed:

"The SNAC received some feedback indicating that more training time should be accommodated into the staff year value. While the SNAC members believed they could benefit from more professional training, they believed that the combined realities of current levels of understaffing and limited county budgets required the committee to be conservative in allotting time for training purposes."

In recent years some regularly scheduled meetings were conducted by conference calls and the use of GoToMeeting technology, which eliminated travel time and costs. Use of this technology for training sessions should increase.

All Kansas judges participate in mandatory continuing judicial education as set forth in Supreme Court Rules 501 and 502. Generally, judges obtain their education through statewide conferences. This format provides an opportunity for judges to communicate directly with colleagues from across the state and to share ideas. The traditional conferences should be augmented with low-cost, computer-based webcasts of education sessions.

With the introduction of e-filing, clerks will need more training to assure that e-filing and case management procedures are consistent across the state. Webcasts and web-based courses have become the daily fare in business and in universities throughout the country. The use of this technology eliminates travel time and travel costs. Web-based courses allow participants to study the course work at any time at their convenience. Some training by the Office of Judicial Administration has already been conducted

using GoToMeeting and other web-based means. The Court should expand the use of technology for training and meeting purposes at all staff levels.

On-site training sessions should be recorded and made available to those who were not able to attend personally. CLE and CJE training is approved and available through both web-based training and through recorded training sessions, and made available to judges and attorneys throughout the state. The Court should expand the use of these training methods.

**2. The Supreme Court should examine the efficiencies of its Office of Judicial Administration's operations, including its Information Technology Department.**

**The Court should seek grant funding and the assistance of the National Center for State Courts to accomplish this.**

The Office of Judicial Administration implements the rules and policies of the Supreme Court as they apply to the operation and administration of the Judicial Branch. The Supreme Court delegates duties to the Office of Judicial Administration that involve fiscal operations, personnel management, education and training, municipal judge support, assistance to the district courts, compilation and assessment of caseload information, family permanency planning, child support enforcement activities, monitoring alcohol and drug safety action funds, alternative dispute resolution, and court improvement programs.

Each state has an administrative office that provides services to the appellate and district courts in a manner similar to the Office of Judicial Administration. In some states, the primary focus of the administrative office of the courts is providing services to the appellate courts, and more limited services to the districts courts. The types of services provided and the manner in which they are provided vary from state to state.

There has been no study to determine the efficiency of the operations of the Kansas Supreme Court's Office of Judicial Administration, or whether there are additional services the Office of Judicial Administration could or should be offering to the district courts. For example, should it provide computer hardware support services? Currently, there are not enough staff personnel to provide this service. However, there may be merit to this and other ideas that could prove to be beneficial to the court system and to the state.

The National Center for State Courts is uniquely qualified and situated to examine the efficiencies of the operations of the Office of Judicial Administration, including its Information Technology Department. The operation of the Information Technology Department will become ever more critical in promoting statewide court efficiency and standardization with the advent of a new statewide electronic filing, case management, and document management systems.

As noted on its website, the National Center for State Courts is the organization that courts turn to for authoritative knowledge and information, because its efforts are directed by collaborative work with the Conference of Chief Justices, the Conference of State Court Administrators, and other associations of Judicial Branch leaders. Consequently, it is able to provide expertise to the courts in a variety of forms, from web resources to hands-on assistance. Its court and technology consultants assist court leaders in identifying, developing, and implementing tools and practices that could improve the efficiency and effectiveness of the Judicial Branch. Some of the questions that could be explored by the National Center for State Courts include whether the Office of Judicial Administration is staffed appropriately, whether it is providing the appropriate types of services, and whether there are efficiencies it should explore.

The complexities of the issues, and the need for help from the National Center for State Courts, is illustrated by a brief look at the staffing levels for administrative offices of various courts. The number of staff persons varies from 9 in Wyoming to 745 in Kentucky, 496 in Florida, and

491 in California. A staffing study must take into account the nature of the services these offices provide and the relative number of constituents they serve.

## **X. LAWYERS**

### **1. The Supreme Court's Office of Judicial Administration should examine expansion of current programs that permit lawyers to provide limited advice and assistance to pro se litigants.**

The Weighted Caseload Study indicates that cases involving pro se litigants take more court resources than cases involving parties represented by counsel. Accordingly, the Supreme Court should develop programs to enable pro se cases to proceed more efficiently.

At the direction of the Supreme Court, the Office of Judicial Administration's Access to Justice Committee currently is involved in several pilot programs designed to facilitate providing assistance to pro se litigants. The committee developed guidelines for judges to use when a self-represented litigant appears in court. The committee established a "Self Help" web page containing information and links to forms and legal resources. A series of brochures was sent to each court for clerks to hand to self-represented litigants to provide them with more advice. The committee worked with the Judicial Council to develop domestic forms which use software that allows parties to answer a series of questions in order to prepare and print a court document. Kansas Legal Services has instituted a phone advice service to enable self-represented litigants to obtain advice on how to fill out and file the forms. There were several training sessions with court clerks to educate them on best practices in working with the self-represented.

Pro se litigants would benefit from even limited involvement of a lawyer in their case. Therefore, the committee examined establishing a limited representation process, through which an attorney could provide some representation and advice on specific limited matters without entering

into an attorney-client relationship. For example, a lawyer could assist a pro se litigant in the preparation of pleadings, motions, and other documents to be signed and filed in court without entering into the usual attorney-client relationship with all the duties that entails.

The committee established five pilot projects to experiment with the limited representation process and to develop the best procedures. After 18 months' experience, the project procedures were drafted into a new rule and several amended rules. Those rules are currently out for comment, and the comment period will end in mid-January, 2012.

Under the proposed rules, an attorney may limit the scope of the representation of a client if the limitation is reasonable under the circumstances and the client gives informed consent in writing. The attorney may help the client prepare a pleading, motion, or other paper to be signed and filed in court by the client, and such filing would not constitute an appearance by the preparing attorney. The attorney also may make a limited appearance on behalf of the pro se litigant so long as the attorney files a Notice of Limited Appearance stating precisely the court proceeding to which the appearance pertains, and, if the appearance does not extend to all issues to be considered at the proceeding, identifying the specific issues covered by the appearance.

The Office of Judicial Administration put the pilot project procedures on its webpage for lawyers to use in educating themselves about the best limited representation practices.

The use of limited representation lawyers should reduce the number of mistakes that self-represented litigants make when submitting court forms and when appearing in court. Lawyers should be more willing to provide pro bono services to unrepresented litigants when the nature and extent of the representation is narrowly defined.

Because the number of pro se cases is increasing and is likely to continue to do so, the Supreme Court should continue to examine ways to

assist pro se litigants in ways that are cost effective for the courts and for the litigants.

**2. The Supreme Court should consider suggesting a number of hours that attorneys are encouraged to voluntarily devote to pro se litigants, the indigent, and general pro bono work.**

Kansas does not require, but does suggest, that all attorneys dedicate time or other resources to assisting needy individuals. As stated in Rule 6.1 of the Supreme Court Rules Relating to Discipline of Attorneys:

"A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means."

The comments to that rule note:

"[2] The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms. As a consequence, legal assistance in coping with the web of statutes, rules and regulations is imperative for persons of modest and limited means, as well as for the relatively well-to-do. [3] The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer . . . . Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. . . ."

Missouri's Rule 4-6.1 is similar to that of Kansas:

"A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations; by service in activities for improving the law, the legal system, or the legal profession; and by financial support for organizations that provide legal services to persons of limited means."

Neither Kansas nor Missouri suggests a specific number of hours to be dedicated. But several states do suggest specific amounts to be dedicated by attorneys. Vermont, in its Rule 6.1, provides:

"Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should render at least 50 hours of pro bono publico legal services per year. . . ."

And among the comments to that rule are the following:

[1] . . . The Vermont Supreme Court urges all lawyers to provide a minimum of 50 hours of pro bono services annually. [Emphasis added.] [9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer."

While the ABA Model Rules of Professional Conduct relating to pro bono efforts is stated in voluntary terms, an amount is specifically recommended in Rule 6.1, Voluntary Pro Bono Publico Service:

"Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. . . . In addition, a lawyer should voluntarily contribute



financial support to organizations that provide legal services to persons of limited means. [Emphases added.]"

Among the comments to that model rule are the following:

"[1] . . . . The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually. States, however, may decide to choose a higher or lower number of hours of annual service (which may be expressed as a percentage of a lawyer's professional time) depending upon local needs and local conditions. "

The WCLS report noted the impact of pro se litigants on the courts (p. 17, Section VI-C, "self represented litigants"), when it stated:

"it is the considered judgment of the advisory committees that, in assessing the effect of self-represented litigants or non-English-Speaking participants on the work of the courts, in any case involving such a party, the case weight should be increased by at least fifty percent."

Later, in Recommendation 5 (p. 36), the report noted that "it is likely that the number of self-represented court cases in Kansas will increase."

Accordingly, any increased assistance to pro se litigants by the attorneys of Kansas will not only directly benefit those pro se litigants themselves, but will also assist the courts in effectively meeting the needs of those litigants.

In light of the findings, and in order to assure and improve appropriate access to justice in Kansas, the Supreme Court should review Supreme Court Rule 6.1. True access to justice may require revising the suggested guidelines to encourage service to pro se litigants, the indigent, and general pro bono work.

## XI. LEGISLATION AND COURT RULES

**The Supreme Court should promote legislation or adopt Court Rules to implement the foregoing recommendations.**

Many of the recommendations in this report will require some sort of rule or legislative changes in order for them to be fully implemented. The Court should determine what changes will be required and issue new rules where it has the authority to do so, and seek legislative change where it cannot implement the recommendation under its general administrative authority granted in Article 3, § 1, of the Constitution of the State of Kansas, which provides:

"The judicial power of this state shall be vested exclusively in one court of justice, which shall be divided into one supreme court, district courts, and such other courts as are provided by law; and all courts of record shall have a seal. **The supreme court shall have general administrative authority over all courts in this state.**" [Emphasis added.]