

State of the Judiciary  
Chief Justice Kay E. McFarland, Kansas Supreme Court  
Written Message  
2002

I welcome this opportunity to report on the state of the Kansas Judicial Branch to the Legislative Branch and to Governor Bill Graves pursuant to K.S.A. 20-320.

First, I want you to know I am very aware of the fiscal crisis confronting the government of the State of Kansas - a crisis that is unprecedented in a number of respects. I certainly do not envy you in the performance of your roles in seeking solutions to the many facets of the fiscal problems with which you are confronted.

#### JUDICIAL BRANCH FUNDING PERSPECTIVE

Unfortunately, the Judicial Branch funding structure makes it particularly vulnerable to budget cuts. This arises from the fact that the Judicial Branch budget is approximately 97 percent salaries. This unique budgetary composition is the direct result of the 1977 court unification legislation under which all county court personnel became state employees. All non-salary expenses of the county courts were to be assumed by the state in a second phase of court unification, which has never occurred. Counties continue to pay all non-salary expenses of the district courts. The 3 percent of the Judicial Branch budget allocated for operating expenses consists of essentially basic costs that cannot be significantly altered. Hence, budget cuts, however designated, ultimately fall on the salary budget components.

It is well established, as a number of studies have shown, that the Judicial Branch has been chronically underfunded for many years. By way of illustration, between fiscal years 1987 and 1999, there was a 54.6 percent increase in case filings, excluding traffic cases. During that same period of time, the number of judges was increased 5.5 percent and the number of nonjudicial employees was increased 9 percent. These figures do not show the increase in the workload arising from changes in federal and state law which add to the complexity of processing and hearing cases. Additional hearings are required, more notices need to be sent, more papers need to be filed, and the list goes on. Many types of cases, particularly domestic, juvenile, and probate, are still receiving reviews and hearings many years after they are filed. These additions to the workload simply do not show up in case number statistics. Through improvements in efficiency and the use of technology, the Judicial Branch has striven to do more, and has done more, without a corresponding increase in personnel. However, cuts in FY 2001 and FY 2002, and those proposed in FY 2003 are reductions to our basic maintenance budget which have the effect of reducing our workforce.

The Judicial Branch budget that we submit each year is a carefully prepared document. All requests for additional personnel submitted to the Court for inclusion in the budget are thoroughly and carefully analyzed. Only those considered most needed are included. The budgets we submit are lean. Nevertheless, each year the Judicial Branch budget is severely cut by the Director of the Budget. (More about the propriety of this process will be discussed later in this report.) Even if we are successful in having partial restoration of these cuts, the end result is that each year we fall further behind in having our needs met. However, as noted, the last few years have seen a downward spiral in funding with ever-growing cuts to even our basic maintenance budget - the cost of just maintaining the salaries and wages of existing employees.

To illustrate just how tight the Judicial Branch budget is, I note the requirement that the state have an ending balance each year of 7.5 percent of the general fund budget. In recent weeks, I have read of much discussion as to whether that could be safely and comfortably lowered to 5 percent in order to reduce the revenue shortfall. By comparison, in FY 2000, the Judicial Branch had an ending balance of \$106, which was 0.00014 percent (or 14/100,000 of 1 percent) of our general fund budget. This was neither safe nor comfortable, I can assure you. In FY 2001, the Judicial Branch had an ending balance of \$12,183, which was 0.01555 percent (or 15/1000 of 1 percent). Even that low percentage was made possible only by a \$300,000 supplemental appropriation without which we could not have met the final payroll. This problem did not arise from unanticipated or increased expenditures, rather it was the result of the underfunding of our basic maintenance budget. Such underfunding was \$1 million in FY 2001 and \$2 million in FY 2002. This background is necessary to understanding the crises we face in this year (FY 2002) and next year (FY 2003) unless funding is restored.

## FY2002

The FY 2002 basic maintenance budget of the Judicial Branch was underfunded by \$2 million. In order to try to operate at this level of reduced funding, we took the following measures:

- imposition of an across-the-board (originally 60 day, now 90 day) hiring freeze on all vacant positions;
- reduction of funding for temporary hours by 25 percent;
- elimination of temporary assignment district magistrate judges from rural districts to urban districts to assist with the latter's processing the massive caseload;
- elimination of travel for Court of Appeals hearings, so that all hearings are held in Topeka; and
- imposition of a local savings reduction on each district, which forced additional savings by either further reducing temporary hours or holding positions open beyond 60 to 90 days.

Even with all of these cost-cutting measures, the Judicial Branch is facing a \$600,000 shortfall in the present fiscal year. These cost-cutting measures are exacting an increasingly heavy toll on the ability of the Judicial Branch to perform its constitutionally and statutorily mandated functions.

The impact is felt in every facet of our operation. To make time for the filing and processing of cases, notices, reporting requirements, and the myriad other duties imposed on our district courts, clerks' offices are having to close their doors and telephones to the public. Only 34 of our counties have clerks' offices available to the public 8 a.m. to 5 p.m. Opening late, closing during the noon hour, and closing early to the public have become the norm. Even so, many courts are reporting that work is falling behind despite the all-out effort to keep current. The result is our employees are under ever-increasing stress in their jobs. In these circumstances, delays in performing the many required functions are occurring and the risk of mistake grows. Delays and errors can have serious, even life-threatening implications. In criminal, juvenile, domestic, and mental illness cases, the effect of a delay or a mistake can be horrendous. This is not a situation that may be likened to an overworked public library staff where delays and mistakes result in untimely notices being sent on overdue books or the slow or erroneous reshelving of returned books. By contrast, the stress of overwork in the clerks' offices can result in the arrest of the

wrong party, a protection from abuse or restraining order not being served, the erroneous release of a prisoner, or other serious consequences.

Additionally, reduced public access to the clerks' offices seriously impacts many of our citizens. The clerk's office is the magnet drawing inquiries from bewildered members of the public who have been pulled into the legal arena and are seeking information. Contacting the clerk's office, in person or by phone, before or after work, or during the noon hour is often not an option due to reduced public availability. Even if contact is made, understaffed clerks' offices have less time to spend with the public to answer the myriad questions that are often presented. The clerks want to help, but shortages of time to perform their required tasks often restrict the time they can spend on such inquiries.

Also hit hard by the cuts is the work of our court services officers. At last count, each of our urban court services officers performing supervision duties were supervising an average of roughly 147 probationers. These numbers are far above nationally recommended caseloads, and hiring freezes exacerbate this already difficult situation. While a position is being held open, probationers who were being supervised by the individual occupying that position cannot just be put on hold. These cases are temporarily redistributed to other already overloaded court services officers, which further reduces meaningful supervision. Both public safety and the safety of the court services officer become issues as the ability to provide meaningful supervision, drug screening, and other services is reduced by overloading the remaining staff. A fair analogy would be if a school district increased an individual class size to 200 students. The school district would still be providing an education to all students - but is the quality of that education what the citizens of Kansas want, need, and have every right to expect? Likewise, if court services officers are forced to spread themselves too thinly across an excessive number of probationers, the level of supervision provided cannot be at the level Kansas citizens expect, need, and deserve for their safety.

Additionally, the underfunding has eliminated one of the most efficient means of utilizing judicial time. Previously, we were able to temporarily assign rural district magistrate judges to over-extended urban courts to assist with their caseloads. In Shawnee County, for example, in the previous three years, approximately 300 days of district magistrate time was assigned to this urban court, providing much needed relief. We no longer have that capability since we cannot afford the travel expenses of the magistrates. This is another example of a cost-cutting measure, that is, in the big picture, a poor economy.

As you know, the Judicial Branch is obligated to maintain court operations in 105 counties. Regardless of the number of case filings in a small county, the minimum number of employees needed to keep the clerk's office open is 1.5 FTE positions. Several part-time positions which had been relied on by these small court locations had been funded through temporary hours allocated to the judicial districts. As we have been forced to drastically cut these temporary hours to meet savings requirements, adequate staffing has become a frequent struggle.

The Kansas Court of Appeals and Kansas Supreme Court are also impacted. Both courts rely heavily on background research done by research attorneys. These positions are, by their very nature, usually relatively short-term employment occupied by recent law school graduates. This results in a high naturally-occurring turnover rate. The 60- to 90-day hiring freeze has hit these positions hard due to this characteristic. I can personally attest to the problems this creates.

Whereas most chief justices have two or more research attorneys on their personal staff, I have one. My former research attorney left for a new position outside the court system in October 2001 and, by virtue of the hiring freeze, she was not replaced until January 2002. During this period I was put in the unenviable position of being the only chief justice in the nation without a research attorney.

The Court of Appeals sits in panels of three and previously heard appeals in cities across the state. As a cost-cutting measure, all Court of Appeals travel was eliminated at the beginning of FY 2002. This has transferred the travel burden to county and district attorneys, as well as private attorneys. Counties and individual litigants must now bear the time and travel expenses. In addition, a public outreach and educational opportunity for Kansas citizens and students that was afforded by the travel of the court has been eliminated. Court of Appeals panels frequently sat at high schools, colleges, or universities, giving students and local citizens the opportunity to see the Kansas justice system at work.

With all of these drastic cost-cutting measures in place, the Judicial Branch is expecting to be at least \$600,000 short of meeting expenses. The \$2 million cut from the FY 2002 basic maintenance budget is the culprit. We are requesting a \$600,000 supplemental appropriation for the current year. Without it we cannot meet our payroll.

I have been most gratified by the responses I have received from members of legislative leadership with whom I have conferred in the last several weeks, as well as the response received from my appearances before the House Ways and Means Committee and the Senate Appropriations Committee. Your concern and understanding is appreciated, as is that of Governor Graves, who included our supplemental appropriation as a budget enhancement in his State of the State Message and has requested additional funding for the Judicial Branch in March budget revisions. The \$600,000 has been included in the budget recommendations of both the House and the Senate. It is vital to the Judicial Branch that this \$600,000 be added to the FY 2002 budget.

FY2003

Without an FY 2002 supplemental appropriation it is clear the Judicial Branch cannot meet its payroll obligations. Despite that, the cut made by the Director of the Budget in our FY 2003 maintenance budget is an incredible \$3.6 million reduction.

The simple truth is the Judicial Branch cannot perform its constitutional and statutory duties with such a shortfall in funding.

This is not speculation - I base this statement on our actual experiences with maintenance budget cuts of \$1 million in FY 2001 and \$2 million in FY 2002. There is no point repeating all of the problems in FY 2002 resulting from the \$2 million cut in our basic maintenance budget. Clearly the Judicial Branch is a co-equal branch of government which must be funded at a level allowing it to perform its constitutional function. Such funding was restored in the Governor's State of the State Message budget enhancements. In doing so, the Governor stated in his 2002 State of the State address that the Judiciary "is strained and limited by the resources we have been providing," and noted that "justice that cannot be accessed is justice denied." I urge restoration of the \$3.6 million cut by the Director of the Budget.

Before closing this section of my report, I want to mention miscellaneous other requests that were cut by the Director of the Budget from our carefully prepared budget.

Three years ago the first additional district magistrate judgeships since the time of court unification in 1977 were authorized. Adding district magistrate judges has proved to be a cost-effective way to manage increasing caseloads. A district magistrate judge is able to manage many of the less complex cases, leaving the district judges to handle the more complex caseload. The lower salary of a district magistrate judge coupled with less support staff makes this a cost-effective caseload management tool. There are four judicial districts whose caseloads require additional judicial resources. We therefore submitted a request for a district magistrate judge in the Seventh Judicial District (Douglas County), the Eighth Judicial District (Dickinson, Geary, Marion, and Morris Counties), the Ninth Judicial District (Harvey and McPherson Counties), and the Twenty-Seventh Judicial District (Reno County).

We also requested funding for 21 new positions for the district courts, as well as a 3.7 percent cost of living increase, which is in line with the increases in the Employment Cost Index as reported by the Bureau of Labor Statistics. A number of economic indicators were reviewed to determine the appropriate one upon which to base a general increase. The overriding philosophy of pay is to recruit and retain qualified, motivated employees. Therefore, we should be increasing salaries at approximately the same rate as other employers do.

Even with the maintenance budget in danger, I feel it is important to continue to emphasize the real need not just to maintain current staffing levels but, where necessary, to add positions. The only requests for new positions which are included in the Judicial Branch budget request are those that are desperately needed.

#### SUBMISSION OF THE JUDICIAL BRANCH BUDGET DIRECTLY TO THE LEGISLATURE

The Judicial Branch will continue to seek authorization to submit its budget directly to the Legislature in order to safeguard its constitutional position from invasion by the Executive Branch. The requirement that the Judicial Branch submit its budget to the Executive Branch Division of the Budget for drastic cuts before it is even seen by the Legislature has led to many of the funding problems the Judicial Branch faces each year. It is appropriate for the Executive Branch to require agencies under its direction to submit their requests to that branch of government's experts so that needs and priorities can be weighed and balanced. Those decisions are Executive Branch matters, and their budgetary procedures are certainly within their realm of authority. It is highly inappropriate for the Judicial Branch budget to be thrown into the Executive Branch agency mix to be slashed by the Director of the Budget at will. There clearly is no expertise in that agency as to judicial operations and needs. The Division of the Budget spends time going through the Judicial Branch budget with the preconceived goal of making cuts in the total amount regardless of the fact our budget is so tight as a result of our own budget review process that every request is necessary. As a result, all cuts made are arbitrary because there are no reasonable cuts left to be made.

As one example, for FY 2003 a preliminary cut of \$400,000 was made from expenditures for contractual services in the district courts. This is the money spent for district judges to travel from one county to another within their district to hear cases. The total request from the State General Fund for all operating expenditures in the district courts is only \$308,163. In addition to

cutting more than was requested in the first place, that particular item is one that cannot be cut at all. Cutting all district judge travel to other counties within their districts would mean that, in 56 counties without resident district judges, no felony criminal trials could be held, no domestic cases could be heard, no major civil cases could be heard, and other matters not within the jurisdiction of district magistrate judges simply could not be handled.

In previous years, examples of cuts recommended by the Division of the Budget in its initial recommendations have included removing a federally funded position, which would have produced no State General Fund savings, and eliminating the only administrative assistant for the Chief Judge of the Court of Appeals. The bottom line is that any significant cut to the Judicial Branch budget will be taken in salaries and wages, regardless of where they are recommended initially. Our budget is truly a maintenance budget, and there are no reasonable cuts that can be made therein.

As there are no specific requests that can be cut from the maintenance budget and justified by the Division of Budget, it falls back on highly inflated estimated savings from personnel turnover. Year after year, these exaggerated "savings from turnover" become a ghastly self-fulfilling prophecy as the Judicial Branch has to impose massive hiring freezes to attempt to make up the cut. This is why, unlike any state agency, the Judicial Branch has had hiring freezes in eight of the last ten fiscal years. The nature of the Judicial Branch budget makes it inappropriate for the kinds of percentage cuts the Division of the Budget appears to feel it is required to make. As I have stated previously, the Judicial Branch budget is nearly all personnel costs. Any cut means funds that are used to pay our employees' salaries are in jeopardy. There is simply no other place to absorb the brutal fiscal impact of reductions to our maintenance budget.

For many years prior to court unification, Judicial Branch budgets were submitted to the Legislative Branch without modification by the Executive Branch. Amending current law to allow the Judicial Branch budget to again be submitted directly to the Legislature would not change the budgetary bottom line. The same budget analysis and legislative review would take place. Any amount requested by the Judicial Branch and not approved by the Legislature would simply be available for the Legislature to spend on other items or would remain unexpended in the State General Fund. This would give the Legislature much more flexibility than current law, because dollars are not forced to be cut from some other program or agency to fund the Judicial Branch. Moreover, direct submission of the Judicial Branch budget could help to focus both legislative and judicial time and energy on the real issues present in the Judicial Branch budget, rather than focusing on cuts made by the Executive Branch.

## CONCLUSION

The major role of the Judicial Branch is to deliver timely, quality justice in an efficient manner.

Public confidence in the ability of the Judiciary to do justice is a cornerstone of our system of government. The courts are frequently the last bulwark of freedom as guaranteed by the Bill of Rights of the United States of America and the State of Kansas. A fully functioning court system is essential to the American way of life. Although much of the most important work of the Kansas courts includes matters that directly impact the lives of Kansas families and public safety, a high quality court system is also vitally important to the Kansas economy. Each year, innumerable business matters are resolved in our courts. Without just and efficient court operations, these cases would not receive timely attention and resolution, costing Kansas

businesses money and creating a burden on the Kansas economy. Interestingly, the January 23, 2002, issue of USA Today contained the results of a survey conducted by the United States Chamber of Commerce which rated each state's court system on reasonableness and fairness from a business perspective. Kansas ranked in the top five in that survey.

We have an excellent court system that is in grave danger of irreparable harm from underfunding of its essential operations. This is an extremely difficult time for all of state government. You have many difficult decisions to make as to what will and will not be funded and as to how to fund the essential state services. I urge you to remember that, while there are things the people of Kansas may have to give up in this fiscal crisis, justice cannot and must not be one of them. The cost of its loss would be far too high.