

State of the Judiciary
Chief Justice Kay E. McFarland, Kansas Supreme Court
Written message
2005

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

JUDICIAL BRANCH OVERVIEW

I am pleased to advise that Kansas continues to have an outstanding court system that well serves the people of Kansas. The Judicial Branch is benefiting from the 2004 Legislature's approval of funding for much-needed new positions. These include 10 of the 13 additional court services officers that the Judicial Branch had requested and an administrative assistant and a court reporter for the new district judge position in the 7th Judicial District (Douglas County). These are the first new nonjudicial positions the Legislature has approved for the district courts since 2001. In addition to the new district judge position in the 7th Judicial District, three district magistrate judge positions were also funded in the 8th (Dickinson, Geary, Marion, and Morris Counties), 9th (Harvey and McPherson Counties), and the 27th (Reno County) Judicial Districts.

FY 2006 MAINTENANCE BUDGET REQUEST

The total FY 2006 maintenance budget request is just under \$100 million, or less than 2.06 percent of the State General Fund. The proposed budget is truly a maintenance budget, funding only those positions and programs currently in place. However, the maintenance budget request does appear to reflect a significant increase, due to factors beyond our control such as amounts required for fringe benefit increases, for the 27th paycheck required in FY 2006 for all state employees, and for the statutorily scheduled expansion of the Court of Appeals. Additionally, we request restoration of the \$3.5 million originally cut from our FY 2003 maintenance budget. This cut resulted in the court having to initiate the emergency surcharge, which the court has been forced to continue. The FY 2003 cut has been carried on through subsequent budgets, leaving the court with no alternative but to continue the surcharge.

THE EMERGENCY SURCHARGE

What It Is and Why It Came into Being

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 trial court personnel became state employees. All non-salary expenses of the trial 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 fixed costs that cannot be significantly altered. Hence, budget cuts, however designated, ultimately fall on nonjudicial salary expenditures.

The Director of the Budget reviewed our proposed budgets and made cuts in our maintenance budgets primarily by overestimating the amount of savings from personnel turnover. Hiring

freezes became routine - these "savings" were used the next budget year by the Director of the Budget to justify even greater anticipated savings and increased cuts.

The ever-escalating cuts were wholly unjustifiable and unrealistic. In FY 2001, the cut was \$1 million. Despite hiring freezes and penny pinching, we were facing a \$300,000 shortfall and would have been unable to meet the final payroll without a \$300,000 supplemental appropriation granted in the final days of the session. Despite this reality, the Director of the Budget cut our FY 2002 maintenance budget by \$2 million. We spent much of FY 2002 in an almost perpetual hiring freeze which caused major problems in performing our mandated duties. Even so, we were facing a \$600,000 shortfall which would have necessitated shutting down the court system for approximately 3 days. Late in the session, a \$600,000 supplemental appropriation headed off this disaster.

Despite this experience the Director of the Budget cut \$3.5 million from our FY 2003 maintenance budget request. Under Article 3 Section 13 of the Kansas Constitution, we could not reduce compensation paid to Supreme Court justices and district court judges. Thus, the entire burden of the \$3.5 million cut in the maintenance budget would have fallen on Judicial Branch employees who were not judges (non-judicial personnel). The shutting down of the court system was looming. Each day the court system was shut down would have saved only \$195,000. Weeks of shut down would have been necessary to recoup the monumental \$3.5 million shortfall.

I met with the legislative leadership and explained the situation. The leadership in that session showed understanding of and concern for the crisis facing the Judicial Branch but offered no realistic hope of restoring funding in light of the fiscal realities of the projected revenue shortfall the state faced in FY 2003. The decision to impose the surcharge on court costs was not taken lightly but was ultimately adopted as a one-year emergency measure. Unfortunately, the \$3.5 million cut to our maintenance budget has never been restored, and the surcharge has had to be extended in FY 2004 and FY 2005.

The root cause of the unrealistic cuts in our maintenance budget was the fact that the Director of the Budget had the authority to reduce the Judicial Branch maintenance budget request. The reduced budget request was the figure included in the Governor's annual budget message. In order to restore the cuts, the Legislature had to either take money from other budgets or increase state revenues. In the tough fiscal times the state faced, the various legislatures opted to do neither.

Thanks to Governor Sebelius and the 2003 Legislature, the Judicial Branch maintenance budget request is no longer subject to reduction and is included, as is, in the Governor's annual budget message.

However, the \$3.5 million FY 2003 budget cut has never been restored and continues into each successive budget with the Emergency Surcharge having to be extended each year to fill in the hole. Restoration of the \$3.5 million cut is urged as a part of our maintenance budget request.

It is important to remember that the surcharge does not fund new programs. Rather, the funds received are dedicated wholly to funding existing employees (excluding judges) by virtue of the FY 2003 Judicial Branch payroll cut made by the Director of the Budget.

Before the 2005 Legislature is HB 2499, which would codify the Judicial Branch Surcharge. The major difference between the surcharge and the effort to codify the surcharge in HB 2499 is that

the Judicial Branch Surcharge Fund is not currently a part of the state treasury and, therefore, is not subject to appropriation. Under proposed HB 2499, the Judicial Branch Surcharge Fund is created "in the state treasury," and all expenditures from the fund are to be made in accordance with appropriations acts. This would place the Judicial Branch in the same position in which it was placed prior to implementation of the surcharge in 2002. The Judicial Branch would be dependent upon the Legislature to appropriate the funds generated by HB 2499. From our experience, extended hiring freezes and waiting for the supplemental appropriations necessary to avert furloughs takes an extraordinary toll on Judicial Branch employees. We request that the Judicial Branch not be placed in this position again.

HB 2499 is not necessary from the perspective that the surcharge is operating smoothly, as it has since its inception, without imposing a burden on the public. If the surcharge is to continue, I request that it remain under the control of the Judicial Branch, as it is currently.

REQUESTED ENHANCEMENTS

New Positions

As always, the Supreme Court carefully considered requests from the district courts in preparing the FY 2006 proposed Judicial Branch budget. In September 2004, the Supreme Court reviewed and determined what additional personnel requests would be included in our FY 2006 proposed budget. We have included requests for 17 new nonjudicial positions, including 4 court services officers, 9 trial court clerk II positions, and 4 clerical support staff positions. Also included are a district judge and district magistrate judge for the 10th Judicial District (Johnson County), together with an administrative assistant and court reporter for the district judge. The need for these positions has been shown through caseload statistics.

Judicial Salary Increase

In an effort to bring Kansas district judges to the national median salary for judges, the Supreme Court voted to include a salary enhancement as requested by the Kansas District Judges Association. District judges have long fought the battle for a salary at or close to the national median. Unfortunately, the salary increases since the last judicial salary increase in 1999 have not kept Kansas judicial salaries in line with our counterparts in other states.

Currently, the salary of a Kansas district judge ranks 39th nationally, while our state ranks 26th in per capita income. Kansas district judges' salaries also do not rank well regionally. The difficult fiscal times the state has had in recent years are not entirely behind us, but the state certainly has begun its climb out of the fiscal black hole that existed for several years. This request would bring our judges' salaries to the national median.

Health Insurance for Senior Judges

The Senior Judge program has proven to be highly successful. Senior judges are retired judges who contract to work 40 percent time for 25 percent of the pay they would have received had they not retired. Both the Judicial Branch and the state as a whole benefit from senior judges' knowledge and years of experience. Senior judges are available statewide, often on short notice, to hear cases from which other judges have had to recuse themselves, to step in when there is an emergency or illness, or to help manage crowded dockets.

Because they are retired, senior judges are considered temporary employees and are not eligible for the benefits enjoyed by other state employees, including health insurance. Senior judges who wish to continue with the state group health insurance must do so at direct bill rates, without benefit of the employer contribution paid for other state employees. When the annual cost of health insurance at the direct bill rate is taken into account, senior judges are actually working 40 percent time for approximately 17.4 percent of the pay.

To remedy this situation and to provide an added incentive for participation in the Senior Judge Program, the Court requested the introduction of legislation, 2005 SB 52, to allow the Court to pay for the employer portion of health insurance for senior judges. In this way, senior judges would be treated just like other Judicial Branch and state employees. At this time, SB 52 has passed the Senate, and we hope for success in the House in the next few weeks.

PROGRAMS

Following are updates on existing programs and information about new or expanded programs of the Judicial Branch. These represent the efforts of the Judicial Branch to better meet the needs of Kansas citizens.

The NonJudicial Salary Initiative Committee

The NonJudicial Salary Initiative Committee is currently reviewing the position descriptions, duties, and staffing patterns of judicial support staff. The committee is comprised of judges, court managers, and personnel. The goals of the committee are (1) to revise the job specifications and position descriptions of the judicial support staff positions, if needed, so they provide guidance to judges and court administrators about appropriate duties for judicial support staff and (2) to make recommendations concerning staffing.

Law School for Legislators

The Judicial Branch launched a new program this year to provide legislators with added insight into the Judicial Branch. *Law School for Legislators* was held on January 13, 2005, and provided both new and returning legislators with information that we believe will assist them throughout the legislative session and as they deal with constituent issues. Approximately 40 legislators attended the first-year event.

Members of the Supreme Court and Court of Appeals, as well as leaders of the 2005 Legislature, were on hand to meet with program participants and to answer questions.

FullCourt Case Management System

I am pleased to announce that October 2004 marked the end of the implementation of FullCourt, our statewide case management system. By all accounts, this has been a successful project. Anderson County was installed beginning November 1, 2001. Our last court scheduled to go on line, Douglas County, was fully implemented on October 1, 2004. Every court in the state, with the exception of Shawnee County and Johnson County, is using FullCourt. FullCourt is now installed in 103 counties, which includes 108 courthouses. At a total cost of \$5 million, the project was primarily federally funded and came in approximately \$1 million under budget and one year ahead of schedule.

The project began in November 2001 and our Office of Judicial Administration (OJA) Information Technology staff have been on the road for three years installing the program, with a minimum of three weeks being spent in each judicial district in the state. District court staff also contributed significant time preparing for the installation. Office of Judicial Administration staff have received many compliments regarding both the product and the ability to roll it out in such a timely manner. Many other states have attempted, or are attempting to do, what we have just completed and have found it quite an undertaking. Few, if any, have achieved our level of success. Much of our success is that this is a "from the ground up" project, with many district court staff involved in an advisory committee to assess our needs and develop the right system.

FullCourt integrated a number of different functions, including accounting, case management, and jury management into one program. This program provides a significant advantage in integrating all court data, including the court services module, into a single program. We are believed to be one of fewer than a dozen states with an integrated statewide system. We believe that FullCourt will help court staff work in a much more efficient manner, increasing their ability to handle growing caseloads.

We will continue to provide FullCourt training to all judges, clerks, and court services officers in the upcoming years, both in Topeka and through regional training, to make training accessible to all regions of our state.

We are currently building a data integration system so court information can be collected and sent directly from Topeka, rather than having each individual court send information to the state agencies who use court information, such as the Department of Corrections, the Kansas Bureau of Investigation, the Department of Health and Environment, the Division of Motor Vehicles, and others.

Audio and Video Streaming of Supreme Court Oral Arguments

On August 30, 2004, the Supreme Court scheduled oral arguments in Case No. 92,032, *Montoy, et al. v. State of Kansas, et al.*, and took unprecedented steps to make accessible to the general public those arguments challenging the constitutionality of the state's School Finance Act.

A number of entities cooperated to make that broadcast possible. The Kansas Board of Regents was instrumental in providing live audio and video streaming over the Internet the day of arguments. The arguments were later made available as an archive via the *Kan-Ed Live!* project.

Representatives of Wichita's public television station KPTS oversaw the production of a one-hour program of the gavel-to-gavel oral arguments which aired on all public television stations in the state on September 5, 2004. That broadcast was added to the *Kan-Ed Live!* website after the program aired.

The Court approved this historic presentation of oral arguments due to widespread interest in the school finance litigation. The Court has now made audio-streaming of oral arguments a regular feature on its own website at www.kscourts.org.

New Orientation Training for Court Services Officers

On December 7 and 8, 2004, the OJA offered a revamped training session to newly hired court services officers (CSOs). The training coincided with the implementation of FullCourt case management in October 2004 and the revised Court Services Manual which will be made

available via CD Rom technology. All court services officers with work experience of two years or less were urged to participate in the educational program.

The two-and-a-half-day training session provided education on a variety of topics, including access to services for offenders in the areas of mental health, domestic violence, and substance abuse; alternative dispute resolution; child-in-need-of-care issues; case supervision; and legal and safety matters for court services officers. The session ended with a panel discussion facilitated by the Court Services Officer Advisory Board and OJA staff.

Mediation Project

The OJA is involved in the evaluation of a dependency mediation pilot project currently being operated by the Sedgwick County District Court. This promising effort is directed at cases in which children are recommended for removal from their homes and has the potential to increase the number of children who are placed with extended family members, rather than with the state. The OJA is also evaluating whether the process can expedite the time it takes a court to reach a decision or placement.

The OJA has provided staff assistance to work with the Kansas Water Office to develop guidelines for the use of dispute resolution in natural resource controversies. The Water Office prepared a budget proposal for the 2005 Legislature to consider. In addition, OJA staff are also working with the Water Office to train staff of natural resources agencies in dispute resolution methods.

OJA staff continue to encourage methods of resolving disputes for divorcing parents with custody or parenting-time issues. All the judicial districts in the state use mediation in these types of cases. OJA is working with the Johnson County court to experiment with offering the class "Higher Ground" for parents in high conflict divorces.

The class teaches ways to improve communication between the parents so they can resolve their own disputes and not have to return to court.

The fastest growth in dispute resolution cases is with civil, non-domestic cases. This indicates an effort on the part of Kansas judges to expand the use of mediation and other forms of dispute resolution to a wide variety of cases, thus giving the parties the ability to resolve their own disputes. This process may save all the parties involved in the disputes and the court system time and money.

Leadership Institute in Judicial Education

The Office of Judicial Administration recently offered a new program to Kansas judges, which focused on techniques of teaching, curriculum design, and adult education principles. The Leadership Institute in Judicial Education was held in November 2004. The program's goal is to train judges on effective teaching methods thereby enabling them to better share and disseminate what they have learned in specialized programs and judicial conferences. Justice Davis is chair of this project and is doing an outstanding job.

A professor from the University of Memphis Center for Higher Learning led the two-and-a-half day workshop, which was funded through a one-time grant by the State Justice Institute. Program evaluations ranked the workshop as highly beneficial.

Advisory Committee on Court Reporting

In response to the current shortage of certified shorthand reporters, the Supreme Court has appointed an advisory committee of judges, court reporters, court administrators, and clerks to study issues related to court reporting. The 14-member committee, chaired by the clerk of the appellate courts, is charged with conducting a comprehensive review of court reporting in Kansas. The issues to be studied, as suggested by the State Board of Examiners of Court Reporters, include finance, technology, use of existing personnel, reporter qualifications, and rules governing court reporting. Recommendations will be submitted to the Supreme Court by year end.

Family and Children's Unit Update

Parents involved in child abuse and neglect cases now have better information about the child in need of care (CINC) court process thanks to a new web-based program. This program was created to meet the legislative requirement for a pilot program in two judicial districts in which a parent whose child is alleged to be a child in need of care can select two "parent advocates" or, as we refer to them, "parent allies," to attend hearings with the parent. The only requirements are that the parent allies participate in an orientation program and that they not be disruptive in court. Although this web-based orientation program satisfies the legislative requirement to orient parent allies, it also will be helpful to parents, foster parents, and the general public interested in learning more about these complicated and emotional cases.

The OJA recently completed a project in which Protection from Abuse and Protection from Stalking forms and instructions were translated from English to Spanish. This project was funded through the Governor's Office by a Violence Against Women's Act grant, with considerable support from the Kansas Coalition Against Sexual and Domestic Violence and other groups including the Crisis Center of Dodge City, El Centro, Inc. of Kansas City, and the Wichita Area Sexual Assault Center. It is our hope that these documents will make the courts more accessible to Spanish-speaking Kansans.

Kansas judges, nonjudicial personnel, and administrative staff continue to be very connected to Executive and Legislative Branch agencies on children's issues. Judges recently took part in a legislative roundtable on children's issues. This was the third roundtable sponsored by the Legislative Joint Committee on Children's Issues. This opportunity to share ideas, discuss possible legislation, and develop relationships with representatives and senators is greatly appreciated by judges and the Judicial Branch as a whole.

ATTORNEY RECIPROACITY

Effective July 1, 2005, Kansas will join thirty-four other states and the District of Columbia which have implemented reciprocal attorney admissions rules. Beginning in the summer of 2004, the Kansas Supreme Court initiated an intensive review of attorney admissions practice in other states. Following that review, the Court published a proposed reciprocal admissions rule for public comment. Anyone making written comment was given the opportunity to appear before the Board of Law Examiners in public hearing to comment further on the proposed rule in particular and the reciprocal admissions process in general. Response to the proposed rule and reciprocal admission was overwhelmingly positive. In January 2005, the Supreme Court adopted the proposed rule with modifications suggested during the comment period.

Attorneys from other states applying for reciprocal admission will complete an extensive application form and will undergo the same character and fitness review and investigation to which first-time takers of the Kansas Bar Examination are subject.

Attorneys who have ever failed the Kansas Bar Exam, who have been suspended or disbarred in another state, or who are currently the subject of a pending disciplinary action in another state will not be eligible to apply. Other character and fitness issues will be reviewed as part of the Board of Law Examiners' investigation which may include a hearing if evidence warrants. The Board must be satisfied that applicants are of good moral character and mentally and emotionally fit to engage in the practice of law in this state before making a recommendation to the Supreme Court for an applicant's admission.

Only experienced attorneys are eligible for reciprocal admission. An applicant must have practiced law for five of the past seven years in specified practice areas and prove his or her good standing within that jurisdiction.

Kansas lawyers will benefit from the reciprocal admissions rule in that they now will be eligible for similar admission in the other thirty-four states and the District of Columbia which allow reciprocal admission of attorneys. Kansas citizens likewise will benefit from the expertise of out-of-state counsel who, prior to adoption of this rule, could appear in Kansas courts only under the supervision of a local attorney whose fee was an added expense to litigants. Adoption of this rule should also foster commerce in that out-of-state businesses can more easily conduct business within the state and Kansas business entities can more economically transact legal business outside of Kansas.

CONCLUSION

I am proud to report that the Kansas Judiciary continues to maintain the highest standard of excellence. Within the last year, several new programs have been introduced and many existing programs have been expanded to ensure that, as the legal needs of Kansans change, the Kansas court system remains attentive to and proactive in addressing those needs. On behalf of all the members of the Judicial Branch, I thank you for your continued support and wish you a successful and productive legislative session.