

State of the Judiciary
Chief Justice Kay E. McFarland, Kansas Supreme Court
Written Message
2007

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 we continue to have an outstanding court system that well serves the people of Kansas. It is a great honor to head what I think of as the Judicial Branch family. I am proud of the hard working and dedicated men and women of the Judicial Branch who make the system function. They are what make the wheels go round in the court system.

The Judicial Branch budget is truly unique. Approximately 97 percent of the Judicial Branch's State General Fund budget consists of personnel costs and the remaining three percent represents operating costs. As a result, if the Judicial Branch maintenance budget is cut, people are cut. Because the Kansas Constitution states that the salaries of judges and justices may not be diminished during their term of office, the people who would be cut are court clerks, court reporters, court services officers, and other nonjudicial personnel. A high percentage of these positions involves very specialized work which has no real counterpart outside the court system. As a result, a stable and experienced work force with a low turnover rate is essential to the efficient operation of the Judicial Branch and the administration of justice. I again thank the 2006 Legislature for restoring the \$3.6 million cut from our FY 2003 maintenance budget, resulting in the emergency surcharge which had to be continued each year until the present fiscal year. Much needed fiscal stabilization has been restored to the Kansas court system.

LOOKING FORWARD—FY 2008 MAINTENANCE BUDGET

On August 30, 2006, the Supreme Court reviewed and approved the budget request for FY 2008. The proposed maintenance budget is \$104.7 million from the State General Fund, or about 2 percent of the total State General Fund. We request Legislative funding thereof.

REQUESTED ENHANCEMENTS

New Positions

As always, the Supreme Court carefully reviewed requests from the district courts in preparing the FY 2008 proposed Judicial Branch budget. In August 2006, the Supreme Court reviewed and determined the additional personnel requests to be included in our budget. We have incorporated requests for 30.5 new full-time equivalent nonjudicial positions, which consist of 14.5 new Trial Court Clerk II positions, eight additional Court Services Officer I positions, seven secretarial positions, and one administrative assistant position.

Also included in our request are two new district magistrate judge positions, one for the 8th Judicial District (Dickinson, Geary, Marion, and Morris Counties) and one for the 21st Judicial District (Clay and Riley Counties). These two district magistrate judge positions are needed because of the expansion of Fort Riley and the phenomenal growth projected for that part of the

state. Riley County commissioners estimate that the communities around the fort will see 30,000 to 35,000 new people move into the area within the next five years. State officials fought hard to maintain military operations at Fort Riley, and now the many infrastructure issues associated with population growth need to be and are being addressed. It is imperative that we maintain the Judicial Branch's infrastructure in these areas as well.

In addition, we have asked for one district judge, an administrative assistant, and a court reporter in the 10th Judicial District (Johnson County). County demographics recently released by the U.S. Census Bureau of Labor and Statistics indicate that the population of Johnson County was estimated at 506,562 in 2005 – an 11.4 percent increase from the 2000 estimate of 454,582. This extraordinary increase not only places Johnson County in first place among the 105 Kansas counties in growth of total population, but Johnson County also ranks 54th of 3,141 counties in total county population change in the nation. As I stated above, a dramatic increase in population requires corresponding growth in our court infrastructure to ensure that all court users have timely access to the constitutionally mandated services provided by the Judicial Branch. For these reasons, we ask your consideration of our request for additional judicial resources in the 8th, 10th, and 21st Judicial Districts.

EXPANSION OF THE COURT OF APPEALS

The Judicial Branch FY 2008 maintenance budget reflects an increase due to the statutorily mandated addition of the 13th judge for the Court of Appeals. Due to a steady growth in the number of appeals heard by the intermediate court, the 2001 Legislature amended K.S.A. 20-3002 to authorize the expansion of the Court of Appeals from ten judges to fourteen judges.

The judges were to be added each January from 2003 until 2006. The 11th judge assumed his duties as originally planned in January 2003. However, with our support, the 2003 Legislature enacted legislation to delay the addition of Court of Appeals positions 12, 13, and 14 by one year. As a result, the 12th judge position was not filled until January 2005.

At the request of the Judicial Branch, the 2005 and 2006 Legislatures also postponed the addition of the 13th and 14th Court of Appeals judge positions. Current law provides that the 13th judge of the Court of Appeals is scheduled to assume his or her judicial responsibilities in January 2008. We concur that this scheduled expansion would enable the Court of Appeals to address its increasing caseload.

APPELLATE COURT SALARY INCREASE

A significant and much needed piece of legislation passed during the 2006 Legislative session was Senate Bill 337, which authorized a \$9,000 salary increase for all district judges and district magistrate judges. The salary increase was financed by an increase in certain docket fees and has successfully brought the salaries of our trial judges closer to the national median. The salary increase is and will continue to be very much appreciated and is important in maintaining the high quality of Kansas trial judges.

At the appellate level, Court of Appeals judges received a \$2,000 pay increase, plus a cost of living allowance (COLA), and Supreme Court justices received only the COLA. Unfortunately, the end result of this has been salary compression. Many vacancies in the appellate courts have traditionally been filled by district judges. Almost half of the present judges of the Court of Appeals came directly from district court judgeships. Three of the present members of the

Supreme Court came directly from trial court judgeships, while two others came from the Court of Appeals and another has served both as a trial judge and a member of the Court of Appeals. With the salaries of district judges now so close to that of appellate judges, much of the fiscal incentive for our experienced trial judges to seek an appellate judgeship has been removed. I am concerned it is not a coincidence that, in the only Court of Appeals vacancy occurring since the new salary schedule went into effect, only one district judge sought the position – a dramatic drop in the number of district judges historically seeking to fill appellate court judicial vacancies. To remedy this situation, we request a \$7,000 salary increase for Court of Appeals judges and a \$9,000 salary increase for Supreme Court justices, which would be commensurate with the increases approved last year for district judges and district magistrate judges.

KANSAS SUPREME COURT

On January 8, 2007, the Kansas Supreme Court witnessed a changing of the guard. Justice Donald L. Allegrucci, a veteran member of the Court whose distinguished legal career spanned nearly 44 years, retired on the same date that his successor, Justice Lee A. Johnson, was sworn in as the Court's newest member. Justice Johnson's appointment to the Supreme Court follows five years of service on the Kansas Court of Appeals and over twenty years in the private practice of law. Justice Allegrucci is much missed, but I have every confidence in Justice Johnson and his ability to fulfill his duties as a justice of the Kansas Supreme Court.

ON-LINE ACCESS TO COURT RECORDS

I am proud to report that the Kansas Judicial Branch continues to make strides in the area of technological advancement to ensure that the citizens of Kansas have convenient access to public court records. In partnership with the Information Network of Kansas, Office of Judicial Administration staff members have begun working with court employees to expand the number of counties that will offer web-based access to the district court's record of action indexes, which note the documents filed and actions taken in district court cases. By this summer, it is anticipated that most district courts across the state will offer court users the opportunity to view a record of action index.

IMAGING

Another information and technology project currently being implemented is the installation of statewide imaging software in the district courts. Over the last year, Office of Judicial Administration staff members have been working with Justice Systems, Inc. (JSI) to provide imaging software to the 103 Kansas counties currently using FullCourt software. The contract with JSI was finalized in October 2006, and the imaging software is scheduled for installation in three pilot counties (Pottawatomie, Leavenworth, and Wyandotte) this spring. This is a wonderful technological advancement that should result in increased internal efficiency and should provide the general public with appropriate access to case information. As always, protection of confidential information remains a top priority. Prior to a statewide rollout of the imaging software, Office of Judicial Administration staff will ensure that safeguards are implemented to protect confidential information.

JUDICIAL EDUCATION

I am very proud of the outstanding judicial education program we have in Kansas. The program starts very soon after a new judge is selected and continues throughout every judge's service on

the bench. Through our comprehensive continuing judicial education program, we work hard to provide judges with the specialized knowledge and skills they need to perform their job as well as meaningful advice on coping with the stresses of the job on the judge and the judge's family.

Each new judge of the district court, whether that judge is a district judge or a district magistrate judge, has the opportunity to attend his or her respective new judges' course at the National Judicial College in Reno, Nevada. This nationally recognized two-week course instructs judges on topics such as conducting trials, evidence, proper courtroom decorum, trial management techniques, family law, and judicial ethics. In addition, communication and listening skills training are a part of the program.

Funding for the Judicial College training comes from three sources: Judicial College scholarships (Kansas judges are typically awarded a \$1,000 tuition scholarship), local district court funding assistance, and state assistance through our Judicial Branch Education Fund. An in-depth orientation training program is important for every new judge, and we encourage judges to attend this program during their first year on the bench.

In addition to the specialized Judicial College training for new judges, a two-and a-half day New Judge Orientation program is held in Topeka every other January. Experienced Kansas judges who have become experts in various areas of the law provide instruction designed to help new judges with the transition to the bench.

Nonlawyer district magistrate judges are required to be certified by the Supreme Court pursuant to K.S.A. 20-337. A committee of four experienced district magistrate judges provides training to nonlawyer judges to assist them in the certification process. The committee also updates a benchbook which is used as a basis for the certification training and testing. The examination required for certification is constantly monitored and updated to ensure coverage of significant areas of needed legal training.

Two statewide judicial conferences are held each year. These provide all judges the opportunity to obtain the twelve hours of continuing judicial education necessary to meet the mandatory education requirements set out in Supreme Court Rule 501. The Supreme Court Judicial Education Advisory Committee plans the program for these conferences. Justice Robert Davis chairs the committee, and twenty district and district magistrate judges from throughout the state serve on the committee.

This committee has focused on designing curricula which incorporate effective adult education principles. In addition, the content of the training is designed to incorporate specific information judges need to effectively do their work (e.g., new decisions, new laws); judicial skills (e.g., writing, decision making, management); and issues of personal development and growth (e.g., interpersonal behavior, physical wellness).

Both in-house faculty and out-of-state experts teach at our judicial conferences. We provide faculty development training for our in-state judge faculty which helps them plan effective presentations. Our last faculty development session was offered in March 2006, with 30 judges participating. This "train the trainer" approach helps to ensure that we have a ready supply of judges who are effective communicators with and educators of other judges. The training includes an overview of adult learning principles, learning styles, and effective instructional methods.

Additionally, we offer specialized educational programs for chief judges. In summary, we have a well-balanced, broad-spectrum judicial education program in place, which is extremely effective, yet provides maximum benefit from each dollar spent.

JUDICIAL PERFORMANCE EVALUATIONS

The 2006 Legislature also approved the establishment of the Commission on Judicial Performance within the Judicial Council. Among the commission's goals are to develop and implement a judicial performance survey process to improve the judicial performance of individual judges and justices statewide. The commission seeks to protect judicial impartiality while promoting public accountability of the judiciary. Where judges and justices are subject to retention elections, the results from the judicial performance evaluation process will be disseminated to help voters make informed decisions about continuing judges and justices in office.

Those individuals surveyed will be court users, including attorneys, litigants, and jurors who have directly observed the judge's or justice's performance or who have interacted with the judge or justice. The surveys will be used to evaluate the judge or justice on his or her ability, integrity, impartiality, communication skills, professionalism, temperament, and administrative capacity suitable to the jurisdiction and level of court.

At this time, the 13-member commission has been named and has begun its work. As more information becomes available, it will be posted on the Judicial Council's website, which can be accessed from the Judicial Branch website at www.kscourts.org. Office of Judicial Administration staff members look forward to assisting the Judicial Council on administrative issues with the survey process.

PROGRAMS INFORMATION

Kansas Court Security and Emergency Preparedness Project

The Kansas Judicial Branch is engaged in a project designed to improve safety and security preparedness at each of our 136 court facilities. This project has been welcomed and has been extremely well received by Judicial Branch and local officials throughout the state. Safe, certain access to the courts is essential to our democracy. Throughout the Kansas Judicial Branch, judges, court staff, sheriffs, county commissioners, emergency preparedness officials, and local health department personnel are working with the Kansas Department of Homeland Security to conduct a security assessment of every court facility in the state. Kansas is one of only a few states conducting such an assessment and is the only state to benefit from the experience and expertise of Homeland Security personnel in conducting the assessments.

Almost all of the court facilities have undergone a vulnerability assessment. All assessments will be completed by June 2007. Although findings for specific facilities will not be made public for security reasons, some of the typical recommendations include establishing a clear chain of command for a variety of security and emergency-related incidents; putting blinds or filters on windows in jury rooms and offices; closing entrances and monitoring entrances open to the public; improving lighting around buildings and parking lots; and improving security during prisoner transport from the jail or holding cell to the courtroom. Despite the risks inherent in the courts, the public, courthouse staff, and litigants must be kept safe and the courts must be kept open.

There are no unfunded mandates resulting from this project. County governments fund the operations of the courts. Although safety and security are important obligations of the counties, the decision as to whether to make improvements will remain with each county's board of commissioners.

Many county governments already have made significant improvements in security and emergency preparedness. Our goal is to integrate court facilities, personnel, and functions into the security and emergency planning process. Reinventing the wheel is not necessary and designing an emergency plan for the court alone would be foolish. Throughout the initial phase of this project, we have been pleased and impressed with the degree of cooperation from local officials. Their expertise and continued support will ensure the best possible level of readiness in the unfortunate event we are faced with an emergency or disaster.

Court Improvement Projects

The Kansas Judicial Branch received two new grants through the federal Court Improvement Act in addition to the grant funding that has been received since 1994 to support child welfare projects, including training for judges and attorneys. These two grants will support efforts to expand training to include the legal community, social workers, foster parents, and other professionals working in the child welfare system and to improve the court's ability to collect and analyze child welfare data. Although Kansas has a long history of inter-disciplinary training and collaboration, the additional funding will help us reach more people on a wider range of topics.

The data collection and analysis money will be used to complete a child in need of care (CINC) module designed to work with the existing FullCourt accounting and case management software. This new CINC module will help to improve tracking and accountability in child welfare cases.

CONCLUSION

The Kansas Judicial Branch continues to deliver timely, quality justice to Kansans in an efficient and cost-effective manner. We are very proud of our court system. On behalf of all the members of the Judicial Branch, I thank you for your continued support and wish you a successful and productive Omnibus Legislative Session.