

State of the Judiciary
Chief Justice Kay E. McFarland, Kansas Supreme Court
Written Message
2008

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

The year 2007 will be forever remembered by Kansans as a year of disastrous weather conditions. Severe ice storms, tornados, and torrential flooding affected every citizen and caused thousands of Kansans to experience personal losses of great magnitude.

Kansas will not soon forget the May 4, 2007, category EF-5 tornado that struck the community of Greensburg and the surrounding area. The images and stories of survival and loss shared by our fellow Kansans in the days and weeks following the disaster touched the hearts of our state and our nation as poignant examples of how life as we know it can be forever changed in an instant.

While at first the Kiowa County Courthouse was thought to have been one of the only buildings in the core area left relatively intact, it was soon learned that the courthouse roof had been badly damaged by the storm's fury. The torrential rains following the tornado caused extensive water damage to the courthouse and its contents, including district court equipment and records. Within hours after the storm, court personnel from Kiowa County and the surrounding counties in the 16th Judicial District were working to retrieve and salvage important documents and to ensure the continuity of essential court operations. Vacant building space in nearby Mullinville was secured to house court operations on a temporary basis, and computers and other necessary items were brought in from surrounding counties and Topeka. By Wednesday, May 9, the date of President Bush's visit to Greensburg, court operations were in place in Mullinville Sixteenth Judicial District. Chief Judge Dan Love held the first appearances for eight persons charged with crimes related to looting and other offenses arising out of the disaster.

The ability to conduct those first appearances helped to send an important message to the citizens of the area, the state, and the nation that, in the midst of nearly total devastation, order would be maintained. Historically, the court system has always been one of the first government services established when a region was settled, and the court system's importance in maintaining order is well established. Throughout the following weeks and months, court personnel worked diligently to ensure that there was no disruption in services to the residents of Kiowa County. Without the experience, expertise, and dedication of our court staff, the court system could not have fulfilled its vital role in maintaining public order, settling disputes, protecting children in need of care and other vulnerable individuals, and providing other services to the citizens of this state.

BASE SALARY INCREASE

No matter the difficulties with which it is confronted, the court system must continue to operate effectively. The nonjudicial employees perform many unique functions requiring highly

specialized training and skills. It is imperative for the Judicial Branch to be able to attract, recruit, and retain qualified individuals.

It is important to recognize that, day in and day out, the work of the Judicial Branch is carried out by dedicated employees across the state. The Judicial Branch is charged with work that is extremely important to the citizens of Kansas, and this work simply cannot be accomplished without both judges and capable nonjudicial employees. Unless the Judicial Branch is able to recruit and retain qualified individuals to do these jobs, the state as a whole will suffer.

The FY 2009 Judicial Branch budget submitted to the 2008 Legislature includes a major item that will address the issue of recruitment and retention of nonjudicial employees – the 15.75 percent base salary increase. The requested base salary increase is needed to bring our employees closer to the cost index increases that have occurred since the Nonjudicial Salary Initiative (NJSI) pay plan was adopted in 2000. The NJSI, as many of you will recall, was designed to address problems the Judicial Branch had experienced with high turnover rates and difficulty in hiring and retaining qualified nonjudicial employees, and it was successful in addressing those problems.

When the NJSI plan was implemented, we knew that it was vital to the plan that pay be kept current with annual increases as close as possible to an index that reflects the cost of hiring and retaining skilled employees. In other words, we needed to remain as close as possible to the market rate for new and experienced employees. The U.S. Bureau of Labor Statistics Cost of Employment Index reflects that cost, and each year since 2000 the Judicial Branch budget has included a request for a base salary increase reflecting the previous year's Cost of Employment Index increase. The cost of living allowances (COLAs) funded by the Legislature, however, have represented only a fraction of the base salary increases requested. Consequently, each year Judicial Branch employee salaries have fallen further behind the market rate, as have the salaries of all other state employees.

While the requested percentage increase may seem high, it represents the difference between the requested base salary increases based on the U.S. Bureau of Labor Statistics index and the COLAs actually funded since 2000, with the effect of compounding incorporated. The effect is to permit us to catch up to the increases statistics indicate have occurred since 2000 that have not been fully funded by the Legislature.

The Judicial Branch request is very similar to the findings of the State Employee Compensation Oversight Commission, which recently studied the Executive Branch pay plan. A consultant's salary study shows that the salaries of many of the state's classifications are at least 15 percent or more below the comparative market rate. The oversight commission has recommended salary adjustments to meet or at least approach the market rate.

LOOKING FORWARD – FY 2009 MAINTENANCE BUDGET

On August 29, 2007, the Supreme Court reviewed and approved the FY 2009 Judicial Branch maintenance budget request. The proposed maintenance budget includes \$109.5 million from the State General Fund, or about 2 percent of the total State General Fund. We request Legislative funding thereof.

EXPANSION OF THE COURT OF APPEALS

Included in the Judicial Branch's FY 2009 maintenance budget is funding for the 14th judge on the Kansas Court of Appeals, pursuant to K.S.A. 2006 Supp. 20-3002. The expansion of the Court of Appeals from 10 judges to 14 judges was authorized by the 2001 Legislature in response to a rapidly increasing caseload at this intermediate level of appeal. The Legislature's original intent was to add one judge each January, beginning in January 2002 and ending in January 2006. However, the Judicial Branch requested postponement of these additional judicial positions until we could be certain that each was justified by actual and sustained caseload growth.

We look forward to January 2009 when expansion of the Court of Appeals is expected to be complete with the swearing in of the 14th judge. I appreciate the Legislature's recognition of the need for additional judges on the Court of Appeals.

REQUESTED ENHANCEMENTS

New Positions

As is customary, the Supreme Court thoroughly reviewed the need for new positions in FY 2009. After much deliberation and with input from the district courts, the Supreme Court has approved and now asks for your consideration of the following additional positions for the district courts: 11.5 trial court clerk II's; 6 court services officer I's; 3.5 secretary I's; 3.5 secretary II's; 1 administrative assistant; and 2 district court administrator I's.

Also included in the FY 2009 budget enhancement is a request for three additional district judges, two in the 18th Judicial District (Sedgwick County) and one in the 2nd Judicial District (Jackson, Jefferson, Pottawatomie, and Wabaunsee Counties). An administrative assistant and court reporter for each judge are included with the request.

Current statistics show that the 18th Judicial District has the largest number of case filings in the state, with a total of 42,038 case filings without traffic in FY 2005 (69,531 with traffic); 43,978 case filings without traffic in FY 2006 (70,762 with traffic); and 42,881 case filings without traffic in FY 2007 (68,752 with traffic). The FY 2005 filings without traffic represent 13.9 percent of the statewide total, and the FY 2005 filings with traffic represent 14.8 percent of the statewide total. The 18th Judicial District was ranked first among the districts with district judges only in Chapter 60, felony, and domestic relations cases in FY 2005, with a total of 16,158 of these cases, or 621 per judge. Because these types of cases can only be heard by district judges (with the exception of protection from abuse and protection from stalking cases) and because they tend to be more time consuming, this statistic has been used in the past as a caseload and workload indicator for district judges.

Using the FY 2005 statistics for Chapter 60, felony, and domestic relations cases, if two district judges were added in the 18th Judicial District, it would still have remained in first place among the districts with district judges only, with a total of 578 of these cases per judge. The 18th Judicial District's Chapter 60, felony, and domestic relations case filings increased from 16,158 in FY 2005 to 16,916 in FY 2006 and remained fairly constant at 16,913 in FY 2007.

The need for an additional district court judge in the 2nd Judicial District is also documented by statistics. Statewide, caseloads increased by 13.8 percent from FY 1995 to FY 2005 (grand total without traffic). In the same time period, the caseload in the 2nd Judicial District increased by 44.2 percent. For several years, judges in the 2nd Judicial District have commented on the

increase in limited actions cases. This increase has been attributed in part to the growth of casinos in the district. The statistics support those statements, with limited actions filings increasing from 702 in FY 1995 to a high of 3,627 in FY 2003. Limited actions filings were 2,161 in FY 2006 and 2,332 in FY 2007.

The district has experienced considerable growth in cases heard by district judges (Chapter 60, felony, and domestic relations cases, although domestic relations cases include protection from abuse and protection from stalking cases, which may be heard by district magistrate judges). In FY 2005, the total number of filings in these types of cases was 697 per district judge, ranking the 2nd Judicial District second in the state behind the 4th Judicial District among the districts that have both district and district magistrate judges. The 2nd Judicial District's growth in these types of case filings has continued. In FY 2006, a total of 721 of these types of cases were filed per district judge in the 2nd Judicial District, and in FY 2007 a total of 732 of these types of cases were filed per district judge in the 2nd Judicial District.

CASE STATISTICS

I am pleased to report that the 2006 and 2007 editions of the *Annual Report of the Courts of Kansas* will soon be available and may be accessed on the Judicial Branch website at www.kscourts.org. The report provides valuable information for legislators, county officials, attorneys, and the public regarding case filings by county and district, and is a valuable tool that assists the chief judges in each of our 31 Judicial Districts in managing challenging caseloads.

Traditionally, the *Annual Report of the Courts of Kansas* is disseminated to our judges and also is made available to the public in December. Unfortunately, the FY 2006 Annual Report was not available in December 2006 because of vendor issues associated with the reprogramming needed to provide case filing information recommended by the U.S. Department of Justice, Bureau of Justice Statistics and the National Center for State Courts.

At this time, the technological issues related to compilation of criminal and civil case data have been resolved. Future publications of the Annual Report of the Courts of Kansas are expected to occur annually in December, as has been the practice for many years.

KANSAS CHILD SUPPORT GUIDELINES

To ensure that child support obligations remain fair and equitable for all parties involved in child custody cases, the federal government requires, pursuant to Chapter 45 of the Code of Federal Regulations, Section 302.56, that each state review the economic basis and current methods of calculating child support at least once every four years. Last summer, the Child Support Guidelines Advisory Committee concluded its review of the Kansas Child Support Guidelines and presented its recommendations to the Supreme Court. The Supreme Court ultimately approved the advisory committee's recommendations and on September 19, 2007, issued Administrative Order 216 authorizing the new Child Support Guidelines, effective January 1, 2008.

The latest review by the Kansas Child Support Guidelines Advisory Committee actually began in October 2005. The Child Support Guidelines Advisory Committee is chaired by 3rd Judicial District Chief Judge Nancy Parrish, and includes judges, attorneys, a law professor, legislators, and members of the public. The Office of Judicial Administration contracted with Wichita State University for the consulting services of School of Business Professor Jodi Messer-Pelkowski.

During this process, the committee reviewed economic data reporting spending patterns on children and reports showing patterns of adjustments in Kansas child support orders. Based on data showing increased spending on children at younger ages, the committee recommended and the Supreme Court approved adjusting the older child age group to include children from ages 12 through 18. This grouping had previously included children from ages 16 through 18. The middle child age group now covers ages 6 through 11 and the youngest child age group covers ages 0 through 5. These age groupings roughly coincide with preschool years, elementary school years, and junior high through high school years.

Reports from the Department of Social and Rehabilitation Services (SRS) show that Kansas judges use adjustments sparingly in child support cases enforced by SRS, and this practice is consistent with federal intent. Other changes to the guidelines include clarifying rules for parents who share time and expenses equally or nearly equally, increasing the parenting time adjustment, and updating methods and resources for calculating the cost of living differential when parents reside in different states.

The committee surveyed the public, judges, attorneys, court trustees, and hearing officers. The committee also held a single public hearing which combined the traditional, multiple city public hearing format with new video webcast technology. This video webcast technology allowed the Office of Judicial Administration to present recommendations to anyone with access to the internet and to simultaneously hold face-to-face meetings with the public and members of the committee in four locations. Although few people attended, the presentations from committee members and the economist and the questions and discussions that followed were recorded. This recording, along with the complete Child Support Guidelines, can be downloaded by going to the Kansas Judicial Branch website at www.kscourts.org, under the "What's New" heading.

IMAGING

Over the past year, Office of Judicial Administration (OJA) staff members have worked diligently with district court personnel to install imaging software in the 103 Kansas counties currently using the FullCourt Case Management System. This outstanding technological advancement that has already provided increased internal efficiency as well as public access to appropriate case information. To ensure that access to confidential court information constantly remains secure, OJA installed appropriate security safeguards prior to the statewide rollout of the imaging software.

The imaging system was purchased from Justice Systems, Inc. (JSI), the vendor of the FullCourt case management and accounting system. One of the many benefits of JSI's document imaging solution is its high degree of integration with the FullCourt system. This level of integration has saved time and money on training and provides an ease of use and access to imaged documents not found in other document imaging products.

At this time, the implementation process is completed in approximately two-thirds of the district courts. We anticipate full, statewide implementation to occur by fall 2008 or earlier. Once document imaging is available statewide, the opportunity to pursue additional technology enhancements, such as electronic filing and the digital sharing of electronic case files between courts, will be a real possibility.

COURT IMPROVEMENT PROGRAM

The Kansas Judicial Branch received two new grants from the federal Court Improvement Project Program. These new grant funds have been used to complete the Child in Need of Care (CINC) module of FullCourt and will provide funding for regional training for judges, prosecutors, attorneys, social workers, and other stakeholders in the child welfare system. Over the next two years, the Court Improvement Project will also fund an initiative for judicial districts interested in conducting a detailed analysis of their local child welfare system, including a structured analysis of a mock case designed to reflect specific characteristics of each judicial district.

The CINC module is designed to promote efficient and timely resolutions in cases where children have been removed from their homes and are living in foster care, while simultaneously supporting the goal of meeting the guidelines established in the federal Adoption and Safe Families Act (ASFA). This component will provide judges of the district court with immediate access to relevant information, including the actual amount of time that a child has spent in foster care. In addition, court staff will have a greater capacity to track and report findings on those children eligible for federal financial assistance.

It is anticipated that the CINC module will be fully operational in those district courts utilizing FullCourt by December 2008.

JUDICIAL PERFORMANCE EVALUATIONS

Earlier this year, the Commission on Judicial Performance within the Kansas Judicial Council mailed the first round of surveys, pursuant to 2006 SB 337, to those individuals who have appeared before or who have had professional contact with Kansas district judges and appellate judges. The Commission anticipates publication of its initial report prior to the 2008 general election.

Additional information on the Kansas Commission on Judicial Performance, including the questionnaires, can be accessed at the following website: www.kansasjudicialperformance.org.

FAMILY AND CHILDREN'S PROGRAMS

The Supreme Court continues to review recommendations and monitor the work of the *Pro Se* Committee and the Domestic High-Conflict Committee. The *Pro Se* Committee is working on recommendations to better assist individuals who wish to represent themselves in court. The Domestic High Conflict Committee is currently developing best practice recommendations which center on assisting families to amicably settle their own disputes in domestic cases. The primary goal of both committees is to improve court access for Kansans, while becoming more efficient in addressing the increasing demands being placed on the courts. The Legislature will be kept apprised of all significant developments resulting from the committees' work.

CONCLUSION

It has been my great honor and pleasure to serve as Chief Justice of the Kansas Judicial Branch for the last twelve and a half years. In January 2009, I will be retiring by operation of law. I will be leaving the office in the capable hands of my successor, Justice Robert E. Davis. I know Justice Davis will make a great Chief Justice.

On behalf of the citizens of Kansas, I thank you for your continuing support of the Judicial Branch and wish you a successful and productive legislative session.