

State of the Judiciary
Chief Justice Robert E. Davis, Kansas Supreme Court
Written Message
2010

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

JUDICIAL BRANCH OVERVIEW

This period will undoubtedly be remembered by Kansans as one of extreme economic hardship. The citizens of our great state will not soon forget the perils of the present fiscal crisis, nor the decisions made by our leaders to guide us through it. I want to thank each and every lawmaker for your interest in the Judicial Branch budget deficit and the efforts you have made to restore, to the extent possible, cuts made to the current year FY 2010 Judicial Branch maintenance budget. I am keenly aware that the Judicial Branch is not the only entity experiencing a budget shortfall. There are many agencies and organizations that offer valuable services which are also encountering difficulties in sustaining operations due to the current State General Fund shortfall. However, both the structure of the Judicial Branch budget and the magnitude of cuts made to it place the Judicial Branch in a unique budget situation.

Please know that the Kansas Supreme Court remains steadfast in our resolve to continue using every sensible cost-cutting measure within our means. The Supreme Court does not take lightly its stewardship of state tax dollars. As always, you have been provided a Judicial Branch budget request that is both prudent and transparent.

In these challenging economic times, the mission and focus of the Kansas Judicial Branch remain, as always, the timely and efficient administration of justice for all persons seeking access to our court system. I am proud of the dedication and commitment of all Judicial Branch employees who, on a daily basis, work together to ensure that justice is provided in a consistent, fair, and timely manner. It would be absolutely impossible for the Judicial Branch to maintain the level of service mandated by our state and federal Constitutions, and upon which Kansans have come to rely, without our competent and capable nonjudicial staff. It is these people – the clerks of the district court, court services officers, court reporters, court administrators, and administrative support staff – who serve on the front lines of the Kansas court system.

We knew going into last year's 2009 legislative session that, given the state of the economy, it was inevitable every state budget would be cut. The Judicial Branch was prepared to accept cuts commensurate with those expected of all state-funded entities. However, during the Omnibus session, the Judicial Branch budget received an additional cut of almost \$11 million under the mistaken assumption that the Judicial Branch surcharge, authorized in 2009 Senate Bill 66, was unlimited and could generate sufficient revenue to make up the reduction. That was not the case. The legislation included a \$10 limit on the surcharge and also limited it to specific court filings. This cut, when coupled with other across-the-board cuts and unfunded fringe benefits, actually represented a 14 percent cut to the Judicial Branch maintenance budget. The effect has been devastating.

With almost 98 percent of the Judicial Branch's State General Fund budget needed to pay the salaries and wages of personnel, it is impossible to achieve savings of this magnitude in any area other than salaries and wages. The Supreme Court has implemented every cost-cutting measure believed to be possible in an effort to reduce the impact of this dramatic budget cut on the salaries of our nonjudicial employees and, of course, on the citizens we serve. Many of these measures were actually instituted several months prior to the beginning of FY 2010, before the severity of the cut to the Judicial Branch maintenance budget was known. Among these cost-cutting measures are a statewide hiring freeze, elimination of all temporary hours, cancellation of the 2009 fall judicial conference, and limiting the use of retired judges in the district courts.

In addition to cutting every cost possible, we have tried to secure additional resources to reduce the amount of supplemental funding required in FY 2010. As soon as possible, the Court implemented the \$10 legislatively authorized surcharge. In addition, the court applied for and received an \$830,000 federal stimulus grant, which reduces the amount needed in current year supplemental funding. The federal funding application was successful thanks, in large part, to the untiring efforts of Justice Marla J. Luckert.

We continue to do all that we can to avoid placing Judicial Branch employees on unpaid involuntary leave. This includes working with our Senate Ways and Means Subcommittee and our House Budget Committee considering the Judicial Branch budget, and with the Senate and House Judiciary Committees, who are considering an increase in the legislatively authorized Judicial Branch Surcharge. The court closings resulting from placing Judicial Branch employees on unpaid involuntary leave would have devastating consequences for our most vulnerable Kansan citizens. Children in need of care, persons seeking protection from abuse and protection from stalking orders, and persons and their families who are seeking mental health or substance abuse treatment all would be placed at risk. Court services officers would be less available to supervise persons convicted of misdemeanor and felony offenses. The entire Judicial Branch would struggle to meet case filing and other deadlines. In the end, litigants would suffer, as would the delivery of timely justice for Kansas citizens.

JUDICIAL BRANCH HIRING FREEZE

Because of the unique structure of the Judicial Branch budget, with almost 98 percent of the Judicial Branch's State General Fund budget needed to pay the salaries and wages of personnel, budget cuts of any magnitude have historically meant hiring freezes. I think it is appropriate to give a brief explanation of what the current hiring freeze means to the Judicial Branch and its employees. On February 6, 2010, there were a total of 96.5 FTE positions in the Judicial Branch that were not filled because we do not have the funding to fill them. The number of employees who have resigned or retired is significantly higher than levels we have experienced in the past. What the hiring freeze means is that, every time an employee resigns or retires, that position is left unfilled. In past hiring freezes, positions were left open for a stated number of days (e.g., 60 days, 90 days, or more) to achieve budget savings. However, because of the magnitude of the current Judicial Branch budget deficit, positions are currently left open with no prospect of being filled until the budget situation improves.

In addition to the hiring freeze, the Judicial Branch has been forced to eliminate all funding for temporary employees in the district courts. These temporary hourly positions were used to provide additional assistance, generally in the clerk of the district court offices, in times of

greater demand, such as during a jury trial or in the absence of full-time employees. They were particularly valuable in clerk of the district court offices staffed by 1.5 or 2.0 FTE positions.

In terms of court administration, the hiring freeze means that positions are left open based on the happenstance of resignation and retirement, rather than being based on careful planning and placement of human resources. From a human perspective, however, it means much more.

Judicial Branch employees, who pride themselves on the prompt, accurate, and courteous service they provide to the public, now find that they cannot offer the same level of services that they have in the past. They simply cannot keep up, and that fact has taken its toll on our dedicated and conscientious employees.

The potential consequences of an error made by an employee rushing to keep up with the crush of work are significant. Errors simply cannot be made in court documents that provide notices of vital importance to attorneys and litigants; in scheduling hearings to meet the requirements of state and federal laws, many of which are required to maintain federal funding; in generating, transmitting, and maintaining accurate records that are relied upon by law enforcement, the Division of Motor Vehicles, Vital Statistics, and many others; in accurately receipting and transmitting millions of dollars in fees, fines, restitution, and other payments to the correct persons and entities; and in many other functions that affect a great number of Kansas citizens on a daily basis. The sheer pressure of making a mistake when the consequences are so significant adds to the stressful work environment.

In difficult economic times such as these, all of us must learn to do more with less.

However, there comes a point when sheer determination and desire are not enough, and a job simply cannot be done. I believe we have reached that point in many areas. Consider the 21st Judicial District (Clay and Riley Counties). As of Monday, January 25, the district clerk's office staffing consisted of 8.5 positions out of an authorized 14.5 FTE positions. That is more than a 41 percent reduction in staffing. In addition to the reduction in full-time staffing, all funding for temporary help has been eliminated from the Judicial Branch, which for the 21st Judicial District meant the equivalent of another .75 FTE position. A 40 percent reduction in workforce would have a devastating effect on any business, school district, police department, or other employer. Judicial Branch employees struggle to provide services under these conditions, but it is clear that the hiring freeze cannot continue.

It is not uncommon for clerks of the district court, who are exempt employees under the Fair Labor Standards Act, to report working 60 to 70 hour weeks because they have lost staff, those positions cannot be filled, and yet the work does not stop. I frequently hear anecdotes that illustrate the efforts of our employees, such as the clerk who came into work when she had the flu, because the only other employee was also out sick and there was no one else who could unlock the doors and staff the office. A court services officer recently included the following statement in her letter of resignation: "I need to finish a task once it is started and do it well. Wish me luck with that because I'll answer four phone calls, answer two emergency e-mails, and see three drop-in clients before I even remember what the task I was trying to finish was. My bottom line right now is quality of life (including the eight hours I spend here). It is time to run up the white flag."

A minimum of 38 clerk of the district court offices across the state have been forced to close their doors to the public for some portion of the day so the clerks can process the cases that are filed without interruptions from phone calls and counter service. This is the only way these short-staffed offices can attempt to deal with all the work they are being asked to handle. Although most attorneys and the public appear to understand, it is a frequent occurrence that very upset citizens arrive at the courthouse only to find the clerk's office closed.

I could supply numerous other examples of how the hiring freeze has impacted Judicial Branch employees and the public they serve. The FY 2011 Judicial Branch maintenance budget would provide funding at a level that would eliminate the hiring freeze.

LOOKING FORWARD – FY 2011 MAINTENANCE BUDGET

On September 2, 2009, the Supreme Court reviewed and approved the FY 2011 Judicial Branch maintenance budget request. The proposed maintenance budget includes \$114 million from the State General Fund, or about two percent of the total State General Fund. We request legislative funding thereof.

ONE JUDGE PER COUNTY

A topic which is of significant interest to the Judicial Branch is the potential amendment or repeal of the one judge per county statute, K.S.A. 20-301b. The statute provides: “[i]n 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.” Many of you may recall the numerous discussions of this topic in previous legislative sessions. A total of seven bills have been introduced on the subject since the 2000 Legislative Session. Some of the previously proposed legislation would have repealed K.S.A. 20-301b but was silent regarding other issues that would arise if the statute were repealed, such as venue of court cases, judicial terms of office, judicial elections, county financial obligations, and jury selection.

A recent Legislative Post Audit report, *Judicial Districts in Kansas: Determining Whether Boundaries Could Be Redrawn to Increase Efficiency and Reduce Costs*, addresses the one judge per county issue. The response provided by the state’s Judicial Administrator, Dr. Howard Schwartz, is appended to the report. The following portion of the response summarizes the Court’s position on this issue:

(COMPILER’S NOTE: DR. SCHWARTZ’S RESPONSE IS ITALICIZED HERE BUT WAS NOT IN THE ORIGINAL DOCUMENT) *While there are many aspects of the report and its recommendations that need further discussion and others with which I [Dr. Howard Schwartz] disagree, I respect your attempt to address the complex issues involved. Most importantly, I agree wholeheartedly with your ultimate conclusion that “[t]he effort to unify the State’s court system in the 1960s and 1970s involved many people, a lot of study, and a systematic process for accomplishing that goal. Any real effort to better equalize caseloads and bring better efficiencies to the current court system would require no less.” (Post Audit report 38.)*

I also agree with the report’s recommendations for legislative action, which call for the Legislature to request that the Chief Justice appoint a judicial advisory committee to study the issues cited in the audit and to consider providing funding for workload and weighted caseload studies. The recommendation for a judicial advisory committee echoes the Court’s conclusion that an independent, blue-ribbon study commission should more fully address these issues. The

Legislature currently has before it 2010 HCR 5026, which requests a study of this nature. The report notes that knowledgeable and experienced consultants, such as staff at the National Center for State Courts, have been used in other states. I would welcome assistance from consultants and studies, but emphasize that funding for them must be provided. It is essential that the workload and weighted caseload studies be completed prior to the work of the blue-ribbon study commission, so that study results are available to assist the commission. Clearly, the commission must have this information to make reasoned and fact-based recommendations. Given the nature and amount of study needed, the January 2011 timeframe suggested in the report does not appear realistic.

Nothing in the audit suggests that our court system is somehow failing to deliver quality service to all our citizens. We continue to deliver timely, effective, high-quality justice to the citizens of Kansas. Indeed, I am happy to report Kansas courts are consistently recognized nationally for our case delay reduction program, effective jury management, uniform child support guidelines, and other key areas in the daily administration of justice in Kansas. The constitutional and statutory duty of the Kansas Judicial Branch is to administer justice in the most equitable manner possible, while maintaining a high degree of effectiveness and efficiency. Justice is effective when it is fairly administered without delay. This constitutional and statutory duty should be the guiding principle of any study of the Judicial Branch and any plan for reorganization.

This overriding issue of how best to meet the needs of Kansas citizens for an effective judicial system is not dealt with in this report, and that issue should be examined.

I concur with the conclusion that a detailed review and analysis by an independent, blue-ribbon study commission would more fully address these issues, and emphasize that the weighted caseload study suggested by the report, together with a workload study, would be invaluable tools for that commission.

KANSAS JUDICIAL BRANCH RECEIVES TWO NATIONAL STATISTICAL AWARDS

In December 2009, the Kansas Judicial Branch was the recipient of two of six national statistical awards given by the National Center for State Courts (NCSC). Kansas and the other award recipients were recognized for outstanding compliance with the guidelines established by the NCSC's 2003 report entitled, "State Court Guidelines to Statistical Reporting." The six statistical award categories included caseload data reported in civil, domestic, criminal, juvenile, traffic, and appellate court cases. Kansas received acclaim for our reporting of statistical data in both juvenile and civil cases.

I am quite proud of our work in this area. Although statistics compiled by the Office of Judicial Administration have, for decades, been a proven source of caseload and other statistical information, OJA staff have worked diligently over the last five years to revamp the way in which statistical data is collected to correspond with revised national reporting formats. This included, as a matter of necessity, the reprogramming of FullCourt, the district court case management system. Those efforts were successful. We continue to consistently collect an array of detailed data that assists the Judicial Branch and others in a variety of planning, reporting, and other endeavors.

ELECTRONIC FILING

Another topic that I would like to briefly touch on is the Judicial Branch's electronic, or e-filing, project. The Supreme Court has appointed an Electronic Filing Committee to study electronic filing of court cases and documents in Kansas. The committee is being chaired by Justice Marla J. Luckert, with Justice Dan Biles serving as vice-chairperson. In addition to judges, court administrators, clerks, information technology specialists, attorneys specializing in collection matters, and other members of the legal community, the committee includes the chairs of both the House and Senate Judiciary Committees. The committee's goal is to save precious time and money in processing our caseload while making the process more transparent, accessible, and convenient for everyone.

The committee will make recommendations to the Supreme Court regarding policies and an implementation plan for a statewide electronic filing system in Kansas. Information about the activities of the Electronic Filing Committee is available on the Kansas Judicial Branch website, www.kscourts.org. The electronic filing web page may be accessed by following the Electronic Filing Committee hyperlink located in the Featured Links section of the homepage.

PROGRAMS INFORMATION

Judicial Branch Receives S.T.O.P. Violence Against Women Grant

In the summer of 2009, the Office of Judicial Administration (OJA) received the S.T.O.P. Violence Against Women grant to fund a collaborative effort with the Kansas Coalition Against Sexual and Domestic Violence (KCSDV). The effort is aimed at improving victim safety and holding perpetrators accountable in domestic violence and sexual assault cases. Together, OJA and KCSDV are facilitating a detailed analysis of domestic and sexual violence cases in a minimum of eight judicial districts. Participants in the process are judges, domestic violence victim advocates, sexual assault victim advocates, prosecutors, defense attorneys, court services officers, community corrections officers, parole officers, law enforcement officers, batterer intervention program providers, and others. The goal of the project is to improve communication and case processing procedures. The project is scheduled to be completed by April 30, 2011.

Level of Service Inventory – Revised (LSI-R);

Youth Level of Service/Case Management Inventory (YLS/CMI)

The Kansas Sentencing Commission, pursuant to K.S.A. 75-5291 (a) (2) (E), has identified the Level of Service Inventory – Revised (LSI-R) as the risk needs instrument to be used by all entities supervising adult offenders on probation. Use of the LSI-R, along with effective case management and motivational interviewing, has proven to be effective in reducing probation violations, recidivism, and the number of offenders entering jails and prisons, without jeopardizing public safety.

Previous efforts to retain necessary funding for training and the purchase of licenses and software support services have failed. As a result, the Judicial Branch has included funding for the LSI-R in its 2011 maintenance budget request.

The Youth Level of Service/Case Management Inventory (YLS/CMI) is the version of the LSI-R for juveniles. The Juvenile Justice Authority has implemented pilot programs in the 7th Judicial District (Douglas County), 10th Judicial District (Johnson County), 18th Judicial District (Sedgwick County), and 22th Judicial District (Brown, Doniphan, Marshall, and Nemaha

Counties). All four pilot projects have resulted in positive outcomes. It is anticipated that the YLS/CMI will be used in judicial districts throughout the state with the support of trainers from the Juvenile Justice Authority.

Self-Represented Litigant Project

The Kansas Supreme Court's Self-Represented Study Committee continues its work to respond to an ever increasing number of parties who choose to represent themselves in our district courts. Self-represented litigants often need additional assistance in the filing, processing, and understanding of their cases due to their limited knowledge of the laws that govern court procedures. At this time, the committee meets regularly and has recommended low-cost methods to improve court accessibility. In addition, the self-represented committee continues its work with local bar associations to establish pilot projects in the 3rd Judicial District (Shawnee County), 7th Judicial District (Douglas County), 10th Judicial District (Johnson County), 18th Judicial District (Sedgwick County), and 23rd Judicial District (Ellis, Gove, Rooks, and Trego Counties). The pilot projects encourage lawyers to examine ways in which they can provide more limited representation, so that parties whose finances are restricted can purchase the legal assistance they need at a cost that is affordable for them. The Self-Represented Study Committee developed materials to assist judges as they address the needs of self-represented litigants in their courtrooms.

In the near future, the Office of Judicial Administration plans to include a self-help web page for self-represented parties on the Judicial Branch website, www.kscourts.org. The web page is intended to help self-represented litigants understand the court process and to assist them in providing all appropriate information to the courts. I am also pleased to announce that the Supreme Court recently approved new Judicial Council domestic forms, which were developed for use by self-represented litigants. Our work in this area will continue, with the goal of providing self-represented litigants more and easier access to our trial courts.

Drug and Other Specialty Courts

In December 2009, the Kansas Supreme Court began working with the State Justice Institute to study the feasibility of drug courts in Kansas. The National Center for State Courts (NCSC) will lead the study, which began in January. The goal of the study is to assist the Supreme Court and the Sentencing Commission in deciding whether drug courts should be mandatory, when drug courts should be available, under what rules drug courts should operate, how drug courts should be funded, and what administrative structure is necessary for the statewide oversight of drug courts. Presently, there are six adult offender drug courts in Kansas, along with a few other specialty courts.

CONCLUSION

As Kansas lawmakers, the citizens of our state are looking to you for hope that we will not only survive these difficult economic times, but that soon our state will thrive again. As always, I welcome the opportunity to work with you and am confident that together we can achieve a solution that, in the end, will provide for the administration of justice in a timely, efficient, and effective manner.

I wish you the best of luck during the remainder of the 2010 legislative session.