

MINUTES

JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

July 10-11, 2007
Room 123-S, Statehouse

Members Present

Representative Steve Huebert, Chairperson
Senator Phillip B. Journey, Vice Chairperson
Senator Terry Bruce
Senator Mark Gilstrap
Senator Dennis Pyle
Senator Mark Taddiken
Representative Virginia Beamer
Representative Pat Colloton
Representative Bob Grant
Representative Broderick Henderson
Representative Rob Olson
Representative Michael Peterson
Representative Dale Swenson

Staff Present

Amy Deckard, Kansas Legislative Research Department
Mike Corrigan, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Others Present

Shelly Starr, Kansas Department of Corrections
Marilyn Jacobson, Kansas Department of Administration
Lacey Keller
Gene Stanger
Mark Bennett, Attorney for Kansas State Board of Technical Professions
Cecil Kingsley, Kansas State Board of Technical Professions
Betty Rose, Executive Director, Kansas State Board of Technical Professions
David Martin Price, Independent Federal Fund Oversight Committee (IFFOC) and Kansas
Citizens for Equal Access to Justice
Patrick Hurley, Kansas Department of Administration

Janice Lynn King, Secretary, IFFOC
Eldon L. Ray
Cassandra Gwinn
Matt Hurley
Ron Gaches, Kansas Society of Professional Engineers
Robert Morse, Mayetta Christian Church
Alma J. Morse, Advocate for Eldon Ray
Rev. Gerald L. Haney, Mayetta Christian Church
Jamie Corkhill, Kansas Department of Social and Rehabilitation Services
Leonard Kinzie, Kansas Department of Social and Rehabilitation Services

July 10, 2007
Morning Session

The meeting of the Joint Committee on Special Claims Against the State was called to order at 10:00 a.m. by Representative Steve Huebert, Chairperson, who opened a discussion on the adoption of Rules of the Committee for 2007. In this regard, Amy Deckard, Kansas Legislative Research Department, presented information on proposed new rules concerning the utilization of the Claims Committee's statutory power to subpoena persons or documents.

At the outset, Ms. Deckard explained that the proposed new rules were developed after a claimant recently raised a question as to whether or not a claimant could request that the Joint Committee on Special Claims Against the State issue a subpoena. Staff from the Legislative Research Department researched the relevant statutes along with staff from the Revisor of Statutes Office, and their research revealed that the Joint Committee on Special Claims Against the State is authorized to utilize the power of compulsory process only when specifically authorized to do so by the Legislative Coordinating Council (LCC). Claims Committee members are required to submit a written request to the LCC in order to proceed to use the compulsory process for a specific issue. Once authorized by the LCC to use the compulsory process, a subpoena could be issued only if a majority of all members of the Claims Committee voted in favor of issuing the subpoena. The Chairperson or Vice Chairperson of the Claims Committee must administer an oath prior to receiving testimony, and a court reporter must be present to record all testimony given under oath. A person who appeared before the Claims Committee in response to a subpoena would receive the same compensation and allowances as someone appearing before the district court.

Ms. Deckard distributed copies of the proposed compulsory process rules drafted by staff from Legislative Research and the Office of the Revisor of Statutes. She noted that the proposed rules required that, before claimants request a subpoena from the Claims Committee, they must first utilize available resources through open records requests and provide documentation that they did so. In addition, claimants would be required to explain why they believed a subpoena was necessary. She pointed out that the subpoena process could become quite costly because the whole process would most likely involve a series of three separate meetings. While responding to

questions from the Committee, she agreed that the background information gathered in the process of preparing the proposed new rules would provide direction for staff when responding to claimants who inquire about the subpoena powers of the Claims Committee.

Following discussion, Representative Olson moved to adopt the 2006 Rules of the Joint Committee on Special Claims Against the State and to attach the proposed new page of compulsory process rules, seconded by Representative Colloton. The motion failed.

Representative Swenson moved to adopt the 2006 Rules of the Joint Committee on Special Claims Against the State, seconded by Representative Grant. The motion carried.

Representative Huebert called upon Ms. Deckard for a brief overview of the Joint Committee on Special Claims Against the State. At the outset, she informed the Committee that the agenda and minutes would be posted on the Kansas Department of Legislative Research Web site this year for the first time. She went on to say that the Claims Committee originated at the turn of the 20th Century for the purpose of furnishing a venue for people who felt they were injured by a state agency, and there was no other recourse to seek payment. The Claims Committee was the only venue available until the early 1970s upon the passage of the Tort Claims Act. She noted that the fact that state agencies are considered immune by statute does not mean that citizens cannot be injured by actions of the state. Claims that come before the Claims Committee generally involve issues of equity and do not always involve issues of negligence on the part of the state or state employees. The rules of evidence do not apply to the Claims Committee, and the Committee is considered the “court of last resort.” With regard to the process of filing claims with the Committee, Ms. Deckard distributed copies of a proposed new claim form, which was designed to streamline the filing process. She pointed out that a newly developed page clearly informed claimants about the claims process. She went on to explain that the new claim form consolidated the two claim forms currently in use – the miscellaneous claim form and the personal injury and property loss claim form. She further explained that the new claim form could be filled out online; however, the typed version could not be saved or submitted electronically because all claims must be signed by the claimant and notarized. Claims not submitted in the new format would be accepted until November 1, 2007. Claims received after November 1 would be returned with instructions to use the new claim form. Upon completion of Ms. Deckard’s presentation, it was the consensus of the Committee that the new claim form be adopted.

Representative Huebert opened the hearing on Claim No. 5905 by Gene W. Stanger against the Kansas Department of Administration in the amount of \$100,000.00 for air pollution, pain and suffering, and medical expenses. Mr. Stanger explained that his claim related to the hazardous fumes created by backup diesel generators used for emergency electricity for the Landon State Office Building which is located at 9th and Jackson Streets in Topeka. He noted that his attempts to address this environmental issue over the years through city officials were unsuccessful because the generators are owned by the state. He was informed by the Department of Administration, Division of Facilities Management, that the cost to upgrade the pipes in the exhaust system would be \$366,000.00. He suggested that the use of biodiesel fuel would clear the air and would be a much less costly solution. He went on to explain that the smoke from exhaust pipes blows into buildings

in the area, causing serious breathing ailments for residents and employees of businesses in the area. He noted that, since 1990, he has made numerous visits to the doctor for pain and suffering related to exposure to the contaminated air. He called attention to copies of a doctor's statement attached to his claim which indicated that he should not be exposed to fumes from diesel fuel because it creates health problems. He went on to say that the diesel generators are currently run once a month for two to four hours on a Sunday morning for testing purposes, and he showed committee members a photograph of the smoke which occurs as the generators start up. In conclusion, Mr. Stanger stated that, rather than receiving financial compensation, he would prefer that the state immediately take steps to eliminate the air contamination.

Patrick Hurley, Chief Counsel for the Kansas Department of Administration, recommended that Mr. Stanger's claim be denied. He informed the Committee that testing by the Kansas Department of Health and Environment showed that the diesel generators, which emit a visible plume for several minutes upon activation, are well within acceptable state and federal regulatory standards. He noted that the Department of Administration agreed to run the backup generator only on a Sunday morning, and the generator typically runs for about one hour between 10:00 a.m. and noon. He further noted that the cost to extend the smoke stacks was now \$380,952.00 and that the cost to convert to biodiesel fuel was in excess of the cost to replace the stacks. At this point, Marilyn Jacobson, Department of Administration, responded to committee questions. She confirmed that the storage tanks for the diesel fuel are located outside the Landon State Office Building. She explained that the Department of Administration sends a certified letter to Mr. Stanger every month informing him when the testing of the backup generators will occur. She agreed to investigate the possibility of running the generator on 2 to 5 percent biodiesel fuel as suggested by a committee member. As to the possibility of installing new smoke filters to help eliminate the problem, she explained that smoke filters only take out particles in the air, not the fumes and odor which concerned Mr. Stanger. She noted that, since 2003, the extension of the exhaust pipes above roof level has been on the Department's five-year capital improvement plan; however, funding has not been approved for that project.

Following discussion, the Joint Committee recommended that Claim No. 5905 be denied. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the hearing on a claim filed by a former inmate at Topeka Correctional Facility, Claim No. 5892 by Cassandra Gwinn against Topeka Correctional Facility in the amount of \$5.46 for the loss of 16 postage stamps which her mother purchased so that she could send information to her home when necessary. Ms. Gwinn explained that a shakedown officer threw away a cup holder which contained the stamps. When questioned about the stamps, the officer stated that there were no stamps in the confiscated cup.

Shelly Starr, legal counsel for the Kansas Department of Corrections (KDOC), noted that stamps are consumable; therefore, there is no way to determine how many stamps inmates may have had in their possession when there is a shakedown. In addition, she noted that Ms. Gwinn's cup holder was confiscated as property that is not allowed. She suggested that Ms. Gwinn could have locked the stamps in the cabinet in her cell. Having found no negligence on the part of the facility,

Ms. Starr recommended that the claim be denied.

In response to Ms. Starr's recommendation, Ms. Gwinn stated that there was no locker in her cell. She explained that she stored the stamps in her cup holder because her roommates often left the cell door unlocked and allowed other inmates to come into the cell. She explained further the cup holder had always been in her cell and that she had placed a cup in it along with the stamps. She contended that the shakedown officer should have given her the choice to send the cup holder home or destroy it.

Following discussion, the Joint Committee recommended that Claim No. 5892 be denied. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the hearing on Claim No. 5940 by Eldon L. Ray against the Kansas State Board of Technical Professions in the amount of \$8,422.00 for punitive damages and out-of-pocket expenses relating to a complaint that the plans and specifications he provided when he volunteered to help build an addition to the Mayetta Christian Church constituted the unlicensed practice of architecture. David Martin Price, President of both the Independent Federal Fund Oversight Committee (IFFOC) and the Kansas Citizens for Equal Access to Justice, read a statement as an advocate for Mr. Ray. Mr. Price explained that he volunteered to help Mr. Ray after he saw him ask for help from anyone willing to help him on the 10:00 news on April 25, 2007. He went on to say that, as he researched the matter, he questioned why the Board of Technical Professions hired counsel who was affiliated with the Board, giving the appearance of a conflict interest, when in actuality the state already had staff to address the issue in the Consumer Protection Division in the Office of the Attorney General. He contended that, due to the non-delegation doctrine, the attorney hired by the Board of Technical Professions to represent the state was barred from participating in the matter. Furthermore, Mr. Price contended that, as a volunteer, Mr. Ray was exempt from prosecution under K.S.A. 60-3601. He charged that Mr. Ray's due process rights were violated when, in their rush to pursue this matter, the Board of Technical Professions simply forgot to follow the proper procedures in K.S.A. 77-513 through 77-532. Mr. Price commented that, under the U.S. Constitution, before being charged with a crime, a person must have knowledge of the crime and have knowledge that the crime was being committed with criminal intent. He emphasized that Mr. Ray clearly did not act with criminal intent or malice as shown in a letter to the Director of the Board of Technical Professions wherein he apologized for not knowing about the requirement that plans for his church's building must be drawn up by an architect.

Mr. Price then explained what he felt should have taken place. He argued that, rather than making a judgement in response to a newspaper article published in the *Topeka Capitol Journal* on September 9, 2006, the Board of Technical Professions should have called either the Mayetta Christian Church or Mr. Ray and inquired whether any professionals had contacted them with complaints in regard to the church project. He complained that, instead, the Board stepped outside its specifically defined statutory authority and acted as judge, jury, and executioner in a personal vendetta. In his opinion, the Board should have contacted the Mayetta City Attorney and asked why a permit to build was issued without the adoption of any ordinances clarifying that the City of Mayetta was complying with state law pertaining to any building codes that the uniformity

application law requires. Additionally, the Board should have asked the Attorney General's Office or the Consumer Protection Division to investigate the matter.

Mr. Price concluded that the Board of Technical Professions had no authority or power to issue a \$500.00 fine to Eldon Ray or the Mayetta Christian Church. In his opinion, after the Board realized there had been no confession of guilt, a Settlement Agreement and Consent Order was crafted to relieve the Board from any liability for damages. He went on to say that state agencies do not have legal authority to act as a prosecutor and make settlement agreements. He maintained that the Board's attempt to force Mr. Ray to sign a plea agreement under duress constituted extortion, coercion, and theft by deception. He commented that the entire situation could have been prevented if the Board of Technical Professions would have used common sense instead of abusing their power. He informed the Committee that Mr. Ray contacted two architects for a professional opinion of the church addition, and both architects indicated that the structure was suitable, safe, and met the structural requirements of the 2003 International Building Code. Mr. Price explained that Mr. Ray basically wanted his name cleared and compensation for the damages he incurred as a result of the action taken by the Board of Technical Professions. He clarified the amount of the claim included the cost for the services of two architects, attorney fees, and punitive damages for slander and libel.

Mark Bennett, attorney for the Kansas State Board of Technical Professions, explained that he had represented the Board of Technical Professions for about 30 years pursuant to a contract, the last two of which were pursuant to the state's bidding process. He went on to explain that, on September 18, 2006, the Board received a letter from the Kansas Chapter of the American Institute of Architects indicating that it was their belief that the new addition to the Mayetta Christian Church should have been designed by an architect or engineer rather than an unlicensed individual such as Mr. Ray. Therefore, the Board's four-member Complaint Committee requested that the church provide documents relating to the plans and specifications for the church addition. After receiving the documentation, the Complaint Committee reached a primary opinion that the preparation of the documents constituted the unlicensed practice of architecture and/or engineering as defined in K.S.A. 74-7003(e) and (i), which the Legislature enacted to protect the health, safety, and welfare of the public. The Complaint Committee then directed Mr. Bennett to prepare a proposed Settlement Agreement and Consent Order and submit it to Mr. Ray in an attempt to resolve the matter without the necessity of a formal hearing. The agreement and order were forwarded to Mr. Ray on January 9, 2007, along with a letter indicating that the agreement was an attempt to resolve the matter without the filing of a formal complaint. The letter instructed Mr. Ray to sign the agreement if he was agreeable to the terms and return it along with a check for \$500.00 for the fine. Mr. Ray was also informed that, if he did not approve of the agreement, the matter could be set for a formal hearing at which time he would have an opportunity to present whatever evidence or arguments he wished to pursue.

As a result of the letter, Mr. Bennett received a telephone call from Theresa Barr, an attorney from Lawrence. She indicated that Mr. Ray wanted to attempt to resolve the matter by way of the settlement agreement with modifications. The settlement agreement indicated that Mr. Ray admitted that he had engaged in the practice of architecture without benefit of licensure. Ms. Barr requested that the language be changed to read that it was alleged that Mr. Ray practiced architecture without

a license. She also wanted the Board of Technical Professions to waive the \$500.00 fine. Mr. Bennett noted that, by statute, the Board is allowed to impose a fine for unlicensed practice up to \$5,000.00 for a first offense. Nevertheless, the Complaint Committee considered this request, and dropped the fine. The modified agreement was sent to Ms. Barr with a letter asking her to respond as to whether Mr. Ray wanted the agreement executed or have a hearing. The Mayetta Christian Church then sent a check for \$500.00 but not the signed agreement. Subsequently, Mr. Bennett wrote a letter to Ms. Barr indicating that the Board got the check but also needed the settlement agreement; however, Ms. Barr did not respond to the letter. The Board then determined that, since the agreement was not signed and returned, they should not negotiate. The check was returned to the church. After the check was returned, the matter broke into the press, and Mr. Ray was interviewed on television.

In response to Mr. Price's allegation that Mr. Ray was charged with a crime, Mr. Bennett clarified that Mr. Ray was never charged with a crime but, rather, was asked in a letter from the Board to sign a settlement agreement. He emphasized that there was nothing stated in the letter which could be interpreted as an attempt to coerce Mr. Ray to sign the agreement. Mr. Ray was simply asked to sign the agreement if it met with his approval. With regard to the allegation that he was improperly retained, Mr. Bennett explained that he was hired through an open bid process pursuant to the statute which allows the Board to hire private counsel (K.S.A. 74-7008). As to Mr. Price's allegation that the Office of the Attorney General should have pursued the matter, Mr. Bennett noted that the statutes clearly allowed the Board to pursue the matter with their own counsel. As to Mr. Price's allegation that the Board was the "judge, jury, and executioner," Mr. Bennett defined the Board as a board delegated by the Legislature to enforce the state's licensure laws which prohibit someone from practicing, offering to practice, or holding oneself out as authorized to practice any of the five professions encompassed by the Board of Technical Professions. Mr. Bennett noted that the members of Board's Complaint Committee included a licensed architect, engineer, and land surveyor. After requesting and receiving a number of documents relating to the addition to the church building from the attorney for the church, the Complaint Committee determined that Mr. Ray's preparation of plans and specifications constituted the practice of architecture as defined in the statutes. Therefore, their next step was to move forward to determine whether or not the health, safety, and welfare of Kansas citizens had been compromised in any way and at the same time take steps to prevent what they felt was the unlicensed practice of architecture. Mr. Bennett pointed out that, had Mr. Ray desired to do so, he could have availed himself of the due process rights to which he was entitled by indicating that he wanted to have an hearing at which time he could have presented whatever arguments or testimony he wanted to present in support of his position; however, he chose not to do that. Contending that Mr. Ray's claim had no basis in fact, Mr. Bennett recommended that the claim be denied in its entirety.

The Chairman reminded committee members that legislative action was taken during the 2007 session to address Mr. Ray's volunteer work for his church. For the Committee's information, Ms. Deckard explained that a proviso included in the omnibus appropriations bill indicated that the Board of Technical Professions could not expend any funds in Fiscal Years 2007 and 2008 to conduct any proceedings or enforce any orders relating to services provided by Mr. Ray for the Mayetta Christian Church. Mr. Bennett commented that the Board considered this proviso to be the end of the matter. In addition, he informed the Committee that the Board sought an opinion from the Office of the

Attorney General as to whether or not the Board would be in violation of the proviso if he appeared before the Claims Committee to respond to Mr. Ray's claim. In a letter dated June 7, 2007, a Deputy Attorney General opined that appearing before the Claims Committee to state the Board's position on the claim would not violate the prohibition as the Board would not be conducting a proceeding or attempting to enforce its order.

Mr. Price reiterated that K.S.A. 60-3601 exempts volunteers, and he contended that the Board's private counsel should have known that this statute exempted Mr. Ray. He emphasized that two architects cleared Mr. Ray of any wrongdoing. He reasoned that Mr. Ray was entitled to damages because the Board was negligent when they failed to call Mr. Ray and discuss the circumstances prior to making the allegation and threatening to fine him. Noting that there was a need to set a precedent to prevent similar state action against volunteers in the future, he strongly urged the Committee to allow the claim.

Following discussion, the Joint Committee recommended that Claim No. 5940 be carried over to the September meeting and requested that staff contact the claimant for documentation of actual out-of-pocket expenses relating to the claim. (See section captioned "Committee Action and Recommendation".)

The meeting was recessed for lunch at 12:15 p.m.

Afternoon Session

Representative Huebert called the meeting to order at 1:40 p.m. at which time he called upon Shelly Starr, KDOC, for a brief overview of the Department of Corrections and its claim procedures. Ms. Starr began by distributing copies of a KDOC "Quick Facts" card with statistics regarding the 9,000 inmates incarcerated in the eight KDOC facilities. She went on to explain that many inmate claims filed with the Claims Committee have been previously filed, investigated, and denied at the facility level. She further explained that inmates are allowed very little property, and the property they can have is controlled very closely by IMPP 12-120, which requires inmates to be primarily responsible for their property. She noted that the amount of property that can be possessed by inmates is controlled by their incentive level as defined in IMPP 11-101. As inmates progress in their level, they earn more privileges; however, they can lose the same for bad behavior. She explained that IMPP 01-118 outlines the steps inmates must follow at the facility when they have a complaint about personal injury or property loss. As to claims referred to her by the Claims Committee, she explained that she reviews the information submitted by the claimant before sending the claim to the facility where the incident occurred with a request for information needed to respond to the claim. She noted that she does not often recommend that claims be paid because truly legitimate claims are usually paid at the facility level, some legitimate claims exceed the Department's authority, or there is a genuine loss or injury to the inmate for which the state should not be responsible as the state is not an insurer.

Representative Huebert opened the telephone hearings on claims filed by inmates at Lansing

Correctional Facility (LCF), Claims Nos. 5878, 5891, 5897, 5898, and 5901.

Delarick Hunter, LCF, summarized his Claim No. 5878 against KDOC in the amount of \$2,000.00 for failure to give notice of the side effect of a drug and for mental anguish. He claimed that the facility physician was negligent when he prescribed Sustiva because he failed to warn him that the drug might cause a false positive for tetrahydrocannabinol (THC) in a random urine test for drugs. Consequently, Mr. Hunter received a disciplinary report on July 25, 2006, after a urinalysis showed positive for THC. He complained that, at the disciplinary hearing, he was required to sign a document agreeing to pay \$30.00 for a more accurate test. He noted that the result of that test was false positive.

Shelly Starr, KDOC, reported that Mr. Hunter's disciplinary record did not show that he received a disciplinary report for a positive drug test in July 2006. She noted that his last disciplinary report occurred on March 6, 2006. In addition, she reported that she found no charges in his inmate bank account for a \$30.00 fee to verify a positive drug test. Having found no evidence of negligence on the part of the facility, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5878 be denied. (See section captioned "Committee Action and Recommendation".)

Roberto Honeycutt, LCF, discussed his Claim No. 5898 against Hutchinson Correctional Facility in the amount of \$204.05 for damage to his television on November 9, 2006, during his transfer from Hutchinson to Ellsworth Correctional Facility. He claimed that his television was in good working order prior to his transfer. But, when he plugged it in upon arriving at Ellsworth, the channel immediately started to change and continued to change on its own. He noted that he was not present when his television was packed out by an officer at Hutchinson; however, the officer checked his electronics and completed a checklist, and there was no notation on the checklist that the television changed channels on its own. Mr. Honeycutt explained that he attempted to fix his television after submitting his claim, but he was only partially successful. He could now change the channel upwards without the channel automatically changing on its own but not downwards. He said the amount of the claim was the purchase price in 2002, but he would be content if the television was repaired instead of replaced.

Shelly Starr, KDOC, noted that the checklist for Mr. Honeycutt's electronic property showed that there two broken buttons on the front of the television when it was packed out. She noted that the list showed that the volume and the on/off switch worked. However, after "reception works," the checklist has a check by "yes" and a question mark by "no." When the television arrived at Ellsworth, a notation on the checklist indicated that the television changed channels on its own. She informed the Committee that other electronics checklists prepared after this move showed that the television was in working order. Having found no evidence to show permanent damage to the television or that there was damage that could be attributed to facility staff, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5898 be denied.

(See section captioned “Committee Action and Recommendation”.)

Edgar Livingston, LCF, summarized his Claim No. 5897 against LCF in the amount of \$100.00 for the loss of his new AM-FM stereo-cassette player. He began by stating that he would accept a replacement rather than money. He explained that his stereo-cassette player was covered up behind a cooler in his living area when he went to sleep. When he awoke, it was missing. He contended that officers were negligent because they did not properly secure the area.

Shelly Starr, KDOC, noted that Mr. Livingston’s account of the loss of his stereo differed from the explanation in his claim, filed in December 2006, wherein he indicated that he left his bunk area for ten minutes to use the restroom, and the stereo-cassette player was missing when he returned. She commented that, while it was unfortunate that Mr. Livingston’s stereo-cassette player was stolen, inmates own personal property at their own risk as stated in IMPP 12-120. She noted that officers have a duty to guard and secure inmates, not to secure their property. Having found no negligence on the part of facility staff, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5897 be denied. (See section captioned “Committee Action and Recommendation”.)

Atris Swafford, LCF, discussed his Claim No. 5891 against KDOC in the amount of \$500.00 for property loss, copying costs, and mental anguish. When he was transferred from his four-man cell to the segregation unit in July 2006, officers told him that he must leave most of his personal property in his cell because the property was not allowed in segregation. At that time, he put his property in a box and a sack and asked that the items be removed from his cell. In response to his request, the officers laughed at him, and his property was left in his cell. He claimed that his property was intentionally left in his cell due to ongoing retaliation by a specific officer. He explained that the items were not listed when he was asked to sign a property inventory sheet; therefore, he filed a facility property loss claim. The officer who investigated the claim determined that his property was either misplaced or stolen because it was not immediately packed out due to a shift change which occurred soon after he was escorted to the segregation unit. The claim was approved in the amount of \$156.00; however, the final approval of the claim by the Secretary of Corrections was for the lesser amount of \$125.58 after depreciating a few of the items that were lost. Mr. Swafford requested that his claim be allowed in the amount of \$344.00, which included the amount he considered to be the correct value of his property (\$156.00), the cost to make copies when filing his claim (10 cents per page), and compensation for mental anguish.

Shelly Starr, KDOC, explained that reasonable steps to secure property are taken by facility staff when an inmate is taken segregation or to another area within the facility; however, if there is insufficient personnel to pack out the property immediately, an inmate’s property is left exposed to other inmates. She went on to say that facility staff who investigated the claim acknowledged that, due to bad judgement and lack of good communication, correctional staff was at fault for not immediately securing Mr. Swafford’s property prior to it being inventoried and packed. She reported that the only item that may have been depreciated erroneously was a dictionary which was depreciated 50 percent based on an earlier dictionary purchase. She explained that a transaction to

the Inmate Benefit Fund on November 17, 2005, may have been the dictionary purchase, in which case there should have been no depreciation. By giving Mr. Swafford the benefit of doubt, she recommended that the amount of the claim be allowed in the amount of \$135.08. She also recommended that the portion of his claim for copying costs and mental anguish be denied.

Following discussion, the Joint Committee recommended that Claim No. 5891 be allowed in the amount of \$156.00. (See section captioned "Committee Action and Recommendation".)

Robert Johnson, LCF, explained his Claim No. 5901 against KDOC in the amount of \$37.22 for the loss of several food items, an extension cord, a stereo extension, and several bars of soap. He packed his personal property to be put in storage while he was out to court in Geary County overnight. When his property was returned to him upon his return to LCF, he noticed that LCF property room staff had placed his property in smaller boxes. Staff asked him to sign the property inventory sheet before he checked the contents of the boxes. He did not discover that the items were missing until he unpacked the boxes. He complained that his property would not have been lost if staff had not re-packed it. He maintained that staff had no reason to re-pack his property because an inventory was completed before he packed his property, and he was scheduled to be out to court only overnight

Shelly Starr, KDOC, explained that, due to space issues in the property room, inmate property is sometimes re-packed into different sized boxes. She said, unfortunately, Mr. Johnson failed to note on the inventory sheet that items were missing when he received his property and signed the receipt; therefore, there was no way to verify what property he actually received. Having found that Mr. Johnson failed to follow policy, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5901 be denied. (See section captioned "Committee Action and Recommendation".)

The Committee's attention was turned to the following claims on the agenda under the heading, "No Hearing Requested," Claims Nos. 5674, 5908, 5919, and 5922.

Claim No. 5674 was filed by an inmate at LCF, Charles J. Street, against KDOC in the amount of \$100,000.00 for personal injury. Ms. Deckard explained that Mr. Street stated that officers cuffed him behind his back as they moved him and his property to a cell on the upper tier. He claimed that the officers failed to support him as he climbed the stairs; therefore, he fell when one of the officers bumped him. As a result of the fall, he suffered multiple lacerations, abrasions, and a concussion.

Shelly Starr, KDOC, noted that Mr. Street's lawsuit went to a jury trial, and he lost. She confirmed that Mr. Street was handcuffed when he fell on the stairs. She reported that the officers escorting him thought Mr. Street either tripped on his shower shoes or on the leg of his pants. One of the officers said he lost his grip on Mr. Street when he fell. She noted that injuries to his knee, shoulder, and face were treated at the facility clinic, and he made no further complaints regarding the injuries after he was treated. Having found that Mr. Street's injuries were not due to staff negligence and that he was given appropriate medical care, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5674 be denied. (See section captioned "Committee Action and Recommendation".)

Claim No. 5908 was filed by Frank A. Martin, Jr., against Pittsburg State University in the amount of \$3,004.33 for the estimated cost to repair damage to his automobile. Ms. Deckard explained that Mr. Martin claimed that his automobile was damaged when he hit an unmarked sign post while turning around in the parking lot of the Technical Institute Building. He also stated that he chose not to use his automobile insurance because he did not feel the accident was due to his negligence, and a claim would increase his premium.

Ms. Deckard noted that Darron C. Farha, attorney for Pittsburg State University, indicated in his written response to the claim that a court of law could likely conclude that Pittsburg State University was responsible for the damages to Mr. Martin's car. However, he recommended that, before taking action on the claim, the Committee request that Mr. Martin get a second estimate if the car had not yet been repaired or provide the actual receipt if the car had been repaired. If the actual damages were found to be less than \$3,004.33, Mr. Farha recommended that the claim be allowed in the lesser amount unless it was \$1,000.00 or less. If the amount was \$1,000.00 or less, he recommended that the claimant file a claim with Pittsburg State University because the University has the authority to grant claims for \$1,000.00 or less.

Following discussion, the Joint Committee recommended that Claim No. 5908 be denied. (See section captioned "Committee Action and Recommendation".)

Claim No. 5919 was filed by Cody Gillespie against Fort Hays State University in the amount of \$954.20 for medical bills. Ms. Deckard explained that the tip of Mr. Gillespie's left index finger was severed when his finger was caught in the door jam as he was entering his dorm room from the hallway. She noted that the written response to the claim from Todd D. Powell, General Counsel for Fort Hayes State University, indicated that an investigation of the claim revealed that a fellow dorm resident shut the door on the claimant's finger, and the University was not aware of the incident until well after it occurred. Mr. Powell recommended that the claim be denied as the University had no control over the actions of Mr. Gillespie or the person who allegedly caused the injury.

Following discussion, the Joint Committee recommended that Claim No. 5919 be denied. (See section captioned "Committee Action and Recommendation".)

Claim No. 5922 was filed by retired Judge Jay Don Reynolds against the Office of Judicial Administration in the amount of \$2,741.88 for a voucher not presented in the proper fiscal year. Ms. Deckard explained that Judge Reynolds was assigned to hear a lengthy case, and he mistakenly was under the impression that he should not turn in the time worked until the case was completed. He did not become aware of the limitation on voucher payments to current fiscal years until he consulted the Judicial Administrator upon submitting the final voucher for the case. Ms. Deckard noted that the written response to the claim submitted by Jerry Sloan, Budget and Fiscal Officer for the Office of Judicial Administration, indicated that Judge Reynolds worked on the case in Fiscal Years 2005 and 2006, and the appropriate rate of pay changed during this period. Therefore, the appropriate amount

of the claim was \$2,672.90. Mr. Sloan confirmed that Judge Reynolds would have been paid had the voucher been submitted in a timely fashion.

Following discussion, the Joint Committee recommended that Claim No. 5922 be allowed in the amount of \$2,672.90. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearings on claims filed by inmates at Ellsworth Correctional Facility (ECF), Claims Nos. 5665, 5876, 5889, and 5900.

Randall A. Murray, ECF, discussed his Claim No. 5665 against KDOC in the amount of \$10,000.00 for lost wages, loss of the use of personal property, and violation of the constitutional right to a prison job. He explained that, when he worked as a baker for Aramark Food Services at El Dorado Correctional Facility in April 2004, he was told to make bread pudding with a recipe which required raisins. Since the prison never stocks raisins, he asked one of Aramark supervisors if apples could be substituted. The supervisor instructed him to ask the manager. He claimed that, in retaliation for reporting food ingredient shortages, the Aramark employees filed a false disciplinary report for disrespect and insubordination towards employees and for work performance. He was convicted on the disciplinary report, and his contrary to his constitutional rights, he was terminated from his job in the prison kitchen. He claimed that, as a result of the false disciplinary report, he lost wages and 30 days good time, and he was unable to purchase a Bible encyclopedia dictionary for the advancement of his religious studies. In addition, his inmate level was reduced, causing the loss of the use of personal property for four months. A lawsuit concerning the same facts and circumstances as the claim, which was pending when Mr. Murray filed the claim in February 2005, had been resolved. The amount of his claim included the cost of preparing the lawsuit and filing fees in Butler County District Court.

Shelly Starr, KDOC, commented, "What this boils down to is a personality conflict. The Department has a right to place inmates where they want to place them." She emphasized that Mr. Murray clearly did not have a constitutional right to a prison job. Additionally, she noted that IMPP 10-109 IV.B.2 and 3 allows the Department to remove an inmate from a work assignment for being disruptive and/or for poor work. In this case, Mr. Murray was convicted of a disciplinary violation for violating K.A.R. 44-12-401, work performance. In conclusion, she noted that, besides the fact that there were no constitutional violations, it was determined in *Levier v. State* that the Secretary of Corrections should be given deference to manage prisoners as he sees fit. With this, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5665 be denied. (See section captioned "Committee Action and Recommendation".)

Keith L. Crawford, ECF, filed Claim No. 5876 against LCF in the amount of \$100.00 for the replacement of his damaged AM-FM stereo-radio and Claim No. 5900 against LCF in the amount of \$135.00 for damage to his television. As to Claim No. 5876, Mr. Crawford explained that the damage to his radio occurred when he was housed in a private medical unit at LCF in October 2006. While he was in the day room playing chess on October 5, another inmate informed him that an

inmate came into the unit without authorization, and an officer caught the inmate (Phillip Miller) as he was attempting to steal the radio. When the officer returned the radio to Mr. Crawford, he found that it had been damaged and no longer worked. Mr. Crawford explained that the back casing was cracked in an attempt to remove the motor, which is often used by inmates to make a tattoo gun. He noted that the officer wrote a disciplinary report for being out-of-area and theft, and inmate Miller was found guilty. Mr. Crawford contended that the officer should have kept damaged radio as evidence and made a theft report in addition to writing a disciplinary report. Mr. Crawford filed a facility property loss claim which was denied on the grounds that the damage was due to his to his neglect. He contended that the disciplinary report on inmate Miller proved that staff was negligent because it showed that inmate Miller was able to come through the only door in his unit without authorization and pass directly in front of the O.I.C.'s office without being stopped.

As to Claim No. 5900, Mr. Crawford explained that he discovered that his television had been smashed when he returned from his job at the medium library at 7:30 p.m. on October 27, 2006. At that time, he saw inmate Miller in the area. He argued that the facility was responsible for his television because an interdepartmental memorandum dated March 31, 2006, stated that inmates could keep their television outside their locker. He noted that he could not secure his television before he left his cell because it would not fit in his locker. He contended that correctional employees were negligent because inmate Miller was not transferred to segregation immediately after he attempted to steal his radio a few weeks earlier. In addition, the lights in his living quarters had been turned off when he returned to his cell at 7:30 p.m. but were supposed to be left on until 10:30 p.m.

Shelly Starr, KDOC, confirmed that another inmate entered Mr. Crawford's cell twice—once to steal his stereo-radio and once to steal his television. She suggested that the television was damaged because the inmate was interrupted as he attempted to steal it. She went on to say that Mr. Crawford was housed in a medium security area wherein the doors are not normally secured. She explained that the officer in charge is not always at his post by the door because he must also make rounds and check on disturbances. She emphasized that the corrections officers guard and secure inmates, not their property. Furthermore, she reminded the Committee that IMPP 12-120 states that inmates own property at their own risk. Noting that the Department believes that it is not good policy to become insurers of inmates' property, Ms. Starr recommended that both Claim No. 5876 and Claim No. 5900 be denied.

Following discussion, the Joint Committee recommended that Claim No. 5976 and Claim No. 5900 be denied. (See section captioned "Committee Action and Recommendation".)

Chuen-Phon Ji, ECF, summarized his Claim No. 5889 against El Dorado Correctional Facility in the amount of \$50.00 for the loss of his radio/cassette player, radio antenna, and television antenna. Before being transferred by bus from El Dorado to Ellsworth on August 31, 2006, an officer told him that the property, which had been confiscated in a shakedown, would be shipped to Ellsworth on a later bus. He never received the property; therefore, he filed a facility property loss claim for \$50.00 on September 5, 2006, and the claim was denied. He claimed that staff at El Dorado was deceitful when he was told that his property would be shipped to him and when responding to his property loss claim.

Shelly Starr, KDOC, reported that Mr. Ji's property was eventually located and returned to him. However, the property was confiscated again on March 28, 2007, after he dropped to Incentive Level 1. She noted that the property was currently in the Department's possession, but Mr. Ji would be required to send it out or donate it if he did not progress in his incentive levels appropriately. In light of her investigation, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5889 be denied. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearing on Claim No. 5881 filed by Othello Johnson, an inmate at Norton Correctional Facility (NCF), against KDOC in the amount of \$314.12 for property loss. Mr. Johnson explained that his personal property was placed in four boxes and stored in the property room at El Dorado Correctional Facility on June 29, 2006, when he was placed in segregation. When he returned the general population on July 26, 2006, one of the four boxes was missing. The box contained several consumable items, Georgia Giant boots, headphones, an alarm clock, a desk lamp, and sun glasses. He claimed that property room staff was negligent in securing his property. He noted that Shelly Starr, KDOC, recommended in her written response to the claim that the claim be allowed in the amount of \$73.81 for the durable goods in the missing box. In his opinion, \$100.00 would be more reasonable along with the replacement of his boots, which he had worn only three times.

Shelly Starr, KDOC, confirmed that Mr. Johnson did not receive one box of property which was placed in storage. She reported that it appeared that he was never given an opportunity to check his property against the inventory sheet and sign that he received everything that had been inventoried; therefore, the Department could not say that he received any of his property that had been in storage. Because the Department did not follow procedure with regard to his property, she recommended that Mr. Johnson be reimbursed \$73.81 for the depreciated value of the durable property (\$41.93 for the Georgia boots, \$18.61 for the headphones, \$5.73 for the alarm clock, \$6.00 for the desk lamp, and \$1.54 for the sunglasses). The Committee requested that Ms. Starr find out whether or not KDOC would agree to replace the boots per Mr. Johnson's request. Ms. Starr reported later in the meeting that the Department would replace the boots.

Following discussion, the Joint Committee recommended that Claim No. 5881 be carried over to the September meeting. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearing on Claim No. 5885 by Timmie Robinson, an inmate at Hutchinson Correctional Facility (HCF), against Winfield Correctional Facility (WCF) in the amount of \$3,500.00 for delay in receiving treatment for injury to the third toe on his right foot. Mr. Robinson explained that he stubbed his toe on a bed post at WCF either on Thursday, May 19, or Friday, May 20, 2006. His toe swelled, and he was certain that it was broken. He asked an officer allow him to go to the clinic, but the officer refused his request, stating that he could not walk if a bone in his toe was broken. The next day, he submitted a request for a sick call order after another officer instructed him to do so. But he was not seen in the clinic until Wednesday. Clinic staff told him that his toe was not broken and that he should return to work after a two-day lay

in. He continued to complain that his toe was broken, and an x-ray was taken two weeks later at his request. The x-ray showed that his toe was broken. Clinic staff ordered a special orthopedic shoe and told him to stay off his feet as much as possible. Later on, an attempt was made to reset the broken bone to relieve the pain. However, the bone did not heal properly, and he continued to be in pain.

Shelly Starr, KDOC, informed the Committee that a request for sick call is the proper procedure for a non-emergency situation such as a broken toe. She noted that Mr. Robinson's toe injury was not an emergency requiring response within four minutes; therefore, it was his responsibility to request medical assistance. She went on to say that inmates submitting requests for a sick call during the week are seen within 24 hours, but on weekends, they are seen within 72 hours after the request is submitted. She reported that Mr. Robinson's medical records showed that he was seen at the clinic on May 23, 2006, and an x-ray was taken on June 8. His records also showed that his toe was realigned and taped to another toe. He was also given Ibuprophen and an orthopedic shoe. Follow up x-rays taken on July 13 and November 2 showed that the toe healed properly and was well healed. His records indicated that no further treatment was needed. Having found that Mr. Robinson received appropriate care from facility staff, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5885 be denied. (See section captioned "Committee Action and Recommendation".)

The meeting was adjourned at 4:20 p.m.

July 11, 2007

Representative Huebert called the meeting to order at 9:05 a.m. at which time he opened the telephone hearings on claims by inmates at El Dorado Correctional Facility (EDCF), Claims Nos. 5877, 5882, 5883, 5886, 5888, 5893, 5895, 5896, and 5899.

Russell Shumway, EDCF, discussed his Claim No. 5882 against EDCF in the amount of \$116.61 for the loss of his wedding band and Georgia Giant boots. Before leaving his cell for a shower on May 20, 2006, he used the intercom in his cell to ask an officer to lock his cell. As he walked away from his cell, he saw the cell door close. When he returned approximately 40 minutes later, the cell door was wide open. He found that his wedding band, boots, and watch were missing. He asked the officer why his door was opened, and the officer told him that the door was opened by mistake. He then searched the area for the missing property and asked for assistance from officers; however, the items were not found. He noted that boots which were found later in a shakedown were not his but were left behind by another inmate who was transferred to another unit.

Shelly Starr, KDOC, commented that corrections officers are responsible for guarding and securing inmates, not their property. She suggested that Mr. Shumway should have locked his property in his cabinet before leaving his cell. She went on to say that the officer who opens and closes cell doors often cannot see the doors. She explained further that sometimes inmates request

that a cell door other than their own be opened unbeknownst to the officer. She noted that, even if the cell row is visible, officers cannot always tell if the right person went into the right cell. Noting that it was unfortunate that Mr. Shumway's property was stolen, Ms. Starr recommended that the claim be denied as inmates own personal property at their own risk.

Following discussion, the Joint Committee recommended that Claim No. 5882 be denied. (See section captioned "Committee Action and Recommendation".)

Johnathan Bafford, EDCF, summarized his Claim No. 5883 against KDOC in the amount of \$5,000.00 for illegal discipline and stress. He claimed that he was illegally disciplined at Larned Correctional Mental Health Facility after receiving two behavior reports issued pursuant to a general order enacted by the warden. The first behavior report was for refusal to allow an officer to remove his restraints when he was placed inside his cell after returning from the shower. The second report was for encouraging another inmate to refuse to follow a direct order to come in from the segregation yard. He received two days yard restriction for each incident. He complained that the behavior reports illegally allowed punishment without a hearing. Mr. Bafford contended that the incidents should have been addressed through a disciplinary report which requires a hearing process wherein he would have had a chance to defend himself. He explained that the amount of his claim included compensation for the denial of due process rights, the loss of privileges, the cost to file his claim, and the emotional stress caused by clearly being illegally disciplined.

Shelly Starr, KDOC, stated that the discipline described by Mr. Bafford did not rise to the level of any sort of constitutional taking which would require due process safeguards. She noted that behavior reports do not affect incentive levels but, rather, they are a tool to try to modify behavior of inmates without the punitive ramifications of a disciplinary report, which does go on the inmate record and does affect incentive levels. She noted that a behavior report could best be compared to a misbehaving school child who does not get to go to recess for two days. She observed that Mr. Bafford would not be given behavior reports if he would follow the rules and stop trying to incite other inmates. With this, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5883 be denied. (See section captioned "Committee Action and Recommendation".)

Jacques Gilmore, EDCF, explained his Claim No. 5896 against Ellsworth Correctional Facility in the amount of \$25.54 for the loss of his headphones. While he was away from his cell at work at Ellsworth, his radio and headphones were confiscated in a shakedown of his cell after his inmate level was dropped to Level 1. When he was transferred three months later to EDCF, he discovered that his radio and headphones were missing and that his property inventory sheet listed the radio but not the headphones. He filed a facility property loss claim, and the claim was approved in the amount of \$19.34 for the loss of the radio. The facility did not offer payment for the headphones because there was no documentation showing that officers confiscated headphones. Mr. Gilmore did not accept the \$19.34 settlement. He complained that he was not given an opportunity to sign a property inventory sheet in accordance with facility rules. He argued that he would not have signed the inventory sheet as correct if given the opportunity to check it when his property was

seized.

Shelly Starr, KDOC, reported that she found no evidence to substantiate that the headphones were in Mr. Gilmore's possession when officers conducted the shakedown of his cell. She contended that the headphones would have been listed if they were in his cell when shakedown officers inventoried his property. Having found no negligence on the part of the facility, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5896 be denied. (See section captioned "Committee Action and Recommendation".)

Thad McCrory, EDCF, explained his Claim No. 5893 against EDCF in the amount of \$14.99 for property loss. When he was moved to a "no contact cell," officers packed out his property to be placed in storage. When his property was returned to him, he found that his headphones, headphone extension, toothbrush holder, and toothbrush were missing. The officer who brought the property to him (Officer Jackson) noted on the inventory sheet that the items were missing. Mr. McCrory then filed a facility property loss claim, which was denied because the investigating officer concluded that he made the notation, not Officer Jackson. Mr. McCrory claimed that the investigating officer intentionally failed to ask Officer Jackson if he made the notation.

Shelly Starr, KDOC, noted that Mr. McCrory provided a copy of a Form 9 from Officer Jackson confirming that he did make the notation on the property inventory sheet that the headphones and extension were missing. Therefore, she recommended that the claim be allowed in the amount of \$9.89 (\$9.39 for depreciated value for headphones and \$.50 for the depreciated value of the extension). She did not recommend payment for the toothbrush and holder as that there was no evidence of the purchase price or the date they were purchased, nor was there a notation that the items were lost.

Following discussion, the Joint Committee recommended that Claim No. 5893 be allowed in the amount of \$9.89. (See section captioned "Committee Action and Recommendation".)

Alrick E. Payne, EDCF, summarized his Claim No. 5886 against KDOC in the amount of \$200.00 for the loss of 20 framed photographs. Mr. Payne noted that a property inventory sheet dated April 10, 2006, showed that he had 12 framed pictures in good condition. He explained that he had 20 pictures when he was admitted to the clinic in May 2006, and an officer packed out his property. He claimed that, when his property was returned to him, some of the pictures were missing and others were damaged due to the officer's negligence.

Shelly Starr, KDOC, pointed out that one inventory showed 12 photographs, but the next inventory did not show any photographs. Therefore, there was no way to establish that Mr. Payne possessed any photographs when his property was packed out. Additionally, she noted that, per Department policy, photographs have no value. For reasons cited, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5886 be denied. (See section captioned "Committee Action and Recommendation".)

Sidney R. Butler, EDCF, explained his Claim No. 5895 against EDCF in the amount of \$9.39 for damage to his headphones. He said that his headphones were new and worked perfectly before he had to leave his cell while a shakedown search was conducted. When he returned, he discovered that one side of the headphones did not work. He claimed that the headphones were damaged when one of the shakedown officers dropped them.

Shelly Starr, KDOC, reported that the three officers who conducted the shakedown denied handling Mr. Butler's headphones. Having found no evidence to show that the officers damaged the headphones, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5895 be denied. (See section captioned "Committee Action and Recommendation".)

Thomas E. Everson, EDCF, discussed his Claim No. 5899 against EDCF in the amount of \$51.74 for damage to his Panasonic radio-tape player. On August 17, 2006, he was cuffed and taken to the shower while a shakedown of his cell was conducted. A shakedown officer took his radio and informed him that the antenna would be removed and replaced by staff. Mr. Everson explained that he had not received a disciplinary report concerning his radio. When his radio was returned to him on August 22, the radio station dial was damaged, and the replaced antenna did not pick up radio stations. He claimed that the general maintenance employees assigned to remove and replace the antenna were not trained to work on Panasonic electronics; therefore, KDOC was responsible for the damage to his radio. He maintained that he should be reimbursed for the full purchase price (\$51.74) because the radio was in perfect working condition before the antenna was removed.

Shelly Starr, KDOC, informed the Committee that the facility determined in 2006 that metal antennas on radios were a safety issue; therefore, the metal antennas were removed and replaced with a less dangerous wire antenna. She confirmed that Mr. Everson's radio was permanently damaged when the antenna was removed. Since Mr. Everson purchased the radio in 1998, she recommended that the claim be allowed in the amount of \$26.00 (50 percent depreciation per KDOC policy).

Following discussion, the Joint Committee recommended that Claim No. 5899 be allowed in the amount of \$26.00. (See section captioned "Committee Action and Recommendation".)

Roland Rudd, EDCF, briefly discussed his Claim No. 5877 against KDOC in the amount of \$1,000.00 for property loss and mental anguish. He claimed that his television, radio, headphones, and a photograph were taken from his cell sometime on September 15, 2006, either because his cell door did not lock due to a mechanical defect or because an officer opened the door for another inmate. He reasoned that the officer in charge was negligent because his cell door was not properly secured.

Shelly Starr, KDOC, reported that she found no evidence that Mr. Rudd's property loss was due to a malfunctioning locking system or to staff's failure to properly secure his cell door. She

emphasized that cell doors are locked to secure the inmate, not the inmate's property. Noting that the Department of Corrections is not an insurer of inmate property, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5877 be denied. (See section captioned "Committee Action and Recommendation".)

Antonio T. Munoz, EDCF, discussed two related claims he filed against the Kansas Department of Social and Rehabilitation Services (SRS), Claim No. 5928 in the amount of \$51,097.25 for an error in the amount he owed for child support and Claim No. 5930 in the amount of \$30,000.00 for debts owed for child support prior to a paternity test and for mental anguish.

Mr. Munoz explained that Claim No. 5928 concerned child support for his son. He claimed that SRS erroneously charged him \$21,097.25 for back child support. In 2000, the error was corrected by reducing the amount owed to \$10,097.15. In December 2006, SRS once again notified him that he owed \$21,097.25. In February 2007, he was notified that he currently owed \$31,097.25. He noted that the mother of his son had not had custody since 1995; therefore, she was not entitled to harass him and request garnishment in the debt setoff program for child support in March 2007. Mr. Munoz said that the amount of his claim included compensation for the mental anguish he suffered as a result of the errors made by SRS.

Mr. Munoz explained that Claim No. 5930 concerned back child support for his daughter. He explained that a judge in Shawnee County District Court ordered him to pay child support, which included payment of medical bills. He contended that he was not responsible for child support at that time because his daughter was in the custody of the state due to the fact that her mother was incarcerated and a paternity test had not yet been conducted. He claimed that he was not responsible for any of his daughter's medical bills or living expenses prior the paternity test.

Leonard Kinzie, SRS Child Support Enforcement, informed the Committee that SRS had two accounts on Mr. Munoz. One was based upon a support order entered in August 1992 on behalf of one child, and the other was a support order entered in September 2000. He explained that he was requested to go through Mr. Munoz's records to determine whether or not an adjustment was ever made in either account, and he did not find any record of any adjustment in either account. However, Mr. Munoz's reference in his claim to social security benefits his children received caused some concern that there might be an error in the accounts. Therefore, Mr. Kinzie asked the collection officer who is in charge of the accounts to check with the Social Security Administration to determine whether or not the children were receiving any social security benefits that could potentially be a credit on their accounts. It was discovered that benefits were being paid to the children, and those benefits were taken into account. Mr. Kinzie noted that the records were corrected, and Mr. Munoz was sent a letter with the corrected calculation on April 27, 2007. The correction resulted in a reduction of his total obligation of just slightly over \$4,000.00. However, his current debt still remained over \$27,000.00. Mr. Kinzie pointed out that this was the first adjustment ever made in Mr. Munoz's accounts. As Mr. Munoz still owed unpaid child support, he recommended that the claim be denied.

Mr. Kinzie went on to say that, because the federal government sends out pre-offset notices each year relative to Internal Revenue Service setoff procedures, it was possible that there could be some confusion in terms of what the debt in a case actually is. He explained that, at some point over the last five or six years, the government began sending two notices — one listing debts owed to the state and one listing debts owed to a private individual but being collected by the state. At that point in time, one of the accounts did have a private debt on it; however, at the present time, all of the support was assigned to the state, and both children were currently receiving support from the state. He noted that any recent notice Mr. Munoz may have received would have listed a consolidated amount rather than two separate amounts. Mr. Munoz then asked Mr. Kinzie if there was a separate collection agency involved in this process. Mr. Kinzie said that there was no separate collection involved; however, once the debt exceeds \$1,000.00, SRS is required by federal law to make a report to credit bureaus that the debt exists.

Mr. Munoz proceeded to ask Mr. Kinzie questions regarding the social security benefits his children were receiving, and he asked whether the mother of his son could be held responsible for half of what he owed. As Mr. Kinzie responded to the questions and provided further information for Mr. Munoz, committee members agreed that the Committee was not the proper forum to address the questions raised by Mr. Munoz. A Committee member commented, “I fail to see how the State of Kansas through the Legislature can make an appropriation or grant any sort of relief on some sort of child support calculation case. If all you are wanting is an offset, I think that could be resolved administratively through the proper state agency or district court. We have no jurisdiction or say in this matter. It’s kind of a unique case. It seems like it’s more lack of communication perhaps that has caused this situation rather than anything else, and it can be resolved in another manner.”

Following discussion, the Joint Committee recommended that Claim No. 5928 and Claim No. 5930 be denied. (See section captioned “Committee Action and Recommendation”.)

Kenneth R. Toynbee, EDCF, discussed his Claim No. 5888 against EDCF in the amount of \$160,000.00 for personal injury, pain and suffering, and future medical costs. On September 27, 2006, the control officer closed his cell door without warning as he was exiting in his wheelchair. His left arm was caught between the door and the wheelchair for over two minutes while he and other inmates yelled for help. He complained that the officer negligently closed the door and was also too slow in responding to the cries for help. He was taken to the clinic to be examined, but a doctor was not available, and no x-rays were taken. He contended that he should have been taken to a hospital. He was seen by a facility doctor on October 4, 2006, and given a sling and Tylenol. He explained that the final diagnosis was soft tissue damage to his shoulder and arm. He complained that he continued to be in pain, but he had not received adequate treatment even though he had been back to the clinic six times to request therapy. He claimed that his lack of proper medical care violated state laws, that his attempts to utilize the facility grievance process were ignored, and that the facility violated the Americans with Disabilities Act.

Shelly Starr, KDOC, noted that Mr. Toynbee has partial paralysis to his left side due to a stroke he suffered in 2004. She went on to say that his medical records relating to the incident showed that he had a red mark from his wrist to his elbow but no swelling, and he was told to return

to the clinic if further problems developed. When he returned two days later with complaints of pain, he was given Tylenol and referred to the doctor on October 4, which was one week after the injury occurred. After he was evaluated by the doctor, his medication was changed to Ibuprofen, he was told to continue to use an ice pack and then heat, and he was given a sling. Since that time, x-rays showed that nothing was broken, and he has been seen for pain on a regular basis. Ms. Starr commented that, unfortunately, Mr. Toynbee continued to be in pain, but there were not many treatment options which had not been tried. To complicate matters, he had been involved in an incident wherein he attempted to break another inmate's fall. His left arm was pinned by the inmate, causing additional injury. Ms. Starr concluded that it was regrettable that Mr. Toynbee's arm was caught between the cell door and his wheelchair; however, it was due to an unfortunate timing of events and not because of any ill will on the part of the officer. Noting that soft tissue injuries sometimes take a very long time to heal and that Mr. Toynbee continued to receive appropriate treatment, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5888 be denied. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearings on claims by inmates at Larned Correctional Mental Health Facility (LCMHF), Claims Nos. 5441, 5890, and 5894.

Christopher Pierce, LCMHF, filed Claim No. 5441 in August 2003 against KDOC in the amount of \$4,500.00 for personal injury; however, the claim was not heard in 2003 because a lawsuit was pending. After the lawsuit was resolved, the claim was set for a telephone hearing in December 2006. At that time, Mr. Pierce stated that his paperwork being held due to his recent transfer from EDCF to LCMHF, and he asked that the claim be carried over to a future meeting.

Instead of discussing his Claim No. 5441, Mr. Pierce began to discuss the loss of his cassette player which he claimed occurred when his property was packed out by officers at EDCF for his transfer to LCMHF. Representative Huebert informed Mr. Pierce that Claim No. 5441 did not concern property loss but related to his allegation that EDCF officers assaulted him in June 2003 while he was handcuffed and shackled, causing injuries to his forearms, wrists, and ankles. Mr. Pierce continued to discuss the loss of his cassette player and ignored a request to discuss Claim No. 5441; therefore, Representative Huebert closed the hearing.

The written response to Claim No. 5441 submitted by Shelly Starr, KDOC, indicated that a review of Mr. Pierce's court case revealed that the habeas corpus he filed did not relate to use of force or cruel and unusual punishment. The habeas corpus, which was denied, was for release based on the fact that he was being illegally held because "they have the wrong man." In addition, Ms. Starr reported that facility records did not show that Mr. Pierce was injured or complained about being injured on June 30, 2003. In light of her investigation, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5441 be denied. (See section captioned "Committee Action and Recommendation".)

Larece T. Hutton, LCMHF, summarized his Claim No. 5890 against EDCF in the amount of \$4,050.00 for the loss of 35 books in November 2006. His said EDCF staff misplaced his books as his property was being packed in preparation for his transfer to LCMHF, and he was told that a search for the missing books would be conducted before his transfer. However, none of the books were found. He complained that the books he needed for his pursuit of a psychology degree were lost. He claimed that it would cost \$3,500.00 to replace all of the books, plus \$550.00 for the books on warranty.

Shelly Starr, KDOC, noted that Mr. Hutton did not provide an inventory sheet for the date of his transfer to show that the books were in the facility's possession at the time he claimed they were lost. Furthermore, he did not provide documentation as to the cost of the books, the warranty to replace some of the books, or the psychology class he supposedly was taking. She pointed out that the maximum number of books an inmate can have in his possession is 12. She noted that the last property inventory that he supplied was from 2005. She went on to say that the response to his facility property loss claim showed that the last inventory of his property was taken in February 2006. At that time, Mr. Hutton had five books, which were given to him, and they were donated at no cost to him. Having found no documentation to support Mr. Hutton's claim, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5890 be denied. (See section captioned "Committee Action and Recommendation".)

Claim No. 5894 was filed by Ronald Murray, LCMHF, against KDOC in the amount of \$22,471.43 for confiscation of his legal documents. Representative Huebert informed the Committee that Mr. Murray had a pending lawsuit in Butler County District Court concerning the same facts and circumstances described in the claim.

Following discussion, the Joint Committee recommended that Claim No. 5894 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearing on a claim filed by an inmate at Topeka Correctional Facility (TCF), Claim No. 5904 by Dotty Ingold against TCF in the amount of \$5,000.00 for the denial of proper medical attention. Ms. Ingold complained that nurses in the clinic refused her requests to see the facility doctor with regard to ongoing stomach problems, treatment after surgery for foot tumors, and her request for a MRI.

Shelly Starr, KDOC, reported that Ms. Ingold's lengthy medical records showed that she visited the facility clinic almost every day for a number of chronic health problems. She noted that the nursing staff consulted with a doctor when needed, and Ms. Ingold had been seen by a doctor, although it may not have been the doctor she requested. Having found that Ms. Ingold received appropriate medical treatment, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5904 be denied. (See section captioned "Committee Action and Recommendation".)

The meeting was adjourned at 11:50 a.m.

Prepared by Shirley Higgins
Edited by Amy Deckard

Approved by the Committee on:

September 5, 2007
(date)

