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Testimony in Support of Senate Bill 149
Presented to the Senate Committee on the Judiciary
By Kansas Attorney General Derek Schmidt
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Mr. Chairman, members of the Committee, thank you for this opportunity to testify in support of Senate Bill 149, which would enact rules for briefs in criminal matters or postconviction cases in the Kansas Supreme Court and Court of Appeals.

The bill before you today is a codification of a longstanding Kansas Supreme Court Rule known as Rule 6.10. This rule requires that in criminal cases before our two state appellate courts, a copy of the brief must be sent to attorney general, and briefs for the State must be approved by the attorney general or a member of the attorney general's staff before filing. Recently, the Kansas Supreme Court has indicated its intention to repeal this rule effective September 1, as part of a "clean up" of the Court's rules. Enacting this statute prior to that date will ensure that the current process, which has worked well, remains in effect.

Preserving this policy is important to the State's legal process. The Legislature recently codified and clarified the longstanding authority of the attorney general as the State's chief legal representative in all appellate matters and in federal court. *See* K.S.A. 75-702. The reason behind this policy is simple: whether a case is being argued by the attorney general or a local district or county attorney, that attorney is representing the State of Kansas. And, the State of Kansas should have a singular, unified voice when arguing matters of law before our highest courts.

Absent that policy, it is possible that the State of Kansas could find itself on different sides of the same appeal. That is what happened to the State of New York in *New York v. Uplinger*, 467 U.S. 246, 247 n.1 (1984), when a New York District Attorney sought U.S. Supreme Court review of a state criminal case, review was granted, and the New York Attorney General then filed a brief on the opposite side of the question. Both the District Attorney and the Attorney General claimed authority to represent the State of New York in the matter, and their conflicting positions put the State of New York on the opposite sides of the same legal question. Confronted with that confusion about who could properly represent the State, the United States Supreme Court reversed itself and declined to review the case. This example illustrates why a clear policy that the State of Kansas speaks with a single voice, through its Attorney General, in the appellate courts, is wise policy.

We ask you to continue that policy and ensure the State continues to speak with one, consistent voice in criminal matters and postconviction cases by codifying Supreme Court Rule 6.10. We request your support for Senate Bill 149.

Thank you for your consideration. I would stand for questions.

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