

## **SENATE COMMITTEE ON JUDICIARY**

Hon. Thomas (Tim) Owens, Chairman  
Hon. Jeff King, Vice Chairman  
Hon. David Haley, R.M. Member

February 16<sup>th</sup>, 2012  
9:30 a.m.  
Room 548-S

Chief Judge Richard M. Smith  
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### **TESTIMONY ON BEHALF OF KANSAS DISTRICT JUDGE'S ASSOCIATION IN SUPPORT OF SB 423**

Thank you, Mr. Chairman and this honorable committee for extending the opportunity to appear and present testimony in support of SB 423. I am Richard M. Smith, President of the Kansas District Judge's Association and Chief Judge of the Sixth Judicial District.

During the 2010 legislative session, I and others appeared before the Senate Ways and Means Committee and testified in support of legislation that would have funded a weighted caseload study in Kansas. Although funded in a different manner, we now have that weighted caseload study and we have the work product of a commission tasked with reviewing the district

courts of this state. When I testified back two years ago I stated on behalf of the KDJA: ...*{I}t is the expectation of the Kansas District Judge's Association that the district judges, OJA and the Supreme Court will embrace the opportunity to thoroughly and honestly study the existing system, isolate and identify any inefficiencies, then present comprehensive suggestions of what changes should be put in place, taking into consideration the philosophies and policies necessary to insure an exceptional system of justice remains for our citizens.*

Respectfully I would suggest we are now here to consider some of those suggestions that might make our system more efficient and cost effective. The Kansas District Judge's Association favors the appropriate and efficient allocation of judicial resources. Concern over whether judicial resources are being appropriately allocated should always be a concern of both the legislature and the courts not just during difficult budgetary times. Obviously during times of financial difficulties these issues tend to come to the forefront. Nevertheless, no matter how much importance we ascribe to "efficiency" we should remember that the overriding concern should be access to justice. The system of justice our citizens enjoy provides consistent and prompt access. Access to justice is and should remain the fundamental concern.

The goal of an efficient judicial system should be to keep the courts accessible to all people in Kansas with a minimum of waste and delay. A certain amount of consolidation of personnel is necessary to reduce waste. The Weighted Caseload Study and the BRC recommendations would indicate that some difficult choices have to be made. Let's be candid. The mere fact that compelling statistics would indicate and will therefore result in a reallocation of judicial resources ignores history. And if we ignore that history we are doomed to repeat it. The legislative requirement that there be one resident judge whose primary office is located in each county was enacted in 1983. Everyone recognizes that this requirement represents an absolute structural impediment to the reallocation of judicial resources. Multiple studies by various commissions, post audit reports and other authorities have recommended and suggested that it be repealed. Nevertheless, that requirement has remained despite unsuccessful efforts to repeal it in 1991, 1992, 1996, 2009 and 2010. (And I do not believe that those dates include all the years that such a proposal failed to get past committee.)

The Blue Ribbon Commission's recommendation that this statute and all other statutes which specifically require that a judge be located in a particular county be repealed should be no surprise to anyone who has

reviewed the many studies of the Kansas Judicial Branch. In 1999 the final report of the Kansas Justice Commission entitled Kansas Citizens Justice Initiative, chaired by former Governor Robert Bennett strongly recommended “The Kansas Supreme Court should be granted authority to allocate all judicial resources, including the location of judges and judges’ offices....” That final report also recommended that the one judge per county statute be repealed. The report recognized that there were social, economic and political reasons which had caused previous legislatures to reject the repeal of this statute but that report specifically stated “It is an extravagant use of resources to require that there be a resident judge in every county, regardless of population or the number of cases to be adjudicated.” Logically and perhaps constitutionally the assignment of trial judges should be done by the Supreme Court and the Office of Judicial Administration rather than by legislation. An analogy recognized by the Kansas Citizens Justice Initiative can be found in the Kansas Department of Transportation which has the authority to staff its regional offices without legislation or oversight.

Who is best equipped to analyze each individual judicial district and county court, apply the statistical analysis of the Weighted Caseload Study?

Who has the personnel necessary to go out, review a court and give due

consideration to not only access to justice, but the local characteristics of each court including its geographical size, population, legal culture and then make decisions as to the allocations of judicial resources? I would respectfully suggest the staff currently in place at the Office of Judicial Administration is already in place and do this analysis for the Supreme Court? Honestly, is the legislature equipped and prepared to engage in that kind of analysis district by district – or county by county for that matter – in order to make these difficult decisions? The 1999 Commission Chaired by Gov. Bennett recognized that the need for additional judges and judicial services is a liquid concept that develops unevenly across the state year by year. They noted that legislative remedies take time and would therefore often be in arrears in addressing the transitional caseload throughout the state.

Technology has certainly advanced since 1999. Nevertheless, as far back as then it was recognized that the one judge per county requirement represented an unnecessary impediment to the efficient allocation of judicial resources. Judges at the district court level now take much greater advantage of the use of such technologies as facsimile transmissions, emails, electronic signatures and video conferencing. These technologies make it even less necessary to have a judge in each county to address immediate

needs and concerns such as search warrants, arrest warrants, probable cause detention affidavits and even hearings which have to be held in a short amount of time due to statutory necessity. I regularly sign documents such as search and arrest warrants for counties within my judicial district without ever leaving Linn County or even my own home. By video I conduct hearings that are time sensitive from Mound City in cases filed in the other counties of my district. All of these procedures are much more commonplace than they were in 1999.

Admittedly, SB 423 transfers the ultimate responsibility for the allocation of judicial resources to the Supreme Court. From a constitutional perspective this legislation is consistent with Article 3, Section 1 of the Kansas Constitution but from a practical stand point this legislation takes the difficult question of the allocation of judicial resources from what might be viewed as more of a political environment and vests it with the entity which already has the staff and expertise needed to evaluate the need for these resources. The 1999 commission recognized that the repeal of the one county, one judge requirement was – and I quote – “[B]y far most fiscally conservative and most logical course of action from an economical point of view.” That commission stated however that the legislature may choose to retain the requirement of a resident judge in each county for political, social

or other reasons but that such a choice should be made only if the legislature provides funding for additional judges and non-judicial personnel in the States' most populous judicial districts. In other words keep adding judges where they are needed and give little or no regard to where they may not be required. It is not possible to specifically itemize the savings that could be realized in a system wherein this one county, one judge requirement no longer exists. It appears however that substantial savings could be realized if judicial resources could be allocated to meet the demand rather than being allocated under the mandates of current law.

Thank you for this opportunity to present our position.

Respectfully submitted,

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