

SENATE BILL NO. 423 and 425

SENATE COMMITTEE ON JUDICIARY

February 16, 2012

Members of the Senate Judiciary Committee,

Senate Bills 425 and 423 seek to transfer legislative authority to the courts regarding allocation of judges and the setting of fees. Chief Justice Nuss has indicated the transfer of these powers are necessary to efficiency in justice and that is likely true. While that is a worthy goal, that should not be the sole consideration for legislators being asked to cede authority to the courts wholesale.

The legislative process, although slow and perceived as inefficient at times, serves a purpose – the affected parties have a chance to be heard and participate in the process - we can testify and then watch you debate in the open. In most cases, the parties have two opportunities to present their case before either the House and Senate.

Senate Bill 423 and 425 would have you cede your authority to the non-elected judiciary and as a result the public loses that vital connection of participation. The judiciary is not a body responsible to the electorate, possesses the enviable power of incumbency, and is thoroughly protected from KOMA. To be sure with these measures, judiciary allocation of judges and setting of fees will occur in a closed setting with no public view, input or inspection.

Protections from the public can be vital where a court's legal discretion applies to a case in controversy. We want the judiciary insulated from popular opinion as it serves its constitutional duties. I am not persuaded that the judiciary needs that same insulation from public scrutiny on matters apart from judicial discretion. The public has always been able to observe and influence allocation of judicial resources and imposition of fees and I see no cause for alarm should that continue. Alarm bells should sound instead of that the open doors are closing.

I want very desperately for the courts to be more efficient. I am a practicing attorney and my start as a lawyer came on the Shawnee County E-filing Committee. I have spoken nationally about E-filing, teach about efficient technology at Washburn Law School, and served on the Supreme Court E-filing Committee. I want the judiciary to "reach to the stars through difficulty" but not alone - not without input from the Kansans it serves.

The steps the judiciary seeks should be carried forward if and only if modifications are made to retain public oversight and participation.

Perhaps a board with voting and/or veto authority comprised of stakeholders together with modifications to KOMA for sunlight in the process. Those reasonable requests have proved valuable in a live demonstration as the Supreme Court E-filing Committee attests. Further, the state of California (<http://www.courts.ca.gov/policyadmin-jc.htm>) and even the federal courts apply a similar process to ongoing court policy decisions.

Please consider carefully the vital importance of continued openness, accountability, and responsiveness to the public when evaluating Senate Bills 425 and 423.

I sincerely appreciate your time and your service.

Larry N. Zimmerman
Attorney at Law
Topeka, Kansas