

Approved: May 11, 2012

(Date)

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Kinzer at 3:30 PM on Wednesday, February 1, 2012 in 346-S of the Capitol.

All members were present except:

Janice Pauls
Greg Smith
Jim Kelly
Annie Kuether

Committee staff present:

Katherine McBride, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Nancy Lister, Committee Assistant

Conferees appearing before the Committee:

Helen Pedigo, Special Counsel to Chief Justice Lawton R. Nuss
Judge David King, Chief Judge of the First Judicial District and Chair of the
Weighted Caseload Study
Judge Patrick McAnany, Kansas Court of Appeals Judge and Chair of the Blue
Ribbon Commission

Others in attendance:

See attached list.

Chairman Kinzer recognized Helen Pedigo, who provided a brief introduction about the presentations on the Weighted Caseload Study and Blue Ribbon Commission Report Briefing. These came about from Project Pegasus, which the Kansas Judicial Branch began in the summer of 2010. Work from this project resulted in comprehensive lists of recommendations for future operation of the Courts. (Attachment 1)

Helen Pedigo stated there are two pieces of legislation being requested in the 2012 legislative session, which would strike the-one-judge-per-county-statute and authorize e-filing fees to go to the courts. Ms. Pedigo identified three others in the audience who are available to answer questions: Kelly O'Brien, Judicial Branch Director of Information Systems; Kim

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Fowler, Judicial Branch Fiscal Officer; and Steve Grieb, General Counsel to Chief Justice Nuss.

Judge David King shared information from the Weighted Caseload Study, which made findings and recommendations that went to the Supreme Court and the Blue Ribbon Commission. The Blue Ribbon Commission then used the information to make its recommendations. Chief Justice Nuss addressed the Kansas Legislature in his State of the Judiciary address on January 18, 2012. Chief Justice Nuss discussed these projects and outlined his recommendations. No Chief Justice has appeared to make recommendations who had better, more reliable information.

Judge King stated the starting point of the study was asking how much work there is in the trial courts in the State of Kansas. For years the courts relied on case filing information and personal judgment to make an assessment for important decisions about the judicial branch. They needed to know the amount of time it takes all the personnel to process the work, from the initial filing, through the case's history and the post-adjudication activity in the case. The methodology of the weighted caseload study was to get a measure of the workload by using a time study and a standard of measuring developed by the National Center for State Courts. The Supreme Court contracted with the National Center for State Courts to conduct the study. Kansas followed a procedure where all the Kansas judges and court clerk staff recorded all their work-related time for two four-week periods of time. A three to four week period is usually considered an accurate measure to determine caseload information. The Kansas study is the most thorough study the National Center has done to date. (Attachment 2)

The weighted caseload study is able to measure workload by determining the average amount of time it takes to process a particular type of case from start to finish. It recognizes different types of cases take different amounts of time. The advisory committee was made up of 14 judges from around the state, and there was 14-member staffing needs assessment committee from around the state to represent these members. Kansas determined there were 23 types of cases that needed to be studied. Case-related activities, non-case related activities that are work related, and travel time were taken into consideration. Qualitative factors were taken into account, including developing an adequacy of time survey to determine if judges and court staff felt they were given enough time to do a quality job. Judge King advised they convened a Delphi process, where expertise was applied to review the data to determine whether it stands up to experts' expectations of what they would expect from the data. Another qualitative factor was the inclusiveness of the soliciting of information from the public about the operations of the courts throughout Kansas.

Judge King stated the final product is they now have case rates, a definitive measure of time for the workload of the state trial courts, and a definitive measure of non-case related time that

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judges and court clerk staff spend each day in carrying out their responsibilities. There is a Chief Judge in each of 31 judicial districts who have additional administrative duties they must perform, and this amount of time is now known. There is a chief clerk of the court in each county who has to perform additional administrative duties and the time it takes is also known. This information was necessary to determine if there is an adequate staffing level in the Kansas courts. The workload assessment is determined by the average amount of time it takes to process the cases times the number of total cases. Knowing what personnel are available and how much time they have in a year to do the work, it is possible to know whether the current staffing levels for judges and court personnel are appropriately staffed.

The Weighted Caseload Study showed the Kansas Courts are not overstaffed. Ten of the 31 judicial districts need additional judicial staffing to meet their workload, nine districts are adequately staffed, and 12 districts have staff numbers greater than their workload. Regarding the court clerk staffing, 35 of the 105 counties need additional court clerk staff, in 28 counties staffing is equivalent to workload, and in 38 counties, staffing is greater than the workload demand. The amount of travel time is a huge inefficiency with the equivalent of 11 judges doing nothing but driving all year. This occurs mostly in multi-county judicial districts where judges have to travel to preside in court cases.

Judge King advised they have data on case filings for FY 2010 and FY 2011, and there was an increase in case filings in FY 2011. The increase in the workload required 1.3 additional judges and a need for an additional 7.35 clerk staff in Kansas.

Chairman Kinzer inquired if the National Center for State Courts were able to put in perspective how Kansas measured compared to other states' work caseload studies. Judge King stated the National Center does look at a lot of things and generally found Kansas data was being reported at the highest level, and the data was validated across the spectrum of what they would expect.

Judge King clarified the magistrate judges are very much part of the judicial branch resources in Kansas. Magistrate judges have a limited jurisdiction, cannot hear all kinds of cases, and are not required to be lawyers, where district judges are.

Judge Patrick McAnany presented information about the Blue Ribbon Commission. It was formed over a year ago, and the Supreme Court appointed individuals from throughout the state, comprised of educators, lawyers and judges, representing the state geographically as well as with business experience. Dr. Keith Savann, an economist and business management expert who

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teaches in the school of business at the University of Kansas helped the commission stay on track, with the charge of looking at the judicial system from top to bottom. The aim was to improve the judicial system so it was more efficient, while maintaining reasonable access to justice for all Kansans. The Commission's findings were presented to the Supreme Court on January 3, 2012. The chief justices have since made recommendations for the legislation.

Judge McAnany advised the Blue Ribbon Commission divided into groups of three and went to 18 communities throughout the state to gather information about the Kansas courts on what people liked and did not like about the system. People were very candid and provided useful information. They came back together and discussed their findings, then made recommendations in three general areas regarding structure, finance, and process, with regards to the internal procedures of the court.

Judge McAnany noted the executive summary from the Blue Ribbon Commission Report has been provided to the Committee as a general overview of the recommended changes (Attachment 3), and the specific recommendations are listed in the Table of Contents. (Attachment 4) The structural changes recommended include abolishing the one-resident-judge-per-county restriction on the placement of judges, an increase in the magistrate judges and, over time, that they come from the ranks of the qualified lawyers in the state. On technology, recommendations include the implementation of statewide electronic filing of documents. The e-filing system should be phased in to eventually cover all counties and judicial districts and appellate courts. On the financial front, the recommendation is all e-filing fees would go to the Judicial Branch and expand efforts to collect all outstanding receivables. The simplification of various court rules also is being recommended to improve the efficiency of the court system overall. The perspective of difficult economic times has focused attention on efficiency and trying to bring business technology and modern business practices to entities of government to make them more efficient while still making judicial services accessible to Kansans.

Judge McAnany shared there are 31 judicial districts in Kansas, with some consisting of a single county where it is most populous, and others consisting of up to seven counties in the least-populated areas of the state. By constitution, there is a district judge in every district. By statute, there is a resident judge in every county. In the court unification enacted in the 1970s, the court systems, which were operated independently by county, came under the management of the Kansas Supreme Court. There is a dual funding system where 98% of the costs represent salaries of the Judicial Branch judges and staff who work in the court system and the other two percent is for supplies and facilities funded through the county. (Attachment 5)

There is at least one district judge in the judicial districts, and there are over 20 district judges in

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our most populated urban areas. In the least populated areas, there may be only one district judge sitting in the most populous community, and the other counties surrounding them are served by a district magistrate judge with the more limited jurisdiction. This is the system which exists today. It requires a judge in each county, even where they are not required, as has been determined from the Weighted Caseload Study. There are areas where judges are not needed and other areas where, if the judge is moved to another area, it would solve problems currently identified. In eliminating the statute, it will assure management flexibility for the Supreme Court to manage the court system's needs.

Judge McAnany offered back when the unification of the court system was set up, it was done so to provide good access to the justice system. The judicial system didn't have cell phones, fax machines, internet, or e-mail at the time. With those technologies today, and with video conferencing and video arraignments becoming more economical and efficient, access to justice can be maintained and enhanced, even if there is not judge sitting in every county.

Judge McAnany shared he did his Christmas shopping on-line this year, reducing his time and making shopping more efficient. Judges are frequently confronted with the situation of having lawyers argue a motion that was filed two weeks ago but is not in the court file. E-filing is a more efficient way for lawyers and litigants to transmit documents to the court. It provides convenience to the litigants and provides lawyers the means to file by a click of the mouse, even at a time and place outside of normal business hours. Documents can be transmitted into electronic files, which will save clerical time and improve accuracy of placing documents in the court files.

Johnson County has implemented e-filing already. All the reports are it is running well, saving the clerks' time in paper shuffling they've had to do up until now. It is the way business is run these days. Case management and document management are related computer systems, which need to go hand in hand with the e-filing. There is a pilot project starting in Douglas, Leavenworth, and Sedgwick Counties to do e-filing/case management electronically. We hope to implement this statewide at a cost of \$1.8 million dollars, which we are asking the state legislature to fund this year. We hope to come back to the legislature to ask for funds necessary to do the case and document management program file systems for \$6.5 million dollars. E-filing gets it in the door, but the case and document management is necessary to integrate the information and make it useful statewide. There are, at present, about 100 stand alone computer systems that have information. The goal is to be able to link systems statewide so a judge or clerk at one end of the state can have access to documents in the other end of the state. If we have a county that can't justify a full time clerk, then the clerk can be available to service the business needs of the local customers, and then will be able to help another clerk in another area by working on-line. The Governor recently said times are changing, and Kansas is in an era of

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transition. Chief Justice Lawton Nuss also affirmed this, and these recommended programs are ways the Judicial System is recognizing the need to become a more efficient and effective justice system for Kansans, while retaining access to the court system.

Chairman Kinzer inquired about whether the recommendation to consolidate judicial districts was a viable solution. Judge McAnany stated there was a study done by the Legislative Post Audit. Because of the dual funding system we have, where the state pays the personnel salaries and the counties fund the county courts, one of the key jobs of the chief judge is to maintain relationships with the various county commissions. If a chief judge is in a district where there are seven county commissions, it is administratively very time consuming to maintain relationships with all of the commissions. If there were consolidation of judicial districts according to what the Post Audit was recommending- about 30 counties be in a district- it would be administratively impossible to maintain meaningful relationships with all the commissions and do the work of the district.

Chairman Kinzer mentioned Johnson County has gotten ahead of the other counties and has not been charging e-filing fees and wondered if they might continue to allow information sharing at the no-fee rate. Judge McAnany stated Johnson County will be integrated with other parts of the state and other courts will have access to it. They are asking the Legislature to pay the up-front costs for startup, but the ongoing maintenance would be paid for by user fees, which could be a front end fee, when a lawsuit is filed, or a per-document fee when a document is filed. Chairman Kinzer noted the use of mediation and having some direction in place at the appellate level could be helpful

Representative Bruchman asked in a scenario with e-filing in place, where a lawyer goes to file near the midnight deadline and the system is down, what might Judge McAnany foresee would happen in this case. Judge McAnany suggested there is a recommendation a mechanism would be put in place that would record when it happens and then there might be an adjustment process that can occur the next day.

Representative Patton inquired with the e-filing, document and case management systems implemented, and the \$8 million dollars spent, is it anticipated the judicial system could see a cost savings down the road, or would it be just the cost of doing business a better way. Judge McAnany did not know if there are documented cost savings at the federal level, but advised Shawnee County has implemented e-filing on a limited basis for their collection docket. The County has reported they have been able to maintain time in their existing personnel without asking for more personnel because of the savings of clerical time processing the collection docket. In Johnson County, where e-filing has begun, Judge Foster shared they have calculated significant savings in clerical time and in the mundane things such as buying boxes and boxes of paper folders.

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Representative Patton asked, in the example of a clerk in one county helping another county clerk out by going on line, if Judge McAnany knew what the clerk might be working on to help out. Judge McAnany advised he may need to defer to another expert to answer, as he is not sure if all the work might be performed as a cost savings method has been identified, but it will be a work in progress. Chairman Kinzer suggested he could check with the 10th Judicial District to see if their cost savings data is available for sharing. Representative Holmes followed up with an inquiry as to whether there might be future ways to save the time of the judges, especially if a judge is only needed three days a week in a particular district to reduce travel time. Judge McAnany expressed he felt the technology will definitely help, especially where a judge might be asked to cover for another judge, but the case file is in another county. Rather than having someone retrieve the documents, the judge might be able to just go on line and do his non-court time administrative work on the case he is covering. Judge McAnany gave the example of Judge Covey, in District 12, who is the only judge among a district full of magistrate judges and there is a default divorce proceeding pending, which can only be heard by a district court judge. As she is the only district judge, she has to drive 80 miles to conduct a 15 minute hearing in even a simple divorce case, then has to drive back home. Judge McAnany shared this is part of the reason for the recommendation for magistrate judges to be lawyers and their roles expanded to support the judicial system needs. Representative Holmes shared he could begin to see how video arraignments might be handled in one county jailhouse with a Judge participating by video conference in another location and inquired whether a judge could actually do arraignments in other counties. Judge McAnany stated judges usually only hear cases in their own district unless under special direction from the Supreme Court, so it is possible it could happen but it would not be the norm.

Representative Ryckman asked what would happen with magistrate judges who are not needed. Judge McAnany stated the Weighted Caseload Study showed what the judges are doing and many are driving a lot to be filling their days and being fully useful. The recommendation of the Blue Ribbon Commission is only through attrition will magistrate judge positions be eliminated over time, and perhaps added in another area where more judges are needed.

Representative Brookens asked about the issue of mandatory and permissive e-filing. Acknowledging the federal system is mandatory, as an attorney, Representative Brookens expressed he operates in a different type of court and deals with the different clientele and, in some respects, deals with a different set of attorneys. There are self-help cases the federal courts do not have and do not intend to have. There are small claims and petition for allowance of demand documents that a business person can fill out and send in to be filed in a probate case. Representative Brookens asked the Judge to expand on the vision of the judicial system on cases such as these in conjunction with electronic filing. Judge McAnany stated the recommendation of the Commission is the statewide e-filing should be mandatory with the exception of *pro se* litigants, small claims, and indigents. If one has a lawyer retained, the lawyer should e-file. If one does not have a lawyer, then the filing can be done through the courthouse. If indigent and

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one cannot pay, the filing can be done through the courthouse. It will be most cost efficient for everyone to e-file if they have access to a computer. Representative Brookens asked whether the courts might consider doubling or tripling the fee for paper document filings. Judge McAnany advised the Commission did not consider this as an option when putting together their recommendations.

Chairman Kinzer thanked the presenters for sharing their findings and recommendations with the Committee.

The next hearing is scheduled for Thursday, February 2, 2012.

Chairman Kinzer adjourned the meeting at 4:57 p.m.

