

**REPORT OF THE JUDICIAL COUNCIL COURT OF APPEALS
JURISDICTION ADVISORY COMMITTEE
ON 2000 H.B. 2906 REGARDING DISCRETIONARY APPEALS**

BACKGROUND

In 1998, the National Center for State Courts conducted an evaluation of the Court of Appeals and suggested one option for dealing with the court's increasing caseload would be to make some types of appeals discretionary rather than mandatory. This idea was forwarded to the Kansas Citizens Justice Initiative which recommended further study of the concept. During the 2000 legislative session, Representative Mike O'Neal took an interest in the idea of discretionary appeals and drafted 2000 H.B. 2906 which incorporates provisions from several other states' laws. A copy of the bill is attached to this report. The House Judiciary Committee then asked that the Judicial Council study the bill.

The Judicial Council agreed to appoint a new advisory committee to undertake the study.

The members of the Judicial Council Court of Appeals Jurisdiction Advisory Committee are:

- Hon. Jerry L. Mershon, Chair, Manhattan, Kansas;
- Sara S. Beezley, Girard, Kansas;
- Hon. Terry L. Bullock, Topeka, Kansas;
- James W. Clark, Topeka, Kansas;
- Martha J. Coffman, Lawrence, Kansas;

- Carol L. Foreman, Topeka, Kansas;
- Phillip Mellor, Wichita, Kansas;
- Debra Peterson, Wichita, Kansas;
- Professor David L. Ryan, Topeka, Kansas; and
- Donald W. Vasos, Fairway, Kansas.

SOURCES OF INPUT

Early on in its study, the Committee recognized that discretionary appeals were only one tool which might be useful in managing the Court of Appeals' caseload; other ideas should also be considered. This report details the Committee's recommendations as to discretionary appeals as well as other issues which were raised for consideration.

The Committee contacted various persons and organizations to solicit their input and suggestions regarding 2000 H.B. 2906 as well as the other ideas being considered by the Committee. Those persons and organizations included the following:

- Kansas Supreme Court
- Kansas Court of Appeals
- Howard Schwartz, Office of Judicial Administration
- Carol Green, Appellate Clerk's Office
- Dennis Harwick, Executive Director, Kansas Bar Association
- Kay Huff, Chair, KBA Criminal Law Committee
- Hon. John Gariglietti, President, Kansas District Judges Association
- Steve Kearney, Executive Director, Kansas County and District Attorneys Association
- Cindy Johnson, Kansas Association of Criminal Defense Lawyers
- Patricia Scalia, Director, Board of Indigents Defense Services
- Jessica Kunen, Appellate Defenders Office

- Jean Barbee, Executive Director, Kansas Association of Defense Counsel
- Terry Humphrey, Executive Director, Kansas Trial Lawyers Association
- Daniel Monnat, Chair, KTLA Criminal Law Committee
- Hon. Tom Tuggle, Chair, Board of Examiners of Court Reporters
- Debbie Hunter, C.S.R., Secretary, Board of Examiners of Court Reporters

Committee members also met with attorneys in their respective areas of the state. The Committee received an overwhelmingly negative response from the bar regarding discretionary appeals. A sampling of those responses is attached. [Attachments not available in electronic form. Please contact the Judicial Council office for a hard copy of the entire report with attachments.]

RECOMMENDATIONS REGARDING DISCRETIONARY APPEALS -- 2000 H.B. 2906

Chief Judge Patrick Brazil reported to the Committee that the Court of Appeals would only feel comfortable with three general categories of discretionary appeals: probation revocations; post-divorce motions, but not those involving child custody or support; and actions involving a dollar amount which falls below a certain threshold. H.B. 2906 would go significantly farther in that it would make appeals discretionary in all domestic cases, and in administrative and other cases which have already been appealed to the district court.

The Committee reviewed information provided by Court of Appeals staff regarding the numbers of specific types of cases in the Court's caseload. The Committee determined that the types of cases contemplated under H.B. 2906 do not appear to make up a significant portion of the Court of Appeals' caseload, or they are already being handled in a summary manner. For

example, probation revocations are already determined by the Supreme Court using a summary disposition procedure. The Committee also discussed whether implementing discretionary appeals would simply add another layer of work by requiring the Court to determine whether it should exercise its discretion to hear an appeal.

The Committee also noted that the concept of discretionary appeals is a departure from the recommendation of the Judicial Study Advisory Committee, which recommended re-creation of the Court of Appeals in the 1970's, that every litigant should have the right to at least one appeal. For all of these reasons, the Committee recommends that 2000 H.B. 2906 not be passed.