

HOUSE COMMITTEE ON INSURANCE AND FINANCIAL INSTITUTIONS

Hon. Scott Schwab, Chairman
Hon. Jim Kelly, Vice Chairman
Hon. Roderick Houston, R.M. Member
March 17, 2017
3:30 p.m.
Room 218-N

Sr. Judge Richard M. (Dick) Smith
srjudgerms@gmail.com

NEUTRAL TESTIMONY ON HB 2716

Executive Summary

- The Senior Judge Program is a cost-effective way of providing judges to hear cases when there are conflicts, in the event of illness, or when there are complex cases that cannot be handled with existing judicial staffing.
- The cost effectiveness of the Senior Judge Program is easily demonstrated: 40% of an annual workload for 25% of the salary.
- In 2006 the Legislature determined health insurance benefits to be an essential element of the Senior Judge Program to attract sufficient interest (candidates).
- The savings of approximately \$86,000 puts at risk a program essential to providing access to justice potentially posing the dilemma of either denying citizens timely access or shifting tens, if not hundreds, of thousands of dollars of costs to county governments.

I wish to thank this honorable committee for extending me the opportunity to appear and present testimony on HB 2716, which would eliminate state health care benefits for all retired public officers and employees. I urge this committee to exempt the Senior Judge Program from the provisions of HB 2716. Testimony in support of the continuation of the Senior Judge Program is necessitated by reason that the elimination of that benefit will certainly have a significant, if not devastating, impact on the continuation of the Senior Judge Program. Viability of the program becomes an issue. Eligibility for participation in the State's health care benefit program has proven to be an essential motivation to attract the necessary, let alone desirable, body of applicants.

The Senior Judge Program was established by the 1995 Legislature. Through the program, the Judicial Branch enters into contracts with retired judges who agree to perform 40% of a work year (104 days) while being compensated at the rate of 25% of their previous annual salary. In 2006, the Legislature added those provisions of K.S.A. 20-3208 which allowed participating judges to participate in the state health care benefits program as if they were full-time employees. The interest in participation has since exceeded available positions.

The total annual cost of the employer contributions for the senior judge healthcare insurance is approximately \$86,000. There are currently 11 senior judges, five of which are assigned to the appellate courts and six are assigned to the district courts. When considering both salary and benefits, senior judges receive total compensation of less than 25% of the total compensation of full-time judges. If one measures the judicial resources these senior judges provide, the coverage they afford must either be provided by other districts (which is often impractical or impossible because of the already overburdened district courts) or transferred to the local level (through such things as *pro tempore* appointments) at a cost of tens to hundreds of thousands of dollars to county governments.

The program is an exceptionally cost effective mechanism that provides experienced judges for both the district court and appellate court levels. At the district court level, senior judges are used in emergency situations precipitated by death, illness, and other crisis situations. Examples in just the last few months include the unfortunate death of Judge Ireland in Jackson County, a district judge diagnosed with breast cancer precipitating arduous treatment, a chief judge with post-surgical complications, and a district judge who was involved in a severe and debilitating accident. In each of those cases there were various types of cases including criminal cases which were scheduled where a continuance would have affected victims, the prosecutor, witnesses, and other members of the public.

Another example is a judge who understandably but abruptly left the bench to take other employment. His pending docket included cases involving child in need of care cases where some were in state custody and a continuance of said cases would have been a hardship on the parties particularly the children involved. Senior judges are also used in situations where all of the judges of the district may be disqualified. This is necessitated anytime the litigation involves court personnel (and their families), county commissioners, or litigants that sue judges.

Senior judges are assigned to cover caseloads when a judge retires until the swearing in of their replacement, which often spans months. As one of the attached letters in opposition to this provision points out, many judges arrive to the bench from positions as prosecutors and are therefore disqualified from all criminal cases for a significant period of time. Senior judges have been used to cover the workload of district judges involved in capital murder cases, sexual predator dockets, and other litigation which requires the full and complete attention of an individual judge. There are judicial districts in western Kansas which only have one district judge covering multiple counties. Any event which precipitates their unavailability requires assistance. Often this need is immediate and essential. Senior judges have been utilized to hold jury trials and prevent speedy trial violations which can bar prosecution. Other times senior judges are employed simply to relieve a backlog of cases that has developed for whatever reason.

The senior judge coverage provided at the appellate level is usually an even greater benefit to the Judicial Branch as most senior judges retired from the district courts, not the appellate courts. Therefore, they are paid at 25% of the salary they earned as either district or chief judge, which is

lower than that of an appellate judge. These judges also do the research, attend hearings, and write opinions like their appellate counterparts. The coverage at the appellate level is necessitated for the same reasons as the district courts, filling in during illness or emergencies, or taking cases from judges who have had to recuse themselves.

I respectfully suggest that the difficulty in making a position attractive where one is expected to work 40% of the time for only 25% of the salary is obvious. Frankly, despite this apparent discrepancy in compensation, current Senior Judge Michael Malone's comments regarding the effort put forth by senior judges is, in my experience, typical of the entire group. He states:

The senior judge program is the epitome of fiscal efficiency. If all a senior judge did was work 40% of the time, the state of Kansas would be receiving a tremendous bang-four-the-buck by paying 25% of a judge's salary. But senior judges do not stop presiding over trial or stop researching and writing an opinion because they have reached the 40% time limit. The nature of the work means that senior judges work far more than 40% of the time, but the reality is that the pay never exceeds 25% – there is no overtime compensation.

If it meets with the committee's kind consideration, I have attached hereto correspondence from Chief Judge Robert W. Fairchild of the 7th Judicial District (Douglas County), Chief Judge Nicholas M. St. Peter of the 19th Judicial District (Cowley County), Chief Judge Bruce T. Gatterman of the 24th Judicial District (Edwards, Hodgeman, Lane, Ness, Pawnee, and Rush Counties), Chief Judge Evelyn Wilson of the 3rd Judicial District (Shawnee County), Chief Judge Michael Powers of the 8th Judicial District (Dickinson, Geary, Marion, and Morris Counties), Chief Judge R. Wayne Lampson of the 29th Judicial District (Wyandotte County), and Chief Judge Phillip Fromme of the 4th Judicial District (Anderson, Coffey, Franklin, and Osage Counties) voicing their concerns on behalf of urban, mid-size, and rural districts. I can honestly state that I am unaware of any district judge or chief judge throughout the state of Kansas that does not consider the senior judge program as a worthy if not vital asset in providing the citizens of the state of Kansas the access to justice they so much deserve. As the benefit of participation in the state health care benefits program has proven to be such an essential ingredient to the quality of this program, we respectfully urge the committee to exempt the Senior Judge Program from the provisions of HB 2716.

Respectfully submitted,

Richard M. (Dick) Smith, Sr. Judge

Richard M. (Dick) Smith –
Background/Biographical data

Personal: Born in El Dorado, Kansas 1955. Married, wife Jenny. Two adult children, Lauren & Logan. Residence, Mound City, Kansas since 1982

Education: B.S., Washburn University 1977, J.D., Washburn law school 1980, Master of Arts-Bible and Theology, Lincoln Christian University 2015

Public Service: Republican Precinct Committeeman, Mound City TWP, 1984-89
Treasurer Republican Central Committee, Linn County 1986-89; Linn County Attorney 1985-89; District Judge, Chief District Judge, 6th Judicial District, 1989-2015; Vice-Chairman and Chairman Kansas Sentencing Commission, 2008-2012; Kansas District Judge's Association president 2011-12; Kansas Criminal Code Recodification Commission, 2007-2010; Judicial Needs Assessment Committee, 2010-2011

Faith/Community Service: Elder, Mound City Christian Church; Secretary, Linn County Foundation (through 2012); County Government Day (Linn) 1985-2015; 4H Leader

Robert W. Fairchild, Chief Judge

Sally D. Pokorny, Judge

Kay Huff, Judge

James R. McCabria, Judge

Paula B. Martin, Judge

Peggy C. Kittel, Judge

James T. George, Pro Tem Judge

DOUGLAS COUNTY DISTRICT COURT
Seventh Judicial District
Judicial Center, 111 E. 11th St.
Lawrence, Kansas 66044-2966



Linda Koester-Vogelsang
Court Administrator, 785-832-5264

Douglas A. Hamilton
Clerk of the District Court, 785-832-5333

Michelle Roberts
Chief Court Services Officer, 785-832-5218

Deborah Ferguson
Community Corrections Director, 785-832-5220

Katy Nitcher
Court Trustee, 785-832-5315

Heather Kruse-Minnick
Citizen Review Board Director, 785-832-5219

March 15, 2016

Hon. Richard Smith
Senior Judge

Dear Dick:

I am writing to oppose to the provision of House Bill 2716 that removes health insurance coverage for senior judges. Senior judges provide a vital service to the Judicial Branch at an extremely low cost. The senior judges who serve the district courts provide coverage of cases in which the all of the judges in a district have a conflict of interest or for some other reason cannot hear those cases. They also provide a great service to the Appellate Courts by serving when the judges and justices have a conflict of interest or a backlog of cases.

Senior judges serve at a fraction of the cost of a full-time judge and thereby save the State of Kansas thousands of dollars per year. One of the benefits that attracts retired judges to sign a senior judge contract is the availability of health insurance. If health insurance coverage ceases to be available to senior judges, far fewer retired judges will be willing to agree to serve. One possible result will be the need to pay senior judges more in order to attract qualified retired judges to the program. Thus, the net savings for the State will be greatly reduced.

The judges of our district whole-heartedly support you in your efforts to delete this provision from HB 2716 and oppose any proposed amendments to K.S.A. 20-2622.

Very truly yours,
/s/
Robert W. Fairchild
Chief Judge

Statement in support of the Senior Judges Program

My name is Nicholas M. St. Peter, I am the chief judge of the 19th Judicial District that is comprised of Cowley County. I have been a judge in this district since October of 2004 and have served as the chief judge since September of 2010. Our district is small with a population of about 33,000 people. We have 3 district judges.

During my time as a judge, we have had to rely on the assignment of a senior judge on a number of occasions. This occurs when we have cases that cannot be assigned to our elected judges because of conflicts. For example, we had a senior judge assigned to hear a case of theft where our court reporter was the alleged victim. We have had other instances when one of our employees has been involved in litigation where we have received assistance from an assigned senior judge.

As is typical of most rural areas, each of our judges have previously been employed either as a county attorney or were engaged in the private practice of law for a number of years before becoming a judge. After working in the community for a number of years, it is not unusual when potential conflicts occur. Sometimes, all of the available judges have a conflict in a particular case. In fact, in the last two years I have had to request the services of a senior judge because of post conviction litigation involving cases where two of our judges were trial counsel in the original case.

In short, the senior judge program provides invaluable assistance to rural districts like ours. The senior judges have years of experience and are able to step in and handle a variety of cases. I suspect that the ability to continue to receive health insurance benefits plays a large role in the recruitment and retention of senior judges. I would encourage you to allow these few judges to continue to receive these benefits.

Thank you for your time

Nicholas M. St. Peter

Chief Judge 19th Judicial District.

Sr. Judge R. Smith

From: Bruce Gatterman <[REDACTED]>
Sent: Tuesday, March 15, 2016 2:28 PM
To: srjudgerms@gmail.com
Cc: [REDACTED] 'Daniel Dale Creitz'; 'Stephanie Bunten'
Subject: HB2716

Senior Judge Richard Smith:

I have reviewed HB2716 with specific reference to its detrimental impact upon Senior Judges and Justices of eliminating the ability to participate in the state health care program. The state health care program is an important component of the Senior Judge program, and without this benefit, I fear that many qualified and experienced jurists would decline participation.

As a former Chief Judge, you realize the value and importance of the Senior Judge Program. In the 24th Judicial District, I am the only District Judge for a six county district. A Senior Judge is vital for my district when a conflict of interest arises, in an emergency, or for an overcrowded docket. A Senior Judge covered a jury trial for me when my wife had emergency surgery, and those same judges have assisted when my docket became jammed with habeas actions from the Sexually Violent Predator Program.

The Judicial Branch and the State of Kansas need a viable Senior Judge and Justice program. Availability of participation in the state employee health plan will help to assure continuation of that program. Thank you.

Bruce T. Gatterman
Chief Judge
24th Judicial District



Chambers of
EVELYN Z. WILSON
Chief Judge

KANSAS DISTRICT COURT

Shawnee County Courthouse

Division Five

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Officers:

PAULA LUNNON
Administrative Assistant

MARCI N. FLORY, CCR
Court Reporter

March 16, 2016

To whom it may concern:

The Third Judicial District for the State of Kansas, which includes Shawnee County, currently has the highest caseload per judge in the state of Kansas. As you know, the District Court has no control over the type and number of cases that are filed, but we must process and handle all of them. In order to do this fairly and appropriately, Shawnee County has often been privileged to have the assistance of Senior Judges. These judges have been enormously helpful to our court in allowing us to handle certain aspects of our caseload.

Senior Judges are not afforded a high salary compared to what they could earn in private practice, given their expertise and experience. I know one of the great benefits to Senior Judges, and one thing that continues to make the program attractive to them, is the ability to obtain health insurance through the state. I suspect the state would suffer a significant shortage of Senior Judge availability if that benefit were taken away. Unfortunately, the work they do would not go away, and our judges would somehow have to absorb the additional workload.

I hope the additional bargaining power and economies of scale available to the State of Kansas for group insurance in its current form will continue to justify making this benefit available to our Senior Judges. They need it; and we need them.

Thank you for your consideration.

Yours truly,

Hon. Evelyn Z. Wilson
Chief Judge
Third Judicial District (Shawnee County)
State of Kansas

District Court of Kansas
29th Judicial District

Chambers of
Hon. R. Wayne Lampson
Chief Judge
Division One



Nancy E. Gilbert
Administrative Assistant
Estella Sullivan
Official Court Reporter

Wyandotte County Courthouse
710 North 7th Street
Kansas City, Kansas 66101
(913) 573-2923

RE: Support for the Senior Judge Program- House Bill 2716

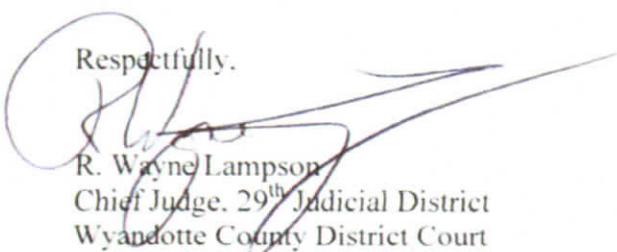
Dear Judge Smith:

This letter is being sent to express my support for the opposition against the proposed changes as set out in House Bill 2716. It is my understanding that this bill, if approved, would eliminate from the state health care benefits program those individuals who are presently serving as "Senior Judges", or would serve in these positions in the future. I believe this action would save little money, and have a significant detrimental effect on the senior judge program. It would bring about the reduction, and possible elimination, of a program that has and continues to provide judicial services to many Kansans.

As you are aware I am the Chief Judge in Wyandotte County, and in my term as the chief I have on several occasions asked for assignment and assistance of a senior judge. These situations arose in those cases where the sitting judges in this district could not hear the case, normally due to conflicts, and thus it was necessary and appropriate for an out of district judge to be assigned. In each case the senior judge assigned handled the case in a professional and proper manner, thus providing excellent service to this district. To limit or eliminate this option would be a disservice to this community.

I want to thank you for your efforts in bringing this information before the committee and if I can be of further assistance, please advise.

Respectfully,


R. Wayne Lampson
Chief Judge, 29th Judicial District
Wyandotte County District Court

Sr. Judge R. Smith

From: Michael Powers <[REDACTED]>
Sent: Tuesday, March 15, 2016 3:43 PM
To: srjudgerms@gmail.com
Subject: HB 2716

Richard, I have been Chief Judge of this district since the Sr. Judge program was started. It is has become an invaluable tool. In the past (before the Sr. Judge program existed) getting coverage involved calls to other busy judges asking them to rearrange their schedules and provide assistance, often on very short notice. Judges are human beings, they become ill, members of their families need assistance, like everyone else there are times when events force them to miss work. *When these events occur there is little time to make multiple calls.*

When a judge has to miss work dozens of people are impacted. When trials and hearings are set, members of the public, their attorneys, law enforcement officers, witnesses and court staff all count on the matter going as scheduled. For this reason judges are reluctant to cancel a hearing or docket.

Having Sr. Judges available to step in has had a very positive impact. Situations such as those mentioned above can now be resolved with a single call. Experienced judges are literally "on call" to help. Of course they not only cover in the case of emergency, they also take dockets when the local judges have conflicts or need help between a judge's retirement and selection of a replacement.

What's really remarkable is that the Sr. Judge Program has done so much to help the judicial branch and the public it serves at such a low cost. It is truly a bargain for the State of Kansas.

I mention all this because HB2716 threatens this wonderful program. The ability to participate in the state health program is a large part of the reason why outstanding retired judges are willing to do so much for so little in the way of direct compensation.

I understand you are testifying in opposition to HB2716. I join you in opposition and authorize you to use this message in any form you may choose, to assist you in your efforts.

Michael Powers
Chief Judge



Chief Judge Phillip M Fromme

Fourth Judicial District of Kansas
Coffey County Courthouse
110 S. 6th St., Ste 102
Burlington, KS 66839



ANDERSON COUNTY
COFFEY COUNTY
FRANKLIN COUNTY
OSAGE COUNTY

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Office # (620) 364-8620
Fax # (620) 364-8535
E-mail: judgefromme4thjudicial@gmail.com

March 16, 2016

To Whom It May Concern:

I want to show our support for the Senior Judge program here in the Fourth Judicial District which includes Franklin, Osage, Coffey and Anderson counties. We have asked for help on many occasions for conflict cases, when a judge retires and in the past year when I needed two surgeries.

I was out of the office for a total of five weeks. Our work load is too great to ask other judges in the district to cover that much time and continue their own workload. We benefited greatly from using the Senior Judges to cover those five weeks.

The Senior Judges stepped right in and handled my scheduled cases without delay to the public and when I came back to work I did not have to make up a postponed schedule. Senior Judges are helping us right now while one of our District Judges is handling a four week capital murder trial.

We need to continue the Senior Judge program and provide incentives to attract good, experienced Judges to that service.

Sincerely,

A handwritten signature in cursive script that reads "Phillip M Fromme".

Phillip M Fromme
Chief District Judge

PFM: mn