

MINUTES

JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

December 17, 2008
Room 143-N—Statehouse

Members Present

Representative Steve Huebert, Chairperson
Senator Phillip Journey, Vice-Chairperson
Senator Terry Bruce
Senator Laura Kelly
Senator Dennis Pyle
Representative Bob Grant
Representative Broderick Henderson
Representative Rob Olsen
Representative Dale Swenson

Staff Present

Cindy Lash, Kansas Legislative Research Department
Amy Deckard, Kansas Legislative Research Department
Mike Corrigan, Office of the Revisor of Statutes
Kathy Letch, Committee Secretary

Others Present

Edie Martin, Kansas Department of Revenue
Patricia Platt, Kansas Department of Revenue
Lana Walsh, Office of Judicial Administration
Libby Snider, Kansas Department of Corrections
John House, Kansas Department of Social and Rehabilitation Services
John Farley, Kansas Department of Social and Rehabilitation Services/Osawatomie
State Hospital
Kim White, Claimant

**Wednesday, December 17
Morning Session**

The meeting of the Joint Committee on Special Claims Against the State was called to order at 9:30 a.m. by Chairperson Representative Steve Huebert.

Representative Grant moved to approve the minutes of the November 12-13, 2008, meeting of the Joint Committee on Special Claims Against the State. Representative Olsen seconded the motion. The motion carried.

Representative Olsen moved to approve Motor Fuel Tax Refunds submitted by the Kansas Department of Revenue totaling \$144,489.96. Representative Grant seconded the motion. The motion carried.

The Chairperson opened the telephone hearings on claims filed by inmates at El Dorado Correctional Facility (EDCF), Claims No. 5963, 6104, and 6107.

Patrick Lynn described Claim No. 5963 against the Kansas Department of Corrections (KDOC) and the Office of Judicial Administration in the amount of \$250,000.00 for malicious refusal to resolve his lawsuit. He said the Butler County judge took 14 months to rule. Two months ago the order was issued and the judge had "X'd out" language allowing Mr. Lynn to receive copies of papers, so he cannot proceed with an appeal. He said court rules require file-stamped, certified copies for the plaintiff. He informed the Committee his case was pending for eight years and there is a KDOC cap of \$50 on legal documents.

Staff perceived the remark he made to the Chairperson as inappropriate and overly personal, and broke the telephone connection with Mr. Lynn.

Following discussion, the Joint Committee recommended that Claim No. 5963 be denied. (See section captioned "Committee Action and Recommendation.")

Michael Lee Strobe summarized Claim No. 6104 against KDOC for \$118.80 or a replacement working typewriter. Mr. Strobe explained that he received a discipline report and was put on restriction for 30 days. Upon release from restriction, he was transferred to El Dorado Correctional Facility (EDCF). When he received his property, that officers had packed out, his typewriter no longer had the safety clip on it that Mr. Strobe had personally clipped on, and was loose in a large box, with no packing material to keep it secure. The typewriter no longer functioned as it should. He filed a property damage claim within the facility. The typewriter was one and one-half years old.

Libby Snider, Kansas Department of Corrections, could not locate an internal claim from Mr. Strobe and recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Libby Snider, Kansas Department of Corrections, locate a replacement working typewriter to be given Mr. Strobe. (See section captioned "Committee Action and Recommendation.")

Timothy Lee Schutte summarized Claim No. 6107 against El Dorado Correctional Facility for \$42.18 due to loss of property. Mr. Schutte explained that he came back from work to find his locker unlocked and his property missing. He submitted a property claim that was approved at the facility, but was then denied by the Secretary of KDOC.

Libby Snider, KDOC, responded that the state does not insure personal property of inmates. The state provides the lockers for securing their possessions.

A Committee member asked about the time frame of the happenings. Mr. Schutte replied that he purchased the items while on his lunch break, locked them in his locker, returned to work, the locker was broken into, and he returned from work to find his property missing and his locker unlocked.

Following discussion, the Joint Committee recommended that Claim No. 6107 be denied. (See section captioned "Committee Action and Recommendation.")

Betty Jean McCoy was telephoned by the Committee to follow-up on her Claim No. 6110 against the Kansas State Fair. Ms. McCoy stated she received an offer of a gift certificate from the State Fair, and that this was okay. She asked what responsibility the State Fair has in this situation.

A Committee member asked Ms. McCoy what amount of money she considered suitable compensation. She said she did not know, but she was injured due to the State Fair's negligence. In response to a question, Ms. McCoy said she had no out-of-pocket expenses, but she believed there should be some compensation other than a gift certificate redeemable only at the State Fair.

Following discussion, the Joint Committee recommended that Claim No. 6110 be allowed in the amount of \$150.00. (See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearings on claims filed by inmates at Lansing Correctional Facility (LCF), Claims No. 6051, 6088, 6092, 6094, 6105, and 6111.

Tyrone Lamar Staten summarized Claim No. 6051 against Winfield Correctional Facility for loss of property in the amount of \$40.25. The claim was presented at the November meeting, but was carried over to allow Mr. Staten to provide additional documentation that showed the items were missing.

Libby Snider, KDOC, recommended that this claim be allowed because Mr. State's property file at the institution appeared to be missing relevant documents and information.

Following discussion, the Joint Committee recommended that Claim No. 6051 be allowed for \$40.25. (See section captioned "Committee Action and Recommendation.")

Marc Showalter summarized Claim No. 6088 against Lansing Correctional Facility for \$28.50 plus postage due to loss of property. He explained that when he was put into segregation, officers packed him out. When he received his property that evening, about half of it was missing. Mr. Showalter would not sign the property inventory sheet as there was far too much missing to note on the forms, so his property was not given to him. He submitted a Form 9 to the unit team asking to retrieve his property. It was later verified that his fan was missing, at which time he filed a property claim, which was denied. Correctional staff said he then signed the verification that his property was correct; he states he did not sign it.

Libby Snider, KDOC, responded that Mr. Showalter did not note any items were missing when he refused to sign the inventory sheet. He did sign the inventory when his property was released. He cannot show possession of the fan at the time of the pack out. She recommended that this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6088 be denied. (See section captioned "Committee Action and Recommendation.")

James Gail Cody Crawford summarized Claim No. 6092 for \$10,000.00 due to personal injury. Mr. Crawford said he slipped and fell down wet stairs, injuring himself. Two guards witnessed the fall, pushed the panic button, and put him in a wheelchair. Officer Wills told Mr. Crawford that he had noticed the stairs were wet and had told the porters to put "wet floor" signs out. Mr. Crawford had x-rays of his shoulder and received anti-inflammatory medications.

Libby Snider, KDOC, responded by stating she found no documentation of wet stairs or a slip and fall incident. Facility staff told her Mr. Crawford was engaged in horseplay with an officer, jumped from the third or fourth stair, fell back and then complained of an injured elbow. He received appropriate medical attention for his elbow, and his right shoulder was x-rayed. She recommended the claim be denied.

Mr. Crawford replied that there was no horseplay. The officers were in the office and could see him slip on the stairs. He slid on his back down the stairs. The facility would not give him the incident report or any of the written records. He can get written testimony by the staff.

The Vice-Chairperson noted the Committee could carry the claim over to next summer, and instructed KDOC to provide copies of the incident report and other documentation to Mr. Crawford and a copy of the pertinent medical records to the Committee.

Following discussion, the Joint Committee recommended that James Gail Cody Crawford's Claim No. 6092 be carried over. (See section captioned "Committee Action and Recommendation.")

Jeffrey S. Collier summarized Claim No. 6094 against Lansing Correctional Facility in the amount of \$54.55 due to Property Damage. His claim was divided into four parts.

Part 1 - Ice Chest: Mr. Collier was at work when officers entered his cell, among other cells, to be learn the procedure for shaking down a cell. Officers tore apart the ice chest to see if drugs were hidden in it. He did not want a broken ice chest back, and was told to file a claim.

Part 2 - \$1.03 for canteen: Mr. Collier was not allowed to check his account using the computer before going to the canteen, but thought he had enough money in his account for his purchase. He was short, and canteen personnel filled part of the order with the available funds. This was not what Mr. Collier wanted, and he refused the canteen. He did not get the items and did not sign for them, yet the money was still taken from his account.

Part 3 - Atomizer for Arts & Crafts: Mr. Collier purchased an atomizer to spray scent on his arts and crafts items when completed, purchased a bottle of scent from the canteen, and put the liquid in his atomizer. The atomizer was confiscated for being filled with "an improper liquid."

Part 4 -Stamp: Mr. Collier sent a letter. The I & I officer wrote one thing on his response and a different thing on the stamped envelope, in what appeared to be identical handwriting.

Libby Snider, KDOC, recommended the claim be denied for the reasons listed below:

- Regarding the ice chest, the officers reported on the property confiscation slip that the ice chest had been altered so the bottom could be pulled off. This makes the ice chest contraband.
- Regarding the \$1.03 for canteen, inmates are responsible to know what funds are in their accounts. Canteen orders are filled in a specific order, as they are able with available funds from the accounts. The policy is that staff will not process refunds for refused orders due to the overwhelming burden this would place on the staff.

- Regarding the "atomizer" for arts and crafts, one of the two bottles that Mr. Collier claimed were filled with Obsession oil was a perm solution bottle, filled with improper liquid, and therefore considered contraband and confiscated.
- Regarding the stamp, Mr. Collier claims his envelope and stamp, \$.45, were "X'd out" by an officer in the investigation unit to harass him. Instead, the mail room staff confirmed they made the X on the stamp and marked it "used stamp" because the stamp had been cancelled by the post office.

Following discussion, the Joint Committee recommended that Claim No. 6094 be denied.
(See section captioned "Committee Action and Recommendation.")

Jim C. Elliott summarized Claim No. 6105 against Lansing Correctional Facility for \$12.00 or the return of his property. He said two or three people came into his cell when he was not there, cut and pulled up tape that taped a power cord to the floor, unhooked everything, and took the power cord. When he confronted the inmates responsible, they denied the action. He told the shift officer, and a report was made, but no real investigation or shake down was done. Mr. Elliott said that the facility is not secure; items are stolen and resold continually. The security needs to be increased.

Libby Snider, KDOC, responded that inmates are responsible for personal property, not the State. She recommended that this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6105 be denied.
(See section captioned "Committee Action and Recommendation.")

Steven Kent Bloom summarized Claim No. 6111 against Kansas Department of Corrections for \$25,000.00 plus shoes and interest. He submitted a property claim for a pair of shoes that were stolen, and submitted a purchase order to replace the shoes. KDOC approved his expenditure of \$48.88 to purchase the replacement shoes, then refused to give him the shoes, and refused to refund the amount he paid. He said the policy KDOC cited specifically states that "Property officer will approve the purchase of property . . . excluding tennis shoes." The wait period of six months excludes shoes. He is seeking punitive damages, as well as reimbursement for the shoes, because KDOC is not following its policy..

Libby Snider, KDOC, responded that his explanation about the exclusion of tennis shoes is not correct. The exception of tennis shoes pertains to gym shoes that the inmates wear out before a six-month period. It allows the old pair of tennis shoes being replaced to be turned in to receive a replacement pair. Otherwise, the six-month period applies. Mr. Bloom ordered new tennis shoes, he paid for them, they are being held as he has not turned in an old pair, and he will be allowed to have the new shoes when the six months expires on January 14, 2009.

Following discussion, the Joint Committee recommended that Claim No. 6111 be denied.
(See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearings on claims filed by inmates at Ellsworth Correctional Facility (ECF), Claims No. 6037, 6087, and 6120.

John F. Francis summarized Claim No. 6037 against Lansing Correctional Facility for \$82.58 due to loss of property. His cell was packed out after he was taken to segregation. He refused to sign the property sheet given to him because it was missing a considerable amount of property.

Libby Snider, KDOC, responded by stating that Mr. Francis' property was two wash clothes and food items. The facility investigated his store purchases to determine if he was operating an

unauthorized store. He was advised that his property was authenticated and would be returned to him. When it was returned, he signed the inventory sheet without any notation of missing items. She recommended the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6037 be denied. (See section captioned "Committee Action and Recommendation.")

John Francis summarized Claim No. 6087 against Lansing Correctional Facility for \$28.50 plus postage due to loss of property. His canteen items were confiscated, they were verified as having been purchased by him, but were destroyed rather than returned to him.

Libby Snider, KDOC, stated that due to possible spoilage, the food items were photographed and then destroyed. The goods that were confiscated became contraband as a result of Mr. Francis' misuse of them, attempting to deal and trade. She recommended that this claim be denied.

Mr. Francis stated that his intentions were to give the items to another inmate.

Following discussion, the Joint Committee recommended that Claim No. 6087 be denied. (See section captioned "Committee Action and Recommendation.")

Sheldon E. Judd summarized Claim No. 6120 against El Dorado Correctional Facility in the amount of \$34.26 for property withheld. Mr. Judd said he obtained permission to purchase some jigsaw puzzles, which are allowed in the segregation unit and the clinic. When the puzzles arrived, they were stopped at the mail room. He was told that under some IMPP, puzzles were not allowed in the institution. The person that signed for his purchase thought it acceptable; another person signed because someone else signed it, so it must be okay.

Libby Snider, KDOC, responded that there are puzzles at some of the facilities that are facility-owned, not personal property of inmates. Jigsaw puzzles are not on the allowable property list, which could have been known by Mr. Judd. Officials erroneously approved Mr. Judd's purchase order, so when the puzzles arrived, they were confiscated. The facility agreed to pay to ship the puzzles out because of the error on their part, but Mr. Judd did not agree. She recommended that the cost of shipping out the puzzles, \$6.50, be allowed.

Following questioning from the Committee, Mr. Judd agreed that shipping the puzzles back to the seller for a refund of the purchase price was an acceptable solution to the problem. Ms. Snider was asked to look into this and respond to the Committee during the afternoon.

Following discussion, the Joint Committee recommended that Claim No. 6120 be allowed in the amount of \$6.50. (See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearing on Claim No. 6117 filed by an inmate at Norton Correctional Facility (NCF).

Ricky R. Redford waived the opportunity to summarize his Claim No. 6117 against the State of Kansas and the Kansas Department of Corrections in the amount of \$75,000.00 due to personal injury.

Libby Snider, KDOC, stated that Mr. Redford was injured by another inmate and that Mr. Redford claims that KDOC knew or should have known that the inmate was a threat to others and that the attack was foreseeable. He offers no explanation or evidence to support those claims. Review of the KDOC records indicates that there were no central monitoring issues between these two inmates. No documentation showed that anyone had reported a threat or a problem between the two inmates. She recommended that this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6117 be denied.
(See section captioned "Committee Action and Recommendation.")

Patrick David Archer's Claim No. 5972 against KDOC in the amount of \$5,000.00 due to illegal incarceration and punitive damages was summarized by Cindy Lash, Kansas Legislative Research Department. Mr. Archer asserts that he was incarcerated on a technical violation for more than 180 days, which is against Kansas law which allows up to 180 days. His claim did not provide the number of days in excess of 180 days that he was held, because he was still incarcerated when he filed the claim. He has subsequently been released.

Libby Snider, KDOC, responded that Mr. Archer is confusing a Morissey waiver with a revocation waiver. He signed a Morissey waiver, but that warrant was withdrawn. A new warrant was filed, he waived his revocation, and he was released at the 175 day mark. She recommended the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5972 be denied.
(See section captioned "Committee Action and Recommendation.")

Corey A. Simmons' Claim No. 6041 against Winfield Correctional Facility for \$200.00 due to property loss and damage was summarized by Libby Snider, KDOC. KDOC confirms that Mr. Simmons' television was damaged when it arrived at El Dorado Correctional Facility from Winfield Correctional Facility. The other items Mr. Simmons claimed missing cannot be substantiated. Therefore, Ms. Snider recommended that the cost of the television, minus 10 percent, be allowed to Mr. Simmons.

Following discussion, the Joint Committee recommended that Claim No. 6041 be allowed in the amount of \$63.00. (See section captioned "Committee Action and Recommendation.")

Erick Smith's Claim No. 6078 against Hutchinson Correctional Facility for \$50,000.00 due to personal injury and lost wages was discussed. Mr. Smith did not attend the Committee meeting with legal counsel or medical documentation of his injuries as he was encouraged to do at the November meeting.

Following discussion, the Joint Committee recommended that Claim No. 6078 be denied without prejudice. (See section captioned "Committee Action and Recommendation.")

Charles Parker summarized Claim No. 6079 against Kansas Department of Corrections in the amount of \$200,000.00 due to personal injury. He stated that he felt extreme angst and claustrophobia during the three months he was in segregation, but was denied medication. He felt panic, anxiety, lack of oxygen, and walls closing in on him. He begged for medication from mental health personnel daily. They told him there was nothing they could do to help him.

Now released after serving his 13 years in prison, he again has extreme anxiety every day, speaks to mental health personnel and is given medication. He now feels more anxiety, fears, and panic when he is on medication. He is homeless, has no family, feels like an animal, thinks like an animal. He is acting on his thoughts now, instead of considering the consequences.

Libby Snider, KDOC, responded that, according to mental health documentation at Hutchinson Correctional Facility, Mr. Parker stated that he had no issues; he had some anxiety while in segregation, but had learned to cope with it. He had no mental health diagnoses, agreed to participate in group therapy to deal with specific issues, and declined general mental health and self esteem groups that were offered to him. He was referred to mental health by the Parole Board, but he did not know why. He had no mental health diagnoses and he showed no distress. She recommended that this claim be denied.

A Committee member asked Ms. Snider to request the Garden City mental health re-entry staff to follow up with Mr. Parker. Ms. Snider agreed to do this.

Following discussion, the Joint Committee recommended that Claim No. 6079 be denied.
(See section captioned "Committee Action and Recommendation.")

The Committee received follow-up information it requested from KDOC on Jonnell Johnson's Claim No. 6098 against the Topeka Correctional Facility for \$50,000.00 due to personal injury. Ms. Johnson contended she was injured in a fight as a result of being housed at an inappropriate custody level. Libby Snider, KDOC, said there is no way to confirm whether there was room in the central or minimum unit at that time. However, Ms. Snider was informed that although the other inmate threw the first punch, both inmates participated in the altercation. Records indicated Ms. Johnson shows a tendency toward violent behavior, *i.e.* threatening her parole officer and fighting with other inmates.

In minimum custody, she had numerous disciplinary violations. Mental health staff advised that she functioned better at the medium custody unit, so she was moved to medium custody due to her disciplinary history. When she was discharged from her sentence, she had further disciplinary charges pending for which she had requested continuances.

There is no indication that Ms. Johnson's housing during the initial intake period was erroneous or that it was outside the discretion granted to the correctional facility in placing her. Ms. Snider continues to recommend the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6098 be denied.
(See section captioned "Committee Action and Recommendation.")

At the request of the Department of Corrections, the Joint Committee recommended that LaTrena Webb's Claim No. 6016 be carried over to the next meeting to allow the Department to complete its investigation.

At the request of the Department of Corrections, the Joint Committee recommended that Jacqueline Hudson's Claim No. 6081 be carried over to the next meeting to allow the Department to complete its investigation.

At the request of the Department of Corrections, the Joint Committee recommended that Debbie Meyer's Claim No. 6102 be carried over to the next meeting to allow the Department to complete its investigation.

At the request of the Department of Corrections, the Joint Committee recommended that Natalie Callaway's Claim No. 6108 be carried over to the next meeting to allow the Department to complete its investigation.

Katherine Burns summarized Claim No. 6114 against Topeka Correctional Facility in the amount of \$10,000,000.00 due to personal injury. Ms. Burns claims that she was housed in maximum security when she was a minimum custody prisoner.

A Committee member asked Ms. Burns how she came up with the \$10,000,000 amount for the claim. Ms. Burns replied that someone else was doing the paperwork for her.

Libby Snider, KDOC, stated that when Ms. Burns was put in the minimum custody housing, she told the staff that the dorm was "too wide open" and she did not trust herself not to run. She wanted to be moved to J cell house. Staff believed the reason she wanted to move to J cell house was to pursue a relationship with another inmate. She was moved into I cell house, which is appropriate for medium and maximum custody inmates. She was given a second opportunity to move

back to minimum compound and she chose not to go. She filed a grievance, which was denied. Ms. Snider recommended the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6114 be denied.
(See section captioned "Committee Action and Recommendation.")

Betty Davis summarized Claim No. 6116 against Topeka Correctional Facility in the amount of \$56,000.00 due to personal injury. She lost her work-release privileges and 100 percent of her good-time. Her co-worker/co-defendant was also removed from work-release and lost 25 percent of her good-time.

Libby Snider, KDOC, responded that Ms. Davis' claim is for \$6,000 in lost wages and \$50,000 in punitive damages for what she perceives as discriminatory disciplinary action. She was taken from her job for eating a Burger King lunch. She lost her custody and incentive level and was moved to a higher custody. She claims this action was discriminatory, because the disciplinary case against her inmate co-worker was dismissed. She also gave examples of other inmates she thought received a less harsh response for their infractions. The documentation shows that the claimant and another inmate left the facility two hours early for work. They were both found at their place of employment eating Burger King lunches. Ms. Davis admitted having been at the Burger King restaurant, which is outside the designated approved area.

Ms. Snider said Ms. Davis' co-worker's disciplinary report was not dismissed, she was convicted of dealing and trading because she left the facility with no money and could only have purchased a Burger King lunch by dealing and trading. The co-worker also lost her level, her custody incentive level, and her work-release job. Ms. Snider also addressed the examples of other inmates raised by Ms. Davis.

Ms. Snider recommended the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6116 be denied.
(See section captioned "Committee Action and Recommendation.")

At the request of the Department of Corrections, the Joint Committee recommended that Donald R Cunningham's Claim No. 6112 be carried over to the next meeting to allow the Department to complete its investigation.

Chase Collins summarized Claim No. 6041 against Winfield Correctional Facility in the amount of \$200.00 due to property loss and property damage. While he was a resident of the Sexual Predator Treatment Program (SPTP), he was convicted of a crime and transferred to prison. He had placed a canteen order at SPTP that was not delivered before he was transferred. He wants his canteen refund and account balance forwarded to his prison account.

John House, SRS, responded that Mr. Collins received a monthly allowance from the State of \$18.00 because he is indigent. This is covered in the residents' handbook. Upon leaving the SPTP, any money from the resident's account that has not been spent is put back into the program, not forwarded with the resident. He recommended that this claim be denied.

A Committee member asked Mr. Collins how he arrived at the \$144.00 figure. He said it was based on \$18 per month from the time he was transferred to prison until he filed the claim.

Following discussion, the Joint Committee recommended that Claim No. 6113 be denied.
(See section captioned "Committee Action and Recommendation.")

At the request of the Department of Corrections, the Joint Committee recommended that Dwayne Wright's Claim No. 6118 be carried over to the next meeting to allow the Department to complete its investigation.

Tom Lightsey's Claim No. 6083 against Winfield Correctional Facility in the amount of \$3,608.91 due to property damage was summarized by Cindy Lash, KLRD. Mr. Lightsey is employed by Winfield Correctional Facility. His truck was damaged by a riding mower, operated by an inmate, which went over a three foot wall and hit the truck parked 25 feet from the wall. Mr. Lightsey provided three repair estimates from auto body shops and chose the middle estimate for the amount of his claim. With recent rain, he realized that water was leaking into his truck, causing the damage estimate to be higher. He does have full coverage insurance on the vehicle, but he chose not to file.

Libby Snider, KDOC, recommended that payment be allowed in the amount of the insurance deductible amount. Mr. Lightsey has not yet provided documentation of the amount of his deductible.

A Committee member stated that the deductible represents the insured's choice of risk coverage. That does not reduce the State's liability. To make him whole, the Committee should not consider the deductible. The State is at fault.

Committee discussion followed. The age of the vehicle was taken into consideration, and members noted that the claimant's insurance company would most likely total the vehicle if he were to file a claim.

Following discussion, the Joint Committee recommended that Claim No. 6083 be allowed in the amount of \$1,600.00. (See section captioned "Committee Action and Recommendation.")

Claim No. 6106 was heard on the record. The claim was submitted by David E. Warren, Sr. for \$2,400.00 against the Kansas Department of Corrections for funeral expenses due to the death of his son while incarcerated at Hutchinson Correctional Facility.

Libby Snider, KDOC, summarized the claim by stating that David E. Warren, Jr. was assaulted by inmates at the Hutchinson Correctional Facility. He was transported to the hospital, which notified the correctional facility the following day that he had died from a brain aneurism. The case was referred to the Reno County District Attorney's office for prosecution. KDOC policy IMPP 01-115 provides that the Secretary of Corrections shall recommend approval of a legislative claim up to \$2,500.00 to defray funeral and burial expenses when an inmate, housed in a correctional facility, is the victim of a homicide at the facility. Given the conclusion on the investigative report on this case, the Department recommends the claim be approved for any documented funeral expenses up to the amount of the claim.

A Committee member suggested that, upon a guilty verdict, KDOC seek restitution to the state from the inmates who committed the murder of Mr. Warren's son.

Following discussion, the Joint Committee recommended that Claim No. 6106 be allowed for \$2,449.29, Mr. Warren, Sr.'s documented expense total. (See section captioned "Committee Action and Recommendation.")

John House, SRS, spoke on behalf of Osawatomie State Hospital on Claim No. 6115 by Olathe Medical Center in the amount of \$14,334.10 due to refusal of bills for services rendered. The bills were not paid during the fiscal year in which the services were rendered, so they must come before the Committee for authorization to pay. Olathe Medical Center and SRS have agreed to a reduced amount of \$7,167.05.

Following discussion, the Joint Committee recommended that Claim No. 6115 be allowed for \$7,167.05. (See section captioned "Committee Action and Recommendation.")

Cindy Lash, KLRD, summarized Claim No. 6121 of Phillip Brownlee against Wichita State University (WSU) in the amount of \$1,246.60 due to personal injury. Mr. Brownlee's daughter broke her nose while playing on an inflatable obstacle course, which was under the supervision of a WSU employee whose assignment was to tell the children when it was safe to proceed on the course. The employee told Mr. Brownlee's daughter it was safe, but she collided with other children who had not cleared the area and broke her nose, which required surgery. Mr. Brownlee is seeking reimbursement of out-of-pocket expenses.

Vice-Chairperson Journey stated that the definition of gross negligence cited in a 2004 Kansas appellate case quoted KSA 21-3201 (criminal statute) as follows: Reckless conduct is conduct done under circumstances that show a realization of imminence of danger to a person or another in a conscious and unjustifiable disregard for that danger. Based on that, he made the following comments:

- Wichita State University had an obstacle course the children were running;
- WSU put someone there to regulate the children, but they did not regulate the children;
- Mr. Brownlee's child popped over the wall, landed on another child and broke her nose;
- WSU realized the danger, they tried to deal with it, and the person who was tasked with dealing with it failed. WSU provided the "controller."
- The claim is too small to go to court. The State ought to pay

Following discussion, the Joint Committee recommended that Claim No. 6121 be denied without prejudice. (See section captioned "Committee Action and Recommendation.")

Kim J. White summarized Claim No. 5841 against Kansas Department of Social and Rehabilitation Services (SRS) in the amount of \$51,000.00 due to mental and emotional anguish. Mr. White's son, Nolan, was removed from Mr. White's custody and put into an abusive environment with his mother where he has been molested, physically abused, used drugs, and more.

A Committee member asked in which specific acts SRS was negligent. Mr. White answered that SRS never considered him as an option for the custodian. In response to a question about the children's current location, Mr. White said his youngest son has been adopted and Nolan is in Newton. The boys have not spoken with each other since February. Mr. White has visitation with Nolan regularly in Newton.

Roberta Sue McKenna, SRS, stated that the Department continues to oppose the claim of Mr. White, although they are working with him to aid in the development of a relationship between him and his oldest son so that he can be a resource for the child. She said SRS does not agree that the State was negligent in its initial interactions with the family. Efforts made to re-integrate the boys with both Mr. and Mrs. White failed. Mr. White relinquished his parental rights rather than go through a hearing to terminate his parental rights. Initially, his claim was to set aside relinquishment and regain custody of his children. SRS's position was that it was possible, if circumstances were changed, for him to adopt his children. They have been working with him toward that end.

A Committee member asked how Mr. White can work toward regaining custody or adopting his sons if one has already been adopted. Ms. McKenna stated that it would not now be possible with that child.

The member asked if negotiations were any closer now to allowing Mr. White custody of Nolan.

Ms. McKenna answered that the decision will be made by the court. The professionals working with Nolan are very supportive of the relationship he has with his father; visits have moved from supervised, on-campus visits to weekly 12-hour visits where they are allowed to leave the campus. If that continues to go well and Nolan continues to improve, those will be expanded. SRS's reports to the court continue to be favorable in terms of maintaining the relationship given that there are no other resources available for Nolan, but not to release him into custody or support Mr. White's petition to adopt Nolan at this time.

A Committee member asked if Mr. White had been counseled that it would be more favorable in his case to relinquish his rights, rather than go through a termination hearing. The reasoning was that it would expedite reconciliation with his children.

Ms. McKenna agreed and said that Mr. White's attorney advised him in this way. It would not have helped Mr. White retain custody, but he would not be found on record to be an unfit parent.

A Committee member asked Ms. McKenna how much longer it is going to take for SRS to find that Mr. White, who is doing considerably better than in years past, is doing well enough.

Ms. McKenna replied that it is unusual for parent to come back after relinquishing their rights to attempt to get custody.

The Committee member stated that Mr. White had gotten bad advice from his attorney, which is not SRS's fault, and he is trying to remedy that.

Ms. McKenna stated that the guardian ad litem and the prosecutor do not perceive it that way. The guardian ad litem has only reluctantly agreed to the current plan of encouraging a relationship under the guidance of Nolan's therapist and continuing contact. Once the therapist recommends SRS go to the guardian ad litem and present the case, they will do so. At this point, he is encouraging, but he will not sacrifice what is in Nolan's best interest in order to resolve this claim.

Mr. White stated that the guardian ad litem is the person who allowed Nolan to go through what he has been through.

Mr. White would be required to file a petition for adoption. The Secretary has the authority to consent to that petition. SRS would need court approval before being able to move forward with that. Ms. McKenna does not think Mr. White is at a point where he is ready to file the petition.

Vice-Chairperson Journey addressed Mr. White and suggested that he allow the Committee to carry this claim over to the next interim and he continue with the process of integration.

A Committee member asked Ms. McKenna for a time line for the Committee or for Mr. White as to the rest of the process.

Ms. McKenna said Nolan is 15 years old; the professionals working with him are very interested in moving forward, but they would only say they are getting to the point of considering overnight stays for Nolan with his father. They are not willing to go beyond that. Nolan still needs structure and the issue is Mr. White's ability to meet Nolan's needs, not just for Mr. White to get his act together. Hopefully, Nolan will be allowed to be with his father before he is 18 years old.

The Chairperson brought up the concept of a child's father being better equipped to meet a child's needs than the State.

Following discussion, the Joint Committee recommended that Claim No. 5841 be carried over. (See section captioned "Committee Action and Recommendation.")

Amy Deckard, Kansas Legislative Research Department, explained the request of Alice Buess for the Committee to allow her to submit a new claim under Committee Rule 3(c), based on her previous claim which was recommended by the Committee but was deleted in the Claims bill. Her claim was for unlawful incarceration; she stated she was under supervision and incarcerated longer than appropriate due to a misapplication of the retroactive provision of the law. She contended her sentence should have been converted. The Claims Committee recommended payment of \$75,000.00 from the State General Fund to Ms. Buess. The 2007 House Appropriations Committee deleted that payment from the bill. During debate in the House of Representatives, Representative Grange added a formula to pay Ms. Buess \$75,000.00, half from KDOC and half from the Judicial Branch. The Senate Ways and Means Committee left the payment in, but changed the formula to \$75,000.00 from the State General Fund, which was the original recommendation by the Claims Committee. During Conference Committee, all payment to Ms. Buess was deleted from the bill.

Ms. Deckard's understanding is that Ms. Buess is requesting to be allowed to file a new claim on the same issue.

A Committee member noted that another option for Ms. Buess would be to request her Representative to introduce a House bill or amendment during the 2009 Legislative Session on her behalf.

Following discussion, the Joint Committee recommended with a unanimous vote that Ms. Buess be allowed to file Claim No. 6119. (See section captioned "Committee Action and Recommendation.")

The meeting was adjourned at 4:15 p.m.

Prepared by Kathy Letch
Edited by Cindy Lash

Approved by the Committee on:

June 29, 2009

(Date)