



# KANSAS COMMISSION ON JUDICIAL PERFORMANCE

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DR. TERRY SANDLIN, Topeka  
MARY LOU WARREN, Great Bend  
CHARLES E. WORDEN, Norton

Kansas Judicial Center  
301 S.W. Tenth Street, Suite 140  
Topeka, Kansas 66612-1507

CHRISTY MOLZEN  
Program Director

Telephone (785) 296-2498  
Facsimile (785) 296-1035

judicial.council@ksjc.ks.gov  
www.kansasjudicialperformance.org

**TO: House Judiciary Committee**

**FROM: Larry McClain, Kansas Commission on Judicial Performance**

**DATE: February 18, 2013**

**RE: Testimony on 2013 HB 2102 Relating to the Commission on Judicial Performance**

## **INTRODUCTION**

The Kansas Commission on Judicial Performance was established by the Legislature in 2006 to create a program for evaluating all of the judges in Kansas – both appellate judges and trial court judges. Evaluations are based on targeted surveys of attorneys and others who have actually been in a judge's courtroom or had other personal experience with that judge. For judges who stood for retention election in 2008 and 2010, the Commission published the results of the surveys on its website and made a recommendation to voters about whether each judge should be retained.

The Commission has been funded by a percentage of court docket fees, rather than state general fund money. In 2011 and 2012, the legislature diverted those docket fee funds to other uses within the judicial branch, so the judicial evaluation program was temporarily discontinued. With HB 2102, the Commission is asking that the legislature fund the evaluation program again, but at a significantly lower level.

## **WHY ARE JUDICIAL PERFORMANCE EVALUATIONS IMPORTANT?**

The Commission's program is the only statewide judicial evaluation program in Kansas. In evaluating judicial performance, the Commission focuses on objective performance standards such as legal ability, integrity, impartiality, communication skills, professionalism, temperament and efficiency. No matter what system of judicial selection is in place, judicial evaluations are important in promoting judicial accountability.

The Commission's confidential surveys provide constructive feedback to judges that they would not receive in any other way. Many judges have indicated that the evaluation process has been beneficial to their professional development and has enabled them to improve their job performance.

For judges who are on the ballot in retention elections, the Commission publishes the results of the evaluations and makes a retention recommendation so that voters can make informed decisions about continuing those judges in office. The Commission believes that voters are using the information based on the number of visits to the website. (During the 3-month period leading up to the November 3, 2010, election, the Commission website received 43,639 visits; 254,361 page views; and 954,992 hits.)

Attached to this testimony are an example of a narrative profile and excerpt from an evaluation that were published on the Commission's website for the 2010 election. A great deal of additional detail about the Commission's program including the Commission's enabling statutes, rules, sample questionnaires, and archived evaluation reports can be found on the Commission's website at: [www.kansasjudicialperformance.org](http://www.kansasjudicialperformance.org).

## **CONCERNS ABOUT THE PROGRAM**

The Commission acknowledges that legislators have expressed some concerns about the evaluation program. The primary concern expressed has been that the program costs too much. In past years, the Commission's annual budget has averaged roughly \$700,000. The Commission proposes scaling back the program budget to less than half that amount - \$307,000. The cost savings will come primarily from eliminating surveys of most non-attorneys such as litigants and witnesses. Those groups of survey respondents have the lowest cooperation rates and are the most expensive to survey because they must be surveyed by mail. In future, the Commission plans to survey only attorneys, jurors, other judges and court staff, and to conduct all of those surveys electronically through a web-based survey host.

A second concern expressed by legislators is that the Commission has not yet recommended that a judge not be retained in office and is simply a rubberstamp for the judicial branch. One reason why the Commission has not yet made a “do not retain” recommendation is that, at the time the Commission drafted its rules and set the standard for a retention recommendation, it was in uncharted waters and did not want to arbitrarily set the bar too high. After two rounds of evaluations, the Commission has now proposed amending its rules to raise the score that would be required to earn an automatic retention recommendation and give the Commission more leeway in making its recommendations. Those proposed amendments have been submitted to the Supreme Court for approval.

Even though it hasn’t yet made a “do not retain” recommendation, the Commission believes strongly that it has had an impact on individual judges and judicial performance generally. The Commission has interviewed a number of judges where comparatively low scores or respondent comments had given the Commission cause for concern. Judges also have the option of not running for retention rather than facing an unfavorable evaluation report. Also, at the time its funding was diverted, the Commission was in the process of developing a courtroom observation program so that Commissioners could directly observe those judges about whom they had concerns.

## **SUNSET PROVISION**

Because the legislature wanted to see how the evaluation program would work before deciding whether to fund it permanently, a sunset provision was included in the Commission’s enabling statutes. Absent some further action by the legislature, the program will sunset on June 30, 2013. K.S.A. 20-3201(b). HB 2102 would extend the sunset to June 30, 2017. This would allow the Commission to complete evaluations for two election cycles (and evaluate almost all Kansas judges once) before the legislature would again review the program and determine whether it should continue.

## **CONCLUSION**

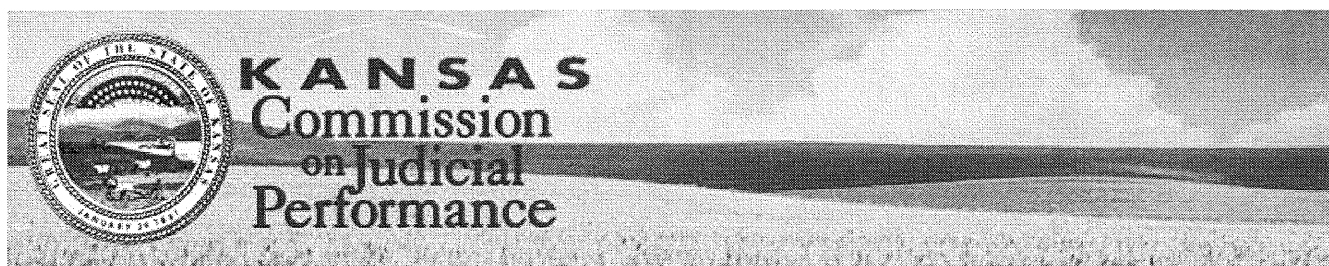
Although the judicial evaluation program has been temporarily discontinued for the last two years, Commission members remain committed to continuing the program. They have invested a significant amount of time and effort in establishing the judicial evaluation program and have learned a great deal about how to improve the process and even streamline it. Most importantly, the Commission believes it is making an impact on judicial performance in Kansas and is providing important, unbiased information to Kansas voters that is not available

anywhere else. On behalf of the Commission, I urge you to recommend HB 2102 favorably for passage.


## **COMMISSION MEMBERS**

The current members of the Kansas Commission on Judicial Performance are:

Gloria Farha Flentje, Chair, Wichita  
Sara S. Beezley, Girard  
Dale Chaffin, Mission  
Professor James Concannon, Topeka  
Hon. Michael Corrigan, Wichita  
Martha Garcia, Wichita  
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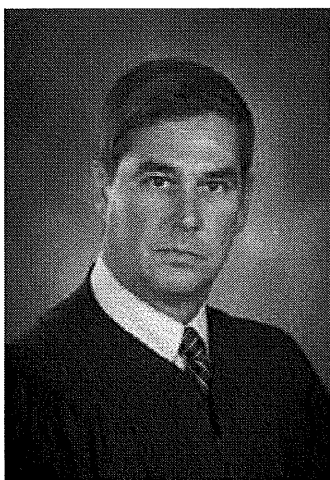
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## Judge Evaluations



### David J. King

District Court

District: 1

County: Leavenworth

The Kansas Commission on Judicial Performance recommends that Judge David L. King BE RETAINED.

Judge King was appointed as District Judge in the 1st Judicial District in 1986. He handles primarily civil cases and has additional administrative duties as Chief Judge in the 1st Judicial District. He has been an Assigned Judge on six Kansas Court of Appeals dockets and one Kansas Supreme Court docket. Judge King was engaged in the private practice of law for 5 years and served as Assistant Leavenworth County Attorney before his appointment to the bench. He is a graduate of the University of Kansas and the University of Kansas School of Law.

Judge King serves as a member of the Kansas Commission on Judicial Qualifications and the Bench/Bar Committee of the Kansas Bar Association. He is also a member of the Leavenworth County Bar Association and the Kansas District Judges Association.

Judge King states that his greatest strengths are experience, common sense, analytical skills, fairness, respect for the rule of law, punctuality, and issuing understandable decisions that are grounded in the facts and the applicable law. He recognizes that he is sometimes impatient with those who are not on time or not prepared without good reason. His professional goal is to maintain a court with a high level of service, including the utilization of technology, to better fulfill the judicial branch's service to the public in challenging economic

circumstances.

The Commission received survey responses from 75 attorneys and 129 non-attorneys. Survey results showed that 99% of attorneys and 90% of non-attorneys recommended that Judge King be retained in office. Judge King received an overall average score from attorneys of 3.69 on a 4.0 scale and an overall average score from non-attorneys of 3.43. He also received an overall average score of 3.90 from 10 appellate judges who responded. Judge King's scores exceed the required minimum average grade of 2.0 from each category of respondents. The Commission recommends that he BE RETAINED.

[View the complete Judicial Performance Report for David J. King in PDF format.](#)

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## Survey of Attorneys Regarding Trial Judges

<b>Judge David J. King</b> Sample Size = 75						Average	
	A	B	C	D	Fail	Judge King	All Kansas Trial Judges

### 1. Performance:

1a. Overall performance as a judge.	76%	20%	3%	1%	0%	3.70	3.27
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### 2. Legal Ability:

2a. Bases decisions on the relevant evidence.	76%	14%	8%	1%	0%	3.65	3.31
2b. Has knowledge of rules of procedure.	84%	16%	0%	0%	0%	3.84	3.42
2c. Follows legal precedent in decisions.	79%	19%	1%	1%	0%	3.74	3.31
2d. Uses judicial discretion to reach a fair decision.	72%	21%	5%	1%	0%	3.64	3.29

**Overall Legal Ability**      3.72      3.33

### 3. Integrity:

3a. Conducts court free from impropriety or appearance of impropriety.	82%	15%	3%	0%	0%	3.80	3.54
3b. Makes decisions without regard to possible criticism.	73%	22%	5%	0%	0%	3.68	3.43

**Overall Integrity**      3.74      3.49

### 4. Impartiality:

4a. Does not prejudice the outcome of cases.	66%	27%	4%	3%	0%	3.56	3.26
4b. Makes decisions and rulings without regard to the identity of the parties.	78%	14%	7%	0%	0%	3.71	3.32
4c. Treats attorneys equally regardless of sex or race.	83%	17%	0%	0%	0%	3.83	3.63

**Overall Impartiality**      3.70      3.40

### 5. Communication Skills:

5a. Issues clear and logical oral communication while in court.	79%	18%	3%	0%	0%	3.77	3.37
5b. Provides written rulings that are clear, thorough and well reasoned.	75%	21%	4%	0%	0%	3.71	3.29

**Overall Communication Skills**      3.74      3.33

### 6. Professionalism:

6a. Does the necessary homework and is prepared for cases.	81%	18%	1%	0%	0%	3.79	3.36
6b. Uses common sense and is resourceful in resolving problems that arise during proceedings.	75%	18%	6%	0%	1%	3.65	3.41
6c. Promptly makes decisions and rulings.	82%	12%	4%	1%	0%	3.75	3.44

**Overall Professionalism**      3.73      3.40

### 7. Temperament:

7a. Maintains proper order, decorum, and civility in the courtroom.	75%	16%	7%	1%	0%	3.66	3.55
7b. Treats everyone in the courtroom with respect.	64%	26%	8%	1%	1%	3.49	3.50
7c. Acts with patience and self-control.	55%	32%	10%	3%	1%	3.36	3.43

**Overall Temperament**      3.50      3.49

Survey of Attorneys Regarding Trial Judges							
Judge David J. King Sample Size = 75						Average	
	A	B	C	D	Fail	Judge King	All Kansas Trial Judges

**8. Administrative:**

8a. Begins court on time.	79%	18%	3%	0%	0%	3.77	3.48
8b. Allots an adequate amount of time for presentation of cases.	78%	21%	0%	1%	0%	3.75	3.49
8c. Manages court proceedings to reduce wasted time.	78%	21%	0%	1%	0%	3.75	3.40
8d. Appropriately uses settlement conferences and alternative dispute resolution mechanisms.	72%	22%	5%	0%	0%	3.67	3.43
<b>Overall Administrative</b>						3.74	3.45
<b>Overall Average Grade:</b>						<b>3.69</b>	<b>3.41</b>

Questions 9 & 10	Percentage	
	Judge King	All Kansas Trial Judges

9. Biased in favor of prosecution/defense.

Very biased in favor of the prosecution	0%	8%
Somewhat biased in favor of the prosecution	0%	28%
Completely Neutral	100%	57%
Somewhat biased in favor of the defense	0%	6%
Very biased in favor of the defense	0%	1%

10. How strongly do you recommend that Judge King be retained or not retained in office?

Strongly recommend retain in office	84%	74%
Somewhat recommend retain in office	15%	16%
Somewhat recommend not retain in office	0%	5%
Strongly recommend not retain in office	1%	5%



## Survey of Appellate Judges Regarding District Judges

<b>Judge David J. King</b> Questionnaires Returned = 14 Evaluations of Judge King = 10						Average	
	A	B	C	D	Fail	David J. King	All 2010 Retention Judges

Judge King in terms of overall performance as a judge.	90%	10%	0%	0%	0%	3.90	3.49
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## Survey of Non-Attorneys Regarding Trial Judges

<b>Judge David J. King</b> Sample Size = 129						Average	
	A	B	C	D	Fail	Judge King	All Kansas Trial Judges
<b>1. Performance:</b>							
1a. Overall performance as a judge.	54%	27%	10%	7%	2%	3.23	3.23
<b>2. Integrity:</b>							
2a. Conducts court free from impropriety or appearance of impropriety.	65%	25%	4%	4%	2%	3.48	3.36
2b. Willing to make decisions even if they are politically unpopular.	63%	17%	9%	4%	7%	3.25	3.17
<b>Overall Integrity</b>						3.37	3.27
<b>3. Impartiality:</b>							
3a. Gives all participants a fair opportunity to be heard.	66%	20%	8%	2%	4%	3.40	3.33
3b. Does not prejudge the outcome of cases.	64%	21%	7%	3%	5%	3.37	3.25
3c. Presents a neutral presence on the bench.	69%	19%	7%	3%	2%	3.48	3.28
3d. Treats everyone fairly regardless of who they are.	65%	22%	5%	3%	5%	3.39	3.27
<b>Overall Impartiality</b>						3.41	3.28
<b>4. Communication Skills:</b>							
4a. Makes sure participants understand whats going on in the courtroom.	70%	19%	7%	2%	2%	3.55	3.42
4b. Gives clear reasons for rulings.	65%	20%	9%	3%	3%	3.40	3.27
<b>Overall Communication Skills</b>						3.48	3.35
<b>5. Professionalism:</b>							
5a. Is prepared for cases.	69%	22%	6%	3%	1%	3.55	3.40
5b. Maintains proper order, decorum and civility in the courtroom.	72%	21%	4%	1%	2%	3.59	3.53
<b>Overall Professionalism</b>						3.57	3.47
<b>6. Temperament:</b>							
6a. Demonstrates a sense of compassion and human understanding for those who appear before the court.	58%	21%	12%	2%	7%	3.22	3.22
6b. Acts with patience and self control.	66%	24%	5%	3%	3%	3.48	3.41
<b>Overall Temperament</b>						3.35	3.32
<b>7. Administrative:</b>							
7a. Begins court on time.	65%	25%	7%	2%	1%	3.52	3.30
7b. Manages court proceedings to reduce wasted time.	64%	25%	8%	1%	2%	3.49	3.32
7c. Provides prompt access to the court in emergency matters.	68%	19%	10%	1%	1%	3.51	3.34
<b>Overall Administrative</b>						3.51	3.32
<b>Overall Average Grade:</b>						<b>3.43</b>	<b>3.32</b>

<b>Judge David J. King</b> <b>Questions 8 &amp; 9</b> Sample Size = 129	Percentage	
	Judge King	All Kansas Trial Judges

8. Biased in favor of prosecution/defense.

Very biased in favor of the prosecution.	4%	9%
Somewhat biased in favor of the prosecution	24%	8%
Completely Neutral.	68%	75%
Somewhat biased in favor of the defense.	0%	5%
Very biased in favor of the defense.	4%	2%

9. How strongly do you recommend that Judge King be retained or not retained in office?

Strongly recommend retain in office	73%	74%
Somewhat recommend retain in office	17%	12%
Somewhat recommend not retain in office	4%	5%
Strongly recommend not retain in office	6%	9%