

TRIAL COURTS *of* KANSAS



OVERVIEW: *Throughout Kansas and here in Shawnee County, district courts are the front line of the judicial system. We hope you find this information about your trial court interesting, informative and satisfying.*

THE ROLE OF THE JUDICIAL COURTS

IN AMERICA: The American legal and judicial system is directly descended from the English system of common law. Common law means, of course, a body of law built up one case at a time over many, many years. Coupled with that common law tradition is the ancient rule of *stare decisis* (which means courts follow precedent when they have it). Precedent, in turn, means rules used and developed by judges when they decided similar cases in the past. The Legislature also enacts laws from time to time and judges are required to follow them when they exist. However, it is estimated that such governing statutes exist in less than half of the cases. The principle reason for this is that where the law is clear, cases are rarely filed, because everyone knows in advance how those cases will turn out once the facts are established. Thus, the cases that are more often filed are those where the law is not clear and a judicial decision is necessary to clarify the rule. You may have heard some persons use the term “activist judges.” This term is usually defined to describe judges who “make it up as they go,” rather than following existing law. Terms like these often spring from a lack of understanding of the common law system. In America judges are required by our Constitutions to decide every case and controversy brought before them, whether they have a statute of the Legislature or a precedent from a higher court or not. They do not have the luxury of saying, “Sorry, we don’t have a case or statute on that yet . . . go away and come back some other year!” Or worse yet, “go settle your dispute with a shoot out on Sixth Street at high noon!” So what do judges do when they are presented with a case that has no precedent to govern it? They must and do decide it anyway . . . consistent with our traditions and general legal values. As you can see, judges are required, at times, to create a rule to decide a case. Of course a higher Court can change the decision of a trial court and the Legislature can pass a law that is different,

but when it’s all said and done, the rule settled on becomes the law for that case and for the future. That is how our system of common law works and how it has been created, one case at a time, over a number of centuries in the combined history of England and America. To the English system of common law, America has contributed the notion of the Constitution. Rather than subscribe to the old European idea that Kings rule by divine right, our founders held that our Creator endowed each of us with the ability to govern ourselves and that the authority to govern, given by us to our government, came not from God, but from the consent of the governed – that is, from each of you who live in Kansas and America respectively. Based upon this premise of self-government, we established two limited governments: State and Federal, and prescribed in our Constitutions the limited powers we granted to each. We also clearly stated those powers that we denied to those governments (the Bill of Rights comes to mind as an example). Thus our Constitutions, both State and Federal, are the fundamental law of our land – which even the three branches of government (perhaps we should say especially the government) is required to obey. The Constitution expresses the will of you the people – the source of all power in our democracy. And in our system, it is the Courts, the third, but equal branch of government, which decides in all cases if laws are broken, especially those contained in our Constitutions.

DID YOU KNOW: There are approximately a half million new legal cases filed every year in Kansas. Of these cases, 7% are criminal cases (where persons are accused of a crime) and 40% are civil actions (usually suits for money). Juvenile cases account for another 4% and the balance are a mixture of traffic, probate, domestic, small claims, debt collection, and treatment proceedings. But despite the rising tide of litigation, the trial courts of Kansas are nationally recognized as leaders in reducing delay in the courts. Typically, less than 1% of the state’s civil cases are over two years old and only 6% of the criminal cases in the entire state are even one year old. In this District, which consists of Shawnee County alone, there are nearly 50,000 new cases filed each year. Of these cases, 50% are small claims and debt collection cases,

21% are traffic cases, 10% are tax warrants, liens and major civil cases, 7% are criminal cases, 6% are domestic cases, 4% are juvenile cases, and 2% are probate cases. One of the most significant features of this District’s operations is the automated debt collection system that is held once each week at the ExpoCentre in Topeka. Between 3,000 and 4,000 new cases are resolved there each week, including new debt collection and child support cases and related postjudgment proceedings. All of this is accomplished without the use of any paper, a significant savings to the parties, the court and the environment. In addition the court at the ExpoCentre also monitors over 120,000 post-judgment cases (where judgment has been taken and payments on the debt are being made) throughout the year.

THE JURY TRIAL: Most court cases (approximately 95%) are resolved without a jury trial, although many popular television programs may make it seem otherwise. However, the right to a jury trial is guaranteed in both criminal and civil cases and is recognized as the foundation of the American court system. When juries are requested and used, juries determine the facts of the case. In other words, the jury decides what happened. The judge instructs the jury on the law, but the jury applies the law to the facts as they find them to reach a verdict. In civil cases either a six or a 12-member jury may be requested, or by agreement of the parties the jury could be waived and the case tried to a judge alone. Criminal cases require a 12-member jury for felonies and a six member jury for misdemeanors. A majority of ten jurors may decide a civil jury trial, but a unanimous verdict is required in criminal cases and in any six member jury case.

TRIAL PARTICIPANTS: Court proceedings are presided over by a judge, whose duty is to apply the law, rule on objections and generally assure all parties a fair trial. The claimant bringing the lawsuit is called the plaintiff in civil cases. The State, through the prosecutor, brings all criminal cases. The one against whom the action is filed is called the defendant, in both civil and criminal cases.

ORDER OF TRIAL: Jury trials begin with “voir dire,” or questions of prospective jurors concerning their qualifications to sit on the jury. Next the

plaintiff, or the state, presents an opening statement in which an outline of the anticipated evidence is given. The defense attorney also may give an opening statement at that point, or in criminal cases it could be reserved until after the prosecution rests its case. The evidence is presented first by the plaintiff (or the state) through exhibits and testimony, all of which are subject to legal challenges by the defendant, including cross-examination of the witnesses. At the conclusion of the plaintiff's case, the defense may, but is not required to, present evidence. Once all the evidence is in, the judge instructs the jury on the law and the lawyers make their closing arguments. The jury then retires to deliberate and return its verdict.

JUVENILE MATTERS: Cases involving juveniles fall under two sets of laws. One is called the Code for Care of Children. These matters, by statute adopted by the Legislature, are presumed to be open but can be closed by the court in the interest of the child. The second is cases under the Juvenile Justice Code. Public access is open subject to some restrictions.

PROBATE MATTERS: A variety of proceedings fall under the jurisdiction of a judge handling probate matters including the admission of wills to probate and the administration of intestate estates. They also include adoptions of minors and adults, establishment and continuing supervision of guardianships and conservatorships for minors and adults, curatorships and testamentary trusts along with the commitment for treatment of mentally ill persons, alcoholics and drug addicted persons and those persons found to be sexually violent predators.

DOMESTIC RELATIONS: Family related proceedings fall under the general heading of domestic relations. These include divorces, child custody and support actions, protection from abuse, annulments and separate maintenance petitions.

TRAFFIC CASES: These cases can range from speeding ticket to Driving Under the Influence. Most traffic cases handled by the District Court arise from violations occurring upon county or state highways, but outside the city limits.

However, district courts also handle all appeals from municipal courts.

SMALL CLAIMS: Civil cases involving cases with claims of less than \$4,000 may be resolved through filing a small claims case without the assistance of an attorney. The clerk of the district court has forms for use by the persons involved in small claims cases.

OUTSIDE THE COURTROOM: Similar to the analogy of the duck gliding seemingly effortlessly on a lake, the judges and court personnel are working feverishly behind the scenes, just as the duck paddles beneath the surface, to make the system work smoothly and seamlessly.

SELECTION AND ACCOUNTABILITY OF

JUDGES: American judges are highly accountable to the public. When a judicial vacancy occurs, a nonpartisan committee of members of the public from Shawnee County (one half lawyers and one half nonlawyers) screens applicants and submits a list of up to three of the most qualified nominees to the governor. The governor appoints the new judge from this list. There is also a Commission on Judicial Qualifications that can unseat a judge if he or she fails to follow the rules that govern a judge's conduct. In addition, every decision of our judges is made in full public view (with a few exceptions for cases involving children, under rules prescribed by the Legislature). Each four years, the public is given the opportunity to vote at the general election whether each judge should be retained in office. Few, if any, other callings enjoy such public scrutiny as judges and their work.

IN CONCLUSION: We know that the reasons for visiting a courthouse vary. Some are happy occasions, such as a wedding or the adoption of a child. Other persons, such as jurors and witnesses come simply to do their civic duty. At other times, unfortunately, the business done is not as pleasant. But whatever the reason that might bring you to our courthouse, we want you to know justice is being carried out there daily. You can also rest assured that the dedicated men and women of the trial courts strive at all times to give courteous and dignified treatment to all of our citizens.