M I N U T E S

JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

December 11-12, 2007
Room 514-S, Statehouse

Members Present

Representative Steve Huebert, Chairperson
Senator Phillip B. Journey, Vice Chairperson
Senator Terry Bruce
Senator Mark Gilstrap
Senator Dennis Pyle
Representative Pat Colloton
Representative Bob Grant
Representative Rob Olson
Representative Dale Swenson

Staff Present

Cindy Lash, Kansas Legislative Research Department
Amy Deckard, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes Office
Mike Corrigan, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Others Present

Shelly Starr, Special Assistant Attorney General, Kansas Department of Corrections
Dustin Hardiston, Kansas Department of Social and Rehabilitation Services
Don Jordan, Secretary, Kansas Department of Social and Rehabilitation Services
Michael Addington, Kansas Department of Social and Rehabilitation Services
Tanya Keys, Kansas Department of Social and Rehabilitation Services
Trevin Wray, Office of the Kansas Attorney General
Lexie Covington
Mark A. Burghart, Attorney at Law, Benchmark Industries, Inc.
Roland D. French and Kanitra Chump
Steve Phillips, Office of the Kansas Attorney General
James Bartle, Chief Counsel, Kansas Department of Revenue
Kathy Porter, Office of Judicial Administration
Mark and Pam Jordan

December 11, 2007

The meeting of the Joint Committee on Special Claims Against the State was called to order at 10:10 a.m. by Representative Steve Huebert, Chairperson. Representative Huebert called the Committee's attention to the minutes of the November 14 and November 15 meetings. Representative Swenson moved to approve the minutes of the November 14, 2007, and November 15, 2007, meetings of the Joint Committee on Special Claims Against the State, seconded by Representative Olson. The motion carried.

The Committee's attention was turned to the list of 2007 claims for motor fuel tax refunds, which was prepared by the Kansas Department of Revenue. (Attachment 1) Amy Deckard, Kansas Legislative Research Department, briefly explained the refund process. She noted that claims for motor fuel tax refunds must be received by the Department of Revenue within one year after the date on which the fuel was purchased. The only recourse for claimants requesting refunds after the one-year statute of limitation is to file a claim with the Joint Committee on Special Claims.

Representative Grant moved that the claims for motor fuel tax refunds in the total amount of $98,027.62 be allowed, seconded by Senator Gilstrap. The motion carried.

Representative Huebert opened the telephone hearings on claims by inmates at El Dorado Correctional Facility, Claims Nos. 5976, 5977, 5978, 5983, 5985, and 5997. Jerome Cheeks, EDCF, filed the following claims against the Kansas Department of Corrections: Claim No. 5976 in the amount of $148,000.00 for denial of due process protection and lost wages, Claim No. 5977 in the amount of $75,000.00 for intentional mistreatment by the Administrative Segregation Board, and Claim No. 5978 in the amount of $25,000.00 for the loss of a job. Cindy Lash, Kansas Legislative Research Department, called attention to copies of a letter from Mr. Cheeks dated November 26, 2007, in which he stated that he wished to withdraw all of his claims.

Following discussion, the Joint Committee recommended that Claim No. 5976, Claim No. 5977, and Claim No. 5978 be denied. (See section captioned "Committee Action and Recommendations".)

John Wilkerson, EDCF, discussed his Claim No. 5983 against Hutchinson Correctional Facility in the amount of $19.82 for the loss of his fan. When he was transferred to another unit in July 2007, he personally packed his property in three boxes and carried the boxes one at a time to an officer in the new unit. After delivering the third box, he told the officer that he wanted to talk to his Unit Team Manager. The officer agreed to call his Unit Team Manager but instructed him to take his property to his cell and lock down first. Mr. Wilkerson refused to go to his cell. Consequently, he was taken to the segregation unit. When he received his property later, his fan was missing. Mr. Wilkerson contended that the fan was stolen in the moving process. He explained that he needed the fan because the cell house was extremely hot. He noted that he had the fan for approximately three years and that it was in good working order.

Shelly Star, legal counsel for the Kansas Department of Corrections (KDOC), reported that

the fan was not in Mr. Wilkerson's possession when his property was inventoried. Noting that inmates own property at their own risk, she recommended that the claim be denied on the grounds that there was no evidence of staff negligence, and possession of the fan could not be verified.

Following discussion, the Joint Committee recommended that Claim No. 5983 be denied. (See section captioned "Committee Action and Recommendations".)

Sean Kelner, EDCF, filed Claim No. 5985 against EDCF in the amount of $7.46 for the loss of his sweat shorts and Claim No. 5997 against EDCF in the amount of $69.00 for damage to his black and white television, which he purchased on February 14, 2007.

With regard to Claim No. 5985, Mr. Kelner explained that he sent his grey sweat shorts to the laundry in July 2007, but they were never returned to him. He noted that clothing items inmates send to the facility laundry are listed on a form to be checked off by an officer when the clothing is returned. The laundry list for his sweat shorts was never checked off as returned by an officer.

Shelly Starr, KDOC, explained that EDCF documents how many items each inmate sends to the laundry, but she was unable to obtain the documentation for Mr. Kelner's shorts from the facility. Commenting that the only conclusion she was able to draw was that the shorts were misplaced by staff, she recommended that the claim be paid in the amount of $7.46.

Following discussion, the Joint Committee recommended that Claim No. 5985 be allowed in the amount of $7.46. (See section captioned "Committee Action and Recommendations".)

With regard to Claim No. 5997, Mr. Kelner explained that he was taken to the shower while a shakedown of his cell was conducted on August 6, 2007. While in the shower, he and another inmate heard a "big bang". When he returned to his cell, he found a piece of his television lying on his bed. Additionally, two corners of the television were cracked, and three screws were broken. Mr. Kelner claimed that the shakedown officer (Officer Lewis) refused to write a report on the damage. In his opinion, Officer Lewis broke the television.

Shelly Starr, KDOC, informed the Committee that facility records showed that an officer other than Officer Lewis conducted the shakedown of Mr. Kelner's cell on August 6, 2007. Additionally, she noted that there were no witnesses or reports which indicated that Officer Lewis damaged Mr. Kelner's television at any time. Having found no evidence to substantiate negligence on the part of the facility, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5997 be denied. (See section captioned "Committee Action and Recommendations".)

The Committee's attention was turned to claims on the agenda under the heading, "No Hearing Requested," Claims Nos. 5989, 5990, and 6002.

Claim No. 5989 was filed by Northwest Kansas Educational Service Center Head Start

against Norton Correctional Facility in the amount of $170.48 for damage to a bus window. Cindy Lash, Kansas Legislative Research Department, explained that inmates from Norton Correctional Facility were mowing the lawn and using a weed eater near a church parking lot where the Norton County Head Start bus was parked. The weed eater threw a rock onto the back window of the bus, and the window was shattered.

Shelly Starr, KDOC, explained that the claim was never directly submitted to the Department of Corrections; therefore, she asked Norton Correctional Facility staff how they preferred to handle the claim. Facility staff requested that the claim be paid as soon as possible. Since payment would not be made for several months if the claim was allowed through the Claims Committee, she suggested that the claim be carried over to the next meeting so that the Department could bypass the legislative process and reimburse Norton County Head Start as soon as possible.

Following discussion, the Joint Committee recommended that Claim No. 5989 be carried over to the next meeting. (See section captioned "Committee Action and Recommendations".)

Danny Schmidt, an inmate at Lansing Correctional Facility, filed Claim No. 5990 against Lansing Correctional Facility in the amount of $53.36 for property loss. Ms. Lash explained that Mr. Schmidt's property was packed out by officers after he was taken to segregation. When his property was returned to him, a pair of Adidas tennis shoes and some small personal items were missing. Mr. Schmidt claimed that his property was packed out to the laundry room, but officers failed to secure the room. He also claimed that the pair of white tennis shoes he received were not his shoes. A proof of purchase attached to his claim showed that he purchased a pair of Adidas tennis shoes in January 2007for $45.74.

Shelly Starr, KDOC, explained that, when an inmate is rolled to segregation, the standard procedure is to secure the property in his cell until it can be inventoried. The property is often put on a cart and stored in the laundry room because the laundry room can be secured until officers have time to return and conduct an inventory. She went on to say that she found no evidence that normal procedures were not followed, and there was no way to verify that the missing property was in Mr. Schmidt's possession at the time he was taken to segregation. In light of her investigation, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5990 be allowed in the amount of $53.36. (See section captioned "Committee Action and Recommendations".)

Claim No. 6002 was filed by Cody Losure against University of Kansas Medical Center in the amount of $955.26 for damage to his vehicle which occurred in an interior parking lot surrounded by buildings. Ms. Lash explained that Mr. Losure drove his vehicle into a concrete light stand which had been covered by an industrial rubber trash barrel after the light was removed for an event involving tents. The accident occurred on September 18, 2007, at approximately 4:45 p.m. Although the light stand was approximately 27 inches high, Mr. Losure claimed that it was not visible. She noted that Steven L. Ruddick, Associate General Counsel for the medical center, recommended that the claim be denied on the grounds that the green barrel was in plain view during

daylight hours, and Mr. Losure would have seen the barrel had he been an observant driver.

Following discussion, the Joint Committee recommended that Claim No. 6002 be denied. (See section captioned "Committee Action and Recommendations".)

Representative Huebert opened the telephone hearing on a claim filed by Shelia Hudson, an inmate at Topeka Correctional Facility (TCF), against TCF in the amount of $1,061,000.00 for unlawful custody, loss of legal papers, mental anguish, and pain and suffering.

Ms. Hudson claimed that, due to the interpretation of K.S.A. 21-4608 by TCF staff, the maximum term for a sentence she received in1981was increased ten years past the statutory maximum term. She alleged that the erroneous interpretation resulted in the illegal forfeiture of nine years of parole. In her opinion, the only period of time which should have been forfeited was from January 1, 1991, to November 14, 1991, for a total of 10 months and 14 days. She explained that there was no new crime committed prior to January 1991 to initiate K.S.A. 21-4608(F)(5). She explained in detail how she believed that the sentence was miscalculated. She maintained that, due to the erroneous computation of her aggregated sentence to date, the 1981 sentence is still active, and she is still considered to be serving on a 1981 sentence for forgery. She went on to say that the 1981 sentence had expired prior to the commission of the new offense, making the aggregated computation cruel and unusual punishment. She contended that she has served 25 years on a 4 to 20 term. She noted that allowing the 1981 sentence to expire as prescribed by law would have adjusted her maximum date on the subsequent charge from 2011 to 2002. She explained that the amount of her claim included $61,000.00 for legal files which a TCF staff member took but did not return, plus $250,000.00 per year for false imprisonment.

Shelly Starr, KDOC, informed the Committee that in order to determine whether or not Ms. Hudson's sentence was incorrect, she consulted a KDOC staff member who is an expert on sentencing. The staff member reported to her that, after a thorough investigation of the sentence several times, it had been determined that the sentence was correct. Ms. Starr commented that Ms. Hudson made a clever argument that, because she was on parole three times before she picked up a new conviction, the time on parole for the first two times should still be counted because her parole violations were not for new crimes. Thus, she would have about 9 years credit on the first conviction, making her remaining time much less. In response to this argument, Ms. Starr commented, "Unfortunately for Ms. Hudson, the statute does not make this distinction." She went on to explain that Ms. Hudson did not meet the following conditions under K.A.R. 44-6-138, subsection (h): "When the aggregate is being computed, the inmate shall be given credit for time spent on probation or parole if both of the following conditions are met: The inmate is returned to prison as a parole violator with multiple new charges that have identical sentences running concurrently with each other but consecutive to the previous sentence on which parole is being served and the date of the offense on one or more of the new charges is before July 1, 1983." She noted that Ms. Hudson litigated this issue up to the Kansas Supreme Court, and she recently filed a lawsuit in Shawnee County over the same issue, which was also dismissed. She called attention to a copy of the Kansas Supreme Court's opinion filed on March 15, 2002, and a copy of the January 8, 2007, Memorandum Decision and Order by the District Court of Shawnee County which she had

attached to her written response to the claim. Having found that Ms. Hudson's sentence was correctly computed, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5809 be denied. (See section captioned "Committee Action and Recommendations".)

Representative Huebert opened the telephone hearings on claims filed by Patrick C. Lynn, an inmate at EDCF: Claims Nos. 5936, 5938, 5959, 5960, 5961, 5964, 5970, 5971, 5979, and 5980. Senator Journey recused himself from the hearing on all of the claims.

Mr. Lynn said that facility staff recently took his files; therefore, he could not properly discuss his claims. He asked that the Chairman delay the hearings for 30 minutes to allow Shelly Starr, KDOC, time to call the Secretary of Corrections and request that the Secretary order staff to return his files to him. Ms. Starr agreed to call the Secretary. The Chairman continued the hearings on Mr. Lynn's claims until 1:00 p.m.

Cindy Lash, Kansas Legislative Research Department, summarized Mr. Lynn's claims as follows:

- Claim No. 5936 against KDOC in the amount of $1,000,000.00 for refusal to provide legal needs and denial of legal remedies and redress: Mr. Lynn claimed that he is indigent and that EDCF and KDOC have refused to provide him an adequate amount of free writing materials, access to a copying machine, and postage to seek redress for his convictions.

- Claim No. 5938 against KDOC in the amount of $5,000.00 for injury to his fingers and illegal battery: Mr. Lynn claimed that he was talking with two correctional officers about his legal affairs while the food pass slot on his cell door was open. As he spoke, another officer approached his cell and closed the food pass on his fingers, smashing his fingers and causing great pain.

- Claim No. 5959 against KDOC in the amount of $100,000.00 for retaliation and psychological trauma: Mr. Lynn stated that he sent a vulgar letter about his ex-girlfriend to her employer in December 2003, and KDOC retaliated by refusing to let him make telephone calls to his mother since that time. As a result of the retaliation, he suffered severe psychological trauma. In his claim, he made a threat against Senator Journey's daughter because the Senator failed to intervene on his behalf.

- Claim No. 5960 against KDOC in the amount of $1,000.00 for illegal use of force by staff: Mr. Lynn claimed that he was forcibly removed from the monthly segregation review board meeting after he tried to raise various issues other than placement.

- Claim No. 5961 against KDOC in the amount of $100,000.00 for numerous dental problems due to the use of toxic toothpaste from China: Mr. Lynn claimed that KDOC has continued to provide indigent prisoners with poisoned toothpaste despite a FDA directive to destroy

all toothpaste made in China. He complained that KDOC refused to give him copies of his dental records to attach to his claim.

- Claim No. 5964 against KDOC in the amount of $10,000.00 for denial of legal rights: Mr. Lynn stated that a corrections officer filed two false infractions against him. One was dismissed, and the other was reduced. He explained that the hearing officer had a conflict of interest, and he was told that officials had directed that a different hearing officer be assigned; however, a new officer was not assigned.

- Claim No. 5970 against KDOC in the amount of $10,000.00 for denial of the right to a fair and impartial hearing: Mr. Lynn stated that he was served a Class I Disciplinary Report at the request of Amy Deckard and Senator Phil Journey. Mr. Lynn claimed that the assigned hearing officer was hostile to him because the officer was also a defendant in a federal lawsuit he filed.

- Claim No. 5971 against KDOC in the amount of $10,000.00 for denial of legal copies and legal postage credits: Mr. Lynn claimed that prison officials denied him legal copies and legal postage credits to meet court filing rules.

- Claim No. 5979 against the Office of Judicial Administration in the amount of $1,000,000.00 for denial of a waiver of an appeal fee and obstruction of justice: Mr. Lynn charged that he has been conspiratorially denied his statutory rights to appellate review as an indigent. He complained that a district court judge failed to sign the order waiving the appeal docket fee.

- Claim No. 5989 against the Board of Indigents' Defense Services in the amount of $250,000.00 for refusal of his request for assistance, for refusal of postage costs, and for mental stress: Mr. Lynn maintained that he has a right to have legal services provided by the Board of Indigents' Defense Services to proceed with an appeal, but the Board declined to provide these services.

The meeting was recessed for lunch at 12:00 p.m.

Afternoon Session

The meeting was called to order by Representative Huebert at 1:05 p.m. At this time, Mr. Lynn was once again contacted by telephone for the hearings on his claims. His files had been returned to him, and he proceeded to discuss each of his claims.

With regard to Claim No. 5936, Mr. Lynn claimed that he was transferred from EDCF to Oklahoma in retaliation for filing grievances and lawsuits. Since his return to EDCF on October 8, 2003, the facility has refused to provide him essential legal needs and postage to litigate pending or future court cases. He stated that the facility refused to mail a U.S. Supreme Court appeal on his

criminal case. He noted that KDOC policy provides that credit must be extended when necessary to provide an inmate with required access to the courts, and the requested credit may only be denied to prevent abuse. Mr. Lynn contended that, by receiving $50.00 credit, he did not abuse the system because he has no job and no income. He explained that the 4 stamps, 10-15 sheets of paper, 4 envelopes, and one pencil per month which he is allowed are inadequate to challenge his convictions. In addition, he complained that he is not allowed any legal phone calls or photocopies. He noted that his father offered to send him $100.00 per month for his legal needs, but the warden would not make an exception for him. Mr. Lynn requested that the Committee order the Secretary of Corrections to conduct an independent investigation of the warden's policies.

Shelly Starr, KDOC, recommended that Claim No. 5936 be denied. She noted that Mr. Lynn acquired a considerable debt in the 11 years he has been incarcerated, including nearly $2,000.00 for legal postage and over $1,000.00 for disciplinary fines and restitution. She also pointed out that IMPP 12-127 sets out the rules on personal hygiene, writing supplies, postage, and copying for indigent inmates, and the rules have been applied fairly to Mr. Lynn.

Following discussion, the Joint Committee recommended that Claim No. 5936 be denied. (See section captioned "Committee Action and Recommendations".)

With regard to Claim No. 5938, Mr. Lynn explained that he was talking to a cell house supervisor about property which was missing from his cell after a search was conducted. His food pass door was open as he talked to the supervisor, and he had not been ordered to close it. Another officer came in from the side, and, without saying anything, closed the food pass door on his fingers. He was unable to use his hand for several days. Mr. Lynn complained that the officer had a "bully complex" and used unnecessary and excessive force.

Shelly Starr, KDOC, recommended that Claim No. 5938 be denied. She commented that, although the closure of the food pass door may have been unnecessarily abrupt, it is reasonable that inmates be required to keep the door closed at all times except when food is being passed in or trays are being passed out. She noted that many inmates have used the food pass door to commit battery on staff or other inmates.

Following discussion, the Joint Committee recommended that Claim No. 5938 be denied. (See section captioned "Committee Action and Recommendations".)

With regard to Claim No. 5959, Mr. Lynn explained that he sent a vulgar letter to his ex-girlfriend on December 10, 2003, at Let's Help in Topeka. A co-worker complained to the EDCF warden about the letter. In retaliation, the warden cut off supplies needed for court access and suspended all access to the telephone. Therefore, he is unable to call his 86 year-old mother, causing him dramatic psychological trauma. He contended that the warden's action was abuse of authority at its worst.

Shelly Starr, KDOC, recommended that Claim No. 5959 be denied. She commented that Mr. Lynn was asking the Committee to intervene in privilege and incentive issues. She noted that Mr.

Lynn's telephone privileges were suspended for security reasons after he threatened one of the witnesses who testified against him in December 2003. Furthermore, she pointed out that Mr. Lynn's correspondence to the Committee was fraught with direct and indirect threats; therefore, it was evident that his threatening behavior had not abated, and the security issues continued to justify suspension of his telephone privileges.

Following discussion, the Joint Committee recommended that Claim No. 5959 be denied. (See section captioned "Committee Action and Recommendations".)

With regard to Claim No. 5960, Mr. Lynn explained that, during a segregation review, a facility lieutenant told him that he could only raise issues dealing with his placement in segregation and his release. After the issue of his release was resolved, he attempted to discuss the possibility of talking to his mother on the telephone, and he was forcibly removed from the review hearing. In his opinion, he was entitled to raise any issue pertinent to his condition of confinement.

Shelly Starr, KDOC, recommended that Claim No. 5960 be denied. She explained that Mr. Lynn is given an in-person monthly review of his administrative segregation status; however, it is not a forum to grieve any issue he might have. She noted that Mr. Lynn was advised upon his arrival at the monthly review to limit his discussion to segregation placement factors; however, he defied that order and was removed from the room. She further noted that, contrary to Mr. Lynn's assumption that the use of force is illegal, the courts have found that prison staff can use force. She explained that the use of force becomes illegal only when used maliciously or sadistically to cause harm. She found no evidence of illegal force in Mr. Lynn's case.

Following discussion, the Joint Committee recommended that Claim No. 5960 be denied. (See section captioned "Committee Action and Recommendations".)

With regard to Claim No. 5961, Mr. Lynn noted that there had been a nationwide recall of toothpaste made in China. He said that KDOC continued to give inmates Chinese toothpaste which was not FDA approved. He believed that, as a result of using the toothpaste, his gums began to bleed, and he lost some of his teeth.

Shelly Starr, KDOC, recommended that Claim No. 5961 be denied. She explained that, while some toothpaste made in China contains a small amount of a sweetener that is toxic, not all Chinese toothpaste contains the poison. The toothpaste distributed by KDOC did not contain the toxic sweetener. She pointed out that FDA information regarding the issue which was attached to her written response to the claim indicated that, because toothpaste is not normally swallowed, the populations most at risk are young children and persons with liver and kidney problems. She noted that there had been no reports of injury caused by Chinese toothpaste in the United States.

Following discussion, the Joint Committee recommended that Claim No. 5961 be denied. (See section captioned "Committee Action and Recommendations".)

With regard to Claim No. 5964, Mr. Lynn said that an intoxicated female guard wrote a

Disciplinary Report on him for two false infractions. The hearing officer had a conflict of interest, but contemptuously refused to recuse herself. Thus, he was denied his right to a fair hearing. He noted that the female guard was fired approximately ten days later for other misconduct.

Shelly Starr, KDOC, recommended that Claim No. 5964 be denied. She confirmed that Mr. Lynn was written up for two disciplinary infractions, and at the hearing, he was convicted of one, and one was dismissed. She found no evidence of wrong doing by the Department. She noted that it did not appear that the conviction was appealed in the proper manner.

Following discussion, the Joint Committee recommended that Claim No. 5964 be denied. (See section captioned "Committee Action and Recommendations".)

With regard to Claim No. 5970, Mr. Lynn informed the Committee that the circumstances related to the same hearing officer to which he referred in Claim No. 5964.

Shelly Starr, KDOC, recommended that Claim No. 5970 be denied. She commented that many inmates, including Mr. Lynn, sue nearly everyone who has contact with them. She noted, if a lawsuit against a correctional officer required recusal in disciplinary cases, the Department would be hard-pressed to staff hearings in an efficient manner. She informed the Committee that, in *Redding v. Fairman*, the court held that due process does not require automatic recusal by hearing officers who are named in unrelated lawsuits brought by an inmate facing a disciplinary hearing.

Following discussion, the Joint Committee recommended that Claim No. 5970 be denied. (See sectin captioned "Committee Action and Recommendations".)

With regard to Claim No. 5971, Mr. Lynn explained that he had a brief due in the 10th Circuit Court of Appeals, but prison officials denied his right to legal copies and postage despite the deadline. He contended that KDOC was guilty of "conspiratorial obstruction of justice" for denying him legal copies and postage credit to mail legal documents. He suggested that Shelly Starr, KDOC, should have spoken to him personally before preparing her written recommendation on his claim.

Shelly Starr, KDOC, recommended that Claim No. 5971 be denied. She commented, "Unfortunately for Mr. Lynn, there is no constitutional right to free copies and postage." She explained that such access is provided readily in the case of criminal appeals only. She noted that reasonable regulations are necessary to balance the legitimate interests of inmate litigants with budgetary considerations and to prevent abuse.

Following discussion, the Joint Committee recommended that Claim No. 5971 be denied. (See section captioned "Committee Action and Recommendations".)

With regard to Claim No. 5979, Mr. Lynn claimed that he was denied his statutory right to appellate review as an indigent. In July 2003, the former Johnson County District Attorney assigned his petition for new DNA testing to the Johnson County Chief Judge, who dismissed the petition even though he complied with court rules. The clerk of the appellate court failed to allow him to

proceed *in forma pauperis* on an appeal, and he was not granted an order waiving the appeal fee.

The written response to Claim No. 5979 submitted by Jerry Sloan, Budget and Fiscal Officer for the Office of Judicial Administration, recommended that the claim be denied on the grounds that the matter about which Mr. Lynn complained was moot. Mr. Sloan explained that Mr. Lynn's appeal had been filed, and he was proceeding *in forma pauperis* (Case No. 07-99100-A), the order of indigency having been signed by the district court and docketed by the district court clerk. Mr. Sloan also pointed out that any issues Mr. Lynn has regarding the district court's dismissal of his petition may be raised in the appellate process.

Following discussion, the Joint Committee recommended that Claim No. 5979 be denied. (See section captioned "Committee Action and Recommendations".)

With regard to Claim No. 5980, Mr. Lynn noted that, under K.S.A. 22-4506, he is entitled to representation by an attorney paid for by the Board of Indigents' Defense Services. He explained that he currently had a petition for review before the Kansas Supreme Court, but KDOC refused to allow him proceed under the prison mail box rule. In his opinion, the Board of Indigents' Defense Services should have stepped in and assisted him years ago.

The written response to Claim No. 5980 submitted by Patricia A. Scalia, Executive Director, State Board of Indigents' Defense Services (BIDS), recommended that the claim be denied. Ms. Scalia noted that, on May 8, 2007, Mr. Lynn requested legal representation in addition to and separate from public defenders. She reported that, over the past ten years, BIDS had assigned public defenders to defend Mr. Lynn when appointed by the court throughout the defense of his criminal proceedings. She stated, "Mr. Lynn now wishes to have legal counsel provided to bring a Mandamus action against Judge Tatum for his refusal to grant him a new trial. To my knowledge, there is no right to counsel for a Mandamus action. Even if there were such a right, it is not within the authority of this agency and its director to appoint counsel in such a matter or any other matter. Only the court may appoint counsel." With regard to the postage cost alleged by Mr. Lynn, Ms. Scalia noted that providing stamps to him would be dealing in contraband. Regarding the issue of mental stress Mr. Lynn claimed he suffered, Ms. Scalia noted that there was no legal remedy for mental stress.

Following discussion, the Joint Committee recommended that Claim No. 5980 be denied. (See section captioned "Committee Action and Recommendations".)

Mr. Lynn questioned why his Claim No. 5963 against KDOC and the Office of Judicial Administration in the amount of $250,000.00 for malicious refusal to resolve a lawsuit was not set for a hearing. Ms. Lash explained that the claim was not set for hearing because he had indicated that there was a pending appeal in Butler County Court concerning the same facts and circumstances. She noted that Butler County Court staff informed her that he filed a Notice of Intent, and the court was awaiting other documentation to go forward. Mr. Lynn said that the information was incorrect. He went on to say that the judge refused to sign the order to waive the docket fee, and the judge also ordered the clerk's office not to file his post judgement motion to alter

amended judgement and motion for a change of judge under K.S.A. 20-311(f). Representative Huebert told Mr. Lynn that he could discuss the claim further at a hearing to be scheduled in 2008.

Representative Huebert opened the telephone hearing on a claim filed by an inmate at Norton Correctional Facility (NCF), Claim No. 5982 by Rickey Charles Hayden against KDOC in the amount of $18,000.00 for illegal conspiracy and wrongful imprisonment. Mr. Hayden stated that the Ellsworth Correctional Facility warden unlawfully deprived him of his liberty in a conspiracy with the Secretary of Corrections. He explained that the wrongful imprisonment related to Sedgwick County District Court Case No. CR-06-879. He contended that he was imprisoned for 18 months without being provided with a transcription of his trial and arraignment or a copy of the journal entry. In addition, he claimed that he was held 18 months without being provided the services of a defense attorney to file an appeal.

Shelly Starr, KDOC, commented that Mr. Hayden attached a copy of two facility grievances to his claim. One complaint related to a $10.00 deposit which was made to his account and subsequently applied to fines he owed, and the other complaint concerned a request for legal counsel to assist him. The first claim was denied because the money was appropriately used to pay for disciplinary fines, library fines, and various other fees. On the second claim, the Department directed Mr. Hayden to the appropriate resource. Ms. Starr noted that, based on documentation provided by Mr. Hayden, it appeared that Legal Services for Prisoners had a conflict as they were previously sued by Mr. Hayden. Consequently, Mr. Hayden narrowed his choices and must hire private counsel if he wants legal representation. She went on to say that Mr. Hayden appeared to be asking the Committee to order the Department to provide him copies of transcripts of his criminal proceedings; however, the Department does not have copies of these documents. She noted that, if the Department did have copies, his request would have been processed through the Kansas Open Records Act. In conclusion, Ms. Starr informed Mr. Hayden that the proper place to address his issues was in a court of law, and it was not necessary to go through the Claims Committee process before going to court. With this, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5982 be denied. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearings on claims filed by inmates at Larned Correctional Mental Health Facility (LCMHF), Claims Nos. 5984 and 6000.

Johnathan William Bafford, LCMHF, discussed his Claim No. 5984 against KDOC in the amount of $20,000.00 for food tampering and violation of the right to religious freedom. Mr. Bafford stated that the facility food service staff allowed inmates to tamper with his food for five days in March 2007. He explained that, after he requested Kosher meals, he was intentionally given over-cooked meals or meals that were still frozen. In addition, one food tray had a message on it instructing him to "quit bitching about the food." He acknowledged that facility staff took steps to correct the situation.

Shelly Starr, KDOC, informed the Committee that full-time staff addressed the issues as

quickly as possible and resolved the matter in Mr. Bafford's favor. Noting that Mr. Bafford suffered no actual damages as a result of any action or inaction on the part of the facility, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5984 be denied. (See section captioned "Committee Action and Recommendation".)

Dennis Eugene Shaw III, LCMHF, filed Claim No. 6000 against Hutchinson Correctional Facility in the amount of $500,000.00 for cruel and unusual punishment. LCMHF staff informed the Committee that Mr. Shaw said that he wished to withdraw his claim. Ms. Lash requested that Mr. Shaw be instructed to submit a written withdrawal.

Following discussion, the Joint Committee recommended that Claim No. 6000 be denied without prejudice. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearings on claims filed by inmates at Lansing Correctional Facility (LCF), Claims Nos. 5981, 5986, 5987, 5988, 5991, 5992, 5994, 5998, and 5999.

Luis Portillo, LCF, filed Claim No. 5986 against LCF in the amount of $1,500.00 for property loss. Ms. Lash informed the Committee that Mr. Portillo was currently in the custody of immigration authorities and could not be reached. She noted that he stated in his claim that he was taken to the segregation unit and was not present when the property in his cell was packed out by officers. When his property was returned to him, he discovered that 14 legal books and 6 personal pictures were missing. The written report on the claim submitted by Shelly Starr, KDOC, indicated that Mr. Portillo did not file a facility property loss claim, did not provide documentation showing that he owned and possessed the books, and did not provide copies of his property inventory. Due to his failure to provide enough information to verify his claim, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5986 be denied without prejudice. (See section captioned "Committee Action and Recommendation".).

Robert Ransom, LCF, filed Claim No. 5987 against LCF in the amount of $750.00 for accidental injury to his leg while he was on a mowing detail in August 2007. LCF staff informed the Committee that Mr. Ransom chose to cancel his participation in the telephone hearing on his claim and, instead, go to his job. In her written response to the claim, Shelly Starr, KDOC, indicated that Mr. Ransom received appropriate medical care, and his leg healed normally with no permanent damage. Noting that he had not been seen at the clinic for issues related to the injury since one week after the accident occurred, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5987 be denied without prejudice. (See section captioned "Committee Action and Recommendation".)

Ezekiel Patrick Rhoten, LCF, discussed his Claim No. 5998 against LCF in the amount of $925.20 for violation of the 14th Amendment and lost wages. Mr. Rhoten explained that he was given a Disciplinary Report for the theft of eyeglasses, found guilty, and charged $250.00 restitution. The eyeglasses belonged to him, and he needed them at the hearing to show that another pair of eyeglasses in question was identical to his. However, a property room officer failed to secure his eyeglasses in the chain of custody. Mr. Rhoten further explained that he had lost his eyeglasses and described them to officers. A pair of eyeglasses found about one month later fit the description, and an officer allowed him to take them. Another inmate described the same eyeglasses about one hour later, and Mr. Rhoten was asked to return the eyeglasses. He was charged 29 days later with taking the glasses under false pretense. Mr. Rhoten noted that his eyeglasses were in the possession of correctional officers at all times and stored in the property room. He maintained that the failure of officers to produce the eyeglasses as evidence violated the equal protection clause and his right to due process and fair hearing. In addition, he complained that, as a result being wrongly convicted on a Disciplinary Report for theft, he lost a job for which had just been hired.

Shelly Starr, KDOC, recommended that the claim be denied on the grounds that there was no basis to award Mr. Rhoten compensation for his perceived injustice. She noted that inmates have no right to specific placement, jobs, or programs. Additionally, she noted that Mr. Rhoten had an appeal right, but he evidentially chose not to appeal the conviction to Court, which was the proper channel.

Following discussion, the Joint Committee recommended that Claim No. 5998 be denied. (See section captioned "Committee Action and Recommendation".)

Alan W. Kingsley, LCF, summarized his Claim No. 5988 against KDOC in the amount of $1,712.12 for failure to deduct restitution payments (court costs and fees) from his paycheck. He claimed that KDOC paid out funds from his inmate account to the Crime Victims Compensation Fund instead of making payments to the Wichita District Court on the $2,827.00 he owed for court costs and fees in regard to Case No. 91-CR-646. He explained that he began working for a private industry (CSE Emblems) on August 24, 2004, and at that time, he entered into a program agreement with KDOC wherein 5 percent of his paycheck would be applied to the court costs and fees he owed. In September 2005, he received a telephone call at CSE from the clerk of the court. At that time, the clerk informed him that no payments had been received, and the court costs and fees for his case had just been turned over to a collection agency.

Shelly Starr, KDOC, recommended that the claim be denied. She explained that payments were made to the Crime Victims Compensation Fund because KDOC was not aware that Mr. Kingsley owed the court until he sent KDOC the information in 2005. She then questioned why Mr. Kingsley used the term "restitution" rather than court costs and fees. At this point, Senator Journey confirmed with Mr. Kingsley that the court costs included restitution owed to the Sedgwick County Sheriff's Office for extradition costs.

It was the consensus of the Committee that more information was needed before the Committee could make a recommendation on the claim. Senator Journey requested that KDOC

provide a detailed account of disbursements made from Mr. Kingsley's inmate account.

Following discussion, the Joint Committee recommended that Claim No. 5988 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation".)

Noah Gleason, LCF, discussed his Claim No. 5994 against LCF in the amount of $96.80 for the loss of his television. On August 27, 2007, his television was taken from his room while he was away, but officers did not attempt to find his television when he reported that it was missing. Mr. Gleason noted that the door on his pod did not self close every time it was opened, but officers made no effort to have the malfunction immediately repaired. He explained that he could not secure his television in his cabinet because it was too large. He noted that KDOC replaced a stereo which was taken from the room next to his room under the same circumstances; therefore, he felt that his television should be replaced. In his opinion, it was a reasonable to expect that the locks on the doors in his pod worked and the property in his room would be safe. He argued that his claim should be allowed because it was not his responsibility to insure that pod doors were secured at all times.

Shelly Starr, KDOC, explained that the difference between Mr. Gleason's claim and the claim of the inmate who lost his stereo was that an officer admitted that he left the door open when he should have closed it. In Mr. Gleason's case, the door self-closed intermittently. In her opinion, the stereo should not have been replaced because inmates own property at their own risk. She commented, "The doors and locks are there to secure the inmates – not necessarily their property." She went on to say that the fact that the loss occurred on August 27 and the door was not repaired until September 24 indicated that the problems with the door were not critical enough to require immediate attention. Having found that Mr. Gleason's loss was not directly due to an intentional or negligent act or omission of a correctional employee, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5994 be denied. (See section captioned "Committee Action and Recommendation".)

Justin Wilhite, LCF, explained his Claim No. 5992 against LCF in the amount of $150.00 for the loss of 30-35 personal drawings. A shakedown of his cell was conducted on June 28, 2007, and his drawings were confiscated as dangerous contraband (tattoo paraphernalia). He was given a Disciplinary Report (DR) for possession of contraband and was found guilty. He contested the DR conviction, contending that his art work was not on transfer paper which could be used as tattoo patterns but rather on typing paper which could be purchased at the canteen. The drawings were lost or misplaced by staff while he was in the appeal process. He claimed that he could have sent his drawings out to his family who, in turn, could have sold them for $5.00 each.

Shelly Starr, KDOC, informed the Committee that Mr. Wilhite had received two previous convictions for possession of tattoo paraphernalia. She went on to say that some of the drawings confiscated in June 2007 were on the type of tracing paper typically used for tattoo drawings. She noted that Mr. Wilhite requested and received a hearing on the matter, and was found guilty. When

he appealed the matter to the Secretary of Corrections, the Secretary upheld the DR. Pursuant to K.A.R. 44-12-902, contraband is forfeited by an inmate. Having found that the facility acted appropriately in the matter, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5992 be denied. (See section captioned "Committee Action and Recommendation".)

Gerald S. Hamilton, LCF, discussed his Claim No. 5981 against Lansing Correctional Facility in the amount of $71.98 for property loss. Several food and hygiene products were confiscated when a shakedown of his cell was conducted on May 31, 2007. He was written a Disciplinary Report for dealing and trading because the officer felt that he had more items than allowed. At the hearing, he was found not guilty of dealing and trading because he did not have more items than allowed. However, none of the items were returned to him.

Shelly Starr, KDOC, explained that inmates are allowed up to $75.00 worth of consumable canteen items, and Mr. Hamilton was found not guilty of dealing and trading because, according to the hearing officer, he did not have more than $75.00 worth of canteen items. She explained further that, although the hearing officer's notes were not clear, it was understood that Mr. Hamilton would receive the canteen items that could be verified as purchased within the previous two weeks, and the remainder would be destroyed. All items that could not be verified by receipt were destroyed as contraband. She noted that Mr. Hamilton's claim was for $71.98, but he provided no receipts. She reported that his banking records reflected that he spent a total of $28.65 on canteen items in the three-month period before the shakedown on May 31, 2007. Therefore, it appeared that he did possess more items than he had purchased. With this, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5981 be allowed in the amount of $40.00. (See section captioned "Committee Action and Recommendation".)

Richard Charles Cooper, LCF, discussed his Claim No. 5991 against Ellsworth Correctional Facility in the amount of $315.00 for the loss of his television, stereo, and headphones. On October 7, 1996, he was dropped to inmate Level I. A member of his Unit Team believed that he should not have received a write up, and converted the Level I to Level III on July 15, 1996. However, the head of the Unit Team disagreed and returned him to Level I on July 16, 1996. While at El Dorado Correctional Facility, he received a write up for work performance on December 22, 2003, and he was dropped to Level I once again. At that time, his electronics were put in storage. Upon his transfer to Ellsworth Correctional Facility in January 2004, he was told that, because he was at Level I for the second time, he must send his electronic property home or have it destroyed. He did not have enough money in his inmate account for postage; therefore, his electronic property was destroyed. When he was transferred to LCF, an officer told him that his property should not have been destroyed because his two drops to Level I were more than five years apart.

Shelly Starr, KDOC, said that Mr. Cooper's 1996 drop to Level I had nothing to do with the requirement that he send out or destroy his property. He dropped to Level I in December 2003, and he did not advance to Level II until March 2005. Pursuant to IMPP 11-101, (E) (1b), items must be

sent out of the facility if the inmate is returned to Level I and fails to advance to Level II at the earliest possible review or opportunity. Because Mr. Cooper received a Disciplinary Report on January 25, 2004, it was not possible for him to advance to Level II at the earliest possible opportunity. Thus, KDOC policy required him to send out his electronics; however, he did not have enough money in his inmate account for the postage, and the property was destroyed. In light of her investigation, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5991 be denied. (See section captioned "Committee Action and Recommendation".)

Michael Neff, LCF, summarized his Claim No. 5999 against LCF in the amount of $14.00 for the loss of his sweat pants. When he was taken to the segregation unit, his sweat pants were hanging on a hook in his cell. He was not given an opportunity to secure his property before officers took him to segregation. The sweat pants were missing when officers brought his property to him in segregation.

Shelly Starr, KDOC, noted that officers inventoried the property in Mr. Neff's cell, and a pair of sweat shorts was not shown on the inventory sheet. Therefore, it was impossible to determine that the sweat pants were in Mr. Neff's possession at the time the officers packed out his property. Having found that there was insufficient evidence to show that the facility was negligent, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5999 be denied. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearing on Claim No. 5875 filed by Gary D. Marks against Hutchinson Correctional Facility in the amount of $88.69 for the loss of several canteen items he purchased. Mr. Marks was incarcerated at Wyandotte County Detention Center at the time if this hearing. Mr. Marks explained that, while incarcerated at Hutchinson Correctional Facility, he was sent out to court in May 2003, and his property remained at Hutchinson. While he was out to court, his sentence expired in September 2005. He returned to the custody of KDOC in December 2005 on a new sentence, and his property was eventually returned to him. On June 13, 2006, he was moved to segregation, and he was told that his property would be held in storage. Upon his release from segregation, he was told that he had all of his property with him when he went to segregation. Additionally, he was told that canteen records did not reflect that he made any purchases. Mr. Marks contended that staff lost the items.

Shelly Starr, KDOC, called attention to copies of Mr. Marks' inventory sheet from May 2003 when he was sent out to court. She noted that it appeared that he received some of his property when he returned to the custody of KDOC in 2005. She pointed out that, except for the mirror and chess pieces, the items he listed as lost in his claim were not on this inventory. She went on to say that Mr. Marks admitted that he made no purchases from the time he returned in December 2005 until his property was allegedly lost. Additionally, he did not specify how he acquired the missing boots, which were not listed on his inventory from 2003, and he also did not provide a property

inventory form from when he was taken to segregation. Because Mr. Marks failed to show that KDOC was negligent in regard to his property, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5875 be denied. (See section captioned "Committee Action and Recommendation".)

Attention was turned to claims on the agenda under the heading, "Claims with Lawsuits Resolved," Claims Nos. 5662 and 5658.

Claim No. 5652 was filed by Gregory L. McCall, a former inmate at Hutchinson Correctional Facility, against KDOC in the amount of $500,000.00 for the loss of his legal papers, expenses, and mental anguish. At the time of this hearing, Mr. McCall was incarcerated at USP Marion Satellite Camp, a federal prison in Marion, Illinois. Representative Huebert opened the telephone hearing on the claim. Mr. McCall explained that he came into the custody of KDOC on August 24, 2004. At that time, he had accumulated seven legal files which he needed to pursue seven active civil and criminal legal cases. When he arrived at the El Dorado Reception and Diagnostic Unit (RDU), an officer told him that he would not be allowed to keep the legal files. Mr. McCall explained to the that he needed the files in order to pursue active legal cases; however, the officer insisted that the files would be destroyed if he did not send them out within 45 days. He subsequently telephoned his parents and asked that they send him $50.00 so that he could send the files home. Soon after, he was transferred to Hutchinson Correctional Facility, and he was not made aware that the money from his parents was received at El Dorado. A freeze was put on his inmate account at Hutchinson from August until November 3; therefore, he had no access to his funds. He was told that his files had been mailed from El Dorado; however, they had been transferred to Hutchinson. He later began receiving notices that the legal cases had been dismissed. Mr. Marks said that he had spent over $10,000.00 for legal research materials and other expenses. He noted that, according to IMPP 12-120, he had the choice of either putting the files in a pack-out box and/or a legal box. He claimed his legal files could have been stored in three pack-out boxes. In summary he said, "Not only was I denied access to the courts by not being allowed to have my legal files, I was wasn't able to have personal hygiene items, and none was provided because they showed a balance on my account. I was kept 180 days past my out date because I wasn't able to prove the fact that my sentences had been imposed illegally."

Shelly Starr, KDOC, explained IMPP 12-120 allows inmates to keep a reasonable amount of legal materials, but they are not allowed to keep an unlimited amount. She noted that $27.63 was required to send out Mr. McCall's excess legal materials, and he had until October 8, 2004, to do so. Approval was given for this transaction on September 20, 2004, but at that time, Mr. McCall had only 22.69 in his inmate account. She went on to explain that the Department often grants inmates a reasonable credit amount for their legal postage and copying, which is reimbursed from credits to the inmate's account. When Mr. McCall's mother sent him $50.00, he had already used up a good portion of it on credit for other legal postage and copies. Therefore, he simply did not have enough money on his books to pay the postage for his excess legal files. Based upon this information, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5652 be denied. (See section captioned "Committee Action and Recommendation".)

Claim No. 5658 was filed on behalf of the Anthony Baker Estate by Keith Renner, Attorney at Law, against KDOC in the amount of $3,185,947.00 for the loss of Mr. Baker's life while imprisoned, lost income, and funeral expenses. The written response to the claim prepared by Shelly Starr, KDOC, explained that a lawsuit in this matter listed the estate, the parents, and the heirs of Mr. Baker as plaintiffs. She informed the Committee that all claims with regard to the litigation were settled, barring Claim No. 5658 or any other claim. A copy of the Settlement Agreement and General Release was attached to her written response. Because the matter had been finally settled and adjudicated in full, she recommended that the claim be denied. Additionally, Mr. Renner indicated in a letter dated December 10, 2007, that the estate of Anthony Baker and the Baker family members wished to withdraw their claim due to the matter having been settled.

Following discussion, the Joint Committee recommended that Claim No. 5658 be denied. (See section captioned "Committee Action and Recommendation".)

The meeting was adjourned at 3:30 p.m.

December 12, 2007

Representative Huebert called the meeting to order at 9:15 a.m. at which time he opened the hearing on Claim No. 5996 by Lexie Covington against Lansing Correctional Facility in the amount of $53.96 for property damage. Mr. Covington was not present. Ms. Lash explained that Mr. Covington, a former inmate at Lansing Correctional Facility, stated that a fan valued at $23.00 was cracked and a pair of headphones valued at $20.73 was damaged when officers conducted a shakedown of his cell. In addition, his locker was turned upside down, and his legal box was torn apart.

Shelly Starr, KDOC, reported that the shakedown officers denied damaging Mr. Covington's property. She recommended that the claim be denied because Mr. Covington failed to prove that facility staff caused the damage to his property.

Following discussion, the Joint Committee recommended that Claim No. 5996 be denied. (See section captioned "Committee Action and Recommendation".)

Mr. Covington arrived at 9:45 a.m. and requested that he be allowed to explain his claim. Representative Grant moved to reopen the hearing on Claim No. 5996, seconded by Representative Olson. The motion carried.

Mr. Covington claimed that, on several occasions, LCF staff intentionally damaged property he had purchased. With regard to his claim, he explained that CO Walters, CO Kelly, and CO

Daicy threw all of his property around his cell during a shakedown and turned his locker upside down. In the process, his Koss headphones were snapped in half. The headphones were like new because he never wore them but used them only to hear sound from a distance. His fan was also broken. The officers then ordered him to pack out his property because he was getting rolled. He responded, "Why did you break my fan and my headphones?" As a result of this comment, both he and his cell mate received a Disciplinary Report (DR). Mr. Covington commented, "This is serious. Employees really believe that they are above everybody. They just come in and break our property. My fan and my headphones came to a total of $44.43, but I ended up purchasing a new fan for $23.70 because the fan was no longer operable. Then I went to the hole, and my lamp was broken. I bought the lamp in 2004." He went on to say that the property claims officer who investigated his facility claim and grievance stated in his report, "I have no reason to believe that this inmate is being untruthful about his loss." Mr. Covington commented, "If he doesn't think I'm being untruthful, why does he not approve my claim?" He clarified that the amount of his claim included the cost of the fan ($23.70), the cost of the headphones ($20.73), and the cost of the lamp ($9.53).

Representative Colloton moved to reconsider Claim No. 5996, seconded by Senator Journey. The motion carried.

Following discussion, the Joint Committee recommended that Claim No. 5996 be allowed in the amount of $41.00 to be paid from the State General Fund. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearing on Claim No. 5995 by Nancy D. George-Green against the Kansas Department of Social and Rehabilitation Services (SRS) in the amount of $6,844.57 for misapplied child support payments. Ms. George-Green explained that, between 1992 and 1998, she did not receive child support payments from Kevin Tatum, the father of her son, even though she contacted several case workers periodically and provided them with information about Mr. Tatum's location and jobs. In March 2006, a child support payment in the amount of $1,660.43 was deposited in her bank account through the Kansas Pay Center. This was the first child support payment she received, and she immediately contacted the SRS case worker handling her case to inquire when further payments would be coming. She was told that SRS records showed that $1,660.43 was the total amount due. She then requested a printout of payments from the Clerk of the Wyandotte County District Court, and the printout listed various payments made on her account from 1993 to 1998 totaling $5,223.78. When she told the Clerk that she did not receive any of the payments, the Clerk informed her that the court forwarded the payments to SRS but had no record as to whom SRS made payments. In Ms. George-Green's opinion, the Maximus disbursement center either misapplied the payments or sent payments to one or all of Mr. Tatum's other children. When she contacted the SRS office in Topeka, she found that payments were sent to addresses where she did not live. She explained that she lived at the same address from 1993 through 1997, and she informed the court when she moved in 1997. She noted that she did not pursue the matter in court because she could not afford an attorney. She went on to say that her son is disabled and requires special care, and she struggled for years to provide his needs without any support from his father.

Michael Addington, an attorney with SRS Child Support Enforcement, recommended that the claim be denied. He reported that the SRS investigation of the claim revealed that all payments that the agency received were processed properly, and all child support payments for which Ms. George-Green was entitled were forwarded to her and were ultimately cleared. For the Committee's information, he presented the following time line on Ms. George-Green's case:

- 1991 – SRS opened a case to pursue a child support order.
- 1993 – SRS obtained a child support against Mr. Tatum, who used two other aliases.
- 1993-1999 – Payments were made to the Clerk of the Court, who then forwarded them to SRS for processing.
- May 1993 through June 1997 – SRS records reflect that 40 payments totaling approximately $4,600.00 were collected on the case, and an additional eight payments totaling approximately $400.00 were made for arrearages. All of the payments shown on the Clerk of the District Court payment record were matched against SRS records. SRS forwarded all of the payments to Ms. George-Green.

Mr. Addington went on to explain that, throughout the relevant time period , SRS logged all of Ms. George-Green's calls on a computer. Many of the entries showed that Ms. George-Green called to inquire why a child support payment was late with regard to all three of her cases. He further explained that, during the relevant period, SRS made payments on all three of her cases, all of which were tied to the same address. He noted that SRS received a $10,000.00 settlement from Mr. Tatum when he sold his house in March 2006. The money was split between the three cases for owed support. Approximately $3,000.00 was applied specifically to the case relating to the claim. The amount still owed Ms. George-Green was $1,729.60. Ms. George-Green received a payment of $1,660.40 because SRS retained a 4 percent cost recovery fee which SRS retains for all non-assisted child support collection. He explained that SRS no longer paid child support in the case relating to the claim after June 1997 because Ms. George-Green's son's living situation changed.

Following discussion, the Joint Committee recommended that Claim No. 5995 be denied without prejudice. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the hearing on Claim No. 5993 by Roland D. French, Jr., against the State of Kansas in the amount of $100,000.00 for an illegal sentence. Mr. French explained that he pled guilty to aggravated escape from custody in 1995. His sentence was three to ten years and 17 months post release. The sentence for aggravated escape from custody was to run concurrently with his original sentence. Shortly before he was scheduled to be released, the warden informed him that a mistake had been made, and he must satisfy both sentences. He filed several facility grievances in which he contended that this interpretation of his sentence was incorrect. He finally consulted with an attorney who filed a Motion to Correct Illegal Sentence in the Sedgwick County District Court in 2002. Mr. French said he should have been released in three years, but he was held for nine years due to the incorrect interpretation of his sentence by a KDOC. In response to questions from a committee member regarding more detailed documentation, Mr. French agreed that he could respond to the questions better if he had an attorney to represent him.

Trevin Wray, Assistant Attorney General, explained that, when Mr. French was sentenced in 1995 for aggravated escape from custody (a level 8, non-person felony), the District Court determined his criminal history score to be a "C" on the non-drug scale and accordingly sentenced him to 17 months imprisonment. He noted that it appeared from court records that Mr. French was granted concurrent time on this matter with other outstanding criminal sentences, which is contrary to the special rules on sentencing. Additionally, he noted that it was unclear whether the original sentence actually implemented concurrent or consecutive sentences. He went on to explain that Mr. French was released on parole from his original sentence, but was placed in custody for violating parole in April 2002. At that time, he was serving sentences for manufacturing narcotics, indecent liberties with a child, and the escape charge. In August 2002, Mr. French petitioned the court to correct an illegal sentence only on the escape charge, indicating that his criminal history score should have been a "G" on the non-drug grid and that his sentence was required to run consecutively as an operation of law. The court sustained his motion, re-sentencing him to a 10 month sentence to run consecutive to his other outstanding sentences. This order caused Mr. French's sentences to collectively expire, but it is unclear how long, if at all, he was additionally incarcerated. In conclusion, Mr. Wray stated, "Mr. French petitions the committee requesting $100,000.00 in compensation for the allegedly illegally entered original sentence, writing on the back of what appears to be an attorney-client memorandum, 'I was to my knowledge 6 years pass (sic) my actual release date.' This calculation is clearly erroneous when one notes that the difference between Mr. French's original and corrected sentence is seven months." Having found no evidence to support Mr. French's claim that he was incarcerated six years longer than permitted by law, Mr. Wray recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5993 be carried over to the first scheduled meeting in 2008. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the hearing on Claim No. 6001 by Benchmark Industries against the Kansas Department of Revenue in the amount of $121,386.00 for a sales tax refund, plus interest. Mark Burghart, Attorney at Law, spoke on behalf of Benchmark Industries. Mr. Burghart explained that Benchmark, a furniture store which was located in Olathe, paid Kansas retailer's sales tax on sales which were delivered into Missouri. However, the sales were properly subject to Missouri compensating use tax rather than Kansas retailer's sales tax. This error was not discovered until an auditor from the Missouri Department of Revenue came on site and audited Benchmark on August 19, 2005. The Kansas Department of Revenue then acknowledged that the sales were actually subject to Missouri compensating use tax, and the Missouri Department of Revenue assessed Benchmark for the same sales transactions. The Kansas Department of Revenue refunded the sales tax paid for all periods except two periods for which refunds were barred by the applicable three-year statute of limitations. In summary, Mr. Burghart said that Benchmark was simply requesting that the Joint Committee exercise its equitable authority and remedy the problem by granting a refund of the sales tax (plus interest) inadvertently paid to Kansas for the months of September and October 2002.

James Bartle, General Counsel for the Kansas Department of Revenue, confirmed that the

Department correctly denied Benchmark's refund claim for excess sales taxes paid in September and October 2002 because the claim was not filed within three years after the taxes for those periods were paid as required by K.S.A. (1006 Supp.) 79-3609(b). He noted that, because the refund was barred by the statute of limitations, the Department had made no determination as to the exact amount of the overpayments; therefore, he could neither confirm nor deny Benchmark's contention that the amount overpaid was $121,386.00. In conclusion, he requested that, if the Committee chose to allow the claim, the claim be paid from the sales tax refund fund, not from the Department's general budget.

Following discussion, the Joint Committee suspended Committee Rule 6 and recommended that Claim No. 6001 be allowed in the amount of $70,000.00 to be paid from the sales tax refund fund. (See section captioned "Committee Action and Recommendation".)

The Committee's attention was turned to claims on the agenda under the heading, "Claims Carried Over," Claims Nos. 5841, 5879, 5880, and 5946.

Claim No. 5841 was filed by Kim White against the Kansas Department of Social and Rehabilitation Services (SRS) in the amount of $51,000.00 for mental and emotional anguish related to the loss of the custody of his two sons. The claim was last carried over at the September meeting.

Mr. White gave an update on the progress he had made in regaining the custody of one of his sons. He informed the Committee that he had obtained copies of court reports which indicated that SRS, Youthville, and a guardian ad litem allowed both of his sons to be abused. He noted that the reports showed that his sons were not taken to required weekly therapy meetings for several months, and, when both were returned to the custody of their mother, she did not follow court ordered case and safety plans. In addition, the guardian ad litem did not make sure that the children were receiving proper care and that their mother attended weekly parenting classes. He went on to say that, when he signed his sons away on January 3, 2005, he had been given the option either to sign them away or SRS would take them away. He explained that he had since discovered that a permanency plan dated November 16, 2004, through December 15, 2005, stated, "Parent responds appropriately to child's verbal and non-verbal signals." He commented, "If this would have been presented in court, this would have been a third option for me – to be able to go and do what I was supposed to do for a permanency plan. This was never brought up in court for me to do. This proves basically that they were going to allow me to be a father to my children, but it was never presented in court." In conclusion, Mr. White said, "I want $51,000.00 so that I can get a lawyer and take all this to court and have actual people sit down and read all of this to see that my children were emotionally, mentally, and physically abused by SRS, Youthville, and the guardian ad litem." At this point, Senator Journey informed Mr. White that, if the Committee decided to grant his claim and he accepted the payment, he would be required to sign a release of liability which would bar him from suing the state with regard to the same circumstances. However, he could pursue the adoption of his son in a lower court. Committee members also explained, if the Committee recommended payment on the claim, the claim would be put in a bill to be considered by the 2008 Legislature. In that case, he could appear before the Senate Ways and Means Committee or the House Appropriations Committee to answer questions at the hearing on the bill.

Don Jordan, Secretary, Kansas Department of SRS, informed the Committee that he had nothing to add to the August 29, 2007, report presented by Roberta Sue McKenna, the Assistant Director of SRS Children and Family Services. He said that he was not certain that everyone involved in the case, including the guardian ad litem and the therapist, had been direct and straight forward in providing exact factual information to Mr. White about why certain decisions are being made. He commented, " Part of the reason for that, and I think with the guardian ad litem, is, because his parental rights are terminated, some confidential information is no longer accessible to him. In reviewing this, our primary concern is with the child. I haven't seen anything that tells me that anything is being done against the interest of the child."

Following discussion, the Joint Committee recommended that Claim No. 5841 be carried over to the first scheduled meeting in 2008. (See section captioned "Committee Action and Recommendation".)

Dianne Meyers filed Claim No. 5879 against KDOC in the amount of $500,000.00 for the death of her daughter and negligence. She also filed Claim No. 5880 against the Kansas Department of SRS and the Kansas Judicial Branch in the amount of $500,000.00 for failure to protect her daughter and her two children. At the September meeting, the hearings on the claims were carried over to a future meeting as requested by Ms. Meyers and her attorney, Jim Adler.

Mr. Adler discussed both claims. At the outset, he distributed a packet of information concerning the death of Dianne Meyers' daughter, Lindsay Meyers. He explained that, on October 8, 2004, Lindsay was brutally murdered by her boyfriend, Kurt Stecklein, who was the father of their then six-month old child. Mr. Stecklein, who had a long criminal history relating to alcohol and drug problems, pled guilty to second degree murder and two counts of reckless aggravated battery. He was sentenced to 14 years and 4 months imprisonment. Mr. Adler informed the Committee that Lindsay was a classic example of battered woman syndrome, and she also had an alcohol problem which made it difficult for her to make a wise decision. He contended that the Kansas Department of SRS, KDOC, and the Kansas court system failed to protect her.

Mr. Adler said that his research showed that Community Corrections, which he considered to be an arm of KDOC, failed to follow its own required procedures pertaining to regular urine analysis (UA) testing at home or at work. He commented that the failure to do the required UAs was particularly egregious due to Stecklein's sordid past and his habitual narcotics and alcohol offenses and his many parole violations. In addition, Mr. Adler noted that a Community Corrections director failed to put Stecklein on supervised bond, and the director told Dianne Meyers that he did not do so because he did not want anything to do with Stecklein because he hated him. Mr. Adler explained that Community Corrections recommended that Stecklein's parole be pulled because he repeatedly violated a No Contact Order, but the court failed to charge Stecklein and put him in jail. Instead, the court allowed him to say in the home. Mr. Adler noted that Stecklein violated the No Contact Order 17 days prior to the murder. He maintained that KDOC was the ultimate responsible party because KDOC is involved with the funding received by Community Corrections, and Community Corrections may collaborate with KDOC in carrying out its supervisory functions.

Mr. Adler went on to say that the Kansas Department of SRS was aware of the domestic violence in the home but did not remove the children or attempt to get the victim and her children to a safe place. He noted that, if SRS would have removed the children from the home, Lindsay would have followed them. He further noted that SRS also could have called Stecklein's parole officer and reported the domestic violence, but did not. He explained that Lindsay left Stecklein's home three times, but she returned each time after he threatened her. Mr. Adler maintained that SRS should have recognized that Lindsay was in dire need of assistance for her own alcohol related problems and that she was suffering from battered woman syndrome. In his opinion, her death could have been prevented if SRS had provided the assistance she needed to remove herself from a violent situation.

Following committee questions concerning battered woman syndrome, Dianne Meyers clarified that, at one time, she offered Lindsay the opportunity to move into her home which was 14 miles away from Hays where Lindsay lived. Lindsay declined the offer because she did not want to be far away from her friends in Hays. She explained that Lindsay left Stecklein's home and moved into an apartment for a short time. She noted that, even though the No Contact Order was against Stecklein, police officers who came to their house told her that she was the one that had to leave because she was not a resident. Ms. Meyers said she had a signed statement from the person who rented the house to Stecklein which indicated that both Lindsay and Stecklein were considered to be residents. She explained that Stecklein was under house arrest and was allowed to stay in the same house with Lindsay even though a No Contact Order was in effect. She noted that SRS knew about the domestic violence and the drug and alcohol abuse, and she strongly believed that SRS should have removed the children from the home.

Tom Drees, Ellis County Attorney, participated in the hearing via telephone conference call. He stated that it was his understanding that Stecklein had finished his parole supervision in April 2003; therefore, he was not on parole when he murdered Lindsay. Stecklein was also not on probation at the time. He had been arrested in Rooks County in February 2004 and again in April 2004 in Ellis County. Both times, he was charged with felony possession of marijuana, which is a Level 4 drug felony (SB 123). He had not yet been convicted on either of the cases. Community Corrections had agreed to do bond supervision as a courtesy for the court and did not receive funding for the bond supervision. Stecklein had been bound over for a preliminary hearing in August 2004 and was scheduled for arraignment on October 20, 2004. Unfortunately, he killed Lindsay Meyers on October 8. He was prosecuted for killing Lindsay, convicted, and received 170 months of imprisonment. He also relinquished his rights to Steeley Stecklein, who was born on April 9, 2004, to Stecklein and Lindsay Meyers.

Mr. Drees commented, "In looking at his plea background, he has a conviction in 1997 for disorderly conduct, resisting arrest, minor consuming alcohol, and DUI. In 1998, convicted of drug paraphernalia, twice for driving while suspended, and possession of marijuana with intent to distribute, a felony for which he was revoked and sent to prison in 1999. He completed his sentence and was paroled in 2003. He did receive convictions for traffic accidents for failure to report in 2000, 2001, and 2003. He got DUIs in those years, habitual violator and other possession of alcohol, and a similar possession of marijuana in 2003. He was being prosecuted for the felony possession

of marijuana from the arrest in Rooks County for which I was Special Prosecutor in Ellis County in the spring of 2004. As far as the information we have concerning domestic violence, the first domestic violence report was in September of 2003 when police responded to a 911 hang-up call at the residence. Lindsay denied that he had hurt her. Police believed that he had slapped her. They arrested Kurt for that violation. Lindsay met with an assistant in my office, Brenda Basgall. She recanted her statement that she had given to law enforcement that he had slapped her. Kurt was placed on a one-year informal diversion, which required him to go to High Plains Mental Health Center for domestic violence and/or anger management counseling. He was arrested on the second violation on November 8, 2003, which was about five weeks after the first incident. On November 8, 2003, they observed Lindsay had a bloody nose and bruising on her left and right eyes. She claimed that she had bit her lip, and that Kurt had accidentally stuck her with his elbow while restraining her. She came to the County Attorney's office and claimed that the blow was accidental. The third arrest for a domestic violence situation occurred on September 21, 2004, which was approximately two and one-half weeks before her death. When the police arrived, Lindsay claimed that there had been no physical contact between the two, although a third person had told law enforcement that he observed Stecklein throw her down the stairs, put her in a headlock, and lift her by her hair. So the police arrested him for domestic battery. He was then placed on house arrest as a bond supervision through Community Corrections. They did place him on electronic monitoring. Keep in mind that the apartment that she was living in had been rented in August of that year. Not quite two months prior to that, Ronald Zimmerman, step-father of Stecklein, had rented the apartment. Lindsay Meyers had taken a separate apartment on 8th Street and was supposed to be living in that separate apartment. But he was on house arrest in the apartment rented by his step-father and in his step-father's name. Lindsay Meyers came to court on October 5, 2004, and tried to have the No Contact Order lifted. Judge Flax denied lifting the No Contact Order, and Lindsay came to my office on October 6 along with her attorney, Olavee Raub. Again, she advised there had been no physical violence between them on September 21st. She also advised me that she was going to claim possession of the marijuana that had resulted in his being charged with felony possession of marijuana in Ellis County. I confronted her information – that her drug of choice was not marijuana, and nobody would believe that, but, if she chose to, she certainly could testify that way. We were still going to pursue the charges against him. We were also still going to pursue the domestic violence charge against him. Unfortunately, she had been killed on October 8, 2004, a couple days later."

Mr. Drees stated, "In reviewing the medical records of Lindsay's contact with Hays Medical Center for the emergency room visits, there were a couple of suspicious times. One time, she had dry blood in her ear and bruising on her chin. She claimed a female friend of hers had hit her and denied being in any kind of abusive relationship. Another time she went to the hospital, she claimed law enforcement had pushed her over a recliner in her apartment. Lindsay Meyers may very well have suffered from battered woman syndrom, but, unfortunately, the bottom line here is she chose to stay with Kurt in violation of the order. She had a separate apartment that she did not stay at, and, when it's all said and done, Kurt Stecklein is the one responsible for murdering Lindsay. He's responsible for it. He's been prosecuted. He's in prison for that offense. Community Corrections was monitoring a bond supervision. He was not on probation. He was not on parole. The history and background did not contain convictions of violence primarily because Lindsay would recant.

We still pursued those as best we could with her recanting, including forcing them to go to treatment for the first two incidents, and we were pursuing and had charged on the second incident in September 2004 just before her death. The court system, frankly, did what it could do given the circumstances in this case. Ultimately, Lindsay chose not to follow the court orders that were in place to try to keep her away from Kurt Stecklein. Unfortunately, that resulted in her death at the hands of Kurt Stecklein."

Steve Phillips, Assistant Attorney General, distributed copies of three e-mails which Dianne Meyers sent to SRS staff. He noted that Ms. Meyers urged SRS not to get involved in the situation, not to remove the children. He went on to say that the Attorney General's Office had determined that every governmental agency did everything they possibly could do and went above and beyond the call of duty, but, ultimately, there was nothing the judges or court system could have done to prevent the death of Lindsay Meyers. Noting that the cause of Lindsay's death was Kurt Stecklein, he recommended that Claim No. 5880 be denied.

Shelly Starr, KDOC, explained that the Department provides grant funding and administers grant funding for Community Corrections; however, the Department does not supervise Community Corrections. She pointed out that Kurt Stecklein was not on parole or probation at the time the incidents described in the claim occurred. Because Kurt Stecklein was not in KDOC care, custody or control during the relevant time, Ms. Starr recommended that Claim No. 5879 be denied.

Don Jordan, SRS Secretary, stated, "Our responsibility and our involvement in the case was to attempt to protect the children. Obviously, the parents have that primary responsibility, and we were attempting to work with the mother to do that. I believe it's a tragic situation, and everybody feels bad about it. But I don't believe that we feel that we failed in our duty."

Following discussion, the Joint Committee recommended that Claim No. 5879 and Claim No. 5880 be denied. (See section captioned "Committee Action and Recommendation".)

Claim No. 5946 was filed by Mark A. Jordan and family against the Kansas Department of SRS in the amount of $28,000.00 for false and misleading information, removal of his children from his home, and related expenses. The claim was carried over at the November 14, 2007, meeting to allow time for the Committee to receive more information. The Committee considered additional information presented by Mr. Jordan regarding his daughter's pregnancy. In a letter dated December 6, Roberta Sue McKenna, Assistant Director of Children and Family Services, responded to a question from a committee member regarding action taken by SRS social workers. Ms. McKenna reported that a review of the record showed that staff received six reports of sexual abuse involving the Jordan's daughter. Law enforcement was immediately notified in five of the reports. The sixth report was received from law enforcement.

Following discussion, the Joint Committee recommended that Claim No. 5946 be allowed in the amount of $16,850.00 ($9,500.00 to be paid from SRS funds and $7,350.00 to be paid from the State General Fund). (See section captioned "Committee Action and Recommendation".)

Mike Corrigan, Revisor of Statutes Office, distributed copies of a proposed bill relating to the hearings on claims held by the Joint Committee on Special Claims Against the State. Mr. Corrigan noted that a claim recently filed by an inmate included some threatening language. The proposed bill would provide that, if the Joint Committee finds by a majority vote that a claim was filed with malice, the Committee shall give the claimant and the state agency involved at least 15 days notice by certified mail of the time and place of the hearing and shall inform the claimant and the state agency involved that the hearing shall be based on the written form and supporting materials attached thereto. He noted that "malice" is defined in Section 1, subsection (d), as follows: "the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances that the law will imply an evil intent."

Senator Journey moved that the Committee introduce the bill in the Senate, seconded by Representative Grant. The motion carried.

The meeting was adjourned at 12:40 p.m.

Prepared by Shirley Higgins
Edited by Cindy Lash

Approved by the Committee on:

February 11, 2008
(date)