

MEMORANDUM OF UNDERSTANDING

Whereas, the parties to this Memorandum of Understanding (“Agreement”) want county government to be as responsive, efficient, and effective to the maximum degree possible within the context of local democracy and to these ends, desire constructive working relationships within all county governments in Kansas; and

*Whereas, the parties uphold the Kansas Supreme Court decision (275 Kan 257) of **Board of Lincoln County Commissioners v. Wray Nielander and Jack Jackson**, in which the Court held that sheriffs, county clerks, county treasurers, and registers of deeds have the exclusive authority to appoint, promote, demote and dismiss deputies and assistants within their offices, while the board of county commissioners has the exclusive authority to establish uniform, countywide personnel policies for all departments within county government, including the various elected offices cited above; and*

Whereas, the parties further uphold that sheriffs, county clerks, county treasurers, and registers of deeds can adopt and enforce supplemental personnel policies applicable to the deputies and assistants in their offices, as long as such policies are not incompatible with the uniform, countywide policies of the County adopted by the board of county commissioners so long as such policies do not impinge the exclusive authority of the sheriff, county clerk, county treasurer or register of deeds to appoint, promote, demote and dismiss deputies and assistants within their office; and

Whereas, adoption of an annual budget for the county and funding to meet the statutory obligations of the county are, by statute, the exclusive prerogative and responsibility of the board of county commissioners; and once a budget of an elected officials office is approved including necessary expenses, that the elected official cannot be required to obtain advance approval for purchases within the limits of the budget regardless of the amount. If an expenditure falls outside of the budget i.e. over budget, then the elected official must request advance approval of the board of county commissioners regardless of the amount. The board must approve the expenditure if it is necessary to carry out the duties of the elected officials statutory duties; and

Whereas, the parties realize that conflict is a natural occurrence within human relationships and is neither good nor bad per se; rather, it only becomes dysfunctional when it is not recognized and appropriately resolved by the parties to the conflict; and

Whereas, the purpose of this Memorandum of Understanding as well as any conflict resolution processes created pursuant to this Memorandum of Understanding are for the purposes of good government and not for the purposes of embarrassing or undermining the authority of any single elected official or group or Association of elected officials;

Whereas, the parties to this agreement recognize their individual and collective responsibility to be catalysts for constructive conflict resolution among county elected officials to the end that the people of Kansas are well served by their county government; and

Whereas, the parties to this agreement recognize that the management of conflict within the various associations of county government is infinitely more responsible and all such conflict is best resolved at the lowest possible level. It is better for all parties to engage in conflict resolution prior to engaging in litigation to resolve differences or requesting legislation to settle differences among the parties. There may be extreme situations in which differences cannot be resolved within the processes described herein but they should be the exception and not the rule.

Now, therefore, be it resolved by the parties to this agreement that the parties to this Agreement are as follows: the Kansas County Clerks and Election Officials Association, the Kansas County Treasurers Association, the Kansas Register of Deeds Association, the Kansas Sheriffs Association, and the Kansas County Commissioners Association.

Be it further resolved that a Conflict Resolution Committee (“Committee, or CRC”) is established for the purpose of serving as an initial screening body for all complaints filed with the Committee, by any individual member of one of the parties to this Agreement. The Committee shall be comprised of five persons, with one member from each of the five parties to this Agreement. It is further agreed that the parties to this Agreement shall exercise the utmost discretion in appointing members to the Committee. The members of the Committee shall 1) exercise keen discernment and impartiality in reviewing the facts of individual situations; 2) reserve judgment until all relevant facts are known; and 3) act and communicate with sensitivity to both the complainant as well as to the elected official (respondent) against whom a complaint is lodged. Members shall serve for a period of one year or until the party(s) replaces such person with another appointee, and such appointment shall be at each party’s sole discretion.

Be it further resolved that the parties to this Agreement agree that the Committee will be provided ongoing training and professional development, with assistance from the Kansas County Officials Association and the Kansas Association of Counties. Such training will be provided on the topics of conflict resolution, mediation, organizational communication, alternative dispute resolution, peer review, and related topics to ensure that the Committee is command of timely information about resources and techniques available to interpret and resolve conflicts in the most expeditious and professional manner possible.

Be it further resolved that all complaints shall be submitted in writing by the complainant(s) and shall identify the 1) name, position title, and contact information of the complainant(s); 2) name, position title, and contact information of the respondent(s); 3) a statement of the issue(s) involved in the complaint, with specific reference to the perceived breach of ethical responsibility or legal compliance by the respondent; and 4) a statement by the complainant describing his or her desired outcome for the situation.

Such written statement shall be filed in duplicate with the Executive Director of the Kansas County Officials Association, 1200 SW 10th Street, Topeka, KS 66604; and the Executive Director of the Kansas Association of Counties, 300 SW 8th Street, 3rd floor, Topeka, KS 66603.

Be it further resolved that, within ten (10) calendar days of receiving the written complaint, the Executive Directors of the two associations shall notify the Committee of the complaint by providing a copy of the written complaint and all attachments to each member. At the same time, the Executive Directors shall notify the Committee of the date, time, and location of a meeting of the Committee to review the complaint. In addition, the Executive Directors shall, within ten (10) calendar days of receiving such written complaint, provide to both the Complainant and Respondent a copy of the written complaint, all attachments, and notification concerning the date, time, and location of the Committee meeting at which time the complaint will be discussed. The Respondent shall have ten (10) calendar days from the receipt of the complaint to provide a written response to the Complaint and copies of such written response shall be shared with the Complainant(s) and the Committee members.

Be it further resolved that, within twenty-one (21) calendar days of receiving the written response from the Respondent, the Executive Directors of the two associations shall convene the Committee in a meeting for the purpose of reviewing the complaint. The Executive Directors shall determine between themselves which one will provide staff support to the Committee in conjunction with the specific complaint filed.

Be it further resolved that the Committee shall meet to preliminarily discuss and evaluate any complaint and all pertinent attached documents pertaining to such complaint as may be submitted, the written response as may be offered by the Respondent, and any other information or data gathered from appropriate sources that directly relate to the complaint. Based on the facts and complexity of such complaint, the Committee shall determine the breadth of the complaint and whether the facts of the complaint are sufficient to warrant further action by the Committee. The Committee shall determine that the complaint has sufficient merit to warrant action if the Committee finds that a prima facie breach of ethical responsibility pursuant to best practices or code of ethics adopted by a given elected officials profession or legal compliance has occurred. If the Committee finds that a follow-up action or response is warranted, the Committee may take one of the following three actions: 1) attempt to resolve the complaint in direct manner by directly discussing the subject matter of the complaint in a meeting with the Respondent, i.e. the elected official(s) whose actions or behavior are suggested to be outside the scope of acceptable practice or behavior or are a violation of law; 2) refer the complaint to a Peer Review Team comprised of elected officials from the Association who hold the same office as the elected official whose practices or behaviors are being called into question; or 3) establish an Alternative Dispute Resolution (ADR) process to work with the parties to the conflict to find an acceptable solution.

Be it further resolved that, if the Committee preliminarily determines that there is prima facie evidence that the Complaint is valid and attempts to resolve the complaint by

directly contacting and discussing the nature of the complaint with the Respondent whose practices or behavior are being called into question, the Committee shall notify the complainant of the resolution or corrective action agreed to by the subject of the complaint.

Be it further resolved that each party to this Agreement shall establish a Peer Review Team, comprised of five to seven peer elected officials in Kansas who are in a position to objectively evaluate the facts of a situation addressed in a written Complaint . It is suggested that the Peer Review Team of each Association be comprised of persons who regularly serve on the association's Ethics Committee or equivalent, although the composition of the Peer Review Team shall be solely determined by each Association.

Be it further resolved that, if the Committee determines that there is probable cause that a breach of ethical conduct or legal compliance has occurred as alleged in the Complaint, and the facts of the situation suggest that a Peer Review Team of the Respondent's peers would best address the situation to achieve a satisfactory result, the Committee may refer the Complaint to the Peer Review Team of the Respondent's Association.

Be it further resolved that within ten (10) calendar days of receiving the Complaint from the Committee, the Peer Review Team of the Respondent's Association shall meet to discuss the facts of the Complaint. The Committee shall evaluate such Complaint and shall invite both the Complainant and Respondent to meet with the Committee to share information. The Peer Review Team shall evaluate all pertinent information and shall determine whether, in its judgment, a breach of ethical conduct or legal compliance has occurred. The Peer Review Team shall issue a written statement of finding to both the Complainant and Respondent. The Peer Review Team shall then provide a copy of its finding, and shall take any actions with respect to the Respondent as it deems appropriate. The Peer Review Team shall then notify the Committee of its finding, as well as any actions taken by the Peer Review Team, and shall forward any recommendations for follow-up action it chooses to the Committee.

Be it further resolved that the Committee shall determine if follow-up action by the Committee is necessary, above and beyond whatever action may have been taken by the Peer Review Team. If the Committee determines that any further action is appropriate, the Committee will take such action and inform the Complainant as well as the Respondent of such action. It is understood that public censure shall be considered the most extreme action possible.

Be it further resolved that there may be occasions when an Alternative Dispute Resolution (ADR) process is necessary to provide the most optimal forum in which to resolve a conflict. All matters involved in the ADR process shall be confidential unless otherwise agreed to by the parties to the extent allowable by law. The goal of ADR is to resolve conflict but also preserve relationships that in instances such as elected officials in a given county may by necessity exist for many years. On such occasions, the Committee may feel compelled to secure the professional services of professional persons skilled in the ADR process to manage the conflict resolution process. In such

occasions, there will be costs associated with the process. Parties to the conflict, including the Complainant and Respondent as well as the Associations of the Complainant and Respondent, may be asked to provide financial support to underwrite the costs associated with ADR. The Committee may also request financial support from the Kansas County Officials Association and the Kansas Association of Counties, if necessary. It is understood that the Alternative Dispute Resolution (ADR) process will be managed and facilitated to a greater extent by parties contracted by the Committee rather than the Committee itself.

Be it further resolved that this Memorandum of Understanding shall be effective and in force as of the last date on which the parties execute this Agreement. It shall remain in force for a period of three (3) years from the effective date of the Agreement, provided that upon written consent of all parties to the Agreement, the term of this Agreement may be extended. It is also agreed that this Memorandum of Understanding shall be continually reviewed for purpose of improving and refining the processes, and upon written consent of all parties to the Agreement, amendments may be made to the Agreement at any time.

This constitutes the entire agreement between both parties and both parties acknowledge that there are no other agreements either express or implied. Any amendments to this agreement shall be in writing.

This Agreement is hereby executed by parties on this _____ day of _____, 2006, as acknowledged by the signatures of the undersigned representatives of the parties. It is hereby understood that the parties shall recommend this Agreement to their respective organizations in good faith and with all deliberate speed and shall recommend positive approval of this Agreement by their organizations.

For the Kansas County Clerks and Election Officials
Association:

President

Date

For the Kansas County Treasurers Association:

President

Date

For the Kansas Register of Deeds
Association:

President

Date

For the Kansas Sheriffs Association:

President

Date

For the Kansas County Commissioners
Association:

President

Date

Affirm for the Kansas County Officials Association:

President

Date

Affirm for the Kansas Association of Counties:

President

Date