

IN THE SUPREME COURT OF THE STATE OF KANSAS

KANSAS CROSSROADS FOUNDATION and KARENA WILSON;)	
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Petitioners,)	
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)	
vs.)	Original Action No. _____
)	
LARRY MARKLE, in his official capacity as County Attorney of Montgomery County;)	
)	
)	
Respondent.)	
_____)	

PETITION FOR WRIT OF MANDAMUS

Petitioners Kansas Crossroads Foundation (“KCF”) and Karena Wilson hereby respectfully seek a Writ of Mandamus requiring Respondent Larry Markle, County Attorney for Montgomery County, Kansas to (1) create written diversion policies and guidelines that fully and accurately describe the county’s entire diversion program, particularly all eligible charges and eligibility requirements, (2) provide written notice of that diversion program, and the policies and guidelines related to the program, to all defendants charged in his jurisdiction, prior to conviction or other disposition, and (3) provide a diversion conference to those defendants who are offered diversion, with the defendant present and an opportunity for the defendant to be represented by counsel. Respondent has a clearly defined legal duty to inform each defendant, in writing, about his diversion policies and guidelines under K.S.A. §22-2907(3), which means that the policies and guidelines must fully and accurately describe the program in the first place. Moreover, Respondent has an obligation to provide in-person diversion conferences to defendants offered diversion under K.S.A. § 22-2907(2).

Petitioners seek this order because Respondent Markle has failed to abide by the above-referenced procedural requirements in K.S.A. §22-2907. Respondent's persistent failure to comply with K.S.A. §22-2907 has constituted and will continue to constitute the unlawful performance of public duties and the unlawful exercise of public office. Further, Respondent's failures are representative of a trend of noncompliance that spans Judicial Districts and impacts untold numbers of defendants in dozens of counties across Kansas. *See Exhibit A.*

Accordingly, Petitioners respectfully request that the Court review this case and grant a writ of mandamus at its earliest convenience.

In support of their petition, Petitioners allege and state as follows:

I. JURISDICTION

1. This Court has original jurisdiction over Petitioners' mandamus action under K.S.A. 60-801 *et seq.*, Article III, § 3 of the Kansas Constitution, and Rule 9.01(a) of the Rules of the Supreme Court.
2. In accordance with Rule 9.01(a) of the Rules of the Supreme Court of Kansas, Petitioners are filing a Memorandum of Points and Authorities, together with documentary evidence supporting the facts alleged.
3. An original action in this Court for mandamus is necessary because adequate relief is not available to Petitioners in the district courts. *See Sup. Ct. R. 901 (b).* Further, access to diversion is a matter of great public importance and resolution in this Court will provide speedy adjudication of these important questions and provide much needed guidance to prosecutors across the state. Given the importance of fairness in diversion access and the widespread

noncompliance with the statute provisions, adequate relief is not available in the district court.

II. PARTIES

4. Petitioner Kansas Crossroads Foundation (“KCF”) is a 501(c)(3) nonprofit organization. KCF is incorporated in Kansas and is headquartered in Neodesha, Wilson County, Kansas.
5. Petitioner KCF provides ministry and support services to the rural poor of Southeast Kansas, specifically to individuals recovering from drug and alcohol addiction. A number of defendants who were prosecuted and confined in Montgomery County on drug or alcohol related offenses participate in KCF's addiction recovery program. As a result, KCF spends significant staff and volunteer time, as well as financial resources, helping defendants convicted in Montgomery County comply with the terms of their parole and reconstruct their lives after long periods of incarceration.
6. KCF often must divert time and resources away from other rehabilitation services to help low-level offenders manage their lives post-release. Petitioner KCF provides room and board to individuals who no longer have stable housing because of their time in jail. Moreover, KCF spends significant time and money transporting clients to and from Fredonia and Independence to attend meetings with parole officers and undergo court mandated drug testing. Finally, KCF must dedicate substantial resources to help defendants who have lost proof of identity and citizenship documents during their incarceration to rebuild their identity. KCF has had to divert significant time and resources

away from providing critical drug rehabilitation services in order to offer prison re-entry assistance to diversion eligible defendants who were not able to take advantage of diversion because of Respondent's failures.

7. Petitioner Karena Wilson is a resident of Montgomery County, Kansas who was prosecuted by the Respondent and is serving a probation sentence.
8. Ms. Wilson is a 19 year old resident of Independence, Kansas who was prosecuted in Montgomery County on charges of theft of property under \$1,500. In or around mid-June 2017, Ms. Wilson was arrested for breaking into a soda machine outside of a liquor store in Independence, Kansas. Ms. Wilson pled guilty to three counts of misdemeanor theft and received one year probation. As a result, Ms. Wilson is required to pay a fine of more than \$2,000 which she has struggled to afford despite having a job. Ms. Wilson was never informed in writing about Montgomery County's diversion policy. She was also not told about program verbally. Ms. Wilson has no prior convictions, and under Markle's policy and past practice, likely would have been eligible to apply for diversion in Montgomery County. Thus both Petitioners have standing under Kansas law to assert their interest.
9. Respondent Larry Markle is the County Attorney for Montgomery County. He may be served at 300 East Main Street Independence, Kansas 67301.

III. STATEMENT OF FACTS

10. Mr. Markle was appointed to serve as the Montgomery County Attorney in 2006.

11. Mr. Markle currently maintains some documents concerning the Montgomery County diversion program and has maintained a policy throughout his tenure as Montgomery County Attorney. *See* **Exhibit B; Exhibit C.**
12. Mr. Markle does not provide written notice of the Montgomery County diversion program to defendants charged with diversion-eligible offenses. Further, he only provides verbal notice of the Montgomery County diversion program to eligible defendants if they appear in court.
13. Mr. Markle also consistently fails to provide statutorily required diversion conferences in misdemeanor cases to defendants who are offered diversion.
14. Mr. Markle's current policies would provide defendants little insight into whether they would be eligible for diversion even if Markle did provide them.
15. When Ms. Wilson was charged with Class A Misdemeanor Theft as an 18-year-old, first-time offender, she was not provided with written notice of Montgomery County's diversion program. Moreover, Mr. Markle did not inform Wilson about Montgomery County's diversion program during any of her court appearances even though she was charged with a crime Respondent would consider diversion under terms of his current policies. *See* **Exhibit B.**
16. KCF has also been injured by Mr. Markle's failure to provide its clients with access to diversion. Due in part to Mr. Markle's refusal to comply with the diversion statute, KCF has been forced to counsel more clients in Montgomery County jail and devote resources towards helping them meet probation and parole obligations.

17. In an effort to resolve the matter without resorting to litigation, the undersigned counsel, on behalf of Petitioners, contacted Mr. Markle on May 30, 2018. *See Exhibit D.* Mr. Markle replied to Petitioners, declining to take action to resolve the matter and directing Petitioners to “take whatever legal action you feel appropriate.” *See Exhibit E.*

IV. GROUNDS FOR RELIEF

18. Here, Respondent has a clear statutory duty to create written policies and guidelines regarding his diversion program, and further to provide eligible defendants with written notice of those policies and guidelines under K.S.A. §22-2907(3). Further, Respondent has a clear statutory duty to provide defendants who have been offered diversion with an in-person diversion conference. That duty is also set forth in K.S.A. §22-2907(2), which provides “such policies and guidelines shall provide for a diversion conference and other procedures in those cases where the district attorney elects to offer diversion in lieu of further criminal proceedings on the complaint.”

V. RELIEF SOUGHT

19. For the forgoing reasons, and those stated in the supporting exhibits,

Petitioners seek the following relief:

- a. An order compelling Respondent to create diversion policies and guidelines that fully and accurately describe the entire diversion program, including what charges are eligible and what factors are disqualifying.

- b. An order compelling Respondent to provide written notice of diversion to all defendants in accordance with Respondent's clearly defined legal duty under K.S.A. §22-2907(3).
- c. An order compelling Respondent to provide diversion conferences to all eligible defendants in accordance with Respondent's clearly defined legal duty under K.S.A. §22-2907 (2) and (3).
- d. Such other relief as this Court deems just and proper.

Dated: June 8, 2018

Respectfully submitted,

/s/ Lauren Bonds
Lauren Bonds, #27807
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*Counsel for Petitioners Kansas Crossroads
Foundation and Karena Wilson*

CERTIFICATE OF SERVICE

The undersigned person hereby certifies that a true and correct copy of the above and foregoing document was placed with a courier service on June 8, 2018 for delivery to:

Larry Markle
Montgomery County Attorney
300 East Main Street
Independence, KS 67301

/s/ Lauren Bonds
Lauren Bonds

