



Experience Counts

Attorneys and Counselors

January 9, 2026

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Via e-mail

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Re:

Dear Mr. Harris:

Please accept the following as the Bourbon County Commission’s written response to complaints PP-25-000306, 000355, 000357, 000358, and 000359. This Response addresses file numbers PP-25-000306 first under its own section header as it stands alone, and then proceeds to PP-25-000355, 000357, 000358, and 000359 together as they concern the same allegations. Finally, the Commission sets out its responses to the specific requests for information contained in your letter in the final section below. As a reminder, the response deadline for the County was originally December 23, 2025, but was graciously extended by your office to January 9, 2026. If, after reading, you determine something is missing or omitted, please do not hesitate to reach out as we will seek to provide the information forthwith.

Submissions PP-25-000306

Mr. Michael Hoyt’s complaint concerns a payment of \$8,000.00 made by the County to the County Clerk as consideration for an agreement to set aside a default judgment the Clerk previously obtained against the County in case No. BB-2025-CV-000015.¹

A 9/22/2025 email from the County Counselor to the County Clerk (attached to these materials) examples the BOCC did not make a decision on the payment in executive session. The email was made in response to language in the previous set of minutes. In his response, the County Counselor states “We can discuss pending litigation and so we discussed with Defense counsel and discussed parameters of settling the je deal. I guess if that is what David said, but that is not accurate as to what actually occurred.”

¹ As the County indicated in its response to the last set of baseless complaints against it, it has long suspected the Clerk and other complainants are making these complaints pursuant to a concerted effort to increase pressure on the County to settle the multitude of legal claims brought against it by Shane and Susan Walker in both district court and in front of the EEOC. It is worth noting the parties are scheduled for mediation on January 14, 2026.

The reality is this: the County Clerk obtained a default judgment against the County for approximately \$200,000.00. The County's litigation counsel advised the BOCC, in privileged communication, that the Clerk's attorney approach him and offered to set aside the default judgment in exchange for payment of the fees spent to obtain the judgment. Attorney ethics require offers to compromise be presented to client, so litigation counsel requested an executive session to discuss the matter.

The Board then convened a closed session at its next regular meeting under attorney client privilege and pending litigation. There, settlement strategy was discussed, which for obvious reasons could not be discussed in public session with the plaintiff herself present. A range of options were discussed and a conversation concerning risk and the expense of presenting evidence to get the judgment set aside also occurred. In the executive session, a consensus was reached that it likely made sense to present a counteroffer within a certain range. At the time, no binding decision to settle the case was made, nor was the amount determined, nor was it clear any counteroffer would be accepted by the plaintiff.

At a later date, litigation counsel advised the Commission that the counteroffer in the range discussed was agreed to by Plaintiff. The County Counselor then requested the County write a check for the agreed consideration accepted by Plaintiff. The payment was then made through public documents presented in an open session.

What occurred in the closed session was quintessentially what happens in counties during litigation across the state. It would be disastrous to conclude counties must state its settlement intentions, strategy, and ultimate authority in public sessions, mid negotiations. Kansas law supports the advice given to the County at the time of the executive session. *O'Hair v. Board. Of Educ.*, 805 P.2d 40 (Kan. App. 1990) confirms that while the BOCC cannot make binding action in executive session, it may reach a consensus. That is exactly what happened here.

There frankly is no violation of KOMA underpinning Mr. Hoyt's complaint. Mr. Hoyt's complaint indicates a desire that your office imposes the maximum statutory penalty for a knowing violation of KOMA. There certainly was no knowing or personal violation of KOMA given the Board was advised by counsel that the procedure for the meeting was proper. Moreover, the Board's decision comports with recognized Kansas caselaw, so it cannot be said the Board knew its actions would violate KOMA (they did not). Accordingly, there is no basis to assess a statutory penalty, nor is there a basis to take any action at all against the County. Mr. Hoyt should be advised his Complaint is unfounded and your office should close the file without action.

Submission PP-25-000355, 25-000357, 25-000358, and 25-000359

Susan Walker's complaint forms the basis of all the other complaints on this issue. There, she alleges the "Commission voted on Monday to approve longevity, but then HR company stated they would not pay longevity." On its face, the email from Dr. Steve Cohen attached to Ms. Walker's complaint states "*County Counsel has affirmed* the intent of the longevity program is to base the calculation on consecutive employment only." See page 2 of the Complaint attachment. Moreover, the attachment plainly states the review of the longevity policy was made by Dr. Cohen

and County Counsel. *Id.* Similarly, the black letter of Laura Holdridge's complaint further confirms the Board did not make a decision on the matter in closed session. There, Ms. Holdridge's complaint confirms that the County Clerk, Complainant Susan Walker, spoke to the County Counselor who confirmed the only commissioner he spoke to was Commissioner Milburn-Kee. Thus, the best evidence underpinning the Complainant's allegation confirms the complaints themselves lack merit. The evidence plainly shows the Board of County Commissioners made a decision in public session, an issue was then raised, and the County's attorney and HR has extensive discussions on the issue, then the Board subsequently took further action at a later regular meeting.

What is not conveyed in the Complaint is the reality of what happened. Per the County Counselor, an initial decision was made by the BOCC in an open session. However, after that decision was made, a new employee was hired by the Register of Deeds (also a complainant here) and that hire substantially affected the longevity pay and other issues. Longevity pay funding also ran into unanticipated issues because the County previously intended to use Sheriff department funds to pay longevity pay.

Once members of the BOCC found out, the Commissioners individually spoke with Dr. Steve Cohen. However, none of the Commissioners discussed the issue with each other about the issue unless it was at a scheduled BOCC meeting. Dr. Cohen and County Counsel indicated to each of them it was best to hold off further discussion until there was a meeting the following Monday. Later, during public session, the Commission took up the issue, and completed action on longevity pay.

To be clear, Kansas Law prohibits calling trees (now more commonly called serial meetings) between a majority of the membership of the body, that one or all the participants intend to reach an agreement on a matter requiring binding action. As you know, the A.G.'s office issued two opinions in 1998 concerning serial meetings – 98-26 and 98-49. In 2008, the state legislature added serial meetings as a type of meeting that should be open and it identified the test applied to serial meetings thus superseding the 1998 A.G. opinions. *See* K.S.A. 75-4318(f). The test conclusively stated is:

- 1) Collectively involve a majority of the membership of the body.
- 2) Share a common topic of discussion concerning the business affairs of the body.
- 3) And are intended by any or all of the participants to reach agreement on a matter requiring binding action be taken by the body.

Critically, the term "participants" is understood to be individuals who are part of the membership of the body but ***does not include*** third parties such as non-voting mayors, city managers, city clerks, citizens, attorneys, etc.

Accordingly, based on the foregoing, it is abundantly clear there was no KOMA violation in any capacity. No action was taken in closed session, and the only communication with commissioners was done by third parties – namely the County Counselor and the HR director. Accordingly, the allegations are again without merit, and this office should close the files without further action.

Final Thoughts on These Complaints Overall

The complaints at issue here, along with the four the County responded to on November 24, 2025, total 9 complaints in a two-month span, all with very common links. Most of the complaints are from the same individuals who very clearly have a larger quarrel with the County aside from open records and meetings. All of the complaints are facially baseless or, at best, are based on misapprehension of the Open Records and Meeting laws in the state of Kansas. Indeed, they are so facially without merit, that one cannot help but wonder whether they are actually submitted to ensure transparency and open government. Of course, that question is best reserved for someone much smarter than the undersigned here.

Nearly all of the complaints suggest the Commission needs KORA and KOMA training. In actuality, the County has received, and followed, sound advice on KORA and KOMA, and it appears none of the complainants are aware of the contours of the law on which their complaints are based. For her part, the County Clerk is the County's custodian of records and should understand the parameters of the open meeting and record laws better than anyone. If this office recommends further training on these subjects, perhaps it would be most beneficial for the elected officials who are also complainants here.

Finally, the undersigned firmly believes in the spirit of transparency espoused in KORA and KOMA. I also hold sacrosanct the public's desire and ability hold their elected officials accountable. In no way is counsel suggesting people should "just stop complaining." Instead, counsel wishes there was a mechanism in the law to prevent individuals from weaponizing KORA and KOMA to serve their own personal ends that would obviate the need to expend resources, particularly public funds, to respond to such baseless allegations.

Specific Requests for Information

The undersigned acknowledges your office requested specific information beyond a narrative explanation of the events alleged. Those requests are answered below.

1. The names, positions/titles, terms of office, and contact information for the Bourbon County Commission.

County Commissioner Mika Milburn, 620.215.5880
County Commissioner David Beerbower, 620.215.5821
County Commissioner Samuel Tran, 575.430.5186

All can be reached at 210 S. National Avenue, Fort Scott, KS, 66701, or through counsel.

2. Copies of any notes taken by the clerk, any deputy or assistant clerk, county commissioners, or any other county appointee or employee during the September 22, 2025 executive session.

There were no notes taken.

3. Copies of any draft or final approved meeting minutes for the September 22, 2025, county commission meeting. Additionally, please provide copies of final approved meeting minutes for all county commission meetings from January 1, 2025, to the present.

See attached.

4. If different from the motion(s) reflected in the meeting minutes, a copy of the complete motions for each executive session held on September 22, 2025. Be sure to identify who made and seconded the motion for executive session, how the county commissioners voted, the subjects to be discussed and justification, as well as the place and time that the open meeting would resume

The votes can be viewed at: <https://www.youtube.com/watch?v=pT056SGsQBk>

5. Identify each person present (including the individual's title or job) during each executive session held on September 22, 2025, and the reason for the individual's presence during the executive session. Please also provide the individual's contact information, including address and phone number.

County Commissioner Mika Milburn, 620.215.5880. Commissioner Milburn was there pursuant to her duties as County Commissioner.

County Commissioner David Beerbower, 620.215.5821. Commissioner Beerbower was there pursuant to his duties as County Commissioner.

County Commissioner Samuel Tran, 575.430.5186. Commissioner Tran was there pursuant to his duties as County Commissioner.

County Counselor Robert Johnson, 620.365.3778, P.O. Box 866, Iola, Kansas, 66210. Mr. Johnson was present (electronically) for the purposes of overseeing the commission and giving advice pursuant to his role as Bourbon County Counselor.

6. A detailed description of any and all communications between the commissioners or the commissioners and Dr. Steve Cohen outside of an open meeting concerning longevity payments.

Per the County Counselor, members of the BOCC individually talked with Dr. Steve Cohen about the issue via phone outside of an open meeting. However, none of the commissioners discussed the issue with each other about the issue unless it was at a scheduled BOCC meeting. As the complaints indicate, an initial decision was made by the BOCC in an open session. However, after that decision was made, a new employee was hired by the Register of Deeds (also a complainant here) and that hire substantially affected the longevity pay and other issues. Once members of the BOCC

found out, the commissioners individually spoke with Dr. Steve Cohen again, who indicated to each of them it was best to hold off further discussion until there was a meeting the following Monday.

Longevity pay funding also ran into unanticipated issues because the County previously intended to use Sheriff department funds to pay longevity pay. Accordingly, either the County Counselor or Dr. Steve Cohen advised the Clerk to wait until the next meeting when the issue could be resolved (neither remembers which one advised her as such).

Funding was ultimately approved in open session and the issue resolved.

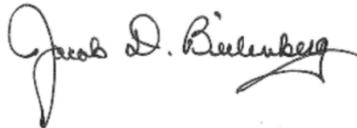
7. Does the commission or commissioners discuss any other county business or make decisions using personal devices or emails?

Not that the undersigned is aware of.

The information contained in this request is true and correct. It has been reviewed by all individuals providing information. Its truth and veracity has been attested to.

If you have any follow-up questions or concerns, please do not hesitate to contact me.

Regards,



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