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MEMORANDUM

To: Chairman Masterson and members of the Senate Ways and Means Committee

From: Jill A. Wolters, First Assistant Revisor

Date: January 19, 2016

Subject: *Solomon v. State*, No. 114,573, 2015 WL 9311523 (Kan. Dec. 23, 2015)

Background

In 2014, the legislature passed **HB2338**, which:

1. Appropriated for FY15, \$2,000,000 for Judiciary operations.
2. Amended the distribution of docket fees as follows (K.S.A. 2015 Supp. 20-362):
 - \$5 or \$10 (depending on the type of case) goes to the county general fund
 - Library fees go to the county law library fund
 - \$1 or \$2 (depending on the type of case) goes to the prosecuting attorneys' training fund
 - \$15 to the law enforcement training center fund
 - Of the balance, 0.99% to the judicial council fund
 - Of the remainder, during FY15 through FY17, the first \$3.1 million goes to e-filing. FY18 and beyond, the first \$1,000,000 goes to e-filing.
 - The remainder after all deductions goes to the judicial branch docket fee fund.

[Previously, the docket fees were distributed (after the deduction of the county general fund, county law library fund, prosecuting attorneys' training fund and law enforcement training center fund) by a specified percentage amount to the following funds: (1) 4.37% to the access to justice fund; (2) 2.42% to the juvenile detention facilities fund; (3) 1.87% to the judicial branch education fund; (4) .50% to the crime victims assistance fund; (5) 2.38% to the protection from abuse fund; (6) 3.78% to the judiciary technology fund; (7) .30% to the dispute resolution fund; (8) 1.10% to the Kansas juvenile delinquency prevention trust fund; (9) .19% to the permanent families account in the family and children investment fund; (10) 1.31% to the trauma fund; (11) .99% to the judicial council fund; (12) .60% to the child exchange and visitation centers fund; (13) 16.03% to the judicial branch nonjudicial salary adjustment fund; (14) 15.85% to the

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judicial branch nonjudicial salary incentive initiative fund; and (15) the balance to the state general fund.]

3. Granted authority to chief judge of each judicial district to be responsible for the budget of such district.
4. Created a \$145 filing fee for appeals.
5. Created the electronic filing and management fund.
6. Allowed the district court judges to elect the chief judge of the district court.
7. Granted the court more time on filling vacancies in district court judge positions.
8. Allowed the court of appeals judges to elect the chief judge of the court of appeals.
9. Increased conviction expungement fees, arrest record expungement fees, juvenile expungement fees, probate fees, garnishment fees, and civil action fees.
10. Created a summary judgment fee.
11. Reduced small claims fees.
12. Contained a nonseverability clause stating if one provision of the bill is found invalid or unconstitutional, it shall be presumed the legislature would not have enacted the remainder of the bill.

In 2015, the legislature passed **HB2005**, which:

1. Appropriated the moneys for FY16 and FY17 for Judiciary operations.
2. Created a dispositive motion fee, replacing the summary judgment fee.
3. Allowed the court to continue to collect an additional charge on docket fees, expungement fees, bond fees, lien fees, judgment fees, and other court fees for 2 years, through June 30, 2017.
4. Extended for two years the \$3.1 mil deposit to the electronic filing and management fund.
5. Increased conviction expungement fee to be equal to other expungement fees.
6. Contained a nonseverability clause stating the provisions of 2015 HB2005 are not severable from 2014 HB2338. If any provision of either act is found invalid or unconstitutional, it shall be presumed the legislature would not have enacted the remainder of the bill.

Solomon v. State, No. 114,573, 2015 WL 9311523 (Kan. Dec. 23, 2015) was filed (in Shawnee County) by Chief Judge Larry Solomon, 30th Judicial District, arguing that section 11 of 2014 HB 2338, allowing the district judges in each judicial district to elect a chief judge of such district court, was a violation of the separation of powers doctrine and that the Kansas Supreme Court retains the general administrative authority over the administration of the Courts. The Judge further argued that the entire bill was invalid based on the nonseverability clause in section 43 of 2014 HB 2338.

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The State argued that the Judge did not have a cognizable injury and thus did not have standing to sue. Further, the State argued that the election of the chief judge of the district court by the district judges did not “constitute a ‘significant interference’ with the Kansas Supreme Court’s ‘general administrative authority’”¹ and therefore was not a violation of the separation of powers doctrine.

The District Court found that the Judge did have standing, and that section 11 of 2014 HB 2338 was an unconstitutional violation of the separation of powers doctrine. Further, the District Court invalidated the entire bill based on the nonseverability clause in section 43 of 2014 HB 2338.

On December 23, 2015, the Kansas Supreme Court agreed with the District Court, that the Judge did have standing, that section 11 of 2014 HB 2338 was an unconstitutional violation of the separation of powers doctrine and that the Kansas Supreme Court has the general administrative authority over the administration of the Courts. The Supreme Court did not address the invalidity of the entire bill based on the nonseverability clause because it was not challenged by either party. Thus, the ruling of the District Court invalidating the entire bill stands.

Further, on September 4, 2015, a case was filed (in Shawnee County) by Chief Judge Robert Fairchild, 7th Judicial District, arguing, among other things, that the nonseverability clause of 2015 HB 2005 was unconstitutional.

On September 22, 2015, in Neosho County, the State filed for and was granted a temporary injunction thus being enjoined from enforcing the HB 2005 nonseverability clause through March 15, 2016.²

For reference purposes only. K.S.A. 2015 Supp. 20-1a18. **Nonseverable provision, includes chapter 82 of the 2014 Session Laws of Kansas.** Except as provided further, the provisions of this act are not severable, nor are they severable from the provisions of 2014 Senate Substitute for House Bill No. 2338, chapter 82 of the 2014 Session Laws of Kansas. If any provision of this act or of 2014 Senate Substitute for House Bill No. 2338, chapter 82 of the 2014 Session Laws of Kansas, is stayed or is held to be invalid or unconstitutional, it shall be presumed conclusively that the legislature would not have enacted the remainder of this act without such stayed, invalid or unconstitutional provision and the provisions of this act are hereby declared to be null and void and shall have no force and effect. If the appropriations to the judicial branch for fiscal year 2016 or fiscal year 2017 are reduced below the amounts appropriated in this act by any other act of the 2015 or 2016 regular session of the legislature, the provisions of this section are hereby declared to be null and void and shall have no force and effect and the provisions of this act and of 2014 Senate Substitute for House Bill No. 2338, chapter 82 of the 2014 Session Laws of Kansas, are declared to be severable.

History: L. 2015, ch. 81, § 29; June 5.

¹ *Solomon v. State*, No. 2015-CV-156, at 18 (Kan. D. Ct. Sept. 2, 2015), <http://www.shawneecourt.org/DocumentCenter/View/540>.

² *State v. Shipman*, No. 2015-CV-73 (Kan. D. Ct. Sept. 22, 2015).