

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at  
Chairperson

10:00 a.m./p.m. on January 29, 1985 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Talkington, Winter and Yost.

Committee staff present:

Mary Torrence, Office of Revisor of Statutes  
Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Don Strole, State Board of Healing Arts  
Judge Sam Bruner, Overland Park  
Professor John Kuether, Washburn University School of Law  
Randy Hearrell, Kansas Judicial Council  
Professor Nancy Maxwell, Washburn University School of Law  
Susana Hall, Mental Health Association  
Keith Landis, Christian Science Committee on Publication for Kansas  
Elizabeth Taylor, Kansas Association of Domestic Violence Program  
Howard Klink, Crime Victims Reparations Board

Don Strole presented a proposal to the committee for introduction as a committee bill to require a copy of the malpractice cases filed with the insurance commissioner be forwarded to the state board of healing arts. A copy of the proposal is attached (See Attachment I). Senator Gaines moved that the proposal be introduced as a committee bill. Senator Feleciano seconded the motion. The motion carried.

Senate Bill 40 - Informal administration of estates; notice and time limit in probate proceedings.

Judge Sam Bruner explained the bill to the committee. He stated the subject matter in this bill has been before the legislature before as HB 3012 and HB 3013 last year. The philosophy of the first six sections of the bill is where a probate practice is necessary, this tool is now available to a practicing attorney of the state. It is designed to augment the code, not to replace the current chapter.

Professor John Kuether, a member of the Probate Advisory Standing Committee of the Judicial Council stated he worked with Judge Bruner to combine the two bills. He explained the bill shortens the time limit wills can be probated from nine months to six months, and reduces the time limit for claims against the estate from six to four months. He pointed out other changes in the bill and explained them to the committee.

Randy Hearrell stated the judicial council has long been interested in the probate area. He presented background information of the bill.

Senate Bill 33 - Court-ordered mediation of child custody and visitation issues.

Randy Hearrell presented background information to the bill. A copy of the handout is attached (See Attachment II).

Professor Nancy Maxwell stated the Family Law Advisory Committee has worked on this bill for many years. Mediation is going on in the State of Kansas. It is a good option for the court. It is not something for every child custody dispute, but is another tool for the court to order, and another avenue for dispute resolution when custody is in question. She explained the bill to the committee. Committee discussion with her followed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on January 29, 1985.

Senate Bill 33 continued

Susana Hall appeared on behalf of the Mental Health Association in Kansas to express full support of the bill. A copy of her testimony is attached (See Attachment III).

Keith Landis, Christian Science Committee on Publication for Kansas, appeared before the committee to request help in finding a solution to their problem existing in the bill. Their problem becomes one of resolving the requirements for confidentiality on one hand with the requirement to report what exists in the law. A copy of his testimony is attached (See Attachment IV). Committee discussion with him followed. Mr. Landis proposed striking "Christian Science" from the bill, but if the committee had any other solution he would be glad to work with them.

Elizabeth Taylor, Kansas Association of Domestic Violence Programs, testified she wished the committee would consider, in cases of domestic violence where divorce is pending, that wife abuse and child abuse is usually very common.

The hearings on Senate Bills 40 and 33 were completed.

Howard Klink presented a proposal on behalf of the Crime Victims Reparations Board for a request as a committee bill concerning increasing the docket fee and assisting in making claim demands by the crime victims. Senator Gaines moved that the committee introduce the bill; Senator Winter seconded the motion, and the motion carried.

The meeting adjourned.

A copy of the Kansas Bar Association position on Senate Bill 40 is attached (See Attachment V).

The guest list is attached (See Attachment VI).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 1-29-85

| NAME (PLEASE PRINT)    | ADDRESS   | COMPANY/ORGANIZATION                                   |
|------------------------|-----------|--|
| Givan G. Molin         | Topeka    |  |
| Math. Lynch            | "         | Judicial Council                                       |
| Randy Nearell          | "         | " " " "  |
| Jeremy Linscheid       | Topeka    |  |
| KEITH R LANDIS         | "         | CHRISTIAN SCHEDULE COMMITTEE ON PUBLICATION FOR KANSAS |
| Gem Robertson          | Topeka    | SRS  |
| Kay Ruse               | "         | "  |
| Don Strode             | "         | Band of Healing Arts                                   |
| JAM K. BRUNER          | O. Pk, Ks | Judicial Council                                       |
| John F. Kuth           | Topeka    | " "  |
| Mary D. Maxwell        | Topeka    | " "  |
| Susana Valdominos-Hall | Topeka    | Mental Health Assoc.                                   |
| David Clark            | Topeka    | CVRB   |
| Phil Anderson          |           | Budget-DIV   |
| Jerry Tenbrink         | Topeka    | MH JSC   |
| Sam Pitt               | "         | "  |
| Mike Stotsky           | Lawrence  | Sen Parrish - Intern                                   |
| PATRICIA HENSHALL      | TOPEKA    | OJA  |
| Bill Sneed             | Topeka    | KADC   |
| Kinda Carol Woody      | Topeka    | Nat'l Organization for Women                           |
|                        |           |  |
|                        |           |  |
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|                        |           |  |
|                        |           |  |

Attch. VI

Sec. 1. Amend K.S.A. 40-3409 as follows:

Service upon commissioner required in action filed in state for injury or death arising out of act or omission of health care provider; time for filing; effect of failure to make service; copy of petition involving certain health care providers forwarded to state board of healing arts; notification of commissioner required in action filed outside of state; defense of action. (a) (1) In any action filed in this state for personal injury or death arising out of the rendering of or the failure to render professional services by any health care provider covered by the fund or any inactive health care provider covered by the fund, the plaintiff shall serve a copy of the petition upon the commissioner by registered mail within 10 days from filing the same, and if such service is not made the fund shall not be liable for any amount due from a judgment or a settlement nor, in such case, shall the health care provider or the provider's insurer or the inactive health care provider or the provider's insurer be liable for such amount that, if such service had been made, would have been paid by the fund; (2) in any action filed outside of this state for personal injury or death arising out of the rendering of or the failure to render professional services by any health care provider or any inactive health care provider covered by the fund, the inactive health care provider, the self-insurer or the insurer of a health care provider or an inactive health care provider shall notify the commissioner, as soon as it is reasonably practicable, that such summons or petition has been filed. If the petition names a health care provider as a defendant in the action who is licensed, registered or certified by the state board of healing arts, the commissioner shall forward a copy of the petition to the state board of healing arts and shall submit to the state board of healing arts upon the board's request any depositions, reports, summaries of cases, or any other relevant information on the case. In addition, the commissioner and the board of governors shall submit to the board any relevant information to assist the board in determining whether a licensee of the board has violated K.S.A. 1984 Supp. 65-2836-2837.

(b) Such action shall be defended by the insurer or the self-insurer, but if the commissioner believes it to be in the best interests of the fund, the commissioner, may employ independent counsel to represent the interests of the fund. The cost of employing such counsel shall be paid from the fund. The commissioner is authorized to employ independent counsel in any such action against an inactive health care provider covered by the fund.

1/29/85  
 Atch. I

PROPOSAL OF THE JUDICIAL COUNCIL FOR  
COURT-ORDERED MEDIATION OF CHILD  
CUSTODY AND VISITATION ISSUES

Introductory Comment

Session of 1985

**SENATE BILL No. 33**

By Committee on Judiciary

1-16

0017 AN ACT concerning actions for divorce, separate maintenance  
0018 and annulment of marriage; providing for court-ordered me-  
0019 diation of issues relating to child custody and visitation;  
0020 amending K.S.A. 1984 Supp. 38-1522 and repealing the exist-  
0021 ing section.

In recent years there has been increased criticism of the use of the adversarial method for resolving domestic relations cases. Many view the adversarial approach as resulting in increased hostility and conflict between the parties. The parties often perceive that any final decision as to custody and visitation has been imposed upon them, whether that decision has been achieved through negotiation by attorneys or at trial.

Mediation is frequently offered as an alternative means of resolving family disputes. In mediation, the disputing parties attempt to resolve their differences with the help of a neutral third party and arrive at a mutually acceptable agreement. Since the parties are the actual decision-makers in the mediation process it is anticipated that there will be greater identification with and adherence to any agreement which may be reached.

The following proposal is the result of a study by the Family Law Advisory Committee of the Judicial Council. The proposal provides for court-ordered mediation of disputes concerning child custody and visitation. The proposal does not provide for court-ordered mediation of financial matters in divorce cases nor does the proposal address the voluntary use of mediation. The Judicial Council was hesitant to involve the court in the ordering of mediation of financial matters due to the increased danger that the mediator would be unable to protect a less financially sophisticated or less dominant spouse from overreaching. In regard to child custody, the Judicial Council was impressed with the results reportedly achieved in California under mandatory mediation of child custody disputes. West's Ann.Cal.Civ.Code § 4607. Child custody mediation has apparently resulted in significant decreases in litigation and post-divorce disputes.

The Judicial Council views the proposal for child custody mediation as a logical extension of the court's authority to order counseling with regard to child custody and visitation under K.S.A. 60-1617.

Attch. II

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 New Section 1. Mediation under this section is the process  
0024 by which a neutral mediator appointed by the court assists the  
0025 parties in reaching a mutually acceptable agreement as to issues  
0026 of child custody and visitation. The role of the mediator is to aid  
0027 the parties in identifying the issues, reducing misunderstand-  
0028 ings, clarifying priorities, exploring areas of compromise and  
0029 finding points of agreement. An agreement reached by the par-  
0030 ties is to be based on the decisions of the parties and not the  
0031 decisions of the mediator.

Section 1 defines the mediation process to avoid confusion with other forms of dispute resolution such as arbitration and conciliation.

In arbitration, the parties agree to submit their dispute to a neutral arbitrator who is empowered to decide the issues involved. In conciliation, a conciliator will typically offer options for the parties to consider and will actually encourage the parties to adopt an option rather than to remain at an impasse. In mediation, the goal is to achieve a "mutually acceptable agreement". Consequently this section clarifies that the parties, not the mediator, are the decision-makers in mediation. It is the parties' responsibility to examine and decide the issues. While the mediator assists in the identification of the issues and the availability of alternatives, the mediator does not encourage the adoption of any particular option.

Even if the parties cannot resolve all the issues through the mediation process, mediation can reduce the number of litigated issues. Only those issues unresolved by the mediation process need to be submitted to the court for determination.

0032 New Sec. 2. In any action for divorce, separate maintenance  
0033 or annulment, the court may order mediation of any contested  
0034 issue of child custody or visitation at any time, whether prior to  
0035 or subsequent to an alteration of marital status, upon the motion  
0036 of a party or on the court's own motion. The court shall appoint a  
0037 mediator who meets the minimum qualifications required under  
0038 section 3.

strike  
including

Section 2 enables the court to determine when mediation will be ordered and the selection of mediators. This act applies to any custody or visitation dispute, regardless of whether the parties are married. If the parties are or have been married, mediation may be ordered prior to or subsequent to an alteration of the parties' marital status.

Attch. II

0039 New Sec. 3. (a) If the court orders mediation under section 2,  
0040 the mediator appointed by the court shall be a person who:

0041 (1) Has at least two years' experience as an attorney handling  
0042 domestic relations cases, such as divorce, annulment and sepa-  
0043 rate maintenance; or ~~or~~ *and child custody*

0044 (2) has at least two years' experience as a counselor or psy-  
0045 chotherapist handling marriage and family relationships and

0046 either is a physician specializing in psychiatry or has a master's  
0047 degree in psychology, social work, counseling or other behav-  
0048 ioral science substantially related to marriage and family rela-  
0049 tionships.

0050 (b) In appointing a mediator under section 2, the court shall  
0051 consider:

0052 (1) The nature and extent of any relationships the mediator  
0053 may have with the parties and any personal, financial or other  
0054 interests the mediator may have which could result in bias or a  
0055 conflict of interest;

0056 (2) the mediator's knowledge of (A) the Kansas judicial sys-  
0057 tem and the procedure used in domestic relations cases, (B) other  
0058 resources in the community to which parties can be referred for  
0059 assistance, (C) child development, (D) clinical issues relating to  
0060 children, (E) the effects of divorce on children and (F) the  
0061 psychology of families; and

0062 (3) the mediator's training and experience in the process and  
0063 techniques of mediation.

0064 New Sec. 4. (a) A mediator appointed under section 2 shall:

0065 (1) Inform the parties of the costs of mediation;

0066 (2) advise the parties that the mediator does not represent  
0067 either or both of the parties;

0068 (3) define and describe the process of mediation to the par-  
0069 ties;

0070 (4) disclose the nature and extent of any relationships with  
0071 the parties and any personal, financial or other interests which  
0072 could result in bias or a conflict of interest;

Section 3 sets forth minimum qualifications for persons who may serve as court-appointed mediators. As an alternative to licensure of mediators by the state and the associated costs of such licensure, the Judicial Council proposes that the court serve the function of insuring that mediators are qualified individuals.

Subsection (a) creates two general categories of persons qualified to serve as court-appointed mediators: (1) attorneys experienced in handling domestic relation cases and (2) behavioral scientists with at least a masters degree in the area of marriage and family relationships. In selecting a mediator from one of those categories, subsection (b) directs the court to consider certain other criteria to insure that the mediator is neutral and competent.

Section 4 enumerates those duties of the mediator which the Judicial Council perceives to be essential for the proper functioning of the mediation process. In addition to promoting the parties' understanding of the process, the costs involved, and the advisability of independent legal advice, the section stresses to both the mediator and the parties that the mediator is not acting in a representative capacity.

*Attch. II*



0073 (5) advise each of the parties to obtain independent legal  
0074 advice;  
0075 (6) inform the parties of the right to terminate mediation at  
0076 any time after the initial session;  
0077 (7) allow only the parties to attend the mediation sessions;  
0078 (8) disclose to the parties' attorneys any factual documenta-  
0079 tion revealed during the mediation if at the end of the mediation  
0080 process the disclosure is agreed to by the parties;  
0081 (9) ensure that the parties consider fully the best interests of  
0082 the children and that the parties understand the consequences of  
0083 any decision they reach concerning the children; and  
0084 (10) inform the parties of the extent to which information  
0085 obtained from and about the participants through the mediation  
0086 process is not privileged and may be subject to disclosure.  
0087 (b) The mediator may meet with the children of any party  
0088 and, with the consent of the parties, may meet with other per-  
0089 sons.  
0090 (c) The mediator shall make a written summary of any un-  
0091 derstanding reached by the parties, which shall be signed by the  
0092 parties and the mediator. The mediator shall advise each party in  
0093 writing to obtain legal assistance in drafting any agreement or for  
0094 reviewing any agreement drafted by the other party. If the  
0095 parties are not represented, the mediator shall provide to the  
0096 court the written summary of any understanding reached by the  
0097 parties.  
0098 (d) The mediator may act as a mediator in subsequent dis-  
0099 putes between the parties. However, the mediator shall decline  
0100 to act as attorney, counselor or psychotherapist for either party  
0101 during or after the mediation or divorce proceedings unless the  
0102 subsequent representation, counseling or treatment is clearly  
0103 distinct from the mediation issues.

Subpart (9) of subsection (a) imposes upon the mediator the duty to ensure that the parties take into consideration the best interests of the children. To facilitate the performance of this duty, subsection (b) allows the mediator to meet with the children of any party, including children whose custody or visitation is not in dispute. This provision was added because the mediator may need to interview children whose custody is not in dispute in order to understand the best interest of a child whose custody is disputed.

Subsection (c) directs the mediator to prepare a written summary of any understanding reached by the parties, which is to be signed by the parties and the mediator. However, it is not the mediator's role to draft an agreement. Where the parties are not represented, the mediator is directed to provide the summary of understanding to the court. The court is then in a position to review the understanding with the parties.

Subsection (d) permits the mediator to mediate subsequent disputes between the parties. If the parties are satisfied with a mediator's prior service, the Judicial Council sees no reason why the parties should not be able to utilize that mediator in regard to subsequent disputes. However, the proposal restricts the activities of a person who has mediated the parties' dispute if that person takes on a new role by acting as an attorney, counselor or psychotherapist for a participant of the prior mediation. The Judicial Council recognizes that such later professional relationships have the potential to create the appearance of impropriety and to arouse suspicions as to the neutrality of the mediator. However, a total prohibition on such relationships would likely deter many qualified professionals from serving as mediators. Additionally, in some areas of the state, the availability of needed professional services to former mediation parties could be severely restricted. Subsection (d) attempts to strike a balance by limiting future professional relationships to matters clearly distinct from the mediation.

Attch. II



0104 New Sec. 5. (a) At any time after the initial session, either  
0105 party may terminate mediation ordered under section 2.

0106 (b) The mediator shall terminate mediation whenever the  
0107 mediator believes that: (1) Continuation of the process would  
0108 harm or prejudice one or more of the parties or the children or (2)  
0109 the ability or willingness of any party to participate meaningfully  
0110 in mediation is so lacking that a reasonable agreement is un-  
0111 likely.

0112 (c) The mediator shall report the termination of mediation to  
0113 the court. The mediator shall not state the reason for termination  
0114 except when the termination is due to a conflict of interest or bias  
0115 on the part of the mediator.

0116 New Sec. 6. A mediator appointed under section 2 shall treat  
0117 all information obtained from and about the participants through  
0118 the mediation process as confidential and shall not disclose any  
0119 such information except as necessary for the conduct of the  
0120 mediation or as required by law.

Due to the costs involved, the negative attitudes which may result from continued mandatory mediation, and the possibility that in some cases a party may perceive more accurately than the mediator that the process is fruitless, the Judicial Council was hesitant to force a party to undergo more than one mediation session. It is anticipated that many initially hesitant parties will, following the initial session, view mediation as preferable to an adversarial resolution of a dispute concerning the parties' children.

Subsection (b) places a duty on the mediator to terminate the mediation if the interests of the children are not being protected or if negotiations are not being carried on in good faith or a party is engaged in overreaching. Although this is a difficult task for the mediator, a fair and acceptable agreement is unlikely to be achieved if these conditions exist.

Subsection (c) directs the mediator to inform the court if mediation is terminated and generally prohibits the mediator from informing the court of the reasons for termination. Reports by the mediator to the court might be viewed as coercive by the parties and would be contrary to the confidentiality necessary for effective mediation. An exception is made where termination is due to conflict or bias on the part of the mediator. In such cases mediation might still be successful with a different mediator.

Section 6 places a general duty of confidentiality on the mediator. The mediator is directed by section 4(a)(10) to inform the parties of the instances in which information obtained in mediation may be disclosed. See also section 7, regarding the mediator-party privilege.

0121 New Sec. 7. (a) A party ordered to participate in mediation  
0122 under section 2 has a privilege in any action to refuse to disclose,  
0123 and to prevent a witness from disclosing, any communication  
0124 made in the course of the mediation. The privilege may be  
0125 claimed by the party or anyone the party authorizes to claim the  
0126 privilege. There is no privilege under this section as to a com-  
0127 munication relevant to: (1) Information the mediator is required  
0128 to report under K.S.A. 1984 Supp. 38-1522 and amendments  
0129 thereto, (2) the commission of a crime during the mediation  
0130 process or (3) an expressed intent to commit a crime in the future.  
0131 (b) No person appointed as a mediator under section 2, nor  
0132 that person's agent, may be subpoenaed or otherwise compelled  
0133 to disclose any matters disclosed in the process of setting up or  
0134 conducting the mediation except as to matters not privileged  
0135 under subsection (a).

0136 New Sec. 8. The costs of any mediation ordered under sec-  
0137 tion 2 shall be taxed to either or both parties as equity and justice  
0138 require, unless the parties have reached a reasonable agreement  
0139 as to payment of the costs.

Section 7 creates a mediator-party privilege except as to communications relevant to reports of child abuse, the commission of a crime during the mediation, or an expressed intent to commit a crime in the future. The Judicial Council viewed provisions concerning confidentiality and privilege as necessary to promote the frank and open discussions required for effective mediation.

Subsection (b) extends to court-appointed mediators protection from forced disclosure of mediation matters similar to that which the Legislature has granted in cases of voluntary mediation, arbitration or conciliation. See chapter 212 of the 1984 Session Laws of Kansas.

In the absence of a reasonable agreement between the parties, section 8 permits the court to tax the costs of mediation in the same manner as costs and fees in divorce cases. See K.S.A. 60-1610(b)(4).

catch. If

0140 Sec. 9. K.S.A. 1984 Supp. 38-1522 is hereby amended to read  
0141 as follows: 38-1522. (a) When any of the following persons has  
0142 reason to suspect that a child has been injured as a result of  
0143 physical, mental or emotional abuse or neglect or sexual abuse,  
0144 the person shall report the matter promptly as provided in  
0145 subsection (c): Persons licensed to practice the healing arts or  
0146 dentistry; persons licensed to practice optometry; persons en-  
0147 gaged in postgraduate training programs approved by the state  
0148 board of healing arts; certified psychologists; Christian Science  
0149 practitioners; licensed professional or practical nurses examin-  
0150 ing, attending or treating a child under the age of 18; teachers,  
0151 school administrators or other employees of a school which the  
0152 child is attending; chief administrative officers of medical care  
0153 facilities; persons licensed by the secretary of health and envi-  
0154 ronment to provide child care services or the employees of  
0155 persons so licensed at the place where the child care services are  
0156 being provided to the child; licensed social workers; firefighters;  
0157 emergency medical services personnel; *mediators appointed*  
0158 *under section 2*; and law enforcement officers. The report may  
0159 be made orally and shall be followed by a written report if  
0160 requested. When the suspicion is the result of medical examina-  
0161 tion or treatment of a child by a member of the staff of a medical  
0162 care facility or similar institution, that staff member shall imme-  
0163 diately notify the superintendent, manager or other person in  
0164 charge of the institution who shall make a written report forth-  
0165 with. Every written report shall contain, if known, the names and  
0166 addresses of the child and the child's parents or other persons  
0167 responsible for the child's care, the child's age, the nature and  
0168 extent of the child's injury (including any evidence of previous  
0169 injuries) and any other information that the maker of the report  
0170 believes might be helpful in establishing the cause of the inju-  
0171 ries and the identity of the persons responsible for the injuries.  
0172 (b) Any other person who has reason to suspect that a child  
0173 has been injured as a result of physical, mental or emotional  
0174 abuse or neglect or sexual abuse may report the matter as  
0175 provided in subsection (c).

Attch. II

0176 (c) Reports made pursuant to this section shall be made to the  
0177 state department of social and rehabilitation services. When the  
0178 department is not open for business, the reports shall be made to  
0179 the appropriate law enforcement agency. On the next day that  
0180 the state department of social and rehabilitation services is open  
0181 for business, the law enforcement agency shall report to the  
0182 department any report received and any investigation initiated  
0183 pursuant to subsection (a) of K.S.A. ~~1983~~ 1984 Supp. 38-1524 and  
0184 amendments thereto. The reports may be made orally or, on  
0185 request of the department, in writing.

0186 (d) Any person required by this section to report an injury to  
0187 a child and who has reasonable cause to suspect that a child died  
0188 from injuries resulting from physical, mental or emotional abuse  
0189 or neglect or sexual abuse shall notify the coroner or appropriate  
0190 law enforcement agency of that suspicion.

0191 (e) Reports of child abuse or neglect by persons employed by  
0192 or of children of persons employed by the state department of  
0193 social and rehabilitation services shall be made to the appro-  
0194 priate law enforcement agency.

0195 (f) Willful and knowing failure to make a report required by  
0196 this section is a class B misdemeanor.

0197 Sec. 10. K.S.A. 1984 Supp. 38-1522 is hereby repealed.

0198 Sec. 11. This act shall take effect and be in force from and  
0199 after its publication in the statute book.

0272-11

1-29-85

January 28, 1985

Dear Senator:

I am speaking on behalf of the Mental Health Association in Kansas to express our full support of Senate Bill No. 33 for Court Ordered Mediation of Child Custody and Visitation Issues.

Many times the behavioral scientists, religious leaders, teachers, lawyers and other human service professionals have faced the ill effects of divorce and marital dissolution upon their clients. Evidence suggests that these effects can be minimized through a cooperative problem-solving approach by the separating couple. This is why we find it most fortunate that the Kansas Legislature is considering a bill for court ordered mediation of child custody and visitation issues.

Mediation empowers the participants by making them part of the decision-making process. It is the intervention of an impartial and neutral third party, with no decision-making power, into a dispute or negotiation to assist contending parties in reaching a mutually acceptable settlement of issues in dispute.

Mediation has a higher rate of success than the traditional adversarial approach because the participants have a personal investment in the decision made. It is a voluntary process in which the mediator's function is to assist the parties in developing a resolution procedure that will enable them to successfully satisfy their interests.

Since mediation facilitates communication and educates the parties to

1/29/85  
Attch. III

creatively and systematically look for the available alternatives and to the use of negotiating skills, the probability of returning to court with related problems decreases.

All of this translates into a faster case processing by the courts, increased probability of long-lasting settlements, "built-in" problem shooting strategies, higher client satisfaction, and less crowded courts. Additionally, people who have submitted their divorce related issues to mediation have expressed a greater feeling of justice, because they are assured that their side of the story was taken into consideration.

Therefore, as a practicing mediator and on behalf of the Mental Health Association in Kansas, I would strongly encourage you to endorse this bill and make mediation of child custody and visitation issues a reality in the courts of our State.

Very truly yours,

Susana Valdovinos-Hall, M.A.  
Mental Health Association  
Board of Directors

Attach. III

1-29-85

# Christian Science Committee on Publication For Kansas

820 Quincy Suite K  
Topeka, Kansas 66612

Office Phone  
913/233-7483

To: Senate Judiciary Committee

Re: SB 33

I request your help in finding a solution for a problem existing in this bill. The difficulty is not in the new language, but is in current law contained in this bill.

Christian Scientists are sincerely concerned about the welfare of children - our own and others. For that reason, we have not come earlier to seek your assistance.

Our problem lies in the requirement that Christian Science practitioners report suspected cases of child abuse or neglect.

Because our practitioners treat all manner of problem, including illness and injury, some may place them in a category with physicians. However, there are significant differences.

Christian Science practitioners treat their patients solely by spiritual means through prayer, using no physical or medicinal remedies. They are prevented by the ethics of their profession as well as by the provisions of the Kansas healing arts act from making any physical diagnosis which might be considered medical practice. Unlike a medical practitioner, the Christian Science practitioner, who is treating the patient through prayer, may not see the patient.

Christian Science practitioners are more accurately considered as clergymen, and are so considered by the Internal Revenue Service and the Social Security Administration, even though payments for treatment of illness or injury may be deducted from income taxes as medical expenses.

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Attch. IV



Our Church Manual, which governs us in the practice of our religion, states in Article VIII, Section 22:

"Members of this Church shall hold in sacred confidence all private communications made to them by their patients; also such information as may come to them by reason of their relation of practitioner to patient. A failure to do this shall subject the offender to Church discipline."

Kansas law also provides for confidential communications between penitent and minister of religion. Christian Science practitioners have usually been considered as coming under the provisions of laws of this type.

Our problem then becomes one of resolving the requirements for confidentiality on one hand with the requirement to report which exists in the law.

Attch. IV

1-29-85

RON SMITH  
Legislative Counsel



SB 40  
Senate Judiciary Committee  
January 29, 1985

Mr. Chairman and Members of the Senate Judiciary Committee.

I am Ron Smith, and I am Legislative Counsel for the Kansas Bar Association, a professional association representing more than 4,000 Kansas attorneys.

Our Executive Council makes our legislative policy. This fall they voted to support changes in the Informal Administration of Estates law as follows:

- (1) reducing the period an estate is open under this act from nine to six months; and
- (2) reducing the non-claim period from six to four months.

SB 40 appears to do both.

The purpose of the Informal Administration of Estates act was to speed smaller estates through the probate process. Reducing the non-claim period to four months and the overall time that an estate can be open under the act to six months further the original intent of the act.

The Kansas Bar Association supports these provisions in SB 40.

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Attch. II