

Approved April 1, 1986
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Chairman Joe Knopp at
Chairperson

3:30 a.m./p.m. on February 5, 1986 in room 313-S of the Capitol.

All members were present except:

Representatives Bideau, Duncan and Walker were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Jan Sims, Committee Secretary

Conferees appearing before the committee:

Ron Smith, Kansas Bar Association
Marjorie Van Buren, Judicial Administrator's Office
Bill Sneed, Kansas Association of Defense Counsel
Kathleen Sebelius, Kansas Trial Lawyers Association
Tom Bell, Kansas Hospital Association
Walter Scott
Joelen Miller, Kansas Legal Assistants Society

HB 2662 - An act concerning interest on judgments.

Ron Smith of the Kansas Bar Association appeared before the committee in support of HB 2662 (Attachment 1). He stated that post judgment interest should be tied with current rates, and that post judgment interest should not be used as a penalty. The current rate of 15% has become a penalty when a defendant has a justified appeal pending. He said Chapter 60 cases could have a yearly interest change or a rate change in line with more current fluctuations because of the larger dollar amounts involved. Chapter 61 cases could be adjusted less frequently, and perhaps even carry the rate at time of judgment for the entire five year life of the judgment. The Bar also expresses some concern regarding the publication of the rates.

Marjorie Van Buren appeared in support of the bill and presented Attachment 2. It is the preference of the Judicial Administrator's Office that the notice of rates be published in the Kansas Register and not have the Judicial Administrator involved.

Bill Sneed of the Kansas Association of Defense Counsel appeared in support of HB 2662 (Attachment 3). He stated that whether there is a fluctuating or fixed rate is a matter of public policy but the Kansas Association of Defense Counsel feels the current rate is unfair.

Kathleen Sebelius of the Kansas Trial Lawyers Association spoke in support of HB 2662 but pointed out that present law allows 10% on prejudgment amounts. She said that from an historical standpoint, the old law allowed for floating rates and at the time when interest rates were 21% the Legislature enacted the present 15% rate. Because of changing economic conditions the 15% now seems high, but that could change as conditions change. Historically post judgment interest was intended to be an incentive to pay the judgment and therefore somewhat penalizing.

Tom Bell of the Kansas Hospital Association appeared before the Committee and stated that his association supports the bill. He agreed with the statements of other conferees in that there are merits to both a fixed and a floating rate, but agreed that the present law needs to be adjusted.

Walter Scott appeared before the committee asking that the committee consider separating Chapter 60 and 61 cases. He feels that 15% is not too high for the dollar amounts involved in Chapter 61 cases. However, many times he has waived interest in order to collect the small judgments involved in Chapter 61 cases.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary
room 313-S, Statehouse, at 3:30 ~~xxxx~~ a.m./p.m. on February 5, 1986

HB 2216 - An act concerning civil procedure relating to depositions.

Representative O'Neal explained that the current law contains no statement of who can and cannot be present at a deposition. He presented a balloon containing an amendment at lines 110-112 pertaining to videotaping. (Attachment 4)

Jolene Miller of the Kansas Legal Assistants Society appeared before the committee and presented Attachment 5. She stated that the Legal Assistants Society supports HB 2616.

Ron Smith of the Kansas Bar Association indicated that the Bar Association generally supports the bill but believes that individuals entitled to be at a deposition should be specifically identified in the bill since some deponents travel a long distance for a deposition and if there is a problem with who is attempting to sit in on a deposition and it is certified to the court, the travel and time have been wasted. The Bar Association has no problem with paralegals, videotape technicians, etc. being present at depositions.

HB 2157 - An act concerning domestic relations; relating to child support order.s

The Committee had discussion on the testimony of conferees appearing concerning this bill. Rep. Luzzati moved that HB 2157 be amended by changing "normal" found on line 38 to "reasonable". Motion was seconded by Rep. Solbach. Motion carried. Rep. Vancrum moved that Draft 5RS 1875 be incorporated into HB 2157. Motion seconded by Rep. Douville. Rep. Teagarden made a substitute motion to report HB 2157 as amended favorably. Seconded by Rep. Wagnon. Motion carried.

Rep. Snowbarger moved that draft 5RS 1875 be introduced as a committee bill. Seconded by Rep. Vancrum. Motion carried.

HB 2639 - An act concerning divorce; relating to division of property. *Atch. 6*

Rep. Buehler offered a balloon amending lines 159-161 to HB 2639. Seconded by Rep. O'Neal. Motion carried. Rep. Vancrum moved that the word "manifest" at line 165 be deleted. Seconded by Rep. Shriver. Motion carried. Rep. Solbach moved to table the bill as amended. The motion died for lack of a second. Rep. Snowbarger moved to delete the language, "and excluded from consideration in making the division of property, unless the court determines that the result would be manifestly unjust and unreasonable" on lines 163 and 164. Seconded by Rep. Solbach. Motion carried. Rep. Buehler moved that HB 2639 be reported favorably. Seconded by Rep. O'Neal. Motion failed 8 to 7.

The Chairman adjourned the meeting at 5:00 P.M.

2/5 Smith



**KANSAS BAR
ASSOCIATION**

1200 Harrison
P.O. Box 1037
Topeka, Kansas 66601
(913) 234-5696

HB 2662

House Judiciary Committee

February 6, 1986

Mr. Chairman. Members of the House Judiciary Committee. I am Ron Smith, Legislative Counsel for the Kansas Bar Association.

KBA requested introduction of a nearly identical bill last year, HB 2459. Basically, we support and believe that HB 2662 is desirable legislation that addresses a number of problems. It is fair and necessary because it would conform interest on judgments to current interest rates.

Post Judgment interest rates are not meant to be penalties. To the extent that average interest rates are lower than the current 15% rate, a judgment debtor is penalized if that judgment debtor is wanting to make a legitimate appeal, or is unable for whatever reason to pay the judgment immediately. There are other penalties for frivolous appeals currently in our statutes, and other theories of penalties for promoting prompt payment of judgments. Using post-judgment interest rates for that purpose is unnecessary. That was not the purpose the legislature intended when interest rates were raised to the 15% level some years back.

*Attachment 1
House Judiciary
2-5-86*

The intent of this bill is to have the Secretary of State determine a post-judgment interest rate that will fluctuate with the money markets. This bill recognizes that we have a volatile system where interest rates can and will fluctuate, and that post-judgment interest should adjust accordingly.

Some may argue the fluctuating rate ought not be the one-year T-bill, and prefer an average prime rate. This is impractical, we think. Bank prime rates are more of an indication of local competitive banking forces than the cost of money.

The Kansas Bankers Association indicates to me that one-year T-Bill auctions occur every fourth Thursday. This means there are 13 such auctions each year. So the judgments rendered in a given year could have one of 13 potential interest rates. Each would be reported by the Secretary of State in the state register.

The concern I've heard about the bill is the drafted language of HB 2662 would require judgment creditors to make a post-judgment interest rate adjustment each time there is a new "auction" for the one-year T-Bill. That is not our intention, and if the bill states it that way, then it needs an amendment. In fact, we suggest that the committee insure that post-judgment interest rates need not be adjusted more than once each year, perhaps on the anniversary of date of the judgment.

With regard to Chapter 61 cases, there are many attorneys with significant numbers of collections cases where the judgment will be less than \$5,000. The expense of refiguring ongoing post-judgment interest on hundreds of small collection cases in order to conform to changes in the one-year T-Bill rate is perhaps inappropriate. I understand recommended

changes might be made concerning these types of cases, and we'd like to reserve an opinion on the merit of the change until we see them.

KBA will support necessary amendments to carry into effect this intent.

Thank you.

2/5



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 West 10th
Topeka, Kansas 66612-1507

(913) 296-2256

February 5, 1986

Testimony before
House Judiciary Committee
on H.B. 2662

Presented by
Marjorie Van Buren
Executive Assistant to the Judicial Administrator

The Office of Judicial Administration has no comment on the merits of H.B. 2662.

If the committee is disposed to act favorably on the bill, we would urge amendment of lines 66-68 regarding giving of notice of the rate. We suggest it would be appropriate that such notice be published in the Kansas Register. By statute, the Kansas Register goes to each district court and would serve as a more formal means of notification than a memo from the judicial administrator. Also, of course, such notice would be available to the public.

MVB:myb

Attachment 2
House Judiciary
2-5-86

POST JUDGMENT INTEREST

Issue:

Whether to adopt a post judgment interest rate equivalent to the Treasury Bill Rate.

KADC Position:

The Kansas Association of Defense Counsel supports legislation that establishes an interest rate on post judgment awards which would correlate with the United States Treasury Bill Rate.

Rationale:

Previously, Kansas statutes provided a fixed rate of interest on judgments and decrees. This was unfair and impractical since judgment awards were unable to adjust for interest rate movements in the economy. Therefore, the amount represented by the judgment would not reflect the true value owed for the period during which the debt remained unpaid.

The KADC believes that a more favorable approach would be a statute that provides for a flexible post judgment interest rate that would vary according to some external standard, such as the Treasury Bill Rate. The T-Bill Rate is a variable standard which would provide a valuable means for adjusting interest rates on post judgment awards to keep pace with the changing conditions of the economy. Each month a rate equal to the coupon issue yield would be determined to be the equivalent of the average accepted auction price for the last auction held during the preceding calendar month of a fifty-two week period. The Secretary of State would then publish this rate each month. This would allow a variable interest rate to move with the economy. A rate which is too high penalizes the defendant; too low, the plaintiff.

It is the position of the KADC that any judgment rendered by a court of this state should bear interest on and after the day on which the judgment is rendered at an appropriate rate consistent with current economic conditions.

*Attachment 3
House Judiciary
2-5-80*

O'Neal 2/5

0083 shall be set forth in writing to accompany a deposition recorded
0084 by nonstenographic means.

0085 (5) The notice to a party deponent may be accompanied by a
0086 request made in compliance with K.S.A. 60-234 and amendments
0087 thereto for the production of documents and tangible things at
0088 the taking of the deposition. The procedure of K.S.A. 60-234 and
0089 amendments thereto shall apply to the request.

0090 (6) A party may in the notice name as the deponent a public
0091 or private corporation, a partnership, association or governmen-
0092 tal agency and designate with reasonable particularity the mat-
0093 ters on which examination is requested. The named organization
0094 shall designate one or more officers, directors, managing agents
0095 or other persons who consent to testify on its behalf and may set
0096 forth, for each person designated, the matters on which the
0097 person will testify. The designated persons shall testify as to
0098 matters known or reasonably available to the organization. This
0099 subsection does not preclude taking a deposition by any other
0100 procedure authorized in these rules.

0101 (7) The parties may stipulate in writing or the court may upon
0102 motion order that a deposition be taken by telephone. For the
0103 purposes of this section and K.S.A. 60-228(a), 60-237(a)(1), 60-
0104 237(b)(1) and 60-245(e), and amendments thereto, a deposition
0105 taken by telephone shall be taken in the district agreed upon by
0106 the parties and at the place where the deponent answers ques-
0107 tions. If a deposition is taken by telephone, a stenographic record
0108 of the deposition shall be made while the deposition is being
0109 taken.

0110 ~~(8) The parties may stipulate in writing or the court, upon~~
0111 ~~motion and a finding that it is necessary, may order that a~~
0112 ~~deposition be videotaped.~~ If a deposition is videotaped, a steno-
0113 graphic record of the deposition shall be made while the depo-
0114 sition is being taken, at the place where the deponent answers
0115 questions.

0116 (c) *Examination and cross-examination; record of examina-*
0117 *tion; oath; objections.* Examination and cross-examination of
0118 witnesses may proceed as permitted at the trial under the provi-
0119 sions of K.S.A. 60-243 and amendments thereto. The officer

A party may videotape a deposition upon giving notice of the videotaping along with the notice of deposition as provided in this section.

Attachment 4
House Judiciary
2-5-80

2/5 Miller
KANSAS LEGAL ASSISTANTS SOCIETY



Chairman Knopp, Ladies and Gentlemen of the Committee, good afternoon:

My name is Jolene Miller and I am here to testify on behalf of Kansas Legal Assistants Society in favor of HB 2216.

By way of introduction, Kansas Legal Assistants Society incorporated in June 1977 and is the first statewide professional organization to represent legal assistants in Kansas.

Legal assistants are a distinguishable group of persons who assist lawyers in the delivery of legal services. Through formal education, training and experience, legal assistants have knowledge and expertise regarding the legal system and substantive and procedural law which qualify them to assist in the delivery of legal services under the supervision of a licensed attorney. It's the direct supervision of the employing lawyer that constitutes the legal assistant's authority to exercise their skill and expertise in serving client needs.

Legal assistants can render valuable support to counsel at depositions by performing several tasks.

*Attachment 5
Abuse Judiciary
2-5-80*

First, taking notes gives legal assistants and counsel the opportunity to follow-up on testimony elicited at the deposition prior to receiving an actual copy of the deposition from the court reporter--thereby expediting the legal process and providing better service to the client.

Second, the documents necessary for the taking of a deposition are sometimes voluminous and their organization is usually a task assigned to the legal assistant. Because of the legal assistant's familiarity with those documents, she is able to efficiently, and with little effort, make those documents readily available to both parties during the deposition without having to waste valuable time searching for them.

Third, a person's first experience with the legal process can be quite intimidating. It is not altogether uncommon for legal assistants to establish a close, working relationship with the client and help ease their apprehensions. The presence of the legal assistant at depositions lends moral support to the client in a situation where he is, at best, uncomfortable.

Fourth, because the legal assistant has established rapport with those involved, including preparing the witness for the deposition, counsel relies on the presence of the legal assistant at the deposition.

K.S.A. 60-234, in its present form, technically excludes the presence of legal assistants at the taking of depositions and has no paralell in the Federal Rules of Civil Procedure. This statute, in its present form, is an unnecessary restriction upon those attorneys who wish to utilize legal assistants at the taking of depositions.

Consequently, for the reasons I've enumerated, I urge the passage of HB 2216.

Thank you

2/5 Buehler

STATE OF KANSAS • HOUSE OF REPRESENTATIVES

FRANK BUEHLER

Representative, 113th District, Barton County
P.O. Box 317, Claflin, Kansas 67525

memorandum

2/4/86

The lined out language in this proposed Amendment was never intended and was inadvertently included.

With this removal, we hope you will find the amendment favorable & give support to it.

Frank
Buehler

Attachment 6
House Judiciary
2-5-86

erty; family ties and obligations; the allowance of maintenance
or lack thereof; dissipation of assets; and ~~such any~~ other factors
as that the court considers necessary to make a just and reason-
able division of property. ~~If either spouse in the spouse's own~~
~~right has acquired property by gift, descent, devise or bequest, it~~
~~shall be presumed that the property is~~ the sole and separate
property of the spouse who acquired it, to be awarded to that
spouse and excluded from consideration in making the division
of property, unless the court determines that the result would be
manifestly unjust and unreasonable, considering all relevant
factors.

(2) *Maintenance.* The decree may award to either party an
allowance for future support denominated as maintenance, in an
amount the court finds to be fair, just and equitable under all of
the circumstances. The decree may make the future payments
modifiable or terminable under circumstances prescribed in the
decree. In any event, the court may not award maintenance for a
period of time in excess of 121 months. If the original court
decree reserves the power of the court to hear subsequent
motions for reinstatement of maintenance and such a motion is
filed prior to the expiration of the stated period of time for
maintenance payments, the court shall have jurisdiction to hear a
motion by the recipient of the maintenance to reinstate the
maintenance payments. Upon motion and hearing, the court may
reinstate the payments in whole or in part for a period of time,
conditioned upon any modifying or terminating circumstances
prescribed by the court, but the reinstatement shall be limited to
a period of time not exceeding 121 months. The recipient may
file subsequent motions for reinstatement of maintenance prior
to the expiration of subsequent periods of time for maintenance
payments to be made, but no single period of reinstatement
ordered by the court may exceed 121 months. Maintenance may
be in a lump sum, in periodic payments, on a percentage of
earnings or on any other basis. At any time, on a hearing with
reasonable notice to the party affected, the court may modify the
amounts or other conditions for the payment of any portion of the
maintenance originally awarded that has not already become

Notwithstanding the provisions of subsection (b)
of K.S.A. 23-201 and amendments thereto,
any property acquired by either spouse, in the
spouse's own right, by descent, devise or bequest,
~~and the rents, issues, profits or proceeds thereof,~~
or by gift from any person except the other spouse,
shall be presumed to be

HOUSE BILL NO. _____

By Committee on Judiciary

AN ACT concerning domestic relations; relating to division of property in actions for divorce, annulment or separate maintenance; amending K.S.A. 1985 Supp. 60-1610 and repealing the existing section.

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

Section 1. K.S.A. 1985 Supp. 60-1610 is hereby amended to read as follows: 60-1610. A decree in an action under this article may include orders on the following matters:

(a) Minor children. (1) Child support and education. The court shall make provisions for the support and education of the minor children. The court may modify or change any prior order when a material change in circumstances is shown, irrespective of the present domicile of the child or the parents. Regardless of the type of custodial arrangement ordered by the court, the court may order the child support and education expenses to be paid by either or both parents for any child less than 18 years of age, at which age the support shall terminate unless the parent or parents agree, by written agreement approved by the court, to pay support beyond the time the child reaches 18 years of age. In determining the amount to be paid for child support, the court shall consider all relevant factors, without regard to marital misconduct, including the financial resources and needs of both parents, the financial resources and needs of the child and the physical and emotional condition of the child. Until a child reaches 18 years of age, the court may set apart any portion of property of either the husband or wife, or both, that seems necessary and proper for the support of the child. Every order requiring payment of child support under this section shall require that the support be paid through the clerk of the

district court or the court trustee.

(2) Child custody. (A) Changes. Subject to the provisions of the uniform child custody jurisdiction act (K.S.A. 38-1301 et seq., and amendments thereto), the court may change or modify any prior order of custody when a material change of circumstances is shown.

(B) Examination of parties. The court may order physical or mental examinations of the parties if requested pursuant to K.S.A. 60-235 and amendments thereto.

(3) Child custody criteria. The court shall determine custody in accordance with the best interests of the child.

(A) If the parties have a written agreement concerning the custody of their minor child, it is presumed that the agreement is in the best interests of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreement is not in the best interests of the child.

(B) In determining the issue of custody, the court shall consider all relevant factors, including but not limited to:

(i) The length of time that the child has been under the actual care and control of any person other than a parent and the circumstances relating thereto;

(ii) the desires of the child's parents as to custody;

(iii) the desires of the child as to the child's custodian;

(iv) the interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interests; and

(v) the child's adjustment to the child's home, school and community.

Neither parent shall be considered to have a vested interest in the custody of any child as against the other parent, regardless of the age of the child, and there shall be no presumption that it is in the best interests of any infant or young child to give custody to the mother.

(4) Types of custodial arrangements. Subject to the

provisions of this article, the court may make any order relating to custodial arrangements which is in the best interests of the child. The order shall include, but not be limited to, one of the following, in the order of preference:

(A) Joint custody. The court may place the custody of a child with both parties on a shared or joint-custody basis. In that event, the parties shall have equal rights to make decisions in the best interests of the child under their custody. When a child is placed in the joint custody of the child's parents, the court may further determine that the residency of the child shall be divided either in an equal manner with regard to time of residency or on the basis of a primary residency arrangement for the child. The court, in its discretion, may require the parents to submit a plan for implementation of a joint custody order upon finding that both parents are suitable parents or the parents, acting individually or in concert, may submit a custody implementation plan to the court prior to issuance of a custody decree. If the court does not order joint custody, it shall include in the record the specific findings of fact upon which the order for custody other than joint custody is based.

(B) Sole custody. The court may place the custody of a child with one parent, and the other parent shall be the noncustodial parent. The custodial parent shall have the right to make decisions in the best interests of the child, subject to the visitation rights of the noncustodial parent.

(C) Divided custody. In an exceptional case, the court may divide the custody of two or more children between the parties.

(D) Nonparental custody. If during the proceedings the court determines that there is probable cause to believe that the child is a child in need of care as defined by subsections subsection (a)(1), (2) or (3) of K.S.A. ~~1984~~ 1985 Supp. 38-1502 and amendments thereto or that neither parent is fit to have custody, the court may award temporary custody of the child to another person or agency if the court finds the award of custody to the other person or agency is in the best interests of the

child. In making such a custody order, the court shall give preference, to the extent that the court finds it is in the best interests of the child, first to awarding such custody to a relative of the child by blood, marriage or adoption and second to awarding such custody to another person with whom the child has close emotional ties. The court may make temporary orders for care, support, education and visitation that it considers appropriate. Temporary custody orders are to be entered in lieu of temporary orders provided for in K.S.A. ~~1984~~ 1985 Supp. 38-1542 and 38-1543, and amendments thereto, and shall remain in effect until there is a final determination under the Kansas code for care of children. An award of temporary custody under this paragraph shall not terminate parental rights nor give the court the authority to consent to the adoption of the child. When the court enters orders awarding temporary custody of the child to an agency or a person other than the parent, the court shall refer a transcript of the proceedings to the county or district attorney. The county or district attorney shall file a petition as provided in K.S.A. ~~1984~~ 1985 Supp. 38-1531 and amendments thereto and may request termination of parental rights pursuant to K.S.A. ~~1984~~ 1985 Supp. 38-1581 and amendments thereto. The costs of the proceedings shall be paid from the general fund of the county. When a final determination is made that the child is not a child in need of care, the county or district attorney shall notify the court in writing and the court, after a hearing, shall enter appropriate custody orders pursuant to this section. If the same judge presides over both proceedings, the notice is not required. Any disposition pursuant to the Kansas code for care of children shall be binding and shall supersede any order under this section.

(b) Financial matters. (1) Division of property. The decree shall value and divide the real and personal property of the parties, as of the date of the filing of the petition pursuant to K.S.A. 60-1604 and amendments thereto, whether owned by either spouse prior to marriage, acquired by either spouse in the

spouse's own right after marriage or acquired by the spouses' joint efforts, by: (A) A division of the property in kind; (B) awarding the property or part of the property to one of the spouses and requiring the other to pay a just and proper sum; or (C) ordering a sale of the property, under conditions prescribed by the court, and dividing the proceeds of the sale. In making the division of property the court shall consider the age of the parties; the duration of the marriage; the property owned by the parties; their present and future earning capacities; the time, source and manner of acquisition of property; family ties and obligations; the allowance of maintenance or lack thereof; dissipation of assets; and such other factors as the court considers necessary to make a just and reasonable division of property.

(2) Maintenance. The decree may award to either party an allowance for future support denominated as maintenance, in an amount the court finds to be fair, just and equitable under all of the circumstances. The decree may make the future payments modifiable or terminable under circumstances prescribed in the decree. In any event, the court may not award maintenance for a period of time in excess of 121 months. If the original court decree reserves the power of the court to hear subsequent motions for reinstatement of maintenance and such a motion is filed prior to the expiration of the stated period of time for maintenance payments, the court shall have jurisdiction to hear a motion by the recipient of the maintenance to reinstate the maintenance payments. Upon motion and hearing, the court may reinstate the payments in whole or in part for a period of time, conditioned upon any modifying or terminating circumstances prescribed by the court, but the reinstatement shall be limited to a period of time not exceeding 121 months. The recipient may file subsequent motions for reinstatement of maintenance prior to the expiration of subsequent periods of time for maintenance payments to be made, but no single period of reinstatement ordered by the court may exceed 121 months. Maintenance may be in a lump sum, in

periodic payments, on a percentage of earnings or on any other basis. At any time, on a hearing with reasonable notice to the party affected, the court may modify the amounts or other conditions for the payment of any portion of the maintenance originally awarded that has not already become due, but no modification shall be made without the consent of the party liable for the maintenance, if it has the effect of increasing or accelerating the liability for the unpaid maintenance beyond what was prescribed in the original decree. Every order requiring payment of maintenance under this section shall require that the maintenance be paid through the clerk of the district court or the court trustee.

(3) Separation agreement. If the parties have entered into a separation agreement which the court finds to be valid, just and equitable, the agreement shall be incorporated in the decree. The provisions of the agreement on all matters settled by it shall be confirmed in the decree except that any provisions for the custody, support or education of the minor children shall be subject to the control of the court in accordance with all other provisions of this article. Matters settled by an agreement incorporated in the decree, other than matters pertaining to the custody, support or education of the minor children, shall not be subject to subsequent modification by the court except: (A) As prescribed by the agreement or (B) as subsequently consented to by the parties.

(4) Costs and fees. Costs and attorney fees may be awarded to either party as justice and equity require. The court may order that the amount be paid directly to the attorney, who may enforce the order in the attorney's name in the same case.

(c) Miscellaneous matters. (1) Restoration of name. Upon the request of a spouse, the court shall order the restoration of that spouse's maiden or former name.

(2) Effective date as to remarriage. Any marriage contracted by a party, within or outside this state, with any other person before a judgment of divorce becomes final shall be

voidable until the decree of divorce becomes final. An agreement which waives the right of appeal from the granting of the divorce and which is incorporated into the decree or signed by the parties and filed in the case shall be effective to shorten the period of time during which the remarriage is voidable.

(3) Applications of amendments. Amendments to this section effective on the date of publication in the Kansas register, shall apply to all actions pending on or commenced after that date.

Sec. 2. K.S.A. 1985 Supp. 60-1610 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.