Approved 2-28-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Representative John M. Solbach at
Chairperson

3:30 ~~a~~p.m./p.m. on February 4, 1991 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, O'Neal and Sebelius who were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

John Wine, Secretary of State's Office
Michael J. Byington, Lobby and Services Provider for Kansas Association for the Blind and Visually Impaired, Inc.
Bud Grant, representing Kansas Chamber of Commerce
Kay Farley, Office of Judicial Administration
Ann McDonald, Court Trustee 29th Judicial Dist. Wyandotte Co.
Jamie Corkhill, Child Support Enforcement, SRS
John Ostrowski, Lobbyist for AFL-CIO
Ron Smith, Kansas Bar Associon Legislative Counsel
Chip Wheelen, Lobbyist for Kansas Medical Society

The Chairman called the meeting to order.

John Wine, Secretary of State's Office, appeared and requested legislation to deal with problems that they have with bussinesses' annual reports. (attachment #0)

Representative Smith made a motion to introduce the proposed legislation. Representative Carmody seconded the motion. The motion carried.

Michael J. Byington, Lobby and Services Provider for Kansas Association for the Blind and Visually Impaired, Inc., appeared and requested legislation which would clarify language in the Kansas Guardianship Statutes as to whether a legally disabled person is entitled to have free legal representation provided when petitioning the court for restoration to competence (See Attachment # 1).

Representative Everhart made a motion to introduce the proposed legislation. Representative Smith seconded the motion. The motion carried.

Bud Grant, representing the Kansas Chamber of Commerce distributed copies of SB 355 (Attachment # 2) from the 1989 Legislative Session, and requested a bill for civil remedies for the crime of theft.

Representative Smith made a motion that the proposed legislation be introduced. Representative Snowbarger seconded the motion. The motion carried.

Representative Everhart made a motion that a committee bill be introduced that deals with insurance relating to the automobile injury reparations act which would amend the definition of motor vehicles to include motorized bicycles. Representative Smith seconded the motion. The motion carried.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Revisor's Staff briefly reviewed the legal changes proposed in House Bills 2050 and 2055. Staff said HB's 2050 and 2055 were requested by the Office of Judicial Administration.

Kay Farley appeared in support of HB 2050. (See Attachment # 3). Ann McDonald, Court Trustee for the 29th Judicial District, Wyandotte County, submitted written testimony supporting House Bill 2050 and Ms. Farley read from the second page of McDonald's testimony which points out "there often is no other remedy or collection tool." (See Attachment # 4.)

Jamie Corkhill, Child Support Enforcement, SRS, appeared to urge the committee to pass HB 2050. (See Attachment # 5).

A committee member asked if a notification procedure would be desirable in connection with payments and noted the present law covers maintenance of a spouse and prior arrearages.

A committee member asked for clarification of how it is determined whether cases are referred to the Court Trustees Offices or to the SRS Office and if the Court Trustees are hired by SRS.

Written testimony was submitted by the Kansas Trial Lawyers Association, in connection with HB 2050. (See Attachment # 6).

John Ostrowski, lobbyist for AFL-CIO, appeared to point out that HB 2050, as written, will present many mechanical problems and policy questions. Mr. Ostrowski said written testimony will be submitted for the record.

Ron Smith, Kansas Bar Association Legislative Counsel, appeared with no position on HB 2050; however, he noted several policy considerations needing to be studied before passage of the bill. (See Attachment # 7).

There being no further conferees, the hearing on HB 2050 was closed.

Chip Wheelen, lobbyist for the Kansas Medical Society, appeared as an opponent of HB 2055. (See Attachment # 8).

A committee member asked if HB 2055 would also apply to the State Board of Healing Arts. Mr. Wheelen said it appears it would apply to the state licensing agency but noted that is not a voluntary organization; that to restrict to licensing agencies might allow establishment of some coordination between organizations requesting information and the appropriate licensing agency, but licensing agencies do not have income characteristics of the licensees; also, that the legislative intent is not clear by the use of the phrase "it shall be the affirmative duty...beginning on Page 1, Line 12 of HB 2055.

Kay Farley, Child Support Coordinator, Office of Judicial Administration, appeared in support of HB 2055. (See Attachment # 9).

Ron Smith, KBA Legislative Counsel, appeared with no formal position on HB 2055 but noted the bill appears to fall into the category of "nice idea, wrong methodology". (See Attachment # 10.)

There being no further conferees, the hearing on HB 2055 was closed.

The Chairman appointed a sub-committee to study HB's 2050 and 2055 with the OJA. Appointees are: Representative Gomez, Chairperson; Representative Smith and Representative Parkinson.

The Chairman called for consideration of approval of the minutes of January 16, 17, 22 and 23, 1991. Representative Everhart made a motion that the minutes be approved as submitted. Representative Hamilton seconded the motion. The motion carried.

The meeting adjourned at 4:30 PM. The next scheduled meeting will be Tuesday, February 5, 1991 at 3:30 p.m. in room 313-S.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY DATE: 2/4/91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Phyllis Schram - Project Director	218 East Kansas Lansing, Kansas 66043	Outside Connections
Kathy Kotter - Topeka Facilitator	1633 Grove, Topeka	" "
John Wine	Topeka	Sec. of St.
KEITH R LANDIS	TOPEKA	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Chip Wheelen	Topeka	KS Medical Soc.
Jeff Montague		Budget
[illegible] GRANT	TOPEKA	KCCI
Bill Morrissey	Topeka	KDHR/Work Comp
Kathy [illegible]	Topeka	Kan Bankers Assn.
John Ostrowski	Topeka	KS AFL-CIO

Bill Graves
Secretary of State

2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236

STATE OF KANSAS

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE

February 4, 1991

Request for Introduction of Bill

Five problems with business annual reports have been brought to our attention and we propose the following solutions:

1. A corporation should be given more time in which to obtain an extension of time to file its annual report. The deadline for requesting an extension should be its forfeiture date rather than its original due date. Limited partnerships and limited liability companies already have this opportunity.

2. Limited partnerships and limited liability companies should be required to report the names and addresses of those owning five percent or more of the capital. Corporations have always reported that information.

3. Information about a corporation's authorized shares, date of election of officers, and places of business should be deleted from corporate annual reports.

4. We propose charging nonprofit corporations $20, rather than $75, for filing articles of incorporation and $20, rather than $5, for filing annual reports. This would reduce the financial burden of creating a nonprofit organization and permit the state to recover filing costs with each annual report. To assist those who have recently incorporated, we propose delaying the increase in the annual fee for two years.

5. The statutory method of abating franchise taxes for out of state activities should be changed to clarify that shell holding companies are not entitled to this abatement.

Because the last proposal is necessary to prevent lost general fund revenues, we ask that the bill be effective upon publication in the Kansas Register.

Thank you.

John Wine
Assistant Secretary of State

HJUD
Attachment 0
2-4-91

Kansas Association for the Blind and Visually Impaired, Inc.

AN AFFILIATE OF THE AMERICAN COUNCIL OF THE BLIND

January 16, 1991

TO: Representative Solbach, Chairperson, House Judiciary

FROM: Michael J. Byington, Lobby and Services Provider

SUBJECT: Bill Request

Thank you for talking with me yesterday and agreeing to have your committee consider this bill request. I apologize for not being able to appear in person to make the request, but my lobbying duties are strictly volunteer and my job requires me to be out of town.

My full time job is with the Kansas Project of the Helen Keller National Center for Deaf/Blind Youths and Adults, and it is in this capacity that the problem requiring Legislative address came to my attention. The Kansas Association for the Blind and Visually Impaired has voted by motion to support me in requesting this Legislation.

Language is not clear in the Kansas Guardianship Statutes as to whether a legally disabled person is entitled to have free legal representation provided when petitioning the court for restoration to competence. The statutes make it clear that a proposed ward entitled to representation when the court considers the action of finding the person to be legally disabled, but should the ward then wish to petition for restoration to competence, most of the probate judges in Kansas interpret the statutes to suggest that the ward is not entitled to court provided representation. In a few counties, the judges have interpreted the statutes to mean that court provided representation is available and have acted accordingly, but the wide variety of interpretations suggest that the language needs to be made more clear.

Under the present system, an individual who is under a full guardianship and conservatorship, even if wealthy, may have absolutely no access to use their monies to hire counsel to attempt restoration if the guardian/conservator does not provide them with money for this purpose. Therefore, this conundrum in effect bars the individual from the due process assured them in other parts of the Kansas Guardianship Statutes.

The statutes currently state that a ward may only petition for restoration once in each six months period. Thus there are already safeguards to insure that an individual who is severely mentally disturbed could not consistently use court provided representation to file one petition immediately after another.

The fiscal impact of this proposed legislation would be negligible. I have talked with several probate judges who, between them have had

HJUD attachment #1 2-4-91

many years on probate benches. They tell me that the person petitioning for restoration is an extremely infrequent occurrence. One judge said that he did not understand why I was worried about this issue because he had had only four or five people petition for restoration in his last 15 years on the bench. This would suggest two things. First of all, the numbers availing themselves of this due process will be small even if representation is available, therefore creating an extremely small fiscal impact. Secondly, the fact that the numbers seem to be so very minute might imply that indeed persons wanting restoration can not get access to legal help to ask for it.

In working as I do with the deaf/blind, I have come across several people who have been placed under extremely restrictive guardianships and conservatorships by the courts due to the impact of their deaf/blindness. In a few cases, these individuals have, despite their handicaps, worked very diligently in the rehabilitation process. They have learned to communicate and reason despite their disabilities and now need much less restrictive guardianships, or in a few cases, would benefit from restoration. Yet if their guardian, out of protectiveness or mis-directed love, declines to provide them with the means to request restoration, they will remain under the tight restrictions.

Thank you for your consideration of this matter. I can be reached at (913) 296-4454 (work) and (913) 233-3839 (home).

NJUD
attachment #1-2
2-4-91

Session of 1989

SENATE BILL No. 355

By Committee on Federal and State Affairs

3-7

AN ACT concerning theft; providing certain civil remedies therefor.

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

Section 1. (a) Any person who commits theft shall be civilly liable to the owner of the property in an amount equal to:

(1) Actual damages equal to the full retail value of the property; and

(2) a civil penalty of not less than $100 nor more than $1,000, as determined by the court.

(3) attorney fees and court costs.

(b) If a minor commits theft, the parent or guardian of the minor, except in cases where the guardian is a state agency, shall be civilly liable for the amount provided by subsection (a). The court may waive all or part of the liability provided for by this subsection if it determines that such liability would be an economic hardship on the parent or guardian of the minor.

(c) A conviction, plea of guilty or *nolo contendere* or adjudication of the offense of theft shall not be a prerequisite to the bringing of an action pursuant to this section.

(d) As used in this section, "theft" means theft as defined by K.S.A. 21-3701 and amendments thereto.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

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attachment #2
2-4-91

HOUSE BILL 2050
HOUSE JUDICIARY COMMITTEE
FEBRUARY 4, 1991

Testimony of Kay Farley
Child Support Coordinator
Office of Judicial Administration

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before you today to support House Bill 2050. I am speaking today on behalf of the Office of Judicial Administration and the District Court Trustees.

The intent of Workman's Compensation Act is to provide income to an injured employee and the employee's family during the employee's recovery. As such, children in an intact family benefit from the Workman's Compensation Act. However, because the act does not allow for debt collection, even for child support enforcement purposes, children of divorce are denied support during the time the obligor is receiving Workman's Compensation benefits.

Kansas law and case law* support the concept that unattachable sources of income, such as unemployment benefits, KPERS benefits, and Social Security Disability benefits, are attachable for the purposes of child support enforcement. We ask that the same consideration be given for the Workman's Compensation Act.

HJUD
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attachment #3

As it stands now, a child whose parent is receiving Workman's Compensation benefits is worse off than a child whose parent is unemployed. This is an inequity. It is also an inequity that a child of an intact family should receive priority over a child of divorce.

While this problem only affects 1-2% of the District Court Trustee's cases, for the families it does affect, it can be devastating.

To remedy these inequities, I ask you to pass House Bill 2050.

* Mahone v. Mahone, 213 Kan. 346 (1973)

Mariche v. Mariche, 243 Kan. 547 (1988)

HJUD
2-4-91
attachment #3-2

TESTIMONY ON HOUSE BILL 2050

House Bill 2050 makes it clear that workmen's compensation payments to a worker are subject to Income Withholding or Garnishment for support. Such payments have always been intended to assist the injured worker and his/her family or dependents. If the family were still intact, the spouse and children would benefit from workmen's compensation payments and there is no demonstrable reason why divorced families should not benefit as well.

The Kansas Supreme Court decided in Mahone vs. Mahone, 213 Kan. 346,517 P.2d 131 (1973) that:

> "Accumulated funds presently due and owing from the Kansas Public Employees Retirement System to a member may be reached to satisfy child support payments due under a decree of divorce. In such cases the statutory exemption provided by K.S.A. 74-4923 is not applicable."

Syl. Par. 3. The Court also said in that same case, Syl. Par 2:

> "The whole purpose and policy of our exemption laws has been to secure to an unfortunate debtor the means to support himself and his family, to keep them from being reduced to absolute destitution and thereby public charges."

In Mariche vs. Mariche, 243 Kan. 547, _____ P.2d _____ (1988), the court allowed the garnishment of federal social security disability benefits to satisfy past-due child support and at 551 cited language from Mahone:

> "This court as a matter of public policy has always vigorously protected . . . 213 Kan. at 352"

The Garnishment and Income Withholding statutes, K.S.A. 60-714, et seq. and K.S.A. 23-4,106 make no mention of any restriction on the use of these remedies for the collection of support. Only the Workmen's Compensation statute disallows attachment of workmen's compensation, and for the very reason that we are advocating today: because these payments were to help tide the injured worker and his/her dependents over a difficult time when the breadwinner was unable to work. The legislature no doubt made a public policy decision at that time and opted for protection of the family even at the expense of other creditors. That rationale is still valid today with one exception, the exception House Bill

HSUD
2-4-91
attachment # 4

2050 is meant to clarify: that dependents are different from other creditors and the law should recognize that.

In a society where half of our children spend a significant amount of time in a single parent home, and close to one-fourth of our children live at or below the poverty level, our present workmen's compensation statute is an anachronism.

I have favored a change such as House Bill 2050 for many years. I am unable to tell you exactly how many families would benefit from this bill, but at a meeting of the state's Court Trustees on February 1, 1991, most agreed about 2 to 5% of their child support enforcement cases would benefit from this change. The problem is that for these families, there often is no other remedy or collection tool. Once the funds are deposited in a bank account, we can garnish, but if they aren't deposited, or the garnishment order doesn't get served right away this remedy doesn't work. We can also file a contempt or Show Cause motion but this requires personal service [Pork Motel, Corp. v. Kansas Department of Health and Environment, 234 Kan. 374, Syl. Par. 7, 673 P.2d 1126 (1983)] which is often difficult to obtain in child support enforcement cases, and even if we do, the obligor must appear in Court. Many don't. Again, even if they do, there is a fairly high evidentiary standard for a showing of willful contempt and many judges are reluctant to throw the obligor in jail because that may add to the medical costs of the county, or prevent the obligor from getting vocational rehabilitation and it just adds to the overcrowding of our jails without necessarily solving the original problem of actually getting some support to the children.

One final argument supporting House Bill 2050 is that we already authorize up to a 50% deduction from unemployment benefits for support. There is no reason to treat workmen's compensation differently.

Now, I would also add that probably the bill should be amended to place limits on the amount that can be taken for child support.

HJUD
2-14-91
attachment #4 - 2

I have not prepared a balloon because I don't know that those exact limits should be. I am a child support enforcement expert but not a workmen's compensation expert. I understand the lump sum payments are subject to attorney fees and possible subrogation rights. The percentage limits of the consumer credit protection act could be used, although workmen's compensation payments aren't technically subject to that law. The Income Withholding law, K.S.A. 23-4,108 (g), contains the same percentage limits. In practice, our office would use Income Withholding whenever possible. Income Withholding requires the withholding of the full amount of monthly current support and something on the arrears. Insofar as is possible, we try to tailor the "something on arrears" to the individual obligor's situation, using consideration of whether he/she has another family, the dollar amount of the current support order, and the amount of arrears. [See, Mariche, supra, at 550].

House Bill 2050 would make a significant difference to those families in which the obligor is receiving worker's compensation. House Bill 2050 is well within the public policy set out in the Mahone and Mariche cases, which recognize statutory exemptions do not apply to child support claims.

I urge the House Judiciary Committee to approve this bill. Thank you for the opportunity to present these comments.

Respectfully submitted,

Anne McDonald

Anne McDonald
Court Trustee for the 29th Judicial District
Wyandotte County Courthouse
710 North 7th Street
Kansas City, Kansas 66101
(913) 573-2992

HJUD
attachment
#4-3
2-4-91

Department of Social and Rehabilitation Services

House Bill 2050

Before the House Judiciary Committee
February 4, 1991

The primary responsibility of the SRS Child Support Enforcement Program is to help children by establishing regular and adequate support payments and by enforcing past due support obligations. From that perspective, SRS strongly favors passage of this bill.

It is well-settled law that the purpose of workers compensation, and its exempt status, is to protect both the injured employee **and** the employee's dependents. This sheltering of income works well for children living with the injured parent, but it becomes a barrier for those children who do not. Allowing payment of child support directly from workers compensation benefits would further the purpose of the exemption and would insure that children are treated more evenly.

In recognition of this principle, other states already permit workers compensation benefits to be assigned or attached for payment of child support obligations. States which permit payment of support from workers compensation include our neighboring states of Missouri, Oklahoma, and Colorado, as well as Illinois, Florida, Connecticut, and California.

Under current Kansas law, workers compensation cannot be assigned or attached. Even if a parent wants a portion of the benefits to be deducted automatically for child support, the law will not allow it.

Parents drawing workers compensation rarely have other non-exempt resources as avenues for enforcement. If support is not paid voluntarily, the only remedy is a citation in contempt, an inefficient and slow remedy at best. Courts are understandably reluctant to jail disabled parents, leaving children who should have been protected by the workers compensation laws without a meaningful remedy.

Fiscal impact: Direct attachment of workers compensation would increase child support collections by approximately $614,625 per year and would increase federal incentive payments by approximately $25,800 per year. In addition, CSE estimates that direct attachment, in lieu of contempt proceedings, would save about $5,000 per year in administrative costs.

For these reasons, SRS urges this committee to recommend House Bill 2050 for passage.

Jamie L. Corkhill
Child Support Enforcement
Social and Rehabilitation Services
296-3237

HJUD
2-4-91
attachment #5

KANSAS
TRIAL LAWYERS ASSOCIATION
Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603
(913) 232-7756 FAX (913) 232-7730

February 4, 1991

TO: House Judiciary Committee Members

FROM: Richard H. Mason

SUBJECT: HB 2050 - Assignability of Payments

The Kansas Trial Lawyers Association wishes to express its concern with HB 2050. While we have not had time to present this to our legislative body for an in-depth review, we have identified several reasons this bill would establish poor public policy:

1. HB 2050 would reverse decades of precedent that has established that workers compensation benefits shall not be attached. While we sympathize with those who want to enforce support payments, this bill would open the door to similar requests regarding overdue tax levies, criminal restitution orders, etc.

2. This bill would remove the injured workers' financial stake in the outcome of a workers compensation claim. In such cases it is very likely the claim would not be pursued, and then everyone loses.

3. HB 2050 will create potential conflicts of interest for claimants' attorneys. Situations will arise where the interests of the child seeking support enforcement authorities will conflict with the interests of the claimant, particularly as settlements are being negotiated. In effect the claimant's attorney would be working on behalf of two different and competing interests.

4. HB 2050 may cause some lawyers to refuse to represent injured workers that owe child support, unless there is a statutory guarantee that the attorney will have his bill paid before the balance of the recovery is assigned.

At a minimum we would encourage you to cautiously analyze HB 2050 before taking action on it. Thank you for the opportunity to explain some of our thoughts on this bill.

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2-4-91
attachment #6

Robert W. Wise, President
Thomas A. Hamill, President-elect
William B. Swearer, Vice President
James L. Bush, Secretary-treasurer
Jack Focht, Past President

KANSAS BAR ASSOCIATION

Marcia Poell, CAE, Executive Director
Karla Beam, Director of Marketing-Media Relations
Ginger Brinker, Director of Administration
Elsie Lesser, Continuing Legal Education Director
Patti Slider, Communications Director
Ronald Smith, Legislative Counsel
Art Thompson, Legal Services — IOLTA Director

TO: House Judiciary Committee

FROM: Ron Smith, KBA Legislative Counsel

SUBJ: Workers Compensation payments used for Child Support Enforcement Orders

DATE: February 4, 1991

Mr. Chairman, members of the House Judiciary Committee. KBA has no position on this matter. Logistically it may be able to withhold from such compensation orders.

Workers compensation is an entitlement award. Garnishment for child support is allowed by law for some entitlement programs. They are social security disability payments,1/ KPERS funds,2/ IRA accounts and tax refunds,3/ and unemployment compensation benefits.4/ Garnishment would also imply that wage withholding methods would also be appropriate.

This is not a cut and dried issue, however. There are important policy matters that you need to address to smooth out this procedure. For example,

1. "Compensation" is undefined. Does it include medical care? Vocational Rehabilitation costs and payments? Medical care is sometimes paid directly to the health care provider and sometimes indirectly through the injured work-

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[1]Mariche v. Mariche, 243 Kan. 547, 758 P.2d. 745 (1988). Indeed, Health and Human Services prefers withholding orders as the "preferred way to obtain social security benefits." Elrod, Family Law Handbook, KBA, Vol. II, p. 14-33.

[2]Mahone v. Mahone, 213 Kan. 346 (1973).

[3]In re Schoneman, 13 Kan.App.2d 536 (1989), and 42 U.S.C.A. Sec. 664 (West. Supp. 1989).

[4]K.S.A. 44-718(d).

HJUD 2-4-91 attachment #7

1200 Harrison • P.O. Box 1037 • Topeka, Kansas 66601-1037 • FAX (913) 234-3813 • Telephone (913) 234-5696

BOARD OF GOVERNORS: Charles E. Wetzler, John L. Vratil, David J. Waxse, District 1 • John C. Tillotson, District 2 • Hon. Tim Brazil, District 3 • Warren D. Andreas, District 4
E. Dudley Smith, Dale L. Somers, District 5 • Anne Burke Miller, District 6 • Dennis L. Gillen, Philip L. Bowman, Warren R. Southard, District 7
Hon. Herb Rohleder, District 8 • Linda Trigg, District 9 • Hon. Charles E. Worden, District 10 • Thomas L. Boeding, District 11
Hon. Patricia Macke Dick, Young Lawyers President • Jack E. Dalton, Association ABA Delegate • Glee S. Smith, Jr., ABA Delegate
Christel Marquardt, Association ABA Delegate • Richard C. Hite, Kansas ABA Delegate • Hon. C. Fred Lorentz, KDJA Representative.

er, who then pays the bills. Is that portion of a workers compensation award subject to the subsection (b) lien created by this bill?

2. Often, the child support arrearages accrue before the worker is injured. If the arrearage is significant, and the compensation award is paid in a lump sum, can the entire award be taken for child support arrearages? Presumably since a workers compensation lump sum is not "income based," it can be treated as non-income based, and the entire amount can be used to satisfy a child support obligation.

If an injured employee sues a third party in tort for job-related injury and recovers a judgment, can a child support order attach to the judgment for payment of arrearages?

Apparently a personal injury award is "marital property" and proceeds therefrom can be divided in a divorce.5/ It would appear that if the child support arrearage included pre-divorce support orders, the personal injury award is divisible for support purposes.6/ But is a post-divorce workers compensation award divisible? We're not sure. Nebraska cases seem to indicate that personal injury awards not only compensate for medical costs, but also compensate "maintenance of the family of the injured party."7/ Post-divorce child support awards clearly provide for expenses of part of the claimant's family.

3. A workers compensation award is based on average weekly wages and other disability factors. What if the Child Support order itself and subsequent arrearages accrue prior to the injury but are based on a much higher wage base than what the worker is paid through workers compensation? Does SRS take the entire comp award without regard to the wage basis on which the award is based. Thus,

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[5]**In re Powell**, 13 Kan.App.2d 174, 766 P.2d 827 (1988).

[6]**Landwehr v. Landwehr**, 200 N.J. Super 56, 490 A.2d 342 (1985) applies only to personal injury claims settled prior to divorce -- and only for actual damages portions. Pain and suffering was exempted, as being personal to the injured party.

[7]**Maricle v. Maricle**, supra.

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attachment #7-2

the worker paying child support through a workers compensation award may be paying more through a check that represents less than what his actual wages were, and yet a greater proportion of his "check" is taken for child support than would be true if the person were uninjured.

> **Example: wages before injury, $2,000 per month resulting in child support liability for an obligor of $X per month from after tax income. After the injury, if the nontaxable workers compensation income is $500 per month, will child support awards automatically be cut by 3/4ths during the period of disability? Or is liability kept at $X?**

4. Should there be adjustments for the fact the workers compensation award is not taxed as income? Taxable or non-taxed income is a part of the considerations of child support guidelines, isn't it?[8]/

5. K.S.A. 1990 Supp. 23-4,106 as referred to in lines 21-22 also allow support orders for non child support awards, such as medical care given by SRS to children under K.S.A. 39-718a and 39-718b. The same provision allows support orders for temporary orders concerning "divorce, separation, separate maintenance (alimony), annulment, adoption or custody accruing in another state. That is interesting policy, since Kansas employers workers compensation insurance is rated according to Kansas factors, yet the award may be contributing to an out of state child support, or alimony award, based in another state with higher incomes and thus higher support levels than in Kansas.

6. Subsection (b) appears to set up a lien on an award the amount for which is in the process of being determined. Kansas law allows the workers compensation claimants attorney a reasonable attorney fee, not to exceed 25%. The amount is set by the director of workers compensation. Question: does this amount of child support come off the top of the award, or after the attorney's fee has been deducted?

> The reason you need to clarify this point is the possible clash with existing case law. Generally everyone pays their own attorney. The exception is where the attorney has, through his services to his client, created a fund or award in which more

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[8]Adjustments can be made for whomever has the child's deduction for income taxes.

HJUD 2-4-91 attachment #7-3

than just his client will share. The workers compensation award for which the claimant's attorney provided all the work is, under this bill, subject to attachment by SRS and other entities to pay child support. Is the claimant's attorney able to collect a reasonable fee, up to the limits he would have had in the claimant's contract, on that portion of claimant's workers compensation award that is taken by SRS for child support?9/ If not, you penalize not only claimant, but claimant's attorney and give a windfall to SRS.

I realize the "equity" argument applies generally to insurance subrogation cases, but the same argument holds true in workers compensation claims. Workers compensation attorney fee contracts usually give the attorney the right to a reasonable fee on "the amount recovered." Medical care may, or may not, be part of that recovery and subject to a contingent fee.10/

The real problem is SRS. SRS subrogation statutes do not allow a personal injury attorney who has diligently represented a client to recover a fair share of the subrogated amount. For example, if the attorney helps recover a lump sum workers compensation award of $10,000 and the worker who lives on SRS owes the state $5,000 in medical care, SRS usually seeks the full $5,000 reimbursement without reimbursing the claimant's attorney for the work done to produce subrogation

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[9]The attorney's right to receive an reasonable fee to a non-client's interest in the fund or award arises either by specific statutory provision . . . or by equitable principles. See **Quesenbury v. Wichita Coca Cola Bottling**, 229 Kan. 501, 503, 625 P. 2d 1129 (1981). "Where such (pool) compensation has been allowed it is generally on the basis that it is unfair and inequitable to permit an insurance company to sit back, do nothing, and have its subrogated interest collected without cost to the company." **Quesenbury**, supra, p. 504.

[10]Medical portions of workers compensation awards generally are not part of the "amount recovered," unless medical is awarded as part of a lump sum settlement. K.S.A. 44-536(c).

HJUD
2-4-91
attachment #7-4

for SRS.[11]/ The director of workers compensation then must decide what is a reasonable fee. It creates a dilemma for the Director.[12]/

7. If this bill passes, it will be fairly easy for SRS child support enforcement employees to have access to cross-matching tapes of the Department of Human Resources' second injury fund payments. SRS will put a "hold" on awards under the second injury fund in order to keep the money from going to the injured worker until the support obligation is paid therefrom. That matching system information is available only to state agencies on a need to know basis, not the private Bar trying to help clients recover child support. Indeed, second injury fund computer payment data may not even be available to county court trustee offices. That gives SRS an undue advantage. Are you going to make that second injury fund compensation data available to all attorneys trying to collect child support on behalf of clients?

You may want to work out these policy considerations before passing this bill.

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[11]K.S.A. 1990 Supp. 39-719a.

[12]The Director must decide whether the attorney's fee comes from the $10,000 recovery or the $5,000 that was left after SRS subrogation. The resulting decision materially affects how much is available to pay the child support order.

HJUD
2-4-91
attachment #7-5

KANSAS MEDICAL SOCIETY
1300 Topeka Avenue • Topeka, Kansas 66612 • (913) 235-2383
Kansas WATS 800-332-0156 FAX 913-235-5114

February 4, 1991

TO: House Judiciary Committee

FROM: Kansas Medical Society Chip Wheelen

SUBJECT: House Bill 2055; Enforcement of Support

Thank you for this opportunity to express opposition to HB 2055. We are particularly concerned because professional societies and associations are included among the various organizations that would be made subject to the reporting requirements imposed by the bill.

We cannot overemphasize that the Kansas Medical Society and most professional associations are voluntary membership organizations. The only information we obtain from KMS members consists of: (1) address, (2) phone number, (3) date of birth, (4) medical education and training, (5) practice location history, (6) hospital affiliation, (7) Kansas license number, and (8) medical specialty. We do not have information related to income characteristics of our members nor would it be reasonable to expect our members to supply such information.

If HB 2055 were to be enacted in its current form, the Kansas Medical Society would simply have to pay the fine each time a request for information would be received. We believe the bill is unrealistic and urge you to report it not recommended for passage. Thank you for your consideration.

CW:ns

HJUD
2-4-91
attachment #8

HOUSE BILL 2055
HOUSE JUDICIARY COMMITTEE
FEBRUARY 4, 1991

Testimony of Kay Farley
Child Support Coordinator
Office of Judicial Administration

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before you today to support House Bill 2055. I am speaking today on behalf of the Office of Judicial Administration and the District Court Trustees.

The first step in the enforcement of child support is the identification of income sources and assets of the obligor. Once the income source has been identified, an income withholding order can be served on the employer.

The proposed legislation will solve a problem that the District Court Trustees have had with unions and other professional associations in obtaining information. A union or association is sometimes the only known source of information about the obligor's employment. In general, the experience of the District Court Trustees is that these type of organizations are protective of their membership and resist providing information. It is not uncommon for the District Court Trustees to have to subpoena these organizations to obtain the information they need about the obligors.

HJUD
2-4-91
attachment #9

House Bill 2055 would require unions and other professional associations to provide the same information that employers are required to provide under the Income Withholding Act for the purposes of support enforcement. As such, I would encourage you to pass House Bill 2055.

HJUD
2-4-91
attachment #9-2

Robert W. Wise, President
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Elsie Lesser, Continuing Legal Education Director
Patti Slider, Communications Director
Ronald Smith, Legislative Counsel
Art Thompson, Legal Services — IOLTA Director

HB 2055

TO: John Solbach, Chair,
Members, House Judiciary Committee

FROM: Ron Smith, KBA Legislative Counsel

SUBJ: HB 2055

DATE: February 4, 1991

The Kansas Bar Association collects much information about its members, but certainly not all Kansas lawyers. KBA is a voluntary bar association. Only those who want to be members, are members.

However, to the extent the bill tries to enforce disclosure of personal information about our members, the KBA cannot logistically comply -- not because we don't want to, simply we cannot. In our membership process, we basically obtain a business address and a telephone number for our members. We obtain no information like current residential addresses, social security numbers, health insurance coverage, income, deductions, pay schedules, and whether or not our member is an obligor under a valid child support order. If a lawyer is not a member of KBA we collect no information on them at all.

We've tried for many years to get accurate salary data from Kansas lawyers so we could do internal salary surveys. Members have resisted that activity and our salary surveys have been incomplete. Were you to require us to collect such information, many of our members would either not be our members, or they still would not disclose the data this bill calls for -- especially since the penalty is not on the member, but rather on the association. It would require considerable further intrusion into the already limited computer space and expenses that KBA incurs to work with its membership.

Second, regarding attorneys, the last sentence of Section 1 of the bill is confusing. The Kansas Supreme Court licenses attorneys. It also supervises all district court

HJUD 2-4-91 attachment #10

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operations. How is the Judicial Branch going to provide itself with due process, then impose and enforce a $1,000 penalty upon itself?

Assuming you absolutely have to have the information, you could more likely obtain it through limited disclosure of income tax information from the Department of Revenue, to SRS, on a "need to know" basis. It would likely be more accurate that way. Unfortunately that alternative has structural limits. Many KBA members, for example, live and work in other states, and pay 100% of their income tax in the state where they work. Many are in the military and that information will not be available to SRS. Another structural weakness of this plan is that it doesn't apply to proprietorships or partnerships, or solo lawyers. If SRS wants information on these individuals and they won't voluntarily give it, getting through tax filings is the best way. The problem is that 1989 income tax records may not show current 1990 income, or it may be misleading.

We have no formal position on this legislation. However, this bill appears to fall into the category of "nice idea, wrong methodology."

HJUD
2-4-91
attachment #10-2