

Approved 3-22-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary

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

3:30 ~~am~~/p.m. on February 7, 1991 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Gomez, Heineman and O'Neal 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 Kuether, Professor, Washburn Law School
Ron Smith, Kansas Bar Association
Mr. Ken Stewart, Alternate Dispute Resolution Committee of Wichita Bar Assoc.
Nancy Maxwell, Professor, Washburn University
David Woodbury, Chairman, Alternate Dispute Resolution Committee of KBA
Richard Routeman, Midwest Arbitration and Mediation, Inc.
Thomas F. Sullivan, Midwest Arbitration and Mediation, Inc.
Paul Shelby, Office of Judicial Administration
Mr. Al Singleton, Court Administrator, 21st Judicial District
Diana Jones, Clerk of District Court, Garden City, Kansas.
John H. Wachter, KBA Legislative Committee

The Chairman called the meeting to order and called for hearing on HB 2054, regarding real property included in allowance to spouse and minor children in probate.

John Kuether, Professor, Washburn Law School, appeared in support of HB 2054. (See Attachment # 1.)

There being no further conferees, the hearing on HB 2054 was closed.

Representative Smith made a motion that HB 2054 be passed. Representative Lawrence seconded the motion. The motion carried.

The Chairman called for hearings on HB 2051, including alternative dispute resolution fees as allowable costs, and HB 2052, additional docket fees to fund alternative dispute resolution services.

Ron Smith, Kansas Bar Association, appeared and distributed (Attachments # 2 and #3) in support of HB's 2051 and HB 2052. Mr. Smith introduced Mr. David Woodbury, Chairman of the Alternative Dispute Resolution (ADR) Committee of the KBA, and Mr. Ken Stewart, ADR Committee of the Wichita Bar Association.

Mr. Stewart said ADR has been utilized in several places in the state and it works; that it is funded by IOLTA funds. IOLTA is the Independent Lawyers Trust Account, a fund set up to allow a lawyer to maintain trust accounts for clients. The interest from the account goes to the Kansas Bar Foundation and one purpose it may be used for is the Neighborhood Justice Center Project, sponsored by the Bar and others dealing with personal civil disputes, neighborhood consumer-merchandising, etc.; that the proposed legislation gives greater visibility to forms of dispute resolutions other than what we know as litigation and provides the means for funding additional emphasis; that HB 2051 identifies fees connected with alternate dispute resolutions; that HB 2052 leaves it up to a specific judicial district to determine if it wants to put upon other forms of dispute resolutions a particular emphasis, allowing them to increase the fee deposit for filing litigation by the sum of \$5.00.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 313-S, Statehouse, at 3:30 ~~xxx~~ p.m. on February 7, 1991

Mr. Stewart introduced Professor Nancy Maxwell, Washburn University. Professor Maxwell, in response to a committee members question, said she does not see KSA 60-1615 as alternate dispute resolution, but as an investigation by a person appointed by a judge to look into the family. Professor Maxwell said she believes the funds cannot be used for education but for mediation. Professor Maxwell noted an existing problem with funding of the Alternative Dispute Resolution Program which causes problems of coordination; that it is desirable to give our citizens another option, rather than litigation, in some types of disputes.

David Woodbury appeared and distributed (Attachment # 4). Mr. Woodbury said this ADR can be used in family law cases and a variety of other cases-even tough cases; that the local judicial district should be given funds to start some of the options. Mr. Woodbury explained that the proposed bill allows the local judicial district to opt in or opt out; that they can decide on the charge up to \$5.00; that it applies to the Chapter 60 and 61 cases.

A committee member asked what is going on now. Mr. Woodbury said there isn't a docketing fee, but Johnson County has allocated some of its people to perform mediation in family law cases and the local court rule says that every child custody case being set for trial must try mediation, and 7 out of 10 cases are solved prior to going to trial; that local courts can develop this in family law cases but there is not a separate way to fund it; that every court services officer doing this is taking away from some other service.

A committee member asked Mr. Stewart to explain the purpose of the Neighborhood Justice Center in Wichita. Mr. Stewart said the Center is programmed by the Wichita Bar Association and there are presently 38 trained mediators; that the biggest part of the program now is setting the docket in the limited jurisdiction small claims court and the judge gives the litigants in small claims court the option of going to mediation; the Center's mediators then meet with the litigants and mediation ensues. In other ways, cases are referred to the Neighborhood Justice Center, e.g. neighborhood dispute; that mediation has been very successful.

Richard Routeman appeared in support of HB's 2051 and 2052 for Midwest Arbitration and Mediation, Incorporated, of Kansas City, a private provider of mediation service, a national organization of attorneys that primarily deals with special mediations in all kinds of cases, except domestic relations. (See Attachment # 5).

Mr. Routeman introduced Thomas F. Sullivan, also with Midwest Arbitration and Mediation, Incorporated.

A committee member asked how Routeman would change the statutes. Mr. Routeman said they don't want to discourage people from using ADR; that a judge should have some guidance on how we make the decision on who goes the cost.

A committee member asked if involvement of insurance companies affect the perception of the mediation. Mr. Routeman said the plaintiff's attorney and plaintiff are usually present with only an adjustor of the insurance company present; that in most cases the plaintiff's attorney is on a contingency; that the insurance company does not pay for the plaintiff's attorney fee.

A committee member asked Mr. Routeman to prepare a list of his criteria for the committee and submit it by February 11, 1991. Mr. Routeman agreed to submit further input.

A committee member asked if the bill, by implication or expressly, gives the judge the authority to order alternative dispute resolution in any case where it might be appropriate. Revisor's Staff said there appears to be no such authority given.

Mr. Stewart commented that if there is authority in the court to utilize some other form of dispute resolution, it is under the civil procedures statute. A committee member noted that KSA 60-2002 already is in effect, and covers criteria for awarding costs.

Paul Shelby, Office of Judicial Administration, appeared to express concerns about HB 2052, and distributed (Attachment # 6).

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary

room 313-S, Statehouse, at 3:30 ~~am~~ p.m. on February 7, 1991.

A committee member asked Mr. Shelby to explain how the deduct system works. Mr. Shelby said that from the basic docket fee we have established by the Legislature deductions; that if the County or local Bar has established a local law library, that is deducted from the docket fee. The committee member pointed out that because the filing fees do not go into a fee fund those funds go to the general fund, so the general fund is reduced; that if we do this we allow counties to deduct up to \$5.00 of the docket fee rather than add on \$5.00 to the docket fee.

Mr. Shelby said he would like to see the law effective January 1992.

There being no further conferees, the hearings on HB 2051 and HB 2052 were closed.

The Chairman called for hearing on HB 2053, expanding the definition of qualified person in professional corporations.

Ron Smith, Kansas Bar Association, appeared in support of HB 2053. (See Attachment # 7).

Mr. Ron Smith introduced John H. Wachter, KBA Legislative Committee to speak on behalf of the corporate section dealing with the issue of HB 2053. Mr. Wachter recommended passage of HB 2053.

There being no further conferees, the hearing on HB 2053 was closed.

The Chairman called for hearing on HB 2056, amending what court documents must be maintained and the duties of the court clerk.

Paul Shelby, Office of Judicial Administration, appeared in support of HB 2056. (See Attachment # 8) and introduced Mr. Al Singleton, District Court Administrator from Manhattan, who distributed his testimony (Attachment # 9) and requested the Committee to take favorable action on the bill. Mr. Singleton introduced several District Court Clerks present at the hearing.

A committee member asked for explanation of how the content of the index would be affected. Mr. Singleton said the proposal does not eliminate the index system in the court.

Mr. Singleton introduced Diana Jones, Clerk of the District Court of the 25th Judicial District, Garden City, Kansas, who described her system.

There being no further conferees, the hearing on HB 2056 was closed.

Representative Vancrum made a motion that HB 2053 be passed and placed on the Consent Calendar. Representative Everhart seconded the motion. The motion carried.

Representative Hochhauser made a motion that HB 2056 be passed. Representative Carmody seconded the motion. The motion carried.

Representative Rock made a motion that HB 2051 be passed. Representative Vancrum seconded the motion.

Committee discussion followed.

Representative Rock withdrew his motion with consent of the second.

A committee member suggested changing the word "shall" to "may" in new language and noted that statutory factors should be considered.

A committee member noted the concern of Office of Judicial Administration that deducts rather than add-ons have always been used; which would have an impact on the General Fund; that a fiscal note should be reviewed, along with whether docket fees should be increased state wide and then take a deduct or just take a deduct.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 313-S, Statehouse, at 3:30 ~~am~~/p.m. on February 7, 1991

A committee member questioned the advisability of passing HB 2052; that the provisions of HB 2051 may be a fairer approach; that some major statutory changes might be involved regarding use of the State General Fund.

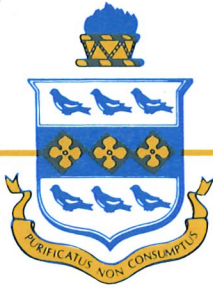
A committee member recommended that a sub-committee be appointed to study HB 2051 and HB 2052.

The Chairman appointed a sub-committee as follows: Representative Hochhauser, Chairperson, Representative Garner and Representative Parkinson.

The Chairman presented a written request by Representative O'Neal requested that five bills be introduced. (See Attachment # 10).

Representative Snowbarger made a motion that the five bills be introduced. Representative Smith seconded the motion. The motion carried.

The meeting adjourned at 4:25 P.M. The next scheduled meeting will be Monday, February 11, 1991, at 3:30 P.M. in Room 313-S.



WASHBURN UNIVERSITY OF TOPEKA

School of Law
Topeka, Kansas 66621
Phone 913-295-6660

MEMORANDUM

To: House Judiciary Committee
Fr: Professor John Kuether
Re: HB 2054
Da: February 7, 1991

Overview

House Bill 2054 is a modest amendment of the Probate Code to make it possible for the court to award real property (Line 18), as well as personalty, in satisfaction of the court approved statutory allowances.

Background

When a decedent dies, the spouse and minor children are entitled to statutory allowances to tide them over while the estate is undergoing probate. These allowances entitle them to exempt items, and supplies, and funds on hand to allow them to live modestly for approximately a year, the period probate is expected to last.

The statutory allowances include wearing apparel, furnishings, one automobile, fuel and provisions which are on hand to the extent needed for a year, and a monetary allowance.

The monetary allowance is between \$1,500 and \$25,000, in the discretion of the judge. The discretion is usually based on the need of the family, the amount and nature of any debt and the apparent size of the estate. In small estates there is often not a enough money to fund the monetary allowance in the needed amount.

The Problem

The current statute authorizes only the use of personal property to satisfy the statutory allowance. This can cause hardship, delay and expense in an estate which has little personal property, but does have sufficient realty to satisfy the monetary allowance. Under current law the needy spouse must either forego part of all of the monetary amount, or have the estate sell realty to raise the funds for the allowance. At best the need to sell the realty will cause a delay and some additional expense. A small estate which can ill afford the expense. The loss can be considerable if the property must be sold for less than its full potential value because of the lack of a willing buyer, or poor market conditions at the time.

The Remedial Amendment

The amendment allows the court to satisfy the allowance with

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personal or real property, doing away with the expense and delay of a sale. It should simplify and speed the probate process, and reduce the costs. This is especially valuable in the small estate, where the need can be greatest. It will also be very valuable in the type of estate where most of the property has passed by joint tenancy or trust, but a little realty remains, which would otherwise require probate.

I do not foresee any chance for abuse. The property can be appraised to determine its value and to protect the interests of other persons. Creditors and other heirs are entitled to be heard regarding the amount of the monetary allowance, and the court decides the amount, within a value of \$1,500 to \$25,000, after learning of the other claims to the property.

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attachment # 1-2



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**

Kansas Bar Association
Alternative Dispute Resolution Committee

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

Proposal for
Funding of Alternative Dispute Resolution
Through Court Cost Assessment

Issue: Recognizing the recent emphasis of the organized Bar (ABA) to support and enhance ADR, should the Committee on Judiciary support statutory amendment which will encourage selected use of ADR by optional funding through court cost assessment?

Background: ADR is working successfully in all metropolitan areas, in one form or another, especially the Neighborhood Justice Center in Wichita, domestic mediation in Topeka, Kansas City and Wichita, farm debt mediation statewide, and settlement conference mediation in selected federal and state trial courts.

Support: Support for the proposal has been given by the ADR Committee of the Kansas Bar Association and the ADR Committee of the Wichita Bar Association, as well as Judge Michael Corrigan, presiding judge of the 18th Judicial District in Wichita, and Mr. Don Bostwick, President of the Wichita Bar Association, as well as Mr. Bob Wise, President of the Kansas Bar Association.

KBA/ADR Position: KBA/ADR believes the legal system of the state can be enhanced and its citizens better served if alternative dispute resolution techniques under proper supervision are available and utilized. Proposed statutory changes will acknowledge the various forms of ADR and provide within the unified court system, the means for local jurisdictions to fund the development and use of ADR techniques.

Economic Impact: In terms of increasing taxes and effect on budget, the proposal should have no effect. The proposed statute will help to facilitate ADR use at the same time that it provides a means for choice in a given judicial district. Support of ADR and support of jurisdictional choice should help to enhance the provision of techniques of dispute resolution to become available for more citizens of Kansas.

36:JANAC:adr/fund

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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
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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.



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Art Thompson, Legal Services — IOLTA Director

HB 2051 & HB 2052
Alternative Dispute Resolution Funding

TO: Hon. John Solbach, Chair,
House Judiciary Committee

FROM: Ron Smith, KBA Legislative Counsel

SUBJ: HB 2051 & 2052

DATE: February 7, 1991

Mr. Chairman, Members of the committee.

KBA asked these bills be introduced. We support them. We've supported ADR programs for a long time in Kansas.

There are many types of ADR. One major system is Federal Judge Pat Kellys' mandatory settlement conferencing system in Wichita. It uses experienced trial attorneys to settle major cases. Other techniques include arbitration, and such items like summary jury trials.

The primary ADR program in Kansas is mediation in contested child support, custody and visitation matters. These programs use trained mediators. The technique is widely used throughout the country. Its objective is to keep children out of courtrooms as much as possible, and teach parents the skills to continue to negotiate in the best interest of their kids.

1. HB 2051 allows judges who order or allow ADR techniques to be used in their trials to assess the costs of ADR to the parties. The new language on page 2 simply defines what constitutes ADR fees. The money is then goes into a fund, and is used to pay for the cost of ADR techniques. This is the "back-end" approach.

*HJUD
2-7-91
Attachment 3*

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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
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Christel Marquardt, Association ABA Delegate • Richard C. Hite, Kansas ABA Delegate • Hon. C. Fred Lorentz, KDJA Representative.

You've already established a pattern of awarding costs of mediation in domestic relations cases.^{1/} These bills follow that pattern, except it broadens the ADR technique from mediation to include conciliation, arbitration, settlement conferences and other ADR techniques.

2. HB 2052 is a different in that it allows district administrative judges to create ADR funds in their judicial district, and collect an optional filing fee of up to \$5.00 on every civil litigation case filed in the district. The money is used to create and maintain ADR programs within the district. This is the "front end" approach.

The theory behind HB 2052 is all litigants have a stake in the success of ADR techniques, since it frees up the judicial system for other matters that do not lend themselves to ADR. Thus, each litigant should help with the costs, if the judges decide it is appropriate.

These programs keep a lot of routine cases out of the courtrooms, yet allows the dispute to be resolved, which is the classical function of the judicial process. That frees up time for other contested matters. We believe the legal system of Kansas can be enhanced and its citizens better served if ADR techniques under proper supervision are available and utilized. Proposed statutory changes will acknowledge the various forms of means for local jurisdictions to fund, develop and maintain use of ADR techniques.

The funding techniques in these bills allow for an increase in the number of programs and judicial districts utilizing ADR. We move beyond experimentation and into mainstream ADR with these bills. Courts are given greater flexibility. If a judicial district decides not to implement these ADR techniques, the extra fee cannot be charged. It permits choice in the means of funding the operation, and flexibility within judicial districts.

I'll answer questions if I can.

¹K.S.A. 23-601, especially 23-607.

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attachment #3-2

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LAW OFFICES

DAVID P. WOODBURY

EXECUTIVE BUILDING, SUITE 125

4121 WEST 83RD STREET

PRAIRIE VILLAGE, KANSAS 66208-5317

TELEPHONE
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MEMORANDUM

TO: House Judiciary Committee
FROM: David P. Woodbury
DATE: February 7, 1991
RE: Proposed Legislation Relating to
Alternative Dispute Resolution

House Bill 2051 - Including ADR Fees as Court Costs

House Bill 2052 - Docketing Fee for ADR services

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Attachment 4

TESTIMONY ON HOUSE BILLS 2051 & 2052

February 7, 1991

David P. Woodbury

Introduction

I am testifying today on behalf of the Kansas Bar Association in support of House Bills 2051 and 2052. On behalf of myself and the Kansas Bar Association, I appreciate the opportunity to address the merits of these two bills.

Background

Although I am here on behalf of the Kansas Bar Association, my comments here today also reflect my own support for these proposals. So that you have some idea of my perspective, I have attached a biographical summary of my background as it relates to my involvement with Alternative Dispute Resolution and, in particular, my experience with mediation.

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attachment 4-2

House Bill 2051

House Bill 2051 amends the Kansas Code of Civil Procedure (specifically K.S.A. 60-2001 and 60-2003) to allow "alternative dispute resolution fees" to be taxed as court costs. New section 7 of K.S.A. 60-2003 defines "alternative dispute resolution fees" and their use.

The section provides the trial court with the discretion to determine how such costs should be allocated.

The section also suggests that funds from a "alternative dispute resolution fund" might be allocated to help pay such costs in a specific case.

The allocation of costs is already being accomplished in some ADR circumstances. In regard to mediation of family law cases, K.S.A. 23-607 allows the Court to tax the costs of mediation to either or both of the parties. Since many civil cases are now referred to arbitration or mediation upon the suggestion of both parties, the parties themselves have sometimes given the Court the power to allocate the costs of mediation.

House Bill 2051 reflects the commitment of the Kansas Bar Association to increase the options available for the speedy and just resolution of disputes. It is an option that is of benefit to all litigants.

House Bill 2051 is a good idea and should be adopted.

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attachment 4-3

House Bill 2052

House Bill 2052 amends the Kansas Code of Civil Procedure to give each judicial district the power to assess an additional docketing fee (of up to \$5) for use in promoting "alternative dispute resolution services." If adopted by the local judicial district, the fee would be assessed for all Chapter 60 and Chapter 61 cases.

House Bill 2052 has presented a serious dilemma for the Kansas Bar Association, due to our long-time opposition to the idea of "add-ons" to the docketing fees. Our opposition has been based upon our concern that special interests should not be addressed by the docketing fee. Nevertheless, the Kansas Bar Association has recommended and fully supports the passage of House Bill 2052. Why?

In discussing the language of House Bill 2052, the KBA ADR Committee felt that Alternative Dispute Resolution is such an important option in our legal system, that an exception must be made to our long-standing opposition to the use of docket fees for special projects.

In supporting this legislation, we are not suggesting that this will fully implement ADR into the Kansas judicial system. Instead, we view it as a small step in allowing local judicial districts to experiment with ADR options. In our analysis, it is important that each judicial district be given the option of choosing or rejecting the docket fee. As recommended by the Alternative Dispute Resolution Committee appointed by the Kansas Supreme Court, each judicial district should be allowed to select the ADR options that are best suited to the needs and resources of that district.

House Bill 2052 should be adopted.

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2/91

David P. Woodbury
Executive Building, Suite 125
4121 West 83rd Street
Prairie Village, Kansas 66208-5317
(913) 642-1144

Preparatory education, Georgetown University (1971-73); University of Kansas (B.G.S., 1974); legal education, University of Kansas (J.D., 1977). Fraternity: Pi Sigma Alpha, Beta Theta Pi.

Law Clerk for Hon. David Prager, Kansas Supreme Court, 1977-79.

Member: Johnson County Bar Association (ADR Committee;
Chairman, Family Law Bench Bar Committee)
Kansas City Metropolitan Bar Association (Family Law Committee)
Kansas City Association for Marriage and Family Therapy
(Advisory Council, 1982 - 1988)
Kansas Bar Association (Family Law Section)
Kansas Trial Lawyers Association
Kansas Supreme Court Committee on Alternative Dispute Resolution
American Bar Association (Family Law Section; Litigation Section)
Association of Family and Conciliation Courts
(President, Kansas Chapter 1988-1989)
Academy of Family Mediators, Affiliate

Fellow: American Judicature Society

Board Member: Mental Health Association of Johnson County (1985-1989)
Association of Family & Conciliation Courts (International Board)

Awards: Pro Bono Award (for Public Service) — Kansas Bar Association (1990)

HJDD
2-7-91
attachment # 4-5

STATE OF KANSAS
HOUSE COMMITTEE ON JUDICIARY

STATEMENT OF RICHARD L. ROUTMAN
AND THOMAS F. SULLIVAN ON BEHALF OF
MIDWEST ARBITRATION AND MEDIATION, INC.

FEBRUARY 8, 1991

Mr. Chairman and Members of the Judiciary Committee, the cover story on this month's issue of the magazine Best's Review - Property/Casualty Insurance Edition is entitled "Legal Costs: Can the Flow be Slowed?" Nothing can provide better evidence of the timeliness of your consideration of House Bills No. 2051 and 2052 which are intended to encourage the use of alternative dispute resolution or ADR in the courts of the State of Kansas.

Of course, the purpose of ADR is to reduce the costs to the litigants of resolving disputes. No one who has been involved in a lawsuit has ever needed to be reminded of the costs involved. But the costs of litigation affect more than just the litigants. It can increase our insurance premium rates. It drives up our cost of doing business and ultimately may tend to make our economy less competitive with those companies in other nations where the litigation system is not as costly.

By way of example, the authors in the Best's Review article report that the amount of money that insurers have spent on legal services increased from \$2.8 billion in 1978 to \$11.8 billion in

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Attachment 5

1988. That represents an increase of more than 15% a year. At that rate, the authors project that the cost of legal services to insurers in the year 2000 will be \$66 billion dollars.

Clearly, something needs to be done. And while it is not a complete solution, ADR is a sleeping giant for cutting costs and getting cases resolved. Quoting from the Best's article,

"ADR is perhaps the most effective existing alternative to standard litigation processes because it expedites settlement without the expense of trial preparation and court costs. Since ADR often can settle a claim in half the time it takes traditional litigation, the savings generated by reducing the time spent on costly legal activities are substantial. An additional advantage of ADR is that it creates a forum for opposing sides of a suit to discuss settlement constructively."

As members of a national organization of attorneys who since 1987 have specialized in Kansas City and eastern Kansas in providing mediation, arbitration and other ADR services to insurance companies, businesses and individuals, Mr. Sullivan and I wholeheartedly endorse both bills. We would, however, like to make the following specific comments:

First at to Bill No. 2052 which allows each judicial district to adopt a local rule adding \$5 to its docket fee:

1) There is nothing in the bill to call for a state wide coordinator of those districts interested in establishing ADR

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programs. Rather than having each interested district undertake all of the required start up activities, it would be more efficient if a state wide office be created for the purpose of educating, promoting and coordinating the efforts on a district by district basis. The function of a state ADR coordinator might be assigned to an existing state judicial administrative office.

By way of background, at least none other states have established state offices of conflict management and alternative dispute resolution, including Massachusetts, Ohio, Iowa and Minnesota.

2) The State should encourage judicial districts to adopt the \$5 docket fee increase by agreeing to match those funds raised if successful ADR programs were implemented and in force in those districts in accordance with standards promulgated by the state ADR coordinator.

As to Bill 2051, it is our belief that the proposed legislation should provide some guidelines to the court with respect to the factors it should consider in determining which party or parties should be responsible for the payment of the alternative dispute resolution services.

Mr. Chairman, Mr. Sullivan and I have been responsible for administering and mediating more than 300 civil cases in the Kansas City metropolitan area since 1987. We would be happy to respond to any questions which the committee would have at this time or in its later deliberations. We would request that we be given notice of future hearings on this proposed legislation. Thank you.

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attachment
#5-3

House Bill No. 2052
House Judiciary Committee
February 8, 1991

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear today to discuss House Bill No. 2052. This bill amends the civil case docket fee statutes to permit an "additional" docket fee of up to \$5.00, in those district courts which by adoption of a local court rule, choose to finance alternate dispute resolution. Such additional fee shall be utilized to develop, implement, promote and provide alternative dispute resolution services within the judicial district.

Implementation of this bill would cause severe dislocation of the district court's uniform accounting system because the revenue to be collected is termed an "additional" docket fee and if the assessment is by local court rule, we destroy statewide uniformity.

This bill is a departure from the single docket fee concept established by the legislature and now in use by the judicial system and, if passed, would be a return to past practice which added up charges of various natures to arrive at the cost for filing a civil suit, which is a labor intensive way to arrive at a filing fee.

The docket fee system was established to deduct various fees not add on various fees. Other fees authorized by the legislature to finance local activities such as law libraries and prosecuting attorneys training funds are deductions from a base civil docket fee of \$60.00.

Although this proposed bill does not provide for a local fund it is probable that any district which provides for collection of the "additional" docket fee would also make provision for creation and administration of a local fund (although authorization of similar funds..see Law Library fees at K.S.A. 20-3121, et seq....has traditionally been a function of the legislature and not the courts).

Even if the legislature decides to make this another deduction or another fund, necessary chages will be required for our accounting forms and procedures, creating additional costs to county general funds.

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Attachment #6

Also, the effective date of this bill would cause a midyear budget impact to our local county budgets. We do not have an estimate of the costs of programming changes for those counties that have automated accounting systems, but because changes would have to be made in the number of fields in both receipts and disbursements of existing systems, the costs could be significant.

We do not want to add another fee nor do we want to establish another fund.

We respectfully urge the committee to consider our concerns and the impact on the uniform District Court Accounting System.

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Attachment 6-2



Robert W. Wise, President
Thomas A. Hamill, President-elect
William B. Swearer, Vice President
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TO: Judiciary Committee: Kansas House of Representatives

FROM: Kansas Bar Association

RE: House Bill 2053

DATE: February 7, 1991

The use of revocable living trusts as an estate planning tool has become extremely common in recent years. For many clients and their attorneys, it has become the preferred estate planning tool. Benefits include:

1. Avoidance of probate and costs incident thereto;
2. Privacy (a living trust normally does not need to be filed of public record); and
3. Avoidance of a conservatorship during incapacity.

Due to two statutory amendments by the Kansas legislature in the last two years, i.e., permitting living trusts to name guardians for minor children and permitting a grantor to leave a separate list disposing of certain tangible personal property items, there now is virtually no estate planning done by will that cannot also be done through a living trust.

However, if a client is to avoid probate and secure the other benefits of a living trust, normally assets must be titled in the name of the trust. Fortunately, almost all types of assets may be titled in a living trust. Unfortunately, one of the few, and perhaps the only, exception is professional corporation stock. K.S.A. 17-2707 presently allows only "natural persons" and Trustees of qualified retirement plans to own professional corporation stock.

House Bill 2053 would amend K.S.A. 17-2707 to permit a Trustee who would otherwise be permitted to hold professional corporation stock individually to also hold such stock as Trustee of his or her revocable living trust. Since a grantor of a revocable living trust has the same amount of control and authority over the stock as Trustee as such grantor would have individually, there is no conceivable purpose of K.S.A. 17-2707 which could be circumvented by this amendment. Certainly, there is a far more direct relationship between the grantor/Trustee of

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Judiciary Committee:
Kansas House of Representatives
February 7, 1991
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a living trust and the stock held by the living trust, then there is between a beneficiary of a retirement plan and the stock held by the plan Trustee. Even the IRS views the grantor/Trustee of living trust to be the sole owner of such trust assets for income tax purposes.

The Kansas Bar Association has endorsed House Bill 2053 and recommend its passage. For professionals wishing to take advantage of the benefits afforded by a revocable living trust, H.B. 2053 would avoid the totally unnecessary expense of having professional corporation stock be the only asset having to go through probate at death.

Timothy P. O'Sullivan
John H. Wachter

Kansas Bar Association
Legislative Committee

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House Bill No. 2056
House Judiciary Committee
February 8, 1991

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

This is a proposal from the Kansas Association of District Court Clerks and Administrators and supported by our office.

If enacted, this bill would save costs and work time at the district court level by repealing a requirement to keep "security" copies of certain documents. The statutory requirement for copies is no longer necessary in that many district courts now use microfilming to maintain security files and there are statutory provisions for reconstituting files which will provide ample security in the other courts.

Other changes in the bill are to conform the statutes to current filing practices of the district courts. The savings of paper and copier costs contemplated by this bill would accrue to county general funds.

We respectfully urge the committee to consider this proposal and pass the bill favorably.

Mr. Al Singleton, District Court Administrator from Manhattan will testify in more detail on this proposal and we would be glad to answer any questions following his presentation.

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HOUSE BILL NO. 2056
HOUSE JUDICIARY COMMITTEE

Testimony of Al Singleton
Court Administrator, 21st Judicial District
Legislative Chairperson KADCCA

Mr. Chairman and Committee Members:

I appreciate the opportunity to appear today on behalf of our association to discuss House Bill 2056. This bill will repeal K.S.A. 59-212(4), amend other sections of K.S.A. 59-212 and amend K.S.A. 60-2601.

This bill eliminates the requirement that the Clerk of the District Court maintain a security copy of certain papers filed in Probate matters pursuant to K.S.A. 59-212(4) and journal entries of judgment in K.S.A. 60-2056(2)(d). It also clarifies language in both statutes to reflect current methods of maintaining records in the court.

These statutes do not require making security copies of the entire court file, therefore, it would be impossible to restore a file using them. If a court file is lost or destroyed, clerks can rely on K.S.A. 60-2501 which authorizes the restoration of records by allowing a copy to be substituted. Copies can be obtained from the attorney of record, which has been the practice by courts when restoring files. Also, Supreme Court Rule 108 requires microfilming the entire court file for the purpose of preservation prior to the destruction of the file. This rule also requires that a backup of the microfilm be made in case of destruction or loss of the court's film.

Our committee surveyed clerks across the State and found that these security copies made under K.S.A. 59-212(4) and K.S.A. 60-2601 are rarely used for any purpose. It was also determined that the cost of making and maintaining these security copies were approximately \$200.00 to \$2,000.00 per year, depending upon the size of the court. The time for doing this ranged from 3 to 20 hours per month, again depending upon the size of the court. We further learned that due to space limitations that most courts store the security copy in the same area as the file. If the file were destroyed, in all probability the security copy would also be destroyed.

Language in both statutes refer to dockets and journals. Historically the courts kept their records in large bound books called "dockets" or "journals." These very difficult

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to manage and very expensive books have been replaced by the individual case docket sheets. These docket sheets are far more simple to use, are less costly and do not create a storage problem. This bill will clean up the language to reflect the current methods of records maintenance in the courts.

The last sentence of K.S.A. 60-2601(2)(d) is redundant as the previous sentence covers all other papers filed which had not been specifically named to be file stamped and initialed. With the ever increasing workloads, staffing limitations, unfilled positions due to budget constraints and the cost to the state and counties of operation of courts, we must, wherever possible, reduce duplication and costs. This bill is a positive step in that direction.

Based on the above factors, the requirement of keeping security copies should be repealed. Additionally, the other changes in the bill should be made to reflect the current policies and procedures of the courts.

I respectfully request that you take favorable action on this bill. Thank you.

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STATE OF KANSAS
HOUSE OF REPRESENTATIVES

MICHAEL R. (MIKE) O'NEAL

104TH DISTRICT

LEGISLATIVE HOTLINE
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OFFICE OF MINORITY WHIP
MEMORANDUM

TO: Rep. John Solbach
Chairman House Judiciary
Room 115 South

FROM: Rep. Mike O'Neal

DATE: February 6, 1991

RE: Judiciary Bill Request

John, over the summer and fall I received a number of requests for bill introductions which I am attaching, and/or describing as follows:

1. Request by Attorney Paul J. Mohr, attached, regarding amendments to the Bad Check Law K.S.A. 60-2610. I believe his attachment is self explanatory.
2. Requested amendment to the Consumer Protection Act, as explained in the attached memorandum of Barkley Clark.
3. Requested amendment, from my District Attorney, Nick Tomasic, attached, regarding House Bill 2666 (K.S.A. 38-1636). I believe his memo is self explanatory.
4. Attached request of Attorney William F. Bradley, Jr. of Wichita for an amendment to K.S.A. 79-1703. Again, I think his letter is self explanatory.
5. Request of Hutchinson City Attorney, Keith Schroeder, to amend K.S.A. 21-3608 (1) (a). This particular sub-paragraph was apparently declared unconstitutional in the 1979 Supreme Court Case State v Meneirt 225 Kan. 816. Apparently the legislature has never deleted that language from statute and some prosecutors, not knowing of the Supreme Court Case, have filed defective complaints citing that statute. The proposed legislation would delete the language that the court has held to be unconstitutional. It is the City Attorneys opinion that future prosecutions can proceed under the provisions of the balance of the statute without need for additional substantive language.

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6. Request by the military for an amendment to the Code of Civil Procedure making it clear that a notice to the court through the Office of the Judge Advocate notifying the court of the availability of protection for a defendant under the Soldier's & Sailor's Relief Act does not constitute a general entry of appearance giving the court jurisdiction over the named party. Apparently some judges are considering such notification by the military to be an entry of appearance. I'm not sure which statute would be amended but staff should be able to take care of that matter. Contact person is Lt. Colonel Michael J. Schenk, Army Judge Advocate, Topeka, (267-6380) and Lt. Colonel Randy Mettner, Air Guard Judge Advocate (266-1024).

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