JUDICIARY SUBCOMMITTEE ON CIVIL PROCEDURE

Senator Richard Rock, Chairman

February 27, 1991
10:00 a.m.
Room 514-S

SB 227 - establishing a children's community planning group in each judicial district.

Made up of volunteers, planning groups in each district would look at delivery of services tohildren.

PROPONENTS

Barbara Huff, Keys for Networking (ATTACHMENT 1)
Doug Bowman, Kansas Children and Youth Advisory Committee (ATTACHMENT 2)
Melissa Ness, Kansas Children's Service League (ATTACHMENT 3)

OPPONENTS

none appeared.

Subcommittee recommendation: recommend favorable for passage.

SB 250 - default procedures under the Kansas administrative procedures act.

Clarifies rights of litigants in administrative hearings.

PROPONENTS

Mark Stafford, Assistant Attorney General (ATTACHMENT 4)

OPPONENTS

none appeared.

Subcommittee recommendation: recommend favorable for passage.

SB 209 - increasing limits on small claims.

Would increase limits on small claims to $2,000 each and 20 claims per year.

PROPONENTS

Steve Burgess, Garden City, landlord (ATTACHMENT 5)
Paula Freerksen, League of Kansas Municipalities (ATTACHMENT 6)

OPPONENTS

Paul Shelby, Office of Judicial Administration (ATTACHMENT 7)
Ron Smith, Kansas Bar Association (ATTACHMENT 8)

Subcommittee recommendation: to not recommend favorable for passage.

GUEST LIST

COMMITTEE: Senate Judiciary Subcommittee on CIVIL PROCEDURE

DATE: 2/27/96

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Doug Bowman	Topeka	Children & Youth Advisory
Becci Akin	Overland Park	Ks Childrens Service League
Melissa Ness	Topeka	Ks. Childrens Serv. League
Mark Stafford	Topeka	AG
Paul Shelby	Topeka	OJA
Matt Lynch	Topeka	Jud Council
Will Belden	Topeka	LWVK
Jim Clark	Topeka	KCDAA
Robert Schmidt	Ness City, KS	Agriculture
Maurice L. Huenergardt	Otis KS	agriculture
Betty Huenergardt	Otis KS	Home maker

Keys For Networking, Inc.

700 S.W. Jackson
Jayhawk Tower Suite 100-A
Topeka, Ks. 66603

Barbara Huff

Since 1985, families in Kansas have been involved in identifying their needs and defining the services they need to keep their children in their homes and communities. Through the Family Input Project and the subsequent follow up to the Families As Allies meetings, families have consistently stated what they have needed and have articulated the services and family supports which would enable them to keep their children and adolescents at home. This has been reiterated by parents involved in the Kansas CASSP Advisory Board, the formation and implementation of Keys for Networking, and the numerous support networks now available to family members in Kansas.

It has been estimated that there are approximately 10,000 children and adolescents in Kansas who have a severe emotional disturbance. Another 60,000 children and adolescents are reported to be in need of mental health services and are at risk of developing a severe emotional disturbance.

There is broad agreement among Kansas families and families across the country that a comprehensive, coordinated system of care must be developed and funded for children and adolescents with emotional disturbances. Such a system should include a wide array of services and family supports in order to meet the multiple needs of these children and their families. The concept of a system of care represents more than individual service components. Rather, it embodies a philosophy about the way in which services and family supports should be delivered to children and their families. Two core values and ten principles have been developed by the National Institute of Mental Health's Children and Adolescent Service System Program (CASSP), to provide this philosophical framework for the system of care. Families in Kansas support these values and principles in their entirety.

The two core values are:

1. The system must be driven by the needs of the child and his or her family, and must be child and family centered.

2. The system of care should be community based.

The ten principles are:

1. Children and adolescents with serious emotional disturbances and their families should have access to a comprehensive array of services and supports that address the child's and family's physical, emotional, social, and educational needs.

2. Children and adolescents with serious emotional disturbances and their families should receive individualized services and supports in accordance with the unique needs and strengths of each child and family.

3. Children and adolescents with serious emotional disturbances and their families should receive services and supports within the most normative environments.

4. Families of children and adolescents with emotional disturbances should be full participants in all aspects of planning and delivery of services and supports.

5. Children and adolescents with emotional disturbances and their families should receive services and supports that are integrated, with linkages between child-care serving agencies and programs and mechanisms for planning, developing and coordinating services and supports.

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6. Children and adolescents with serious emotional disturbances and their families should be provided with case management to ensure that the multiple services and supports are delivered in a coordinated manner, and that they can move through the system of services and supports in accordance with their changing needs.

7. Early identification and intervention for children with serious emotional disturbances should be promoted by the system of care in order to enhance the likelihood of positive outcomes.

8. Adolescents with serious emotional disturbances and their families should be ensured smooth transitions to the adult service system as the adolescent reachs maturity.

9. The rights of children and adolescents with serious emotional disturbances and their families should be protected, and effective advocacy efforts should be promoted.

10. Children and adolescents with serious emotional disturbances and their families should receive services and supports without regard to race, religion, national origin, sex, physical disability or other characteristics; and services and supports should be sensitive and responsive to cultural differences and special needs.

The services and family supports Kansas families of children and adolescents with serious emotional disturbances have identified include, but are not limited to, the following:

SERVICES
- Central point of entry
- Early identification and intervention
- Assessment and diagnosis
- Case management
- Education/mental health liaison
- Outpatient treatment
- Name-based family services
- Family-based crisis services and other emergency services
- Day treatment
- Short-term inpatient care
- Therapeutic foster care
- Therapeutic group homes that are community-based
- Vocational assessment and training

Services to enable adolescents to transition into adult services and/or to transition into independent living:

FAMILY SUPPORT SERVICES

FORMAL SUPPORTS
- Respite care
- After-school programs
- Summer programs
- Recreational activities
- Home aide

INFORMAL SUPPORTS
- Information
- Support networks and groups
- Training (advocacy and parent education)
- Volunteer programs
- Transportation
- Any other supports necessary for the family to maintain the child in their home

February 26, 1991

KEYS FOR NETWORKING, INC. supports the basic notion of Senate Bill 227 however, we would ammend the bill to include the following.

1. S.R.S. would be required to issue an annual report on outcomes of children and adolescence in each of their childrens programs.

2. That each planning council establish a sub committee which would review "hard to deal with" cases and make recommendations for services. Families of these children would be involved in identifying needed services.

3. That the planning council should include parents whose children are involved in more than two state agencies.

STATE OF KANSAS

CHILDREN AND YOUTH ADVISORY COMMITTEE

SMITH-WILSON BLDG.
300 S.W. OAKLEY
TOPEKA, KANSAS 66606-1898

(913) 296-2017

KANS-A-N 561-2017

TESTIMONY BEFORE SENATE JUDICIARY COMMITTEE
Senator Wint Winter, Jr. - Chairperson
SB #227 - February 26, 1991

Mr. Chairman and members of the committee, thank you for the opportunity to testify today. My name is Doug Bowman, and I represent the Children and Youth Advisory Committee.

As partial fulfillment of our mission to advocate within state government for the youth of Kansas, we have recently completed a planning document: "Toward The Year 2000". Our plan is for this to become an annual process. Each year we would reassess the progress made towards the goals we have established. In completing this process, we would invite participation from as many interested people as possible. The establishment of children's community services planning groups would fit nicely into these plans.

From a broader perspective, anytime a local community takes time to carefully analyze children's services, good things will happen. Instances where services are duplicative can be addressed. Areas that are needed, but not currently provided, can be filled. We believe these efforts are a wise investment in our future.

Thank you for your time.

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KANSAS CHILDREN'S SERVICE LEAGUE

...to protect and promote the well-being of children ...to strengthen the quality of family life —since 1893

Wichita District & Central Office
1365 N. Custer
P.O. Box 517
Wichita, KS 67201
(316) 942-4261

Kansas City District Office
Gateway Center Tower II
Suite 921
4th & State Ave.
P.O. Box 17-1273
Kansas City, KS 66117
(913) 621-2016

Topeka District Office
2053 Kansas Ave.
P.O. Box 5314
Topeka, KS 66605
(913) 232-0543

Western Kansas District Office
705 Ballinger
Garden City, KS 67846
(316) 276-3232

FIELD OFFICES

Flint Hills
227 Southwind Place
Manhattan, KS 66502
(913) 539-3193

Emporia
417 Commercial
P.O. Box 724
Emporia, KS 66801
(316) 342-8429

United Way

Member Child Welfare League of America

Accredited by The Council on Accreditation of Services for Families & Children

TESTIMONY BEFORE THE SENATE JUDICIARY SUBCOMMITTEE ON CIVIL PROCEDURE
RE: SB 227 ESTABLISHING A COMMUNITY SERVICES PLANNING GROUP

FEBRUARY 26, 1991

BY: MELISSA NESS J.D., M.S.W.

Kansas Children's Service League is a statewide not for profit child welfare agency. Our mission is to protect and promote the well-being of children and to strength the quality of family life.

The services we deliver are dependent on community need and range from respite care, Head Start services, foster care, family preservation, adoption, teen pregnancy prevention, parent/adolescent mediation services, pregnancy counseling and family counseling.

One of the League's top recommendations for 1991 is that Kansas define a statewide policy for children and families. **For that reason we stand in support of the concept behind SB 227 and HB 2010.**

THE ISSUE: WHY CHANGE THE WAY WE LOOK AT OUR DELIVERY SYSTEM?

Currently our system of human service delivery is problem driven and crisis oriented. Changing demographics, economic instability of families, and increasing needs in those populations tell us that our system has outlived its ability to respond in the way we once thought it could. The concept behind the way we deliver services does not allow the opportunities needed by our children and families to stay together, to become self sufficient or independent of our governmental support systems. Subsequent to this responsive mode, priorities in this state are set in a de facto manner and are primarily budget driven. Programs often times are developed without thought given to the larger policy issues or the outcomes we as a state are looking.

Until we have a well defined policy, we are going to be unable to develop responsive programs and systems. There will be little accountability if that policy at a minimum does not outline the obligations, commitments and outcomes we want for our Kansas children and families.

A clear policy framework can then assist in designing a human service system that is a planned architecture, aimed at minimizing inefficiencies, duplication of

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services and is developmental, preventive and child centered in nature versus problem and crisis centered.

This policy framework should serve as the guide for any system developed for planning at a state or local level. Fundamental elements of any new system must include:

>Comprehensive policies, supported through legislative and legal action

>Competent organizational structures to deliver services

>Adequate financial resources which can ensure sufficient service amount and quality, including competent staffing

>Effective community linkages to ensure coordination and prevent fragmentation of effort

>Effective service models which deliver desired outcomes

If there is truly an agreement that we must overhaul or take a closer look at our system of service delivery, we must take the time to ask whether or not these fundamental elements are being met in the systems we are designing.

There will be several proposals of this nature you will be seeing during this session. We ask that you take a close look and ask these difficult questions. We are encouraged that there appears to be a consensus among policy makers that we can no longer maintain the status quo. A system that is only crisis oriented and reactive offers no long term solution.

We support a healthy debate on reassessing our manner of service delivery and recommend the first step be an effort to define a statewide policy for children and families which outlines our basic obligations, commitments, and the outcomes we want for our children and families.

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

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Before the Senate Judiciary Subcommittee
on Civil Procedure
1991 Senate Bill No. 250

Testimony Presented by
Assistant Attorney General Mark W. Stafford
on Behalf of
Attorney General Robert T. Stephan
February 26-27, 1991

Mr. Chairman and Members of the Subcommittee:

Attorney General Stephan thanks this subcommittee for the opportunity to support 1991 Senate Bill No. 250. We requested introduction of this bill, and now request passage of this bill, as a means to clarify the rights of litigants in administrative hearings. The bill would amend the default provisions of the Kansas administrative procedure act.

The need for this legislation arises out of language in K.S.A. 1990 Supp. 77-520 relating to default proceedings. Under subsections (a) and (b) of that statute, a person who fails to attend or participate in an administrative hearing may be held in default, and a proposed default order issued. The party has seven days from service of the proposed order to file a motion to vacate the order. Pursuant to subsection (c), if the

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presiding officer does not vacate the proposed order, it becomes effective after the seventh day.

The current statute allows a person to file a motion to vacate the proposed order, but if the presiding officer fails to act on that motion, the proposed order becomes effective, though the pending motion is timely filed. Even if issued in error, the proposed order operates against the individual and substantially affects rights in the administrative proceeding. An example of this possibility is a true case which occurred before an agency. Because of an internal oversight, the case was commenced by serving the notice of hearing at the incorrect address. The licensee did not appear at the hearing, and a proposed default order was issued. The board proposed to revoke the license. The licensee received the proposed order, and immediately filed a timely motion to vacate. The motion was filed on the seventh day. The presiding officer did not rule on the motion prior to the time the proposed order became effective by operation of law. The motion was eventually ruled upon, and granted. However, confusion exists whether this individual's license was revoked for the time period between the date the proposed order became effective and the date the order was vacated. Senate Bill No. 250 would resolve the uncertainty by staying the effectiveness of the proposed order until the motion to vacate is ruled upon.

Other issues regarding the default provisions of the Kansas administrative procedure act must be resolved at some time in the future. This bill does not attempt to address those issues. We understand that the judicial council may be reviewing these provisions later this year with the goal of refining the section. Until such time as all issues may be resolved, we request that Senate Bill No. 250 be passed as an interim measure to clarify individual parties' procedural rights.

SB 209 - Proponent

MY NAME IS STEVE BURGESS FROM GARDEN CITY, KANSAS. I AM A LANDLORD AND PRESENTLY OWN 107 HOUSES AND APARTMENTS IN GARDEN CITY.

GARDEN CITY IS A HUB FOR THE FEEDLOT AND PACKING PLANT INDUSTRIES. IT HAS IBP WHICH IS THE LARGEST PACKING PLANT IN THE WORLD AND MONFORT WHICH IS ONE OF THE TOP THREE PACKING COMPANIES IN THE NATION.

BECAUSE OF THE NATURE OF THE EMPLOYEES AT THESE PACKING PLANTS, WE HAVE A HIGH PERCENTAGE OF LOST RENTS AND DESTRUCTION OF PROPERTY.

A NUMBER OF LANDLORDS HAVE GONE BROKE AND LOST THEIR PROPERTIES BECAUSE OF THE LOST RENTAL INCOME AND DESTRUCTION OF PROPERTY PROBLEM. VACANCIES HAVE NOT BEEN A PROBLEM IN GARDEN CITY.

I BELIEVE THESE TWO PROBLEMS HAVE ALSO PLAYED A ROLL IN THE SAVINGS AND LOAN DILEMMA THAT IS PRESENTLY PLAGUEING OUR NATION. LENDING INSTITUTIONS WOULD LOOK MORE FAVORABLE ON FINANCING OF APARTMENTS IF THEY WERE MORE PROFITABLE.

ONE WAY TO MAKE RENTAL PROPERTY MORE PROFITABLE IS FOR THE LEGAL SYSTEM TO BE MORE SUPPORTATIVE OF THE OWNERS OF RENTAL PROPERTY AND GIVE THEM THE PROPER TOOLS TO HELP COLLECT THEIR EARNED REVENUE.

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DECEMBER 26 WE HAD A DISTRAUGHT BOY FRIEND SET HIS GIRL FRIENDS BED ON FIRE. BECAUSE THE BED WAS IN MY HOUSE WE HAD $24,000.00 WORTH OF DAMAGE TO MY HOUSE.

THAT SAME WEEK ONE OF MY TENANTS TURNED THE FURNACE OFF AND WENT TO MEXICO FOR TWO WEEKS. WE HAD $7,000.00 WORTH OF WATER DAMAGE TO THIS HOUSE DUE TO FROZEN AND BROKEN PIPES. EVEN THOUGH THESE TO EXAMPLES ARE EXTREMES AND WERE COVERED BY INSURANCE, WE HAVE MANY CASES OF $500.00 TO $1,000.00 WORTH OF DAMAGE THAT IS NOT COVERED BY INSURANCE.

ONE OF THE TOOLS THAT I HAVE LEARNED TO USE TO COLLECT LOST RENTS AND DAMAGE LOSSES HAS BEEN SMALL CLAIMS COURT. IT HAS BEEN VERY EFFECTIVE FOR CLAIMS UP TO $1,000.00. MY PROBLEM IS THAT UNDER PRESENT LAW WE CAN ONLY PROCESS TEN CLAIMS PER YEAR AND THE MAXIMUM AMOUNT WE CAN SUE FOR IS $1,000.00. I WOULD LIKE TO SEE THIS CHANGED TO TWENTY CLAIMS PER YEAR AND TO A $2,000.00 CEILING.
THERE SEEMS TO BE A WINDOW BETWEEN $1,000.00 AND $2,000.00 THAT IS TOO LARGE FOR SMALL CLAIMS COURT AND TOO SMALL TO BE ABLE TO JUSTIFY THE USE OF AN ATTORNEY.

RECENTLY I WAS GRANTED A JUDGEMENT FOR $1,1000.00. SO FAR MY ATTORNEY'S ARE $900.00 JUST TO GET THE JUDGEMENT. WE HAVN'T EVEN STARTED TRYING TO COLLECT THE MONEY YET. THE ATTORNEY'S FEES WILL FAR EXCEED THE AMOUNT OF THE JUDGEMENT BEFORE WE ARE FINISHED WITH THIS CASE.

AT NINETY DOLLARS PER HOUR WE SIMPLY CANNOT AFFORD TO USE AN ATTORNEY FOR CASES OF TWO THOUSAND DOLLARS OR LESS..

I FEEL THE SMALL CLAIMS COURT IS AN IMPORTANT BUSINESS MANAGEMENT TOOL FOR ANY SMALL BUSINESS WITH COLLECTION PROBLEMS, AND I WOULD LIKE TO SEE IT EXPANDED TO BE EVEN MORE FUNCTIONAL.

AT PRESENT RENTS AND COST OF REPAIR, IT IS NOT HARD TO EXCEED $1,000.00 IN LOSES. EVEN THOUGH WE HAVE NOT HAD A VACANCY PROBLEM, WE HAVE ALWAYS HAD AND PROBABLY WILL CONTINUE TO HAVE COLLECTION AND DESTRUCTION OF PROPERTY PROBLEMS.

I CONSIDER MYSELF TO BE A STRONG BUSINESSMAN THAT EXPECTS TO BE PAID FOR THE SERVICES THAT I AM PROVIDING TO THE COMMUNITY, UNFORTUNITELY WE HAVE TO TURN TO THE LEGAL SYSTEM TO COLLECT SOME OF OUR EARNED INCOME.

LANDLORDS LIKE MYSELF ARE A NECESSARY SEGMENT OF AN ECONOMY. SOMEONE HAS TO PROVIDE HOUSING FOR PEOPLE. MANY OF THEM WILL NEVER HAVE THE OPPORTUNITY TO OWN THEIR OWN HOME. THEREFORE THEY ARE DEPENDENT ON LANDLORDS, WE IN TURN HAVE TO BE PAID FOR THE SERVICES WE ARE PROVIDING.

ONCE AGAIN I ASK THE NUMBER OF CLAIMS THAT CAN BE FILED BE INCREASED TO TWENTY AND THE MAXIMUM PER CLAIM BE CHANGED TO TWO THOUSAND DOLLARS.

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League
of Kansas
Municipalities

Municipal
Legislative
Testimon

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: Senate Committee on the Judiciary
FROM: Paula Freerksen, Research Associate, League of Kansas Municipalities
RE: SB 209--Small Claims Court Procedure
DATE: February 26, 1991

By action of its legislative policy committee on February 22, the League of Kansas Municipalities appears in support of SB 209.

Many cities currently use the small claims court procedure for the collection of debts, particularly delinquent water, sewer and refuse bills. Cities have found this procedure to be more efficient and less expensive than alternative debt collection procedures, such as resort to the district courts. For this reason, the League supports SB 209, which expands the jurisdiction of the small claims court system.

SB 209's proposed increase from 10 to 20, of the number of claims that may be brought before a small claims court each year is the most important amendment in the bill; however, the League also supports the proposed increase in the small claims allowable amount in controversy from $1,000 to $2,000. The League believes this increased jurisdiction of the small claims courts will be of value to the operation of local government.

The League respectfully urges your favorable consideration of SB 209.

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Senate Bill No. 209
Senate Judiciary Civil Subcommittee
February 26, 1991

Testimony of Paul Shelby
Assistant Judicial Administrator
Office of Judicial Administration

Mr. Chairman:

I appreciate the opportunity to appear today to discuss Senate Bill No. 209, which amends the small claims procedure act.

This proposal increases the amount claimed from $1,000 to $2,000 and increases the present limitation of 10 small claims cases to 20 that a person may file during any calendar year.

Enactment of this bill will increase judicial business in the district courts to a marked degree. In 1973 when the small claims procedure act first became law, the docket fee was $5, the upper limit was $300, and the number per year per plaintiff was five.

In 1979 the upper dollar limitation was raised to $500; the following year small claims cases had increased to 15,045 cases from 11,875, an increase of 27%.

In 1986 the upper dollar limitation increased to $1,000 and the number per year per plaintiff increased to 10. Filings increased to 17,773 from 15,096, an increase of 17%.

I might add that in each of the above cases there was no reduction in Limited Civil Action filings and we certainly don't expect any reduction with this proposal. We anticipate a caseload increase of 27% because there is no increase in docket fee (a factor which tended to moderate the 1986 increase).

In 1990, 18,718 small claims cases were filed statewide. We would therefore anticipate an increase of about 5,000 cases.

Small claims cases often take more judicial and clerical time than other cases filed with the court, because many of the persons filing cases are not familiar with any of the court's forms or procedures. Because they are unfamiliar with the system causes more time in the hearing trying to explain the process; continuances are common due to the defendant not being prepared.

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Another concern of ours would be post judgment remedies. The increase in cases will generate an increase in these remedies. Last year in Shawnee County, the court issued 19,000 garnishments (5,000 were for nonwage). This proposal will increase the post judgment workload dramatically. An increase of this magnitude would require additional clerical and perhaps even judicial help in some districts.

Although this bill fails to show changes to forms (see K.S.A. 61-2713) changes of this sort in mid fiscal year (for counties) would require replacing forms in 105 counties at a cost of about $7,500.

I might remind the committee that K.S.A. 61-2707 excludes representation by an attorney in small claims actions except on appeal. The higher the claim the greater the need for legal representation.

We urge the committee to consider our concerns with this proposal.

KANSAS BAR ASSOCIATION

POSITION STATEMENT

TO: Hon. Wint Winter, Jr., Chair;
Members, Senate Judiciary Committee

FROM: Ron Smith, KBA Legislative Counsel

SUBJ: SB 209; small claims jurisdiction

DATE: February 26, 1991

Mr. Chairman, and members of the Senate Judiciary committee. KBA's membership includes 5,300 attorneys and judges in Kansas and literally throughout the world. Our role in this legislature spans 108 years of service to Kansas.

The small claims act was enacted in 1973. Originally it allowed actions for disputes not exceeding $500 in value and five actions per year per plaintiff. It was intended that all litigants would be on equal footing. In 1986, small claims was amended to allow actions not to exceed $1,000 in value and ten such actions per year.[1]

The Kansas Bar Association opposes further expansion of small claims jurisdiction, SB 209, for the following reasons:

1. The original intent and purpose of small claims was to provide an inexpensive forum for speedy trial of minor civil matters.[2] Plaintiffs cannot assert a claim in excess of the statutory limit either in the original action or on appeal.[3] Furthering the in-

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[1]Chap. 222, 1986 Session laws.

[2]K.S.A. 61-2712. It was not intended for commercial business collections, most of which is handled under Chapter 61 Limited Actions Division.

[3]On a $2,500 debt, plaintiffs cannot, for example, sue for the statutory $1,000 amount in small claims and then seek the other $1,500 in some other forum. The excess is waived when the plaintiff chooses the forum. Armstrong v.

(Footnote Continued)

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

tent of speed and an inexpensive forum, the legislature denied litigants the right to hire counsel in original small claims matters.4/ To shield the act from constitutional challenge, the legislature guaranteed litigants the right to hire counsel of choice and conduct a jury trial on de novo appeal to the district court.5/

2. The losing party in a small claims action can appeal, but if the person who wins the small claims trial also wins the appeal, such person is allowed reasonable attorney fees and costs.6/ However, if the person who loses the small claims trial later wins on appeal, no such attorney fees appear to be allowed. To the extent you continue to expand the size of cases small claims can resolve, more appeals will be taken since an appeal is the only way to get access to legal help. Yet all the power and fee incentives reside with the one who wins the first trial. There is no case law on this point, but the latter anomaly may raise equal protection considerations.

3. While proponents may claim SB 209 represents simple inflationary adjustments, what actually happens when jurisdiction limits are expanded, fewer debts are written off above the statutory amount in order to bring a small claims action. A $2,000 civil matter is a lot of money to many people. The Small Claims act does not allow discovery devices, interrogatories, depositions or other means of an adversary determining whether there is reasonableness to the amount claimed. Laymen must go into court unarmed with even the most basic information. To then say that the person against who a judgment is rendered for $2,000 is able to hire a lawyer to "fix" the problem on appeal is being unrealistic.

4. Further expansion of small claims lends credence to the unauthorized practice of law, mainly by businesses. The popular notion of small claims court is a "people's court," not a business collections system. Unless one is

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(Footnote Continued)
Lowell H. Listrom & Co., 11 Kan.App.2d 448, 725 P.2d 540, at 541 (1986).

[4]K.S.A. 1990 Supp. 61-2707(a).

[5]Without such guarantees, the small claims denial of the right to counsel or jury trials is unconstitutional. Windholz v. Willis, 1 Kan.App.2d 683, 573 P.2d 1100(1977).

[6]K.S.A. 1990 Supp. 61-2709. There is little doubt the purpose of this "fee shifting" is to discourage appeals.

acting pro se, nonlawyers cannot undertake to represent others on matters that create rights, duties and obligations, as such becomes the unauthorized practice of law.7/ If a nonlawyer appears in court representing business interests that are not his or her own, that may constitute the corporate practice of law. Such activity is generally prohibited in states where, like Kansas, inherent power to determine who practices law rests with the Supreme Court.8/

5. Finally, our opposition exists because there is a **better alternative** than SB 209. So long as plaintiffs not represented by counsel are representing themselves (and not a business or corporation where they are the sole owner), they can file as many Chapter 61 actions as they want. The cost of filing in small claims and limited actions is the same. The only difference is in Chapter 61 Limited Actions, the defendant may choose to hire an attorney. But most do not. The results in Limited Actions Court are the same as in small claims court -- the winner receives a judgment, then has to find means of collecting the judgment. At least, however, the defendant's right to hire counsel is not impeded.

In sum, using the current Chapter 61 limited actions court is a better this a better, existing alternative than SB 209, the purpose for which appears to be to expand the unauthorized corporate practice of law.

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[7]The reason for prohibiting the unauthorized practice of law is inextricably wound up in the process of licensing attorneys for practice. Since public policy in Kansas allows licensing of attorneys strictly through for the practice of law, the integrity of that policy must be upheld by provisions to thwart the inevitable rule breakers. The reason we limit the practice of law only to those individuals examined and found qualified to practice is frequently misunderstood. It is not done to protect the members of the legal profession either by creating or maintaining monopolies. It is done to protect the public from being advised and represented in legal matters by unqualified persons over whom the judicial department can exercise little if any control in the matter of infractions of the code of conduct, which in the the public interest, lawyers are bound to observe.

[8]Martin v. Davis, 187 Kan. 473 (1960). See for example, Public Service Comm'n v. Hahn Transp., Inc., 253 Md. 571, 253 A.2d 845 (1969).