

**SUBCOMMITTEE ON FAMILY COURTS AND
COURT EDUCATION**

1992 Session

Subcommittee Members

Senator Marge Petty, Chairperson
Senator Dick Bond
Senator Lana Oleen
Senator Nancy Parrish

BILL INDEX

<u>BILL NO.</u>	<u>BILL DESCRIPTION</u>	<u>HEARING DATE</u>	<u>REPORTED DATE</u>
HB 2691	family court system pilot projects.	4-2-92	4-7-92
HB 2832	creating a judicial branch education fund to educate judicial branch officers and employees.	4-2-92	4-7-92

April 2, 1992 5:15 p.m. Room 522-S

HB 2691 - family court system pilot projects.

HB 2832 - creating a judicial branch education fund to educate judicial branch officers and employees.

CONFEREES WHO APPEARED:

Judge James Buchele, Shawnee County District Court (ATTACHMENTS 1 and 2)
Judge Dan Mitchell, Shawnee County District Court
Sue Lockett, Kansas CASA Association, Inc.
Larry Rute, Kansas Legal Services (ATTACHMENTS 3 through 10)
Paul Shelby, Office of Judicial Administration

Subcommittee recommendation: see ATTACHMENT 11

Family matters

Domestic relations law has changed for the better

Last week's column was a nostalgic glance backward to 20 years ago in the practice of law here in the Lowcountry. In every branch of the law, it was a different time.

Nothing, however, has changed quite so radically as domestic relations practice. In 20 years, we have leaped forward at least 50.

As recently as 1977, pundits were still proclaiming, "Domestic relations is to the law as proctology is to medicine." Translation: Domestic relations is dirty, nasty business, just as



L. MENDEL RIVERS JR.

proctology deals with unpleasant body parts. "Real" lawyers deal in more refined, less emotional matters. Only those lawyers who can't get better cases handle domestic clients.

Before 1977, jurisdiction over domestic relations was spread over a crazy-quilt collection of courts and judges. In Charleston County, no fewer than four different courts (Common Pleas, Master-in-Equity, County and Family) could and did hear domestic matters, frequently issuing contradictory orders that simply canceled each other out.

One circuit judge hated domestic cases so much he issued a standing order he would never hear another one, even though he clearly had jurisdiction. Such was the respect accorded family law.

"Temporary relief" (a preliminary order establishing custody, support, visitation, etc. until the time of trial) was usually determined by a "race to the courthouse." Either side could obtain something called an "ex-parte order" granting him or her custody, support and exclusive possession of the marital home, simply based upon an affidavit presented to a judge, without a hearing.

Thus a man could be served on his job with an order telling him not to go home that night. His wife had just gotten the house, the kids, the car and most of his pay! It was his obligation to hire a lawyer, get a court hearing, and have the ex-parte order modified so he could get his clothes back.

'If a man failed to pay child support, his wife had to hire an attorney, bring him to court at her own expense, and plead with a judge to force him to pay it. If the man had a pitiful enough excuse, the judge might not only refuse to make him pay the arrearage, he might even reduce the future support, even though that issue was not before the court.'

In 1972, virtually no lawyer specialized in domestic relations law. Lawyers handled divorce cases as an accommodation, almost as a favor, to longtime clients.

It was common for a lawyer to waltz into Family Court and announce to the judge, "Your honor, I don't do domestic relations work, so I'd like you to help me out a little on this one, in case I'm a bit rusty with the law and the procedure."

During a divorce trial, when a lawyer was unsure as to the applicable law (which happened frequently), he would simply look up at the judge with a pathetic smile and beg, "Your honor, this is a court of equity. I'll have to ask you to do the right thing here."

To be fair to the lawyers, family law was murky in those days. Very few domestic cases were appealed to the Supreme Court, and the General Assembly saw fit to pass few domestic statutes, so there was little guidance from Columbia as to what the law really was. We lawyers and judges were on our own. If we didn't know any better, it was because there was little better to know.

The biggest failing of the system back then was in enforcement of orders. Judges just felt uncomfortable putting those who disobeyed court orders in jail, no matter how egregious the violation.

Child support orders were routinely ignored. To be blunt, child support was a standing joke. If a man failed to pay child support, his wife had to hire an attorney, bring him to court at her own expense and

plead with a judge to force him to pay it. If the man had a pitiful enough excuse, the judge might not only refuse to make him pay the arrearage, he might even reduce the future support, even though that issue was not before the court.

Judges never rotated. Lawyers had to face the same judges over and over in domestic cases. Woe be unto a lawyer if a local domestic judge disliked him! There was no place to turn — no alternate group of judges and no group to hear complaints against an errant judge.

But in 1976, something dramatic happened. In one of our General Assembly's finest hours, it abolished the hodge-podge of overlapping court jurisdictions and created a uniform statewide Family Court system, manned by specialist judges who can be rotated all over the state. It transferred control over the new Family Courts to the Supreme Court, with a central court administration in Columbia, and it created a Commission on Judicial Standards to receive complaints against all judges.

Improvement has been slow but steady. The same procedures now control every Family Court in the state, presided over by a shifting pool of judges. A new generation of lawyers, proud to specialize in family law, has appealed so many cases to the Supreme Court that we now have a large body of decisions to tell us what the law is.

Ex-parte orders are a rarity now. Temporary relief is handled under a uniform procedure in which every litigant receives adequate notice of the relief requested.

And we enforce our orders, if not perfectly, at least far better. Child support is routinely paid through the Family Court, and the clerk of court sends out hundreds of summonses every month, at no expense to the mothers, directing the fathers to show cause why they should not be punished for refusing to pay support. The county jail population is ample testimony to judges' determination to make non-supporters pay.

Enter a Family Court today. You will see lawyers who want to practice there presenting cases to judges who want to preside there. If we are the proctologists of the law, we are proud proctologists. Like them, we know that what we do matters.

Rivers is a Family Court judge and a former member of the state Legislature.

Subcommittee on Family Court System and Judiciary Education Fund
April 2, 1992

The Post-Courier - Charleston, S.C. 3-7-92

Attachment 1 1/1

Estimate Shawnee County
Family Court Study Project

4/2/92

Administrator - Present Ct. Adm. and/or
Director of C Services

24,000	Adm. Secy - Coordinator	(Base x 1.25)
58,000	2 CSO's	"
20,000	1 Clerical	
515,000	Contract Services	
30,000	Planning + Consultation	
35,000	Evaluations - Psyc, Drug, Alch., Abuse, etc.	
50,000	Judge Pro Tem	
35,000	ASST. Dist. ATTY	
30,000	GAL Training + Add'l Comp.	
335,000	Expand Juv. Intake, Screening, Case management (Double present) county intake & AND case mgt programs	
12,000	Mediation Services	
18,000	Office space/intake/trustee/D.A.	
6,000	Misc. Expenses - office eqpt, travel, supplies	
<u>653,000</u>		
110,000	1 Trustee Unit (1 atty + 3 staff)	
10,000 - 120,000	Records Management	

Judiciary Subcommittee on FCS + JEF
April 2, 1992
Attachment 2

TESTIMONY OF LARRY R. RUTE
KANSAS LEGAL SERVICES, INC.
(913) 233-2068

SENATE JUCICIARY COMMITTEE

Wint Winter, Chairperson
Monday, March 16, 1992

I would like to thank the Chairperson and members of the committee for the opportunity to appear before you today to discuss House Bill No. 2832.

I am the Litigation Director and Deputy Director for Kansas Legal Services, Inc. (KLS). As you are probably aware KLS is a private, non-profit corporation dedicated to providing free or low-cost legal services to low and moderate income Kansans throughout the state.

House Bill No. 2832 is a good bill. The \$2.00 addition to certain docket fees provided in the bill could be well used by the courts. The docket fee increase is essentially a user fee and, I believe, an appropriate method of paying for education and training for judicial branch employees.

PROPOSAL TO CREATE AN ACCESS TO JUSTICE FUND

I am here to ask you to consider an amendment to House Bill No. 2832 that would add an additional \$5.00 to civil filing fees to create an Access to Justice Fund. I propose that the funds generated and placed in the Access to Justice Fund be disbursed equally to the Office of Judicial Administration and to legal services organizations that provide services to low income Kansans. I have provided you with a "balloon" version of the bill with some suggested language for this amendment.

Kansas would not be the first state to fund civil legal services with filing fee revenue. Oregon, North Dakota, Massachusetts, Florida, and Nevada all utilize filing fees to supplement the budgets of legal services organizations in their states. In 1989, the Oregon Legislative Assembly (Oregon Revised Statutes 21.480 and 21.485) increased filing fees paid into the circuit and district courts for the use of non-profit legal aid programs. In the case of Oregon, fees were increased in circuit courts from \$8 to \$22 and in district courts from \$3.50 to \$8.50. In Oregon all of the increased revenues from filing fees were devoted to defraying the operating costs of legal aid programs.

North Dakota has a \$10 filing fee surcharge in all civil cases filed in district and county courts. All of this revenue is credited to an indigent civil legal services fund in the state treasury. Each state has a somewhat different method of collecting

Judiciary Subcommittee on FCS + JEF
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Attachment 3

and distributing filing fees to legal services organizations. I have provided you with a copy of the bill passed in Oregon and copies of pertinent statutes from each of the other states.

There were 131,441 civil cases filed in Kansas during 1991. Current filing fees in Kansas are \$60 for all Chapter 60 cases and in Chapter 61 cases where the contested amount is greater than \$5,000. Chapter 61 cases involving \$500 to \$5,000 are \$35. Filing fees for Chapter 61 cases involving less than \$500 are \$15. A \$5 across the board increase in filing fees would generate approximately \$657,000 per year, if filings remained at the level experienced during 1991. It might be desirable to exempt certain types of domestic cases (eg. child support collections) from the filing fee increase. If only 100,000 cases were subject to the \$5 increase, \$500,000 of revenue would be generated annually. Naturally, a \$10 increase in the civil filing fee would generate approximately 1 million dollars annually.

I would like to suggest that one-half of the filing fee increase could be used to fund and enhance an "access to justice-poverty prevention program" within Kansas Legal Services. The remaining one-half of the filing fee increase could perhaps go to OJA to assist in funding the proposed pilot family court system, attorney dispute resolutions systems (eg. mediation and arbitration) and even enhance judicial salaries.

With \$250,000 in revenue from a \$5 filing fee increase, Kansas Legal Services, Inc. would be in a position to expand its representation in domestic violence, post-divorce custody motions and contested divorce matters where children are involved by 6,250 hours. This would represent a 26% increase in domestic relations legal services to low-income Kansans. It would allow service delivery to be provided to approximately 2,000 additional low income persons per year.

Another possible approach would be to utilize a portion of the revenue to allow KLS to assist the court system in those domestic relations situations where a significant number of pro se actions have been filed. I understand this is a particular problem in those judicial districts where large numbers of pro se protection orders are being filed. Similarly it might be possible to make attorneys available to the Court in those custody situations requiring the appointment of a guardian ad litem.

UNMET CIVIL LEGAL NEEDS OF LOW INCOME KANSANS

In 1988, under the supervision of the Kansas Bar Association's Legal Aid and Referral Committee, a survey regarding civil legal services for low income persons in Kansas was conducted. Four components of the legal profession were surveyed, including: a random sample of Kansas Bar Association (KBA) members, district court judges, local Bar presidents, and Kansas Legal Services staff attorneys.

The result of that survey indicated that a large majority of all groups surveyed perceived a need for additional civil legal services for low income Kansans. The areas of need most often cited by the legal professionals were, in order of priority:

1. Post Divorce Motions
2. Domestic Violence
3. Contested Divorces

The attorneys and judges surveyed in 1988 also indicated a belief that many low income individuals do not know how to obtain legal assistance. Adding attorney staff to Kansas Legal Services offices was the legal professionals' preferred method of meeting the unmet legal needs of low income Kansans. (A copy of the executive summary of the Bar study is attached).

The demand for services among low income residents of Kansas has continually increased. In 1991, Kansas Legal Services attorneys provided advice/representation to approximately 20,000 low income Kansans in a wide variety of matters. We have experienced a 28% case load increase since 1986. As case loads increase each year, the incidence of divorce and domestic violence increase also. This increase in demand, particularly in the area of domestic law, has made it necessary to provide limited services to some individuals and to reject services entirely to thousands of individuals each year.

Kansas Legal Services provided advice and representation in domestic matters to 7,806 persons in 1991. Domestic cases average over three hours per case and a total of 23,650 hours of legal advice and representation was provided. Despite this extensive service, Kansas Legal Services is unable to meet the demand in the areas identified in the 1988 KBA survey as areas of excessive unmet need.

POVERTY PREVENTION

Traumatic events such as divorce and domestic violence create severe periods of economic and social instability for persons of all ages and all classes. These events often precipitate a transition from a socially stable, financially secure lifestyle to one of poverty or near poverty. For example, a recent study by the Census Bureau found that four months after a divorce, the average monthly income in households with custody of children drops \$900. This "fall" into poverty can often be attributed to a lack of coordinated support and assistance in identifying and utilizing economic and social resources available to persons undergoing a traumatic event.

Comprehensive legal advocacy regarding issues surrounding divorce, domestic violence and attempts to modify divorce decrees, can be a critical component of preventing long term poverty and dependency. Legal advocacy should be particularly focused on recently divorced women with children because of their high risk of prolonged

poverty. Kansas Legal Services' long range goal is to provide comprehensive advocacy services to our clients who are at risk of becoming permanently poverty stricken.

These examples are provided to sensitize you to some of the areas of outstanding and serious legal needs among low income persons in Kansas. We at Kansas Legal Services, Inc. are very willing to work with you in designing a program to utilize filing fee funds to the best advantage of low income persons needing legal assistance in Kansas.

Thank you for your consideration.

Kansas Legal Services Offers Statewide Accessibility.

Our twelve field offices, staffed by over 50 attorneys, provide legal advice and representation to nearly 20,000 Kansans annually. Services are provided in each of the state's 105 counties.

Advice and Representation for Low Income and Disadvantaged Kansans.

- Agriculture Law
- Consumer Law
- Disability Law
- Education Law
- Elderly Law
- Family Law
- Health Law
- Housing Law
- Public Benefits Law
- Rural Community Development

Kansas Legal Services Community Education.

- Substantive Legal Education
- Program priorities and procedures.
- Other training services

1 Counties served:
Anderson, Chase, Coffey,
Greenwood, Lyon, Marion

5 County served:
Reno

6 Counties served:
Leavenworth
Wyandotte

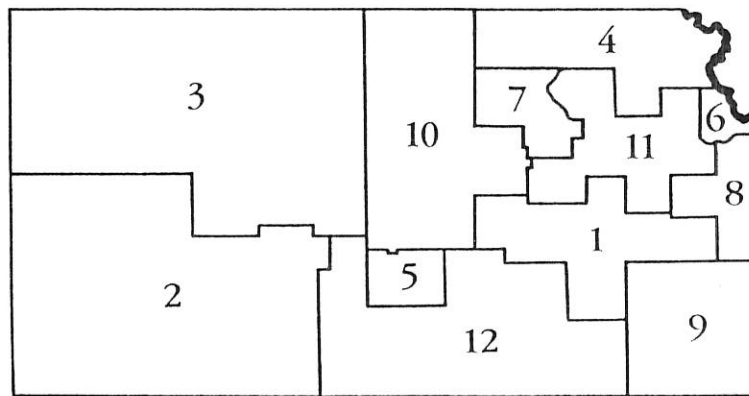
/ Clay, Geary, Riley

8 Franklin, Johnson, Linn,
Miami

2 Counties served:
Clark, Comanche,
Edwards, Finney, Ford,
Grant, Gray, Greeley,
Hamilton, Haskell,
Hodgeman, Kearny, Kiowa,
Lane, Meade, Morton,
Pawnee, Scott, Seward,
Stanton, Stevens, Wichita

3 Counties served:
Barton, Cheyenne,
Decatur, Ellis, Gove,
Graham, Logan, Ness,
Norton, Osborne, Phillips,
Rawlins, Rooks, Rush,
Russell, Sheridan,
Sherman, Smith, Thomas,
Trego, Wallace

4 Counties served:
Atchison, Brown,
Doniphan, Jackson,
Marshall, Nemaha,
Washington



9 Counties served:
Allen, Bourbon, Cherokee,
Crawford, Labette,
Montgomery, Neosho,
Wilson, Woodson

10 Counties served:
Cloud, Dickinson,
McPherson, Mitchell,
Ottawa, Republic, Rice,
Saline, Ellsworth, Jewell,
Lincoln

11 Counties served:
Douglas, Jefferson,
Morris, Osage,
Pottawatomie, Shawnee,
Wabaunsee

12 Counties served:
Barber, Butler, Chautauqua,
Cowley, Elk, Harper,
Harvey, Kingman, Pratt,
Sedgwick, Stafford, Sumner

Kansas Legal Services Field Offices

1 *Kansas Legal Services of Emporia*
417 Commercial
P.O. Box 1316
Emporia, Kansas 66801
(316) 343-7520

2 *Kansas Rural Legal Services*
120 Grant
Garden City, Kansas 67846
(316) 275-0238
1-800-362-9009

3 *Hays Legal Services*
1201 Fort
Hays, Kansas 67601
(913) 625-4514

4 *Legal Services of Northeast Kansas*
1500 Community Dr.
Seneca, Kansas 66538
(913) 336-6016

5 *Hutchinson/Reno County Legal Aid*
206 W. First
Hutchinson, Kansas 67501
(316) 663-8311

6 *Wyandotte/Leavenworth Legal Services*
825 North Seventh
Kansas City, KS 66101
(913) 621-0200

7 *Flint Hills Legal Services*
102-B South 4th Street
Manhattan, Kansas 66502
(913) 537-2943

8 *Kansas Legal Services of Olathe*
465 South Parker
Olathe, Kansas 66061
(913) 764-8585

9 *Legal Services of Southeast Kansas*
National Bank Building,
Suite 204
P.O. Box 1509
Pittsburg, Kansas 66762
(316) 232-1330

10 *Legal Services of North Central Kansas*
227 North Santa Fe,
Suite 201
Salina, Kansas 67401
(913) 825-8147

11 *Kansas Legal Services of Topeka*
712 S. Kansas Ave.
Topeka, Kansas 66603
(913) 354-8531

12 *Legal Services of Wichita*
154 North Emporia
Wichita, Kansas 67202
(316) 265-9681

Kansas Legal Services, Inc. Administrative Office

712 S. Kansas Ave., Suite 200
Topeka, Kansas 66603
Tel: (913) 233-2068

Roger L. McCollister, Executive Director

Attachment 4 1/2

HOUSE BILL No. 2832

By Committee on Judiciary

1-31

9 AN ACT concerning the judicial branch; relating to the education
 10 of judicial officers and employees; increasing docket fees; creating
 11 the judicial branch education fund; amending K.S.A. 8-2107, 12-
 12 4112, 12-4114 and 12-4116 and K.S.A. 1991 Supp. 20-362, 28-
 13 172a and 32-1050 and repealing the existing sections; also re-
 14 pealing K.S.A. 12-4115.

creating the access to justice fund; relating to the
 provision of free legal assistance to low-income Kansans.

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

16 New Section 1. (a) There is hereby created in the state treasury
17 a judicial branch education fund.

18 (b) All money credited to the fund shall be used for the purpose
19 of educating and training judicial branch officers and employees; for
20 administering the training, testing and education of municipal judges
21 as provided in K.S.A. 12-4114, and amendments thereto; and for
22 educating and training municipal judges and municipal court support
23 staff. Expenditures from the judicial branch education fund shall be
24 made in accordance with appropriation acts upon warrants of the
25 director of accounts and reports issued pursuant to vouchers ap-
26 proved by the chief justice of the supreme court or by a person or
27 persons designated by the chief justice.

28 (c) The chief justice may apply for, receive and accept money
29 from any source for the purposes for which money in the judicial
30 branch education fund may be expended. Upon receiving any such
31 money, the chief justice shall remit the entire amount at least
32 monthly to the state treasurer who shall deposit such money in the
33 state treasury and credit such money to the judicial branch education
34 fund.

35 (d) Upon the effective date of this act, the director of accounts
36 and reports is directed to transfer all moneys in the municipal judge
37 training fund to the judicial branch education fund. Upon the ef-
38 fective date of this act, all liabilities of the municipal judge training
39 fund existing prior to such date are hereby imposed on the judicial
40 branch education fund. Whenever the municipal judge training fund,
41 or words of like effect, is referred to or designated by any statute,
42 contract, or other document, such reference or designation shall be
43

*Judiciary Subcommittee on
 FCS + JEF
 April 2, 1992
 Attachment 5*

Sec. 7. K.S.A. 1991 Supp. 20-362 is hereby amended to read as follows: 20-362. The clerk of the district court shall remit at least monthly all revenues received from docket fees as follows:

(a) To the county treasurer, for deposit in the county treasury and credit to the county general fund:

(1) A sum equal to \$10 for each docket fee paid pursuant to K.S.A. 60-2001, and amendments thereto, during the preceding calendar month;

(2) a sum equal to \$10 for each \$35 or \$60 docket fee paid pursuant to K.S.A. 61-2501, and amendments thereto; and

(3) a sum equal to \$5 for each \$15 docket fee paid pursuant to K.S.A. 61-2501 or 61-2704, and amendments thereto, during the preceding calendar month.

(b) To the board of trustees of the county law library fund, for deposit in the fund, a sum equal to the library fees paid during the preceding calendar month for cases filed in the county.

(c) To the county treasurer, for deposit in the county treasury and credit to the prosecuting attorneys' training fund, a sum equal to \$1 for each docket fee paid pursuant to K.S.A. 28-172a, and amendments thereto, during the preceding calendar month for cases filed in the county and for each fee paid pursuant to subsection (c) of K.S.A. 28-170, and amendments thereto, during the preceding calendar month for cases filed in the county.

(d) To the state treasurer, for deposit in the state treasury and credit to the indigents' defense services fund, a sum equal to \$.50 for each docket fee paid pursuant to K.S.A. 28-172a and subsection (d) of K.S.A. 28-170, and amendments thereto, during the preceding calendar month.

(e) To the state treasurer, for deposit in the state treasury and credit to the law enforcement training center fund, a sum equal to \$5 for each docket fee paid pursuant to K.S.A. 28-172a, and amendments thereto, during the preceding calendar month.

~~(f) To the state treasurer, for deposit in the state treasury and credit to the juvenile detention facilities fund, a sum equal to 5.85% of the remittances of docket fees paid during the preceding calendar month.~~

~~(g) To the state treasurer, for deposit in the state treasury and credit to the state general fund distribution according to section 2, a sum equal to the balance which remains from all docket fees paid during the preceding calendar month after deduction of the amounts specified in subsections (a), (b), (c), (d), and (e), and (f), and (f).~~

(f) To the state treasurer, for deposit in the state treasury and credit to the access to justice fund, a sum equal to \$5.00 for each docket fee paid pursuant to K.S.A. 61-2501.

Sec. 8. K.S.A. 1991 Supp. 28-172a is hereby amended to read

1 costs a docket fee.

2 Sec. ~~1012~~ K.S.A. 8-2107, 12-4112, 12-4114, 12-4115 and 12-4116
3 and K.S.A. 1991 Supp. 20-362, 28-172a and 32-1050 are hereby
4 repealed.

5 Sec. ~~4113~~ This act shall take effect and be in force from and after
6 its publication in the statute book.

New Section 10. (a) There is hereby created in the state treasury an access to justice fund.

New Section 11. (a) In all counties wherein legal representation is provided without fee by a nonprofit legal aid program organized under the auspices of the Legal Services Corporation (Public Law 93-355 or successor legislation), there shall be collected by the clerk of the district court from the plaintiff or other moving party in each civil suit, action or proceeding in the district court, whether Chapter 60 or 61, at the time of filing the first paper therein, in addition to all other fees collected and in the same manner, the sum of \$5.00 to be deposited in the access to justice fund.

(b) Fifty percent of the funds collected shall be distributed to qualified legal services programs that have demonstrated an ability to provide legal services to persons unable to afford private counsel with funds provided by the federal Legal Services Corporation. All funds distributed pursuant to this clause shall be used for the provision of legal services in civil matters to eligible clients.

(c) Fifty percent of the funds collected shall be distributed to the Office of Judicial Administration for administration and program purposes.

LOW-INCOME
CIVIL LEGAL SERVICES
NEEDS STUDY
1988

Kansas Bar Association
Legal Aid and Referral Committee

*Judiciary Subcommittee on
FCS & JEF
April 2, 1992
Attachment 6*

INTRODUCTION

This study was conducted under the supervision of the Kansas Bar Association's Legal Aid and Referral Committee, Gloria Flentje chairperson. The staff who compiled the data were Art Thompson, Legal Services Director for the Kansas Bar Association, and Wayne White, Ph.D., researcher for Kansas Legal Services.

The Legal Aid and Referral Committee determined that there was a need to update the data on the provision of civil legal services to low-income Kansans in order to continue to improve bar sponsored projects.

The study was funded through grants from the Kansas Bar Foundation and the Kansas Bar Association.

The goal of this study was to determine what services are needed and possible ways to improve the delivery of those services.

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- 4 -
EXECUTIVE SUMMARY

The Massachusetts Bar Association and The Advisory Council of the Maryland Legal Services Corporation recently conducted extensive random surveys of their low-income populations. These studies were designed to determine the level of need in those areas. Massachusetts found that only one out of six low-income people with legal problems is being served by the existing legal services system. (Massachusetts Legal Services Plan for Action, 1987, Massachusetts Bar Association.)

Similarly, Maryland found that only 20% of those poor with identified legal problems were being served. They also found that poor people who had a legal representative when they sought to obtain government services had almost twice as great a chance of success as those who were without representation. (Action Plan for Legal Services to Maryland's Poor: A Report of the Advisory Council to the Maryland Legal Services Corporation, January 1988) The results of the Kansas Bar Association study indicate that a high level of need for civil legal services for low-income people also exists in Kansas.

Poverty in the U.S:

There were 32.5 million persons below the official government poverty level in 1987. This represents 13.5 percent of the U.S. population. Neither the poverty rate nor the number of poor changed significantly between 1987 and 1986, when there were 32.4 million poor and a 13.6 percent rate.

From 1978 to 1983 the number of persons in poverty increased by 44 percent, from 24.5 to 35.3 million, and the poverty rate increased from 11.4 to 15.2 percent. Since 1983, both the number of poor and the poverty rate have declined slightly. Both the number of poor and the poverty rate in 1987, however, were well above their 1978 levels.

The poverty thresholds are updated every year to reflect changes in the consumer price index.

TABLE ONE

POVERTY LEVEL AND
125 PERCENT OF POVERTY LEVEL
INCOME BY FAMILY SIZE

<u>Size of Family Unit</u>	<u>Poverty Level</u>	<u>125% of Poverty</u>
1	5,770	7,213
2	7,730	9,663
3	9,690	12,113
4	11,650	14,563
5	13,610	17,013
6	15,570	19,463
7	17,530	21,913
8	19,490	24,363

Based on the February 1988 Official Poverty Threshold as defined by the Department of Health and Human Services.

Poverty in Kansas:

The incidence of poverty in Kansas has increased since 1980. The Institute for Research on Poverty at the University of Wisconsin recently estimated the mid-1980's poverty rate in Kansas at 11.2 percent.¹ The "mid-1980's" poverty rate was determined by combining census data for the years 1984, 1985 and 1986.

The Census Bureau identified 231,699 persons below the poverty level in 1980 in Kansas. There were 329,757 persons below 125 percent of poverty (the threshold for Legal Services Corporation eligibility) at the time of the 1980 census.

Assuming that the mid-1980's poverty rate of 11.2 percent has remained constant into 1988, and the Census Bureau's most recent population estimate of 2,487,000 (Bureau of the Census 1988) for 1988 is accurate, the poverty population in Kansas is now approximately 278,544 (11.2 percent of 2,487,000).² This is a 20 percent or 46,845 person increase in the poverty population of Kansas since the 1980 census. If the ratio of persons below the poverty line to persons below 125 percent of poverty has remained constant, there are now approximately 396,368 persons below 125 percent of

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poverty and eligible for legal services under Legal Services Corporation guidelines.

Staff Attorney Programs:

Staff attorney programs which serve the civil legal service needs of low-income Kansans have experienced reductions in their budgets over the last eight years. In 1980 dollars (the year of the last census), the federal government's 1988 funding of these programs is approximately 53% of its 1980 funding. Other types of local and state funding have brought the budget up (in 1980 dollars) to 63% of the funds available in 1980 per eligible person.

Over the same period the income eligible population increased from about 6,000 people per staff attorney in 1980 to nearly 9,000 per staff attorney in 1988. This change was due to a combination of fewer KLS staff attorneys and the increase in poverty.

The twelve staff attorney offices across the state each have somewhat different priorities but generally focus on those legal issues which affect the basic survival needs of their clients.

In 1987, Kansas Legal Services turned away over 5,700 income eligible potential clients because they did not have the staff or private bar volunteer lawyers to handle these cases. Another 640 income eligible people were turned away because of conflicts. An additional 4,200 people were turned away because their incomes fell just above the KLS income guidelines.

Bar Associations' Programs:

The seven local bar sponsored pro bono and low fee projects and the five KBA Reduced Fee Plans primarily attempt to handle the cases which the staff programs are unable to accept. These bar associations also contribute thousands of dollars towards the administrative expenses of operating these projects. In addition, the Kansas Bar Foundation has allocated substantial revenues to this effort.

In 1987, approximately 596 pro bono and 779 low fee cases were handled by the seven local bar programs. It is estimated that these bar sponsored

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projects are able to assist with approximately 24% of those low-income people who approached staff attorney program in 1987 but who were turned away because there were no staff attorneys available. In addition to these reported cases, many other low-income clients are provided advice and representation at low or no fee by individual lawyers who provide a major service by accepting cases outside of any organized bar program. However, even with this important resource, there is still a need for additional organized programs.

One of the main factors which keeps even more cases from being referred to the private bar is not necessarily the lack of volunteers, but the limited administrative assistance for private bar involvement programs. Currently, all the pro bono programs use Legal Services staff to process referrals and keep track of each case disposition. Since most offices are very busy, this puts an additional burden on them.

IOLTA Program

The Kansas Bar Foundation's volunteer IOLTA program was begun in April of 1984. Currently the program has enrolled 850 lawyers out of a potential of 4,400 lawyers and expects to generate \$130,000 in 1988. There are a few financial institutions which remain undecided or have refused to participate. There is a potential of generating anywhere from \$350,000 to \$500,000 in IOLTA funds if all the potentially eligible lawyers were to participate.

The Kansas Bar Foundation has granted the majority of funds for the provision of civil legal services for the low-income victims of domestic violence. Additional funds have gone to assist with the administration of local bar associations' pro bono and low fee programs.

Lawyer Survey Results:

Four different components of the Bar in Kansas were surveyed on a variety of areas related to civil legal services for the low-income; a random sample of KBA members, district court judges, local bar presidents and Kansas Legal Services lawyers.

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- * The responses indicate that a large majority of all groups perceive a need for additional civil legal services for low-income Kansans.
- * The top three areas of need are family issues with post divorce motions being the most often cited. Domestic violence and contested divorces were second and third. Tenant disputes ranked as the fourth most mentioned area.
- * There is also a belief that a number of low-income individuals do not know how to obtain legal services.
- * A large majority of the lawyers surveyed indicated that the KBA should be involved with encouraging the provision of civil legal services to low-income persons.
- * State funds and the IOLTA program were the most mentioned areas of additional funding. The least acceptable funding method was the use of bar dues income.
- * There was substantial support for adding staff to Legal Services programs as a method of increasing service delivery.
- * There was less approval indicated among private attorneys for additional pro bono or reduced fee services.

¹ Robert D. Plotnick and Sheldon Danziger, "Poverty Rates by State in the Mid-1980s: An Update." Focus, University of Wisconsin-Madison Institute for Research on Poverty, Vol. 11, No. 3, Fall 1988.

² Bureau of the Census 1988, "Midwest Population Begins Growing Again", Press Release CB 88-205, Dec. 30 U.S. Department of Commerce.

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11-16-02

North Dakota

COUNTIES

discretion to initiate prosecution by indictment or by information, 44 ALR 4th 401. Liability of community property for ante-nuptial debts and obligations, 68 ALR 4th 877.

11-16-02. Assistant — Appointment — Duties. The state's attorney may appoint assistant state's attorneys, who, when qualified by filing the required oath of office, shall have the same powers as, and shall perform any and all duties required of, the state's attorney. The state's attorney is responsible, under the state's attorney's official bond, for any and all acts of such assistant. The work of an assistant state's attorney must be assigned by the state's attorney.

Source: R.C. 1895, § 1987; R.C. 1899, § 11-1602; S.L. 1971, ch. 118, § 2; 1989, ch. § 1987; S.L. 1903, ch. 180, § 1; R.C. 1905, 140, § 2. § 2498; C.L. 1913, § 3380; R.C. 1943,

11-16-05. Restrictions on powers of state's attorney — Option regarding full-time state's attorneys — Penalty for breach of duty. The state's attorney shall not:

- 1. Present a claim, account, or other demand for allowance against the county, except for his own services, nor in any way advocate the relief asked for by the claim or demand of another.
2. Be eligible to or hold any judicial office except that of United States commissioner.
3. Receive a fee or reward from or on behalf of a prosecutor or other individual for services in any prosecution or business to which it is his official duty to attend.
4. Be concerned as attorney or counsel for any party, other than the state or county, in any civil action depending upon, or arising out of, a state of facts upon which a pending and undetermined criminal prosecution depends.
5. Be concerned as attorney or counsel for any party, other than the state or county, or other than a city within the county, when so authorized by resolution of the board of county commissioners, in any action or proceeding whatsoever when employed by a county having a population exceeding thirty-five thousand or by any other county whose board of commissioners has, by resolution, determined that the state's attorney shall be restricted in this manner. A board of county commissioners may adopt or rescind a resolution under this subsection in any year. However, in the general election year in which the state's attorney is to be elected, such action must be taken prior to June first. Such adoption or rescission shall not be effective during the state's attorney's current term of office unless agreed upon between the board and the state's attorney.

A violation of any provision of this section shall constitute an infraction, and the offender may be removed from office.

Source: S.L. 1883, ch. 43, § 6; R.C. 1895, §§ 1982, 1983, 7634; R.C. 1899, §§ 1982, 1983, 7634; R.C. 1905, §§ 2494, subas. 12, 13, 9404; C.L. 1913, §§ 3376, subas. 12, 13, 10191; S.L. 1915, ch. 248, § 1; 1925 Supp., § 3376, sub. 13; R.C. 1943, § 11-1605; S.L. 1971, ch. 118, § 3; 1975, ch. 106, § 84; 1977, ch. 100, § 2; 1991, ch. 112, § 1.

Effective Date.

The 1991 amendment of subsection 5 of this section by section 1 of chapter 112, S.L. 1991, became effective on July 3, 1991, 90 days after filing, pursuant to N.D. Const., Art. IV, § 13.

CLERK OF DISTRICT COURT

11-17-04

CHAPTER 11-17
CLERK OF DISTRICT COURT

Section

11-17-01. Duties of the clerk of court.
11-17-04. Fees to be charged by the clerk of the district court and county court.

Section

Monthly report to county auditor.
11-17-11. County option for state funding of clerk of district court.

11-17-05. Clerk to keep record of fees —

11-17-01. Duties of the clerk of court. Unless otherwise directed by rule of the supreme court, the clerk of the district court shall perform the following duties:

- 1. Take charge of all papers and records, which are filed or deposited in the office of the clerk of court, and safely keep and dispose of the same according to supreme court rule.
2. Act as clerk of the district court, and attend the judge of the district court in chambers during sessions of the district court when requested to do so by the judge.
3. Issue all process and notices required to be issued out of the district court.
4. Keep in the office a judgment docket in which the clerk shall enter alphabetically the name of each judgment debtor, the amount of the judgment, and the precise time of its entry.
5. Satisfy all liens and judgments docketed or on file in the office immediately after a satisfaction of the lien or judgment is filed.
6. Keep in the office a register of all actions, in which the clerk shall enter the title of each action with brief notes of all papers filed in the action together with the date of the filing, and such other matters as are required by supreme court rule.
7. Keep for the district court a plaintiff's and defendant's index.
8. Keep a record of the name of each juror in the district court, the number of days in attendance, and compute the mileage of each.
9. Keep a record of the name of each witness called in each criminal action in the district court, the number of days in attendance, and the witness' legal fees.
10. Keep other records and perform other duties as the supreme court directs by rule.

Source: C. Civ. P. 1877, § 530; R.C. 1895, § 6829a; R.C. 1943, § 11-1701; S.L. 1949, ch. §§ 1989, 5740; R.C. 1899, §§ 1989, 5740; R.C. 124, § 1; 1957 Supp., § 11-1701; S.L. 1981, 1905, §§ 2500, 7347; C.L. 1913, §§ 3387, ch. 320, § 17; 1985, ch. 337, § 1; 1987, ch. 7967; S.L. 1917, ch. 154, § 1; 1925 Supp., 385, § 1.

11-17-04. Fees to be charged by the clerk of the district court and county court. The clerk of the district court and county court shall charge and collect the following fees in civil cases:

- 1. For filing a case for decision in district court or county court which is not a small claims action, twenty dollars.
2. For filing a small claims action in county court, ten dollars.
3. For filing any matter authorized to be filed in the office of the clerk of court other than a case for decision in subsections 1 and 2, five dollars.

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4. For preparing, certifying, issuing, or transmitting any document, five dollars; or such lesser fee as may be set by a schedule to be promulgated by the state court administrator.

In addition to the fee required under subsection 1, the clerk of court shall charge and collect a fee of ten dollars. This fee must be deposited with the county treasurer as provided under sections 11-17-05 and 27-07.1-12 and thereafter must be deposited with the state treasurer and credited to an indigent civil legal services fund in the state treasury. Section 27-01-07 applies to fees charged under this section. The clerk of court may not charge or collect any fee, prescribed by this or any other section, from the county, or agencies thereof, in which the office of the clerk of court is located nor may the clerk of court charge or collect the additional ten dollar fee prescribed by this section from the state or an agency thereof or from a political subdivision or agency thereof.

Source: R.C. 1895, § 2067; S.L. 1899, ch. 64, § 5; R.C. 1899, § 2066; S.L. 1901, ch. 92, § 1; 1903, ch. 55, § 1; R.C. 1905, § 2584; C.L. 1913, § 3498; S.L. 1927, ch. 123, § 1; R.C. 1943, § 11-1704; S.L. 1947, ch. 228, § 3; 1967 Supp., § 11-1704; S.L. 1971, ch. 297, § 1; 1973, ch. 93, § 1; 1975, ch. 101, § 1; 1981, ch. 320, § 18; 1981, ch. 361, § 6; 1983, ch. 498, § 8; 1985, ch. 338, § 1; 1989, ch. 150, § 1.

Effective Date.

The 1989 amendment of this section became effective on July 1, 1989, pursuant to N.D. Const., Art. IV, § 13.

Note.

Effective January 2, 1995, this section is amended by S.L. 1991, chapter 326, section 19. The amendment will be set out in the 1993 supplement.

11-17-05. Clerk to keep record of fees — Monthly report to county auditor. The clerk of the district court shall keep a public record of all money received as fees for services rendered as clerk. Within three days after the close of each calendar month and also at the close of the clerk's term of office, the clerk shall file with the county auditor a statement under oath showing the amount of fees received as clerk since the date of the clerk's last report, and within three days thereafter the clerk shall deposit with the county treasurer the total sum of such fees which must be used for facilities, except fees which the clerk is authorized expressly to retain.

Source: R.C. 1895, § 2066; S.L. 1899, ch. 64, § 2; R.C. 1899, § 2062; R.C. 1905, § 2581; C.L. 1913, § 3496; R.C. 1943, § 11-1705; S.L. 1947, ch. 228, § 4; 1967 Supp., § 11-1705; S.L. 1971, ch. 297, § 2; 1975, ch. 106, § 85; 1985, ch. 337, § 2; 1989, ch. 138, § 6.

Effective Date.

The 1989 amendment of this section became effective on July 10, 1989, 90 days after filing, pursuant to N.D. Const., Art. IV, § 13.

11-17-08. Clerk of court to destroy certain records after offer to state archivist.

Note.

Effective January 2, 1995, subsections 1 and 2 of this section are amended by S.L.

1991, chapter 326, section 20. The amendment will be set out in the 1993 supplement.

11-17-10. Certain files not to be destroyed.

Cross-Reference.

For Administrative Rule 19, which sets forth a court records retention and disposi-

tion schedule to be followed by all courts of North Dakota, see North Dakota Court Rules Annotated.

11-17-11. County option for state funding of clerk of district court. The board of county commissioners of any county may initiate the option to transfer responsibility for funding for the clerk of district court to the state by the filing of written notice to the state court administrator before February first of the year prior to the start of the next state biennium, accompanied by:

1. A resolution of the board of county commissioners;
2. A resolution separating the offices of register of deeds and clerk of district court pursuant to section 11-10-02; and
3. A statement of income and expenses of the office of the clerk of court for the prior fiscal year and projected costs of the office for the next biennium.

Following approval by the supreme court, the state court administrator shall include in the comprehensive budget in section 27-01-01.1 all salaries and expenses for the clerk of district court and their deputies and employees for each county initiating the option. If approved by the legislative assembly, all clerks of the district court and their deputies and employees shall become employees of the North Dakota judicial system.

The clerk of district court at the start of the next biennium period may remain as full-time clerk of district court at a salary which is not less than the salary paid to the clerk of district court in the year prior to the start of that biennium period until the clerk retires or resigns. Thereafter, the clerk of district court must be employed by the North Dakota judicial system.

The clerk of district court options must be funded in the order of the date of the approval by the supreme court. If the legislative assembly does not appropriate funds for the transfer of responsibility for funding for one or more clerks of district court to the state at the next legislative session after the date the county has initiated the option in this section, the state court administrator shall provide written notification to the appropriate boards of county commissioners. The unfunded option counties shall remain in priority order for future legislative action.

Source: S.L. 1989, ch. 138, § 5.

Cross-References.

Bond for clerk of district court, see § 11-10-06.

Compensation for the clerk of a district court, see § 11-10-10.

Number and compensation of deputies, clerks, and assistants for a clerk of district court, see § 11-10-11.

Effective Date.

This section became effective July 10, 1989, 90 days after filing, pursuant to N.D. Const., Art. IV, § 13.

CHAPTER 11-18

REGISTER OF DEEDS

Section

11-18-02.2. Statements of full consideration to be filed with state board of equalization or register of deeds — Procedure — Secrecy of information — Penalty.

Section

11-18-05. Fees of register of deeds.
11-18-14. Register of deeds to remove and destroy certain documents — Records to be made.

Nevada

19.031 FEES

clerk to the state treasurer, to be placed by the state treasurer in the state general fund.

[1:151:1947; A 1955, 482] + [2:151:1947; A 1949, 90; 1955, 482]—(NRS A 1969, 25; 1981, 1369; 1983, 335)

—ANNOTATIONS—

Attorney General's Opinions. Statute includes cases transferred from another county. Statute providing for payment of fee "on commencement of any action in district court" includes cases transferred from another county as well as actions originally commenced. AGO 85 (8-30-1917)

Right to refuse to file papers until fees paid. On commencement or transfer of action, clerk of court has right to refuse to file papers until statutory fees are paid. AGO 36 (8-30-1917)

Party causing removal need not pay all fees. Upon transfer of action from one county to another, prescribed fees must be paid by each party filing papers. Party causing removal does not have to pay all fees. AGO 36 (8-30-1917)

State department exempt from paying fee for suit to recover unemployment contributions.

Unemployment compensation division (now employment security department) is state department and thus is exempt from paying filing fees upon commencement of suit to recover unemployment contributions. AGO A-24 (6-16-1939)

When county exempt from fee. Sec. 1, ch. 151, Stats. 1947 (cf. NRS 19.030), exempts counties from county clerk's fee only in those actions brought by county in its own district court. AGO 922 (5-23-1950)

Fees collected by county clerks pursuant to NRS 19.030 are in addition to certain other fees. Fee set in NRS 19.030 is in addition to fees which county clerks must charge in civil actions pursuant to NRS 19.013. Additional fees are also required in some counties pursuant to NRS 19.031. AGO 87-10 (5-18-87)

19.031 Additional fees in civil actions: Programs for legal aid.

1. Except as otherwise provided in subsection 2, in each county in which legal services are provided without charge to indigent or elderly persons through a program for legal aid organized under the auspices of the State Bar of Nevada, a county or local bar association, a county program for legal services or other program funded by this state or the United States to provide legal assistance, the county clerk shall, on the commencement of any civil action or proceeding in the district court for which a filing fee is required, and on the filing of any answer or appearance in any such action or proceeding for which a filing fee is required, charge and collect a fee of \$18 from the party commencing or appearing in the action or proceeding. These fees are in addition to any other fees required by law.

2. In each county described in subsection 1, the county clerk shall, on the commencement of any action provided for in chapter 125 of NRS, and on the filing of any answer or appearance in any such action, charge and collect a fee of \$7 from the party commencing or appearing in the action. These fees are in addition to any other fees required by law.

3. On or before the first Monday of each month the county clerk shall pay over to the county treasurer the amount of all fees collected by him pursuant to subsections 1 and 2. Except as provided in subsection 5, the county

FEES 19.033

treasurer shall remit quarterly to the organization operating the program for legal services all the money received by him from the county clerk.

4. The organization operating the program for legal services shall use any money received pursuant to subsection 3 as follows:

- (a) From each \$18 collected pursuant to subsection 1: (1) Ten dollars and 50 cents for the benefit of indigent persons in the county; and (2) Seven dollars and 50 cents for the benefit of elderly persons in the county.

(b) From each \$7 collected pursuant to subsection 2:

- (1) Five dollars for the benefit of indigent persons in the county; and (2) Two dollars for the benefit of elderly persons in the county.

5. If the county treasurer receives notice from the state or a political subdivision that an award of attorney's fees or costs has been made to an organization that receives money pursuant to this section and has been paid, he shall:

(a) Deduct an amount equal to the award from the amount to be paid to the organization; and

(b) Remit an equal amount to the state or to the political subdivision that paid the fees or costs at the time when he would have paid it to the organization.

6. The fees which are collected from a county must be used for the benefit of the indigent or elderly persons in that county.

(Added to NRS by 1975, 587; A 1977, 467; 1981, 1710; 1983, 598; 1985, 770; 1989, 582)

—ANNOTATIONS—

Attorney General's Opinions. Fees collected by county clerks pursuant to NRS 19.030 are in addition to certain other fees. Fee set in NRS 19.030 is in addition to fees which county clerks must charge

in civil actions pursuant to NRS 19.013. Additional fees are also required in some counties pursuant to NRS 19.031. AGO 37-10 (5-18-87)

19.033 Additional fees in action for dissolution of marriage.

1. In each county, on the commencement of any action for divorce in the district court, the county clerk shall charge and collect, in addition to other fees required by law, a fee of \$15. The fee must be paid by the party commencing the action.

2. On or before the first Monday of each month, the county clerk shall pay over to the county treasurer an amount equal to all fees collected by him pursuant to subsection 1, and the county treasurer shall place that amount to the credit of the state general fund. Quarterly, the county treasurer shall remit all money so collected to the state treasurer, who shall place the money in an account in the state general fund for use by the director of the state job training office or, if the office is abolished by executive order, a person

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APPENDIX PROCEDURE

Neither the corporation nor any recipient shall contribute or make available corporate funds or program personnel or equipment to any political party or association, or so contribute to the campaign of any candidate for public or party office.

No class action suit, class action appeal, or amicus curiae class action may be undertaken, directly or through others, by a staff attorney employed by a recipient except with the express approval of a project director of a recipient in accordance with policies established by the governing body of such recipient.

Attorneys employed by a recipient shall be appointed to provide legal assistance without reasonable compensation only when such appointment is made pursuant to a statute, rule, or practice applied generally to attorneys practicing in the court where the appointment is made.

Employees of the corporation or of recipients shall not at any time intentionally identify the corporation or the recipient with any partisan or nonpartisan political activity associated with a political party or association, or the campaign or any candidate for public or party office. (1982, 609, § 1.)

§ 9. Financial Assistance to Local and Statewide Programs.

The corporation shall, subject to appropriation or to the amount of monies available from the fund, or from funds made available from any other public or private source, provide financial assistance to both local and statewide programs. In each fiscal year at least eighty per cent of such financial assistance shall be distributed to local programs on a basis proportionate to the number of eligible clients within the service areas of such local programs. Up to twenty per cent of such assistance may be distributed to statewide programs.

In the distribution of such assistance the corporation shall insure the maintenance of the highest quality of service and professional standards, the preservation of attorney-client relationships, and the protection of the integrity of the adversary process from any impairment, and that recipients, consistent with goals established by the corporation, shall adopt procedures for determining and implementing priorities for the provision of such assistance, taking into account the relative needs of eligible clients for such assistance, including such outreach, training, and support services as may be necessary, including, particularly, the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems, including elderly and handicapped individuals, and appropriate training and support

services; and, in order to provide such assistance to such significant segments of the population of eligible clients; that attorneys employed full time in legal assistance activities supported in major part by the corporation refrain from any compensated outside practice of law, and any uncompensated outside practice of law except as authorized in guidelines promulgated by the corporation; and that no financial assistance distributed pursuant to this chapter shall be used to provide legal assistance with respect to any fee generating case, or to provide legal assistance with respect to any criminal proceeding or civil action arising out of or brought for the purpose of challenging the validity of a criminal conviction, or to provide services to persons who are not eligible clients; and that a substantial amount of financial assistance distributed pursuant to this chapter shall be provided, under standards established by the board, for compensation for legal services to indigent persons which are provided by attorneys who engage in the private practice of law. (1982, 609, § 1.)

§ 10. Annual Report.

The corporation shall annually submit a complete and detailed report of its activities within ninety days after the end of the fiscal year to the clerk of the house of representatives, to the clerk of the senate, and to the governor. The annual report shall include, but not be limited to, descriptions of all programs funded, an evaluation of the performance of each program, a summary of the public monies expended, and descriptions of the individuals served by such programs. (1982, 609, § 1.)

§ 11. Annual Audit.

The books and records of the corporation shall be subject to an annual audit by the auditor of the commonwealth. (1982, 609, § 1.)

§ 12. Legal Assistance Fund Established; Application for Financial Assistance; Annual Financial Statement from Recipient.

There shall be established and set up on the books of the commonwealth a fund, as defined in section one. All revenues collected from surcharges established pursuant to section four C of chapter two hundred and sixty-two shall be credited to the fund. On or before the last day of each calendar quarter, the state treasurer shall distribute to the corporation all revenues received by the fund. The corporation shall establish procedures for the application by qualified legal services programs for financial assistance from funds so received or

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from other sources for the purposes established in this chapter. The corporation shall determine if such applications comply with the provisions of this chapter and shall determine the amounts of financial assistance to be provided to the qualified legal services programs.

Application for such financial assistance shall be made by qualified legal services programs by July first of each year. The corporation shall determine the amount of financial assistance to be distributed and the recipients of such financial assistance by September first of each year and payment of such financial assistance shall be made by October first of each year. In its discretion, the corporation may allow a second round of applications to be completed by January first, the distribution of which shall be determined by March first and payment of which shall be made by April first of each year.

Every recipient of such financial assistance shall annually submit to the corporation a financial statement including an audit of such monies approved by a certified public accountant. (1982, 609, § 1.)

CHAPTER 222

Justices of the Peace, Notaries Public and Commissioners

JUSTICES OF THE PEACE AND NOTARIES PUBLIC

SEC.

- 1. Justices of the peace and notaries public; appointment and jurisdiction.

SPECIAL COMMISSIONERS

- 2. [Repealed.]

COMMISSIONERS TO QUALIFY PUBLIC OFFICERS

- 3. Commissioners to qualify public officers; appointment and returns; certain fees prohibited.

COMMISSIONERS IN OTHER STATES AND FOREIGN COUNTRIES

- 4. Commissioners in other states and countries.
- 5. Oath, signature, seal, etc.
- 6. Powers and duties.
- 7. Instructions, etc.
- 8. Justices of the peace, etc., to print, etc., name and affix date of expiration of commission.
- 8A. Justice of the peace, etc., taking acknowledgment, etc., to print name below signature.
- 9. Penalty for acting as justice of the peace, etc., after expiration of commission.
- 10. Penalty for destroying records of notary public.
- 11. Acknowledgment of written instruments by persons serving in or with the armed forces of the United States or their dependents.

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The 1961 amendment added the undesignated paragraph at the end of the section, relative to exemption of the attorney general from payment of fees.

The 1971 amendment rewrote the section to increase most of the fees provided.

Cross References—

As to power of clerks to receive fees, payments and accounting therefor, see ALM G.L.c. 218 §§ 12, 47, 49.

Total Client-Service Library® References—

15A Am Jur 2d, Clerks of the Court §§ 11 to 20.

Law Review References—

For recommendation of judicial council as to amending this section, see 23 Mass LQ No 1 p 21.

This and § 4 were recommended by the judicial council in its 14th Report (pp 31-32) to avoid uncertainty and thus assist the clerical service of the courts. 25 Mass LQ No 1 p 9.

§ 3. Special Justices.

A special justice, when not holding court shall be paid by the commonwealth two dollars for each summons or process issued by him, and for each application for a warrant entertained by him. (1879, 254; PS 199, § 3; RL 204, § 3; 1926, 128; 1961, 343, § 2; 1978, 478, § 270, approved July 18, 1978; by § 343, effective July 1, 1978.)

Editorial Note—

The 1961 amendment provided for a fee of \$2 for each application for a warrant entertained by a special justice, whereas formerly the provision was for a fee of \$2 for each warrant issued by a special justice.

The 1978 amendment, as part of the program to consolidate the several courts of trial jurisdiction, provided for payment of fees under this section by the commonwealth rather than by the county.

CLERKS OF COURTS

§ 4. Clerks of Courts.

The fees of clerks of courts shall be as follows:

For a blank writ of attachment and summons or an original summons, ten cents. (1964, 328, § 3.)

For a subpoena for one or more witnesses, ten cents.

For a venire facias for jurors, six cents.

For a writ in civil proceedings, not before mentioned, ten cents. (1975, 377, § 163.)

For entry of an action or suit, or of a petition in the supreme judicial or superior court or for filing a petition to the county commissioners, five dollars, and for entry in the superior court of a libel for divorce or for affirming or annulling marriage, five dollars, each of which fees shall be paid by the party entering the same, and no other fee shall be charged for taxing costs, for issuing any subpoena or execution or for issuing any order of notice or other mesne, interlocutory or final order, rule, decree or process authorized by law, except an injunction or restraining order in cases not involving domestic relations, and for the issuance of such injunction or restraining order in the supreme judicial, superior, land or probate courts, five dollars; and provided, further, that no fee shall be required from a municipality filing a petition to the county commissioners for the county wherein it is located. (1795, 41, § 1; RS 122, § 2; 1853, 369; 1856, 246; GS 157, § 3; PS 199, § 4; 1888, 257, §§ 3, 5; 1890, 209, § 2; 256; 360; 1891, 87; 1899, 91; 333, § 1; 1900, 372, § 3; RL 204, § 6; 1904, 350; 1926, 363, § 1; 1950, 119, § 2; 1953, 632; 1954, 382; 1973, 342; 1974, 694, § 4.)

For the entry, record and transmission of papers of each question or cause in the supreme judicial court for the commonwealth, five dollars. (1954, 624.)

For a certificate of the proof of a deed in court, twenty cents.

For the warrant for a county tax, twenty cents. (1862, 162, § 9; PS 162, § 14; 1891, 313; 1897, 466, § 2; RL 168, §§ 14, 74; 1913, 471, § 7; 1927, 334, § 3; 1931, 426, § 306.)

For taking and recording a recognizance under chapter two hundred and fifty-six, fifty cents.

In civil actions which are entered by the commonwealth or by a county no entry fee shall be paid; but, if the commonwealth or the county prevails, the entry fee shall be taxed against the other party.

In civil actions in which Boston is a party no fee or expense shall be paid to any clerk of a court of Suffolk county by or on behalf of the city; but, if the city prevails, the fees allowed by law shall be taxed. (1781, 36; 1782, 21, § 8; RS 118, § 19; GS 152, § 15; PS 193, § 15; RL 199, § 10.)

Editorial Note—

The 1937 amendment made changes in the former seventh paragraph of this section.

The 1939 amendment struck out the former seventh through tenth paragraphs of this section.

The 1950 amendment affected only the sixth paragraph, increasing from three to five dollars the fee referred to therein.

Florida

§ 480.24

JUDICIAL DEPARTMENT

Historical and Statutory Notes

Laws 1982, c. 489, § 11, which repealed this section effective June 30, 1985, was itself repealed by Laws 1985, 1st Sp., c. 13, § 376, subd. 2, eff. June 30, 1985. The 1986 amendment added subd. 5.

480.241. Filing fee surcharge in civil actions

Subdivision 1. Amount of surcharge; collection by court administrators. A plaintiff, petitioner, defendant, respondent, intervenor or moving party in any trial court civil action or civil proceeding in which an initial filing fee is payable by that party, except a marriage dissolution or conciliation court action, shall pay to the court administrator a surcharge of \$25 in addition to the initial filing fee otherwise prescribed. A plaintiff, defendant, or moving party in any conciliation court action in which an initial filing fee is payable shall pay to the court administrator of conciliation court a surcharge of \$3 in addition to the initial filing fee otherwise prescribed. Notwithstanding any other law or rule to the contrary, no surcharge shall be paid by any governmental unit of the state of Minnesota, any local unit of government, or agency thereof.

Subd. 2. Transmittal of surcharge to state treasurer. Notwithstanding any other law or rule to the contrary, all surcharges collected pursuant to subdivision 1 shall be transmitted monthly by the court administrators to the state treasurer for deposit in the state treasury and credit to the general fund. Laws 1982, c. 489, §§ 3, 11, eff. July 1, 1982. Amended by Laws 1983, c. 301, § 215; Laws 1985, 1st Sp., c. 13, § 376, subd. 2; Laws 1986, 1st Sp., c. 3, art. 1, § 82; Laws 1987, c. 404, § 180, eff. July 1, 1987; Laws 1988, c. 686, art. 5, § 9, eff. July 1, 1989; Laws 1989, c. 335, art. 1, §§ 253, 254.

Historical and Statutory Notes

Laws 1982, c. 489, § 11, which repealed this section effective June 30, 1985, was itself repealed by Laws 1985, 1st Sp., c. 13, § 376, subd. 2, eff. June 30, 1985. in the software sales account under section 480.236." The 1989 amendment rewrote subds. 1 and 2 which formerly read:

The 1983 amendment substituted "a legal service account in the special revenue fund" for "the general fund".

Laws 1986, 1st Sp., c. 3, art. 1, § 82 directed the revisor of statutes to substitute references to court administrator for references to clerks of various courts.

The 1987 amendment inserted the second sentence in subds. 1 and 2.

The 1988 amendment substituted "the state treasury and credit to the general fund" for "a legal services account in the special revenue fund" in the final sentence of subd. 2. In addition the following former final sentence of subd. 2 was deleted: "After June 30, 1989, two-thirds of the surcharge must be deposited in the legal services account in the special revenue fund and one-third must be deposited

"Subdivision 1. Amount of surcharge; collection by court administrators. A plaintiff, petitioner, defendant, respondent, intervenor or moving party in any district, county, or municipal court civil action or civil proceeding in which an initial filing fee is payable by that party, except a marriage dissolution or conciliation court action, shall pay to the court administrator of district or county court or court administrator of the municipal courts of Hennepin county or Ramsey county a surcharge of \$10 in addition to the initial filing fee otherwise prescribed. For such a civil action or civil proceeding commenced on and after July 1, 1987, the surcharge is \$20. A plaintiff, defendant, or moving party in any conciliation court action in which an initial filing fee is payable shall pay to the court administrator of conciliation court a surcharge of \$2 in addition to the initial filing fee otherwise prescribed.

Florida

SUPREME COURT

§ 480.242

Notwithstanding any other law or rule to the contrary, no surcharge shall be paid by any governmental unit of the state of Minnesota, any local unit of government, or agency thereof, when the governmental unit, local government, or agency thereof is a party to any civil action or civil proceeding in the municipal courts of Hennepin or Ramsey counties, or in any county court.

"Subd. 2. Transmittal of surcharge to supreme court. Notwithstanding any other law or rule to the contrary, all surcharges collected pursuant to subdivision 1 shall be transmitted monthly by the district, county, and conciliation court court administrators and municipal court administrators to the supreme court for deposit in the state treasury and credit to the general fund."

Library References

Clerks of Courts ¶11.
WESTLAW Topic No. 79.
C.J.S. Clerks of Courts § 9 et seq.

Notes of Decisions

Probate proceedings 1 probate proceedings. Op.Atty.Gen., 1025a-1, Nov. 4, 1982.

1. Probate proceedings

This section requires that the surcharge impose be collected in both formal and informal

480.242. Distribution of civil legal services funds to qualified legal services programs

Subdivision 1. Advisory committee. The supreme court shall establish an advisory committee to assist it in performing its responsibilities under sections 480.24 to 480.244. The advisory committee shall consist of 11 members appointed by the supreme court including seven attorneys-at-law who are well acquainted with the provision of legal services in civil matters, two public members who are not attorneys and two persons who would qualify as eligible clients. Four of the attorney-at-law members shall be nominated by the state bar association in the manner determined by it, and three of the attorney-at-law members shall be nominated by the programs in Minnesota providing legal services in civil matters on July 1, 1982, with funds provided by the federal Legal Services Corporation in the manner determined by them. In making the appointments of the attorney-at-law members, the supreme court shall not be bound by the nominations prescribed by this section. In making appointments to the advisory committee, the supreme court shall ensure that urban and rural areas of the state are represented. The supreme court shall adopt by rule policies and procedures for the operation of the advisory committee including, but not limited to, policies and procedures governing membership terms, removal of members, and the filling of membership vacancies.

Subd. 2. Review of applications; selection of recipients. At times and in accordance with any procedures as the supreme court adopts in the form of court rules, applications for the expenditure of civil legal services funds shall be accepted from qualified legal services programs or from local government agencies and nonprofit organizations seeking to establish qualified alternative dispute resolution programs. The applications shall be reviewed by the advisory committee, and the advisory committee, subject to review by the

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supreme court, shall distribute the funds received pursuant to section 480.241, subdivision 2 to qualified legal services programs or to qualified alternative dispute resolution programs submitting applications. Subject to the provisions of subdivision 4, the funds shall be distributed in accordance with the following formula:

(a) Eighty-five percent of the funds distributed shall be distributed to qualified legal services programs that have demonstrated an ability as of July 1, 1982, to provide legal services to persons unable to afford private counsel with funds provided by the Federal Legal Services Corporation. The allocation of funds among the programs selected shall be based upon the number of persons with incomes below the poverty level established by the United States Census Bureau who reside in the geographical area served by each program, as determined by the supreme court on the basis of the 1980 national census. All funds distributed pursuant to this clause shall be used for the provision of legal services in civil matters to eligible clients.

(b) Fifteen percent of the funds distributed may be distributed (1) to other qualified legal services programs for the provision of legal services in civil matters to eligible clients, including programs which organize members of the private bar to perform services and programs for qualified alternative dispute resolution, or (2) to programs for training mediators operated by nonprofit alternative dispute resolution corporations. Grants may be made pursuant to this clause only until June 30, 1987. If all the funds to be distributed pursuant to this clause cannot be distributed because of insufficient acceptable applications, the remaining funds shall be distributed pursuant to clause (a).

Subd. 3. **Timing of distribution of funds.** The funds to be distributed to recipients selected in accordance with the provisions of subdivision 2 shall be distributed by the supreme court no less than twice per calendar year.

Subd. 4. Repealed by Laws 1989, c. 335, art. 1, § 270(a).
Laws 1982, c. 489, § 4, eff. July 1, 1982. Amended by Laws 1985, 1st Sp., c. 13, § 376, subd. 2; Laws 1986, c. 398, art. 17, § 2, eff. March 22, 1986; Laws 1989, c. 335, art. 1, § 255.

Historical and Statutory Notes

Laws 1982, c. 489, § 11, which repealed this section effective June 30, 1985, was itself repealed by Laws 1985, 1st Sp., c. 13, § 376, subd. 2, eff. June 30, 1985.

The 1986 amendment in subd. 2, par (b) designated cl. (1) as such, inserted cl. (2), and inserted the penultimate sentence allowing grants to be made only until June 30, 1987.

The 1989 amendment in subd. 2 in the opening language substituted "civil legal services funds" for "funds collected pursuant to section 480.241", and in subd. 4 substituted "the money

appropriates for civil legal services" for "the funds received pursuant to section 480.241, subdivision 2".

Laws 1989, c. 335, art. 1, § 270 repealed subd. 4. Laws 1989, c. 335, art. 1, § 255 also amended subd. 4. As amended subd. 4 read:

"Administration. The supreme court may retain up to five percent of the money appropriated for civil legal services to defray the costs incurred in executing its responsibilities and the responsibilities of the advisory committee under sections 480.24 to 480.244."

LEGAL SERVICES ADVISORY COMMITTEE MEMBERSHIP RULES

Adopted May 24, 1982

Rule 1. Definitions

As used in these rules:

1. Eligible client means an individual who is financially unable to afford legal assistance as determined by a recipient by applying Federal Legal Service Corporation standards in effect on July 1, 1982.

2. Qualified Legal Services Program means a non-profit corporation which provides or proposes to provide legal services to eligible clients in civil matters and which is governed by a board of directors composed of attorneys at law and consumers of legal services.

3. Recipient means a qualified legal services program that receives funds from the Supreme Court to provide legal services to eligible clients.

Rule 2. Purpose

It is of primary importance for all citizens to have access to our system of justice. The Minnesota Legislature has recognized this necessity by appropriating a surcharge on civil filings to fund legal services for persons unable to afford private counsel and to fund programs which organize members of the private bar to perform services for qualified alternative dispute resolution. The distribution of funds for such legal services and alternative dispute resolution programs shall be accomplished in accordance with these rules.

Rule 3. Legal Services Advisory Committee

A) **Composition.** The Legal Services Advisory Committee shall consist of:

1. A chairman appointed by this Court for such time as it designates and serving at the pleasure of this Court but not more than six years as chairman; and

2. Effective July 1, 1982, ten members appointed by the Court for three year terms or until their successors are appointed, except that shorter terms shall be used where necessary to assure that as nearly as may be possible one third of all terms expire each July 1. No person may serve more than two three year terms in addition to any additional shorter terms to which he was originally appointed to fill a vacancy and any period served as chairman.

3. The members specified in subdivision 1 and 2 shall be constituted as follows: seven attorneys at law who are well acquainted with the provision of legal services in civil matters, four of whom shall be nominated by the state bar association in a manner determined by it, and three of whom shall be nominated by the programs in Minnesota providing legal services in civil matters on July 1, 1982, with funds provided by the Federal Legal Services Corporation in the manner determined by them; two public members who are not attorneys and two persons who could qualify as eligible clients. In

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28.223. Probate records; recordation

Notes of Decisions

Inspection of records 3

1. Inspection of records

Probate records filed with the clerk of the circuit court are subject to inspection and copy-

ing by the public at reasonable times, under reasonable conditions, and under supervision by the clerk or his designee in the absence of a statute or rule of court providing for the confidentiality of the record or rule prescribing the procedure for the release of judicial records, or a court order providing for closure of a particular record. Op. Atty. Gen. 89-94, Dec. 29, 1989.

28.24. Service charges by clerk of the circuit court

Forms

See West's Florida Legal Forms, Domestic Relations.

Notes of Decisions

1. Validity

Greco v. Tampa Wholesale Co., App. 2 Dist., 522 So.2d 506 (1988) [main volume] review de-

nied 531 So.2d 168, certiorari denied 109 S.Ct. 786, 488 U.S. 1006, 102 L.Ed.2d 778.

28.2401. Service charges in probate matters

[See main volume for text of (1) and (3)]

(3) Service charges in excess of those fixed in this section may be imposed by the governing authority of the county by ordinance, or by special or local law, to provide and maintain facilities, including a law library, or to provide or maintain a legal aid program. Service charges other than those fixed in this section shall be governed by s. 28.24. An additional service charge of \$2.50 on petitions seeking summary administration, family administration, formal administration, ancillary administration, guardianship, curatorship, and conservatorship shall be paid to the clerk for deposit into the Court Education Trust Fund.

Amended by Laws 1991, c. 91-152, § 5, eff. July 1, 1991.

[See main volume for text of (4)]

Historical and Statutory Notes

Laws 1991, c. 91-152, § 7, eff. July 1, 1991, provides that the law "apply only to actions,

suits or proceedings filed on or after the effective date"

28.241. Filing charges for trial and appellate proceedings

(1) The party instituting any civil action, suit, or proceeding in the circuit court shall pay to the clerk of that court a service charge of \$40 in all cases in which there are not more than five defendants and an additional service charge of \$2 for each defendant in excess of five. An additional service charge of \$10 shall be paid by the party seeking each severance that is granted. An additional service charge of \$35 shall be paid to the clerk for all proceedings of garnishment, attachment, replevin, and distress. An additional service charge of \$8 shall be paid to the clerk for each civil action filed, \$7 of such charge to be remitted by the clerk to the State Treasurer for deposit into the General Revenue Fund unallocated. An additional charge of \$2.50 shall be paid to the clerk for each civil action brought in circuit or county court, to be deposited into the Court Education Trust Fund; the moneys collected shall be forwarded by the clerk to the Supreme Court monthly for deposit in the fund. Service charges in excess of those herein fixed may be imposed by the governing authority of the county by ordinance or by special or local law; and such excess shall be expended as provided by such ordinance or any special or local law, now or hereafter in force, in providing and maintaining facilities, including a law library, for the use of the courts of the county wherein the service charges are collected or for a legal aid program in such county. In addition, the county is authorized to impose, by ordinance or by special or local law, a fee of up to \$10 for each

civil action filed, contingent upon the county matching these funds from county general revenue, for payment of the costs associated with public guardianships. Postal charges incurred by the clerk of the circuit court in making service by certified or registered mail on defendants or other parties shall be paid by the party at whose instance service is made. That part of the within fixed or allowable service charges which is not by local or special law applied to the special purposes shall constitute the total service charges of the clerk of such court for all services performed by him in civil actions, suits, or proceedings. The sum of all service charges and fees permitted under this subsection may not exceed \$200.

(2) The clerk of the circuit court of any county in the state who operates his office from fees and service charges collected, as opposed to budgeted allocations from county general revenue, shall be paid by the county as service charges for all services to be performed by him in any criminal or juvenile action or proceeding in such court, in lieu of all other service charges heretofore charged, except as hereinafter provided, the sum of \$40 for each defendant or juvenile. However, in cases involving capital punishment the charge shall be \$60. In any county where a law creates a law library fund or other special fund, this charge may be increased for that purpose by a special or local law or ordinance. The sum of all service charges and fees permitted under this subsection may not exceed \$200.

(3) Upon the institution of any appellate proceeding from any inferior court to the circuit court of any such county or from the circuit court to an appellate court of the state, the clerk shall charge and collect from the party or parties instituting such appellate proceedings a service charge of \$75 for filing a notice of appeal from an inferior court and \$50 for filing a notice of appeal to a higher court.

(4) A service charge or a fee may not be imposed upon a party for responding by pleading, motion, or other paper to a civil or criminal action, suit, proceeding, or appeal in a circuit court.

(5) The fees prescribed in this section do not include the service charges required by law for the clerk as provided in s. 28.24 or by other sections of the Florida Statutes.

Amended by Laws 1989, c. 89-290, § 6, eff. July 5, 1989; Laws 1990, c. 90-181, § 1, eff. July 1, 1990; Laws 1990, c. 90-271, § 89, eff. Oct. 1, 1990; Laws 1991, c. 91-152, § 3, eff. July 1, 1991.

Historical and Statutory Notes

Section 4 of Laws 1990, c. 90-181, approved June 25, 1990, provides:

"This act shall take effect July 1, 1990 . . . and shall apply only to civil actions filed on or after that date."

Laws 1991, c. 91-152, § 7, eff. July 1, 1991, provides that the law "apply only to actions, suits or proceedings filed on or after the effective date".

be awarded civil damages, was adequate to invoke jurisdiction of circuit court, even though petition attempted to combine probate petition and civil complaint into single pleading without payment of civil action filing fee. Payette v. Clark, App. 2 Dist., 559 So.2d 630 (1990).

Notes of Decisions

7. Probate proceedings

Niece's petition, which requested that her uncle's intestate estate be reopened, and that she

28.29. Recording of orders and judgments

Notes of Decisions

Attorney fees 23

23. Attorney fees

Order awarding party attorney's fees did not create judgment lien in that it was not recorda-

ble instrument, and thus recording of order was a nullity. Spoddy v. NCNB Nat. Bank of Fla., App. 4 Dist., 575 So.2d 231 (1991).

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SUBCOMMITTEE ON FAMILY COURT SYSTEM

The Subcommittee met to draft changes to HB 2691 and HB 2832. The Subcommittee on Family Court System addressed three issues: components of the family court model, the costs of that model and the most efficient organizational structure. During testimony, questions were raised regarding the model and the broad scope of services to be provided through the family court system. The cost of implementing a model would be driven by the components of the model. Funding for the family court was intended provide increased services through the development of a case management model. There needs to be clarity on the role the legislature has in providing the direction to the judiciary on the components of the model and the organizational structure. The judiciary needs to be involved in the development of the model and the projection of a budget if the family court is to eventually be implemented as a statewide concept.

It is the recommendation of the Subcommittee that a Family Court Commission be established with six members of the legislature, three district court judges and a Supreme Court judge. Their tasks are to clearly define the model, clarify court jurisdiction, establish the criterion for one rural and one urban pilot project, and recommend a budget. That task force will complete its work by December 31, 1992. The Office of Judicial Administration will establish RFPs for the awarding of two grants on April 1, 1993. The grants would run from April, 1993 through June 1995. It is recommended that funding begin to accrue in July, 1992 through increased docket fee on adoptions and an increase in court fees on CINC. Indigent parents currently have a waiver on paying court costs in CINC cases.

Regarding funding of family court system through an amendment to HB 2832, it is the recommendation of the Subcommittee that no amendments be made. The municipal court training fund totals \$480,000. The cost of municipal court training is \$84,000 per year. The training of municipal clerks is intended to come from this training fund. Judge Lockett has the authority over allocations from the education fund and agreed that some of the cost of implementing a family court system could come from this fund. However, at this point, without a clear definition of the criterion in the model, and identifying potential multiple revenue sources, a fiscal note on family courts is unclear.

Senator Marge Petty, Chair
Subcommittee on Family Court System

*Judiciary Subcommittee on FCS & JEF
reported on April 7, 1992
Attachment 11 (4/2/92)*