Approved: 2-16-96
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on February 6, 1996 in Room 514-S of the Capitol.

All members were present except:

Committee staff present: Michael Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee: Marilyn Scafe, Kansas Parole Board
Roberta Sue McKenna, SRS
Ruth Landau, Deputy Court Trustee, Johnson County
Ron Smith, Kansas Bar Association
Stephen Blaylock, Attorney, Family Law Section, Wichita
Larry Rute, Kansas Legal Services, Inc.

Others attending: See attached list

The Chair called the meeting to order at 10:00 a.m.

A motion was made by Senator Bond, seconded by Senator Parkinson to approve the Minutes of January 25, 1996. The motion carried.

Bill introductions:

Marilyn Scafe, Chair of the Kansas Parole Board stated that the Kansas Parole Board is in the process of reorganization. Ms Scafe stated that changes in the parole board statutes have been introduced in **SB 505** which will consolidate the staff under the Department of Corrections. Ms Scafe requested additional legislation that would clean up language, and streamline staff duties as they are transferred to the Department of Corrections. (Attachment 1)

Ms Roberta Sue McKenna, Youth Services Attorney for the Department of SRS requested a bill be introduced on behalf of Secretary Chronister that would amend the Kansas code for care of children. (Attachment 2)

A motion was made by Senator Bond, seconded by Senator Reynolds to introduce as Committee bills those requested by the Kansas Parole Board and the SRS. The motion carried.

Senator Harris requested a bill that would provide for informed consent for medical procedures.

A motion was made by Senator Harris, second by Senator Reynolds to introduce as a Committee bill. The motion carried.

The Chair requested a bill that would exempt public cemeteries from liability under the Kansas Tort Claims Act.

A motion was made by Senator Vancrum, seconded by Senator Parkinson to introduce as a Committee bill. The motion carried.

The Chair requested that a bill be introduced to include community correction officers under the definition of law enforcement officers. This bill would allow that community correction officers can carry weapons.

A motion was made by Senator Parkinson, seconded by Senator Reynolds to introduce as a Committee bill.

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

The motion carried.

Senator Vancrum requested a bill that would require the licensing of residential contractors.

A motion was made by Senator Vancrum, seconded by Senator Parkinson to introduce as a Committee bill. The motion carried.

SCR 1617--Requesting the Chief Justice of the Supreme Court to develop and implement guidelines for intermediate sanction options for probation.

The Chair referred to a letter from Kay McFarland, Chief Justice of the Supreme Court of Kansas. The letter states that in reference to **SCR 1617**, the Chief Justice has directed the Judicial Administrator to establish the Judicial Branch Alternative Sanctions Committee. (Attachment 3)

The Chair informed the Committee that the assisted technology i.e. wheel- chair etc. "lemon law" bill will be introduced by the Committee on Public Health and Welfare.

SB 513--Support orders not subject to attorney liens.

Ruth Landau, Deputy Court Trustee, Johnson County address the Committee in support of **SB 513**. The conferee stated that this bill clarifies the scope of the attorney's lien statute found in K.S.A. 7-108, by exempting funds held by court trustee, court clerk or SRS. The conferee stated that attorney liens upon child support or spousal payment through the court trustee's office interferes with the function of processing and accounting for such monies. The conferee stated that there is a potential conflict problem, because the district court trustee's office must either agree or challenge the lien itself. The conferee explained that this circumstance places the court trustee's office in an adversary position to one of the parties, when that office is meant to be a neutral party. The conferee stated that since the payment of support through the trustee's office is mandatory under local court rule, the office becomes an easy target for attorneys or other creditors to proceed against the funds held by that office. Ms Landau explained that the 1992 garnishment exemption provided protection for the trustee's office from having to process garnishments by creditors against those funds. The conferee stated that any additional litigation or procedures takes staff and time away from the office's primary function. The conferee related that the importance of **SB 513** is that it confirms and maintains the limited purpose of the trustee's office enforcement units. The conferee concluded by stating that **SB 513** would still allow attorneys sufficient legal remedies to recover unpaid charges.(Attachment 4)

In response to a Committee member's question, Ms Landau stated that this bill applies to both child support and spousal support because separating the funds would be difficult when they are paid in the same payment. During discussion with Committee members, the conferee stated that such liens have been taken to court, but no decision has been made.

The Chair closed the hearing on **SB 513.**

SB 514--Marital property to include professional goodwill.

Mr. Ron Smith, Kansas Bar Association, stated that **SB 514** was requested by the Bar Association's family law section. Mr. Smith introduced Attorney Stephen Blaylock from Wichita, Kansas.

Mr. Blaylock related his background in dealing with asset divorce cases. The conferee stated that this bill was requested by the family law section of the KBA. The conferee stated that this bill amends K.S.A. 23-201 to include professional goodwill to the extent that it is marketable for that particular professional. The conferee referred to the *Powell v Powell*, 1982 court case which stated that professional practice does not have goodwill value for purposes of divorce. The conferee explained that the *Powell* case dealt with clientele and the elements of goodwill depended on place and time, and when that professional retired that was the end of goodwill.

The conferee continued by stating that since that time there was the *Grant* case dealing with military retirement, defining it as a benefit with the ability to divide future interest. The conferee described examples where future interest can be divided. The conferee stated that goodwill in professional practices to the extent it is sold has been divided more and more in many other states, *i.e.* Nebraska, Florida, Missouri. The conferee stated that the key in determining goodwill as an asset is the extent that it is sellable. Goodwill has value beyond the accounts receivable and the hard assets. The conferee described examples of professional practices where goodwill is sellable.

The conferee made a distinction between personal goodwill and professional goodwill. The conferee stated

that professional goodwill is practice goodwill and is external to the individual. The conferee stated that lawyers do not have practice goodwill. However, collection practices that attorneys have would be professional goodwill. This bill would allow attorneys in family law to place a value on professional goodwill if it exists. It would also allow an asset to be excluded. The conferee stated that in 1993 an allowance was made for professional goodwill as an asset on a balance sheet. (Attachment 5)

The conferee recommended a balloon to be added in Section Three of **SB 514** which would clarify the act by stating: "This act shall affect only those divorce matters filed on or after the effective date of this act." Section 4 would state: "This act shall take effect and be in force from and after its publication in the statute book." (Attachment 6)

Having no other conferee present, the Chair concluded the hearing on **SB 514.**

SB 584--Relating to protection of confidential information obtained during mediation.

Mr. Ron Smith introduced Mr. Larry Rute, who serves as president of the KBA's Alternative Dispute Resolution Section to address the Committee in support of **SB 584.** Mr. Rute stated that he is serving as this year's Chair of the Kansas Children's Coalition, and that the Children's Coalition is supportive of the changes found in **SB 584**. Mr. Rute stated that the proposed language in **SB 584** is the result of a legislative task force comprise of the KBA and Heartland Mediators Association. The conferee stated that the statutory language found in K.S.A. 55-512 and, 44-817, 60-452a, 72-5427, 74-545 and 75-4332 has been combined to create a uniform statement of confidentiality which can and should be used in any statute containing dispute resolution process language whether it be mediation, settlement conference, arbitration or neutral evaluation.

The conferee stated that the language in this bill is broad to protect confidentiality, because confidentiality is the stock and trade of the mediator. The conferee stated that the bill also provides a privilege for participates in allowing them protection from disclosure of information obtained in the course of mediation, arbitration, etc. This privilege does not include cases of child abuse. Mr. Rute suggested defining the term "neutral person conducting the proceeding," and changing the language so it would not apply to sitting judges. (Attachment 7)

During Committee discussion with Mr. Rute, concerning possible criticism of the bill, the conferee stated that this bill could slow down the discovery process, for the ADR portion of the bill. Issues concerning independent privilege of each party of the mediation process was discussed.

Mr. Rute in answer to Committee members questions regarding whether the mediator is a party of the mediation, stated that the language could be broken out, however the mediator is defined as a party on line 24, page one of the bill.

Having no other conferee present, the Chair concluded the hearing on **SB 584**, and adjourned the meeting at 11:50 a.m.

The next meeting is scheduled for February 7, 1996.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-6-96

NAME	REPRESENTING
Kara Kimble	Page/Emmert
Jordan Watson	Page/Emert
Jalaynna Newkirk	Page/Emert
Marilyn Scafe	Kansas Parole Board
Steve BLAYLOCK	Kansas Bar assoc
Joe Nowak	Caroline Tillotson
Dana McCurdy	Caroline Tillotson
Ed Del Cox	Sn Mont
Lori Callahan	KAMMCO
Ruth Landau	Johnson Co. District Court Trustee
Kelley Kuetala	KTLA
Steve Johnson	KS ASAP Assn
Ron Smith	Ks Bar Assoc
Paul Shelby	OJA
Kathy Kirk	DJA
Sara Rute	KOA
Jeanne Edwards	KPL
Richard Wilkins	SRS
Lucy Ridgway	Sn Leon

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-6-96

NAME	REPRESENTING
Whitney Damron	Kansas Bar Association
Matt Lyman	Judicial Council
Jen Eichman	Sen. Dan Corey
Jamie Corkhill	SRS/CSE
Terry SLAUGHTER	KNEA
Melissa Wangemann	Hein. Eberti Werr
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS

Scafe
C. . erson

Leo "Lee" Taylor
Vice Chairperson

Christopher N. Cowger
Member

Bob J. Mead
Member

Sherman A. Parks, Jr.
Member

KANSAS PAROLE BOARD
LANDON STATE OFFICE BUILDING
900 SW JACKSON STREET, 4TH FLOOR
ROOM 452 S
TOPEKA, KANSAS 66612-1220
(913) 296-3469

Micah A. Ross
Director

Sandra K. Smith
Assistant Director

Date: February 5, 1996

To: Senate Judiciary Committee

From: Marilyn Scafe
Chair, Kansas Parole Board

Re: Proposal for Legislation in 1996 Session

The Kansas Parole Board is in the process of reorganization. Changes in the parole board statutes have been introduced in Senate Bill 505 which will consolidate the staff under the Department of Corrections. In the meantime, the Board is respectfully requesting that further legislation be introduced to clean up language and to streamline staff duties as they are transferred to the Department of Corrections.

Revision proposals have been reviewed by the office of the Attorney General and the legal department of the DOC. The revisor will have a draft of the bill by Wednesday, February 7, 1996.

Sen Jud
2-6-96
Attach 1

#2

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Rochelle Chronister, Secretary

Senate Committee on Judiciary
Bill Introduction

February 6, 1996

Mr. Chairman and Members of the committee, my name is Roberta Sue McKenna. I am Youth Services Attorney for the Department of Social and Rehabilitation Services and thank you for the opportunity to appear before you today on behalf of Secretary Chronister in order to request introduction of a bill to amend the Kansas code for care of children.

This bill contains several provisions designed to minimize the potential for loss of parental custody; facilitate the return of a child in situations when the child can be maintained safely at home and increase opportunities for the child to be cared for by family or friends. Other provisions clarify the responsibility of the department by limiting department authority to investigate to situations for which the department has services and unique expertise. Details are available in written testimony available for your review.

We respectfully encourage the committee to act favorably on this proposed legislation.

Rochelle Chronister, Secretary
Department of Social and
Rehabilitation Services

913/296-3271

Sen Judiciary
2-6-96
Attach 2

KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Rochelle Chronister, Secretary

Senate Committee on Judiciary
Testimony

February 6, 1996

TITLE
An Act amending the Kansas code for care of children; amending K.S.A. 38-1523, 38-1524 and 38-1542 and K.S.A. Supp. 38-1502, 38-1528, 38-1543, 38-1563 and 38-1565 and repealing the existing sections.

Mr. Chairman and Members of the committee, I am pleased to provide you with this testimony to introduce ammendments to the Kansas code for care of children.

PURPOSE

This bill contains several provisions which are designed to minimize the potential for loss of parental custody; facilitate return of a child in situations where the child can be maintained safely at home and increase opportunities for the child to be cared for by family or friends. Other provisions clarify the responsibility of the department by limiting department authority to situations for which the department has services and unique expertise.

DISCUSSION:

Responsibilities of the Department of Social and Rehabilitation Services:

When a child is abused or neglected by a parent, the family is subject to the Kansas code for care of children and services may be provided by or through the department. If, however, a child is harmed by a person who is not responsible for the care of the child and the parents are behaving in an appropriate manner, the matter is most appropriately dealt with by a law enforcement agency and the criminal courts. The department has many services available to assist families to remain together safely or to provide an alternative home for the child if the parents are unwilling or unable to provide adequate care. The department has no authority to require separation and/or punishment of non-caregivers who harm children. Nor does the department have services designed to address this situation. However the Kansas code for care of children does not clearly distinguish between child abuse perpetrated by strangers and abuse at the hands of parents, custodians or caregivers.

Section 1. Amending K.S.A. 38-1502(a)(3) would clarify that protective services are intended for children maltreated by their parents, guardians, other care givers and children in substitute care subject to state licensure such as day care, foster care or group boarding homes.

Avoiding parental loss of custody and responsibility in non-abuse/neglect situations:

Children who refuse to attend school as required by law or whose own behaviors otherwise place them in conflict with their parents or community are the largest and fastest growing segment of children served by the department. Parents struggling with a rebellious child should not have their authority further diminished by loss of custody to the state.

Section 7, amending K.S.A. 1995 Supp. 38-1563 would preclude loss of parental custody except in situations where a child is in danger from abuse or neglect, adoptive placement in violation of law or abandonment. Only when parents have abdicated or abused their right to custody and control of their child may custody be transferred to the state. A court having a child under its jurisdiction due to actions of the child would retain all the dispositional alternatives of service and treatment now available except that parents would continue to have custody of and responsibility for their own children.

Facilitating the prompt return of children to parents who have successfully completed a court-approved plan:

Under current statutes, a parent who has successfully completed a court-approved reintegration plan to return children to parental care must await the receipt of written permission from the court before the child may actually return home. In some jurisdictions this requires the filing of a motion, the setting of a court date and a court hearing before the children may be returned home. It may take weeks or months before the family is reunited. This bill proposes giving the department authority to return children to the care of parents who have made sufficient change to warrant reunion. This bill requires the department to notify the court prior to returning the child and, if the court does not object, the family may be reunited.

Section 7, Amending K.S.A. 1995 Supp. 38-1563 adds subsection (k) providing when children in the custody of the Secretary have been placed with parents and the parents have successfully completed a court-approved reintegration plan, the secretary may place the child in the home of the parent unless, after receiving notice, the court objects.

Return of child to parental custody if safely in placement with parents for six months.

A child in the custody of the Secretary may, with court approval, have been successfully placed with the parents. Despite there being no further threat to the safety of the child, in order to return custody of the child to the parent, it is necessary for the parent, guardian ad litem or prosecutor to file a motion. The motion must be set for hearing and the hearing held. This process commonly takes weeks and occasionally months. This amendment provides for automatic return of custody to the parents unless, within six months after receipt of the recommendation, the court enters an order barring return or there is some other activity in the case which results in a court order.

Section 8, amending K.S.A. 1995 Supp. 38-1565 would permit the automatic return of custody of the child to the child's parents after a period of six months unless within those six months the court had entered an order in the matter.

Additional time to provide services to avoid unnecessary custody and placement of children:

In 1992 the code was amended permitting a child to remain under an ex parte order of protective custody for not to exceed 72 hours (excluding weekends and holidays). The change reverted back to 48 hours after July 1, 1993. The additional time provided the department or private shelter time to assess the family and to make an alternative plan than state custody.

Section 5, amending K.S.A. 38-1542 will expand the maximum length of time for protective custody without a hearing from 48 to 72 hours (exclusive of weekends and holidays).

Similarly, K.S.A. 38-1528 permits a law enforcement officer to place a child in police protective custody for up to 48 hours.

Section 4 amends K.S.A. 38-1528 to provides for 72 hours to permit services to be provided the child and family to avoid, where possible, the necessity for the child to come into the custody of the state.

Standards for the child abuse and neglect central registry.

The child abuse and neglect central registry was originally conceived as a means of tracking victims and perpetrators of child abuse and neglect for case identification and diagnosis purposes. With the passage of K.S.A. 65-516 requiring use of the registry for employment screening for licensed child care facilities the registry, over time, required adoption of a level of proof and due process protections. No authorization exists for the department to promulgate regulations setting standards for determining whether a person poses a danger to children sufficient to justify denying access to children. There is no reference to the registry in the code for care of children.

Section 3, which amends 38-1524 authorizes the Secretary to adopt standards for placing the name of a confirmed perpetrator in the central registry. This will reduce the number of administrative appeals, eliminate the need for most of the time consuming "post confirmation corrective action plans" supervised by SRS staff, and result in greater equity and uniformity of information in the registry.

Kinship conferences

In 1994 K.S.A. 38-1559 was added to the code providing that if a child is in the custody of the Secretary, the department may convene a conference of the child's relatives to decide in the child's best interest where the child should be placed. By requiring the kinship conference prior to awarding custody to the secretary, this ammendment facilitates the involvement of extended family and enables families to avoid loss of custody to the state.

Section 6, amending K.S.A. 1995 Supp. 38-1543 provides that prior to giving custody of a child to the Secretary, the court shall convene a conference of the child's relatives to recommend to the court with whom the child should be placed. This change will enhance state and federal laws requiring reasonable efforts to avoid unnecessary foster care placement.

RECOMMENDATION

The Department of Social and Rehabilitation Services requests the committee recommend the bill for passage.

Rochelle Chronister, Secretary
Department of Social and
Rehabilitation Services

913/296-3271

3

Supreme Court of Kansas

KAY MCFARLAND
Chief Justice

Kansas Judicial Center
Topeka, Kansas 66612-1507

(913) 296-5322

February 6, 1996

Hon. Tim Emert
Chairman
Senate Judiciary Committee
Room 143-N
State Capitol
Topeka, Kansas 66612

Dear Senator Emert:

I have directed the Judicial Administrator to establish the Judicial Branch Alternative Sanctions Committee forthwith.

The purpose of the committee is to formulate and/or recommend alternatives to revocation of probation and submit a report on alternative sanctions considerations to the Supreme Court on or before July 1, 1996.

The goal of the committee should be an objective system of sanctions for court services staff which will provide guidance and uniformity in response to probation violations.

I trust that this action will alleviate the need for Senate Concurrent Resolution No. 1617.

Sincerely,

Kay McFarland

Kay McFarland
Chief Justice

KMcF:nrt

cc: Dr. Howard Schwartz, Judicial Administrator

Sen Jud
2-6-96
Attach 3

#4

SENATE BILL NO. 513
Senate Judiciary Committee
February 6, 1996

Testimony of Ruth L. Landau
Deputy District Court Trustee
Tenth Judicial District

Mr. Chairman and Members of the Committee:

Thank you for allowing me to appear before you today and speak in support of Senate Bill No. 513.

Senate Bill No. 513 clarifies the scope of the attorney's lien statute found in K.S.A. 7-108 adding specific language exempting funds held for child or spousal support by a district court trustee, court clerk or state department of social rehabilitation services. The language is similar to that which the legislature passed in 1992 creating an exemption for garnishments against those offices as set forth in K.S.A. 60-2308.

Since enacted in 1972 under K.S.A. 23-494 et seq., the Court Trustee has provided for a self-supporting system with which to enforce duties of spousal and child support. The District Court Trustee and other similar offices attempt to accomplish their enforcement and accounting duties with minimal processing and minimal delay in getting the funds out to the persons entitled.

Sen Jud.
2-5-96
Attach 4

K.S.A. 7-108 as currently in effect, allows for attorney's liens in two situations: upon funds held by the attorney for the benefit of his client, and, funds held by an adverse party.

The amended statute as proposed in Senate Bill No. 513 adds the necessary language to clarify that the district court trustee, court clerk or state department of social rehabilitation services holding support funds are not subject to or in the purview of the attorney's lien statute and are exempt.

Our office strongly believes that attorneys should be paid for services rendered. However, an attorney's lien upon child support or spousal payments through our office interferes with our primary function of processing and accounting for this money. The ability to enforce an attorney's lien against funds held by our office places us in the middle of litigation which causes lengthy delays. It results in having to place holds on funds, conduct additional hearings to determine the validity of the lien, and requires our office to investigate to determine if any part of the lien had been otherwise satisfied.

It also poses a potential conflict problem because in obtaining a court order directing the amount, etc, to be paid to the attorney lien holder, our office must either agree or challenge the lien itself. This can place our office in an adversary position to one of the parties when it is meant to be a neutral party, just enforcing the current court support order.

Since the payment of support through our office is mandatory under local court rule, it becomes an easy target for attorneys or other creditors to proceed against the funds we hold. The 1992 garnishment exemption provided protection from our office having to process garnishments by creditors against those funds.

The attorney, who has the special statutory lien apart from the garnishment has proceeded to find this different avenue to attach funds in our office. The reasoning behind the garnishment exemption applies here to the attorney's lien. Any additional litigation or procedures which our office must address takes staff, time, and energy away from our primary duties.

The importance of such an amendment with Senate Bill 513, confirms and maintains the limited purpose for which our enforcement units were created.

If Senate Bill No. 513 passes, an attorney who has not been paid has sufficient legal remedies which remain available as against his clients assets, or the assets of the adverse party while in their possession.

I will close by saying that I appreciate the opportunity to share my thoughts today, and appreciate your continued concern for child support issues. I hope that my comments have been helpful.

MEMORANDUM

TO: **Kansas Senate Judiciary**

FROM: **Stephen J. Blaylock, Chair of the Family Law Section**
Kansas Bar Association

DATE: **February 8, 1996**

RE: **Senate Bill No. 514**

REQUEST:

The Kansas Bar Association and Family Lawyers in Kansas support adoption of Senate Bill No. 514, which amends K.S.A. 23-201 (defining marital property for divorce or separate maintenance purposes), to include "professional goodwill to the extent it is marketable for that particular profession".

PRIOR LAW:

The necessity for amendment is that the Domestic Trial Courts in Kansas will not consider professional goodwill because of the holdings in the 1982 Supreme Court of Kansas Case of *Powell v. Powell* 321 Kan. 456, in which the Court declared "a professional practice does not have goodwill value which becomes part of marital property in a divorce". While recognizing that at that time there was a split of authority among other jurisdictions, the Kansas Supreme Court based its decision largely on the rationale that if a professional dies or retires, nothing of the goodwill remains. While the *Powell* decision involved a single practice surgeon

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Attach 5

whom did not have a patient base, the trial courts in Kansas have applied the theory to all types of professionals, including dentists, doctors with a patient base, accountants, chiropractors, and lawyers.

KANSAS LAW CHANGES SINCE *POWELL*:

The theory behind *Powell, supra* applied to any property assets which in the future might disappear if the professional or participant died before they received the benefit. This included defined benefit pension plans and military retirement. *Grant v. Grant* (cite omitted). The legislation after *Grant* amended K.S.A. 23-201 (same statute affected by Senate Bill 514), to include unvested military retirement pay. In re *Marriage of Harrison* (cite omitted), the Court of Appeals extended marital property to include the present value of a defined benefit pension plan of which the participant may not receive if he or she dies prior to receiving the benefit.

IN SOME PROFESSIONAL PRACTICES THERE IS GOODWILL VALUE THAT IS MARKETABLE:

While it is true as in *Powell*, there are many professional practices that do not have goodwill, there are a number of professional parties that do have a value beyond that of just the book value and accounts receivables. A number of these professional practices have the goodwill or intangible value even without the particular profession. Those of us who deal in the sale of these practices refer to it as practice goodwill versus professional goodwill. Examples can be found in group medical practices which control a large patient base (family practice, HMO's, PPO's), dentists, accountants, chiropractors and sometimes lawyers such as a collection practice. We sell these practices all the time in Kansas for the practice goodwill value. There exist

formulas in each type of business which is used to determine what another professional or group of professional would pay for the patient or client base. For example, a dentist whom is older may be able to sell his practice beyond book and accounts receivable for an amount equal to one times gross billings. A dentist whom makes $200,000 per year after overhead might sell the practice goodwill for $400,000. That dentists wife of thirty (30) years presently gets no value for that. This inequity affects the non-professional whom are usually women and children. This is not fair.

RECENT DEVELOPMENT IN OTHER JURISDICTIONS:

While there are a few exceptions, most jurisdictions are holding that when there is practice goodwill and the practice has a value that is marketable above book value and accounts receivable, that it is property that can be valued in a divorce case. See *Thompson v. Thompson*, 576 So.2d 267 (Fla. 1991), *Taylor v. Taylor*, 386 N.W.2d 851 (Neb. 1986), *Hanson v. Hanson*, 738 S.W.2d 429 (Mo. banc 1987). An example of the changing trend is found in the Wisconsin case of *Peerenboom v. Peerenboom* 433 N.W.2d 282 (Wis. App. 1988) in which practice goodwill was found in a dental practice. An item of interest is that it distinctifies the early case of *Hollbrook v. Hollbrook* 309 N.W.2d 343 (Wis. 1981) which was relied upon heavily in *Powell, supra*, recognizing that some professional practices do have goodwill.

POLICY FOR SENATE BILL 514:

The Supreme Court of Kansas is reluctant to hear domestic marital asset issues and feel that some of these decisions are for the legislature. We have goodwill in other types of businesses for marital divorce purposes and professional practice should not be excluded. The

way the statute is written to be amended protects the concern set forth in *Powell, Supra*, and yet allows the trial court to consider the value when practice goodwill has a market. This will not affect a great many physicians whom have no marketable practice goodwill or are restricted by Buy-Sell Agreements, but it will allow us to consider an asset which the professional could sell on the open market. Even the I.R.S. recognized this now, and since OBRA 1993 allows goodwill when purchased to be amortized and written off over fifteen (15) years.

SUGGESTED AMENDMENT:

Since there are a number of pending divorces in Kansas, Senate Bill No. 514 should apply to petitions for separate maintenance or divorces filed after its effective date.

WHITNEY B. DAMRON, P.A.
COMMERCE BANK BUILDING
100 EAST NINTH STREET – SECOND FLOOR
TOPEKA, KANSAS 66612-1213
(913) 354-1354 ◆ 232-3344 (FAX)

February 8, 1996

The Honorable Tim Emert
Senate Committee on Judiciary
Room 143 - North
State Capitol Building
Topeka, Kansas 66612

Re: SB 514 An Act concerning domestic relations; relating to marital property; professional goodwill.

Dear Chairman Emert:

Included with this cover letter is a balloon draft amendment for SB 514 as requested by Stephen Blaylock during his testimony in support of this bill on behalf of the Kansas Bar Association. The intent of the amendment is to clarify that the bill would not affect divorce proceedings filed prior to the enactment of this law.

The amendment is the bold faced language in Section 3.

Please contact either Ron Smith of the Kansas Bar Association (234-5696) or me if you have any questions over this amendment or the bill.

Thank you for your consideration of this amendment.

Sincerely,

Whitney Damron

Whitney B. Damron

WBD:jd
Enclosure
CC: Members of the Senate Committee on Judiciary

Sen Jud.
2-6-96
Attach 6

Page
Date: 2/7/98 Time: 10:54:10
From: Ron Smith To: Whitney Damron

SENATE BILL No. 514
By Committee on Judiciary
1-24

AN ACT concerning domestic relations; relating to marital property; professional goodwill; amending K.S.A. 23-201 and repealing the existing section.

Be It Enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 23-201 is hereby amended to read as follows: 23-201. (a) The property, real and personal, which any person in this state may own at the time of the person's marriage, and the rents, issues, profits or proceeds thereof, and any real, personal or mixed property which shall come to a person by descent, devise or bequest, and the rents, issues, profits or proceeds thereof, or by gift from any person except the person's spouse, shall remain the person's sole and separate property, notwithstanding the marriage, and not be subject to the disposal of the person's spouse or liable for the spouse's debts.

(b) All property owned by married persons, including the present value of any vested or unvested military retirement pay, *or professional goodwill to the extent that it is marketable for that particular professional,* whether described in subsection

(a) or acquired by either spouse after marriage, and whether held individually or by the spouses in some form of co-ownership, such as joint tenancy or tenancy in common, shall become marital property at the time of commencement by one spouse against the other of an action in which a final decree is entered for divorce, separate maintenance, or annulment. Each spouse has a common ownership in marital property which vests at the time of commencement of such action, the extent of the vested interest to be determined and finalized by the court, pursuant to K.S.A. 60-1610 and amendments thereto.

Sec. 2. K.S.A. 23-201 is hereby repealed.

Sec. 3. ***This act shall affect only those divorce matters filed on or after the effective date of this act.***

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

1-2

#6

Testimony of
Larry R. Rute
Kansas Bar Association
(913/234-5696

SENATE JUDICIARY COMMITTEE

Tim Emert, Chairman

Tuesday, February 6, 1996
Room 514-S

Mr. Chairman, Members of the Committee, I very much appreciate the opportunity to appear before you today concerning Senate Bill No. 584. It is my privilege to serve as president of the Kansas Bar Association's Alternative Dispute Resolution Section. One of the purposes of the section is to work with the courts, legislative bodies and governmental administrations, and where appropriate, other ADR professional organizations, to review and critique, develop new and to improve existing ADR rules, standards, ethics, programs and all other matters relating to alternative dispute resolution.

I also have the privilege to serve as this year's Chair of the Kansas Children's Coalition. The Children's Coalition is also supportive of the changes found in Senate Bill No. 584.

We believe that various ADR related statutes set out in Senate Bill No. 584 should be amended to assure that the mediation process is kept confidential and that information not amounting to evidence of criminal conduct is not used in subsequent actions. The proposed language in the bill before you is the result of a legislative task force made up of members from the Kansas Bar Association and Heartland Mediators Association. The statutory language found in K.S.A. 55-512 and, 44-817, 60-452a, 72-5427, 74-545 and 75-4332 has been combined to create a uniform statement of confidentiality which can and should be used in any statute containing dispute resolution process language whether it be mediation, settlement conference, arbitration or neutral evaluation.

Confidentiality, and the resulting ability to be candid, is one of the most attractive qualities dispute resolution has to offer. Much of the motivation to engage in dispute resolution is lost when confidentiality is compromised. If communications are not protected, a party may use the proceeding as a case preparation and/or discovery tool rather than a means to facilitate good faith settlement.

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In the proposed bill, we are also suggesting confidentiality be extended to include a privilege for the participants. The use of the privilege permits a participant in the alternative dispute resolution process to resist legal pressure to disclose information. A privilege permits any party to the mediation to keep another from speaking about what happened in the process. In this manner the mediation process is kept confidential and information not amounting to evidence of criminal conduct not be used in subsequent actions, either by subpoena of papers used or produced by the mediation process, or compelled testimony of the parties or any mediator. Without such assurances, full discussion of subjects sent to mediation cannot occur. There are, of course, instances where information should not be kept secret because of the mediation process. Evidence of criminal wrongdoing and suspected child abuse should be exceptions to this general rule of confidentiality.

In closing, I would recommend that this committee consider defining the term "neutral person conducting a proceeding under this act". The neutral person should be defined a someone other than a sitting judge in order that this legislation not inadvertently create an argument that information provided a sitting judge is confidential.

In conclusion, we support the concepts and goals set forth in Senate Bill 584. Thank you for your attention and concern. I'll be happy to answer your questions.

Respectfully submitted,

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