

Approved: 2/6/97  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m.. on January 27, 1997 in Room 313--S of the Capitol.

All members were present except: Phill Kline (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department  
Mike Heim, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Nancy Lindberg, Assistant to Attorney General  
John Peterson, Budget Car Rental

Others attending: See attached list

The Chair called the meeting to order at 3:40 p.m.

**Bill Introductions:**

Nancy Lindberg, Assistant to Attorney General Carla Stovall requested three bill recommendations.

The conferee stated that the first recommendation concerns terrorism because the state has until April 25, 1997, to extend compensation coverage to Kansas residents who have been victims of foreign terrorism. The conferee stated that without this recommendation there is a possibility that Kansas will be at risk of losing 4.6 million federal dollars. The conferee stated that Kansas will not be eligible to share, with other states, in an additional 50 million dollars in federal funds set aside for victims of foreign terrorism. (Attachment 1)

Ms Lindberg related that the second bill recommendation was brought to the Attorney General's attention by Kansas Bureau of Investigation. The conferee stated one of the judges had written Paul Shelby, OJA bringing to his attention a situation where a server falsely completed the return of service on subpoenas and personal service when in fact he had not made such services. When the Attorney General's office looked at what they could charge this individual with there was nothing in the statutes that said that he was perjuring himself. The conferee stated that it is the Attorney General's recommendation to amend K.S.A. 60-312 to require that an affidavit be signed by the person making the service regardless of whether the individual is an officer or not. (Attachment 1)

Ms Lindberg stated that the third bill recommendation concerns the mistreatment of a dependent adult amending K.S.A. 21-3437 by adding a new subsection proscribing reckless behavior upon a dependent adult. The conferee stated that this recommendation would make it more consistent with child abuse statutes. (Attachment 1)

Committee members discussed with the conferee the federal requirement concerning the New 1996 Anti-Terrorism Act, and the federal funds available.

A motion was made by Representative Swenson and seconded by Representative Shultz to introduce the three bill recommendations requested by the Attorney General as Committee bills. The motion carries.

John Peterson representing Budget Car Rental requested the introduction of a bill that would amend K.S.A. 21-3702 the statute treating circumstances for prima facie evidence of intent to permanently deprive the owner or lessor of property of the possession, use or benefit. The conferee stated that this bill proposal will provide that the owner may notify the appropriate authorities after the additional seven day period. The motor vehicle could then be placed on the appropriate national computer system listing stolen vehicles. The conferee remarked that this proposal is patterned after Missouri law. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary. Room 313-S Statehouse. at 3:30 p.m. on January 27, 1997.

A motion was made by Representative Presta and seconded by Representative Shriver to introduce Mr. Peterson's request as a Committee bill. The motion carries.

**HB 2007:**                    **Judiciary amendments to rules of civil procedure.**

The Chair referred to two handouts prepared by the Revisor, Jill Wolters. The Chair related that Ms Wolters will present an overview of civil procedure and the important changes that are contained in **HB 2007**.

Ms Wolters discussed the various federal and state courts systems. The conferee stated that the rules of civil procedure are rules that the judges and all parties to an action follow. The conferee related the purpose for the development of civil procedure rules. The conferee provided information on the types of specialized action rules and rules adopted by the Supreme Court. The conferee defined terminology and types of action found in the rules of civil procedure. (Attachment 3) (Attachment 4)

The Committee members and the staff discussed issues concerning motions for sanction's, immunity, pretrial procedure, interrogatories, and additional standards for expert testimony.

The Chair announced that an additional hearing on **HB 2007** is scheduled for tomorrow, and adjourned the meeting at 4:30 p.m.

The next meeting is scheduled for January 28, 1997.

# HOUSE JUDICIARY COMMITTEE COMMITTEE GUEST LIST

DATE: 1-27-97

NAME	REPRESENTING
John McElroy	RBI
Michael A. Russell	AG
Callee J. Denton	Bollenberg's Assoc
Heather Marshall	Whiskey Cannon
Paul Shelton	OFA
Randy Nease	Jud. Com.
Steve Montgomery	Midwest Auto Wholesalers Assoc.



State of Kansas

## Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
FAX: 296-6296  
TTY: 291-3767

January 27, 1997

TO: House Judiciary  
FROM: Attorney General Carla Stovall  
RE: 1997 Legislative Recommendations

1. **Terrorism** - States have until April 25, 1997, to extend crime victim's compensation coverage to Kansas residents who have been victims of foreign terrorism.
2. **Return of Service of Subpoenas** - Amend K.S.A. 60-312, the proof of service statute, to require an affidavit to be signed by the person making the service regardless of whether the individual is an officer or not.
3. **Mistreatment of a Dependent Adult** - Amend K.S.A. 21-3437 by adding a new subsection proscribing reckless behavior upon a dependent adult. The violation of a reckless act would be a severity level 6, person felony. Also, amend by increasing to a severity level 5, person felony the intentional mistreatment of a dependent adult.

House Judiciary  
Attachment 1  
1/27/97

PROPOSED AMENDMENT

John C. Peterson

Budget Car Rental

to permanently deprive owner or lessor of possession, use or benefit of property. (a) In any prosecution under this article, the following shall be prima facie evidence of intent to permanently deprive the owner or lessor of property of the possession, use or benefit thereof:

(1) The giving of a false identification or fictitious name, address or place of employment at the time of obtaining control over the property;

(2) the failure of a person who leases or rents personal property to return the same within 10 days after the date set forth in the lease or rental agreement for the return of the property, if notice is given to the person renting or leasing the property to return the property within seven days after receipt of the notice, in which case the subsequent return of the property within the seven-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section;

(3) destroying, breaking or opening a lock, chain, key switch, enclosure or other device used to secure the property in order to obtain control over the property; or

(4) destruction of or substantially damaging or altering the property so as to make the property unusable or unrecognizable in order to obtain control over the property.

(b) In any prosecution for a misdemeanor under K.S.A. 21-3701 and amendments thereto in which the object of the alleged theft is a book or other material borrowed from a library, it shall be prima facie evidence of intent to permanently deprive the owner of the possession, use or benefit thereof if the defendant failed to return such book or material within 30 days after receiving notice from the library requesting its return, in which case the subsequent return of the book or material within the 30-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section.

(c) The word "notice" as used herein shall be construed to mean notice in writing and such notice in writing will be presumed to have been given three days following deposit of the notice as registered or certified matter in the United States mail, addressed to such person who has leased or rented the personal property or borrowed the library material at the address as it appears in the information supplied by such person at the time of such leasing, renting or borrowing, or to such person's last known address.

Where the leased or rented property is a motor vehicle, if the motor vehicle has not been returned within seven days after the receipt of the notice, the lessor may notify the local law enforcement agency of the failure of the lessee to return such motor vehicle, and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate local, state and national computer system listing stolen motor vehicles. Any law enforcement officer who stops such a motor vehicle may seize the motor vehicle and notify the lessor that he may recover such motor vehicle after it is photographed and its vehicle identification number is recorded for evidentiary purposes.

House Judiciary  
Attachment 2  
1/27/97

#2

3

Office of Revisor of Statutes  
300 S.W. 10th Avenue  
Suite 322, Statehouse  
Topeka, Kansas 66612-1592  
Telephone (913) 296-2321 FAX (913) 296-6668

MEMORANDUM

To: House Judiciary Committee  
From: Jill Ann Wolters, Assistant Revisor  
Date: January 27, 1997  
Subject: Civil procedure and the courts

COURTS

- Federal Courts  
U.S. District Court (at least one in each state; additional specialized courts such as Tax Court and Bankruptcy Court)  
U.S. Court of Appeals (for the circuit in which the district is located, 11 circuits and a Federal Circuit taking appeals from specialized federal courts such as Tax Court and Bankruptcy Court)  
U.S. Supreme Court
- State Courts  
District Courts (31 Judicial Districts, KSA 4-202 through 4-232)  
Kansas Court of Appeals (10 Judges)  
Kansas Supreme Court (7 Justices)

CIVIL PROCEDURE

I. The rules of civil procedure are the rules the judges and all parties to an action follow. The Kansas rules of civil procedure are modeled after the federal rules of civil procedure. The purpose underlying the development of the rules of civil procedure is to secure the just, speedy and inexpensive determination of every action or proceeding. KSA 60-102.

II. In addition to the rules of civil procedure, a specialized action may have other rules. Examples of these types of action include probate proceedings (KSA chapter 59), limited actions (KSA chapter 61, amount in controversy may not exceed \$10,000), and criminal proceedings (KSA chapter 22).

III. Further rules that govern court proceedings are found in the Rules adopted by the Supreme Court. These rules further clarify what is already in statute and assist in establishing the actual procedure that will be used in the courtroom. Included within

these rules are rules relating to the Supreme Court, Court of Appeals and Appellate practice; rules relating to District Courts; rules relating to the discipline of attorneys; rules relating to court reporters, and rules relating to judicial conduct.

- All rules relating to appellate practice are applicable to both civil and criminal appeals and govern procedure in both the Court of Appeals and the Supreme Court, unless otherwise indicated.
- The rules relating to the district court include, but are not limited to:
  - adopting general principles and time standards to be used as guidelines for processing district court cases;
  - adopting standards relating to jury use and management
  - establishing child support guidelines;
  - establishing forms to be used for court documents;
  - establishing courtroom decorum.
- All attorneys admitted to practice law in Kansas are subject to the jurisdiction of the Supreme Court.

#### J Commencing the law suit--selecting the proper court KSA 60-266

- Subject matter jurisdiction is whether or not a court can hear a particular type of dispute. ie. State district courts of general jurisdiction have the competence to hear any matters not given by statute to the exclusive jurisdiction of another court, such as probate, limited actions, criminal.
- Personal jurisdiction is whether or not the district court has the power to render a judgment against this particular person. The long-arm statute, KSA 60-308, is needed when defendant is a non-resident individual who can't be served in Kansas or a foreign corporation. A non-resident defendant may be served if the cause of action arose out of acts by defendant or defendant's agent.
- Venue means the place of the trial, KSA 60-601 through 60-614. In all actions, venue will lie in at least the following counties: where the defendant resides or has an office or place of employment or where the cause of action arose.

#### Service of Process

- Service of process is giving the defendant notice of the action, KSA 60-204 & chapter 60, article 3. KSA 60-303 provides service by the sheriff, of the county wherein the action is filed, by certified mail. The party or attorney for the party may elect personal service or elect to serve by certified mail themselves.

#### Pleading

- The only pleadings allowed are the petition and answer; the counterclaim and reply; the cross-claim and answer; and the third-party petition and answer. KSA 60-207.
- The petition is the document which sets out the plaintiff's case.
- Any pleading setting forth a claim for relief shall contain a short and plain

statement of the claim showing that the plaintiff is entitled to relief and a demand for judgment. KSA 60-208.

- The attorney must sign all pleadings. KSA 60-211.
- The answer must admit or deny each of the points in the petition. The answer may also include affirmative defenses such as assumption of risk, contributory negligence, fraud, duress, etc. KSA 60-208 (c).
- Parties may amend and supplement the pleading. A supplemental pleading adds allegations concerning events that occurred after the pleading sought to be supplemented was filed. An amendment adds allegations concerning events that took place before the pleading was filed, but were omitted, overlooked, or unknown at the time of pleading. KSA 60-215.

### Joinder of Claims and Parties

- Claim Joinder KSA 60-213.
  - A party asserting a claim for relief may join with that claim any other claims such party has against the same opposing party.
  - A counter-claim is any claim a defending party has against the party he is defending against.
  - A cross-claim is a claim by a party against a co-party, usually a defendant against a co-defendant. A cross-claim is only made if it arises out of the transaction or occurrence that is the subject matter of the litigation.
- Joinder of Parties
  - Permissive joinder of parties is allowed under KSA 60-220 when a group of plaintiffs join together to assert claims against a defendant(s) that arise out of the same transaction or occurrence and raise one or more questions of law or fact common to all plaintiffs.
  - Joinder of persons needed for just adjudication, KSA 60-219, defines a contingently necessary party as a person whom complete relief cannot be accorded in such person's absence among those already a party to the action or the person claims an interest in the subject matter of the litigation and is so situated that the disposition of the action without such person may substantially impair such person's ability to protect the interest or subject existing parties to a substantial risk of multiple or otherwise inconsistent obligations because of such person's claimed interest.
  - Pursuant to third-party practice under KSA 60-214, a defendant may implead a non-party as a third-party defendant if it is asserted that the third-party is or may be liable to the defendant for all or part of plaintiff's claim against the defendant.
  - An interpleader may join an action when a person is exposed to several claims which would multiply such person's liability. KSA 60-222.



- The following are prerequisites to a class action pursuant to KSA 60-223: One or more members of a class may sue or be sued as representative parties on behalf of all only if: (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.
- For comparative negligence joinder, on the motion of any party against whom a negligence claim is asserted, any other person whose negligence allegedly contributed to the plaintiff's injuries shall be joined as an additional party to the action. KSA 60-258a.

### Discovery

- Discovery is the process by which parties to an action discover what they can about each other's case in preparation of their own case. The competing policies are, on one hand, the desire for full disclosure to aid in the rational and efficient presentation and resolution of the issues at or before trial, and, on the other hand, the desire to protect the parties against unfair burdens or prejudice that may help the other party make its case.
- Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. KSA 60-226.
- Depositions are taken during the discovery process. Depositions are statements made, under oath, concerning the case. KSA 60-230. All or any part of the deposition may be used at trial, subject to the rules of evidence. KSA 60-232.
- Interrogatories are written questions and written answers, under oath. KSA 60-233. Example of how the statute and rules work together: The statute sets out the general frame work for the interrogatories and Supreme Court Rules for District Courts, Rule 135, limits the number of interrogatories to 30 unless additional authorized by the court.
- Pursuant to Supreme Court Rules for District Courts, Rule 136, a discovery conference shall take place upon request of either party or upon the court's own motion. At the discovery conference, the issues shall be identified and the possibility of stipulations and settlement explored. The judge shall require completion of discovery within a set number of days after the conference was conducted.

### Summary Judgment

- Summary judgment may be granted only when the court concludes that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. KSA 60-256.

### Pretrial Conference

- A pretrial conference shall take place upon request of either party or upon the court's own motion.
- The purpose of the pretrial conference is to narrow and simplify the issues for trial, stipulate to whatever can be stipulated, resolve evidentiary questions, and resolve as many collateral matters as possible so that the trial can proceed efficiently without unnecessary disruption.
- After a conference, the court issues a pretrial order setting forth the agreements and stipulations made by the parties and all other actions taken at the conference.

### Trial

- KSA 60-238 provides for the right to a jury trial. In cases where there is no right to a jury trial, the matter will be tried to the court.
- The parties to the action may stipulate to a jury of any number less than 12. If the number of jury members is 12, the agreement of 10 jurors shall be sufficient to render a verdict. If the parties stipulate to a less than 12 member jury, a unanimous verdict will be required unless the parties also stipulate to a less than unanimous verdict. KSA 60-248.
- Instructions are given to the jury prior to closing arguments. KSA 60-251.
- Three types of verdicts:
  1. A general verdict states who won and how much they have been awarded.
  2. A special verdict requires special written findings upon each issue of fact.
  3. A general verdict accompanied by answer to interrogatories means the judge, if requested in writing, may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more substantial questions of disputed facts on which decision is necessary to a verdict.

### Post Trial Motions (Before the verdict is handed down)

- Directed verdict or judgment notwithstanding the verdict motions may only be granted if it appears from the evidence presented that there are no factual issues that need to be resolved by the jury. The court is required to consider all the evidence and any inferences that may be drawn from the evidence in a light most favorable to the party opposing the motion. The directed verdict or judgment notwithstanding the verdict motions are the equivalent of the motion to dismiss for failure to state a claim and the summary judgment motion, except that they are made at the trial stage based on the evidence presented at trial. KSA 60-250.

### New Trial Motions KSA 60-259.

- A new trial may be granted to all or any of the parties and on all or part of the issues when it appears that the rights of the party are substantially

affected:

1. Because of abuse of discretion of the court, misconduct of the jury or party, or accident or surprise which ordinary prudence could not have guarded against, or for any other cause whereby the party was not afforded a reasonable opportunity to present such party's evidence and be heard on the merits of the case.
2. Erroneous rulings or instructions of the court.
3. That the verdict, report or decision was given under the influence of passion or prejudice.
4. That the verdict, report or decision is in whole or in part contrary to the evidence.
5. For newly discovered evidence for the party applying, which such party could not, with reasonable diligence, have discovered and produced at the trial.
6. That the verdict, report or decision was procured by the corruption of the party obtaining it. In this case the new trial shall be granted as a matter of right, and all the costs made in the case up to the time of granting the new trial shall be charged to the party obtaining the decision, report or verdict.

#### Judgments

- A judgment is the final determination of the rights of the parties in an action. KSA 60-254.
- A judgment becomes effective when a journal entry or judgment form is signed by the judge and filed with the clerk of the court. KSA 60-258.
- Default judgments. KSA 60-255. If a party against whom a claim has been made has not appeared within the requisite time, default judgment may be entered by the court. If an appearance has been entered on behalf of the party, but the party had failed to answer or otherwise defend the action, default judgment may be entered by the court. For good cause shown the court may set aside a default judgment in accordance with K.S.A. 60-260 (b).

#### Appeals

- The Kansas Court of Appeals has jurisdiction over all appeals from final judgments of the district court except those cases that go directly to the Supreme Court.
- The Kansas Supreme Court has jurisdiction to hear any appeals from decisions by the Court of Appeals; any matters transferred by the Court of Appeals because of significant public interest in the case or issues; any final judgment of a district court holding a state or federal statute unconstitutional; any case in which the defendant has been convicted of a class A felony or in which a maximum sentence of life imprisonment has been imposed; or for crimes committed on or after July 1, 1993, any case in which the defendant has been convicted of an off-grid crime. KSA 20-3016, 22-3601 and 60-2101.

**Office of Revisor of Statutes**  
300 S.W. 10th Avenue  
Suite 322, Statehouse  
Topeka, Kansas 66612-1592  
Telephone (913) 296-2321 FAX (913) 296-6668

**MEMORANDUM**

To: House Judiciary Committee  
From: Jill Ann Wolters, Assistant Revisor  
Date: January 27, 1997  
Subject: 1996 HB 2007

HB 2007, which was introduced by the interim committee on Judiciary following an interim study, contains amendments to the rules of civil procedure recommended by the civil code advisory committee of the Judicial Council. The committee engaged in a two-year review comparing the Kansas rules with the federal rules. The committee did not adopt all federal rule recommendations.

This memo is intended to cover the main points of the bill, and not to be used as a complete summary.

KSA 60-211 (Sec. 5, page 5, line 26)

- Signing of pleadings, motions and other papers; liability for frivolous filings.
  - Current law provides that the signature on a pleading constitutes a certification that the person has read the papers and to the best of the person's knowledge such pleading is in good faith. The amendments to the bill are intended to establish a more objective standard showing the claims are warranted by a nonfrivolous argument for the modification or reversal of existing law and the allegations have evidentiary support or are likely to have after investigation or discovery.
  - Motion for sanctions, under this section, may be filed any time but not later than 10 days after the entry of judgment. (Other sanctions may be assessed pursuant to other civil procedure rules.)

KSA 60-216 (Sec. 8, page 8, line 41)

- Pretrial procedure
  - Pretrial conferences
    - The amendment clarifies that there may be more than one pretrial conference.
    - The amendment further states that the pretrial conference is to expedite processing and disposition of the litigation, minimize expense and conserve time. Underlined portion from current S. Ct. Rule 136.
  - Case management conference
    - The amendments clarify what a case management conference is and what the conference may cover. Many amendments to this subsection are currently contained in Supreme Court Rule 136.
    - Actions to consider include: identifying issues and exploring the possibilities of stipulations and settlement; exchanging information on the issues of the case; designating the time and place of discovery.
  - At least one of the attorneys for each party participating in any conference shall have the authority to enter into stipulations and to make admissions. This

House Judiciary  
Attachment 4  
1/27/97

- amendment is intended to promote meaningful participation in the conferences.
- The final pretrial conference shall take place on request of either party or upon the request of the court. The Supreme Court shall establish rules for the procedures.

KSA 60-226 (Sec. 10, page 13, line 24)

- Discovery
  - The amendment spells out that discovery is limited by the court only if: the discovery sought is unreasonably cumulative or duplicative; the party seeking discovery had ample opportunity to discover; or the burden outweighs the benefit. The court may act on it's own motion.
  - *Ad* Current law provides that parties, through interrogatories, must identify all expert witnesses and state the substance of the facts and opinions of the experts. The amendment allows a party to depose any person who has been identified as an expert whose opinions may be presented at trial.
  - Supplemental disclosure is required if the party learns that the information disclosed is incomplete or incorrect.

KSA 60-230 (Sec. 12, page 20, line 7)

- Oral depositions
  - The amendments provide for basic safeguards to assure the integrity of the recording.
  - One of the amendments requires the person taking the deposition to retain stenographic notes or a copy of any deposition recording.

KSA 60-233 (Sec. 15, page 29, line 15)

- Interrogatories
  - The amendment clarifies that each interrogatory shall be answered fully, unless objected to. If an objection, the objecting party shall specify the reasons for the objection and shall answer to the extent the interrogatory is not objectionable.
  - Any objection not stated is waived unless excused by the court for good cause shown.

KSA 60-234 (Sec. 16, page 30, line 27)

- Production of documents
  - The amendment clarifies that if a request for production is objectionable, the objecting party shall state the reasons for the objection and shall permit inspection of the remaining parts of the documents which are not objectionable.
  - The amendment removes the necessity for an independent action against a nonparty by recognizing a nonparty may be compelled to produce documents pursuant to a subpoena or business records subpoena. *243 243*

KSA 60-237 (Sec. 19, page 34, line 1)

- Failure to allow discovery; sanctions
  - The amendment clarifies that if a party fails to make a disclosure of expert witness testimony, any other party may move to compel disclosure and for sanctions. The motion shall include a certification that the movant has in good faith attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action. These amendments are added to encourage litigants to seek resolve by informal means.

KSA 60-245 (Sec. 23, page 40, line 40)

- Subpoenas
  - A subpoena is a written command to a party to give testimony or produce documents at a specified time and place.
  - The form of the subpoena is established by statute and the amendment requires the inclusion of a statement of the rights and duties of a witness.
  - The amendment clarifies the appropriate issuing authority for the subpoena and states that a subpoena may be served anywhere within the state.
  - An objection to the subpoena must be made within 14 days of service. The current law allows 10 days.
  - The amendments identify circumstances when the court shall as well as may quash a subpoena.
  - A party responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize/label them to correspond with the categories in the demand. This duty is already imposed on parties pursuant to KSA 60-234, production of documents.

KSA 60-456 (sec. 29, page 53, line 6)

- Expert testimony
  - Concerning expert testimony, the bill proposes to add the following additional standards for such testimony to be based on: reasoning or methodology which is scientifically valid which can be properly applied to the facts in issue and the likelihood to assist the trier of fact to understand the evidence or to determine a fact in issue.