

Approved: February 9, 1999  
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:06 a.m. on February 4, 1999 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Revisor  
Mike Heim, Research  
Jerry Donaldson, Research  
Mary Blair, Secretary

Conferees appearing before the committee:

Kathy Olsen, Kansas Bankers Association (KBA)  
Eldon Cleaver, Cleaver Farm & Home, Chanute  
Arthur Brown, Mid America Lumberman's Association  
Joe Lieber, Kansas Cooperative Council  
Natalie Bright, Kansas Chamber of Commerce (KCCI)  
Hal Hudson, National Federation of Independent Businesses (NFIB)  
Ron Smith, Kansas Bar Association

Others attending: see attached list

The minutes of January 27,28 and February 2 meeting were approved on a motion by Senator Bond, seconded by Senator Oleen. Carried.

**SB 97—an act concerning small claims procedure; relating to corporate representation**

Conferee Olson testified in support of **SB 97**. She stated that the purpose of the amendment is to clarify "what appears to be a conflict between the Small Claims Procedure Act and case law," a conflict regarding the issue of corporation representation in small claims court. She argued that corporate representatives are not "practicing law" when they appear in small claims court but are exercising the right to represent their business interest under the limitations of said court. She substantiated her argument, in part, with an Attorney General's Opinion on the issue which she detailed. (attachment 1)

Conferee Cleaver testified in support of **SB 97**. He described his experience attempting to collect debts owed to his small corporation. He described the benefits of using the Small Claims Court for collections of small debts. He stated that his business also uses **Chapter 61** for collections on occasion but finds the administrative requirements cumbersome. He urged Committee consider passage of the bill. (attachment 2)

Conferee Brown testified in support of **SB 97**. He supported Conferee Cleaver's testimony and discussed varied reasons why the bill should be passed (attachment 3)

Conferee Lieber testified in support of **SB 97**. He briefly summarized what the bill would do and made a plea for passage of the bill on behalf of small businesses. (attachment 4)

Conferee Bright testified in support of **SB 97**. She briefly summarized the history of the 1973 Small Claims Procedure Act. She stated that **SB 97** "would codify the intent of the 1973 Legislature by expressly allowing a corporation to appear in small claims court by an officer or an agent of the corporation." She discussed the current "trend" of magistrate judges to deny corporations access to small claims courts stating that "they preface their denials on common law that provides that a corporation may not appear in court by a representative other than an attorney because it is an artificial entity who interest must be protected." She further discussed a Attorney General's Opinion on the issue which was favorable to her argument and urged passage of the bill. (attachment 5)

Conferee Hudson testified in support **SB 97**. He stated that over 80% of NFIB/Kansas members are businesses who employ 15 or fewer persons and that many of these are incorporating and need the provisions of SB 97 to help them collect small debts. He urged passage of the bill. (attachment 6)

Written testimony from Community Banker's Association, Kansas Automobile Dealer's Association, and Petroleum Marketers and Convenience Store Association of Kansas supporting **SB 97** was distributed. (attachments 7, 8, 9)

Conferee Smith testified in opposition to **SB 97**. He stated that the proposed law "distinctly raises the issue of the unauthorized practice of law being practiced in our small claims courts." He discussed: several reasons why KBA opposes the bill; the issue of constitutionality of the bill; the outcome of a random fax survey he conducted; (attachment 10) a Small Claims & Chapter 61 comparison chart; an Attorney General's Opinion; new case law; and practical problems. He recommended an amendment to eliminate corporation involvement in Small Claims court. (attachment 11)

The Chair closed the hearings on **SB 97**. No action was taken at this time.

**SB 4—an act concerning criminal procedure; relating to expungement**

**SB 90—an act concerning criminal procedure; relating to arrest, release on appearance bond**

**SB 95—an act concerning juvenile offenders; relating to arrest and placement; court services officers**

Senator Pugh reviewed his subcommittee's study of **SB 4, SB 90, and SB 95**. He stated that the subcommittee recommended no action be taken on **SB 4**. (attachment 12) Following discussion Senator Bond moved to amend the bill deleting the italicized portion and striking the word "arrested" on pg 2 line 41 and pg 8 line 4, Senator Vratil seconded. Carried. Senator Pugh stated the Subcommittee recommended passage of **SB 90** and **SB 95**. **A motion was made by Senator Pugh to pass SB 90 out favorably and was seconded by Senator Donovan. Carried. Senator Pugh moved to pass SB 95 out favorably, Senator Oleen seconded the motion. Carried.**

The meeting adjourned at 11:02a.m. The next scheduled meeting is Tuesday, February 9, 1999.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 4, 1999

| NAME            | REPRESENTING               |
|-----------------|----------------------------|
| TOM TUNNELL     | KANSAS GRAIN & FED ASSN.   |
| GAT BROWN       | Mid-Mn Lumbermen (M. L.A.) |
| ELDON CLEAVER   | CLEAVER Farm + Home        |
| Hal Hudson      | NFIB/Kansas                |
| Joe Lieber      | Ks Co-op Council           |
| Kathy Olsen     | Ks Bankers Assn.           |
| Natalie Bright  | KCCI                       |
| Mary Feighny    | Att. Gen                   |
| Kathy Porter    | OJA                        |
| Jean Barber     | KADC                       |
| Ridym. Nearreel | KS Judicial Council        |
| Con Smith       | Ks An Assn                 |
| JAMES CHARK     | KCDAA                      |
| Debby Fleming   | Fedrics Consulting         |
| Barb Tombs      | KSE                        |
| Kevin A. Smith  | KSC                        |
| Vickilyn Hessel | Division of Budget         |
| Chuck Stones    | K Bankers Assn             |
| Bill Henry      | Ks Gov. Consulting         |

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb. 4, 1999

| NAME           | REPRESENTING            |
|----------------|-------------------------|
| Ashley Sherard | Overland Park Chamber   |
| Whitney Daman  | Kansas Bar Association  |
| Maurin Hoover  | Hoover's Capital Report |
| Dea Mc Keeleel | KTLA                    |
|                |                         |
|                |                         |
|                |                         |
|                |                         |
|                |                         |
|                |                         |
|                |                         |
|                |                         |
|                |                         |
|                |                         |
|                |                         |
|                |                         |
|                |                         |
|                |                         |
|                |                         |



DAILY AGENDA

February 4, 1999

Hearing on:

**SB 97**—an act concerning small claims procedure; relating to corporate representation

Proponent

Opponent

Eldon Cleaver, Cleaver Farm & Home, Chanute

Ron Smith, Ks. Bar Assn

Arthur Brown, Mid America Lumberman's Ass'n

Kathy Olsen, Ks. Bankers, Assn.

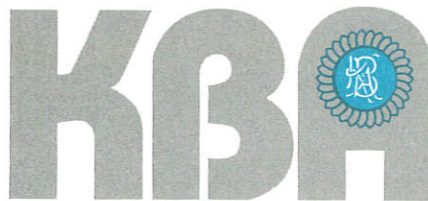
Joe Lieber, Ks. Cooperative Council

Natalie Bright, Ks Chamber of Commerce

Hal Hudson, Nat'l Fed. of Independent Businesses

Subcommittee reports and possible action

Approval of Jan. 27 & 28 and Feb. 2 minutes



570  
2-4-99  
att  
#1

February 4, 1999

To: Senate Committee on Judiciary

From: Kathleen Taylor Olsen

Re: **SB 97: Small Claims Court**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the Committee today in support of **SB 97**. As you can see, this bill amends one section of the Small Claims Procedure Act by adding a sentence relating to appearances by corporations in small claims court.

We believe the amendment clarifies what appears to be a conflict between the Small Claims Procedure Act and case law. The Small Claims Procedure Act is found in Chapter 61, Article 27 of the Kansas Statutes Annotated. It is by legislative authority that any "person" may file a written statement of the person's small claim with the clerk of the court as an alternative procedure to filing a small claim under the code of civil procedure for limited actions. "Person" is specifically defined to include a corporation. Attorney representation is specifically prohibited except in limited circumstances.

The case law in Kansas provides that a corporation may not appear in court by an agent who is not an attorney. The reason for this rule is that a corporation is legally, a separate entity that can only interact with other entities and persons through an agent. In court, Kansas case law has held that this agent must be a licensed attorney.

This issue was brought to our attention by a banker in Jamestown, Cloud County, Kansas. I have attached a copy of the letter he wrote to be presented to this committee. As he states in the letter, until 1995, bank employees were allowed to file the bank's small claims under the Small Claims Procedures Act. For some reason, the Magistrate Judge decided at this time, to ignore the statute and apply the common law rule to small claims.

This prompted a request for an Attorney General's Opinion from Senator Hardenburger which I have attached to my testimony. In that Opinion, the Attorney General discusses the apparent conflict in laws – noting that other states have made an exception to the common law rule requiring corporations to be represented by attorneys in court, for small claims court. The General then concludes that since corporations are authorized by statute to bring claims in small claims court, and since no party is allowed attorney representation therein, a corporation may participate in small claims court through an agent who is not licensed to practice law.

The amendment before you is our attempt to codify the Attorney General's opinion. We are not asking for any greater rights than any other claimant has in small claims court. We are only asking that corporations have the same rights as other business entities to resolve disputes of minimal amounts.

*Sent Jud*  
*2-4-99*  
*att 1*

The argument against such an amendment is that by allowing nonlawyer representation, the legislature is somehow legitimizing or contributing to the unauthorized practice of law. The legislature has already made the policy decision to allow the forum of a small claim court where attorney representation is prohibited. It is not our intention, by this amendment, to authorize nonlawyer corporate representatives to practice law. Again, it is our intent only to allow the same rights under the Small Claims Procedure Act as afforded to other entities.

While the Attorney General, in the Opinion letter, indicates that it is difficult to define what the practice of law is, she opines that completing the fill-in-the-blank claim forms does not constitute the practice of law – unless that requires some legal skill or knowledge or unless legal advice is given. The Small Claims Procedure Act itself states, that “discovery methods or proceedings shall not be allowed nor shall the taking of depositions for any purpose be permitted.” (KSA 61-2707(a)) The General concludes her Opinion letter by stating:

“We have no facts upon which to base a conclusion that the unauthorized practice of law is occurring in small claims courts throughout the state of Kansas and, therefore, it is our opinion that the legislature is not usurping the judiciary’s power to regulate the practice of law by allowing nonlawyer corporate representatives to appear in small claims courts.”

Any “person” that subjects himself to the jurisdiction of the small claims court must accept the limitations placed by that Act. The rules there apply to everyone so that the amount of value of the claim may not exceed \$1,800, there can be no more than 10 appearances in the same small claims court in any calendar year, and no party may be represented by an attorney except in limited circumstances.

What are those “limited circumstances”? They are found in KSA 61-2714. If any party in small claims litigation uses an attorney or is an attorney, the other party is entitled to have an attorney appear on their behalf. We believe this provision was intended to be used sparingly as its use defeats the whole premise of small claims court, i.e., to be used as an alternative procedure for processing small claims in an economical manner. Not allowing attorney representation when the amount in dispute is small lowers the cost of adjudication to both parties. I hope you all have the time to review the comments from John Herbin, President of the Jamestown State Bank regarding this concern.

In conclusion, I would ask that you keep in mind that we are not advocating the unauthorized practice of law in any circumstance. We **are** asking for the right to represent a business interest under the limitations of small claims court – just as other interests are represented there.

# THE JAMESTOWN STATE BANK

422 WALNUT ST., P.O. BOX 285  
JAMESTOWN, KANSAS 66948

JOHN F. HERBIN  
PRESIDENT

January 29, 1999

Kathleen Olsen  
Associate General Counsel  
Kansas Bankers Association  
800 SW Jackson, Suite 1500  
Topeka, KS 66612-1265

Dear Kathy:

As I am aware of the upcoming hearings regarding the Small Claims Court Bill, SB 97, I would like to take this opportunity to express some of our bank's experiences with the small claims process of the past and to delineate some reasons why I would like to see SB 97 move forward.

My family has been involved in Kansas banking for 76 years. Our bank has been chartered for over 100 years. When necessary in the past, we always availed ourselves of the right to pursue some accounts through the small claims court. It was cost effective for us and the hearings were speedy. Then, one day in the summer of 1995, a bank employee visited the District Magistrate Court in our County with the intention of filing a small claims case against a delinquent debtor. He was instructed that our Magistrate no longer allowed corporations to file small claims cases. In disbelief, I made some telephone calls and found that banks in other jurisdictions were still using the small claims procedure, just as they had previously. Further investigation revealed that there was even disagreement in the legal community, from the Attorney General's Office on down, as to the application of a corporation's right to use the small claims court process.

Since we now have the opportunity to resolve this issue legislatively, once and for all, I would like to emphasize the following points in favor of this bill

- Small Claims Court is cost efficient for both the corporation and the debtor. That is why we had it in the first place. The small claims procedure act was enacted in 1973 to create a "practicable forum in which a small claim could be adjudicated economically"
- We are a small corporation and do not have in-house counsel. We cannot afford to hire an outside attorney at an hourly rate to collect small debts in Limited Action Cases. In the past our collection claims have averaged about \$500. Four or five hours of attorney's time can easily consume over 50 percent of the claim.
- It is difficult, if not impossible to persuade an attorney to represent a corporation in a small claims case on a contingency basis because there is not enough fee income relative to the time spent. Our primary attorney will not even accept contingency cases under \$200.00 and charges a 50 percent contingency on amounts above that.



January 29, 1999

- It is my opinion that that by being denied access to the small claims court our corporation is being denied a due process that sole proprietorships have enjoyed. We also have a small insurance agency that is owned by my family and which is not a part of the bank. However, since it is incorporated, we cannot even collect small unpaid accounts because we are not allowed access to the small claims court. We must write them off as a non-collectable debts
- There are 90,965 active corporations in the State of Kansas. All of these entities are now denied access to the small claims process, even though they pay millions of dollars in state income and sales taxes, and county property taxes to assist in funding our programs and highways. Personally, I feel it is unfair to prohibit such a large constituency from having access to the small claims procedure, merely over the definition of what constitutes "a person".

If you have any questions or comments, you are invited to contact me.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a long horizontal line extending to the right.



State of Kansas

## Office of the Attorney General

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

CARLA J. STOVALL  
ATTORNEY GENERAL

October 10, 1995

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
FAX: 296-6296

ATTORNEY GENERAL OPINION NO. 95- 100

The Honorable Janice L. Hardenburger  
State Senator, 21st District  
Rt. #1, Box 78  
Haddam, Kansas 66944

Re: Procedure, Civil for Limited Actions--Small Claims  
Procedure--Corporation's Use of Procedure Without  
Attorney Representation

Synopsis: The small claims procedure act, which prohibits  
attorney representation except in limited  
circumstances, abrogates the common law principle  
that corporations may appear in court only through  
an attorney. While corporate representatives may  
participate in small claims matters, they may not  
practice law. Cited herein: K.S.A. 61-2703;  
61-2704; 61-2705; 61-2707; 61-2712; 61-2713;  
61-2714.

\*

\*

\*

Dear Senator Hardenburger:

You request our opinion regarding whether a corporation may appear in small claims court by an agent who is not an attorney. You indicate that some district court magistrates are refusing to allow corporations to use the small claims process unless the corporation is represented by an attorney. The small claims procedure act specifically prohibits attorney representation except in limited circumstances.

The small claims procedure act provides a simple method for the recovery of money not exceeding the statutory amount of \$1,800. K.S.A. 61-2712; *Patterson v. Brouhard*, 246 Kan. 700, 703 (1990). The court supplies the forms for the plaintiff's statement of claim and the defendant's statement

of claim (if the defendant has a counter claim against the plaintiff). K.S.A. 61-2713. No other pleadings are permitted, no discovery is allowed, the trial is to the court and no party may be represented by an attorney except in limited circumstances. K.S.A. 61-2705; 61-2707; 61-2714. Any "person" may file a written statement of the plaintiff's claim with the clerk of the court. K.S.A. 61-2704(a). "Person" includes a corporation. K.S.A. 61-2703(b).

The small claims procedure act was enacted in 1973 after two legislative interim committees concluded that there was no practicable forum in which a small claim could be adjudicated economically. *1971 Reports and Recommendations to the 1972 Session of the Kansas Legislature*, p. 496. A special committee on small claims solicited input from judges of courts of limited jurisdiction and found that it was not economically feasible for most people to retain attorneys for claims of less than \$300 nor was this the kind of litigation profitable for most attorneys. Furthermore, the committee concluded that in a proceeding where the pleadings and other procedures were simple and informal, the particular talent of an attorney would be "superfluous." *Report on Kansas Legislative Interim Studies to the 1973 Legislature*, Proposal No. 20. The committee also agreed that the small claims process should be made available to merchants as well as consumers.

Since its enactment in 1973 there has been no significant change in the procedure and adjudication of small claims except that the statutory amount has increased from \$300 in 1973 to the current amount of \$1,800.

The common law of Kansas provides that a corporation may not appear in court by an agent who is not an attorney. *Union P.R. Co. v. Horney*, 5 Kan. 340 (1870); *U.P.R. Co. v. McCarty*, 8 Kan. 125 (1871). Because the small claims procedure act purports to authorize this nonlawyer representation, it has been suggested that the legislature has usurped the judiciary's inherent power to regulate the practice of law. *Unauthorized Corporate Law Practices in Small Claims Court: Should Anyone Care?*, 33 W.L.J. 345 (Spring 1994).

The reason for the common law rule stems from the fact that a corporation is an artificial entity that can only act through agents. Courts thus require persons trained in the law and familiar with court procedure to act as agents of the corporation in litigation in order to further the efficient administration of justice. *Oahu Plumbing and Sheet Metal Limited v. Kona Construction Inc.*, 590 P.2d 570 (Haw. 1979); 8 A.L.R. 5 653 (1992). However, some jurisdictions have made

an exception for small claims court. *Prudential Insurance Co. v. Small Claims Corp.*, 173 P.2d 38 (Ca. 1946); *State of Washington, ex rel. Long v. McLeod*, 496 P.2d 540 (Wash. 1972); *Woodford Manufacturing Co. v. A.O.Q. Inc.*, 772 P.2d 652 (Colo. App. 1988); *Woerner v. Seneca Petroleum Inc.*, 529 N.E.2d 660 (Ill. App. 1988); *Varney Enterprises Inc. v. W.M.F. Inc.*, 520 N.E.2d 1312 (Mass. 1988). In *Prudential Insurance Co.*, *supra*, the court concluded that since corporations were authorized to prosecute or defend claims in small claims court and since no party was allowed attorney representation, a corporation could appear in small claims court through an agent not licensed to practice law.

"There is a series of cases that it is argued compel the conclusion that a corporation under no circumstances may appear in a court of law in *propria persona* (citations omitted). These cases . . . hold that a corporation under general legal principles can only appear in a court of record by and through an attorney and may not appear and defend or prosecute through its officers or employees. Based on these cases appellant argues that since a corporation can only prosecute or defend legal actions through an attorney and since attorneys are prohibited in the small claims courts, such corporations are denied representation. The obvious answer to this argument is that all of the above cases dealt with courts of record and dealt with general common law principles. They all revolve around the general rule that a corporation in the absence of statutory authority . . . cannot practice law. None of them dealt with a statutory situation such as is here involved. Here we have a statute . . . that expressly confers on corporations, as well as on other persons, the right to prosecute or defend such actions [in small claims court]. At the same time it denies to corporations as well as to other litigants the right to appear in such actions by attorneys. Since a corporation can only speak through a natural person, it is apparent, therefore, that [the statute] must be interpreted as conferring on corporations the right to appear through some representative other than an



attorney. Thus, here, unlike the above cases, there is express statutory authorization for a corporation to appear in *propria persona*, through some proper representative other than an attorney. This serves to distinguish all of the cited cases." *Prudential Insurance Co.*, 173 P.2d at 42.

The attorney representation rule for corporations is part of the common law which can be abrogated or modified by statute. *City of Haven v. Gregg*, 244 Kan. 117, 123 (1988). The legislature has abrogated this principle by virtue of K.S.A. 61-2703(b) and K.S.A. 61-2707. Consequently, it is our opinion that a corporation may participate in small claims court through an agent who is not licensed to practice law. We note that there has been some confusion because of the attorney representation rule which resulted in some district court magistrates requiring corporations to appear by attorney in small claims actions thus creating an inequity for the other party - usually, an individual who was not entitled to attorney representation. The legislature addressed this situation in 1994 by enacting K.S.A. 61-2714 which allows a party not represented by an attorney to be so represented if the other party is represented by counsel or is an attorney representing himself or herself.

Concerning the issue of whether the legislature is usurping the judiciary's inherent right to regulate the practice of law by authorizing nonlawyer corporate representatives to appear in small claims court, the threshold question is whether these representatives are engaging in the unauthorized practice of law. In *State ex rel. Stephan v. Williams*, 246 Kan. 681 (1990) the court concluded that there is no precise, all encompassing definition of what constitutes the practice of law and that each situation must be considered on its own facts on a case-by-case basis.

"Although it may sometimes be articulated more simply, one definition [of "practice of law"] has gained widespread acceptance, and has been adopted by this Court:

"'A general definition of the term frequently quoted with approval is given in *Eley v. Miller*, 7 Ind. App. 529, 34 N.E. 836, as follows:'

"'As the term is generally understood, the practice of law is the doing or performing of services in a court of justice, in any

matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be depending in a court.' *State, ex rel., v. Perkins*, 138 Kan. 899, 907, 908, 28 P.2d 765 (1934).

. . . .

"A more recent source defines the practice of law as 'the rendition of services requiring the knowledge and application of legal principles and technique to serve the interests of another with his consent.' (Citation omitted)."

In *State ex rel. v. Hill*, 233 Kan. 425, 426 (1978), the court adopted a test for determining what is the unauthorized practice of law.

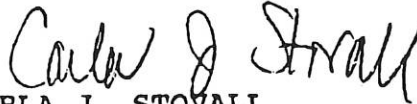
"The main general test in unlawful practice of law cases seems to be whether or not an attorney-client relationship exists. That is whether the person whose conduct is under scrutiny represented or implied he had legal knowledge beyond that of a layman and provided 'professional' assistance to a 'client'. The customer pays for the 'skill,' 'special knowledge' or 'expertise' of the seller. There is a personalization of services provided. That is, the customer provides the data or raw material and the 'expert' assembles, compiles, organizes, etc. And using the 'expertise' (real or imagined) provides a legal service."

Because the concept of the practice of law is so amorphous and dependent upon the specific acts of the individual in question we cannot conclude that every representative of a corporation engages in the practice of law simply by filling out a form and appearing in small claims court. In *Depew v. Wichita Association of Credit Men*, 142 Kan. 403, 411 (1935) the court concluded that the filling out of forms like blank promissory notes, drafts and similar forms that are obtainable at book stores does not constitute the practice of law where no legal skill or knowledge is required, no advice as to legal rights

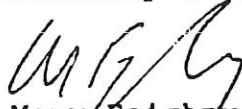
is given and no remuneration is received. Following this rationale, it is our opinion that merely completing the fill-in-the-blank statement of claim form does not constitute practicing law in the absence of evidence that legal skill or knowledge is required and legal advice given.

We hasten to note that our interpretation of the small claims procedure act only extends to allowing corporate agents to participate. It does not authorize corporate representatives to practice law. A corporate representative who appears in small claims court and conducts direct and cross examination of witnesses, presents and objects to evidence and makes legal arguments may be engaging in the practice of law. (Attorney General Opinion No. 93-100). However, if this is the case, the remedy is a quo warranto action filed by this office or, possibly, an injunction action filed by attorneys (*see Depew, supra*, where 8 attorneys obtained an injunction to prohibit a corporation from engaging in the unauthorized practice of law.) We have no facts upon which to base a conclusion that the unauthorized practice of law is occurring in small claims courts throughout the state of Kansas and, therefore, it is our opinion that the legislature is not usurping the judiciary's power to regulate the practice of law by allowing nonlawyer corporate representatives to appear in small claims courts.

Very truly yours,



CARLA J. STOVALL  
Attorney General of Kansas



Mary Feighny  
Assistant Attorney General

CJS:JLM:MF:jm

5 Jul  
2-4-99  
a 2

*Cleaver Farm & Home*  
LUMBER - FARM SUPPLIES - HARDWARE - FEED - PAINT  
2103 S. SANTE FE  
CHANUTE, KANSAS 66720

Good Morning. Mister Chairman and members of the Senate Judicial Committee. My name is Eldon Cleaver from Chanute KS. I am the owner of Cleaver Farm & Home and appear before you today favoring the passage of Senate Bill 97, which would allow corporations such as mine representation in small claims Court.

Along with my wife, we have operated our business in Neosho County for many years. As it is a rural community, much of our business is conducted on an open account type arrangement. As a matter of policy, we extend credit to those who meet the criteria of our credit applications, which we issue to each customer wanting to establish an account with our business.

We send out approximately 1000 statements a month. Most of our customers pay within our terms. Some don't. For those that don't we have a policy of contacting these people by phone, in writing, fax, or in person to settle the account. Due to the size of these collectibles (usually less than \$400.00) we do not seek legal assistance. While small claims certainly does not guarantee collection, it is a simple procedure and usually results in a settlement within a given time period. The bill before you is of major interest to my business and to myself. As stated, most of these collections are in a range under \$400.00. Attorneys will wrinkle their noses when asked to pursue such an amount, and when you factor the legal costs, we are better off for the time and effort simply to write off the entire matter as a loss. That is a lousy way to run a business. Half seriously, it would be better if those impacted by this action were to rob me blind to make it worth my while to have an attorney involvement! Can you imagine a sign posted on my door saying "we prosecute theft, but make sure you take a lot when you steal from me so it will be worth the effort to prosecute you." I can not believe that you folks in the Legislature have ever

Sen Jud  
2-4-99  
att 2



intended to keep small businesses like mine out of small claims court. Certainly my State Representative and State Senator feel I should have access to this court.

Judge Tim Brazil, a local judge told me that he feels small claims is working just the way it is supposed to be working. He told me attorneys would rather work cases that are a better use of their time, and small merchants need a place where they can settle matters such as this. He feels small claims is a perfect fit for this type of situation.

In some candid follow up remarks, Judge Brazil noted the Chapter 61 action, another avenue for collection of debt ends up creating the same problems I see us talking about today—that an attorney must be present. We utilize Chapter 61 action in some cases, but such actions are much more cumbersome in their administrative requirements.

As a retailer in a small town, I can tell you it is tough enough out there. We are doing all we can to hold our communities together and provide services and products to impact growth in our region. We will play the game with the cards dealt, but let's at least keep the rules we have to help us continue to grow our businesses. We have had the ability to use small claims court for many years now. If you want to send a message to the real vermin of our society to pick our bones dry, keeping businesses like mine away from the opportunity this court provides to settle these matter would help a segment of our society I am sure you do not want to help. This issue is a very serious issue to my family and my business, and as such I ask this Committee to give its strongest consideration to the passage of Senate Bill 97.

I thank the members of the Committee for allowing me the time to testify before you today and will try to answer any questions.

5 Feb  
2-4-99  
att3

6321 BLUE RIDGE BLVD. • KANSAS CITY, MO 64133  
PHONE 816-313-2020 FAX: 816-313-1910

# MID-AMERICA LUMBERMENS ASSOCIATION



## TESTIMONY

### SENATE JUDICIARY COMMITTEE

FEBRUARY 4, 1999

SENATE BILL #97

*Good Morning. Mr. Chairman and members of the Committee, my name is Art Brown. I stand before you today representing the retail lumber and building material dealers in the State of Kansas as a strong proponent of SB 97.*

*As is the case anytime I testify before this Committee, I must tell you first and foremost that I am not an attorney. Asking me any legal questions will not assure you of a knowledgeable answer, although I would endeavor to answer to the best of my ability.*

*I sincerely thank my friends in the banking community for bringing this issue to the attention of the Legislature by authoring this bill. We were getting some rumblings recently about businesses being denied access to the small claims venue, and were pondering the seriousness of the problem. Obviously, other groups were experiencing the same concerns with their memberships, hence the public hearing today to address the issue of corporate representation in this venue.*

Sen Jud  
2-4-99  
att3

As an Association, we were one of the interested parties in the forefront when the cap on small claims was raised from \$1000.00 to the current \$1800.00 level during the 1994 session. In November of that year, Ron Smith of the Kansas Bar wrote a publication for the Washburn Law Journal which I hold before you now: "Unauthorized corporate law practices in small claims court: should anybody care?" I applaud the author on a well written and researched essay. It seems to have been a "Genius" of sorts to get some of the Judges in this State to reconsider a policy they had adopted, which allowed corporations to utilize the small claims venue.

As many of you know, there is a great deal of case law that prohibits corporations from appearing in any court without the representation of an attorney. Somewhere, and somehow, for reasons that certainly cannot be pinpointed, small business corporations have been allowed to utilize this venue in Kansas for many years.

I have had the occasion to read Mr. Smiths essay. I had to chuckle to myself about the text at the bottom of page 346. It states that some critics note that small claims court has become little more than a taxpayer-subsidized collection for businesses. The last time I looked, businesses paid taxes also. Maybe I have it a little backwards, but it would seem to me that the Judiciary, like the Legislature, is here to serve the people of the State of Kansas. It seems odd to me that such an attempt is being made to isolate the small business community from these services. You would think the attempt would be made to find a way to reach out and assist in helping these folks instead of writing essays telling us we must utilize an attorney to deal with a problem that many do not want to address as Mr. Cleaver noted in his testimony. I think

many of you would concur with those thoughts. He also references in parts of his essay that this issue would be best settled by the Judicial system, and that the Legislature should not be involved in this matter. ( pgs. 348, 351, 363 to name a few pages. ) Mr. Smith also references a 1972 interim Committee report ( pg 349) which states that ( I will paraphrase) generally speaking, businesses can afford to collect their accounts by other means. The Committee did feel strongly that a small claims procedure should be made available to merchants as well as consumers. Given this background, this Committee is being given a chance to follow up on the 1972 report and use this bill as a vehicle to do so. As for the comment about the Legislature's role in all of this, my thought is that you as a body pass laws that in your mind are good public policy. In regards to how all of this will stand up in the long run, at the end of the day, let's just see how the chips will fall.

I happen to believe there is an perception problem at issue in this matter. It just seems the word "corporation" stirs up images of a General Motors, Boeing or Farmland Industries type of entity. Corporations of this magnitude do not utilize the small claims venue as they have their own in house legal staff or retained legal services. Let's fast forward to the 20th century to take another look at corporations today. The truth of the matter is, and somewhat the irony, is that businesses like Mr. Cleavers are the norm in the small claims venue. Attorneys, rightfully so, have been telling he and thousands of businesses like his to incorporate over the years primarily for liability protection. Also note that a trend today in our society is to hire outside services. Employers many times will take incorporation as a benchmark in companies they would hire to provide services to their customers to protect themselves from the possible tax liability associated with the

employee/independent contractor relationship which can be a tax land mine. The I.R.S. considers incorporation as one of the major components for independent contractor status. With companies hiring these independent contractors, the savings in employment taxes, and benefits is enormous and is a rapidly growing trend in today's business community. Again, most of these corporations are small businesses, much like Mr. Cleavers.

To me, not to pass this law, is akin to taking ice cream away from a baby. You can do it, but you sure will hear some howling if you do. To tell these folks they can no longer use this court when they have done so for many years and to explain why they can't is going to be a real hard sell.

This bill has generated a great deal of interest. I don't have a list of conferees, but there are a host of small business groups that have asked me about this bill. Don't think just because they may not be here ( and they may be for all I know ) that they don't have a strong concern about this issue. I don't know how many members of this Committee have been approached about this matter, but I certainly see that this is an important issue to many small business groups, given discussions amongst my peers.

I close simply by saying that Mr. Cleaver very much represents the typical small business user of the small claims venue. As stated in his testimony he has visited with his State Senator and Representative and they support him in his endeavor to continue to utilize the small claims court. They also support this bill. It is my hope you also support this bill and pass it favorably out of this Committee.



5 Feb 99  
17

Testimony of SB 97  
Judiciary Committee  
February 4, 1999  
Prepared by Joe Lieber, Kansas Cooperative Council

Mr. Chairman and members of the Committee. I'm Joe Lieber, Executive Vice President of the Kansas Cooperative Council. The Council has a membership of nearly 200 cooperative businesses who have a combined total of nearly 200,000 Kansans.

The Council is in support of SB 97.

It has always been our belief that the Small Claims Court was established for people and organizations that can not afford to hire an attorney.

SB 97 will insure that corporations can be represented by an officer of the corporation or by an agent designated by corporate resolution.

Many times, when people think of corporations, they think of large firms, such as General Motors, IBM or AT&T. But, many small businesses, including farms, have organized themselves as corporations. Asking these businesses to hire an attorney kind of defeats the purpose of the small claims court.

Again, Mr. Chairman and members of the committee, we ask for your support of SB 97.

If you have any questions, I will attempt to answer them.

Sam Judd  
2-4-99  
att 4

STUD  
2-4-99  
att 5

# LEGISLATIVE TESTIMONY



*The Unified Voice of Business*

835 SW Topeka Blvd. • Topeka, KS 66612-1671 • 785-357-6321 • Fax: 785-357-4732 • E-mail: [kcci@kansaschamber.org](mailto:kcci@kansaschamber.org) • [www.kansaschamber.org](http://www.kansaschamber.org)

SB 97

February 4, 1999

## KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Judiciary Committee

by

Natalie Bright

Director of Taxation & Small Business

Chairman Emert and Honorable Committee Members:

I am Natalie Bright, Director of Taxation and Small Business for the Kansas Chamber of Commerce and Industry and I thank you for the opportunity to appear before you in support of SB 97.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 47% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

The Kansas Legislature enacted the Small Claims Procedure Act in 1973 to address the need for an economical forum to resolve small disputes. After a two-year study, the interim committee report indicated that attorneys could not handle all the cases and that judges of limited jurisdiction felt it was not economically feasible for most people to retain an attorney to handle claims small in nature.

The interim committee reasoned that if the proceeding were with limited pleadings and simple

Sen Jud  
2-4-99  
att 5

cedures, the talent of an attorney would be superfluous. The committee noted that giving people a practical and economical procedure by which to adjudicate small claims was so important that it should be available statewide.

In response to these concerns, the 1973 Kansas Legislature enacted the Small Claims Procedure Act, as set out in K.S.A. §61-2707, et seq. This Act provides a simple adjudication for monetary disputes not exceeding \$1,800. In order to recover the disputed sum, any "person" may file a claim with the clerk of the court. K.S.A. §61-2703 (b) sets out the definition of those "persons" entitled to use the Act and specifically includes a corporation.

I appear before you today to ask that you reaffirm the intent of the 1973 Legislature by amending the Small Claim Procedure Act as set out in SB 97. This amendment would codify the intent of the 1973 Legislature by expressly allowing a corporation to appear in small claims court by an officer or an agent of the corporation. Furthermore, it addresses the recent trend of magistrate judges to deny corporations access to small claims courts. They preface their denials on common law that provides that a corporation may not appear in court by a representative other than an attorney because it is an artificial entity whose interest must be protected. As such, those corporations being denied are forced to either hire an attorney and pursue their claims in an alternative forum or forgo their claims all together.

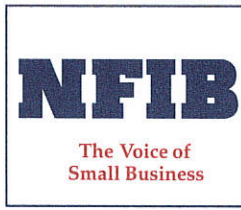
According to Attorney General Opinion 95-100, this trend among magistrate judges is misguided. The rule of requiring corporations to be represented by attorneys is based on common law. Under the rules of precedence, statutory law outweighs common law. When the 1973 Legislature made the policy decision to statutorily permit corporations to appear under the Small Claims Procedure Act, the mandate of the common law requiring attorneys to represent corporations was overridden. As such, the magistrate judges are misapplying the law and wrongfully denying corporations access.

In addition, there is speculation that any non-attorney appearing on behalf of a corporation in a small claims forum is engaging in the unauthorized practice of law. In Attorney General Opinion 95-

, it is noted that there is no precise definition as to what constitutes the unauthorized practice of law and as such each situation must be decided on a case by case basis. Furthermore, since the Small Claims Procedure Act statutorily permits a corporation to appear in small claims, there is no foundation for an argument that one is guilty of engaging in the unauthorized practice of law. In other words, since a corporation is an entity and not a human, there is logically no other means for the corporation to appear under the Kansas Small Claims Procedure Act, but by a non-attorney.

Today, it is imperative we protect the policy decision made in 1973 by the Kansas Legislature. Small claims is an inexpensive forum where businesses, especially those very small, are able to settle their disputes economically. There is often a misconception that all businesses either have an attorney in house or retain one on fee. Though this may be a luxury for many larger businesses, this is not the reality for small to mid-size businesses. As I am sure most of you are aware, decent legal advice and assistance is not cheap. Under most circumstances, businesses are more than willing to pay what it takes to protect their assets and settle their disputes. However, there are instances where the expense of settling one's dispute is more than the amount in controversy. After a simple cost analysis, the smart businessman is forced to forgo pursuing claims. Yet, for many small businesses, the cumulative effect of forgoing small claims will be economically devastating not to mention frustrating.

The circumstances identified by the 1972 interim committee for creating the small claims forum have not gone away. In 1999, it is still expensive to hire legal counsel and difficult to find one willing to handle disputes of small amounts. Currently, there are almost 91,000 corporations registered with the State of Kansas. If you do not act favorably on SB 97, these 91,000 corporations stand to be denied access to a much-needed forum provided by the Small Claims Procedure Act as intended by the 1973 Legislature.



SJL  
4-99  
att  
6

NFIB Kansas

**Statement by  
Hal Hudson, State Director  
Kansas Chapter  
National Federation of Independent Business  
Before the  
Kansas Senate Judiciary Committee  
February 4, 1999**

Mr. Chairman and Members of the Committee: Thank you for granting this opportunity for me to appear in support of S.B. 97. My name is Hal Hudson. I am here today representing the more than 7,000 members of the Kansas Chapter of NFIB, most of whom are very small businesses. In fact, the majority of NFIB/Kansas members, over 80 percent, employ 15 or fewer persons.

Many of our members' businesses are proprietorships or partnerships. However, as they grow, more and more firms are incorporating – either as "S" corps. or regular "C" corporations.

It is these firms that find themselves locked out of small claims court, and need the provisions of S.B. 97 to help them collect small debts.

Often, the debts they need to collect are too small to justify hiring an attorney, and going into district court. Allowing a corporate officer or a designated agent to represent the company would be very helpful.

I urge you to report S.B. 97 favorably, and to support its enactment.

Thank you.

See grid  
2-4-99  
att 6





Date: February 4, 1999

To: The Senate Judiciary Committee

From: J. Sue Anderson, Executive Director

Re: Senate Bill 97

On behalf of the membership of the Community Bankers Association of Kansas, thank you for the opportunity to comment on Senate Bill 97. We are in support of the amendment suggested to K.S.A. 61-2707.

It was brought to our attention last Spring by one of our members that a discrepancy existed concerning whether banks had the ability of banks to represent themselves in small claims court or whether an attorney could represent the corporation on its behalf. A copy of this community banker's letter of frustration is attached to our testimony.

Traditionally, under Kansas Common Law, banks had been able to represent themselves in small claims court, since Kansas law states that no party in any case before the Small Claims Court will be represented by an attorney. The contradiction developed when a Kansas Court of Appeals ruled in early 1997 that under Kansas Common Law, corporations were an artificial entity which is separate from individuals acting on its behalf. The Court's conclusion was, that banks could not represent themselves (by way of a non-lawyer representative) to argue a case before the court. So it has been a catch-22 situation . . . a problematic situation for which a common sense solution is denied by a circumstance.

Senate Bill 97 remedies this contradiction and restores reason to the situation. We respectfully ask the Judiciary Committee to approve this measure.

*Senate Jud*  
*2-4-99*  
*att 7*

C:\WPFILES\SA\POLITICS\ST SESSION\99\SM-CLAIM\897

*Directed By The Members We Serve*

# Wellsville Bank

April 7, 1998

Sue Anderson, Exec. Director  
Community Bankers Assn.  
2942-B SW Wanamaker Dr.  
Suite 2 A  
Topeka, Ks 66614

Dear Sue,

I raised the question at the CBA March 12 meeting about corporations not allowed in small claims court. Our bank was kicked out of small claims court in Franklin County due to a court of appeals ruling October 10, 1997, disallowing corporations (banks) in small claims (SC) court, and were told that we must have an attorney represent us. At the same time the Franklin County SC rules state "No Attorneys".

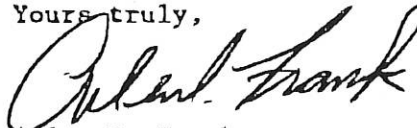
So, we had a SC case in Douglas County. The Douglas County judge said "No" your attorney cannot be present, the Bank has to appear. One county says we can't the other adjoining county says we can. "A damn mess".

Come to find out we have an administrative judge over 4 counties (Franklin, Osage, Coffey and Anderson). Judge James Smith. He has followed the court of appeals opinion in his counties. While the Administrative Judge north of us (Douglas co.) does not follow the appeals decision.

Our Attorney says the Stovall opinion is just that "an opinion". Judges are not bound to follow an opinion by the Attorney General.

Our Bank wishes to bring this up because it needs to be straightened out. We use the small claims court and if our judge reads the appeals decision surely other judges will begin to notice. I couldn't believe no other bankers have heard of this. Something needs to be done.

Yours truly,



Arlen D. Frank  
President



## KANSAS AUTOMOBILE DEALERS ASSOCIATION

---

### BEFORE THE SENATE COMMITTEE ON JUDICIARY

Thursday, February 4, 1999

10:00 a.m.

Senate Bill 97

Mr. Chairman, Members of the Committee:

On behalf of the Kansas Automobile Dealers Association, it is our pleasure to submit to you our written comments with respect to Senate Bill No. 97 which essentially would amend the current Kansas small claims court procedure act to allow greater access by Kansas corporations on claims which in many cases are not economical to pursue by retaining counsel, or practical, except through the small claims procedure. Kansas new automobile dealers support the amendments proposed to you which are represented in Senate Bill No. 97.

Our membership ranges from the very small "mom and pop" type of retail automobile establishment to what some people would consider to be quite large corporate operations. However, in a state like Kansas, virtually none of our individual member dealerships qualify as the type of business arrangement that many people refer to as multi-national corporations or very large domestic corporations such as those manufacturers whose trademarks our members represent. There are some who would fear allowing such corporations for many reasons to have the use of the small claims court procedure. However, we believe the type of entity which is going to use this procedure is that which would normally be viewed as the traditional small or medium size business.

In reading the small claims procedure we believe that it would be erroneous to infer the exclusion of corporate use of the procedure under current law. However, unfortunately, there are many courts throughout the state which are doing so under the present act. We find that in many cases this arises from the application of the case of Atchinson Homeless Shelters, Inc. v. Atchinson County, 24 Kan.App. 2d 454 (1997). This case notes the long-standing rule in this state that under

800 S.W. Jackson, Suite 1110 • Topeka, KS 66612

Telephone (785) 233-6456 • Fax (785) 233-1462

*Sen Jud*  
*2-4-99*  
*Att 8*

the common law an appearance in court of a corporation by an agent other than a licensed attorney was not proper since a corporation is an artificial entity without the right of self-representation.

Since there are courts which are following this case in the context of small claims, despite other references in the procedure itself which would seem to indicate otherwise, all doubt needs to be removed. We have actually had small dealerships excluded from small claims court while seeking to collect small isolated bills which simply did not justify hiring an attorney, and which few attorneys, if any, would accept for collection. Keep in mind, in each and every case we are talking about a claim of less than \$1,800 and since that is the limit of small claims jurisdiction, in most cases we are talking about sums far less than that.

In our instance it is usually an unpaid repair bill for which special arrangements were made in the first place. Often they are arrangements which (1) do not justify a lien filing; (2) are not subject to liens; or (3) for which the dealer, out of consideration for the customer, has not pursued a lien or has been lenient. Most dealerships try not to carry accounts receivable on day to day business, but occasions do arise where unpaid bills come about.

Virtually every new automobile dealership in the state of Kansas is a corporation or limited liability company. The manufacturers whose trademarks our members represent require them to be organized that way. There are a number of reasons for doing so, but the unintended result is that inefficient business practices are locked in if the dealership is not able to use an expedited cost effective procedure such as small claims court.

We repeatedly hear that judicial budgets are strained with the case load, particularly in metropolitan counties, created with cases filed under criminal, limited actions and regular civil procedure rules. By excluding small claims jurisdiction for corporations, that burden is only amplified as it would force the company to tie up the regular civil process outside of the small claims procedure for a case that is either handled by default or a hearing of one half hour to an hour.

Since our members are generally going to use this process on an isolated or occasional basis, it can only make sense to make it clearly available in every county.

Thank you for your attention.

Don L. McNeely, President  
Kansas Automobile Dealers Association

*Written to go*

## Petroleum Marketers and Convenience Store Association of Kansas

---

*Serving the Independent Petroleum Marketing Industry of Kansas since 1914*

Memo to: Members of the Senate Judiciary Committee  
From: Thomas M. Palace, Executive Director, PMCA of Kansas  
Date: February 4, 1999  
Re: Testimony for Senate Bill 97

Mr. Chairman, Members of the Senate Judiciary Committee;

My name is Tom Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas, representing over 350 independent Kansas petroleum companies that distribute petroleum products at the wholesale and retail level.

We appreciate the opportunity to provide written testimony in support of SB 97.

Independent petroleum marketers market fuel throughout the State of Kansas. Many times, customers fail to pay their monthly bill. When this happens, marketers normally attempt to collect the balance due on their own initiative. However, when customers fail to pay their bill, and depending on the amount owed, the only alternatives available to the marketer are either to turn it over to a collection agent or to file a claim with the small claims court. Because of the attorney representation rule in which some district court magistrates required corporations to appear by attorney is prohibited by the small claims procedures act, this rule has caused great consternation amongst our members.

It appears there are inconsistencies in the Kansas Statutes as they relate to the small claims procedure act. The small claims procedure act prohibits attorney representation except in limited circumstances. The act abrogates the common law principle that corporations may appear in court only through an attorney. The Attorney General has opined that a corporation may participate in small claims court through an agent who is not licensed to practice law. With this opinion, Senate Bill 97 simply puts in statute what the Attorney General has stated is acceptable.

PMCA of Kansas appreciates the opportunity to provide written testimony and position in support of Senate Bill 97.





**KANSAS BAR  
ASSOCIATION**

1200 SW Harrison St.  
P.O. Box 1037  
Topeka, Kansas 66601-1037  
Telephone (785) 234-5696  
FAX (785) 234-3813  
Email: ksbar@ink.org

**MEMORANDUM  
Appendix "C"**

**TO: Members, Senate Judiciary Committee**  
**FROM: Ron Smith**  
**SUBJ: Appendix, Small Claims**

Enclosed are responses from district court clerks and administrative judges to a random fax request I sent out in early January. Several things are clear from this response:

1. a majority of new small claims filings involve businesses and corporations, even at the \$1800 level;
2. clerks have concerns that people who obtain judgments do not know how to collect the judgment, leading to hard feelings.
3. Some jurisdictions are seeing corporations file more than 10 cases per year, which by law are void judgments but the defendants do not know this.
4. One judge indicate that if he ever gets shot it will be in a small claims action, not a domestic relations action.
5. The claims may be "small," but the problems are large.

Thank you.

*Sen Jud  
2-4-99  
att 10*

*5 Jul  
2 39  
att 10*

5-14-99  
4-99  
10



**KANSAS BAR  
ASSOCIATION**

1200 SW Harrison St.  
P.O. Box 1037  
Topeka, Kansas 66601-1037  
Telephone (785) 234-5696  
FAX (785) 234-3813  
Email: ksbar@ink.org

**Legislative Testimony**

**TO:** Members, Senate Judiciary Committee  
**FROM:** Ron Smith, General Counsel  
Kansas Bar Association  
**SUBJ:** SB97; Small Claims Jurisdiction  
**DATE:** February 4, 1999

The proposed amendment in this bill distinctly raises the issue of the unauthorized practice of law being practiced in our small claims courts. In summary, KBA opposes this bill for several reasons.

1. This bill is more than just allowing corporations to appear in a court. Corporations already appear in small claims court using "full time employees."
2. The reason for the expansion being sought in this bill is that businesses have turned small claims court into a collections court. Thus, many other groups will seek to expand the jurisdiction of small claims court by increasing the amount plaintiffs can seek.
3. The appellate process in small claims court is decidedly more unfair to the small claims defendants than similar defendants in Chapter 61 cases of an identical nature.
4. The new language codifies the unauthorized practice of law that already is taking place in small claims courts. Legislatures have no authority to decide who can represent others in our court system.

**I.**

**Separation of Judicial and Legislative Powers**

The claims are "small" but the issues are large. The Kansas constitution creates three *constitutional* powers: executive, legislative and judicial power. *These powers are coequal*. One is not more important than another. The constitution gives judicial power solely to the Supreme Court to administer. Representing someone or some entity in a courtroom is the practice of law. In *Martin v. Davis*, 187 Kan. 473, 478-79, 357 P.2d 782 (1960), the Court held the right to regulate the practice of law is a judicial power that "naturally and logically belongs to the judicial department." Judicial power also allows the court to unilaterally "prevent the practice of law by unauthorized persons." Included in the concept of judicial power is "the supreme court's inherent right to prescribe conditions for admission to the bar, to define, supervise regulate and control the practice of law, whether in or out

Sen. Jul  
2-4-99  
att 11

of court, and *this is so notwithstanding acts of the legislature in the exercise of its police power to protect the public interest and welfare.*"<sup>1</sup>

The *only* power to regulate any profession that is found in the constitution is the *judicial* power to administer the courts. No individual has the right to practice medicine, or teach without a license. No person has the right to practice law and represent other persons or entities without a license. The shorthand here is that the legislature can affect judicial power *only* with the acquiescence of the judicial branch.

One of the purposes for courts controlling who practices law is "to guard against the unauthorized practice of law by those who are not subject to the general discipline of the Court."<sup>2</sup> Corporations which appear without attorneys are not subject to judicial regulation of the *methods* in which they practice law. Representing others in a courtroom is a basic definition of the practice of law.<sup>3</sup> All other professional regulation is subject to legislation. However, the Supreme Court, not the legislature, sets the rules for who practices law in the courts.<sup>4</sup>

Many of you have heard of Franklin Dee Williams. Several times, Mr. Williams has sought permission from the LCC to use the capitol legislative rooms for his Citizens' Constitutional Court. The LCC has said no. *There is no appeal from an LCC decision on legislative room assignments. Not even to a court.* This is because a basic legislative power is the power to decide how legislative rooms are scheduled. I doubt any Court would interfere with that basic legislative power.

In 1990, the same Franklin Dee Williams was representing farmers against banks in farm foreclosures. Williams claimed to be a lawyer by authority of representing a territorial-era corporation. Mr. Williams was very good at delaying the legal process of foreclosures. In that case, the Kansas Supreme Court held that nonattorneys who "*appeared on behalf of others at court hearings ... [were] engaged in unauthorized practice of law ....*" The petition by the Attorney General in *Williams* requested the court enjoin the defendant from even "appearing as counsel or filing papers for others in any courts ..."<sup>5</sup>

Mr. Williams is a good example that the *legislature* decides legislative issues; the Supreme Court decides Judicial power issues. One of those judicial powers is who can practice law in a court.

The legislature has the power to create a court. It does not have the power to tell the Court who practice law in that new court.

---

<sup>1</sup> *Martin v. Davis, Id.* In accord, *Washington State Bar Assoc. v. State of Washington, etal*, 890 P.2d. 1047 (1995); *In re Succession of Wallace*, 574 So.2d 348 (La. 1991) *Attwell v. Nichols*, 466 F.Supp. 206, 209 (1979)

<sup>2</sup> *Reeves v. Queen City Transp.*, 10 F.Supp.2d 1181 (D.Colo. 1998)

<sup>3</sup> *State ex rel. Stephan v. Adam*, 243 Kan. 619, 623, 760 P.2d 683 (1988)

<sup>4</sup> "[The legislature has no authority to regulate the practice of law] because the regulation of the practice of law is the exclusive constitutional prerogative of the court." *Norvell v. Credit Bureau of Albuquerque*, 514 P.2d 40 (1973).

<sup>5</sup> *State ex rel Stephan v. Williams*, 246 Kan. 681, 793 P.2d 234 (1990)

SB 97, authorizing agents of corporations to appear in court, does the exact same thing that Mr. Williams was told in 1990 he could not do!

Indeed, if the legislature can authorize Mr. Williams to appear on behalf of the corporations, doesn't equal protection require you to authorize Mr. Williams to be able to be an agent for a defendant?<sup>6</sup>

SB 97 attempts to overturn 175 years of jurisprudence in this nation and this state. The reality is the Kansas Legislature cannot by law empower corporations to use nonlawyers in any court without violating the Separation of Powers doctrine.<sup>7</sup>

## II.

**Small claims was intended as a court for individual people to resolve their disputes without using attorneys. Since 1972, the public has not requested expansion of this court. It has been the business community.**

An individual can represent himself or herself in any litigation, civil or criminal. It may not be wise, but it is a right found in the state constitution.<sup>8</sup> Corporations and other business entities are not human beings. In many ways corporations have liability, tax and business advantages than human beings do not have. In return for the advantages of being a corporation, they are required historically to be represented in courts by attorneys. Corporations are relatively new business entities and primarily came into being since 1800. Since 1832 in the federal common law,<sup>9</sup> and since 1871 in Kansas common law,<sup>10</sup> the courts have held that a corporation does not have the right of self-representation. Corporations who attempt to appear in Kansas courts without an attorney are denied access to either the court or the appellate process.<sup>11</sup>

As an artificial entity, requiring corporations to be represented by attorneys maintains the distinction between the corporation itself and the separate interests of the directors and employees.<sup>12</sup> It also keeps corporations from practicing law without a license. In other words, the rule keeps the corporation's interests and the directors interests separate.

---

<sup>6</sup> I make this suggestion knowing full well that case law does not allow this result. In *State v. Matzke*, 236 Kan. 833, 696 P.2d 396 (1985), a defendant asked specifically to have a nonlawyer friend represent him in a criminal matter. The request was denied.

<sup>7</sup> In *Williams*, the Kansas Supreme Court decided neither the territorial legislature nor a corporation organized by that legislature had the power to authorize a nonattorney to practice law in Kansas. "The authority to admit a person to the bar of Kansas and to authorize the practice of law in Kansas is vested solely in the Kansas Supreme Court. \*\*\* While respondent may appear in court on his own behalf when he is a named party to pending litigation, he has no right, franchise, or authority to appear for or on behalf of any other person or entity." (emphasis added).

<sup>8</sup> Section 10, Kansas bill of rights, guarantees the right to "appear and defend in person" in all "prosecutions." Case law has expanded the right to include representing one's self in civil actions, too. See *Atchison Homeless Shelters v. Atchison Co.*, 24 Kan.App.2d 454, 946 P.2d 113 (Kan.App. 1997), and *Williams, supra.*

<sup>9</sup> *Osborn v. President of Bank of United States*, 9 Wheat. 738, 22 U.S. 738, 829-831, 6 L.Ed. 204 (1832). The Congress has enacted a law regarding this point. See 28 U.S.C. § 1654 (1997).

<sup>10</sup> *U.P. Railway Co. v. McCarty*, 8 Kan. 125, 131 (1871), and *U.P.R.W. Co. v. Horney*, 5 Kan. 340, 347 (1870).

<sup>11</sup> *Atchison Homeless Shelters v. Atchison Co.*, 24 Kan.App.2d 454, 946 P.2d 113 (Kan.App. 1997)

<sup>12</sup> *Id.*

If you want to devise a system of arbitration outside the courtroom that involves debtors and creditors, that's fine. You can define what rules of representation are available in that system. However, if you create a court, even a small claims court, and make it part of the Article III Judicial System of Kansas, at that point the Judiciary takes over as administrators to decide who practices law in those courts.

**III.  
Comparing Small Claims & Chapter 61:  
Unfair to the small claims defendant**

By comparing Small Claims court and Chapter 61 (collections) courts, you can see that *for the business community* they are remarkably similar. However, note in the following table that *appellate rights* are much different. The shaded areas underscore the differences.

| Issue  | Small Claims Court                                    | Chapter 61 Court  |
|--|---|---|
| Filing fee in all matters up to \$5000   | The Same in both courts                               | The Same in both courts   |
| Limitation on jurisdiction   | \$1800 or less; ten times per year                    | Unlimited amounts in certain contract areas, \$10,000 in tort; no limit on yearly filings |
| Limitation on discovery  | No discovery is allowed.                              | Very limited discovery is allowed.  |
| Corporation required to have Attorney Representation   | No, by what we believe is an unconstitutional statute | Yes, by Court Rules & Case Law  |
| Right of either party to appeal de novo to the district court  | Yes   | Yes   |
| Right to jury trial in initial proceeding  | No  | Yes   |
| Limited pleadings.   | Very informal. Primarily a petition & Answer          | Petition is a little more formal than small claims court.                                 |
| Attorney can be used on appeal to District Court   | Yes   | Yes   |
| Right to jury trial on appeal  | Yes   | Yes   |
| If losing party in lower court wins on appeal, they get attorneys fees and cost penalty.                           | No  | No  |
| If winning party in small claims court wins on appeal in district court, they get attorneys fees and cost penalty. | Yes   | No  |
| Post-Judgment the winner can seek to collect the judgment using garnishment & attachment                           | Yes   | Yes   |
| Can use out-of-state attorney without compliance with Rule 118 on pro haec vice.                                   | Yes   | No  |
| IF THIS BILL IS ENACTED, corporation can name nonlawyer agent or officer to represent it in court.                 | Yes   | No  |



As you can see the advantages of small claims court to the corporate plaintiff makes it easier to collect judgments. That is why businesses are eager to expand small claims jurisdiction.

- ◆ a plaintiff can keep defendant from using legal counsel at the critical first trial,
- ◆ no juries are allowed; and
- ◆ a plaintiff who prevails in small claims court is given statutory pressure to keep the defendant from appealing the case *de novo* to the district court.
- ◆ Once the judgment is obtained, the plaintiff can give the case to attorneys to collect the judgment.

#### IV. Small Claims Court are not All Simple Collection Matters

The 1972 Interim Committee that recommended a small claims court did so in part because it was perceived that the pleadings and the procedures were to be "simple and informal," and that attorneys would be "superfluous."<sup>13</sup> However, many corporations use small claims court for litigation that in some instances is not "simple and informal." Examples:

1. Laypersons have used small claims court involving attorneys as plaintiff-litigants. *In re the Matter of Jackson*, 253 Kan. 810, 861 P.2d 124 (1993); *State v. Johnson*, 12 Kan.App.2d 239, 738 P.2d 872 (Kan.App. 1987); *Vogel v. Haynes*, 11 Kan.App.2d 454, 730 P.2d 1096 (Kan.App. 1986)
2. Corporation car dealership files suit for repairs; owner files counterclaim to release the mechanics lien. Lawsuit over attorney fees. *C.W. Beamgard Co., Inc. v. Luedke*, 17 Kan.App.2d 654, 842 P.2d 317 (Kan.App. 1992).
3. A condominium corporation filed suit against individual owners of condos for late fees. *Carnes v. Meadowbrook Executive Bldg. Corp.*, 17 Kan.App.2d 292, 836 P.2d 1212 (Kan.App. 1992).
4. Private club brought action against minor to reimburse a \$500 fine on the club by the Alcohol Beverage Control department. *Sanctuary, Inc. v. Smith*, 12 Kan.App.2d 38, 733 P.2d 839 (Kan.App. 1987)
5. UCCC questions over whether a loan was an "all in the family" loan to allow both repossession of collateral and a deficiency judgment. *Central Finance Co., Inc. v. Stevens*, 221 Kan. 1, 558 P.2d 122 (1976)
6. Corporations are sometimes the defendant, which precludes them from bringing lawyers into the case unless they pay the cost of dismissing the case and filing it in Chapter 61. *Armstrong v. Lowell H. Listrom & Co., Inc.*, 11 Kan.App.2d 448, 725

<sup>13</sup> Report on Kansas Legislative Interim Studies to the 1973 Legislature, Proposal No. 20.

P.2d 540 (Kan.App. 1986); *Schuh v. Educational Reading Services of Kansas, Inc.*, 6 Kan.App.2d 100, 626 P.2d 1219 (Kan.App. 1981); and *Buettner v. Unruh*, 7 Kan.App.2d 359, 642 P.2d 124 (Kan.App. 1982).

Complex cases should allow attorney involvement.

## V. ATTORNEY GENERAL OPINION 95-100

In 1995, the Attorney General was asked by Senator Hardenburger to advise whether banks could appear in small claims court using a nonattorney agent. The attorney general's opinion,<sup>14</sup> which is printed in full, *infra*, suffers from one major defect. It discusses statutory powers, but not the *constitutional* limitations on legislative power when it encroaches on judicial power. Because of this, the conclusion is a half-and-half solution.

The Opinion concludes the Judicial branch and the legislative branch "share" the power to decide who practices law in a court. The cases do not stand for the "sharing" of judicial power between the Courts and the Legislature.

The Opinion concludes that agents can file the action and "appear" in small claims court but the agent cannot do anything that might be construed as the practice of law. This conclusion is contrary to federal case law in the 10th Circuit which holds just the opposite -- even the entry of an appearance by nonlawyers for private clients constitutes the practice of law.<sup>15</sup>

The opinion then suggests that it is up to the bar to enforce any UPL that might occur in Kansas small claims courts. This is an enforcement mess. Most collection matters are quickly filed and result in default judgments. Are the courts to make value judgments and tell litigants they are practicing law without a license without a hearing? Is the bar to hire spies to sit in small claims courts in 105 courthouses and make similar value judgments and threaten to intervene in each case involving a corporate plaintiff? Are clerks to become involved in telling laypersons how to collect the judgment using garnishment and attachment? *A judicial case by case solution is not a good one.* The better alternative is to correct the offending statute with an amendment that restores the concept of judicial power over the unauthorized practice of law.

The Opinion cites *City of Haven v. Gregg* as standing for the proposition that the legislature can change any common law rules regarding who appears in court. *Gregg* concerned new legislation which change a common law presumption that city commissioners, when adopting a city ordinance, an absent commissioner's vote is counted as an affirmative one. This common law power does not discuss

---

<sup>14</sup> See Appendix "A"

<sup>15</sup> *Dietrich Corp. v. King Resources Co.*, 596 F.2d 422, 426 (10th Cir.1979)( Consulting services involving legal areas or issues are not the practice of law if the consultant does not enter an appearance or perform direct legal services.); *Unauthorized Practice of Law Committee v. Prog.*, 761 P.2d 1111, 1115 (Colo.1988); *Sequa Corp. v. Lititech, Inc.*, 780 F.Supp. 1349, 1352, (D.Colo. 1992)

judicial power. Judicial power is a power based in the constitution, not merely in the common law. *Such power is not subject to arbitrary statutory regulation.*<sup>16</sup>

## VI New Case Law Supports KBA position

In late 1997, in *Atchison Homeless Shelters v. Atchison County*,<sup>17</sup> the Kansas Court of Appeals held that a nonprofit corporation could not be represented by its chief executive officer, that such was the unauthorized practice of law. As long as the corporation would not hire an attorney, the Court would not even entertain the appeal. The Court of Appeals, citing Supreme Court cases, limited to four the types of persons who can “practice law” in our courts:

- (1) members of the bar;
  - (2) graduates of accredited law schools who have temporary permits to practice law;
  - (3) legal interns, who are law students supervised by members of the bar responsible for the interns' activities;
- and
- (4) *nonlawyers, who may represent only themselves and not others in court.*

Neither officers of corporations, nor agents appointed by the corporation, are on the list of who can represent other persons in court. This legislation, if enacted in original form, is very possibly unconstitutional.

## VII Practical Problems

In addition to the constitutional problems, the proposed amendment has several practical problems.

*Entity-based, and Wealth-based, Discrimination.* By using “corporation” in the new language, giving corporations the right to use directors or agents in small claims court, what rationale is there to give corporations this sort of power that other entities do not possess -- partnerships, limited liability companies, limited partnerships, trusts, etc. All other business entities would appear to have to use full time employees. This sort of discrimination may not be constitutionally invidious but it doesn't make much sense.

Where you ARE possibly discriminating is the *lack of representation* for the defendant. Plaintiff corporations can use agents. Small claims law forbids the defendant from bring an attorney to court. Why are we not allowing agents for the defendants? It makes no sense to say that corporations can have agents in small claims court, but defendant individuals cannot, than it would to make a law that said

---

<sup>16</sup> “It is elementary law that the people may exercise all governmental powers not surrendered by them to the federal government and which they have not restrained themselves by the provisions of their own state Constitution.” *Tri-State Hotel Co. v. Londerholm*, 195 Kan. 748, 408 P.2d 877, 888 (1965)

<sup>17</sup> *Atchison Homeless Shelters v. Atchison Co.*, 24 Kan.App.2d 454, 946 P.2d 113 (Kan.App. 1997)

black Americans in our courts are entitled to agents for their civil actions, but whites are not.<sup>18</sup> When you craft a law that says one group of litigants is entitled to special agents but others in the same lawsuit are not, you may violate the 14th Amendment's equal protection clause and the state's privileges and immunities clause. In any event, it is a slippery slope.

*Fair Debt Collection Practices Act.* The bill authorizes an "agent" to be used to collect debts if authorized by a corporate resolution. By definition, an agent is usually not an employee of the business.<sup>19</sup> Thus, an agent is not limited to working solely for one "corporation" like an employee. An agent can be an individual or a business. Lawyers and collection agencies are examples of agents, and both lawyers and collection agencies can represent more than one client.

Under this bill, nothing prevents several corporations from hiring a collection agency as an "agent," to represent them in small claims courts in one or more counties.

Unsuspecting businesses or persons who are agents under this bill are subject to the federal Fair Debt Collection Practices Act. People who are not collecting a debt of their own are "debt collectors" under the act. The FDCPA can be a trap for the unwary, and the fines are enormous under this federal act -- \$500,000 per violation. If they make mistakes, they are going to be on the butt end of hefty litigation -- and the corporation that hires them are going to be joined in the dispute. Now the corporation may not be liable, but it will be joined in a difficult lawsuit over an \$1,800 bill?

## VIII Recommendation

To be consistent with Kansas law, it is the courts who decide which entities can practice law in a court, not the legislature. We recommend the following amendment. It eliminates corporation involvement in Small Claims court. This is done by striking all of Section 1 and inserting in lieu thereof the following:

Section 1. Amend KSA 61-2703 as follows: 61-2703. (a) "Small claim" means a claim for the recovery of money or personal property, where the amount claimed or the value of the property sought does not exceed \$1,800, exclusive of interest, costs and any damages awarded pursuant to K.S.A. 60-2610 and amendments thereto. In actions of replevin, the verified petition fixing the value of the property shall be determinative of the value of the property for jurisdictional purposes. A small claim shall not include:

- (1) An assigned claim; *or*
  - (2) ~~a claim based on an obligation or indebtedness allegedly owed to a person other than the person filing the claim, where the person filing the claim is not a full-time, salaried employee of the person to whom the obligation or indebtedness is allegedly owed; or~~
  - (3) a claim obtained through subrogation.
- (b) "Person" means an individual, ~~partnership, corporation, fiduciary, joint venture, society, organization or other association of persons.~~

If you have further questions, please let me know. Thank you.

<sup>18</sup> "Governmental regulation may be unconstitutional per se if it discriminates on the basis of race, creed or wealth." *Blaine v. Board of Ed. Haysville Unified School Dist. No. 261 Sedgwick County, Haysville*, 210 Kan. 560, 502 P.2d 693, 699 (1972)

<sup>19</sup> Black's Law Dictionary 85 (Rev. 4th Ed., 1968) defines "agent" as "[a] person authorized by another to act for him, or entrusted with another's business." P. 1466. *Appeal of Scholastic Book Clubs, Inc.*, 260 Kan. 528, (Kan. 1996)

## Appendix "A"

Office of the Attorney General  
State of Kansas  
Opinion No. 95-100  
October 10, 1995

### **Re: Procedure, Civil for Limited Actions--Small Claims Procedure--Corporation's Use of Procedure Without Attorney Representation**

**Synopsis: The small claims procedure act, which prohibits attorney representation except in limited circumstances, abrogates the common law principle that corporations may appear in court only through an attorney. While corporate representatives may participate in small claims matters, they may not practice law. Cited herein: K.S.A. 61-2703; 61-2704; 61-2705; 61-2707; 61-2712; 61-2713; 61-2714.**

The Honorable Janice L. Hardenburger  
State Senator, 21st District  
Rt. # 1, Box 78  
Haddam, Kansas 66944

Dear Senator Hardenburger:

You request our opinion regarding whether a corporation may appear in small claims court by an agent who is not an attorney. You indicate that some district court magistrates are refusing to allow corporations to use the small claims process unless the corporation is represented by an attorney. The small claims procedure act specifically prohibits attorney representation except in limited circumstances.

The small claims procedure act provides a simple method for the recovery of money not exceeding the statutory amount of \$1,800. K.S.A. 61-2712; *Patterson v. Brouhard*, 246 Kan. 700, 703 (1990). The court supplies the forms for the plaintiff's statement of claim and the defendant's statement of claim (if the defendant has a counter claim against the plaintiff). K.S.A. 61-2713. No other pleadings are permitted, no discovery is allowed, the trial is to the court and no party may be represented by an attorney except in limited circumstances. K.S.A. 61-2705; 61-2707; 61-2714. Any "person" may file a written statement of the plaintiff's claim with the clerk of the court. K.S.A. 61-2704(a). "Person" includes a corporation. K.S.A. 61-2703(b).

The small claims procedure act was enacted in 1973 after two legislative interim committees concluded that there was no practicable forum in which a small claim could be adjudicated economically. 1971 Reports and Recommendations to the 1972 Session of the Kansas Legislature, p. 496. A special committee on small claims solicited input from judges of courts of limited jurisdiction and found that it was not economically feasible for most people to retain attorneys for claims of less than \$300 nor was this the kind of litigation profitable for most attorneys. Furthermore, the committee concluded that in a proceeding where the pleadings and other procedures were simple and informal, the particular talent of an attorney would be "superfluous." Report on Kansas Legislative Interim Studies to the 1973 Legislature, Proposal No. 20. The committee also agreed that the small claims process should be made available to merchants as well as consumers.

Since its enactment in 1973 there has been no significant change in the procedure and adjudication of small claims except that the statutory amount has increased from \$300 in 1973 to the current amount of \$1,800.

The common law of Kansas provides that a corporation may not appear in court by an agent who is not an attorney. *Union P.R. Co. v. Horney*, 5 Kan. 340 (1870); *U.P.R. Co. v. McCarty*, 8 Kan. 125 (1871). Because the small claims procedure act purports to authorize this nonlawyer representation, it has been suggested that the legislature has usurped the judiciary's inherent power to regulate the practice of law. *Unauthorized Corporate Law Practices in Small Claims Court: Should Anyone Care?*, 33 W.L.J. 345 (Spring 1994).

The reason for the common law rule stems from the fact that a corporation is an artificial entity that can only act through agents. Courts thus require persons trained in the law and familiar with court procedure to act as agents of the corporation in litigation in order to further the efficient administration of justice. *Oahu Plumbing and Sheet Metal Limited v. Kona Construction Inc.*, 590 P.2d 570 (Haw. 1979); 8 A.L.R. 5 653 (1992). However, some jurisdictions have made an exception for small claims court. *Prudential Insurance Co. v. Small Claims Corp.*, 173 P.2d 38 (Ca. 1946); *State of Washington, ex rel. Long v. McLeod*, 496 P.2d 540 (Wash. 1972); *Woodford Manufacturing Co. v. A.O.Q. Inc.*, 772 P.2d 652 (Colo. App. 1988); *Woerner v. Seneca Petroleum inc.*, 529 N.E.2d 660 (Ill. App. 1988); *Varney Enterprises Inc. v. W.M.F. Inc.*, 520 N.E.2d 1312 (Mass. 1988). In *Prudential Insurance Co.*, supra, the court concluded that since corporations



were authorized to prosecute or defend claims in small claims court and since no party was allowed attorney representation, a corporation could appear in small claims court through an agent not licensed to practice law.

"There is a series of cases that it is argued compel the conclusion that a corporation under no circumstances may appear in a court of law *in propria persona* (citations omitted). These cases ... hold that a corporation under general legal principles can only appear in a court of record by and through an attorney and may not appear and defend or prosecute through its officers or employees. Based on these cases appellant argues that since a corporation can only prosecute or defend legal actions through an attorney and since attorneys are prohibited in the small claims courts, such corporations are denied representation. The obvious answer to this argument is that all of the above cases dealt with courts of record and dealt with general common law principles. They all revolve around the general rule that a corporation in the absence of statutory authority ... cannot practice law. None of them dealt with a statutory situation such as is here involved. Here we have a statute ... that expressly confers on corporations, as well as on other persons, the right to prosecute or defend such actions [in small claims court]. At the same time it denies to corporations as well as to other litigants the right to appear in such actions by attorneys. Since a corporation can only speak through a natural person, it is apparent, therefore, that [the statute] must be interpreted as conferring on corporations the right to appear through some representative other than an attorney. Thus, here, unlike the above cases, there is express statutory authorization for a corporation to appear *in propria persona*, through some proper representative other than an attorney. This serves to distinguish all of the cited cases." Prudential Insurance Co., 173 P.2d at 42.

The attorney representation rule for corporations is part of the common law which can be abrogated or modified by statute. *City of Haven v. Gregg*, 244 Kan. 117, 123 (1988). The legislature has abrogated this principle by virtue of K.S.A. 61-2703(b) and K.S.A. 61-2707. Consequently, it is our opinion that a corporation may participate in small claims court through an agent who is not licensed to practice law. We note that there has been some confusion because of the attorney representation rule which resulted in some district court magistrates requiring corporations to appear by attorney in small claims actions thus creating an inequity for the other party - usually, an individual who was not entitled to attorney representation. The legislature addressed this situation in 1994 by enacting K.S.A. 61-2714 which allows a party not represented by an attorney to be so represented if the other party is represented by counsel or is an attorney representing himself or herself.

Concerning the issue of whether the legislature is usurping the judiciary's inherent right to regulate the practice of law by authorizing nonlawyer corporate representatives to appear in small claims court, the threshold question is whether these representatives are engaging in the unauthorized practice of law. In *State ex rel. Stephan v. Williams*, 246 Kan. 681 (1990) the court concluded that there is no precise, all encompassing definition of what constitutes the practice of law and that each situation must be considered on its own facts on a case-by-case basis.

"Although it may sometimes be articulated more simply, one definition [of "practice of law"] has gained widespread acceptance, and has been adopted by this Court:

"A general definition of the term frequently quoted with approval is given in *Eley v. Miller*, 7 Ind. App. 529, 34 N.E. 836, as follows:'

"As the term is generally understood, the practice of law is the doing or performing of services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be depending in a court.' *State, ex rel., v. Perkins*, 138 Kan. 899, 907, 908, 28 P.2d 765 (1934).

...."A more recent source defines the practice of law as 'the rendition of services requiring the knowledge and application of legal principles and technique to serve the interests of another with his consent.' (Citation omitted)."

In *State ex rel. v. Hill*, 233 Kan. 425, 426 (1978), the court adopted a test for determining what is the unauthorized practice of law.

"The main general test in unlawful practice of law cases seems to be whether or not an attorney-client relationship exists. That is whether the person whose conduct is under scrutiny represented or implied he had legal knowledge beyond that of a layman and provided 'professional' assistance to a 'client'. The customer pays for the 'skill,' 'special knowledge' or 'expertise' of the seller. There is a personalization of services provided. That is, the customer provides the data or raw material and the 'expert' assembles, compiles, organizes, etc. And using the 'expertise' (real or imagined) provides a legal service."

Because the concept of the practice of law is so amorphous and dependent upon the specific acts of the individual in question we cannot conclude that every representative of a corporation engages in the practice of law simply by filling out a form and appearing in small claims court. In *Depew v. Wichita Association of Credit Men*, 142 Kan. 403, 411 (1935) the

court concluded that the filling out of forms like blank promissory notes, drafts and similar forms that are obtainable at book stores does not constitute the practice of law where no legal skill or knowledge is required, no advice as to legal rights is given and no remuneration is received. Following this rationale, it is our opinion that merely completing the fill-in-the-blank statement of claim form does not constitute practicing law in the absence of evidence that legal skill or knowledge is required and legal advice given.

We hasten to note that *our interpretation of the small claims procedure act only extends to allowing corporate agents to participate. It does not authorize corporate representatives to practice law.* A corporate representative who appears in small claims court and conducts direct and cross examination of witnesses, presents and objects to evidence and *makes legal arguments may be engaging in the practice of law.* (Attorney General Opinion No. 93-100). However, if this is the case, the remedy is a *quo warranto* action filed by this office or, possibly, an injunction action filed by attorneys (see Depew, supra, where 8 attorneys obtained an injunction to prohibit a corporation from engaging in the unauthorized practice of law.) We have no facts upon which to base a conclusion that the unauthorized practice of law is occurring in small claims courts throughout the state of Kansas and, therefore, it is our opinion that the legislature is not usurping the judiciary's power to regulate the practice of law by allowing nonlawyer corporate representatives to appear in small claims courts. (emphasis added)

Very truly yours,  
Carla J. Stovall  
Attorney General of Kansas

## Appendix "B"

*Atchison Homeless Shelters, Inc.*  
v.  
*County of Atchison,*  
24 Kan.App.2d 454, 946 P.2d 113 (Kan.App. 1997)

The Atchison District Court, Martin Asher, J., awarded sanctions against corporation for filing frivolous claim, and corporation appealed. The Court of Appeals, Stephen D. Hill, District Judge, assigned, held that: (1) corporations can only be represented in court by attorney who is duly licensed to practice law, and (2) corporation did not lawfully appear in proceeding, and thus, its appeal was not properly before Court.

Appeal dismissed.

### Syllabus by the Court

1. Only four categories of individuals may appear in the courts of this state (except for out-of-state attorneys): (1) members of the bar; (2) graduates of accredited law schools who have temporary permits to practice law; (3) legal interns, who are law students supervised by members of the bar responsible for the interns' activities; and (4) nonlawyers, who may represent only themselves and not others in court.

2. Kansas follows the common-law rule that an appearance in court of a corporation by an agent other than a licensed attorney is not proper since a corporation is an artificial entity without the right of self-representation.

Rev. Don Lockhart, Patricia A. Lockhart, and LaChelle Lockart, pro se, for appellant.

Leonard L. Buddenbohm, Atchison, for appellee.

Before KNUDSON, P.J., and STEPHEN D. HILL and PAUL E. MILLER, District Judges, Assigned.

STEPHEN D. HILL, District Judge, Assigned:

Atchison Homeless Shelters, Inc., is a corporation which has filed this appeal from an order awarding sanctions against it for filing a frivolous claim in the district court of Atchison County. No attorney has entered an appearance for the appellants in this appeal.

[1] Except for out-of-state attorneys, the Supreme Court recognizes only four categories of individuals who may appear in the courts of this state: (1) members of the bar who have licenses to practice law; (2) individuals who have graduated from an accredited law school and have a temporary permit to practice law; (3) legal interns, who are law students supervised by members of the bar responsible for the interns' activities; and (4) *nonlawyers, who may represent only themselves and not others*. State ex rel. Stephan v. Adam, 243 Kan. 619, 623, 760 P.2d 683 (1988); see State ex rel. Stephan v. Williams, 246 Kan. 681, 690-91, 793 P.2d 234 (1990).

[2] [3] This means, therefore, that *corporations can only be represented in Kansas courts by an attorney duly licensed to practice law in Kansas*. Kansas follows the common-law rule that an appearance in court of a corporation by an agent other than a licensed attorney is not proper since *a corporation is an artificial entity without the right of self-representation*. Such a rule helps to maintain a distinction between the corporation and its directors and employees. See 8 A.L.R.5th 653, § 3. This rule was tacitly acknowledged in dicta in U.P. Railway Co. v. McCarty, 8 Kan. 125, 131 (1871), and U.P.R.W. Co. v. Horney, 5 Kan. 340, 347 (1870).

[4] Since Atchison Homeless Shelters, Inc., does not lawfully appear in this proceeding, its appeal is not properly before this court, and this appeal is dismissed.

Appeal dismissed.

Barber County, Kansas

Your Judicial District: # 30th

1. For the last three months of 1998,  
how many (total) small claims actions were filed in your court(s)? 9
2. What percentage of small claims filings would you estimate involve either plaintiffs or  
defendants who are not individuals (e.g. government, corps, businesses)? 66 %
3. Do you currently allow corporations to appear  
in Chapter 61 limited actions court without attorneys?  Yes  No.
4. Have you seen problems with plaintiffs  
attempting to file more than ten cases per year?  Yes  No.
5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep  
them confidential).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Your rapid help is greatly appreciated.

-----  
Please do not mistake this email for legal advice. It isn't intended  
as legal advice nor should it be perceived as such.  
-----

Ron Smith, General Counsel  
Kansas Bar Association      our website: <http://www.ksbar.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-3696  
alternate e-mail [kansbar5@ink.org](mailto:kansbar5@ink.org)

Your Judicial District: # 1

1. For the last three months of 1998, how many (total) small claims actions were filed in your court(s)? 80
2. What percentage of small claims filings would you estimate involve either plaintiffs or defendants who are not individuals (e.g. government, corps, businesses)? 50 %
3. Do you currently allow corporations to appear in Chapter 61 limited actions court without attorneys?  Yes  No.
4. Have you seen problems with plaintiffs attempting to file more than ten cases per year?  Yes  No.
5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep them confidential).

The attempt to use non lawyer representatives by businesses in small claims court is a significant problem. An attempt by the legislature to specifically authorize this practice should be vigorously opposed.

Your rapid help is greatly appreciated.

-----  
Please do not mistake this email for legal advice. It isn't intended as legal advice nor should it be perceived as such.  
-----

Ron Smith, General Counsel  
Kansas Bar Association      our website: <http://www.ksbar.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-5696  
alternate e-mail [kansbar5@ink.org](mailto:kansbar5@ink.org)



Your Judicial District: # 2

1. For the last three months of 1998,  
how many (total) small claims actions were filed in your court(s)? 120

2. What percentage of small claims filings would you estimate involve either plaintiffs or  
defendants who are not individuals (e.g. government, corps, businesses)? 20 %

3. Do you currently allow corporations to appear  
in Chapter 61 limited actions court without attorneys?  Yes  No.

4. Have you seen problems with plaintiffs  
attempting to file more than ten cases per year?  Yes  No.

5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep  
them confidential).

*People are often highly emotional. Try to get too  
much done (evictions, TRO'S ect) out of the procedure  
& then get mad when they can not. If I ever get  
shot it will be over a small claims case more than  
likely than even a domestic.  
Your rapid help is greatly appreciated.*

~~~~~  
Please do not mistake this email for legal advice. It isn't intended  
as legal advice nor should it be perceived as such.  
~~~~~

Ron Smith, General Counsel  
Kansas Bar Association      our website: <http://www.ksbar.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-5696  
alternate e-mail [kansbar5@ink.org](mailto:kansbar5@ink.org)

Your Judicial District: # 24

1. For the last three months of 1998,  
how many (total) small claims actions were filed in your court(s)? 12

2. What percentage of small claims filings would you estimate involve either plaintiffs or  
defendants who are not individuals (e.g. government, corps, businesses)? 80 %

3. Do you currently allow corporations to appear  
in Chapter 61 limited actions court without attorneys?  Yes  No (Act 27)

4. Have you seen problems with plaintiffs  
attempting to file more than ten cases per year?  Yes  No

5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep  
them confidential).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Your rapid help is greatly appreciated.

Please do not mistake this email for legal advice. It isn't intended  
as legal advice nor should it be perceived as such.

Ron Smith, General Counsel  
Kansas Bar Association our website: <http://www.k sbar.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-5696  
alternate e-mail: [kansbar5@ink.org](mailto:kansbar5@ink.org)

Your Judicial District - 08

1. For the last three months of 1998, how many (total) small claims actions were filed in your courts?

|           |       |        |        |
|-----------|-------|--------|--------|
| Dickinson | Geary | Morris | Marion |
| 40        | 31    | 13     | 12     |

2. What percentage of small claims filings would you estimate involve either plaintiffs or defendants who are not individuals (e.g. government, corps, businesses)?

|           |       |        |        |
|-----------|-------|--------|--------|
| Dickinson | Geary | Morris | Marion |
| 37        | 1     | 67     | 75     |

3. Do you currently allow corporations to appear in Chapter 61 limited actions court without attorneys?

|           |       |        |        |
|-----------|-------|--------|--------|
| Dickinson | Geary | Morris | Marion |
| No        | No    | No     | No     |

4. Have you seen problems with plaintiffs attempting to file more than ten cases per year?

|           |       |        |        |
|-----------|-------|--------|--------|
| Dickinson | Geary | Morris | Marion |
| No        | No    | No     | No     |

5. Any observations on the small claims issue in your courts that you'd like to reveal? (I'll keep them confidential).

The problem is the post trial activity - average individual does not understand - if a small claims form kit could be developed & distributed, it would be helpful - this kit would need to include all forms and instructions on when & how to file them. - Geary County

Your Judicial District: # 6

1. For the last three months of 1998,  
how many (total) small claims actions were filed in your court(s)? 37
2. What percentage of small claims filings would you estimate involve either plaintiffs or  
defendants who are not individuals (e.g. government, corps, businesses)? 46 %
3. Do you currently allow corporations to appear  
in Chapter 61 limited actions court without attorneys?  Yes  No.
4. Have you seen problems with plaintiffs  
attempting to file more than ten cases per year?  Yes  No.
5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep  
them confidential).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Your rapid help is greatly appreciated.

-----  
Please do not mistake this email for legal advice. It isn't intended  
as legal advice nor should it be perceived as such.  
-----

Ron Smith, General Counsel  
Kansas Bar Association      our website: <http://www.ksbar.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-5696  
alternate e-mail [kansbar@jink.org](mailto:kansbar@jink.org)

Sumner County, Kansas

Your Judicial District: # 30<sup>th</sup>

1. For the last three months of 1998,  
how many (total) small claims actions were filed in your court(s)? 39
2. What percentage of small claims filings would you estimate involve either plaintiffs or  
defendants who are not individuals (e.g. government, corps, businesses)? 50 %
3. Do you currently allow corporations to appear  
in Chapter 61 limited actions court without attorneys?  Yes  No.
4. Have you seen problems with plaintiffs  
attempting to file more than ten cases per year?  Yes  No.
5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep  
them confidential).

Our Limited Actions have doubled in the last year if they  
allow the small claim limit to be raised we will drown in  
paper, we can barely keep up now. They need better rules  
for small claims by itself.

Your rapid help is greatly appreciated.

~~~~~  
Please do not mistake this email for legal advice. It isn't intended  
as legal advice nor should it be perceived as such.  
~~~~~

Ron Smith, General Counsel  
Kansas Bar Association      our website: <http://www.ksbar.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-5696  
alternate e-mail [kansbar5@ink.org](mailto:kansbar5@ink.org)



Pratt County, Kansas

Your Judicial District: # 30<sup>th</sup>

- 1. For the last three months of 1998, how many (total) small claims actions were filed in your court(s)? 26
- 2. What percentage of small claims filings would you estimate involve either plaintiffs or defendants who are not individuals (e.g. government, corps, businesses)? 90 %
- 3. Do you currently allow corporations to appear in Chapter 61 limited actions court without attorneys?  Yes  No.
- 4. Have you seen problems with plaintiffs attempting to file more than ten cases per year?  Yes  No.
- 5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep them confidential).

---



---



---



---

Your rapid help is greatly appreciated.

Please do not mistake this email for legal advice. It isn't intended as legal advice nor should it be perceived as such.

Ron Smith, General Counsel  
 Kansas Bar Association      our website: <http://www.ksbar.org>  
 1200 Harrison  
 Topeka Kansas 66601  
 fax: 913-234-3813  
 voice: 913-234-5696  
 alternate e-mail [kansbar5@jink.org](mailto:kansbar5@jink.org)

Your Judicial District: # 28

1. For the last three months of 1998,  
how many (total) small claims actions were filed in your court(s)? 96

2. What percentage of small claims filings would you estimate involve either plaintiffs or  
defendants who are not individuals (e.g. government, corps, businesses)? BELOW %

3. Do you currently allow corporations to appear  
in Chapter 61 limited actions court without attorneys?  Yes  No.

4. Have you seen problems with plaintiffs  
attempting to file more than ten cases per year?  Yes  No.

5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep  
them confidential).

---

---

---

---

Your rapid help is greatly appreciated.

2. Based on last 96 case of year.  
25.8% filed by plaintiffs other  
than individuals. 8% of cases  
were against defendants which  
were not individuals.

~~~~~  
Please do not mistake this email for legal advice. It isn't intended  
as legal advice nor should it be perceived as such.  
~~~~~

Ron Smith, General Counsel  
Kansas Bar Association      our website: <http://www.ksbar.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-5696  
alternate e-mail [kansbar5@ink.org](mailto:kansbar5@ink.org)

11-28

Your Judicial District: # 11 - Crawford County Filings; Cherokee & Lenoir Counties may respond separately.

1. For the last three months of 1998, how many (total) small claims actions were filed in your court(s)? 84
2. What percentage of small claims filings would you estimate involve either plaintiffs or defendants who are not individuals (e.g. government, corps, businesses)? 50% %
3. Do you currently allow corporations to appear in Chapter 61 limited actions court without attorneys?  Yes  No.
4. Have you seen problems with plaintiffs attempting to file more than ten cases per year?  Yes  No.
5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep them confidential).

No 2. is Clerk's estimate, when entities are sued via transfer to Ch. 61 or punitive, & allow both parties to appear w/ counsel. Current rule is to require entities to file Ch. 61 form.

Your rapid help is greatly appreciated.

voice: 913-734-5696  
alternate e-mail kansbar5@ink.org

possible. ....  
=====

12th Judicial District

1. For the last three months of 1998, how many small claims actions were filed in your court(s)? 18

2. What percentage of S.C. filings would you guess involve either corporate plaintiffs or corporate defendants? 0 % - not permitted -

3. Do you currently allow corporations to appear in Chapter 61 courts without attorneys?  Yes  No.

4. Have you seen problems with plaintiffs attempting to file more than ten cases per year?  Yes  No. not small claims

5. Any observations on the small claims issues in your courts that you'd like to reveal: (I'll keep them confidential).

I have had a few corporations assign their debts to their "owners", to pursue personally, which I have permitted. It can become interesting with a defense that requires joining the corporation. Some of the practices in the assignment probably expose the "owners" to liability, i.e. piercing the veil of the corporation: corporation stationery, envelopes, postage, secretary preparing petition, etc.

1/22/99

Your Judicial District: # 05

1. For the last three months of 1998,  
how many (total) small claims actions were filed in your court(s)? 52

2. What percentage of small claims filings would you estimate involve either plaintiffs or  
defendants who are not individuals (e.g. government, corps, businesses)? 50 %

3. Do you currently allow corporations to appear  
in Chapter 61 limited actions court without attorneys?  Yes  No.

4. Have you seen problems with plaintiffs  
attempting to file more than ten cases per year?  Yes  No.

5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep  
them confidential).

---

---

---

---

Your rapid help is greatly appreciated.

~~~~~  
Please do not mistake this email for legal advice. It isn't intended  
as legal advice nor should it be perceived as such.  
~~~~~

Ron Smith, General Counsel  
Kansas Bar Association      our website: <http://www.ksbar.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-3696  
alternate e-mail [kansbar5@mk.org](mailto:kansbar5@mk.org)



Your Judicial District: # 23

1. For the last three months of 1998, how many (total) small claims actions were filed in your court(s)? 75
2. What percentage of small claims filings would you estimate involve either plaintiffs or defendants who are not individuals (e.g. government, corps, businesses)? 61 %
3. Do you currently allow corporations to appear in Chapter 61 limited actions court without attorneys?  Yes  No.

4. Have you seen problems with plaintiffs attempting to file more than ten cases per year?  Yes  No.

5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep them confidential).

Small claims is a zoo! People have no concept of how to proceed. It is tough to maintain order. Increasing jurisdictional limits would increase these problems. With proposed change in law, unlicensed agents would act as attorneys with other party being at a disadvantage. Increasing number of cases allowed per year would make small claims court the creature of big business. Your rapid help is greatly appreciated. Collection procedures are difficult with lay persons not understanding how to proceed.

Please do not mistake this email for legal advice. It isn't intended as legal advice nor should it be perceived as such.

Ron Smith, General Counsel  
Kansas Bar Association our website: <http://www.ksbars.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-5696  
alternate e-mail [kansbar5@jink.org](mailto:kansbar5@jink.org)

11-24

Your Judicial District: # 35<sup>th</sup>

1. For the last three months of 1998, how many (total) small claims actions were filed in your court(s)? 20
2. What percentage of small claims filings would you estimate involve either plaintiffs or defendants who are not individuals (e.g. government, corps, businesses)? 67 %
3. Do you currently allow corporations to appear in Chapter 61 limited actions court without attorneys?  Yes  No.
4. Have you seen problems with plaintiffs attempting to file more than ten cases per year?  Yes  No.
5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep them confidential).

Some are ridiculous. Some people expect the court to do all the work. Especially after judgment is rendered. They think its the courts job to collect there money.

Your rapid help is greatly appreciated.

-----  
Please: do not mistake this email for legal advice. It isn't intended as legal advice nor should it be perceived as such.  
-----

Ron Smith, General Counsel  
Kansas Bar Association      our website: <http://www.ksbars.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-5696  
alternate e-mail [kansbar5@ink.org](mailto:kansbar5@ink.org)

Your Judicial District: # 21st (Riley County only)

1. For the last three months of 1998, how many (total) small claims actions were filed in your court(s)? 95

2. What percentage of small claims filings would you estimate involve either plaintiffs or defendants who are not individuals (e.g. government, corps, businesses)? 75 %

3. Do you currently allow corporations to appear in Chapter 61 limited actions court without attorneys?  Yes  No.

4. Have you seen problems with plaintiffs attempting to file more than ten cases per year?  Yes  No.

5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep them confidential).

Some businesses or corp. will file 10 cases in more than 1 county!

Your rapid help is greatly appreciated.

~~~~~  
Please do not mistake this email for legal advice. It isn't intended as legal advice nor should it be perceived as such.

~~~~~  
Ron Smith, General Counsel  
Kansas Bar Association      our website: <http://www.ksbar.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-5696  
alternate e-mail [kansbar5@ink.org](mailto:kansbar5@ink.org)

Your Judicial District: # 30<sup>th</sup>

1. For the last three months of 1998,  
how many (total) small claims actions were filed in your court(s)? 24

2. What percentage of small claims filings would you estimate involve either plaintiffs or  
defendants who are not individuals (e.g. government, corps, businesses)? 75 %

3. Do you currently allow corporations to appear  
in Chapter 61 limited actions court without attorneys?  Yes  No.

4. Have you seen problems with plaintiffs  
attempting to file more than ten cases per year?  Yes  No.

5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep  
them confidential).

NONE

---

---

---

---

Your rapid help is greatly appreciated.

~~~~~  
Please do not mistake this email for legal advice. It isn't intended  
as legal advice nor should it be perceived as such.  
~~~~~

Ron Smith, General Counsel  
Kansas Bar Association      our website: <http://www.ksbar.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-5696  
alternate e-mail [kansbar5@ink.org](mailto:kansbar5@ink.org)

Your Judicial District: # 24<sup>th</sup>

1. For the last three months of 1998,  
how many (total) small claims actions were filed in your court(s)? 55
2. What percentage of small claims filings would you estimate involve either plaintiffs or  
defendants who are not individuals (e.g. government, corps, businesses)? 50 %
3. Do you currently allow corporations to appear  
in Chapter 61 limited actions court without attorneys?  Yes  No.
4. Have you seen problems with plaintiffs  
attempting to file more than ten cases per year?  Yes  No.
5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep  
them confidential).

Judge Michael Freelow is trying to get  
some amendments to the Small Claims act to  
clarify some issues.

Your rapid help is greatly appreciated.

-----  
Please do not mistake this email for legal advice. It isn't intended  
as legal advice nor should it be perceived as such.  
-----

Ron Smith, General Counsel  
Kansas Bar Association      our website: <http://www.kobar.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-5696  
alternate e-mail [kansbar5@ink.org](mailto:kansbar5@ink.org)

Your Judicial District: # 09

- 1. For the last three months of 1998, how many (total) small claims actions were filed in your court(s)? 37
- 2. What percentage of small claims filings would you estimate involve either plaintiffs or defendants who are not individuals (e.g. government, corps, businesses)? 25 %
- 3. Do you currently allow corporations to appear in Chapter 61 limited actions court without attorneys?  Yes  No.
- 4. Have you seen problems with plaintiffs attempting to file more than ten cases per year?  Yes  No. Sometimes they file several all toward the end of the year.
- 5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep them confidential).

\*Our Treasurers office seems to be advising people to file a Small Claims Case when the title to a vehicle is lost, when really they need to file a Chapter 60 quiet title.

\*Keeping track of the number of cases filed -- the limit of 10 cases per year.

\*Recovery of property - difficult to assist people with after judgment.

Your rapid help is greatly appreciated.

~~~~~  
Please do not mistake this email for legal advice. It isn't intended as legal advice nor should it be perceived as such.

~~~~~  
Ron Smith, General Counsel  
Kansas Bar Association      our website: <http://www.ksbar.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-5696  
alternate e-mail [kansbar5@ink.org](mailto:kansbar5@ink.org)



Your Judicial District: # 19

1. For the last three months of 1998,  
how many (total) small claims actions were filed in your court(s)? 117
2. What percentage of small claims filings would you estimate involve either plaintiffs or  
defendants who are not individuals (e.g. government, corps, businesses)? 65 %
3. Do you currently allow corporations to appear  
in Chapter 61 limited actions court without attorneys?  Yes  No.
4. Have you seen problems with plaintiffs  
attempting to file more than ten cases per year?  Yes  No. Maybe not exactly "problems"  
but attempts are always made by businesses with more than one operating name.
5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep  
them confidential).  
From the Clerks' standpoint, we would vigorously oppose any expansion of the  
small claim procedure. As evidenced above, we are increasingly becoming the  
arena for collections by businesses without the expense of an attorney.  
We also are their avenue of enforcement after judgment is obtained, obviously.  
Any enhancement of small claims would greatly increase our workload and  
subsequent pro-se contact with each litigant.

Your rapid help is greatly appreciated.

---

Please do not mistake this email for legal advice. It isn't intended  
as legal advice nor should it be perceived as such.

---

Ron Smith, General Counsel  
Kansas Bar Association      our website: <http://www.kabar.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-5696  
alternate e-mail [kansbar5@ink.org](mailto:kansbar5@ink.org)

Your Judicial District: # 24

1. For the last three months of 1998,  
how many (total) small claims actions were filed in your court(s)? 22
2. What percentage of small claims filings would you estimate involve either plaintiffs or  
defendants who are not individuals (e.g. government, corps, businesses)? 82 %
3. Do you currently allow corporations to appear  
in Chapter 61 limited actions court without attorneys?  Yes  No.
4. Have you seen problems with plaintiffs  
attempting to file more than ten cases per year?  Yes  No.
5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep  
them confidential).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Your rapid help is greatly appreciated.

\_\_\_\_\_  
Please do not mistake this email for legal advice. It isn't intended  
as legal advice nor should it be perceived as such.  
\_\_\_\_\_

Ron Smith, General Counsel  
Kansas Bar Association      our website: <http://www.kubar.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-5696  
alternate e-mail: [kansbar5@ink.org](mailto:kansbar5@ink.org)

Your Judicial District: # 14TH

1. For the last three months of 1998,  
how many (total) small claims actions were filed in your court(s)? 121
2. What percentage of small claims filings would you estimate involve either plaintiffs or  
defendants who are not individuals (e.g. government, corps, businesses)? 55 %
3. Do you currently allow corporations to appear  
in Chapter 61 limited actions court without attorneys?  Yes  No.
4. Have you seen problems with plaintiffs  
attempting to file more than ten cases per year?  Yes  No.
5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep  
them confidential).

An ongoing problem is that the statute doesn't address post-judgment procedures,  
past the debtor's statement of assets; therefore, causing the clerk's  
office to deal with legal questions that we cannot/should not answer.  
Venue should also be more clearly defined as that is not a judgment for the  
clerk's office to make; however, we are occasionally faced with that question.  
Your rapid help is greatly appreciated.

~~~~~  
Please do not mistake this email for legal advice. It isn't intended  
as legal advice nor should it be perceived as such.  
~~~~~

Ron Smith, General Counsel  
Kansas Bar Association      our website: <http://www.kstbar.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-6606  
alternate e-mail [kamber5@ink.org](mailto:kamber5@ink.org)

Your Judicial District: # 14 - Co Co.

1. For the last three months of 1998, how many (total) small claims actions were filed in your court(s)? 8
2. What percentage of small claims filings would you estimate involve either plaintiffs or defendants who are not individuals (e.g. government, corps, businesses)? 33 %
3. Do you currently allow corporations to appear in Chapter G1 limited actions court without attorneys?  Yes  No.
4. Have you seen problems with plaintiffs attempting to file more than ten cases per year?  Yes  No.
5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep them confidential).

---

---

---

---

Your rapid help is greatly appreciated.

~~~~~  
Please do not mistake this email for legal advice. It isn't intended as legal advice nor should it be perceived as such.  
~~~~~

Ron Smith, General Counsel  
Kansas Bar Association      our website: <http://www.ksbar.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-6696  
alternate e-mail [kanabar5@ink.org](mailto:kanabar5@ink.org)

Your Judicial District: # 27

1. For the last three months of 1998, how many (total) small claims actions were filed in your court(s)? 107
2. What percentage of small claims filings would you estimate involve either plaintiffs or defendants who are not individuals (e.g. government, corps, businesses)? 50 %
3. Do you currently allow corporations to appear in Chapter 61 limited actions court without attorneys?  Yes  No.
4. Have you seen problems with plaintiffs attempting to file more than ten cases per year?  Yes  No.
5. Any observations on the small claims issues in your courts that you'd like to reveal? (I'll keep them confidential).

---

---

---

---

Your rapid help is greatly appreciated.

~~~~~  
Please do not mistake this email for legal advice. It isn't intended as legal advice nor should it be perceived as such.  
~~~~~

Ron Smith, General Counsel  
Kansas Bar Association      our website: <http://www.ksbar.org>  
1200 Harrison  
Topeka Kansas 66601  
fax: 913-234-3813  
voice: 913-234-5696  
alternate e-mail [kansbar5@ink.org](mailto:kansbar5@ink.org)

=====  
=====

20<sup>th</sup> Judicial district

1. For the last three months of 1998, how many small claims actions were filed in your court(s)? 33
2. What percentage of S.C. filings would you guess involve either corporate plaintiffs or corporate defendants? 6 %
3. Do you currently allow corporations to appear in Chapter 61 courts without attorneys?  Yes  No.
4. Have you seen problems with plaintiffs attempting to file more than ten cases per year?  Yes  No. 2 times in 3 years
5. Any observations on the small claims issues in your courts that you'd like to reveal: (I'll keep them confidential).

This for Barton County normally BT Co equals 55% of dist. so for 20th Jud Dist. I estimate 66 cases for last 3 months. Our clerks "warn" plaintiffs when they have filed 8 or 9 cases a year so no real problems out here. Limited action is our real case load. In Barton Co, for 1998 we had 138 small claims and 2004 limited action.



55  
2-4-99  
att # 12

**Senator Pugh's Subcommittee**

1. S.B. 4 would clarify that previously expunged DUI records are to be used as a prior conviction in cases of repeated DUIs. The bill was recommended by the 1999 interim Special Committee on Judiciary as a clarification.

**Conferees**

Proponents of the bill included: Mark Stafford, Kansas Board of Healing Arts, requested an amendment to the bill to require disclosure of expungement on licensure applications. A similar amendment was endorsed by the Kansas Medical Society. The Kansas State Board of Nursing also requested disclosure of expungements on licensure applications for nurses.

Opponents of the bill included: The Kansas State Nurses Association opposed disclosure of expunged materials on nursing license applications.

**Subcommittee Action**

K.S.A. 8-1567 now provides that expunged DUI diversion agreements shall be counted as conviction for subsequent DUI convictions. The Subcommittee recommends no action be taken on S.B. 4 by the full Committee believing current law does not need clarification.

2. S.B. 90 would permit, instead of require, a magistrate for "good cause" to commit into custody a person who has been arrested by his surety while on appearance bond and release the surety from further responsibility.

**Conferees**

Proponents of the bill included: Judge Marla Luckert, representing the Kansas Judicial Council's Criminal Law Subcommittee, said the current law should be changed from "shall" to "may" with a "good cause" requirement. In some cases there is no compelling reason to keep a defendant in custody.

Opponents of the bill included: None

**Subcommittee Action**

The Subcommittee recommends S.B. 90 be passed favorably by the full Senate Judiciary Committee.

3. S.B. 95 would allow a court services officer to arrest a juvenile without a warrant or to deputize any other officer with power of arrest to arrest a juvenile without a warrant by giving the officer a written statement detailing the violation of the juvenile's release. The

Sen Jud  
2-4-99  
att 12

bill also permits these juvenile arrestees to be kept in a detention facility.

**Conferees**

Proponents of the bill included: Chris Mechler, Kansas Association of Court Services Officers, supported the bill. The bill gives CSO's the same powers of arrest as they currently have for adult clients.

Opponents of the bill included: None

**Subcommittee Action**

The Subcommittee recommends S.B. 95 be passed favorably by the full Senate Judiciary Committee.

# KANSAS BOARD OF HEALING ARTS

**BILL GRAVES**  
Governor



235 S. Topeka Blvd.  
Topeka, KS 66603-3068  
(785) 296-7413  
FAX # (785) 296-0852  
(785) 368-7102

February 2, 1999

Hon. Edward W. Pugh  
State Senator, First District  
Chairman, Judiciary Subcommittee

Re: Senate Bill No. 4

Dear Senator Pugh:

Thank you for the opportunity to appear before the Judiciary Subcommittee on behalf of the State Board of Healing Arts. The Board supports Senate Bill 4, and urges the committee's favorable action.

The Board is a fifteen member body appointed by the governor to regulate eleven different professions. Under the healing arts act, the Board licenses medical doctors, doctors of osteopathic, and doctors of chiropractic. The Board also licenses podiatrists under the podiatry act. Physicians assistants are registered under the healing arts act. There are separate registration statutes regarding occupational, physical and respiratory therapy and regarding athletic training.

Senate Bill 4 as introduced relates to DUI convictions and expungement of conviction information. The State Board of Nursing requested an amendment that would require disclosure of arrests and of expunged convictions on license applications. The Kansas Medical Society requested language to require the same disclosures to the State Board of Healing Arts. The Board supports the concept, though it believes that the language suggested by the medical society should be expanded to include all of the professions it regulates. Therefore, the Board requests that on page 8, line 41, the balloon from the medical society be amended to read as follows:

*(1) in any application for an original, renewal or reinstated license or registration to practice any profession regulated by the state board of healing arts;*

LAWRENCE T. BUENING, JR.  
EXECUTIVE DIRECTOR

MEMBERS OF THE BOARD

RONALD J. ZOELLER, D.C., PRESIDENT  
TOPEKA  
DONALD B. BLETZ, M.D., VICE-PRESIDENT  
OVERLAND PARK

WILLIAM BRYANT, WASHINGTON  
JAMES D. EDWARDS, D.C., EMPORIA  
HOWARD D. ELLIS, M.D., LEAWOOD  
ROBERT L. FRAYSER, D.O., HOISINGTON  
JOHN P. GRAVINO, D.O., LAWRENCE  
JANA D. JONES, M.D., LANSING  
LANCE MALMSTROM, D.C., TOPEKA

LAUREL H. RICKARD, MEDICINE LODGE  
CHRISTOPHER P. RODGERS, M.D., HUTCHINSON  
HAROLD J. SAUDER, D.P.M., INDEPENDENCE  
EMILY TAYLOR, LAWRENCE  
HAI K. TRUONG, D.O., WICHITA  
ROGER D. WARREN, M.D., HANOVER

and on page 10, line 33:

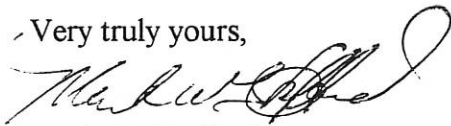
*(13) the state board of healing arts, and the request is accompanied by a statement that the request is made to determine licensure or registration qualifications to practice any profession regulated by the board.*

The purpose of the requested language is to clarify that the amendments apply not only to medical doctors, osteopaths and chiropractors regulated under the healing arts act, but also to the other professions regulated by the Board.

Earlier discussions before the Senate Judiciary Committee suggest that the Committee would also like to address the issue of whether a person licensed to practice the healing arts should be disqualified from licensure following conviction of certain felonies. The Board had anticipated requesting legislation to join the conviction and expungement issues in a single bill. I understand that the medical society has already submitted language to the Senate Committee on Public Health and Welfare, so unless this committee specifically desires to take that matter up, we will not request the bill.

Once again, thank you for the opportunity to support Senate Bill 4, and I urge your adoption of the bill with the requested amendments.

Very truly yours,



Mark W. Stafford  
General Counsel

# Kansas State Board of Nursing

Landon State Office Building  
900 S.W. Jackson, Rm. 551 S  
Topeka, Kansas 66612-1230  
785-296-4929  
FAX 785-296-3929



Patsy L. Johnson, R.N., M.N.  
Executive Administrator  
785-296-5752  
ksbn0@ink.org

To: The Honorable Senator Edward Pugh Chairperson  
and Members of the Judiciary Subcommittee

From: Patsy L. Johnson, M.N., A.R.N.P.  
Executive Administrator  
Kansas State Board of Nursing

Date: February 2, 1999

Re: SB 4

Thank you for allowing me to testify on SB 4 for the Board of Nursing. The Board would like the Judiciary Subcommittee to consider adding the agency to the list of those with the authority to get expungement information. The proposed language is attached.

The rationale for obtaining expungement information is as follows:

- The agency already has access to arrest records under K.S.A. 65-1120 (f), so we want to avoid confusion at the court level in obtaining information. (See attachment of K.S.A. 65-1120.)
- There would be a reduction of staff time spent in determining the disposition of arrests.
- Staff looks for patterns of behavior during the investigation process. Expungement information can be utilized for that purpose.
- Types of expungement that are of concern include but are not limited to DUI, theft, battery, assault, forgery, embezzlement, perjury.

**Janette Pucci, R.N., M.S.N.**  
Education Specialist  
296-3782  
ksbn1@ink.org

**Patricia McKillip, R.N., Ph.D.**  
Education Specialist  
296-3782  
ksbn1@ink.org

**Diane Glynn, R.N., J.D.**  
Practice Specialist  
296-4325

**Rex G. Beasley, J.D.**  
Assistant Attorney General  
Disciplinary Counsel  
296-8401

12-5

- Some felonies, which may be expunged, are an absolute bar to licensure based on K.S.A. 65-1120 (a)(2). Without being able to ask for expungement information, some individuals may get licensed that should not.
- Patients such as children, the elderly, the mentally ill, and those receiving care in the home are very vulnerable to abuse or exploitation.

I have also listed some types of cases we have repeatedly investigated and subsequently took action on.

- Stealing home health, long-term care and hospital patients' narcotic medications;
- Stealing and forging checks of home health patients;
- Stealing jewelry, money, antiques from patients in all settings;
- Physically abusing pediatric and geriatric patients;
- Working in an impaired state;
- Duessing elderly clients into giving cars, money, and other possessions to a licensee;
- Altering or falsifying patient records to hide drug theft or mistakes that could bring harm to patients. The patient record/nurses notes are the primary source of communication to aid all health care licensees in making decisions for patient care.

The ability to learn the true background of all nurse applicants is an essential element in fulfilling the Board's duty to protect the public and to insure that all licensees are fully qualified. Without complete information, the Board may not be able to fulfill its duty to the public.

I hope the committee will pass SB 4 favorably as amended.

Thank you. I am available for questions.



6-1

1 sentence to be imposed;  
 2 (2) upon conviction for any subsequent violation of K.S.A. 8-1567,  
 3 and amendments thereto, the diversion that was expunged shall be con-  
 4 sidered as a prior conviction pursuant to K.S.A. 8-1567, and amendments  
 5 thereto, in determining the sentence to be imposed; and

6 (3) the petitioner shall disclose that the arrest, conviction or diversion  
 7 occurred if asked about previous arrests, convictions or diversions:

8 (A) In any application for employment as a detective with a private  
 9 detective agency, as defined by K.S.A. 75-7b01, and amendments thereto;  
 10 as security personnel with a private patrol operator, as defined by K.S.A.  
 11 75-7b01, and amendments thereto; or with an institution, as defined in  
 12 K.S.A. 76-12a01, and amendments thereto, of the department of social  
 13 and rehabilitation services;

14 (B) in any application for admission, or for an order of reinstatement,  
 15 to the practice of law in this state;

16 (C) to aid in determining the petitioner's qualifications for employ-  
 17 ment with the Kansas lottery or for work in sensitive areas within the  
 18 Kansas lottery as deemed appropriate by the executive director of the  
 19 Kansas lottery;

20 (D) to aid in determining the petitioner's qualifications for executive  
 21 director of the Kansas racing commission, for employment with the com-  
 22 mission or for work in sensitive areas in parimutuel racing as deemed  
 23 appropriate by the executive director of the commission, or to aid in  
 24 determining qualifications for licensure or renewal of licensure by the  
 25 commission;

26 (E) upon application for a commercial driver's license under K.S.A.  
 27 8-2,125 through 8-2,142, and amendments thereto;

28 (F) to aid in determining the petitioner's qualifications to be an em-  
 29 ployee of the state gaming agency;

30 (G) to aid in determining the petitioner's qualifications to be an em-  
 31 ployee of a tribal gaming commission or to hold a license issued pursuant  
 32 to a tribal-state gaming compact; or

33 (H) in any application for registration as a broker-dealer, agent, in-  
 34 vestment adviser or investment adviser representative all as defined in  
 35 K.S.A. 17-1252 and amendments thereto;

36 (3) the court, in the order of expungement, may specify other cir-  
 37 cumstances under which the arrest, conviction or diversion is to be dis-  
 38 closed; and

39 (4) the conviction may be disclosed in a subsequent prosecution for  
 40 an offense which requires as an element of such offense a prior conviction  
 41 of the type expunged.

42 (f) Whenever a person is convicted of an ordinance violation, pleads  
 43 guilty and pays a fine for such a violation, is placed on parole or probation

(I) in any application for a license as a nurse under K.S.A. 65-1115  
and 65-1116 and amendments thereto; or

(J) in any application for a license as a mental health technician under  
K.S.A. 65-4203 and amendments thereto;

6-2

8-21

1 the Kansas lottery as deemed appropriate by the executive director of the  
2 Kansas lottery;

3 (9) the governor or the Kansas racing commission, or a designee of  
4 the commission, and the request is accompanied by a statement that the  
5 request is being made to aid in determining qualifications for executive  
6 director of the commission, for employment with the commission, for  
7 work in sensitive areas in parimutuel racing as deemed appropriate by  
8 the executive director of the commission or for licensure, renewal of  
9 licensure or continued licensure by the commission;

10 (10) the state gaming agency, and the request is accompanied by a  
11 statement that the request is being made to aid in determining qualifi-  
12 cations: (A) To be an employee of the state gaming agency; or (B) to be  
13 an employee of a tribal gaming commission or to hold a license issued  
14 pursuant to a tribal-state gaming compact; or

15 (11) the Kansas securities commissioner, or a designee of the com-  
16 missioner, and the request is accompanied by a statement that the request  
17 is being made in conjunction with an application for registration as a  
18 broker-dealer, agent, investment adviser or investment adviser represen-  
19 tative by such agency and the application was submitted by the person  
20 whose record has been expunged.

21 Sec. 2. K.S.A. 1998 Supp. 21-4619 is hereby amended to read as  
22 follows: 21-4619. (a) (1) Except as provided in subsections (b) and (c),  
23 any person convicted in this state of a traffic infraction, cigarette or to-  
24 bacco infraction, misdemeanor or a class D or E felony, or for crimes  
25 committed on or after July 1, 1993, nondrug crimes ranked in severity  
26 levels 6 through 10 or any felony ranked in severity level 4 of the drug  
27 grid, may petition the convicting court for the expungement of such con-  
28 viction or related arrest records if three or more years have elapsed since  
29 the person: (A) Satisfied the sentence imposed; or (B) was discharged  
30 from probation, a community correctional services program, parole, post-  
31 release supervision, conditional release or a suspended sentence.

32 (2) Except as provided in subsections (b) and (c), any person who has  
33 fulfilled the terms of a diversion agreement may petition the district court  
34 for the expungement of such diversion agreement and related arrest re-  
35 cords if three or more years have elapsed since the terms of the diversion  
36 agreement were fulfilled.

37 (b) Except as provided in subsection (c), no person may petition for  
38 expungement until five or more years have elapsed since the person sat-  
39 isfied the sentence imposed, the terms of a diversion agreement or was  
40 discharged from probation, a community correctional services program,  
parole, postrelease supervision, conditional release or a suspended sen-  
tence, if such person was convicted of a class A, B or C felony, or for  
crimes committed on or after July 1, 1993, if convicted of an off-grid

(12) the Kansas state board of nursing, and the request is accompanied  
by a statement that is being made to aid in determination of fitness for  
licensure as a nurse or mental health technician.

8-21

1 secretary of corrections and any other criminal justice agency which may  
 2 have a record of the arrest, conviction or diversion. After the order of  
 3 expungement is entered, the petitioner shall be treated as not having been  
 4 arrested, convicted or diverted of the crime, except that:

5 (1) Upon conviction for any subsequent crime, the conviction that  
 6 was expunged may be considered as a prior conviction in determining the  
 7 sentence to be imposed;

8 (2) *upon conviction for any subsequent violation of K.S.A. 8-1567,*  
 9 *and amendments thereto, the diversion that was expunged shall be con-*  
 10 *sidered as a prior conviction pursuant to K.S.A. 8-1567, and amendments*  
 11 *thereto, in determining the sentence to be imposed; and*

12 (3) the petitioner shall disclose that the arrest, conviction or diversion  
 13 occurred if asked about previous arrests, convictions or diversions: (A) In  
 14 any application for employment as a detective with a private detective  
 15 agency, as defined by K.S.A. 75-7b01 and amendments thereto; as se-  
 16 curity personnel with a private patrol operator, as defined by K.S.A. 75-  
 17 7b01 and amendments thereto; or with an institution, as defined in K.S.A.  
 18 76-12a01 and amendments thereto, of the department of social and re-  
 19 habilitation services;

20 (B) in any application for admission, or for an order of reinstatement,  
 21 to the practice of law in this state;

22 (C) to aid in determining the petitioner's qualifications for employ-  
 23 ment with the Kansas lottery or for work in sensitive areas within the  
 24 Kansas lottery as deemed appropriate by the executive director of the  
 25 Kansas lottery;

26 (D) to aid in determining the petitioner's qualifications for executive  
 27 director of the Kansas racing commission, for employment with the com-  
 28 mission or for work in sensitive areas in parimutuel racing as deemed  
 29 appropriate by the executive director of the commission, or to aid in  
 30 determining qualifications for licensure or renewal of licensure by the  
 31 commission;

32 (E) upon application for a commercial driver's license under K.S.A.  
 33 8-2,125 through 8-2,142, and amendments thereto;

34 (F) to aid in determining the petitioner's qualifications to be an em-  
 35 ployee of the state gaming agency;

36 (G) to aid in determining the petitioner's qualifications to be an em-  
 37 ployee of a tribal gaming commission or to hold a license issued pursuant  
 38 to a tribal-state gaming compact; or

39 (H) in any application for registration as a broker-dealer, agent, in-  
 40 vestment adviser or investment adviser representative all as defined in  
 41 K.S.A. 17-1252 and amendments thereto;

42 (3) the court, in the order of expungement, may specify other cir-  
 43 cumstances under which the conviction is to be disclosed;

(I) in any application for a license as a nurse under K.S.A. 65-1115  
and 65-1116 and amendments thereto; or

(J) in any application for a license as a mental health technician unde-  
K.S.A. 65-4203 and amendments thereto;

b-2/

621

01-21

1 statement that the request is being made in conjunction with a prosecu-  
2 tion of an offense that requires a prior conviction as one of the elements  
3 of such offense;

4 (7) the supreme court, the clerk or disciplinary administrator thereof,  
5 the state board for admission of attorneys or the state board for discipline  
6 of attorneys, and the request is accompanied by a statement that the  
7 request is being made in conjunction with an application for admission,  
8 or for an order of reinstatement, to the practice of law in this state by the  
9 person whose record has been expunged;

10 (8) the Kansas lottery, and the request is accompanied by a statement  
11 that the request is being made to aid in determining qualifications for  
12 employment with the Kansas lottery or for work in sensitive areas within  
13 the Kansas lottery as deemed appropriate by the executive director of the  
14 Kansas lottery;

15 (9) the governor or the Kansas racing commission, or a designee of  
16 the commission, and the request is accompanied by a statement that the  
17 request is being made to aid in determining qualifications for executive  
18 director of the commission, for employment with the commission, for  
19 work in sensitive areas in parimutuel racing as deemed appropriate by  
20 the executive director of the commission or for licensure, renewal of  
21 licensure or continued licensure by the commission;

22 (10) the Kansas sentencing commission;

23 (11) the state gaming agency, and the request is accompanied by a  
24 statement that the request is being made to aid in determining qualifi-  
25 cations: (A) To be an employee of the state gaming agency; or (B) to be  
26 an employee of a tribal gaming commission or to hold a license issued  
27 pursuant to a tribal-gaming compact; or

28 (12) the Kansas securities commissioner or a designee of the com-  
29 missioner, and the request is accompanied by a statement that the request  
30 is being made in conjunction with an application for registration as a  
31 broker-dealer, agent, investment adviser or investment adviser represen-  
32 tative by such agency and the application was submitted by the person  
33 whose record has been expunged.

34 Sec. 3. K.S.A. 1998 Supp. 12-4516 and 21-4619 are hereby repealed.

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

(13) the Kansas state board of nursing, and the request is accompanied  
by a statement that is being made to aid in determination of fitness for  
licensure as a nurse or mental health technician.

12/0



700 SW Jackson, Suite 601  
Topeka, Kansas 66603-3758

785/233-8638 \* FAX 785/233-5222  
www.nursingworld.org/snas/ks  
the Voice of Nursing in Kansas

Debbie Folkerts, A.R.N.P.--C.  
President

Terri Roberts, J.D., R.N.  
Executive Director

TO: Kansas State Board of Nursing

FROM: Ellen Carson Ph.D., ARNP  
Secretary  
Kansas State Nurses Association

DATE: December 8, 1998

SUBJ: Open Forum *Board Access to Expungement Records*

I thank the Board for providing me the opportunity to speak and the arrangement of the telephone presentation. Technology is truly a wonderful asset to us.

I am Ellen Carson, a registered nurse and ARNP, a faculty member at Pittsburg State University and a member of the KSNA Board of Directors. I want to speak to the Board about the proposed changes to K.S.A. 12-4516(h), 21-4610(I) and 21-4623 dealing with access to expunged records.

At the November KSNA Board of Directors meeting, we discussed these changes at length. The consensus was that the association would not support the KSBN's request for this access.

It is unclear why the Board would require information from expunged records. Individuals whose records are expunged *must meet very specific criteria*. The individual must submit a petition to the court where a judge renders a decision. Guidelines for record expungement are limited and well-defined by state statute and *do not include violent crimes* against others such as rape, murder, or sexual offenses. Further, if the individual repeats a crime, the expunged record is considered in determining the sentence. Therefore, the individual must maintain a "clean record" to preserve expungement.

The KSNA Board applauds the KSBN's support of the prohibition of individuals convicted of violent crimes. This was a prudent decision on the part of KSBN and the state legislature to change the nurse practice act to protect the public. However, the association does not believe that accessing expunged records would be a prudent use of the KSBN's resources and manpower. Considering the finite financial assets and workforce of the KSBN, the association believes that using state resources for this endeavor would be fruitless in the effort to protect the welfare of the citizens of Kansas.

I appreciate the opportunity to provide this opinion from the association.

Thank you and Happy Holidays.

c:\office\legislation\expungement

10-11



**65-1120. Denial, revocation, limitation or suspension of license or certification of qualification; costs; professional incompetency defined.** (a) Grounds for disciplinary actions. The board may deny, revoke, limit or suspend any license, certificate of qualification or authorization to practice nursing as a registered professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or as a registered nurse anesthetist that is issued by the board or applied for under this act or may publicly or privately censure a licensee or holder of a certificate of qualification or authorization, if the applicant, licensee or holder of a certificate of qualification or authorization is found after hearing:

(1) To be guilty of fraud or deceit in practicing nursing or in procuring or attempting to procure a license to practice nursing;

(2) to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, except that notwithstanding K.S.A. 74-120 no license, certificate of qualification or authorization to practice nursing as a licensed professional nurse, as a licensed practical nurse, as an advanced registered nurse practitioner or registered nurse anesthetist shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto;

(3) to have committed an act of professional incompetency as defined in subsection (e);

(4) to be unable to practice with skill and safety due to current abuse of drugs or alcohol;

(5) to be a person who has been adjudged in need of a guardian or conservator, or both, under the act for obtaining a guardian or conservator, or both, and who has not been restored to capacity under that act;

(6) to be guilty of unprofessional conduct as defined by rules and regulations of the board;

(7) to have willfully or repeatedly violated the provisions of the Kansas nurse practice act or any rules and regulations adopted pursuant to that act, including K.S.A. 65-1114 and 65-1122 and amendments thereto; or

(8) to have a license to practice nursing as a registered nurse or as a practical nurse denied, revoked, limited or suspended, or to be publicly or privately censured, by a licensing authority of another state, agency of the United States government, territory of the United States or country or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country. A certified copy of the record or order of public or private censure, denial, suspension, limitation, revocation or other disciplinary action of the licensing authority of another state, agency of the United States government, territory of the United States or country shall constitute prima facie evidence of such a fact for purposes of this paragraph (8).

(9) to have assisted suicide in violation of K.S.A. 21-3406 and amendments thereto as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406 and amendments thereto.

(B) A copy of the record of a judgement of contempt of court for violating an injunction issued under section 5 and amendments thereto.

(C) A copy of the record of a judgement assessing damages under section 6 and amendments thereto.



(b) Proceedings. Upon filing of a sworn complaint with the board charging a person with having been guilty of any of the unlawful practices specified in subsection (a), two or more members of the board shall investigate the charges, or the board may designate and authorize an employee or employees of the board to conduct such investigation. After investigation, the board may institute charges. If an investigation, in the opinion of the board, reveals reasonable grounds for believing the applicant or licensee is guilty of the charges, the board shall fix a time and place for proceedings, which shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Witnesses. No person shall be excused from testifying in any proceedings before the board under this act or in any civil proceedings under this act before a court of competent jurisdiction on the ground that such testimony may incriminate the person testifying, but such testimony shall not be used against the person for the prosecution of any crime under the laws of this state except the crime of perjury as defined in K.S.A. 21-3805 and amendments thereto.

(d) Costs. If final agency action of the board in a proceeding under this section is adverse to the applicant or licensee, the costs of the board's proceedings shall be charged to the applicant or licensee as in ordinary civil actions in the district court, but if the board is the unsuccessful party, the costs shall be paid by the board. Witness fees and costs may be taxed by the board according to the statutes relating to procedure in the district court. All costs accrued by the board, when it is the successful party, and which the attorney general certifies cannot be collected from the applicant or licensee shall be paid from the board of nursing fee fund. All moneys collected following board proceedings shall be credited in full to the board of nursing fee fund.

(e) Professional incompetency defined. As used in this section, "professional incompetency" means:

(1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board;

(2) repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board; or

(3) a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice nursing.

→ (f) Criminal justice information. The board upon request shall receive from the Kansas bureau of investigation such criminal history record information relating to arrests and criminal convictions as necessary for the purpose of determining initial and continuing qualifications of licensees of and applicants for licensure by the board.

**JUDICIAL COUNCIL TESTIMONY  
IN SUPPORT OF SENATE BILL 90  
BEFORE THE  
SENATE JUDICIARY COMMITTEE  
FEBRUARY 2, 1999**

The Criminal Law Subcommittee of the Judicial Council originated this bill which was approved by the Judicial Council. Members of the Criminal Law Subcommittee include district court judges, prosecutors, defense attorneys, law professors and counsel to law enforcement agencies.

Senate Bill 90 amends K.S.A. 22-2809 which relates to the surrender of an obligor by a surety. The bill contains several changes in wording to clarify the meaning of bill. The most substantive change is at line 21 where the word "shall" is deleted and the words "may, for good cause" are added. This proposal strikes the mandatory language requiring a magistrate to commit an obligor to jail and discharge the bondsman from the surety if the bondsman brings the obligor before the magistrate. Under this mandatory language, the bondsman may bring the obligor before the court for no reason at all or for a reason which the court finds not to be good cause. The court has no choice but to release the surety and commit the obligor to jail.

The issue was presented to the committee by a district judge who found himself in such a situation and felt strongly that the surrender was not justified. The committee unanimously agreed that an amendment was appropriate with other members able to recall situations where the application of the mandatory language was unjust.

The proposed amendment substitutes a "may" for the "shall", but also includes a requirement of "good cause." Such an amendment will most likely not affect the usual conduct of most proceedings. Usually the bondsman presents good cause for the commitment and the release of the surety. However, the magistrate will not be mandated to release a surety in the rare case where, for example, the bondsman does not and apparently cannot or will not articulate a reason for surrendering the defendant, but still presents for commitment the obligor who has kept his side of the contract by paying the surety, appearing in court, and doing nothing which raised issues of risk.

While the proposal is not a major change in language or a change which will bring about a different result in most cases, it is a change which is necessary to correct injustices in some circumstances which were sufficiently compelling to cause an outcry for change. The Judicial Council requests your support for the passage of Senate Bill 90.

## KANSAS ASSOCIATION OF COURT SERVICES OFFICERS

---

TESTIMONY TO SENATE JUDICIARY SUBCOMMITTEE  
CHRIS MECHLER, LEGISLATIVE CHAIRPERSON  
KANSAS ASSOCIATION OF COURT SERVICES OFFICERS  
ON 1999 SENATE BILL 95  
FEBRUARY 2, 1999

Senator Pugh and Members of the Subcommittee:

I am Chris Mechler, legislative chairperson for the Kansas Association of Court Services Officers. I am here today to ask the committee to consider Senate Bill 95. This bill would make much needed changes to the Juvenile Code.

The first change is on page 1, line 42 and following, this would allow a court services officer to issue a written statement to immediately arrest a juvenile for a violation of that juveniles' probation. The second change is on page 4, line 23 and 24, this would provide for the secure detention of the juvenile that has been arrested.

As the committee is aware, the courts are presented with an ever increasing stream of challenging juveniles. By making these changes, a Court Services Officer could in an emergency situation arrest a juvenile. As an example, I will use the case of Susie. Susie is 16 years old and is on probation for misdemeanor theft, she stole some clothing from a local store. During Susies' probation it became apparent that she has some psychological problems, including chemical addiction. She violated her probation by refusing to attend school, missing curfew and having a positive drug test. Her probation officer requested a hearing on her case, and she was ordered to undergo inpatient treatment at a local hospital to address the psychological and addiction issues. On Saturday

morning, Susie got into a fight with another patient and injured his ankle. The police were called, Susie was arrested for misdemeanor battery and transported to the juvenile intake facility. Susie does not meet the criteria outlined in K.S.A. 38-1640 to be detained at a locked facility, so she was placed at the shelter. Everyone could probably agree that a shelter is not the best placement for Susie as she is at risk to harm herself or others. Had the Court Services Officer been able to arrest Susie, she would have been immediately detained at a secure detention facility until an appropriate placement was found.

The situations in which a juvenile is arrested would be extremely rare. The Office of Judicial Administration has policies by which Court Services Officers can arrest their adult probationers. The guidelines specifically state that the authority to arrest be used only when absolutely necessary to ensure personal or public safety, and then only with discretion and caution. A similar policy would be written for juvenile arrests.

The Kansas Association of District Judges Executive Board has reviewed the proposed changes and has expressed their support for this legislation.

On behalf of the Kansas Association of Court Services Officers we appreciate your consideration of this matter.