

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Michael O'Neal at 3:30 p.m. On February 6, 2001 in Room 313-S of the Capitol.

All members were present except:

Representative Candy Ruff - Excused
Representative Clark Shultz - Excused
Representative Daniel Williams - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Pam Moses, Clerk of District Court, Reno County
Kathy Porter, Office of Judicial Administration
Larry Kleeman, Kansas League of Municipalities
Chief Judge Paul Buchanan, 18th Judicial District, Sedgwick County
Lisa Wilson, Clerk of the District Court, Jackson County

Committee minutes from January 24, 25, 29, 30 & 31 were distributed.

Hearings on **HB 2173 - expungement of arrest records**, were opened.

Pam Moses, Clerk of District Court, Reno County, appeared as a proponent of the bill. She stated that the bill provides a means by which persons wishing to expunge arrest record could do so without calling attention to the arrest by filing a petition in district court. She requested an amendment which would add the same language regarding expungement to K.S.A. 22-2410 & 12-4516a. (Attachment 1)

Kathy Porter, Office of Judicial Administration, stated that section one of the bill was inadvertently included in the bill. (Attachment 2)

Larry Kleeman, Kansas League of Municipalities, commented that the proposed bill would cause an impact on the municipal courts and would increase the cost to create a computer filing system and a separate one for the hard copy. (Attachment 3)

Hearings on **HB 2173** were closed.

Hearings on **HB 2174 - appointment of the Chief Clerk & Clerk of District Court by the Chief Judge**, were opened.

Kathy Porter, Office of Judicial Administration, explained that the Chief Judge has a wide range of duties assigned to them and because of this they should be able to safely assume this responsibility. (Attachment 4)

Chief Judge Paul Buchanan, 18th Judicial District, Sedgwick County, commented that requiring a majority of district court judges to agree on a Chief Clerk & Clerk of District Court would be impractical. (Attachment 5)

Hearings on **HB 2174** were closed.

Hearings on **HB 2175 - promoting limited action cases to a Chapter 60 judgement for the purpose of securing a lien**, were opened.

Lisa Wilson, Clerk of the District Court, appeared as a proponent of the bill which proposes clarification of procedures for elevating the status of a limited action judgement to a lien against real estate. (Attachment 6)

Hearings on **HB 2175** were closed.

Hearings on **HB 2208 - district magistrate judges have jurisdiction over limited actions**, were opened.

Representative Ward Loyd appeared as the sponsor of the bill. The 2000 Legislature overhauled the Kansas Code of Civil Procedure for Limited Actions but did not consider or amend the statutes dealing with the authority of judges, and district magistrate judges ability to hear such cases up to \$25,000 amount. (Attachment 7).

Kathy Porter, Office of Judicial Administration, appeared as a proponent of the bill. She requested an amendment clarifying that district magistrate judges do not have jurisdiction over actions other than actions seeking judgement for an unsecured debt not sounding in tort and arising out of a contract for the provisions of goods, services, or money, in which the amount in controversy exceed \$10,000. (Attachment 8)

Hearings on **HB 2208** were closed.

HB 2082 - a provision in certain documents for a nonprobate transfer is nontestamentary

Representative Long made the motion to report HB 2082 favorably and be place on the consent calander. Representative Newton seconded the motion. The motion carried.

Chairman O'Neal appointed the following committee members to subcommittee on **HB 2077 - PFA orders entered into the NCIC file**:

- Representative Peggy Long - Chair
- Representative Karen DiVita
- Representative Andrew Howell
- Representative Jan Pauls
- Representative Marti Crow

HB 2084 - for the purpose of a criminal proceeding, a mentally ill person subject to involuntary commitment is a mentally ill person who is likely to cause harm to self or others

Representative Pauls made the motion to report HB 2084 favorably for passage. Representative Loyd seconded the motion.

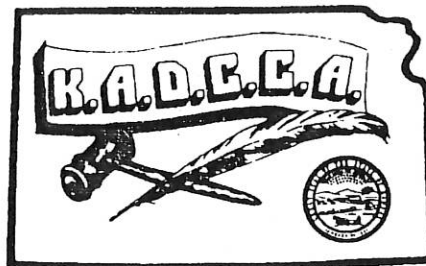
There was a brief discussion about the State not having an appropriate facility for these people. It was noted that when the Legislature passed the Sexual Predator Act there wasn't a facility for them and eventually one was developed. It was the committee belief that if the appropriations are there then SRS would find a facility.

The motion carried. Representative Crow requested she be recorded as voting no.

The committee meeting adjourned at 4:45. The next meeting is scheduled for February 7, 2001.

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February 6, 2001

Mr. Chairman and Members of the Committee:

I am here speaking on behalf of the Kansas Association of District Court Clerks and Administrators (K.A.D.C.C.A.). We appreciate the opportunity to state our views on HB2173.

K.S.A. 22-2410 is in regard to expungements of arrest records. Arrest records are records that have not and will not be filed in the courts. These are records that a prosecuting attorney chooses not to file with the court for reasons that are unknown to the courts. There is no case on file with the courts but the arrest itself can be expunged. The petition for expungement is filed as a civil case that is a public record until the order for expungement is filed. Due to the nature of this process and the fact that no case is on file with the courts, we believe the case should be a closed record upon filing of the petition for expungement as it may take 1-3 weeks before the "Order of Expungement" is filed. Until the order of expungement is filed with us the arrest record remains with the originating arresting agency.

We would also like to amend two other statutes regarding expungements to make the language consistent with the changes incorporated in SB 482 of 1998. K.S.A. 22-2410 and K.S.A. 12-4516a currently require the clerk of the district court to send a certified copy of the expungement order to the KBI. The amendment would add the requirement that the KBI notify the FBI that the records have been expunged, to be consistent with K.S.A. 21-4619 and K.S.A. 12-4516.

Thank you for allowing me the opportunity to speak to you today on these issues. I would be happy to answer any questions you may have.

**KANSAS ASSOCIATION OF DISTRICT COURT
CLERKS AND ADMINISTRATORS**

House Judiciary
2-6-01
Attachment 1



State of Kansas
Office of Judicial Administration

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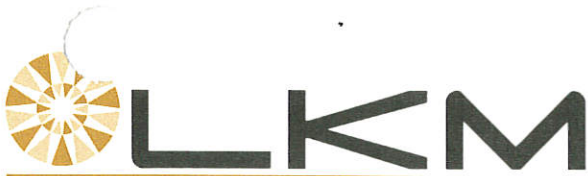
House Judiciary Committee

Testimony on House Bill 2173
Tuesday, February 6, 2001

Kathy Porter
Office of Judicial Administration

House Bill 2173 was intended to provide a means by which persons wishing to expunge arrest records could do so without calling attention to the arrest by filing a petition in the district court which, in many areas, would end up being reported in the local newspaper.

By including Section One, the municipal courts were inadvertently included in the bill. While the district courts have procedures in place to deal with confidential cases and confidential files within cases, the municipal courts would not have the same reasons to have these procedures in place. Deleting Section One from the bill would not alter the intended result of the bill, and I request that it be deleted.



League of Kansas Municipalities

TO: House Judiciary Committee
FROM: Larry Kleeman, Assistant Legal Counsel
DATE: February 6, 2001
RE: Opposition to HB 2173

I would like to thank the Committee for allowing the League of Kansas Municipalities to testify today in opposition to HB 2173. This bill, recommended by the Judicial Council for district courts, was written to apply to municipal courts as well. In the past, because of the huge impact on municipal courts in our large cities, the League testified against the original bill that would allow arrest records to be expunged.

The current bill, as written, would require that once a petition for expungement is filed, the arrestee's municipal court file be separated from other records and only released to certain individuals. Again, the problem is the potential impact on the municipal courts. Whether the files are hard copy or computer files, the potential is for increased cost to somehow segregate computer files or create a separate filing system for the hard copy records. In addition, if the records are inadvertently released, there is the potential for liability for the city. Therefore, the League urges the Committee to reject HB 2173.

Once again, I would like to thank the Committee for the opportunity to appear before you today in opposition to HB 2173.



State of Kansas
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House Judiciary Committee

Testimony on House Bill 2174
Tuesday, February 6, 2001

Kathy Porter
Office of Judicial Administration

Under current law, K.S.A. 20-343 provides that the chief judge of a judicial district is to appoint the clerk of the district court and designate one clerk as the chief clerk, with the approval of a majority of the other district judges of the judicial district. K.S.A. 20-345 includes this same provision for court services officers, secretaries, and other nonjudicial personnel. House Bill 2174 would allow the chief judge to make these appointments without requiring the approval of the majority of the other district judges.

The current statutory language could make the selection of nonjudicial personnel difficult under some scenarios. One example might be a district in which there are three district judges, including the chief judge. Although the chief judge and one other district judge might agree as to the appointment of a clerk or chief clerk, the selection process could run into difficulties if the remaining district judge disagrees with that selection. To comply with the statute in a three-judge district, it would appear that both district judges would have to agree with the chief judge, because one of two district judges does not constitute a majority of the other district judges of the judicial district. Stated differently, one district judge could effectively block the agreed-upon decision of the chief judge and the other district judge.

Each of the 31 judicial districts throughout the state has one chief judge who is appointed by the Supreme Court. K.S.A. 20-329 provides that the chief judge "shall have general control over the assignment of cases within the district, subject to supervision by the Supreme Court." The chief judge "shall be responsible for and have general supervisory authority over the clerical and administrative functions of such court." A variety of other statutes outline the duties of chief judges. Among other duties, a chief judge may appoint judges *pro tem* under certain circumstances (K.S.A. 20-310a), is responsible for the preparation of the budget to be submitted to the Board of County Commissioners (K.S.A. 20-349), and has numerous other duties specified by statute. In addition, Supreme Court Rule 107, a copy of which is attached, outlines these and other duties.

Given the broad range of responsibilities and duties with which chief judges are charged, it makes sense that the chief judge should have the ability to select the personnel who will be assisting the chief judge in carrying out those responsibilities and duties.

House Judiciary
2-6-01
Attachment 4

Rule 107

DUTIES OF ADMINISTRATIVE JUDGE

In every judicial district the Supreme Court shall designate an administrative judge who shall have general control over the assignment of cases within said district under supervision of the Supreme Court. Assignment of cases shall be designed to distribute as equally as is reasonably possible the judicial work of the district. The administrative judge of each district shall be responsible for and have general supervisory authority over the clerical and administrative functions of the court.

At least once a month in single-county districts and at least once every three months in multiple-county districts the administrative judge shall call a meeting of all judges within the district for the purpose of reviewing the state of the dockets within the district and to discuss such other business as may affect the efficient operation of the court. Within guidelines established by the Supreme Court, by the judges of the judicial district, or by statute, the administrative judge shall have the following responsibilities.

- (a) *Personnel Matters.* The administrative judge shall have supervision over recruitment, removal, compensation, and training of nonjudicial employees of the court. He shall prepare and submit to the judges for approval rules and regulations governing personnel matters to ensure that employees are recruited, selected, promoted, disciplined, removed, and retired appropriately.
- (b) *Trial Court Case Assignment.* Cases shall be assigned under the supervision of the administrative judge. Under his supervision, the business of the court shall be apportioned among the trial judges as equally as possible and he shall reassign cases as necessity requires. He shall provide for the assignment of cases to any special division established in the court. A judge to whom a case is assigned shall accept that case unless he is disqualified or the interests of justice require that the case not be heard by that judge.
- (c) *Judge Assignments.* The administrative judge, with the approval of the other judges, shall provide for the assignment and reassignment of judges to any specialized division of the court. The administrative judge shall prepare an orderly plan for vacations. The plan shall be approved by the judges of the court and shall be consistent with statewide guidelines.
- (d) *Information Compilation.* The administrative judge shall have responsibility for development and coordination of statistical and management information.
- (e) *Fiscal Matters.* The administrative judge shall supervise the fiscal affairs of the court.
- (f) *Committees.* The administrative judge may appoint standing and special committees necessary for the proper performance of the duties of the court.
- (g) *Liaison and Public Relations.* The administrative judge shall represent the court in business, administrative or public relations matters. When appropriate, he shall meet with (or designate other judges to meet with) committees of the bench, bar, and news media to review

problems and promote understanding.

(h) *Improvement in the Functioning of the Court.* The administrative judge shall evaluate the effectiveness of the court in administering justice and recommend changes.

House Judiciary Committee

Testimony in Support of HB 2174
Tuesday, February 6, 2001

I am Paul Buchanan, Chief Judge, 18th Judicial District.

Thank you for the opportunity to appear today in support of House Bill 2174. This bill gives authority to the Chief Judge to make appointments to the court staff.

I remember being in a law firm which had about the same number of members as there are judges in Sedgwick County. The members agreed that the firm's carpeting would be selected with the approval of a majority of the members of the firm. We (and I don't exclude myself) had the most ugly carpet ever designed.

The Chief Judge is picked by the Supreme Court. The job is not one where every decision is a popular decision. By giving all the judges authority to participate in the hiring process, there is a chance for pay back for an earlier unpopular decision of the Chief Judge.

I remember in my early years as a judge, it was time to appoint a Clerk of the District Court. An outside committee had been appointed to review the applications, everyone had been given the opportunity to apply. The committee had made its recommendation. There were a myriad of reasons why not to accept the recommendation. The problem was eventually solved by the Chief Judge carrying a legal pad to each judge, avoiding the problem judges, asking for a signature until he got a majority.

I urge enactment of HB2174.

John President Elect

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House Bill No. 2175
JUDGMENT LIENS
K.S.A. 60-2202 and K.S.A. 60-2418

TESTIMONY

By: Lisa A. Wilson, Clerk of the District Court (Jackson County)

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today to speak on behalf of the Kansas Association of District Court Clerks and Administrators regarding House Bill No. 2175. This bill proposes a clarification of procedures set forth in K.S.A. 60-2202(b) and 60-2418(a) for elevating the status of a limited actions judgment to a lien against real estate.

These two statutes deal, in part, with making a Chapter 61 judgment a lien on real property of judgment debtors in counties wherein their property is located. The status of the judgment in the county of origin should have the same force and effect as that given it in any other county where the judgment is filed; thus, it should not be a lien on real property in any other county until after the proper filing and fee, as provided by law, have been made in the originating county.

Since all attachments for enforcement of the judgment continue to issue from the originating county, this insures that proper process is issued for the current status of that judgment. To this end, we are requesting the insertion of the words "original" and "subsequently" in **Lines 39 & 40 on Section 1** of the bill pertaining to K.S.A. 60-2202(b), and then inserting wording in Section 2 pertaining to K.S.A. 60-2418 to agree with and further clarify this process.

Again, thank for allowing us the opportunity to appear before you today on this bill. I would be glad to entertain any questions you may have.

**KANSAS ASSOCIATION OF DISTRICT COURT
CLERKS AND ADMINISTRATORS**

House Judiciary
2-6-01
Attachment 6

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TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEES
 CHAIR: RULES & JOURNAL
 VICE-CHAIR: JUDICIARY
 MEMBER: UTILITIES
 TAX, JUDICIAL &
 TRANSPORTATION BUDGET
 CORRECTION & JUVENILE
 JUSTICE OVERSIGHT

**TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
 REGARDING HOUSE BILL 2208
 FEBRUARY 6, 2001**

Chairman O'Neal
 Honorable Committee Members

In 2000 as a result of action initiated in and issued from our committee the Kansas Legislature overhauled the Kansas Code of Civil Procedure for Limited Actions. The law became effective January 1, 2001, and can be found at K.S.A. 61-2801, *et seq.* In one section of the new law we specifically identify those civil actions which are typified as limited actions, and are governed by the procedures provided in Chapter 61 of the Kansas Statutes. That is

61-2802. Application of code. (a) This act may be used to govern the procedure for a civil lawsuit filed in the district court which:

(1) Seeks judgment for a debt which is not secured by a lien and arises out of a contract for the providing of goods, services or money, without limitation as to the amount claimed in the lawsuit;

(2) seeks judgment for a debt which is secured by a lien and arises out of a contract for the providing of goods, services or money, where the amount claimed in the lawsuit, not counting costs, interest and fees, does not exceed \$25,000; or

(3) seeks judgment where the claim does not arise out of a contract and the amount claimed in the lawsuit, not counting costs, interest and fees, does not exceed \$25,000.

(b) The following types of lawsuits may not be filed under this act:

(1) Actions against any officers of the state, or any subdivisions thereof, for misconduct in office, except as authorized by the Kansas tort claims act, K.S.A. 75-6101 *et seq.*, and

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 2-6-01
 Attachment 7

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February 6, 2001**

**Testimony Regarding H.B. 2208
by Ward Loyd**

amendments thereto;

(2) actions for specific performance of contracts for real estate;

(3) actions in which title to real estate is sought to be recovered or in which an interest in real estate, either legal or equitable, is sought to be established, except that nothing in this paragraph shall be construed as limiting the right to bring an action for forcible detainer as provided in K.S.A. 2000 Supp. 61-3801 through 61-3808, and amendments thereto;

(4) actions to foreclose real estate mortgages or to establish and foreclose liens on real estate as provided in article 11 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto;

(5) actions for divorce, separate maintenance or custody of minor children;

(6) habeas corpus;

(7) receiverships;

(8) change of name;

(9) declaratory judgments;

(10) mandamus and quo warranto;

(11) injunctions;

(12) class actions;

(13) rights of majority; and

(14) any appeal from an order or ruling of an administrative officer or body.

To provide statutorily for the procedures by which civil actions might be maintained is, however, not the same thing as identifying the courts or the judges that have the jurisdiction for such actions or the authority to oversee their administration.

It has been called to my attention that in amending Chapter 61 with regard to limited actions, the Legislature did not also consider and amend the statutes dealing with the authority of judges, and specifically district magistrate judges.

The statute providing that authority is

20-302b. District magistrate judges: jurisdiction, powers and duties; appeals. [See Revisor's Note] (a) A district magistrate judge shall have the jurisdiction and power, in any case in

**House Judiciary Committee
February 6, 2001**

**Testimony Regarding H.B. 2208
by Ward Loyd**

which a violation of the laws of the state is charged, to conduct the trial of traffic infractions, cigarette or tobacco infractions or misdemeanor charges to conduct the preliminary examination of felony charges and to hear felony arraignments subject to assignment pursuant to K.S.A. 20-329 and amendments thereto. In civil cases, a district magistrate judge shall have concurrent jurisdiction, powers and duties with a district judge, except that, unless otherwise specifically provided in subsection (b), a district magistrate judge shall not have jurisdiction or cognizance over the following actions:

(1) Any action, other than an action seeking judgment for an unsecured debt not sounding in tort and arising out of a contract for the provision of goods, services or money, in which the amount in controversy, exclusive of interests and costs, exceeds \$10,000, except that in actions of replevin, the affidavit in replevin or the verified petition fixing the value of the property shall govern the jurisdiction; nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas probate code or to issue support orders as provided by paragraph (6) of this subsection;

(2) actions against any officers of the state, or any subdivisions thereof, for misconduct in office;

(3) actions for specific performance of contracts for real estate;

(4) actions in which title to real estate is sought to be recovered or in which an interest in real estate, either legal or equitable, is sought to be established, except that nothing in this paragraph shall be construed as limiting the right to bring an action for forcible detainer as provided in the acts contained in article 23 of chapter 61 of the Kansas Statutes Annotated, and any acts amendatory thereof or supplemental thereto; and nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to hear any action pursuant to the Kansas probate code;

(5) actions to foreclose real estate mortgages or to establish and foreclose liens on real estate as provided in the acts contained in article 11 of chapter 60 of the Kansas Statutes Annotated, and any acts amendatory thereof or supplemental

**House Judiciary Committee
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**Testimony Regarding H.B. 2208
by Ward Loyd**

thereto;

(6) actions for divorce, separate maintenance or custody of minor children, except that nothing in this paragraph shall be construed as limiting the power of a district magistrate judge to: (A) Hear any action pursuant to the Kansas code for care of children or the Kansas juvenile justice code; (B) establish, modify or enforce orders of support, including, but not limited to, orders of support pursuant to the Kansas parentage act, K.S.A. 23-451 et seq., 39-718a, 39-718b, 39-755 or 60-1610 or K.S.A. 23-4,105 through 23-4,118, 23-4,125 through 23-4,137, 38-1542, 38-1543 or 38-1563, and amendments thereto; or (C) enforce orders granting visitation rights or parenting time;

(7) habeas corpus;

(8) receiverships;

(9) change of name;

(10) declaratory judgments;

(11) mandamus and quo warranto;

(12) injunctions;

(13) class actions;

(14) rights of majority; and

(15) actions pursuant to K.S.A. 59-29a01 et seq. and amendments thereto.

(b) Notwithstanding the provisions of subsection (a), in the absence, disability or disqualification of a district judge, a district magistrate judge may:

(1) Grant a restraining order, as provided in K.S.A. 60-902 and amendments thereto;

(2) appoint a receiver, as provided in K.S.A. 60-1301 and amendments thereto; and

(3) make any order authorized by K.S.A. 60-1607 and amendments thereto.

(c) In accordance with the limitations and procedures prescribed by law, and subject to any rules of the supreme court relating thereto, any appeal permitted to be taken from an order or final decision of a district magistrate judge shall be tried and determined de novo by a district judge, except that in civil cases where a record was made of the action or proceeding before the district magistrate judge, the appeal shall be tried and determined on the record by a district judge.

House Judiciary Committee
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Testimony Regarding H.B. 2208
by Ward Loyd

(d) Upon motion of a party, the chief judge may reassign an action from a district magistrate judge to a district judge.

History: L. 1976, ch. 146, § 13; L. 1977, ch. 112, § 2; L. 1979, ch. 92, § 12; L. 1979, ch. 80, § 2; L. 1983, ch. 140, § 3; L. 1984, ch. 39, § 31; L. 1985, ch. 115, § 30; L. 1986, ch. 115, § 32; L. 1986, ch. 137, § 1; L. 1986, ch. 137, § 2; L. 1990, ch. 212, § 1; L. 1992, ch. 312, § 30; L. 1995, ch. 193, § 11; L. 1996, ch. 214, § 23; L. 1998, ch. 148, § 1; L. 1999, ch. 159, § 1; L. 2000, ch. 171, § 3; July 1.

Considering the above, you will note that in 2000 we increased the size of the claims that could be filed as limited actions to a total of \$25,000, being claims on a debt which is secured by a lien and arises out of a contract for the providing of goods, services or money, or where the claim does not arise out of a contract (i.e., tort actions.) At the same time, we did not correspondingly amend K.S.A. 20-302b(1) (a), so the jurisdictional limit of claims that district magistrate judges have the authority to consider remains at \$10,000.

The intent in offering House Bill 2208 is to increase the jurisdictional limit of district magistrate judges to \$25,000.00, and thus permit such officers to have the authority over limited actions not claiming a sum in excess of \$25,000.



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House Judiciary Committee

Testimony on House Bill 2208
Tuesday, February 6, 2001

Kathy Porter
Office of Judicial Administration

Thank you for the opportunity to testify in support of House Bill 2208 on behalf of the President of the Kansas District Magistrate Judges Association, the chairperson of its Legislative Committee, and several Legislative Committee members. I apologize that their schedules would not allow them to appear in person today.

2000 House Substitute for Senate Bill 504, among other provisions, increased the amount of judgments that may be sought in limited actions cases from actions in which the amount claimed does not exceed \$10,000 to actions in which the amount claimed does not exceed \$25,000. Although district magistrate judges have traditionally heard a significant portion of the limited actions cases filed statewide, the statute that defines the jurisdiction of district magistrate judges, K.S.A. 2000 Supp. 302b, was not amended to reflect the change in the limited actions jurisdictional limit. House Bill 2208 would bring the jurisdiction of district magistrate judges back in line with the amounts that may now be claimed in limited actions cases. Without the amendment, district magistrate judges may hear limited actions cases in which the amount claimed is \$10,000 or under, but a district judge would have to hear limited actions cases in which the amount claimed is over \$10,000.

The district magistrate judges noted request one clarifying amendment. Subsection (a)(1) of K.S.A. 2000 Supp. 20-302b (at page one, line 30) specifies that district magistrate judges do not have jurisdiction over actions, other than actions seeking judgment for an unsecured debt not sounding in tort and arising out of a contract for the provision of goods, services, or money, in which the amount in controversy, exclusive of interests and costs, exceeds \$10,000. To clarify that this does not include limited actions cases, the phrase "excluding actions filed under the code of civil procedure for limited actions, K.S.A. 2000 Supp. 61-2801 et seq., and amendments thereto," could be inserted.

Thank you for your attention to this bill.