

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on March 12, 2002 in Room 313-S of the Capitol.

All members were present except:

Representative Tom Klein - Excused
Representative Judy Morrison - Excused
Representative Rick Rehorn - Excused
Representative Candy Ruff - Excused

Committee staff present:

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

Conferees appearing before the committee:

Randy Hearrell, Kansas Judicial Council
Lela Smith, Clerk of the District Court, Brown County
Lisa Wilson, Clerk of the District Court, Jackson County

Hearing on **SB 399 - appointment of an attorney for child in certain child in need of care cases**, was opened.

Randy Hearrell, Kansas Judicial Council, suggested the bill to deal with instances where the guardian ad litem and the child disagree about the child's best interest. In those courts where funding is appropriate the guardians provide appropriate service, whereas other courts that are underfunded the guardian might spend twenty minutes on a case. (Attachment 1)

Hearing on **SB 399** was closed.

Hearing on **SB 400 - nonresident administrators authorized when appointing a resident agent**, was opened.

Randy Hearrell, Kansas Judicial Council, stated that this small change would allow a non-resident seeking to serve as an administrator in the same position as an executor. (Attachment 2)

Hearing on **SB 400** was closed.

Hearing on **SB 444 - form summons in evictions under code of civil procedure for limited actions**, was opened.

Lela Smith, Clerk of the District Court, Brown County, informed the members that the bill is intended to create compliance with summons forms and response timeframes relating to limited civil actions. (Attachment 3)

Hearing on **SB 444** was closed.

Hearing on **SB 445 - filing of judgement liens under code of civil procedure**, was opened.

Lisa Wilson, Clerk of the District Court, Jackson County, commented that similar provisions passed last year but died in conference committee. It simply clarifies the Kansas Code of Civil Procedure regarding judgements obtained under Chapter 61. These judgements would become a lien against real property of the judgement debtor in any county in which real property is owned. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on March 12, 2002 in Room 313-S of the Capitol.

SB 95 - Enacting the interstate compact for adult offenders supervision

Representative Lloyd made the motion to report SB 95 favorably for passage. Representative DeCastro seconded the motion.

Representative DeCastro made the substitute motion to change the effective date to 2002. Representative Lloyd seconded the motion. The motion carried.

Representative Decastro made the motion to report SB 95 favorably for passage, as amended. Representative Newton seconded the motion. The motion carried.

SB 412 - application fee imposed on defendant entitled to indigent defense services

Representative Long made the motion to report SB 412 favorably for passage. Representative Loyd seconded the motion.

Representative Owens was concerned with having indigents pay \$50 up front. Representative DeCastro commented that there are waivers available for those who really can't pay.

The motion failed 5-9.

SB 444 - form of summons in evictions under code of civil procedure for limited actions

Representative Long made the motion to report SB 444 favorable for passage. Representative Owens seconded the motion. The motion carried.

SB 445 - filing of judgement liens under code of civil procedure

Representative Long made the motion to report SB 445 favorable for passage. Representative Crow seconded the motion.

Representative Patterson made the substitute motion to include the provisions of **HB 2980 - allowing a nonprofit trade association representating its members to be a real party in interest in lawsuits.** Representative Swenson seconded the motion. After committee discussion Representative Patterson withdrew his motion with permission of his second.

Representative Patterson made the motion to amend in the provisions of **Substitute SB 136 - wage garnishment, assignment of account.** Representative DiVita seconded the motion. The motion failed.

The motion to report carried.

HB 2135 - undocumented workers, drivers licenses

Upon committee discussion it was determined that they would like to compromise by having a license be distinctive from a Kansas driver license. It could be the same as those who are under the age of 21, those who receive learners permits or a temporary.

The committee meeting adjourned at 5:00 p.m.

**JUDICIAL COUNCIL TESTIMONY
ON 2002 SB 399**

2002 SB 399 was drafted by the Judicial Council Guardian Ad Litem Advisory Committee and approved for introduction by the Judicial Council. The bill amends K.S.A. 38-1505 by adding the following language:

"When the child's position is not consistent with the determination of the guardian ad litem as to the child's best interests, the guardian ad litem or the child may request the court to appoint a second attorney to serve either as guardian ad litem or as attorney for the child. Such attorney shall allow the child and the guardian ad litem to communicate with one another but may require such communications to occur in the attorney's presence.,"

Although this situation rarely occurs, this amendment codifies the current procedure followed by many Kansas judges when the situation does occur, and speaks to a problem which currently arises when the Judge makes such an appointment. Rule 4.2 of the Kansas Rules of Professional Conduct (Supreme Court Rule 226) reads as follows:

"Rule 4.2. Communication with Person Represented by Counsel. In representing a client, a lawyer shall not communicate about the subject of the representation with the party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so."

The proposed amendment meets the requirement of the rule by authorizing such contact. This allows the guardian ad litem to maintain ongoing contact with the child, even if the child is separately represented.

The Kansas Bar Association and some district court judges have ask for language clarifying that the judge may appoint such second attorney but is not required to do so. With the clarifying language added in dark type, the proposed amendment will read as follows:

"When the child's position is not consistent with the determination of the guardian ad litem as to the child's best interests, the **guardian ad litem shall inform the court of the disagreement.** The guardian ad litem or the child may request the court to appoint a second attorney to serve either as guardian ad litem or as attorney for the child, **and the court may, on good cause shown, appoint such second attorney.** The attorney for the child shall allow the child and the guardian ad litem to communicate with one another but may require such communications to occur in the attorney's presence."

A "paste-up" of the proposed amendment is attached at page 2.

The Supreme Court has recently amended Supreme Court Administrative Order No. 100 "Re: Guidelines for Guardians Ad Litem." A copy of that rule is attached. See pages 3-5.

SENATE BILL No. 399

By Committee on Judiciary

1-18

9 AN ACT concerning the Kansas code for care of children; relating to
10 appointment of counsel; amending K.S.A. 38-1505 and repealing the
11 existing section.
12

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

14 Section 1. K.S.A. 38-1505 is hereby amended to read as follows: 38-
15 1505. (a) *Appointment of guardian ad litem; duties.* Upon the filing of a
16 petition the court shall appoint a person who is an attorney to serve as
17 guardian *ad litem* for a child who is the subject of proceedings under this
18 code. The guardian *ad litem* shall make an independent investigation of
19 the facts upon which the petition is based and shall appear for and rep-
20 resent the child. *When the child's position is not consistent with the de-*
21 *termination of the guardian ad litem as to the child's best interests, the*
22 *guardian ad litem or the child may request the court to appoint a second*
23 *attorney to serve either as guardian ad litem or as attorney for the child.*
24 ~~Such attorney~~ *shall allow the child and the guardian ad litem to com-*
25 *municate with one another but may require such communications to occur*
26 *in the attorney's presence.*

27 (b) *Attorney for parent or custodian.* A parent or custodian of a child
28 alleged or adjudged to be a child in need of care may be represented by
29 an attorney, other than the guardian *ad litem* or a second attorney as
30 provided in subsection (a) appointed for the child, in connection with all
31 proceedings under this code. If at any stage of the proceedings a parent
32 desires but is financially unable to employ an attorney, the court shall
33 appoint an attorney for the parent. It shall not be necessary to appoint
34 an attorney to represent a parent who fails or refuses to attend the hearing
35 after having been properly served with process in accordance with K.S.A.
36 38-1534 and amendments thereto. A parent or custodian who is not a
37 minor, a mentally ill person as defined in K.S.A. 2000 2001 Supp. 59-
38 2946 and amendments thereto or a disabled person as defined in K.S.A.
39 59-3002 and amendments thereto may waive counsel either in writing or
40 on the record.

41 (c) *Attorney for parent who is a minor, mentally ill or disabled.* The
42 court shall appoint an attorney for a parent who is a minor, a mentally ill
43 person as defined in K.S.A. 59-2902 and amendments thereto or a disa-

guardian ad litem shall inform the court of the
disagreement. The

, and the court may, on good cause shown, appoint such
second attorney

The attorney for the child

1-2

2

1 child disagrees with the guardian *ad litem*'s recommendations, the guardian *ad litem* must inform
2 the court of the disagreement. The court may, on good cause shown, appoint an attorney to represent
3 the child's expressed wishes. If the court appoints an attorney, that individual serves in addition to
4 the guardian *ad litem*. The attorney must allow the child and the guardian *ad litem* to communicate
5 with one another but may require such communications to occur in the attorney's presence.

6 4) Provide reports at every hearing, such reports being written or oral at the discretion of the
7 judge.

8 5) Explain the court proceedings and the role of the guardian *ad litem* in terms the child can
9 understand.

10 6) Make recommendations for specific appropriate services for the child and the child's
11 family.

12 7) Monitor implementation of service plans and court orders.

13 8) Participate in prerequisite education prior to appointment as a guardian *ad litem* which
14 consists of not less than six (6) hours including one (1) hour of professional responsibility, and
15 participate in annual continuing education consisting of not less than six (6) hours. Areas of
16 education should include, but are not limited to, dynamics of abuse and neglect; roles and
17 responsibilities; cultural awareness; communication and communication with children skills and
18 information gathering and investigatory techniques; advocacy skills; child development; mental
19 health issues; permanence and the law; community resources; professional responsibility; special
20 education law; substance abuse issues; school law; and the code for the care of children. Such hours
21 of continuing education, if approved by the Continuing Legal Education Commission, shall apply

1 to the continuing legal education requirements of Supreme Court Rule 802 and the minimum total
2 hours annually required by that rule are not modified by these guidelines. The appointing judge or
3 designee shall have the authority to approve the prerequisite education and continuing education not
4 otherwise approved by the Continuing Legal Education Commission. Guardians ad litem shall be
5 responsible for maintaining a record of their own participation in prerequisite and continuing
6 education programs. Upon the request of the appointing judge or designee, the guardian ad litem
7 shall be required to provide evidence of compliance with this order. Such prerequisite education
8 may be waived by the appointing Judge or designee upon showing of a need for emergency
9 temporary appointment. The educational requirements shall be completed within six (6) months of
10 appointment. These educational requirements shall not be effective for a period of six (6) months
11 from the date this order is adopted by the Supreme Court.

**JUDICIAL COUNCIL TESTIMONY
ON 2002 SB 400**

Section 1 - K.S.A. 59-706

2002 SB 400 was drafted by the Probate Law Advisory Committee and approved by the Judicial Council. The bill amends K.S.A. 59-706 and 59-1706.

The amendment to K.S.A. 59-706(a) allows granting of Letters of Administration to a nonresident when the nonresident meets the same criteria as subsection (b) requires of nonresidents seeking Letters Testamentary. The proposed change will place a nonresident seeking to serve as administrator under subsection (a) in the same position as a nonresident seeking to serve as executor under subsection (b).

In addition to the requirement of the appointment of a designated agent pursuant to K.S.A. 59-1706, the appointment of any person as administrator is in the discretion of the judge (K.S.A. 59-705) and the judge may require bond (K.S.A. 59-1104).

Section 2 - K.S.A. 59-1706

The Judicial Council proposes K.S.A. 59-1706 be amended by requiring a nonresident fiduciary to obtain written acceptance of the appointment by the designated agent. Currently K.S.A. 59-1706 requires that every nonresident appointed as a fiduciary shall:

1. Appoint in writing an agent residing in the county where the appointment is made.
2. Consent that service of any notice or process made upon such agent shall have the same force and effect as personal service upon the fiduciary.
3. State the correct address of such agent.
4. File the consent in the district court where the appointment is made.

This amendment adds a fifth requirement that the writing shall include written acceptance of such appointment by the designated agent.

When the Committee reviewed this section they were surprised that there was not such a requirement. There has long been a probate form which is routinely filed in every testate estate entitled "Acceptance of Appointment as Agent of Nonresident Executor."

The amendment to the section will require that such written acceptance be made in testate and intestate cases.

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**Senate Bill # 444
Chapter 61 Summons Forms
K.S.A. 61-3805**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before this Committee today on behalf of the Kansas Association of District Court Clerks and Administrators and speak to you regarding Senate Bill # 444. This bill is intended to create compliance with summons forms and response time frames relating to limited civil actions in our state courts.

K.S.A. 61-3805 presently reflects that the summons in eviction and forcible detainer lawsuits should be the same as all other lawsuits filed under Chapter 61. In its present form, K.S.A. 61-3805 presently requires the eviction/forcible detainer summons form to be the same as the "general summons form". However, the defendant's response time on an eviction/forcible detainer summons is set not less than 3 nor more than 14 days after the date of the issuance of the summons by the court.

In contradiction to this, the "general summons form", described in K.S.A. 61-3002, requires the defendant to appear in response to the petition not less than 11 nor more than 50 days after the date of the issuance of the summons by the court. In order to eliminate further confusion, we would ask that the present K.S.A. 61-3805 be amended as follows:

"The form of summons in lawsuits under KSA 61-3801 through 61-3808, and amendments thereto, shall be the same as for other lawsuits filed under the code of civil procedure for limited actions comply with the rules or orders of the Supreme Court of this state. The time stated in the summons requiring the defendant to appear in response to the petition shall be determined by the court. Such time shall be not less than 3 nor more than 14 days after the date the summons is issued."

Thank you for your time and attention today on this issue. I would be happy to entertain any questions you might have.

Lisa [redacted] n, President Elect

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**Senate Bill No. 445
JUDGMENT LIENS
K.S.A. 60-2418**

TESTIMONY

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 Senate Bill No. 445. This bill proposes a clarification of procedures set forth in K.S.A. 60-2418(a) for elevating the status of a limited actions judgment to a lien against real estate.

This statute deals, 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 this judgment continue to be issued from the originating county, this insures that proper process is issued for the current status of that judgment. Therefore, we are requesting the insertion of the following sentence to further clarify this process.

“After such payment of the fee and renumbering of the case, such judgment may be filed in any county in which real property of the judgment debtor is located pursuant to K.S.A. 60-2202, and amendments thereto”.

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