

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Vice-Chairman Doug Patterson at 3:30 p.m. on March 4, 2004 in Room 313-S of the Capitol.

All members were present except:

Representative Ward Loyd- excused
Representative Michael O'Neal- excused
Representative Dan Williams- excused

Committee staff present:

Jill Wolters, Revisor of Statutes
Diana Lee, Revisor of Statutes
Jerry Ann Donaldson, Kansas Legislative Research Department
Cindy O'Neal, Secretary

Conferees appearing before the committee:

John Steelman, Court Administrator, 4th Judicial District
Kay Falley, Court Administrator, 3rd Judicial District
Lisa Wilson, Office of Judicial Administration
Wayne White, Kansas Legal Services, Inc.
Kathy Porter, Office of Judicial Administration
Kathy Olsen, Kansas Bankers Association

The hearing on **SB 317 - eliminating the requirement subpoenaed business records held indefinitely by the clerk of the district court**, was opened.

John Steelman, Court Administrator, 4th Judicial District, appeared before the committee as a proponent of the bill. He explained that the proposed bill would allow clerks to return business records which were not used as evidence within 30 days after a case had been terminated. ([Attachment 1](#))

The hearing on **SB 317** was closed.

The hearing on **SB 316 - requiring judges to sign executions and orders of sales**, was opened.

Kay Falley, Court Administrator, 3rd Judicial District, stated that the change is simple and would require executions and orders of sale be issued by the clerk but signed by the judge. This is currently the practice with other orders. ([Attachment 2](#))

The hearing on **SB 316** was closed.

The hearing on **SB 315 - requiring a \$20 domestic post-docket motion fee on any domestic post-decree motion**, was opened.

Lisa Wilson, Office of Judicial Administration, appeared as a proponent of the bill. Which would include all post-decree motions so clerks would not have to spend them reading the motions to determine if a docket fee should be assessed. The bill would also remove the sunset of the \$21 docket fee to make it permanent. When filing motions, attorneys are coming up with creative titles which are requiring clerks to spend time reading each motion to determine what type of motion it is. ([Attachment 3](#))

Committee members were concerned with the increase in fees and thought it might be looked upon as "funding for the court". Some wondered why the court doesn't make a rule to mandate exactly what is to be in the title of a motion.

Written testimony in opposition to the bill was provided by the Kansas Bar Association ([Attachment 4](#))

The hearing on **SB 315** was closed.

The hearing on **SB 298 - creation of docket fee for garnishments**, was opened.

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on March 4, 2004 in Room 313-S of the Capitol.

The proposed bill was requested from the Special Committee on Judiciary this past summer and would impose a \$5 docket fee for garnishment actions under Chapter 60 & 61 actions. The Senate amended the bill to establish a new Judicial Branch Fund in which the fees would be deposited. The fund would be administered by the Chief Justice of the Supreme Court. No proponents appeared on behalf of the bill. Those who did appear simply requested amendments.

Wayne White, Kansas Legal Services, Inc., requested an amendment to have the moneys generated by the garnishment docket fee be earmarked for the Access to Justice Fund, which provides legal assistance in debt collection and other related consumer legal issues. (Attachment 5)

Kathy Porter, Office of Judicial Administration, requested an amendment which would allow the docket fee to be placed with all other docket fees and then sent to the State Treasurer and then go through the docket fee percentage splits with a portion going to the newly proposed Judicial Branch Fund. (Attachment 6)

Kathy Olsen, Kansas Bankers Association, appeared as an opponent to the bill citing that it would raise the cost of collection on debts for all business, not just banks. (Attachment 7)

Written testimony in opposition to the bill was provided by the Kansas Bar Association (see attachment 4)

The hearing on **SB 298** was closed.

The committee meeting adjourned. The next meeting was scheduled from March 8, 2004.

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March 4, 2004

**Testimony by John K. Steelman,
Fourth Judicial District Court Administrator**

**Subpoena of Records of a Business not a Party
K.S.A. 60-245a**

Thank you for the opportunity to appear before you today to speak on behalf of the Kansas Association of District Court Clerks and Court Administrators regarding our proposed changes to K.S.A. 60-245a.

The Kansas Association of Court Clerks and Court Administrators is once again respectfully requesting a change to KSA 60-245a, which involves business records that have been subpoenaed. The association members would like to include language in the statute allowing the Clerks of District Court to, either return the subpoenaed records to the parties that have submitted them or destroy the business records that have not been entered into evidence as part of the case record thirty days after termination of the case.

We would request that KSA 60-245a(2)(b) would be amended with the addition of the following language:

“Thirty days after the termination of the case, records not introduced in evidence or required as part of the records may be destroyed or returned to the custodian of the records who submitted them, if return has been requested.”

The association has been requesting this change since 1998. Clerks of District Court offices continue to experience severe shortages in vault space needed to house the ever increasing number of court records. Currently, Clerks of District Court have no specific authorization to destroy or return these subpoenaed business records, so they take up valuable records space in the Courthouses.

Thank you for allowing me the opportunity to speak before you today on our proposed change.

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House Judiciary Committee
3-4-04
Attachment \

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KANSAS ASSOCIATION OF DISTRICT
COURT CLERKS & ADMINISTRATORS

Senate Bill No. 316
EXECUTIONS AND ORDERS OF SALE
K.S.A. 60-2401

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. 316. This bill proposes a clarification of procedures set forth in K.S.A. 60-2401(b) of who signs executions and orders of sale.

The statute, as it is currently written, states that executions and orders of sale shall be issued by the clerk at the request of any interested person and directed to the appropriate officers of the counties where they are to be levied.

No where in K.S.A. 60-2401(b) do you find specific wording on who is to sign these executions or orders. In practice, we have clerks signing them and we also have judges signing them. Because executions and an order of sale are a directive to an officer to seize property and cause it to be sold in satisfaction of a judgment, we are proposing to have this subsection changed to read that . . . **executions and orders of sale shall be issued by the clerk and signed by the judge.** This would eliminate clerks from the responsibility of making sure that all journal entries have been filed and all appeal time has passed—a responsibility we feel that a judge should have—not a clerk.

Thank you for allowing us the opportunity to appear before you today on this bill. I would be glad to answer any questions you may have.

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March 4, 2004

**Senate Bill 315
Post-Divorce Motions**

Thank you for allowing me, as a representative of the Kansas Association of District Court Clerks and Administrators, to speak to you today concerning SB 315 relating to post-decree motion docket fees.

Statute currently assesses a \$21 docket fee for filing certain types of post-decree motions.

We have seen documents with very creative titles requiring clerks to spend much time reading to determine what type of motion is being filed.

Therefore, we are requesting that K.S.A. 60-1621 (a) be amended as written in the bill before you.

This would allow us to quickly and more efficiently process these motions by assessing the docket fee to all post-decree motions filed under this statute.

Thank you for your time and allowing us to appear before you today. If you have any questions, I would be happy to answer them.

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Testimony in Opposition to Non-uniform Docket
Fees
SB 298 and SB 315

Presented by Jim Clark, KBA Legislative Counsel

The Kansas Bar Association is acutely aware of the inadequate funding of most governmental agencies and institutions, and it is especially conscious of the lack of funding for the court system. An adequately funded court system is not only more efficacious to lawyers and to litigants, it also ensures the right of meaningful access to the courts by all citizens of Kansas. However, the Kansas Bar Association remains steadfast in its opposition to legislative measures that detract from uniform docket fees.

Specifically, the KBA is opposed to **SB 298**, which imposes an additional \$5 fee on garnishments. The burden of the added fee falls on those litigants who, having paid the initial docket fee and successfully obtained a judgment from a court, must now resort to additional efforts to collect on that judgment.

The KBA is also opposed to **SB 315**, which imposes an additional \$21 fee on post-divorce motions. People who are forced to file such motions have already paid a docket fee, and have had their divorces granted. Unfortunately, having successfully obtained a dissolution of marriage does not mean that all parties will comply with the terms of the decree. In short, parties who must file post-divorce motions are already aggrieved, and imposition of an added fee to enforce rights which were previously given them by the court is an additional, unnecessary burden.

Unlike an across-the-board \$5 or \$21 surcharge on all cases, both bills make a uniform docket fee non-uniform, and both bills unfairly discriminate against certain classes of litigants.

**TESTIMONY OF WAYNE A. WHITE
KANSAS LEGAL SERVICES, INC.**

(785) 233-2068

Thursday, March 4, 2004

**Hearing Before the
HOUSE JUDICIARY COMMITTEE
Chairman: Representative Michael O'Neal
Statehouse Room 313-S**

I appreciate the opportunity to appear before you this afternoon regarding Senate Bill 298. In its current form, this bill would create a five dollar filing fee on garnishments and the funds generated by the fee would accrue to the newly created Judicial Branch Fund.

I am in favor of Senate Bill 298 and request that the Committee consider an amendment to place the revenue generated from garnishment fees into the Access to Justice Fund to be used to provide legal assistance in debt collection and related consumer debt legal issues.

The Access to Justice Fund was created by the Kansas Legislature in 1996 for the purpose of providing access to the Kansas civil justice system for persons who would otherwise be unable to gain access to civil justice. Access to Justice funding has allowed Kansas Legal Services to greatly expand legal assistance to *pro se* litigants, legal counsel in civil and domestic matters, and dispute resolution services to low income Kansans. The program follows guidelines established by the Supreme Court of Kansas.

Legal assistance with debt collection and related issues is an area of great unmet need among low income Kansans. Legal assistance in consumer debt cases can be beneficial to both parties of a garnishment. Legal advice or representation often results in the development of a workable payment plan and avoids costly litigation and/or collection actions.

Using revenue generated from fees on garnishments to provide legal or mediation assistance in debt collection and related consumer debt issues ties the use of the revenue directly to the process which generates the revenue. It also addresses an unmet legal need among low income Kansans and generally reduces the burden on Kansas courts.

EXECUTIVE SUMMARY
ACCESS TO JUSTICE PROGRESS REPORT FOR THE QUARTER
October 1 through December 31, 2003
YEAR TO DATE
January 1 through December 31, 2003

The Kansas Legal Services Access to Justice program makes legal counsel, mediation and *pro se* services available to low income people in all 105 Kansas counties through four programs: Access to Justice Advice Line, Domestic and Other Advocacy, *Pro Se* Assistance and Mediation.

◆ **ACCESS TO JUSTICE ADVICE LINE**

- Calls are coming in to the Advice Line from throughout the state and from all Judicial Districts.
- The Advice Line received 2,559 calls during the Fourth Quarter (October 1 through December 31, 2003) and processed intakes on 777 of those calls. During calendar year 2003, the Advice Line has received a total of 11,158 calls and processed intakes on 3,601 calls.

◆ **DOMESTIC ADVOCACY AND OTHER ADVOCACY**

- During the quarter ended December 31, 2003, Access to Justice funded domestic advocacy included 674 advice cases and 144 closed representations. An additional 126 new representation cases were opened.
- From January 1 through December 31, 2003, Access to Justice funded domestic advocacy included 3,097 advice cases and 553 closed representations. A total of 545 new representation cases were opened.
- Access to Justice funding has allowed Kansas Legal Services to continue to greatly expand the availability of domestic advocacy to low income Kansans.
- Access to Justice funding made possible 456 advices and 56 closed representations in matters other than domestic (primarily consumer and housing) during the Fourth Quarter. An additional 25 representations were opened during the quarter.
- Year to Date, Access to Justice funding made possible 2,359 advices and 366 closed representations in matters other than domestic during the fiscal year. 181 representations were opened during that period.

◆ **PRO SE ASSISTANCE**

- Assistance to *pro se* litigants is being provided through the Access to Justice Advice Line, through expanded domestic mediation and other services as requested by court personnel.
- During the Fourth Quarter of 2003, 132 persons received *pro se* assistance (closed and advised cases). An additional 10 cases were opened during the quarter.
- From January 1 through December 31, 2003, 445 persons received *pro se* assistance (closed and advised cases). 82 cases were opened during that period.

◆ **MEDIATION**

- Access to Justice funding has made it possible for Kansas Legal Services to expand the availability of mediation services for low income persons statewide.
- During the Fourth Quarter, Kansas Legal Services received 50 referrals and completed 45 Access to Justice mediations. Our mediation settlement rate for the Fourth Quarter was 62%.
- Kansas Legal Services received 205 referrals and completed 185 mediations from January 1 through December 31, 2003. Our Year to Date mediation settlement rate is 68%.



State of Kansas

Office of Judicial Administration

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March 4, 2004

Testimony on SB 298

Kathy Porter

I am requesting an amendment in the way the \$5 garnishment fee is collected and remitted to the State Treasurer by the clerks of the district courts. Under the Senate version of the bill, the \$5 fee would be placed into a separate fund and remitted to the State Treasurer. This would require the clerks to keep this money segregated from other funds, and to balance this fund separately. This would also require some programming costs to the Judicial Branch FullCourt system, and to those separate systems in counties that are not using FullCourt.

The attached proposed amendment would allow the clerks to place the \$5 garnishment fee together with other docket fees collected by the clerks. Through the docket fee percentage splits included in K.S.A. 2003 Supp. 20-367, the funds would be directed into the Judicial Branch Fund specified in the bill. The clerks would not need to balance a separate fund under this method.

Thank you for your consideration of this amendment.

As Amended by Senate Committee
Session of 2004
SENATE BILL No. 298
By Special Committee on Judiciary

1-9

AN ACT concerning civil procedure; relating to docket fees; amending K.S.A. 2003 Supp. [20-367,]60-729 **and 61-3502** and repealing the existing section *sections*.

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

Section 1. K.S.A. 2003 Supp. 60-729 is hereby amended to read as follows: 60-729. (a) Garnishment is a procedure whereby the wages, money or intangible property of a person can be seized or attached pursuant to an order of garnishment issued by the court under the conditions set forth in the order.

(b) Except as otherwise provided by law, no case shall be filed or docketed garnishment shall be issued under article 7 of Chapter 60 of the Kansas Statutes Annotated, and amendments thereto, without payment of the appropriate docket fee of \$5. The docket fee shall be paid to the clerk of the district court for remittance to the state treasurer. The state treasurer shall deposit and credit the fees to the state general judicial branch fund. [for disbursement in accordance with K.S.A. 20-362 and amendments thereto.]

Sec. 2. K.S.A. 2003 Supp. 61-3502 is hereby amended to read as follows: 61-3502. (a) Garnishment is a procedure whereby the wages, money or intangible property of a person can be seized or attached pursuant to an order of garnishment issued by the court under the conditions set forth in the order.

(b) Except as otherwise provided by law, no garnishment shall be issued under article 35 of chapter 61 of the Kansas Statutes Annotated, and amendments thereto, without payment of the appropriate docket fee of \$5. The docket fee shall be paid to the clerk of the district court for remittance to the state treasurer. The state treasurer shall deposit and credit the fees to the judicial branch fund. [for disbursement in accordance with K.S.A. 20-362 and amendments thereto.]

New Sec. 3. There is hereby created the judicial branch fund. The state treasurer shall deposit moneys, in accordance with K.S.A. 2003 Supp. 60-729 and 61-3502, and amendments thereto, to the judicial branch fund. All expenditures from the judicial branch fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chief justice of the supreme court or by a person or persons designated by the chief justice.

[New Sec. 4. K.S.A. 2003 Supp. 20-367 is hereby amended to read as follows:

20-367. (a) ~~On and after July 1, 2003, through June 30, 2005, o~~ [O]f the remittance of the balance of docket fees received by the state treasurer from clerks of the district court

pursuant to subsection (f) of K.S.A. 20-362, and amendments thereto, the state treasurer shall deposit and credit [to the judicial branch fund, a sum equal to 1.94% of the remittances of docket fees;] to the access to justice fund, a sum equal to 5.90% [5.79%] of the remittances of docket fees; to the juvenile detention facilities fund, a sum equal to 3.27% [3.21%] of the remittances of docket fees; to the judicial branch education fund, the state treasurer shall deposit and credit a sum equal to 2.52% [2.47%] of the remittances of docket fees; to the crime victims assistance fund, the state treasurer shall deposit and credit a sum equal to .67% [.66%] of the remittances of the docket fees; to the protection from abuse fund, the state treasurer shall deposit and credit a sum equal to 3.22% [3.16%] of the remittances of the docket fees; to the judiciary technology fund, the state treasurer shall deposit and credit a sum equal to 5.10% [5.00%] of the remittances of docket fees; to the dispute resolution fund, the state treasurer shall deposit and credit a sum equal to .41% [.40%] of the remittances of docket fees; to the Kansas juvenile delinquency prevention trust fund, the state treasurer shall deposit and credit a sum equal to 1.49% [1.46%] of the remittances of docket fees; to the permanent families account in the family and children investment fund, the state treasurer shall deposit and credit a sum equal to .25% [.24%] of the remittances of docket fees; to the trauma fund, a sum equal to 1.77% [1.73%] of the remittance of docket fees; to the judicial council fund, a sum equal to 1.33% [1.30%] of the remittance of docket fees; and to the judicial branch nonjudicial salary initiative fund, the state treasurer shall deposit and credit a sum equal to 21.41% [21.00%] of the remittance of docket fees. The balance remaining of the remittances of docket fees shall be deposited and credited to the state general fund.

~~(b) On and after July 1, 2005, of the remittance of the balance of docket fees received by the state treasurer from clerks of the district court pursuant to subsection (f) of K.S.A. 20-362, and amendments thereto, the state treasurer shall deposit and credit to the access to justice fund, a sum equal to 5.98% of the remittances of docket fees; to the juvenile detention facilities fund, a sum equal to 3.32% of the remittances of docket fees; to the judicial branch education fund, the state treasurer shall deposit and credit a sum equal to 2.55% of the remittances of docket fees; to the crime victims assistance fund, the state treasurer shall deposit and credit a sum equal to .68% of the remittances of the docket fees; to the protection from abuse fund, the state treasurer shall deposit and credit a sum equal to 3.26% of the remittances of the docket fees; to the judiciary technology fund, the state treasurer shall deposit and credit a sum equal to 5.17% of the remittances of docket fees; to the dispute resolution fund, the state treasurer shall deposit and credit a sum equal to .42% of the remittances of docket fees; to the Kansas juvenile delinquency prevention trust fund, the state treasurer shall deposit and credit a sum equal to 1.51% of the remittances of docket fees; to the permanent families account in the family and children investment fund, the state treasurer shall deposit and credit a sum equal to .25% of the remittances of docket fees; to the trauma fund, a sum equal to 1.79% of the remittance of docket fees; and to the judicial branch nonjudicial salary initiative fund, the state treasurer shall deposit and credit a sum equal to 21.70% of the remittance of docket fees. The balance remaining of the remittances of docket fees shall be deposited and credited to the state general fund.~~

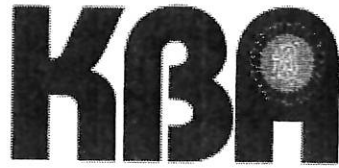
Sec. 24. [5] K.S.A. 2003 Supp. 60-729 is *and 61-3502 are* hereby

repealed.

Sec. 3-5: [6] This act shall take effect and be in force from and after its publication in the statute book.

6-5

		FY 2004 Estimate	FY 2005 Estimate	Additional \$	Proposed FY 2005
	Clerk's Fees	\$19,227,069	\$19,748,376	\$390,000	20,138,376
Fund	Current %	Current Estimate	FY 2005 Estimate	Proposed %	Proposed Estimate
Garnishment Fund				1.94%	\$ 390,684.49
Judicial Council Fund	1.33%	\$255,720.02	\$ 262,653.40	1.30%	\$ 261,798.89
Access to Justice	5.90%	\$1,134,397.07	\$ 1,165,154.18	5.79%	\$ 1,166,011.97
Juvenile Detention Facilities	3.27%	\$628,725.16	\$ 645,771.90	3.21%	\$ 646,441.87
Protection from Abuse	3.22%	\$619,111.62	\$ 635,897.71	3.16%	\$ 636,372.68
Crime Victims Assistance	0.67%	\$128,821.36	\$ 132,314.12	0.66%	\$ 132,913.28
Dispute Resolution	0.41%	\$78,830.98	\$ 80,968.34	0.40%	\$ 80,553.50
Judicial Branch Education	2.52%	\$484,522.14	\$ 497,659.08	2.47%	\$ 497,417.89
Judiciary Technology	5.10%	\$980,580.52	\$ 1,007,167.18	5.00%	\$ 1,006,918.80
Kansas Juvenile Delinquency Prevention	1.49%	\$286,483.33	\$ 294,250.80	1.46%	\$ 294,020.29
Permanent Families Account	0.25%	\$48,067.67	\$ 49,370.94	0.24%	\$ 48,332.10
Trauma Fund	1.77%	\$340,319.12	\$ 349,546.26	1.73%	\$ 348,393.90
Judicial Branch Nonjudicial Salary Initiative Fund	21.41%	\$4,116,515.47	\$ 4,228,127.30	21.00%	\$ 4,229,058.96
State General Fund	52.66%	\$10,124,974.54	\$ 10,399,494.80	51.64%	\$ 10,399,457.37
	100.00%	\$19,227,069.00	\$ 19,748,376.00	100.00%	\$ 20,138,376.00



The Kansas Bankers Association

3-4-04

TO: House Judiciary Committee
FROM: Chuck Stones, Senior Vice President

RE: SB 298

Mr. Chairman and Members of the Committee,

The Kansas Bankers Association appreciates this opportunity to appear before you in opposition to SB 298.

SB 298, if enacted, would greatly increase the cost of collecting on debts for all businesses, including banks. For banks this would include collection on overdue loans and on overdrafts. The result would be that it will simply be too costly to collect smaller debts, due to not only the new fee but also the associated legal costs.

I spoke to an attorney in Topeka who represents about 20 financial institutions. He estimates that he files between 200 – 300 garnishments per month on behalf of his clients. He also estimates that this bill will add approximately \$20 to each file.

As I have discussed this seemingly innocuous piece of legislation with my members, many of them guess that the minimum account balance that they will find economical to collect will increase from about \$300 to around \$500.

This will add to the cost of doing business and ultimately add to the price paid by consumers.

Thank you for your consideration and we urge you to not support SB 298.

House Judiciary Committee
3-4-04
Attachment 7