

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 2, 2005 in Room 313-S of the Capitol.

All members were present except:

Dean Newton- excused
Michael Peterson- excused
Mike Kiegerl- excused
Ward Loyd- excused

Committee staff present:

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

Conferees appearing before the committee:

Randy Hearrell, Kansas Judicial Council
Doug Smith, Kansas Credit Attorney's Association
Kathy Porter, Office of Judicial Administration
Judge Meryl Wilson, District Court Judge, Manhattan
Judge Richard Smith, Kansas District Judges Association
Elias Garcia, Kansas Hispanic & Latino American Affairs Commission
Ralph Mondonedo, Consumer Protection Division, Office of Attorney General
Melinda Lewis, El Centro

The hearing on **SB 50 - changing references to the Soldiers and Sailors Civil Relief Act to the Service members Civil Relief Act**, was opened.

Randy Hearrell, Kansas Judicial Council, commented that the proposed bill would update the citations to reflect the new name of the federal law Servicemembers Civil Relief Act. ([Attachment 1](#))

The hearing on **SB 50** was closed.

The hearing on **HB 2499 - Establishing the judicial branch surcharge fund, imposing certain surcharges**, was opened.

Chairman O'Neal announced that no proponents were appearing on the bill which was suggested by the Appropriations Committee.

Doug Smith, Kansas Credit Attorney's Association, appeared as an opponent of the bill. The emergency surcharge has not increased the value or improved access to the courts. While the surcharge has been successful to operate the courts, there is still a continual lack of sufficient funding. The bill simply represents a shift away from funding the courts with state general fund monies. He suggested that instead of making the surcharge mandatory the legislature look at reallocating the way in which current docket fees are divided under K.S.A. 20-367. ([Attachment 2](#))

Kathy Porter, Office of Judicial Administration, appeared in opposition to the bill. She explained that budget deficits since FY 2001 has caused the need for the emergency surcharge, and while the Court does not oppose the emergency surcharge in times of budget crunches, they do not want to make it permanent. They believe that they should be funded out of the State General Fund. ([Attachment 3](#))

Chairman O'Neal asked what the court see for the future docket fee situation. He see the docket fees either controlled totally by the courts or totally by the legislature. He asked Ms. Porter to provide information from the court as to what the future holds and where they want to be with regarding to long term solution for funding the Judiciary beside the State General Fund.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on March 2, 2005 in Room 313-S of the Capitol.

Judge Meryl Wilson, District Court Judge, Manhattan, expressed interest in **HB 2491** which provides judicial compensation. Judicial salaries are relatively low when compared to other states courts, attorneys in private practice and even professors at law schools. (Attachment 4)

Judge Richard Smith, Kansas District Judges Association, commented that other states do not use docket fees to pay judicial salaries. He was more worried about competing salaries with the private sector than with what other states are paying their judges. (Attachment 5)

The hearing on **HB 2499** was closed.

The hearing on **HB 2485 - prohibited acts by notaries public related to services offered to non-English speaking persons**, was opened.

Elias Garcia, Kansas Hispanic & Latino American Affairs Commission, has been hearing from Kansans about predatory practices towards the Latino immigrant community. In Mexico a Notario Public is able to practice law but in the U.S. a Notary Public simply certifies signatures. Some are holding themselves out as being able to practice law and taking money from those seeking help with their immigration paperwork. (Attachment 6)

Chairman O'Neal questioned why charges are not brought under the "unauthorized practice of law" statute Ralph Mondonedo, Consumer Protection Division, Office of Attorney General, responded that it's been hard to find the ones committing the crimes because so few cases are actually reported. (Attachment 7)

Representative Owens suggested that the proposed bill should include a penalty that the Notary would lose their certificate.

Melinda Lewis, El Centro, commented that many states are looking at or have taken action on similar legislation. (Attachment 8)

The hearing on **HB 2485** was closed.

The committee meeting adjourned at 5:15 p.m. The next meeting was scheduled for March 3, 2005 at 3:30 p.m. in room 313-S.



KANSAS JUDICIAL COUNCIL

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JUDGE JERRY G. ELLIOTT, WICHITA
JUDGE C. FRED LORENTZ, FREDONIA
JUDGE JEAN F. SHEPHERD, LAWRENCE
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REP. MICHAEL R. O'NEAL, HUTCHINSON
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GERALD L. GOODELL, TOPEKA
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ADMINISTRATIVE ASSISTANT

MEMORANDUM

TO: House Judiciary Committee

FROM: Kansas Judicial Council - Randy M. Hearrell

DATE: March 2, 2005

RE: 2005 SB 50

The 2003 Servicemembers Civil Relief Act is a federal law which is the successor to the Soldiers and Sailors' Civil Relief Act of 1940. The act protects active duty military members and reservists and members of the National Guard who are called to active duty.

The act covers such issues as rental agreements, security deposits, prepaid rent, eviction, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosure, income tax payments and civil judicial proceedings. The references to the Soldiers and Sailors' Civil Relief Act in the Kansas Statutes relate to civil judicial proceedings.

In order to obtain the finality parties require in civil judicial proceedings, the act must be followed. For example, the Judicial Council in its probate forms is careful to properly inform the court either that no person interested in the estate is a member of any branch of the military service within the purview of the act, or to petition for an attorney to represent the servicemember in the proceedings. In addition, Kansas Title Standards 22.2 and 22.3 require compliance with the act.

Though the content of the act was not changed with respect to civil judicial proceedings, in 2003 the Soldiers and Sailors' Civil Relief Act was amended and the name of the act was changed to the Servicemembers Civil Relief Act. SB 50 makes that change in K.S.A. 59-2208, 59-2223 and 60-203.

SB 50 was placed on the Consent Calendar in the Senate.

KANSAS CREDIT ATTORNEYS ASSOCIATION AND KANSAS COLLECTORS ASSOCIATION, INC.

REMARKS CONCERNING HOUSE BILL NO. 2499

HOUSE JUDICIARY COMMITTEE

MARCH 2, 2005

Chairman O'Neal and Members of the House Judiciary Committee:

Thank you for the opportunity to present remarks regarding House Bill No. 2499 on behalf of the Kansas Credit Attorneys Association and Kansas Collectors Association, Inc. The Kansas Credit Attorneys Association is a statewide organization of attorneys, representing approximately 60 law firms, whose practice includes considerable collection work, and Kansas Collectors Association, Inc., which is an association of collection agencies throughout Kansas. Our members represent the interests of retail merchants of all sizes and other small businesses in collection and legal matters resulting from the unpaid or past due payment for goods or services.

The KCAA and KCA appear today as opponents to House Bill No. 2499.

In 2002, while the rest of the state dealt with a budget deficit of \$500+ million, the Judicial branch adopted the emergency surcharge - an across-the-board increase in fees by \$5 - to make up for a \$3 million budget shortfall for the judicial branch budget.

This surcharge was depicted as an urgent and temporary measure necessary to avoid a financial crisis in our courts while not increasing taxes. It was and is styled as a "user-fee" on individuals who seek court assistance in enforcing court-awarded judgments. This "user-fee" has not, however, increased the value of or improved access to the courts for those paying the fee. In fact, those paying the surcharge are finding it increasingly difficult to access the courts.

In large part, the expenses of the courts are personnel costs (95+% salary) and all attempts at trimming costs reduce services. Many courts throughout the state have limited hours of operation and are limiting the numbers of post-judgment pleadings and hearings. While reducing expenses is an admirable goal, Kansans should not be asked to surrender justice.

In every year since 2002, the Court has extended this "emergency" surcharge. Although the surcharge has been successful in raising money for the Court's ongoing operations, the emergency is now and has always been a matter of continual lack of sufficient funding.

Kansas residents and businesses cannot continually be abandoned in the middle of this fiscal and political battle of budget priorities.

We have three major concerns with House Bill No. 2499.

The surcharge:

- will never go away if put in statute.
- may be increased without justification.
- can be appropriated for uses other than the court's.

This bill represents a shift away from the State's funding obligations for the Judicial branch and imposes an additional and lasting financial burden on those who need the court to enforce its own judgments. (The emergency surcharge, when implemented, was only supposed to be for one year.)

We believe it to be bad public policy to permanently fund our Court system with "user fees". Particularly when those paying the bulk of the "user fees" are simply seeking enforcement of the courts' judgments.

At least, under the current Emergency Surcharge we are somewhat assured that all funds generated will be spent by the Judiciary on improving and providing the services available to those in need of the courts. As you know, turning those surcharge fees over to the general fund, while protected now, is questionable insurance against there being unintended uses (and increased) later.

Instead of making temporary charges permanent maybe we should look seriously at reallocating the way in which the current docket fees are presently divided under KSA 20-367. If 100% of the docket fees were allocated to and retained by the Court system, instead of some funds going to a variety of extraneous programs, our Courts might fair better financially. We urge you to reject House Bill No. 2499 and request that you consider an interim study to thoroughly review the docket fees and charges. Maybe we should put those other docket fee disbursements under the appropriations process where they belong. If they are still reasonable and justified the Legislature shouldn't have a problem funding them. We believe it to be a shift in general fund monies, not any new burden on the SGF.

Thank you for your time and consideration this afternoon.

Douglas E. Smith
Kansas Credit Attorneys Association
and Kansas Collectors Association, Inc



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507

(785) 296-2256

Testimony Regarding HB 2499

House Judiciary Committee
Wednesday, March 2, 2005

HB 2499 would codify the Judicial Branch Surcharge. The surcharge was established by Supreme Court Order on April 1, 2002, in response to escalating Judicial Branch budget underfunding and the threat of extended furloughs which would have left the Judicial Branch unable to perform its constitutional and statutory duties. The attached document, "Budget Deficits Leading to the Judicial Branch Surcharge," notes the budget deficits in the years preceding and following imposition of the surcharge, and the efforts made to address those budget deficits.

Two facts about the Judicial Branch budget make it particularly vulnerable to budget cuts. The first is that it is approximately 97 percent salaries, with the remaining three percent comprised of mostly fixed-cost items. Any budget cuts mean cuts in salaries. The second fact is that these salary cuts must come from nonjudicial personnel. Article 3, Section 13 of the Kansas Constitution provides that the salaries of judges "shall not be diminished during their terms of office, unless by general law applicable to all salaries officers of the state." This leaves nonjudicial salaries as the only budget component from which cuts can be made. These two facts, coupled with years of unrealistic cuts to the Judicial Branch maintenance budget, help to explain the years of hiring freezes and potential furloughs endured by the Judicial Branch and its employees.

The Judicial Branch Surcharge has served its purpose in that furloughs have been averted and the Judicial Branch has been able to perform its constitutional and statutory duties. The surcharge also has been beneficial to the Legislature. Subcommittee reports in both the 2003 and 2004 Legislatures requested that the surcharge be continued in order to "free up" approximately \$3.5 million from the State General Fund.

The major difference between the surcharge and the effort to codify the surcharge in HB 2499 is that the Judicial Branch Surcharge Fund currently is not a part of the state treasury, and therefore is not subject to appropriation. Under HB 2499, the Judicial Branch Surcharge Fund is created "in the state treasury," and all expenditures from the fund are to be made in accordance with appropriations acts. This would place the Judicial Branch in the same position in which it was placed prior to implementation of the surcharge in 2002. The Judicial Branch would be dependent upon the Legislature to appropriate the funds generated by HB 2499. From our experience, waiting for the supplemental appropriations necessary to avert furloughs takes a

House Judiciary
3-2-05
Attachment 3

extraordinary toll on Judicial Branch employees. We request that the Judicial Branch not be placed in this position again.

HB 2499 is not necessary from the perspective that the surcharge is operating smoothly without imposing a burden on the public, as it has since its inception. If the Legislature chooses to enact the bill, however, the Judicial Branch requests that the bill be amended as provided in the attached balloon.

The balloon would replace references to "surcharge" with "charge," because the resulting fee would be authorized by statute, and would no longer be a surcharge. The name of the fund would be amended to the Judicial Branch Nonjudicial Salary Stabilization Fund for the same reason. Section 2(d) would need to be amended to refer to all post-decree motions filed pursuant to Article 16 of Chapter 60 of the Kansas Statutes Annotated, so that all post-decree motions would be assessed the \$5 charge, rather than just the motions specified in K.S.A. 2004 Supp. 60-1621 (motions for a change in legal custody, residency, visitation rights or parenting time or for modification of child support).

The Judicial Branch's experience in implementing the surcharge is that some parties have looked for ways in which to bypass paying the surcharge. Because the surcharge is implemented by court order, we have maintained flexibility and have been successful in addressing those attempts. One example is that of hearings in aid of execution. Some parties have attempted to avoid the fee by requesting that the court order an automatic call-back of the debtor at 60 or 90 days, avoiding the need to move for a hearing in aid. Others have simply resorted to the creative titling of motions, such as a "motion to examine the debtor," rather than a motion for a hearing in aid of execution. By setting these terms and fees in statute, some degree of administrative flexibility is lost. By its nature, specific codification would appear to eliminate flexibility in administering the surcharge.

Most importantly, the balloon amendment would leave the Judicial Branch Surcharge Fund under the control of the Judicial Branch, as it is currently. Again, HB 2499 is not necessary, and its codification of the surcharge creates both administrative concerns and potential budget concerns for the Judicial Branch.

Thank you for the opportunity to testify on this bill.

Budget Deficits Leading to the Judicial Branch Surcharge

FY 2001

Budget deficit approximately \$1.2 million

- Addressed with a hiring freeze on all vacant positions
- The Judicial Branch needed a supplemental appropriation of \$300,000 to end the fiscal year without a furlough.

FY 2002

Budget deficit approximately \$2.0 million

- Addressed with a 60-day minimum hiring freeze (Toward the end of the year, no positions were filled, regardless of the length of time they had been vacant.)
- All funding for temporary positions was reduced by 25%.
- All expenditures allowing district magistrate judges to travel from outlying districts into districts that do not have district magistrate judges were eliminated.
- Travel expenditures for Court of Appeals hearings were eliminated.
- Each of the 31 judicial districts had to implement a local savings component, which in the aggregate generated \$524,611 in savings.
- Even with all of the above measures, the Judicial Branch needed a supplemental appropriation of \$600,000 to end the fiscal year without a furlough.

FY 2003

Budget deficit approximately \$3.5 million

- As the FY 2003 budget was being considered by the 2002 Legislature, the Supreme Court discussed all possible options to meet this budget deficit.
- Following consideration of these options and assurances from legislative leaders that an adequate FY 2003 maintenance budget would not be forthcoming due to the state's dire fiscal situation, the Supreme Court enacted the FY 2003 Emergency Surcharge in April 2002. The surcharge generated the amount needed to adequately fund the Judicial Branch in FY 2003.

FY 2004

Budget deficit approximately \$3.5 million

- The state's dire fiscal situation continued, and the 2003 Legislature strongly urged the Judicial Branch to continue the surcharge.
- The Judicial Branch Emergency surcharge was continued into FY 2004.

HOUSE BILL No. 2499

By Committee on Appropriations

2-22

nonjudicial salary
stabilization fund,
which shall not be a
part of the state
treasury.

nonjudicial
salary
stabilization

nonjudicial salary
stabilization

9 AN ACT concerning courts; prescribing and fixing certain surcharges;
10 establishing the judicial branch surcharge fund.

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

12 Section 1. (a) There is hereby created ~~in the state treasury~~ the ju-
13 dicial branch ~~surcharge fund~~. The chief justice of the Kansas supreme
14 court shall remit any moneys received that are attributable to ~~surcharges~~
15 imposed under section 2, and amendments thereto, to the state treasurer
16 in accordance with the provisions of K.S.A. 75-4215, and amendments
17 thereto. Upon receipt of such remittance, the state treasurer shall deposit
18 the entire amount ~~in the state treasury~~ to the credit of the judicial branch
19 ~~surcharge fund~~. Moneys in the judicial branch ~~surcharge~~ fund shall be
20 used exclusively for the business of the judicial branch in the state of
21 Kansas. All expenditures from the judicial branch ~~surcharge~~ fund shall be
22 made ~~in accordance with appropriation acts~~ upon warrants of the director
23 of accounts and reports issued pursuant to vouchers approved by the chief
24 justice of the Kansas supreme court or by a person or persons designated
25 by the chief justice.

26 (b) The district court or appellate court, as the case may be, shall
27 administer, charge and collect ~~surcharges~~ imposed by section 2, and
28 amendments thereto.

29 (c) District and appellate courts may waive all or part of the ~~surcharge~~
30 imposed by section 2, and amendments thereto, upon motion of the party
31 to be charged and upon showing that such ~~surcharge~~ will result in undue
32 hardship to the petitioning party.

33 (d) ~~Surcharges~~ imposed by section 2, and amendments thereto, shall
34 be assessed in the same manner as docket fees and court costs are col-
35 lected pursuant to law in cases filed ~~in county or state courts~~.

36 Sec. 2. (a) In addition to any other fees prescribed by law, there is
37 hereby imposed a \$5 ~~surcharge~~ on persons filing or docketing a case
38 pursuant to the code of civil procedure for limited actions, which shall be
39 deposited to the credit of the judicial branch ~~surcharge~~ fund.

40 (b) In addition to any other fees prescribed by law, there is hereby
41 imposed a \$5 surcharge on persons filing a small claim pursuant to K.S.A.
42 61-2701, *et seq.*, and amendments thereto, which shall be deposited to
43

nonjudicial
salary
stabilization

nonjudicial
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stabilization

nonjudicial
salary
stabilization

nonjudicial salary stabilization

1 the credit of the judicial branch surcharge fund.

2 (c) In addition to any other fees prescribed by law, there is hereby
3 imposed a \$5 surcharge on a person filing a petition under article 16 of
4 chapter 60 of the Kansas Statutes Annotated, and amendments thereto,
5 which shall be deposited to the credit of the judicial branch surcharge
6 fund.

nonjudicial salary stabilization

nonjudicial salary stabilization

7 (d) In addition to any other fees prescribed by law, there is hereby
8 imposed a \$5 surcharge on persons filing a post-decree motion ~~petitioning~~
9 ~~for a change in legal custody, residency, visitation rights or parenting time~~
10 ~~or for modification of child support~~, which shall be deposited to the credit
11 of the judicial branch surcharge fund.

s
pursuant to article 16 of chapter 60 of the Kansas Statutes Annotated,

12 (e) In addition to any other fees prescribed by law, there is hereby
13 imposed a \$5 surcharge on persons who request a hearing in aid of exe-
14 cution pursuant to K.S.A. 60-2419, and amendments thereto, which shall
15 be deposited to the credit of the judicial branch surcharge fund.

nonjudicial salary stabilization

nonjudicial salary stabilization

16 (f) In addition to any other fees prescribed by law, there is hereby
17 imposed a \$5 surcharge on a person who requests a hearing in aid of
18 execution, pursuant to K.S.A. 2004 Supp. 61-3604, and amendments
19 thereto, which shall be deposited to the credit of the judicial branch
20 surcharge fund.

nonjudicial salary stabilization

21 (g) In addition to any other fees prescribed by law, there is hereby
22 imposed a \$5 surcharge on a person who requests an order or writ of
23 execution, pursuant to K.S.A. 60-2401, and amendments thereto, or an
24 alias order for hearing pursuant to K.S.A. 60-2419, and amendments
25 thereto, which shall be deposited to the credit of the judicial branch
26 surcharge fund.

nonjudicial salary stabilization

27 (h) In addition to any other fees prescribed by law, there is hereby
28 imposed a \$5 surcharge on persons who request a writ or order of sale
29 pursuant to K.S.A. 2004 Supp. 61-3602, and amendments thereto, which
30 shall be deposited to the credit of the judicial branch surcharge fund.

31 (i) In addition to any other fees prescribed by law, there is hereby
32 imposed a \$5 surcharge on all cases in which a judgment is rendered
33 pursuant to the code of civil procedure for limited actions in which the
34 party in whose favor judgment is rendered files pursuant to K.S.A. 60-
35 2418 or 60-2202, and amendments thereto, which shall be deposited to
36 the credit of the judicial branch surcharge fund.

nonjudicial salary stabilization

nonjudicial salary stabilization

37 (j) In addition to any other fees prescribed by law, there is hereby
38 imposed a \$5 surcharge on a person who files a petition for attachment
39 under K.S.A. 60-703 or K.S.A. 2004 Supp. 61-3501, and amendments
40 thereto, which shall be deposited to the credit of the judicial branch
41 surcharge fund.

42 (k) In addition to any other fees prescribed by law, there is hereby
43 imposed a \$5 surcharge on a person requesting an order for garnishment

1 pursuant to K.S.A. 2004 Supp. 61-3503 and 61-3504, and amendments
2 thereto, which shall be deposited to the credit of the judicial branch
3 ~~surcharge~~ fund.

nonjudicial
salary
stabilization

4 (l) In addition to any other fees prescribed by law, there is hereby
5 imposed a \$5 ~~surcharge~~ on a prosecuting witness or defendant adjudged
6 to pay the costs in a criminal proceeding in any county for a felony, mur-
7 der or manslaughter, a misdemeanor and forfeited recognizance, which
8 shall be deposited to the credit of the judicial branch ~~surcharge~~ fund.

nonjudicial
salary
stabilization

9 (m) In addition to any other fees prescribed by law, there is hereby
10 imposed a \$50 ~~surcharge~~ on a person who files a petition for expungement
11 pursuant to K.S.A. 21-4619, 38-1610 or K.S.A. 2004 Supp. 22-2410, and
12 amendments thereto, which shall be deposited to the credit of the judicial
13 branch ~~surcharge~~ fund.

nonjudicial
salary
stabilization

14 (n) In addition to any other fees prescribed by law, there is hereby
15 imposed a \$5 ~~surcharge~~ on persons filing or docketing a case pursuant to
16 article 40 or 52 of chapter 65 of the Kansas Statutes Annotated, and
17 amendments thereto, for treatment of alcoholism or drug abuse, which
18 shall be deposited to the credit of the judicial branch ~~surcharge~~ fund.

nonjudicial
salary
stabilization

19 (o) In addition to any other fees prescribed by law, there is hereby
20 imposed a \$5 ~~surcharge~~ on persons filing or docketing a case under the
21 provisions of chapter 59 of the Kansas Statutes Annotated, and amend-
22 ments thereto, for treatment of mentally ill, treatment of alcohol, treat-
23 ment of drug, determination of descent of property, refusal to grant let-
24 ters of administration, guardianship, conservatorship, combined
25 guardianship and conservatorship, annual reports, annual accounting of
26 conservatorship, closing conservatorship or closing guardianship, termi-
27 nation of joint tenancy, termination of life estate, closing trusteeship, trus-
28 teeship, decrees in probate from another state, probate of an estate or of
29 a will and filing a will and affidavit under K.S.A. 59-618a, and amend-
30 ments thereto, which shall be deposited to the credit of the judicial branch
31 ~~surcharge~~ fund.

nonjudicial
salary
stabilization

32 (p) In addition to any other fees prescribed by law, there is hereby
33 imposed a \$5 ~~surcharge~~ on a person adjudged to pay the costs in a pro-
34 ceeding under the Kansas juvenile justice code, which shall be deposited
35 to the credit of the judicial branch ~~surcharge~~ fund.

nonjudicial
salary
stabilization

36 (q) In addition to any other fees prescribed by law, there is hereby
37 imposed a \$5 ~~surcharge~~ on a prosecuting witness or defendant adjudged
38 to pay the costs in a juvenile tobacco proceeding, which shall be deposited
39 to the credit of the judicial branch ~~surcharge~~ fund.

nonjudicial
salary
stabilization

40 (r) In addition to any other fees prescribed by law, there is hereby
41 imposed a \$5 ~~surcharge~~ on persons entering and filing a lien statement
42 pursuant to K.S.A. 65-409, and amendments thereto, which shall be de-
43 posited to the credit of the judicial branch ~~surcharge~~ fund.

nonjudicial
salary
stabilization

1 (s) In addition to any other fees prescribed by law, there is hereby
2 imposed a \$5 ~~surcharge~~ on matters in which no other fee is prescribed
3 by statute pursuant to K.S.A. 2004 Supp. 28-170, and amendments
4 thereto, which shall be deposited to the credit of the judicial branch
5 ~~surcharge~~ fund.

nonjudicial
salary
stabilization

6 (t) In addition to any other fees prescribed by law, there is hereby
7 imposed a \$5 ~~surcharge~~ on persons filing a notice of pendency of an action
8 pursuant to K.S.A. 60-2203a, and amendments thereto, which shall be
9 deposited to the credit of the judicial branch ~~surcharge~~ fund.

nonjudicial
salary
stabilization

10 (u) In addition to any other fees prescribed by law, there is hereby
11 imposed a \$25 ~~surcharge~~ on an applicant for a marriage license pursuant
12 to K.S.A. 23-108a, and amendments thereto, which shall be deposited to
13 the credit of the judicial branch ~~surcharge~~ fund.

nonjudicial
salary
stabilization

14 (v) In addition to any other fees prescribed by law, there is hereby
15 imposed a \$5 ~~surcharge~~ on all persons assessed a driver's license rein-
16 statement fee pursuant to K.S.A. 8-2110, and amendments thereto, which
17 shall be deposited to the credit of the judicial branch ~~surcharge~~ fund.

nonjudicial
salary
stabilization

nonjudicial
salary
stabilization

18 (w) In addition to any other fees prescribed by law, there is hereby
19 imposed a \$5 ~~surcharge~~ on a prosecuting witness or defendant adjudged
20 to pay the costs in an action involving violation of a traffic violation under
21 K.S.A. 8-2118, and amendments thereto, which shall be deposited to the
22 credit of the judicial branch ~~surcharge~~ fund.

23 (x) In addition to any other fees prescribed by law, there is hereby
24 imposed a \$5 ~~surcharge~~ on any prosecuting witness or defendant ad-
25 judged to pay the costs in an action involving a violation of any of the
26 wildlife and parks laws of this state or of the provisions of article 11 of
27 chapter 32, of the Kansas Statutes Annotated, and amendments thereto,
28 which shall be deposited to the credit of the judicial branch ~~surcharge~~
29 fund.

nonjudicial
salary
stabilization

30 (y) In addition to any other fees prescribed by law, there is hereby
31 imposed a \$5 ~~surcharge~~ on persons filing a municipal court appeal or
32 appeal under the code of civil procedure for limited action pursuant to
33 K.S.A. 60-2001, and amendments thereto, or an appeal to the appellate
34 courts, pursuant to K.S.A. Supp. 60-2103, and amendments thereto,
35 which shall be deposited to the credit of the judicial branch ~~surcharge~~
36 fund.

nonjudicial
salary
stabilization

37 (z) In addition to any other fees prescribed by law, there is hereby
38 imposed a \$5 ~~surcharge~~ on persons filing or docketing a case pursuant to
39 the code of civil procedure pursuant to article 2 of chapter 60 of the
40 Kansas Statutes Annotated, and amendments thereto, which shall be de-
41 posited to the credit of the judicial branch ~~surcharge~~ fund.

nonjudicial
salary
stabilization

42 (aa) In addition to any other fees prescribed by law, there is hereby
43 imposed a \$5 ~~surcharge~~ on persons adjudged to pay the costs under the

nonjudicial
salary
stabilization

1 Kansas code for care of children under K.S.A. 38-1501, et seq., and
2 amendments thereto, which shall be deposited to the credit of the judicial
3 branch ~~surcharge~~ fund.

4 (bb) In addition to any other fees prescribed by law, there is hereby
5 imposed a \$5 ~~surcharge~~ on any person required to register as a sex of-
6 fender under K.S.A. 2004 Supp. 22-4901, et seq., and amendments
7 thereto, and any sex offender who is adjudged to pay the costs in an action
8 pursuant to K.S.A. 2004 Supp. 22-4903, and amendments ~~thereto, which~~
9 shall be deposited to the credit of the judicial branch ~~surcharge~~ fund.

10 Sec. 3. This act shall take effect and be in force from and after its
11 publication in the statute book.

nonjudicial
salary
stabilization

[Emergency Surcharge home page](#)

Amended - March 22, 2002

2002 SC.13

AMENDED - March 22, 2002

IN THE SUPREME COURT OF THE STATE OF KANSAS

Re: Kansas Judicial Branch Fiscal Year 2003 Emergency Surcharge

WHEREAS the Judicial Branch has been underfunded for many years; and

WHEREAS FY 2001 and FY 2002 have seen escalating underfunding in the Judicial Branch basic maintenance budget; and

WHEREAS an overwhelming \$3.5 million has been cut from the Judicial Branch's FY 2003 maintenance budget; and

WHEREAS recent meetings with Kansas legislative leaders have offered scant hope of restoration of funds to the Judicial Branch's FY 2003 budget by virtue of the then anticipated \$426 million shortfall in state revenues; and

WHEREAS at such meetings, support was expressed for the Judicial Branch to seek innovative means of securing the necessary funding; and

WHEREAS as of March 8, 2002, the projected state revenue shortfall has been increased to \$680 million making the possibility of restoration of the maintenance budget even more unlikely; and

WHEREAS without restoration of maintenance funding, the Judicial Branch cannot perform its constitutional and statutory duties; and

WHEREAS the Judicial Branch has the inherent power to do that which is necessary to enable it to perform its mandated duties; and

WHEREAS the Emergency Surcharge is not a service or operational charge and funds will be utilized solely to make up the deficit in the maintenance budget to avoid even less palatable alternatives such as prioritizing mandated services and reducing or eliminating a substantial number thereof, including misdemeanor probation, a wide variety of post-judgment remedies, and implementing furloughs and layoffs.

IT IS THEREFORE ORDERED that an Emergency Surcharge shall be imposed in accordance with the attached schedule, which is subject to change upon order of the Supreme Court.

IT IS FURTHER ORDERED that the district and appellate courts may waive all or part of the Emergency Surcharge set forth by this order on motion of the party to be charged and upon a showing that such surcharge will result in undue hardship to the petitioning party.

IT IS FURTHER ORDERED that the district and appellate court clerks shall monthly remit surcharge funds to the state treasurer. Upon receipt of such remittance the state treasurer shall deposit the entire amount thereof in a special fund to be known as the Judicial Branch Emergency Surcharge Fund, which is hereby established by this Order, and which shall not be a part of the state treasury. This fund shall be used only for Judicial Branch expenditures. All expenditures from such fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the Chief Justice of the Supreme Court or her designee.

IT IS FURTHER ORDERED that notwithstanding the provisions of Supreme Court Administrative Order No. 41 or local rules pertaining to the order of payment in criminal cases, funds received in criminal cases shall first be credited to the Judicial Branch Emergency Surcharge Fund in the amount required, then shall be credited to other funds or entities as Supreme Court Administrative Order No. 41 or local rule requires.

IT IS FURTHER ORDERED that in criminal and civil cases where a party is ordered to pay court costs, the Judicial Branch Emergency Surcharge shall be considered a portion of such court costs.

This order shall be effective April 1, 2002, and shall continue until June 30, 2003, unless rescinded, amended, or extended by the Kansas Supreme Court.

BY ORDER OF THE COURT the _____ day of March, 2002.

Kay McFarland
Chief Justice

Attachment

IN THE SUPREME COURT OF THE STATE OF KANSAS

Re: Kansas Judicial Branch Fiscal Year 2005 Emergency Surcharge

WHEREAS, the Judicial Branch's FY 2003 maintenance budget was cut by approximately \$3.5 million; and

WHEREAS, it was determined that, without restoration of the maintenance budget cut, the Judicial Branch could not perform its constitutional and statutory duties; and

WHEREAS, in response to this funding crisis, the Supreme Court established the Kansas Judicial Branch Fiscal Year 2003 Emergency Surcharge, as set forth in 2002 SC 13. Because the maintenance budget continued to be underfunded in 2004, the Supreme Court was forced to extend the Judicial Branch Emergency Surcharge to Fiscal Year 2004, as set forth in 2003 SC 51; and

WHEREAS, the \$3.5 million shortfall has been continued into the Judicial Branch's FY 2005 budget. Both the Senate Ways and Means and House Appropriations committees deleted approximately \$3.5 million from the FY 2005 Judicial Branch budget, stating that the recommendation would "force the Judicial Branch either to sustain reduction in funding from its current service budget or consider continuing the surcharge;"

IT IS THEREFORE ORDERED that the Judicial Branch FY 2004 Emergency Surcharge be extended through FY 2005 in accordance with the attached schedule as amended, effective July 1, 2004.

IT IS FURTHER ORDERED that the following terms and conditions shall apply:

1. The district and appellate courts may waive all or part of the Emergency Surcharge set forth by this Order on motion of the party to be charged, and upon a showing that such surcharge will result in an undue hardship to the petitioning party;

2. The district and appellate court clerks shall monthly remit surcharge funds to the state treasurer. Upon receipt of such remittance the state treasurer shall deposit the entire amount thereof in the special fund known as the Judicial Branch Emergency Surcharge Fund, which is

hereby established by this Order, and which shall not be a part of the state treasury. This fund shall be used only for Judicial Branch expenditures. All expenditures made from such fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the Chief Justice of the Supreme Court or her designee;

3. Notwithstanding the provisions of Supreme Court Administrative Order No. 41 or local rules pertaining to the order of payment in criminal cases, funds received in criminal cases shall first be credited to the Judicial Branch Emergency Surcharge Fund in the amount required, then shall be credited to other funds or entities as Supreme Court Administrative Order No. 41 or local rule directs;

4. In criminal and civil cases where a party is ordered to pay court costs, the Judicial Branch Emergency Surcharge shall be considered a portion of such court costs.

5. The Emergency Surcharge is not a service or operational charge and funds will be utilized solely to make up the deficit in the maintenance budget; and

6. This order shall be effective July 1, 2004, and shall continue until June 30, 2005, unless rescinded, amended, or extended by the Kansas Supreme Court.

BY ORDER OF THE COURT the 11th day of May, 2004.

Kay McFarland
Chief Justice

Attachment

**Kansas Judicial Branch FY 2005 Emergency Surcharge
Amended 7/01/2004**

Type of Fee	Surcharge
<u>Civil</u>	
Chapter 60	\$5.00
Limited Action:	
<=\$500	\$5.00
>\$500 or <=\$5,000	\$5.00
>\$5,000 or <=\$25,000	\$5.00
Small Claims	
<=\$500	\$5.00
>\$500 or <=\$4,000	\$5.00
Domestic Relations	\$5.00
Post Decree Motion	\$5.00
Hearings in Aid of Execution & Alias Orders for Hearings	\$5.00
Writs /Orders of Sale or Execution & Alias Orders or Writs	\$5.00
Elevating a Chapter 61 Judgment	\$5.00
Attachments	\$5.00
Garnishments	\$5.00
<u>Criminal</u>	
Felony	\$5.00
Murder/Manslaughter	\$5.00
Misdemeanor	\$5.00
Bond Forfeiture	\$5.00
Expungement	\$50.00
<u>Probate</u>	
Treatment of Mentally Ill Treatment of Alcohol Treatment of Drug	\$5.00
Determination of Descent	\$5.00
Refusal to Grant Letters	\$5.00
Filing Will and Affidavit	\$5.00
Guardianship	\$5.00

Type of Fee	Surcharge
Conservatorship	\$5.00
Guardianship and Conservatorship	\$5.00
Annual Reports	\$5.00
Annual Accounting of Conservatorship	\$5.00
Closing Conservatorship or Closing Guardianship	\$5.00
Termination of Joint Tenancy or Life Estate	\$5.00
Trusteeship	\$5.00
Annual Accounting of Trusteeship	\$5.00
Closing Trusteeship	\$5.00
Probate of an Estate or a Will	\$5.00
Decrees in Probate From Another State	\$5.00
Marriage License	\$25.00
<u>Juvenile</u>	
Expungement	\$50.00
Child in Need of Care	\$5.00
Juvenile Offender	\$5.00
Juvenile Tobacco Infractions	\$5.00
<u>Other Costs and Fees</u>	
Personal Property Tax Warrants	\$5.00
Tax Warrants	\$5.00
Performance Bonds	\$5.00
Hospital Lien	\$5.00
Intent to Perform	\$5.00
Mechanic's Lien	\$5.00
Oil and Gas Mechanic's Lien	\$5.00
Pending Action Lien	\$5.00
Notice of Extension to File Lien	\$5.00

Type of Fee	Surcharge
<u>Traffic</u>	
Traffic	\$5.00
Driver's License Reinstatement	\$5.00
<u>Fish and Game</u>	
<u>Appeals</u>	
*Municipal Court Appeal	\$5.00
Limited Actions Appeal	\$5.00
Appellate Court Review	\$5.00
<p>The surcharge will be assessed in the same manner as docket fees and court costs are currently collected in cases filed by city, county, or state entities.</p> <p>* An appearance bond in the amount of the docket fee (K.S.A. 28-172a) may be assessed at the time a municipal court appeal is filed.</p>	

THE HONORABLE MIKE O'NEAL, CHAIRMAN

HOUSE JUDICIARY COMMITTEE

STATEHOUSE, TOPEKA, KS

Each year, increasing numbers of Kansans are seeking quality justice in the courts of our State. Providing the citizens of Kansas with a quality judicial system is the responsibility not only of the Judicial Branch, but also the Legislative and Executive branches of our state government. It is the position of the Kansas District Judges' Association that to provide a quality system, judicial compensation must be set at a level to attract able and experienced attorneys to the bench and to retain competent, experienced judges. I would be less than candid to suggest that the level of salaries is the sole criteria by which attorneys decide whether to seek a judicial position. Perhaps the question of concern can be better stated by asking at what level of compensation are competent, qualified and experienced attorneys dissuaded from seeking judicial appointment or election.

Presumably, the State of Kansas expects its judges to possess above average levels of legal skills and experience.

Assuming that an attorney's income is an indicator of that attorney's legal skills and experience, we can compare judicial salaries with the income of above average attorneys. In 1999 the Kansas Citizens Justice Initiative issued its final report and one of the items addressed was that of judicial compensation. Their recommendation was that the State should attempt to provide salaries at least approaching the 75th percentile in the experience level (20 years) from which most judges are most likely to be recruited. Stated in other terms, we need to recruit able lawyers who in mid-career are willing to make a commitment to public service.

According to the Kansas Bar Association survey, as adjusted for inflation using the consumer price index, the average income for attorneys in this range is \$142,320. This compares with the 2003 salary of district judges of slightly more than \$100,000. Based upon this data, Kansas cannot expect to attract an above average attorney to the trial bench unless that attorney has less than fifteen (15) years of experience. The twenty-five (25) full law professors at KU (excluding the Dean) who are on a nine month term, average \$130,247. Only eleven make less than our Chief Justice, and only two make less than a district judge. The Dean earns \$86,688 more than the Chief Justice of the Kansas Supreme Court. The city attorney for

Overland Park is paid an annual salary of approximately \$135,000, or approximately \$31,000 more than a Johnson County District Judge, and \$13,600 more than the salary paid to the Chief Justice of the Kansas Supreme Court. The Kansas District Judges' Association is not suggesting that Kansas Judges are generally unqualified or inferior today, however the quality of the bench may be threatened in the near future if nothing is done to improve judicial salaries. We believe that public service generally involves some sacrifices, and recognize that public employees simply do not attain levels equal to the top pay scale in the private sector. However be it Engineers, Doctors , Computer Programmers or Judges, that are working for government entities, they must be paid salaries that are in line with the private sector, or we will cease to have a pool of well-qualified candidates.

Since 1989, a period of 15 years, Kansas judges have received one raise of \$3,218 in FY 2000, excluding COLA's. The Judicial budget as submitted provides for an increase which will be much less than offered in the public sector. As one judges related to me, I sit on the bench, listening to two attorneys, half my age, with half my experience and half my knowledge and making twice my pay and

**sometimes I wonder why. The Kansas District Judges' Association
strongly supports the budget as submitted.**

Respectfully submitted,

Meryl D. Wilson

District Judge 21st Judicial District

1-3-05

Judge Max
Wilson

**KANSAS
JUDICIAL SALARIES**

**A Report prepared by the Kansas District Judge Association
Committee on Compensation and Retirement**

Summary of

Report on Kansas Judicial Salaries

It would hardly seem debatable that there is a direct relationship between the level of judicial salaries and the competence of attorneys attracted to the judiciary. To provide a quality justice system for Kansas citizens, judicial compensation must be set at a level that able and experienced attorneys will be attracted to the bench, and competent, experienced judges will be retained.

We would be less than candid if we suggested that the level of salaries is the sole criteria by which attorneys decide whether to seek a judicial position. Perhaps the question of concern can be better stated by asking at what level of compensation are competent, qualified, and experienced attorneys dissuaded from seeking judicial appointment or election.

Judicial Salaries-National and Regional:

- Judges in thirty-eight states are paid higher salaries than Kansas judges.
- Kansas judges are paid \$10,312 less than the national median salary for trial court judges (adjusted to 2004) and \$13,325 less than the 2003 national average (adjusted to 2004).
- Kansas judges are paid lower salaries than judges in nearby states, including Missouri, Nebraska, Colorado, Iowa, and Arkansas.
- Kansas judges receive \$14,896 per year less than the highest salary (Arkansas) and \$8,600 per year less than the average of salaries paid to judges in the six nearby states.

Kansas Attorneys' Income:

- In 1996, the average income of Kansas attorneys with 15-19 years experience was \$92,820. Adjusted for inflation, this equates to a 2003 salary of \$110,085, or \$9,860 more than the comparable district judge salary.
- The median income of Kansas attorneys with twenty or more years of experience was \$98,500 and the average income was \$109,867. This equates to a 2003 median income of \$116,821 (\$16,596 more than the district judge salary) and a 2003 average income of \$130,302 (\$30,077 more than the district judge salary).
- The city attorney of Overland Park, Kansas is paid \$13,600 more than the Chief Justice of the Kansas Supreme Court and approximately \$31,700 more than a Johnson County District Judge.

Per Capita Income/Judicial Salaries-Kansas and Other States:

- Kansas 2003 per capita income ranked 26th nationally; Kansas judicial salaries ranked 39th nationally.
- Of nearby states, only Colorado and Nebraska had a higher per capita income than Kansas; Kansas judges are paid less than judges in all of those states, except Oklahoma.
- From 1996 through 2003, Kansas per capita income increased 29.22%; Kansas judges salaries increased 19.51%.

- Of ten states having a comparable per capita income to Kansas, Kansas judges are paid less than judges in any of those ten states, with the exception of Oregon and South Dakota.
- In 2003, the average salary for judges in the ten states having a comparable per capita income was \$111,501.

Kansas State Officials and Employees:

- **The twenty-five full law professors at KU (excluding the dean), who are on a 9 (nine) month term, average \$130,247. Of these twenty-five professors, only eleven (11) make less than the Chief Justice and only two (2) earn less than a district judge. The law school dean, who is on a 12-month appointment, earns \$86,688 more than the Chief Justice of the Kansas Supreme Court.**

Fiscal Note:

- The estimated fiscal note to increase judicial salaries to the national median is \$301,238 for appellate justices and judges, \$2,219,193 for district judges, \$43,799 for senior judges, \$512,683 for district magistrate judges. An additional \$90,875 would increase the salary of chief judges, providing a more appropriate and meaningful increase above the salary of district judges.

As with all FY 2006 budgets, this proposal must include a 27th paycheck for the year. The total cost of the proposal is as noted below.

	Annual Cost	27th Pay Period	FY 2006 Total Cost
Appellate Judges	\$290,081	\$11,157	\$301,238
District Court Judges	\$2,137,001	\$82,192	\$2,219,193
District Magistrate Judges	\$493,695	\$18,988	\$512,683
Senior Judges	\$42,177	\$1,622	\$43,799
Chief Judge Proposal	\$87,509	\$3,366	\$90,875
	<u>\$3,050,463</u>	<u>\$117,325</u>	<u>\$3,167,788</u>

KANSAS JUDICIAL SALARIES

A Report prepared by the Kansas District Judges Association Committee in Compensation and Retirement

Introduction

Each year, increasing numbers of Kansans are seeking quality justice in the courts of our state. We think the question can fairly be asked whether the present salary level of the Kansas judges, without significant adjustments, is adequate to ensure Kansans that their case will be presented to qualified, competent, and experienced judges.

For many years Kansas judges have actively lobbied the Kansas Legislature for an increase in judicial compensation that would bring the salaries of Kansas judges to the national median. For the first time since 1999, judges seek a salary increase that would place the Kansas compensation level at or near the national median. In FY 1988 and FY 1989, judges received 7% salary increases, reflecting a legislative effort to bring Kansas judges to the national median. In subsequent years, Kansas judicial salaries began to drop further below the national median, until a FY 2000 salary increase helped to some extent. However, since FY 2000, judges have received cost of living adjustments, but nothing more. In FY 2003, judges did not even receive a cost of living adjustment. Since 1989, a period of 15 years, Kansas judges have received one raise of \$3,218 in FY 2000.

Whether Kansas judges are being fairly compensated is a matter that can be, and has been, the subject of debate between individual judges and legislators. Unfortunately, that debate may have clouded an issue of greater concern than the personal gain of judges or the political concerns of legislators—the issue of the public's interest in having a quality judicial system. Providing the citizens of Kansas with a quality judicial system is the responsibility not only of the Judicial Branch, but also the Legislative and Executive Branches of our state government.

It would hardly seem debatable that there is a direct relationship between the level of judicial salaries and the competence of attorneys attracted to the judiciary. To provide a quality justice system,

judicial compensation must be set at a level to attract able and experienced attorneys to the bench and to retain competent, experienced judges. The Kansas Judicial Branch cannot continue to provide quality justice to the citizens of Kansas without the Legislative and Executive Branches providing fair and adequate compensation to Kansas judges.

We would be less than candid if we suggested that the level of salaries is the sole criteria by which attorneys decide whether to seek a judicial position. Perhaps the question of concern can be better stated by asking at what level of compensation are competent, qualified, and experienced attorneys dissuaded from seeking judicial appointment or election.

Salary Comparison – Judges Other States

As of January 1, 2003, Kansas trial judges received an annual salary of \$100,255. Thirty-eight states paid their judges higher salaries than the salaries received by Kansas judges.¹ Kansas trial judges received approximately \$10,000 less than the national median salary of \$113,544. Nationally, the range of annual salaries of general jurisdiction trial court judges varied from a high of \$154,700 in the District of Columbia to a low of \$88,164 in Montana.²

The justices of the Kansas Supreme Court have fared no better than the trial judges. The Supreme Court justices' salary for 2003 was \$116,111, which was still \$9,181 less than the 2003 national median.

The average salary paid to the trial judges in the states shown in Table 1 was \$107,380. Kansas trial judges were paid nearly \$15,000 less than the highest paid (Arkansas), less than \$5,000 above the lowest salary (Oklahoma), and approximately \$7,000 less than the average.

¹ *Survey of Judicial Salaries*, National Center for State Courts, Vol. 28, Number 2

² *id.*

Table 1
Judicial Salaries – Central States
Trial Courts, Intermediate Appellate Courts and Highest Appellate Court
(as of July 1, 2004)

	Kansas	Missouri	Iowa	Nebraska	Colorado	Oklahoma	Arkansas
Trial	\$103,232	\$108,000	\$112,010	\$110,330	\$107,044	\$95,898	\$118,128
Intermediate Appellate Court	\$114,118	\$115,000	\$115,540	\$113,312	\$109,137	\$101,714	\$122,093
Highest Appellate Court	\$118,212	\$123,000	\$120,100	\$119,276	\$113,637	\$106,716	\$126,054

Judicial Salaries – Attorney Income

Presumably, the State of Kansas expects its judges to possess above average levels of legal skills and experience. Assuming that an attorney's income is an indicator of that attorney's legal skills and experience, we can compare judicial salaries with the income of above average attorneys. A 1997 Kansas Bar Association study of attorneys' income in Kansas provides the basis for a comparison of judicial salaries and attorneys' incomes.³

In 2003, attorneys with fifteen to nineteen years of experience had an average income of \$110,085, based on a 1996 Kansas Bar Association survey, as adjusted for inflation using the Consumer Price Index [CPI]. Attorneys in the top 25% of that range of experience have incomes of approximately \$142,320, as adjusted for inflation. The median income of attorneys with twenty or more years of experience was \$116,821 and their average income was \$130,302, as adjusted for inflation. This compares with the 2003 salary of district judges of slightly more than \$100,000. Based on this data, Kansas cannot expect to attract an above average attorney to the trial bench unless that attorney has less than fifteen years experience. To attract an attorney from the 75th percentile group, that attorney will likely have less than ten years experience. In 1998 the Kansas Citizens Justice Initiative Committee issued its final report. On the issues of compensation of judges, the committee

³ 1997 *Economic Survey of Kansas Lawyers*, Journal of the Kansas Bar Association, December 1997, Vol. 66, No. 10

stated, “We believe that, to hire from among the best Kansas lawyers, the State should attempt to provide judicial salaries at least approaching the 7th percentile in the experience level from which judges are most likely to be recruited, i.e., those lawyers with from 10 to 20 years of experience.” Recommendation number six of the report was to increase the salaries an additional \$10,000 beyond current salaries, in addition to any cost of living increases. In the opinion of the committee, this was the amount necessary to bring district judges salaries roughly to the median income statewide for attorneys with 20 to 29 years of experience. Five years later this gap has increased to \$16,596.

In Johnson County, the city attorney of Overland Park is paid an annual salary of approximately \$135,000, or approximately \$31,800 more than the annual salary of a Johnson County district judge, and approximately \$13,600 more than the salary paid to the Chief Justice of the Kansas Supreme Court.

The average income of male attorneys⁴ categorized by the number of years in the practice of law is shown in Table 2:

Table 2
Kansas Attorneys’ Income by Years in Practice

Years in Practice	Percentile 25	Percentile 25		Median		Mean		Percentile 75	
		Adjusted to 2003	Median	Adjusted to 2003	Mean	Adjusted to 2003	Percentile 75	Adjusted to 2003	
<5	31,750	37,656	38,500	45,661	41,244	48,915	49,250	58,411	
5-9	40,000	47,440	52,000	61,672	51,989	68,775	70,000	83,020	
10-14	50,000	59,300	74,000	87,764	84,338	100,025	114,250	135,501	
15-19	50,000	59,300	80,000	94,880	92,820	110,085	120,000	142,320	
20-29	65,000	77,090	98,500	116,821	109,867	130,302	134,500	159,517	
30-39	72,000	85,392	90,000	106,740	112,933	133,346	140,000	166,040	

⁴ The study provided statistical data showing the net income of Kansas attorneys by gender and number of years in practice. The net income of female attorneys was shown to be lower than that of male attorneys.

Judicial Salaries – Per Capita Income

The 2003 per capita income of Kansas ranked 26th in the nation.⁵ The 2003 per capita incomes and the national rankings for Kansas and nearby states are shown in Table 3. Of the surrounding states, only Colorado and Nebraska had a higher per capita income than Kansas.

Table 3
Central States
Per Capita Income, National Ranking

	Kansas	Missouri	Iowa	Nebraska	Colorado	Oklahoma	Arkansas
Income	29,935	29,252	29,043	30,283	30,283	26,656	24,289
US Rank	26	30	33	21	8	39	49

While Kansas citizens enjoyed the third-highest per capita income in the seven states, Kansas judges were paid less than the judges in any of our neighboring states, with the exception of Oklahoma. From 1996 to 2003, Kansas per capita income rose from \$23,165 to \$29,935, an increase of 29.22%. In the same time period, salaries of district judges increased 19.51%. A comparison of the per capita income rankings of the states and the ranking for salaries paid to general trial judges is shown in Table 4.

Table 4
1996 National Ranking – Per Capita Income and Judicial Salaries

	Kansas	Missouri	Iowa	Nebraska	Colorado	Oklahoma	Arkansas
US Rank-Judges	39	30	26	25	35	43	18
US Rank-Per Capita Income	26	30	33	21	8	39	49

⁵ Bureau of Economic Analysis, US Department of Commerce, July 24, 1997, and September 19, 1997, news releases.

Table 5 provides a comparison of July 1, 2004, judicial salaries in those states having a 2003 per capita income comparable to the Kansas per capita income. For purposes of this comparison, ten states were selected: the five states ranking nationally twenty-first through twenty-fifth and the five states ranking nationally twenty-seventh through thirty-first. With two exceptions, Oregon and South Dakota, trial judges in these states were paid more than Kansas trial judges. The average salary for the eleven states was \$111,501.

Table 5
1996 Per Capita Income and Judicial Salaries Ranking

State	Per Capita Income	National Rank (PCI)	Judge Salary	National Rank (Judge \$)
Nebraska	30,758	21	110,330	19
Vermont	30,740	22	104,355	37
Florida	30,446	23	133,250	8
Michigan	30,439	24	139,919	5
Ohio	29,994	25	107,600	31
<i>Kansas</i>	<i>29,935</i>	<i>26</i>	<i>100,255</i>	<i>39</i>
Georgia	29,442	27	121,938	13
Texas	29,372	28	109,158	27
Oregon	29,340	29	95,800	44
Missouri	29,252	30	108,000	30
South Dakota	29,234	31	95,910	42

Judicial Salaries – Other State Officials and Employees

The twenty-five (25) full law professors at KU (excluding the law school dean) who are on a nine (9) month term, average \$130,247. Because some of the professors are “distinguished professors,” a modest amount of some salaries come from sources outside the normal channels. Of these 25 full professors, only eleven (11) make less the Chief Justice and only two make less than a district judge. The Chairman of the department, who is on a twelve (12) month appointment, earns \$86,688 more than the Chief Justice of the Kansas Supreme Court.

Table 6
Salaries of State Officials and Employees

Position Title	FY 2005 Salary
Dean, KU Law School	\$208,077
KU Law School Professor	\$165,132
KU Law Professor	\$163,558
KU Law Professor	\$163,267
KU Law Professor	\$158,748
KU Law Professor	\$156,202
KU Law Professor	\$155,350
KU Law Professor	\$152,314
KU Law Professor	\$150,877
KU Law Professor	\$140,756
KU Law Professor	\$130,528
KU Law Professor	\$127,500
KU Law Professor	\$127,077
KU Law Professor	\$123,646
KU Law Professor	\$123,636
KU Law Professors average	\$130,247
Chief Justice – Supreme Court	\$121,389
KU Law Professor	\$121,000
KU Law Professor	\$120,843
KU Law Professor	\$120,476
Justice – Supreme Court	\$118,212
Chief Judge – Court of Appeals	\$117,134
KU Law Professor	\$117,312
KU Law Professor	\$113,266
KU Law Professor	\$111,000
KU Law Professor	\$110,840
KU Law Professor	\$110,596
KU Law Professor	\$110,000
KU Law Professor	\$107,500
KU Law Professor	\$107,931
Judge – Court of Appeals	\$ 114,118
Chief District Judge	\$104,368
District Judge	\$103,232

Fiscal Note

The estimated fiscal note to increase the salaries of Kansas district judges to the national median of \$113,544 is \$2,219,193. To increase appellate justices and judges to the national median requires \$301,238. District magistrate judges receive a salary that is approximately 47% of the salary of a district judge. A corresponding increase of district magistrate judges' salaries adds \$512,683 to the fiscal note, and a corresponding increase for senior judges adds \$43,799. To create a more appropriate salary differential between district judges and the 31 chief judges requires an additional \$90,875, for a **FY 2006 total of \$3,167,788**. As with all state salaries in FY 2006, this figure is somewhat higher than in other fiscal years due to the 27th paycheck that will be paid to all state employees in FY 2006.

KANSAS DISTRICT JUDGES ASSOCIATION
LEGISLATIVE COMMITTEE

Hon. Thomas M. Tuggle, Chair
Cloud County Courthouse
811 Washington Street
Concordia, KS 66901

Hon. Nancy E. Parrish
Shawnee County Courthouse
200 SE 7th Street
Topeka, KS 66603

Hon. Meryl D. Wilson
Riley County Courthouse
100 Courthouse Plaza
Manhattan, KS 66502

Hon. Larry T. Solomon
Kingman County Courthouse
130 N. Spruce Street
Kingman, KS 67068

Hon. Robert J. Fleming
Labette County Judicial Center
201 S. Central
Parson, Ks 67357

Hon. Earnest L. Johnson
Wyandotte County Courthouse
710 N. 7th Street
Kansas City, Ks 66101

Hon. Daniel L. Love
Ford County Courthouse
P.O. Box 197
Dodge City, Ks 67801

Hon. Richard M. Smith
Linn County Courthouse
315 Main Street
Mound City, KS 66056

Hon. Stephen R. Tatum
Johnson County Courthouse
100 N Kansas Avenue
Olathe, KS 66061-3273

HOUSE JUDICIARY COMMITTEE

Hon. Mike O'Neal, Chairman

March 2, 2005 - 3:30 p.m.

Room 313

Testimony on behalf of the
KANSAS DISTRICT JUDGES ASSOCIATION

Judge Richard M. Smith

P.O. Box 350

Mound City, Kansas 66056-0350

judgelndc@earthlink.net

FUNDING THE JUDICIAL SALARY INITIATIVE

Thank you, Honorable Chairman and members of the committee for allowing me the opportunity to speak.

Judge Wilson has addressed the rationale behind the judicial salary initiative and it is my duty to address the fashion in which it might be funded. We are mindful of the fiscal state of affairs. We know this daunting situation is compounded by educational finance issues. Many of our members are fiscal conservatives and would not approve of this initiative even for their own benefit, if it would require a tax increase. That is why we are proposing, in essence, a user fee funding mechanism. This would be in the nature of a docket fee increase.

The projected cost of the proposal is \$3,167,788 in fiscal year 2006, and \$3,050,463 in subsequent years due to the 27th paycheck issue. After thorough consideration, we considered four final scenarios and arrived at one final recommendation. A chart is attached to my testimony outlining all the current fees, the increases and the results. It would provide for the following increases. Chapter 60 civil cases would increase \$39, so would domestic relations cases.

Chapter 61 cases of less than \$500 through less than \$5,000 in controversy would increase \$2, and Chapter 61 cases making claim for greater than \$5,000 to less than \$10,000 could increase \$16. Small Claims would increase \$2. Criminal cases, both felony and misdemeanor, would increase \$8, and traffic cases would increase \$4.

This proposal would net a projected \$3,197,417.

Under our proposal there would be no new court costs and under our proposed plan there would be no increased costs to probate, lien filings, performance bonds or tax warrants.

Increases in the docket fees (even assuming the continuation of the surcharge) would maintain parity with other costs charged by the Federal Courts and our sister states. The Federal Court filing fee is being increased to \$250. Missouri charges \$150 for regular civil actions, and Colorado charges a filing fee of \$136, but also charges an answer fee of \$70. Domestic fees are \$153 in Missouri and \$144 in Colorado. Oklahoma's filing fees are less but it is our understanding that 100 % (unlike Kansas) goes directly to the courts including salaries. More detailed information can be provided regarding small claims and limited action cases if the committee would so request.

In summary, the Supreme Court issued a statement on February 1, 2005, that read:

On August 25, 2004, members of the Kansas Association of District Judges (KDJA) Executive Board met with the Court and discussed the issue of judicial salaries. The Supreme Court concurred then that KDJA had demonstrated the need for a salary increase for Kansas district judges. In order to retain the existing salary spread among district judges, district magistrate judges, and appellate judges, it was necessary to include all judges in the salary proposal. The Supreme Court

therefore included salary increases for all judges in the FY 2005 Judicial Branch enhancement budget, to be funded from the State General Fund.

After receiving feedback from legislators, representatives of the KDJA Executive Board again met with the Supreme Court on January 31, 2005, seeking the Court's position on funding the proposal through docket fee increases. The Court concludes that it is not opposed to consideration of funding the cost of the salary increase, in whole or in part, through reasonable and appropriate docket fee increases. However, it is important that docket fees not be set at a level that would deny Kansas citizens access to the court system.

We understand the General Fund has been stretched to the max. We appreciate the reluctance to consider any tax increase. That is why we are proposing this increase in user fees to fund this necessary initiative. Our organization is not married to any specific docket fee increase proposal. With your acquiescence, we would be willing to look at any specific proposal that would accomplish the goals of insuring quality in the judiciary while not denying any citizen reasonable access to our courts.

Respectfully submitted,
Richard M. Smith, Chief Judge
Sixth Judicial District
Mound City, Kansas

Total Cost for Initiative

\$3,050,463 (annual basis)

\$3,167,778. (Fiscal Year 2006)
27th paycheck

	Annual Cost	27th Pay Period	FY 2006 Total Cost
Appellate Judges	\$290,081	\$11,157	\$301,238
District Court Judges	\$2,137,001	\$82,192	\$2,219,193
District Magistrate Judges	\$493,695	\$18,988	\$512,683
Senior Judges	\$42,177	\$1,622	\$43,799
Chief Judge Proposal	\$87,509	\$3,366	\$90,875
	<hr/> \$3,050,463	<hr/> \$117,325	<hr/> \$3,167,788

Kansas District Judges Association Recommendation

Considered 4 Alternatives:

- 1. Across board \$8.00
- 2. Maximize “Big Civil” and Minimize Traffic and Limited Actions Equally
- 3. Maximize “Big Civil” and Minimize Traffic and Limited Actions – Minimize Impact on Traffic
- 4. **Maximize “Big Civil” and Minimize Traffic and Limited Actions – Minimize Impact on Limited Actions**

- KDJA recommendation is #4.

Major Points of Docket Fee

Increase (Minimizing Limited Actions)

<u>Case Type</u>	<u>Increase</u>
Chapter 60	\$39.00
Limited Actions <500	\$ 2.00
>500 <5000	\$ 2.00
>5000 <10,000	\$16.00
Domestic Relations	\$39.00
Criminal-Felony	\$ 8.00
Criminal-Misdemeanor	\$ 8.00
Probate (all filings)	\$.00
Liens (all types)	\$.00
Marriage Licenses	\$.00
Tax Warrants	\$.00
Traffic	\$ 4.00
Fish & Game	\$ 4.00
Revenue Produced	\$3,197,417

Maximize Chapter 60 and Minimize Traffic and Limited Actions
(minimize limited actions more)

Type of Fee	Filings or Terminations	% of Cases Docket Fees Collected	Adjusted Filings or Terminations	Current Fee	Proposed Increase	Proposed Total	Increase From Proposal
Civil							
Chapter 60	25,684	98%	25,170	\$111.00	\$39.00	\$150.00	\$981,630
Limited Action (61)	152,878	98%	117,983				
<=\$500		55%	64,891	\$31.00	\$2.00	\$33.00	\$129,782
>\$500 or <=\$5,000		40%	47,193	\$51.00	\$2.00	\$53.00	\$94,386
>\$5,000 or <=\$10,000		5%	5,899	\$81.00	\$16.00	\$97.00	\$94,384
Small Claims	9,816	98%	9,620				
		55%	5,291	\$31.00	\$2.00	\$33.00	\$10,582
		45%	4,329	\$51.00	\$2.00	\$53.00	\$8,658
Domestic Relations	37,222	75%	27,917	\$111.00	\$39.00	\$150.00	\$1,088,763
Criminal*							
Felony	19,087	16%	3,054	\$152.00	\$8.00	\$160.00	\$18,324
Misdemeanor	19,813	38%	7,529	\$117.00	\$8.00	\$125.00	\$45,174
Expungements	500	100%	500	\$50.00	\$100.00	\$150.00	\$50,000
Probate							
Treatment of Mentally Ill							
Treatment of Alcohol or Drug	2,427	25%	607	\$30.50	\$0.00	\$30.50	\$0
Determination of Descent	1,263	98%	1,238	\$45.50	\$0.00	\$45.50	\$0
Guardianship	657	40%	263	\$65.50	\$0.00	\$65.50	\$0
Conservatorship	317	60%	190	\$65.50	\$0.00	\$65.50	\$0
Guardianship and							
Conservatorship	915	50%	458	\$65.50	\$0.00	\$65.50	\$0
Annual Reports	7,800	100%	7,800	\$5.00	\$0.00	\$5.00	\$0
Annual Accounting of							
Conservatorship over \$10,000	3,500	30%	1,050	\$5.00	\$0.00	\$5.00	\$0
Closing Conservatorship							
under \$10,000	1,000	100%	1,000	\$5.00	\$0.00	\$5.00	\$0
over \$10,000	1,000	100%	1,000	\$5.00	\$0.00	\$5.00	\$0
Trusteeship	128	98%	125	\$65.50	\$0.00	\$65.50	\$0
Probate of an Estate or a Will	3,923	100%	3,923	\$105.50	\$0.00	\$105.50	\$0
Other Costs and Fees							
Performance Bonds							
Delinquent Personal Property Tax							
Hospital Lien							
Intent to Perform							
Mechanic's Lien							
Oil and Gas Mechanic's Lien							
Pending Action Lien							
Total	3,435	100%	3,435	\$10.00	\$0.00	\$10.00	\$0
Employment Security Tax Warrant							
Sales and Compensating Tax Warrant							
State Tax Warrant							
Motor Carrier Lien							
Total	4,812	100%	4,812	\$20.00	\$0.00	\$20.00	\$0
Marriage License	19,121	100%	19,121	\$75.00	\$0.00	\$75.00	\$0
Driver's License Reinstatements	15,759	100%	15,759	\$55.00	\$0.00	\$55.00	\$0
Traffic**	203,236	92%	186,977	\$60.00	\$4.00	\$64.00	\$665,638
Fish and Game**	3,417	83%	2,836	\$60.00	\$4.00	\$64.00	\$10,096

TOTAL FEES COLLECTED

\$3,197,417

* Criminal fees are adjusted by 25% to reflect delayed collection

** Traffic and Fish and Game fees are adjusted by 11% to reflect delayed collection

Testimony:
House Judiciary Committee
HB 2485 Notary Public Bill

Elias L. Garcia, Exec. Director, Kansas Hispanic & Latino American Affairs (KHLAAC)

Thank you Mr. Chair and thank you honorable members of this committee for the opportunity to speak on behalf of HB 2485, a bill that would serve as added deterrent to criminals and would-be predators of our most naïve, uneducated and vulnerable members of our community i.e. the growing Kansas Latino immigrant community.

First, let me give a little background that led to this bill. You may or may not know that in Mexico, a individual with the title of Notario Publico is one who has official standing in their form of government. Also, they do have authority and jurisdiction to navigate in their respective legal and governmental pool. Conversely, in the United States a Notary Public is just that, a Notary Public, someone whose only authority is to, via a notary stamp, one who serves as witness and one who substantiates identity or signature of person.

As Americans, we all understand the authority and role of Notary Public, none of us would go to a Notary and seek legal advice or representation. Yet, what of the new comers from Mexico who see the words Notary Public and automatically relate that title to their own very familiar Notario Publico. Now lets add to that scenario, a predator, a con, a flim-flam man or woman who see opportunity in this "mis-conception", this state of confusion between cultures and titles. These scam artists see a easy way to make money by taking advantage of naïve, uneducated people by giving hope to desperate people who trust this self proclaimed official and who invariably will give all their savings to these human vultures who feed off the the most helpless in our society. In the end, they leave their victims without money, without trust, and perhaps the biggest tragedy of all, they leave them without hope.

Currently, our office has fielded numerous calls from members of the immigrant community complaining of unscrupulous individuals who go around misrepresenting themselves as government officials and who, for a fee, promise their victims legitimacy in the form of shortcuts to obtaining work visas, student visas, drivers licenses, or other immigration services that they simply cannot legally deliver.

The intent of this bill is to compel those holding a Notary Public Certification to openly state that they are not legal counsel, cannot give legal advice nor represent anyone in any legal capacity. This bill further states that those individuals who violate this law will also then be in violation Consumer Protection statute K.S.A. 50-626 and therefore subject to all remedies and penalties applicable to same.

HB 2485 does nothing more than seek to stop practices that allows predators to prey upon innocent, trusting, desperate people whose naiveté of this country and culture are often talked into reaching for the brass ring. It has been said that the true value of society can be found in how that society cares for its most vulnerable. Ladies and gentlemen of this committee, our most vulnerable are crying out for help, and through passage of HB 2485 we can send the message that we will not tolerate predatory or deceptive behaviors in our community at any level, especially in the shadows of our society. Furthermore, we send the message that if you wish to engage in these practices, Kansas will hold you accountable - and then we will proceed to prosecute you and on your way to jail, we will notarize your identity and signature, and stamp your shirt with a number. Thank you for the opportunity to speak on behalf of HB 2485.

March 2, 2005



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION AND ANTITRUST DIVISION

PHILL KLINE
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-3751 • FAX (785) 291-3699
CONSUMER HOTLINE (800) 432-2310
WWW.KSAG.ORG

THE NOTARIO PUBLICO BILL
(The Notary Public Bill)

OBJECTIVES:

- 1. To prevent the deceptive acts by a Notary Public against vulnerable immigrants and to overcome the misconception of the term “Notario Publico.”**

The issue of the Notario Publico is a growing problem in the state of Kansas.

Thanks to the misconception of the term Notario Publico (Notary Public), a great number of immigrants, the majority Hispanics, are being deceit by unscrupulous persons pretending to be licence attorneys able to practice law in the state of Kansas. For many Immigrants the term Notario Publico or Notary Public is the title given to a licence attorney who chooses to work in that field, as it is in their countries of origin, this misconception make it easier for unscrupulous persons to take advantage of the term and use it on their favor to defraud Kansas residents.

- 2. To aid officials and their consumer protection efforts in preventing deceptive and unconscionable acts and to increase the liability thereof.**

1. Sections highlighted in yellow is new language requiring disclosure when offering notary services in a language other than English .
2. Sections highlighted in red is new language allowing for criminal liability.
3. Sections highlighted in green are new language allowing this new law to be used in conjunction with the KCPA.

Currently the Attorney General's Consumer Protection Division relies on K.S.A. 50-626 and K.S.A. 50-627 to bring actions against persons that commits deceptive and unconscionable acts pretending to be an attorney by using the title of Notario Publico (Notary Public). The Most recent example is the case of the Notario Alicia Morales-Phillips. Mrs. Phillips represented to consumers, thanks to her Notary public title, to be a qualified licenced attorney, able to work in Immigration law and any other legal proceedings. Mrs. Phillips defrauded over one hundred persons of more than \$100,000.00. The enacting of this law will directly address the problem of the Notario Publico and will aid us in preventing such acts.

- **Below is the bill and the proposed language that will aid many branches of the government and officials in their efforts to prevent deceptive and unconscionable acts of Notarios:**

PROPOSED BILL NO. 2485

K.S.A. 53-121

Section 1. (a) A notary public who is not admitted to the practice of law in this state and who advertises notarial services in a language other than English shall include, in any advertisement, notice, letterhead or sign, a statement prominently displayed, in the same language in which such notarial services are offered, as follows:

"I am not authorized to practice law and have no authority to give advice on immigration laws or any other legal matters."

1. Sections highlighted in **yellow** is new language requiring disclosure when offering notary services in a language other than English .
2. Sections highlighted in **red** is new language allowing for criminal liability.
3. Sections highlighted in **green** are new language allowing this new law to be used in conjunction with the KCPA.

(b) A notary public who is not admitted to practice law in this state shall not use the term "notario publico" or any equivalent non-English term in any business card, advertisement, notice or sign unless it complies with the requirements of Section 1 (a).

(c) Violation of this section is a class B misdemeanor.

(d) Violation of this section constitutes a deceptive act or practice pursuant to K.S.A.50-626, and amendments thereto, and shall be subject to the remedies and penalties provided by the Kansas consumer protection act.

(e) This section shall be part of and supplemental to the acts contained in article 1 of chapter 53 of the Kansas Statutes Annotated, and amendments thereto.

Section. 2. This act shall take effect and be in force from and after its publication in the statute book.

1. Sections highlighted in yellow is new language requiring disclosure when offering notary services in a language other than English .
2. Sections highlighted in red is new language allowing for criminal liability.
3. Sections highlighted in green are new language allowing this new law to be used in conjunction with the KCPA.

El Centro, Inc.

The Center for Continuous Family Improvement

Administration and
Computer Learning Center
650 Minnesota Avenue
Kansas City, KS 66101
913-677-0100
www.ElCentroInc.com

March 2, 2005

Chairman O'Neal and Honorable Members of the House Judiciary Committee,

The Academy for Children
1330 S. 30th Street
Kansas City, KS 66106
913-677-1115
913-677-7090 fax

Academy for Children,
Choo Choo Child Care
219 S. Mill Street
Kansas City, KS 66101
913-371-1744
913-371-1866 fax

Academy for Children,
Donnelly College
608 North 18th Street
Kansas City, KS 66102
913-281-1700

Casa de Rosina Apartments
851 Barnett
Kansas City, KS 66101

ECI Development, Inc.
2100 Metropolitan Ave.
Kansas City, KS 66106
913-677-1120
913-677-0051 fax

El Centro, Inc. Argentine
1333 S. 27th Street.
Kansas City, KS 66106
913-677-0177
913-362-8520 fax

El Centro, Inc. Family Center,
Johnson County
9525 Metcalf Avenue
Overland Park, KS 66212
913-381-2861
913-381-2914 fax

Macías-Flores Family Center
290 S. 10th Street
Kansas City, KS 66102
913-281-1186
913-281-1259 fax

Woodland Hills, Inc.
1012 Forest Court
Kansas City, KS 66103
913-362-8155
913-362-8203 fax



Thank you for the opportunity to appear before you in support of HB2485, legislation that would reduce the victimization of immigrants by predators who exploit our state's notary public program for their own criminal purposes. The crisis of fraud and exploitation perpetrated against immigrants, especially those who speak limited English, is one that has recently gained the attention of the Federal Trade Commission and several states. I have attached to my written testimony a copy of a front-page article from The Kansas City Star about these incidents of fraud. We are impressed and encouraged by these efforts in Kansas to address this growing problem within our own state.

Language misunderstandings, vulnerability to pressure within isolated ethnic groups, mistrust of government authorities, and economic marginalization combine to make immigrants particularly vulnerable to many criminal schemes. A recent FTC survey suggests that Hispanics, in particular, are more than twice as likely to be victimized by fraud as non-Hispanic whites. Among the FTC's priorities related to immigrant consumers are insurance fraud, business and job opportunities, fraudulent international driving permits, and weight loss and health products, but the area of 'notario' fraud is distinguished for its widespread practice, deplorable exploitation of a recognized, state-supported process, and particularly devastating consequences. As the Texas Attorney General stated during a tour of the state to warn communities about this problem, "The abuses perpetrated by fraudulent 'notarios' and their likes have caused much suffering for Texas families. These schemes also create chaos in an already overburdened immigration system."

HB2485 addresses those who, using their status as notary publics, attempt to pass themselves off as attorneys and collect thousands of dollars in fees from individuals seeking assistance with immigration or other legal matters. Because the word 'notario' connotes an attorney in Spanish, the Kansas notary public seal becomes, unintentionally, a tool that facilitates these criminals' activities. In fact, in many Latin American countries, the term 'notario' encompasses broad duties including preparation and filing of legal documents; many foreign 'notarios' actually have more credentials than other lawyers. Certainly we understand it to be beyond the purview of the Secretary of State's office to conduct extensive investigations of people applying for notary licenses, but we believe that, if HB2485 passes, fewer criminals who intend to use the license for ill purposes will be enticed to apply for them, thus reducing fraudulent demand.

Ensuring that immigrant consumers in Kansas understand the differences in law and practice and are protected from notaries public who abuse their authority is difficult. We can learn from the efforts of those in Nebraska, New Jersey, New

House Judiciary
3-2-05
Attachment 8

York, and elsewhere who have used a combination of outreach campaigns, changes in the instructions given to notaries, public service announcements, and both litigious and legislative action to address these cases of fraud. California passed legislation similar to HB2485, requiring any consultant or notary public to disclose in advertising that they are not lawyers.

While addressing this problem conclusively will require taking criminal and civil action against some of the worst offenders, we believe that HB2485 performs an essential role in attempting to prevent the fraud before it occurs. While the hundreds of thousands of dollars in judgments won by states' Attorneys General in recent years represent significant victories on behalf of consumers, we have seen firsthand the tragic consequences of these criminals' behavior and seek any reasonable means to thwart it.

We have worked with immigrants who have been deported after having paid thousands of dollars to notarios who took their money yet failed to file the correct papers with what was then the Immigration and Naturalization Service. We have also seen people victimized by notarios who file for the wrong type of program or fail to follow proper procedures, again resulting in negative immigration consequences for clients. And outside of the immigration realm, we have clients whose tax filing, business licenses, and even divorces have been jeopardized by dishonest and incompetent notaries public posing as attorneys.

We respectfully ask for your support of HB2485. We believe that it will help to protect some of our most vulnerable consumers from predatory abusers, save our law enforcement officers valuable time, and preserve the integrity of our state's notary public program.

Most sincerely,



Melinda Lewis
Director of Policy Advocacy and Research
El Centro, Inc.

Posted on Wed, Feb. 23, 2005

Fraud is taking a toll on Hispanics

By MARY SANCHEZ The Kansas City Star

"It just makes your blood boil. They walk out of my office even sadder than when they came in."

Ted Garcia, immigration lawyer



DAVID
PULLIAM/The
Kansas City
Star

DAVID
PULLIAM/The
Kansas City
StarGarcia



Cuevas

Dozens of worried immigrants have talked with immigration lawyer Ted Garcia in recent months. One by one, they tell their stories. Then he confirms their fears:

They have paid someone to file paperwork for an immigration status they are not eligible for — and their money is gone. "It just makes your blood boil," Garcia said. "They walk out of my office even sadder than when they came in."

Fraud that affects immigrants is not a new crime, but legal experts think it is growing in Midwestern and Southern states, areas that have become destinations in recent years for Hispanic immigrants.

The Kansas City area is drawing the interest of the Texas attorney general, who has filed a civil consumer-fraud case against the Dallas-based Grupo ECSA, also known as ECSA Group.

Grupo ECSA has offered immigration services in a storefront office at 3608 S. Noland Road in Independence. In a connected room, tax preparation work is done under the name Profit Income Tax Service. Both businesses are owned by Fidelina Cuevas of Dallas, according to the Texas attorney general's office.

Cuevas did not return calls made to her office in Dallas. Calls to her lawyer also were not returned.

During a November hearing in Dallas, Cuevas' lawyer, Steven Yu, said in court that although his client made mistakes in her practice, she

ne sought to defraud people, *The Dallas Morning News* reported. Yu declined to comment further, the paper reported.

In recent months, the Grupo ECSA office in Independence was open sporadically, said Garcia and several Kansas City area immigrants. This week, the office was closed, although telephone calls to the tax service were being forwarded to a Dallas number for Profit Income Tax. The phone for immigration services was disconnected.

The Texas attorney general has accused Cuevas and Grupo ECSA of deceptive trade practices, said Paco Felici, a spokesman for the attorney general's office. The allegations include giving immigration advice without a law license or accreditation by the Board of Immigration Appeals, an administrative arm of the U.S. Department of Justice.

No allegations have been made against Profit Income Tax Service.

No complaints have been filed in Missouri or Kansas against Group ECSA.

"We are very, very interested in hearing from consumers who have had dealings with the organization and have experienced problems," said Jim Gardner, a spokesman with the Missouri attorney general's office. Kansas attorney general spokesman Whitney Watson expressed a similar interest.

Immigrants often are hesitant to file a complaint, fearing their status may be questioned or they will be misunderstood if they do not speak English well, said Garcia and other immigration lawyers.

In Texas more than one hundred complaints have been filed against Grupo ECSA, Felici said, and a trial is scheduled for March 21. If Cuevas is found guilty, the penalty could be as high as \$20,000 per validated complaint.

In addition, Texas has fined her \$13,000 for refusing to close her offices. She was jailed for one day for refusing to comply with the order to stop conducting immigration business through a Web site, Felici said.

"To us, this just underscores the egregious nature and the brazen conduct of the defendant," he said.

Texas has ordered Cuevas to stop offering immigration services and has frozen her immigration business assets.

During the past five years, Grupo ECSA has taken in more than \$1.7 million, according to bank deposit records obtained by Texas authorities, Felici said.

In the Kansas City area, one woman said she paid Grupo ECSA \$300 seven months ago to get copies of her husband's immigration paperwork from federal authorities so the family would have a complete record of his legal status. She said she had not seen the paperwork or a refund; she asked that her name not be used because she hoped for a resolution.

Garcia, based in Mission, became suspicious about Grupo ECSA in the fall. Many of the immigrants he spoke with had heard about Grupo ECSA through a promotional call-in program that Cuevas conducted on local-Spanish language radio.

Garcia then learned from the Texas attorney general's office that complaints were being filed against Grupo ECSA.

A transcript from a radio program Cuevas did on the Kansas City, Kan.-based Spanish language station KCZZ, 1480 AM, in July is now a part of the evidence filed against her in Texas.

Mishandled paperwork

People posing as immigration attorneys is not a new problem. Most immigrant advocates can tell stories of people charged thousands of dollars for services that were not done or done poorly.

In the worst abuses, immigrants are deported, not because they did something wrong but because their paperwork was mishandled. A missed filing date can shift a person from good status into the illegal category in the government's eyes.

In another common immigration scam, people are mistakenly told they are eligible for a particular immigration program, such as the one offering legal status if an employer will sponsor the immigrant. Often, the shoddy offices are open for relatively short amounts of time, said Jim Austin, a Kansas City immigration lawyer.

Language confusion can complicate matters. In the United States, notaries simply witness a legal signature. But the Spanish word *notario* is used in Latin countries to describe someone who also can do legal work. So use of the Spanish word *notario* in advertising often confuses U.S. immigrants.

A bill to crack down on the fraudulent use of the term *notario* was introduced in the Kansas Legislature last week. It would force notaries

When an attorney advertises in a language other than English to also state in that language that they are not authorized to practice immigration law or to give advice on legal matters.

Texas, which is combating the problem of *notarios* through a public-information campaign, has found success in cracking down on fraudulent immigration services. In recent years, Felici said, Texas Attorney General Greg Abbott has closed 20 businesses offering immigration advice.

Suzanne Gladney, a Kansas City-based immigration lawyer with Legal Aid of Western Missouri, said she spoke to a Guatemalan woman recently who suspected she had been defrauded of \$5,000.

The woman, living in southern Missouri, had paid a California lawyer to file immigration paperwork. Now she was having trouble contacting the lawyer.

Gladney found the lawyer had voluntarily surrendered his license and had charges pending against him.

"Luckily she had stopped paying him," Gladney said. "But people like this just steal money."

Gladney, Austin and Garcia think several people in the Kansas City area offer immigration services but are not legally qualified to do so.

Ultimately, Garcia said, Missouri and Kansas should make it easier for authorities to pursue such cases.

He said he understood immigrants' hesitancy to come forward. But as a lawyer, he knows such cases are built through complaints.

"I'm looking for someone to come forward with a (formal) complaint," Garcia said. "This has to stop."

To reach Mary Sanchez, call

(816) 234-4752 or send e-mail

to msanchez@kcstar.com.

Where to find help

- *If you have concerns about an immigration service, call the attorney general's office.*

In Missouri: (800) 392-8222.

In Kansas: (800) 432-2310.

- *Find a reliable immigration lawyer at www.aiala.org, the Web site of the American Immigration Lawyers Association.*

- *Inquire at established social service agencies. In Missouri,*

try the Guadalupe Center at (816) 218-0900; in Kansas, try

El Centro, (913) 677-0100.