

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 6, 2007 in Room 313-S of the Capitol.

All members were present except:
Kevin Yoder- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Duston Slinkard, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:
Senator Barbara Allen
Claudia Alexander, Individual
Randy Hearrell, Kansas Judicial Council
Jim Clark, Kansas Bar Association

The hearing on **SB 88 - restoration of spouse's name after divorce is final**, was opened.

Senator Barbara Allen appeared as the sponsor of the proposed bill which would authorize a court to restore the maiden or former name of a party in a divorce at any time before or after the divorce becomes final. The person seeking the name restoration would not have to pay a docket fee. (Attachment 1)

Claudia Alexander relayed her story of how she sought to restore her former name, only to be denied by the courts because she had not requested the name change during the divorce proceeding. (Attachment 2)

The hearing on **SB 88** was closed.

The hearing on **SB 74 - recovery of medical assistance, probate code**, was opened.

Randy Hearrell, Kansas Judicial Council, appeared in support of the proposed bill. He explained that the proposed bill was a result of a Judicial Council study on 2006 SB 536. It would change the notice requirements for estates that go through probate process and authorize Kansas, and other states that provide medical assistance, to be a party to the probate action. (Attachment 3)

Jim Clark, Kansas Bar Association, expressed concern that in order for a creditor to be a party confers unnecessary obligations on the estate when the purpose of the bill is to provide notice. Attachment 4 is the proposed amendment from the Judicial Council that would address this concern. (Attachment 4)

The hearing on **SB 74** was closed.

The hearing on **SB 76 - probate, small estate, transfer of personal property**, was opened.

Randy Hearrell, Kansas Judicial Council, appeared as the sponsor of the bill. He commented that it would expand the definition of personal property that can be transferred by affidavit for estates not exceeding \$20,000. (Attachment 5)

Jim Clark, Kansas Bar Association, appeared in support of the bill because it would simplify the transfer of property in small estates. (Attachment 6)

The hearing on **SB 76** was closed.

The hearing on **SB 85 - authorizing employment of retired justices and judges to assist the Kansas Judicial Council**, was opened.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on March 6, 2007 in Room 313-S of the Capitol.

Randy Hearrell, Kansas Judicial Council, explained that the Kansas Judicial Council would like to use one of their FTE to hire a retired judge, but base their salary on the same system used by the Judicial Branch. The judge would help with areas of courtroom observation, evaluations and working with judges on self-improvement. (Attachment 7)

The hearing on **SB 85** was closed

The hearing on **SB 269 - Kansas Code for care of children, service of process**, was opened.

Randy Hearrell, Kansas Judicial Council, appeared in support of the proposed bill which would require when service is by publication, it would be placed in a local newspaper where the parent to be served is, with substantial certainty, residing. (Attachment 8)

The hearing on **SB 269** was closed.

SB 58 - conveying trust property

Representative Kuether made the motion to report SB 58 favorably for passage. Representative Proehl seconded the motion. The motion carried.

SB 118 - children in need of care, CASA reports

Representative Whitham made the motion to report SB118 favorably for passage. Representative Roth seconded the motion. The motion carried.

SB 76 - probate, small estate, transfer of personal property

Representative Pauls made the motion to report SB 76 favorably for passage as amended and to be placed on the consent calendar. Representative Owens seconded the motion. The motion carried.

SB 85 - authorizing employment of retired justices & judges to assist the Kansas Judicial Council

Representative Colloton made the motion to report SB 85 favorably for passage. Representative Crow seconded the motion. The motion carried.

SB 269 - Kansas Code for care of children, service of process

Representative Colloton made the motion to report SB 269 favorably for passage. Representative Pauls seconded the motion. The motion carried.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for March 7, 2007.

Testimony Presented to
The House Judiciary Committee
Senator Barbara P. Allen
March 6, 2007
SB 88

Good morning. Thank you for the opportunity to appear before the House Judiciary Committee on SB 88, which would establish a simplified procedure for name reinstatement following a final divorce decree.

SB 88 amends the statutes covering divorce proceedings, to authorize a court to restore the maiden or former name of a party in a divorce action after the divorce decree becomes final. The bill would require the Kansas Judicial Council to develop a standardized form for name reinstatement that would be available online, and would clarify that no additional docket fee would be required for reinstatement of a former or maiden name.

Its goal is to simplify and make affordable the name change process when a decision is made to reinstate the former name after a divorce case has been closed. It passed the Senate 40-0.

This legislation came about in response to a request from my constituent, Claudia Alexander, who is present today to give her story and explain her reasons for requesting introduction of this bill.

Under current law, name reinstatement following a final divorce decree must be made under the formal name change statutes used by any citizen desiring to change to a different name. This process can be lengthy, expensive and difficult to maneuver without legal assistance.

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Some women, for varying reasons, do not wish to change their names at the time of divorce. Under current law, after the divorce proceedings are closed, if a woman decides to reclaim her former name, a change of name pursuant to KSA 60-1402 requires the following:

1. Petition - Filing a name change petition with the court
2. Notice – Service of notice of the hearing, either by mail or by publication, in the discretion of the court
3. Fees - A \$147 docket fee, attorney's fees (if an attorney is retained), and fees associated with complying with the notice provision of the statute

My research shows that, under current law, this process would cost around \$1,000 if an attorney is involved. In contrast, a name change after enactment of SB 88 would require filling out a simple form which could be downloaded off the Kansas Judicial Council website, and no additional docket fee would be due.

In closing, please consider that while Claudia's experience may seem unique, it raises the question about the possibility of other women across our state finding themselves in a similar situation. I ask for your support. Thank You!

Testimony Presented to
The House Judiciary Committee
by Claudia Alexander
March 6, 2007
SB 88

Good morning, Mr. Chairman and members of the committee. Thank you for giving me this opportunity to appear before the House Judiciary Committee to express my interest in Senate Bill 88.

I am a divorced woman. My marriage to Randy Alexander ended in February, 2006. The time period of our divorce proceedings was a very traumatic time in my life, and I did not understand that it was necessary for me to make a final decision at that time about reinstating my former name. Two months later, in April 2006, I concluded that I would like to return to my former name in order to carry the same last name as my daughter by a previous marriage.

Currently, as I experienced personally, a divorced woman in the State of Kansas who wants to legally be restored to a former or maiden name is advised that she should contact an attorney who handles legal name changes. This procedure involves additional time to meet with an attorney at least once and time to make at least one court appearance. I was quoted by at least two law firms that had been referred to me, that the fees involved would be near or over one thousand dollars, which is several times the amount I paid for the fees incurred for the divorce itself.

When I found that my post divorce desire to be restored to a former name would be a complicated process, I researched the Kansas statutes. Kansas Statute 60-1610 includes a sentence on name restoration related to divorce proceedings. The opening paragraph of this statute is: "60-1610. Decree: authorized orders. A decree in an action under this article may include orders on the following matters". Item (c) in the second to last paragraph of the statute states, "*Miscellaneous matters. (1) Restoration of Name.* Upon the request of a spouse, the court shall order the restoration of that spouse's maiden or former name".

After reading this, I felt this statute was a pertinent and logical article to name in reference to my request to be restored to my former last name. I contacted the Johnson County Courthouse and was told to take it up with the judge who presided over the divorce proceedings. I contacted the judge's office

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and communicated with his assistant. I was asked to file the motion with the clerk and send a notarized registered copy of the motion to my ex-husband so he could appear at the hearing if he wanted to oppose the motion for some reason. I complied with these requests.

At my first court appearance I appeared Pro Se. I believed that I was there as a formality in obtaining the restoration of my former name. I did not know, going in, that the only way the judge would proceed with my request was if there was a typo or missing information on the actual divorce decree, or if my attorney had not asked me if I wanted to change my name when I met with him to file for the divorce. I encountered a sometimes disrespectful interrogation by the judge, and by his request, found it necessary to schedule a second hearing at which my attorney was also asked to be present. In the end, the judge denied my request for name reinstatement due to the fact that I had not requested the name change during the divorce proceeding.

A woman's last name is part of her identity, and it is a personal decision that should not be called into question. A woman is not forced into taking her husband's name when marrying, so why should she be forced into keeping that last name by a court process that makes it too difficult or unaffordable to change once a divorce is final?

Name changing added to the list of much more important considerations during a divorce, is yet another change a woman may not be devoting much thought to or want to tackle at that particular time. The fact that the man will not be faced with this question and that there is currently no simple way for the woman to accomplish a name reinstatement following the final divorce decree, creates an unequal amount of pressure on the woman at a time that will be stressful for her, whether or not she is the one that files for the divorce.

In June of 2006 I contacted Senator Allen's office regarding the possibility of Kansas adopting an Ex Parte Name Restoration Order similar to the one I found for the State of California while conducting research on the Internet. I would like to see SB 88 approved by this committee and sent to the Senate for a vote in hopes that it will continue to receive the approval needed to provide the divorced women of Kansas with a simple and affordable means of name reinstatement after their divorce has become final.

Again, I thank you for giving me time to express my reasons for requesting this legislation. I am willing to receive questions if you would like me to do so.



KANSAS JUDICIAL COUNCIL

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MEMORANDUM

TO: House Judiciary Committee
FROM: Kansas Judicial Council - Randy M. Hearrell
DATE: March 6, 2007
RE: 2007 SB 74

In 2006, Judge David Mikesic who heads the Probate Department of the Wyandotte County District Court proposed SB 536 relating to Medicaid reimbursement. There were several objections to the bill and SB 536 was assigned to the Judicial Council for study.

The Judicial Council Probate Law Advisory Committee (list of members attached at page 2) studied the bill. Brian Vazquez of the Kansas Health Policy Authority, who is directly responsible for Medicaid collections, and Judge Mikesic assisted the Committee with its study of SB 536. A letter from Judge David Mikesic supporting this bill is attached at page 3.

The Committee decided that when an estate is opened, if the decedent has received Medicaid payments from Kansas or another state, the state shall be given notice. The petition for final settlement shall contain a statement that neither the decedent nor a predeceased spouse of the decedent received Medicaid, or that if they did receive Medicaid, the appropriate state or states were notified of the filing of the petition pursuant to K.S.A. 59-2222.

In section 3, the bill provides that reimbursement of Medicaid payments paid to the conservatee or a predeceased spouse of the conservatee is required before the court can close the conservatorship, release the conservator and release the conservator's surety. The amendments in section 3 made in the Senate were technical.

A proposed amendment with explanation is attached.

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Attachment # 3

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(Revised 10/05)

DISTRICT COURT OF KANSAS

CHAMBERS OF
DAVID P. MIKESIC
DISTRICT JUDGE



COURTHOUSE
KANSAS CITY, KANSAS
66101

WYANDOTTE COUNTY

Randy Hearrell
Executive Director
Kansas Judicial Council
301 SW Tenth St, Suite 262
Topeka, KS 66612-1507

Re: Amendments to KSA 59-2222, 59-2247 and 59-3086

Dear Randy:

I have received and reviewed the proposed draft of the above statutes prepared by the Judicial Council Probate Law Advisory Committee.

The Probate Law Advisory Committee did an excellent job of redrafting my concept to provide that fiduciaries give notice to SRS or the appropriate agency of any possible Medicaid claim.

It has been my experience that counsel for executors, administrators and conservators fail to inquire of their client about past Medicaid payments. These amendments should put both counsel, fiduciaries and the court on notice to ask the right questions in Chapter 38 and Chapter 59 proceedings, when Medicaid recoupment may be appropriate. This proposal will also require some re-education for members of the legal profession, including judges.

The only critical observation I can make has to do with the wording of 59-3086(h). Simply stated, subsection (h) is one long wordy sentence that I have a difficult time digesting. Perhaps the advisory committee or the legislature can tweak the wording if they deem necessary.

I believe the proposed amendments to these statutes are improvements that deserve consideration and passage. Medicaid assistance will probably continue to increase as "baby boomers" retire and move into nursing care centers. It is therefore important for the State of Kansas to recoup expenditures when allowable under Kansas Law.

If I can be of any assistance on this matter please feel free to call.

Best Regards,



David P. Mikesic

District Court Judge

Division 10

SENATE BILL No. 74

By Committee on Judiciary

1-11

10 AN ACT relating to the probate code; concerning the recovery of certain
11 medical assistance; amending K.S.A. 59-2222, 59-2247 and 59-3086
12 and repealing the existing sections.

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

15 Section 1. K.S.A. 59-2222 is hereby amended to read as follows: 59-
16 2222. (a) When a petition is filed for the probate of a will, for the deter-
17 mination that the consent of a spouse to a will is a valid and binding
18 consent, for administration or for refusal to grant letters of administration,
19 the court shall fix the time and place for the hearing thereof. Notice of
20 the hearing shall be given pursuant to K.S.A. 59-2209, *and amendments*
21 *thereto*, unless the court makes an order to the contrary. If notice is by
22 order of the court not required to be given pursuant to K.S.A. 59-2209,
23 *and amendments thereto*, the court shall order notice of the hearing to
24 be given, unless waived, in such manner as the court directs.

25 (b) When the petition seeks simplified administration, the notice shall
26 advise all persons that under provisions for simplified administration the
27 court need not supervise administration of the estate, and no notice of
28 any action of the executor or administrator or other proceedings in the
29 administration will be given, except for notice of final settlement of de-
30 cedent's estate. The notice shall further advise all persons that if written
31 objections to simplified administration are filed with the court, the court
32 may order that supervised administration ensue.

33 (c) When a petition has been filed for the refusal of letters of admin-
34 istration, pursuant to K.S.A. 59-2287, *and amendments thereto*, the notice
35 given shall advise all persons that at such hearing exempt property and a
36 reasonable allowance will be set aside to the surviving spouse and minor
37 children, or both, and that no further notice of the proceeding will be
38 given.

39 (d) When the state is a ~~proper~~ party, the notice shall be served upon
40 the attorney general and the county or district attorney of the county.

41 (e) *If the decedent or a predeceased spouse of the decedent received*
42 *medical assistance payment under subsection (e) of K.S.A. 39-709, and*
43 *amendments thereto, or the laws of any other state, the state or states*
1 *providing such payment or payments shall be ~~considered a party. Notice~~ entitled to actual notice. Such notice*
2 *shall be given to the agency or department responsible for the recovery*
3 *of medical assistance in Kansas or, if a state other than Kansas, to the*
4 *attorney general of such state or states, and the notice required by sub-*
5 *section (d) shall not be given.*

Comment

The K.B.A. expressed the opinion that considering the creditor to be a party confers unnecessary obligations on the estate when the purpose of the bill is to provide notice. The Judicial Council Probate Law Advisory Committee agreed and proposed the amendment.

House Judiciary

Date 3-6-07

Attachment # 4



KANSAS JUDICIAL COUNCIL

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MEMORANDUM

TO: House Judiciary Committee

FROM: Kansas Judicial Council - Randy M. Hearrell

DATE: March 6, 2007

RE: 2007 SB 76

K.S.A. 59-1507b has been available since 1980 as a method of transferring property in small estates by affidavit. It was thought that the statute applied to all personal property. It came to the attention of the Judicial Council that motor vehicle titles are not included in the categories of personal property listed. By striking the existing language listing the types of personal property in line 18, and replacing the list with the phrase "of whatever nature", all personal property (including motor vehicle titles) is included.

In lines 19 and 23 striking the word "corporation" and replacing it with the word "entity" is intended to include not only corporations but other business entities such as LLC's, trusts, associations, corporations, etc.

House Judiciary
Date 3-6-07
Attachment # 5



**KANSAS BAR
ASSOCIATION**

Testimony in Support of

SENATE BILL NO. 76

Presented to House Judiciary Committee
March 6, 2007

The Kansas Bar Association is a voluntary, professional association of over 6,700 members dedicated to serving Kansas lawyers, their clients, and the people of Kansas.

The KBA is in support of **SB 76** because it simplifies the transfer of property in small estates. Current law allows for summary proceedings in estates with assets not exceeding \$20,000. However, it only allows a restricted form of person property to be transferred without going through the probate process. For example, current law allows for transfer of \$19,999 in cash or stocks, but does not allow for the transfer of a car, furniture or other tangible property. The bill, by expanding the definition of personal property that may be transferred, further simplifies the process of settling smaller estates.

Consequently, the Kansas Bar Association is in support of **SB 76**, and urges the Committee to recommend it favorably.

James W. Clark
KBA Legislative Counsel
785-234-5696

* * *

House Judiciary
Date 3-6-07
Attachment # 6



KANSAS JUDICIAL COUNCIL

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ADMINISTRATIVE ASSISTANT

MEMORANDUM

TO: House Judiciary Committee

FROM: Kansas Judicial Council - Randy M. Hearrell

DATE: March 6, 2007

RE: 2007 SB 85

In 2006 the Legislature passed SB 337 which created the Kansas Commission on Judicial Performance as an independent committee of the Judicial Council. The Commission is included in the Council's budget and staffed by the Council. When the Commission was established, three FTE positions were approved. One position remains unfilled because existing staff can handle the "start-up" work of the Commission.

The Commission has discussed this third position and would like the option of hiring retired judges on the same basis that the Judicial Branch currently hires them (a copy of K.S.A. 20-2622 is attached). It is the opinion of the Commission that retired judges could be of great assistance to the Commission in such areas as courtroom observation, discussion of judicial performance evaluations with judges, and working with judges on self-improvement plans.

House Judiciary
Date 3-6-07
Attachment # 7

Chapter 20.--COURTS

Article 26.--RETIREMENT SYSTEM FOR JUSTICES AND JUDGES

20-2622. Employment of retirants; temporary judicial duties; agreement; stipend, amount; state health care benefits; no limitation on court's authority to make judicial assignments pursuant to law. (a) On and after the effective date of this act, a retirant who retires as provided in K.S.A. 20-2608 and amendments thereto, may return to temporary judicial duties while receiving service retirement benefits. Upon written agreement with the Kansas supreme court prior to retirement, such retirant shall be available to perform assigned judicial duties for not more than 104 days or 40% of each year. Notwithstanding the provisions of law in effect on the retirement date of a retirant, such retirant shall receive a stipend, payable monthly, equal to 25% of the current monthly salary of judges or justices serving in the same position as that held by the retirant at the time of retirement. Such agreement shall be for a period of not more than two years. A retirant may enter into subsequent agreements, except that the aggregate of these agreements shall not exceed 12 years. The supreme court is hereby authorized and may pay on behalf of such retirant the amount specified by the Kansas state employees health care commission under K.S.A. 75-6508, and amendments thereto, as if the retirant is serving as a full-time employee of the judicial branch and participating in the state health care benefits program to provide for such participation of the retirant. Any retirant entering into a written agreement with the Kansas supreme court to be available to perform assigned judicial duties for less than 104 days or 40% of each year for a proportionally reduced stipend shall be considered as if the retirant is serving under a part-time appointment as an employee of the judicial branch and participating in the state health care benefits program to provide for such participation of the employee and the supreme court may pay on behalf of the retirant the amount specified by the Kansas state employees health care commission and K.S.A. 75-6508, and amendments thereto.

(b) Within five years after retirement, a retirant who did not enter into an agreement as provided for in subsection (a) prior to retirement may enter into such a written agreement within 30 days prior to any anniversary date of retirement. Agreements shall be signed by the chief justice with the approval of a majority of the justices of the Kansas supreme court.

(c) If a written agreement is entered into pursuant to the provisions of subsection (a), and notice is received by the chief justice of the refusal of the retirant to accept a temporary assignment without just cause, the written agreement shall be terminated.

(d) Nothing in this act shall be construed to require a retirant of the retirement system for judges to enter into an agreement to perform temporary judicial duties.

(e) Nothing in this act shall be construed to limit the supreme court's ability to make judicial assignments pursuant to the provisions of K.S.A. 20-310b and 20-2616 and amendments thereto; and the stipend provided by this act shall not be counted toward the annual limitation on compensation provided in K.S.A. 20-2616 and amendments thereto.

(f) Any retirant who has fulfilled the requirements of an agreement entered into pursuant to this act may continue to accept judicial assignments and shall be compensated for such subsequent assignments in accordance with the provisions of K.S.A. 20-310b and 20-2616 and amendments thereto.

(g) If an assignment given to a retirant in accordance with this act will require the retirant to exceed the 104 day limitation provided in subsection (a), the retirant shall be compensated in accordance with the provisions of K.S.A. 20-2616 and amendments thereto.

(h) For purposes of this act, "retirant" shall include any justice of the Kansas supreme court, judge of the Kansas court of appeals, and district judge of any district court of Kansas who retired pursuant to the provisions of the retirement system for judges. Retirant shall not include any district magistrate judge.

History: L. 1995, ch. 267, § 40; L. 2006, ch. 195, § 9; July 1.



KANSAS JUDICIAL COUNCIL

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MEMORANDUM

TO: House Judiciary Committee

FROM: Kansas Judicial Council - Randy M. Hearrell

DATE: March 6, 2007

RE: 2007 SB 269

The Revised Child in Need of Care Code made several changes to the provisions concerning service of process. One such change affects service by publication. The final sentence of K.S.A. 38-2237(e) now provides that, "In the case of a parent, publication shall also be in a newspaper authorized to publish legal notices in the locality where the court determines, after due diligence, the parent is most likely to be found." This language has created problems for court personnel, because the language can be read to imply that for every parent whose location cannot be ascertained, it is necessary to publish notice in whatever the best guess of location might be. In practice, publication of notice in the correct newspaper for locations out of state, and perhaps in another country, is a very expensive and time consuming proposition.

The advisory committee proposed this language in response to *Board of County Commissioners of Reno County v. Akins*, 271 Kan. 192, 21 P.3d 535 (2001), which held that publication notice of a tax sale in the county where property was located violated due process when it was known that the taxpayer did not reside in the county, and insufficient efforts were made to locate the taxpayers. The advisory committee's concern was that, in *Akins*, the taxpayers were known to have lived for some time in Oregon, which meant that publication in the State of Kansas was particularly unlikely to provide any actual notice of proceedings. Although *Akins* does not explicitly require it, the committee believed that if a parent was known to have lived for some time in another location but a current address could not be found, due process might require that

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publication notice be made in the location where the parent was known to reside. Courts insist on a very high standard of due process when the state terminates parental rights, and it is particularly unfortunate and disruptive for children when problems with service require the process to be redone. *See In re S.R.*, 34 Kan. App. 2d 202; 116 P.3d 43 (Kan Ct. App. 2005).

At the same time, it was not the advisory committee's intention that publication in another state or foreign country be required in every case when a parent might be located somewhere else. To clarify the scope of the publication requirement, the advisory committee would suggest adoption of the following amendment from page 2, lines 8-14 of SB 269.

~~In the case of a parent, publication shall also be in a newspaper authorized to publish legal notices in the locality where the court determines, after due diligence, the parent is most likely to be found.~~
If a parent cannot be served by other means and due diligence has revealed with substantial certainty that the parent is residing in a particular locality, publication shall also be in a newspaper authorized to publish legal notices in that locality.