Approved: February 14, 2007
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:34 A.M. on January 29, 2007, in Room 123-S of the Capitol.

All members were present except:
Barbara Allen arrived, 9:35 A.M.
Dwayne Umbarger arrived, 9:36 A.M.
David Haley arrived, 9:42 A.M.
Phil Journey arrived, 10:00 A.M.
Terry Bruce- excused
Greta Goodwin- excused

Committee staff present:
Athena Anadaya, Kansas Legislative Research Department
Bruce Kinzie, Office of Revisor of Statutes
Nobuko Folmsbee, Office of Revisor of Statutes
Karen Clowers, Committee Assistant

Conferees appearing before the committee:
Eric N. Anderson, Attorney
Marilyn L. Nichols, Shawnee County Register of Deeds
Marilyn Calhoun, Montgomery County Register of Deeds
Larry Tucker, Past President, Missouri Bar Association
David Frye, Attorney
Hon. Nancy Parrish, Chief Judge, 3rd Judicial District
Hon. Meryl Wilson, Judge, 21st Judicial District

Others attending:
See attached list.

Chairman Vratil reminded the committee that they approved introduction of the Model Entity Transaction Act at the request of Melissa Wangeman, Secretary of State's Office, on January 9, 2007. Ms. Wangeman informed the Chairman that some complicating factors have arisen and requests the bill be rescinded. Senator Donovan moved, Senator Schmidt seconded, to rescind the committee's action authorizing introduction of the Model Entity Transaction Act. Motion carried.

Bill Introductions
Steve Kearney requested the introduction of two bills. The first would address unintended consequences of the "stand and defend" legislation passed by the Legislature in 2006. The second bill would prohibit convicted felons holding certain public offices. Senator Schmidt moved, Senator Donovan seconded, to introduce both bills as committee bills. Motion carried.

Helen Pedigo requested the introduction of a bill that would repeal several unused criminal sentencing statutes pertaining to penalties. Senator Schmidt moved, Senator Umbarger seconded, to introduce the bill. Motion carried.

The hearing on **SB 32--Health care; medical assistance repayment; discretionary trusts** was opened.

Eric N. Anderson appeared in support, but recommended several amendments to avoid what he believed could become unintended consequences in the bill as it is written (Attachment 1).

There being no further conferees, the hearing on **SB 32** was closed.

The hearing on **SB 73--Mortgage registration fees, exemptions** was opened.

Marilyn L. Nichols testified in support and proposed an amendment to clarify the intent of the statute to collect mortgage registration tax on "new money" and would no longer be left to the interpretation of the Register of Deeds (Attachment 2).

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

MINUTES OF THE Senate Judiciary Committee at 9:34 A.M. on January 29, 2007, in Room 123-S of the Capitol.

Marilyn Calhoun spoke in favor, indicating enactment of this bill would assist Registers of Deeds across the state in their work by clarifying what is now a frustrating situation (Attachment 3).

There being no further conferees, the hearing on **SB 73** was closed.

The hearing on **SB 86--Change of judge by application in civil cases** was opened.

Larry Tucker appeared in support, relating his experiences with a similar rule in the State of Missouri. Mr. Tucker indicated the rule has worked well when there is a legitimate reason to request. A change of judge may be made without the necessity of having to allege any bias or prejudice on the part of the sitting judge. The rule can be a great convenience to the parties and permits counsel to represent their clients more effectively (Attachment 4).

David Frye spoke in support, indicating that while the majority of his practice is in Missouri, he offices in Overland Park, Kansas. Mr. Frye concurred with Mr. Tucker's testimony and he believes enactment of this bill would eliminate the creation of animosity between the judge, the client, and the attorney when a change of judge is desired (No written testimony provided).

Judge Nancy Parrish appeared in opposition, relating several concerns regarding the bill (Attachment 5). Her concerns are:

- the bill will not provide a positive enhancement to current laws regarding disqualification of judges,
- the bill would allow "judge shopping",
- the majority of judicial districts have three or fewer district judges, and
- the bill appears to present difficulty in Chapter 60 civil and domestic cases in which the district magistrate judges do not have jurisdiction.

Judge Meryl Wilson spoke in opposition, addressing his concern regarding the many judicial districts with less than six judges. Judge Wilson indicated this bill could cause extensive delays to these districts and additional expense to the State (Attachment 6).

Written testimony in opposition to **SB 86** was submitted by:
Hon. Steve Tatum, Chief Judge, 10th Judicial District (Attachment 7)

There being no further conferees, the hearing on **SB 86** was closed.

Approval of Minutes

Senator Allen moved, Senator Schmidt seconded, to approve the committee minutes of January 16, 2007, and January 17, 2007. Motion carried.

The meeting adjourned at 10:30 A.M. The next scheduled meeting is January 30, 2007.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

**PLEASE CONTINUE TO ROUTE TO NEXT GUEST**

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 29 JAN 2007

| NAME | REPRESENTING |
| --- | --- |
| Sunee Mickle | Kansas Health Institute |
| Sarah Green | KHI News Service |
| Richard Samaniego | [illegible] Assoc. |
| STEVE KEARNEY | KCDAA |
| Phil BRADLEY | KLBA |
| ROSANNE Rutkowski | KDHE |
| Dick Morrissey | KDHE |
| David R. Frye | Proponent of SB No. 86 |
| Laurence R. Tucker | ARMSTRONG TEASDALE LLP |
| Ron Seeber | Hein Law Firm |
| Kevin Siek | T/ILRC |
| [illegible] | LGR |
| Jeff Bottenberg | State Farm |
| [illegible] | Sentencing Commission |
| Ginger Park | KDHE |
| PHILIP A. HURLEY | PAT HURLEY & CO. |
| [illegible] P. [illegible] | VIA CHRISTI HEALTH SYSTEM |
| William Deer | Federico Consulting |

**PLEASE CONTINUE TO ROUTE TO NEXT GUEST**

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 29 January 2007

| NAME | REPRESENTING |
|---|---|
| Bob Keller | JCSO |
| Sharolyn Dugger | Ks CASA Association |
| LISA BENLON | AMER. CANCER Soc. |
| Jennifer Hermann | KDOR-DMV |
| Kathy Olsen | Ks Bankers Assoc. |
| Kim Brown | KFMC |
| Kathy Porter | Judicial Branch |
| Dan Gibb | KSAG |
| Matthew Goddard | Heartland Community Bankers Assn. |
| [illegible] Damron | District Judges Assoc. |
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# CLARK, MIZE & LINVILLE
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JOHN W. MIZE
GREG A. BENGTSON
MICKEY W. MOSIER
PAULA J. WRIGHT
ERIC N. ANDERSON
DUSTIN J. DENNING
MICHAEL P. ALLEY
PETER S. JOHNSTON
NICHOLE MOHNING ROTHS
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C.L. CLARK (1908 – 2004)
JAMES P. MIZE (1910 – 1988)

AUBREY G. LINVILLE
L.O. BENGTSON
RETIRED


January 25, 2007

To: Kansas Senate Judiciary Committee
From: Eric N. Anderson, Esq.
RE: Senate Bill 32

Thank you for the opportunity to submit testimony on SB 32. At the outset, I want to say that I support the overall goal of K.S.A. 39-709, specifically Sections (e)(3) and (g)(3)(B) concerning the requirement that people requesting assistance through Medicaid be truly without financial means before making such request. I do, however, have some recommendations that will help avoid what I believe are unintended consequences of the current version of those sections, as enacted in 2004, and the modifications proposed by SB 32. The following is a summary of my proposed recommendations:

**Recommendation #1: Combine the second and third sentences of Subsection (e)(3) to eliminate the confusion of having a 2004 reference and a 2007 reference.**

Reason for change: Having a reference of 2004 and 2007 creates a three year gap which will create confusion in interpreting the statute.

**Recommendation #2: Eliminate the word "exclusively" in (e)(3)(1) in favor of the words "more than nominally."**

Reason for change: Assume parents have a minor child with Downs Syndrome. As part of their regular estate planning, they create a Supplemental Needs Trust to be the receptacle for their child's share of their estate. But, for a trust to be a valid trust, it must have a grantor, trustee, beneficiary, and corpus. Because money will only go into the Supplemental Needs Trust when the parents die, there isn't any reason to fund the trust with substantial funds or obtain a taxpayer identification number until the parents die. Now, jump forward 20 years when the parents die. Their estate passes to the child, who is now an adult, but the estate goes into the Supplemental Needs Trust.

Question: If parents nominally funded the Supplemental Needs Trust with $1.00 when the child was a minor, does that violate the "funded exclusively" rule when significant monies pour into the Supplemental Needs Trust when the parents die? Remember, at the time the significant money goes into the trust, the child is an adult.

Suggested Answer: If the statute states that the supplemental needs trust cannot be funded "more than nominally" when the child is a minor by the person owing a duty of support to the child, then we avoid an inadvertent problem created by the parents funding the Supplemental Needs Trust with $1.00 when the child was a minor and significant dollars when the child was an adult.

**Recommendation #3. Eliminate the word "contemporaneous" in Subsection (e)(3)(2).**

Reason for change: To what does "contemporaneous" refer? To the time of application for/receipt of assistance? To the time the trust was drafted? If it is contemporaneous to the time of initial execution, do the grantors have to dissolve the trust and make a new one rather than just amend their trust? Does "contemporaneous" only refer to the fact that the trust is intended to be supplemental to public assistance or

Senate Judiciary
1-29-07
Attachment 1

does it also relate to the reference to "medicaid, medical assistance or title XIX of the social security act" at the end of (e)(3)(2)?

Instead, if the statute requires that the supplemental needs trust include language "specifically stating" that the intent of the trust is to be supplemental to public assistance, that requirement, alone, gets the statute where it needs to be. It will also eliminate needless litigation concerning supplemental needs trusts that were clearly intended by the language in the trust to be supplemental to public assistance, but were drafted before July 1, 2004.

**Recommendation #4. Eliminate the phrase "medicaid, medical assistance or title XIX of the social security act" at the end of (e)(3)(2).**

Reason for change: What does referencing "medicaid, medical assistance or title XIX of the social security act" add to the notion that the grantor of the trust intended the trust to be supplemental to public benefits? What if the Medicaid system changes names? What if title XIX of the social security act is repealed in favor of a different provision that addresses the same issues? Either a grantor intends that a supplemental needs trust is supplemental to public assistance or the grantor doesn't. And, with the change referenced in Concern #3 above, it should be simple to make that determination to the point that it is redundant to thereafter reference the types of public assistance to which the trust is intended to be supplemental.

**Recommendation #5. Language should be added to SB 32 to clear up confusion and loss of benefits caused by the 2004 version of K.S.A. 39-709(e)(3) as follows: "Any applicant for medical assistance whose application has been denied due to the existence of a trust executed after July 1, 2004, but which trust was determined to be an excess resource according to the July 1, 2004 version of this statute, may apply to have such medical assistance reinstated retroactive to the date that such medical assistance was terminated."**

Reason for change: Numerous otherwise qualified applicants have been denied coverage since the inception of the 2004 changes to K.S.A. 39-709(e)(3) and this language would retroactively reinstate those benefits – as long as the trusts corresponding to those applicants contain the requisite specific language showing intent that the trust is to be supplemental to public assistance.

After making all of these changes the revised (e)(3) would read as follows:

> Resources of trusts shall be considered when determining eligibility of a trust beneficiary for medical assistance. Medical assistance is to be secondary to all resources, including trusts, that may be available to an applicant or recipient of medical assistance. If a trust, executed on or after July 1, 2004, has discretionary language, the trust shall be considered to be an available resource to the extent, using the full extent of discretion, the trustee may make any of the income or principal available to the applicant or recipient of medical assistance unless (1) the trust is funded more than nominally from resources of a person who, at the time of creation of the trust, owed no duty of support to the applicant or recipient; and (2) the trust contains specific language that states an intent that the trust be supplemental to public assistance. Any applicant for medical assistance whose application has been denied due to the existence of a trust executed after July 1, 2004, but which trust was determined to be an excess resource according to the July 1, 2004 version of this statute, may apply to have such medical assistance reinstated retroactive to the date that such medical assistance was terminated.

**Recommendation #6: Redefine the "medical assistance estate" in Section (g)(3)(B) to be only those assets, or portions of those assets, that the recipient of medical assistance owns in his or her individual name as of his or her date of death.**

Reason for change: In Section (g)(3)(B) there appears a definition of the "medical assistance estate," which includes the assets conveyed to a survivor, heir or assign of the deceased recipient through: joint tenancy, tenancy in common, survivorship, transfer-on-death deed, payable-on-death contract, life estate, trust, annuities, or similar arrangement. The breadth of assets covered by the "medical assistance estate" can cause title examination and constitutional problems. For example, if a person purchases a joint or remainder interest in property and pays fair market value for that interest, upon the death of the other owner (who is also a recipient of state medical assistance), under the current version of the statute, the State of Kansas will be "taking" the interest of survivor without compensation and due process of law. K.S.A. 39-

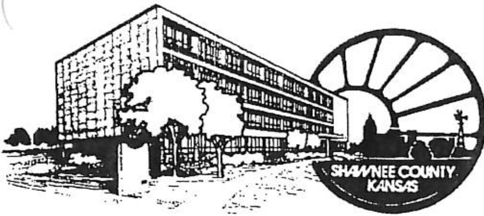
709 already gives the State the ability to place a lien on property to the extent of its claim. By making the requested change, the State will not lose anything. SRS can place a lien on the property to the extent of the owner's interest in the property, but that will also avoid the State from "taking" more than the interest owned by the recipient of medical assistance.

Thank you very much for your consideration on this matter. If there is anything I can to do clarify any of these points, please don't hesitate to contact me.

Very truly yours,

CLARK, MIZE & LINVILLE, CHTD.

Eric N. Anderson




Shawnee County
**Register of Deeds**
200 East 7th Street
Topeka, Kansas 66603-3932
COURTHOUSE ROOM 108 785-233-8200 Ext. 4020
**MARILYN L. NICHOLS**
REGISTER

January 25, 2007

Senate Judiciary Committee
Senator Vratil, Chairman
Distinguished Members

I am offering this testimony as a proponent of SB 73, for myself as the Shawnee County Register of Deeds as well as for the Kansas Register of Deeds Association as their Legislative Committee Chair.

It is my understanding that the intent of SB 73 is to clarify the procedures in determining when mortgage registration tax is due upon recording of a mortgage as an additional amount of debt or a refinance of the same debt. If our records reflect the previous mortgage as "released" then mortgage registration tax would then be due on the new mortgage as a new loan.

This amendment to KSA 79-3102 as proposed in SB 73, would clarify the intent of the statute to collect mortgage registration tax on "new money" and would no longer be left to the interpretation of the Register of Deeds as to the appropriateness of collecting the tax. Frequently we receive the release document several days to weeks ahead of the refinance or new mortgage sent for recording. We have no way of knowing that indeed a refinance has occurred and have the release of mortgage on record when a refinance or new mortgage comes in and states that mortgage registration tax has been paid and the affidavit is claiming an exemption from the tax due. It seems reasonable to assume that if mortgage is released of record then a new mortgage is indeed a new debt wherein tax would be due. This amendment would clarify the procedure to be followed upon application of receiving an exemption from the tax. It should be the responsibility of the lender to make sure they do not release a mortgage before sending the refinance document to insure the proper recording sequence remains intact to refinance the same debt and therefore be entitled to the tax exemption. We encourage your support of SB 73 as proposed.

Thank you for your attention and I will be happy to stand for any questions.

Marilyn L. Nichols

Senate Judiciary
1-29-07
Attachment 2

Montgomery County Register of Deeds
Marilyn Calhoun
Montgomery County Courthouse
P.O. Box 647
Independence, KS 67301
Ph. 620-330-1140 Fax 620-330-1144 Cell 620-330-0137

Dear Senator Vratil and Members of the Senate Judiciary Committee,

My name is Marilyn Calhoun and I am the Register of Deeds in Montgomery County, Kansas. I want to thank you for your time and consideration of us, the Register of Deeds, today. Also, thank you for your service to the people of the great state of Kansas. I think it was Plato who said that "civic service is the noblest of callings." I like to remind myself of that from time to time.

I am a proponent of Senate Bill 73. By inserting this line, <u>unless the previously recorded mortgage or other instrument was released prior to the register of deeds receipt of the subsequent mortgage or other instrument;</u> in Section 1, paragraph (d), you would aid us in our work tremendously.

We here today,and other registers in our association,have had mortgage releases sent to our offices for filing and then later have a mortgage follow. It would seem some expect us to ignore that prior release. We are not readers of the future. We file what is in hand before us. If a mortgage is sent after the release because of a mail delay or some other such complication, we have no way of knowing. Our job is to make documents of record. A mortgage may come in weeks after a release of that same mortgage. If this happens it is a new mortgage and a mortgage registration fee is collected.

This occurance has been frustrating for us, the abstractors, and other members of the public at large who are trying to file documents. Again this clarification would be a great help to us. Thank you for your time and I pray this amendment finds favor in the halls of the Kansas Legislature.

Respectfully,

Marilyn Calhoun

January 25, 2007

Senate Judiciary
1-29-07
Attachment 3

## TESTIMONY OF LAURENCE R. TUCKER
## BEFORE THE JUDICIARY COMMITTEE OF THE KANSAS SENATE

My name is Laurence R. Tucker. I am a partner in the law firm of Armstrong Teasdale, LLP in Kansas City, Missouri. I have practiced law since 1972 and am licensed in Missouri and admitted to practice in the state and federal courts in Missouri and the federal court in Kansas. My practice is primarily focused on civil litigation.

In my practice, I have become familiar with the operation of Missouri Supreme Court Rule 51.05 entitled Change of Judge Procedure. That rule permits a party to apply for a change of judge without stating any reason or cause on one occasion during the pendency of a lawsuit. The rule permits the plaintiff or the defendant (and certain other named parties) to apply for a change of judge within 60 days from the service of process or 30 days from the designation of the trial judge, whichever time is longer, without the necessity of stating any basis for such application. The Missouri courts have construed the rule so that all courts know that once such an application is filed, the only action a judge may take is to transfer the case to either the presiding judge of a multi-judge circuit or in a single-judge circuit to the Missouri Supreme Court for reassignment.

In my experience, this rule has worked well. Where there is a legitimate reason for a request to be made to change a judge, the change may be made without the necessity of having to allege any bias or prejudice on the part of the sitting judge. The rule limits this request to one per side of the case. Where there are multiple plaintiffs or multiple defendants, there is only one change permitted for the plaintiff's side and one for the defendant's side of the case.

The way this rule operates in multi-judge circuits is that once an application is filed, the sitting judge immediately grants the application and sends the case to the presiding judge of that circuit for reassignment. In a single-judge circuit, after the application is filed, the judge immediately grants the application and sends the case to the Supreme Court for reassignment. Customarily, the Supreme Court tries to reassign the case to a judge sitting in a circuit that is geographically close to the single-judge circuit where the application was filed in order to avoid undue travel for the judge assigned to the case.

This rule provides an opportunity for parties to a change judge where there is a necessity to do so without having to explicitly state that the judge is likely to be unfair or bias. This can be a great convenience to the parties. It also permits counsel to represent their clients more effectively by providing an avenue for a change of judge where one is necessary.

Any request for a change of judge after the initial one, pursuant to this rule, must be based upon a claim of a need to change a judge for cause. It is possible to obtain a change of judge after the initial change, but only upon the moving party stating a cause and the review by the sitting judge of that application.

I would be pleased to answer any questions that the committee has about the operation of Missouri Supreme Court Rule 51.05 and my observations of its application in civil litigation.

Clerk Handbooks

## Supreme Court Rules

| | | | |
|---|---|---|---|
| **Subject:** | **Rule 51 - Rules of Civil Procedure - Rules Governing Civil Procedure in the Circuit Courts - Venue Including Change of Venue and Change of Judge** | Section/Rule:<br>Publication / Adopted Date: | **51.05**<br>**November 15, 1974** |
| **Topic:** | **Change of Judge - Procedure** | Revised / Effective Date: | **January 1, 2005** |

### 51.05. Change of Judge - Procedure

**(a)** A change of judge shall be ordered in any civil action upon the timely filing of a written application therefor by a party. For purposes of this Rule 51, motions to modify child custody, child support, or spousal maintenance filed pursuant to chapter 452, RSMo, are not an independent civil action unless the judge designated to rule on the motion is not the same judge that ruled on the previous independent civil action. The application need not allege or prove any cause for such change of judge and need not be verified.

**(b)** The application must be filed within 60 days from service of process or 30 days from the designation of the trial judge, whichever time is longer. If the designation of the trial judge occurs less than thirty days before trial, the application must be filed prior to any appearance before the trial judge.

In the case of intervenors, the application must be filed within 30 days of intervention or designation of the trial judge, whichever is later, but in no event may any intervening party obtain a change of judge pursuant to this Rule 51 unless the application is filed within 180 days of the designation of the trial judge.

**(c)** A copy of the application and notice of the time when it will be presented to the court shall be served on all parties.

**(d)** Application for change of judge may be made by one or more parties in any of the following classes: (1) plaintiffs; (2) defendants; (3) third-party plaintiffs (where a separate trial has been ordered); (4) third-party defendants; or (5) intervenors. Each of the foregoing classes is limited to one change of judge, and any such change granted any one or more members of a class exhausts the right of all members of the class to a change of judge. However, no party shall be precluded from later requesting any change of judge for cause. Further, in condemnation cases involving multiple defendants, as to which separate trials are to be held, each separate trial to determine damages shall be treated as a separate case for purposes of change of judge.

4-2

**(e)** The judge promptly shall sustain a timely application for change of judge upon its presentation. The disqualified judge shall transfer the case to a judge stipulated to by the parties if the new judge agrees to take the case. If the case is not so transferred, the disqualified judge shall notify the presiding judge:

> (1) If the presiding judge is not disqualified in the case, the presiding judge shall assign a judge of the circuit who is not disqualified or request this Court to transfer a judge; or
>
> (2) If the presiding judge is disqualified in the case, a judge of the circuit shall be assigned in accordance with local court rules, so long as the local court rules do not permit the disqualified judge to make the assignment, or the presiding judge shall request this Court to transfer a judge.

**(f)** If after a change of judge has been granted the action shall be removed on application of another party to some other county in the same circuit, the transferred judge shall continue as the judge therein.

*(Adopted Nov. 15, 1974, eff. Sept. 1, 1975. Amended June 24, 1986, eff. Jan. 1, 1987; June 16, 1989, eff. Jan. 1, 1990; June 1, 1993, eff. Jan. 1, 1994; March 22, 1994, eff. Jan. 1, 1995; June 17, 1997, eff. Jan. 1, 1998; May 26, 1998, eff. Jan. 1, 1999; June 17, 2004, eff. Jan. 1, 2005.)*

Document History:

4-3

# The Kansas District Judges' Association

*Hon. Daniel L. Love, President*
*Phone: 620-227-4620*

*Hon. Meryl D. Wilson, Secretary*
*Phone: 785-537-6372*

*Hon. Robert J. Fleming, President-elect*
*Phone: 620-421-1410*

*Hon. Nancy E. Parrish, Treasurer*
*Phone: 785-233-8200 x4067*

Senate Judiciary Committee
Monday, January 29, 2007

Testimony in Opposition to SB 86

Chief Judge Nancy Parrish, 3rd Judicial District, Shawnee County

SB 86 would provide that a change of judge shall be ordered in any civil action upon the timely filing of a written application by a party. Parties may be either the plaintiffs, defendants, third-party plaintiffs, third-party defendants, or intervenors. The application need not allege or prove any cause for the change of judge and need not be verified.

The disqualified judge would transfer the case to a judge stipulated by the parties if the new judge agrees to take the case. If the case is not transferred, the disqualified judge shall notify the chief judge. If the chief judge is not disqualified, the chief judge shall assign a judge of the district who is not disqualified.

I have been asked to testify in opposition to SB 86 on behalf of the Kansas District Judges Association. At our most recent meeting, SB 86 was the topic of much conversation. It was opposed by every judge present, and both our members and the Office of Judicial Administration have had additional calls from judges concerned about the bill.

Among the concerns about the bill are that it will not provide a positive enhancement to current laws regarding disqualification of judges. I have attached copies of K.S.A. 20-311d and 20-311, which address disqualification of judges. In addition, the Code of Judicial Conduct notes circumstances under which judges must recuse themselves of their own accord. In the Third Judicial District, of which I am chief judge, cases are assigned on a random basis. The random nature of the judicial assignment is beneficial to both judges and litigants. One concern is that SB 86 would allow "judge shopping," and that any of the parties can ask for a change of judge based on their perception that they are more likely to achieve their desired result from one judge as opposed to another. The provisions of SB 86 could be used as an attempt to undo the random assignment of cases, or as an attempt to delay the progress of a case.

Administration of the bill presents other issues. In the majority of Kansas' 31 judicial districts, there are three or fewer district judges. Judge Wilson will talk in more detail about the bill from this

perspective. While district magistrate judges are present in some counties, this bill would appear to present the most difficulty in Chapter 60 civil and domestic cases, in which district magistrate judges do not have jurisdiction. Although it might appear that, at least in the urban districts, there are sufficient judges to deal with this issue, in reality the urban districts would face some of the same issues as the rural districts. While Shawnee County has a total of 15 district judges, each of those judges are assigned to departments, where they hear a specified type of case or cases. For example, in Shawnee County two judges are assigned to the domestic department and hear the vast majority of all domestic cases. If a party requests a change from one judge and the other judge has no time available on his or her docket within a reasonable amount of time, I will have to find another judge within the district or will have to request an assigned judge from another district to hear the case.

I am not aware of problems that are not addressed by current provisions regarding disqualification of judges, and my colleagues also have not found this to be an issue. While the Kansas District Judges Association remains open to ideas that would improve the administration of justice, we do not share the view that SB 86 would provide an improvement to current law.

Thank you for your consideration of this issue, and I would be happy to answer any questions you might have.

# *The Kansas District Judges' Association*

*Hon. Daniel L. Love, President*
*Phone: 620-227-4620*

*Hon. Meryl D. Wilson, Secretary*
*Phone: 785-537-6372*

*Hon. Robert J. Fleming, President-elect*
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*Hon. Nancy E. Parrish, Treasurer*
*Phone: 785-233-8200 x4067*

Senate Judiciary Committee
Monday, January 29, 2007

Testimony in Opposition to SB 86

Judge Meryl Wilson, 21st Judicial District, Riley and Clay Counties

Thank you for the opportunity to testify regarding this bill. As Judge Parrish noted, I will address in more detail the difficulties we note regarding the application of this bill in judicial districts outside the urban areas of the state.

Kansas has three judicial districts with one district judge, four with two district judges, ten with three district judges, six with four district judges, one with five district judges, and three with six district judges. Only the four urban districts (Johnson, Sedgwick, Shawnee, and Wyandotte Counties) have more than six district judges. Moreover, Kansas judges have active and full caseloads and generally are forced to schedule cases and hearings weeks to months in advance. In at least the three judicial districts with one district judge, if that judge is disqualified, it will take weeks to months to find another judge from another district to hear that case. The same delay will result in other districts because another judge cannot clear his or her docket to travel to the district from which one or more judges have been disqualified to hear the case.

It does not seem overly dramatic to state that, in the three districts with only one district judge, that judge could actually hear very few civil cases in his or her own district under the provisions of SB 86. The Office of Judicial Administration correctly notes that this issue could be addressed to some extent with additional senior judge contracts. However, that means additional state expense and that solution does not totally address the issue of delay to the litigants. Delay would result not only to those litigants requesting a change of judge, but also potentially to other litigants, both because of the administrative time spent and because of rescheduling issues.

I share Judge Parrish's assessment of this bill, and reiterate her statements that these views are shared by other judges across the state.

Thank you again for this opportunity, and I will stand for any questions.

Senate Judiciary
1-29-07
Attachment 6

January 29, 2007

Senator John Vratil
Judiciary Committee
State Capitol
Topeka, KS 66612

RE: SB 86

Dear Senator Vratil:

Please accept this letter as testimony from the Judges of the Tenth Judicial District, Johnson County, expressing their concerns regarding the referenced bill.

It is difficult to respond to such a bill in the first instance when we do not have available the perceived problem the bill is attempting to correct. It appears the bill may be designed to fix something that is not broken. That would be a formula for creating new problems that do not exist as things presently stand. If we had more time to talk with the proponents of the bill, we may be able to address the underlying concerns, if any, more adequately.

The nearest we can tell from the face of it is that it is designed to follow, in part (civil only) a practice in the State of Missouri. It is worth noting, however, that the practice in Missouri is a product of Missouri Supreme Court Rule (See *e.g.,* Missouri S. Ct. Rule 32.06 R.S.Mo. and Rule 51.05 R.S.Mo.) It seems to us that this type of procedure is a matter for judicial administration. The Kansas Constitution, Article 3, § 1, gives the Kansas Supreme Court general administrative authority over all courts in this state. If this is a good rule or actually addresses a problem in the administration of the Kansas system of justice, we suggest letting the Supreme Court study the proposal and the problem. If it is appropriate for the administration of the Kansas courts, the Supreme Court can adopt it as a Rule.

This proposed procedure would undermine our assignment of KSA 60-1507 cases to the original sentencing judge. They are in the best position to review the trial procedures and habeas issues. However, this free change of judge, without cause, would almost guarantee that the defendant who is already convinced the trial judge and his counsel erred, would request a new judge. Once again, that interferes with the administration of the courts.

Finally, we are very concerned about the allowance of multiple changes and how that impacts the administration of assignment of cases. We can envision, for instance, a single divorce case with an immediate change because the filing party does not like the judge assigned when the case was filed. Then, upon entry of appearance by the respondent, another change because respondent or counsel does not like the replacement judge. Then a few years after litigation and, perhaps, some decisions going against one of the parents, that side's grandparent intervenes and moves for yet another change of judge. You have effectively defeated another administrative issue in family court where we are attempting to move toward the concept of one family - one judge.

We request that this matter be rejected at this point. At the very least, we suggest that the concept be deferred for further study. In reality, the concept should be left within the authority of the Kansas Supreme Court.

Thank you for your consideration and continuing work on behalf of the citizens of our state.

Sincerely,

Steve Tatum
Chief Judge, Tenth Judicial District

cc: Judges of the Tenth Judicial District
Kansas Supreme Court