

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Vice Chairman Terry Bruce at 9:34 A.M. on January 30, 2007, in Room 123-S of the Capitol.

All members were present except:

John Vratil arrived, 9:35 A.M.  
Barbara Allen arrived, 9:35 A.M.  
Dwayne Umbarger arrived, 9:37 A.M.  
Derek Schmidt arrived, 9:40 A.M.  
David Haley arrived, 9:42 A.M.

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:

Randy Hearrell, Kansas Judicial Council  
Jim Clark, Kansas Bar Association  
Pat Scalia, Executive Director, State Board of Indigents' Defense Services  
Bill McKean

Others attending:

See attached list.

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

Randy Hearrell testified in support, providing background on development of the bill (Attachment 1). Following testimony, Senator Vratil referred to the new language beginning on page 5, line 3, suggesting deletion of the phrase "and the notice required by subsection (d) shall not be given" since there is no need to notify the State twice on a Medicaid claim. Mr. Hearrell agreed and had no objection to the change. The Chairman also suggested rewriting the new language beginning on page 4, line 42, through page 5, line 3, to a more understandable form.

Jim Clark appeared in opposition, indicating the Kansas Bar Association's concern that **SB 74** will impose a burden of time and expense on all estates (Attachment 2).

There being no further conferees, the hearing on **SB 74** was closed.

The hearing on **SB 75--Compensation for attorneys representing indigent defendants** was opened.

Pat Scalia spoke in support, stating that legislation passed last year directed the executive director of the board on indigents' defense services to open public defender offices in locations where it is cost effective. Ms. Scalia indicated that, in all pertinent districts, both the bench and local attorneys preferred to retain the assigned counsel system and offered to accept a lower hourly rate to remain cost effective. Enactment of this bill will continue to save state general funds as contracts are made with additional counties (Attachment 3).

There being no further conferees, the hearing on **SB 75** was closed.

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

Randy Hearrell testified in favor, stating that it came to the attention of the Judicial Council that motor vehicles titles are not included in the categories of personal property listed that may be transferred by affidavit in small estates. Passage of this bill will ensure that all personal property is included (Attachment 4).

Written testimony in support of **SB 76** was submitted by:

Jim Clark, Kansas Bar Association (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:34 A.M. on January 30, 2007, in Room 123-S of the Capitol.

There being no further conferees, the hearing on **SB 76** was closed.

The hearing on **SB 85--Authorizing employment of retired justices and judges with the Kansas Judicial Council to assist the Commission on Judicial Performance** was opened.

Randy Hearrell appeared in support, indicating **SB 85** will allow the Kansas Commission on Judicial Performance to hire retired judges on the same basis as the Judicial Branch under K.S.A. 20-2622 (Attachment 6).

Bill McKean spoke in opposition, stating that he may have misunderstood the intent of **SB 85**. He was not aware that it was strictly to assist the Judicial Council Administration (Attachment 7).

There being no further conferees, the hearing on **SB 85** was closed.

Final action continued on **SB 37--Concerning the crime of smoking in indoor areas.**

Senator Donovan distributed a proposed amendment that would allow an annual benefit cigar dinner for local charities (Attachment 8). Following discussion, Senator Donovan moved, Senator Bruce seconded, to adopt the proposed amendment reworded to read: "an annual benefit cigar dinner for charitable purposes." Motion carried.

Senator Goodwin distributed a proposed amendment to exempt commercial vehicles (Attachment 9). Senator Goodwin moved, Senator Betts seconded, to adopt the proposed amendment and authorize the revisor's liberty to restate the amendment in appropriate statutory language. Motion carried.

A proposed amendment by Senator Wysong was distributed indicating the addition of subsections 11 & 12 to his previous balloon amendment. The additions would include exemptions for trains (Attachment 10). Senator Schmidt moved, Senator Umbarger seconded, to amend the bill to exempt designated smoking areas in passenger trains and freight trains. Motion carried.

Senator Schmidt distributed an amendment consistent with all of the changes made to date but would allow counties to "opt out" of the state wide smoking ban in public places. It also includes provisions to create a protest petition mechanism for any county that did opt out to allow local citizens to put the question on the ballot (Attachment 11).

Following discussion, several questions arose regarding the bill. The Chairman announced final action will continue at a later date to give the staff time to research answers to questions.

Final action on **SB 51--Vital statistics, list of deceased residents, district court clerks.**

The Chairman provided a review of the bill. Senator Haley moved, Senator Goodwin seconded, to recommend **SB 51** favorably for passage. Motion carried.

Senator Umbarger suggested the committee proceed with final action on **SB 75**. The Chairman indicated since there did not appear to be any opposition to the bill, he would make an exception provided the committee agreed.

Final action on **SB 75--Compensation for attorneys representing indigent defendants.**

Senator Umbarger moved, Senator Donovan seconded, to recommend **SB 75** favorably for passage. Motion carried.

The meeting adjourned at 10:28 A.M. The next scheduled meeting is January 31, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 30 January 2007

NAME	REPRESENTING
Patricia	BIDS
Tom Whitaker	KMCA
Ron Secher	Hein Law Firm
JEFF GUNDERME	KS CHAMBER
Bill McLean	CITIZEN - OTCUITA
Tom Griffith	Observer
Bob Keller	JCSO
Robyn Horton	AmCA
Jeff Dameron	CSG
Callie Denton Hattle	KTLA
JIM CHARK	KBA
Brian Vazquez	KITPA
Ed Brady	KDHE
Brenda Haines	KSC
Sara Blubaugh	KBA
Carolyn Drexler	KS St No Coun
Suzee Mickie	KS Health Institute
Sarah Green	KHI News Service

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 30 January 2007

NAME	REPRESENTING
Pam Scott	Ks Funeral Directors Assn
Donna Calabrese	KDHE
Maryjean Kelleher	TFKC
Linda J. McCawley	American Heart Assn
LISA BENLON	AMER. CANCER Soc.
Whitney Danna	KS Bar Assn.
Bob Coble	<del>KS Bar Assn.</del>



# KANSAS JUDICIAL COUNCIL

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JUDGE ROBERT J. FLEMING, PARSONS  
JUDGE JEAN F. SHEPHERD, LAWRENCE  
SEN. JOHN VRATIL, LEAWOOD  
REP. MICHAEL R. O'NEAL, HUTCHINSON  
J. NICK BADGEROW, OVERLAND PARK  
GERALD L. GOODELL, TOPEKA  
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Kansas Judicial Center  
301 S.W. Tenth Street, Suite 262  
Topeka, Kansas 66612-1507

Telephone (785) 296-2498  
Facsimile (785) 296-1035

judicial.council@ksjc.state.ks.us  
www.kscourts.org/council

RANDY M. HEARRELL  
EXECUTIVE DIRECTOR  
NANCY J. STROUSE  
STAFF ATTORNEY  
CHRISTY R. MOLZEN  
STAFF ATTORNEY  
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ADMINISTRATIVE ASSISTANT  
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ADMINISTRATIVE ASSISTANT  
BRANDY M. WHEELER  
ADMINISTRATIVE ASSISTANT

## MEMORANDUM

**TO: Senate Judiciary Committee**

**FROM: Kansas Judicial Council - Randy M. Hearrell**

**DATE: January 30, 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.

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 a party to the proceedings and 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.

A letter from Judge David Mikesic supporting the bill is attached at page 3.

PROBATE LAW ADVISORY COMMITTEE

Gerald L. Goodell, Chair  
515 S. Kansas Ave.  
Topeka, KS 66603  
(785) 233-0593  
(785) 233-8870 FAX  
ggoodell@goodellstrattonlaw.com

Cheryl C. Boushka  
800 West 47th ST., STE 500  
Kansas City, MO 64112-1240  
(816) 531-8877  
(785) 531-3522 FAX  
cheryl@sildonlaw.com

Hon. Sam K. Bruner  
6901 West 69<sup>th</sup> Street  
Overland Park, KS 66204  
(913) 722-0590  
samkbruner@aol.com

Tim Carmody  
10955 Lowell #520  
Overland Park, KS 66210  
(913) 491-6332 Ext. 126  
(913) 451-9147 FAX  
carmt@kcnet.com

Michael L. Clutter  
2201 SW 29<sup>TH</sup> Street  
Topeka, KS 66611-1908  
(785) 266-5121  
(785) 266-2116 FAX

Martin B. Dickinson, Jr.  
School of Law  
University of Kansas  
Lawrence, KS 66045  
(785) 864-9246  
(785) 864-5054 Law School  
(785) 843-8405 FAX  
mbd@ku.edu

Jack R. Euler  
P.O. Box 326  
137 S. Main  
Troy, KS 66087  
(785) 985-3561  
(785) 985-2322 FAX  
Eulerlaw@carsoncomm.com

Senator Greta Goodwin  
420 E. 12th Ave.  
Winfield, KS 67156  
(620) 221-9058  
ggoodwin@ink.org

Mark Knackendoffel  
The Trust Company of Manhattan  
330 Poyntz Avenue  
Manhattan, KS 66502  
(785) 537-7200  
(785) 537-2030  
markk@thetrustco.com

Justice Edward Larson  
2761 SW Plass  
Topeka, KS 66611  
(785) 354-7350

Philip D. Ridenour  
P.O. Box 1028  
107 S. Main Street  
Cimarron, KS 67835  
(620) 855-7051  
(620) 855-3207 FAX  
ridelaw@ucom.net

Willard B. Thompson  
P.O. Box 997  
125 N. Market, Ste. 1600  
Wichita, KS 67202  
(316) 267-7361  
(316) 267-1754 FAX  
wthompson@fleeson.com

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Randy M. Hearrell  
301 SW 10<sup>th</sup>, Ste. 262  
Topeka, KS 66612  
(785) 296-3930  
(785) 296-1035 FAX

(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





**KANSAS BAR  
ASSOCIATION**

Testimony in Opposition to

**SENATE BILL NO. 74**

Presented to Senate Judiciary Committee  
January 30, 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 recognizes the huge burden that medical assistance to those without means imposes on the State of Kansas and the United States. It also supports efforts to recoup those costs from people of means who accepted such assistance. However, the KBA is in opposition to SB 74.

Section 1 of the bill amends the probate code to require joining the State of Kansas, or any state, if the decedent or decedent spouse received medical assistance, as a party in the proceedings. Under current law, probate estates do not reflect an adversarial relationship, or list all possible parties, but rather are titled under the name of the decedent of the estate. Under current law, any entity, including the State of Kansas, which has a claim against the estate may file a claim, then the assets in the estate are liquidated and such claims are paid under a system of statutory priorities. Under current law, the State must be given notice that an estate has been opened, and recovery of medical assistance is given priority. To make the State of Kansas, or any other state, a party causes unnecessary delay in the administration of an estate.

Section 2(a)(5) of the bill amends the notice of finale settlement by requiring a statement that no medical assistance was received, or that notice to the State of Kansas, or any other state, was given notice of the filing of the probate case. This amendment is basically a specific wording for what has been more generally included in (a)(4), and is not much more burdensome. However, the language appears to be in contradiction to Section 1, since if the State were made a party, there is no need for such additional language. Section 3 also inserts more specific language requiring repayment to the State, when such requirement currently exists under the general obligation of a conservator.

The KBA is under the impression that recovery of medical assistance affects very few estates, yet the changes in SB 74 impose a burden of time and expense on all estates. Without some showing that the current probate system results in a diminution of the State's ability to recover medical assistance costs, the Kansas Bar Association is in opposition to SB 74, and urges the Committee not to recommend it favorably.

James W. Clark. KBA Legislative Counsel

Senate Judiciary

1-30-07  
Attachment 2

## TESTIMONY

### STATE BOARD OF INDIGENTS' DEFENSE SERVICES BEFORE THE SENATE JUDICIARY COMMITTEE

#### Senate Bill 75

Chairman Vratil and Members of the Committee:

The Board of Indigents' Defense Services requested this proposed legislation. This bill would change the current statutory language from requiring the Board to pay \$80 per hour for assigned counsel services to language that will allow the Board to contract with private attorneys for rates lower than \$80 per hour and to allow the chief judge of a judicial district to set an hourly rate for the local voluntary panel of assigned attorneys at less than \$80 per hour.

This legislation is needed to enable the Board to accomplish its mission of providing the Constitutional right to counsel and related defense services in a cost effective manner. Last session, when the hourly rate paid to assigned counsel was increased from \$50 to \$80 per hour, the first increase for assigned counsel in 18 years, there was the following direction: "The executive director of the board of indigents' defense services is hereby directed to open additional public defender offices in locations where it is cost effective." (Omnibus, HB 2968 Sec 50)

Accordingly, I compared the cost of opening public defender offices with the cost of paying assigned counsel \$80 per hour. I then scheduled public hearings in those districts where a public defender office would be cost effective. In each one of those districts, both the bench and the local attorneys preferred to retain the assigned counsel system and offered to accept a lower hourly rate to remain cost effective. A list of those counties, the agreed hourly rate, and the savings to the state general fund follows this testimony. Additional counties will be added with the passage of this legislation because the potential for a legal challenge to the payment of less than \$80 per hour will be removed. Additionally, this agency currently has in place 21 contracts with attorneys and we need the ability to continue to contract in order to save state general funds.

Senate Judiciary

1-30-07

Attachment 3

**Current Savings FY07**

<b>Agreement</b>		<b>Hourly Rate</b>	<b>Savings</b>
7/1/06	Wyandotte	\$62	\$109,571
10/1/06	Clark, Ford, Gray, Kiowa, Meade, Cherokee, Crawford, Labette	\$69	\$23,442
1/1/07	McPherson, Harvey	\$62	(Not yet available)

**Projected Savings at Minimum FY08**

<b>County</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Equals</b>	<b>Hourly Rate</b>	<b>Equals</b>	<b>Savings</b>
Wyandotte	12,960	\$80	\$1,036,800	\$62	\$803,520	\$233,280
McPherson, Harvey	5,785	\$80	\$462,800	\$62	\$358,670	\$104,130
Clark, Ford, Gray, Kiowa, Mead, Cherokee, Crawford, Labette	13,343	\$80	\$1,067,440	\$69	\$920,667	\$146,773

Respectfully submitted,



Patricia A. Scalia  
Executive Director



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### MEMORANDUM

**TO:** Senate Judiciary Committee

**FROM:** Kansas Judicial Council - Randy M. Hearrell

**DATE:** January 30, 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.

Senate Judiciary

1-30-07

Attachment 4



**KANSAS BAR  
ASSOCIATION**

Testimony in Support of

**SENATE BILL NO. 76**

Presented to Senate Judiciary Committee  
January 30, 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 personal 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

\* \* \*

Senate Judiciary  
1-30-07  
Attachment 5



# KANSAS JUDICIAL COUNCIL

JUSTICE ROBERT E. DAVIS, CHAIR, LEAVENWORTH  
JUDGE JERRY G. ELLIOTT, WICHITA  
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JUDGE JEAN F. SHEPHERD, LAWRENCE  
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## MEMORANDUM

**TO:** Senate Judiciary Committee

**FROM:** Kansas Judicial Council - Randy M. Hearrell

**DATE:** January 30, 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 (K.S.A. 20-2622). 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.

Senate Judiciary  
1-30-07  
Attachment 6

## 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.

TESTIMONY OF WILLIAM MCKEAN IN OPPOSITION OF SENATE BILL 85

My name is Bill McKean and I am a constituent of Senator Les Donovan. Since the 2004 primaries, I have actively lobbied the reporters and editors at the Wichita Eagle and elected officials, politicians, judges, prominent attorneys and law professors through out the state to reduce the effects of nepotism and cronyism and in the Kansas judiciary by increasing accountability and transparency.

I have driven up this morning from Wichita to provide you with anecdotal evidence of the lack of accountability and inherent conflicts of interest due to the political nature of the Kansas Judicial Council. More importantly I also want to encourage this committee early in the legislative session to enact many wide-sweeping judicial reforms on a bi-partisan basis. I truly believe that the current political climate is such that the governor, incoming attorney general, the judiciary committee chairmen and the Senate & House leadership can create political legacies for themselves by enacting reforms so that Kansas legal system will be the model for the rest of the United States.

Senate Bill 85 should be defeated for the following reasons:

1. Retired Judges Beasely, Buchanan & Dewey are employed by the Sedgwick County District Court on a part-time basis only because the 26 district court judges refuse to serve on the family law courts for more than one year. The chief administrative judge could easily reassign the work load. The retired judges have a conflict of interest because attorneys may feel that they are required to hire them as case managers for clients.
2. If retired judges are required, they should not serve in family law court were case may need to be heard on a periodic basis over a 2 - 3 year period.. The 26 elected judges rather than the Supreme Court should chose and evaluate the retired judges to be hired on a confidential survey.
3. In the past the Supreme Court has chosen retired judges despite their history of unethical behavior. This only reinforces the appearance of cronyism in the courts.
4. By its nature, the Kansas Judicial Council is too political to objectively evaluate the performance of retired judges.
5. Statewide reforms should be made to the family law courts such as uniform shared residential custody law and mandatory bifurcation of custody and property issues so that only property issues will be adjudicated to reduce the family law case load.



## **DOES NICK BADGEROW HAVE THE PROFESSIONAL INTEGRITY TO OBJECTIVELY EVALUATE THE PROFESSIONAL CONDUCT OF RETIRED JUDGES?**

**Point #1** Badgerow is a member of the Kansas Judicial Council which is appointed by the Supreme Court. He is also the chairman of the Kansas Ethics Advisory Committee which publishes opinions about hypothetical ethical violations for the members of the Kansas Bar Association. Ironically the general public may not read Badgerow's opinions. The KBA is probably afraid that an informed public will file more complaints against attorneys.

**[http://www.ksbar.org/public/legislative/ethics\\_request.shtml](http://www.ksbar.org/public/legislative/ethics_request.shtml)**

**Badgerow routinely represents powerful politicians. He could use his position on the Kansas Judicial Council for political purposes to increase his ability to peddle**

**[http://findarticles.com/p/articles/mi\\_qn4179/is\\_20060110/ai\\_n16005647/print](http://findarticles.com/p/articles/mi_qn4179/is_20060110/ai_n16005647/print)**

### ***Attorney: Kline on both sides Abortion suit may put A.G. in odd***

*Attorney General Phill Kline may have indirectly sued himself in a lawsuit challenging the legality of Medicaid payments to fund abortions, an attorney representing Gov. Kathleen Sebelius told Shawnee County District Court Judge David Bruns on Monday.*

*Kline v. Sebelius was filed in August. The lawsuit is based on a resolution passed Jan. 24, 2002, by the Kansas House of Representatives and seeks a court opinion saying state-funded abortions are unconstitutional. Medicaid provides health care for the poor and disabled.*

*Sebelius, represented Monday by Overland Park attorney Nick Badgerow, is asking Bruns to dismiss the lawsuit. Bruns took the motion to dismiss under advisement and will rule on the issue later. Neither Sebelius nor Kline were in Shawnee County District Court on Monday.*

*The Medicaid budget in Kansas is about \$2.2 billion, of which 60 percent --- \$1.32 billion --- is federal money. Kansas would risk losing Medicaid funding if it didn't follow provisions of the federal law tied to the program, Badgerow said.*

*In about the past year, there have been 10 abortions performed in Kansas that received \$3,000 from Medicaid, Badgerow said.*

*He also noted that Kline administers the Crime Victims Reparations Board, which also could administer funding for abortions if a rape victim sought to recover medical costs for the procedure.*

*Kline was represented Monday by Olathe attorney Lance Kinzer, a member of the Kansas House who filed the lawsuit on behalf of Kline in August.*

*If the Crime Victims Reparations Board became an issue, representing Kline would create an "interesting" situation, Kinzer said.*

*Badgerow argued that Bruns should dismiss the case, saying the U.S. Constitution is the supreme law of the land and wins any conflict between federal and state law. Badgerow also said there isn't a cause of action or a controversial issue before the court for Bruns to decide.*

*Medicaid funds abortions in only three instances: to victims of rape or incest or where the mother's life is in danger, Badgerow said.*

*"It has to be medically necessary as defined by regulations," Badgerow said.*

*Medicaid doesn't provide elective abortions, just as it doesn't provide nose jobs, Badgerow said.*

*Medicaid, which originated in 1965, was adopted in Kansas in the early 1970s, Badgerow said. Once Kansas opted to join the program, the state was obligated to follow all of its provisions, Badgerow said.*

**Badgerow represented Supreme Court Justice Nuss before the Kansas House Committee and against a complaint filed by the Commission on Judicial Qualifications while he continued to serve on the Kansas Judicial Council under the authority of the Supreme Court supposedly in the best interests of the citizens of Kansas. Per the 8/10/06 article from the Topeka Capital Journal:**

**[http://findarticles.com/p/articles/mi\\_qn4179/is\\_20060810/ai\\_n16637840](http://findarticles.com/p/articles/mi_qn4179/is_20060810/ai_n16637840)**

*A Kansas Supreme Court justice who has come under unprecedented scrutiny will get his own day in court today to try to fight off allegations he violated judicial ethics in the recently dismissed school finance lawsuit.*

*Justice Lawton Nuss will testify in an open hearing before the Kansas Commission on Judicial Qualifications. The judge faces formal allegations he improperly discussed the school finance case with two state senators.*

*He has admitted to the conversation and apologized for the "lapse of judgment." Judges generally are forbidden from discussing ongoing cases with outsiders.*

*Nuss has said he didn't intentionally violate any judicial ethics. His legal team declined to discuss the case.*

*"I think I'll leave that for my opening statement on Thursday," said Nick Badgerow, an Overland Park attorney representing Nuss.*

*Key witnesses in the hearing, which will run like a trial, are Nuss and the two senators he had lunch with on March 1 - Senate President Steve Morris, R-Hugoton, and Sen. Pete Brungardt, R- Salina. None of them has testified under oath regarding the lunch, and Nuss never has spoken publicly about the meeting.*

*Nuss generated controversy this spring when he admitted to having a lunch meeting with the two senators. Nuss said he brought a spreadsheet to the March 1 meeting to ask the senators to clarify figures in a recently introduced school finance bill.*

*The Legislature had been under court mandate to increase public school funding. Nuss has said he was following closely legislation that was being drafted to comply with the court's orders.*

*The justice admitted to the conversation six weeks later after a Topeka Capital-Journal reporter inquired about any talks between the court and the Legislature. Nuss also recused himself from the school finance litigation.*

*Without Nuss, the high court last week approved a three-year, \$541 million school spending package passed by the Legislature this year, dismissing the school lawsuit.*

*House panel waits*

*The investigations continue.*

*While the Commission on Judicial Qualifications is examining Nuss' ethical behavior, a special investigative committee in the House is trying to determine whether the justice's acts influenced school finance legislation.*

*Morris had justified voting against one school finance plan by telling senators he had had back-channel talks with the court and that the plan wasn't up to its standards.*

*Some senators left that meeting with the impression Morris had had ongoing talks with the court, not a single conversation with a lone judge.*

*For his part, Morris has said that Nuss indicated a bipartisan school finance plan would be viewed favorably by the court but offered no clearer direction. Nuss has said through his attorneys that he offered the senators no guidance.*

*Sen. John Vratil, R-Leawood, who is an attorney representing Morris and Brungardt, said the senators will testify today voluntarily. Under the state constitution, Vratil argues, state lawmakers aren't required to answer questions about where they get their information or private conversations they have.*

*But he said Tuesday the men were willing to cooperate after they received assurances from Nuss' attorneys and the attorney for the Judicial Qualifications Commission that questions wouldn't stray beyond the March 1 lunch.*

*"They're appearing voluntarily," Vratil said. "We don't then get into questions about their immunity."*

*That is important because the men also have turned down requests to testify before the House committee. Democrats and some moderate Republicans have said the committee is politically oriented, trying to embarrass the senators, the court and Gov. Kathleen Sebelius.*

*Rep. Mike O'Neal, R-Hutchinson, chairman of the committee, has halted the panel's work until after Nuss, Brungardt and Morris testify today.*

*"We are just going to wait and see what the commission turns up," he said. "At least this will be some testimony from them."*

*He says the stories about the lunch from Nuss and Morris have differed.*

*"They, frankly, don't jibe in my book," O'Neal said.*

*New proceeding*

*Today's hearing will operate like a trial.*

*Nuss' attorneys will call witnesses and present evidence to the seven-member hearing panel about why he should be acquitted of violating judicial ethics.*

*The attorney for the commission, meanwhile, will try to approve his own allegations that Nuss was in the wrong.*

*This is the first time any Kansas Supreme Court justice has faced a hearing before the ethics panel, which was formed in 1974. If the panel finds Nuss violated judicial rules, it could admonish the justice or order him to cease improper behavior. The high court, meanwhile, has the authority to discipline Nuss through public censure or suspension.*

*Only the Legislature can impeach a justice.*

*After today's hearing, a member of the commission will write an opinion on the matter, possibly handing down discipline or recommending the high court take action. It wasn't clear how long that process would take.*

**PER HIS LAW FIRM'S WEBSITE, BADGEROW IS SUPPOSED TO BE AN EXPERT ON PROFESSIONAL ETHICS:**

<http://www.spencerfane.com/content/content/2002-93655-365.asp>

**J. Nick Badgerow**

His practice focuses on litigation of business and employment matters, including construction, trade secrets/non-competes/intellectual property, professional responsibility and negligence, and employment discrimination and wrongful termination (for employers only). In addition, He is frequently retained to give opinions and testimony as an expert witness in attorney liability suits. Nick's responsibilities with the firm include serving as the Kansas office Partner-in-Charge and as the firm's Professional Responsibility Counsel. He speaks at many seminars and programs on the subjects of litigation, construction and engineering, civil rights and employment, and professional ethics.

<http://www.spencerfane.com/content/content/2005-144939-777.asp>

## **Nick Badgerow's Article, *Rattling the Saber: The Ethics of Threatening Criminal and Disciplinary Prosecution* is Published**

By: J. Nick Badgerow

Practice Group(s): Labor & Employment  
and Litigation & Dispute Resolution

In his 20th published article, Nick Badgerow has written on the ethics of threatening criminal prosecution and disciplinary complaints in the January 2005 edition of the Journal of the Missouri Bar. The article, *Rattling the Saber: The Ethics of Threatening Criminal and Disciplinary Prosecution*.

<http://www.mobar.org/11dde125-8e64-40f5-82f0-865a999fdf4a.aspx>

**Badgerow's article acknowledges that attorneys do not report ethical violations against opposing attorneys if they have to work with each in the future. Yet he also writes that because Kansas attorneys are required to report ethical violations of other attorneys and judges, they can not threaten to expose the unethical behavior of judges or opposing attorneys to advocate for their client:**

*"A larger bar reduces the opportunity for individual lawyers to meet, confer, get to know each other, and develop a relationship of respect and mutual cooperation. The Golden Rule and the "whatever goes around . . ." rule have less chance for consideration between lawyers who have not met or opposed each other in the past, and feel it is unlikely that they will do so in the future".*

*A lawyer having knowledge of any action, inaction, or conduct which in his or her opinion constitutes misconduct of an attorney under these rules shall inform the appropriate professional authority.<sup>40</sup>*

*An agreement to violate the MRPC is a violation of Rule 8.4(a).<sup>41</sup> As the ABA Ethics Committee reasoned, "Because an agreement not to file a[n ethics] complaint if a satisfactory settlement is made is the logical corollary of a threat to file a complaint in the absence of such a settlement, we conclude that a threat to file disciplinary charges is unethical in any circumstance where a lawyer would be required to file such charges by Rule 8.3(a)."<sup>42</sup>*

**The code of ethics are not being enforced. Otherwise there would not be wide spread complaints about unethical behavior of judges and attorneys in the family law courts if attorneys are required to report violations of other attorneys & judges.**

## **DOES THE KANSAS JUDICIAL COUNSEL HAVE THE PROFESSIONAL INTEGRITY TO OBJECTIVELY EVALUATE THE PROFESSIONAL CONDUCT OF RETIRED JUDGES?**

**Per excerpts from the 8/11/06 follow up story on the Nuss hearing in the Lawrence World Journal:**

[http://mobile.ljworld.com/news/2006/aug/11/nuss\\_offers\\_apology\\_hearing/](http://mobile.ljworld.com/news/2006/aug/11/nuss_offers_apology_hearing/)

*It was the first time in history that a Kansas Supreme Court justice was required to explain his conduct before the Kansas Commission on Judicial Qualifications.*

*The dispute stems from a March 1 lunch at a Topeka restaurant between Nuss and Brungardt, R-Salina. Later, they were joined by Senate President Steve Morris, R-Hugoton.*

*At the time, the school finance lawsuit was the most high-profile case before the Kansas Supreme Court. The court had declared the school funding system unconstitutional because it shortchanged all students, especially low-income districts. It also had ordered lawmakers to increase funding.*

*Last month, the court approved the Legislature's new \$466 million, three-year funding increase.*

*During the lunch meeting, Nuss asked both legislators if a newspaper account of a proposed House bill on school finance had the accurate amount of funding. He had a sheet of paper that listed the funding amount of the House bill and two education cost studies.*

*Nuss said he asked about it because he wanted to stay on top of developments in the case so that when the court acted on whatever the Legislature did, it could work quickly and not inconvenience the school system.*

*He said he initially sought out his friend Brungardt for a talk because he was concerned about some lawmakers making disparaging comments about the court after it ruled against the state in school finance and the death penalty.*

*Nuss is accused of violating the Kansas Canons of Judicial Conduct, which prohibit judges from meeting with select, interested parties in a pending case and from doing research on cases that is independent of what has been entered into the record of a lawsuit.*

*Both Brungardt and Morris testified after first being subpoenaed but later agreeing to speak voluntarily.*

*Their version of the lunch conversation agreed with what Nuss had said, which produced a major conflict with earlier comments. After news of the lunch broke in April, Morris publicly stated that Nuss had said he was pleased to hear reports that legislative leaders were seeking a bipartisan school finance plan.*

*Critics have said Morris' comment helped defeat a smaller school finance proposal in the Senate that was supported only by Republicans. But on Thursday, Morris backed off that statement.*

*"I can't say for sure" that Nuss had said that, Morris testified.*

*Nuss denied saying that he told the two senators that he or anyone else on the court favored a bipartisan plan.*

*Sen. Jim Barnett, R-Emporia, author of that failed school plan, said Morris had changed his story.*

*"In meetings with me and other colleagues in the Senate, he did state that a bipartisan plan was one of the specific requirements that was put forth," said Barnett, who now is the Republican Party candidate for governor.*

*Nuss' attorneys argued that the justice suffered a "brief lapse" from observing the judicial code, and that no harm was done because the conversation didn't influence Morris or Brungardt, and the House bill never was approved.*

*"This was a single, simple mistake with no intent to do wrong," said attorney Nick Badgerow.*

*The incident stoked criticism of the court as overreaching and heightened speculation of "back-door" communications between the court and state officials.*

*But Badgerow urged the commission to ignore the political storm, which he said was fueled by election-year rhetoric.*

**The Nuss controversy creates the appearance that the Senate President was not honest and had to be represented by Sen. Vrtil, another member of the Kansas Judicial Council. It also creates the appearance that the Edward Collister, the counsel for the Commission on Judicial Qualifications did not aggressively investigate if other communications had occurred between Morris and the Supreme Court. Why should the citizens of Kansas trust that the Kansas Judicial Council will not cover up corruption and cronyism?**



**The unethical behavior by the so-called experts in the legal ethics set a poor example and demonstrate e hypocrisy and cronyism that exists in our law schools:**

Per a 5/16/06 article in the Kansas City Business Journal, a federal judge removed Badgerow from a high profile criminal trial for unethical behavior:

<http://www.bizjournals.com/kansascity/stories/2005/05/16/story3.html>

*Overland Park lawyer Nick Badgerow has made a career of monitoring other Kansas lawyers' ethical conduct.*

*He serves on at least two boards that discipline attorneys. He has trained hundreds of area lawyers on ethics in 150 seminars and written 20 journal articles on the topic.*

*On May 6, acting on what Badgerow called a false but "very serious allegation" that he had violated ethics rules, federal Judge Julie Robinson removed Badgerow from the defense team of former Westar Energy Inc. executive Douglas Lake.*

*Robinson found a conflict of interest: As recently as 2003, Badgerow was an attorney for Westar and has a continuing duty to protect the interests of the company, which Lake allegedly looted.*

*Badgerow surprised the prosecution by being the first lawyer to make arguments at an April 4 hearing without first addressing the conflict, said Richard Hathaway, senior litigation counsel for the Kansas U.S. Attorney's Office.*

*"Mr. Badgerow made a belated contact with his former client in which he simply made the patently incredible statement that the interests of Westar and Mr. Lake are not adverse," Hathaway wrote in a motion seeking Badgerow's disqualification.*

*Hathaway said Badgerow's presence could undermine a conviction by allowing both men to argue on appeal that Badgerow offered ineffective counsel because of his continuing duty to protect Westar's interests while defending Lake's.*

*Badgerow replied that Westar has no "adverse interest" at stake in the criminal case because it pits the government versus Lake, not Westar versus Lake.*

*But Westar General Counsel Larry Irick said Westar and Lake do have nearly a quarter-billion dollars in adverse interests at stake in opposing civil claims that are lying dormant in an arbitration forum during criminal proceedings.*

*"If Wittig and Lake are convicted in the criminal case, the company is very likely to prevail in the arbitration," Irick said.*

*Included in that dispute is nearly \$8 million Westar has advanced for Lake's and Wittig's legal bills so far. Hathaway's filings included a letter from Westar objecting to advancing money for Badgerow's fees.*

*Robinson's order didn't discuss the arbitration. Instead, she ruled that the facts in the criminal trial are "substantially related" to both previous cases Badgerow handled for Westar, making disqualification necessary.*

*Robinson also commented on Badgerow's unsuccessful efforts before the Kansas Corporation Commission in 2002 to disqualify another Topeka lawyer, Glenda Cafer. She represented a corporate client that opposed Wittig's and Lake's efforts to saddle Westar's public utilities with debts from subsidiaries while spinning off the subsidiaries into a debt-free company -- of which the two executives would be big shareholders.*

*"The attempt of defendants, including Lake, to split the regulated business from the unregulated businesses was one of the major focuses of the government's case," Robinson wrote.*

*Cafer, who was a KCC lawyer before resigning and eventually taking the case opposing Westar, remains angry about Badgerow's actions. She said another Westar lawyer in 2002 forwarded Badgerow's motion for her disqualification to the Board of Discipline for Attorneys as an ethics complaint, which was rejected.*

*"In my opinion, it was an impermissible trial tactic, and they failed," she said. "Every time I see his articles and hear him referred to as Mr. Ethics, it really hits me wrong."*

*But Michael Hoeflich, a former University of Kansas Law School dean, said Badgerow's reputation is deserved.*

*"I have shared the podium with him numerous times, and I have the utmost respect for his ethics, his expertise, his lawyering skills and his integrity," Hoeflich said in a written statement.*

*Unlike Badgerow, Cafer said, she had obtained permission from her former "client," the KCC, and even from Westar before taking a client adverse to Westar.*

*"He's got a little different definition of things when it comes to his own practices," she said.*

**The defense of Badgerow's conduct by the former Dean of the University of Kansas Law School and current legal ethics professor Michael Hoeflich's is another example of the Kansas legal experts and power brokers trying to make excuses for each other.**

**Per the website for Kansas University Law School, Professor Hoeflich was educated in England at Cambridge and is an expert in legal history.**

**<http://www.law.ku.edu/faculty/hoeflich.shtml>**

**His most recent contributions to the body of knowledge for legal ethics are:**

*"Roman Law and Forensic Oratory in Antennellum America," 120 Zeitschrift der Savigny-Stiftung fur Rechtsgeschichte 189 (2003); "Translation and the Reception of Foreign Law in Antebellum American," 50 American Journal of Comparative Law 753 (2003); "The Lawyer as Pragmatic Reader: The History of Legal Common-Placing," 55 Arkansas Law Review 87 (2002); "Lawyers, Fees & Anti-Lawyer Sentiment in Popular Art, 1800-1925," 4 The Green Bag 147 (2001).*

**It is noteworthy that the other two instructors teaching legal ethics courses are Kansas University law school are Shawnee District court Judge Terry Bullock who originally ruled that the legislature's level of public school funding was unconstitutional and Stanton Hazlett, the Disciplinary Coordinator for the Office of Judicial Administration**

**Fortunately there are a few patriotic citizens and attorneys in Wichita Kansas willing to fight the arrogant imperial legal establishment at the Supreme Court, Kansas Judicial Council, Office of Judicial Administration and both law schools that promotes cronyism & nepotism and attempts to minimize unethical behavior and scandals by politicians, attorney generals and judges.**

**Incumbent district court judges can be defeated in Wichita, Kansas by reform minded candidates. Merit appointed judges in the district and appellate courts are never voted out of office.**

**Newly elected judge Robb Rumsey filed a federal law suit to allow judicial candidates to answer questions at public forums.**

**<http://www.jamesmadisoncenter.org/JudicialAP/KS/KS%20Amended%20Complaint.pdf>**

**Future candidates will be required to publicly deny or acknowledge is corruption, cronyism and sexual harassment exists in the Sedgwick County Courts.**

Due to constant lobbying by a concerned citizen, the Sedgwick County District Court and the Wichita Eagle have agreed to conduct attorney surveys to evaluate judges.

[http://www.findarticles.com/p/articles/mi\\_km4479/is\\_200608/ai\\_n16608535](http://www.findarticles.com/p/articles/mi_km4479/is_200608/ai_n16608535)

The 10/19/06 press release by the Kansas Republican Party, former Attorney General Bob Stephan were accused of sexual harassment. Incoming Attorney General Paul Morrison was accused of sexual harassment while serving as district attorney. Morrison was defended by an attorney-politician, Mark Parkinson who was recently elected Lt. Governor.

<http://www.ksgop.org/News/Read.aspx?ID=2654>

The members of the Senate Judiciary Committee need to accept that the internet is so powerful that they can not silence citizens demanding reform.

**Instead of trying to silence free speech that criticizes powerful elected officials and judges, the committee should repeal the criminal defamation laws that exist in Kansas by reintroducing Senator Schmidt's 2002 Senate Bill 3:**

<http://www.kslegislature.org/bills/2004/3.pdf>

[http://lawprofessors.typepad.com/crimprof\\_blog/2005/05/kansas\\_criminal.html](http://lawprofessors.typepad.com/crimprof_blog/2005/05/kansas_criminal.html)

*From Reporters Committee for Freedom of the Press: "A Kansas criminal defamation law is not unconstitutionally vague or overly broad because the law only punishes speech that can be proven false and is spoken with actual malice -- meaning that the speaker knew it was false or recklessly disregarded whether it was true or not, a federal judge in Kansas City, Kan., ruled last week in two separate cases. The nearly identical rulings by U.S. Chief District Judge John W. Lungstrum in two related cases arose from a 2003 mayoral election in Baxter Springs, Kan. The Baxter Springs published a March 2003 letter-to-the-editor by local businessman Charles How and a guest editorial by columnist Ronald Thomas criticizing City Clerk Donna Wixon. How later became a mayoral candidate. Two days after the letter and editorial ran, Wixon swore out a criminal complaint against How, Thomas and the newspaper's publisher for violating the city's criminal defamation ordinance. The ordinance, which is adapted from a state criminal defamation law, carries a maximum penalty of a \$2,500 fine and one-year imprisonment. The law defines criminal defamation as "communicating to a person orally, in writing, or by any other means, information, knowing the information to be false and with actual malice, tending to expose another living person to public hatred, contempt or ridicule; tending to deprive such person of the benefits of public confidence and social acceptance; or tending to degrade and vilify the memory of one who is dead and to scandalize or provoke surviving relatives and friends."*

Bill McKean

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From: "Art Thompson" <thompsona@kscourts.org>  
To: <bmckean@sctelcom.net>  
Sent: Friday, October 22, 2004 12:26 PM  
Subject: Re: Complaints About Case managers - DRC Mediators

Mr. McKean

The statute which addresses case management, K.S.A. 23-1003, indicates that:

(c) A disputant party may request reassignment of a case manager by filing a motion with the court. The court shall consider such requests upon review. Repeated requests may raise a presumption of lack of parental cooperation and the court may consider sanctions against the uncooperative parent or parents.

(6) If a disputant party disagrees with a recommendation such party may file a motion before the court for a review at which time an order shall be made by the court. The case manager shall explain to the court either by report or testimony the reasons for such recommendation or recommendations.

The Office of Judicial Administration does hear complaints about "dispute resolution" which are included in the Dispute Resolution Act, K.S.A. 5-502, but this does not include case management. Please let me know if I can be of further assistance.

Art Thompson  
Dispute Resolution Coordinator  
Office of Judicial Administration  
301 W. 10th  
Topeka, KS 66612-1507  
[thompsona@kscourts.org](mailto:thompsona@kscourts.org)  
785-291-3748

>>> "Bill McKean" <bmckean@sctelcom.net> 10/13/04 04:28PM >>>

Dear Mr. Thompson:

I am writing to follow up on our telephone conversation from last week. As you recall, Roger Scurlock, the investigator for Behavioral Sciences Board, referred me to your office because I wanted to file an complaint about unethical behavioral by a mental health provider that occurred when the provider was serving as a court appointed dispute resolution mediator for the family law judges in Sedgwick County. You specifically told me that I would need to file the complaint with the administrative judge in the 18th District.

I want you to confirm by e-mail that your office has no jurisdiction to investigate alleged misconduct by case managers or dispute resolution mediators while they are serving as court-appointed agents of the family law court.

7-15

Bill McKean

From: "Scurlock, Roger" <roger.scurlock@bsrb.state.ks.us>  
To: "Bill McKean" <bmckean@sctelcom.net>  
Sent: Friday, October 15, 2004 7:42 AM  
Subject: RE: Complaints Against Case Managers & DRC Mediators

Bill,

I do not mind if you forward my e-mail.

Roger

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From: Bill McKean [mailto:bmckean@sctelcom.net]  
Sent: Thursday, October 14, 2004 3:09 PM  
To: Scurlock, Roger  
Cc: Art Thompson  
Subject: Re: Complaints Against Case Managers & DRC Mediators

Roger

Thank you so much for your prompt response. It really helps give me some direction. If you do not mind, I will forward your e-mail to Mr. Art Thompson of the Office of Judicial Administration.

Thnaks Again

Bill McKean

w (316) 267-4379 x109  
h (316) 729-9949  
c (316) 655-8150

----- Original Message -----

From: Scurlock, Roger  
To: Bill McKean  
Sent: Thursday, October 14, 2004 2:58 PM  
Subject: RE: Complaints Against Case Managers & DRC Mediators

Mr. McKean,

In case number 729, a complaint was made against a licensee who was acting as a court appointed case manager. Our general counsel, an Assistant Attorney General, reviewed the materials and advised the board to close the case due to a lack of jurisdiction over the licensee while serving in the role of a court appointed case manager. The board did dismiss that case. To the best of my knowledge, every complaint since then which involved a licensee acting as a court appointed case manager has been dismissed.

The role of the case manager as described in K.S.A. 23-1001 is to assist "the parties by providing a procedure, other than mediation, which facilitates negotiation of a plan for child custody, residency or visitation or parenting time. In the event that the parties are unable to

7-16

reach an agreement, the case manager shall make recommendations to the court."

K.S.A. 23-1002 states: "To qualify as an appointed case manager, an individual shall: Be qualified to conduct mediation; have experience as a mediator; attend a workshop, approved by the district court in which the case is filed, on case management; and participate in continuing education regarding management issues."

The case manager's duties are described in K.S.A. 23-1003. They are: "Meet with the parties, and other individuals deemed appropriate; gather information necessary to assist the parties in reaching an agreement or making recommendations, including medical, psychological, education and court records, including child custody investigations and child custody psychological evaluations, of the parties and children; report to the court as directed by court order; keep a record by date and topic of all contacts with the parties in the case. When requested, this record shall be made available to the court in total or summary form without the express consent of the parties and shall not be considered a medical or psychological record for purposes of confidentiality; notify the court when a party fails to meet the financial obligations of the case management process; file for collection of costs as necessary. The court shall assist in such filing or collection efforts, or both; be authorized by the court to report threats, imminent danger, suspected child abuse, fear of abduction and suspected or actual harm to any party or child involved in case management either directly to the court and to other authorities, or both. Such action shall be followed by a written summary within five business days of the initial filing of such report which shall be sent to the judge or the judge's designee and included in the court file; and directly contact the court with any other information the case manager determines that the court should know."

Our general counsel determined that while the licensee's training and experience may have been valuable in the licensee's role as a case manager, the licensee was fulfilling the above described duties to the court and was not practicing the licensee's profession.

However, I encourage everyone who believes that a licensee has acted in violation of the statutes and/or regulations to make a complaint. In some situations a court appointed case manager may act outside of statutory duties by providing mental health or counseling services which would be within BSRB's jurisdiction. To comply with the policy and procedures for investigations, I need a completed, signed report of alleged violation or "other reasonably reliable written information". This is required by the procedures approved by the board on January 13, 2003 and K.S.A. 74-7508. Through usage "other reasonably reliable written information" has been defined as something printed, published, or a letter on a state agency's letterhead. I ask that you complete and submit a report of alleged violation if you wish. I have attached a copy to this e-mail which will print from Microsoft Word. You may also download the form at <http://www.ksbsrb.org/pdf/RAV.pdf> or I can mail a copy to you. Please let me know if you need me to mail a form to you.

Please feel free to contact me if you have further questions.

Roger Scurlock  
Special Investigator  
785-296-8341

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From: Bill McKean [mailto:bmckean@sctelcom.net]  
Sent: Wednesday, October 13, 2004 5:21 PM

K-7-17  
B-3



To: Scurlock, Roger  
Subject: Complaints Against Case Managers & DRC Mediators

Mr. Scurlock:

I am following up on our telephone conversation last week in which I inquired about the proper channel to file a complaint about unethical behavior by a mental health provider that occurred while they were serving as a court-appointed case manager or DRC mediator. As you recall, you referred me to Art Thompson of the Office of Judicial Administration because you told me that your office only investigated complaints concerning conduct individuals while they are providing mental health services (counseling).

When I spoke with Mr. Thompson, he told me to file the complaint with the district court judges in Wichita. Last night I spoke with a senior judge after a candidates forum put on by the Wichita Bar Association. I did not discuss any particulars about my allegation. I only told the judge that you referred me to Mr. Thompson and that Mr. Thompson referred me to the Administrative Judge in Wichita. The senior judge told me that he was surprised that the Behavioral Sciences Board would not retain jurisdiction to investigate complaints. To avoid the possibility of any unintentional "run around" when I file my complaint, I would appreciate it if you would confirm by e-mail that your office does not have jurisdiction to investigate complaints about unethical behavior by mental health providers who are serving as an agents of the court.

Thanks you so much for your courteous and prompt responses in the pst to my inquiries.

Very truly yours,

Bill McKean  
825 N. Bay Country Cir.  
Wichita, KS 67235

CC

work (316) 267-4379 x109  
cell (316) 655-8150  
home (316) 729-9949

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K-4  
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## KANSAS JUDICIAL COUNCIL

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Kansas Judicial Center  
301 S.W. Tenth Street, Suite 262  
Topeka, Kansas 66612-1507

Telephone (785) 296-2498  
Facsimile (785) 296-1035

judicial.council@ksjc.state.ks.us  
www.kscourts.org/council

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November 1, 2006

Bill McKean  
825 N. Bay Country Circle  
Wichita, KS 67235

Dear Mr. McKean:

Pursuant to our telephone conversation, I am enclosing the minutes of the Judicial Council Family Law Advisory Committee for the last three years. As you'll see, the Committee met only once in 2006 and once in 2005. Also, please note that the most recent minutes of the September 22, 2006, meeting have not yet been approved by the Committee; however, I don't anticipate any changes.

I am also enclosing several sets of minutes from 1998, all of which make reference to legislation regarding covenant marriage. From what I can tell, the Committee was aware of the legislation and discussed it, but I see nothing indicating that the legislature ever asked the Committee to study or review the issue. If Charlie Harris testified against a covenant marriage bill, I believe he probably did so in his individual capacity and not as a representative of the Judicial Council.

If I can be of any further assistance, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Christy R. Molzen", is written over a faint, larger version of the same signature.

Christy R. Molzen

crm  
enclosures

7-19

MINUTES OF THE MEETING OF THE JUDICIAL COUNCIL  
FAMILY LAW ADVISORY COMMITTEE HELD SEPTEMBER 22, 2006

The Family Law Advisory Committee met Friday, September 22, 2006, in Conference Room 269, Kansas Judicial Center, Topeka, Kansas, at 9:30 a.m.

The following members were present:

Charles F. Harris, Chair;  
Joyce Grover;  
Sen. Janis Lee;  
Suzanne Carey McAllister;  
Anne Burke Miller;  
Brian J. Moline;  
Ronald W. Nelson;  
Ardith Smith-Woertz; and  
Christy Molzen, Reporter.

Members Sara S. Beezley, Hon. Sam K. Bruner, Dr. Sharon E. Cain, and Prof. Nancy Maxwell were unable to attend.

MINUTES

The minutes of the July 29, 2005, meeting were approved with the caveat that Ms. Molzen will double-check on some of the dates mentioned in the minutes that seem inconsistent.

PROTECTION FROM ABUSE FORMS

Joyce Grover explained to the Committee that she had requested this agenda item be postponed until a future meeting because she will be attending a national conference next week with a team of people from Kansas, including two judges, to discuss domestic violence and firearms issues. Ms. Grover stated that one of issues that the Committee will be asked to address at a future meeting is whether our PFA orders should be clarified so that it is readily apparent to the persons entering the order into the NCIC whether Brady indicators are present, *i.e.*, whether the order is a qualifying order implicating firearms restrictions under federal law. The Committee also discussed other enforcement issues regarding PFA orders.

### NEW JUDGE MEMBER

Miss Molzen asked Committee members for suggestions on a new district judge to replace Committee member Judge Jerry Mershon who has resigned from the Committee. Preferably, the Council would like to appoint someone from an area not already represented by another member of the Committee. The Committee suggested the following judges as possible new Committee members: Judge Derek Stutzman of Manhattan; Judge David Kaufman of Wichita; Judge Bill Elliott of Norton; Judge Jean Schmidt of Topeka; retired Judge Jim Beasley of Wichita; and Judge Maritza Segarra of Junction City. The Committee would also be interested in having more than one judge appointed if possible.

### NORTH CAROLINA CHILD SUPPORT ENFORCEMENT PROGRAM

Next, the Committee reviewed materials provided by North Carolina Judge Kristin Ruth describing a North Carolina child support enforcement program emphasizing alternatives to incarceration. The North Carolina program includes elements such as use of an employment service organization to work with non-custodial parents who are unemployed or underemployed; cost-free mediation services to resolve disputes where a non-custodial parent has been unable to see his or her children; and electronic monitoring as an alternative to incarceration.

The Committee discussed similar programs that have been used in different Kansas counties until funding ran out, *e.g.*, Topeka Job Service, or other SRS programs. It was noted that channeling all payments through the Kansas Payment Center and requiring income withholding orders have been reasonably successful, although these options make no difference in cases where a non-custodial parent is unemployed. In the case of low or no income non-custodial parents, there are simply not enough resources available in the form of job training and education. To change this situation would require a major policy shift at both the state and federal levels in terms of the availability of funding. The Committee agreed that while the North Carolina program has been successful, that success appears to be dependent on the commitment of the individual who is leading it, Judge Ruth, and on the availability of funding for the other programs which support it. Any attempt to mirror the North Carolina program in Kansas would have to be instigated by a legislative policy decision to devote more funds to child support enforcement. There is no specific legislation or change in court rules that the Committee can recommend.

### REVOCAION OF LIFE INSURANCE BENEFICIARY DESIGNATION UPON DIVORCE

Next, the Committee reviewed Kansas law regarding divorce and change of life insurance beneficiary designations. It was noted that the Judicial Council introduced a bill in 1995 dealing with revocation of probate and nonprobate transfers (*e.g.*, life insurance beneficiary designations) upon divorce. That bill did not pass. A similar bill was introduced in 2005 by the House Judiciary Committee, but it did not receive a hearing. The Committee discussed

whether, as a matter of public policy, the Judicial Council should again pursue introduction of a bill to automatically revoke life insurance beneficiary designations upon divorce.

The Committee reviewed *Cincinnati Life v. Palmer*, 32 Kan. App. 2d 1060 (2004), which held that, given the 1996 revisions to K.S.A. 60-1610(b)(1) which require any change in beneficiary on an insurance or annuity policy to be specified in the divorce decree, when a divorce decree does not include such an express provision a beneficiary designation of either spouse is not automatically revoked as the result of a divorce.

The Committee noted that most attorneys are now including in their divorce decrees language which addresses beneficiary designations. In addition, the law is well-settled in Kansas as to what happens if such designations are not addressed in a divorce decree. The consensus was that to change the law so that automatic revocation occurred upon divorce might bring into play unanticipated consequences. The Committee agreed to recommend no change in the law on this issue at this time.

#### FUTURE MEETINGS

A future meeting was scheduled for:

**Friday, January 26, 2007.**

At that meeting, the Committee will discuss any necessary changes to the PFA forms and will review 2007 legislation of interest to the Committee.

There being no further business, the meeting adjourned.

(10) restrooms, lobbies and other common areas in hotels and motels and in at least 75% of the sleeping quarters within a hotel or motel that may be rented to guests;

(11) the common areas of retirement facilities, publicly owned housing facilities and nursing homes, not including any resident's private residential quarters; and

(12) the entryways of all buildings and facilities listed in paragraphs (1) through (11) of this subsection.

(b) A cigar-tobacco bar shall display a sign in at least one conspicuous place and at least four inches by six inches in size stating: "Smoking allowed. Children under 18 years of age prohibited".

(c) Smoking shall be prohibited within 10 feet of any operable windows and ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

(d) The provisions of this section shall not apply to:

(1) Private homes, private residences and private automobiles, except if any such home, residence or vehicle is being used for a licensed child care or day care or if a private vehicle is being used for the public transportation of children by a licensed health care facility or day care facility;

(2) limousines under private hire;

(3) a hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 25%;

~~(4) any retail tobacco business;~~

(5) a cigar-tobacco bar;

(6) the outdoor area of any business beyond 10 feet of any entrance or exit to such business; or

(7) any private club licensed pursuant to K.S.A. 41-2601 et seq., and amendments thereto.

Sec. 3. K.S.A. 21-4011 is hereby amended to read as follows: 21-4011. The proprietor or other person in charge of the premises of a public place shall post or cause to be posted in a conspicuous place signs clearly stating that smoking is prohibited by state law. ~~The person in charge of the premises shall also post or cause to be posted in any designated smoking area, signs stating that smoking is permitted in such room or area. The proprietor or person in charge of the public place shall have the authority to establish the percentage of area in the public place which shall be posted and designated as a smoking area.~~

Sec. 4. K.S.A. 21-4012 is hereby amended to read as follows: 21-4012. (a) Any person found guilty of smoking in violation of ~~this act~~ K.S.A. 21-4010, and amendments thereto, is guilty of a class C nonperson misdemeanor punishable by a fine of not more than ~~\$20 for each violation. \$200 for a first violation within a calendar year, a fine of not more than~~

(4) an annual benefit cigar dinner for local charities;

And by renumbering the remaining sections accordingly

*(d) The provisions of this section shall not apply to:*

*(1) Private homes, private residences and private automobiles, except if any such home, residence or vehicle is being used for a licensed child care or day care or if a private vehicle is being used for the public transportation of children by a licensed health care facility or day care facility;*

*(3) a hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 25%;*

*(4) any retail tobacco business;*

*(5) a cigar-tobacco bar;*

*(6) the outdoor area of any business beyond 10 feet of any entrance or exit to such business; or*

*(7) any private club licensed pursuant to K.S.A. 41-2601 et seq., and amendments thereto.*

Amendment to Senate Bill No. 37 Section 1, Page 4, beginning after line 29:

*(8) any commercial motor vehicle for the purpose of this language*

*(i) Commercial motor vehicle used on a highway in interstate or intrastate commerce to transport property when the vehicle –*

*(a) Has a gross weight rating, or gross vehicle weight or gross combination weight, 10,001 pounds or more;*

*(b) Is not used in transporting material found by the United States Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the United States Secretary of Transportation under 49 CFR, subtitle B, chapter I, subchapter C, and is subject to the provisions of 49CFR 397.13 as enacted on Dec. 12, 1994.*

Amendment provided by The Kansas Motor Carriers Association 1/07.

**SENATE BILL No. 37**

By Committee on Judiciary

Representative Wysong  
Balloon Amendment #3  
1/26/07

1-9

9 AN ACT concerning crimes and punishments; relating to smoking;  
10 amending K.S.A. 21-4009, 21-4010, 21-4011, 21-4012 and 65-530 and  
11 K.S.A. 2006 Supp. 20-350 and repealing the existing sections; also re-  
12 pealing K.S.A. 21-4017.

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

15 Section 1. K.S.A. 21-4009 is hereby amended to read as follows: 21-  
16 4009. As used in this act:

17 (a) *“Auditorium” means the part of a public building where an au-*  
18 *dience gathers to attend a performance, and includes any corridors, hall-*  
19 *ways, or lobbies adjacent thereto.*

20 (b) *“Bar” means any indoor area that is operated and licensed pri-*  
21 *marily for the sale and service of alcoholic beverages for on-premises*  
22 *consumption and where the service of food is secondary to the consump-*  
23 *tion of such beverages.*

24 (c) *“Cigar-tobacco bar” means an establishment whose business is*  
25 *devoted to the serving of only tobacco products and alcohol for consump-*  
26 *tion by guests on the premises and prohibits the entry of persons 18 years*  
27 *of age and under at all times. The establishment must have revenue gen-*  
28 *erated from the serving of tobacco products equal to or greater than 20%*  
29 *of the total combined revenue generated by the service of tobacco and*  
30 *beverage.*

31 (d) *“Cigarette” means any roll for smoking, made wholly or in part*  
32 *of tobacco, irrespective of size or shape, and irrespective of tobacco being*  
33 *flavored, adulterated or mixed with any other ingredient if the wrapper*  
34 *is in greater part made of any material except tobacco.*

35 (e) *“Employee” means any person who:*

36 (1) *Performs any type of work for benefit of another in consideration*  
37 *of direct or indirect wages or profit; or*

38 (2) *provides uncompensated work or services to a business or non-*  
39 *profit entity.*

40 (f) *“Employer” means any person, partnership, association, corpo-*  
41 *ration or nonprofit entity that employs one or more persons. “Employer”*  
42 *includes, without limitation, the legislative, executive and judicial*  
43 *branches of state government; any county, city and county, city, or town,*



10-2

1 (10) restrooms, lobbies and other common areas in hotels and motels  
2 and in at least 75% of the sleeping quarters within a hotel or motel that  
3 may be rented to guests;

4 (11) the common areas of ~~retirement facilities,~~ publicly owned hous-  
5 ing facilities ~~and nursing homes,~~ not including any resident's private res-  
6 idential quarters; and

7 (12) the entryways of all buildings and facilities listed in paragraphs  
8 (1) through (11) of this subsection.

9 (b) A cigar-tobacco bar shall display a sign in at least one conspicuous  
10 place and at least four inches by six inches in size stating: "Smoking al-  
11 lowed. Children under 18 years of age prohibited".

12 (c) Smoking shall be prohibited within 10 feet of any operable win-  
13 dows and ventilation systems of enclosed areas where smoking is prohib-  
14 ited, so as to insure that tobacco smoke does not enter those areas.

15 (d) The provisions of this section shall not apply to:

16 (1) Private homes, private residences and private automobiles, except  
17 if any such home, residence or vehicle is being used for a licensed child  
18 care or day care or if a private vehicle is being used for the public trans-  
19 portation of children by a licensed health care facility or day care facility;

20 (2) limousines under private hire;

21 (3) a hotel or motel room rented to one or more guests if the total  
22 percentage of such hotel or motel rooms in such hotel or motel does not  
23 exceed 25%;

24 (4) any retail tobacco business;

25 (5) a cigar-tobacco bar;

26 (6) the outdoor area of any business beyond 10 feet of any entrance  
27 or exit to such business;

28 (7) any ~~private~~ club licensed pursuant to K.S.A. 41-2601 et seq., and  
29 amendments thereto;

30 Sec. 3. K.S.A. 21-4011 is hereby amended to read as follows: 21-  
31 4011. The proprietor or other person in charge of the premises of a public  
32 place shall post or cause to be posted in a conspicuous place signs clearly  
33 stating that smoking is prohibited by state law. ~~The person in charge of~~  
34 ~~the premises shall also post or cause to be posted in any designated smok-~~  
35 ~~ing area, signs stating that smoking is permitted in such room or area.~~  
36 ~~The proprietor or person in charge of the public place shall have the~~  
37 ~~authority to establish the percentage of area in the public place which~~  
38 ~~shall be posted and designated as a smoking area.~~

39 Sec. 4. K.S.A. 21-4012 is hereby amended to read as follows: 21-  
40 4012. (a) Any person found guilty of smoking in violation of ~~this act~~ K.S.A.  
41 21-4010, and amendments thereto, is guilty of a class C nonperson mis-  
42 demeanor punishable by a fine of not more than ~~\$20 for each violation.~~  
43 \$200 for a first violation within a calendar year, a fine of not more than

Class A

;

- (8) any adult care home licensed pursuant to K.S.A. 39-923 et seq., and amendments thereto;
- (9) any veterans administration hospital within the state;
- (10) any Kansas soldiers' home established pursuant to K.S.A. 76-1901 et seq., and amendments thereto, or veterans' home established pursuant to K.S.A. 76-1951 et seq., and amendments thereto;
- (11) designated smoking areas in passenger trains; or
- (12) freight trains.

New Sec. 6. If any county exempting such county from the provisions of K.S.A. 21-4009 through 21-4014, and amendments thereto, under section 5, and amendments thereto, such county shall comply with the provisions of sections 7 through 12, and amendments thereto.

New Sec. 7. As used in sections 7 through 12, and amendments thereto: (a) "Public place" means enclosed indoor areas open to the public or used by the general public including, but not limited to: Restaurants, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, educational facilities, libraries, courtrooms, state, county or municipal buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas and recreational facilities.

(b) "Public meeting" includes all meetings open to the public.

(c) "Smoking" means possession of a lighted cigarette, cigar, pipe or any other lighted smoking equipment.

New Sec. 8. (a) No person shall smoke in a public place or at a public meeting except in designated smoking areas.

(b) Smoking areas may be designated by proprietors or other persons in charge of public places, except in passenger elevators, school buses, public means of mass transportation and any other place in which smoking is prohibited by the fire marshal or by other law, ordinance or regulation.

(c) Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas.

New Sec. 9. The proprietor or other person in charge of the premises of a public place shall post or cause to be posted in a conspicuous place signs clearly stating that smoking is prohibited by state law. The person in charge of the premises

shall also post or cause to be posted in any designated smoking area, signs stating that smoking is permitted in such room or area. The proprietor or person in charge of the public place shall have the authority to establish the percentage of area in the public place which shall be posted and designated as a smoking area.

New Sec. 10. Any person found guilty of smoking in violation of sections 7 through 12, and amendments thereto, is guilty of a misdemeanor punishable by a fine of not more than \$20 for each violation. In addition, the department of health and environment, or local department of health, may institute an action in any court of competent jurisdiction to enjoin repeated violations of sections 7 through 12, and amendments thereto.

New Sec. 11. Nothing in sections 7 through 12, and amendments thereto, shall prevent any city located in any such exempted county from regulating smoking within its boundaries, so long as such regulation is at least as stringent as that imposed by sections 7 through 12, and amendments thereto. In such cases the more stringent local regulation shall control to the extent of any inconsistency between such regulation and sections 7 through 12, and amendments thereto.

New Sec. 12. If any provision of sections 7 through 12, and amendments thereto, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions of application of sections 7 through 12, and amendments thereto, that can be given effect without the invalid provision or application, and to this end the provisions of sections 7 through 12, and amendments thereto, are declared to be severable.

And by renumbering the remaining sections accordingly.