

KANSAS CREDIT ATTORNEYS ASSOCIATION

SENATE BILL NO. 425

HOUSE APPROPRIATIONS COMMITTEE

MARCH 13, 2012

Chairman Rhoades and Members of the House Committee on Appropriations:

I appreciate this opportunity to submit remarks to you on behalf of the Kansas Credit Attorney Association.

My name is Larry Zimmerman. I am a private practice attorney from Topeka and very passionate about electronic court filing (e-filing). My involvement with the legal field began with the Shawnee County e-filing project in 1996 – 16 years ago – where I helped my firm become the first e-filer in the state. I have spoken nationally advocating e-filing efficiency and have served on the Kansas Supreme Court's Electronic Filing Committee since 2009. As recently as last Thursday I worked with the Supreme Court e-filing work group hammering out the nitty-gritty details of the system. This long-winded introduction is simply to underline my obsessive interest in seeing e-filing succeed in Kansas. It might appear Senate Bill No. 425 would meet that aim but I regrettably ask you to oppose the bill as written.

Context is everything in understanding my grave reservations about Senate Bill No. 425. Please indulge me as I rattle off a list of matters you might consider before acting on this bill.

1. An emergency surcharge of \$12.50 for my small business clients' claims took effect on July 1, 2011. It was hoped that surcharge would prevent court furloughs and closures while generating new revenue. While it kept doors open and court staff working, it fell short by \$1 million in revenues as the high surcharge lowered filings as businesses, the largest "paying customer" of the courts, held back filings for cost concerns.
2. Despite that history, Senate Bill No. 322 currently in the House Judiciary Committee seeks to preserve that emergency surcharge allowing up to \$19.00 in surcharges. I broke the news to clients last week that certain remedies in the courts are effectively priced out of reach and, if Senate Bill No. 322 passed, many claims would have to be eaten as a loss.
3. Supreme Court Chief Justice Nuss indicated in his State of the Courts address that the court expected to raise all fees. It is reasonable to anticipate then that the \$12.50 will soon be the \$19.00 indicated in Senate Bill No. 322.

4. Layered atop the emergency surcharge is a \$10.00 increase to service fees in Senate Bill No. 283 also heard in House Judiciary last Wednesday. This \$10 increase repeats several times through a single case and will now apply to filings never before charged. There is no way yet to project the profound impact of this fee on filings.

With fees for a single case set to rise by almost \$30.00 per filing, Senate Bill No. 425 threatens to add another \$10.00 on top of that. **Please note - this increase is not a one-time fee. It applies to each and every document in a case.** It is a fee per motion, pleading, or answer filed with the court. An uncontested case will see at least \$30.00 in new fees with the e-filing charge at filing of the petition, return of service, and entry of judgment. Add another \$10.00 when case pays quickly and a satisfaction of judgment is entered.

If raising the emergency surcharge to \$12.50 negatively impacted filing, what are the projections for raising fees on a case by \$50.00 or more as these bills cumulatively would do? If fewer “paying customers” use the courts, what happens to the costs of a divorce, a probate, or even the cost of subsidizing the municipality filers exempt from those fees?

The fee structure has some other disconcerting impacts that could reverberate in undesirable ways. Using the fees tactically in litigation can impact who has access to the courts. An aggressive plaintiff can file a series of motions or documents ringing up \$10.00 charges for each and attributing them to be recovered from a defendant at judgment. Defendants could make sure each answer they file includes a counter-claim to force additional \$10.00 answer fees on the plaintiff. Even the court can game the system turning a motion and order filed together now into separate e-filed documents bearing a \$10.00 charge for each or even requiring submission of briefs after hearing from each party (\$10.00 each) before deciding a matter. E-filing should improve efficiency and access but fees for filing can too easily be turned into a weapon to limit access. That is the fundamental reason the Supreme Court E-filing Committee recommendation was that e-filing bear no fee to filers so that none would have the merits of their claim or defense impaired by tactically-used fees from opposing parties or the court.

A frequent argument in support of the Senate Bill No. 425 funding model for e-filing is that it is so much more convenient and inexpensive for litigants that the fees are cost justified. This really is a specious argument. I can prepare a set of twenty pleadings in minutes for less than \$0.10 per page in raw costs; tuck them in an envelope to the court with postage of about \$6.00, and mail to opposing counsel for another \$10-20.00. The same set of twenty documents filed electronically would impose considerable additional staff time over paper to rekey data and upload documents, cost an additional \$200.00 in document e-filing fees, and then require \$0.10 per page to view any response from opposing counsel. (There is no provision to permit a one-look free for parties as provided in the federal e-filing system.) The pricing model under Senate Bill No. 425 greatly favors paper filing and that is why the Supreme Court feels it necessary to force all to use it – they know the system cannot sell itself on value.

There is nothing wrong with the e-filing system the court is building. I have seen initial demonstrations and have spoken with colleagues who use systems from the same vendor in other states. I would love to have e-filing as outlined in the Supreme Court E-filing Committee recommendations. I believe it reasonable to fund it from the general fund, as it is basic state infrastructure for one of the three branches of government – the branch with which more Kansans have direct, personal involvement than either of the other two. Failing that, however, I believe it could be partially funded with very modest increases to attorney registration fees. I also think an optional system for at least 2-3 years would improve use and access. Put a modest surcharge on those who choose to file paper; paper costs the court more to process than electronic and a surcharge on paper helps provide intrinsic motivation to migrate to e-filing.

Please do support electronic court filing in Kansas but please put it on a sure footing at the very outset. Approving Senate Bill No. 425 as written would dramatically increase costs – more than doubling costs to parties – and leave the entire state with a bad taste for a system that can truly benefit the court and state coffers.

Thank you for your consideration.

Larry Zimmerman
Legislative Committee
Kansas Credit Attorneys Association