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TO: Senate Judiciary Committee

FROM: Kansas Judicial Council – Nancy Schmidt Roush

DATE: January 23, 2012

RE: Testimony on 2012 SB 293 Relating to Delivery of Wills to the District Court and Preservation of Wills for Probate

Introduction

Last year, Senator Tim Owens referred two bills relating to probate estates and trusts to the Judicial Council for study: 2011 SB 47 and SB 48. The Council's Probate Law Advisory Committee studied those bills, as well as several others, all of which had originally been drafted by the Real Estate, Probate and Trust Law Section of the Kansas Bar Association. As a result of that study, the Probate Committee recommended three new bills, one of which is 2012 SB 293.

Purpose of Amendments

SB 293 would amend K.S.A. 59-618a in two respects. The amendments to subsection (a) would blend in language from current K.S.A. 59-621 (which would be repealed under the bill) providing that the custodian of a will has a duty to deliver it to the district court upon the testator's death. The Committee believes this change will clarify that Kansas law has a bifurcated system where anyone in possession of a decedent's will has a duty to deliver that will to the court, and, once the will is delivered, any interested party can file an affidavit to preserve the will for probate.

The amendments to subsection (b) and (c) would allow a decedent's will to be filed within six months of date of death with an affidavit preserving the will for probate regardless of the kind or value of property in the decedent's probate estate or the total amount of known demands against the estate. Existing law is changed by no longer requiring that a decedent's estate contain no known real or personal property or the value of such property be less than the total of all known demands enumerated in K.S.A. 59-1301. The information required to be in the affidavit is changed by eliminating the requirements that the property in the estate and the demands against the estate be stated.

The Committee also recommends that the Revisor include the phrase, "preserving will for probate" in the heading of this statute.

Committee Members

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