House Judiciary Committee
February 17, 2016
House Bill 2502

Testimony of the
Kansas Association of Criminal Defense Lawyers
Opponent

SUPPLEMENT TO TESTIMONY

Dear Chairman Barker and Members of the Committee:

Our opposition testimony was submitted separately last week. After the fact, I realized it might be helpful for the Committee to see what documents a movant has to file under K.S.A. 60-1507. Please find attached the 1) Motion; 2) Poverty Affidavit; and 3) Civil Cover Sheet. These forms are from the Judicial Council's website, via the Kansas Judicial Branch's website.[1]

As you will hear during the testimony, most K.S.A. 60-1507 motions (and accompanying documents) are filed *pro se* by incarcerated defendants. As you will also note, the forms do not mention a time limit for filing.

Respectfully submitted,

Jennifer Roth

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[1] http://www.kansasjudicialcouncil.org/SupremeCourtRules.shtml; http://www.kscourts.org/Rules-Procedures-Forms/Legal-Forms.asp

(07/01/13)

IN THE _____ JUDICIAL DISTRICT
DISTRICT COURT OF _____ COUNTY, KANSAS

PERSONS IN CUSTODY

_____
Full name of Movant

_____
Prison Inmate Number

Case No.:_____
(To be supplied by the Clerk of the District Court)

vs.

STATE OF KANSAS, *Respondent.*

INSTRUCTIONS—READ CAREFULLY

For this motion to be considered by the district court, you must submit it in writing (legibly handwritten or typewritten), set forth concise answers to each applicable question, and sign under penalty of perjury. If necessary, you may finish the answer to a particular question on the reverse side of the page or on an additional blank page. You must make clear the question to which a continued answer refers.

Since this motion must be subscribed as true under the penalty of perjury, any false statement of a material fact in this motion may serve as the basis of prosecution and conviction for perjury. You, therefore, should exercise care to assure that all answers are true and correct.

If you request permission to file this motion without paying the docket fee and other costs of the proceeding, you must include as an attachment at the back of this form:

1. a poverty affidavit showing your inability to pay the full costs of the proceedings; and

2. a certified inmate account statement setting forth the lesser of the average account balance or total deposits in your inmate trust fund for the six-month period preceding the filing of this motion or the current period of incarceration, whichever is shorter.

The court will determine the initial fee to be assessed for filing the action, but in no event will the court require an inmate to pay less than $3. The poverty affidavit applies only to the amount that must be paid to file the case and does not prevent the court from later assessing the remainder of the docket fee or other fees and costs against the petitioner.

When the motion is completed, *the original and one copy* must be mailed to the Clerk of the District Court from which petitioner was sentenced.

MOTION

1. Place of detention _____

2. Name and location of the court which imposed the sentence _____
_____

3. The case number and the offense or offenses for which sentence was imposed:
Case Number Offense

4. The date upon which sentence was imposed and the terms of the sentence:
Date Length of Sentence

5. Check whether a finding of guilty was made after a plea of:
(a) guilty_____
(b) not guilty_____
or (c) no contest_____

6. If you were found guilty after a plea of not guilty, check whether that finding was made by
(a) a jury_____
or (b) a judge without a jury_____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
_____

8. If you answered "yes" to (7), list
(a) the name of each court to which you appealed:
i. _____
ii. _____
(b) the result in each court to which you appealed and the date of the court's decision:
i. _____
ii. _____

9. If you answered "no" to (7), state your reasons for not appealing:
(a) _____
_____
_____
(b) _____
_____
_____
(c) _____
_____

10. State concisely all the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) _____

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10), and the names and addresses of the witnesses or other evidence upon which you intend to rely to prove those facts:

(a) _____

(b) _____

(c) _____

12. Prior to this motion have you filed, with respect to this conviction:

(a) any petitions in state or federal courts for habeas corpus?_____

(b) any petitions in the United States Supreme Court for certiorari other than petitions already specified in (8)?_____

(c) any other petitions, motions, or applications in this or any other court?

_____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion, or application:

(a) the specific nature of the petition, motion, or application:

i. _____

ii. _____

iii. _____

(b) the name and location of the court in which it was filed:

i. _____

ii. _____

iii _____

(c) the disposition thereof and the date of the disposition:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

14. Has any ground set forth in (10) been presented previously to this or any other court, *state or federal,* in any petition, motion, or application that you have filed?

_____

15. If you answered "yes" to (14), identify
    (a) the grounds previously presented:
        i. _____
        ii. _____
        iii. _____
    (b) the proceedings in which each ground was raised:
        i. _____
        ii. _____
        iii. _____

16. If any ground set forth in (10) has not been presented previously to any court, *state or federal,* set forth the ground and state concisely the reasons why the ground has not been presented previously:
    (a) _____
    _____
    _____
    (b) _____
    _____
    _____
    (c) _____
    _____
    _____

17. Were you represented by an attorney at any time during the course of
    (a) your preliminary hearing?_____
    (b) your arraignment and plea?_____
    (c) your trial, if any?_____
    (d) your sentencing?_____
    (e) your appeal, if any, from the judgment of conviction or the imposition of sentence?

        _____
    (f) preparation, presentation, or consideration of any petition, motion, or application that you filed regarding this conviction?

        _____

18. If you answered "yes" to one or more parts of (17), list
    (a) the name and address of each attorney who represented you:
        i. _____
        ii. _____
        iii. _____
    (b) the proceedings at which the attorney represented you:
        i. _____
        ii. _____
        iii. _____

(c) whether the attorney was:
i. appointed by the court?_____;or
ii. of your own choosing?_____

19. If your motion is based on the district court's refusal to appoint you counsel, attach the transcript of the proceedings which supports your allegation.

20. If your motion is based on the failure of counsel to represent you adequately, state concisely and in detail what counsel failed to do in representing your interests:
(a) _____
_____
_____
(b) _____
_____
_____

21. Are you now serving a sentence from any other court that you have not challenged? _____

22. Are you seeking permission to proceed *in forma pauperis*? _____ If so, have you attached the completed affidavit and certified inmate account statement (see instructions, page 1 of this form)? _____

I, _____, declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20____.

_____
Signature of Movant

POVERTY AFFIDAVIT
(See instructions on page 1 of this form)

In the District Court of _____ County, Kansas:

I, _____, inmate number _____, am currently an inmate in the custody of the secretary of corrections and am unable to pay the full amount of the docket fee in this matter by reason of poverty. Pursuant to K.S.A. 60-2001(b)(2), the following information is provided in support.

Employment: I am ___ employed; ___ not employed.

My employer is: _____

My employer's address is: _____

_____

_____

Income: I receive income from the following other sources **(list amount per week)**:

Employment income (after withholdings) is:	$_____
Rental income:	$_____
Interest and / or dividends:	$_____
Spousal support and / or child support:	$_____
Retirement, pension, social security:	$_____
Disability, workers compensation:	$_____
Unemployment benefits:	$_____
Other Income (Describe) _____	$_____
TOTAL weekly income from all sources:	$_____

Assets on Hand: I presently have the following assets (list value):

Cash (including bank accounts, prison accounts, and electronic accounts):	$_____
Automobile, truck or other vehicle:	$_____
Real property (home, building or land):	$_____
Other assets (jewelry, watches, etc.)	$_____

Other Assets: Are you a beneficiary of any current estate, trust, annuity, or life insurance policy? If so, please provide the details.

_____

_____

_____.

Other Reasons: Explain any other facts or reasons why you cannot afford to pay the full amount of the docket fee in your case.

_____

_____

_____.

I do solemnly swear or affirm that the claim set forth in the motion is just, and I do further swear or affirm that, by reason of my poverty, I am unable to pay the full amount of the docket fee.

I, _____, declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20___.

_____
Signature of Movant

For Office Use Only

CIVIL COVER SHEET

The civil cover sheet neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Clerk of the District Court for the purposes of initiating the civil docket sheet. This information will not be available to the public and this document will be stored in a separate location from the case file and then destroyed within a reasonable time. A new case **will not be accepted** without a cover sheet attached. (THIS FORM MUST BE TYPED OR PRINTED LEGIBLY). This form can be found at www.kscourts.org.

NATURE OF SUIT (Click or mark in one circle only – If the case involves more than one of the following categories, indicate the category having the highest dollar value)

CIVIL If a CH. 61: $_____ (Judgment Demand Amount)

TORT
- ○ Asbestos Product Liability
- ○ Automobile Tort
- ○ Intentional Tort
- ○ Legal Malpractice
- ○ Medical Malpractice
- ○ Other Professional Malpractice
- ○ Premises Liability
- ○ Slander/Libel/Defamation
- ○ Tobacco Product Liability
- ○ Toxic/Other Product Liability
- ○ Other Tort

CONTRACT
- ○ Buyer Plaintiff
- ○ Employment Dispute - Discrimination
- ○ Employment Dispute - Other
- ○ Fraud
- ○ Landlord/Tenant - Unlawful Detainer
- ○ Landlord/Tenant Dispute – Other
- ○ Seller Plaintiff (debt collection)
- ○ Other Contract

CIVIL APPEALS
- ○ Administrative Agency
- ○ Other Civil Appeal

REAL PROPERTY
- ○ Eminent Domain
- ○ Mortgage Foreclosure
- ○ Other Real Property

MISCELLANEOUS
- ◉ 60-1507
- ○ Habeas Corpus
- ○ Other Writs

○ **STATE TAX WARRANT**

○ **OTHER CIVIL**

○ **SMALL CLAIMS**

DOMESTIC

○ **MARRIAGE DISSOLUTION/DIVORCE** ○ **PROTECTION FROM ABUSE** ○ **PROTECTION FROM STALKING** ○ **UIFSA**
○ **OTHER DOMESTIC RELATIONS** ○ **NON-DIVORCE SUPPORT, CUSTODY OR VISITATION** ○ **PATERNITY**

PROBATE/ESTATE

GUARDIAN /CONSERVATOR
- ○ Conservatorship/Trusteeship
- ○ Guardianship – Adult
- ○ Guardianship - Minor
- ○ Guardian/Conservator – Adult
- ○ Guardian/Conservator - Minor

○ **DETERMINATION OF DESCENT**
○ **SEXUALLY VIOLENT PREDATOR**
○ **DECEDENT ESTATE**

○ **ELDER ABUSE**
○ **OTHER PROBATE / ESTATE**
○ **CARE AND TREATMENT**

○ **ADOPTION**

JURY DEMAND ○ YES (Check yes only if jury demand is included in petition or as a separate pleading) ◉ NO

SUMMONS ATTACHED: ◉ YES ○ NO

SERVICE BY: ○ PROCESS SERVER/ATTORNEY ○ SHERIFF IN STATE _____ (County) ○ SHERIFF OUT OF STATE _____ (State)

SHERIFF'S PROCESS FEE ATTACHED ◉ YES ○ NO

PLAINTIFF / SUBJECT INFORMATION
(ATTACH ADDITIONAL SHEET, IF NECESSARY)

NAME:_____
ADDRESS:_____
_____
PHONE:_____ **SEX:**_____
SSN:_____ **DOB:**_____
DL OR STATE ID NO:_____ (State and Number)
ALIAS NAMES USED:_____
_____

ATTORNEYS
(Firm Name, Address, Telephone Number and Supreme Court ID Number)
_____
_____
_____

DEFENDANT / OTHER PARTY INFORMATION
(ATTACH ADDITIONAL SHEET, IF NECESSARY)

NAME:_____
ADDRESS:_____
_____
PHONE:_____ **SEX:**_____
SSN:_____ **DOB:**_____
DL OR STATE ID NO:_____ (State and Number)
ALIAS NAMES USED:_____
_____

ATTORNEYS (if known)
(Firm Name, Address, Telephone Number and Supreme Court ID Number)
_____
_____
_____

FOR DOMESTIC CASES - NAME, DATE OF BIRTH AND SOCIAL SECURITY NUMBER OF EACH DEPENDENT CHILD:

(Name)	(Date of Birth)	(Social Security Number)

The requirement that Social Security numbers be included on domestic cases is mandatory, and authorized by the Supreme Court and federal law. On non-domestic cases, the Social Security number is not mandatory. The number is used for purposes of identification and may be disclosed as permitted by law. This form is not considered to be a public record.

ADDITIONAL CIVIL PARTY INFORMATION

PLTF/SUB/DEF/OTHER PTY INFORMATION (CIRCLE ONE)
(ATTACH ADDITIONAL SHEET, IF NECESSARY)
NAME:__________
ADDRESS:__________

PHONE:__________ SEX:__________
SSN:__________ DOB:__________
DL OR STATE ID NO:__________
State and Number
ALIAS NAMES USED:__________

ATTORNEYS
(Firm Name, Address, Telephone Number and Supreme Court ID Number)

PLTF/SUB/DEF/OTHER PTY INFORMATION (CIRCLE ONE)
(ATTACH ADDITIONAL SHEET, IF NECESSARY)
NAME:__________
ADDRESS:__________

PHONE:__________ SEX:__________
SSN:__________ DOB:__________
DL OR STATE ID NO:__________
State and Number
ALIAS NAMES USED:__________

ATTORNEYS
(Firm Name, Address, Telephone Number and Supreme Court ID Number)

PLTF/SUB/DEF/OTHER PTY INFORMATION (CIRCLE ONE)
(ATTACH ADDITIONAL SHEET, IF NECESSARY)
NAME:__________
ADDRESS:__________

PHONE:__________ SEX:__________
SSN:__________ DOB:__________
DL OR STATE ID NO:__________
State and Number
ALIAS NAMES USED:__________

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(Firm Name, Address, Telephone Number and Supreme Court ID Number)

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(ATTACH ADDITIONAL SHEET, IF NECESSARY)
NAME:__________
ADDRESS:__________

PHONE:__________ SEX:__________
SSN:__________ DOB:__________
DL OR STATE ID NO:__________
State and Number
ALIAS NAMES USED:__________

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ADDRESS:__________

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SSN:__________ DOB:__________
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ADDRESS:__________

PHONE:__________ SEX:__________
SSN:__________ DOB:__________
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ALIAS NAMES USED:__________

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