

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairman, Representative Michael R. O' Neal at 3:30 p.m. on February 1, 1993 in room 313-S of the Statehouse.

All members were present except:

Representative Clyde Graeber - Excused
Representative Denise Everhart - Excused

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Revisor of Statutes
Cindy Wulfschuh, Committee Secretary

Conferees appearing before the Committee:

Ed Schaub, Western Resources
Matt Lynch, Judicial Council
Randy Hearrell, Judicial Council

Committee minutes for January 25, 26, 27 & 28 were distributed.

Ed Schaub, Western Resources, appeared before the committee to re-introduce K.S.A. 66-7016-1708 the Overhead Powerline Accident Prevention Act. Section 66-1706(b) was deleted by the House Committee, therefore the bill that passed the Senate and the one that passed in the House were two different versions.

Representative Mays made a motion to have this re-introduced as a committee bill. Representative Wells seconded the motion. The motion carried.

Matt Lynch, Judicial Council, appeared before the committee with a bill request amending K.S.A. 59-2121 & 59-2123 dealing with child placement agencies. (Attachment #1)

Representative Carmody made a motion to have this introduced as a committee bill. Representative Pauls seconded the motion. The motion carried.

Hearings on HB 2097 were opened relating to probate docket fees.

Randy Hearrell, Judicial Council, appeared before the committee as a proponent to the bill. He handed out a letter from Robert Berkley, Attorney from Salina, which sets out the reasons for requesting the proposed amendment. (Attachment #2)

Hearings on HB 2097 were closed.

Hearings on HB 2098 were opened relating to civil procedure, and service of process.

Matt Lynch, Judicial Council, appeared before the committee as a proponent to the bill. He stated that the 1990 amendment to K.S.A. 60-906 was inappropriate because it is not concerned with how an injunction order is served, but rather with the binding effect of the injunction upon nonparties who act in concert with enjoined defendants, regardless of how the nonparties receive actual notice of the injunction. (Attachment #3)

Hearings on HB 2098 were closed.

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

CONTINUATION SHEET

Minutes of the House Committee on Judiciary, Room 313-S, Statehouse, at 3:30 p.m. on February 1, 1993.

Hearings on HB 2101 were opened regarding the inheritance rights of children even if parental rights are terminated.

Matt Lynch, Judicial Council, appeared before the committee as a proponent to the bill. Matt stated that the Judicial Council recommends that the termination of parental rights should not terminate a child's right to inherit from the child's biological parents. (Attachment #4)

Representative Heinemann questioned that if we put into law what is generally case law, and we do not spell out the word grandparent or sibling, then by definition we would only intend for the inheritance to come from the parent.

Chairman O'Neal asked Matt to provide further information on this.

Representative Pauls made the statement as to why there was no amendment to K.S.A. 59-2118 that has the same language in it. She stated that this is the statute that most judges look at when they handle an adoption.

Committee discussion followed.

Hearings on HB 2101 were closed.

Representative Carmody made a motion to approve the committee minutes from January 25, 26, 27 & 28. Representative Scott seconded the motion. The motion carried.

Representative Smith made a motion to pass HB 2097. Representative Carmody seconded the motion. The motion carried.

Representative Pauls made a motion to have HB 2097 placed on the Consent Calendar. Representative Carmody seconded the motion. The motion carried.

Representative Carmody made a motion to have HB 2098. Representative Smith seconded the motion. The motion carried.

Representative Carmody made a motion to have HB 2098 placed on the Consent Calendar. Representative Bradley seconded the motion. The motion carried.

The Committee adjourned at 4:25 p.m. The next Committee meeting is February 2, 1993 at 3:30 p.m. in room 313-S.

GUEST LIST

HOUSE JUDICIARY COMMITTEE

DATE February 1, 1993

[illegible]

**JUDICIAL COUNCIL BILL REQUEST
REGARDING CHILD PLACEMENT AGENCIES**

FEBRUARY 1, 1993

Two sections of the adoption and relinquishment act (K.S.A. 59-2121 and 59-2123) refer to a "licensed child-placing agency" or to a "licensed child placement agency." Currently, the entities contemplated by these phrases are regulated by Health and Environment and SRS under the construction such agencies constitute "boarding homes for children" under article 5 of chapter 65. The Judicial Council requests introduction of a bill which would add to article 5 of chapter 65 clearer and more appropriate terminology for the regulation of child placement agencies.

1993 HB 2097

Sec. 1. The proposed amendment came from Robert Berkley, a lawyer from Salina. His letter, which is attached, sets out his reasons for requesting the proposed amendment.

The Judicial Council Probate Law Advisory Committee supports Mr. Berkley's position and it is my understanding that the office of Judicial Administration has no problem with the proposal.

Sec. 2. In 1992, the Legislature passed the Uniform Simultaneous Death Act (K.S.A. 58-708 et. seq.). In reviewing the 1992 legislation, the Probate Law Advisory Committee found a conflict between K.S.A. 1992 Supp. 58-712 and K.S.A. 59-2704.

K.S.A. 1992 Supp. 58-712(5) reads as follows:

(5) An individual whose death is not established under the preceding paragraphs who is absent for a continuous period of **five** years, during which the individual has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. Such individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

K.S.A. 59-2704 reads as follows:

An absentee shall be presumed dead for the purposes of this act if:

(1) the absentee shall remain unheard from by those persons most likely to hear from said absentee for a period of not less than **seven** (7) years, and

(2) one or more persons who had a bona fide motive for locating the absentee have conducted a diligent search for the absentee in all places where said absentee's presence could reasonably be expected.

If no such search has been made with reference to an absentee who has been unheard from for more than **seven** (7) years and for whose estate a trustee has been appointed in accordance with this act, the district court may on its own motion order the trustee to conduct such search under the direction of the court and pay the reasonable expenses thereof out of the estate.

The problem before the Committee was the conflict between the five year and seven year time periods.

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April 23, 1992

627 6743

Senator Ben Vidricksen
State Capitol, Third Floor
Topeka, KS 66612

Dear Senator Vidricksen:

K.S.A. 59-213 provides: "The duly certified copy of any document on file or of record in any probate proceedings in the district court of any county of the state may be filed in the district court of any other county of the state and when so filed shall have the same force and effect in such other county as in the county of origin."

K.S.A. 59-104 prescribes the docket fees and court costs applicable to the itemized proceedings listed therein and the various amounts. One of the items is "Final settlements or other final decrees in probate from another county of this state" and the filing fee therefore is \$10.

At a meeting of the Clerks' Advisory Council in Topeka, Kansas, on September 13, 1991, their minutes reflect: "In Probate cases the filing fee for partial transcripts should be \$95 if there is no final decree. The filing fee for a final settlement of [sic] other final decree the fee is \$10 according to K.S.A. 50-104 [sic]."

Often times it is necessary to file a partial transcript of a probate case being probated in one county in the probate court of another county because the domiciliary estate owns real estate in the second county and the executor is in the process of selling that real estate.

In most instances we have not had any problem of filing the partial transcript and paying a filing fee of \$10. However, recently in attempting to file a partial transcript in Lincoln County the clerk of the court notified me of the minutes from the September 13, 1991, council meeting mentioned above and provided me with a copy. Her request was that this estate pay \$95 for filing the partial transcript over in her county when the estate had

Senator Ben Vidricksen
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already paid a \$95 fee for the probate of the estate in the county of origin.

I am confident the legislature intended a fee of \$10 to be applicable in any case being filed pursuant to K.S.A. 59-213.

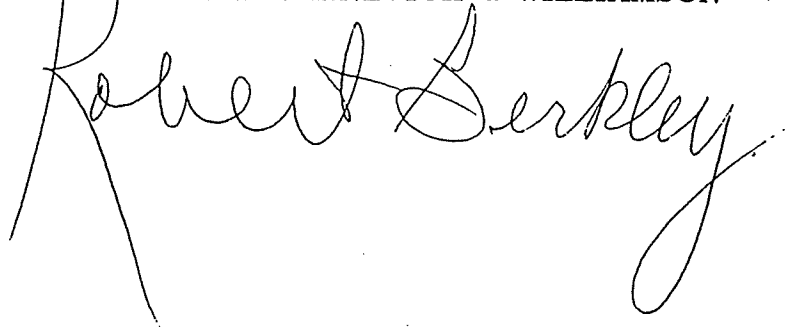
Please refer this letter to the technical correction division of the Kansas legislature. I think all that needs to be done to correct the matter is to amend K.S.A. 59-104 to delete the following: "Final settlements or other final decrees in probate from another county of this state" and insert in lieu thereof the following: "Certified probate proceedings under K.S.A. 59-213."

Thank you kindly for your assistance.

Yours very truly,

KENNEDY BERKLEY YARNEVICH & WILLIAMSON

By:

A handwritten signature in cursive script, appearing to read "Robert Berkley", written over the printed name of the firm.

RBB/gld

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(Revised 01/93)

JUDICIAL COUNCIL TESTIMONY ON 1993 HB 2098

BINDING EFFECT OF INJUNCTIONS
AND RESTRAINING ORDERS ON NONPARTIES

FEBRUARY 1, 1993

In 1990, legislation was enacted providing for service of process by certified mail. Essentially, service by certified mail was made equivalent to personal service. However, the legislature chose to require personal service, rather than certified mail service, under certain statutes: K.S.A. 60-903 (restraining order issued without notice), 60-906, 60-3104 (proceedings under protection from abuse act) and 60-1607(a)(1) and (2) (restraining orders in divorce cases).

It appears the 1990 amendment to K.S.A. 60-906 was inappropriate. K.S.A. 60-906 deals primarily with the scope of an injunction's binding effect and is copied almost verbatim from federal rule of civil procedure 65(d). The provisions were intended to make it clear that persons acting in concert or participation with the defendant named in the injunction could be punished for contempt for violation of the injunction, even if they have not been served with process, if they have actual notice of the injunction. In other words, K.S.A. 60-906 is not concerned with how an injunction order is served, but rather with the binding effect of the injunction upon nonparties who act in concert with enjoined defendants, regardless of how the nonparties receive actual notice of the injunction.

JUDICIAL COUNCIL TESTIMONY ON 1993 HB 2101
INHERITANCE RIGHTS OF CHILDREN
FEBRUARY 1, 1993

In December of 1990, Judge Thomas Graber contacted the Judicial Council to point out a seeming inconsistency in the area of inheritance rights of children.

A series of cases dating from approximately 1920 hold that, absent a statute to the contrary, a child inherits from both natural and adoptive parents. Dreyer v. Schrick, 105 Kan. 495 (1919); Baird v. Yates, 108 Kan. 721 (1921); and Bartram v. Holcomb, 109 Kan. 87 (1921). K.S.A. 1991 Supp. 59-2118 addresses the effect of adoption on the respective rights of the child, birth parents and adoptive parents. The statute clearly terminates the right of birth parents to inherit from the adopted child but does not preclude the adopted child from inheriting from the birth parents.

More recent cases involving situations in which there has been a termination of parental rights indicate the termination of parental rights completely severs the parent-child relationship and ". . . there is a complete and final divestment of all legal rights, privileges, duties and obligations of the parent and child with respect to each other." In re Wheeler, 3 Kan.App.2d 701, 702, 601 P.2d 15, rev. denied 227 Kan. 927 (1979). Accordingly, in a case where parental rights had been previously terminated, the biological children were held not to be heirs at law for purposes of the wrongful death statute. Wilson v. Kansas Gas & Electric Co., 12 Kan.App.2d 336 (1987).

Consequently, where a natural parent has consented to the adoption of his or her child, the child may inherit from both the natural and adoptive parents. Where parental rights have been terminated and there has been no subsequent adoption, the child has neither natural or adoptive parents from which to inherit.

The Judicial Council recommends that a termination of parental rights should not terminate a child's right to inherit from the child's biological parents.

59-2118. Effect of adoption; name; rights of child, parents. (a) Any person adopted as provided in K.S.A. 59-2111 through 59-2143 shall assume the surname of the petitioner or petitioners for adoption, except that the court in its discretion may permit a different surname when requested by the petitioner or petitioners. When requested by the petitioner or petitioners, the court, in its discretion, may change the given name or names of the person adopted.

(b) When adopted, a person shall be entitled to the same personal and property rights as a birth child of the adoptive parent. The adoptive parent shall be entitled to exercise all the rights of a birth parent and be subject to all the liabilities of that relationship. Upon adoption, all the rights of birth parents to the adopted person, including their right to inherit from the person, shall cease, except the rights of a birth parent who is the spouse of the adopting parent.