

Approved: 01/18/94  
Date

## MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Chairman Rochelle Chronister at 1:30 p.m. on January 12, 1994 in Room 514-S of the Capitol.

All members were present except: Rep. George Dean, excused  
Rep. Denise Everhart, excused

Committee staff present: Scott Rothe, Legislative Research Department  
Jim Wilson, Revisor of Statutes  
Jerry Cole, Committee Secretary  
Sharon Schwartz, Administrative Assistant

Conferees appearing before the committee:

Gary Kretchmer, 10th Judicial District Court Services Officer  
Honorable G. Joseph Pierron, Kansas Court of Appeals  
Richard L. Routman, Midwest Arbitration and Mediation, Inc.  
Nancy Hughes, University of Kansas Psychological Clinic  
Larry Rute, Legal Aid Society of Kansas, Inc.  
Elwayne Pomeroy, Kansas Collectors Association

Others attending: See attached list

Chairman Chronister requested a motion to unfavorably report HB 2146, 2156, 2212, 2216, 2247, 2309, 2329, 2346, 2347, 2348, 2350, 2351, 2361 and 2504. The bills had been addressed in the 1993 session as a substitute for HB 2211. Rep. Reinhardt made the motion and Rep. Helgerson seconded it. The committee carried the motion.

Chairman Chronister then requested a motion to unfavorably report HB 2154 and HB 2155. Rep. Gross made the motion, which was seconded by Rep. Bradley and then carried.

Chairman Chronister opened the hearing on HB 2574. The first conferee to appear before the committee was Gary Kretchmer who was representing the 10th Judicial District as a Court Services Officer. Kretchmer was in favor of the proposed bill and enthusiastic about the legislature's strides toward opening alternatives to resolving conflicts. (See Attachment 1).

The Honorable G. Joseph Pierron, Kansas Court of Appeals appeared before the committee in support of the bill. As Chairman of the Supreme Court Committee on Alternative Dispute Resolution, Judge Pierron favored the mediation process. He stated that 25% of his court docket, prior to the use of mediation, was taken up by domestic disputes. However, since ADR and the mediation process was being used more, that figure had dropped to about 5%. Judge Pierron also addressed the committee on areas of concern where he felt the bill was lacking. He suggested expanding the scope of the ADR office and the director's responsibilities. Furthermore, he told the committee language in the legislation should arrange for more flexible standards and to not only keep, but to expand the duties of the ADR advisory council. Higher confidentiality standards, modifying negligent standards for mediators and consideration of other forms of ADR were also addressed by Judge Pierron for consideration of the committee. (See Attachment 2)

Richard Routman, Midwest Arbitration & Mediation, Inc. spoke in favor of HB 2574. He spoke to areas of concern and suggested amending the bill from its current form. (See Attachment 3).

The next conferee supporting the bill and offering testimony to the committee to that effect was Nancy Hughes, University of Kansas Psychological Clinic. Hughes told the committee she also represented the

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS, Room 514-S Statehouse, at 1:30 p.m. on January 12, 1994.

Heartland Mediators Association. She spoke first of legislation in Nebraska creating a statewide mediation office. Hughes told the committee that she would like to see a preamble, similar to that of Nebraska's, contained somewhere in the bill. She likewise voiced her concern of excluding funds to certain non-profit agencies within the state, agencies similar to those she represented. She said by changing language in the bill those non-profit agencies would be included as eligible for funding as state mediation centers. Hughes suggested standardizing training for mediators and was concerned on the confidentiality of information gleaned by mediators in the mediation process.

Larry Rute, Legal Aid Society of Kansas, spoke in favor the HB 2574 as well. Rute wanted to tell the committee about the success of a mediation program in Olathe, Kansas. Rute also suggested ways to strengthen the bill in the form of amendments. (See Attachment 4).

Elwaine Pomeroy, Kansas Collector's Association, Inc. and Kansas Collection Attorneys told the committee that he had no objection to HB 2574. However, Pomeroy said he was aware that the committee was considering funding mechanisms for the program. Pomeroy said he strongly opposed funding the program through an increase in court docket fees. (See Attachment 5).

At the request of the Chairman, information had been supplied to committee members from the Kansas Committee for Community Mediation. (See Attachment 6).

Chairman Chronister closed the hearing on **HB 2574** and then addressed the committee. She said she had noticed many agencies appearing that had concerns about the bill and representatives of those agencies were there, largely to suggest amendments. For that reason, she referred the bill to a special sub-committee for continued hearings. Chairman Chronister appointed Rep. Pottorff as sub-committee chair, and Rep.s Heinemann, Everhart, Carmody and Reinhardt, respectively as members and requested that the subcommittee report by the end of January. She adjourned the meeting at 2:44 p.m.

The next meeting is scheduled for January 13, 1994.

# 1994 Appropriation Committee Guest List

1	NAME	ORGANIZATION
2	Paul Shelby	OJA
3	John Viro	SSS
4	Duane Waterworth	Division of Budget
5	Paula M. Williams	KS Agric. Mediation Services
6	Kon Smith	KS Bar #8802
7	Michelle Clum	att. Brad Snoot
8	Lacey Ruth	KS
9	J. Nelson Van Selt	Rep - Elect
10	GARY KETCHUM	OJA
11	Harry S. Moore	3rd Judicial District Court Services
12	Brandon L. Myers	KS Human Rights Comm'n
13	TK Shively	KS Legal Services
14	Dodie Lacey	KS Children's Service League
15	St. James' Episcopal	KS Court of Appeals
16	RICHARD ROUTHMAN	MIDWEST ARB + MED INC
17	LOREN ISRAEL	ATTY
18	Nancy Hughes	Hartland Mediators Assoc. KLL Psychological Clinic
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Wed, Jan 12, 1994



## *Domestic Court Services*

GARY KRETCHMER  
DIRECTOR, DOMESTIC SERVICES  
FAX (913) 782-3297

January 11, 1994

STATE OF KANSAS  
TENTH JUDICIAL DISTRICT  
Johnson County

905 W. Spruce  
Olathe, KS 66061  
(913) 782-7252

Appropriations Committee  
Kansas Legislature

Re: House Bill #2574

Dear Committee Members:

I am the Director of Domestic Court Services for the Tenth Judicial District in Olathe, Kansas. My staff provides mediation for families struggling with making decisions about their children following divorce. This office is in full support of legislative initiatives that will provide the citizens of Kansas every resource possible to help in problem-solving and conflict resolution.

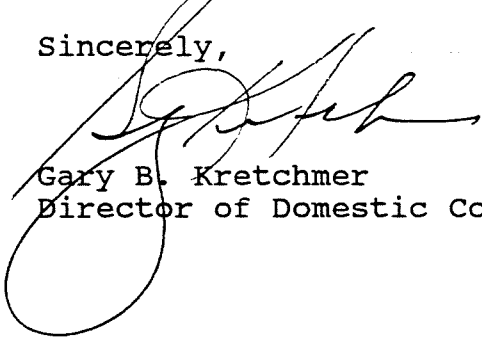
Our mediation program in Johnson County has proven to be a success. It has benefited the court and many families caught up in conflict. We must realize that people in dispute over normal family issues cannot depend on the court for effective resolution. In 1993, the court staff completed work with 381 families in mediation. Our results indicate:

145 families (38%) reached a written agreement.  
129 families (34%) reached their own verbal agreement.  
30 families (08%) reached an agreement before mediation was initiated.  
68 families (18%) reached no agreement.  
09 families (02%) were not recommended for joint mediation.

These numbers show that eight out of ten families coming to the mediation process last year, resolved their conflict without depending on a courtroom decision. I am very proud of my staff's efforts. This experience needs to be available to all citizen's across Kansas.

Since 1985, the staff has worked with 2,445 families in mediation. Our statistics show that 76% found resolution. House Bill #2574 can open up more opportunity for the settlement of conflict. If you have questions about the Johnson County experience, please call.

Sincerely,

  
Gary B. Kretchmer  
Director of Domestic Court Services

ATTACHMENT 1

Jerry Cole  
514  
Cap.

Remarks of the Honorable G. Joseph Pierron, Chair  
Kansas Supreme Court Committee on Alternative Dispute Resolution  
House Appropriations Committee Concerning HB 2574  
January 12, 1994

The Supreme Court Committee on Alternative Dispute Resolution is composed of 21 members from all over the State of Kansas who have expertise and experience in the area of alternative dispute resolution.

Following the expression of legislative interest in alternative dispute resolution late last year the committee was reconstituted by Chief Justice Richard Holmes, who ordered the committee to provide a written report as expeditiously as possible in regard to the following.

1) The current state of alternative dispute resolution in Kansas, with special attention to the ways in which district courts use the different methods of alternative dispute.

2) Explore methods by which a court or community interested in alternative dispute resolution could encourage and implement its appropriate use.

3) Recommend guidelines for the qualifications of practitioners of alternative dispute resolution to whom a court might make referrals.

4) Generally review the 1989 Alternative Dispute Resolution Committee report to the Supreme Court and make recommendations as to updating, expanding, or modifying it.

This first meeting of the committee was Monday, January 10, 1994. The committee decided that the 1989 report of the previous committee on ADR was still substantially correct and should be the general basis for the 1994 report.

The committee has broken down into nine sub-committees to update the report. The committees are:

1. The current status ADR in Kansas;
2. The office of ADR and the possible functions of an ADR director;
3. Qualifications and educational standard for ADR practitioners.
4. Major civil litigation and problems. (the issues can be the subject of ADR prior to the filing of litigation.);
5. Minor civil litigation and problems.
6. Domestic relations;
7. Juvenile law;
8. Criminal law;
9. Funding.

The first drafts of the subcommittees' reports will be discussed in our next meeting on March 7, 1994. We hope to complete the report as soon after that as possible and submit it to the Chief Justice.

The committee also felt it was appropriate to offer comments concerning HB 2574. The consensus is that the legislation has a great deal of potential and is the most constructive effort in the area of ADR in Kansas in many years.

We would suggest the committee consider a few points raised during our committee's discussion of the bill.

The bill focuses on the establishment and management of ADR centers which will often presuppose little or no ADR activity taking place. It also presumes the need for new administrative bodies to encourage or manage new ADR resources. Kansas has a lot of ADR going on both through the courts, in cooperation with the courts, and totally independent of the courts. The final legislation, in addition to providing for the establishment of centers where appropriate, should also have provisions for the general encouragement of ADR and the means to coordinate with resources already in place and functioning.

Similarly, the tasks of the Office of ADR and its director should be expanded to reflect this expansion of vision. At page five of the 1989 report, we suggest eight general duties of such a coordinator;

- a) Assisting the Court to identify several existing ADR programs to serve as pilot programs;
- b) Working with the programs to gather statistics which will allow evaluation of the programs' strengths and weaknesses;
- c) Helping the pilot programs exchange information, share resources, apply for grants and develop in other ways;
- d) Assisting Kansas colleges and universities in developing interdisciplinary programs including practicums for training mediators;
- e) Continuing the cataloging of ADR programs and services in Kansas;
- f) Assisting in the creation of new court-based ADR programs;
- g) Exploring methods of providing ADR to individuals in all income levels; and
- h) Working with the ADR Advisory Board as directed by the Court.

We emphasize that a director should be familiar with all the forms of ADR, not only mediation. The director should also be familiar with the various ways of delivery of all forms of ADR since we find that many times the same service may be delivered in different ways.

We definitely believe the legislation is correct in requiring standards and qualifications for programs and practitioners of ADR. However, we believe the legislation should arrange for flexible implementation of general standards. Many details like a particular number of hours of training in a certain sequence would be more easily handled administratively. This would make the inevitable modifications easier than requiring statutory changes.

We believe the provision for an advisory counsel is good, but its duties should be expanded to match those of the proposed ADR director and office. We would suggest general guidelines concerning who should be solicited for nominations as opposed to particular organizations being named. Eleven members may not be a sufficient size. The present ADR committee of 21 seems barely adequate.

The ADR committee also had some technical and general concerns which were not expressed in detail at the meeting.

The provisions governing confidentiality, in the opinion of ADR practitioners serving on the committee, needs some tightening.

The modification of negligence standards for mediators under the legislations may or may not be appropriate. We think the reason for this provision should be clearly understood by the committee and contrasted with the present standard to make sure that the change is desirable.

Should the term "court established" be used in the final draft of the legislation, that term should be defined.

If attorneys will be required to spend full time on the position if they are the director of ADR the same requirement should be placed on non-attorneys.

The committee believes it is very important that we recognize there are many different ways of approaching ADR services and in delivering them.

It is also very important that we avoid duplication and be aware of ADR resources presently in place and functioning when planning expenditures for new services.

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## **HOUSE COMMITTEE ON APPROPRIATIONS**

### **Hearings on House Bill 2574 (Alternative Dispute Resolution)**

**Richard L. Routman  
Midwest Arbitration and Mediation, Inc.  
Kansas City, Missouri**

**January 12, 1994**

With the introduction of this bill, the State of Kansas comes one step closer to joining the seventeen other states in this country which have established state offices of dispute resolution and conflict management. I suppose it might be said that with the killing of lawyers last year in California and the general disdain in which attorneys are said to be held by the public at large, it is not a moment too soon.

In the ten years since Hawaii instituted its Center for Alternative Dispute Resolution in 1984, there has been an explosion in the uses to which alternative dispute resolution methods or ADR have been applied by state governments. And that brings me to my first point concerning this bill. This bill could more effectively take advantage of the experimentation and experience which other states have already gleaned in this field.

For example, this proposed legislation could call for state government to take a hard look at how it handles conflict to which it is a party and how ADR could help. The proposed legislation could require state agencies and departments to work with the director of the office of dispute resolution in formulating procedures to more efficiently and economically process disputes by using ADR methods, all with a view to having an ADR plan in place by a certain deadline.

Examples include the state offering mediation in connection with highway right-of-way and tort disputes or environmental disputes or cases involving civil rights

discrimination in state-supported universities. The State could have a policy that in the future all of the State's vendors must agree to a contractual provision that requires the parties to mediate or arbitrate contractual disagreements which might arise between them.

The bill could also provide encouragement for the courts to use ADR in judicial proceedings, particularly before substantial discovery in a lawsuit has occurred. Working with the judiciary and the bar, the director could be required to make recommendations for needed ADR legislation. A possible example would be to make a small increase in the filing fee on a statewide basis, the proceeds of which could be used to encourage ADR in the judicial system.

Other states have taken steps along this path. We should take advantage of their experience and incorporate specific directives into this proposed legislation to accelerate the development of ADR by state government in Kansas.

Regarding certain specific provisions of the bill, I am against Section 13 which insulates a mediator from civil liability except upon a showing of gross negligence with malicious purpose or a showing of willful disregard. Even if there is some rationale for applying this provision to volunteer mediators, there is certainly no reason to give mediators this kind of special treatment if they are compensated for their services. They should be held to a reasonable standard of care as set forth by the appropriate prevailing professional guidelines and the courts.

With respect to the exceptions to confidentiality provision of Section 12, at the very least, the proposed legislation should spell out exactly what is referred to in Subpart (4) of that section exempting from confidentiality "any information that the mediator is required to report or communicate under the specific provisions of any statute or in order to comply

with orders of a court." The generality of that language gives neither the mediator nor the disputant a clue as to what communications in the mediations might ultimately be disclosed by the mediator to a third party.

There are a number of additional points which I would like to have in the record and considered by this Committee. Those points are contained in a letter from me dated December 30, 1993, addressed to Mr. Scott Rothe of the Kansas Legislative Research Department, a copy of which is attached hereto.

I appreciate the opportunity to participate in this process and would be pleased to respond to any questions.

MIDWEST ARBITRATION AND MEDIATION INC.



Richard L. Routman, Esq.  
Director

December 30, 1993

P.O. Box 26064  
Kansas City, Missouri 64196  
(816) 221-4079  
FAX (816) 221-4078

Mr. Scott Bennett Rothe  
Kansas Legislative Research Department  
300 S.W. 10th Avenue  
Room 545-N - Statehouse  
Topeka KS 66612-1504

Re: H.B. 2574

Dear Mr. Rothe:

Thank you for your December 23 memorandum concerning hearings for alternative dispute resolution legislation. I would like to appear as a witness regarding the captioned proposed legislation on January 12, 1994, and called your office with that message earlier this week. I would also like to submit this letter as a additional response.

Briefly as background, I am the full time administrative director of the Kansas City office of a national for-profit organization of attorneys specializing in mediation, arbitration and alternative dispute resolution techniques. Since its inception in 1986, our regional organization of eight attorney-mediators has conducted a significant number of mediations in western Missouri and Kansas in tort and business cases referred by attorneys or insurance companies.

At the outset, I would like to congratulate the Appropriations Committee, Chairman Rochelle Chronister and her staff for their farsightedness in considering proposed legislation which would increase the visibility and usage of ADR techniques in the State of Kansas.

In turning to the bill itself, I would like to make the following comments:

1) As an initial general observation, it appears to me that the Nebraska Act, from which the language of this bill is largely taken, is directed mainly to the types of disputes which arise in community neighborhood settings and, to some degree, in divorce and family disputes. As a general rule, mediations conducted in these types of cases do not include attorneys being present. I have no doubt that, in these categories of disputes, volunteer mediators or mediators with little or no legal background can often play an important role in assisting disputants resolve their differences.

In matters where the parties have their counsel participating in the mediation itself and especially when the cases are in litigation, I think mediators who do not have legal backgrounds may face more difficulties. Moreover, courts tend to control their dockets and the administration of their cases closely. Without a high degree of coordination between the judicial system and the

An Affiliate of United States Arbitration and Mediation, Inc.

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3-4

Mr. Scott Bennett Rothe  
December 30, 1993  
Page Two

proposed dispute resolution centers, there is a risk that the public will become confused with two concurrent institutions addressing their dispute.

In short, to the extent that the proposed legislation targets the smaller, neighborhood or family dispute matters, the dispute resolution centers will probably assist in the resolution of conflicts. To the extent that the proposed legislation is directed to cases in the judicial system or where attorneys are normally involved in the mediations themselves, this committee needs to invite representatives of the judiciary and the bar in order to make this effort more collaborative.

Indeed, the Supreme Court of Kansas has a committee on Alternative Dispute Resolution which has addressed many of the issues which would be relevant to this proposed legislation.

2) The bill's language does not empower the office of dispute resolution to award grants to centers in the state, as does the Nebraska law for the dispute resolution centers in Nebraska. It appears that the funding for the proposed Kansas centers will be derived from private and public sources, including possibly the legislature.

I am concerned that without a firm commitment of state funds at the outset of this effort, there is no assurance that private or other public sources of support will be found. Unless the funding is in place, there is a risk that the program will not be appropriately or effectively administered, thereby increasing the likelihood that the public will not be well served by the program. Ultimately, a inadequately funded program will make the public's acceptance of mediation more problematic.

3) The bill proposes a set of criteria for the director of the office of dispute resolution to approve various centers in the state to participate in the dispute resolution process pursuant to this proposed act upon the center's showing of certain criteria as set forth in Section 7.

However, there is no provision for the director to take into consideration the extent to which, if at all, there are pre-existing dispute resolution facilities or services already operating in the area proposed to be served by the applicant center. Indeed, there is no provision for those existing facilities or services to have an opportunity to provide evidence to the director that the public is being currently and reasonably served by existing facilities and services. The bill should be amended to afford existing services that opportunity.

Mr. Scott Bennett Rothe  
December 30, 1993  
Page Three

The purpose of this proposed legislation should be to "jump start" ADR procedures in areas where there are no providers of such services. It should not be the purpose of this legislation to add the State as another competing ADR provider where private for-profit and not-for-profit vendors are already serving the public adequately and economically.

4) According to Section 7, an applicant center must show that it is a non-profit organization under federal law or a program established by a court. There is no rational basis for the exclusion of other service providers which do not otherwise fit into those categories. If, for example, a for-profit association provides quality ADR services on a for-fee basis, the public should not be precluded from at least considering the use of those services solely on the ground that the organizations was not a court-established or non-profit company.

5) Section 11 sets forth the rules of confidentiality attendant to a mediation. This is a complex and technical area. In my view, the language of this section needs re-examination for the following reasons:

a) The first sentence of this section makes confidential all verbal or written information "relating to the subject matter of an agreement" between a party and the mediator or center's staff. If the reference to "agreement" is intended to refer to an agreement to mediate, then communications requesting an agreement to mediate and made in the course of setting up the mediation would not be given confidential treatment if the parties did not ultimately enter into an agreement yet the communications should still be protected. Accordingly, the language should not refer to an "agreement".

b) The second sentence states in part "...no admission, representation or statement made in mediation which is not otherwise discoverable or obtainable shall be admissible as evidence or subject to discovery." This language suggests that if a statement made during the mediation can be independently discovered or obtained from sources outside the mediation then the statement made in the mediation may be admissible.



Mr. Scott Bennett Rothe  
December 30, 1993  
Page Four

Any statement made in a mediation should not be admissible in a court of law or an arbitration even though the underlying substance of that statement might be later be the proper subject of discovery in a deposition or otherwise obtained. If the statement can be independently discovered or obtained, the party seeking to use that statement obtained outside the mediation may do so. However, the party may not use the same statement as it was uttered in the mediation itself.

c) The proposed legislation provides an exception to the confidentiality for cases involving the possible furtherance of a crime or fraud or if there is a conflict between this proposed statute and any other statute. This means that before a mediation begins, a full and fair disclosure will be required advising the participants that the confidentiality of the process will be lost if in the course of the mediation a communication is made which the mediator believes is part of a potentially continuing criminal or fraudulent activity or that confidentiality cannot be maintained with respect to that communication without otherwise violating another statute.

Making disclosures of that nature to the disputants at the outset of the mediation will have a chilling effect on their willingness to candidly share information with the mediator, especially if the proposed legislation does not specifically identify the other statutes which might be in conflict with the confidentiality provision.

6) In Section 12, there is a limitation to the liability of mediators except for gross negligence with malicious purpose. In my view, there is no reason to insulate mediators or other neutrals from the prevailing standard of care for mediators and other conflict management professionals. If mediators are concerned about their liability, they should acquire malpractice insurance.

7) Section 10 sets forth the training qualifications for mediators of approved centers to include 30 hours of certain training. The proposed legislation should have a grandfather clause for those legitimate providers who have been active in the field

Mr. Scott Bennett Rothe  
December 30, 1993  
Page Five

for a reasonable period of time. The proposed legislation needs to address how an organization which wishes to conduct training becomes credentialed so that its graduates are qualified under the proposed legislation.

In order to provide the public with a meaningful choice of mediators, the proposed legislation should mandate the publication of the training and experience of the mediators providing the service at the dispute resolution centers and the names and addresses of persons so consenting for whom the mediator has conducted mediations within a previous three year period.

In terms of other possible methods of encouraging the use of ADR which go beyond the immediate scope of the proposed legislation, the following is offered:

a) Legislation authorizing district courts to mandate mediation in cases by court order.

b) Legislation requiring the Office of Judicial Administration to formulate guidelines for judges in issuing orders requiring parties to use mediation or other forms of ADR.

c) Legislation requiring the implementation of pilot programs in court-annexed ADR in the two largest urban areas in Kansas.

d) Legislation permitting each judicial district by local option to raise the filing fee for the purpose of raising funds to be used to encourage the use of ADR in those districts or, alternatively, raising the filing fee statewide by one or two dollars to be used for that purpose.

e) Legislation requiring the Attorney General to report upon the feasibility of utilizing ADR in connection with the cases in which the State is a party and to begin to implement programs utilizing ADR.

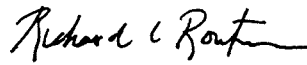
f) Legislation requiring state agencies and departments to study and implement ADR procedures and adopt ADR clauses in contracts between the State and vendors and in connection with any project which is funded in whole or in part by state funds.

Mr. Scott Bennett Rothe  
December 30, 1993  
Page Six

g) Legislation calling upon legislative committees and regulatory agencies to study and implement negotiated rule-making techniques in its hearing procedures.

Thank you for this opportunity to comment on the proposed legislation. If there are any questions, I would be happy to respond to them. Please feel free to call.

Yours truly,



Richard L. Routman

rr/

**TESTIMONY OF LARRY R. RUTE**  
(913) 233 - 2068

**HOUSE COMMITTEE ON APPROPRIATIONS**  
**ROCHELLE CHRONISTER, CHAIRPERSON**  
Wednesday, January 12, 1994  
Room 514-S - State House

I would like to thank the Chairperson and members of the Committee for the opportunity to appear before you today to speak in support of HB 2574.

I am the Deputy Director of Kansas Legal Services (KLS). As you are probably aware, KLS is a private, non-profit corporation dedicated to providing free or low-cost legal services to low and moderate income Kansans. Last year our attorneys and support staff, located in 12 offices throughout the state, provided legal advice and representation to approximately 24,000 Kansans.

With my appearance today I am also wearing at least one other hat. I also appear before you as Chair of the Corporation for Change's Family Court Committee. The goal of the Family Court Committee has been to explore the feasibility of a family court system in Kansas.

I am very pleased that the Appropriations Committee has chosen to give serious consideration to strengthening alternative dispute resolution systems in Kansas through HB 2574. I believe that this bill, will serve as an economic and effective vehicle to resolve conflicts between individuals, as well as to reduce the inflow of cases into our already overburdened court system.

**DISPUTE RESOLUTION SERVICE - OLATHE**

The Committee may not be aware of the fact that a prototype of a local dispute resolution center as envisioned by HB 2574 is currently in operation under the name Dispute Resolution Services, in Olathe, Kansas. Dispute Resolution Services (DRS) was established in 1985 through the joint efforts of the Kansas Bar Association and Kansas Legal Services, Inc., to explore alternatives to the court system for the resolution of disputes. Dispute Resolution Services is based in the Kansas Legal Services of Olathe office and serves all residents of Johnson county regardless of age or income. Priority is given, however, to disputes involving parties who have a limited income.

Dispute Resolution Services began accepting referrals in January of 1986 after extensive groundwork had been laid for the project and training of volunteers was completed. Project staff trained approximately twenty (20) volunteers from the community to mediate minor disputes. Approximately 60 percent of the volunteers were attorneys and the other volunteers ranging from

mental health professionals to business persons and other interested individuals. The original focus of the project was on the resolution disputes between neighbors, landlord-tenant disputes, consumer complaints, and family disputes.

Today, DRS staff and volunteers continue to be heavily involved with neighborhood dispute mediation under a grant through the Johnson county small claims court. Parties to small claim disputes are provided a brochure at the Clerk's office advising them that if they are thinking about filing a lawsuit, have filed a lawsuit, or are defending a lawsuit, mediation may be an alternative worth considering. Under the program, mediation can be provided prior to filing a lawsuit, after filing but before the court date, and at the date of the court appearance. If the legal issue is not resolved in mediation, parties are given additional time to present their case before the judge at the court docket.

In addition to small claims court mediation, DRS also provides family mediation services in divorce and post divorce matters. Problem resolutions will commonly center around issues concerning custody and visitation. Family mediation cases are co-mediated, generally involving male and female attorney and non-attorney mediators.

I have set out below Olathe's dispute resolution statistics for 1992 and 1993, as follows:

STATISTICS FOR DISPUTE RESOLUTION SERVICES OF KANSAS LEGAL SERVICES:

<u>SMALL CLAIMS</u>	<u>1992</u>	<u>1993</u>
CASES MEDIATED	306	275
CASES RESOLVED	176	166
PERCENTAGE OF CASES RESOLVED	58%	60%
PERCENTAGE OF COMPLIANCE WITH AGREEMENT	83%	85%

<u>FAMILY MEDIATION</u>		
CASES MEDIATED	17	17
CASES RESOLVED	13	13
PERCENTAGE OF CASES RESOLVED	76%	76%
TELEPHONE CONTACTS	117	205

Dispute Resolution Services is currently developing a proposal for victim/offender mediation in the juvenile court. This form of mediation will bring victims and the perpetrator before a mediator to establish an agreed restitution

in the victim's behalf. A 1986 study found recidivism rates in four programs studied to be lower, two of them significantly so, in those using restitution instead of detention, counseling or probation.

Yesterday, I heard several questions regarding the use of sliding scale systems to help supplement scarce program funds. I have set out below DRS's domestic fee scale based on individual annual gross income, as follows:

to \$10,000	\$10 per/hr.
+\$10,000-\$15,000	\$18 per/hr.
+\$15,000-\$20,000	\$26 per/hr.
+\$20,000-\$30,000	\$36 per/hr.
+\$30,000-\$40,000	\$46 per/hr.
+\$40,000-\$50,000	\$56 per/hr.
+\$50,000-\$60,000	\$66 per/hr.
+\$60,000	\$76 per/hr.

### **FAMILY COURT STUDY**

As I indicated earlier, I serve as the Chairperson for the Corporation for Change's Family Court Advisory Committee. Early in July, the Corporation for Change issued a report prepared by the Family Court Advisory Committee suggesting that the Kansas Legislature and Judicial branch might "dramatically improve the quality and appropriateness of court services to Kansas children and families" by pursuing a family court system. The report entitled, "A Family Department for the District Courts of Kansas," found that many Kansas families are directly and indirectly impacted by our judicial system. Excluding minor cases, in excess of 56 percent of all civil cases filed in Kansas District Courts for the year ending June 30, 1992, were domestic relations and juvenile matters.

Yesterday, the Joint Committee on Children and Families filed HB 2582, The Families In Court Partnership Act.

The reason that I am discussing the Families In Court Partnership Act with you today is that those states that have been successful in establishing family courts have utilized alternative dispute resolution techniques as an important if not vital element in developing a successful family court system.

There are several principles that are commonly discussed as encompassing a comprehensive family court. These principles include the following:

1. The family court requires carefully selected, trained, and experienced judges and staff;
2. Maximize the use of non-adversarial methods of family dispute resolution;

3. Maintain an aggressive case processing and management system;
4. Provide maximum access to all members of society;
5. Maximize the use of community services and trained volunteers;  
and
6. One judge, one staff, one family; and
7. Broad based jurisdiction.

Other states have maximized the efficiency of a family court system by the creative use of alternative dispute resolution techniques. By maximizing the use of alternative dispute resolution, the Court becomes a facilitator to help people exhaust their own resources to settle the matter prior to entering into a potentially destructive and expensive advocarial hearing.

#### **ARBITRATION PROGRAMS OUTSIDE THE STATE OF KANSAS**

By the use of the term alternative dispute resolution, I do not intend to limit the discussion merely to mediation techniques. The use of other forms of settlement techniques such as arbitration has proven to be an effective method to reduce the costs of going to court and to expedite disposition of cases.

In the 1980's the Judicial Council of California and the Pittsburgh, Pennsylvania Office of Court Administration reviewed comparative case processing costs for cases arbitrated versus those processed through the traditional trial advocacy system. The results demonstrated a significant cost savings when utilizing arbitration techniques, particularly when courts schedule cases for arbitration at the time of filing.

#### **MEDIATION PROGRAMS OUTSIDE THE STATE OF KANSAS**

Mediation is becoming increasingly popular in the United States. Community mediation-dealing with disputes between neighbor, friends, relatives, former spouses, landlords and tenants, ect.- has grown rapidly, with the development of more than 250 mediation centers that conduct over 230,000 mediation each year. Family and divorce mediation are also becoming prominent, as is small claims and civil court mediation.

In California all contested child custody and visitation disputes must be referred to mediation. Courts in at least two California counties have been making significant use of mediation in non-family cases including small claims cases.

In 1989 the California Department of Consumer Affairs surveyed forty ADR programs then receiving funds pursuant to the 1986 dispute resolution programs act (DRPA). That report included several highlights:

- \* 38,842 people chose to resolve their disputes through a program funded under the DRPA during the survey period (fiscal year 1988-89).
- \* 7,194 dispute resolution proceedings were held pursuant to the DRPA with an average success rate of sixty-three percent. The average waiting time to enter a dispute resolution proceeding was twelve days while the average session lasted two and one half hours.
- \* \$1,757,244 in filing fees was used to fund dispute resolution programs.
- \* The average cost per disputant was \$46 and the average cost per session was \$244.33.
- \* 30,362 hours of mediator volunteer work and 8,802 hours of non-mediator volunteer work were donated to the programs.
- \* Of a total of forty programs, twenty-two programs provided free services. The remaining eighteen programs charged according to a sliding scale based on the disputant's income.

The American Bar Association has also cited reports finding mediation to be cost effective. One study found the advocarial divorce process costs 58 percent more than mediation even when including mediation client's cost for consulting with attorneys.

### HB 2574

As I indicated at the beginning of my testimony, I believe that with slight modification the HB 2574 will go a long way toward establishing a coordinated state-wide system to promote the use of Alternative Dispute Resolution. We do, however, recommend at least three modifications, as follows:

1. Page 6, Line 12, add a number (4) Other cases appropriate to mediation referred by the court and/or approved by the Advisory Council. (this allows for inclusion as opposed to exclusion).
2. Page 6, Line 13, an approved center may accept or refuse, cases referred...
3. Page 6, Line 27, change 30 hours to 20 hours.
4. Page 6, Line 30, strike "an additional" and change 30 hours to 40 hours. (these hours are satisfactory and are feasible with training programs in place).



## CONCLUSION

For years, child advocacy, family law practitioners, and domestic and juvenile judges have searched for a way to improve the quality and appropriateness of court services to Kansas children and families. The use of mediation centers provide an important vehicle by which court dockets can be reduced and we can begin building a less advocarial and more client-centered approach to problem resolution. I urge the committee to give favorable consideration to the model provided by the Kansas Dispute Resolution Act.

REMARKS CONCERNING HOUSE BILL 2574  
HOUSE APPROPRIATIONS COMMITTEE

I am Elwaine F. Pomeroy, appearing on behalf of the Kansas Collectors Association, Inc., and on behalf of the Kansas Collection Attorneys. Kansas Collectors Association, Inc. is a statewide association of collection agencies. Kansas Collection Attorneys is a group of attorneys from various parts of the state whose law practices include considerable collection work.

Thank you for the opportunity to appear before you concerning HB 2574. The Kansas Collectors Association, Inc. and the Kansas Collection Attorneys have no objection to HB 2574, so long as the funding mechanism is not an increase in docket fees. We would object to using docket fees as a fund-raising mechanism. Traditionally, the funding for our court system in Kansas has been from the general fund. We believe Kansas should return to that method of funding courts, and not use docket fees to fund other programs. Several years ago, docket fees were increased and the proceeds were used to fund programs for children. The 1992 docket fee increase was related to filing of pleadings by fax.

In 1993, Senate Bill 287 was introduced, which would increase docket fees much more than its stated purpose, to fund alternative dispute resolution programs. Also in 1993 SB 372 provided for increase in judicial salaries and would have increased docket fees, presumably for that purpose.

We feel the philosophy of funding these programs by docket fees is flawed. We are also concerned by the disproportionate burden that Chapter 61 cases would bear under such proposals.

The present docket fee for Chapter 60 cases is \$61.50. SB 287 would increase that docket fee to \$72.00, an increase of \$10.50, or a 17% increase. However, the bill would increase the docket fee for a Chapter 61 case where the amount in controversy is less than \$500.00 from the present \$16.50 to \$26.00, an increase of \$9.50,

or a 58% increase. This grossly disproportionate increase cannot be justified.

If the cost of access to the court system becomes too high, the merchants, the business establishments, and health care providers will be unable to pursue efforts to collect funds that are rightfully owed to them.

I am attaching a sheet which shows the various docket fees and the distribution that is made of the "balance" forwarded to the state. As you can see, docket fees are being used to fund juvenile detention facilities, judicial branch education, emergency services operating fund, judiciary technology fund, and the remaining 82.34% goes to the state general fund.

As you consider alternative dispute resolution matters, and other legislation throughout this year, we urgently request that you not increase docket fees. Another aspect that this committee should consider is the large number of cases filed under Chapter 61. A glance at the Shawnee County docket supplement each week as published by the Topeka Metro News illustrates the large number of Chapter 61 proceedings. Shawnee County has thirteen District Court Judges. One of them handles virtually all of the Chapter 61 cases.

We urge you not to increase docket fees for Chapter 61 proceedings.

Also attached is a memo I prepared last year expressing our opposition to SB 372 and SB 287.

## Other Charges:

Probation fee; community corrections service fee.

Misdemeanor \$25, K.S.A. 21-4610a; all to State General Fund;

Felony \$50.

Alcohol and drug safety action program fee. For the benefit of local programs.

\$110, K.S.A. 8-1008; two different methods of distribution.

Driver's License Reinstatement Fee; \$50, K.S.A. 8-2110; to State Treasurer for distribution.

Marriage License; \$40, K.S.A. 23-108a; to State Treasurer for distribution.

Case Type	Docket Fee	Statute	State*	County	Law Library Fund	Pros. Attys. Fund	Aid to Indigent Def. Fund	LETC
Regular Civil	\$61.50 to \$66.50	60-2001	Balance	\$10.00	X	—	—	—
Limited Action or Small Claims Appeal	\$61.50 to \$66.50	61-2102 61-2709	Balance	\$10.00	X	—	—	—
Limited Action	\$500 or less \$16.50 to \$19.50	61-2501	Balance	\$5.00	X	—	—	—
Limited Action	\$500.01— \$5,000 \$36.50 to \$39.50 \$5,000.01— \$10,000 \$61.50 to \$64.50	61-2501	Balance	\$10.00	X	—	—	—
Foreign Judgment	\$61.50 to \$66.50	60-3005	Balance	\$10.00	X	—	—	—
Small Claims	\$16.50 to \$19.50	61-2704	Balance	\$5.00	X	—	—	—
(See limited action)	\$36.50 to \$39.50	61-2704	Balance	\$10.00	X	—	—	—
Probate, Estates	\$96.50 to \$99.50	59-104	Balance	—	X	—	—	—
Probate, Treatment	\$21.50 to \$24.50	59-104	Balance	—	X	\$1.00	\$0.50	—
Probate, Property	\$36.50 to \$39.50	59-104	Balance	—	X	—	—	—
Probate, Trust, etc.	\$56.50 to \$59.50	59-104	Balance	—	X	—	—	—
Probate, Adoption	\$36.50 to \$39.50	59-104	Balance	—	X	—	—	—
Probate, Transcript	\$11.50 to \$14.50	59-104	Balance	—	X	—	—	—
Murder or Manslaughter	\$153.50 to \$158.50	28-172a	Balance	—	X	\$1.00	\$0.50	\$5.00
Felony	\$123.50 to \$128.50	27-172a	Balance	—	X	\$1.00	\$0.50	\$5.00
Misdemeanor	\$93.50 to \$96.50	28-172a	Balance	—	X	\$1.00	\$0.50	\$5.00
Municipal Appeal	\$53.50 to \$56.50	28-172a	Balance	—	X	\$1.00	\$0.50	\$5.00
Traffic, Fish & Game, Watercraft	\$37.00 to \$40.00	8-2107 28-172a 32-1050	Balance	—	X	\$1.00	\$0.50	\$5.00
Juvenile	\$16.50 to \$19.50	38-1511 38-1613	Balance	—	X	\$1.00	\$0.50	—
Appellate	\$55.00	Sup. Ct. Rule 2.04	All	—	—	—	—	—

\* FROM THE BALANCE FORWARDED TO THE STATE, 5.12% goes to the juvenile detention facilities fund, 3.93% to the judicial branch education fund, 2.95% to the emergency services operating fund, 5.66% to the judiciary technology fund, and 82.34% to the State General Fund.

March 9, 1993

OPPOSITION TO DOCKET FEE INCREASES  
SENATE BILL 372 AND SENATE BILL 287

This statement has been prepared by Elwaine F. Pomeroy, on behalf of The Kansas Collectors Association, Inc., and on behalf of The Kansas Collection Attorneys. Kansas Collectors Association, Inc. is a statewide association of collection agencies. Kansas Collection Attorneys is a group of attorneys from various parts of the state whose law practices include considerable collection work.

The Kansas Collectors Association, Inc. and The Kansas Collection Attorneys object to using docket fees as a fund-raising mechanism, because of the burden it places on persons involved in lawsuits where small amounts of dollars are in controversy. Traditionally, the funding for our court system in Kansas has been from the general fund. We believe Kansas should return to that method of funding courts, and not use docket fees to fund other programs. We have seen a growing trend to fund other programs from docket fees. Several years ago, docket fees were increased and the proceeds were used to fund programs for children. The 1992 docket fee increase was related to filing of pleadings by fax. In 1993, Senate Bill 287 proposes to fund alternative dispute resolution programs, but provides for great increase in docket fees. Senate Bill 372 provides for increase in judicial salaries and also increases docket fees.

We feel the philosophy of funding these programs by docket fees is flawed. We are also concerned by the disproportionate burden that Chapter 61 cases would bear under such proposals.

The present docket fee for Chapter 61 cases where less than \$500.00 is in controversy is \$16.50; for cases where the amounts in controversy are between \$500.00 and \$5,000.00, the docket fee is \$36.50; and in cases where the amount in controversy is \$5,000.00 or more, the docket fee is \$61.50. The present docket fee for Chapter 60 cases is \$61.50.

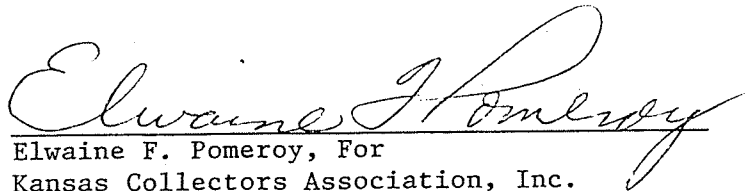
Senate Bill 372 would increase the docket fee for cases under \$500.00 by \$12.00, a 73% increase. Senate Bill 372 would provide for a \$22.00 increase for cases between \$500.00 and \$5,000.00, a 60% increase.

We also are concerned about the cumulative effect of Senate Bill 287 and Senate Bill 372. As indicated, Senate Bill 372 would increase the docket fees for cases less than \$500.00 by \$12.00; Senate Bill 287 would increase those docket fees by \$9.50; for a combined increase of the two bills of \$21.50, a 130% increase. For cases between \$500.00 and \$5,000.00, Senate Bill 372 provides a \$22.00 increase in the docket fees, and Senate Bill 287 provides an increase of \$5.50, for a total increase in those docket fees of \$27.50, a 75% increase over the present docket fees.

If the cost of access to the court system becomes too high, the merchants, the business establishments, and health care providers will be unable to pursue efforts to collect funds that are rightfully owed to them.

Another important aspect that should be considered is the extremely large number of cases filed under Chapter 61. A glance at the Shawnee County Docket Supplement as published weekly by the Topeka Metro News illustrates the large number of Chapter 61 proceedings. Shawnee County has thirteen district court judges. One of them handles virtually all of the Chapter 61 cases.

The Kansas Collectors Association, Inc. and The Kansas Collection Attorneys urgently requests the legislature not to increase docket fees. If it is determined that there needs to be an increase in docket fees, we would urge you to exempt Chapter 61 docket fees from any increases.

  
Elwaine F. Pomeroy, For  
Kansas Collectors Association, Inc.  
Kansas Collection Attorneys

### 5. Training.

Numerous groups offer basic mediation training, including the Family Mediation Association in Washington, D.C.; the Academy of Family Mediators in New York; Center for Dispute Resolution in Denver; and the Center for Development of Mediation and Law in San Francisco. Additionally, several individuals offer mediation training.

Standard training consists of forty hours of lecture, simulation, and practice mediation. Additional advanced training is available for those who have had the basic course and experience. In some jurisdictions, persons with certain degrees or experience may be qualified as mediators.

### 6. Costs.

Mediation, instead of litigation, of child custody can save the state money. One California study found that mediation administered through the conciliation courts in California cost one-fourth as much as a trial would for resolving custody disputes.\* In addition, before 1977 when San Francisco adopted mandatory mediation of child custody and visitation disputes, there were five hearings a day on contested custody. By 1980, there were five a year, which resulted in substantial savings to the judicial system as well as the litigants.

The Denver Custody Mediation project found substantial savings in court costs. Contested custody cases were found to cost over \$1,000 for bench time and \$528 for custody investigation. Mediation of those cases led to court costs of less than \$300 per case. In Los Angeles, one estimate found a savings of \$1,175,044 in court costs in 1978 by the conciliation court.

Mediation has the potential to be quicker and cheaper for the parties than using the judicial system. The cost for the initial mediation may be comparable to that of an initial legal consultation. Mediation services may equal in cost an attorney's fee for a divorce if the parties negotiate an agreement. If, however, the mediation reduces or eliminates the need for courtroom battles, then there is a substantial cost savings. Additional savings result from less postdivorce litigation.

In private mediation, the mediator sets his or her hourly rate. The hourly rate will be determined by the background of the mediator—psychiatrist or lawyer or sociologist. Fees range from \$35-\$150 an hour with the average being \$60-\$85 per hour. The parties pay the fee directly to the mediator.

In some states, there is no fee charged for mediation services that are connected with court services. In public mediation models through the court, the costs of mediation are assessed as costs in the case or free. Therefore, costs are considerably lower than private mediation. In some states a sliding scale is used even for court-provided mediation.

The Standards of Practice for Family Mediators do not allow contingency or outcome related fees."

From:  
Kansas Family Law  
Handbook  
Linda Elrod (1990)

FROM: JERRY BENEVENTI, KANSAS COMMITTEE FOR COMMUNITY  
MEDIATION

at request to Rep. Chronister Meeting 1-11-94