

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Vice-Chairman called the meeting to order at 9:41 A.M. on February 10, 2011, in Room 548-S of the Capitol.

All members were present, except Senator Donovan, who was excused

Committee staff present:

Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Jason Thompson, Office of Revisor of Statutes
Tamera Lawrence, Office of Revisor of Statutes
Theresa Kiernan, Committee Assistant

Conferees appearing before the committee:

Joe Molina, Kansas Bar Association (KBA)
Helen Pedigo, Special Counsel to the Chief Justice of the Kansas Supreme Court

Others attending:

See attached list.

The Vice-Chairman recognized Senator Lynn regarding a bill she previously had requested to be introduced.

Senator Lynn moved, Senator Bruce seconded, to withdraw her previous request for introduction of a bill relating to District Court Trustees and Title IV cases. The motion was adopted.

The Vice-Chairman called the committee's attention to information provided by Joe Molina in response to a question raised by Senator Vratil concerning the need for the "spendthrift trust" provision in **SB 36 -- Exemption from creditors for assets held in qualified retirement plans and regular and Roth individual retirement accounts** (Attachment 1).

Senator Owens took the chair.

The Chairman opened the hearings on **SB 45--Trusts; certification of trust.**

Jason Thompson, Staff Revisor, reviewed the bill.

Joe Molina testified in support of **SB 45**, which was introduced at the request of the KBA (Attachment 2). The bill would delete the requirement that the certification of a trust certification contain the rust tax ID number. Once filed, the certification becomes a public record available to third parties. There are other ways to identify a trust that are more secure and also protect the privacy of trusts and trustees and decrease the possibility of identity theft.

No testimony in opposition to **SB 45** was offered.

The Chairman called the committee's attention to the fiscal note for **SB 45**.

The Chairman closed the hearings on **SB 45**.

The Chairman opened the hearings on **SB 79 -- Debt setoff; collection assessment fee.**

Jason Thompson, Staff Revisor, reviewed the bill.

Helen Pedigo offered testimony in support of the bill on behalf of Deborah Poire, Clerk of the Coffee County District Court (Attachment 3). She stated the bill would amend the Kansas Debt Setoff Law. She stated the bill would allow the collection assistance fee to be paid as an additional cost for debts owed to a court in the same manner as the collection fee authorized under K.S.A. 75-719.

Senator Kelly asked, "How much money will the court collect under the bill?"

CONTINUATION SHEET

The minutes of the Judiciary Committee at 10:30 a.m. on February 10, 2011, in Room 548-S of the Capitol.

Kent Olson, Director of Accounts and Reports, who administers the debt setoff program, stated he would provide additional information for committee.

No testimony in opposition to **SB 79** was offered.

The Chairman called the committee's attention to the fiscal note for **SB 79**.

The Chairman closed the hearings on **SB 79**.

The Chairman opened the hearings on **SB 83 -- Judges and justices; employment of retirants.**

Jason Thompson, Staff Revisor, reviewed the bill.

Helen Pedigo offered testimony in support of the bill (Attachment 4). She stated that the bill would provide greater flexibility in managing the Senior Judge Program by deleting the provisions that require a judge to enter into a written agreement for employment under the Program either before retirement or within 5 years after retirement and within 30 days prior to the judge's retirement anniversary date.

No testimony in opposition to **SB 83** was offered.

The Chairman called the committee's attention to the fiscal note for **SB 83**.

The Chairman closed the hearings on **SB 83**.

The Chairman opened the hearings on **SB 97 -- Courts; court fees and costs; judicial branch surcharge.**

Helen Pedigo offered testimony in support of the bill (Attachment 5). She stated the bill would extend the sunset on the Judicial Branch Surcharge from June 30, 2011 to June 30, 2012. The surcharge provides funding for the Judicial Branch from a source other than the state general fund.

Written testimony in support of **SB 97** was submitted by Joe Molina, Kansas Bar Association (Attachment 6).

No testimony in opposition to **SB 97** was offered.

The Chairman called the committee's attention to the fiscal note for **SB 97**.

The Chairman closed the hearings on **SB 97**.

Committee Action:

The Chairman called the committee's attention to **SB 45 -- Trusts; certification of trust.**

Senator Bruce moved, Senator Kelly seconded, that SB 45 be passed. The motion was adopted.

The Chairman called the committee's attention to **SB 60 -- Eliminating direct appeals to the supreme court for certain off-grid felonies.**

The Chairman called the committee's attention to a copy of an email provided by Helen Pedigo in response to a question, relating to appeals from Jessica's Law cases in other states, raised by Senator Umbarger during the hearings on **SB 60** (Attachment 7).

Senator King moved, Senator Umbarger seconded, that SB 60 be passed. The motion was adopted.

The Chairman called the committee's attention to **SB 62 -- Assessment of court costs under the Kansas standard asset seizure and forfeiture act.**

Senator Vratil moved, Senator Schodorf seconded, that SB 62 be passed. The motion was adopted.

CONTINUATION SHEET

The minutes of the Judiciary Committee at 10:30 a.m. on February 10, 2011, in Room 548-S of the Capitol.

The Chairman called the committee's attention to **SB 97 -- Courts; court fees and costs; judicial branch surcharge.**

Senator Vratil moved, Senator Kelly seconded, that the sunset provision be deleted. The motion was adopted.

Senator King asked, "What are the consequences of making the surcharge a part of the docket fees?" Helen Pedigo responded, "The proceeds of the surcharge goes to court personnel; proceeds of docket fees are not used for the same purpose. In addition, the court would receive less money because the court does not receive all of the proceeds of the docket fees."

Senator Vratil moved, Senator Umbarger seconded, that **SB 97** be passed as amended. The motion was adopted.

Meeting adjourned at 10:25 A.M. The next meeting is scheduled for February 11, 2011.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: February 10, 2011

NAME	REPRESENTING
David Clark	Intern
Helene Pedraza	Counsel
Lisa Wilson	"
Brenna Duffy	Intern
Bruce Tunnell	AFL-CIO
Miranda Breen	Intern
Mandy Miller	SCS/KS
Melissa Ward	Hein Law Firm
Pam Fink	Dept of Admin
Kent Olson	Dept. of Admin.
Joe Molina	KS BAR ASSN
Whitney Jam	KS Sen Assn
Nathan Lindsey	Kearney + Associates
Kathy Olsen	KS Bankers Assn
Doug Smith	KCA/KCAA
Kenn Berore	Cap lobby



KANSAS BAR
ASSOCIATION

TO: The Honorable Tim Owens
And Members of the Senate Judiciary Committee

FROM: Joseph N. Molina
On Behalf of the Kansas Bar Association

RE: SB 36 – Amending K.S.A. 60-2308

DATE: February 10, 2011

Good morning Chairman Owens and Members of the Senate Judiciary Committee. I am Joseph N. Molina and I appear on behalf of the Kansas Bar Association to provide an answer concerning SB 36.

During the hearing on SB 36 Senator Vratil questioned the “spendthrift trust” provision contained in K.S.A. 60-2308(b). Sen. Vratil was interested in the need for such a provision. I have researched the request and found that creditors are prohibited from filing an attachment of assets contained within a spendthrift trust. This protects an exempt asset, such as qualified retirement plans, from creditors who would simply attach the asset and wait till the retirement plan is distributed. By presuming a qualified retirement plan is a spendthrift trust creditors are unable to circumvent the intent of the law.

On behalf of the Kansas Bar Association, I thank you for the opportunity to respond to questions concerning SB 36.

About the Kansas Bar Association:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 7,000 members, including lawyers, judges, law students, and paralegals. www.ksbar.org



**KANSAS BAR
ASSOCIATION**

TO: The Honorable Tim Owens
And Members of the Senate Judiciary Committee

FROM: Joseph N. Molina
On Behalf of the Kansas Bar Association

RE: SB 45 – Removing the Tax Identification number requirement from
K.S.A. 58a-1013

DATE: February 10, 2011

Good morning Chairman Owens and Members of the Senate Judiciary Committee. I am Joseph Molina and I appear on behalf of the Kansas Bar Association in support of SB 45 which amends K.S.A. 58a-1013 by removing the Tax identification number.

Originally it was necessary, under K.S.A. 58a-1013, to use the TAX ID number as a way to identify the Trust. However, when a Certification of Trust is filed it becomes a public record available to third parties. While the Tax ID number can still be used for this purpose more secure options are now available that increase privacy while decreasing the possibility of identity theft. It is the KBA's position that the TAX ID number of the trust is no longer necessary to identify the trust and should not be in a document that is placed in the public record.

Also, most register of deeds have a policy to remove or redact personal identifying information, such as social security numbers or TAX ID numbers, that appear in a filed document. By eliminating the Tax ID number in K.S.A. 58a-1013 Register of Deeds will no longer need to concern themselves with concealing this information, thereby saving time and resources.

In addition, many attorneys, abstracters or title insurance companies already request the TAX ID number of the trust in a separate affidavit that is required for IRS purposes. These affidavits are maintained privately by the particular attorney, abstracter or title insurance company.

By amending K.S.A. 58a-1013 to remove the TAX ID requirement we protect the privacy of the trusts and trustees while maintaining the ability of interested parties to ascertain the nature and property held in trust..

On behalf of the Kansas Bar Association, I thank you for the opportunity to appear before the committee in support of SB 45.

About the Kansas Bar Association:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 7,000 members, including lawyers, judges, law students, and paralegals. www.ksbar.org

Kathleen Collins, President

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SENATE JUDICIARY COMMITTEE
Senate Bill 79
Debt Set-off Collection Fee

TESTIMONY
By: Deborah Poire, Clerk of District Court
Coffey County District Court
Fourth Judicial District of Kansas
February 10, 2011

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of the Kansas Association of District Court Clerks and Administrators (KADCCA) regarding Senate Bill 79.

KADCCA is asking to amend K.S.A. 75-6210 to provide that the debt set-off collection assistance fee be paid as an additional cost for all debts owed to the court when a debt set-off procedure is utilized. Under current law, the 17 percent debt setoff collection assistance fee is paid from the amount collected, making the amount remitted to the court 17 percent less than the debt owed.

KADCCA would ask that the debt setoff collection assistance fee be identical to the debt collection fee authorized in K.S.A. 75-719, which is: "the cost of collection shall be paid from the amount collected, but shall not be deducted from the debts owed to the courts or restitution."

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*Ann Mcnett, Past President
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Senate Judiciary

2-10-11

Attachment 3



SUPREME COURT OF KANSAS

KANSAS JUDICIAL CENTER

301 SW 10TH AVE.

TOPEKA, KANSAS 66612-1507

HELEN PEDIGO
SPECIAL COUNSEL
TO CHIEF JUSTICE

PHONE: (785) 368-6327

FAX: (785) 291-3274

SENATE JUDICIARY COMMITTEE

Honorable Senator Tim Owens, Chair

Testimony in Support of

SB 83 Senior Judge Program Amendments

February 10, 2011

Thank you for the opportunity to testify in support of SB 83, which would amend current law regarding the Senior Judge Program. The Senior Judge Program was established by the 1995 Legislature. Through the program, The Supreme Court may enter into contracts with retired judges who agree to perform assigned judicial duties for 40 percent of each year, or 104 days. They are compensated at the rate of 25 percent of the current monthly salary of judges serving in the same position held by the retirant at the time of retirement. The program is a cost-effective way of providing judges to hear cases when there are conflicts and in other situations when an additional judge is needed, such as in the event of illness, when there are increased filings or complex cases that cannot be handled with existing judicial staffing, and in similar situations.

The proposed amendment to K.S.A. 20-2622 applies to judges who wish to serve as senior judges but who did not enter into a senior judge contract prior to retirement. Under current law, those judges may enter into a contract within five years after retirement *and* within 30 days prior to any anniversary date of retirement. This limits the potential pool of senior judge candidates from which the Supreme Court may choose in determining which judges will receive senior judge contracts. The Court is precluded from entering into a senior judge contract with any judge who did not enter into a contract prior to retirement who has been retired for more than five years. Moreover, the time during which the Court may enter into a contract with judges who have not entered into a contract prior to retirement is limited to 30 days prior to any anniversary date of the judge's retirement. The Court normally contracts with senior judge at the beginning of each fiscal year for a full-year contract. The 30 day requirement means that, if the senior judge did not retire at or near the end of a fiscal year, the Court would have to enter into a contract with that judge at another time in the fiscal year that is 30 days prior to that judge's retirement anniversary date.

A recent situation illustrates the difficulty that can arise under the requirements of current law. Midway through the current contract year, a senior judge recently gave notice that he was unable to fulfill the terms of his contract. Because demand for the services of senior judges has

Senate Judiciary
2-10-11
Attachment 4

been high and because that senior judge had been assigned to a number of ongoing cases, the Court sought to fill the unexpired term of his contract. The Court was limited in the number of retired judges from whom it could choose because it could select only from the pool of judges who had been retired for five years or less and who were within 30 days prior to their anniversary retirement date. Although the Court was fortunate in that several well qualified retired judges met both criteria, at other times during the year there would have been few, if any, retired judges who met both criteria who could quickly enter into a contract.

SB 83 would provide greater flexibility in managing the Senior Judge Program. Thank you again for the opportunity to testify in support of SB 83, and I would be happy to stand for any questions you might have.



SUPREME COURT OF KANSAS

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TO CHIEF JUSTICE

SENATE JUDICIARY COMMITTEE

Honorable Senator Tim Owens, Chair

Testimony in Support of

SB 97 Judicial Branch Surcharge Extension

February 10, 2011

Thank you for the opportunity to testify in support of SB 97, which would extend the sunset on the Judicial Branch Surcharge one year from June 30, 2011 to June 30 2012.

Both the statutes regarding the surcharge and the order authorizing the surcharge are effective only to the end of the present fiscal year. The Division of Budget requested that the surcharge be included in the Judicial Branch FY 2012 budget request, although it is set to expire at the end of FY 2011. We complied with that request. For FY 2012, \$9 million in surcharge revenue is included in the budget submitted for the Legislature's consideration.

Enactment of SB 97 would allow the surcharge to remain in effect for FY 2012, helping to fund the court system. Even with the surcharge, the Judicial Branch will continue holding 75 – 80 positions open throughout the fiscal year.

The 2009 Legislature considered a \$10 Judicial Branch Surcharge as a way to provide funding for the Judicial Branch budget, which was significantly underfunded. 2009 SB 66 authorized the Supreme Court to impose an additional charge, not to exceed \$10, on specified docket and other fees, to fund the cost of nonjudicial personnel. 2009 SB 66 also created the Judicial Branch Surcharge Fund, into which surcharge amounts are deposited.

The 2010 legislature, in HB 2476, increased surcharge amounts to a range of between \$10 and \$17.50, effective July 1, 2010. The Judicial Branch Emergency Surcharge was a fee that was charged in addition to the statutory docket fee when cases were filed. The revenue generated from the Emergency Surcharge kept Kansas courts open and operating. The Emergency Surcharge was in effect April 1, 2002, through fiscal year 2006. At that time, the state's fiscal situation had improved and the Legislature was able to fully fund the courts. Therefore, during the 2006 legislative session SB 180 was enacted, which stated that docket fees would be set by the Legislature and no other fee would be charged. Given the fiscal crisis the state is experiencing, the 2009 and 2010 Legislatures revisited the idea of a surcharge, enacting

2009 SB 66, and 2010 HB 2476, which contains the current surcharge. The surcharge allows the Legislature to use funds that otherwise would be appropriated to the Judicial Branch for other necessary expenditures, while helping to keep the courts open and functioning. The Court does not view the surcharge authority as permission to increase fees to fund enhancements or even operations when they choose. It is viewed as a temporary stopgap measure to react to severe underfunding. The Legislature is the appropriating body, and should remain so. The surcharge is a method through which additional fees can be generated that, for the specified time period, will take the place of State General Fund financing for the Judicial Branch.

We ask that you consider this bill favorably. Thank you again for the opportunity to testify in support of SB 97, and I would be happy to answer your questions.



**KANSAS BAR
ASSOCIATION**

TO: **The Honorable Tim Owens, Chair**
 And Members of the Senate Judiciary Committee

FROM: **Joseph N. Molina**
 On behalf of the Kansas Bar Association

RE: **SB 97 – Extending the judicial branch surcharge fee**

DATE: **February 10, 2011**

Good morning Chairman Owens and Members of the Senate Judiciary Committee. I am Joseph N. Molina and on behalf of the Kansas Bar Association I provide this written testimony in support of SB 97 which would extend the current judicial branch surcharge fee till June 30, 2012.

The KBA is acutely aware of the inadequate funding of most governmental agencies and institutions, and it is especially conscious of the continuing struggles facing the Judicial Branch. An adequately funded court system ensures a citizen's right to meaningful access to the courts. A properly funded judicial system also allows for the efficient application of the legal process for lawyers and litigants. If the surcharge fee is allowed to sunset on June 30, 2011, the judicial branch could suffer a significant financial hardship and in turn subject Kansans to an inefficient court system.

The KBA recognizes and appreciates the steps taken by our Judicial Branch to deal with their fiscal situation. The Judicial branch continues to show sound fiscal discipline by continuing measures designed to weather difficult financial times. The Judicial Branch continues with a hiring freeze from last year, reducing travel and instituted other efficiencies throughout the court system. The additional money generated from last year's surcharge fee increase is one of the steps used by the Judicial Branch. However, to maintain the level of stability created from past budget saving measures the surcharge fee needs to be maintained. By extending the surcharge fee for an additional year the Judicial Branch will avoid another round of furloughs to non-judicial personnel.

On behalf of the Kansas Bar Association, I thank you for your time this morning and would be available to respond to questions.

About the Kansas Bar Association:

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Senate Judiciary
2-10-11
Attachment 6

Helen Pedigo

From: Helen Pedigo
Sent: Tuesday, February 08, 2011 8:11 AM
To: Senator Owens
Cc: 'Theresa Kiernan'
Subject: SB 60 Eliminating Direct Appeals to the Supreme Court

Good morning, Senator Owens,

In response to Senator Umbarger's question regarding how Florida handles Jessica's law cases, below is the reply from the Public Information Office of the Florida Supreme Court. Only death penalty cases have direct appeals to the Florida Supreme Court. I hope this adequately answers the question. Please contact me if I can be of further assistance.

Helen Pedigo

Special Counsel to Chief Justice Lawton R. Nuss
Kansas Judicial Center
301 W. 10th
Topeka, Kansas 66612-1507
785-368-6327

From: Craig Waters [<mailto:watersc@flcourts.org>] **On Behalf Of** Public Information
Sent: Tuesday, February 08, 2011 7:56 AM
To: Helen Pedigo
Subject: RE: To the Supreme Court

Florida only has direct appeal to its Supreme Court in cases in which the death penalty is imposed. All cases involving life or lesser sentences first go to the lower appellate courts. This is established by our Constitution and thus could only be changed by a constitutional amendment.

Craig Waters
Communications Counsel
Florida Supreme Court
850-414-7641