



SUPREME COURT OF KANSAS

KANSAS JUDICIAL CENTER

301 SW 10TH AVE.

TOPEKA, KANSAS 66612-1507

PHONE: (785) 368-6327

FAX: (785) 291-3274

HELEN PEDIGO
SPECIAL COUNSEL
TO CHIEF JUSTICE

SENATE JUDICIARY COMMITTEE

Honorable Senator Tim Owens, Chair

Request for Introduction

January 18, 2010

Mr. Chairman, and committee members, thank you for the opportunity to request that legislation be introduced through this committee. I would like to request the following six bills:

1. Judicial Branch Surcharge - The current Judicial Branch surcharge will expire on June 30, 2011. The Judicial Branch FY 2012 budget request is based upon continuing the surcharge, and legislation is required to extend it into FY 2012.
2. E-Filing Issues - Two amendments regarding e-filing are requested. The first amendment would be to K. S. A. 60-2601a to clarify that the Supreme Court, rather than the chief judge of a judicial district, would issue an order stating when records and information would be maintained in a computer information storage and retrieval system, rather than in dockets and journals. The second amendment should be to K. S. A. 60-2601(d) and would delete language that refers to the clerk keeping papers filed in each case carefully enveloped in a wrapper or folder and that requires to clerk to initial time and date stamps. Under the amendment, clerks would record the date and time of receipt of all filings. Both amendments should be included in one bill.
3. Debt Setoff Provision - The Kansas Association of District Court Clerks and Administrators (KADCCA) requests amendment to K. S. A. 75-6210, to provide that the debt setoff collection assistance fee shall be paid as an additional costs for all debts owed to the court when the debt setoff procedure is utilized. This would make the debt setoff collection assistance fee that same as the debt collection fee authorized by K. S. A. 75-719. K. S. A. 75-719 provides that "the cost of collection shall be paid from the amount collected, but shall not be deducted from the debts owed to courts or restitution." This amendment would allow clerks to collect the full amount of the debt owed to the court in debt setoff cases. Under current law, the debt setoff collection assistance fee is paid from the amount collected, and the amount remitted to the court is approximately 15 percent less than the debt owed.
4. Assessment of Court Costs in Asset Forfeiture Cases - KADCCA's second request for a bill introduction would amend K. S. A. 2009 Supp. 60-4107 and K. S. A. 60-4109 to provide that court costs, which in most cases would include only the docket fee, may be assessed by the court in asset forfeiture cases.
K. S. A. 2009 Supp. 60-4107 (b)(3) provides that "[f]ilings or recordings made pursuant to this act are not subject to a filing fee or other charge." K. S. A. 60-4109(b) provides that [t]he

aintiff's attorney, without a filing fee, may file a lien for the forfeiture of property upon the initiation of any civil or criminal proceeding relation to conduct giving rise to forfeiture under this act or upon seizure for forfeiture." Moreover, K. S. A. 60-2005 exempts the state of Kansas and all cities and counties from payment of the docket fee bur further provides that, "if the costs are assessed against the state of Kansa or any city or county in this state in any such action, such costs shall include the amount of the docket fee prescribed by K. S. A. 60-2001 together with any additional court costs accrued in the action."

The Asset Seizure and Forfeiture Act provides in K. S. A. 2009 Supp. 60-4117 that the proceeds of any sale shall be distributed in a prescribed order of priority, and includes "sale and court costs" as an item that may be paid in the second order or priority. While this provisions appears to allow the assessment of the docket fee when forfeited assets are actually sold, there appears to be no express authority for the court to assess the docket fee when the object of the forfeiture proceeding is cash and on o sale occurs. The proposed amendments to K. S. A. 2009 Supp. 60-4107(b)(3) and 60-4109(b) would provide that "court costs may be assessed and, if so, shall include the amount of the docket fee prescribed by K. S. A. 60-2001 and amendments thereof, together with any additional court costs accrued in the action.

5. Senior Judge Program Amendment - An amendment is requested to K. S. A. 20-2622, which established the Senior Judge Program. The first amend would strike from current law the requirement that retirants who which to serve as senior judges enter into written agreements *within thirty days prior to any anniversary date of retirement*. This requirement applies only to judges who did not enter into a senior judge contract prior to retirement. The amendment would mean that judges who have been retired for five years or less would be eligible to enter into senior judge contracts at any point during the year and that they would not have to wait until thirty days prior to a retirement anniversary date to enter into a contract.

In addition to the amendment noted above, the second proposed amendment would also strike from current law language that limits to within five years after retirement the participation of judge who did not enter into a senior judge contract prior to retirement. This would allow the Court to enter into a senior judge contract with any retired judge, rather than limit consideration to only those judges who have been retired for five years or less.

6. Direct Appeals of Jessica's Law cases - Amendment to K.S.A. 22-3601 is requested to ensure that direct appeals on behalf of criminal defendants who are sentenced pursuant to Jessica's Law or departures from it go first to the Court of Appeals rather than the Supreme Court. More than thirty Jessica's Law cases have been heard so far by the Supreme Court, and many of the novel legal issues that inevitably arise out of new legislation with such far-reaching effect are already settled. Continuing to require that these particular off-grid offenses or departures come to the Supreme Court rather than the Court of Appeals in the first instance is no longer necessary. In addition, the influx of Jessica's Law cases tends to delay other important cases already designated for initial Supreme Court review, for example, other off-grid criminal offenses, including capital cases; federal certified questions; original actions such as mandamus and quo warranto; and eminent domain matters. Decisions in significant civil cases transferred to the Supreme Court also may be delayed, as may decisions in matters accepted for discretionary review after an opinion has been issued by the Court of Appeals. Frequently, these transfer and petition for review cases concern issues in particular need of the final decision the Supreme Court must provide. In short, the requested amendment to K.S.A. 22-3601 will correct the tendency of Jessica's Law cases, which are regrettably numerous, to clog the Supreme Court's docket, even when the legal issues they raise are no longer subject to much dispute.