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**January 25, 2012**

**Senate Judiciary Committee  
Testimony of Audrey B. Magaña  
Senate Bill 283 – Sheriffs, civil process fees**

**My testimony is presented in opposition to that portion of the Senate Bill 283 which would amend K.S.A. 2011 Supp. 28-110 (g) to require the state and municipalities to pay service of process fees when the state or municipality is represented by a “nongovernmental firm” performing debt collection.**

**Since 1997 my law firm has represented the Secretary of the Kansas Department of Social and Rehabilitation in the performance of the Secretary’s responsibility to enforce family support obligations pursuant to Part D of Title IV of the Social Security Act. The Secretary is our firm’s only client. Our firm has offices in El Dorado, Salina, and Wellington, Kansas, providing legal services for judicial districts Thirteen (13), Twenty-eight (28), and Thirty (30), composing a ten (10) county service area. Approximately six thousand six hundred (6,900) support orders are monitored and enforced by these offices. Our firm estimates that on a monthly basis approximately 153 documents prepared by our firm which could incur the proposed process service fee are processed by sheriffs.**

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**If the amendment to K.S.A. 2011 Supp. 28-110 (g) is enacted my firm's monthly expense for service of process fees will be approximately four thousand, five hundred and ninety dollars (\$4,590.00). Over the course of a year this expense would be approximately fifty-five thousand, eighty dollars (\$55,080.00). Because checks do not write themselves, check books do not balance themselves, computer systems do not program themselves, equipment and supplies for check writing are not cost free, I estimate that our firm will incur approximately five thousand, five hundred dollars (\$5,500.00) of added annual expense beyond the cost of the service fee paid to sheriffs. Thus, in our small firm's representation of the Secretary for one year, the estimated expense of compliance with the proposed amendment of K.S.A. 2011 Supp. 28-110 (g) would be sixty thousand, five hundred eighty dollars (\$60,580.00).**

**The following illustration displays how the cost of operating state government would be increased by enactment of the proposed amendment to K.S.A. 2011 Supp. 28-110 (g).**

**To obtain a contract to perform the legal services such as those provided by our firm to the Secretary of the Department of Social and Rehabilitation Services, a firm submits a response to a request for proposal (RFP) issued through the Kansas Department of Administration for an issuing agency. In the request for proposal (RFP) the state defines the service it wants a vendor to perform. Potential vendors calculate the cost to perform**

**the service, including an added amount for its profit. The issuing agency then selects the successful bid based upon many factors, not the least of which is “price/cost”.**

**If the proposed amendment to K.S.A. 2011 Supp. 28-110 (g) is enacted, when future requests for proposals (RFP’s) for support enforcement services are issued by the state, the costs which will have to be considered by all competent “nongovernmental firm” vendors will necessarily include service of process fees and related costs. Thus, in the instance of support enforcement contracts, the state will ultimately end up paying the service of process fees and related costs even though the state is represented by a “nongovernmental firm”.**

**As a separate and more legalistic consideration of the proposed amendment to K.S.A. 2011 Supp. 28-110 (g), in relation to the Kansas IV-D support enforcement program, I question whether such an enactment would create a possible constitutional issue or instigate litigation concerning equality of services.**

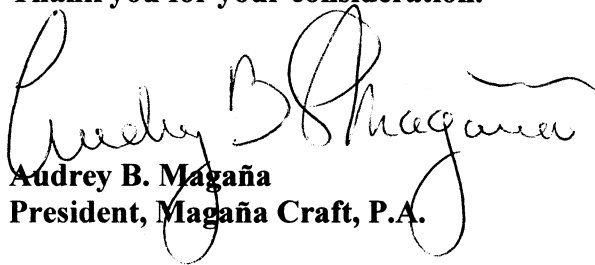
**If the proposed amendment to K.S.A. 2011 Supp. 28-110 (g) is enacted the result will be that recipients of IV-D enforcement services will be broken into two distinct classes. One class will be recipients of IV-D services performed by attorneys employed by governmental agencies who do not pay a service of process fee. The other class will be recipients of IV-D services performed by attorneys employed by for profit “nongovernmental firms.” Thus the following question is posed. Will the class differential**

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result in a disparate impact on the service received by the recipients of IV-D services performed by attorneys employed by for profit “nongovernmental firms”? I would hope not, but from these distinctions equal protection and class action lawsuits arise. Should such a lawsuit be filed the defendants would be the “nongovernmental firms” and the state. As general counsel to my firm I will do everything possible to ensure that the firm appropriately prosecutes the support orders it assigned for legal action. Unfortunately, doing everything right does not immunize one from having to defend a lawsuit.

I request that the proposed amendment to K.S.A. 2011 Supp. 28-110 (g) be stricken from SB 283, or that “debt collection” be defined within the meaning of the act to except IV-D support enforcement services from the definition of “debt collection.”

Thank you for your consideration.



Audrey B. Magaña  
President, Magaña Craft, P.A.