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HONORABLE EDGAR C. BENNETT

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FOREWORD

In this issue, we print an article entitled "The American Bar, or Missouri Plan for Selection of Judges" by the Honorable Edgar C. Bennett, who has served as judge of the Twenty-first Judicial District since January, 1932, and as a member of the Judicial Council since 1938. Judge Bennett's decision to retire from the bench is regretted not only by the lawyers of his judicial district, but by the bar of the entire state.

At the suggestion of Chief Justice W. W. Harvey, we are reprinting in full the Canons of Professional Ethics, as adopted by the American Bar Association and the Bar Association of the state of Kansas, and cited with approval by the supreme court of this state. These are supplemented by annotations to cases in the Kansas Reports, the Attorney's oath adopted by the supreme court, and a short explanatory preface, all by Melvin R. Quinlan, of the Topeka bar. Mr. Quinlan, who formerly lived in Lyons, Kan., is the son of L. E. Quinlan, former judge of the Twentieth Judicial District. After five years service in the Navy in World War II, he was admitted to the bar in 1949, and is an associate in the office of Dean & Dean, of Topeka.

We are also printing an article and proposed statute by Kenneth V. Moses, of the Marysville bar, under the title "The Forcible Entry and Detainer Statute Needs Legislative Attention." The Council was fortunate to secure the services of Mr. Moses to study this matter, as part of our research program, and we hope that his article will be given careful consideration by the bar and by the next legislature. Mr. Moses is also a veteran of World War II, and was admitted to practice in 1941.

THE AMERICAN BAR, OR MISSOURI PLAN FOR SELECTION OF JUDGES

I am happy to accept Judge Thiele's invitation to write an article on a subject of my own choosing for the JUDICIAL COUNCIL BULLETIN. It was to be in the nature of a swan song because of my announced intention to retire from the bench before I "got beat." I have selected a subject which has given me much concern for several years, "Security of Tenure for Judges." With great forbearance on my part, the hysterics which the circumstance of my own retirement arouses, in my own mind at least, will be omitted. Suffice it to say that several of the most recently resigned district judges have told me that they would have remained on the bench if the security, tenure and old age were better provided for.

From the advent of constitutional government the problem of the selection and tenure of the judiciary has plagued the American people. From the beginning there were two opposing schools of thought on the problem; one, that judges should be appointed by the executive for life or good behavior; the second, that they should be elected by popular vote for short terms. The first argued that executive appointment for life tenure made for a strong and independent judiciary—the surest safeguard of the constitution and the rights of the people; while the other held it made judges aloof from the needs and temper of the people, inclined them to be overbearing or negligent in their duties, and that strength and independence in the judiciary, though a good thing in moderation, when carried to the extreme was bad. The federal constitution and most of the early state constitutions adopted the first method; but beginning about 1830 in the Jackson period, the states began to go over to the second method, and popular election of judges for short terms long since became and remains the dominant method of judicial selection in the states.

Experience has shown that election for short terms, no less than executive appointment for life, is far from satisfactory.

It perforce puts the judge in politics, not only in securing his first election but continuously if he makes a career of the bench. It makes the judge more or less dependent on party power and favor, which bears hard against his most needful quality—a strict impartiality. Moreover, it tends to prevent the selection for the bench of the best qualified men, because many who would make excellent judges are unwilling to undertake the political activity connected with the position, or to run the risk of being cut short in their judicial careers, no matter how meritoriously they may have performed their functions, by a shift in the political winds or the caprice of party favor, over neither of which a judge has, or should have, much control; and too many times it has been noted that the qualities of character and temperament which will make a successful candidate, do not make a good judge.

Potent as have been the faults of our popular election of judges, there has been little inclination on the part of the states to swing back to the federal system—seemingly the only alternative. What everyone has long felt was the need for some new system which would retain the benefits and

get rid of the flaws of both old systems, perhaps adding some novel merits of its own. But new systems, like new inventions, no matter how simple they may appear when they eventually evolve, do not come easy, nor are they always recognized when they arrive.

The American Judicature Society was struggling with this problem in 1914, when one of its contributors, Prof. Albert M. Kales of Northwestern University Law School, came forth with a blueprint for an entirely new method of selecting the judiciary. It was one of those flashes of inspiration which have a way in Democracy of emerging when a need exists; yet the plan lay dormant and largely unnoticed for many years. In 1937, the Committee on Judicial Selection and Tenure of the American Bar Association, headed by John Perry Wood of Los Angeles, Cal., submitted the old Judicature Society proposal to the House of Delegates for action.

The plan made a startlingly favorable impression on the House of Delegates. It was adopted as the official recommendation and program of the American Bar Association, and forthwith hailed as the simple, long-sought solution of the ancient American problem of the judiciary. But still it was merely a formula. It looked good on paper but it was theory, and theory is one thing and actual practice another.

Mr. Justice Brandeis, in *New State Ice Co. v. Liebmann*, 285 U. S. 262, 76 L. ed. 747, 52 S. Ct. 371, in his dissenting remarks observed:

"It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."

To our sister state on the east must go the credit and thanks of the nation for serving as a testing ground for the new plan. It was adopted by the people of Missouri as an amendment to their constitution in 1940, and has since remained a part of their basic law. Mr. Justice James M. Douglas of the Supreme Court of Missouri, who has worked on the plan and had the plan worked on him, explains it in the American Bar Journal of December, 1947:

"The plan provides for two sorts of selection or Nominating Commissions called Judicial Commissions. The Appellate Judicial Commission selects nominees for all appellate Courts. Then there are Circuit Judicial Commissions, one for each judicial circuit included in the plan.

"The Appellate Judicial Commission is composed of three lawyers who are elected, one from each Court of Appeals district, by a mail vote of the lawyers residing in each district; three laymen, one from each Court of Appeals district; appointed by the Governor. The seventh member is the then Chief Justice of the Supreme Court, ex officio, who is the Chairman of the Commission. The office of Chief Justice is rotated among the seven judges of the Supreme Court by their own balloting.

"The Circuit Judicial Commissions for the two Circuit Courts have five members each. Two lawyer members are elected by the Bar of the Circuit; two lay members are appointed by the Governor; and the fifth member is the Presiding Judge of the Court of Appeals of the district in which the circuit is located, ex officio, who acts as chairman.

"The members, other than the chairman, have six-year terms, staggered so that no more than one term ends in the same year. Members are not eligible to succeed themselves and serve one term only.

"No member of a commission, other than the chairman, may hold other public office and no member may hold any official position in any political party.

"Whenever a vacancy occurs in any judicial office affected by the plan, the following three steps for nomination, appointment, and election are taken:

(1) The appropriate judicial commission selects three persons possessing the qualifications of the office, and submits their names to the Governor;

(2) The Governor must appoint one from the three submitted, to fill the vacancy;

(3) After the person so appointed has served a probationary period of at least twelve months, he must then be voted on by the people at the next general election. At such election he has no opponent, but runs on his record. His name is placed on a separate judicial ballot without party or political designation, in the following manner:

Shall Judge..... of the.....
Court be retained in office?

"If the vote is favorable, he (incumbent) then serves a full term thereafter—six years for a Circuit Judge, twelve years for an Appellate Judge. But if the judge be not retained, then the nominating and appointing procedure is again invoked.

"Thus the judge runs against no political opponent, against no political party or policy, but runs only on his record of service on the bench. Unless the record is corrupt or obviously inefficient, there is every reason to expect that he will receive a favorable vote.

"The Judges on the bench at the time of the adoption of the plan continue to serve out their regular terms. If such a judge desires to run for re-election upon the expiration of his term, he merely files his declaration of candidacy for re-election, and his name is placed on the judicial ballot without further action of any kind. He is voted on at a general election in the same manner as a newly appointed judge: "Shall Judge of the Court be retained in office?" His candidacy for re-election is not subject to any action by the Judicial Commission.

"A Judge who has been elected under the plan runs for re-election in the same manner. His candidacy for re-election is not subject to any action by a Judicial Commission. In both instances the judges run for re-election on their records, as in the case of a newly appointed judge whose record is passed on by the voters for the first time. Of course, should a judge running for re-election not be retained in office, then a vacancy would arise, and the procedure for selection and appointment provided by the plan would be invoked to fill the vacancy.

"The constitutional amendment embodying the Court plan contains a direct prohibition against political activity by a judge whose office is covered by the plan. He may not directly or indirectly make any contribution to any political party. He may not hold any office in a political party. He may not take part in any political campaign."

When a group of St. Louis attorneys and laymen decided in 1940 to get behind the new plan and try for its adoption as an amendment to the constitution they organized committees in every county to obtain signatures for the necessary petitions and explain the plan to the people. Missouri's professional political crowd, detecting in the plan an odor of the schoolroom, took an instinctive dislike to it, but concluded there was little to worry about. They miscalculated the people's deep concern and interest in the administration of justice. The proposed amendment carried by a majority of 90,000 votes. The politicians then went to work in earnest and pushed through the legislature another constitutional amendment repealing the plan. This was submitted to the people in 1942. The plan was retained by a majority of 180,000. For the third time in 1945, the people voted on the plan when it was incorporated in a proposed brand new Missouri constitution. That the new constitution carried by a comfortable majority is attributed by Missourians in large part to

the popularity of its articles on the selection of the judiciary plan, now sometimes called the Missouri Plan, being in operation for some years. The theory stage is over, and it has become hard fact.

In an article of this nature one can do no more than summarize the appraisals of the Missouri Plan by others who have studied it more expertly, and try to stimulate the bar to an active interest in shaping and adopting the plan to Kansas needs.

To return to the two schools of thought previously mentioned—the appointive life-term school, and the elective short-term school, historically, the controversy between these schools has been a controversy between conservatives and liberals. John Marshall, the conservative, believed “that the greatest scourge on an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent judiciary.” As against this, Jefferson asserted: “I regard the court as a subtle corps of sappers and miners, who if left unrestrained, taking a little here and gaining a little there, will eventually undermine the liberties of the American people.” And so it has gone on in this country, with varying degrees of heat, to the present time.

It is not the purpose of this article to take a stand with either of these philosophies. One great blessing of the Missouri Plan is, of course, that it is a compromise. If it does no more than settle, once and for all, the eternal political squabble over the judiciary that has harassed this country from its beginning, it will have earned a fair name.

As for the details of the compromise itself, it must be confessed that those on the appointive side would seem to get a little the better bargain. A judge running for reelection on his record is not likely to be cast out unless his record is pretty bad, and most judge's records are not that bad. It has a tendency toward life tenure for the good judge, as has already been demonstrated in Missouri. There is one conspicuous instance under the plan where a judge in Kansas City, Mo., failed of reelection.

The plan has been seriously discussed in Kansas for several years and was offered to the 1949 legislature, although it failed to emerge from committee. The recent session of the Kansas State Bar Association, held in Wichita in May, 1950, took action favoring the principles of the plan and directed the appointment of a committee to adapt it to the Kansas political philosophy which presumably will be done in time for its consideration in the 1951 legislature. At the same time the Kansas District Judges' Association went on record as favoring the principle and urged the action taken by the Bar Association.

To some extent desirable replacement of judges under the Missouri Plan may be a little more difficult than under the elective system, but when accomplished it will be on a basis of merit rather than politics. On the other hand, it certainly is easier than impeachment under the appointive system.

To those who fear that Kansas people would not take kindly to a system of appointing judges, a poll was taken at the recent meeting of the District Judges' Association. Of thirty-two judges present, twenty took office initially by appointment, and twelve by election.

For the consolation of those of the elective suasion, recommended reading is the final chapter of Haynes' excellent study, “The Election and Tenure of Judges” (National Conference of Judicial Councils, Judicial Administration Series, 1944), entitled: “Are Elected Judges More Liberal?” The author reviews the cases and demonstrates rather conclusively that they are *not*.

But whether the new plan would tend toward liberal or conservative judges, the inescapable fact is, as Haynes says in his book, "that ninety-nine cases out of a hundred do not touch any question of social policy that can be affected substantially by the judges who decide them. But they do require a capacity to administer what is probably the most intricate body of law in the world. And every lawyer knows that only exceptional men are equal to the task, and that incalculable harm is done, not only to the litigants but to the community as a whole, when the character and ability of the men on the bench is inferior."

Perhaps Roscoe Pound's apt remark is now apropos: "Too much thought," he said, "has been given to the matter of getting less qualified judges off the bench. The real remedy is *not* to put them on." Here it is that the American Bar or Missouri Plan stands head and shoulders over the traditional systems. The novel nominating scheme whereby the appointing authority is restricted in his appointment to candidates named by a select commission composed of lawyers and laymen, practically guarantees a good appointment. It goes without saying, moreover, that the troublesome problem under the elective system of persuading qualified lawyers to give up their practice and assume the bench, will generally cease to exist. For a dozen lawyers who would not take to the hustings for a position on the bench, hardly one would refuse to allow a nominating commission composed of his fellow lawyers and qualified laymen to submit his name for consideration.

While it is true, under the plan, that in the early years of its operation it may result in the retention on the bench of some undesirable judges who would be replaced earlier under an elective system, the comments of a Missouri lawyer on this point deserve consideration:

"So far, the working of the plan has inclined against rejection. Conspicuous unfitness with organized attack by the press and probably the Bar would be necessary to accomplish rejection. This means, I think, that the innovation cannot pay dividends on a short-term test but belongs in the category of those constructive measures of statesmanship which look forward into the future. The two benefits definitely observable are these: (a) Improved attitude and independence of the judiciary immediately; (b) Gradual replacement of judges selected under ancient systems of political partiality by men chosen one by one, through the years, by use of a mechanism which reduces political favoritism to a minimum and emphasizes temperamental and professional fitness."

In pouring through a random score or more of articles and reports in various law journals covering the Missouri Plan, one cannot but be impressed with unanimity with which the plan is acclaimed, and the almost complete absence of unfavorable opinion toward it. One is reminded that the plan combines the best features of both the appointive and elective system; that the nominating commissions have without exception been composed of men of the highest standing and ability who have performed their functions with skill and efficiency; that all nominees submitted to the Governor have been such that he could have picked from them by lot and not gone wrong; that judges have been concerned to make good records, have improved their learning and courtroom demeanor, and have worked to bring and keep their dockets up to date; that it has definitely taken the courts out of politics; that political parties have learned to respect the system and have made no efforts to influence elections under it; that good lawyers who formerly dis-

dained the bench as a career are beginning to change their attitude; that the people believe in the plan and their confidence in the courts has increased tremendously.

Then we remember the old days in Missouri described by Dean Pound, when one saw "flaming bill-board advertisements of candidates for judicial office, sometimes with promises of what the candidate will do as judge, and what is quite as unseemly, advertisements in the press endorsed by trial lawyers who practice in the particular court," and one is persuaded to agree with Pound that "such things are not merely unseemly. They tend to create suspicion of the basis of judicial action, which should be only the law and the evidence, not political expediency."

Discussion with many persons interested in bettering the judiciary in any way possible finds the idea frequently advanced that the plan would be better adapted to Kansas if the appointment to fill such vacancies as will occur, were to be made by the chief justice of the supreme court rather than by the governor. There can be little doubt that lodging the appointive powers with the chief justice rather than the governor, would better assure the removal of the appointing power from the political arena.

It is my firm belief that the people of Kansas are ready to take this step to guarantee an able, independent judiciary. Based upon my own experience in making political campaigns for a judicial office, the often expressed thought, not by politicians, not by lawyers, but by citizens—thinking citizens—"Why does a judge run for office as a Republican or a Democrat?" impels this conclusion. The people look to us to lead and unless we do lead in such endeavors as this, we may further lose our place as leaders.

To those who doubt, may we propound this question: Do you really think a judge should be a politician?

THE CANONS OF PROFESSIONAL ETHICS

(With Annotations to Decisions of the Kansas Supreme Court.¹)

Preface

In 1908 rules for the guidance of lawyers in their professional conduct, designated as the Canons of Professional Ethics, were adopted by the American Bar Association.² Promptly following the lead of the American Bar Association, the Bar Association of the state of Kansas approved these Canons in 1909.³ In 1917, the president of the Kansas Bar Association recommended a wide publication of the Canons to the bar and to the public. He said:⁴

"This magnificent and inspiring code should be brought to the direct attention of every member of the Bar of this state, as well as of every litigant in its courts, by having printed in proper form for framing, a card with the entire Code of Professional Ethics printed upon it in such type as may be readily read, and hung in a conspicuous place in every court room of the respective courts of each county in Kansas. In addition thereto provision should be made for its publication throughout the state; or at least a synopsis of the same should be brought to the attention of the public."

Pursuant to this recommendation, publication of the Canons by the Kansas Bar Association was ordered.⁵

Early recognition of the Canons was given by the Kansas supreme court. Beginning in October, 1920, they were printed in the court's monthly docket, and in that same year they appeared in volume 107 of the Kansas Reports.⁶ In 1922, in the case of *Judy & Gilbert v. Railway Co.*, 111 Kan. 46, 205 Pac. 1116, the court, in discussing Canon 28, said, at page 50:

"This rule is not statutory, but, in the matter of procuring business, it expresses the reasonable ideals of the able lawyers of the state and of the nation. This court has so far approved the rule that it has been regularly and continuously published in the monthly docket since October, 1920."

The Canons, as amended and enlarged, are here presented together with annotations to relevant decisions of the supreme court of Kansas. In addition, the Attorney's Oath,⁷ with annotations, is included.

The annotator makes no claim that the annotations appearing on the following pages are exhaustive, and has no doubt but that many opinions dis-

1. Annotated by Melvin R. Quinlan of the Topeka Bar.

2. Canons 1 to 32, inclusive, were adopted by the American Bar Association at its thirty-first annual meeting at Seattle, Wash., on August 27, 1908. Canons 33 to 45, inclusive, were adopted at the fifty-first annual meeting at Seattle, Wash., on July 26, 1928. Canons 11, 13, 34, 35 and 43 were amended, and Canon 46 was adopted, at the fifty-sixth annual meeting, at Grand Rapids, Mich., on August 31, 1933. Canons 11, 12, 27, 33, 34, 37, 39 and 43 were amended, and Canon 47 was adopted, at the sixtieth annual meeting at Kansas City, Mo., on September 30, 1937. Canons 27 and 43 were amended at the sixty-fifth annual meeting at Detroit, Mich., August 27, 1942.

3. The Canons of Professional Ethics were adopted by the Kansas Bar Association at its twenty-sixth annual meeting at Topeka, Kan., on January 27, 1909.

4. President's Annual Address, Proceedings of the Bar Association of the State of Kansas, Thirty-Fourth Annual Meeting, Topeka, Kan., January 30-31, 1917, pp. 53, 53.

5. See Proceedings of the Bar Association of the State of Kansas, Thirty-Seventh Annual Meeting, Topeka, Kan., January 30-31, 1920, p. 21.

6. The Canons of Professional Ethics appear in the following volumes of the Kansas Reports: 107 Kan. iii; 108 Kan. iii; 110 Kan. iii; 135 Kan. iii; 140 Kan. ii; 144 Kan. vii; 156 Kan. x; 164 Kan. xi.

7. Prescribed by Rule No. 41 of the Rules of the Supreme Court of Kansas.

cussing principles announced in the Canons have not been included. Some cases involving misconduct of counsel during the course of a trial have been included, particularly as annotations to Canon 22. No attempt has been made to include each of the many opinions discussing some phase of such misconduct; only those deemed of particular significance appear.

However cursory the annotations may be, it is hoped they will serve to add real and practical significance to the principles of professional conduct announced in the Canons.

Preamble

In America, where the stability of courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the republic, to a great extent, depends upon our maintenance of justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.

No code or set rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life. The following canons of ethics are adopted by the American Bar Association as a general guide, yet the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned.

In re Macy, 109 Kan. 1, 196 Pac. 1095.

In re Gorsuch, 113 Kan. 380, 214 Pac. 794.

In re Learnard, 121 Kan. 596, 249 Pac. 616.

1. The Duty of the Lawyer to the Courts

It is the duty of the lawyer to maintain toward the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

G. S. 1935, 7-106; G. S. 1935, 7-111.

In re Pryor, 18 Kan. 72, 26 Am. Rep. 77.

State v. Gallup, 1 Kan. App. 618, 42 Pac. 406.

In re Wilcox, 90 Kan. 95, 133 Pac. 547.

In re Hanson, 99 Kan. 23, 160 Pac. 1141.

Overlander v. Overlander, 129 Kan. 709, 284 Pac. 614.

In re Hanson, 134 Kan. 165, 5 P. 2d 1088.

Wheat v. Hilkey, 148 Kan. 60, 79 P. 2d 865.

2. The Selection of Judges

It is the duty of the bar to endeavor to prevent political considerations from outweighing judicial fitness in the selections of judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the bench; and it should strive to have elevated thereto only those willing to forego other employments, whether of a business, political or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of lawyers for judicial position should be governed by an impartial estimate of their ability to add honor to the office and not by a desire for the distinction the position may bring to themselves.

3. Attempts to Exert Personal Influence on the Court

Marked attention and unusual hospitality on the part of a lawyer to a judge, uncalled for by the personal relations of the parties, subject both the judge and the lawyer to misconstructions of motive and should be avoided. A lawyer should not communicate or argue privately with the judge as to the merits of a pending cause, and he deserves rebuke and denunciation for any device or attempt to gain from a judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the judge's station, is the only proper foundation for cordial personal and official relations between bench and bar.

4. When Counsel for an Indigent Prisoner

A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf.

5. The Defense or Prosecution of Those Accused of Crime

It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound, by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law.

The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible.

State v. Tabor, 63 Kan. 542, 66 Pac. 237, 55 L. R. A. 231.

Pyle v. Amrine, 159 Kan. 458, 156 P. 2d 509, certiorari denied, 326 U. S. 749, 66 S. Ct. 45, 90 L. Ed. 448, rehearing denied, 326 U. S. 809, 66 S. Ct. 165, 90 L. Ed. 493.

Layman v. Hudspeth, 162 Kan. 445, 176 P. 2d 527.

Dunfee v. Hudspeth, 162 Kan. 524, 178 P. 2d 1009.

6. Adverse Influence and Conflicting Interests

It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

Yeamans v. James, 27 Kan. 195.

Wills v. Wood, 28 Kan. 400.

Haverty v. Haverty, 35 Kan. 438, 11 Pac. 364.

Cunningham v. Jones, 37 Kan. 477, 15 Pac. 572, 1 Am. St. Rep. 257.

Caldwell v. Bigger, 76 Kan. 49, 90 Pac. 1095.

Holmes v. Culver, 89 Kan. 698, 133 Pac. 164.

Purdy v. Ernst, 93 Kan. 157, 143 Pac. 429.

Rhodes v. Rhodes, 108 Kan. 64, 193 Pac. 894, 16 A. L. R. 423.

Smith v. Kagey, 146 Kan. 563, 73 P. 2d 56.

7. Professional Colleagues and Conflicts of Opinion

A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A lawyer should decline association as colleague if it is objectionable to the original counsel, but if the lawyer first retained is relieved, another may come into the case.

When lawyers jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should be accepted unless the nature of the difference makes it impracticable for the lawyer whose judgment has been overruled to cooperate effectively. In this event it is his duty to ask the client to relieve him.

Efforts, direct or indirect, in any way to encroach upon the professional employment of another lawyer, are unworthy of those who should be brethren at the bar; but, nevertheless, it is the right of any lawyer, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel, generally after communication with the lawyer of whom the complaint is made.

8. Advising Upon the Merits of a Client's Cause

A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. The miscarriages to which justice is subject, by reason of surprises and disappointments in evidence and witnesses, and through mistakes of juries and errors

of courts, even though only occasional, admonish lawyers to beware of bold and confident assurances to clients, especially where the employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

Cochran v. Amrine, 156 Kan. 217, 133 P. 2d 92.

Maxwell v. Hudspeth, 160 Kan. 553, 164 P. 2d 134.

Miller v. Hudspeth, 164 Kan. 688, 192 P. 2d 147.

In re Estate of Koellen, 167 Kan. 676, 208 P. 2d 595.

9. Negotiations With Opposite Party

A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.

10. Acquiring Interest in Litigation

The lawyer should not purchase any interest in the subject matter of the litigation which he is conducting.

Yeamans v. James, 27 Kan. 195.

Cunningham v. Jones, 37 Kan. 477, 15 Pac. 572, 1 Am. St. Rep. 257.

Caldwell v. Bigger, 76 Kan. 49, 90 Pac. 1095.

Holmes v. Culver, 89 Kan. 698, 133 Pac. 164.

In re Wilcox, 90 Kan. 95, 133 Pac. 547.

Shouse v. Consolidated Flour Mills Co., 128 Kan. 174, 277 Pac. 54.

Yeoman v. Morris, 135 Kan. 566, 11 P. 2d 683.

11. Dealing With Trust Property*

The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.

Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly, and should not under any circumstances be commingled with his own or be used by him.

G. S. 1935, 7-111; 7-119

Voss v. Bachop, 5 Kan. 59.

Matthews v. Robinson, 7 Kan. App. 118, 53 Pac. 81.

In re Wilson, 79 Kan. 450.

In re Wilson, 79 Kan. 674, 100 Pac. 635, 21 L. R. A. (N. S.) 517.

In re Washington, 82 Kan. 829, 109 Pac. 700.

Hess v. Conway, 92 Kan. 787, 142 Pac. 253, 4 A. L. R. 1580, rehearing denied 93 Kan. 246, 144 Pac. 205, judgment affirmed.

Homes v. Conway, 241 U. S. 624, 36 S. Ct. 681, 60 L. Ed. 1211.

In re Learnard, 121 Kan. 596, 249 Pac. 606.

Wigton v. Donnelly, 122 Kan. 796, 253 Pac. 400.

Yeoman v. Morris, 135 Kan. 566, 11 P. 2d 683.

* As amended September 30, 1937.

In re Evans, 139 Kan. 63, 29 P. 2d 1111.

In re Stanley, 139 Kan. 656, 33 P. 2d 163.

In re Gorsuch, 147 Kan. 459, 78 P. 2d 12.

12. Fixing the Amount of the Fee*

In fixing fees, lawyers should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration.

In determining the amount of the fee, it is proper to consider: (1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other employment while employed in the particular case or antagonisms with other clients; (3) the customary charges of the bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

In determining the customary charges of the bar for similar services, it is proper for a lawyer to consider a schedule of minimum fees adopted by a bar association, but no lawyer should permit himself to be controlled thereby or to follow it as his sole guide in determining the amount of his fee.

In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

Ottawa University v. Parkinson, 14 Kan. 159.

Topeka Water Supply Co. v. Root, 56 Kan. 187, 42 Pac. 715.

Noftzger v. Moffett, 63 Kan. 354, 65 Pac. 670.

Cooper v. Harvey, 77 Kan. 854, 94 Pac. 213.

Stevens v. Sheriff, 76 Kan. 124, 90 Pac. 799, 11 L. R. A. (N. S.) 1153.

Stevens v. City of Anthony, 77 Kan. 839, 90 Pac. 800.

In re Wilson, 79 Kan. 450.

Joyce v. Miami County Nat. Bank, 90 Kan. 745, 136 Pac. 232.

Epp v. Hinton, 102 Kan. 435, 170 Pac. 987.

In re Learnard, 121 Kan. 596, 599, 249 Pac. 606, citing canon.

Boberg v. Fitchburg Mutual Fire Ins. Co., 127 Kan. 787, 275 Pac. 211.

Forbes v. Whitsitt, 155 Kan. 598, 601, 127 P. 2d 450, citing canon.

13. Contingent Fees*

A contract for a contingent fee, where sanctioned by law, should be reasonable under all the circumstances of the case, including the risk and uncertainty of the compensation, but should always be subject to the supervision of a court, as to its reasonableness.

* As amended August 31, 1933.

Aultman v. Waddle, 40 Kan. 195, 19 Pac. 730.

Stevens v. Sheriff, 76 Kan. 124, 90 Pac. 799, 11 L. R. A. (N. S.) 1153.

Stevens v. City of Anthony, 77 Kan. 839, 90 Pac. 800.

Sedbrook v. McCue, 104 Kan. 813, 180 Pac. 787.

Comer v. McGuire, 121 Kan. 820, 250 Pac. 345.

Shouse v. Consolidated Flour Mills Co., 128 Kan. 174, 277 Pac. 54, 64 A. L. R. 606.

Dannenberg v. Dannenberg, 151 Kan. 600, 100 P. 2d 667.

Watson v. Woodruff, 154 Kan. 61, 114 P. 2d 864.

14. Suing a Client for a Fee

Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition or fraud.

In re Wilcox, 90 Kan. 95, 133 Pac. 547.

15. How Far a Lawyer May Go in Supporting a Client's Cause

Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause.

It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.

The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.

G. S. 1935, 7-106.

In re Norris, 60 Kan. 649, 57 Pac. 528.

In re Washington, 82 Kan. 829, 109 Pac. 700.

In re Macy, 109 Kan. 1, 196 Pac. 1095.

In re Staton, 112 Kan. 226, 210 Pac. 615.

In re Ellis, 155 Kan. 894, 130 P. 2d 564.

In re Cox, 164 Kan. 160, 188 P. 2d 652.

16. Restraining Clients From Improprieties

A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly

with reference to their conduct towards courts, judicial officers, jurors, witnesses and suitors. If a client persists in such wrong-doing the lawyer should terminate their relation.

G. S. 1935, 7-106.

In re Gorsuch, 113 Kan. 380, 214 Pac. 794.

In re Ellis, 155 Kan. 894, 130 P. 2d 564.

In re Cox, 164 Kan. 160, 188 P. 2d 652.

In re Estate of Koellen, 167 Kan. 676, 208 P. 2d 595.

17. Ill-feeling and Personalities Between Advocates

Clients, not lawyers, are the litigants. Whatever may be the ill-feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanor toward each other or toward suitors in the case. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided.

State v. Hartsock, 144 Kan. 227, 58 P. 2d 1144.

Taylor v. F. W. Woolworth Co., 151 Kan. 233, 98 P. 2d 233.

18. Treatment of Witnesses and Litigants

A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client cannot be made the keeper of the lawyer's conscience in professional matters. He has no right to demand that his counsel should abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

Harding v. Henderson, 123 Kan. 533, 255 Pac. 969.

Forsyth v. Church, 141 Kan. 687, 42 P. 2d 975.

19. Appearance of Lawyer as Witness for His Client

When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in court in behalf of his client.

State v. Ryan, 137 Kan. 733, 737, 22 P. 2d 418, citing canon.

Earhart v. Tretbar, 148 Kan. 42, 45, 80 P. 2d 4, citing canon.

Protheroe v. Davies, 149 Kan. 720, 735, 89 P. 2d 890, citing canon.

State v. Bechtelheimer, 151 Kan. 582, 100 P. 2d 657.

Maxfield v. Fox Kansas Theater Co., 152 Kan. 716, 107 P. 2d 685.

Yarmick v. Metropolitan Life Ins. Co., 156 Kan. 16, 20, 131 P. 2d 881, citing canon.

In re Estate of Henry, 156 Kan. 788, 800, 137 P. 2d 222, citing canon.

20. Newspaper Discussion of Pending Litigation

Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the

extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An *ex parte* reference to the facts should not go beyond quotation from the records and papers on file in the court; but even in extreme cases it is better to avoid any *ex parte* statement.

In re Elliott, 73 Kan. 151, 84 Pac. 750.

21. Punctuality and Expedition

It is the duty of the lawyer not only to his client, but also to the courts and to the public to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

22. Candor and Fairness

The conduct of the lawyer before the court and with other lawyers should be characterized by candor and fairness.

It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a textbook; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or in argument to assert as a fact that which has not been proved, or in those jurisdictions where a side has the opening and closing arguments to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A lawyer should not offer evidence which he knows the court should reject in order to get the same before the jury by argument for its admissibility, nor should he address to the judge arguments upon any point not properly calling for determination by him. Neither should he introduce into an argument addressed to the court, remarks or statements intended to influence the jury or bystanders.

These and all kindred practices are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice.

G. S. 1935, 7-106, 7-111.

State v. Gutekunst, 24 Kan. 252.

State v. Wait, 44 Kan. 310, 24 Pac. 354.

In re Norris, 60 Kan. 649, 57 Pac. 528.

In re Washington, 82 Kan. 829, 109 Pac. 700.

In re Wilcox, 90 Kan. 95, 133 Pac. 547.

State v. Wilson, 108 Kan. 433, 195 Pac. 618.

In re Macy, 109 Kan. 1, 196 Pac. 1095.

Weaver v. Winchell, 116 Kan. 296, 226 Pac. 719.

State v. Powell, 120 Kan. 772, 245 Pac. 128.

Wigdon v. Donnelly, 122 Kan. 796, 253 Pac. 400.

State v. Podpechon, 127 Kan. 471, 274 Pac. 197.

State v. Netherton, 128 Kan. 564, 279 Pac. 19.

Overlander v. Overlander, 129 Kan. 709, 284 Pac. 614.

In re Evans, 139 Kan. 63, 29 P. 2d 1111.
State v. Ryan, 141 Kan. 549, 42 P. 2d 591.
Forsyth v. Church, 141 Kan. 687, 42 P. 2d 975.
In re Gorsuch, 147 Kan. 459, 78 P. 2d 12.
Jones v. Pohl, 151 Kan. 92, 98 P. 2d 175.
Taylor v. F. W. Woolworth Co., 151 Kan. 233, 98 P. 2d 114.
In re Ellis, 155 Kan. 894, 130 P. 2d 564.
In re Cox, 164 Kan. 160, 188 P. 2d 652.

23. Attitude Toward Jury

All attempts to curry favor with juries by fawning, flattery or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the court out of the jury's hearing. A lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause.

24. Right of Lawyer to Control the Incidents of the Trial

As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement; forcing the trial on a particular day to the injury of the opposite lawyer when no harm will result from a trial at a different time; agreeing to an extension of time for signing a bill of exceptions, cross interrogatories and the like, the lawyer must be allowed to judge. In such matters no client has a right to demand his counsel shall be illiberal, or that he do anything therein repugnant to his own sense of honor and propriety.

25. Taking Technical Advantage of Opposite Counsel; Agreement With Him

A lawyer should not ignore known customs of practice of the bar or of a particular court, even when the law permits, without giving timely notice to the opposing counsel. As far as possible, important agreements, affecting the rights of clients, should be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing; as required by rules of court.

Farlin v. Sook, 26 Kan. 397, 30 Kan. 401.
Weaver v. Winchell, 116 Kan. 296, 226 Pac. 719.

26. Professional Advocacy Other Than Before Courts

A lawyer openly, and in his true character may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the court; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding, to influence action.

McBratney v. Chandler, 22 Kan. 692, 31 Am. Rep. 213.
Shouse v. Consolidated Flour Mills Co., 128 Kan. 174, 277 Pac. 54, 64 A. L. R. 606.

27. Advertising, Direct or Indirect *

It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations. Indirect advertisements for professional employment, such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the lawyer has been or is engaged or concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyer's position, and all other like self-laudation, offend the traditions and lower the tone of our profession and are reprehensible; but the customary use of simple professional cards is not improper.

Publication in reputable law lists in a manner consistent with the standards of conduct imposed by the canons of brief biographical and informative data is permissible. Such data must not be misleading and may include only a statement of the lawyer's name and the names of his professional associates; addresses, telephone numbers, cable addresses; branches of the profession practiced; date and place of birth and admission to the bar; schools attended, with dates of graduation, degrees and other educational distinctions; public or quasi-public offices; posts of honor; legal authorships; legal teaching positions; memberships and offices in bar associations and committees thereof, in legal and scientific societies and legal fraternities; the fact of listings in other reputable law lists; the names and addresses of references; and, with their written consent, the names of clients regularly represented. A certificate of compliance with the rules and standards issued by the special committee on law lists may be treated as evidence that such list is reputable.

In re Evans, 139 Kan. 63, 29 P. 2d 1111.

28. Stirring Up Litigation, Directly or Through Agents

It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship or trust make it his duty to do so. Stirring up strife and litigation is not only unprofessional, but it is indictable at common law. It is disreputable to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit or collect judgment, or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients, or to employ agents as runners for like purposes, or to pay or to reward, directly or indirectly, those who bring or influence the bringing of such cases to his office, or to remunerate policemen, court or prison officials, physicians, hospital *attachés* or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick and the injured, the ignorant or others, to seek his professional services. A duty to the public and to the profession devolves upon every member of the bar having knowledge of such practices upon the part of any practitioner immediately to inform thereof, to the end that the offender may be disbarred.

In re Macy, 109 Kan. 1, 196 Pac. 1095.

Judy & Gilbert v. Railway Co., 111 Kan. 46, 49, 205 Pac. 1116, citing canon.

In re Staton, 112 Kan. 226, 234, 210 Pac. 615, citing canon.

* As amended by the House of Delegates of the American Bar Association, August 27, 1942.

In re Gorsuch, 113 Kan. 380, 382, 214 Pac. 794, citing canon.

In re Gilbert & Judy, 114 Kan. 57, 216 Pac. 1089, citing canons.

In re Anderson, 122 Kan. 394, 251 Pac. 1088.

State ex rel., Boynton v. Perkins, 138 Kan. 899, 28 P. 2d 765.

In re Lashbrook, 146 Kan. 752, 73 P. 2d 1106, citing canon.

In re Gorsuch, 147 Kan. 459, 78 P. 2d 12.

29. Upholding the Honor of the Profession

Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.

G. S. 1935, 7-112.

In re Peyton, 12 Kan. 398.

In re Cooksey, 79 Kan. 550, 100 Pac. 62.

State ex rel., Boynton v. Perkins, 138 Kan. 899, 28 P. 2d 765.

Wheat v. Hilkey, 148 Kan. 60, 79 P. 2d 865.

30. Justifiable and Unjustifiable Litigations

The lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong. But otherwise it is his right, and, having accepted retainer, it becomes his duty to insist upon the judgment of the court as to the legal merits of his client's claim. His appearance in court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination.

In re Cooksey, 79 Kan. 550, 100 Pac. 62.

In re Macy, 109 Kan. 1, 196 Pac. 1095.

In re Gorsuch, 113 Kan. 380, 214 Pac. 794.

In re Estate of Koellen, 167 Kan. 676, 208 P. 2d 595.

31. Responsibility for Litigation

No lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment. Every lawyer upon his own responsibility must decide what employment he will accept as counsel, what causes he will bring into court for plaintiffs, what cases he will contest in court for defendants. The responsibility for advising as to questionable transactions, for bringing questionable suits, for urging questionable defenses, is the lawyer's responsibility. He cannot escape it by urging as an excuse that he is only following his client's instructions.

In re Macy, 109 Kan. 1, 196 Pac. 1095.

32. The Lawyer's Duty in Its Last Analysis

No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive nor should any lawyer render any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

G. S. 1935, 7-106, 7-111.

In re Wilcox, 90 Kan. 95, 133 Pac. 547.

In re Swisher's Estate, 153 Kan. 401, 110 P. 2d 765.

In re Ellis, 155 Kan. 894, 895, 130 P. 2d 564, citing canon.

33. Partnerships—Names*

Partnerships among lawyers for the practice of their profession are very common and are not to be condemned. In the formation of partnerships and the use of partnership names care should be taken not to violate any law, custom, or rule of court locally applicable. Where partnerships are formed between lawyers who are not all admitted to practice in the courts of the state, care should be taken to avoid any misleading name or representation which would create a false impression as to the professional position or privileges of the member not locally admitted. In the formation of partnerships for the practice of law, no person should be admitted or held out as a practitioner or member who is not a member of the legal profession duly authorized to practice, and amenable to professional discipline. In the selection and use of a firm name, no false, misleading, assumed or trade name should be used. The continued use of the name of a deceased or former partner, when permissible by local custom, is not unethical, but care should be taken that no imposition or deception is practiced through this use. When a member of the firm, on becoming a judge, is precluded from practicing law, his name should not be continued in the firm name.

Partnerships between lawyers and members of other professions or non-professional persons should not be formed or permitted where any part of the partnership's employment consists of the practice of law.

In re Evans, 139 Kan. 63, 29 P. 2d 1111.

34. Division of Fees*

No division of fees for legal services is proper, except with another lawyer, based upon a division of service or responsibility.

* As amended September 30, 1937.

Depew v. Wichita Ass'n. of Credit Men, 142 Kan. 403, 413, 49 P. 2d 1041, citing canon, certiorari denied, 297 U. S. 710, 56 S. Ct. 574, 80 L. Ed. 997.

In re Lashbrook, 146 Kan. 752, 73 P. 2d 1106, citing canon.

35. Intermediaries**

The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performances of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigents are not deemed such intermediaries.

A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs.

Depew v. Wichita Ass'n of Credit Men, 142 Kan. 403, 413, 49 P. 2d 1041, citing canon, certiorari denied, 297 U. S. 710, 56 S. Ct. 574, 80 L. Ed. 997.

36. Retirement From Judicial Position or Public Employment

A lawyer should not accept employment as an advocate in any matter upon the merits of which he has previously acted in a judicial capacity.

A lawyer, having once held public office or having been in the public employ, should not after his retirement accept employment in connection with any matter which he has investigated or passed upon while in such office or employ.

37. Confidence of a Client*

It is the duty of a lawyer to preserve his client's confidences. This duty outlasts the lawyer's employment, and extends as well to his employees; and neither of them should accept employment which involves or may involve the disclosure or use of these confidences, either for the private advantage of the lawyer or his employees or to the disadvantage of the client, without his knowledge and consent, and even though there are other available sources of such information. A lawyer should not continue employment when he discovers that this obligation prevents the performance of his full duty to his former or to his new client.

If a lawyer is accused by his client, he is not precluded from disclosing the truth in respect to the accusation. The announced intention of a client to commit a crime is not included within the confidences which he is bound to respect. He may properly make such disclosures as may be necessary to prevent the act or protect those against whom it is threatened.

In re Elliott, 73 Kan. 151, 84 Pac. 750.

In re Burnette, 73 Kan. 609, 85 Pac. 875.

Purdy v. Ernst, 93 Kan. 157, 143 Pac. 429.

In re Estate of Koellen, 167 Kan. 676, 208 P. 2d 595.

** As amended August 31, 1933.

38. Compensation, Commissions and Rebates

A lawyer should accept no compensation, commission, rebates or other advantages from others without the knowledge and consent of his client after full disclosure.

Haverty v. Haverty, 35 Kan. 438, 11 Pac. 364.

39. Witnesses*

A lawyer may properly interview any witness or prospective witness for the opposing side in any civil or criminal action without the consent of opposing counsel or party. In doing so, however, he should scrupulously avoid any suggestion calculated to induce the witness to suppress or deviate from the truth, or in any degree to affect his free and untrammelled conduct when appearing at the trial or on the witness stand.

40. Newspapers

A lawyer may with propriety write articles for publications in which he gives information upon the law; but he should not accept employment from such publications to advise inquirers in respect to their individual rights.

41. Discovery of Imposition and Deception

When a lawyer discovers that some fraud or deception has been practiced, which has unjustly imposed upon the court or a party, he should endeavor to rectify it; at first by advising his client, and if his client refuses to forego the advantage thus unjustly gained, he should promptly inform the injured person or his counsel, so that they may take appropriate steps.

In re Ellis, 155 Kan. 894, 130 P. 2d 564.

In re Cox, 164 Kan. 160, 188 P. 2d 652.

42. Expenses

A lawyer may not properly agree with a client that the lawyer shall pay or bear the expense of litigation; he may in good faith advance expenses as a matter of convenience, but subject to reimbursement.

Atchison, T. & S. F. R. Co. v. Johnson, 29 Kan. 218.

Moreland v. Devenney, 72 Kan. 471, 83 Pac. 1097.

Gilbert and Judy v. Railway Co., 111 Kan. 46, 205 Pac. 1116.

In re Gilbert and Judy, 114 Kan. 57, 216 Pac. 1089, citing canons.

43. Approved Law Lists**

It is improper for a lawyer to permit his name to be published in a law list, the conduct, management or contents of which are calculated or likely to deceive or injure the public or the profession, or to lower the dignity or standing of the profession.

44. Withdrawal From Employment as Attorney or Counsel

The right of an attorney or counsel to withdraw from employment, once assumed, arises only from good cause. Even the desire or consent of the client is not always sufficient. The lawyer should not throw up the unfinished task to the detriment of his client except for reasons of honor or self-respect.

* As amended September 30, 1937.

** As amended August 27, 1942.

If the client insists upon an unjust or immoral course in the conduct of his case, or if he persists over the attorney's remonstrance in presenting frivolous defenses, or if he deliberately disregards an agreement or obligation as to fees or expenses, the lawyer may be warranted in withdrawing on due notice to the client, allowing him time to employ another lawyer. So also, when a lawyer discovers that his client has no case and the client is determined to continue it; or even if the lawyer finds himself incapable of conducting the case effectively. Sundry other instances may arise in which withdrawal is to be justified. Upon withdrawing from a case after a retainer has been paid the attorney should refund such part of the retainer as has not been clearly earned.

In re Estate of Koellen, 167 Kan. 676, 208 P. 2d 595.

45. Specialists

The canons of the American Bar Association apply to all branches of the legal profession; specialists in particular branches are not to be considered as exempt from the application of these principles.

46. Notice of Specialized Legal Service*

Where a lawyer is engaged in rendering a specialized legal service directly and only to other lawyers, a brief, dignified notice of that fact, couched in language indicating that it is addressed to lawyers, inserted in legal periodicals and like publications, when it will afford convenient and beneficial information to lawyers desiring to obtain such service, is not improper.

47. Aiding The Unauthorized Practice of Law**

No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate.

Attorney's Oath*

You do solemnly swear that you will support and bear true allegiance to the constitution of the United States and the constitution of the state of Kansas; that you will neither delay nor deny any man his right through malice, for lucre, or from any unworthy desire; that you will not knowingly foster or promote, or give your assent to any fraudulent, groundless or unjust suit; that you will neither do, nor consent to the doing of any falsehood in court; and that you will discharge your duties as an attorney and counselor of the supreme court and all inferior courts of the state of Kansas with fidelity both to the court and to your cause, and to the best of your knowledge and ability. So help you God.

In re Cooksey, 79 Kan. 550, 552, 100 Pac. 62, citing oath.

In re Macy, 109 Kan. 1, 5, 196 Pac. 1095, citing oath.

In re Learnard, 121 Kan. 596, 598, 249 Pac. 606, citing oath.

In re Stanley, 139 Kan. 656, 659, 33 P. 2d 163, citing oath.

In re Gorsuch, 147 Kan. 459, 461, 466, 78 P. 2d 12, citing oath.

In re Cox, 164 Kan. 160, 162, 167, 188 P. 2d 652, citing oath.

* Adopted August 31, 1933.

** Adopted September 30, 1937.

* Prescribed by Rule No. 41 of the Rules of the Supreme Court of Kansas.

THE FORCIBLE ENTRY AND DETAINER STATUTE NEEDS LEGISLATIVE ATTENTION

By KENNETH V. MOSES of the Marshall County Bar

The recent case of *Hall v. Ward*, 168 Kan. 141, — P. 2d —, invites a critical examination of the Kansas procedure for actions of forcible or unlawful entry or detainer. Two other relatively recent cases, *Reeves v. McAdoo*, 165 Kan. 193, 193 P. 2d 233, and *McCracken v. Wright*, 159 Kan. 615, 157 P. 2d 814, have extended similar invitations to the readers thereof. The academic difficulties of the procedure, as revealed by these cases, seem to lie in the applications of the jurisdictional statute of justices of the peace,¹ the procedural statute for justices of the peace requiring and providing for certification to the District Court of any question of title raised, in the manner therein prescribed,² and the general statute providing for forcible entry and detainer actions;³ however, a present pressing need for a roof over the defendant's head may have a tendency to enlarge his concept of the requisites for a valid claim of title to the extent that any academic approach to the procedure is completely hidden thereby. To say the least, it appears that the procedure has not always been clear. This does not seem surprising inasmuch as the need for the action as a remedy for breaches of the peace arising out of disputes over possession, the purpose for which the action was originally created, now has almost completely vanished.

HISTORY OF THE ACTION

Before examining the Kansas procedure, a brief résumé of the history and nature of the action may be of some interest, and it may give a better understanding of the purposes which should be served. Also, it may aid in detecting imperfections in our present procedure.

The action originated as a statutory creation, and is not found as a part of the unwritten common law. In the beginning, one who had been forcibly dispossessed of his lands had the legal right to retake possession of the same with force and arms, and the rule was likewise where a person was forcibly prevented from having possession of the premises to which he was rightfully entitled, even though the wrongful detainer had entered into possession thereof peaceably.⁴ Chaotic conditions resulted. Inasmuch as the rule of survival of the strongest prevailed, many breaches of the peace occurred and the security of the community was imperiled by the physical contests for possession between the parties and their lieutenants.

And so it was that the action of forcible entry and detainer had its origin in the statute.⁵ It was of a criminal nature to prevent trial of the question of right of possession to real property by battle, and was designed to keep the King's peace. No provisions for restitution of the property were made in the original statute. However, such provisions soon followed to give civil redress, as well as criminal.⁶ The sole question to be decided in the early action was the ques-

1. G. S. 1935, 61-102.

2. G. S. 1935, 61-107.

3. G. S. 1935, 61-1301, *et seq.*

4. Bancroft's Code Pr. and Rem., 1928 ed., vol. 4, sec. 3193.

5. 26 C. J. 802, Note 17, citing St. 5, Richard II, c. 8.

6. 26 C. J. 802, Note 26, citing St. 31 Eliz. c. 11; St. 21 Jac. 1 c. 15.

tion of the right of immediate possession, a distinction being made between the right of possession and the right to immediate possession. Hence, a great deal of stress was laid, in the early law, upon the proposition that if a party was in peaceable possession of a premises immediately before the act of forcible entry against him, he could maintain the action against his forcible dispossessor, even though he had no right of possession, which right belonged to his dispossessor. Thus, the main purpose of the early statute was to place the parties in the same position regarding the premises as they were before the alleged act of forcible entry;⁷ and once they were placed in their respective original positions, they were free to litigate other rights of title and possession by reason thereof, the forcible entry action not being a bar to such actions.⁸ Traces of the criminal origin still remain in the Kansas procedure, although they do not appear to have any useful purpose.⁹

As people became less brutal in their attempts to settle their differences, the "forcible" aspects of the action began to lose its significance; however, it became evident that a person, who entered into possession rightfully but retained the premises after his rights thereto had expired, was just as much an offender against the civil rights of the person entitled to possession as if he had forcibly driven him from the premises. In this category is the tenant holding over his term, or failing in the covenants of his lease, thereby forfeiting his term.

Today, in most jurisdictions, the problem of evicting a tenant who wrongfully holds over his term or has forfeited his term is contemplated by a portion of statutory procedure providing for "unlawful" or "forcible" detainer suits.¹⁰ These adjectives are, in most instances, used synonymously to describe the detention without right against a party entitled thereto. Present day forcible entry and detainer procedures have lost their place in criminal law, being designed to secure a speedy and summary restitution of the premises in question to the party entitled to and/or deprived of the possession thereof in the wrongful manner as is prescribed in particular by the statute.¹¹

We should bear in mind the above-mentioned purpose of forcible entry and detainer actions as we continue our examination. Also, we should take notice that, today, people do not forcibly dispossess each other of their property, as a general rule, but confine their actions to unlawful detention after having gained a rightful possession. As a consequence, the "forcible entry" part of the procedure has become almost obsolete. Further, while we cannot say that delay in the eviction procedure is of primary concern to the party against whom the action is brought, we can note that, in many instances, a delay in eviction has provided the accused party with an additional opportunity to locate quarters—and perhaps has prevented an advantageous sale of the premises in some cases.

7. Bancroft's Code Pr. and Rem., 1928 ed., vol 4, sec. 3194.

8. 26 C. J. 870, Notes 5 through 12, sec. 152.

9. See words "complainant," "complaint," and "verdict of guilty or not guilty" used in G. S. 1935, 61-1301, *et seq.*

10. Bancroft's Code Pr. and Rem., 1928 ed., vol. 4, sec. 3194.

11. Bancroft's Code Pr. and Rem., 1928 ed., vol. 4, sec. 3191.

KANSAS PROCEDURE

Briefly summarizing Kansas procedure, the original jurisdiction of the action is vested in justices of the peace and such other inferior courts as have been empowered by law to exercise the jurisdiction thereof.¹² This jurisdiction, at the present status of the procedure, is exclusive to such courts.¹³ They are given no equitable jurisdiction and therefore have no power to try questions of title which may arise in such actions.¹⁴ Such courts are limited by statute in the amounts involved in controversy which may be entertained.¹⁵ The present statutory procedure permits the plaintiff landlord to join with his action his claim for unpaid rent, if he has such;¹⁶ however, it is open to question whether such courts have jurisdiction of claims for rent in excess of the statutory limitation otherwise imposed.¹⁷ If a question of title is properly raised in defense to the action, as required by statute, the inferior court must stay the proceeding and certify the question of title to the district court.¹⁸ Upon certification, the district court has jurisdiction to try the question of title, and if the allegation fails, to try the question of right of possession.¹⁹ The purpose of full compliance with the certification statute seems to be to protect the complainant against an unfounded allegation of title designed to delay the action for possession.²⁰ If the claim of title is not properly raised in the justice court, the claim should be quashed, and the trial of possession should proceed.²¹ If such claim is not raised, or is improperly raised, it cannot be raised on appeal,²² and the district court is without jurisdiction to determine a question of title raised in this manner.²³ In such cases, the district court should try the question of possession *de novo*.²⁴

DEFECTS AND REMEDIES

The cases seem to indicate that the result of the Kansas procedure, in many instances, has been just the opposite of the purpose of the action, *i. e.*, a speedy and summary restitution of the premises to the proper party. The fact that the justice of the peace, or other inferior court, is barred from inquiry into title, which limitation carries forward on the district court on appeal, invites a title minded and recalcitrant defendant to beat a path of delay between the two courts. If the district courts were given power to determine all matters necessary for final settlement of the issues raised between the parties, whether acting as a court of first instance, or as an appellate

12. G. S. 1935, 61-101 and 1301, and see specific statutes empowering city courts and county courts with justice court jurisdiction.

13. *Armour Packing Co. v. Howe*, 62 Kan. 587; *Wideman v. Taylor*, 63 Kan. 884; *Bancroft's Code Pr. and Rem.*, 1928 ed., vol. 4, sec. 3202.

14. *Linder v. Warnock*, 91 Kan. 272, 137 Pac. 962.

15. G. S. 1935, 61-102, 103, and see specific statutes limiting amount of claims within jurisdiction of county and city courts.

16. G. S. 1935, 61-1305.

17. No Kansas cases found. See 26 C. J. 842, sec. 91, *et seq.*

18. G. S. 1935, 61-107.

19. *Reeves v. McAdoo*, 165 Kan. 193, 193 P. 2d 233.

20. G. S. 1935, 61-107, study all requirements for certification.

21. *Lyman v. Todd*, 43 Kan. 70; *Conaway v. Gore*, 27 Kan. 122.

22. *Bramwell v. Trower*, 92 Kan. 144, 139 Pac. 1018; *McCracken v. Wright*, 159 Kan. 615, 157 P. 2d 814.

23. *Hall v. Ward*, 168 Kan. 141, ——— P. 2d ———, syl. 3.

24. *Id.*, syl. 4.

court, or by way of certification, such will-o-the-wisp defendants, and their tactics, should vanish, and the district court should finally dispose of all matters raised.

Complete jurisdiction of title and equity questions in the district court would alleviate a part of the delay, but the raising of a question of title necessarily means some delay in restoration of the premises, though the claim of title fails; and where, as in the great majority of cases, the action is one for the purpose of moving a stubborn tenant from the premises, justice requires that the landlord be protected against as much delay as is possible without placing undue restraint upon any defenses which his tenant wishes to raise. While the tenant should not be prevented from raising the question of title, he should not be encouraged to raise such question for purposes of delay. Rather it appears that he should be penalized in such cases. A proper solution appears to be to require the tenant to give adequate security to the landlord in substantiation of the truth of his claim. This would be something of a "put your money where your mouth is" proposition, and should prevent unfounded claims of title from being introduced by the defendant in defense of the action. Some jurisdictions have attempted to remedy the delay in such situations by imposing such conditions or other limitations upon the introduction of such claim.²⁵

The questions of procedure in cases requiring a judicial determination of percentage rents, and the question of proper forum where rents claimed are in excess of monetary limitations on jurisdiction, arise collaterally with problems of disposition of title questions. Changing economy has introduced new landlord-tenant relations which may require the powers of an equity court to untangle. What has been termed the "percentage" lease is now commonly used in the large trade and industrial areas, and is finding its way into the more sparsely populated localities. Generally speaking, in such a lease, rental payments are based upon a percentage of some phase of the trading aspect of the tenant's business or industry, such as, a percentage of gross sales, or net sales, or gross or net receipts, or gross or net profits. The landlord must have an accounting of the operations of his tenant's business to determine the rent due. If such tenant fails to provide the accounting, a court of equity is the only tribunal with power to compel the same.²⁶ The granting of concurrent original jurisdiction of the action to the district courts would provide machinery for the solution of this problem. Such would also give the landlord a choice of forums, depending upon the amount of his claim for rent.

It is certainly proper to give the district court concurrent original jurisdiction with justices of the peace and other inferior courts to complete the procedural process. Other states have given such jurisdiction to their general trial courts.²⁷ Further, there is no real reason, in cases where the action is commenced in an inferior court, why the district court, on appeal, should be limited to the jurisdiction of such inferior court. It would be proper for the legislature to enlarge the appellate jurisdiction of the district courts in such cases,

25. Vol. II, Revised Statutes of Maine (1944), ch. 109, secs. 6, 7 and 8. Vol. III, Colorado Statutes Annotated (1935), ch. 70, sec. 26.

26 1 C. J. 612, sec. 56, *et seq.*

27. See statutory provisions of each state to determine the procedure therefor. Examples of statutes providing for concurrent original jurisdiction—Arizona, Colorado, Illinois and Iowa.

and our own probate code furnished precedent for such action.²⁸ Such a provision would permit the district court, on appeal, to hear and determine the action *de novo*, to determine any question, including questions of title, which may be raised or be necessary to a final determination of the matter. This appears to be a satisfactory solution, especially from the standpoint of saving time, expense and delay.

The traces of the criminal origin of the action have already been mentioned. There is no real reason for the retention of this language. The action is civil in nature, to determine who is entitled to possession of real property. Right to possession is the purpose of the judicial inquiry, and not the prevention of criminal wrongs. The obsolete language should be deleted.

Finally, careful examination of the forcible entry and detainer statute now in effect reveals that a great deal of the language used in the provisions thereof is merely a restatement of the code of civil procedure provisions pertinent to such action.²⁹ Perhaps this was done for the benefit of the justices of the peace, most of whom have no formal legal training. Be that as it may, if it is already provided in the code of civil procedure, it need not be stated again.³⁰ It is generally true that the less the repetition, the less the confusion in application.

PROPOSED: AN ACTION FOR POSSESSION OF REAL PROPERTY

It should be stated, by way of summary, that corrective measures are necessary which:

1. Will provide a procedure to recover possession of real property sufficient in a speedy and summary manner to properly settle questions of right to immediate possession-particularly in the simple landlord-tenant relation.
2. Will adequately safeguard and protect a party entitled to immediate possession from feigned or false claims of title to the premises in question, yet will be flexible enough to insure that a valid claim of title can be raised without undue restraint or burden, and will insure that the same be settled without delay.
3. Will provide a landlord with a choice of forums to use according to the needs of his claim for rents and other matters.

It is understood that in the general run of the mill cases, the inferior courts have adequate jurisdiction to handle the matters therein involved expeditiously, and that any proceeding commenced in district court will naturally extend over a longer period of time than if the same were commenced in an inferior court and prosecuted to final conclusion without appeal or certification.

It appears that a simple action for possession of real property is the best solution. Although the necessary corrective measures could be made by amendment to the old statute, the more favorable course seems to be in the form of a legislative enactment of a complete new statute, with repeal of the old.

In drafting a new statute, simplicity should be maintained. Repetition or recodification of known procedures should be avoided unless absolutely necessary for sake of clarity.

28. G. S. Kansas, 1947 Supplement, 59-2408.

29. See detailed directions contained in G. S. 1935, 61-1301, *et seq.*

30. G. S. 1935, 61-1501.

The following is respectfully submitted as a draft of a new statute to accomplish the desired changes. It is believed that the same will remedy the difficulties in our present procedure which have been discussed herein, and that it should prove to be a simple workable procedure:

SECTION 1. *The Action.* An action may be brought by any person to establish his right to possession of real property against any person or persons wrongfully withholding the same; but it shall not be a misjoinder of causes of action if the plaintiff includes in the action allegations to establish his title to such premises. Plaintiff may also include a claim for unpaid rent, or for damages arising because of such wrongful or unlawful detention.

SEC. 2. *Jurisdiction.* Where such action is for the recovery of possession and/or unpaid rents or damages, only, justices of the peace, and other inferior courts empowered by law to exercise the jurisdiction thereof, shall have concurrent jurisdiction of such actions with the district courts: *Provided, however,* that when a claim for rent or damages is included in such action, the value thereof shall determine the jurisdiction of such inferior courts regarding such claims.

SEC. 3. *Procedure.* The party desiring to commence an action under this act shall notify the adverse party in writing to leave the premises for the possession of which the action is about to be commenced, which notice shall be served at least three clear days before the commencing of the action: *Provided, however,* If the action is brought for the purpose of ejecting a tenant for nonpayment of rent, no notice need be served, if a statement is included in the notice terminating the tenancy for nonpayment of rent that, unless tenant shall vacate in the time provided in the notice, suit will be brought to eject him. The petition or bill of particulars shall be in writing and verified, and shall particularly describe the premises for which possession is sought. The summons shall state the date and hour of trial of such action, and shall be served at least ten clear days before such date named; and if the action is commenced in the district court, the day of trial shall be the next regular motion day thereof after due service of summons has been made. No continuance shall be granted for a period longer than ten days unless the defendant applying therefor give an undertaking to the adverse party, with good and sufficient security to be approved by the court, conditioned to pay all damages and double the rent that may accrue by reason thereof if judgment be rendered against him. Restitution of the premises shall be made to the party entitled thereto after the expiration of ten days from the date of judgment, unless stayed by appeal. Trial by jury shall not be secured to either party. Judgments in actions for possession only shall not be a bar to any after action brought by either party.

SEC. 4. *Defense of Title.* In all actions commenced under the provisions of this act, but not commenced originally in district court, a defendant desiring to establish a claim of title to the premises involved as a defense, shall, in addition to the other requirements provided by law for setting up such claim, recognize to the plaintiff and the state of Kansas with good and sufficient security to be approved by the court, to pay all damages occasioned by reason of delay, all rents accruing during the period thereof, and all costs, in the event that such claim is not proved or finally determined, and such court shall then proceed with certification of the action as in other cases; and the district court shall then proceed with the cause as hereinafter provided for appeals.

SEC. 5. *Appeals.* Appeals may be taken as in other cases, except that, if the defendant appeals from a judgment granting restitution of the premises to the plaintiff, he shall recognize to the plaintiff and the state of Kansas, with good and sufficient security to be approved by the court, to pay all damages occasioned by reason of delay, all rents accruing during the period thereof, and all costs, in the event that such judgment of restitution is sustained.

SEC. 6. *Jurisdiction on Appeal from Inferior Courts.* When an appeal is taken from the judgment of a justice of the peace or other inferior court, upon

the filing of the transcript, the district court shall proceed to hear and determine the appeal at the next regular motion day. In determining such appeal, the district court shall have and exercise the same general jurisdiction and power as though the controversy had commenced originally in such court. It may allow or require pleadings to be filed or amended, as the justice of the matter may require.

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