

Kansas Judicial Council Bulletin

MAY, 1982

FIFTY FIFTH ANNUAL REPORT



CHARLES E. HENSHALL
1981-1982 President, Kansas Bar Association

PROPOSED KANSAS PARENTAGE ACT

MEMBERS OF THE JUDICIAL COUNCIL

David Prager, Chairman, (1979-)	Topeka
Justice of the Supreme Court	
James D. Waugh, Secretary, (1963-)	Topeka
J. Richard Foth (1977-)	Topeka
Chief Judge of the Court of Appeals	
Elwaine F. Pomeroy (1977-)	Topeka
Chairman, Senate Judiciary Committee	
Joseph J. Hoagland (1979-)	Overland Park
Chairman, House Judiciary Committee	
Robert H. Cobean, (1947-)	Wellington
Jack E. Dalton (1969-)	Dodge City
Marvin E. Thompson (1969-)	Russell
Herbert W. Walton, (1975-)	Olathe
Judge, Tenth Judicial District	
James J. Noone, (1975-)	Wichita
Judge, Eighteenth Judicial District	

FORMER MEMBERS OF THE JUDICIAL COUNCIL

W. W. HARVEY, <i>Chairman</i> , (1927-1941)	Ashland
Justice of the Supreme Court	
WALTER G. THIELE, <i>Chairman</i> , (1941-1954)	Lawrence
Justice of the Supreme Court	
ROBERT T. PRICE, <i>Chairman</i> , (1954-1963)	Topeka
Justice of the Supreme Court	
ALFRED G. SCHROEDER, <i>Chairman</i> , (1963-1979)	Newton
Chief Justice of the Supreme Court	
J. C. RUPPENTHAL, <i>Secretary</i> , (1927-1941)	Russell
RANDAL C. HARVEY, <i>Secretary</i> , (1941-1953)	Topeka
WILLIAM M. MILLS, JR., <i>Secretary</i> , (1953-1957)	Topeka
WALTER G. THIELE, <i>Secretary</i> , (1957-1963)	Topeka
EDWARD L. FISCHER, (1927-1943)	Kansas City
ROBERT C. FOULSTON, (1927-1943)	Wichita
CHARLES L. HUNT, (1927-1941)	Concordia
CHESTER STEVENS, (1927-1941)	Independence
JOHN W. DAVIS, (1927-1933)	Greensburg
C. W. BURCH, (1927-1931)	Salina
ARTHUR C. SCATES, (1927-1929)	Dodge City
WALTER PLEASANT, (1929-1931)	Ottawa
ROSCOE H. WILSON, (1931-1933)	Jetmore
GEORGE AUSTIN BROWN, (1931-1933)	Wichita
RAY H. BEALS (1933-1938)	St. John
HAL E. HARLAN, (1933-1935)	Manhattan
SCHUYLER C. BLOSS, (1933-1935)	Winfield
E. H. REES, (1935-1937)	Emporia
O. P. MAY, (1935-1937)	Atchison
KIRKE W. DALE, (1937-1941)	Arkansas City
HARRY W. FISHER, (1937-1939)	Fort Scott
GEORGE TEMPLAR, (1939-1941, 1943-1947, 1953)	Arkansas City
EDGAR C. BENNETT, (1938-1951)	Marysville
SAMUEL E. BARTLETT, (1941-1951)	Wichita
PAUL R. WUNSCH, (1941-1943)	Kingman
WALTER F. JONES, (1941-1945)	Hutchinson
GROVER PIERPONT, (1943-1944)	Wichita
I. M. PLATT, (1943-1945)	Junction City
C. A. SPENCER, (1944-1951)	Oakley
CHARLES VANCE, (1945-1947)	Liberal
RICHARD L. BECKER, (1949-1951)	Coffeyville
W. D. VANCE, (1951-1952)	Belleville
JOHN A. ETTLING, (1945-1953)	Kinsley
DALE M. BRYANT, (1947-1949, 1951-1953)	Wichita
FRANKLIN B. HETTINGER, (1952-1953)	Hutchinson
JOHN H. MURRAY, (1953-1957)	Leavenworth
A. K. STAVELY, (1951-1959)	Lyndon
MAX L. DICE, (1957-1959)	Johnson
WILLIAM L. MITCHELL, (1959-1961)	Hutchinson
JOSEPH J. DAWES, (1953-1960, 1961)	Leavenworth
WILFORD RIEGLE, (1953-1960, 1961)	Emporia
GLEE S. SMITH, (1961-1963)	Larned
SPENCER A. GARD, (1959-1964)	Iola
CLYDE HILL, (1961-1965)	Yates Center
JAMES E. TAYLOR, (1941-1969)	Sharon Springs
J. WILLARD HAYNES, (1955-1969)	Kansas City
STEADMAN BALL, (1963-1973)	Atchison
JACK R. EULER, (1965-1973)	Wathena
ALEX HOTCHKISS, (1964-1973)	Lyndon
ALBERT B. FLETCHER, JR., (1973-1975)	Junction City
DOYLE E. WHITE, (1961-1975)	Arkansas City
J. C. TILLOTSON, (1973-1977)	Norton
JOHN F. HAYES, (1973-1977)	Hutchinson
E. RICHARD BREWSTER, (1977-1979)	Topeka

TABLE OF CONTENTS

	PAGE
Foreword	3
By Justice David Prager, Chairman, Kansas Judicial Council	
The Judicial Council—A Boon for Kansas	9
By Charles E. Henshall, President of the Kansas Bar Association	
Proposed Kansas Parentage Act	13
Prepared by the Judicial Council Family Law Advisory Committee	
Time Standards	32
Reprinted from the 1981 Annual Report of the Judicial Administrator's Office	
Summary of FY 1981 Court Caseload Data for Supreme Court, Court of Appeals, and District Courts	34
Prepared by the Judicial Administrator's Office	
Roster of Judges of the District Courts	36
Members of the Kansas Judicial Council	(Inside front cover)
Former Members of the Kansas Judicial Council	(Inside front cover)
Change in Address of Recipient	(Inside back cover)

FOREWORD

The Honorable Charles E. Henshall has prepared an article for this issue of the *Kansas Judicial Council Bulletin* entitled "The Judicial Council—A Boon For Kansas".

Mr. Henshall is President of the Kansas Bar Association and is a partner in the Chanute law firm of Henshall, Pennington, and Brazil. He was a member of the KBA Executive Council from 1977 through 1980.

Born in Osborne, Mr. Henshall attended the University of Kansas, where he received his A.B. degree in 1938 and his J.D. degree in 1940. He is a member of the American, Kansas, Southeast Kansas, and Neosho County Bar Associations. Mr. Henshall is on the Board of Governors of the K.U. Law Society and is a Fellow of the American College of Trial Lawyers. He served on the Supreme Court Advisory Committee on Judicial Conduct and is presently a member of the Benchbook and Civil Code Advisory Committees of the Judicial Council. He and his wife Barbara have two children, Charles Austin of McPherson and Patricia Elizabeth, a second year law student at K.U.

This *Kansas Judicial Council Bulletin* contains the article written by Kansas Bar Association President Charles E. Henshall; the proposed Kansas Parentage Act, drafted by the Judicial Council Family Law Advisory Committee; a reprint of an article entitled "Time Standards" from the fiscal year 1981 Annual Report of the Judicial Administrator; a summary of fiscal year 1981 court caseload data, and a roster of judges of the district courts. This bulletin is somewhat unusual in that in the past the bulletin has been prepared in November and distributed in December. This bulletin was prepared in April and distributed in May. The publication was delayed to allow inclusion of the Family Law Advisory Committee's proposed Kansas Parentage Act to give members of the bench and bar an opportunity to express their comments on the subject. Comments are invited and may be offered by writing:

Kansas Judicial Council
Kansas Judicial Center
301 West 10th Street
Topeka, Kansas 66612

The court days for 1982 are not printed in this bulletin. Any person requiring a listing of court days for any judicial district can obtain that information by requesting it from the Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612. Also, any person needing detailed court caseload data of the work of the Supreme Court, Court of Appeals, or District Court, for the period from July 1, 1980 to June 30, 1981 may obtain it by writing the Judicial Administrator.

There have been no changes in the membership of the Judicial Council since the last report of the Council. The Kansas Judicial Council consists of the following persons: Justice David Prager, Chairman, Topeka; James D. Waugh, Secretary, Topeka; Chief Judge J. Richard Foth, Topeka; Judge James J. Noone, Wichita; Judge Herbert W. Walton, Olathe; Senator Elwayne F. Pomeroy, Topeka; Representative Joseph J. Hoagland, Overland Park; Robert H. Cobean, Wellington; Jack E. Dalton, Dodge City; and Marvin E. Thompson, Russell.

The staff of the Judicial Council consists of Randy M. Hearrell, attorney, who is research director, Mrs. Nell Ann Gaunt, fiscal officer & administrative assistant for

the Council, and Matthew B. Lynch, attorney, who is research associate for the Council.

The Judicial Council continues to perform its statutory duties as prescribed by K.S.A. 20-2203 and 20-2204. Much of the work of the Judicial Council is carried out through the use of advisory committees. The following is a summary of the work of each advisory committee for the past year.

The Benchbook Advisory Committee remains a standing committee of the Council to update and prepare supplements to the *Kansas Benchbook* as they are deemed desirable. Copies of the *Kansas Benchbook* are available from the Council, free-of-charge, to attorneys who request a copy of the book. The members of the committee are Judge James J. Noone, Chairman and member of the Council, Wichita; Judge John W. Brookens, Westmoreland; Judge William R. Carpenter, Topeka; Charles S. Fisher Jr., Topeka; Charles E. Henshall, Chanute; Byron G. Larson, Dodge City; Donald Patterson, Topeka; Gene H. Sharp, Liberal, and Judge John W. White, Iola.

The Civil Code Advisory Committee is a standing committee of the Council and is designated to keep the Kansas Code of Civil Procedure current with amendments to the Federal Code of Civil Procedure and with current needs. The committee also receives assignments from the Council in related areas.

The committee has studied several subjects and made recommendations which, as of this writing, are either under consideration by the Legislature or have been taken under advisement by the Supreme Court. Substitute for H.B. 2280, relating to court costs; H.B. 2150 relating to prejudgment interest; H.B. 2201 relating to terms of court; H.B. 2615 relating to frivolous claims and defenses, and H.B. 2660 relating to a "full constitutional scope" amendment to the long arm statute are bills initially drafted by the Civil Code Advisory Committee which are presently being considered by the Legislature. A proposed amendment to Supreme Court Rule No. 3.03, Transcripts in Record on Appeal; a proposed rule titled "Suggested Procedure for Discovery Conference Under Supreme Court Rule No. 136", and proposed Supreme Court Rule No. 2.04 relating to docketing statements were all drafted by the Civil Code Advisory Committee and are under advisement by the Supreme Court.

The committee is currently studying: a multi-district litigation statute for Kansas; a proposed rule relating to destruction of court records; discovery procedure; sufficiency of process; certain aspects of foreclosure proceedings; the doctrine of *forum non conveniens*, and a rule which would require payment of additional costs for certain post-trial remedies.

In the near future the committee will undertake a study of the changes in the Federal Code of Civil Procedure. The members of the Civil Code Committee are Marvin E. Thompson, Chairman and member of the Judicial Council, Russell; Professor Michael A. Barbara, Topeka; Emmet A. Blaes, Wichita; Chief Judge J. Richard Foth, member of the Judicial Council, Topeka; Charles E. Henshall, Chanute; Morris D. Hildreth, Coffeyville; Justice David Prager, Chairman of the Judicial Council, Topeka; Richard D. Shannon, Kansas City; and Leonard O. Thomas, Kansas City.

The Counsel for Indigent Persons Advisory Committee which was appointed at the request of the 1977 Legislature has completed its study of the appointment of counsel in criminal and all other proceedings constitutionally requiring appointed counsel. The committee reported to the 1980 Legislature and has been disbanded. However, Senate Bill 515, which is being considered by the 1982 Legislature, is nearly identical to legislation recommended by the C.I.P. Com-

mittee. The members of the committee were Jack E. Dalton, Chairman and member of the Judicial Council, Dodge City; A. Jack Focht, Wichita; Gerald L. Goodell, Topeka; Judge Morris V. Hoobler, Salina; Ira R. Kirkendoll, Kansas City; Michael Lerner, Kansas City; Dolores V. Macke, Overland Park; Walter F. Stueckemann, Jetmore; and Representative Fred L. Weaver, Baxter Springs.

Creation of a new Criminal Law Advisory Committee which will serve as a standing committee to advise the Judicial council on matters of criminal law and procedure has been approved by the Judicial Council. Appointments to the committee have not yet been made.

The Family Law Advisory Committee is studying problems in the area of divorce and family law. The committee has prepared amendments to Article 16 of K.S.A. Chapter 60, which are contained in H.B. 2706, presently being considered by the Legislature. The committee has drafted a proposed Kansas Parentage Act, which is printed in this bulletin. The members of the committee are Judge Herbert W. Walton, Chairman and member of the Council, Olathe; Constance M. Achterberg, Salina; Phyllis H. Buzick, Topeka; John H. Johntz Jr., Olathe; Dr. Paul C. Laybourne Jr., Kansas City; Judge Jerry L. Mershon, Manhattan; Brian J. Moline, Topeka; Judge Wayne H. Phillips, Kansas City, and Judith C. Runnels, Topeka.

The Guardianship and Conservatorship Advisory Committee was recently created to study and propose improvements in the Kansas Statutes relating to guardianships and conservatorships. The members of the committee are Robert H. Cobean, Chairman and member of the Council, Wellington; Senator Norma L. Daniels, Valley Center; Dr. Jim Lackey, Manhattan; Judge Samuel I. Mason, Fort Scott; Representative Vic Miller, Topeka; Judge Mary Schowengerdt, Topeka, Wayne T. Stratton, Topeka; Judge Joe H. Swinehart, Topeka and David J. Waxse, Olathe.

The PIK-Civil Advisory Committee has completed a supplement to the *PIK-Civil 2d* which can be obtained from its publisher, Bancroft-Whitney Publishing Company. The members of the committee are Judge Herbert W. Walton, Chairman and member of the Council, Olathe; Judge Bob Abbott, Topeka; Professor Michael A. Barbara, Topeka; Judge John W. Bookens, Westmoreland; Judge B. Mack Bryant, Wichita; Chief Judge J. Richard Foth, member of the Council, Topeka; Judge Ronald D. Innes, Manhattan; Justice David Prager, Chairman of the Council, Topeka; and Judge Frederick Wolesslagel, Lyons.

The PIK-Criminal Advisory Committee will draft a second edition to *PIK-Criminal*. The new, looseleaf, volume has been made possible by a grant from the Governor's Committee on Criminal Administration to the Judicial Council. The book will be available this fall. The members of the committee are Judge Herbert W. Walton, Chairman and member of the Council, Olathe; Judge Bob Abbott, Topeka; Professor Michael A. Barbara, Topeka; Judge John W. Bookens, Westmoreland; Judge B. Mack Bryant, Wichita; Chief Judge J. Richard Foth, member of the Council, Topeka; Judge Ronald D. Innes, Manhattan; Justice David Prager, Chairman of the Council, Topeka; and Judge Frederick Wolesslagel, Lyons.

The Judicial Redistricting Advisory Committee was formed to conduct a review of the geographic configuration of the State's 29 judicial districts and report to the Legislature. The legislation proposed by the committee has passed and the Governor has signed Senate Bills 203 and 773 which accomplished the redistricting of the states judicial districts. The legislation changes the counties that comprise the 13th, 14th, 15th, 17th, 19th, and 23rd judicial districts and creates a new 30th judicial district. The legislation mandates elections on the method of

judicial selection in the 14th, 15th, 17th, and 23rd judicial districts and sets out the procedures to be followed in those elections. The legislation also eliminates an associate district judge position in the 11th and 19th judicial districts when the next vacancy occurs. New associate district judge positions are created in the 7th judicial district and the 25th judicial district. The members of the committee were Chief Judge J. Richard Foth, chairman and member of the Judicial Council, Topeka; Jack R. Euler, Troy; Judge Steven P. Flood, Hays; Senator Franklin D. Gaines, Augusta; Representative John Michael Hayden, Atwood; Richard C. Hite, Wichita; Representative Joseph J. Hoagland, member of the Council, Overland Park; Justice Robert H. Kaul, retired, Wamego; Ted Morgan, Lakin, and Harold A Pfalzgraf, Wellington.

The Juvenile Code Advisory Committee has recommended recodification of the Kansas Juvenile Code into two separate codes, one dealing with status offenders and one dealing with "criminal type" offenses. The recommendations are contained in Senate Bill 520 and are being considered by the Legislature. The members of the committee are Robert H. Cobean, chairman and member of the Judicial Council, Wellington; Michael G. Glover, Lawrence; Arthur H. Griggs, Topeka; Charles V. Hamm, Topeka; Representative James Holderman, Wichita; Judge C. Fred Lorentz, Fredonia; Judge David P. Mikesic, Kansas City; Judge Robert L. Morrison, Wichita; Mary Ann Torrence, Topeka; and David J. Waxse, Olathe.

The Special Services Advisory Committee which studied the special court services currently operating in the various judicial districts and the implementation of the requirement K.S.A. 20-346a that the district courts provide certain probation services now provided by the Department of Corrections, has been disbanded. Members of the committee were Chief Justice Alfred G. Schroeder, Chairman, Topeka; Justice David Prager, Chairman of the Judicial Council, Topeka; Judge C. Phillip Aldrich, Larned; Judge William R. Carpenter, Topeka; Judge William D. Clement, Junction City; Judge William M. Cook, Kansas City; Judge James J. Noone, member of the Judicial Council, Wichita; Judge David H. Scott, Independence, and Michael S. McLain, Olathe. John E. Johnston, court services specialist for the office of the Judicial Administrator, was an *ex officio* member of the committee.

The Traffic Law Advisory Committee has been created to study traffic offense adjudication and procedures. The members of the committee are James D. Waugh, Chairman and member of the Council, Topeka; Sheriff Fred Allenbrand, Olathe; Norma Doty, Alma; James R. Feters, Smith Center; Representative Karen B. Griffiths, Newton; Judge David W. Kennedy, Wichita; Senator Jan Meyers, Overland Park; Terry L. Pullman, Wichita; Dwight E. Robinson, Topeka; Judge Pauline Schwarm, Greensburg; Dr. Howard Schwartz, Topeka, and Major Charles Wickham, Topeka.

The redraft of the *Kansas Municipal Court Manual* has been completed by the Judicial Council staff and the book has been distributed. Copies are available upon request.

Among the statutory duties of the Judicial Council is the duty to report on the condition of business in the courts. The Council often views the condition of business and proposes methods of improvement. However, in this instance it is the Council's intention to recognize the positive effect that the adoption of time standards by the Supreme Court has had on the administration of justice. I call your attention to the article entitled "Time Standards" which appeared in the

annual report of the Judicial Administrator for fiscal year 1981 and is reprinted in this bulletin.

The Council also recognizes the success of the districts which are using the one-trial system of jury duty.

The work of the Judicial Council in surveying the judicial system and recommending needed improvements is continuous. Any person who has comments or suggestions about any matter affecting the administration of justice is urged to contact the Kansas Judicial Council.

DAVID PRAGER, *Chairman*
Kansas Judicial Council

THE JUDICIAL COUNCIL—A BOON FOR KANSAS

I am pleased to have been asked to contribute this commentary for publication in the *Kansas Judicial Council Bulletin*. In its preparation I have drawn, substantially, on research previously compiled by Chief Justice Schroeder and Mr. Randy M. Hearrell, Research Director of the Kansas Judicial Council. I am indebted to them for their assistance.

In 1927, the Kansas Legislature created our Judicial Council. In doing so, Kansas became the eighth state to adopt this vehicle for overcoming a problem inherent in the separation of governmental powers and denounced by Justice Cardozo in the following language:

"Today (1921) courts and legislatures work in separation and aloofness . . . they move on in proud and silent isolation. Some agency must be found to mediate between them."¹

The statute creating the Judicial Council is K.S.A. 20-2201 and its duties are set forth in K.S.A. 20-2203. Because of the limitation of space, I shall not recapitulate, herein, those statutes. It appears to me the duties of the Council are summarized in K.S.A. 20-2204 where the Council is charged:

"The council shall report on the work of the council, the facts ascertained, the conditions of business in the courts, conditions found to be defeating or deferring the administration of justice, with recommendations concerning needed changes in the organization of the judicial department, in rules and methods in civil and criminal procedure and pertinent legislation"

At the present time, the Council consists of one member of the Supreme Court, Justice David Prager, its Chairman, one member of the Court of Appeals, Chief Judge J. Richard Foth, two District Judges from different judicial districts, Judge James J. Noone and Judge Herbert W. Walton, and the chairpersons of the Senate and House Judiciary Committees, Senator Elwaine F. Pomeroy and Representative Joseph J. Hoagland. In addition, there are four practicing lawyer members, James D. Waugh of Topeka, its Secretary, Robert H. Cobean of Wellington, Jack E. Dalton of Dodge City, and Marvin E. Thompson of Russell. In addition to Mr. Hearrell, the Council's staff consists of Matthew Lynch, its Research Associate, and Nell Ann Gaunt, its Fiscal Officer and Administrative Assistant.

The Council does its work through Advisory Committees. These committees are composed of lawyers, judges, and lay persons from throughout the state and, generally, are chaired by a member of the Council.

As of March, 1982, there were eight functioning committees, i.e., Benchbook, Civil Code, Criminal Law, Family Law, Juvenile Code, PIK Civil, PIK Criminal, and Traffic Law.

The members of the Council and the advisory committees receive a per diem of \$35 for attendance at a meeting of a given committee and a subsistence allowance for meals and lodging. They also receive mileage in the amount fixed by statute, which is currently at \$.22 per mile. It, immediately, will be appreciated by the reader that this scale of remuneration can hardly be accused of fanning the flames of inflation. Chief Justice Schroeder put it this way:

"Legal services rendered to the taxpayers of Kansas through the Judicial Council have been acquired at the bargain counter. The taxpayers of Kansas have been receiving one dollar's worth of legal services for three cents."²

That the Council, and its various committees, through the years, have been in the vanguard of progressive thinkers is easily gleaned from a survey of its earliest

reports and bulletins. In the 1927 annual report of the Council, appears some discussion concerning the advisability of less than unanimous jury verdicts in civil cases. In one of the 1938 bulletins appears a study on pre-trial conference procedure. In 1942 appears a discussion of the proposed Uniform Simultaneous Death Act. In 1944 a study was made concerning comparative negligence vis-a-vis the defense of contributory negligence. In 1948 the Council presented the concept of non-partisan selection of judges. It also recommended the Judicial Article of our State Constitution be rewritten vesting the judicial power of the State in its Supreme Court with the Supreme Court having administrative control over the district courts. It further recommended provisions should exist whereby a trial judge could be transferred from one judicial district to another for trial purposes; all judges of the state should be lawyers—admitted to the bar; a procedure should be established whereby a judge could be removed from his office, for the good of the public's confidence in its courts; there should be no terms of judicial office and clerks of the various courts should be appointed by and responsible to the court for office performance.

All of these innovative suggestions for improving the administration of justice now have come to pass. In some of these concepts, the Council was 50 years ahead of the Legislature and the electorate in sensing the need for change. One wonders why it took so long! Could it have been the operation of that certain law of static human behavior expressed by Mencken as follows:

"Everyone favors progress but resists change"?

Other activities of the Council which have been of help to the practicing lawyer have been the Benchbook, Pattern Instructions Civil and Criminal, and the several Judicial Council Bulletins containing probate forms. These publications have been of inestimable value to the practicing lawyer and have taken much guess work out of pleadings and instructions. I am advised suggested instructions implementing the recently adopted Kansas Product Liability Act K.S.A. 1981 Supp. 60-3301 *et seq.* the 1981 Sessions Laws of Kansas) have been drafted and appear in the supplement to *PIK-Civil 2d*.

Copies of the *Kansas Benchbook* are available to the Kansas practitioner (as long as the supply lasts) for the asking. This book is a capsule summary of those bodies of substantive and procedural law, as well as rules of evidence, a Kansas trial judge is most likely to meet and use in his or her determination of litigation. It is kept to date by annual supplements.

I believe every practicing lawyer in Kansas has, at one time or another, uttered a silent prayer of thanksgiving for the two PIK committees and their work product.

Other projects currently under study or draft are:

A. The Juvenile Code Committee, under the guidance of Bob Cobean, has redrafted the juvenile code into two separate codes. They are being considered by the 1982 Legislature.

B. Judge Walton's Family Law Committee has drafted a completely new approach to the problem of divorce and its by-products which has been introduced in the 1982 legislative session. In addition, the committee is studying a proposed parentage act.

C. Judge Foth chaired a Judicial Redistricting Advisory Committee which studied and suggested certain judicial districts be changed. This matter was passed by the 1982 Legislature, and has been signed by the Governor.

D. The Judicial Council has appointed a committee, with Jim Waugh as chairman, to undertake a study of traffic law.

E. Marvin Thompson's Civil Code Committee currently is studying numerous problems among which are the subjects of trial delay and discovery abuse.

Kansas is a progressive albeit conservative state. Its people abjure waste and inefficiency. They want and expect the best and least offensive government for each tax dollar spent. In this respect, they expect efficient, orderly, fair and prompt determination of their litigations from their courts.

We can expect continued population growth in Kansas. This has become quite evident in the past few years. We are a large geographical piece of real estate but already there are several urban areas experiencing growth pains and demonstrating stretch marks. Our courts must keep abreast of the concomitant increase in litigation spawned by this growth. Means must be found to insure litigations will be quickly and fairly resolved, without the litigants experiencing financial havoc in the process.

I am confident the Council will come forth with suggested solutions to the various problems I have commented on which will comport with due process and emphasize, once again, the Council's prudent stewardship of its legislative charge.

The people of Kansas can be thankful and proud their Legislature, back in 1927, found a medium whereby the cleft between the Legislature and the Judiciary could be bridged. The Council has served us well and deserves our thanks, appreciation, and support.

CHARLES E. HENSHALL, *President*
Kansas Bar Association

1. Harvard Law Review, 1921

2. Public release by Chief Justice Schroeder in re. PIK-Criminal, 5/11/72

PROPOSED KANSAS PARENTAGE ACT
PREPARED BY THE KANSAS JUDICIAL COUNCIL
FAMILY LAW ADVISORY COMMITTEE

INTRODUCTION

The Kansas Judicial Council created the Family Law Advisory Committee in 1977 and granted it latitude in the consideration and solution of problems in the area of family law.

The major efforts of the Committee have been devoted to a substantial revision of the Kansas divorce code. The Committee's recommended amendments to the divorce code are contained in 1982 House Bill 2706, which is presently before the Kansas Legislature. In addition to its work in finalizing the proposed parentage act, the Committee is engaged in a study of the use of conciliation and mediation in domestic relations cases.

In preparing the proposed Kansas Parentage Act, the Committee relied extensively on the Uniform Parentage Act, 9A *Uniform Laws Annotated* (1979). The Committee made numerous amendments to the provisions of the uniform act to accommodate Kansas practice or where present provisions of Kansas law were viewed as preferable.

It should be stressed that what follows are the tentative proposals of the Family Law Advisory Committee.

THEY HAVE NOT BEEN CONSIDERED BY THE JUDICIAL COUNCIL.

The proposed act is being published at this time to invite comments, criticisms, and suggestions. Upon consideration of the responses generated by this publication, the Committee will engage in any necessary redrafting of the proposed act and will submit it to the Judicial Council for approval.

The following persons are members of the Family Law Advisory Committee:

HONORABLE HERBERT W. WALTON, Chairman of the Committee, from Olathe, a member of the Judicial Council, and District Judge of Division I of the 10th Judicial District. Judge Walton is past president of the Kansas District Judges Association, and was formerly probate judge and assistant county attorney of Johnson County. He is chairman of the Judicial Council's PIK-Criminal and PIK-Civil Advisory Committees.

CONSTANCE M. ACHTERBERG, a practicing lawyer and assistant county attorney for civil matters in Salina, former chairman of the Kansas Bar Association Family Law Section, and current secretary-treasurer of the Kansas Bar Association.

PHYLLIS H. BUZICK, a registered occupational therapist from Topeka, and former member of the President's Task Force on the Mentally Handicapped.

JOHN H. JOHNTZ, JR., a practicing lawyer in Olathe. Mr. Johntz is a member of the Board of Editors of the Kansas Bar Journal, the Family Law Section of the American Bar Association, the American Academy of Matrimonial Lawyers, and the Family Law Bench-Bar Committee of the Johnson County Bar Association.

PAUL C. LAYBOURNE, JR., M.D., professor of psychiatry and family practice, associate professor of pediatrics, and director of child psychiatry at the University

of Kansas Medical Center. Dr. Laybourne is a former member of the Governor's Advisory Commission on Institutional Management and Community Mental Health programs.

HONORABLE JERRY L. MERSHON, from Manhattan, District Judge, Division II of the 21st Judicial District. Judge Mershon is a past member of the Kansas Task Force on Children and Youth and is a current member of the National Council of Juvenile and Family Court Judges. He has served as a faculty member and lecturer at the National College of Juvenile Justice, University of Nevada, the National College of District Attorneys, University of Houston, and Kansas State University.

BRIAN J. MOLINE, general counsel to the Kansas Corporation Commission in Topeka. Mr. Moline is a former member of the Kansas House of Representatives and former executive director of the Legal Aid Society of Wichita, Inc.

HONORABLE WAYNE H. PHILLIPS, District Judge of the 29th Judicial District. Judge Phillips resides in Bonner Springs and was engaged in the general practice of law in Wyandotte County prior to his appointment to the bench in 1975.

JUDITH C. RUNNELS, a registered nurse from Topeka, formerly legislative liaison for Governor John Carlin. She has also worked as lobbyist for the Kansas State Nurses Association and was president of the League of Women Voters of Topeka.

The Committee wishes to note the support efforts of the Judicial Council staff members, Matthew B. Lynch, Nell Ann Gaunt, and Randy M. Hearrell.

KANSAS PARENTAGE ACT

Section 1. [UPA 1] Parent and child relationship defined.

As used in this act, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

Section 2. [UPA 2] Relationship not dependent on marriage.

The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

Comment

Sections 1 and 2 are taken verbatim from the Uniform Parentage Act. These sections abolish illegitimacy, provide equality of legal status to all children and eliminate discrimination based upon marital status. The parent and child relationship is applicable to all children by virtue of the fact of their birth and to all parents by virtue of the fact of their parentage. These sections set forth the substantive portions of the Uniform Parentage Act while the remaining sections set forth the procedural portions.

These sections necessitate the amendment of statutes which discriminate on the basis of the marital status of the child's parents. See sections 24, 25, and 26 and the comments to those sections.

Under the common law, a child born to unmarried parents was considered to be the child of no one. An illegitimate child was denied a surname and the right to inherit property. The inequity of punishing illegitimate children for the alleged sins of their parents has long been noted. *Doughty v. Engler*, 112 Kan. 583, 585, 211 Pac. 619 (1923).

In recent years, the United States Supreme Court has had occasion to apply an equal protection analysis to a number of statutes which discriminate on the basis of illegitimacy. Note, *The Equal Protection Clause and Illegitimacy—What Standard of Review*, 28 Kan. L. Rev. 140 (1979). The court has struck down statutes which deny recovery to illegitimate children for the wrongful death of their mother [*Levy v. Louisiana*, 391 U.S. 68 (1968)], bar recovery to a mother for the death of her child [*Glonn v. American Guarantee and Liability Insurance Co.*, 391 U.S. 73 (1968)], do not place illegitimate children on an equal basis with legitimate children in recovering for the death of their father under workmen's compensation [*Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972)], deny illegitimate children a right to support from their father [*Gomez v. Perez*, 409 U.S. 535 (1972)], deny social security benefits to certain illegitimate children born to the insured father after he is disabled [*Jiminez v. Weinberger*, 417 U.S. 628 (1974)], and which allow illegitimate children to take through intestacy from their mothers but not from their fathers [*Trimble v. Gordon*, 430 U.S. 762 (1977)]. On the other hand, the Supreme Court has upheld provisions denying acknowledged illegitimate children equal participation with legitimate children in their fathers' estates [*Labine v. Vincent*, 401 U.S. 532 (1971)], denying a statutory presumption of dependency to certain illegitimate children for the purpose of receiving social security benefits [*Matthews v. Lucas*, 427 U.S. 495 (1976)], denying openly acknowledged illegitimate children the right to inherit from their intestate fathers where they lack a judicial order declaring paternity [*Lalli v. Lalli*, 439 U.S. 259 (1978)], and precluding the father of an illegitimate child who has not legitimated

the child from suing for the child's wrongful death [Parham v. Hughes, 441 U.S. 347 (1979)]. As can be seen, the results of the court's decisions have been varied, due in large part to the court's failure to articulate a consistent standard of review for classifications based on illegitimacy. At least it might be said that, although illegitimacy has never been declared a suspect classification, such classifications will receive something greater than minimal scrutiny from the court.

Kansas was the first state to recognize the nonstatutory right of an illegitimate minor child to support from its father. See *Doughty v. Engler, Supra*. K.S.A. 59-501 allows illegitimate children to inherit from intestate fathers where the father has notoriously or in writing recognized his paternity or his paternity has been adjudicated during his lifetime.

Section 3. [UPA 3] How parent and child relationship is established.

The parent and child relationship between a child and

(1) the natural mother may be established by proof of her having given birth to the child, or under this Act;

(2) the natural father may be established under this Act;

(3) an adoptive parent may be established by proof of adoption.

Comment

This section is nearly identical to section 3 of the Uniform Parentage Act. This section provides for the establishment of the parent and child relationship by proof of birth, proof of adoption or ascertainment under this Act.

Kansas provides for proof of paternity in an action brought by an unmarried woman pursuant to K.S.A. 38-1101 *et seq.*, an action brought by SRS under K.S.A. 39-755, or in an action to enforce the child's nonstatutory right to support, *Huss v. DeMott*, 215 Kan. 450, 524, P.2d 743 (1974).

Section 4. [UPA 4] Presumption of paternity.

(a) A man is presumed to be the natural father of a child if:

(1) he and the child's natural mother are, or have been, married to each other, and the child is born during the marriage, or within 300 days after the marriage is terminated by death, or a decree of annulment, separate maintenance, or (divorce) (dissolution of marriage);

(2) before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is void or voidable, and,

(i) if the attempted marriage is voidable, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, or (divorce) (dissolution of marriage); or

(ii) if the attempted marriage is void, the child is born within 300 days after the termination of cohabitation;

(3) after the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is void or voidable, and

(i) he has acknowledged his paternity of the child in writing, or

(ii) with his consent, he is named as the child's father on the child's birth certificate, or

(iii) he is obligated to support the child under a written voluntary promise or by a court order;

(4) he notoriously or in writing recognizes his paternity of the child.

(b) A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

Comment

This section generally follows section 4 of the Uniform Parentage Act and sets forth the circumstances in which a presumption of paternity arises. In 4(a)(2) and 4(a)(3) the words "void" and "voidable" have been substituted for "invalid" to be consistent with Kansas terminology. The Committee has replaced the presumptions contained in 4(a)(4) and 4(a)(5) of the UPA with a presumption of paternity where the father "notoriously or in writing recognizes his paternity of the child." Presently, under K.S.A. 59-501, an illegitimate child can inherit from an intestate father where the decedent has notoriously or in writing recognized his paternity of the child. Since this act abolishes distinctions based on illegitimacy, the Committee proposes the amended presumption in 4(a)(4) to insure that such a child can bring an action upon the death of the alleged father to determine parentage and establish the right to inherit.

The presumptions contained in subsections (1), (2), and (3) of section 4(a) correspond significantly to the Kansas law relating to legitimacy. There is a strong presumption that a child born in wedlock is legitimate. *Bariuan v. Bariuan*, 186 Kan. 605, 352 P.2d 29 (1960). This presumption extends to a child born after the parents are divorced where conception takes place before the decree is entered. *In re Marsolf*, 200 Kan. 128, 434 P.2d 1010 (1967) (287 days after decree); *Jensen v. Reeble*, 167 Kan. 1, 204 P.2d 703 (1949) (295 days after decree). Under K.S.A. 23-124, children of a void or voidable marriage are deemed legitimate, although a father can attempt to disprove his paternity. K.S.A. 23-125 *et seq.*, provides a procedure for the legitimation of a child whose parents marry after the child's birth.

K.S.A. 60-413 through 60-416 set forth the Kansas rules of evidence in regard to presumptions. Where there is a conflict of presumptions, Kansas adopts the one "founded on the weightier consideration of policy and logic." K.S.A. 60-415.

Section 5. [UPA 5] Artificial insemination.

(a) Use of artificial insemination by husband and wife.

(1) The technique of heterologous artificial insemination may be performed in this state at the request and with the consent in writing of the husband and wife desiring the utilization of such technique for the purpose of conceiving a child or children.

(2) Any child or children heretofore or hereafter born as the result of heterologous artificial insemination shall be considered at law in all respects the same as a naturally conceived child of the husband and wife so requesting and consenting to the use of such technique.

(3) The consent provided for in this act shall be executed and acknowledged by both the husband and wife and the person who is to perform the technique, and an original thereof may be filed under the same rules as adoption papers in the district court of the county in which such husband and wife reside. The written consent so filed shall not be open to the general public, and the information contained therein may be released only to the persons executing such consent, or

to persons having a legitimate interest therein as evidenced by a specific court order.

(b) Semen donor.

The donor of semen used in artificial insemination is treated in law as if he were not the natural father of the child thereby conceived, except in the instance where the donor is the consenting husband.

Comment

This statute covering the most important legal aspects of artificial insemination is made up of the present Kansas statutes, K.S.A. 23-128 through 23-130, and a modified version of subsection (b) of section 5 of the Uniform Parentage Act. Issues of consent, paternity of the consenting husband, and non-paternity of the donor are addressed in the statute.

The statute does not attempt to address the issue of whether the performance of this technique should be limited to physicians.

Section 6. [UPA 6 and 7] Determination of father and child relationship; who may bring action; when action may be brought.

(a) A child, the natural mother, or a man presumed to be the father under subsection (1), (2), or (3) of section 4(a), may bring an action

(1) at any time for the purpose of determining the existence of the father and child relationship presumed under subsection (1), (2), or (3) of section 4(a); or

(2) within five years after the child's birth for the purpose of determining the nonexistence of the father and child relationship presumed under subsection (1), (2), or (3) of section 4(a). After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(b) Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under subsection (4) of section 4(a).

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under section 4 may be brought by the child, the natural mother, the man alleged or alleging himself to be the father, or the personal representative of any of the above. An action under this subsection may not be brought later than three years after the birth of the child or the effective date of this act, whichever is later. However, an action brought by or on behalf of a child whose paternity has not been determined is not barred until three years after the child reaches the age of majority.

(d) When authorized under K.S.A. 39-755 or 39-756, the secretary of social and rehabilitation services may bring an action at any time during a child's minority to determine the existence of the father and child relationship.

(e) This section does not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to the probate of estates or determination of heirship.

(f) Any agreement between alleged or presumed father and the mother or child does not bar an action under this section.

Comment

This section represents a combination of sections 6 and 7 of the Uniform Parentage Act and states who may bring an action to determine parentage and

when such an action may be brought. Both sections 6 and 7 of the UPA contain statutes of limitations. In the hopes of achieving greater clarity, the Committee has placed all statutes of limitation in this section.

This section follows the approach of the UPA by relating who may be a party and when an action can be brought to the presumptions contained in section 4. As noted in the Commissioner's Comment to the UPA, attacks on the presumptions based on marriage or an attempted marriage are "... restricted to a limited circle of potential contestants and in point of time. Presumptions created in other circumstances may be attacked more freely." Presently, Kansas provides for the establishment of paternity in an action brought by an unmarried woman pursuant to K.S.A. 38-1101 *et seq.*, an action brought by a child through its next friend to enforce the child's nonstatutory right to support (*Doughty v. Engler*, 112 Kan. 583, 211 Pac. 619 [1923]), and an action by SRS to enforce the child's nonstatutory right of support pursuant to K.S.A. 39-755. The statutory action of the unmarried woman can not be instituted later than one year after the birth of the child (K.S.A. 38-1104) while, presumably, actions to enforce the child's nonstatutory right to support can be maintained until the child reaches majority, at which time the father's duty of support ends.

Subsection (f) is in accord with the Kansas cases which hold that any settlement of the child's nonstatutory right of support is ineffective. *Lawrence v. Boyd*, 207 Kan. 776, 486 P.2d 1394 (1971); *Smith v. Simmons*, 4 Kan.App.2d 60, 602 P.2d 546 (1979).

Section 7. [UPA 8] Jurisdiction; venue.

(a) The district court has jurisdiction of an action brought under this Act. The action may be joined with an action for divorce, annulment, separate maintenance, support or adoption.

(b) The action may be brought in the county in which the child, the mother, or the presumed or alleged father resides or is found. If the parent is deceased, an action may be brought in the county in which proceedings for probate of his or her estate have been or could be commenced.

Comment

This section closely follows section 8 of the Uniform Parentage Act, except that subsection (b) of the uniform act has been deleted.

Section 8(b) of the UPA provides that, in addition to personal service of summons outside of the state, registered mail with proof of actual receipt can be used. Such service would not suffice to impose in personam jurisdiction over the alleged father or mother, but rather would only suffice for in rem jurisdiction of the subject matter. Since the court may order the alleged parent to submit to blood tests, assess monies for pregnancy and confinement expenses and child support, and enter other personal orders against the alleged parent, the Committee felt that the type of service must be limited to personal service. K.S.A. 60-308(b)(10) provides sexual intercourse as a statutory basis upon which extraterritorial in personam jurisdiction may be imposed.

Proposed subsection (b) includes the UPA venue provisions and adds where the mother resides or is found. Presently in Kansas, under statutory paternity proceedings, venue is proper where the complaining witness resides or where the defendant resides or is served. K.S.A. 38-1102.

Section 8. [UPA 9] Parties.

The child shall be made a party to the action. The minor child shall be represented by a guardian ad litem who shall be an attorney appointed by the court. The natural mother, each man presumed to be the father under section 4 of this act, and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and shall be afforded the opportunity to be heard. If a man alleged or presumed to be the father is a minor, the court shall cause notice of the pendency of the proceedings and copies of the pleadings on file to be served upon the parents or guardian of the minor and shall appoint a guardian ad litem who shall be an attorney to represent the minor in the proceedings. If the parents or guardian of such minor cannot be found, notice may be served in such manner as the court may direct.

Comment

This section generally follows section 9 of the Uniform Parentage Act and emphasizes that the child is a party to the action. Kansas recognizes that under the nonstatutory action for support, it is the child's substantive rights that are involved and that the child is the real party in interest. *Lawrence v. Boyd*, 207 Kan. 776, 486 P.2d 1394 (1971); *Smith v. Simmons*, 4 Kan.App.2d 60, 602 P.2d 546 (1979).

The Committee substituted "guardian ad litem who shall be an attorney" for the term "guardian" used in the uniform act. The Committee believed it to be essential that the minor be represented by an attorney. The Committee added language adopted in Hawaii providing for the appointment of a guardian ad litem for an alleged father who is a minor.

[UPA 10 and 13] Pre-trial procedure and recommendations.

Comment

These sections of the Uniform Parentage Act provide for an informal hearing before the court, following which the court evaluates the probability of establishing paternity and whether establishing paternity is in the best interests of the child. Furthermore, the court would make a settlement recommendation to the parties. It is the opinion of the Committee that making the court an active participant in pre-trial settlement negotiations raises questions about the objectivity and impartiality of the tribunal should the settlement negotiations break down. Current Kansas pre-trial practice presents the better alternative and the Committee does not recommend adoption of a special pre-trial procedure.

Section 9. [UPA 11] Blood tests to determine paternity; order of court; refusal to submit to tests; expert witnesses.

Whenever the paternity of a child is in issue in any action or judicial proceeding in which the child, the mother and alleged father or such child are parties, the court, upon its own motion, or upon motion of any party to the action or proceeding may order the mother, child and alleged father to submit to blood tests. If any party refuses to submit to such tests, the court may resolve the question of paternity against such party or enforce its order if the rights of others and the interests of justice so require. The tests shall be made by experts qualified as examiners of blood types who shall be appointed by the court. The experts shall be called by the court as witnesses to testify as to their findings and shall be subject to cross-examination by the parties. Any party or person at whose sugges-

tion the tests have been ordered may demand that other experts, qualified as examiners of blood types, perform independent tests under order of the court, the results of which may be offered in evidence. The number and qualification of such experts shall be determined by the court.

Comment

The Committee believes that the existing Kansas statute, K.S.A. 23-131, is more comprehensive and more desirable than the Uniform Parentage Act blood test section. The Kansas statute, unlike the UPA, addresses the situation where a party refuses to submit to the tests.

Section. 10. [UPA 12] Evidence.

(a) Evidence relating to paternity may include:

(1) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) Blood test results, of the statistical probability of the alleged father's paternity;

(4) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. The court may and upon request of a party shall, require, the child, the mother and the alleged father to submit to appropriate tests;

(5) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth which testimony is not privileged; and

(6) All other evidence relevant to the issue of paternity of the child.

(b) Testimony relating to sexual access to the mother by a man at a time other than the probable time of the conception of the child is inadmissible in evidence.

Comment

The Committee adopted the Uniform Parentage Act statute with minor modification, believing that specific statutory provisions are helpful and beneficial in parentage actions.

Subsection (a)(5) was taken from section 10(c) of the UPA. Since it is evidentiary in nature it was set forth in this section. Similarly, subsection (b), as modified, is evidentiary in nature and was taken from section 14(b) of the UPA. Subsection (b) is consistent with the holding in *Dewey v. Funk*, 211 Kan. 54, 505 P.2d 722 (1973), that in a paternity action, evidence as to the sexual relations of the mother with others should be confined to a period of time when conception could have occurred.

Section 11. [UPA 14] Civil action; jury.

(a) An action under this Act is a civil action governed by the rules of civil procedure.

(b) Trial by jury may be granted by the court.

Comment

This section is a greatly abbreviated version of section 14 of the Uniform Parentage Act.

Language relating to the testimony of the mother or alleged father in 14(a) of the UPA has been deleted since it is adequately covered by the Kansas Rules of Evidence. See K.S.A. 60-407. The last sentence of the subsection is not necessary since the pre-trial procedure of the UPA is not recommended.

A modified version of 14(b) of the UPA has been transferred to proposed section 10 of this Act. 14(c) of the UPA has been deleted.

Presently, all paternity actions in Kansas are civil in nature. K.S.A. 38-1101, 39-755, *Huss v. DeMott*, 215 Kan. 450, 524 P.2d 743 (1974). There is no constitutional right to a jury trial in paternity proceedings in Kansas. *State ex rel. Wingard v. Sill*, 223 Kan. 661, 576 P.2d 620 (1978), *State ex rel. Mayer v. Pinkerton*, 185 Kan. 68 340 P.2d 393 (1959). Proposed subsection (b) would make a jury trial discretionary with the court.

Section 12. [UPA 15] Judgment or order.

(a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(b) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued.

(c) Upon adjudging that a party is the father of the child, the court shall order the party to provide for support and education of the child and the payment of the mother's necessary medical expenses incident to the birth of the child. The judgment shall specify the terms of payment and may require the party to provide a bond with sureties to secure such payment. If the party fails or refuses to make the payment or to supply the bond required by the judgment he may be adjudged in contempt of court and punished accordingly. The court may at any time during the minority of the child modify or change any such order of support as the interest of the child may require. The court may order such visitation as it deems proper.

(d) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts including, but not limited to, the following:

- (1) the needs of the child;
- (2) the standards of living and circumstances of the parents;
- (3) the relative financial means of the parents;
- (4) the earning ability of the parents;
- (5) the need and capacity of the child for education, including higher education;
- (6) the age of the child;
- (7) the financial resources and the earning ability of the child;
- (8) the responsibility of the parents for the support of others, and
- (9) the value of services contributed by the custodial parent.

Comment

Subsections (a) and (b) are taken from the corresponding subsections of section 15 of the Uniform Parentage Act.

In subsection (c), the Committee rejected the UPA language in favor of modified language from K.S.A. 38-1106.

In subsection (d), the Committee inserted the words "but not limited to, the following" to emphasize the latitude the court has in determining relevant factors. It was the opinion of the Committee that providing guidelines would be very helpful to the court in setting support obligations.

Section 13. [UPA 16] Costs.

The court may order reasonable fees of counsel and the child's guardian ad litem and other expenses of the action, including blood tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid from the general fund of the county. After payment, the court may tax all or part or none of the expenses as costs in the action. The fee of an expert witness qualified as an examiner of blood types, but not appointed by the court, shall be paid by the party calling the expert witness, but shall not be taxed as costs in the action.

Comment

This section generally follows section 16 of the Uniform Parentage Act. The last sentence of the section is taken from K.S.A. 23-132.

Under present Kansas law, attorney's fees are recoverable in paternity actions only under the mother's statutory action when she is not represented by the county attorney. K.S.A. 38-1103. Attorney's fees are not allowed in actions to enforce the child's nonstatutory right to support. *Crooms v. Whitfield*, 4 Kan.App.2d 306, 605 P.2d 592 (1980).

Both the UPA and the Committee's proposals provide for the appointment of a guardian ad litem for a minor child in a paternity action. Kansas presently does not have such a provision. In the nonstatutory action, usually brought by a next friend, the child is considered the real party in interest. In actions under K.S.A. 39-755, the secretary of SRS is deemed to represent all persons, officials or agencies having an interest in the assignment of support rights.

The essence of K.S.A. 23-132, which provides for the payment for blood tests, has been retained in the proposed section. Of particular relevance to blood tests, is the provision in this section that the court may order the proportionate share of the expenses of an indigent party be paid from the county general fund. In *Little v. Streater*, 452 U.S. 1 (1981), the U.S. Supreme Court held that a Connecticut statute which charged costs of blood grouping tests to the requesting party, thus denying such tests to indigent putative fathers, was violative of due process. Two important factors in *Little* were the involvement of the State on behalf of the mother and a Connecticut evidentiary rule that the testimony of the putative father alone is insufficient to overcome the mother's prima facie case. In *Little*, the court noted with approval the practice of a state advancing expenses for blood tests and later taxing such expenses as costs to the parties. The court also noted that three state supreme courts have held that putative fathers may not constitutionally be denied access to blood tests on the basis of indigency. See *Franklin v. District Court*, 194 Colo. 180, 571 P.2d 1072 (1977); *Commonwealth v. Poessehl*, 355 Mass. 575, 246 N.E.2d 667 (1969); *State ex rel. Graves v. Dougherty*, 266 S.E.2d 142 (W. Va. 1980).

Section 14. [UPA 17] Enforcement of judgment or order.

(a) If existence of the father and child relationship has been determined under this act or under prior law, the court may order support and related expenses payments to be made to the mother, clerk of the court, district court trustee, or a person, corporation, or agency designated to administer them for the benefit of the child to the extent they have furnished or are furnishing these expenses.

(b) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

Comment

This section provides authority for the court to order support payments where paternity has been determined and provides suitable enforcement remedies.

Subsection (a) is a condensation of subsections (a) and (b) of section 17 of the Uniform Parentage Act. It follows the wording adopted in Montana and Wyoming. It eliminates direct payments to "the child" and does not itemize related expenses, leaving such determination to the court's discretion.

Subsection (a) covers the same material as the second sentence of K.S.A. 38-1106 and subsection (b) the same material as the third sentence. Subsection (a) differs from K.S.A. 38-1106 only in the inclusion of a list of persons to whom the payments may be made, and in omitting provision of a bond to secure payment.

Section 15. [UPA 18] Modification of judgment or order.

The court has continuing jurisdiction to modify or vacate a judgment or order made under this act.

Comment

K.S.A. 38-1106, in its last sentence, provides, "The Court may at any time during the minority of the child modify or change any such order of support as the interest of the child may require." Proposed Section 15 allows modification *or vacation* of an order *or judgment*, and does not restrict such changes to be required by the interest of the child. While the interest of the child remains paramount, such changes may be permitted for reasons of changed parental circumstances or other eventualities which the court may find compelling.

Section 16. [UPA 19] Counsel for indigent; free transcript on appeal.

(a) The court shall appoint counsel for a party who is financially unable to obtain counsel.

(b) If a party is financially unable to pay the costs of a transcript, the court shall furnish on request a transcript for purposes of appeal.

Comment

This section is substantially the same as section 19 of the Uniform Parentage Act.

In proceedings under K.S.A. 38-1101 *et seq.*, the county attorney is required to represent an unmarried mother who is otherwise not represented. See K.S.A. 38-1103. K.S.A. 39-755(b) gives the court discretion to appoint an attorney for any party to an assignment of support rights, when the assignment is the basis for a paternity action brought by the secretary of social and rehabilitation services.

State courts have split on whether an indigent defendant in a paternity proceeding is entitled to counsel at state expense. See generally 4 A.L.R. 4th 363.

Although *Little v. Streater*, 482 U.S. 1 (1981), dealt with the availability of blood tests to indigent putative fathers, the Supreme Court noted the substantial interests of the putative father at stake in a paternity proceeding. The court noted not only the pecuniary interest in avoiding a support obligation and the liberty interest threatened by the possible sanctions for noncompliance, but also the potential creation of the parent-child relationship. The court stated that the imposition, as well as the termination, of the parent-child relationship demands procedural fairness.

Section 17. [UPA 20] Hearings and records; confidentiality.

(a) Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this act shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in the Bureau of Vital Statistics or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases upon an order of the court for good cause shown.

(b) Should trial by jury be ordered under section 11, the confidentiality requirements of this section do not apply.

Comment

In view of the sensitive nature of paternity proceedings, it is desirable that such proceedings be kept in confidence in most instances. The deletion, in subsection (a), from the second sentence of the Uniform Act of the words "other than final judgment" reflects the confidentiality need versus possible findings of fact and conclusions of law set forth in the final judgment. All records should have restrictive access unless the matter is tried to a jury.

Section (b) governing trial by jury is new. Should the issues mandate jury determination it would not be practical to retain the protection given court trials.

Current Kansas law has no provision for the confidentiality of paternity proceedings. K.S.A. 45-201 already provides for the confidentiality of the records of illegitimate births, and is not in conflict with this section.

Section 18. [UPA 21] Action to determine mother and child relationship.

Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this Act applicable to the father and child relationship apply.

Comment

This section is new and is taken verbatim from section 21 of the Uniform Parentage Act. It permits any interested party to bring a maternity action to establish the mother and child relationship. The applicable provisions of the act concerning the determination of paternity are made to apply.

Section 19. [UPA 22] Promise to render support.

(a) Any promise in writing to furnish support for a child, growing out of a presumed or alleged father and child relationship, shall not require consideration and shall be enforceable according to its terms, subject to section 6(f).

(b) In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person, agency, or district court trustee to receive and disburse on behalf of the child all amounts paid in performance of the promise.

Comment

Subsection (a) substantially follows section 22(a) of the Uniform Parentage Act. The word "presumed" has been substituted for the word "supposed" to reflect the two classifications of fathers under the act, namely: alleged and presumed. In addition, the words "shall not" and "shall be enforceable" have been used in lieu of the words "does not" and "is enforceable".

Subsection (a) permits any written promise to furnish support for a child to be enforced with the exception of agreements that seek to bar a paternity action. The exception prevents the parents from entering into an agreement to bar a paternity action by the child. The exception is in accord with the law of Kansas. See *Lawrence v. Boyd*, 207 Kan. 776, 779, 486 P.2d 1394 (1971); *Huss v. DeMott*, 215 Kan. 450, 524 P.2d 743 (1974); and *Smith v. Simmons*, 4 Kan.App.2d 60, 602 P.2d 546 (1979). In *Lawrence*, the Kansas Supreme Court stated that “[t]he child’s right cannot be bargained away or defeated by a purported settlement agreement between the father and mother.” 207 Kan. 776 at 779. Further, the section does not restrict an action to avoid the contract on the grounds of mutual mistake or fraud relating to the existence of the parent and child relationship.

Subsection (b) recognizes the sensitive nature of a paternity promise and gives the court discretion to make it confidential unless requested by the promisor, in which event, the court must make it confidential.

Section 20. [UPA 23] Paternity orders; birth certificates.

(a) Upon receipt of a certified order from a court of this state or an authenticated order of a court of another state, the state registrar shall prepare a new birth registration consistent with the findings of the court.

(b) The fact that the father and child relationship was declared after the child’s birth shall not be ascertainable from the new birth registration but the actual place and date of birth shall be shown.

(c) The findings upon which the new birth registration was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

Comment

The recommendation is taken substantially from section 23 of the Uniform Parentage Act. Subsection (a) was amended to include certified orders from courts of this state and authenticated orders from courts of other states. The Committee believes that the statute should be located in Chapter 65, Article 24, with other statutes reflecting the registration of birth records and not with the other parentage provisions.

Section 21. [UPA 24] Relinquishment and adoption; proceedings to terminate parental rights of father.

(a) If a mother desires to relinquish or consents to the adoption of a child who does not have (1) a presumed father under subsections (1), (2), or (3) of Section 4(a), (2) a father whose relationship to the child has been determined by a court, or (3) a father as to whom the child is a legitimate child under prior law of this State or under the law of another jurisdiction, the agency to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the district court to terminate the parental rights of the father, unless the father’s relationship to the child has been previously terminated or determined not to exist by a court.

(b) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry shall include the following: whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received

support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(c) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with subsection (e). If any of them fails to appear or, if appearing, fails to claim custodial rights, his parental rights with reference to the child shall be terminated. If the natural father or a man representing himself to be the natural father, claims custodial rights, the court shall proceed to determine parentage and custodial rights. The court may order that the father's consent is not required for relinquishment or adoption upon a finding that:

(1) the father abandoned or neglected the child after having knowledge of the child's birth;

(2) the father is unfit as a parent;

(3) the father has made no reasonable efforts to support or communicate with the child after having knowledge of the child's birth;

(4) the father failed without reasonable cause to provide support for the mother during the six months prior to the child's birth;

(5) the father abandoned the mother after having knowledge of the pregnancy; or

(6) the birth of the child was the result of rape of the mother.

(d) If, after the inquiry, the court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial rights, the court shall enter an order terminating the unknown natural father's parental rights with reference to the child.

(e) Notice of the proceeding shall be given to every person identified as the natural father or a possible natural father in any manner the court directs. Proof of giving the notice shall be filed with the court before the petition is heard. If no person has been identified as the natural father or a possible father, the court, on the basis of all information available, shall determine whether publication notice of the proceeding is likely to lead to identification and, if so, shall order publication notice of the hearing as deemed appropriate.

(f) The court may appoint an attorney to represent any unknown natural father.

Comment

This section is similar in many respects to section 24 of the Uniform Parentage Act. The section addresses adoption and relinquishment situations where the father has not been formally ascertained and one of the stronger presumptions of paternity does not exist. It sets forth a procedure to determine the father's parental rights in such cases and the necessity of his consent to a proposed adoption or relinquishment. While the act does not speak in terms of legitimacy or illegitimacy, this section attempts to be consistent with the United States Supreme Court decisions addressing the rights of fathers of illegitimate children. See *Stanley v. Illinois*, 405 U.S. 645 (1972); *Quilloin v. Walcott*, 434 U.S. 246 (1978); and *Caban v. Mohammed*, 441 U.S. 380 (1979).

Subsection (c) provides for notice to all putative fathers and an opportunity to be heard. If a putative father fails to appear or fails to claim custodial rights, his parental rights are terminated. If a putative father does appear and assert custodial rights, his consent is still not necessary if the court makes one of the findings enumerated in subsection (c). These findings are taken from K.S.A. 38-113a,

which relates to the necessity for the consent of the father of an illegitimate child to the child's relinquishment, and tie the need for the father's consent to his manifested parental concern.

Subsection (d) provides for terminating parental rights where the father can not be identified. Subsection (f) provides for the appointment of an attorney for an unknown father as an additional safeguard in such cases.

Subsection (e) gives the court discretion in determining whether publication notice will be required based on its likelihood of resulting in identification of the father.

Section 22. K.S.A. 38-113 should be amended to read as follows:

38-113. Same; relinquishment of right by parent. (a) Any parent or parents unable to provide for their children, or furnish them the necessary support, may relinquish to such corporation, in writing, the control and management of such children; and if the said corporation, through its officers or agents duly authorized by its board of directors shall accept such control and management, such corporation shall thereupon be vested with the custody and management of said children, as provided in section 38-114 of the General Statutes of 1935 and any amendments thereto. Minority of a parent shall not invalidate such parent's surrender of said child. Such surrenders shall in all cases be in writing, duly acknowledged before an officer authorized by law to take acknowledgements.

(b) *Relinquishments under this section shall be in writing and executed by: (1) Both parents of a child; (2) one parent, if the other parent is deceased; (3) the mother, if the father's consent is found unnecessary under section 21; (4) a person in loco parentis.*

Comment

Presently, K.S.A. 38-112 through 38-114 provides a procedure for relinquishment of a child to corporations authorized to place children for adoption. K.S.A. 38-113a addresses the situation where the mother of an illegitimate child wishes to relinquish the child for adoption. Since this act abolishes the concept of illegitimacy, 38-113a must be repealed. K.S.A. 38-113, as amended, would conform with the procedure in section 21 for determining whether a father's consent is necessary to a proposed relinquishment. Once the child is relinquished, the corporation stands in *loco parentis* to the child and only its consent is necessary for the child's adoption. K.S.A. 38-112, 59-2102.

Section 23. K.S.A. 38-126 should be amended to read as follows:

38-126. Same; in writing; execution. All relinquishments and surrender to the department under this act shall be in writing and executed by: (1) Both parents of a child; (2) one parent, if the other parent is deceased; (3) the mother, if the ~~child is born out of wedlock~~ father's consent is found unnecessary under section 21; (4) a person in *loco parentis*.

Comment

K.S.A. 38-124 through 38-128 provides a procedure for the relinquishment of a child to the department of social and rehabilitation services. The amendments in this section are recommended for the same purposes discussed in the comment to section 22.

Section 24. K.S.A. 59-501 should be amended to read as follows:

59-501. Definitions. As used in this article, the word "children" means natural children, including a posthumous child, and children adopted as provided by law, *and children whose parentage is determined under this act or has been determined under this act or prior law* ~~and includes illegitimate children when applied to mother and child, and also when applied to father and child where the father has notoriously or in writing recognized his paternity of the child, or his paternity thereof has been determined in his lifetime in any action or proceedings involving that question in a court of competent jurisdiction.~~ The word "issue" includes adopted children of deceased children or issue.

Comment

Under K.S.A. 59-501, illegitimate children can inherit through intestate succession from their father, where the father has notoriously or in writing recognized his paternity or his paternity has been adjudicated in his lifetime. Under the proposed section, the Committee has tried to insure that children similarly situated to illegitimate children under the present law will retain rights of inheritance.

To accomplish this, the Committee changed the presumption in subsection (4) of section 4(a) to correspond to the language in present 59-501 declaring when illegitimate children have the same status as legitimate children. When taken in conjunction with the statute of limitations in section 6, a child with a presumed father under 4(a)(4) would be allowed to bring an action upon the death of the father to have paternity determined. Children with no presumed father could bring such an action upon the death of the father only if the father died before the child reached age 21. However, subsection (e) of section 6 states that even though an action to determine paternity may be brought after the death of the father, the time for asserting a right of inheritance is not extended.

Section 25. K.S.A. 59-2102 should be amended to read as follows:

59-2102. Written consent required; acknowledgment; irrevocability of consent, when; effect of parents' minority. Before any minor child is adopted, consent must be given to such adoption:

- (1) by the living parents of a ~~legitimate~~ child or
- (2) by the mother of ~~an illegitimate~~ a child if the *consent of the father is found unnecessary under section 21* or
- (3) by one of the parents if the other has failed or refused to assume the duties of a parent for two (2) consecutive years or is incapable of giving such consent or
- (4) by the legal guardian of the child if both parents are dead or if they have failed or refused to assume the duties of parents for two (2) consecutive years, or
- (5) by the department of social and rehabilitation services, a person, or by the executive head of an agency or association, where the rights of the parents have been legally terminated and custody of the child has been legally vested in such person, department, agency or association with authority to consent to the adoption of said child.

In all cases where the child sought to be adopted is over fourteen (14) years of age and of sound intellect, the consent of such child must be given. Consent in all cases shall be in writing. Whenever consent of a parent or parents is necessary it shall be acknowledged and may be acknowledged before the judge of a court of record, and when such consent is acknowledged before such a judge it shall be

final and may not thereafter be revoked by the person or persons giving the same. In all other cases the written consent shall be acknowledged before an officer authorized by law to take acknowledgments, and when such consent has been given in writing and has been filed of record in the district court, the same shall be irrevocable, unless the consenting party or parties, prior to final decree of adoption, allege and prove that such consent was not freely and voluntarily given. The burden of proof shall rest with the consenting party or parties. Minority of a parent shall not invalidate his or her consent.

Comment

Presently, only the consent of the mother is statutorily required for the adoption of an illegitimate child. K.S.A. 59-2102(2). In *In re Lathrop*, 2 Kan.App.2d 90, 575 P.2d 894 (1978), the Kansas Court of Appeals addressed the rights of the father of an illegitimate child in adoption situations. The Court of Appeals held that the father of an illegitimate child is an interested party under K.S.A. 59-2278 and must be given notice of the pending adoption of his child. Furthermore, if the father appears and asserts custodial rights, his rights must be given preference over third-party adoptive parents unless he is unfit or has failed to assume parental responsibilities for the statutory period of two years. See K.S.A. 59-2102(3). In reaching its decision, the Court of Appeals analyzed the United States Supreme Court decisions in *Stanley v. Illinois*, 405 U.S. 645 (1972) and *Quilloin v. Walcott*, 434 U.S. 246 (1977). *Stanley* clearly established that an unwed father has parental rights in his children. In *Stanley* an Illinois statute declared illegitimate children wards of the state upon the death of the mother with no provision for a hearing on the fitness of the father despite the fact that the father in *Stanley* had assumed parental responsibilities over a period of years. The Supreme Court held the statute violated the father's due process rights. In *Quilloin* the Supreme Court held that a father who had never had custody or assumed significant responsibility for his illegitimate child, and who was not seeking custody, was not entitled to a fitness hearing or veto authority over the adoption. The court emphasized the strong interest in having children raised in a family setting contrasted with the weak interest of such a father in vetoing the adoption.

Although the Court of Appeals upheld K.S.A. 59-2102(2) against an equal protection challenge in *Lathrop*, a similar New York statute was struck down by the U.S. Supreme Court on equal protection grounds, at least where the father had had custody and contributed to the support of his illegitimate children. *Caban v. Mohammed*, 441 U.S. 380 (1979).

This section, in conjunction with section 21, attempts to be consistent with the decisions referred to above in its treatment of the rights of unwed fathers. At the same time these sections try to serve the interest of facilitating adoptions. Section 21 provides for notice to a putative unwed father and a procedure for determining parentage and custodial rights. It protects his parental rights where he has manifested parental concern, and only where such concern is not manifested or he is unfit is his consent to the proposed adoption unnecessary.

Section 26. K.S.A. 59-3002 should be amended to read as follows:

59-3002. Definitions. When used in this act: (1) The term "incapacitated person" shall mean any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic narcotic drug addiction, chronic intoxication, or other cause to the extent that he or she

lacks sufficient understanding or capacity to make or communicate responsible decisions concerning either his or her person or his or her estate.

(2) The term "guardian" shall mean any person who has been appointed by a court of competent jurisdiction to exercise control over the person of an incapacitated person or of a minor.

(3) The term "natural guardian" shall mean both the father and mother of a ~~legitimate minor or the mother of an illegitimate~~ minor, provided that both parents or parent shall not have been found to be an incapacitated person or had their parental rights severed by a court of competent jurisdiction. If either parent of a ~~legitimate~~ minor dies, or has been found to be an incapacitated person or has had his or her parental rights severed by a court of competent jurisdiction the other shall be the "natural guardian."

(4) The term "conservator" shall mean any person who has been appointed by a court of competent jurisdiction to exercise control over the estate of any person.

(5) The term "minor" shall mean any person defined by K.S.A. 38-101 as being within the period of minority.

(6) The term "proposed ward" shall mean a person for whom an application for the appointment of a guardian pursuant to K.S.A. 59-3006 has been filed.

(7) The term "proposed conservatee" shall mean a person for whom an application for the appointment of a conservator pursuant to K.S.A. 59-3006 has been filed.

(8) The term "ward" shall mean a person who has a guardian.

(9) The term "conservatee" shall mean a person who has a conservator.

(10) The various terms defined in K.S.A. 59-2902 of the act entitled "act for obtaining care or treatment for a mentally ill person" shall mean the same herein as they do in said act.

Comment

Since this act abolishes illegitimacy, K.S.A. 59-3002(3) must be amended to provide that both natural parents of a child are natural guardians entitled to share in the rights, privileges and responsibilities afforded the guardian, unless a parent is incapacitated or has had parental rights severed.

TIME STANDARDS

At midyear, the Kansas Supreme Court adopted a statement of general principles and guidelines for the district courts which included time standards for the different kinds of cases handled by the trial courts.

While the statement continues the Kansas court system's traditional emphasis on the quality of justice as the paramount consideration in any case adoption of active case management principles and the guidelines provided by specific time standards gave each trial court an improved capability for eliminating unnecessary waiting time in the resolution of disputes brought before the court.

While the quality of justice is not easily measured, all judges are acutely aware that the quality of justice begins to erode if disputes are not resolved in a timely manner. Timeliness can and is being measured.

The office of judicial administration's management information service section has made special reports this year which are designed to assist administrative trial judges in identifying areas which need special attention and which are also to serve as "report cards" on how well each judicial district and the court system meet the time standards.

A recent national media claim that, "the right to a speedy trial is so regularly denied that the thought seems antique" focused its attention on violent offenders. The article drew its facts from large metropolitan areas, citing one area where the average time from arrest to trial is eight months. Checking A, B, and C felonies, and crime categories which include murder rape, robbery, and assault for the period January 1, 1979 to June 30, 1980, our Kansas courts averaged 112 days (less than 4 months) between the date of a person's first appearance in court and the end of the case. Of the 2,819 cases ended during the period, 1,608, or 57 percent, were ended within 120 days, the time standard set by the Supreme Court.

A special report on civil cases focused on cases which have been pending more than two years. Some civil cases have complex fact situations and involve large number of litigants and attorneys. In such cases justice requires that all parties have adequate preparation time but that delay as a litigant strategy be discouraged. If delay reduction programs are to be successful, these older civil cases must be periodically reviewed and brought to trial.

The report disclosed that cases pending two years or longer have been reduced by 18 percent during the past year. The reduction means only 1,809 cases, or 5 percent of the total 36,873 pending civil cases, are two years old or older as of June 30, 1981.

All but six of the 29 judicial districts held their ground or gained in the war on older cases. Two districts reduced the number of cases two years or older to zero. They are the 17th District made up of the top tier of counties in the northwest and the 12th District in the north central part of the state.

Realizing the largest number of reductions in old cases was the 29th District (Wyandotte) where 115 such cases were disposed of. The reduction represents 25 percent of the total cases two years old or older pending in that court.

The 1st, 3rd, 10th and 27th Districts reduced their older cases by 68, 58, 64, and 32, respectively. The 1st District (Atchison and Leavenworth Counties) reduction of older cases was 61 percent.

The 3rd District (Shawnee County) reduced its old cases by 23 percent; the 10th District (Johnson County) by 22 percent, and the 27th District (Reno County) by 16 percent.

Although the largest percentage reductions came in the 12th and 17th Districts

(100 percent), the 24th District in west central Kansas showed a huge 83 percent reduction in old cases when they were reduced from 67 to 11, down 56 cases.

The combined efforts have trimmed the statewide percentage of two-year-old cases to 1,809, or 5.0 percent of 36,873 pending civil cases.

Although further reductions in the number of aging cases seem possible, eliminating them completely may be difficult given the complexity of some cases.

Although the specific time standards for the different kinds of cases were adopted at midyear, the management information service section is reviewing the entire year against the guidelines so that fiscal year 1981 may serve as a base to measure improvement. The first report generated in this series reviewed civil cases filed under the code of civil procedure less domestic relations cases.

The time standard guideline for this category of regular civil cases is that one-half of all cases ended should be completed within 180 days (six months) of filing.

Twenty-three of 29 judicial districts met the standards for the year ended June 30, 1981. More than 54% of the civil completed (10,379 of 18,957) were finished within 180 days. This report was based on the court's data base as of the end of October so that a reporting time lag stemming from the delays encountered in filing a final entry of judgment was corrected, increasing the number of cases ended for the period to 18,957 from 18,703 reported elsewhere in this summary.

The median time for the entire state court system was 146 days from filing to termination, 34 days faster than the guideline established. Seventy-three percent of the cases were completed within one year.

An encouraging note is that the effort expended in reducing cases two years or older is also a partial explanation for the longer than 180-day median times for the six districts which did not meet the guidelines for fiscal year 1981. A disproportionate number of older cases cleared from a court's calendar in any one year tends to lengthen the median time measurement for all cases for the court.

The first quarterly report measuring pending and terminated cases against the guidelines for time standards has been compiled for the quarter ended September 30, 1981. The management information service section will issue three more reports for the 1982 fiscal year, adding each quarter's cases to successive reports. The pending case measurements are intended for use in alerting the trial courts to possible problem areas. Statewide totals are comfortably within the time standards, but individual trial courts vary widely. An inference which can be drawn from this observation is that the lower the total number of cases the greater impact a few older cases or a few quickly ended cases has on the median age of the case category.

Statewide pending and terminated median age measurements are shown on the following table:

Case Type	Time Standard	Median Age of Pending Cases	Median Age of Terminated Cases
Felony	120 days	66 days	44 days
Misdemeanor	60 days	56 days	1 day
Regular Civil	180 days	206 days	121 days
Domestic Relations	120 days	72 days	80 days
Limited Civil	60 days	118 days	35 days

TABLE 1
COMBINED APPELLATE COURT CASELOAD
(APPEALS AND ORIGINAL CASES)
FY '81

	Number of cases
Pending 7-1-80	980
Commenced	<u>1,097</u>
Total Caseload	2,077
Terminated	<u>1,140</u>
Pending 6-30-81	937

TABLE 2
SUPREME COURT CASELOAD SUMMARY
FY 1981

	Number of cases
Pending 7-1-80	147
Commenced	130
Transferred from Court of Appeals	<u>74</u>
Total Caseload	351
Terminated	<u>252</u>
Pending 6-30-81	99

TABLE 3
COURT OF APPEALS CASELOAD SUMMARY
FY 1981

	Number of cases
Pending 7-1-80	833
Commenced	<u>967</u>
Total Caseload	1,800
Transferred to Supreme Court	74
Terminated	<u>888</u>
Pending 6-30-81	838

TABLE 4

SUMMARY OF DISTRICT COURT CASELOAD FOR THE STATE
YEAR ENDING JUNE 30, 1981

	Pending 7-1-80	Cases Filed	Cases Terminated	Pending 6-30-81
Civil Cases:				
Regular Actions	13,259	18,171	18,703	12,727
Domestic Relations	8,954	27,869	28,065	8,758
Limited Actions	<u>13,044</u>	<u>41,129</u>	<u>40,419</u>	<u>13,754</u>
Total, Civil	35,257	87,169	87,187	35,239
Criminal Cases:				
Felonies	4,242	12,121	12,971	3,392
Misdemeanors	<u>3,486</u>	<u>13,967</u>	<u>15,600</u>	<u>1,853</u>
Total, Criminal	7,728	26,088	28,571	5,245
SUBTOTAL	<u>42,985</u>	<u>113,257</u>	<u>115,758</u>	<u>40,484</u>
Traffic Cases		281,842	279,736	
Formal Juvenile Cases		12,805	10,438	
Decedent Estates		6,392	5,586	
Fish and Game Cases		2,331	1,967	
Guardianship/ Conservatorship Estates		2,044	1,659	
Trusts		<u>310</u>	<u>115</u>	
TOTAL		305,724	299,501	
Other Actions:				
Small Claims	14,707			12,877
Adoptions	2,142			1,859
Treatment Proceedings	4,176			1,757
				Informal Juvenile Cases
				Determination of Descent . . .
				Miscellaneous Probate Actions

ROSTER OF JUDGES OF THE DISTRICT COURTS AS OF APRIL 1, 1982

Judicial District	DISTRICT JUDGE	ASSOCIATE DISTRICT JUDGE	DISTRICT MAGISTRATE JUDGE
1	Div. 1: Kenneth Harmon, Leavenworth * Div. 2: Maurice P. O'Keefe, Jr., Atchison	Frederick N. Stewart, Leavenworth John L. White, Leavenworth	Richard A. Dempster, Atchison Dolan McKelvy, Atchison
2	John W. Brookens, Westmoreland *	Tracy D. Klinginsmith, Holton	Dennis L. Reiling, Jefferson Oliver F. Maskil, Pottawatomie Verte L. Swenson, Wabaunsee
3	Div. 1: William R. Carpenter, Topeka * Div. 2: Fred S. Jackson, Topeka Div. 3: E. Newton Vickers, Topeka Div. 4: Adrian J. Allen, Topeka Div. 5: James M. Macmish, Topeka Div. 6: Terry L. Bullock, Topeka Div. 7: James P. Buchele, Topeka	Franklin R. Theis, Topeka James H. Hope, Topeka Mary Schowengardt, Topeka Bill G. Honeyman, Topeka Matthew J. Dowd, Topeka	
4	Div. 1: Floyd H. Coffman, Ottawa * Div. 2: John W. White, Iola	Donald L. White, Ottawa James J. Smith, Garnett	George G. Levans, Allen Orville E. Steele, Coffey Larry L. Coursen, Osage Ronald L. Call, Woodson
5	Gary W. Rulon, Emporia *	William J. Dick, Emporia	Francis D. Towle, Chase
6	Charles M. Warren, Fort Scott *	Leighton A. Fossey, Mound City Stephen D. Hill, Paola	Samuel I. Mason, Bourbon
7	Div. 1: Ralph M. King, Lawrence Div. 2: James W. Paddock, Lawrence *	John M. Elwell, Lawrence	
8	Div. 1: John F. Christner, Abilene Div. 2: William D. Clement, Junction City *	George F. Scott, Junction City Melvin M. Grader, Marion	Tom Nold, Dickinson Clarence L. Sawyer, Morris
9	Sam H. Sturm, Newton *	John T. Reid, Newton Carl B. Anderson, Jr., McPherson	

* Administrative Judge of the Judicial District

ROSTER OF JUDGES OF THE DISTRICT COURT—Continued

Judicial District	DISTRICT JUDGE	ASSOCIATE DISTRICT JUDGE	DISTRICT MAGISTRATE JUDGE
10	Div. 1: Herbert W. Walton, Olathe Div. 2: James H. Bradley, Olathe Div. 3: G. Joseph Pierron, Jr., Olathe Div. 4: William G. Gray, Olathe Div. 5: Phillip L. Woodworth, Olathe Div. 6: Lewis C. Smith, Olathe *	Marion Chipman, Olathe Earle D. Jones, Olathe J. Stewart McWilliams, Olathe Sam K. Bruner, Olathe Bill E. Haynes, Olathe Robert G. Jones, Olathe Jannett Howard, Olathe Gerald L. Hougland, Olathe Richard D. Lofswold, Girard * John C. Gariglietti, Pittsburg Daniel L. Brewster, Parsons Richard L. Ashley, Chanute	B. J. LaTurner, Cherokee Dwaine Spoon, Wilson Marvin L. Stortz, Cloud Jack D. Bradrick, Jewell Ardith Von Fange, Lincoln Bonnie J. Wilson, Mitchell William E. Thompson, Republic Steve Kaminski, Washington Waine L. Jones, Chautauqua Darlene P. Bradley, Elk Harriet Shumard, Greenwood
11	Div. 1: Donald L. Allegrucci, Pittsburg Div. 2: David F. Brewster, Columbus Div. 3: Charles J. Sell, Parsons Div. 4: C. Frederick Lorentz II, Fredonia Div. 5: Richard W. Wahl, Concordia *		
12			
13	Div. 1: I. Patrick Brazil, Eureka Div. 2: Page W. Benson, El Dorado *	John M. Jaworsky, El Dorado	
14	Kenneth D. David, Independence *	Richard A. Medley, Coffeyville Floyd V. Palmer, Independence	
15	Keith R. Willoughby, Colby *	Jack L. Burr, Goodland	Frederick J. Hammers, Cheyenne Annabeel M. Peck, Logan Dorothy R. Reinert, Rawlins Ward Gilliland, Sheridan Nellie L. Blakely, Colby Logan Dobbs, Wallace

* Administrative Judge of the Judicial District

ROSTER OF JUDGES OF THE DISTRICT COURT—Continued

Judicial District	DISTRICT JUDGE	ASSOCIATE DISTRICT JUDGE	DISTRICT MAGISTRATE JUDGE
16	Don C. Smith, Dodge City *	Jay Don Reynolds, Dodge City	Michael A. Freelove, Clark L. E. Mike Murphey, Comanche Maurice L. Johnson, Gray Pauline Schwarm, Kiowa John Murphy, Meade
17	Charles E. Worden, Norton *		Elmer J. Tachia, Decatur Pauline Coker, Graham Wilda June Brown, Norton Shirley Henderson, Osborne Martha Kellogg, Phillips Betty McDonald, Smith
18	Div. 1: Willis W. Wall, Wichita Div. 2: Ray Hodge, Wichita Div. 3: Keith Sanborn, Wichita Div. 4: James V. Ruddle, Wichita Div. 5: James J. Noone, Wichita Div. 6: D. Keith Anderson, Wichita Div. 7: Tom Raum, Wichita Div. 8: Nicholas W. Klein, Wichita Div. 9: David F. Calvert, Wichita Div. 10: Tyler C. Lockett, Wichita Div. 11: Robert L. Morrison, Wichita Div. 12: Michael Corrigan, Wichita Div. 13: Owen Ballinger, Wichita	Elliott Fry, Wichita Robert Hornung, Wichita Hal Malore, Wichita David W. Kennedy, Wichita James G. Beasley, Wichita Paul W. Clark, Wichita Robert C. Helsel, Wichita Ron Rogg, Wichita John E. Foulston, Wichita	Clarence Kahler, Ellsworth Don L. Alvord, Rice N. J. Becker, Russell Lee Nusser, Stafford
19	Div. 1: (Vacant)	David S. Lord, Winfield Robert L. Bishop, Winfield Tom Pringle, Winfield	
20	Div. 1: Barry A. Bennington, St. John Div. 2: Herb Rohleder, Great Bend *	William J. Laughlin, Great Bend	

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ROSTER OF JUDGES OF THE DISTRICT COURT—Continued

Judicial District	DISTRICT JUDGE	ASSOCIATE DISTRICT JUDGE	DISTRICT MAGISTRATE JUDGE
21	Div. 1: Ronald D. Innes, Manhattan ° Div. 2: Jerry L. Mershon, Manhattan	Harlan W. Graham, Manhattan	Chester W. Kent, Clay
22	William L. Stevenson, Hiawatha	Robert L. Gernon, Hiawatha °	Virgil W. Begesse, Doniphan Maxine Cumro, Marshall Francis C. Holthaus, Nemaha
23	Steven P. Flood, Hays °	Tom Scott, Hays	Lawrence Litson, Gove Nancy Conyac, Rooks David L. Rhodes, Trego
24	Div. 1: C. Phillip Aldrich, Larned °		Richard Miller, Edwards Virginia M. Schroeder, Hodgeman Roger A. Yost, Lane Orval Burdett, Ness David Buster, Pawnee Leonard A. Mastroni, Rush
25	J. Stephen Nyswonger, Garden City °	Harrison Smith, Garden City	C. Ann Wilson, Greeley Donna L. J. Blake, Hamilton John R. Jennings, Kearny Gordon Goering, Scott Claude S. Heath, Wichita

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ROSTER OF JUDGES OF THE DISTRICT COURT—*Concluded*

Judicial District	DISTRICT JUDGE	ASSOCIATE DISTRICT JUDGE	DISTRICT MAGISTRATE JUDGE
26	Keaton G. Duckworth, Elkhart °	Kim D. Ramey, Liberal	K. T. Gregg, Grant David G. Rinehart, Haskell Shirley A. Ketchum, Morton Vance L. Whittington, Stanton Verna Kay McQueen, Stevens
27	Div. 1: Porter K. Brown, Hutchinson Div. 2: J. Stanley Hill, Hutchinson °	Steven R. Becker, Hutchinson William F. Lyle, Hutchinson	
28	Div. 1: Morris V. Hoobler, Salina ° Div. 2: David S. Kundson, Salina	Gene B. Penland, Salina John Weckel, Salina	Adrian Lapka, Ottawa
29	Div. 1: James J. Lysaught, Kansas City Div. 2: William M. Cook, Kansas City Div. 3: Dean J. Smith, Kansas City Div. 4: John W. Mahoney, Kansas City Div. 5: Leo J. Maroney, Kansas City Div. 6: Cordell D. Meeks Jr., Kansas City Div. 7: Wayne H. Phillips, Kansas City	Ralph D. Lamar, Kansas City David P. Mikešic, Kansas City Matthew G. Podrebarac, Kansas City Bill D. Robinson Jr., Kansas City Philip L. Sieve Lawrence G. Zukel, Kansas City Robert J. Foster, Kansas City	
30	Charles H. Stewart, Kingman	Clarence E. Renner, Pratt ° Thomas H. Graber, Wellington Lloyd K. McDaniel, Wellington	Thomas L. McGuire, Barber John Moore, Harper Gene Shay, Kingman Walter McClauskey, Pratt

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PRINTED IN THE
KANSAS STATE PRINTING PLANT
TOPEKA, KANSAS
1982

39-3491