

Kansas Judicial Council Bulletin

DECEMBER, 1974

PART 4—FORTY-EIGHTH ANNUAL REPORT

COURT DAYS 1975



**PROPOSED AMENDMENTS
TO THE PROBATE CODE**

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FOREWORD

This Bulletin contains a list of the court dates for 1975 in the district courts of the state of Kansas. This Bulletin also contains an article written by Randy M. Hearrell, Research Attorney for the Judicial Council, which tells the Bench and Bar of the work of the Judicial Council Probate Law Study Advisory Committee and includes a draft of the bill that committee will propose to the Legislature.

A brief summary of activities and accomplishments of the Kansas Judicial Council for the past year will follow.

The Judicial Council moved into new quarters in January of 1974. The address of the Judicial Council is as follows:

Kansas Judicial Council,
1105 Merchants National Bank Building,
8th and Jackson,
Topeka, Kansas 66612.

The quarters will be occupied by the Council Staff until the new Supreme Court Building is completed, at which time the Council will move into quarters in the Supreme Court Building.

There were no changes in the membership of the Judicial Council during the past year.

The staff of the Council consists of: Randy M. Hearrell, Attorney, who serves the Council as reporter for each of the Advisory Committees and Office Administrator. Nell Ann Gaunt, who serves as Administrative Assistant and Legal Secretary.

In 1975 the Judicial Council will combine the Bulletin which contains the court statistics with the Court Days Bulletin and make only one publication, unless a Special Bulletin is required for another reason.

The Judicial Council Ad Hoc Advisory Committee will continue to be available to the Council throughout the year 1975. The members of the committee advise the Council on ways and means to take advantage of funds provided under the provisions of the Omnibus Crime Control and Safe Streets Act of 1968, which are administered through the Governor's Committee on Criminal Administration. The members of the committee are: James R. James, Chairman, Topeka; Herbert A. Marshall, Topeka; Elwaine F. Pomeroy, Topeka; Warren B. Shaw, Topeka; James P. Buchele, Topeka.

The Administrative Procedure Advisory Committee, appointed to draft a Code of Administrative Procedures for Kansas, has submitted its work to the

legislative leadership. It is anticipated that the proposed code will be introduced in the 1975 Legislative Session. The members of the committee are: Hon. Doyle E. White, Chairman and member of the Judicial Council, Arkansas City; Richard C. Byrd, Ottawa; Lewis C. Carter, Topeka; Rex L. Culley, Russell; Arden K. Ensley, Topeka; Byron M. Gray, Green Valley, Arizona; John E. Jandera, Topeka; David L. Ryan, Topeka; John S. Seeber, Wichita.

The Bench-Bar Advisory Committee, previously sponsored by the Supreme Court, has become an Advisory Committee of the Council. The present task of the Bench-Bar Committee is the drafting of Uniform Rules for the District Courts. The members of the committee are: Hon. Frederick Wolesslagel, Chairman, Lyons; Gerald L. Michaud, Vice-Chairman, Wichita; Marvin E. Thompson, Administrative Chairman and member of the Judicial Council, Russell; James R. James, Secretary, Topeka; Robert H. Bingham, Kansas City; Hon. Charles A. Elliott, Olathe; Hon. Albert B. Fletcher, Jr., member of the Judicial Council, Junction City; Hon. John F. Fontron, Topeka; Hon. Frank R. Gray, Lawrence; Charles E. Henshall, Chanute; Harold S. Herd, Coldwater; Philip H. Lewis, Topeka; Hon. Charles H. Stewart, Kingman; Jerry M. Ward, Great Bend; and *ex officio* members Hon. William J. Laughlin, President of the Special Judges Association, Great Bend; Hon. William P. Meek, President of the District Judges Association, Baxter Springs; Leonard O. Thomas, President of the Kansas Bar Association, Kansas City.

The Bench Book Advisory Committee is working to prepare a Bench Book to aid the bench and bar with problems involved in the trial of cases. The members of the committee are: Hon. James J. Noone, Chairman, Wichita; Jack E. Dalton, Administrative Chairman and member of the Judicial Council, Dodge City; Hon. John W. Brookens, Westmoreland; Charles S. Fisher, Jr., Topeka; Hon. Harold R. Riggs, Olathe; Gene H. Sharp, Liberal; Hon. Robert F. Stadler, Iola.

The Judicial Council also has standing Advisory Committees designed to keep the Code of Civil Procedure current with amendments to the Federal Code of Civil Procedure and with current needs and to keep the new Criminal Code and Code of Criminal Procedure up to date.

Membership—Civil Code Advisory Committee: Hon. Albert B. Fletcher, Jr., Chairman and member of the Judicial Council, Junction City; Hon. Michael A. Barbara, Topeka; Emmet A. Blaes, Wichita; Hon. John F. Fontron, *ex officio*, Topeka; Morris D. Hildreth, Coffeyville; Leonard O. Thomas, Kansas City; Marvin E. Thompson, member of the Judicial Council, Russell.

Membership—Criminal Code Advisory Committee: Hon. Doyle E. White, Chairman and member of the Judicial Council, Arkansas City; Hon. Albert B. Fletcher, Jr., member of the Judicial Council, Junction City; Hon. John F. Fontron, Topeka; Hon. J. Richard Foth, Topeka; Lee Hornbaker, Junction

City; Gene M. Olander, Topeka; George T. Van Bebber, Troy; Paul E. Wilson, Lawrence.

The Advisory Committee on Standards for Criminal Justice prepared a complete comparative analysis of the American Bar Association's Standards for Criminal Justice with Kansas Law, Rules and Legal Practice. It has completed and published its work. The committee is presently working on a supplement and index to the book. The supplement will be distributed and additional copies of the book will be printed in 1975. The members of the committee are: Hon. Albert B. Fletcher, Jr., Chairman, Junction City; Edward Johnson, Topeka; John C. Tillotson, Leavenworth; Prof. Paul Wilson, Lawrence; Lee Hornbaker, Junction City.

The Governmental Immunity Advisory Committee presented a report and recommendations for the 1973 session of the legislature. The recommendations were considered by the 1974 session of the legislature. The proposed bill was not enacted. The members of this committee were: Marvin E. Thompson, Chairman, Russell; Wright Crummett, Overland Park; John Dekker, Wichita; Patrick F. Kelly, Wichita; David H. Heilman, Council Grove; Donald C. Smith, Dodge City; Donald Hickman, Arkansas City.

The Judicial Study Advisory Committee has completed its survey and study.

It will continue to function during the year 1975 if a determination by the Supreme Court and the Kansas Judicial Council deems it necessary. The members of this committee are: Edward F. Arn, Chairman, Wichita; Whitley Austin, Salina; John W. Carlin, Smolan; Carol B. Chalmers, Manhattan; Ray F. Crofoot, Cedar Point; James P. Davis, Kansas City; Albert B. Fletcher, Jr., Junction City; Kenneth Ingham, Wichita; Patricia L. Jones, Lakin; Tyler C. Lockett, Wichita; Jack A. McGlothlin, Pittsburg; Don Matlack, Wichita; Ernest A. Mosher, Topeka; John C. Peterson, Topeka; John F. Steineger, Jr., Kansas City; A. L. Swart, Oakley; J. C. Tillotson, a member of the Judicial Council, Norton; Robert Wells, Garden City; Ray E. Dillon, Jr., Hutchinson.

The Municipal Court Manual Advisory Committee has drafted a manual for use by judges, attorneys and law enforcement officers in the municipal courts. Distribution of the manual was begun in May of 1974. The members of this committee were: James D. Waugh, Chairman, and member of the Judicial Council, Topeka; John Gernon, Hiawatha; Floyd Hannon, Jr., Wichita; Edward Larson, Hays; Basil Marhofer, Ness City; Charles Menghini, Pittsburg; Leonard Munker, Wichita; Charles Orcutt, Hutchinson; Charles Wetzler, Prairie Village.

The Pattern Instructions Advisory Committee has recently completed a supplement to *PIK-Civil*. The supplement included instructions relating to com-

parative negligence. The committee is presently working on a supplement to *PIK-Criminal*. The members of the committees are: Hon. Albert B. Fletcher, Jr., Chairman of PIK-Criminal Committee, Junction City; Hon. Don H. Musser, Chairman of PIK-Civil Committee, Pittsburg; Hon. Michael A. Barbara, Topeka; Hon. B. Mack Bryant, Wichita; Hon. David Prager, Topeka; Prof. Earl B. Shurtz, Lawrence; Hon. Herbert W. Walton, Olathe; Hon. Frederick Wolesslagel, Lyons.

The Probate Forms Advisory Committee has completed the tasks that were assigned to it. The forms were published in a Special Bulletin in June of 1974. The members of the committee were: Robert H. Cobean, Chairman and member of the Judicial Council, Wellington; Jon C. Christlieb, Kansas City; Malcolm G. Copeland, Topeka; Clifford Holland, Jr., Russell; Roy Kirby, Coffeyville; Walter G. Stumbo, Topeka.

The Probate Law Study Advisory Committee was created by resolution of the Council adopted in October of 1972. The committee is considering various aspects of probate reform including the Uniform Probate Code, and will present their report and recommendations to the 1975 Session of the Legislature. An article relating to this study, and a copy of the proposed act are contained in this Bulletin. The members of this committee are: Robert H. Cobean, Chairman and member of the Judicial Council, Wellington; Jack E. Dalton, Co-Chairman and member of the Judicial Council, Dodge City; Steadman Ball, Atchison; Oscar F. Belin, Wichita; Georgia N. Gray, Topeka; Camilla K. Haviland, Dodge City; John L. Logan, Holliday; Emerson Lynn, Jr., Iola; Richard L. D. Morse, Manhattan; Wayne Rogler, Matfield Green; Larry Winn, III, Prairie Village.

The Title Standards Advisory Committee remains available to consider problems in that area. The members of this committee are: Jack E. Dalton, Chairman, Dodge City; Morris Moon, Augusta; Wilbur H. Jones, Wichita; Hylton Harman, Kansas City; Robert F. Lytle, Prairie Village.

Alfred G. Schroeder, *Chairman*

The Judicial Council of the State of Kansas.

PROBATE LAW— A STUDY AND PROPOSALS

by Randy M. Hearrell

- I. Introduction
- II. Background
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- IV. Changes Proposed in the Kansas Probate Code
- V. The Kansas Simplified Estates Act
- VI. Attorneys' Fees in Probate Matters
- VII. Index to Proposed Act
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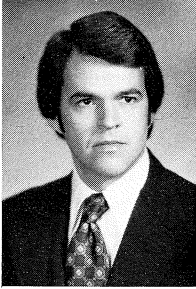
I. Introduction

This article is being prepared to inform the members of the bar of Kansas and other recipients of the *Kansas Judicial Council Bulletin* of the study undertaken and the proposed act, relating to probate, which was drafted by the Kansas Judicial Council Probate Law Study Advisory Committee and which will be introduced in the 1975 Session of the Legislature. It is published and distributed to the members of the bar to allow them an opportunity to become acquainted with the proposed act prior to its consideration by the legislature.

Part VIII of this article is entitled "Proposed Act," and contains the recommendations of the Judicial Council Probate Law Study Advisory Committee as they will be introduced to the 1975 legislature. Comments follow each section.

Publication of an important proposed act in the *Kansas Judicial Council Bulletin* is not without precedent. The proposed Kansas Criminal Code was published in April, 1968; the proposed Kansas Code of Criminal Procedure was published in October, 1969 and the proposed Governmental Immunity Statute was published in December, 1972.

This article contains the following sections: The introduction; the background of the undertaking of the Probate Law Study project by the Judicial Council; an account of the matters considered in the study; a brief discussion of the changes proposed by the amendments to the Kansas Probate Code and the new sections drafted; an explanation of the proposed Kansas Simplified Estates Act; an



RANDY M. HEARRELL was admitted to the Bar in 1970. He is a graduate of Washburn University and Washburn University School of Law. He is a past Ford Foundation Legislative Intern and presently serves as research assistant to the Kansas Judicial Council and as reporter for the twelve advisory committees of the Kansas Judicial Council that are active.

explanation of the committee's position on attorneys' fees; and the proposed act.

The philosophy of the committee with respect to changes in the probate code was developed over a long period of time at a number of committee meetings. It is appropriate that the committee philosophy be stated at this place in the article so the reader can view the recommendations in light of that philosophy. The committee worked to simplify probate procedure. The committee felt that the Uniform Probate Code and other probate laws should be considered thoroughly and adoption of Uniform Probate Code concepts, or other laws, should be recommended when they simplified the Kansas Probate Code, if simplification could be achieved within the framework of constitutional due process.

The committee appointed was unusual because for the first time non-lawyers were invited to serve on an Advisory Committee of the Judicial Council. The reason for appointment of non-lawyers to this committee was to give representation to consumer groups.

Those appointed to the committee are as follows: Robert H. Co-bean, chairman, attorney, longtime member of the Judicial Council and past chairman of the drafting committees for guardian and conservatorship forms and probate forms, Wellington; Jack E. Dalton, co-chairman, attorney, member of the Judicial Council and chairman of the Judicial Council Title Standards Advisory Committee, Dodge City; Steadman Ball, attorney, former state senator, Atchison; Oscar F. Belin, attorney, C. P. A. and partner in the law firm of Bever, Mustard, Dye and Belin, Wichita; Georgia Neese Gray, president of Capital City State Bank, Topeka; Hon. Camilla Klein Haviland, attorney and Ford County Probate Judge, Dodge City; John L. Logan, retired labor lobbyist, Shawnee Mission; Emerson Lynn, Jr., publisher of *The Iola Register*, Iola; Richard L. D. Morse, head of Family Economics Department at Kansas State University, Manhattan; Wayne Rogler, farmer and stockman, Matfield

Green; Larry Winn, III, attorney and partner in the law firm of Bennett, Lytle, Wetzler, Winn and Martin, Prairie Village.

The undertaking of the study by the Judicial Council was timely because shortly after its initiation the Uniform Probate Code was introduced in both the Kansas House of Representatives (1973 HB 1087) and the Kansas Senate (1973 SB 77).

II. BACKGROUND

During 1972 the Judicial Council received an unusually large volume of correspondence with regard to probate matters. The July 30, 1972 issue of *Parade* magazine contained an article entitled "At Last: A Way to Settle Estates Quickly." A reprint of the article appeared in *Reader's Digest* in September 1972. Shortly thereafter several letters were directed to the Judicial Council with respect to the Uniform Probate Code.

At the regular meeting of the Judicial Council held September 29, 1972 the minutes reflect considerable discussion with regard to a study of the probate laws of Kansas. There was no formal action taken at the meeting, but the concensus was that such a study should be undertaken. At the regular meeting of the Judicial Council held October 10, 1972 a lengthy resolution was passed which directed ". . . That the Kansas Judicial Council should forthwith undertake and conduct a study and analysis of the probate laws of Kansas." At the regular meeting of the Judicial Council held November 17, 1972 the resolution passed on October 10, 1972 was amended by increasing the size of the Advisory Committee authorized in the previous resolution from nine to eleven members. The resolution, as amended, was published in the December, 1972 *Kansas Judicial Council Bulletin*. At the November meeting the Judicial Council appointed eleven persons to serve on the Judicial Council Probate Law Study Advisory Committee.

III. THE STUDY

Before there could be a comparison of the Kansas Probate Code with the Uniform Probate Code and other matters directed to the Judicial Council Probate Law Study Advisory Committee could be considered it was necessary for the committee to provide to the non-lawyer members basic information about probate law and the Probate Courts. This information was presented simply and thoroughly by the lawyer members of the committee. After the non-lawyer members of the committee had an understanding of how the probate process operated, the committee began its comparison

of the Kansas Probate Code to the Uniform Probate Code and other probate laws.

It was decided that a section by section comparison of the Kansas Probate Code with the Uniform Probate Code would be the best approach to the study. The lawyer members were assigned specific articles and parts of the Uniform Probate Code. They summarized the Uniform Probate Code and the corresponding or related sections of the Kansas Probate Code. It was this preparation, presentation and discussion that allowed the members of the committee to develop their thoughts relating to changes in the probate code. As the committee proceeded through the comparison of the codes, opinions were formed by the members of the committee as to which parts of the Kansas Probate Code needed amendment and which parts of the Uniform Probate Code should be adopted by Kansas.

The committee was served by the research and clerical staff of the Judicial Council. They were provided with a bibliography of law review articles and articles published in lay publications that related to the Uniform Probate Code. The Judicial Council subscribed to and received the "U. P. C. Notes" a newsletter published by the Joint Editorial Board for the Uniform Probate Code. The newsletter reported on the adoption of the Uniform Probate Code by various states, the changes made by these states and articles written about the various aspects of the Uniform Probate Code.

The committee followed the progress of bills introduced in the Kansas Legislature on probate matters; representatives of the committee attended both of the National Conferences on the Uniform Probate Code that were held while the committee was active; the Chairman and other committee members corresponded with Mr. Wellman (reporter for the drafting committee of the Uniform Probate Code); the committee met with the sponsors of the Uniform Probate Code Bills in Kansas (1973) Senate Bill No. 77 and 1973 House Bill No. 1087) and discussed probate problems with those sponsors; the committee maintained liaison with the Kansas Bar Association group charged with a similar study. Members of the committee spoke to seminars on the progress of the committee; and, the reporter gathered research information and reports from other states that had completed a comparative analysis of their laws with the Uniform Probate Code.

Examples of items considered by the committee are the following: Changing the requirements and procedure for appraisal of estates, the effect of adoption of the Uniform Probate Code on the Kansas Corporate Code; a Small Estates Act; amendment of the

refusal to grant letters of administration statute; the effect of *In Re the Estate of Willis B. Barnes, Deceased*, 212 Kan. 502, 512 P 2d 387 (1973); the effect of unification of the judicial system on the probate code; changing the number of publications of notice; the case of *Goldfarb v. Virginia State Bar*, 497 F. 2d 1 (4th Cir.), petition for cert. granted (Oct. 29, 1974); and, several tax related problems including considering the effect of the "Widow's Allowance" contemplated by the Uniform Probate Code on the marital deduction and consideration of a statute authorizing a surviving joint tenant to disclaim joint tenancy property.

The committee conducted several studies to discover the present Kansas situation with respect to the methods of passage of property, amount of fees and time involved in the probate of estates.

The first study involved categorizing the methods of passing property and determining the percentage of use of each method.

The Kansas Department of Revenue, Inheritance Tax Division, allowed the reporter of the committee to analyze the 15,412 inheritance tax orders issued for the 12 month period from July 1, 1972 to June 30, 1973. This study revealed the relative use of administration and other procedures under existing Kansas law for perfecting title to property. They are as follows:

<i>Method</i>	<i>Percent</i>
Direct application to the Department of Revenue, Inheritance Tax Division, without intervention of the Probate Court (Form IH-22). (Procedure primarily for property held in joint tenancy.)	36.6
Full administration of estate, in which executor or administrator appointed. (Approximately $\frac{2}{3}$ testate and $\frac{1}{3}$ intestate.)	35.8
Determination of Descent Proceedings. (Proceeding without appointment of administrator, takes approximately one month to complete.)	17.8
Foreign will proceedings	7.8
Other proceedings (including termination of life estates and refusal to grant letters of administration).	2.0

The committee also conducted a study concerning fees charged in probate of estates. The committee gathered information with respect to the size of estates, the complexity, the amount of attorneys' fees, and the amount of the administrators' or executors' fees. This material was gathered from the last ten estates closed in each county. The suggested fee schedules of each county were gathered. Professor Richard L. D. Morse, of the committee, coded the material into form for computer analysis. Such analysis was completed and Dr. Morse prepared a thorough report on probate fees in Kansas for use by the committee.

The committee found need for information relating to the time

lapsed between opening and closing of estates. The probate courts that responded provided information as to (1) date of death; (2) date of petition for admission of will or appointment of administrator; (3) date of journal entry of final settlement; (4) date of federal estate closing letter, if any, and (5) date of journal entry of final discharge for the same estates they had previously provided information concerning fees. The above items were coded for computer analysis. Such analysis was completed and Dr. Morse provided the committee with meaningful data with respect to the time lapsed during probate.

The studies of cost and time and the section by section comparison of the Kansas Code with the Uniform Probate Code gave to the committee members sufficient background to begin giving consideration to the drafting of the proposed amendments to the Kansas Probate Code.

If a proper forum is available and there is sufficient interest the previously mentioned studies may be published in the future.

IV. CHANGES PROPOSED IN THE KANSAS PROBATE CODE

The committee has recommended several changes to the Kansas Probate Code. The most significant change is the proposal of the "Kansas Simplified Estates Act" which is anticipated to be a more direct and less costly method of handling specified types of estates. The Kansas Simplified Estates Act is discussed in Part V of this article. The proposed Kansas Simplified Estates Act is found in Section 33 to 38 of the act amending and supplementing the Kansas Probate Code, which is included as Part VIII of this article.

Changes in the procedure relating to the appraisal of estates have been proposed by the committee. The proposed changes contemplate: That the personal representative will inventory the estate, as present law requires, and place the value of the items on the inventory (Sec. 10); that the representative can hire an advisor to assist him if necessary (Sec. 13). If a party having an interest in the estate requests an independent appraisal, one or more, not to exceed three, appraisers shall be appointed by the court (Sec. 11); that appraisal of real estate prior to sale is required, although the procedure is slightly changed (Sec. 29). Other sections of the proposed act dealing with appraisal are sections 12, 21 and 22.

The proposed act changes the present real estate sale proceedings by allowing sale, lease or mortgage to a personal representative,

his spouse, child, or grandchild, agent or attorney, or to a corporation in which he has a substantial beneficial interest if the will or a contract entered into by the decedent expressly authorizes such transaction or if the court approves the transaction after hearing, upon notice to interested persons.

The proposed act would also change real estate sale proceedings in the situation where the terms of a prospective transaction are a matter of agreement between the parties. The sections of the proposed act relating to real estate sales are 15, 26, 27, 28 and 30.

The proposed act makes several changes relating to notice. The persons who may waive notice of probate proceedings are expanded (Sec. 16). More parties are allowed to waive notice of hearings on petitions for probate of a will or for administration (Sec. 19). The publication notice to creditors may be combined, where appropriate, with notice of a hearing on petitions for probate of a will or for administration (Sec. 8 and Sec. 23). A change in the notice, when letters are sought under the Kansas Simplified Estates Act, is included (Sec. 18).

The proposed act amends the present statute relating to refusal to grant letters of administration by removing real property from the act, removing the creditors from the act, raising the amount that can be transferred under the act and by making several other minor changes (Secs. 24 and 25).

Proposed changes to other sections of the statute are as follows: K. S. A. 59-1504 relating to entitlement to fees by persons successfully defending or prosecuting an action on behalf of the ultimate recipients of an estate would be broadened (Sec. 14); the amount, as set by K. S. A. 1973 Supp. 59-3003, a natural guardian can manage for a minor without appointment of a conservator would be raised (Sec. 31); K. S. A. 1973 Supp. 59-1104 would be amended to increase the number of situations in which bond may be excused (Sec. 9); the descent and distribution statutes, K. S. A. 59-506, 59-508 and 59-514 would be changed to require per capita distribution in situations where all heirs are of the same degree of relationship to the decedent; the length of time a widow is allowed to elect not to take by terms of the will would be increased to six months by amendment to K. S. A. 1973 Supp. 59-2233 (Sec. 21); a new section would allow a document separate from the will to dispose of certain personal property (Sec. 32); by amendment to K. S. A. 1973 Supp. 59-706, a non-resident person would be allowed to serve as executor of a resident's estate in certain circumstances (Sec. 7); K. S. A. 59-606 and K. S. A. 59-2224 would be amended to allow a

self-proved will (Secs. 6 and 20); the maximum allowance to the surviving spouse would be increased to \$7,500 by amendment to K. S. A. 1973 Supp. 59-403 (Sec. 2); and K. S. A. 1973 Supp. 59-102, the definitions section of the Kansas Probate Code would be amended (Sec. 1).

V. THE KANSAS SIMPLIFIED ESTATES ACT

Several approaches were considered in an attempt to draft a Small Estates Act. The Small Estates Acts of various states were considered as was the Uniform Probate Code approach to the problem. The committee agreed that the approach taken by California Assembly Bill No. 1481 was preferable. Mr. Larry Winn, III, initially prepared the California bill in a form the committee could consider. Many amendments and changes have since been made and the committee decided that the Kansas Simplified Estates Act would be a suitable title for this proposed legislation, which appears as sections 33 to 38 of Part VIII of the article.

Although a thorough reading of the proposed Kansas Simplified Estates Act is suggested, it can be said that if letters are obtained under the act the executor or administrator can sell personal property and pay claims without prior court approval. All actions would have to be approved on final settlement.

Although the proposed Kansas Simplified Estates Act is similar in some ways to the Uniform Probate Code proposals, the Uniform Probate Code does not require notice to open or close an estate. The committee could not agree with this concept. Notice on opening, closing and sale of real property is required under the Kansas Simplified Estates Act. This is consistent with the practice of many attorneys under the Uniform Probate Code.

The reader of this article should be made aware of a topic long argued in the committee: Whether or not a dollar limitation should be placed on estates to be probated under the Kansas Simplified Estates Act. The concept adopted by the committee was that of no dollar limitation.

VI. ATTORNEYS' FEES IN PROBATE MATTERS

A single item that received much consideration by the committee was the area of attorneys' fees in probate. The committee discovered early in its consideration of the Uniform Probate Code that U. P. C. 3-715 (21), 3-720 and 3-721, relating to attorney's fees, differs little in concept from K. S. A. 59-1717. Both the U. P. C. and The Kansas Probate Code contemplate a reasonable fee.

The bill proposed by the committee does not contain a section relating to attorney's fees. The lack of a recommendation does not mean that the area was not considered by the committee, but rather that at this time the committee was not ready to make any proposal with respect to fees.

The committee heard many proposals in the area of attorneys' fees. These proposals included maintaining the status quo, a percentage ceiling, a statutory percentage table, mandatory hourly charges and the gathering of a data base for the probate judges to better determine the reasonableness of a given fee. The proposals were all discussed extensively and given much consideration.

This area of discussion is not new. The pros and cons are not unique. For example, objection was raised to percentage fees, whether they be suggested fee schedules or set by statute. The objections are that the percentage fee fails to reflect the actual amount of professional services performed, the percentage fee does not reward those who have taken measures to reduce the amount of professional services required to settle their estate and percentage ceilings may become the norm. Payment of probate fees based on an hourly charge raised objections. Among the objections was the undue rewarding of a dilatory performance.

The committee concluded that, if a problem exists with regard to probate fees, it is a problem that the bar of Kansas should have first opportunity to study and to report their findings. For that reason, and because the committee is aware of the recent resolution of the Executive Council of the Kansas Bar Association directing the Probate, Real Estate and Trust Law Section to make an in depth study of attorneys' fees and other costs in probate, including a justification or lack thereof of percentage fees, the committee will take no action with respect to attorneys' fees in probate matters until the report of the Bar Association is available to the committee.

Although the committee has not made recommendations in the area of attorneys' fees, and the committee does believe that some of the dissatisfaction with attorneys in regard to their fees could be eliminated if fees were discussed and an understanding or a contract agreed upon at the beginning of the attorney-client relationship. This recommendation by the committee should not be interpreted as a committee position that the area of attorneys' fees in probate matters cannot be improved. Such is not the case.

The Judicial Council Probate Law Study Advisory Committee will meet to consider the report that the Kansas Bar Association has directed in the area of fees and other costs in probate matters and

will review the report in depth and not hesitate to make frank recommendations on the subject.

VII. INDEX TO PROPOSED ACT

The following is a brief index to the act the Probate Law Study Committee has proposed. The brief index is provided to aid the readers in consideration of the proposed act.

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VIII. PROPOSED ACT

The following is the act proposed by the Probate Law Study Advisory Committee in substantially the form in which it will be introduced to the legislature.

Bill No. _____

An Act amending and supplementing the Kansas Probate Code; amending K. S. A. 59-506, 59-508, 59-514, 59-606, 59-1203, 59-1207, 59-1504, 59-2208, 59-2219, 59-2222, 59-2223, 59-2224, 59-2307 and 59-2309, and K. S. A. 1973 Supp. 59-102, 59-403, 59-706, 59-709, 59-1104, 59-1201, 59-1202, 59-1703, 59-2233, 59-2235, 59-2236, 59-2287, 59-2288, 59-2303, 59-2304, 59-2305 and 59-3003, and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

- 1 Section 1. K. S. A. 1973 Supp. 59-102 is hereby amended to read
- 2 as follows: 59-102. As used in this act the term "probate court"

1 means judge of the probate court when that meaning is necessary
 2 to effectuate the general purpose of the provisions of this act. As
 3 used in this act, unless the context otherwise indicates:

4 (1) The word "representative" includes executors, administrators,
 5 administrators with the will annexed, administrators, *de bonis non*,
 6 conservators, and guardians;

7 (2) the word "fiduciary" includes representatives, trustees, and
 8 surviving partners administering their trusts;

9 (3) the word "person," as applied to fiduciaries, includes banks
 10 and other corporations authorized by law to act in a fiduciary ca-
 11 pacity in this state;

12 (4) *the term "simplified administration" means administration*
 13 *under the Kansas Simplified Estates Act;*

14 (5) *the term "supervised administration" means administration*
 15 *under the Kansas Probate Code, exclusive of Kansas Simplified*
 16 *Estates Act;*

17 ~~(4)~~ (6) the masculine gender includes the feminine; and

18 ~~(5)~~ (7) the singular number includes the plural.

COMMENT

The proposed change inserts two new terms into the definition section of the Kansas Probate Code. There are no substantive changes in this section. The term "Supervised Administration" will be used to refer to administration under the Kansas Probate Code, exclusive of the Kansas Simplified Estates Act. The term is necessary to differentiate from "Simplified Administration" which is used to describe a shortened form of probate created by sections 33 to 38 of this act.

The reason for the definitions is to facilitate identification of the type of administration that is referred to in the proposed act.

28 Sec. 2. K. S. A. 1973 Supp. 59-403 is hereby amended to read as
 29 follows: 59-403. When a resident of the state dies, testate or inte-
 30 state, the surviving spouse shall be allowed, for the benefit of such
 31 spouse and the decedent's minor children during the period of their

1 minority, from the personal property of which the decedent was
2 possessed or to which he was entitled at the time of death, the
3 following:

4 (1) The wearing apparel, family library, pictures, musical instru-
5 ments, furniture and household goods, utensils and implements used
6 in the home, one automobile, and provisions and fuel on hand
7 necessary for the support of the spouse and minor children for one
8 year.

9 (2) A reasonable allowance of not less than seven hundred fifty
10 dollars (\$750) nor more than ~~three thousand five hundred dol-~~
11 ~~lars (\$3,500)~~ *seven thousand five hundred dollars (\$7,500)* in money
12 or other personal property at its appraised value in full or part pay-
13 ment thereof, with the exact amount of such allowance to be deter-
14 mined and ordered by the court, after taking into account the
15 condition of the estate of the decedent.

16 The property shall not be liable for the payment of any of de-
17 cedent's debts or other demands against his estate, except liens
18 thereon existing at the time of his death. If there are no minor
19 children, the property shall belong to the spouse; if there are minor
20 children and no spouse, it shall belong to the minor children. The
21 selection shall be made by the spouse, if living, otherwise by the
22 guardian of the minor children. In case any of the decedent's minor
23 children are not living with the surviving spouse, the court may
24 make such division as it deems equitable.

COMMENT

This section proposes to increase the "widow's allowance" from \$3,500 to \$7,500.

There are several reasons for the proposed change. It was the feeling of the committee that the change to \$7,500 was a reasonable one in light of inflation. This figure may have to be reviewed periodically.

This change is necessary to facilitate the proposed changes in the

present Refusal to Grant Letters of Administration Act. (K. S. A. 59-2287 *et seq.*) (See sections 24 and 25 of this act.)

The Uniform Probate Code deals with this topic in section 2-403 "Family Allowance," which allows a "reasonable allowance in money" out of the estate for maintenance of the family during the period of administration.

The committee considered the U. P. C. view but decided to increase the present amount as an alternative. There were various reasons for this decision: Among them the fact that the allowance under the U. P. C. concept does not qualify for the marital deduction under the Internal Revenue Code, because the interest is terminable.

The other related sections are sections 18, 23, 24, and 25 dealing with Refusal to Grant Letters of Administration.

- 11 Sec. 3. K. S. A. 59-506 is hereby amended to read as follows:
 12 59-506. If the decedent leaves a child, or children, or issue of a
 13 previously deceased child or children, and no spouse, all his prop-
 14 erty shall pass to the surviving child, or in equal shares to the sur-
 15 viving children and the living issue, if any, of a previously deceased
 16 child, but such issue shall collectively take only the share their
 17 parent would have taken had such parent been living. *If the de-*
 18 *cedent leaves no child surviving, and if the issue entitled to take*
 19 *hereunder are all of the same degree of relationship to the decedent,*
 20 *all his property shall pass to his issue in equal shares.* If the dece-
 21 dent leaves such child, children, or issue, and a spouse, one-half of
 22 such property shall pass to such child, children, and issue as afore-
 23 said.

The proposed changes in this section and sections 4 and 5 amend the present law of descent and distribution by providing for a per capita distribution of the estate in situations where all heirs are of the same degree of relationship to the decedent.

This change is suggested because of the feeling by the committee that since the laws of descent and distribuion are "a will made for a person who fails to do so" that such laws should reflect the wishes of the public. Several surveys taken by the committee indicated there was nearly unanimous agreement as to the proposed changes in this section and sections 4 and 5.

The Uniform Probate Code deals with this topic at section 2-103 in much the same manner.

Sections 4 and 5 of this act are related to this section.

3 Sec. 4. K. S. A. 59-508 is hereby amended to read as follows:
4 59-508. If the decedent leaves no surviving spouse, child, issue,
5 or parents, the respective shares of his property which would have
6 passed to the parents, had both of them been living, shall pass to
7 the heirs of such parents respectively (excluding their respective
8 spouses), the same as it would have passed had such parents owned
9 it in equal shares and died intestate at the time of his death; but if
10 either of said parents left no such heirs, then and in that event his
11 property shall pass to the living heirs of the other parent: *Provided,*
12 *however, If all heirs entitled to take hereunder are of the same de-*
13 *gree of relationship to the decedent they shall be entitled to equal*
14 *shares of decedent's property.*

COMMENT

See comment under section 3.

19 Sec. 5. K. S. A. 59-514 is hereby amended to read as follows:
20 59-514. If an intestate decedent leaves no person entitled to receive
21 property of the decedent as said intestate's heir under the provisions
22 of ~~sections~~ K. S. A. 59-503 to 59-513, both sections inclusive, ~~of~~
23 ~~the General Statutes of 1949,~~ and acts amendatory thereof or
24 supplemental thereto, then and in that event said intestate's prop-
25 erty shall pass to the living heirs of the intestate's last spouse
26 dying prior to the death of the intestate ~~and~~: *Provided, however,*
27 *If all the heirs entitled to take hereunder are of the same degree of*
28 *relationship to the intestate's last spouse dying prior to the death of*
29 *the intestate, they shall be entitled to equal shares of decedent's*
30 *property. If there be no such heir or heirs, then his estate shall*
31 *escheat to and become the property of the state.*

COMMENT

See comment under section 3.

3 Sec. 6. K. S. A. 59-606 is hereby amended to read as follows:
 4 59-606. Every will, except an oral will as provided in ~~section~~
 5 ~~41~~ K. S. A. 59-608, shall be in writing, and signed at the end thereof
 6 by the party making the same, or by some other person in his
 7 presence and by his express direction, and shall be attested and
 8 subscribed in the presence of such party by two or more competent
 9 witnesses, who saw the testator subscribe or heard him acknowledge
 10 the same. *Such will may, at the time of its execution or at any*
 11 *subsequent date during the lifetimes of the testator and the wit-*
 12 *nesses, be made self-proved, and the testimony of the witnesses in*
 13 *the probate thereof may be made unnecessary by the acknowl-*
 14 *edgments thereof and the affidavits of the testator and the attesting*
 15 *witnesses, each made before an officer authorized to take acknowl-*
 16 *edgments to deeds of conveyance and to administer oaths under the*
 17 *laws of this state, such acknowledgments and affidavits being evi-*
 18 *denced by the certificate, with official seal affixed, of such officer*
 19 *attached or annexed to such will in form and contents substantially*
 20 *as follows:*

State of Kansas

County of _____ } SS.

24 Before me, the undersigned authority, on this day personally
 25 appeared _____, _____, and _____, known to me to
 26 be the testator and the witnesses, respectively, whose names are
 27 subscribed to the annexed or foregoing instrument in their respec-
 28 tive capacities, and, all of said persons being by me first duly
 29 sworn, said _____, testator, declared to me and to the said
 30 witnesses in my presence that said instrument is his last will and
 31 testament, and that he had willingly made and executed it as his

1 *free and voluntary act and deed for the purposes therein expressed;*
 2 *and the said witnesses, each on his oath stated to me, in the pres-*
 3 *ence and hearing of the said testator, that the said testator had*
 4 *declared to them that said instrument is his last will and testament,*
 5 *and that he executed same as such and wanted each of them to*
 6 *sign it as a witness; and upon their oaths each witness stated fur-*
 7 *ther that they did sign the same as witnesses in the presence of each*
 8 *other and in the presence of the testator and at his request, and*
 9 *that said testator at that time possessed the rights of majority, was*
 10 *of sound mind and under no restraint.*

Testator

Witness

Witness

Subscribed, acknowledged and sworn to before me by _____,
testator, and _____, and _____, witnesses, this _____
day of _____, A. D., _____.

(SEAL) (SIGNED) _____

(Official capacity of officer)

21 *A self-proved will, unless contested, shall be admitted to probate*
 22 *without the testimony of any subscribing witness, but otherwise it*
 23 *shall be treated no differently than a will not self-proved. A self-*
 24 *proved will may be contested or be revoked, or be amended by a*
 25 *codicil in the same fashion as a will not self-proved.*

COMMENT

This section of the proposed act sets forth the procedure for making a will self-proved. At the present time in Kansas the law requires that the witnesses to a will appear in court at the time of the hearing on the petition to probate the will, provided the witnesses are in the county. Under the self-proved will concept the witnesses would sign a sworn statement, which would be acknowl-

edged and which would set forth certain facts about the signing of the will. After the testator's death this statement would be offered for proving the will, in place of the testimony presently required.

The Judicial Council anticipates that the self-proved will concept would save time and expense in the locating and producing of testimony of the witnesses.

The self-proved will concept was introduced to the legislature in 1971 as Senate Bill 13 and passed the Senate.

The Uniform Probate Code deals with the self-proved will in much the same manner in section 2-504 of that act.

For a related section see section 20 of this act.

8 Sec. 7. K. S. A. 1973 Supp. 59-706 is hereby amended to read as
9 follows: 59-706. In cases of administration of a resident's estate;
10 (a) Letters ~~testamentary or~~ of administration shall ~~in no case~~
11 ~~not~~ be granted to a nonresident of this state; and when an ~~executor~~
12 ~~or~~ administrator of a resident's estate shall become a nonresident,
13 the probate court shall revoke his letters. (b) *Letters testamentary*
14 *may be granted to a nonresident of this state when the nonresident*
15 *has appointed an agent pursuant to K. S. A. 59-1706. When an*
16 *executor of a resident's estate shall become a nonresident, the pro-*
17 *bate court shall revoke his letters, until the nonresident has ap-*
18 *pointed an agent pursuant to K. S. A. 59-1706.*

COMMENT

Section 7 of the proposed act changes the present Kansas law by allowing a nonresident of this state to serve as executor of a resident's estate if the executor appoints an agent for the purpose of service of process.

It was anticipated by the Judicial Council that in certain instances a nonresident would be the most logical person to serve as executor.

Several states, including California, allow nonresident executors to serve.

This amendment does not affect K. S. A. 1973 Supp. 59-1701, which prohibits nonresident corporate fiduciaries from acting in the state.

See U. P. C. 3-203 (f).

29 Sec. 8. K. S. A. 1973 Supp. 59-709 is hereby amended to read as
30 follows: 59-709. ~~An executor or administrator, except a spe-~~
31 ~~cial administrator, shall within ten (10) days after his~~

1 appointment and qualification cause notice of his appoint-
2 ment to be published in some newspaper of the county
3 authorized by law to publish legal notices, which notice
4 shall be published once a week for three consecutive weeks.
5 A successor administrator shall give notice of his appoint-
6 ment in the same manner only in the event his predecessor
7 had given no notice. If notice of appointment shall not be
8 published within the time herein prescribed, the court shall
9 order such notice to be published, but such order shall not
10 exempt the executor or administrator or his sureties from
11 liability which they would otherwise incur by reason of the
12 failure to give notice within the time herein first prescribed.
13 *Every petitioner who files a petition for administration, probate of*
14 *a will or refusal to grant letters of administration shall, pursuant to*
15 *an order of the court, and within ten (10) days after filing, publish*
16 *notice to creditors in some newspaper of the county authorized by*
17 *law to publish legal notices, which notice shall be published once*
18 *a week for three (3) consecutive weeks. A petitioner for the ap-*
19 *pointment of a successor administrator or administrator CTA shall*
20 *publish notice to creditors only in the event the original petitioner*
21 *for administration or for the probate of a will or for refusal to grant*
22 *letters of administration had failed to give such notice.*

COMMENT

The change proposed by this section removes the requirement in K. S. A. 1973 Supp. 59-709, that the executor or administrator publish notice of his appointment and requires instead that the court order notice to creditors be given at the time a petition is filed.

This section of the proposed act changes present Kansas law by requiring the court to publish notice that a petition for probate of a will has been filed, and a notice to creditors within ten days after such petition has been filed. Presently Kansas law required two separate publications in the absence of waiver.

The Judicial Council anticipates that the change will eliminate one publication and could expedite the administration.

The U. P. C. does not have a section which is similar to this section. However, the approach taken by this section is consistent with the philosophy of the U. P. C.

Section 23 of this act should be considered along with this section.

6 Sec. 9. K. S. A. 1973 Supp. 59-1104 is hereby amended to read as
7 follows: 59-1104. ~~When by the terms of any last will, or~~
8 ~~other written instrument creating a trust in favor of per-~~
9 ~~sons subject to guardianship or conservatorship, the testa-~~
10 ~~tor or settlor shall express a wish that the executor, con-~~
11 ~~servator, or trustee named therein shall execute the same,~~
12 ~~or the trust created thereby, or condition named therein,~~
13 ~~without giving bond, no bond shall be required unless the~~
14 ~~probate court, for sufficient cause, deems it proper to re-~~
15 ~~quire it, but the court may, at any subsequent period, on~~
16 ~~the application of any party interested, or on its own mo-~~
17 ~~tion, require bond to be given. Bonds otherwise required of~~
18 ~~every fiduciary under the provisions of K. S. A. 59-1101 of this act~~
19 ~~may be excused:~~

20 (1) *When the will expressly waives a bond of an executor, con-*
21 *servator or trustee; or,*

22 (2) *When all of the known heirs, if no will has been probated,*
23 *or all the devisees and legatees under a will which does not waive*
24 *a bond, file with the court a written waiver of a bond. A duly*
25 *appointed conservator, guardian ad litem or named trustee may*
26 *wave on behalf of his conservatee or cestui que trust or ward unless*
27 *the conservator or trustee is the fiduciary; or,*

28 (3) *When the fiduciary is a bank or trust company organized*
29 *and having its principal place of business within the state of Kansas;*
30 *but the court may, at that time or any subsequent period, on the*

- 1 *application of any party interested, or on its own motion, require*
2 *bond to be given.*

COMMENT

This section of the proposed act increases the number of situations in which bond may be excused.

Presently, if a will or a trust instrument excuses bond, it may be excused. The proposed change expands these situations to include those cases where all heirs, devisees and legatees agree on waiver, where conservatee, trustee or guardian ad litem waive (with certain reservations). Both present law and the proposed change allow the court to require bond.

It is anticipated by the committee that there will be a saving of the expense of requiring bond in those cases where the beneficiaries or their representatives do not consider the bond necessary.

The section of the U. P. C. which relates to bonds is 3-603. The change proposed by the committee is nearly identical to the U. P. C. as adopted by Arizona.

15 Sec. 10. K. S. A. 1973 Supp. 59-1201 is hereby amended to read
16 as follows: 59-1201. Within thirty (30) days from the date of his
17 letters of appointment, unless a longer time has been granted by
18 the court, every representative shall make an inventory *stating*
19 *opposite each item contained in the inventory the full and fair*
20 *value as of the date of death of the decedent*, verified by his affi-
21 davit, of all real estate and tangible personal property owned by
22 the decedent or conservatee and located in the state of Kansas and
23 of all intangible property owned by the decedent or conservatee
24 wherever located which shall come to his possession or knowledge.
25 Such property shall be classified therein as follows:

- 26 (1) Real estate, with plat or survey description.
27 (2) The furniture, household goods, and wearing apparel.
28 (3) Corporation stocks, described by certificate numbers.
29 (4) Bonds, mortgages, notes and other written evidence of debt,
30 described by name of debtor, recording data, and other identi-
31 fication.

1 (5) All other personal property accurately identified. If the
 2 decedent was a member of a partnership, the inventory *and* *valua-*
 3 *tion* shall contain a separate inventory *and* *valuation* of the whole
 4 of the partnership estate and of the decedent's proportional share
 5 therein.

6 The court may, for good cause shown, require an earlier inventory
 7 *and* *valuation* of any estate.

COMMENT

This section requires that in addition to the preparation of an inventory by every representative that a value be placed on each item in the inventory by the representative.

Under present law the representative lists the property and it is appraised by three court appointed appraisers.

The Judicial Council anticipates there would be a saving to the estate by not employing the three appraisers.

It should be noted that section 11 of this act allows a party having an interest in the estate to request, and be granted, an independent appraisal and section 13 of this act allows the representative to employ advisors to aid in valuing inventoried items.

This section and the related sections of the act are similar to 1974 SB 785. The Uniform Probate Code is identical in concept to the proposed act. (U. P. C. 3-706.)

Related sections are sections 11, 12, 13, 21, 22 and 29.

21 Sec. 11. K. S. A. 1973 Supp. 59-1202 is hereby amended to read
 22 as follows: 59-1202. ~~The inventory and the property therein~~
 23 ~~described shall be exhibited by the representative to the~~
 24 ~~appraisers when they are appointed. If the inventory lists~~
 25 ~~no property other than moneys and other obligations of the~~
 26 ~~United States, no appraisal shall be required, other-~~
 27 ~~wise the property shall be appraised at its full and fair~~
 28 ~~value as of the date of death or date of appointment of~~
 29 ~~conservator, by three (3) disinterested persons appointed~~
 30 ~~by the court within thirty (30) days after the appointment~~
 31 ~~of the representative: Provided, That if the inventory lists~~

1 no property other than personal property whose value is
2 capable of determination by reference to sources in which
3 regularly established commercial markets exist and which
4 are so established on the basis of quotations contained in
5 commercial or other similar publications of recognized
6 authority, the court may make a finding that the appoint-
7 ment of appraisers is unnecessary: Provided further, That
8 such determination shall not be made where the value of the
9 assets depends upon the condition, grade or appearance of
10 such assets, or if any party having an interest in the estate
11 requests that appraisers be appointed. Within sixty (60)
12 days after their appointment, unless longer time has been
13 granted by the court, the appraisers shall state opposite
14 each item contained in the inventory the value thereof, and
15 forthwith deliver such inventory and appraisement, certi-
16 fied by them under oath, to the representative, who shall
17 file it with the probate court. The court may, for good
18 cause shown, require an earlier appraisement thereof. No
19 independent appraisement shall be made unless a party having an
20 interest in the estate requests an independent appraisement, in
21 which event one or more, but not to exceed three (3), appraisers
22 shall be appointed by the court. If independent appraisers are
23 appointed, they shall, within thirty (30) days after their appoint-
24 ment state opposite each item contained in the inventory the value
25 thereof, and forthwith deliver such inventory and appraisement,
26 certified by them under oath, to the representative, who shall file
27 it with the probate court. If appraisers are appointed, they shall
28 be paid such compensation as the court shall deem reasonable.

COMMENT

The proposed change amends present Kansas law by removing the reference to the procedure for appointing the three appraisers and specifying their duties and inserting language which does not contemplate appraisal by a person other than the representative unless requested by a party having an interest in the estate, or unless the representative employs an advisor to aid him.

This section should be considered with sections 10, 12 and 13 of this act.

This section is similar to U. P. C. 3-707.

Related sections are 10, 12, 13, 21, 22 and 29.

9 Sec. 12. K. S. A. 59-1203 is hereby amended to read as follows:
10 59-1203. Whenever assets of any kind, not mentioned in the in-
11 ventory that has been made, come to the knowledge or possession
12 of a representative, he shall make an inventory thereof ~~and cause~~
13 ~~such assets to be appraised,~~ *stating opposite each item con-*
14 *tained in the inventory the value thereof* and the inventory ~~and~~
15 ~~appraisal to shall be returned filed with the court~~ within
16 thirty (30) days after the discovery thereof.

COMMENT

This section is amended to be consistent with sections 10, 11, and 13 of this act. It provides a procedure for inventory and valuation of later discovered assets.

This section of the act is amended in a manner similar to the proposed amendment in 1974 SB 785.

This section is similar to U. P. C. 3-708.

Related sections are 10, 11, 13, 21, 23 and 29.

24 Sec. 13. K. S. A. 59-1207 is hereby amended to read as follows:
25 59-1207. ~~Appraisers shall each be allowed for services per-~~
26 ~~formed by them, such compensation as the court shall deem~~
27 ~~reasonable and their actual necessary expenses.~~ The ap-
28 ~~praisers representative may be authorized by the court to~~
29 ~~employ one or more expert and technical advisers to aid them~~
30 *in valuing inventoried items.* Such advisors, ~~when so employed,~~

1 shall be paid ~~such~~ *reasonable* compensation as the court shall
2 ~~deem reasonable~~.

COMMENT

This section provides for employment and payment of expert advisors to aid the representative in valuing inventoried items.

The section, as amended, removes reference to appraisers and their payment. The authority to employ advisors is changed to the representative and payment authorized.

The comparable section of the U. P. C. is 3-707.

Related sections are 10, 11, 12, 22, 23 and 30.

10 Sec. 14. K. S. A. 59-1504 is hereby amended to read as follows:
11 59-1504. Whenever a decedent by will makes a provision for the
12 compensation of his executor, that shall be taken as his full com-
13 pensation, unless he files a written instrument, renouncing all claim
14 to the compensation provided for in the will. Whenever any per-
15 son named in a will or codicil defends it, or prosecutes any pro-
16 ceedings in good faith and with just cause, for the purpose of
17 having it admitted to probate, whether successful or not, or if any
18 person successfully opposes the probate of any will or codicil, he
19 shall be allowed out of the estate his necessary expenses and dis-
20 bursements in such proceedings, together with such compensation
21 for his services and those of his attorneys as shall be just and
22 proper.

23 *Any heir at law or beneficiary under a will who, in good faith*
24 *and for good cause, successfully prosecutes or defends any other*
25 *action for the benefit of the ultimate recipients of the estate may,*
26 *at the discretion of the court, be allowed his necessary expenses,*
27 *including a reasonable attorney fee.*

COMMENT

The Judicial Council concluded that factual circumstances under which an heir or beneficiary could "successfully prosecute or de-

fend” actions “for the ultimate recipients of the estate” should be broadened beyond the present provisions of K. S. A. 59-1504.

3 Sec. 15. K. S. A. 1973 Supp. 59-1703 is hereby amended to read
4 as follows: 59-1703. No fiduciary shall make a profit by the in-
5 crease, nor suffer loss by the decrease or destruction without his
6 fault, of any part of the estate, and he shall account for the excess
7 when he sells for more than the appraisement and shall not be
8 responsible for the loss when he sells for less, if such sale appears
9 to be beneficial to the estate.

10 He shall not be responsible for any loss happening by the in-
11 solvency of any purchaser, or his sureties, for any sale duly made
12 according to law, if he proceeded with due caution in taking surety,
13 and has used due diligence to collect thereon.

14 He shall not be accountable for debts due the decedent or con-
15 servatee which remain uncollected without fault on his part, but
16 where he neglects or unreasonably delays to raise money by col-
17 lecting debts or selling property, or neglects to pay over the money
18 in his hands and by reason thereof the value of the estate is
19 lessened, or unnecessary costs, interest, or penalties accrue, or the
20 persons interested suffer loss, the same shall be deemed waste and
21 the fiduciary shall be charged in his account with the damages
22 sustained. He shall not purchase any claim against the estate nor
23 shall he purchase directly or indirectly or be interested in the
24 purchase of any property sold by him, *except as hereinafter pro-*
25 *vided.*

26 *Any sale, lease or mortgage to the personal representative, his*
27 *spouse, child or grandchild, agent or attorney, or to any corporation*
28 *in which he has a substantial beneficial interest, or any transaction*
29 *which is affected by a substantial conflict of interest on the part of*
30 *the personal representative, is voidable unless: (1) the will or a*
31 *contract entered into by the decedent expressly authorized the*

- 1 *transaction; or (2) the transaction is approved by the court after*
- 2 *hearing upon notice to interested persons.*

COMMENT

The Judicial Council recognized the fact that in some, perhaps frequent sales, leases or mortgages the most advantageous (to the Estate sale, lease or mortgage may be made to a family member who may be a personal representative, spouse, child or grandchild, agent or attorney or a corporation in which any of the above have a substantial beneficial interest, all of which relationships may create either an actual or potential conflict of interest, notwithstanding the fact that such sale, lease or mortgage, may be for the best interest of the estate.

Such sale, lease or mortgage should be permissible:

- (1) If the testator, by Will or contract, has authorized such a transaction, or
- (2) If all of the facts, constituting the relationships and potential conflicts of interest are fully disclosed to the court in an appropriate petition; all interested persons are given notice of the proposed sale, lease or mortgage, and the court should judicially determine that such sale, lease or mortgage will be for the best interest of the estate.

18 Sec. 16. K. S. A. 59-2208 is hereby amended to read as follows:
19 59-2208. When notice of any probate proceedings is required by
20 law or deemed necessary by the court and the manner of giving
21 the same shall not be directed by law, the court shall order notice
22 to be given to all persons interested, in such manner and for such
23 length of time as it shall deem reasonable. Any required notice
24 may be waived in writing by any competent person; by any fidu-
25 ciary; *by a trustee on behalf of the trustee and all beneficiaries of*
26 *the trust; by a conservator on behalf of the conservator and all*
27 *conservatees; by a guardian on behalf of the guardian and all his*
28 *wards; by a guardian ad litem on behalf of the guardian ad litem*
29 *and all those whom he represents or by an attorney under the*
30 *Soldiers' and Sailors' Civil Relief Act on behalf of an attorney ap-*

1 *pointed pursuant to the Soldiers' and Sailors' Civil Relief Act and*
 2 *all those whom he represents.*

COMMENT

While Trustees, Conservators, Guardians, Guardian ad litem and attorneys under the Soldiers' and Sailors' Civil Relief Act may not waive any rights for the respective persons whom they represent, the Judicial Council believes that in the spirit of the U. P. C. they should be authorized to waive notices, otherwise required, and thereby save time and expense.

10 Sec. 17. K. S. A. 59-2219 is hereby amended to read as follows:
 11 59-2219. A petition for administration shall state: (1) The name,
 12 residence, and date and place of death, of the decedent; (2) the
 13 names, ages, residences, and addresses of the heirs of the decedent
 14 so far as known or can with reasonable diligence be ascertained;
 15 (3) the general character and probable value of the real and per-
 16 sonal property; (4) ~~and~~ the name, residence and address of the
 17 person for whom letters are prayed; (5) *and whether administration*
 18 *is sought under the Kansas Simplified Estates Act, and if such*
 19 *administration is sought, one or more reason or reasons for seeking*
 20 *administration under the Kansas Simplified Estates Act.*

COMMENT

This section is amended to add as a requirement for inclusion in the petition for administration a statement as to whether or not administration is sought under the Kansas Simplified Estates Act. If such administration is sought, the specific reason or reasons under section 34 of the act must be set forth.

Because K. S. A. 1973 Supp. 59-2220 requires that items set forth in this statute be included in the petition to probate a will the above amendment will also relate to the petition for probate of a will.

This section is consistent with the philosophy of the U. P. C.

Other sections which relate to the Kansas Simplified Estates Act are sections 18 and 33 to 38.

1 Sec. 18. K. S. A. 59-2222 is hereby amended to read as follows:
2 59-2222. When a petition *is filed* for the probate of a will, or for
3 administration, *or for refusal to grant letters of administration, is*
4 ~~filed~~, the court shall fix the time and place for the hearing thereof,
5 notice of which shall be given pursuant to ~~section 185 [59-2209]~~
6 K. S. A. 59-2209, unless the court shall make an order to the con-
7 trary. If notice is by order of the court not required to be given
8 pursuant to ~~section 185 [59-2209]~~ K. S. A. 59-2209, the court shall
9 order notice thereof to be given, such notice, unless waived, shall
10 be given in such manner as the court shall direct. *When the peti-*
11 *tion seeks administration under the Simplified Estates Act (Sections*
12 *33 to 38 of this act), the notice shall advise all persons that under*
13 *such provision the court need not supervise administration of the*
14 *estate, and no notice of any action of the executor or administrator*
15 *or other proceedings in the administration will be given, except for*
16 *notice of final settlement of decedent's estate. The notice shall*
17 *further advise all persons that if written objections to simplified*
18 *administration are filed with the court, the court may order that*
19 *supervised administration ensue. When a petition has been filed*
20 *for the refusal of letters of administration, pursuant to K. S. A. 59-*
21 *2287, the notice given shall advise all persons that at such hearing*
22 *exempt property and a reasonable allowance will be set aside to*
23 *the surviving spouse and minor children, or both, and that no fur-*
24 *ther notice of the proceeding will be given. When the state is a*
25 *proper party the notice shall be served upon the attorney general*
26 *and the county attorney of the county.*

COMMENT

This section is amended to (1) include refusal to grant letters of administration in the petitions which are required to have notice given pursuant to K. S. A. 59-2209, unless the court otherwise orders; (2) provide that when administration under the Simplified Estates

Act is sought the notice contains a statement that (a) the court may not supervise administration, (b) no notice of actions of the administrator or executor will be given except on final settlement, (c) if written objections to simplified administration are filed the court may order supervised administration; and (3) set forth contents of notice when petition is filed for refusal to grant letters of administration.

The changes set out by this section are necessary because of a broad revision of the present refusal to grant letters of administration statute and to be consistent with the notice requirements of *In Re Estate of Willis B. Barnes, Deceased*, 212 Kan. 502, 512 P. 2d 387 (1973).

See Kansas Simplified Estates Act (Sec. 33-38).

10 Sec. 19. K. S. A. 59-2223 is hereby amended to read as follows:
 11 59-2223. When a petition is filed for the probate of a will or for
 12 administration, if all the parties interested as heirs, devisees, and
 13 legatees enter their appearance in writing, waive the notice other-
 14 wise required, and consent to an immediate hearing, a hearing may
 15 in the discretion of the court be had as if notice had been given.
 16 *Such entry of appearance, waiver of notice and consent to an im-*
 17 *mediate hearing may be given by a trustee on behalf of the trustee*
 18 *and all beneficiaries of the trust; a conservator on behalf of the*
 19 *conservator and all conservatees; a guardian on behalf of the guard-*
 20 *ian and all his wards; a guardian ad litem on behalf of the guardian*
 21 *ad litem and all of those whom he represents or by an attorney*
 22 *under the Soldiers' and Sailors' Civil Relief Act on behalf of an*
 23 *attorney appointed pursuant to the Soldiers' and Sailors' Civil Relief*
 24 *Act and all of those whom he represents.*

COMMENT

This section is amended to allow waiver of notice by trustees, conservators, and guardians.

The Judicial Council has recommended the change because of the expense and time involved in notice to the parties.

This is consistent with Section 1-402 of the Uniform Probate Code.

1 Sec. 20. K. S. A. 59-2224 is hereby amended to read as follows:
2 59-2224. On the hearing of a petition for the probate of a will,
3 *unless it is an uncontested self-proved will*, at least two (2) of the
4 subscribing witnesses shall be examined if they are within the
5 county and competent and able to testify. Otherwise the court
6 may admit the testimony of other witnesses to prove the capacity
7 of the testator and the due execution of the will; and as evidence
8 of such execution may admit proof of the handwriting of the tes-
9 tator and of the subscribing witnesses. Any heir, devisee, or lega-
10 tee may prosecute or oppose the probate of any will. If the instru-
11 ment is not allowed as the last will and if the estate should be
12 administered, the court shall grant administration to the person or
13 persons entitled thereto.

COMMENT

This section gives effect to section 6 of this act relating to self-proved wills. See comment under section 6.

18 Sec. 21. K. S. A. 1973 Supp. 59-2233 is hereby amended to read
19 as follows: 59-2233. When a will is admitted to probate the court
20 shall forthwith transmit to the surviving spouse a certified copy
21 thereof, together with a copy of K. S. A. 59-603 and this section
22 and certify to such transmittal. If such spouse has consented to
23 the will, as provided by law, such consent shall control; otherwise
24 such spouse shall be deemed to have elected to take under the
25 testator's will unless he shall have filed in the probate court, within
26 ~~four (4)~~ *six (6)* months after the probate of the will, an instrument
27 in writing to take by the laws of intestate succession. If said spouse
28 files an election before the ~~appraisement~~ *inventory and valuation*
29 of the estate is filed, the said election shall be set aside upon peti-
30 tion of the spouse made within thirty (30) days after the filing of
31 the ~~appraisement~~ *inventory and valuation*. For good cause shown,

- 1 the court may permit an election within such further time as the
2 court may determine, if a petition therefor is made within said
3 period of ~~four (4)~~ six (6) months.

COMMENT

This section changes from four to six months the amount of time allowed to file an election not to take under the will.

The Judicial Council felt that in an estate of substantial size the four month time limit did not allow enough time to make a meaningful decision as to whether or not to elect not to take under the will, in many cases.

This change is beneficial for estate tax marital deduction purposes and should not lengthen the period of administration.

The Uniform Probate Code sections dealing with the elective share are 2-201 and 2-203. The decision of the committee to recommend the change contained in this section was not because of the U. P. C. handling of the subject, but because the Judicial Council felt the present code could be improved.

The other changes are necessary to be consistent with those sections of this act which change the present concept of appraisement.

- 17 Sec. 22. K. S. A. 1973 Supp. 59-2235 is hereby amended to read
18 as follows: 59-2235. After the inventory and ~~appraisement~~ *valuation*
19 *tion* have been filed, the surviving spouse, or in case there is none,
20 the children, may petition the court to set apart the homestead,
21 and the personal property allowed in K. S. A. 1971 Supp. 59-403.
22 Such petition shall show the names, ages, and relationship of the
23 parties, a description of the homestead claimed and of the personal
24 property selected, and the appraised value of personal property
25 selected under K. S. A. 59-403 (2). The petition may be heard with
26 or without notice. Upon proof of the petition, the court shall set
27 apart such homestead and personal property. The property so set
28 apart shall be delivered by the executor or administrator to the
29 persons entitled thereto, and shall not be treated as assets in his
30 custody, but the title of the homestead shall be included in the
31 final decree of distribution.

COMMENT

The change in this section is only a language change which is necessary to be consistent with those sections of the act which change the present appraisalment concept.

See sections 10, 11, 12, 13, 21 and 29 of this act.

5 Sec. 23. K. S. A. 1973 Supp. 59-2236 is hereby amended to read
6 as follows: 59-2236. The *publication* notice ~~of appointment to~~
7 ~~be published by an executor or administrator shall be to~~
8 ~~the creditors, heirs, devisees, legatees, and all others con-~~
9 ~~cerned to creditors shall be to all persons concerned.~~ It shall
10 state the date of ~~appointment and qualification, the filing of~~
11 *the petition for administration or petition for probate of a will or*
12 *petition for refusal to grant letters of administration*, and shall
13 notify the creditors *of the decedent* to exhibit their demands against
14 the estate within six (6) months from the date of the first published
15 notice as provided by law, and that if their demands are not thus
16 exhibited they shall be forever barred. *The notice to creditors,*
17 *herein required, shall be combined with the notice for probate or*
18 *administration required by K. S. A. 59-2222, as amended: Provided,*
19 *however, If the notice required pursuant to K. S. A. 59-2222, as*
20 *amended, is waived pursuant to K. S. A. 59-2223, as amended, then*
21 *the notice to creditors required by K. S. A. 59-709, as amended,*
22 *and this section, shall be separately published.*

COMMENT

This section is broadened to include the petition for refusal to grant letters of administration. This section directs publication of notice for probate or administration to be combined with the notice to creditors. Provision is made to publish notice to creditors separately if notice of petition is waived.

The Judicial Council anticipates that the change will eliminate one publication and expedite the administration.

The U. P. C. does not have a section which is similar to this section. However, the approach taken by this section is consistent with the philosophy of the U. P. C.

Section 8 of this act is a related section.

1 Sec. 24. K. S. A. 1973 Supp. 59-2287 is hereby amended to read
2 as follows: 59-2287. (a) The probate court in its discretion, may
3 refuse to grant letters ~~in the following cases:~~

4 ~~(1) When the estate of the decedent~~ *When the value of*
5 *personal property owned by the decedent* is not greater in amount
6 than is allowed by law as exempt property and the allowance to the
7 surviving spouse or minor children under K. S. A. ~~1969~~ 1973 Supp.
8 59-403, *as amended.*

9 ~~(2) When the personal estate of the decedent does not~~
10 ~~exceed one thousand five hundred dollars (\$1,500) and there~~
11 ~~is no widower, widow or unmarried minor children, any~~
12 ~~creditor of the estate may apply for refusal of letters by~~
13 ~~giving bond in the sum of not less than the value of the~~
14 ~~estate, the bond to be approved by the probate court, con-~~
15 ~~ditioned upon the creditor obligating himself to pay, so far~~
16 ~~as the assets of the estate will permit, the debts of the dece-~~
17 ~~dent in the order of their preference, and to distribute the~~
18 ~~balance, if any, to the persons entitled thereto under the~~
19 ~~law.~~

20 (b) Proof may be allowed by or on behalf of the ~~widower,~~
21 ~~widow, surviving spouse or minor children or creditor~~ before
22 the probate court of the value and nature of the estate, ~~and~~ If the
23 court is satisfied that no estate will be left after allowing to the
24 surviving spouse or minor children their exempt property and statu-
25 tory allowances, ~~or that the personal estate does not exceed~~
26 ~~one thousand five hundred dollars (\$1,500) when applica-~~
27 ~~tion is made by a creditor,~~ the court may order that no letters of
28 administration shall be issued on the estate, ~~unless, upon the~~
29 ~~application of other creditors or parties interested, the~~
30 ~~existence of other property is shown.~~

31 (c) After the making of the order, ~~and until such time as the~~

1 same may be revoked, the surviving spouse, or minor children
2 or creditor may collect and sue for all the personal property be-
3 longing to the estate, if a surviving spouse or creditor, in the
4 same manner and with the same effect as if he had been
5 appointed and qualified as executor or administrator of the
6 estate, and if minor children, in the same manner and with
7 the same effect as now provided by law for proceedings in
8 court by infants in bringing suit.

9 (d) When the estate of the decedent includes real estate
10 and its value, less liens and encumbrances, together with
11 the personal property is not greater in value than the
12 exempt property and allowances to the surviving spouse or
13 unmarried minor children, the surviving spouse or minor
14 children are entitled thereto and may make record evidence
15 of title thereto without appointment of an executor or ad-
16 ministrator if:

17 (1) A notice is published in a newspaper of general cir-
18 culation in the county of proper venue for administration
19 at least once each week for three (3) consecutive weeks,
20 describing the real property, giving the name and last resi-
21 dence address of the deceased owner thereof, stating that
22 such order of refusal of letters has been recorded in each
23 county where the real estate is situated by or on behalf of
24 the persons who claim to be entitled to succeed to the real
25 property, showing their names and their right to the prop-
26 erty, and notifying all persons having claims against the
27 decedent or his estate to file a petition for the appointment
28 of an executor or administrator within three (3) months
29 after the first publication of such notice or be barred from
30 asserting any right or claim as against the real property
31 therein described, and

1 (2) No petition for the appointment of an executor or
2 administrator is filed within three (3) months after the
3 first publication of such notice. Upon compliance with this
4 procedure the real estate involved shall not thereafter be
5 taken in execution for any debts or claims against the dece-
6 dent, but such compliance has the effect of establishing the
7 right of the surviving spouse or the minor children to suc-
8 ceed to the real property; but nothing herein affects the
9 rights of secured creditors with respect to the real property.

10 When application under this act is made by a surviving spouse
11 or minor children notice of the proceeding shall be given pursuant
12 to K. S. A. 59-2222, as amended.

13 (e) The surviving spouse or minor children, who receive
14 property of the estate under this section, may retain the
15 same but a creditor receiving property hereunder shall
16 apply the proceeds thereof to debts of the estate in the
17 order in which claims against the estate of deceased per-
18 sons are now classified and preferred by law, and shall
19 distribute the balance, if any, to the persons entitled thereto
20 under the law.

21 (f) Any person who has paid funeral expenses or debts
22 of decedent is deemed a creditor for the purpose of making
23 application for the refusal of letters of administration un-
24 der this section and is subrogated to the rights of the origi-
25 nal creditor.

26 (g) Whenever it shall be made to appear to the court that fur-
27 ther proceedings in the administration of an estate pursuant to this
28 section are unnecessary, and after payment of Kansas Inheritance
29 Taxes, if any, the court shall enter an order terminating the ad-
30 ministration of such estate. Such order shall be made without
31 notice, unless the court otherwise orders, and it shall be to the effect

1 that, unless further estate of the decedent be discovered, all further
2 ~~advertisements~~, settlements and other proceedings concerning the
3 estate be dispensed with, *and* that the surviving spouse and minor
4 children are relieved of any further obligations with respect to said
5 estate. ~~and that any creditor of the estate, having applied~~
6 ~~for refusal of letters by giving bond pursuant to subsection~~
7 ~~(a) (2) of this section, shall be released from such bond~~
8 ~~and relieved of any further obligations with respect to said~~
9 ~~estate, if said creditor has filed with the court a detailed~~
10 ~~statement of the manner in which he distributed the assets~~
11 ~~of the estate, showing the payment of decedent's debts, if~~
12 ~~any, in order of their preference, distribution of any bal-~~
13 ~~ance to persons entitled thereto by law and any money col-~~
14 ~~lected and retained by him.~~ If further estate of the decedent
15 is discovered and administration is had thereon, such administra-
16 tion shall not abrogate or invalidate or otherwise affect any right,
17 title or interest in property transferred or vested pursuant to this
18 section unless the court, for good cause shown, shall otherwise
19 determine and order.

COMMENT

This section is extensively amended. It is the desire of the Judicial Council to provide a workable method of dealing with certain small estates.

The Refusal to Grant Letters section is changed as follows:

1. The amendments change the section to deal only with personal property;
2. The maximum amount of property that can be in the estate and this section be used is raised from \$1,500 to \$7,500 (see section 2 of this act);
3. The creditor is stricken as one of the persons who can petition under this section and reference to creditors is deleted throughout the statute;
4. The notice section of the present act is stricken and notice is required to be given pursuant to K. S. A. 59-2222;
5. Payment of Kansas Inheritance Taxes, if any, is specifically required, and

6. Miscellaneous other changes are made, but only to make the act consistent with the previously mentioned changes.

See sections 18, 23, and 25 of this act, as related sections.

This section is consistent with the Uniform Probate Code concept of informal probate.

5 Sec. 25. K. S. A. 1973 Supp. 59-2288 is hereby amended to read
6 as follows: 59-2288. In cases arising under ~~section 1 [59-2287]~~
7 ~~of this act~~, K. S. A. 1973 Supp. 59-2287, *as amended*, the probate
8 court, if it finds that it would be just and equitable to make an
9 apportionment of property between a surviving spouse and minor
10 children, shall in its order thereunder make such ~~division~~ *appor-*
11 *tionment* of the *personal property and assign title. as will effec-*
12 ~~tuate the apportionment.~~

COMMENT

This section is changed to be consistent with section 24 of this act. The only change is made to clarify that personal property is involved. Specific authority to assign title to such property is given.

See U. P. C. 2-403 for apportionment of the family allowance under that code.

See sections 18, 23, and 24 of this act.

19 Sec. 26. K. S. A. 1973 Supp. 59-2303 is hereby amended to read
20 as follows: 59-2303. (1) An executor or administrator may file a
21 petition to sell real estate of a decedent. The petition shall state
22 the facts constituting the reasons for the application and describe
23 the real estate to be sold. It may include all the real estate of the
24 decedent subject to sale, or any part or parts thereof.

25 *The petition may further state the name of a prospective pur-*
26 *chaser and the terms of a proposed sale, and may include a request*
27 *for appointment of appraisers and for confirmation of the proposed*
28 *transaction. In this event, the petition shall further contain a full*
29 *disclosure of any financial or blood relationship between the pro-*
30 *posed purchaser and the fiduciary. If no such relationship exists,*
31 *the petition shall so state.*

1 (2) A conservator may file a petition to sell, lease, or mortgage
2 real estate of a conservatee.

3 The petition shall state the facts constituting the reasons for the
4 application and describe the real estate to be sold, leased, or mort-
5 gaged. It may include all the real estate of the conservatee subject
6 to sale, lease, or mortgage or any part or parts thereof. It may
7 apply in the alternative for authority to sell, lease or mortgage.

8 *The petition may further state the name of a prospective pur-*
9 *chaser, lessee or mortgagee and the terms of a proposed sale, lease*
10 *or mortgage, and may include a request for appointment of ap-*
11 *praisers and for confirmation of the proposed transaction. In this*
12 *event, the petition shall further contain a full disclosure of any*
13 *financial or blood relationship between the proposed purchaser,*
14 *lessee and mortgagee, and the fiduciary. If no such relationship*
15 *exists, the petition shall so state.*

COMMENT

This comment must be read in conjunction with the amendments proposed and comments to sections 10 and 15.

Many times the prospective purchaser, lessee or mortgagee and the terms of such proposed sale, lease or mortgage are the matter of agreement between the parties, subject of course to the final approval of the court. When such is the case; the facts should be fully set forth in the petition; notice should be given to all interested parties; and at the hearing, the court may confirm the proposed sale, lease or mortgage, and thereby save time and expense.

25 Sec. 27. K. S. A. 1973 Supp. 59-2304 is hereby amended to read
26 as follows: 59-2304. Notice of the hearing shall briefly state the
27 nature of the application made by the petition and shall be given
28 ~~pursuant to K. S. A. 59-2209~~ *in such manner as the court may*
29 *direct.* At the hearing and upon proof of the petition, the court
30 shall have full power to order the sale, lease, or mortgage of all the
31 real estate described in the petition, or to order the sale, lease, or

1 mortgage of one or more tracts thereof, if such order shall be made
2 within the terms of the application made by the petition. The
3 probate court, with the consent of the mortgagee, may order the
4 sale of real estate subject to the mortgage, but such consent shall
5 release the estate of the decedent or conservatee, should a deficit
6 later appear. *If the petition and notice have included the details*
7 *of a proposed transaction the court may confirm the proposed sale,*
8 *lease or mortgage, provided that the requirements of K. S. A. 59-*
9 *1703, as amended, and 59-2307 have been met.*

COMMENT

See Comment to section 26.

14 Sec. 28. K. S. A. 1973 Supp. 59-2305 is hereby amended to read
15 as follows: 59-2305. (1) In all cases the order shall describe the real
16 estate to be sold, leased, or mortgaged, and may designate the
17 sequence in which the several tracts shall be sold, leased, or mort-
18 gaged, subject to the provisions of this act.

19 (2) An order for sale shall direct whether the real estate shall be
20 sold at private sale or public auction. If at private sale it shall
21 direct that the real estate shall not be sold for less than three-fourths
22 of the appraised value. If at public auction it shall direct the
23 place or places of sale. It shall direct that the sale be for cash,
24 for cash and deferred payments, or deferred payments: *Provided,*
25 *That in decedent's estates the payment shall not be deferred for*
26 *more than one year from the date of the appointment and quali-*
27 *fication of the executor or administrator making the sale. In all*
28 *cases the order shall specify the time of payment, the interest on*
29 *deferred payments, and the manner in which the payments shall be*
30 *secured.*

31 (3) An order to lease shall not be made for less than three-

1 fourths of the appraised value of the leasehold interest. The order
2 shall direct that the lease be for cash, for cash and deferred pay-
3 ments, or deferred payments, or if said lease is of real estate used
4 for farming, such lease may be upon a crop share basis and such
5 share shall be that recognized as standard in the community, subject
6 to the approval of the court, and such order shall specify the time
7 of payment, the interest on deferred payments, and the manner in
8 which the payments shall be secured.

9 (4) An order to mortgage shall fix the maximum amount of prin-
10 cipal, the maximum rate of interest, the earliest and latest date of
11 maturity, and shall direct the purpose for which the proceeds shall
12 be used.

13 (5) An order for sale, lease or mortgage shall remain in force
14 until terminated by the court, but no private sale or lease shall be
15 made after one year from the date of the order, unless the real estate
16 or the leasehold interest therein shall have been reappraised ~~under~~
17 ~~order of the court~~ within three months preceding the sale or
18 lease.

19 (6) *If the petition and notice have included the details of a pro-*
20 *posed transaction and the requirements of K. S. A. 59-1703, as*
21 *amended, and 59-2307, as amended, have been met the court may*
22 *confirm the proposed transaction as a part of its order to sell, lease*
23 *or mortgage, and no report of sale or confirmation thereof shall be*
24 *required.*

COMMENT

See Comment to Sec. 26.

If the Petition and Notice include all necessary details of a proposed transaction, the court may not only order the sale, lease or mortgage, but in the same journal entry may confirm the proposed transaction and thereby save time and expense.

1 Sec. 29. K. S. A. 59-2307 is hereby amended to read as follows:
2 59-2307. Before any representative shall sell or lease any real estate
3 at private sale, he shall have it appraised at its full and fair value
4 by *one or more, but not to exceed three (3), disinterested persons*
5 ~~appointed~~ *named by the representative to be approved* by the
6 court *unless good cause is shown to the court why the named*
7 *appraisers should not be approved. Provided, That if at the time of*
8 sale more than one year has not elapsed since said real estate or
9 leasehold interest was appraised under the provisions of ~~section~~
10 K. S. A. 1973 Supp. 59-1202, *as amended*, or K. S. A. 59-1203, *as*
11 *amended*, ~~of the General Statutes of 1949~~, no new appraisal
12 shall be required unless otherwise directed by the court.

COMMENT

This section changes the present statute by allowing the fiduciary to name the appraisers of real estate which is to be sold.

The court must approve the persons named by the fiduciary unless good cause is shown why they should not be approved.

This is consistent with the concept that appraisers should be appointed by the fiduciary. The concept of the court not appointing appraisers is consistent with U. P. C. 3-707.

Other sections of the act relating to inventory, valuation or appraisers are 10, 11, 12, 13, 21, and 22.

22 Sec. 30. K. S. A. 59-2309 is hereby amended to read as follows:
23 59-2309. (1) The representative shall make a verified report of his
24 proceedings to the court, with the certificate of appraisement in
25 case appraisement is required, and with proof of publication in case
26 sale is made at public auction, which report shall state that he did
27 not directly or indirectly acquire any beneficial interest in the said
28 real estate, or the lease thereof, or the mortgage thereof, as the case
29 may be, and that he is not interested in the property sold, leased,
30 or mortgaged, except as stated in his report. *The report shall fur-*
31 *ther contain a full disclosure of any financial or blood relationship*

1 *between the representative and the proposed purchaser, lessee or*
2 *mortgagee. If no such relationship exists, the report shall so state.*
3 (2) The court, after having duly examined the report and being
4 satisfied that the sale, lease, or mortgage has been in all respects
5 made in conformity to law and ought to be confirmed, shall confirm
6 the same and order the representative to make a deed, lease, or
7 mortgage to the person entitled thereto. The instrument shall refer
8 to the order for sale, lease, or mortgage by its date, and the court
9 by which it was made, and shall transfer to the grantee, lessee, or
10 mortgagee all the right, title, and interest of the decedent or ~~ward~~
11 *conservatee* in the estate granted by the instrument, discharged
12 from liability assumed for his debts, except encumbrance assumed.

COMMENT

If a Petition and Notice to sell, lease or mortgage does not set forth the name of a prospective purchaser, lessee or mortgagee (see K. S. A. 1973 Supp. 59-2303) the court cannot "confirm the proposed sale, lease or mortgage" in the same journal entry in which it orders the sale, lease or mortgage and a separate report and confirmation of the transaction will be required. The representative, in such report shall disclose any financial or blood relationship between the representative and the proposed purchaser, lessee or mortgagee.

21 Sec. 31. K. S. A. 1973 Supp. 59-3003 is hereby amended to read
22 as follows: 59-3003. Unless a guardian has been appointed for the
23 minor, a natural guardian, or either of them, shall have the right to
24 the custody of his minor child and the right to exercise control
25 over the person of his minor child as provided by law. Unless a
26 guardian or conservator has been appointed for the minor, the
27 natural guardian of such minor has the right and duty, for the
28 benefit of the minor, to manage, mortgage, sell or otherwise dis-
29 pose of all the personal estate vested in such minor when the total
30 of such estate does not exceed ~~two thousand dollars (\$2,000)~~
31 *three thousand seven hundred fifty dollars (\$3,750)* in value.

COMMENT

This section is amended by raising from \$2,000 to \$3,750 the amount that a natural guardian can manage for a minor without appointment of a conservator.

5 *New Sec. 32.* A will may refer to a written statement or list
6 dispose of items of tangible personal property not otherwise specif-
7 ically dispose of by the will, other than money, evidences of debt,
8 documents of title, securities, and properties used in trade or busi-
9 ness. To be admissable under this section as evidence of intended
10 disposition, the writing must either be in the handwriting of the
11 testator or be signed by him, and must describe the items with
12 reasonable certainty. The writing may be referred to as one to be
13 in existence at the time of the testator's death; it may be prepared
14 before or after the execution of the will; it may be altered by the
15 testator after its preparation.

COMMENT

Subject to certain limitations this section permits a testator to refer in his will to a separate document disposing of certain tangible personal property. This document may be altered from time to time. It need only be in the testator's handwriting or signed by him.

This section is patterned after U. P. C. section 2-513.

22 *New Sec. 33.* Section 33 to, and including, section 38 of this act
23 is named and can be cited as the Kansas Simplified Estates Act.

COMMENT

This is the title section to the Kansas Simplified Estates Act.

The Kansas Simplified Estates Act is a proposal by the Judicial Council which is planned to provide an alternative to supervised administration in certain cases.

The act itself is the work of the Kansas Judicial Council Probate Law Study Advisory Committee. "Informal Administration" under the U. P. C. (3-301 *et seq.*) was considered by the committee, but the safeguards thereunder were not adequate. The committee also considered California Assembly Bill No. 1481.

The Kansas Simplified Estates Act is similar to our present probate code except there is no supervision by the court other than at the time of opening, closing and the sale of real property.

The Kansas Simplified Estates Act appears at sections 33-38 of this act, and sections 17 and 18 are related.

5 *New Sec. 34.* On the hearing of a petition for the appointment
6 of an administrator or for the probate of a will where administra-
7 tion is sought under the Kansas Simplified Estates Act, the court
8 shall determine whether the estate shall be administered as a simpli-
9 fied estate or as a supervised estate. In making such a determina-
10 tion, the court may consider the size of the estate; the degree of
11 kinship of the heirs, devisees and persons seeking appointment; the
12 solvency of the estate; the nature of the estate; the wishes of the
13 heirs and devisees; the probable cost of estate administration and
14 settlement, and any other pertinent matters.

COMMENT

This section sets forth the matters that the court may consider in determining whether or not the estate should be administered under the Kansas Simplified Estates Act.

Section 37 and 38 of this act sets forth the circumstances under which administration under the Kansas Simplified Estates Act can be terminated and supervised administration substituted.

21 *New Sec. 35. (a)* If the court has determined that the estate
22 shall be administered as a simplified estate further proceedings
23 shall be under the provisions of the Kansas Simplified Estates Act
24 with the following exceptions:

25 (1) If letters issued under the Kansas Simplified Estates Act
26 are revoked, pursuant to section 38 of this act, or

27 (2) If pursuant to section 37 of the Kansas Simplified Estates
28 Act the executor or administrator petitions the court for notice and
29 judicial determination of a single proceeding or an act in the
30 estate but does not seek supervised administration.

31 *(b)* All procedures, notices, bonds, hearings and appeals under

1 the Kansas Simplified Estates Act shall proceed as set out under
2 other provisions of the Kansas Probate Code, unless otherwise pro-
3 vided herein.

4 (c) All letters testamentary and letters of administration issued
5 pursuant to the Kansas Simplified Estates Act shall be designated
6 on their face as letters testamentary or letters of administration
7 issued under the Kansas Simplified Estates Act.

8 (d) No provision of the Kansas Simplified Estates Act shall be
9 construed to eliminate any required publication of notice of peti-
10 tion to sell, lease or mortgage or the sale, lease or mortgage of real
11 property.

COMMENT

This section provides that if an estate is commenced under this act further proceedings will be under the act unless a permanent switch to supervised administration is made pursuant to section 38 of this act or a temporary switch is made for a limited purpose under section 37 of this act.

Because the letters issued under this section give the representative more powers they are required to have a special designation. The procedure for sale of real estate is not changed by this act.

20 *New Sec. 36.* The executor or administrator, appointed under
21 the Kansas Simplified Estates Act, shall collect the decedent's assets,
22 file an inventory and valuation, pay creditors claims, secure a deter-
23 mination of Kansas inheritance tax in the same manner as provided
24 by K. S. A. 79-1501 *et seq.* and pay taxes owed by the decedent or
25 the decedent's estate in the manner now provided by law.

26 The executor or administrator may sell, liquidate or exchange
27 personal property of the estate not specifically bequeathed. Pay-
28 ment of creditor's claims and sale, liquidation or exchange of per-
29 sonal property hereunder shall not require court supervision.

30 The executor or administrator may make a distribution of a be-
31 quest or of the residue of the estate prior to the closing of the estate

1 if he receives a redelivery bond equal to the value of the property
2 distributed.

COMMENT

This section sets forth the powers and duties of executor or administrator under the Kansas Simplified Estates Act.

The powers and duties and limitations thereon, of the representative under the U. P. C. are set out at 3-715.

8 *New Sec. 37.* After an estate has been opened under the Kansas
9 Simplified Estates Act and letters testamentary or letters of adminis-
10 tration under this act have been issued, no further court supervision
11 is necessary or required until the court orders the estate closed
12 except: (1) When the administrator or executor petitions the court
13 for a judicial determination of any proceeding or act in the estate,
14 but does not seek supervised administration for the remainder of
15 the administration and the petition is granted; or (2) when the
16 change to supervised administration is made, as provided in section
17 38 of this act.

18 When the time for the filing of claims has expired the time in
19 which an appeal may be taken from an order admitting or refusing
20 to admit a will to probate has expired and nine (9) months from
21 the date of decedent's death have expired the court may order the
22 estate closed as provided in K. S. A. 59-2247 and K. S. A. 1973 Supp.
23 59-2249.

COMMENT

This section provides a method of having supervised administration in any proceeding if there is reason to do so but it is advantageous to administer the remainder of the estate without supervision. Unless this is desired or supervision of the remainder of the estate is desired (sec. 38) there is no supervision of the estate other than opening, closing and the sale of real property.

K. S. A. 59-2247 relates to the petition and notice of final settlement. K. S. A. 1973 Supp. 59-2249 relates to the hearing and final

1 decree, under the section of the statute relating to settlement and
2 determination of descent.

3 *New Sec. 38.* After letters testamentary or letters of administra-
4 tion have been issued under the Kansas Simplified Estates Act if:

5 (a) Any person having an interest in the estate files an objec-
6 tion to the administration of the estate under this article and
7 states his reasons therefor; or

8 (b) The executor or administrator files a statement alleging that
9 the estate cannot be administered advantageously under the act,
10 the issue of continuing administration under the Kansas Simplified
11 Estates Act shall be heard by the court, after notice has been given
12 pursuant to K. S. A. 59-2208.

13 If the court finds that administration under the Kansas Simplified
14 Estates Act should be terminated, it shall so order and direct super-
15 vised administration.

16 After the filing of the objection, but prior to the hearing on the
17 objection, the court, on its own motion, or on application of a per-
18 son interested in the estate, may require the filing of a bond, and
19 make orders with respect to the estate, as provided in the Kansas
20 Probate Code.

21 After a finding that supervised administration is necessary, letters
22 testamentary or letters of administration shall be issued and all
23 proceedings shall be governed by the applicable parts of the Kansas
24 Probate Code, and letters issued under the Kansas Simplified Estates
25 Act shall be revoked.

26 The change to supervised administration shall not require republi-
27 cation of a notice to creditors which has been duly published,
28 invalidate a proper inventory and valuation previously filed, invali-
29 date any action previously taken by, or prejudice the rights of, any
30 person who has in good faith dealt with the executor or adminis-
31 trator in reliance on his authority.

COMMENT

This section allows transfer from simplified administration to supervised administration.

If a person interested in the estate files an objection or if the administrator or executor files the required statement there is then a notice of hearing. The hearing is to determine whether simplified administration should continue or supervised administration begin. In the period prior to the hearing the court may require bond.

If a change is made under this section it is a permanent change to supervised administration and should not be confused with the temporary change contemplated under section 37 of this act.

The procedure for changing to supervised administration is set out as are savings clauses for previous notice given and good faith acts taken.

12 Sec. 39. This act shall be supplemental to and a part of the
13 Kansas Probate Code.

14 Sec. 40. If any provision of this act is declared unconstitutional,
15 or the applicability thereof to any person or circumstance is held
16 invalid, by a court of competent jurisdiction, the constitutionality
17 of the remainder of the act and the applicability thereof to other
18 persons and circumstances shall not be affected.

19 Sec. 41. K. S. A. 59-506, 59-508, 59-514, 59-606, 59-1203, 59-1207,
20 59-1504, 59-2208, 59-2219, 59-2222, 59-2223, 59-2224, 59-2307 and 59-
21 2309, and K. S. A. 1973 Supp. 59-102, 59-403, 59-706, 59-709, 59-
22 1104, 59-1201, 59-1202, 59-1703, 59-2233, 59-2235, 59-2236, 59-2287,
23 59-2288, 59-2303, 59-2304, 59-2305 and 59-3003 are hereby repealed.

24 Sec. 42. This act shall take effect and be in force from and after
25 its publication in the statute book.

COURT DAYS IN DISTRICT COURTS—1975

(Please see notes on page 142)

Counties	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Allen.....	Iola.....	Floyd H. Coffman Robert F. Stadler	Jeanne Smith.....	4	20c	17c	17c	21c	19c	16c	14c	18c	15c	20c	17c	15c
Anderson.....	Garnett.....	Floyd H. Coffman Robert F. Stadler	Roberta Bowman.....	4	3c	7c	7c	4c	2c	6c	11c	15c	5c	3c	7c	5c
Atchison.....	Atchison.....	Kenneth Harmon J. W. Lowry	Mary Lou Underwood.....	1	6 13	3	3	7 14	5	2	7	4	8	6	3	1
Barber.....	Medicine Lodge.....	Doyle E. White Chas. H. Stewart	Donna Garten.....	19	8c	10c	4c	2c	12c	10c	8h	4h	10c	13c	4c	2c
Barton (see note 7).....	Great Bend.....	Frederick Wolslagel Herbert Rohleder	Irene Horner.....	20	8c	5c	4c	2c	7c	3c	3c	29c	3c	1c	3c	3c
Bourbon (see note 1).....	Fort Scott.....	Charles M. Warren	Betty O'Dell.....	6	6	5	5	2	12	4	2	6	8	1	5	3
Brown.....	Hiawatha.....	William L. Stevenson	Mildred Davis.....	22	6 20	21	17	21	5 22	17	7	18	22	6 20	17	15
Butler.....	El Dorado.....	J. Patrick Brazill Page W. Benson	Virginia Elmore.....	13	3	3	3	7	5	9	7	4	8	6	10	8
Chase.....	Cottonwood Falls.....	R. E. Miller	Virgene E. Gaines.....	5	27	24	4 31	28	27	3 30	28	25	29	27	4 24	29
Chautauqua.....	Sedan.....	J. Patrick Brazill Page W. Benson	Linda Griffin.....	13	13	3	10	7	12	6	11	8	2	3	3	1

COURT DAYS IN DISTRICT COURTS—1975—CONTINUED
(Please see notes on page 142)

Counties	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Cherokee	Columbus	Don H. Musser	Nina Coldiron	11	6	3	4	7	5	3	7	4	3	6	3	1
Div. No. 1	Columbus Div.	William P. Meek	William P. Meek													
Div. No. 2	Galeta Div.	Hal Hyler	Hal Hyler		2	4	3	1	6	3	1	5	2	7	12	2
Div. No. 3		Geo. W. Donaldson	Geo. W. Donaldson													
Div. No. 4																
Cheyenne	St. Francis	Marvin W. Meyer	Ena Zimbelman	17	6c	4c	3c	2c	1c	2c	1c	18c	9c	7c	5c	8c
Clark	Ashland	Robert M. Baker	Betty Wyatt	16	9c	6c	6c	3c	8c	5c	10c	7c	4c	9c	6c	4c
						18c							22c			
Clay	Clay Center	Ronald D. Innes	Lucille Murrison	21	23	20	3	17	22	2	10	28	18	9	3	4
Cloud	Concordia	Marvin O. Brummett	Marguerite Larson	12	6c	4h	6h	10c	7h	5c	9h	6h	2c	7h	5h	1c
Coffey	Burlington	Floyd H. Coffman	Audrey L. Hegg	4	13c	10c	10c	14c	12c	9c	14c	11c	8c	6c	10c	8c
Div. No. 1		Robert F. Stadler														
Div. No. 2																
Comanche	Coldwater	Robert M. Baker	Ellen M. Erwin	16	8c	5c	5c	2c	7c	4c	9c	6c	3c	8c	5c	1c
Cowley	Winfield	Doyle E. White	Joy Detwiler	19	13a	7c	10a	4c	2c	2a	11c	1c	5c	6a	7c	5c
Div. No. 1		Charles H. Stewart														
Div. No. 2																
Crawford	Girard	Don Musser	Janice Caruthers	11	13	7	7	7	2	6	11	1	5	6	7	5
Div. No. 1	Girard Div.	William P. Meek	William P. Meek													
Div. No. 2	Pittsburg Div.	Hal Hyler	Hal Hyler		6	17	3	14	12	2	7	4	8	13	17	1
Div. No. 3		Geo. W. Donaldson	Geo. W. Donaldson													
Div. No. 4																
Decatur	Oberlin	Marvin W. Meyer	Alice J. Vernon	17	15c	10c	5c	4c	8c	5c	3c	20c	10c	6c	7c	10c
Dickinson	Abilene	John M. Rugh	Roberta Sleichter	8	6	5	4	10	2	5	1	5	8	8	11	3
Div. No. 1		Albert B. Fletcher, Jr.														
Div. No. 2																

COURT DAYS IN DISTRICT COURTS—1975—CONTINUED

(Please see notes on page 142)

Counties	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Doniphan	Troy	Wm. L. Stevenson	Alice F. Crane	22	21	8 18	18	22	19	18	8	19	23	6 21	18	16
Douglas (see note 2) Div. No. 1 Div. No. 2	Lawrence	Frank R. Gray James W. Paddock	Sherlyn Sampson	7	3b	3b	7b	4b	5b	6b	1b	8b	12b	3b	3b	5b
Edwards (see note 8)	Kinsley	C. Phillip Aldrich	Joan Parnell	24	7a	4a 10c	4a	2a	6a 12c	3a	8a	5a	3a	2a 28c	4a	2a
Elk Div. No. 1 Div. No. 2	Howard	J. Patrick Brazil Page W. Benson	Nadine Fickle	13	13	7	17	14	5	2	14	11	15	6	3	15
Ellis	Hays	Benedict P. Cruise	W. J. Billinger	23	13a 27a	3a 23a	10a 31a	14a 28a	5a 27a	9a 30a	14a	11a	8a 20a	6a 28a	10a 24a	15a 29a
Ellsworth (see note 7) Div. No. 1 Div. No. 2	Ellsworth	Frederick Woleslagel Herbert Rohleder	Helen Katzenmeier	20	28c	25c	25c	22c	27c	24c	1c	27c	23c	28c	25c	16c
Finney (see note 5)	Garden City	Bert J. Yance	Rose Murray	25	13a	25a	4a	15a	12a	2a	8a	5a	15a	21a	25a	16a
Ford	Dodge City	Robert M. Baker	Beatrice Slattery	16	10 20c	7	7	4 27c	9	6	11	8	5 8c	10	7	5
Franklin Div. No. 1 Div. No. 2	Ottawa	Floyd H. Coffman Robert F. Stadler	Ruby Sanford	4	10c	14c	21c	17c	9c	13c	11c	8c	12c	10c	14c	12c
Geary Div. No. 1 Div. No. 2	Junction City	John M. Rugh Albert B. Fletcher, Jr.	Lillian Newman	8	9	6	3	9	1	2	7	4	11	9	10	4
Gove	Gove	Benedict P. Cruise	Mabel Fagan	23	15a	19a	17a	16a	20a	16a	15f	12f	10a	21a	17a	17a
Graham	Hill City	C. E. Birney	Margaret A. Hildebrand	15	2	3	3	2	12	2	2	4	4	15	6	2

COURT DAYS IN DISTRICT COURTS—1975—CONTINUED
(Please see notes on page 142)

Counties	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Grant (see note 6)	Ulysses	Keaton G. Duckworth	Edna M. Walker	26	9c	5c	5c	14c	8c	5c	3h	7c	3c	1h	4h	8c
Gray	Cimmaron	Robert M. Baker	Marie Babcock	16	7c	4c	4c	7c	6c	3c	8c	5c	2c	7c	10c	2c
Greeley (see note 5)	Tribune	Bert J. Vance	Margaret Pile	25	7e	24e	3e	14e	5e	9e	7e	4e	22e	20e	24e	16e
Greenwood	Eureka	J. Patrick Brazil Page W. Benson	Eleanor Jacoby	13	20	10	17	14	19	13	18	15	5	14	17	5
Hamilton (see note 5)	Syracuse	Bert J. Vance	Helen C. Helm	25	7f	24f	3f	14f	5f	9f	7f	4f	22f	20f	24f	15f
Harper	Anthony	Doyle E. White Chas. H. Stewart	Olive L. Ghormley	19	6c	3c	3c	1c	5c	9c	8c	4c	8c	14c	3c	1c
Harvey	Newton	Sam H. Sturm	Joe Fox	9	16b	10b	13b	10b	12b	12b	10b	28b	18b	9b	10b	11b
Haskell (see note 6)	Sublette	Keaton G. Duckworth	Georgia McNabb	26	7c	4c	10c	1c	6c	3c	1c	5c	2c	1c	10c	2c
Hodgeman (see note 8)	Jetmore	Chas. P. Aldrich	Agnes Gleason	24	7h	4h	4h	2h	6h	3h	8h	5h	3h	2h	4h	2h
Jackson	Holton	John W. Brooks	Paul E. Shelby	2	13	5	5	9	5	4	9	6	10	6	5	3
Jefferson	Oskaloosa	John W. Brooks	Mary Schiller	2	14	4	3	8	6	2	8	5	9	7	3	2
Jewell	Mankato	Marvin O. Brummett	Eva Myers	12	7c	5c	6c	7c	7c	3h	9c	6c	3c	20c	5c	2h
Johnson	Olathe	Herbert W. Walton Harold L. Hammond Edward L. Shankel David E. Riggs Philip L. Woodworth	Hazel Mueller	10	8	12	12	9	14	11	9	13	10	8	12	10
					22	26	26	23	28	25	23	27	24	22	26	24

COURT DAYS IN DISTRICT COURTS—1975—CONTINUED
(Please see notes on page 142.)

Counties	County seat	Judge	Clerk	No. Jdt. Disc.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Keary (see note 5)	Lakin	Bert J. Vance	Elizabeth Williams	25	7h	24h	10a	14h	5h	9h	7h	4h	22h	20h	10a	15h
Kingman	Kingman	Doyle E. White Chas. H. Stewart	Janis McIlrath	19	27c	12c	6c	28c	18c	12c	10c	5h	22c	15c	6c	4c
Kiowa	Greensburg	Robt. M. Baker	Billie M. Huckriede	16	8h	5h	5h	2h	5c 7h	4h	9h	6h	3h	8h 14c	5h	1h
Labette (see note 3)	Oswego	Don Musser Wm. Meek Hal Hylar Geo. W. Donaldson	Virginia Beaty	11	10 24	4 14	7 21	8 18	9 23	13 27	25	29	12 26	7 17	7 21	12 30
Lane (see note 8)	Dighton	Philip Aldrich	Ella Lawrence	24	8h	5h	5h 17c	3h	7h	4h	9h	6h	2h	3h	5h 17c	3h
Leavenworth	Leavenworth	Kenneth Harmon J. W. Lowry	Mary Kate Gausz	1	3	3	7	4	2 5	6	11	1	5	3 6	7	5
Lincoln	Lincoln	Marvin Brummett	Jennie Panzer	12	8c	3c	4c	8c	6c	4c	8c	5c	4c	8c	17c	3c
Linn (see note 1)	Mound City	Chas. M. Warren	Ann Stewart	6	9	6	6	7	8	5	14	7	4	9	6	1
Logan	Oakley	Benedict P. Cruise	H. Belle Salley	23	6a	20a	11a	7a	21a	10a	16a	13a	2a	22a	11a	18a
Lyon	Emporia	R. E. Miller	Phebe Stone	5	29	4 26	26	30	6 28	25	30	27	24	7 29	26	31
Marion	Marion	John M. Rugh A. B. Fletcher, Jr.	Geraldine Seibel	9	7	3	5	8	5	3	2	6	9	6	12	2

COURT DAYS IN DISTRICT COURTS—1975—CONTINUED

(Please see notes on page 142)

Counties	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Marshall	Marysville	Wm. L. Stevenson	Wilma J. Blaser	22	22	19	3 19	23	20	2	9	20	24	22	3 19	17
McPherson	McPherson	Sam H. Sturm	Alma Bretches	9	13b	7b	14b	7b	16b	13b	11b	28b	19b	6b	14b	12b
Meade	Meade	Robert M. Baker	Evelyn Dye	16	7h	4h	4h 17c	1h	6h	3h	8h	5h	2h	7h 28c	4h	2h
Miami (see note 1)	Paola	Chas. M. Warren	Vivian L. McCready	6	7	3	4	8	6	2	1	5	2	6	4	2
Mitchell	Beloit	Marvin O. Brummett	Neva Wagner	12	7h	5h	3c	8h	6h	4h	8h	5h	4h	8h	3c	3h
Montgomery	Independence	David H. Scott	Bessie Scofield	14	3	6	6	3	1	5	3	7	8	2	6	4
Independence Div.				8	5	5	2	2	7	4	2	6	3	1	5	3
Coffeyville Div.				8	8	7	7	7	6	6	3	7	10	7	13	1
Morris	Council Grove	John M. Rugh A. B. Fletcher, Jr.	Marie Borkert	8	8	4	6	7	6	6	3	7	10	7	13	1
Div. No. 1				26	8c	10c	4c	2c	7c	4c	2c	6c	8c	2c	5c	3c
Div. No. 2				22	23	20	20	7	21	16	10	21	25	23	20	1
Morton (see note 6)	Elkhart	Keaton G. Duckworth	Verda Allen	26	8c	10c	4c	2c	7c	4c	2c	6c	8c	2c	5c	3c
Div. No. 1				22	23	20	20	7	21	16	10	21	25	23	20	1
Div. No. 2				22	23	20	20	7	21	16	10	21	25	23	20	1
Div. No. 3				22	23	20	20	7	21	16	10	21	25	23	20	1
Div. No. 4				22	23	20	20	7	21	16	10	21	25	23	20	1
Nemaha	Seneca	Wm. L. Stevenson	Jane Heinen	22	23	20	20	7	21	16	10	21	25	23	20	1
Nescho	Erie	Don Messer	Virginia Embry	11	8	5	11	2	7	4	2	27	3	3	5	3
Div. No. 1				11	8	5	11	2	7	4	2	27	3	3	5	3
Div. No. 2				11	8	5	11	2	7	4	2	27	3	3	5	3
Div. No. 3				11	8	5	11	2	7	4	2	27	3	3	5	3
Div. No. 4				11	8	5	11	2	7	4	2	27	3	3	5	3
Ness (see note 8)	Ness City	C. Phillip Aldrich	Opal Burdett	24	8a	5a	5a 10c	3a	7a	4a	9a	6a	2a	3a	5a	3a 8c

COURT DAYS IN DISTRICT COURTS—1975—CONTINUED

(Please see notes on page 142)

Counties	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Norton	Norton	Marvin W. Meyer	Myredith Tonne	17	7c	5c	7c	9c	12c	9c	7c	21c	11c	20c	10c	4c
Osgo Div. No. 1 Div. No. 2	Lyndon	Floyd H. Coffman. Robert F. Stadler	Margaret Knight	4	14c	11c	7c	15c	13c	10c	15c	12c	9c	7c	11c	9c
Osborne	Osborne	Marvin W. Meyer	Irene Lafoon	17	20c	11c	12c	10c	5c	16c	10c	26c	18c	14c	4c	7c
Otawa Div. No. 1 Div. No. 2	Minneapolis	Morris V. Hoobler. Raymond E. Haggart	Esther Plunkett	28	14	11	11	8	13	10	8	12	9	14	12	9
Pawnee (see note 8)	Larned	C. Phillip Aldrich	Lois Miller	24	6h 27c	3h	3h	1h 4c	5h	2h	7h	4h	4h	1h 4c	3h	1h
Phillips	Phillipsburg	Marvin Meyer	Doris Van Allen	17	17c	6c	7c	7c	14c	11c	8c	22c	15c	10c	3c	3c
Pottawatomie	Westmoreland	John W. Brookens	Deane L. Arnold	2	16	6	6	7	8	5	10	7	8	9	6	7
Pratt Div. No. 1 Div. No. 2	Pratt	Doyle E. White Chas. H. Stewart	Betty Onstott	19	20c	11c	5c	27c	14c	11c	9c	5c	11c	20c	5c	3c
Rawlins	Atwood	Marvin W. Meyer	Bessie B. Peterson	17	16c	3c	4c	3c	7c	3c	2c	19c	8c	8c	6c	9c
Reno Div. No. 1 Div. No. 2	Hutchinson	W. A. Gossage James H. Rexroad	Sara Hill	27	6 3 17 10 24	7 3 21 14 28	7 4 21 14 28	7 4 18 11 25	2 4 16 9 23	6 20 13 27	6 18 11 25	1 15 8 22	1 19 12 26	5 7 10 24	7 21 10 28	5 19 12 26
Republic	Belleville	Marvin O. Brummett	Earl J. Baldrige	12	9h	4c	5h	9h	5c	3c	7h	4h	3h	6c	4h	2c
Rice (see note 7) Div. No. 1 Div. No. 2	Lyons	Frederick Woelsgel Herbert Rohleder	Laura Saint	20	7c	3c	3c	7c	5c	2c	2h	28h	2c	6c	4c	1c

COURT DAYS IN DISTRICT COURTS—1975—CONTINUED

(Please see notes on page 142)

Counties	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Riley	Manhattan	Ronald D. Innes	Ruth Houghton	21	13	3	17	14	5	16	7	25	15	6	10	1
Rooks	Stockton	C. E. Birney	Virginia Doughty	15	13	4	4	1	5	3	1	5	2	1	5	1
Rush (see note 8)	La Crosse	Chas. P. Aldrich	Clara Humburg	24	6a 13c	3a 24c	3a 24c	1a 24c	5a 28c	2a 23c	7a 1h	4a 27h	4a 22c	1a 22c	3a 24c	1a 15c
Russell (see note 7)	Russell	Frederick Wolfeslagel Herbert Rohleder	Vivian Miller	20	27c	24c	24c	28c	28c	23c	1h	27h	22c	22c	24c	15c
Salina	Salina	M. Y. Hoobler Raymond E. Haggart	Betty J. Just	28	7	4	4	1	6	3	1	5	2	7	4	2
Scott (see note 5)	Scott City	Bert J. Vance	B. Arlista Grube	25	6b	26b	3b	27b	13b	3b	7b	4b	29b	20b	24b	15b
Sedgwick	Wichita	Willis W. Wall Howard C. Kline B. Mack Bryant James V. Riddle, Jr. James J. Noone Robt. T. Stephan Tom Raum Nicholas W. Klein David P. Calvert	Dorothy Van Arsdale	18												
Seward (see note 6)	Liberal	Keaton G. Duckworth	Dessie Jenkins	26	13c	7c	7c	27c	2c	6c	11c	1c	5c	13c	7c	5c

(see note 10)

COURT DAYS IN DISTRICT COURTS—1975—CONTINUED

(Please see notes on page 142)

Counties	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Shawnee (see note 4)	Topoka	Wm. R. Carpenter	Lorene Wells	3	31		7	11	16	20	25	29		3	7	12
Div. No. 1		Michael A. Harbars		3	3	7	14	18	23	27		1	5	10	14	19
Div. No. 2		E. Newton Vickers		10	10	14	21	25	30		2	8	12	17	21	23
Div. No. 3		Adrian J. Allen		17	21	28			2	6	11	15	19	24	26	
Div. No. 4		Kay McFarland		24	28		4		9	13	18	22	26	31		5
Div. No. 5																
Sheridan	Hoxie	C. E. Birney	Vergie D. Wentz	15	3	24	5	4	19	4	3	1	3	6	7	5
Sherman	Goodland	C. E. Birney	Dixie Chatfield	15	7	6	6	7	1	9	8	6	9	7	4	4
				21	21	20	20	22	15	24	22	20	23	21	17	18
Smith	Smith Center	Marvin W. Meyer	Betty McDonald	17	21c	7c	10c	21c	15c	12c	9c	25c	17c	13c	17c	2c
Stafford (see note 7)	St. John	Frederick Wolslagel	Darlene Bartlett	20	6c	4c	5c	7c	6c	4c	2c	28c	8c	7c	5c	2c
Div. No. 1		Herbert Robles		26	8h	17c	4h	2h	7h	4h	2h	6h	15c	2h	4c	3h
Div. No. 2	Johnson	Keaton G. Duckworth	Bonnie Eckas	26	7h	4h	17c	1h	6h	3h	1h	5h	2h	20c	5h	2h
Stanton (see note 6)	Hugoton	Keaton G. Duckworth	Shirley DeCamp	26	14c	10c	10h	7c	13c	2h	7c	4c	9c	6h	3c	1c
Stevens (see note 6)	Wellington	Doyle E. White	Charlotte Liddle	19												
Div. No. 1		Chas. H. Stewart		15	8	15	17	3	27	5	9	7	4	8	3	9
Div. No. 2	Colby	C. E. Birney	Thelma Livingston	23	14a	13a	3a	15a	19a	2a	15a	12a	9a	20a	3a	16a
Thomas	Wakeney	Benedict P. Cruise	Corra V. Hladek	2	17	3	7	11	19	6	11	8	12	20	7	5
Trego	Alma	John W. Brookens	Norma Doty	23	20a	20f	11f	21a	21f	10f	16f	13f	16a	22f	11f	18f
Wabausee	Sharon Springs	Benedict P. Cruise	Meriam Bell	12	9c	6c	5c	9c	8c	2c	7c	4c	15c	7c	4c	4c
Wallace	Washington	Marvin O. Brummett	Lois Aarce	25	7e	24e	3e	14e	5e	9e	7e	4e	22e	20e	24e	8c
Washington	Leoti	Bert J. Vancee	Margie Ames													
Wichita (see note 5)																

COURT DAYS IN DISTRICT COURTS—1975—CONCLUDED

(Please see notes on page 142)

Counties	County seat	Judge	Clerk	No. Jud. Dist.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.				
Wilson	Fredonia	Don Musser Wm. P. Meek Hal Hyler Geo. W. Donaldson	Leslie V. York	11	7	6	13	1	8	5	3	28	2	16	6	4				
Div. No. 1																				
Div. No. 2																				
Div. No. 3																				
Div. No. 4																				
Woodson	Yates Center	Floyd H. Coffman Robt. F. Stadler	Doris Peterson	4	21c	18c	18c	15c	20c	17c	15c	19c	16c	21c	18c	16c				
Div. No. 1																				
Div. No. 2																				
Wyandotte	Kansas City	O. Q. Clafin III Wm. J. Burns Harry G. Miller Joe H. Swinehart Leo J. Moroney Cordell D. Meeks	Richard D. Shannon	29																
Div. No. 1																				
Div. No. 2																				
Div. No. 3																				
Div. No. 4																				
Div. No. 5																				
Div. No. 6																				

(see note 9)

*Italicized dates indicate the first day of the regular term of court—*a. 9:00 a. m.; b. 9:30 a. m.; c. 10:00 a. m.; d. 10:30 a. m.; e. 11:00 a. m.; f. 1:00 p. m.; g. 1:30 p. m.; h. 2:00 p. m.

NOTE 1. In Bourbon, Linn and Miami Counties court convenes at 10:00 a. m. for trial to the court and 9:00 a. m. for jury trials.

NOTE 2. In Douglas County all court days open at 9:30 a. m.; on days on which a term of court opens, the civil docket will be called beginning at 9:30 a. m. in Division 1 and at 2:00 p. m. in Division 2.

NOTE 3. In Labette County, Parsons Division, July 28 and August 27, are Civil Court Days and July 29 and August 28, are Criminal Court Days. **NOTE 4.** In Shawnee County dates indicated are Motion Days, Arraignment Days will be the preceding day.

NOTE 5. In Finney, Scott and Wichita Counties, Central Time is shown. In Greeley, Hamilton and Kearny Counties, Mountain Time is shown. **NOTE 6.** In Haskell, Grant, Stanton, Morton, Stevens and Seward Counties court will convene as follows—Central Time:

First day of each Regular Term—10:00 a. m.

Motion Days—Forenoon Sessions—2:00 p. m.

Jury Sessions (unless otherwise ordered)—10:00 a. m.

NOTE 7. In Barton, Ellsworth, Rice, Russell and Stafford Counties dates in July and August are Arraignment Days only.

NOTE 8. In Edwards, Hodgeman, Lane, Ness, Pawnee and Rush Counties court will convene as follows—Local Standard Time:

Regular Term—10:00 a. m.

Motion Days—Forenoon Sessions—9:00 a. m.

Afternoon Sessions—2:00 p. m.

Jury Sessions (unless otherwise ordered)—10:00 a. m.

NOTE 9. In Wyandotte County all pre-trial motions will be heard by the division to which the case was assigned, at 9:30 a. m. on Fridays, as follows:

Division 1, 3, and 5, on the First and Third Fridays of each month.

Division 2, 4, and 6, on the Second and Fourth Fridays of each month.

All post-trial motions and matters requiring the presentation of oral testimony must be specially set by the judge to which the case is assigned. Motions in criminal cases are assigned for hearing by the Assignment Judge.

Attorneys of record will be notified of settings by the Clerk. No regular motion days are designated during the months of July and August, and each judge will hear his motions at such times during these months as will be

fixed by him. During July and August, all pre-trial motions in domestic relations cases, and emergency matters will be heard on Friday by the Judges on duty. Arraignments in all felony cases where the defendant is bound over to the district court are held on the third Friday of each month at 1:30 p. m. in the division assigned to criminal matters.

NOTE 10. In Sedgewick County, all pre-trial motions filed during any week, except motions in domestic relations cases, shall be heard by the Administrative Judge at 9:30 a. m. on Friday of the following week.

All post-trial motions and petitions filed under K. S. A. 60-1507, will be heard at 2:00 p. m. on the following days by the Judge of the Division which tried the case:

Division 1: First Thursday of each month;

Division 2: Every Friday of each month;

Division 3: First Friday of each month;

Division 4: Second Thursday of each month;

Division 5: Second Friday of each month;

Division 6: Third Thursday of each month;

Division 7: Third Friday of each month;

Division 8: Fourth Thursday of each month;

Division 9: Fourth Friday of each month.

All motions in civil cases shall state the date, time and Division of Court in which the motion is to be heard.

All motions in domestic relations cases which have been on file five (5) days or more (including contempt, change of custody, and modifications of previous orders), shall be peremptorily heard by the Judge of the Division to which the case has been permanently assigned at 9:30 a. m. on the following days:

Division 1: First Thursday of each month;

Division 2: Every Friday of each month;

Division 3: First Friday of each month;

Division 4: Second Thursday of each month;

Division 5: Second Friday of each month;

Division 6: Third Thursday of each month;

Division 7: Third Friday of each month;

Division 8: Fourth Thursday of each month;

Division 9: Fourth Friday of each month.

All motions in domestic relations shall state the date, time and division of court in which the motions is to be heard.

In all felony cases where the defendant is bound over to the district court, and all appeals from inferior courts shall be arraigned on Wednesday of the second following week at 2:00 p. m. by the Administrative Judge.

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