

MEMORANDUM

TO: Kansas Judicial Council
FROM: Civil Code Advisory Committee
DATE: December 4, 2009
RE: 2009 HB 2393

In June 2009, the Judicial Council assigned to the Civil Code Advisory Committee the study of 2009 HB 2393, which provides for expungement of entries in the civil record upon the petition of an interested person. The bill provides guidelines for what the petition must contain and establishes standards for the expungement. A copy of the bill is attached to this memorandum

HB 2393 originated with a request from a citizen, Mr. Norm Crawford of Topeka. Beginning in 2005, Mr. Crawford has devoted a great deal of time and effort to evoking changes in how civil court records are kept, specifically in making it possible to amend or delete such records. He has established a web site at <http://uncorrectable-government-databases.info>, where one can access the letters Mr. Crawford has sent to numerous Kansas legislators and more than 300 local and national media outlets. Mr. Crawford was ultimately referred by a legislator to the Office of the Revisor of Statutes, where Jill Wolters was asked to draft a bill relating to his concerns.

The Committee received and reviewed printed copies of Mr. Crawford's web site, and Mr. Crawford was allowed to address the Committee when it met on September 25, 2009. Mr. Crawford spoke about his experience, stating that his problems began when he was in college pursuing a second degree and the Shawnee County Courthouse started putting "other people's transgressions" on his civil record. This includes two actions over checks written on his account by a person who stole his blank checks and an action filed in his name without his knowledge by a company managing a property for him. There are also actions relating to unpaid utility bills, which he admits fell through the cracks and were not timely paid, as well as several foreclosure filings. Mr. Crawford states that the incorrect records in the courthouse show that he writes bad checks and sues people, neither of which has ever happened. Mr. Crawford stated that he is certain that the entries on his civil record in Shawnee County have prevented him from obtaining employment, specifically mentioning a position at the Veteran's Administration. Mr. Crawford's web site states that, as of August 19, 2008, he had incurred losses of \$551,622.63 due to the incorrect courthouse records. This includes lost wages, student loans he cannot pay because he has been unable to obtain employment, and the value of the home lost to foreclosure.

Mr. Crawford told the Committee that when a prospective employer does a background check and pulls records from the Shawnee County Courthouse, they find these civil records that do not belong to him. Mr. Crawford also stated that his record has a problem with multiple entries. He said he had done a survey and found that "approximately 9% of all people in Shawnee County who have a courthouse record have duplicated entries, as in a record has been entered multiple times, and those multiple entries cannot be deleted either." Mr. Crawford was asked how a repeated entry, if it is correct, can hurt someone. He replied that an HR person may only see the number of entries, and that it would take a real "numbers nerd" to notice that multiple entries have the same case number.

In its discussion of HB 2393, the Committee expressed serious concerns about the notice provisions in the legislation. The bill permits filing a petition for expungement and provides that notice of the hearing be given to the clerk of the district court. However, the bill does not specifically require that the petition be served on or notice be given to the other party or parties to the action for which expungement has been requested. The Committee is also concerned about the breadth of the bill. Section (e)(4) provides that the court shall order the civil record expunged upon finding that the case had been dismissed prior to trial. It was noted that the vast majority of cases are settled prior to trial, and this bill could therefore allow a major portion of the entire civil record to be erased.

The Committee discussed the potential conflict between HB 2393 and the common-law and First Amendment presumption that judicial proceedings and court records are open to the public. Narrow exceptions have been legislated for juvenile and adoption matters and certain other situations where it is deemed that public policy and the benefit of open access to the judicial system and its records are outweighed by a competing interest. While credible arguments could be posited in support of expungement of erroneous records, it is doubtful that the mere fact a case was dismissed prior to trial could outweigh the compelling interest in public access to court records.

On a more basic level, the Committee determined that there is no demonstrable need for a civil expungement process. No member of the Committee had ever heard of or encountered a situation similar to that described by Mr. Crawford. Legal research by staff failed to turn up any other state that is considering or has considered similar legislation.

The Committee acknowledges Mr. Crawford's distress and is sympathetic, but legislation cannot be written to solve the problems of one person. There was consensus that a "cure" for Mr. Crawford would result in much bigger problems for many others. The Committee was unanimous in the determination that it would not support HB 2393.