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December 14, 1979

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ATTORNEY GENERAL OPINION NO. 79- 299

R. G. Henley
Office of the Judicial Administrator
Second Floor, Kansas Judicial Center
Topeka, Kansas 66612

Re: Civil Procedure--Tort Claims Act--Liability of
District Court Clerks for Wrongful Garnishment

Synopsis: A district court clerk is not liable when incorrect information is supplied to such clerk by a party seeking a garnishment order. The clerk has a duty to issue such an order, but in the absence of an error by the clerk or a garnishment request which is defective on its face, the clerk has no duty to verify the information contained in such a request.

* * *

Dear Mr. Henley:

On behalf of the Judicial Administrator, you have requested the opinion of this office on a question concerning the liability of a district court clerk when a wrongful garnishment order is issued. Specifically, you wish to know the extent of a clerk's liability when he/she issues a garnishment order using information supplied by a party which is later determined to be incorrect, i.e., the amount of judgment is incorrect or the wrong individual is identified as the judgment debtor.

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We would initially note that whatever questions existed prior to court unification, it is now clear that district court clerks are not county officers, but instead employees of the district courts, which are not entities or instrumentalities of the county. Pursuant to K.S.A. 1978 Supp. 20-343, district court clerks are now appointed by the administrative judge of each judicial district. Furthermore, they are compensated, not by the county, but by the state, in an amount fixed by rule of the supreme court. K.S.A. 1978 Supp. 20-361, 20-162. Finally, under K.S.A. 1978 Supp. 20-343, they are to have such "powers, duties and functions as are prescribed by law, prescribed by rules of the supreme court or assigned by the administrative judge," a very general statement comparable to former K.S.A. 19-1302, now repealed.

One such statutorily-prescribed function is that involving the issuance of garnishment orders, either prior to or in the enforcement of a judgment. However, as your opinion request deals with the latter only, this distinction is unimportant here. K.S.A. 60-716 provides that:

"As an aid to the enforcement of the judgment, an order of garnishment may be obtained and shall be issued by the clerk of the court from which execution is issuable, either in connection with an execution or independently thereof as designated by the written direction of the party entitled to enforce the judgment."
(Emphasis added.)

And, at K.S.A. 1978 Supp. 60-717(a), the clerk is directed to use certain types of forms ("the clerk of the district court shall cause . . ."), while in subsection (b) it is further emphasized that the procedure of garnishment is not a discretionary one ("the order of garnishment shall be served . . .").

From this, we would conclude that the clerk of a district court acts in a merely ministerial role in the garnishment procedures outlined in Kansas statutory law. This distinction is important in light of language in the newly-enacted Tort Claims Act (L. 1979, ch. 186, §4) which exempts from liability the action of government officers and employees when they are performing "judicial" functions. As district court clerks do not appear to fall under this or any other exemption listed therein at section 4, the general imposition of liability by section 3 of the same chapter would arguably apply.

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In our opinion, however, such would not be the case in the situation you posit, i.e., where a clerk issues a garnishment order using inaccurate information which has been supplied by the moving party, in that no duty exists on the part of the clerk to verify such information. The case of Mallory v. Ferguson, 50 Kan. 685 (1893), involved a somewhat similar set of facts wherein a court clerk issued a certificate appended to an abstract of title which stated that there were no outstanding judgments or pending suits against the property. In fact, there was such a suit, and the injured party brought an action against the clerk. The Supreme Court rejected the argument that the clerk should be held liable, and held in part:

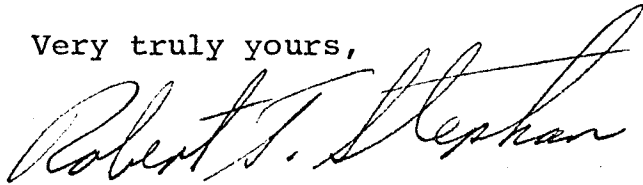
"The defendant was clerk of the district court of Miami county, Kansas. He testifies that in making this certificate he supposed he was merely performing a duty imposed on him by law. It is nowhere made the duty of the clerk of the district court to search the records in his office for judgments, liens, and suits pending, nor does the statute provide any fee for any such service."
50 Kan. at 693.

In the present hypothetical, neither statutory nor case law indicates a duty of a district court clerk to verify the information contained on a request for garnishment. Liability for any inaccuracies contained therein is that of the person who supplied it, and the law recognizes an action for wrongful garnishment in such situations. Braun v. Pepper, 224 Kan. 6 (1978). The clerk, in issuing such an order, is merely performing a duty imposed by law, and in the absence of any special agreement to verify the information we cannot say that more is required. It should be noted, however, that this opinion is limited to such a situation, and does not purport to deal with the possible liability of clerks who, on their own, make mistakes in the processing of such requests for garnishment, i.e., transposing the amount of the total judgment or misspelling the name of the judgment debtor. Nor does this conclusion extend to requests for garnishment which are so defective on their face as to provide notice of invalidity, or where the lack of any judgment could be determined simply by checking the file.

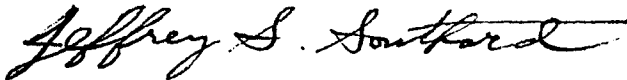
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In conclusion, a district court clerk is not liable when incorrect information is supplied to such clerk by a party seeking a garnishment order. The clerk has a duty to issue such an order, but in the absence of an error by the clerk or a garnishment request which is defective on its face, the clerk has no duty to verify the information contained in such a request.

Very truly yours,



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RTS:BJS:JSS:gk