Final Redline Copy
May 3, 2012

SUPREME COURT RULES
RELATING TO DISTRICT COURTS

Rules 101 – 196

Restyled Rules

♦Redline & Comments♦

GENERAL AND ADMINISTRATIVE

~~PREFATORY RULE~~
PREFATORY RULE

(a) ~~*Rules Adopted.*~~ **Rules Adopted.** The following Supreme Court rules numbered 105 through 196 ~~of the Supreme Court numbered 101 through 184~~ are ~~hereby adopted July 28, 1976, effective January 10, 1977.~~, effective _____, 20__.

(b) ~~*Repeal of Former Rules.*~~ **Repeal of Former Rules.** ~~All~~ The Supreme Court rules ~~of the Supreme Court relating to the district courts~~ numbered ~~1 through 126~~ 105 through 196 ~~which are~~ that were in effect immediately prior to the effective date of these rules are ~~hereby~~ repealed as of ~~January 10, 1977.~~ _____, 20___.

(c) ~~*Statutory References.*~~ **Statutory References.** In these rules, ~~wherever there is~~ a reference to a ~~section of a~~ statute or administrative regulation ~~by number, it shall be deemed to be a reference to the Kansas Statutes Annotated or Supplement or amendment thereto unless a different statute is indicated~~ includes any subsequent amendment to the statute or regulation.

(d) **Judicial Council Forms.** Judicial council forms referenced in these rules may be found at the judicial council's website: http://www.kansasjudicialcouncil.org.

COMMENT

The language of the Prefatory Rule has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

In new subsection (d), the Supreme Court Rules Advisory Committee recommends that all forms be consolidated on the judicial council's website to make them easily accessible and to facilitate updates.

Rule 101

TERMS OF COURT

[**History:** Repealed effective September 8, 2006.]

Rule 102

TERMS OF COURT—HOLIDAYS

[**History:** Repealed effective September 8, 2006.]

Rule 103

REQUIRED DAYS OF COURT

[**History:** Repealed effective September 8, 2006.]

Rule 104

DOCKET CALLS

[**History**: Repealed effective September 8, 2006.]

Rule 105

~~LOCAL RULES~~
LOCAL RULES

~~The judge or judges of each judicial district may make rules that are found necessary for the administration of the affairs of the district court, and of all courts of limited jurisdiction in the district, to the extent they are not inconsistent with the applicable statutes and rules promulgated by the Supreme Court.~~

~~District courts will not reproduce Supreme Court Rules in publishing their local rules. Local rules promulgated by the district courts shall be clear and concise and shall be effective upon filing with the Clerk of the Supreme Court. Local rules shall be made accessible to the public and posted on the Judicial Branch website.~~

(a) **Local Rules Permitted.** After consultation with the district magistrate judges, the district judges of a judicial district, by majority vote, may adopt rules that are:

(1) clear and concise;

(2) necessary for the judicial district's administration;

(3) consistent with applicable statutes; and

(4) consistent with — but not duplicative of — Supreme Court Rules.

(b) **Publication and Accessibility of Local Rules.** Local rules adopted under K.S.A. 20-342 must be:

(1) made accessible to the public; and

(2) posted on the Judicial Branch website.

(c) **Effective Date of Local Rules.** Local rules are effective upon filing with the clerk of the appellate courts and posting on the Judicial Branch website.

COMMENT

The language of Rule 105 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (a) clarifies that district judges, by majority vote, may adopt local rules after consultation with the district magistrate judges. This amendment is consistent with K.S.A. 20-342.

Rule 106

~~COURT RECORDS~~
COURT RECORDS

~~(a) No file or record of the court shall be permitted to be outside of the physical possession and control of the clerk or judge except on the signed receipt of an attorney or of an abstracter, and subject to being returned immediately upon request. No file or record shall be taken outside of the county of the clerk's office except with the knowledge and consent of the clerk or by order of the judge.~~

~~(b) Court services officer files, including but not limited to case notes, are confidential and are not subject to subpoena or other process and shall not be disclosed to anyone other than to the judge or court personnel assigned to the case or to others entitled by law to receive reports unless or until otherwise ordered by a judge of that judicial district. Orders for production of drug and alcohol information shall comply with procedures set forth in 42 C.F.R. Part 2.~~

(a) **Court Files and Records.** Except as otherwise provided in subsection (b), court files and records must remain in the court's physical possession and control.

(b) **Authorized Check Out.** An attorney or abstracter may check out a court file or record — subject to immediate return on request of the clerk of the district court — on the following conditions:

(1) the attorney or abstracter must sign a receipt;

(2) the file or record must not be taken outside the county unless authorized by the clerk or a court order; and

(3) the file or record must be returned in its original condition.

(c) **Court Services Officer Files.** All court services officer files — including case notes — are confidential and are not subject to subpoena or other process. Unless otherwise ordered by the court, the records may be disclosed only to the court, a court employee assigned to the case, or a person legally entitled to receive the disclosure. Orders to produce drug and alcohol abuse patient records must comply with 42 C.F.R. Part 2.

COMMENT

The language of Rule 106 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (b)(3) adds language to require that a file or record must be returned in its original condition.

In new subsection (c), "drug and alcohol information" was amended to reflect the more limited language used in the federal statute, "drug and alcohol abuse patient records."

Rule 107

~~DUTIES OF CHIEF JUDGE~~
DUTIES AND POWERS OF CHIEF JUDGE

~~In every judicial district the Supreme Court shall designate a chief judge who shall have general control over the assignment of cases within said district under supervision of the Supreme Court. Assignment of cases shall be designed to distribute as equally as is reasonably possible the judicial work of the district. The chief judge of each district shall be responsible for and have general supervisory authority over the clerical and administrative functions of the court.~~

~~Upon consultation with and approval by the departmental justice, the chief judge may appoint another judge of the district to act on a temporary basis in the absence of the chief judge.~~

~~At least once a month in single-county districts and at least once every three months in multiple-county districts the chief judge shall call a meeting of all judges within the district for the purpose of reviewing the state of the dockets within the district and to discuss such other business as may affect the efficient operation of the court. Within guidelines established by the Supreme Court, by the judges of the judicial district, or by statute, the chief judge shall have the following responsibilities.~~

~~(a) *Personnel Matters.* The chief judge shall have supervision over recruitment, removal, compensation, and training of nonjudicial employees of the court.~~

~~(b) *Trial Court Case Assignment.* Cases shall be assigned under the supervision of the chief judge. Under the chief judge's supervision, the business of the court shall be apportioned among the trial judges as equally as possible and the chief judge shall reassign cases as necessity requires. The chief judge shall provide for the assignment of cases to any special division established in the court. A judge to whom a case is assigned shall accept that case unless the judge is disqualified or the interests of justice require that the case not be heard by that judge.~~

~~(c) *Judge Assignments.* The chief judge, with the approval of the other judges, shall provide for the assignment and reassignment of judges to any specialized division of the court. The chief judge shall prepare an orderly plan for vacations. The plan shall be approved by the judges of the court and shall be consistent with statewide guidelines.~~

~~(d) *Information Compilation.* The chief judge shall have responsibility for development and coordination of statistical and management information.~~

~~(e) *Fiscal Matters.* The chief judge shall supervise the fiscal affairs of the court.~~

~~(f) *Committees.* The chief judge may appoint standing and special committees necessary for the proper performance of the duties of the court.~~

~~(g) *Liaison and Public Relations.* The chief judge shall represent the court in business, administrative or public relations matters. When appropriate, the chief judge shall meet with (or designate other judges to meet with) committees of the bench, bar, and news media to review problems and promote understanding.~~

~~(h) *Improvement in the Functioning of the Court.* The chief judge shall evaluate the effectiveness of the court in administering justice and recommend changes.~~

(a) **Appointment and Term; Recommendation.**

(1) **Appointment.** The Supreme Court will appoint a chief judge in each judicial district.

(2) **Term.** A chief judge is appointed for a 2-year term that begins January 1 in an even-numbered year. An interim appointment is for the remainder of the 2-year term.

(3) **Reappointment.** On or before November 30 in an odd-numbered year, an incumbent chief judge must notify the Supreme Court whether the judge wishes to be reappointed.

(4) **Recommendation.** A judge of the district court may recommend to the departmental justice the appointment of a chief judge for the judge's district. The Supreme Court must keep any recommendations confidential.

(b) **Chief Judge's Duties and Powers.** The chief judge's duties and administrative powers include:

(1) **Clerical and Administrative Functions.** The chief judge is responsible for and has supervisory authority over the court's clerical and administrative functions.

(2) **Personnel Matters.**

(A) **General Responsibility.** The chief judge is responsible for and has supervisory authority over recruitment, removal, compensation, and training of the court's nonjudicial employees.

(B) **Appointment of Clerk and Chief Clerk.** The chief judge must appoint a clerk of the district court for each county in the judicial district and appoint one clerk of the district court to be chief clerk of the district, except that a chief clerk is not required to be designated in a judicial district which is authorized to have a court administrator. On appointment:

(i) a copy of each order of appointment must be sent to the judicial administrator; and

(ii) the clerk or chief clerk appointed under this subparagraph must subscribe to an oath or affirmation under K.S.A. 54-106.

(3) **District Court Case Assignment.** Under the supervision of the Supreme Court, the chief judge is responsible for case assignment. The following guidelines apply:

(A) To the extent reasonably possible, the chief judge must distribute the district's judicial work equally.

(B) The chief judge should reassign cases when necessary.

(C) The chief judge is responsible for assigning cases to the court's special divisions, if any.

(4) **Judge Assignment.**

(A) Subject to approval by a majority of the other judges, the chief judge must:

(i) assign judges to the court's special divisions, if any; and

(ii) prepare an orderly vacation plan that is consistent with statewide guidelines.

(B) Subject to the departmental justice's approval, the chief judge may appoint another judge of the district to act *pro tem* in the chief judge's absence.

(C) A judge must accept an assigned case unless the judge is disqualified or the interests of justice require the judge's recusal.

(5) **Information Compilation.** The chief judge is responsible for developing and coordinating statistical and management information.

(6) **Fiscal Matters.** The chief judge must supervise the court's fiscal affairs.

(A) **Designation of Fiscal Officer.** The chief judge must designate a fiscal officer for each county in the judicial district to assist in managing the court's budget. The chief judge may designate a clerk of the district court or court administrator as fiscal officer. In multicounty districts, the same person may serve as fiscal officer for one or more counties.

(B) **Fiscal Officer's Duties.** The fiscal officer in each county must:

(i) under the supervision of the chief judge, initiate expenditures from the court's budget and process expenditures for the operation of all court offices within the county;

(ii) maintain accounts on all budgetary matters; and

(iii) regularly report to the chief judge on the status of the court's budget.

(C) **Preparation of County Operating Budget; Copies.** In preparing and submitting a district court county operating budget, the chief judge — or a fiscal officer under supervision of the chief judge — must:

(i) use forms prescribed by the judicial administrator;

(ii) follow in detail the district court county operating budget guidelines distributed by the office of judicial administration;

(iii) forward to the judicial administrator a copy of the budget at the time the budget is submitted to the board of county commissioners; and

(iv) not later than August 25, forward to the judicial administrator a second copy of the budget, signed by the presiding officer of the county commission indicating approval of the budget as submitted or as amended.

(7) **Committees.** The chief judge may appoint standing and special committees necessary to perform the court's duties.

(8) **District Judicial Meetings.** At least once each month in a single-county district and at least once every three months in a multicounty district, the chief judge must call a meeting of all judges of the district court to review the district's dockets and to discuss other business affecting the court's efficient operation.

(9) **Liaison and Public Relations.** The chief judge represents the court in business, administrative, and public relations matters. When appropriate, the chief judge should meet with — or designate other judges to meet with — bench, bar, and news media committees to review problems and promote understanding.

(10) **Improvement in the Court's Functioning.** The chief judge must evaluate the court's effectiveness in administering justice and recommend changes.

COMMENT

The language of Rule 107 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

Throughout this rule, the Supreme Court Rules Advisory Committee carefully distinguished between duties of a chief judge which are mandatory ("must") and those which are permissible ("should" or "may"). The current rule has been expanded to include chief judge responsibilities formerly included in Supreme Court Administrative Orders. This is a representative compilation, rather than a comprehensive listing of chief judge responsibilities.

Rule 108

~~REPRODUCTION AND DISPOSITION OF ORIGINAL COURT RECORDS~~
REPRODUCTION AND DISPOSITION OF COURT RECORDS

~~**1. RECORDS THAT MAY NOT BE DESTROYED WITHOUT REPRODUCTION**~~

~~**GENERAL RULE**: Original court records, documents, and filings including electronic transmissions shall be retained until reproduced, disposed of, or otherwise destroyed as herein provided. Reproduction of court records, documents, and filings is preferred to retaining the originals.~~

(a) **Generally.** This rule governs the retention, reproduction, disposition, and destruction of court records. The following general rules apply:

(1) **"Court Records" Include.** As used in this rule, "court records" include all original court records, documents, and filings, including electronic transmissions.

(2) **Reproduction Preferred.** Unless reproduced, disposed of, or destroyed under this rule, court records must be retained. Reproduction is preferred to retaining the originals.

(3) **Retention and Disposition File.** The clerk of the district court in the county in which court records are located must maintain a permanent file containing all correspondence, orders, and other records regarding reproduction, disposal, and destruction of records and notification under subsection (c).

~~(A)~~(b) ~~**Originals and**~~ **Reproduction of Court Records~~:~~ .**

(1) **Chief Judge's Authority.** Under K.S.A. 20-357 and 20-159, ~~T~~the chief judge ~~is authorized to~~ may:

(A) provide for ~~the~~ reproduction of all court records~~, documents, and filings including electronic transmissions in accordance with K.S.A. 20-357 and 20-159, which exist~~ in the judicial district~~;~~ ~~and to~~

(B) acquire appropriate files~~,~~ ~~and~~ containers~~,~~ or storage systems ~~necessary to accommodate~~ to store and preserve the reproductions~~.~~; and

(C) ~~The chief judge is authorized to~~ provide for equipment to convert the reproductions to usable form.

(2) **Indexing and Storing Reproduced Records.** All records reproduced ~~as herein provided~~ under this rule ~~shall~~ must be indexed and stored for convenient retrieval and ~~reproduction~~ copying.

~~(B)~~(3) **Guidelines~~:~~.** The ~~J~~judicial ~~A~~administrator ~~shall~~ must provide guidelines to ~~insure~~ ensure:

(A) retrieval and reproduction of court records meet acceptable standards; and

(B) reproduced records ~~will be~~ are stored and preserved ~~to meet the requirements of~~ in compliance with K.S.A. 20-159.

~~(C)~~(4) **Reproductions Considered Originals~~:~~.** ~~Original court records, documents, and filings may be destroyed as provided in section (F) after reproduction as further specified, and any reproduction shall be considered in all instances as if it were the original pursuant to K.S.A. 60-465a. The chief judge may, by written order, authorize the destruction of appearance dockets, journals, minute record books, original case files including any trial or hearing transcripts, and trial dockets in all categories of cases immediately after the record is reproduced and notice has been given pursuant to 1(D), unless otherwise specified. Any trial or hearing transcript not reproduced shall be retained in compliance with section 2(E).~~ When court records are reproduced under this rule, the reproductions are considered original records under K.S.A. 60-465a.

(c) **Destruction or Disposal of Court Records.**

(1) **Court Records May Not Be Destroyed Until Case is Closed.** Original court records that have not been reproduced and are being used for active legal proceedings must not be destroyed until the case is closed.

(A) In a criminal case, "closed" means:

(i) the case has been terminated, and all appeals have been terminated or the time to appeal has expired; and

(ii) any sentence imposed upon conviction has expired or been satisfied and the defendant has been discharged.

(B) In an action or proceeding other than a criminal case, "closed" means:

(i) an order terminating the action or proceeding has been filed and all appeals have been terminated, or the time to appeal has expired; and

(ii) if a judgment was entered, the judgment is either satisfied or barred under K.S.A. 60-2403.

~~(D)~~(2) **Notification to Historical Societies:** The clerk of the district court must ~~Notification to~~ notify the Kansas State Historical Society and county historical societies of the county ~~where~~ in which the court is located ~~is required prior to disposal~~ before disposition or destruction ~~for all~~ of any court records~~, documents and filings~~ except ~~those~~ records ~~specifically~~ the State Historical Society has exempted from notification. ~~by written agreement from the State Historical Society and approved by~~ An exemption must be approved by the ~~J~~judicial ~~A~~administrator. ~~If no response or action is taken on the part of the state or county historical societies within~~ Unless the State Historical Society or a county historical society files with the clerk an objection in writing not later than ~~thirty (~~30~~)~~ days ~~of~~ after the notice is served, the court may proceed with disposition or destruction. If ~~A negative written response by~~ a county historical society objects in writing to disposition or destruction of a record, the objection ~~shall be~~ is considered a permanent ~~declination~~ refusal to consent to disposition or destruction ~~for all or specific categories~~ of all court records of the same type ~~without additional notification,~~ unless the refusal is changed ~~by future written notice from the county historical~~ in writing by the society. The State Historical Society ~~shall have~~ has priority over a county historical society ~~should~~ if both ~~agencies~~ societies want possession of a record.

~~(E)~~ ~~**Retention and Disposition File**: The clerk of the district court in the county where the court records are located shall maintain a permanent retention and disposition file containing all correspondence, orders, and other records regarding reproduction, notification, disposal, and destruction of records.~~

(3) **Destruction After Reproduction.** Unless otherwise provided in this rule — after reproduction and, if required, notification under paragraph (2) — the chief judge may, by written order, authorize the destruction of appearance dockets, journals, minute record books, original case files, including any trial or hearing transcripts, and trial dockets in all categories of cases. Any trial or hearing transcript not reproduced must be retained under subsection (e)(6).

~~(F)~~(4) **Method of Destruction~~:~~.** The chief judge may order ~~When~~ court records ~~have been ordered~~ be destroyed ~~by the chief judge, destruction shall be~~ by supervised shredding, burning, or other method. ~~approved by the chief judge. Electronically~~ Electronic or tape-recorded records may be destroyed by employing magnetic or electromagnetic fields. Tapes or films from which all records have been erased may be reused.

~~(G)~~(d) ~~**Mandatory Retention Until Reproduction:**~~ **Court Records That May Not Be Destroyed Until Reproduced.** The following court records~~, documents, and filings including electronic transmissions shall~~ must be retained until reproduced:

(1) Chapter 59 (Probate except Care and Treatment and Wills on Deposit);

(2) Chapter 60 ~~including Article 16, Domestic~~ (Civil);

(3) Chapter 23 (Family Law Code);

~~(3)~~(4) General Index (Civil and Probate) kept pursuant to statute;

~~(4)~~(5) Chapter 38, Article ~~15~~ 22 (formerly Article 15), Termination of Parental Rights (Child in Need of Care); ~~and~~

~~(5)~~(6) Driving Under the Influence ~~(DUIs).~~ (K.S.A. 8-1567);

(7) Criminal investigation records, including presentence investigation reports — described in K.S.A. 21-6704 (formerly 21-4605), K.S.A. 21-6813 (formerly 21-4714), and K.S.A. 45-221; and

(8) Expunged criminal records — subject to K.S.A. 21-6614 (formerly 21-4619).

~~**2. RETENTION SCHEDULE OF RECORDS THAT MAY BE DESTROYED WITHOUT REPRODUCTION AFTER NOTIFICATION IF REQUIRED**~~

~~**GENERAL RULE**: Under no circumstances may original court records, documents, or filings including electronic transmissions which have not been reproduced and are actively being used for legal proceedings be destroyed until the case is closed as defined in Section 2(A)(viii) or 2(B)(iv), whichever is applicable. All retention periods listed below are minimums. Further, under no circumstances may an adult criminal, juvenile offender, child in need of care record, or other court record, document, or filing that could be used to determine a defendant's criminal history score be disposed of or destroyed before a period of fifty (50) years has elapsed from the date of filing.~~

(e) **Court Records that May Be Destroyed Without Reproduction.** Reproduction is preferred to retention of original court records. But court records listed in this subsection may be destroyed without reproduction, after notice if notice is required under subsection (c)(2). The periods of time stated are the minimum number of years the original records must be retained, if not reproduced.

~~(A)~~(1) **Civil~~:~~.** The following categories of ~~C~~civil court records~~, documents, and filings including electronic transmissions shall be subject to the following provisions if not reproduced in accordance with 1(A) and (B)~~ must be retained for:

~~(i)~~(A) Chapter 61 (Limited Actions and Small Claims)~~:~~ — ~~Ten (~~10~~)~~ years ~~from~~ after the date of filing.

~~(ii) Traffic (except DUIs K.S.A. 8-1567, Reckless Driving K.S.A. 8-1566, Driving on a Suspended License K.S.A. 8-262(a), No Driver's License K.S.A. 8-235, Failure to Stop at an Injury Accident K.S.A. 8-1602, Eluding a Police Officer K.S.A. 8-1568, Open Container K.S.A. 8-1599 and all previous cites, and Habitual Violator K.S.A. 8-286): Five (5) years from the date of filing.~~

~~(iii) Reckless Driving K.S.A. 8-1566, Driving on a Suspended License K.S.A. 8-262(a), No Driver's License K.S.A. 8-235; Failure to Stop at an Injury Accident K.S.A. 8-1602, Eluding a Police Officer K.S.A. 8-1568, Open Container K.S.A. 8-1599 and all previous cites, and Habitual Violator K.S.A. 8-286: Fifty (50) years after the case is closed or the date of filing.~~

(B) Chapter 38, Child in Need of Care official and social files — 100 years after the date of filing.

~~(iv)~~(C) Fish and Game, Watercraft~~:~~ — ~~Five (~~5~~)~~ years ~~from~~ after the date of filing.

~~(v)~~(D) Mechanics' Liens~~:~~ — the later of ~~Two (~~2~~)~~ years after filing of the lien or upon maturity of an attached promissory note.

~~(vi)~~(E) Chapter 59, Article 29 (Care and Treatment)~~:~~ — ~~Eighty (~~80~~)~~ years ~~from~~ after the date of filing.

~~(vii)~~(F)Marriage License Applications~~:~~ — ~~One (~~1~~)~~ year ~~from~~ after the date of filing.

~~(viii) In actions other than criminal cases or proceedings, "closed" means when: an order terminating the action or proceeding has been filed and all appeals have been terminated, or appeal time has expired; or the judgment is either satisfied or is barred under the provisions of K.S.A. 60-2403.~~

~~(B)~~(2) **Criminal~~:~~.** ~~Adult criminal, juvenile offender, and child in need of care records shall be subject to the following provisions if the records are~~ The following categories of criminal court records must be retained for, at minimum, the stated number of years before disposal or destruction, if not reproduced ~~in accordance with 1(A) and (B)~~:

~~(i)~~ Adult criminal, juvenile offender, felony, and misdemeanor criminal records ~~including Reckless Driving K.S.A. 8-1566, Driving on a Suspended License K.S.A. 8-262(a), No Driver's License K.S.A. 8-235; Failure to Stop at an Injury Accident K.S.A. 8-1602, Eluding a Police Officer K.S.A. 8-1568, Open Container K.S.A. 8-1599 and all previous cites, Habitual Violator K.S.A. 8-286, child in need of care official and social files,~~ and criminal appeals filed with a district court from a municipal court ~~shall be maintained for fifty — (50)~~ 100 years ~~from~~ after the date of filing.

(3) **Traffic and Chapter 8 Violations.** The following categories of traffic and Chapter 8 violation court records must be retained for, at minimum, the stated number of years before disposal or destruction, if not reproduced:

(A) DUIs K.S.A. 8-1567, Reckless Driving K.S.A. 8-1566, Driving on a Suspended License K.S.A. 8-262(a), No Driver's License K.S.A. 8-235; Failure to Stop at an Injury Accident K.S.A. 8-1602, Eluding a Police Officer K.S.A. 8-1568, Transporting an Open Container K.S.A. 8-1599 and all previous cites, and Habitual Violator K.S.A. 8-286 — 50 years after the date of filing.

(B) All other traffic violations — 5 years after the date of filing.

~~(ii) Criminal Investigation Records, including Pre-Sentence Investigation reports, shall be maintained confidentially without reproduction subject to provisions of K.S.A. 21-4605, K.S.A. 21-4714, and K.S.A. 45-221 for fifty (50) years from the date of filing.~~

~~(iii) Expunged criminal records shall be maintained confidentially without reproduction subject to provisions of K.S.A. 21-4619 for fifty (50) years from the date of filing.~~

~~(iv) In a criminal case "closed" means when: The case has been terminated, including dismissals, in favor of all defendants and all appeals have been terminated or appeal times have expired; or upon conviction when the sentence has expired or has been satisfied and the defendant has been discharged.~~

~~(C)~~(4) **Wills on ~~d~~Deposit~~:~~.** Sealed wills on deposit under former K.S.A. 59-620 ~~shall~~ must be maintained for ~~seventy-five (~~75~~)~~ years ~~from~~ after the year of deposit. All sealed wills on deposit for ~~seventy-five (~~75~~)~~ years or longer ~~shall~~ must be destroyed ~~pursuant to 1(F)~~ under subsection (c)(4). The formerly required will index ~~shall~~ must be maintained to include the date of destruction in ~~accordance~~ compliance with ~~1(E)~~ subsection (a)(3).

~~(D)~~(5) **Records of ~~s~~Special or ~~l~~Limited ~~j~~Jurisdiction ~~c~~Courts ~~p~~Prior to 1977~~:~~.** The chief judge may, by written order, authorize destruction of all categories of cases transferred to the district court ~~pursuant to~~ under K.S.A. 20-335(a)(1), (2), (3), (4), and (5) from courts of special or limited jurisdiction prior to 1977. ~~Under no circumstances may a criminal, juvenile, or other court record, document, or filing that could be used to determine a defendant's criminal history score be disposed of or destroyed before a period of fifty (50) years has elapsed from the date of filing.~~

~~(E)~~(6) **Court Reporters' ~~n~~Notes~~:~~.** The chief judge may~~,~~ by ~~written~~ order~~,~~ authorize the destruction or other disposition ~~pursuant to 1(C)~~ under subsection (c)(4) of all mechanical or electronic recordings of proceedings, including court reporters' notes, electronic tapes, video tapes, and computer disks, ~~in compliance with the following schedule~~ as follows:

(A) ~~Civil~~ **Civil.** Chapter 38 (except Article ~~16~~ 23 [formerly Article 16], Juvenile Offenders); Chapter 59, Article 21 (Adoptions); Chapter ~~60, Article 16~~ 23 (Divorce and Maintenance) — ~~twenty-five (25)~~ years after the record is taken.

(B) ~~Other Civil~~ **Other Civil** — the later of ~~five (5)~~ years after the case is closed or ~~twenty (20)~~ years after the record is taken.

(C) ~~Criminal and Juvenile Offender~~ **Criminal and Juvenile Offender** — ~~fifty (50)~~ 100 years after the record is taken.

~~(F)~~(7) **Depositions~~:~~.** The chief judge may authorize the withdrawal, disposition, or destruction of a ~~depositions~~ deposition in the court's custody ~~of the court pursuant to the following schedule and conditions~~ as follows:

~~(1)~~(A) Counsel of record may withdraw a ~~depositions~~ deposition when the case is closed upon giving a receipt to the court.

~~(2)~~(B) ~~Sixty (60) days after a case is closed and notification to counsel of record,~~ A ~~depositions~~ deposition may be destroyed ~~without reproduction~~ by written order of the chief judge ~~pursuant to section 1(F)~~ under subsection (c)(4) — 60 days after the case is closed and notification to counsel of record.

~~(3)~~(C) In a closed case, a ~~Depositions~~ deposition filed prior to July 1, 1987, ~~in closed cases~~ may be ~~scheduled for disposition~~ destroyed by written order of the chief judge ~~after issuing notification of intent to destroy in accordance with 1(D)~~ under subsection (c)(4) — after notification under subsection (c)(2). ~~Destruction shall be in accordance with section 1(F).~~

~~(4)~~(D) A ~~Depositions~~ deposition filed with the court:

~~(a)~~(i) ~~shall~~ must remain sealed and confidential unless opened ~~by a judge or counsel of record~~ as allowed by the court; and

~~(b)~~(ii) ~~shall~~ must, if opened, be considered an open record associated with the case unless otherwise prohibited by statute or court rule.

~~(5)~~(E) ~~As used in this rule "deposition" means transcript of testimony taken pursuant to statute or court rule, including video or tele-conference stenographic transcription pursuant to K.S.A. 60-230 and K.S.A. 61-1710 video tape pursuant to K.S.A. 22-3211(4), K.S.A. 38-1318, and other applicable statutes.~~ In this subparagraph, "deposition" includes depositions taken by video, teleconference, videotape, or other electronic means pursuant to statute or court rule.

~~(G)~~(8) **Exhibits~~:~~.** An ~~Exhibits~~ exhibit in the court's custody ~~of the court shall~~ may be withdrawn, disposed of, or destroyed as follows:

~~(1)~~(A) ~~On motion of t~~The court — on its own or on motion of ~~,~~ a party, counsel, or other interested entity — may order that an~~,~~ ~~exhibits~~ exhibit introduced in a case may be withdrawn. ~~at any time by court order.~~ ~~Any~~ An ~~exhibit(s)~~ exhibit withdrawn ~~shall~~ must be made available for trial or appeal.

~~(a)~~(i) ~~Civil Exhibits:~~ **Civil Exhibits.** ~~Any~~ An ~~exhibits~~ exhibit not withdrawn within ~~sixty (~~60~~)~~ days after the judgment becomes final, ~~including expiration of time for~~ if no appeal is taken, or within 60 days after all appeals of the judgment terminate, ~~shall be~~ is considered unclaimed and subject to disposition or destruction.

~~(b)~~(ii) ~~Criminal Exhibits:~~ **Criminal Exhibits.** ~~Any~~ An ~~exhibits~~ exhibit not withdrawn within ~~sixty (~~60~~)~~ days after completion of a sentence — ~~(~~including probation, parole, and post-release supervision~~)~~ — and full discharge of the defendant ~~shall be~~ is considered unclaimed and subject to disposition or destruction. An ~~Exhibits~~ exhibit may be disposed of or destroyed prior to sentence completion and discharge of the defendant only by order of the chief judge with ~~thirty (~~30~~)~~ days prior notice to all interested parties. If no ~~response or action is taken on the part of an~~ interested party responds ~~within thirty (~~30~~)~~ days ~~of~~ after the notice, the court may proceed with disposition or destruction of the ~~exhibit(s)~~ exhibit. ~~after time for appealing the chief judge's order has expired.~~

~~(2)~~(B) ~~Unclaimed exhibits determined by~~ When the chief judge determines an unclaimed exhibit ~~to have~~ has value, it may be retained and used as county property, or be sold at public auction with ~~such~~ the net proceeds paid to the state treasurer ~~pursuant to~~ under K.S.A. 20-2801, ~~K.S.A. 21-4206~~ 21-6307, ~~K.S.A.~~ 22-2512, ~~and~~ or other applicable ~~statutes~~ statute.

~~(3)~~(C) ~~Unclaimed exhibits determined by~~ When the chief judge determines an unclaimed exhibit ~~to have~~ has no value, it may be disposed of or destroyed in the manner ~~ordered by~~ the chief judge orders.

~~(H)~~(9) **Court Accounting Records~~:~~.**

~~(1)~~(A) ~~Destruction of any~~ The court's accounting records ~~must be upon written order of~~ may be destroyed only on the chief judge's written order.

~~(2)~~(B) Criminal, juvenile, and all other case ledger reports may be destroyed without notice ~~fifty (50)~~ 100 years ~~from~~ after the date the case was filed.

~~(3)~~(C) Bank statements, daily reports, and monthly reports may be destroyed without notice ~~five (~~5~~)~~ years after the ~~records~~ statements and reports have been audited and approved.

~~(4)~~(D) Receipts, canceled checks, check stubs, and deposit slips may be destroyed at any time.

~~(5)~~(E) ~~All c~~Computerized accounting records not purged from the computer system ~~shall~~ must be preserved by computer backups.

~~(6)~~(F) ~~Any~~ An accounting ~~records~~ record not listed in ~~(2), (3), (4), or (5) above and not reproduced~~ subparagraphs (B), (C), (D), or (E) may be destroyed ~~without notice five (5) years after audit.~~ as follows:

(i) ~~Any accounting records not listed in (2), (3), (4), or (5) above which have been reproduced may be destroyed without notice after audit.~~ if not reproduced — without notice 5 years after they have been audited and approved.

(ii) if reproduced — without notice after they have been audited and approved.

(G) Fax transmission sheets containing debit or credit information must be kept for a minimum of one year after audit.

~~(I)~~(10) **Miscellaneous~~:~~.** All other miscellaneous court records~~, documents, and filings including electronic transmissions~~ may be withdrawn, disposed of, or destroyed ~~pursuant to~~ in compliance with guidelines established by the ~~J~~judicial ~~A~~administrator~~;~~. ~~i~~If no guidelines have been established for a particular court record, ~~document, or filing~~ the chief judge ~~shall follow the procedure provided in section 1(D) for notice and section 2(G) for disposal or destruction of the item(s)~~ must comply with subsection (c)(2) and (4). ~~Under no circumstances may an adult criminal, juvenile offender, child in need of care record, or other court record, document, or filing that could be used to determine a defendant's criminal history score be disposed of or destroyed before a period of fifty (50) years has elapsed from the date of filing.~~

COMMENT

The language of Rule 108 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

Citations to statutes have been updated throughout and duplicative citations have been consolidated.

New subsection (d)(6) and (7) includes in "Court Records That May Not Be Destroyed Until Reproduced" records which, under the former rule, could not be reproduced.

The Supreme Court Rules Advisory Committee recommends that retention schedules in new subsections (e)(1)(B), (e)(2), (e)(6)(C), and (e)(9)(B) be increased from 50 to 100 years because 50 years is not adequate to cover the records' potential relevance for youthful offenders.

New subsection (e)(9)(G) covers retention of fax transmission cover sheets containing debit or credit information, which currently appears in Rule 119(a)(3).

Rule 109

~~SUPERVISION AND REPORTING IN PROBATE CASES~~
SUPERVISION AND REPORTING IN PROBATE CASES

(a) **Reporting/Accounting Period; When Due.** Unless the court orders otherwise, ~~authorized by the district court,~~ the annual fiscal accounting or other reporting period for ~~each~~ a guardianship, conservatorship, trusteeship, absentee's estate, ~~convict's estate,~~ curatorship, and special personal representative's estate case ~~shall be~~ is the ~~twelve~~12-month period immediately preceding the anniversary date of the case filing. ~~of the case and all~~ The required annual ~~reports~~ report and ~~accountings~~ accounting ~~shall~~ must be filed ~~no~~ not later than 30 days after the end of the reporting period.

(b) **Notification of Late Report/Accounting.** If a required annual or final report or accounting is not filed within the time prescribed by law or ~~permitted by rule of the~~ supreme court rule, the district court ~~shall~~ must notify the fiduciary or ~~the~~ fiduciary's attorney ~~for the fiduciary~~ that the report or accounting is due.

(c) ~~Annual or final reports of a guardian and annual or final accountings of a conservator required by section 59-3083 shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council.~~ **Form.** A guardian's annual or final report and a conservator's annual or final accounting under K.S.A. 59-3083 are sufficient if in substantial compliance with the judicial council form.

COMMENT

The language of Rule 109 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

In new subsection (a), the reference to "convict's estate" has been deleted because the statute has been repealed.

Rule 109A

~~THERAPEUTIC OR PROBLEM-SOLVING COURTS~~
THERAPEUTIC OR PROBLEM-SOLVING COURTS

(a) **Special Court Dockets Allowed.** ~~Each~~ A judicial district ~~is hereby authorized to~~ may establish a specially designed court ~~calendar~~ docket ~~for criminal or juvenile cases, the purposes of which are to achieve a reduction in recidivism and to increase the likelihood of successful rehabilitation through early, continuous, and intense judicial supervision.~~ for cases in which the court may use ~~Such~~ therapeutic or problem-solving procedures ~~may~~ that target ~~offenders~~ parties with a mental illness or ~~with~~ a drug, alcohol, or other ~~addictions~~ addiction. Procedures may include treatment, mandatory periodic testing for a prohibited ~~drugs~~ drug ~~and~~ or other ~~substances~~ substance, community supervision, and ~~the use of~~ appropriate sanctions and incentives~~, all as allowed by law~~.

(b) **Receipt of *Ex Parte* Communication.** A judge presiding over ~~such~~ a special court ~~calendar~~ docket established under subsection (a) may initiate, permit, ~~or~~ and consider an ~~ex parte~~ *ex parte* ~~communications~~ communication with a probation ~~officers~~ officer, case ~~managers~~ manager, treatment ~~providers~~ provider, or other ~~members~~ member of ~~the~~ a problem-solving court team, either at a team ~~meetings~~ meeting~~,~~ or ~~by~~ in a ~~written~~ ~~documents~~ document provided to all members of the ~~problem-solving court~~ team. ~~A judge who has received any such ex parte communication regarding the defendant or juvenile may preside over any subsequent proceeding if the judge discloses the existence and, if known, the nature of the ex parte communication to the defendant and the State and both the defendant and the State consent to the judge hearing the matter.~~

(c) **Disclosure of *Ex Parte* Communication.** A judge who receives an *ex parte* communication under subsection (b) regarding a party may preside over any subsequent proceeding involving the party if:

(1) the judge discloses to the party and the State the existence and, if known, the nature of the *ex parte* communication; and

(2) both the party and the State consent.

COMMENT

The language of Rule 109A has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

In subsection (a), the words "all as allowed by law" were stricken as ambiguous.

In subsection (a), the limitation to "criminal or juvenile cases" has been removed to permit potential expansion of special court dockets.

In subsections (a) and (c), the terms "parties" or "party" replace "offenders" or "defendant or juvenile."

Rule 110

~~CASA VOLUNTEER PROGRAMS~~
CASA VOLUNTEERS AND PROGRAMS

(a) ~~Court-appointed special advocate (CASA) volunteer programs shall embrace the following:~~ **Duties and Prerequisites for Court-Appointed Special Advocate (CASA) Volunteer.**

~~(a)~~(1) **Duties.** ~~It shall be the~~ The primary ~~duty~~ duties of a ~~court-appointed special advocate~~ CASA volunteer ~~to personally~~ are to investigate and become acquainted with the facts, conditions, and circumstances affecting ~~the welfare of the~~ a child's welfare, ~~for whom appointed,~~ to advocate the best interests of the child, and to assist the court in obtaining ~~for the child~~ the most permanent, safe, and homelike placement possible. A CASA volunteer~~, additionally,~~ should:

~~(1)~~(A) ~~V~~visit the child as often as necessary to monitor the child's safety and observe whether the child's essential needs are being met;

~~(2)~~(B) ~~A~~attend court hearings ~~pertaining to~~ involving the child or, if not excused from attendance by the ~~judge~~ court, arrange for attendance of a qualified substitute approved by the ~~judge~~ court;

~~(3)~~(C) ~~P~~participate in staffings and, to the extent possible, other meetings ~~pertaining to~~ about the child's welfare;

~~(4)~~(D) ~~P~~participate in the development of ~~the~~ a written reintegration plan ~~for reintegration and/~~or modification of ~~a~~ an existing plan, or both ~~already in place~~;

~~(5)~~(E) ~~S~~submit a written report to the court ~~prior~~ before ~~to~~ each regularly scheduled court hearing involving the child; and

~~(6)~~(F) ~~Do all such other things on behalf of the child~~ act on the child's behalf as ~~are~~ directed by the program director and the standards ~~relating to CASA volunteer programs~~ promulgated by the judicial administrator under subsection (b).

~~(b)~~(2) **Volunteer Prerequisites.** A CASA volunteer ~~shall~~ must:

~~(1)~~(A) ~~B~~be at least 18 years ~~of age~~ old;

~~(2)~~(B) ~~S~~submit a ~~completed~~ written application to the local program staff; and

~~(3)~~(C) ~~S~~successfully complete screening procedures and a review by the local program staff.

~~(c)~~(b) **Program Standards.** A local ~~Standards relating to~~ CASA volunteer ~~programs~~ program ~~shall be promulgated by the~~ must follow standards promulgated by the ~~J~~judicial ~~A~~administrator and adopted by the Supreme Court. ~~and followed by CASA volunteer programs.~~ The standards ~~shall~~ must include requirements for: ~~pertaining to certification of local CASA volunteer programs by the Judicial Administrator and certification and training of CASA volunteers by the local program.~~

(1) certification of local CASA volunteer programs by the judicial administrator; and

(2) certification and training of CASA volunteers by the local program.

~~(d)~~(c) **Written Agreement Required for Privately Administered Program.** A ~~D~~district ~~courts~~ court ~~utilizing~~ using a privately administered CASA ~~programs~~ program ~~shall~~ must have a written agreement with the person or group sponsoring the program. The term of the written agreement ~~shall be in force for not longer than~~ may not exceed two years ~~from the effective date of the agreement~~. The agreement ~~shall~~ governs operation of the privately administered CASA program and ~~shall~~ must:

(1) ~~R~~require the program to meet the judicial administrator's standards ~~relating to~~ for CASA volunteer programs ~~promulgated by the Judicial Administrator~~;

(2) ~~Set forth the responsibilities of the court to the CASA program and of the CASA program to the court including a requirement that CASA volunteers be certified by the local program~~ state the court's and the CASA program's responsibilities to each other;

(3) require that CASA volunteers be certified by the local program;

~~(3)~~(4) ~~S~~specify ~~the~~ procedures for ~~assignment of~~ assigning the program to a ~~cases~~ case and for ~~the~~ removal of the program from a ~~cases~~ case;

~~(4)~~(5) ~~E~~establish procedures for ~~resolution of~~ resolving grievances and conflicts for both the CASA ~~programs~~ program and a ~~individual~~ CASA ~~volunteers~~ volunteer; and

~~(5)~~(6) ~~Set forth~~ state the requirements the program must meet to be eligible ~~for renewal of~~ to renew the agreement ~~upon expiration~~.

~~(e)~~(d) **Local Rules.** The ~~D~~ddistrict ~~courts~~ court ~~shall promulgate~~ must adopt a local court ~~rules~~ rule governing operation of a CASA ~~programs~~ program ~~which are~~ administered by the court. The ~~rules~~ rule ~~shall~~ must include the items specified in subsection (c) (1) through ~~(4)~~ (5) ~~of the preceding paragraph~~.

~~(f)~~(e) **Volunteer Notice and Access.** A CASA volunteer ~~shall be given notice of all court hearings involving the child and shall have access to any district court records within the state pertaining to the child for whom appointed.~~ must be given:

(1) notice of a court hearing involving the child; and

(2) access to any district court record within the state pertaining to the child.

~~(g)~~(f) **Reporting Requirements.** The district court or ~~the~~ a privately administered CASA program, as applicable, ~~shall~~ must provide ~~such~~ statistical and other information ~~about its CASA program as~~ required by the ~~J~~judicial ~~A~~administrator ~~may require~~.

COMMENT

The language of Rule 110 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

New subsection (a)(1)(F) clarifies that standards governing CASA volunteers are those promulgated by the judicial administrator in new subsection (b).

~~Administrative Order No. 100~~
~~Guidelines for Guardians *Ad Litem*~~

~~The Supreme Court guidelines are recommended for the representation of children by guardians *ad litem* in cases pursuant to the Kansas Code for the Care of Children, K.S.A. 38-1501 *et seq.*; the Parentage Act, K.S.A. 38-1110 *et seq.*; and Domestic Relations, K.S.A. 60-1601 *et seq*. Unless departure is authorized by the presiding judge or designee for good cause shown. The appointing judge or designee should:~~

~~1) issue an Order appointing the guardian *ad litem* on a form substantially as attached, and~~

~~2) insure compliance with this Administrative Order.~~

~~A guardian *ad litem* should:~~

~~(1) Conduct an independent investigation consisting of the review of all relevant documents and records including those of social service agencies, police, courts, physicians (including mental health), and schools. Interviews either in person or by telephone with the child, parents, social workers, relatives, school personnel, court appointed special advocates (CASAs), caregivers, and others having knowledge of the facts are recommended. Continuing investigation and ongoing contact with the child are mandatory.~~

~~(2) Determine the best interests of the child by considering such factors as the child's age and sense of time; level of maturity; culture and ethnicity; degree of attachment to family members, including siblings; as well as continuity, consistency, permanency and the child's sense of belonging and identity.~~

~~(3) File appropriate pleadings on behalf of the child. Appear for and represent the best interests of the child at all hearings. All relevant facts should be presented to the court, including the child's position. If the child disagrees with the guardian *ad litem's* recommendations, the guardian *ad litem* must inform the court of the disagreement. The court may, on good cause shown, appoint an attorney to represent the child's expressed wishes. If the court appoints an attorney for the child, that individual serves in addition to the guardian *ad litem*. The attorney must allow the child and the guardian *ad litem* to communicate with one another but may require such communications to occur in the attorney's presence.~~

~~(4) Not submit reports and recommendations to the court, act as a witness or testify in any proceeding in which he or she serves as guardian *ad litem*, except as permitted by the exceptions to Kansas Rules of Professional Conduct 3.7(a). The guardian *ad litem* should submit the results of his or her investigation and the conclusion regarding the child's best interest in the same manner as any other lawyer presents a case on behalf of a client: by calling, examining and cross-examining witnesses, submitting and responding to other evidence, and making oral and written arguments based on the evidence that has been or is expected to be presented.~~

~~(5) Explain the court proceedings and the role of the guardian *ad litem* in terms the child can understand.~~

~~(6) Make recommendations for specific appropriate services for the child and the child's family.~~

~~(7) Monitor implementation of service plans and court orders.~~

~~(8) Participate in prerequisite education prior to appointment as a guardian *ad litem* which consists of not less than six (6) hours including one (1) hour of professional responsibility, and~~

~~participate in annual continuing education consisting of not less than six (6) hours. Areas of education should include, but are not limited to, dynamics of abuse and neglect; roles and responsibilities; cultural awareness; communication and communication with children skills and information gathering and investigatory techniques; advocacy skills; child development; mental health issues; permanence and the law; community resources; professional responsibility; special education law; substance abuse issues; school law; and the code for the care of children. Such hours of continuing education, if approved by the Continuing Legal Education Commission, shall apply to the continuing legal education requirements of Supreme Court Rule 802 and the minimum total hours annually required by that rule are not modified by these guidelines. The appointing judge or designee shall have the authority to approve the prerequisite education and continuing education not otherwise approved by the Continuing Legal Education Commission. Guardians ad litem shall be responsible for maintaining a record of their own participation in prerequisite and continuing education programs. Upon the request of the appointing judge or designee, the guardian ad litem shall be required to provide evidence of compliance with this order. Such prerequisite education may be waived by the appointing Judge or designee upon showing of a need for emergency temporary appointment. The educational requirements shall be completed within six (6) months of appointment. These educational requirements shall not be effective for a period of six (6) months from April 19, 1995.~~

RULE 110A

STANDARDS FOR GUARDIANS *AD LITEM*

(a) **Generally.** Unless the appointing judge authorizes departure from these standards for good cause, these standards apply when the judge appoints a guardian *ad litem* for a child in a case under the Revised Kansas Code for Care of Children, K.S.A. 38-2201 *et seq.;* the Revised Kansas Juvenile Justice Code, K.S.A. 38-2301 *et seq.*; and the Kansas Family Law Code, Chapter 23. The judge must:

(1) issue an order appointing the guardian *ad litem* on a form substantially in compliance with the judicial council form; and

(2) ensure compliance with this rule.

(b) **Prerequisite and Continuing Education.**

(1) **Requirements.**

(A) **Number of Hours; Timeframe.** As a prerequisite to appointment, a guardian *ad litem* must complete at least 6 hours of education, including 1 hour of professional responsibility. An appointed guardian *ad litem* also must participate in continuing education consisting of at least 6 hours per year.

(B) **Areas of Education.** Areas of education should include, but are not limited to:

- dynamics of abuse and neglect;
- roles and responsibilities;
- cultural awareness;
- communication skills, including communication with children;
- information gathering and investigatory techniques;
- advocacy skills;
- child development;
- mental health issues;
- permanency and the law;
- community resources;
- professional responsibility;
- special education law;
- substance abuse issues;
- school law; and
- the revised code for care of children.

(2) **Waiver of Prerequisite.** The appointing judge may waive the prerequisite education when necessary to make an emergency temporary appointment. The educational requirements must be completed within 6 months after appointment.

(3) **Continuing Education Requirements; Judicial Approval.** If approved by the Continuing Legal Education Commission, the education hours required by paragraph (1) also can be counted to satisfy Supreme Court Rule 802's continuing legal education requirements. These standards do not modify the minimum total hours annually required under that rule. The appointing judge may approve prerequisite education and continuing education hours not otherwise approved by the Continuing Legal Education Commission.

(4) **Recordkeeping.** Each guardian *ad litem* must maintain a record of the guardian's participation in prerequisite and continuing education programs. Upon request of the appointing judge, the guardian must provide evidence of compliance with this subsection.

(c) **Guardian *Ad Litem* Duties and Responsibilities.** A guardian *ad litem* must comply with the following standards:

(1) **Conducting an Independent Investigation.** A guardian *ad litem* must conduct an independent investigation and review all relevant documents and records, including those of social service agencies, police, courts, physicians, mental health practitioners, and schools. Interviews — either in person or by telephone — of the child, parents, social workers, relatives, school personnel, court-appointed special advocates (CASAs), caregivers, and others having knowledge of the facts are recommended. Continuing investigation and ongoing contact with the child are mandatory.

(2) **Determining the Best Interests of the Child.** A guardian *ad litem* must determine the best interests of the child by considering such factors as:

- the child's age and sense of time;
- the child's level of maturity;
- the child's culture and ethnicity;
- degree of the child's attachment to family members, including siblings;
- continuity;
- consistency;
- permanency;
- the child's sense of belonging and identity; and
- results of the investigation.

(3) **Representing in Court.** A guardian *ad litem* must:

(A) file appropriate pleadings and other papers on the child's behalf;

(B) represent the best interests of the child at all hearings;

(C) present all relevant facts, including the child's position;

(D) submit the results of the guardian's independent investigation and the guardian's recommendations regarding the child's best interests; and

(E) vigorously advocate for the child's best interests by:

(i) calling, examining, and cross-examining witnesses;

(ii) submitting and responding to other evidence; and

(iii) making oral and written arguments based on the evidence that has been or is expected to be presented.

(4) **Explaining to the Child.** A guardian *ad litem* must explain the court proceedings and the guardian's role in terms the child can understand.

(5) **Making Recommendations for Services.** A guardian *ad litem* must recommend appropriate services for the child and the child's family.

(6) **Monitoring**. A guardian *ad litem* must monitor implementation of service plans and court orders.

(d) **When Recommendation Conflicts With Child's Wishes.** If the child disagrees with the guardian *ad litem's* recommendation, the guardian must inform the court of the disagreement. The court may, for good cause, appoint an attorney to represent the child's expressed wishes. If the court appoints an attorney for the child, that individual serves in addition to the guardian *ad litem*. The attorney must allow the child and the guardian to communicate with one another but may require the communications to occur in the attorney's presence.

(e) **Participation Limited by Rules of Professional Conduct.** An attorney in a proceeding in which the attorney serves as guardian *ad litem* may submit reports and recommendations to the court and testify only as permitted by Kansas Rule of Professional Conduct 3.7(a).

COMMENT

The language of Administrative Order No. 100 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

The former Administrative Order has been numbered Rule 110A and incorporated into the Rules Relating to District Courts for clarity and ease of reference. Although characterized as "Guidelines for Guardians *Ad Litem*," the former Administrative Order contained mandatory components.

The new rule sets forth "Standards for Guardians *Ad Litem*" and clarifies mandatory components. For example, prerequisite and continuing education requirements are clearly defined.

Under new subsection (a), the appointing judge continues to have authority to depart from these standards for good cause.

In new subsection (a), the Revised Kansas Juvenile Justice Code was added to the list of enumerated acts.

The duty of the guardian *ad litem* to file "pleadings" on behalf of the child in the former rule has been expanded in new subsection (c)(3)(A) to "pleadings and other papers." Guardians file reports and other documents in addition to pleadings.

New subsection (e) continues to limit the attorney's participation to actions permitted by KRPC 3.7(a).

The Supreme Court Task Force on Permanency Planning was consulted regarding this Committee's proposed amendments.

COMMENCEMENT OF ACTIONS, PLEADINGS, AND RELATED MATTERS

Rule 111

~~FORMS OF PLEADINGS~~
FORM OF PLEADINGS AND OTHER PAPERS

Unless the court permits otherwise, every ~~All pleadings~~ pleading, ~~briefs~~ brief, and other ~~papers~~ paper ~~prepared by attorneys or litigants for filing~~ filed ~~in~~ with the ~~courts~~ court ~~shall, unless the judge specifically permits otherwise,~~ must be ~~typed with~~ in black ~~ink~~ type or print on one side only of an ~~standard size (~~8½" x 11"~~)~~ ~~sheets~~ sheet. ~~and shall~~ It must include the name, ~~Supreme court registration numbers for attorneys,~~ address, ~~and~~ telephone number, fax number, and e-mail address of the person filing ~~them~~ it. A paper filed by an attorney must include the attorney's Kansas registration number after the attorney's name. ~~Typing shall~~ Text must be double-spaced, except that single spacing may be used for a ~~subparagraphs~~ subparagraph, legal ~~descriptions~~ description of real estate, ~~itemizations~~ itemization, ~~quotations,~~ quotation, and similar subsidiary ~~portions~~ portion of the ~~instrument~~ paper.

COMMENT

The language of Rule 111 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

A fax number and e-mail address are now required. K.S.A. 60-205(b)(2)(E) now authorizes service by fax, and K.S.A. 60-211 was recently amended to require an e-mail address.

Rule 112

~~DUTY TO PROVIDE ADDRESSES FOR SERVICE~~
DUTY TO PROVIDE ADDRESS FOR SERVICE

~~In all instances, a litigant has the duty to provide addresses for any service requested.~~ A party must provide an address for service of any process or other paper filed by the party which is required to be served by a sheriff or clerk.

COMMENT

The language of Rule 112 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 113

~~CLERK'S EXTENSION~~
CLERK'S EXTENSION

~~In cases filed pursuant to~~ The clerk may extend the initial time to plead to a petition under Chapter 60 of the Kansas Statutes Annotated~~, the initial time to plead to any petition, as the time is stated on the summons served upon the party, may be extended once by the clerk of the court for a period of not to exceed fourteen~~ for a period of no more than ~~(~~14~~)~~ ~~additional~~ days. The party seeking the extension ~~shall~~ must prepare ~~the~~ an order for the clerk's signature, and copies ~~thereof shall~~ must be served ~~upon counsel for all adverse~~ on all other parties ~~in accordance with K.S.A. 60-205~~. ~~All~~ Any other ~~extensions~~ extension of time to plead ~~shall~~ must be by court order ~~of the judge~~.

COMMENT

The language of Rule 113 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 114

~~SURETIES ON BONDS~~
SURETY ON BOND

~~Whenever any bond is permitted or required to be taken by a clerk or sheriff in accordance with the provisions of Chapter 60 without being approved by the court, it shall be sufficient if the surety thereon is a surety company currently admitted to do business in the State of Kansas. No corporation other than a surety company may be accepted as a surety unless so ordered and approved by the judge. Whenever a natural person is accepted and approved as a surety by a clerk or sheriff, the surety shall be required to attach to the bond a sworn financial statement which reasonably identifies the assets relied upon to qualify the person as surety and the total amount of any liabilities, contingent or otherwise, which may affect the person's qualifications as a surety. No attorney or the attorney's spouse may act as a surety on a bond in any case in which the attorney is counsel. The principal on any bond may at his option, in lieu of providing a surety, deposit with the clerk of the district court cash money in the full amount of the bond. The deposit shall be retained by the clerk until the bond is fully discharged and released or the court orders the disposition of the deposit.~~

(a) **Corporate Surety.** When a clerk or sheriff is permitted or required under Chapter 60 to take a bond without court approval, it is sufficient if the surety on the bond is a surety company admitted to do business in this state. No corporation other than a surety company may be accepted as a surety unless the court orders.

(b) **Individual Surety.** When a clerk or sheriff accepts an individual as a surety, the surety must attach to the bond a sworn financial statement that reasonably identifies the assets relied on for qualification as a surety and the total amount of any liabilities, contingent or otherwise, that may affect the individual's qualification as a surety.

(c) **Attorney and Spouse Disqualified.** An attorney or the attorney's spouse may not act as a surety on a bond in a case in which the attorney is counsel.

(d) **Cash Bond.** The principal on a bond may, in lieu of providing a surety, deposit with the clerk the full amount of the bond. The clerk must retain the deposit until the bond is fully discharged and the principal released or the court orders disposition of the deposit.

COMMENT

The language of Rule 114 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 115

~~ENTRIES OF APPEARANCE~~
ENTRY OF APPEARANCE

If a party appears in ~~In all~~ an ~~actions~~ action ~~in which a party shall enter an appearance~~ solely by ~~personally signing an instrument designed for that purpose~~ filing a signed entry of appearance, and no attorney subsequently appears of record on the party's behalf, ~~of such party, such~~ the entry of appearance ~~shall be held to be ineffective to constitute service~~ has the effect under K.S.A. 60-203(c) ~~unless the~~ of service of summons only if the party's signature ~~of the party has been~~ was acknowledged ~~before an officer authorized by law to take acknowledgements~~.

COMMENT

The language of Rule 115 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 116

~~ADMISSION *PRO HAC VICE* OF OUT-OF-STATE ATTORNEY~~
ADMISSION *PRO HAC VICE* OF OUT-OF-STATE ATTORNEY

(a) **Eligibility for Admission *Pro Hac Vice*.** ~~Any~~ An attorney not admitted to ~~the~~ practice ~~of~~ law in Kansas ~~but who is regularly engaged in the practice of law in another state, territory of the United States, or the District of Columbia, and who is in good standing pursuant to the rules of the highest appellate court in that jurisdiction,~~ may ~~on motion~~ be admitted on motion to practice law in a Kansas ~~the courts~~ court or ~~any~~ administrative tribunal ~~of this state for the purposes of a~~ — for a particular case only — if the attorney:~~,~~ ~~upon showing that he or she has associated an attorney of record in the case who is regularly engaged in the practice of law in Kansas and who is in good standing under all of the applicable rules of the Kansas Supreme Court. The Kansas attorney of record shall be actively engaged in the conduct of the case; shall sign all pleadings, documents, and briefs; and shall be present throughout all court or administrative appearances. Service may be had upon the associated Kansas attorney in all matters connected with the case with the same effect as if personally made on the out-of-state attorney within this state.~~

(1) is regularly engaged in practicing law in another state, United States territory, or the District of Columbia;

(2) is in good standing under the rules of the highest appellate court in that jurisdiction; and

(3) shows association with an attorney of record in the case who:

(A) is regularly engaged in practicing law in Kansas; and

(B) is in good standing under the Kansas Supreme Court rules.

(b) **Kansas Attorney's Duties.** The Kansas attorney of record under subsection (a) must:

(1) be actively engaged in the case;

(2) sign all pleadings, documents, and briefs;

(3) be present throughout all court or administrative appearances; and

(4) attend a deposition or mediation unless excused by the court or tribunal or under local rule.

(c) **Service.** Service of a paper in a case on the Kansas attorney of record under subsection (a) has the same effect as if personally served on the attorney admitted *pro hac vice*.

~~(b) A motion filed by the Kansas attorney of record, accompanied by the out of state attorney's verified application, shall be in writing and shall be filed with the court or administrative tribunal where the case is pending as soon as reasonably possible but no later than the date the out-of-state attorney files any pleading or appears personally. The motion and verified application shall be served on all counsel of record and on the out-of-state attorney's client.~~

(d) ***Pro Hac Vice* Motion.** A separate motion for admission *pro hac vice* must be filed for each case.

(1) **Requirements.** The motion must be:

(A) filed by the Kansas attorney of record;

(B) accompanied by the out-of-state attorney's verified application, complying with subsection (e);

(C) filed with the court or administrative tribunal in which the case is pending as soon as reasonably possible but not later than the date the out-of-state attorney files a pleading or appears personally; and

(D) served on all counsel of record, unrepresented parties not in default for failure to appear, and the out-of-state attorney's client.

(2) **Denial of Motion.** If the court or administrative tribunal denies the motion, it must state reasons for the denial.

(e) **Verified Application.**

~~(c)~~ (1) **Contents.** ~~The~~ An out-of-state attorney's verified application for admission *pro hac vice* ~~shall~~ must include:

~~(1)~~(A) a statement identifying the party or parties represented;

~~(2)~~(B) the name, business address, telephone number, fax number, e-mail address, and Kansas attorney registration number of ~~local counsel~~ the Kansas attorney of record;

~~(3)~~(C) the applicant's residence address~~,~~ and business address, ~~and business~~ telephone number, fax number, and e-mail address;

~~(4)~~(D) the bar(s) to which the applicant is admitted, the date(s) of admission, and the applicable attorney registration number(s);

~~(5)~~(E) a statement that the applicant is a member in good standing of each bar;

~~(6)~~(F) a statement that the applicant has not been the subject of prior public discipline, including ~~but not limited to~~ suspension or disbarment, in any jurisdiction;

~~(7)~~(G) a statement that the applicant is not currently the subject of a disciplinary action or investigation in any jurisdiction or, if the applicant is currently the subject of a disciplinary action or investigation, the application ~~shall~~ must provide a detailed description of the nature and status of the action or investigation ~~as well as~~ and the address of the disciplinary authority in charge; and

~~(8)~~(H) if applicable, the case name, case number, and the court in which the applicant has been granted permission to appear *pro hac vice* in Kansas within the preceding 12 months.

(2) **Obligation to Report Changes.** The applicant has a continuing obligation to notify the court or administrative tribunal if a change occurs in any of the information provided in the application.

~~(d)~~(f) **Fee.** A non-refundable fee of $100, payable to the clerk ~~of the district court~~, ~~shall~~ must accompany ~~the~~ a motion ~~and verified application~~ for admission *pro hac vice* in each case. An administrative tribunal may~~, in its discretion,~~ impose a similar fee. ~~An attorney employed by a governmental agency or~~ An attorney representing the government or ~~an attorney who represents~~ an indigent party may move — for good cause — ~~move~~ for waiver of the fee ~~for good cause shown~~.

~~(e)~~(g) **Consent to Disciplinary Jurisdiction.** ~~Any out-of-state attorney admitted pursuant to this rule shall be subject to the order of, and amenable to disciplinary action by, the courts and administrative tribunals of this state.~~ By applying for admission *pro hac vice* under this rule, an out-of-state attorney consents to the exercise of disciplinary jurisdiction by Kansas courts and administrative tribunals.

~~(f) A separate motion shall be filed for each case, and the motion may be granted or denied in the discretion of the presiding judge or administrative officer. If the motion is denied, reasons shall be stated.~~

~~(g)~~(h) **Appearance *Pro Se*.** ~~Nothing in this rule shall be construed to~~ This rule does not prohibit ~~any~~ a party from appearing ~~personally~~ before ~~any~~ a court or administrative tribunal on ~~his or her~~ the party's own behalf.

COMMENT

The language of Rule 116 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (b)(4) clarifies that the Kansas attorney must attend a deposition or mediation unless excused, in addition to the requirement in (b)(3) that the Kansas attorney be present throughout all court or administrative appearances.

New subsection (e)(1)(B) and (C) adds references to fax number and e-mail address. K.S.A. 60-205(b)(2)(E) now authorizes service by fax, and K.S.A. 60-211 was recently amended to require an e-mail address.

Rule 117

~~WITHDRAWAL OF ATTORNEY~~
WITHDRAWAL OF ATTORNEY

~~An attorney who has appeared of record in any proceeding may withdraw; but shall be relieved of duties to the court, the client, and opposing counsel only when the attorney has served a motion for withdrawal on the client and on opposing counsel, filed a copy of the motion and proof of the service thereof with the clerk, and the judge has entered an order approving the withdrawal. No such order shall be required if another attorney authorized to practice law in this state is appearing of record to represent the client.~~

(a) **Withdrawal of Attorney When Client Will Be Left Without Counsel.** When withdrawal of an attorney who has appeared of record in a proceeding will leave the client without counsel, the attorney may withdraw only when:

(1) the attorney has served a motion for withdrawal on the client — and on all counsel of record and unrepresented parties not in default for failure to appear — that:

(A) states the reasons for the withdrawal, unless doing so would violate an applicable standard of professional conduct;

(B) provides evidence that the withdrawing attorney provided the client:

(i) an admonition that the client is personally responsible for complying with all orders of the court and time limitations established by the rules of procedure or by court order; and

(ii) notice of the date of any pending trial, hearing, conference, or deadline; and

(C) provides the court with a current mailing address and telephone number for the client, if known;

(2) the attorney has filed a copy of the motion and proof of service; and

(3) the court issues an order approving the withdrawal.

(b) **Withdrawal of Attorney When Client Continues to Be Represented by Other Counsel of Record.** When the client will continue to be represented by other counsel of record, an attorney may withdraw without a court order by filing a notice of withdrawal of appearance. The notice must:

(1) identify the attorney of record admitted to practice law in Kansas who will continue to represent the client; and

(2) be served on the client and all counsel of record and unrepresented parties not in default for failure to appear.

(c) **Withdrawal of Attorney When Client Will Be Represented by Substituted Counsel.** An attorney may withdraw without court order upon simultaneous substitution of counsel admitted to practice law in Kansas by:

(1) filing a notice of withdrawal of counsel and entry of appearance of substituted counsel signed by both the attorney withdrawing and the attorney to be substituted as counsel; and

(2) serving the notice on the client and all counsel of record and unrepresented parties not in default for failure to appear.

COMMENT

The language of Rule 117 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

The rule has been significantly expanded, based on United States District Court of Kansas local rule 83.5.5.

Rule 118

~~PLEADING OF UNLIQUIDATED DAMAGES~~
STATEMENT OF DAMAGES WHEN PLEADING DOES NOT DEMAND SPECIFIC AMOUNT

(a) **Request for Actual Amount of Money Damages.** ~~In any action in which~~ When a pleading contains a demand for money damages which states only that the amount sought as damages is in excess of $75,000, as provided in K.S.A. 60-208(a)(2), ~~and amendments thereto, the~~ a party against whom relief is sought may serve on the party seeking relief a ~~written~~ request ~~of~~ for the actual amount of monetary damages ~~being~~ sought ~~in the action~~. ~~Within~~ Not later than ~~fourteen (~~14~~)~~ days ~~following~~ after service of the request, the party seeking relief ~~shall~~ must serve ~~the adversary with~~ a ~~written~~ statement of the total amount of monetary damages ~~being~~ sought ~~in the action~~ and ~~at the same time shall cause a~~ file a copy of the ~~written~~ statement ~~to be filed in the action~~. The amount recited in the ~~written~~ statement may be amended downward at any time ~~prior to~~ before the action ~~being~~ is submitted to the trier of ~~facts~~ fact ~~for determination~~. The amount ~~recited in the written statement~~ may be amended upward on motion if the ~~judge hearing a motion to amend the amount recited in the written statement is satisfied~~ court determines the ~~reasons~~ reason ~~recited~~ stated in the motion ~~justify~~ justifies the amendment.

(b) **Disclosures Allowed in Jury Trial.** A ~~Written statements~~ statement filed ~~pursuant to~~ under subsection (a) ~~shall~~ may not be admitted in evidence ~~at~~ during a jury trial or referred to in the jury's presence ~~of the jury~~. The final amount ~~claimed~~ sought may be disclosed to the jury, but earlier amounts ~~claimed~~ sought, and whether the ~~claim~~ amount has been amended, ~~shall~~ may not be referred to in the jury's presence ~~of the jury~~.

(c) **Frivolous Damages Amount.** If the ~~judge, upon the judge's or a party's motion,~~ court — on a party's motion or on its own — finds the amount of damages ~~sought, as recited~~ stated in the last ~~written~~ statement filed under subsection (a) ~~above,~~ was chosen frivolously ~~chosen, by the party filing same,~~ the ~~judge~~ court ~~shall~~ must apportion the costs as justice requires.

(d) **Default Judgment.** Before ~~any~~ a default judgment is taken in ~~any~~ an action ~~contemplated by~~ subject to this rule, the party seeking relief must notify the party against whom relief is sought of the amount of money for which judgment will be taken. ~~Said n~~Notice ~~shall~~ must be given by ~~certified mail,~~ return receipt ~~requested~~ delivery, or as the court ~~may~~ orders, at least ~~fourteen (~~14~~)~~ days ~~prior to~~ before the date judgment is sought. ~~Proof of service shall be filed and submitted to the court.~~

COMMENT

The language of Rule 118 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

In subsection (a), restrictive language has been added to clarify that the rule applies when a pleading states only that the amount sought as damages is in excess of $75,000.

Changes to the title and subsection (a) clarify that the rule applies when a pleading does not demand a specific amount, rather than to any unliquidated damage claim. The analysis in *First Nat'l Bank in Belleville v. Sankey Motors, Inc.*, 41 Kan. App. 2d 629, 204 P.3d 1167 (2009), would change under the rule, as clarified.

Rule 119

~~FACSIMILE FILING~~
FAX FILING AND SERVICE

~~(a) *How To File by Fax.*~~

~~(1) An attorney may file by fax directly to the Office of the Clerk of the District Court, at the facsimile numbers designated by the clerk, a document of not more than ten (10) pages. A document may not be split into multiple fax transmissions to avoid the page limitation. The required cover sheet and any special processing instructions are not included in the ten (10) page limitation.~~

~~(2) Within the ten (10) page limitation in (d)(1), a petition may include related summonses and service copies. If the inclusion of related summonses and service copies with the petition would cause the transmission to exceed the ten (10) page limitation, then all additional copies and summonses shall be delivered to the clerk in a manner other than by facsimile transmission and shall be accompanied by a request for service.~~

~~(3) Each facsimile document filed shall be accompanied by the Facsimile Transmission Cover Sheet. The cover sheet shall be the first page transmitted, followed by any special processing instructions. A cover sheet that contains financial information as per section (d) herein shall not be filed in a case or publicly disclosed. Such cover sheets shall be kept in a separate confidential file for a minimum of one year after audit.~~

~~(4) The first page of each document filed by fax shall include the words "By Fax." Each page shall be numbered and shall include an abbreviated caption of the case and an abbreviated title of the document. The attorney shall also include his or her name, address, telephone number, fax number, and Supreme Court registration number on the document. The document placed in the transmitting fax machine shall comply with all applicable rules on the form, format, and signature of papers. A signature reproduced by facsimile transmission will be treated as an original signature.~~

~~(5) *Forms.* The forms contained in the Appendices shall be used in compliance with this rule. The Facsimile Transmission Cover Sheet shall be in the form set forth in Appendix A to this rule. The Affidavit of Transmission by Fax required by (a)(6) shall be in the form set forth in Appendix B to this rule.~~

~~(6) An attorney filing by fax shall cause the transmitting facsimile machine to print a transmission record of each filing by fax. If the facsimile filing is not filed with the court because of (A) an error in the transmission of the document the occurrence of which was unknown to the sender or (B) a failure to process the facsimile filing when received by the court, the sender may move the court for an order filing the document nunc pro tunc. The motion shall be accompanied by the transmission record, a copy of the document transmitted, and an Affidavit of Transmission by Fax as set forth in Appendix B.~~

~~(7) Each court shall have its facsimile machine available on a 24-hour basis. This provision does not prevent the Clerk of the District Court from sending documents by fax or providing for normal repair and maintenance of the fax machine. Facsimile filings received in the Office of the Clerk of the District Court shall be deemed filed as of the time printed by the court facsimile machine on the final page of the facsimile document received, subject to the provisions of (d)(3).~~

The district court shall have discretion to impose limitations on the numbers of fax-filings by any one attorney by order or by local rule.

(b) *Service of Papers by Fax.*

(1) Service by fax shall be made by transmitting the document to the attorney's designated facsimile machine telephone number. Service of papers pursuant to K.S.A. 60-205 may be made by facsimile transmission only in proceedings subject to these rules and only on an attorney representing a party.

(2) An attorney consents to service by fax in a proceeding by: (A) filing a document by fax in that proceeding; (B) serving a document by fax in that proceeding; or (C) serving a pleading which includes the attorney's fax number on the pleading. The three-day mailing rule of K.S.A. 60-206(e) does apply to those who have consented to be served by fax and are served by fax.

(3) An attorney who consents to fax service shall make his or her fax machine available for receipt of documents on a 24 hour basis, 7 days per week. This provision does not prevent the attorney from sending documents by fax or providing for normal repair and maintenance of the fax machine.

(4) Service by fax is complete upon generation of a transmission record by the transmitting machine indicating the successful transmission of the entire document.

(5) A certificate of service by fax shall include the following:

(A) the date of transmission;

(B) the name and facsimile machine telephone number of the person served;

(C) a statement that the document was transmitted by facsimile transmission and that the transmission was reported as complete and without error;

(D) the signature of the attorney or the person making the transmission.

(6) A court may serve a notice by fax if the notice may be served by mail. The notice may be served by fax on an attorney who consents to fax service under subsection (1) of this section.

(c) *Possession of Documents*. An attorney who files by fax shall retain the original document in his or her possession or control during the pendency of the action and shall produce such document upon request under K.S.A. 60-234 by the Court or any party to the action. Upon failure to produce such document, the Court may strike the fax and may impose sanctions under K.S.A. 60-211.

(d) *Payment of Fees.*

(1) Only credit card systems designated by the Office of Judicial Administration may be used to charge docket fees, filing fees, fax service charges, and any other fees or charges.

(2) The cover sheet of a fax document requiring the payment of a docket fee shall include (A) the name of the credit card system and the account number to which the fees shall be charged, (B) the signature of the cardholder authorizing the charging of the fee, and (C) the expiration date of the credit card.

(3) If the charge for the docket fee is rejected by the credit card issuing company the pleading shall not be deemed filed pursuant to K.S.A. 60-2001.

(e) *Applicability*. These rules apply to all district court proceedings except small claims as defined in K.S.A. 61-2703.

(f) *Definitions*. As used in this rule, unless the context requires otherwise:

~~(1) "Document" includes not more than one pleading and all exhibits except those, the original of which, by statute, must be filed with the Clerk of the District Court.~~

~~(2) "Facsimile filing" or "filing by fax" means the facsimile transmission of a document to a court or fax filing agency for filing with the court.~~

~~(3) "Facsimile machine" means a machine that can send a facsimile transmission using the international standard for scanning, coding, and transmission established for Group 3 machines by the Consultative Committee of International Telegraphy and Telephone of the International Telecommunications Union (CCITT), in regular resolution.~~

~~(A) A facsimile machine used to send documents to a court shall send at an initial transmission speed of no less than 4800 baud and be able to produce a transmission record.~~

~~(B) As applied to a court, or fax filing agency, "facsimile machine" also means a receiving unit meeting the standards specified in this subdivision which prints on plain bond paper or is connected to and prints through a printer on plain bond paper and a facsimile modem that is connected to a personal computer that prints through a printer which prints on plain bond paper. The receiving unit shall also automatically place the date and time of receipt on the printed transmission.~~

~~(4) "Facsimile transmission" means the transmission of a copy of a document by a system that encodes a document into electronic signals, transmits the signals over a telephone line, and reconstructs the signals to print a duplicate of the document at the receiving end.~~

~~(5) "Fax" is an abbreviation for "facsimile" and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.~~

~~(6) "Fax filing agency" means an entity that receives documents by fax for processing and filing with the court.~~

~~(7) "Service by fax" means the transmission of a document to the attorney for a party under these rules.~~

~~(8) "Transmission record" means the document printed by the sending facsimile machine stating the telephone number of the receiving machine, the number of pages sent, the transmission time, and an indication of errors in transmission.~~

~~(g) *Fax Filing Agency.*~~

~~(1) An attorney or a party may transmit a document, without page limitation, by fax to a fax filing agency for filing with the court. The fax filing agency acts as the agent of the filing party and not as an agent of the court.~~

~~(2) A fax filing agency shall not be required to accept papers for filing unless appropriate arrangements for payment of docket fees and service charges have been made by the transmitting person before the papers are transmitted to the fax filing agency.~~

(a) **Applicability.** This rule applies to all district court proceedings except a small claim as defined in K.S.A. 61-2703.

(b) **Definitions.** In this rule, unless the context requires otherwise:

(1) "Document" includes a pleading, motion, or other paper and attached exhibits. "Document" does not include a pleading, motion, other paper, or exhibit if a statute requires the original to be filed with the court.

(2) "Fax filing" or "filing by fax" means transmitting a facsimile of an original document by electronic means to a court or fax filing agency for filing with the court. The term includes receipt of the transmission by the court or agency.

(3) "Fax filing agency" means an entity that receives documents by fax for processing and filing with the court.

(4) "Transmission record" means a document printed by a sending fax machine stating the telephone number of the receiving machine, the number of pages sent, and the transmission time, indicating no errors in transmission.

(c) **Filing by Fax.** An attorney or an unrepresented party may file a document by fax directly to the district court at the fax number designated by the clerk. The following rules apply:

(1) **Separate Transmission for Each Court Filing.** Each document filed by fax must be transmitted separately. The document may include attached exhibits.

(2) **10-Page Limitation.** The document, with attached exhibits, must not exceed 10 pages and may not be split into multiple transmissions to avoid the page limitation. The transmission sheet required by paragraph (4), cover sheet required by Rule 123, and any special processing instructions are not included in the 10-page limitation.

(3) **Summonses and Service Copies.** If the fax filing does not exceed the page limitation in paragraph (2), a petition may include related summonses and service copies. If their inclusion would cause the transmission to exceed 10 pages, all additional copies and summonses must be delivered to the clerk in a manner other than by fax transmission and must be accompanied by a request for service.

(4) **Transmission Sheet Required.** A fax filing must be accompanied by a Fax Transmission Sheet on the judicial council form. The transmission sheet must be the first page(s) transmitted, followed by any special processing instructions. When the second page of the transmission sheet contains credit or debit card information, that page must not be retained in the case file or publicly disclosed.

(5) **Other Fax Content Requirements.** The following additional requirements apply to the content of a document filed by fax:

(A) The first page must include the words "By Fax;" and

(B) Each page must be numbered and must include a short caption of the case and an abbreviated title of the document.

(6) **Retention of Fax Transmission Record and Original Document.**

(A) **Transmission Record.** An attorney or unrepresented party filing by fax must retain a transmission record.

(B) **Original Document.** An attorney or an unrepresented party that files or serves a document by fax must retain the original document during the pendency of the action and must produce it on request by the court or a party. If the attorney or unrepresented party fails to produce the document, the court may strike the fax filing and impose sanctions under K.S.A. 60-211.

(7) **When a Fax Filing is Deemed Filed.** Subject to the provisions of paragraph (9)(C), a fax filing received by the court is deemed filed at the time printed by the court fax machine on the final page of the fax document received or at the time recorded on the court's electronic fax log.

(8) **Motion Procedure When Fax Filing Fails.**

(A) **Applicability.** The court, on motion of the sender, may order filing of a document *nunc pro tunc* if a fax filing is not filed with the court because of:

(i) an error — the occurrence of which was unknown to the sender — in the transmission of the document; or

(ii) the court's failure to process the fax filing on receipt.

(B) **Motion Requirement.** A motion under subparagraph (A) must be accompanied by:

(i) the transmission record;

(ii) a copy of the document transmitted; and

(iii) a Declaration of Transmission by Fax on the judicial council form.

(9) **Payment of Fees.** The following rules govern the payment of fees associated with a document filed by fax:

(A) Only a credit or debit card system designated by the judicial administrator may be used to pay a docket fee, filing fee, and any other fee or charge.

(B) When payment of a fee is required with a fax filing, the second page of the transmission sheet must include:

(i) the name of the credit or debit card system and the account number to which the fee is to be charged;

(ii) the signature of the cardholder authorizing the charge; and

(iii) the credit or debit card's expiration date.

(C) If a charge for a fee is rejected by the credit or debit card issuing company, the document is not deemed filed under K.S.A. 60-203 or 60-2001.

(10) **Rules Applicable to the Court.** The following rules apply to the district court:

(A) The court must have its fax machine available on a 24-hour basis.

(B) The court may impose limitations, by order or local rule, on the number of fax filings by a single attorney or party.

(d) **Service by Fax.**

(1) **How Made.** Service by fax is made by transmitting a document to the attorney's or unrepresented party's designated fax number.

(2) **Fax Service by Court.** A court may serve a notice by fax if the notice may be served by mail.

(3) **Applicability of 3-Day Mailing Rule.** The extension of time to act after service by mail under K.S.A. 60-206(d) applies when service is by fax.

(4) **Must Make Fax Machine Available.** An attorney or unrepresented party that has listed a fax number on a paper in compliance with Rule 111 must make the fax machine available for receipt of documents on a 24-hour basis.

(5) **When Fax Service Deemed Complete.** Service by fax is complete when the transmitting machine generates a transmission record indicating successful transmission of the entire document.

(6) **Certificate of Service by Fax.** A certificate of service by fax must include:

(A) the transmission date and time;

(B) the name and fax number of the person served;

(C) a statement that the document was transmitted by fax and the transmission was reported as complete and without error; and

(D) the signature of the attorney or person making the transmission.

(e) **Fax Signature.** A fax signature has the same effect as an original signature.

(f) **Fax Filing Agency.**

(1) An attorney or a party may transmit a document, without page limitation, by fax to a fax filing agency for filing with the court. The fax filing agency acts as the filing party's agent, not as the court's agent.

(2) A fax filing agency is not required to accept a document for filing unless the sender has made appropriate arrangements for payment of any docket or other required fee before the document is transmitted to the agency.

COMMENT

The language of Rule 119 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

The former rule was adopted in 1993, and some definitions are no longer needed. Former (f)(3) "Facsimile machine," (4) "facsimile transmission," (5) "Fax," and (7) "Service by fax" have been eliminated.

References in the former rule at (a)(7) and (b)(3) to "normal repair and maintenance" have been deleted.

That portion of former (b)(2) which refers to consent to service by fax has been deleted. K.S.A. 60-205(b)(2)(E) authorizes service by fax, and consent is not required.

The reference in former (d)(1) to "fax service charges" was deleted because no district court is known to charge them.

New subsection (c) allows an attorney or an unrepresented party to file by fax.

New subsection (c)(7) provides alternative reference to time recorded by a fax machine or on an electronic fax log.

The Fax Transmission Sheet, former Appendix A, has been amended to require debit or credit card information on a separate second page. The requirement in former (a)(3) that financial information "shall be kept in a separate confidential file for a minimum of one year after audit" now appears in Rule 108(e)(9)(G). New subsection (c)(4) still requires that financial information not be retained in the case file or publicly disclosed.

Former Appendix B, Affidavit of Transmission by Fax, has been designated Declaration of Transmission by Fax. K.S.A. 53-601 permits a declaration signed under penalty of perjury to be used in lieu of an affidavit.

Forms, formerly designated as appendices to the rule, will be moved to the judicial council website.

~~APPENDIX A~~
~~FACSIMILE TRANSMISSION COVER SHEET~~

~~DATE: _____~~

~~TO: Clerk of the District Court, _____ County~~
~~FAX Number: ( ) _____ - _____~~

~~Case Number: _____~~

~~Caption: _____~~

~~vs.~~

_____

~~FROM: Attorney (Name and Address)~~

_____
_____
_____
_____

~~Kansas Supreme Court Registration Number: _____~~
~~Telephone Number: ( ) _____ - _____~~
~~Fax Number: ( ) _____ - _____~~
~~Attorney for (Name of Party): _____~~

~~1. Please file the following transmitted document. NOTE: Document length is limited to 10 pages. A cover sheet must separate each document filed.~~

~~Document Name~~ ~~No. of Pages~~

~~2. ☐ Docket Fee $_____ ☐ Other $ _____~~
~~(Describe)~~

~~I authorize the above fees to be charged to the following account:~~
~~☐ VISA ☐ MASTERCARD Account No. _____~~
~~Expiration Date: _____~~

_____ _____
~~(Type or Print Name of Cardholder)~~ ~~(Signature of Cardholder)~~

~~APPENDIX B~~
~~AFFIDAVIT OF TRANSMISSION BY FAX~~

~~State of Kansas)~~
~~) ss:~~
~~County of)~~

~~being duly sworn on my oath states:~~

~~I transmitted the following documents by fax:~~

~~to:~~

~~at fax number:~~

~~At the time of the transmission I was at least 18 years of age and not a party to this legal proceeding. The facsimile machine I used complied with Supreme Court Rule 119(b)(3) and no error was reported by the machine.~~

~~Sender~~

~~Subscribed and sworn to before me on~~

~~Notary Public~~

~~My appointment expires:~~

Rule 120

~~DEATH PENALTY CASES—NOTICE TO APPELLATE COURTS~~
DEATH PENALTY CASE — NOTICE TO APPELLATE COURT

If a ~~criminal defendant is charged with capital murder and the~~ county or district attorney files ~~written~~ notice ~~pursuant to K.S.A. 21-4624~~ under K.S.A. 21-6617 that ~~such~~ the attorney intends~~,~~ ~~upon~~ — on conviction of ~~the~~ a defendant~~,~~ charged with capital murder — to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death, the clerk ~~of the district court shall~~ must forward a copy of ~~that~~ the ~~written~~ notice to the clerk of the appellate courts ~~within~~ not later than ~~seven (~~7~~)~~ days after filing.

COMMENT

The language of Rule 120 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 121

~~PROCEDURE UNDER KANSAS STANDARD ASSET SEIZURE AND FORFEITURE ACT, K.S.A. 60-4101 *et seq.*~~
PROCEDURE UNDER KANSAS STANDARD ASSET SEIZURE AND FORFEITURE ACT, K.S.A. 60-4101 *et seq*.

(a) ~~*Procedure for filing.*~~ **Procedure for Filing.** ~~Whenever~~ When a forfeiture proceeding is commenced ~~by the filing of a notice of pending forfeiture pursuant to~~ under K.S.A. 60-4109 by filing a notice of pending forfeiture, ~~such~~ the notice ~~shall~~ must be filed with the ~~clerk of the~~ district court having jurisdiction ~~pursuant to~~ under K.S.A. 60-4103. The clerk ~~shall~~ must file stamp and assign a case number to the notice. No filing fee ~~shall be~~ is required.

(b) ~~*Uncontested forfeiture action.*~~ **Uncontested Forfeiture Proceeding.** If a forfeiture proceeding is uncontested, the ~~district~~ court may ~~enter an~~ order ~~of~~ forfeiture ~~pursuant to~~ under K.S.A. 60-4116 without ~~requiring any further~~ additional notice.

(c) ~~*Contested forfeiture action.*~~ **Contested Forfeiture Proceeding.** If a judicial forfeiture proceeding ~~is commenced following a notice of pending forfeiture in order~~ to resolve ~~any~~ a proper claim is commenced after a notice of pending forfeiture, no additional notice of the judicial forfeiture proceeding ~~shall be~~ is required.

COMMENT

The language of Rule 121 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 122

~~ELECTRONIC FILING AND TRANSMISSION OF DISTRICT COURT DOCUMENTS~~
ELECTRONIC FILING AND TRANSMISSION OF DISTRICT COURT DOCUMENTS

~~A district court may, by local rule, require documents to be filed, signed, or verified by electronic means that are consistent with technical standards for electronic filing and transmission as approved by the Supreme Court. The local rule may impose a reasonable fee for electronic filing and/or remote access viewing, if available, to support the expenses associated with the e-filing system.~~

~~ORDER ADOPTING TECHNICAL STANDARDS~~

~~The following technical standards provide guidelines for implementation of electronic filing and transmission systems in Kansas district courts pursuant to Supreme Court Rule 122.~~

~~**TECHNICAL STANDARDS GOVERNING ELECTRONIC FILING AND TRANSMISSION OF DISTRICT COURT DOCUMENTS**~~

~~A.~~ ~~Technical Standards~~

~~The following technical standards are mandatory requirements which guide implementation of electronic document filing and transmission systems in Kansas district courts. The standards are phrased as functional requirements that any electronic filing and transmission system must meet; there may be a variety of technical implementations by which each functional standard may be met. The standards focus on ensuring the integrity of the court record and providing a capability for filing that is at least as good as existing paper systems.~~

~~B.~~ ~~Electronic Filing and Transmission~~

~~Electronic filing and transmission is the process by which information is delivered by electronic means rather than in the conventional paper form. This includes any documents which normally become part of the case file, whether submitted by the court or the litigants.~~

~~C.~~ ~~Document and File Format Standards~~

~~1.~~ ~~Documents filed electronically shall comply with all applicable rules of the Kansas Supreme Court and of the receiving court regarding form and content.~~

~~2.~~ ~~All documents filed electronically must be capable of being printed as paper documents without loss of content or appearance.~~

~~3.~~ ~~Electronic documents must be stored in, or convertible to, a format that can be archived in accordance with specifications set forth in Kansas Supreme Court Rule 108.~~

4. Electronic documents must be retained in the electronic format in which they are submitted. Documents submitted to the court in paper form may subsequently be imaged to facilitate the creation of an electronic case file after which the paper document does not need to be retained by the court.
5. Every implementation of electronic filing must accommodate submission of nonelectronic documents or exhibits in special circumstances as defined by local rule.
6. The appearance docket shall indicate the time of filing of every item and from whom it came and shall be electronically visible to those persons enrolled in the electronic filing system. This docket entry shall satisfy the duty of the clerk outlined in K.S.A. 60-2601 to file stamp and initial all filed documents.

D. Signatures
1. An electronic signature is defined under K.S.A. 2000 Supp. 16-1602(i) of the Uniform Electronic Transactions Act, K.S.A. 2000 Supp. 16-1601 *et seq*., as an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
2. A digital signature is defined under K.S.A. 2000 Supp. 16-1602(e) as a type of electronic signature consisting of a transformation of an electronic message using an asymmetric crypto system such that a person having the initial message and the signer's public key can accurately determine whether:
    a. the transformation was created using the private key that corresponds to the signer's public key; and
    b. the initial message has not been altered since the transformation was made.
3. A digital signature, per K.S.A. 2000 Supp. 16-1602(e), may be accepted as a substitute for, and, if accepted, shall have the same force and effect as, any other form of signature.
4. Digital signature standards based on public-private key encryption technology may be used to authenticate filer identity and to ensure the integrity of a document's content.
5. An electronic, digital signature contained in an electronic court filing will be treated as an original signature and has the assurances of a signature under K.S.A. 2000 Supp. 60-211. An electronic signature contained in an electronic document originating from a clerk of a court shall be treated as an original signature and has the assurances of a signature under K.S.A. 2000 Supp. 20-365.

E. Authorization of Electronic Filers
1. Persons intending to file documents electronically with a district court shall follow the district court's established procedures for enrolling in the electronic filing system. The district court may request information necessary to establish that person as an authorized system user. The information shall include:

a. the filer's public key which will serve to authenticate the filer's future electronic transmissions; and
b. the filer's full name, business address, phone number, e-mail address, and Kansas Supreme Court registration number if the filer is an attorney; and
c. the name and account number of the filer's financial institution, which will be debited to pay any required case and electronic filing fees (lack of funds for a bank draft will be treated the same as an insufficient funds check); or
d. (1) the name of the credit card system and the account number to which the fees shall be charged, (2) the signature of the cardholder authorizing the charging of the fee, and (3) the expiration date of the credit card.

2. Payment of bank charges for debit transactions will be paid by the court from interest earned on the court bank account per Supreme Court Administrative Order 30.
3. No person shall file documents electronically with a district court until the filer has received confirmation and registration approval from the district court.
4. Payment of court costs through the debit transaction referenced in E.1.c. or the credit transaction referenced in E.1.d. above shall satisfy the statutory requirements for payment of court costs as stated in K.S.A. 61-2501 and K.S.A. 60-2001.

F. Document and System Security Standards
1. A mechanism must be provided to ensure the authenticity of the electronically filed document. This will include the ability to verify the identity of the filer and the ability to verify that a document has not been altered since it was filed.
2. The authentication private key shall remain under the exclusive control of the filer. If security of the public-private key pair is compromised, the filer will promptly notify the district court, will discontinue use of the compromised key pair, and will replace the compromised key pair in the court authentication and registration process.
3. If a court implements an interactive electronic filing process, the court must control interactive access to the electronic filing system via a user authentication process.
4. Media capable of carrying viruses into court computers (*e.g.*, floppy disks and electronic mail) must be scanned for computer viruses prior to processing.
5. It is necessary to isolate access to computers used for electronic filing from access to other court networks and applications.
6. Computer systems used for electronic filings must protect electronic filings against system and security failures during periods of system availability. In addition, they must provide normal backup and disaster recovery mechanisms.

G. Electronic Filing and Transmission Process Standards
1. Court computers shall be available on a 24-hour basis to receive electronic filings. This provision does not prevent the court from providing for normal repair and maintenance of the receiving computer.

2. All electronic document submissions must generate a positive acknowledgment or notice that is given to the filer and other parties in the case who have enrolled in the electronic filing system to indicate that the document has been received by the court. The positive acknowledgment must include the date and time of the document receipt and a court-assigned document reference number (case number).
3. Electronic filings received by the court shall be deemed filed as of the time the transmission ends and the court computer provides acknowledgement to the sender of the successful transmission of the electronic document.
4. Electronic filing systems must provide a mechanism for quality assurance and quality control of the submitted documents and case management data by both the court and the filer. The court will provide notice to the filer if a transmission is received with errors.
5. Adequate public access to electronically filed documents must be provided.
6. Unless otherwise governed by local rule, electronic filings may be transmitted in successive transmissions, but no single transmission shall exceed 2 megabytes.

H. Pro Se Filings

The court may provide the ability for pro se filers to file electronically.

I. Possession of Documents

A person filing or transmitting court documents electronically shall retain, in his or her possession or control, a record of the transmission from which a full copy of the document can be made during the pendency of the action and shall produce such document upon request under K.S.A. 2000 Supp. 60-234 by the court or any party to the action. Upon failure to produce such document, the court may strike the electronically filed document and may impose sanctions under K.S.A 2000 Supp. 60-211. Retention of electronic documents shall include all documents filed with the district court and any other electronic communication related to the action.

J. Service by Electronic Mail

1. A party consents to service by electronic mail by: (a) enrolling in the electronic filing system; (b) filing a document by electronic mail in that proceeding; (c) serving a document by electronic mail in that proceeding; or (d) serving a pleading which includes the party's electronic mail address on the pleading.
2. Service by electronic mail shall be made by transmitting the document to the party's designated electronic mail address. To insure that the document is transmitted in a readable format, any attachments transmitted as part of an electronic mail message must be formatted in a universal computer language or format such as American Standard Code Information Interchange (ASCII) text file or Rich Text Format (RTF), or Portable Document Format (PDF).

~~3. A court may serve notice by electronic mail if the notice may be served by regular mail. The notice may be served by electronic mail on the party's attorney, when represented by counsel, or on the party, if the party consents to electronic mail service under subsection (1) of this section.~~

~~4. Service by electronic mail shall be complete when the mail message is transmitted unless the message is returned to the sender as undeliverable.~~

(a) **District Court May Require Electronic Filing.** A district court may require filing by electronic means if:

(1) the district court's electronic filing system is consistent with standards for electronic filing approved by the Supreme Court; and

(2) the Supreme Court approves the system.

(b) **Service by Electronic Means.** Service of papers under K.S.A. 60-205 by electronic means is authorized in a proceeding in a district court that has implemented an approved electronic filing system.

(c) **Fees.** The Supreme Court may approve reasonable fees to support the expenses associated with the electronic filing system.

COMMENT

The language of the opening paragraph of Rule 122 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

The restyled rule makes more clear that the Supreme Court's approval is required for implementation of electronic filing and imposition of fees.

On recommendation of the Office of Judicial Administration, the Supreme Court's order adopting technical standards will no longer appear as part of the rule. Subsection (b), however, authorizes service by electronic means to satisfy the requirement of K.S.A. 60-205(b)(2)(F).

Rule 123

~~RULE REQUIRING USE OF COVER SHEETS AND PRIVACY POLICY REGARDING USE OF PERSONAL IDENTIFIERS IN PLEADINGS~~
COVER SHEET; PRIVACY POLICY REGARDING PERSONAL IDENTIFIERS

~~(a) Effective July 1, 2005, for the filing of all new cases, the clerks of the district courts shall require the submission of a cover sheet. The cover sheets should be in substantially the same form as Appendix A hereto. [Forms may be found at www.kscourts.org.] The judicial administrator may exclude certain cases from this requirement.~~
~~(b) Parties filing new cases seeking divorce, child custody, child support, or maintenance shall furnish to the clerk on the cover sheet Social Security numbers for the parties and for the parties' children, if known, and dates of birth for parties and children.~~
~~(c) Pursuant to the court's authority recognized in K.S.A. 45-221(a)(1), Social Security numbers and dates of birth supplied to the district court in connection with a cover sheet shall remain confidential and are not to be released to the public.~~
~~(d) The cover sheet should not be retained in court case files, is not subject to Rule 108, and may be shredded or otherwise destroyed within a reasonable time after the case is entered into the case information system.~~

(a) **Cover Sheet Required.** A party that files a case must submit a cover sheet with the initial pleading. The judicial administrator may exclude categories of cases from this requirement. The cover sheet must be in substantial compliance with the forms located on the judicial council website. The following rules apply:

(1) **Cover Sheet Handling.** The cover sheet:

(A) must not be retained in the case file;

(B) is not subject to Rule 108; and

(C) may be shredded or otherwise destroyed within a reasonable time after the case is entered into the case information system.

(2) **Confidential Information.** Social security numbers and birth dates supplied on a cover sheet are confidential and may not be disclosed to the public.

(3) **Divorce, Child Custody, Child Support, and Maintenance Cases.** In an action for divorce, child custody, child support, or maintenance, the cover sheet must include, if known, social security numbers and birth dates for the parties and for the parties' children.

~~(e)~~(b) **Exclusion of Personal Identifiers from Documents.** Unless otherwise required by law or court order, parties and their attorneys ~~are directed to refrain from including,~~ must not include ~~—~~ or ~~shall~~ must partially redact ~~where~~ when inclusion is necessary~~, —~~ the following personal identifiers from all documents ~~filed with the court, including~~ and accompanying exhibits filed ~~thereto, unless otherwise ordered by~~ with the court:

(1~~.~~) ~~Social Security numbers.~~ **Social Security Number.** If an individual's ~~S~~social ~~S~~security number must be included in a pleading, only the last four digits ~~of that number shall~~ may be used.

(2~~.~~) ~~Dates of birth.~~ **Birth Date.** If an individual's ~~date of~~ birth date must be included in a pleading, only the year ~~shall~~ may be used.

(3~~.~~) ~~Financial account numbers.~~ **Financial Account Number.** If a financial account ~~numbers~~ number ~~are~~ is relevant, only the last four digits of ~~these~~ the ~~numbers~~ number ~~shall~~ may be used.

(c) **Clerk Does Not Review Document for Personal Identifiers.** ~~The parties and counsel~~ A party and the party's attorney are solely responsible for redacting personal ~~data~~ identifiers. The clerk will not review ~~each pleading~~ a document for compliance with this ~~R~~rule.

COMMENT

The language of Rule 123 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

MOTIONS, DISCOVERY, PRETRIAL PROCEDURES, AND RELATED MATTERS

Rule 131

NOTICE OF HEARINGS AND TRIAL SETTINGS

~~(a) If any party seeks the hearing of any motion and it is not a motion which may be heard *ex parte*, notice of the hearing shall be given to all parties affected either by the party, or by the clerk at the direction of the judge, not less than seven (7) days prior to the date of hearing.~~

~~(b) Matters set for hearing or trial on other days shall be at the discretion of the judge and with not less than seven (7) days notice to the parties affected. If the matter is urgent, notice shall be given as is reasonable and possible under the circumstances.~~

~~(c) Nothing in this rule shall be construed to prevent the parties, acting through their respective counsel, from agreeing on a date for a hearing on a motion or trial of the action on its merits provided counsel first receives the approval of the date from the judge to whom the action is assigned.~~

[History: Repealed effective _____, ___.]

COMMENT

The Supreme Court Rules Advisory Committee recommends repeal of Rule 131 which repeats K.S.A. 60-206(c).

Rule 132

~~DEFAULT JUDGMENTS AND EX PARTE MATTERS~~
ATTENDANCE AT DEFAULT JUDGMENT AND *EX PARTE MATTER*

~~Cases involving default judgments, *ex parte* applications and formal matters not requiring a hearing, may be presented on any court day, or at such other times as may be determined by the court.~~

~~Counsel shall be present personally to present such cases, unless excused by the judge.~~

When required by the court, a party or the party's attorney personally must present a request for default judgment, an *ex parte* application, or a formal matter not requiring a hearing.

COMMENT

The language of Rule 132 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

The Supreme Court Rules Advisory Committee recommends that the first sentence be deleted. The presumption of attendance in the second sentence was changed to a presumption of non-attendance although the court's authority to order attendance is preserved.

Rule 133

~~MEMORANDA AND ARGUMENTS ON MOTIONS~~
MEMORANDUM AND ARGUMENT ON MOTION

(a) ~~Forms of motions.~~ **Form of Motion.** Every written motion must — ~~made in writing which seeks a ruling on some part of the merits of the action (*e.g.*, lack of jurisdiction, motion for summary judgment) as distinguished from a motion regulatory only of the procedure of the action (*e.g.*, motion to limit discovery, motion to substitute successor party) shall be accompanied by a short memorandum setting forth (a) any reasons for the motion not fully stated in the motion itself, and (b) the citation,~~ in the motion or in an accompanying memorandum — without extended elaboration, ~~of any~~ state the reasons for the motion and cite authorities, if any, ~~which it is necessary for~~ the ~~judge~~ court ~~to~~ should consider in ruling ~~upon~~ on the motion.

(b) ~~Response.~~ **Response.** ~~An adverse party may at his or her option serve and file a similar memorandum in opposition to the motion within the time prescribed by local rule~~. An adverse party may file a memorandum in opposition to a motion, stating without extended elaboration the reasons the motion should be denied and citing authorities, if any, the court should consider in ruling on the motion. Except as otherwise provided by statute or these rules, the response must be filed not later than 7 days after service of the motion or as otherwise provided by the court.

(c) ~~Oral argument.~~ **Oral Argument.** The following rules govern oral argument and rulings on motions. ~~If the motion also contains a request for oral argument, or if within seven (7) days of the service of the motion an adverse party serves and files a request for oral argument, no ruling shall be made on the motion without opportunity being given to counsel to present such arguments. In the absence of any request by either party for oral argument in accordance with this Rule, the judge may set the matter for hearing or rule upon the motion forthwith and communicate the ruling to the parties. (For requirements applicable to motions for summary judgment, see Rule 141.) Notwithstanding a timely request for oral argument the court may deny such request by stating in the ruling or by separate communication that oral argument would not materially aid the court.~~

(1) **When Oral Argument is Requested.** A party may request oral argument — either in the motion or in a response filed by the adverse party under subsection (b). The court must grant a timely request for oral argument unless it states in the ruling or by separate communication that oral argument would not aid the court materially.

2) **When Oral Argument is Not Requested.** If no party requests oral argument, the court may:

(A) set the matter for hearing; or

(B) rule on the motion immediately and communicate the ruling to the parties.

COMMENT

The language of Rule 133 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

In subsection (a), the distinction between dispositive and procedural motions has been deleted.

In subsection (b), guidance is offered on the substance of the motion, and a response time has been added.

In subsection (c), the reference to oral argument in Rule 141 has been deleted because it is incorrect. That rule does not contain any specific procedures for requesting oral argument.

Rule 134

~~NOTICE OF RULINGS~~
NOTICE OF RULING

(a) **General Rule.** ~~Whenever a judge shall make a ruling~~ If the court rules on a motion or other application ~~of any kind and there are parties~~ when an affected party who ~~have~~ has appeared in the action ~~but who are~~ is not ~~then~~ present~~,~~ — either in person or by ~~their~~ the party's ~~attorneys,~~ attorney — the ~~judge shall~~ court ~~cause written~~ immediately must serve notice of ~~such~~ the ruling ~~to be sent to the parties or attorneys forthwith~~.

(b) **Exception for Case With Large Number of Parties.** The ~~provisions for~~ court may modify the notice ~~above set forth may be modified by the court~~ requirement in subsection (a) — ~~upon~~ on motion~~,~~ or on its own — ~~initiative~~ in ~~any~~ an action ~~in which there are~~ involving an unusually large number~~s~~ of parties.

COMMENT

The language of Rule 134 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 135

~~WRITTEN DISCOVERY: FORM AND LIMITATIONS~~
WRITTEN DISCOVERY: FORM AND LIMITATIONS

~~(a) *Interrogatories; Form*. The party propounding interrogatories shall first set forth each question in clear and concise language, leaving an appropriate space for the answer. The original shall be served on the adverse counsel, or the opposing party if not represented by counsel, with copies to all other counsel. In the event an answer is too lengthy to place in the space provided, it shall be attached as an appendix and clearly identified by number. The original with its answers shall be served on the party propounding the interrogatories and copies served on all counsel of record.~~

~~(b) In all damage actions the number of interrogatories shall be limited to thirty (30) interrogatories counting subparagraphs unless the court authorizes additional interrogatories upon motion or at the case management or other conference.~~

(a) **Interrogatories.**

(1) **Form.** An interrogatory must:

(A) state the question in clear, concise language; and

(B) leave sufficient space after the question to insert an answer.

(2) **Service.** The original must be served on adverse counsel, or the opposing party if unrepresented, and copies must be served on all counsel of record and unrepresented parties not in default for failure to appear.

(3) **Number Limited in Chapter 60 Damage Action.** Unless the court orders otherwise, the number of interrogatories in a damage action under K.S.A. Chapter 60 is limited to 30, counting subparagraphs.

(b) **Responses to Interrogatories.**

(1) **Form.** If an answer does not fit in the space provided, it must be attached as an appendix and clearly identified by number.

(2) **Service.** The original, with answers inserted or attached under paragraph (1), must be served on counsel for the party propounding the interrogatories and copies must be served on all counsel of record and unrepresented parties not in default for failure to appear.

(c) **Alternative Service Method for Written Discovery, Requests, and Responses.** In lieu of service by mail, interrogatories, a ~~requests~~ request for production, and a ~~requests~~ request for admission, and responses to them, may be served as an attachment — in a commonly used word processing format — to an electronic mail transmission ~~in a commonly used word processing format~~.

COMMENT

The language of Rule 135 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

New subsection (a)(3) clarifies that this limitation on interrogatories applies to Chapter 60 damage actions.

Rule 136

DISCOVERY CONFERENCE

[**History**: Repealed effective March 11, 1999.]

Rule 137

~~WRITTEN COMMUNICATIONS WITH COURT~~
WRITTEN COMMUNICATION WITH COURT

~~(a) In the absence of a specific directive by the court, the original of a brief or memorandum shall be filed with the clerk of the court in the county where the matter is pending. In the event that the court is part of a multi-county judicial district, counsel shall forward a copy of each brief or memorandum to the judge handling the matter at the judge's chambers.~~
~~(b) Other communications with the judge shall be mailed or delivered to the judge handling the matter at the judge's chambers in the county of his or her residence.~~

(a) **In General.** This rule does not supersede any statute or rule that governs document filing.

(b) **Brief, Memorandum, or Other Communication With the Court.** Unless the court directs otherwise:

(1) the original of a brief, memorandum, or other communication with the court must be filed in the county where the case is pending;

(2) a copy must be served on all counsel of record and unrepresented parties not in default for failure to appear; and

(3) if the court is part of a multicounty judicial district, a copy of each brief, memorandum, or other communication with the court must be sent to the assigned judge at the judge's chambers.

(c) ~~Counsel's duty to notify court when matter is ready for decision.~~ **Counsel's Duty to Notify Court When Matter is Ready for Decision.** ~~In all instances where~~ When a ~~briefs~~ brief or ~~memoranda~~ memorandum ~~are related~~ relates to a matter being submitted to the ~~judge~~ court for ~~ruling or~~ decision, counsel ~~shall~~ must notify the ~~judge~~ court when the filings with the clerk are completed or the matter is otherwise ready for ~~ruling~~ decision.

~~(d) Copies of briefs, memoranda or communications shall be forwarded to other counsel of record.~~
~~(e) This rule does not supersede the requirement of any specific statute or specific rule as to the filing of documents; and pleadings in cases shall be filed with the clerk of the district court in the county where the litigation is pending.~~

COMMENT

The language of Rule 137 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (b)(1) adds "other communication" to the papers which must be filed in the county where the case is pending.

Rule 138

~~OPENING OF DEPOSITIONS~~
OPENING OF DEPOSITION

A ~~Depositions~~ deposition in a pending ~~cases~~ case — which ~~have~~ has been filed ~~in the office of the clerk as permitted by~~ under K.S.A 60-205(d) or by court order under K.S.A. 60-230(f) — ~~or as ordered by the court~~ may be opened as allowed by ~~a judge~~ the court. ~~or any attorney of record in the case.~~

COMMENT

The language of Rule 138 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

Statutory references reflect recent amendments to the rules of civil procedure.

Rule 139

~~APPLICATIONS FOR SUPPORT ORDERS IN DOMESTIC RELATIONS CASES AND MOTIONS TO MODIFY EXISTING SUPPORT ORDERS~~
DOMESTIC RELATIONS AFFIDAVIT; SUPPORT ORDER AND PAYMENT

~~(a) Applications for *ex parte* orders which include requests for temporary support and all motions to modify existing support orders shall be accompanied by a Domestic Relations Affidavit. The form of the affidavit is set forth in the appendix of the Kansas Child Support Guidelines.~~
~~(b) A copy of the *ex parte* order and of the Domestic Relations Affidavit shall be served promptly on the individual to whom it is addressed.~~
~~(c) All support payments of child support or alimony, either temporary or permanent, shall be made to the Kansas Payment Center, unless otherwise directed by the court.~~
~~(d) No *ex parte* order for support will be issued without this required affidavit.~~
~~(e) Any party challenging a support order of the court or facts contained in the Domestic Relations Affidavit shall file a similar affidavit at the time of filing the party's response, answer, or motion for modification.~~
~~(f) A party filing a motion to modify an existing order of support shall serve a copy of the Domestic Relations Affidavit along with the motion on the adverse party. Any person challenging a motion to modify an existing support order or the facts contained in the movant's affidavit shall file and serve a similar affidavit prior to the hearing on the motion to modify.~~
~~(g) Where child support is required, a Child Support Worksheet shall accompany the Domestic Relations Affidavit.~~

(a) **Domestic Relations Affidavit Required in Divorce, Annulment, or Separate Maintenance Case.** All parties — including unrepresented parties — in a divorce, annulment, or separate maintenance case must prepare and file a domestic relations affidavit on the form set forth in the appendix of the Kansas Child Support Guidelines. In a contested case, the parties must exchange domestic relations affidavits before trial.

(b) **Domestic Relations Affidavit Required in Matter Involving Support.** A domestic relations affidavit must be included with:

(1) an *ex parte* motion that includes a request for temporary support;

(2) a motion to modify an existing support order; and

(3) a response or answer challenging:

(A) a support order; or

(B) facts contained in a domestic relations affidavit.

(c) **When Child Support Worksheet Required.** When child support is an issue, a child support worksheet — on the form set forth in the appendix of the Kansas Child Support Guidelines — must accompany the domestic relations affidavit.

(d) **No *Ex Parte* Order Without Required Attachment.** An *ex parte* support order may not be issued in the absence of an accompanying domestic relations affidavit or child support worksheet required under subsection (b) or (c).

(e) **Service.**

(1) ***Ex Parte* Order.** A copy of an *ex parte* support order — and any accompanying domestic relations affidavit or child support worksheet if required under subsection (b) or (c) — must be served promptly on the individual to whom it is addressed.

(2) **Motion to Modify Support Order.** A party filing a motion to modify a support order must serve the motion, along with a copy of the domestic relations affidavit — and a copy of the child support worksheet if the order is for child support — on the adverse party.

(f) **Filing and Service of Required Document in Response to Motion to Modify.** A person challenging a motion to modify a support order or facts contained in an accompanying domestic relations affidavit or child support worksheet must file and serve a domestic relations affidavit — and a child support worksheet if the motion seeks to modify child support — prior to the hearing on the motion to modify.

(g) **Support Payment.** Unless the court orders otherwise, every child support or spousal support payment — whether temporary or permanent — must be made to the Kansas Payment Center.

COMMENT

The language of Rule 139 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (a) incorporates the content of former Rule 164.

Rule 140

~~FINAL PRETRIAL CONFERENCE~~
FINAL PRETRIAL CONFERENCE PROCEDURE

(a) **Timing.** ~~The~~ A final pretrial conference ~~contemplated by~~ under K.S.A. 60-216(e) ~~shall be held before a judge with court participation throughout.~~ may be held when discovery is complete. The parties must be prepared to complete the procedural steps stated in subsection (c). ~~The~~ If a final pretrial conference ~~shall~~ is held, it must be held at least ~~fourteen (~~14~~)~~ days ~~prior to~~ before trial.

~~(b) The final pretrial conference is predicated upon discovery being completed and the parties being prepared to complete the procedural steps recited herein. If additional witnesses or evidence is discovered after the final pretrial conference, the discovering party shall immediately make this known to all parties and the court in writing.~~

(b) **Participants.** If a final pretrial conference is held, the court must conduct the conference and participate throughout. An attorney who will participate in the trial must attend the conference. A party may be — and if the court orders, must be — present at the conference.

~~(c) Parties may be present at the final pretrial conference and shall be present when ordered by the court.~~
~~(d) The final pretrial conference will be conducted by an attorney who will participate in the trial of the case.~~
~~(e) The court shall prepare the pretrial order or designate counsel to do so.~~
~~(f) Should counsel object to the pretrial order, counsel shall state his or her objections in writing and forward the objections and the pretrial order to the court within fourteen (14) days.~~

~~(g)~~(c) **Procedural Steps.** ~~The~~ A final pretrial conference ~~will~~ must be conducted substantially in conformity with the following procedural steps:

(1) Each party, beginning with the ~~P~~plaintiff, states ~~will state~~ concisely ~~his factual contentions and the theory of his action.~~:

(A) the party's factual contentions; and

(B) the theory of the party's action, defense, or claim for relief.

~~(2) Defendant will state concisely his factual contentions and the theories of his defenses and claims for relief.~~

~~(3)~~(2) The court ~~will~~ rules ~~upon~~ on any proposed amendments.

~~(4)~~(3) The ~~C~~court and ~~counsel~~ parties ~~will~~ confer ~~as to~~ about undisputed matters ~~not disputed~~ and request ~~will be made for~~ admissions and stipulations.

~~(5)~~(4) Parties submit in writing the ~~N~~names and addresses of witnesses ~~who will be called will be submitted in writing and~~ ~~counsel~~ parties plan to call. Parties ~~will~~ must be prepared to state the essence of ~~their~~ each witness' testimony.

~~(6)~~(5) ~~All exhibits which parties intend to use at the trial shall be known to the~~ Parties inform the court and opposing ~~counsel~~ parties ~~and~~ of all exhibits parties intend to use at the trial. The exhibits may be marked for identification and admitted into evidence.

~~(7)~~(6) The court may rule on any motions, including motions in limine, for dismissal, judgment on the pleadings, or summary judgment.

~~(8)~~(7) ~~Counsel~~ Parties ~~will~~ state ~~if a jury is requested, if a jury of less than twelve (12) will be accepted, and time required for trial.~~:

(A) whether a jury is requested and, if so, whether a jury of less than 12 will be accepted; and

(B) the amount of time required for trial.

~~(9)~~(8) If needed, the court appoints ~~A~~ a guardian *ad litem* ~~will be appointed if advisable~~.

~~(10)~~(9) ~~Limitations upon~~ The court considers and rules on limiting the number of expert and cumulative witnesses ~~for~~ each ~~side~~ party ~~will be considered and ruled upon~~ may call.

~~(11)~~(10)~~The issues of fact will be stated by the court.~~The court states the factual issues.

~~(12)~~(11)~~The questions of law will be stated and the court will rule thereon.~~The court states and may rule on the legal issues.

~~(13)~~(12)~~Questions of evidence will be stated and the court will rule thereon.~~ The court states and may rule on evidentiary issues.

~~(14)~~(13)~~Problems relative to~~ The court may rule on jury ~~instructions~~ instruction issues ~~will be stated and the court will rule thereon~~.

~~(15)~~(14)The ~~position of~~ parties ~~relative to settlement shall be considered and the possibility of~~ discuss and explore settlement possibilities ~~explored~~.

~~(16)~~(15)~~If~~ ~~t~~The court ~~authorizes~~ determines whether ~~the filing of~~ briefs ~~the time of filing shall be specified.~~ may be filed and, if so, specifies the time for filing them.

~~(17)~~(16)~~Any~~ The court determines any procedures that may aid in ~~the~~ disposition of the case ~~will be determined~~, including:

(A) submission on special verdict or general verdict and interrogatories~~,~~;

(B) consolidated or split trials~~,~~;

(C) reference to a master~~,~~; ~~less than twelve (12) jurors~~ and

(D) less than unanimous verdict.

~~(h)~~(d) **Additional Matters in Condemnation Case.** In a condemnation case, the following additional matters ~~shall~~ must be considered ~~and determined~~:

(1) Date of the taking.

(2) Any ~~inconsistencies~~ inconsistency between the appraisers' report and the petition's stated description of the taking ~~stated in the petition~~.

(3) Legal description and size of the original tract before the taking.

(4) Legal description and size of the original tract taken.

(5) Size of the tract or parcel remaining after the taking.

(6) The nature of the taking~~,~~ — whether a fee simple interest or an easement~~,~~ — and any limitations on the taking established in the ~~condemnation~~ petition ~~and/~~or appraisers' ~~reports~~ report.

(7) Access rights taken.

(8) Any other factors to be considered in ascertaining compensation, *i.e.*, K.S.A. 26-513(d).

(9) The parties' ~~P~~positions ~~of the parties~~ regarding highest and best use.

(10) Requests for ~~other~~ admissions and stipulations.

(11) Exhibits, plats, or demonstrative evidence to be introduced.

(12) Views of the premises.

(13) For each ~~W~~witness-~~appraisers~~ appraiser ~~. For each witness~~ who will testify as to the value or damage, ~~each~~ the party calling the witness ~~shall~~ must state the witness' valuation of the entire property or interest immediately before the taking and, ~~where~~ when appropriate, the valuation of that portion of the tract or interest remaining immediately after the taking.

(14) Any special instructions needed.

(15) In the case of a temporary ~~takings~~ taking, the duration of the taking.

(16) Any ~~motions~~ motion in limine not previously ruled upon.

(e) **Post-Conference Discoveries.** If an additional witness or evidence is discovered after the final pretrial conference, the discovering party must immediately must inform, in writing, the court and all parties not in default for failure to appear.

(f) **Pretrial Order.** The court must prepare — or designate counsel to prepare — the pretrial order.

(g) **Objection to Pretrial Order.** If a party objects to a pretrial order, the objection must be filed, with a copy of the pretrial order attached. An objection must be filed not later than 14 days after the pretrial order is filed unless trial begins in that 14-day period, in which case the objection must be filed at the beginning of trial.

COMMENT

The language of Rule 140 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

Subsection (a) has been amended to clarify that a final pretrial conference is not mandatory.

New subsection (c)(6) includes a reference to motions in limine.

New subsection (c)(11), (12), and (13) state the court "may rule," allowing the court to reserve ruling until trial.

New subsection (g) clarifies when objections to a pretrial order must be filed.

Rule 141

~~SUMMARY JUDGMENTS~~
SUMMARY JUDGMENT

~~No motion for summary judgment shall be heard or deemed finally submitted for decision until:~~

~~(a) The moving party has filed with the court and served on opposing counsel a memorandum or brief setting forth concisely in separately numbered paragraphs the uncontroverted contentions of fact relied upon by said movant (with precise references to pages, lines and/or paragraphs of transcripts, depositions, interrogatories, admissions, affidavits, exhibits, or other supporting documents contained in the court file and otherwise included in the record); and~~

~~(b) Any party opposing said motion has filed and served on the moving party within twenty-one (21) days thereafter, unless the time is extended by court order, a memorandum or brief setting forth in separately numbered paragraphs (corresponding to the numbered paragraphs of movant's memorandum or brief) a statement whether each factual contention of movant is controverted, and if controverted, a concise summary of conflicting testimony or evidence, and any additional genuine issues of material fact which preclude summary judgment (with precise references as required in paragraph [a], *supra*).~~

~~The motion may be deemed submitted by order of the court upon expiration of twenty-one (21) days, or expiration of the court ordered extended period, after filing and service on opposing counsel of the brief or memorandum of moving party notwithstanding the failure of the opposing party to comply with paragraph (b), *supra*. In such cases the opposing party shall be deemed to have admitted the uncontroverted contentions of fact set forth in the memorandum or brief of moving party. In determining a motion for summary judgment the judge shall state the controlling facts and the legal principles controlling the decision in accordance with Rule 165.~~

(a) **Motion for Summary Judgment; Requirements.** A motion for summary judgment must be accompanied by a memorandum or brief that:

(1) states concisely, in separately numbered paragraphs, the uncontroverted contentions of fact on which the movant relies;

(2) for each fact, contains precise references to pages, lines and/or paragraphs — or to a time frame if an electronic recording — of the portion of the record on which the movant relies; and

(3) is filed and served on all counsel of record and unrepresented parties not in default for failure to appear.

(b) **Response to Motion for Summary Judgment; Requirements.** A memorandum or brief opposing a motion for summary judgment must:

(1) state — in separately numbered paragraphs that correspond to the numbered paragraphs of movant's memorandum or brief — whether each of movant's factual contentions is:

(A) uncontroverted;

(B) uncontroverted for purposes of the motion only; or

(C) controverted, and if controverted:

(i) concisely summarize the conflicting testimony or evidence and any additional genuine issues of material fact that preclude summary judgment; and

(ii) provide precise references as required in subsection (a)(2); and

(2) be filed and served on all counsel of record and unrepresented parties not in default for failure to appear not later than 21 days after service of the motion, unless the time is extended by local rule or court order.

(c) **Reply to Motion for Summary Judgment; Requirements.** Any reply must be filed and served on all counsel of record and unrepresented parties not in default for failure to appear not later than 14 days after service of the response, unless the time is extended by local rule or court order.

(d) **Objection That a Fact is Not Supported by Admissible Evidence.** A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(e) **Materials Not Cited.** The court need consider only the parts of the record that have been cited in the parties' briefs, but it may consider other materials in the record.

(f) **Hearing or Final Submission for Decision.** A motion for summary judgment may be heard only when the movant has complied with subsection (a), and one of the following has occurred:

(1) the opposing party has complied with subsection (b) and the movant has filed a reply or the time for the movant to reply has expired; or

(2) the court orders that the motion is deemed finally submitted because the opposing party failed to comply timely with subsection (b), in which case the uncontroverted factual contentions stated in the moving party's memorandum or brief are deemed admitted for purposes of the motion.

(g) **Findings and Conclusions by the Court.** When granting a motion for summary judgment, the court must state its findings of fact and conclusions of law in compliance with Rule 165. When denying a motion, the court must state the reasons for the denial.

COMMENT

The language of Rule 141 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (a)(2) incorporates references to electronically stored information, declarations, and stipulations from Federal Rule of Civil Procedure 56(c)(1)(A).

New subsection (b)(2) adds a reference to "local rule," consistent with the provisions of K.S.A. 60-256(c)(1).

New subsection (f)(1) acknowledges the moving party's right to reply to the response under K.S.A. 60-256(c)(1)(C).

On recommendation of the Judicial Council Civil Code Advisory Committee, the Supreme Court Rules Advisory Committee amended Rule 141 to conform to recent changes to Federal Rule of Civil Procedure 56. New subparagraphs (A) and (B) were added to subsection (b)(1).

New subsections (e) and (f) were added. New subsection (g) contains an additional sentence: "When denying a motion, the court must state the reasons for the denial."

Rule 142

~~MEDICAL AND PROFESSIONAL MALPRACTICE SCREENING PANELS—PROCEDURE, COMPENSATION, AND EXPENSES~~

MEDICAL AND PROFESSIONAL MALPRACTICE SCREENING PANELS

(a) **Applicability.** This rule governs the procedure for ~~The court may convene~~ a medical ~~or professional~~ malpractice screening panel ~~either before or after the filing of a petition in the district court as provided by~~ under K.S.A. 65-4901 *et seq.* ~~or~~ and a professional malpractice screening panel under K.S.A. 60-3501 *et seq.*

~~(a) *Definitions.* As used in this rule:~~

~~(1) Plaintiff shall include both the party who has filed a petition as well as a claimant who has not formalized a dispute by the filing of a petition.~~

~~(2) Defendant shall include both a party who is a defendant as the result of the filing of a petition as well as a health care provider or professional licensee against whom a claim is made before the filing of a petition.~~

~~(3) Notification shall be in writing and served pursuant to K.S.A. 60-205. Notice need only be served on counsel, if employed, rather than both a party and his or her counsel.~~

~~(4) Filing of any documents except x-rays with a chairperson shall include an original plus three copies for the other members of the panel.~~

~~(5) District judge includes chief judges where applicable.~~

~~(6) Parties include both plaintiff and defendant as hereinbefore defined. If either or both parties employ counsel, then party or parties includes counsel.~~

~~(7) Commencement of a screening panel occurs on the date when the district judge notifies the parties that a screening panel shall be convened.~~

(b) **Definitions and General Provisions.**

(1) **Definitions.** As used in this rule:

(A) "Plaintiff" includes:

(i) a party that has filed a petition; and

(ii) a claimant that has not formalized a dispute by filing a petition.

(B) "Defendant" includes:

(i) a party that is a defendant in a pending action; and

(ii) a health care provider or professional licensee against whom a claim has been made, but no petition has been filed.

(C) "Judge" means the judge specified in K.S.A. 65-4901 *et seq.* and 60-3501 *et seq.*

(D) "Party" includes a plaintiff or defendant as defined in subparagraphs (A) and (B). If a party is represented, "party" includes counsel.

(2) **General Provisions.**

(A) Whenever notice is required, notice must be served under K.S.A. 60-205.

(B) When this rule requires that a party file a document with a chairperson, the party must include the original and three copies. This requirement does not apply to an x-ray, of which only the original must be provided. The panel chairperson must make the original x-ray available for review by panel members and parties.

(C) A screening panel is convened on the date the judge notifies the parties under subsection (e).

(c) **Requesting a Screening Panel.** A party may request a screening panel by filing a written request with the judge before or after a petition is filed, but not later than 60 days after the defendant subject to the screening panel is served with process.

~~(b)~~(d) ~~*Authorization*~~ **Record Release Authorization.** ~~The~~ A plaintiff ~~who~~ that files a request for a screening panel ~~prior to the~~ before filing ~~of~~ a petition ~~shall~~ must furnish ~~—~~ to all health care providers or professional licensees ~~who~~ that have provided services or treatment to the plaintiff in connection with the claim~~,~~ ~~—~~ an authorization releasing records to the screening panel or parties. ~~Such~~ The authorization ~~shall~~ is not ~~be~~ a waiver for any other purpose.

~~(c) *Compensation and Expenses.*~~

~~Compensation and expenses of medical malpractice screening panel members shall be as provided in K.S.A. 65-4907, and any amendments thereto. Compensation and expenses of professional malpractice screening panels shall be as provided in K.S.A. 60-3508, and any amendments thereto.~~

~~(d) *Time for Request, Notice, Organization, and Conduct of Meetings.*~~

~~(1) Whether or not a petition has been filed, any party may request a screening panel by signing a request for a panel. A request for a screening panel shall not be made later than 60 days after defendants are served with process. The party shall file the request with the district judge. The judge shall then notify all parties. Where a petition has been filed and the judge pursuant to K.S.A.~~

~~65-4901 determines without a request that a screening panel shall be convened, the judge shall notify the parties. In either instance the notice shall include the name of the attorney selected as chairperson and the need to select the other members within fourteen (14) days thereafter. The judge may enter an order partially or completely staying discovery pending the report of the screening panel.~~

~~(2) A health care provider or professional licensee may not serve on the screening panel where such health care provider or professional licensee has knowledge of any material facts in the case or a relationship with any of the parties which would affect the panel member's impartial consideration of the case. A health care provider or professional licensee must have expertise in the subject matter of the claim. Parties shall not discuss material facts of the case with any panel members. A panel member shall not discuss the facts of the case outside the regular meetings of the screening panel, or permit others to discuss the facts with him or her. A panel member shall report immediately to the chairperson any attempts by anyone to discuss the facts of the case with the panel member. A panel member shall sign a statement indicating recognition of the duty to consider the case impartially. The statement shall be provided to panel members by the chairperson and shall be in substantially the following form:~~

~~Statement of Panel Member~~

~~I understand and agree to abide by the following principles:~~

~~I have no knowledge of material facts of the case, or relationships with any of the parties, which might affect my impartial consideration of the case.~~

~~I have had no contacts with any party concerning the facts of the case other than contacts disclosed to the chairperson of the panel.~~

~~I will not discuss the facts of the case outside the regular meetings of the panel and will report immediately to the chairperson any attempts by anyone to discuss the facts of the case with me.~~

~~_____~~

~~(Signature of Panel Member)~~

(e) **Notice.** After a request for a screening panel is filed — or when a petition is filed and the judge, under K.S.A. 65-4901, determines a screening panel should be convened — the judge must notify the parties. The notice must include the name of the attorney selected as chairperson and instruct the parties to select the other panel members not later than 14 days after the notice is served.

(f) **If Multiple Parties Cannot Agree on Panel.** If a claim involves multiple plaintiffs or multiple defendants and the parties cannot agree on a three-member panel or enlarged panel, the judge may:

(1) convene one or more screening panels;

(2) select the same chairperson for all panels; and

(3) suggest or require that all panels meet separately or jointly.

(g) **Discovery in a Pending Action.** The judge may issue an order partially or completely staying discovery pending a screening panel's report.

(h) **Plaintiff to Provide Documents.** Not later than 30 days after the judge notifies the parties that a screening panel will be convened, the plaintiff must file a copy with the chairperson — serving a copy on the other party — of all medical records, medical care facility records, x-rays, test results, treatises, documents, tangible evidence, and written contentions on which the plaintiff relies.

(i) **Defendant to Provide Documents.** Not later than 30 days after plaintiff's filing under subsection (h), a defendant must file a copy with the chairperson — serving a copy on the plaintiff — of all medical records, medical care facility records, x-rays, test results, treatises, documents, tangible evidence, and written contentions not yet provided on which the defendant relies.

(j) **Written Contentions.** A party's written contentions under subsection (h) or (i) must contain:

(1) a statement of the factual and legal issues;

(2) a brief statement of the facts — limited to facts included in material filed with the chairperson — in support of the party's claim or defense; and

(3) a brief statement of the applicable law, including citation of authority.

(k) **Panel Member Qualifications and Requirements.**

(1) A health care provider or professional licensee may not serve on a screening panel if the provider or licensee has:

(A) knowledge of any material facts in the case; or

(B) a relationship with a party that would affect the panel member's impartial consideration of the case.

(2) To serve on a screening panel, a health care provider or professional licensee must have expertise in the subject matter of the claim.

(3) A panel member must not discuss the facts of the case outside the regular meetings of the screening panel or permit others to discuss the facts with the panel member. A

panel member must report immediately to the chairperson any attempt by anyone to discuss the facts of the case with the panel member.

(4) A panel member must sign a statement acknowledging the duty to consider the case impartially. The statement must be in substantially the following form:

Statement of Panel Member

I have no knowledge of material facts of the case, or relationship with any of the parties, which might affect my impartial consideration of the case.

I have had no contact with any party concerning the facts of the case other than contacts disclosed to the chairperson of the panel.

I will not discuss the facts of the case outside the regular meetings of the panel and will report immediately to the chairperson any attempt by anyone to discuss the facts of the case with me.

_____
(Signature of Panel Member)

(5) The chairperson must provide to panel members for signature ~~T~~the statement ~~shall be~~ required by paragraph (4), accompanied by a copy of this rule, the relevant statutes concerning the screening ~~panels~~ panel, and a letter ~~from the chairperson~~ briefly explaining or describing ~~the following~~:

~~(a)~~(A) the parties involved;

~~(b)~~(B) the panel's composition ~~of the panel~~;

~~(c)~~(C) the panel's basic procedure ~~of the panel~~;

~~(d)~~ (D) the general issues ~~for~~ the panel must ~~determination~~ determine;

~~(e)~~(E) the ~~requirements~~ requirement ~~relating to~~ of impartial consideration ~~by the panel~~; and

~~(f)~~(F) the panel members' compensation ~~of panel members~~.

(l) **Organization and Conduct of Meetings.**

~~(3)~~(1) As soon as practicable, ~~T~~the chairperson of ~~the~~ a screening panel~~, as soon as practicable shall~~ must convene the screening panel at a time and place ~~to be~~ agreed

upon by the panel members and ~~shall~~ must notify the parties of the meeting date ~~of the panel meeting~~.

~~(4) Within thirty (30) days after the judge notifies the parties that a screening panel shall be convened, the plaintiff shall file with the chairperson all medical records, medical care facility records, x-rays, test results, treatises, documents, tangible evidence, and written contentions upon which the plaintiff or claimant relies. A copy thereof shall be provided to the other party except x-rays the original of which shall be made available to all parties by the chairperson. [See (a) (4) of this rule for number of copies.]~~

~~(5) Within thirty (30) days after plaintiff's filing, the defendant shall in like manner provide the chairperson and the plaintiff a copy of all medical records, medical care facility records, x-rays, test results, treatises, documents, tangible evidence, and written contentions not theretofore provided. [See (a) (4) of this rule for number of copies.]~~

~~(6) In a claim involving multiple plaintiffs or multiple defendants where the parties cannot agree on a three-member panel or enlarged panel, the district judge shall convene one or more screening panels as the judge shall determine to be necessary and may select the same chairperson for all of said panels and may suggest or require that all of such panels meet separately or jointly.~~

~~(7) The contention of the parties shall contain a statement of the issues of fact and law; a brief statement of the facts in support of and in opposition to the claim; and a brief statement of the law that is applicable with citation of authority in support thereof. Contentions shall not contain a statement of facts not included in the material filed with the chairperson.~~

~~(8) Oral testimony and the presence of the parties shall not be permitted. The screening panel shall determine if the material provided by the parties is adequate from which a decision can be made on the issue of whether there was a departure from the standard practice of the health care provider or professional licensee and whether a causal relationship existed between the damages claimed by the plaintiff and such departure, if any. If the screening panel determines that further information or legal authority is required, the screening panel at the discretion of the chairperson shall notify the parties of the additional material required and may submit written questions to the parties the answers to which need not be verified under oath. The requested additional material shall be limited to the issues of fact as contained in the contentions. Such additional material and answers shall be filed with the chairperson within fourteen (14) days after receipt of the written questions by mailing a copy of such answers to all parties and the chairperson.~~

~~(9) The chairperson's duties shall be to conduct such meetings as may be necessary to arrive at the facts. The chairperson shall advise the other members of the screening panel of the applicable rules of law and such rules shall be recorded in the opinion handed down by the screening panel. The screening panel then shall review all of the material and decide the facts and from those facts determine whether there was a~~

~~departure from the standard practice of the health care provider specialty or profession involved. If a departure is found, there shall be further determination of whether a causal relationship existed between the damages claimed by the plaintiff and any such departure. Such findings must be based on reasonable probability but need not be to a scientific certainty.~~

~~(10) The screening panel shall prepare a written opinion of its findings. Any materials considered by the panel that were not provided by the parties shall be itemized in the panel's report. The opinion shall be supported by corroborating references to published literature and other relevant documents and shall:~~

~~A. state the standard of practice of the health care provider specialty or profession involved under the facts of the claim;~~

~~B. state whether there was a departure from the standard practice of the health care provider specialty or profession involved and the facts in support of a finding of departure, if any is found;~~

~~C. if a departure is found, state whether a causal relationship exists between the claimed injury sustained by the plaintiff and such departure. If a causal relationship is found, state the facts in support of such causal relationship; or~~

~~D. if the screening panel is unable to make a finding of either no departure or no causal relationship or both, so state giving the reasons therefor.~~

(2) A screening panel may not take oral testimony.

(3) A party may not attend a screening panel meeting.

(4) A screening panel must determine whether the parties have provided sufficient material to enable the panel to decide:

(A) whether there was a departure from the standard of practice required of the health care provider or professional licensee; and

(B) if there was a departure, whether the departure from the required standard of practice caused the plaintiff's claimed damages.

(5) If a screening panel determines that it requires further information or legal authority, the chairperson may:

(A) request the parties to provide the additional information or authority required, which must be limited to the factual issues stated in the parties' contentions; and

(B) submit written questions to the parties.

(6) Requested additional information or authority and answers — which need not be verified under oath — must be filed with the chairperson not later than 14 days after service of the request or written questions under paragraph (5). A copy of additional material or answers provided to the chairperson must be served on the other party.

(7) A chairperson's duties include:

(A) conducting such meetings as may be necessary to determine the facts; and

(B) advising other panel members of the applicable rules of law, which must be stated in the panel's opinion.

(8) A screening panel must:

(A) review all materials submitted by the parties;

(B) decide the facts;

(C) from the decided facts determine whether there was a departure from the standard of practice required of the health care provider or professional licensee; and

(D) if it determines that there was a departure from the standard of practice, whether the departure caused the plaintiff's claimed damages.

(9) A screening panel's findings must be based on reasonable probability but need not be based on scientific certainty.

(10) A screening panel must prepare a written opinion that includes its findings. Any materials considered by the panel that were not provided by the parties must be itemized in the panel's report. The opinion must be supported by corroborating references to published literature and other relevant documents and must:

(A) state the standard of practice of the health care provider specialty or profession involved under the facts of the claim;

(B) state whether there was a departure from the standard of practice of the health care provider specialty or profession involved or state the reasons why the panel is unable to determine whether there was a departure; and

(C) if the panel finds there was a departure, state:

(i) the facts that support the finding;

(ii) whether the departure caused the plaintiff's claimed damages or state the reasons why the panel is unable to determine whether the departure caused the damages; and

(iii) if the panel finds the departure caused the damages, state the facts that support the finding.

COMMENT

The language of Rule 142 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

Former subsection (c) on compensation and expenses was deleted from the rule because it adds nothing to the statutory provisions.

Rule 143

~~PROBATE PROCEEDINGS: TIME FOR HEARING WHERE WRITTEN DEFENSES TO PETITION FILED~~
PROBATE PROCEEDING: TIME FOR HEARING WHEN DEFENSE TO PETITION FILED

~~Whenever written defenses to a petition, other than general denials by a guardian ad litem, an attorney pursuant to the Servicemembers Civil Relief Act or other similar denials, are filed in a probate proceeding, the court shall order a continuance of not less than fifteen (15) days for the hearing of the petition unless the judge in the exercise of his or her discretion finds that there are compelling reasons to hear the petition immediately or continue the matter for a shorter period of time.~~

~~Notice of the time and place of hearing, as continued, and a copy of the written defenses and any attachments thereto shall be given in accordance with K.S.A. 59-2208.~~

(a) **Hearing Continued When Defense Filed.** When a defense to a petition — other than a general denial such as one by a guardian *ad litem* or an attorney under the Servicemembers Civil Relief Act — is filed in a probate proceeding, the court must continue the hearing on the petition for at least 14 days unless the court finds there is a compelling reason to hear the petition immediately or continue the matter for a shorter period of time.

(b) **Notice of Hearing.** Notice of a modified hearing date ordered under subsection (a), with a copy of the filed defense, must be given under K.S.A. 59-2208.

COMMENT

The language of Rule 143 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

In new subsection (a), the 15 day period has been changed to 14 days, consistent with time frames in the Code of Civil Procedure.

Rule 144

~~APPLICATION OF DISCOVERY TO K.S.A. CHAPTER 59 PROCEEDINGS~~
APPLICATION OF DISCOVERY TO K.S.A. CHAPTER 59 PROCEEDING

In ~~all~~ a ~~proceedings~~ proceeding ~~now or hereafter conducted pursuant to~~ under Kansas Statutes Annotated, Chapter 59, the parties may use the discovery procedures ~~as now prescribed by~~ in K.S.A. 60-226 ~~to~~ through ~~K.S.A.~~ 60-237~~, inclusive, or as hereafter amended, together with all rules of court pertaining thereto, shall be available to the parties in such proceedings if issues of fact have~~ if a factual issue has been raised by a written ~~defenses~~ defense. Local and Supreme Court rules governing these discovery procedures also apply.

COMMENT

The language of Rule 144 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 145

~~USE OF TELEPHONE OR OTHER ELECTRONIC CONFERENCE~~
USE OF TELEPHONE OR OTHER ELECTRONIC CONFERENCE

The court~~, in its discretion,~~ may use a telephone or other electronic conference to conduct any hearing or conference~~,~~ other than a trial on the merits. For a trial on the merits, K.S.A. 60-243(a) applies. The court may require the parties to ~~make reimbursement for any charges incurred by~~ reimburse the court for any costs incurred.

COMMENT

The language of Rule 145 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

The rule has been amended to clarify that K.S.A. 60-243(a) applies to a trial on the merits.

Rule 146

~~CONSOLIDATION OF MULTIDISTRICT LITIGATION~~
CONSOLIDATION OF MULTIDISTRICT LITIGATION ON MOTION OF PARTY

(a) **Motion to Consolidate.** ~~Applications for consolidation of~~ A motion by a party to consolidate multidistrict litigation ~~pursuant to~~ under K.S.A. 60-242(c) ~~shall~~ must be ~~by motion~~ filed with the clerk of the appellate courts with proof of service on all counsel of record, unrepresented parties not in default for failure to appear, and ~~on~~ the clerks of the district courts in which the actions are pending.

(b) **Proof of Service.** Proof of service under subsection (a) ~~shall~~ must include the address, ~~and~~ telephone number, fax number, and e-mail address of all counsel of record and unrepresented parties not in default for failure to appear.

(c) **Docketing.** ~~The motion and any response thereto shall be subject to Rule 5.01, K.S.A. 60-205, 60-206(a) and (e), 60-210, and 60-211. No docket fee shall be charged for any motion pursuant to this rule. Upon receipt of the motion and proof of service the clerk shall docket the motion and submit it to the court.~~ On receipt of a motion and proof of service under subsection (a), the clerk must docket the motion and submit it to the court. There is no docket fee for a motion under this rule.

(d) **Applicable Statutes and Rules.** A motion under subsection (a) and any response to the motion are subject to Rule 5.01 and K.S.A. 60-205, 60-206(a) and (d), 60-210, and 60-211.

(e) **Effect on District Court Proceedings.** ~~The~~ A motion under subsection (a) ~~shall~~ does not ~~operate to~~ stay any part of the district court proceedings ~~in the district courts~~ or deprive the district courts of jurisdiction over the ~~litigation sought to be consolidated~~ pending actions.

COMMENT

The language of Rule 146 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

The title and new subsection (a) clarify that the rule applies to a motion by a party. K.S.A. 60-242(c) provides that a party or a district court in which one of multiple actions is pending can request that the Supreme Court consolidate the actions.

A fax number and e-mail address are now required. K.S.A. 60-205(b)(2)(E) now authorizes service by fax, and K.S.A. 60-211 was recently amended to require an e-mail address.

TRIALS AND RELATED MATTERS

Rule 161

~~COURTROOM DECORUM~~
COURTROOM DECORUM

(a) ~~The conduct, demeanor, and attire of attorneys w~~When present during ~~any~~ a court proceeding, an attorney or party must — through conduct, demeanor, and attire — ~~shall reflect~~ show respect for the dignity and authority of the court, and the proceedings ~~shall~~ must be maintained as an objective search for the applicable facts and the correct principles of law.

(b) Except as permitted under Rule 1001, photographic or electronic recording is not allowed.

(c) Unless otherwise authorized by local rule or permitted by the court:

(1) An attorney or party must ~~always~~ stand, if physically able, when addressed by the ~~judge~~ court or when speaking to the ~~judge.~~ court;

(2) ~~Unless the judge specifically prescribes otherwise, an~~ An attorney or party must stand, if physically able, when interrogating a witness and should refrain from moving about ~~except as may be~~ unless necessary ~~for the~~ to ~~presentation~~ present ~~of~~ an ~~exhibits~~ exhibit or ~~other assistance to~~ otherwise assist the court~~.~~; and

(3) ~~Except as the judge may specifically permit otherwise, only~~ Only one attorney may examine or cross-examine a witness on behalf of all parties united in interest. ~~Neither photographic nor electronic recording shall be allowed except as permitted by Rule 1001.~~

COMMENT

The language of Rule 161 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (c) recognizes that rules of conduct may be modified by local rule or the court.

New subsection (c)(1) and (2) recognizes that a physical disability may prevent an attorney or party from standing.

Rule 162

~~CONFLICT IN TRIAL SETTINGS IN DISTRICT COURT~~
CONFLICT IN TRIAL SETTINGS IN DISTRICT COURT

~~Whenever~~ When ~~a lawyer~~ an attorney has a conflict in trial settings and the involved district judges cannot resolve the conflict, the matter ~~shall~~ must be referred to the departmental justice. ~~In the event~~ If the district courts are in different judicial departments, the matter ~~shall~~ must be referred to both departmental justices.

COMMENT

The language of Rule 162 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 163

~~INEFFECTIVE STIPULATIONS~~
INEFFECTIVE STIPULATION

A court is not required to give effect to a ~~stipulations~~ stipulation between counsel~~,~~ or an oral ~~admissions~~ admission of counsel~~,~~ which ~~are~~ is not:

(a) ~~reduced to~~ in writing and signed by the counsel to be charged with the stipulation or admission; ~~therewith,~~ or

(b) ~~which are not~~ made a part of the record.

COMMENT

The language of Rule 163 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 164

REQUIRED FACTUAL STATEMENTS IN DIVORCE,
ANNULMENT, AND SEPARATE MAINTENANCE CASES

~~(a) In divorce, annulment, and separate maintenance cases, a Domestic Relations Affidavit as set forth in the appendix of the Kansas Child Support Guidelines shall be prepared by counsel and furnished to the court.~~
~~(b) In contested cases, the affidavits shall be exchanged by counsel before trial.~~
~~(c) Subsections (a) and (b) above apply to *pro se* litigants.~~

[History: Repealed effective _____, ____. The content appears now in Rule 139.]

COMMENT

The content of this rule has been incorporated into Rule 139, new subsection (a).

Rule 165

~~REASONS FOR DECISIONS~~
REASONS FOR DECISION

~~In all contested matters submitted to a judge without a jury including motions for summary judgment, the judge shall state the controlling facts required by K.S.A. 60-252, and the legal principles controlling the decision. If evidence was admitted over proper objections, and in the reasons for the decision the judge does not state that such evidence, specifying the same with particularity, was not considered, then it shall be presumed in all subsequent proceedings that the evidence was considered by the judge and did enter into the judge's decision.~~

(a) **Court Must State Findings of Fact and Conclusions of Law.** In a contested matter submitted to the court without a jury — and when the court grants a motion for summary judgment — the court must state its findings of fact and conclusions of law in compliance with K.S.A. 60-252.

(b) **Presumption That Evidence Was Considered.** If evidence was admitted over proper objection in a matter submitted to the court without a jury, and in the reasons for the decision the court does not state that the evidence — specifying the evidence with particularity — was not considered, then it will be presumed in a subsequent proceeding that the court did consider the evidence in reaching its decision.

COMMENT

The language of Rule 165 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

References to "controlling facts" and "legal principles controlling the decision" have been changed to "findings of fact and conclusions of law" to reflect recent amendments to K.S.A. 60-252.

Rule 166

~~MATTERS TAKEN UNDER ADVISEMENT~~
TIME FOR RULING ON MOTION; MATTER TAKEN UNDER ADVISEMENT

~~All civil matters taken under advisement by a district judge shall be decided with dispatch. If, however, the matter is not decided within ninety (90) days after final submission, within seven (7) days thereafter the judge shall file with the Judicial Administrator a written report setting forth the title and the number of the case, the nature of the matter taken under advisement, and the reasons why a judgment, ruling or decision has not been entered. The Judicial Administrator may require supplemental reports until final disposition of the matter taken under advisement and shall furnish copies of all reports, upon their receipt, to the appropriate Departmental Justice. (Adopted pursuant to K.S.A. 60-252b.)~~

~~When a court is called upon to rule on a motion, the elapsed time between final submission of the motion and the ruling thereon shall not exceed thirty (30) days, except that the ruling time on a motion for summary judgment shall not exceed sixty (60) days. If the ruling on a motion is not entered within the required time, all of the reporting requirements of the preceding paragraph shall apply, with the initial report being filed within seven (7) days after the ruling was to have been entered as required by this paragraph~~.

(a) **Ruling on Motion.** A judge of the district court must issue a ruling on a civil motion not later than 30 days after the motion's final submission except for a ruling on a motion for summary judgment, which must be issued not later than 60 days after final submission.

(b) **Ruling on Other Civil Matter Taken Under Advisement.** A judge of the district court who takes under advisement a civil matter other than a motion must issue a ruling on the matter not later than 90 days after the matter's submission.

(c) **Reporting Requirement.** If a judge of the district court fails to issue a ruling within the time required under subsection (a) or (b), the judge must — not later than 7 days after the expiration of the time period — file with the judicial administrator a written report stating the title of the case and case number, the nature of the matter taken under advisement, and the reason the judge has not entered a judgment, ruling, or decision. The judicial administrator may require supplemental reports until final disposition of the matter taken under advisement and must furnish copies of all reports received to the appropriate departmental justice.

COMMENT

The language of Rule 166 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

The first sentence of the former rule has been deleted because the words "with dispatch" don't add anything; the stated time frames speak for themselves.

Rule 167

~~USE OF JUROR QUESTIONNAIRE~~
USE OF JUROR QUESTIONNAIRE

~~The~~ A district ~~courts~~ court may ~~provide for the~~ use ~~of~~ a juror questionnaire. ~~The~~ A juror questionnaire is not a public record under the Kansas Open Records Act. ~~The~~ A juror questionnaire may be substantially ~~in the following form:~~ similar to the judicial council form.

~~IN THE DISTRICT COURT OF _____ COUNTY, KANSAS~~

~~You have been selected to serve as a juror in the District Court of [Name] County. Pursuant to Kansas statute, you are required to answer the questions on this form and return it in the enclosed addressed, stamped envelope within the next seven days. The juror questionnaire is not a public record and is only made available to court personnel and the attorneys and parties to the case being tried. Your cooperation and willingness to serve as a juror is appreciated.~~

~~**Americans with Disabilities Act Notice**~~

~~It is Judicial Branch policy to comply with the Americans with Disabilities Act. If you have questions or concerns about jury service or if you are a person with a disability needing a reasonable accommodation to serve on a jury, please contact the court clerk promptly after receiving the summons. The clerk may be contacted in person or by mail at: [address]; by email at _____; by telephone at (XXX) XXX-XXXX; or via the Kansas Relay Center at (XXX) XXX-XXXX.~~

~~Judge _____, Division I~~
~~Judge _____, Division II~~
~~(Insert names of judges of judicial district)~~

~~JUROR QUESTIONNAIRE~~

~~1. Name _____ Age _____~~
~~First Second (or initial) Last~~
~~2. Home Address _____~~
~~Residence Phone No. _____ Business Phone No. _____~~
~~3. Years of Residence: In Kansas _____ In this County _____~~
~~Is your home address in [this or name of] County? Yes ___ No _____~~
~~4. Former Residence _____~~
~~5. Marital Status: (Married, Single, Divorced or Widowed) _____~~
~~A. Number and ages of any children _____~~
~~_____~~
~~6. If married, name and occupation of husband or wife _____~~
~~_____~~

7. Your Occupation_____
A. If not self-employed, name of employer_____
8. If you are not now employed, give your last occupation and employer _____
_____
9. Have you ever served on a jury? Yes___ No___
Have you served as a juror in this county within the last year? (Answer "Yes" if you were selected as a juror or were summoned and appeared, even if not selected).
Yes___ No___
10. Have you or any members of your immediate family been a party to any civil or criminal lawsuit? Yes___ No___
A. If so, what type of lawsuit was it?_____
_____
B. When and where did it occur?_____
_____
C. Who in your family was involved in this lawsuit?_____
_____
11. Have you been convicted or pleaded guilty or *nolo contendre* ("no contest"), to a felony within the last ten years? Yes___ No___
A. If so, state when and where this conviction or plea took place _____
_____
12. Has any court ever found you to be incompetent or incapacitated?
Yes___ No___
A. If your answer to this question is yes, state where and when this took place. _____
_____
B. If restored, give the date._____
13. Do you drive an automobile? Yes___ No ___
A. If your answer is "no", is transportation available for you to get to court?
Yes ___ No ___
14. Are you currently a breastfeeding mother? Yes___ No ___
If yes, please state the approximate date you anticipate breastfeeding will be discontinued:
15. Are you related to or a close friend of any law enforcement officer?
Yes ___ No ___
16. Please state the extent of your education and vocational training:
_____

I affirm that the answers I have given to the above questions are true and correct.

_____
Signature

COMMENT

The language of Rule 167 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

The juror questionnaire form will be moved to the judicial council website.

Rule 168

~~CLOSING ARGUMENTS TO JURY~~
CLOSING ARGUMENT TO JURY

~~In the final portion of his or her argument to the jury, counsel for plaintiff should not be permitted to use more than one-half the aggregate time allotted for plaintiff's argument nor more than the time used in the opening argument. Plaintiff's counsel shall not be permitted to argue general issues not discussed in the opening portion of plaintiff's argument unless in rebuttal. If, after plaintiff has made an argument, defendant waives argument, then no further argument shall be permitted.~~

(a) **Plaintiff's Closing Argument.** The following rules apply to the final portion of plaintiff's closing argument to a jury:

(1) The argument may not exceed the lesser of:

(A) one-half the aggregate time allotted for plaintiff's closing argument; or

(B) the time used in the opening portion of plaintiff's closing argument;

(2) Plaintiff may not argue a general issue not discussed in the opening portion of plaintiff's closing argument, unless in rebuttal; and

(3) If, after the opening portion of plaintiff's closing argument, defendant waives argument, no further argument is permitted.

(4) As used in subsection (a), "plaintiff" includes the State in a criminal case.

(b) **Defendant's Closing Argument.** If plaintiff does not have the burden of persuasion on any issue, the rules in subsection (a) apply to defendant's closing argument.

COMMENT

The language of Rule 168 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (a)(4) expands the rule to include criminal cases.

Rule 169

~~POST-TRIAL COMMUNICATIONS WITH JURORS~~
POSTTRIAL COMMUNICATION WITH JURORS

~~Upon~~ On completion of ~~the~~ a jury trial and before ~~discharge of~~ the jury is discharged, the court ~~shall~~ must give the substance of the following instruction:

You have now completed your duties as jurors in this case and are discharged with the thanks of the court. The question may arise whether you may discuss this case with the ~~lawyers~~ attorneys who presented it to you. For your guidance the court instructs you that whether you talk to anyone is entirely your own decision. It is proper for the attorneys to discuss the case with you and you may talk with them, but you need not. If you talk ~~to~~ with them you may tell them as much or as little as you like about your deliberations or the facts that influenced your decision. If an attorney persists in discussing the case over your objections, or becomes critical of your service either before or after any discussion has begun, please report it to me.[1]

Also, you may soon receive a survey in the mail about my performance as judge in this trial. This survey is confidential and is from the Kansas Commission on Judicial Performance. I urge you to take a few minutes to answer the questions and return it promptly.

[1](REPORTER'S NOTE: See Supreme Court Rule 226 KRPC 3.5.)

COMMENT

The language of Rule 169 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

The Kansas Commission on Judicial Performance still exists although there is no current funding. Reference to the Commission should not be made until funding is restored.

Rule 170

~~JOURNAL ENTRIES AND ORDERS~~
PREPARATION OF ORDER

~~(a) In all cases where the judge directs that the judgment be settled by journal entry pursuant to K.S.A. 60-258, it shall be prepared in accordance with the directions of the judge. Counsel preparing the journal entry shall, within fourteen (14) days, unless another time is specifically directed by the judge, serve copies thereof on all other counsel involved. At the time of service, counsel preparing the journal entry shall file with the court a notice stating the date the proposed journal entry was served, attaching a copy of the proposed journal entry. Counsel upon whom a proposed journal entry is served shall, within fourteen (14) days after service is made, serve on the counsel preparing said journal entry any objections in writing. At the expiration of the time for serving objections, counsel preparing said journal entry shall submit the original, together with any objections received, to the judge for approval. If counsel cannot agree as to the form of the journal entry, the judge shall settle the journal entry after such hearing, if any, as the Court deems appropriate and necessary.~~

~~(b) If a party is not represented by counsel, service on the party will comply with this rule.~~

~~(c) Orders or other documents containing rulings of the judge other than judgments shall be prepared in accordance with the directions of the judge.~~

(a) **Order; Content.** When the court directs a party to prepare an order, the party must prepare the order in accordance with the court's directions. As used in this rule, "order" includes a journal entry or other document containing a court ruling.

(b) **Duties of Party Preparing Order.** A party directed to prepare an order must, not later than 14 days after the court's direction, unless the court specifies a different time:

(1) serve on counsel of record and unrepresented parties not in default for failure to appear a copy of:

(A) the proposed order; and

(B) a notice that, unless an objection is received not later than 14 days after service of the proposed order, the order will be filed with the court; and

(2) file a certificate of service with a copy of the order and notice attached.

(c) **Objections.** An objection to a proposed order must be served — not later than 14 days after service of the proposal — on the party that drafted it.

(d) **Submission to Court.**

(1) If no objection to a proposed order is served before the expiration of the time under subsection (c) for serving objections, the drafter must submit the original to the court for approval.

(2) If there is an objection, the parties must make a reasonable effort to confer to resolve the objection and, if agreement is reached, the drafter must submit the agreed journal entry to the court for approval. A "reasonable effort to confer" requires more than sending a communication to the opposing party. It requires that the parties in good faith converse, compare views, and deliberate, or in good faith attempt to do so.

(3) If — after reasonable effort to confer — the parties have not agreed on the terms of the order, the drafter must submit the original draft and the objection to the court and the court must settle the order, with or without a hearing.

~~(d)~~(e) **Title to Real Estate.** ~~Every~~ An order, journal entry, or judgment that changes the ownership or title to real estate ~~shall~~ must contain on the margin of the first page the notation "TITLE TO REAL ESTATE INVOLVED."

COMMENT

The language of Rule 170 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (a) defines "order" to include "a journal entry or other document containing a court ruling." The more general term "order" is used throughout the rule. References to "counsel" have been changed to "party" or "drafter."

New subsection (b)(1)(B) requires a notice that, unless an objection is filed, the order will be filed with the court. The notice informs *pro se* litigants and reminds attorneys that, without objection, the order will be filed.

New subsection (d)(2) provides a process for parties to work out their differences.

Rule 171

~~OATH OF BAILIFF~~
BAILIFF'S OATH OR AFFIRMATION

A ~~Persons~~ person ordered by the court to ~~be in~~ have charge of a jury during the jury's deliberations ~~shall~~ must ~~be required by the court to~~ subscribe to an oath or affirmation. ~~which~~ The oath or affirmation ~~shall~~ must be filed with the clerk ~~of the court~~. ~~Once filed with the clerk of the court,~~ ~~t~~The oath or affirmation ~~shall continue~~ remains in effect after filing ~~until it is set aside by a~~ unless the ~~judge~~ court ~~of the district court.~~ sets it aside, and a new oath or affirmation is not required if the ~~Such~~ person ~~may continue to~~ acts as a bailiff in ~~jury cases thereafter without being required to file a new oath~~ a subsequent case.

The form of the oath or affirmation ~~shall~~ should be as follows:

[OATH] [AFFIRMATION]

I, the undersigned, a duly appointed, qualified, and acting officer of the District Court of _____ County, Kansas, do solemnly [swear][affirm] to ~~faithfully~~ perform faithfully the duties of bailiff as assigned and in the manner prescribed by the court.

Further, when acting in the capacity of bailiff and a jury is entrusted to me by ~~a judge of~~ the court, I will keep the ~~jury~~ jurors together only in places designated by the court until they agree upon a verdict or are discharged by the court, subject to an order of the court permitting them to separate temporarily at night and at their meals.

I do solemnly [swear][affirm] that I ~~shall~~ will not allow any communications to be made to the ~~jury~~ jurors or make any myself unless by order of the court and, before their verdict is rendered, I ~~shall~~ will not communicate to any person the state of their deliberations or the verdict agreed upon.

[So help me God.]

_____

Subscribed and [sworn][affirmed] before me this _____ day of _____, 20____.

Clerk of the District Court
By_____
Deputy Clerk

COMMENT

The language of Rule 171 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

The option of oath or affirmation has been added.

RULE 172

EXPEDITED JUDICIAL PROCESS; SUPPORT; VISITATION

(a) **Hearing Officer; Appointment.** To increase effectiveness in support, visitation, and parentage proceedings, the chief judge in each judicial district may appoint a judge of the district court, a court trustee, or an attorney licensed to practice law in the state of Kansas to preside as a hearing officer at a summary hearing on:

(1) the establishment, modification, or enforcement of support (under the Kansas Parentage Act, K.S.A. ~~38-1110~~ 23-2201 *et seq*.; the Uniform Interstate Family Support Act, K.S.A. ~~23-9,101~~ 23-36,101 *et seq*.; K.S.A. 39-718b; K.S.A. 39-755; K.S.A. ~~60-1610~~ 23-3001 to 23-3006; K.S.A. ~~38-1542~~ 38-2242; ~~K.S.A. 38-1543~~; K.S.A. ~~38-1563~~ 38-2264; and the Income Withholding Act, K.S.A. ~~23-4,105~~ 23-3101 *et seq*.,); and

(2) the modification or enforcement of parent visitation rights and parenting time.

(b) **Hearing Officer; Judge Pro Tem.** On approval by a judicial district's departmental justice, the chief judge of the district may appoint a hearing officer who is not a judge of the district court as a judge pro tem. A judge pro tem appointed under this provision has jurisdiction and full authority to preside over matters within the scope of this rule unless the order of appointment imposes limitations.

(c) **Hearing Officer; Authority.** A hearing officer appointed under subsection (a) is authorized to:

(1) take testimony;

(2) evaluate evidence and decide the most expeditious manner to establish, modify, or enforce a court order;

(3) accept voluntary acknowledgment of support liability and a stipulated agreement setting the amount of support to be paid;

(4) accept voluntary acknowledgment of parentage;

(5) modify and enforce visitation or parenting time;

(6) prepare written findings of fact and conclusions of law; and

(7) issue an order, including a default order, but an order proposed by a hearing officer who is not a judge of the district court and has not been appointed as a judge pro tem under subsection (b) must be approved by a judge before the order is entered.

(d) **Hearing to Contest Income Withholding Order.** If an obligor contests an income withholding order, a hearing officer appointed under subsection (a) must:

(1) set a hearing at which the obligor may assert any affirmative defense authorized by K.S.A. ~~23-4,110~~ 23-3106; and

(2) not later than 45 days after notice of delinquency to the obligor, issue a decision on whether to withhold income.

(e) **Support or Maintenance Order Requirements.** A support or maintenance order must specify the payment period, such as monthly or weekly, and the date by which the first payment must be made.

(f) **Support Obligation; Time Frame.** The chief judge must monitor cases subject to expedited judicial process to ensure that an action to establish, modify, or enforce a support obligation is completed — from filing to disposition — within the following time frames:

(1) 90% in 90 days.

(2) 98% in 180 days.

(3) 100% in 365 days.

(g) **Parentage; Time Frame.** The chief judge must monitor cases subject to expedited judicial process to ensure that an action to establish parentage and a support obligation is completed — from filing to disposition — within the following time frames:

(1) 75% in 270 days.

(2) 85% in 365 days.

(3) 90% in 455 days.

(h) **Review of Hearing Officer Order.** An order of a hearing officer — other than a district judge — appointed under this rule is subject to review by a district judge on a party's motion filed not later than 14 days after the order is entered. The district judge will review the

transcript or a recording of the hearing and admitted exhibits and, applying an abuse of discretion standard, may affirm, reverse, or modify an order. If a transcript is not available, the district judge will conduct a de novo proceeding.

COMMENT

The Supreme Court amended Rule 172 on May 18, 2011 (2011 SC 33) and on September 15, 2011 (2011 SC 72), adopting the Supreme Court Rules Advisory Committee's recommendations for stylistic and substantive changes.

Subsection (a) describes who may be named as a hearing officer, and subsection (b) allows a hearing officer to be appointed as a judge pro tem.

Subsection (h) clarifies the nature of review by a district judge and specifies the standard of review.

Rule 173

~~EXPEDITED PETITION BY UNEMANCIPATED MINOR FOR WAIVER OF PARENTAL NOTICE REQUIREMENT~~
EXPEDITED PETITION FOR WAIVER OF PARENTAL CONSENT REQUIREMENT

(a) **Immediate Case Assignment.** The chief judge in each district ~~shall~~ must provide for an expedited judicial process for a ~~petitions~~ petition to waive the consent requirement ~~filed pursuant to~~ in K.S.A. 65-6705. ~~Any such~~ A petition filed under K.S.A. 65-6705 ~~shall~~ must be ~~immediately~~ assigned immediately to a district judge for consideration, hearing, and decision.

(b) **Attorney List.** The chief judge ~~shall~~ must maintain a confidential list of attorneys ~~who are~~ willing ~~to~~ — at no cost — to assist or represent a minor in a proceeding ~~to waive the notice requirement of~~ under K.S.A. 65-6705. ~~Upon~~ On notification that a minor desires assistance in preparing and filing a petition for waiver of the ~~notice~~ consent requirement, or ~~upon~~ on filing of a petition for waiver of the ~~notice~~ consent requirement, the judge ~~shall~~ must appoint counsel from ~~such~~ the attorney list to assist or represent the minor ~~at no cost to the minor~~.

(c) **Recording; Confidentiality.** ~~The judge shall ensure that all proceedings related to the petition for waiver of the notice requirement~~ A proceeding under K.S.A. 65-6705 ~~shall~~ must be recorded. ~~As required by subsection (c) of K.S.A. 65-6705, a~~ A ~~confidential~~ record of the evidence in the proceeding ~~shall~~ must be maintained confidentially ~~of the evidence in the proceeding~~, and the court ~~shall~~ must protect the anonymity of the minor. The case ~~shall~~ must be captioned "In the Matter of the Petition of Jane Doe for Waiver of ~~Notice~~ Consent." ~~Any~~ A court employee who breaches the confidentiality of a minor seeking a waiver under K.S.A. 65-6705 is subject to disciplinary action, including termination of employment, ~~pursuant to the~~ under the Kansas Court Personnel Rules.

(d) **Forms.** The ~~Office of Judicial Administration shall prepare and distribute forms that may be used by the district courts to implement this rule.~~ ~~F~~forms for a petition for waiver of the ~~notice~~ consent requirement and for instructions for delivery of the order ~~shall~~ must be available in each district court ~~clerks's~~ clerk's office ~~upon~~ on request. The forms must be in substantial compliance with the judicial council forms.

(e) **Hearing; Order.** The ~~district~~ court ~~shall~~ must hold a hearing and ~~file its written decision and~~ issue its order ~~setting forth the specific~~ — stating findings of fact and conclusions of law — ~~within~~ not later than 48 hours ~~of the filing of~~ after the petition is filed ~~in district court~~, excluding Saturdays, ~~and~~ Sundays, and holidays. ~~Upon failure to file the~~ If the court fails to issue its order within ~~such~~ the required period, the petition ~~shall be~~ is deemed granted, and the court ~~shall forthwith~~ promptly must issue an order to that effect.

(f) **Notice of Appeal.** If ~~the~~ a minor files a notice of appeal from an order denying ~~the~~ a petition ~~for waiver,~~ to waive the consent requirement in K.S.A. 65-6705, the ~~district~~ court ~~judge shall~~ immediately must order preparation of a confidential transcript of the proceedings at no cost to the minor. ~~A copy~~ Copies of the order and the notice of appeal ~~and a copy of the district judge's decision shall~~ must be filed by the appellant with the clerk of the appellate courts immediately upon filing the notice of appeal in district court. The transcript ~~shall~~ must be filed with the clerk of the district court ~~within~~ not later than ~~three (~~3~~)~~ days ~~of~~ after the filing of the notice of appeal in district court.

~~(f)~~(g) **Record on Appeal.** The clerk of the district court, ~~within~~ not later than ~~seven (~~7~~)~~ days ~~of~~ after the filing of the notice of appeal, ~~shall~~ must compile and transmit to the clerk of the appellate courts, insofar as possible in the chronological order of their filing:

(1) the following original documents:

~~(a)~~(A) the petition for waiver of the ~~notice~~ consent requirement;

~~(b)~~(B) the ~~written opinion, findings, and conclusions of the district judge~~ district court's order;

~~(c)~~(C) the notice of appeal;

(2) the ~~transcripts~~ transcript of the ~~proceedings before the~~ district court proceeding; and

(3) any other document or exhibit ~~which~~ that is part of the record.

~~(g)~~(h) **Time Computation.** Except as otherwise specifically provided by section (e) ~~of this rule~~, K.S.A. 60-206(a) ~~shall~~ governs in computing any prescribed period of time.

COMMENT

The language of Rule 173 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

The word "notice" was changed to 'consent" throughout the rule to conform to amendments to K.S.A. 65-6705.

Instead of maintaining a paper file, clerks of the district courts will be able to access the judicial council website to obtain the current forms under subsection (d).

~~POST-TRIAL~~ POSTTRIAL MATTERS

Rule 181

~~POST-TRIAL CALLING OF JURORS~~
POSTTRIAL CALLING OF JURORS

A ~~Jurors~~ juror ~~shall not~~ may be called ~~for~~ to testify at a ~~hearings~~ hearing on a ~~post-trial~~ posttrial ~~motions~~ motion ~~without an order of~~ only if the court — after ~~motion and~~ a hearing ~~held~~ to determine whether all or any ~~of the~~ jurors should be called~~.~~ — grants a motion to call the juror. If a ~~jurors~~ juror ~~are~~ is called, informal means ~~other than subpoena~~ should be ~~utilized if possible~~ used to obtain the juror's attendance at the hearing, rather than subpoena.

COMMENT

The language of Rule 181 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 182

WITHDRAWAL AND DISPOSITION OF EXHIBITS

[**History]:** Repealed effective December 4, 1997.

Rule 183

~~PROCEDURE UNDER K.S.A. 60-1507~~
PROCEDURE UNDER K.S.A. 60-1507

(a) ~~NATURE OF REMEDY. K.S.A. 60-1507 is intended to provide in a sentencing court a remedy exactly commensurate with that which had previously been available by habeas corpus in district courts in whose jurisdiction the prisoner was confined. A motion challenging the validity of a sentence is an independent civil action which should be separately docketed, and the procedure before the trial court and on appeal to the Court of Appeals is governed by the Rules of Civil Procedure insofar as applicable. No docket fee shall be required, as long as the movant complies with the provisions of subsection (b) of K.S.A. 60-2001 and amendments thereto. When the motion is received and filed by the clerk, the clerk shall forthwith deliver a copy thereof to the county attorney and make an entry of such fact in the appearance docket.~~ **Nature of Remedy.** K.S.A. 60-1507 provides a procedure to challenge the validity of a sentence of a court of general jurisdiction and is intended to provide in the sentencing court the same remedy that previously was available — by habeas corpus under K.S.A. 60-1501 — in the county where the prisoner was confined. The following rules apply:

(1) A motion under K.S.A. 60-1507 to vacate, set aside, or correct a sentence is an independent civil action that must be docketed separately.

(2) The procedure on a motion under K.S.A. 60-1507 is governed by the rules of civil procedure, K.S.A. 60-201 *et seq.*, to the extent the rules are applicable.

(3) If the movant files a poverty affidavit under K.S.A. 60-2001(b), the court will assess the initial filing fee, which may not be less than $3. A poverty affidavit applies only to the amount that must be paid to file the action and does not prevent the court from later assessing the remainder of the docket fee or other fees and costs against the movant.

(4) When a motion is filed, the clerk must serve a copy of the motion on the county or district attorney and complete a certificate of service.

(b) ~~EXCLUSIVENESS OF REMEDY.~~ **Exclusiveness of Remedy.** The remedy afforded by K.S.A. 60-1507 ~~dealing with motions to vacate, set aside or correct sentences~~ is exclusive, ~~if adequate and effective, and a prisoner cannot maintain habeas corpus proceedings before or after a motion for relief under the section~~ unless it is inadequate or ineffective to test the legality of a movant's custody.

(c) ~~WHEN REMEDY MAY BE INVOKED.~~ **When Remedy May Be Invoked.**

(1) The provisions of K.S.A. 60-1507 may be invoked only by ~~one~~ a person in custody claiming the right to be released~~,~~.

(2) ~~a~~ A motion to vacate, set aside or correct a sentence ~~cannot be maintained~~ may not be filed while an appeal from the conviction and sentence is pending or during the time within which an appeal may be perfected~~,~~.

(3) ~~a~~ A proceeding under K.S.A. 60-1507 ~~cannot~~ ordinarily may not be used as a substitute for direct appeal involving mere trial errors or as a substitute for a second appeal. Mere trial errors ~~are to~~ must be corrected by direct appeal, but trial errors affecting constitutional rights may be raised even though the error could have been raised on appeal, provided ~~there were~~ exceptional circumstances ~~excusing~~ excuse the failure to appeal.

(4) Unless the court extends the time to prevent manifest injustice, a motion under K.S.A. 60-1507 must be filed not later than one year after the later of:

(A) the date the mandate is issued by the last appellate court in this state which exercises jurisdiction on a movant's direct appeal or the termination of the appellate court's jurisdiction; or

(B) the date the United States Supreme Court denies a petition for the writ of certiorari from the movant's direct appeal or issues its final order after granting the petition.

(d) ~~SUCCESSIVE MOTIONS.~~ **Successive Motions.** ~~The~~ A sentencing court ~~shall~~ may not ~~entertain~~ consider a second or successive motion for relief ~~on behalf of~~ by the same ~~prisoner,~~ movant ~~where~~ when:

(1) the ~~same~~ ground ~~presented in the subsequent application~~ for relief was determined adversely to the ~~applicant~~ movant on ~~the~~ a prior ~~application,~~ motion;

(2) the prior determination was on the merits~~,~~; and

(3) ~~the ends of~~ justice would not be served by reaching the merits of the subsequent ~~application~~ motion.

(e) ~~SUFFICIENCY OF MOTION.~~ **Sufficiency of Motion.** A motion to vacate, set aside, or correct a sentence ~~shall be deemed~~ is sufficient if it is in substantial compliance with the judicial council form ~~set forth by the judicial council~~. The form ~~shall~~ must be furnished by the clerk ~~upon~~ on request.

(f) ~~HEARING.~~ **Hearing.** Unless the motion to vacate, set aside, or correct a sentence and the files and records of the case in the sentencing court conclusively show that the movant is entitled to no relief, the court ~~shall~~ must ~~notify the county attorney and~~ grant a prompt hearing and notify the county or district attorney. "Prompt" means as soon as reasonably possible considering ~~other urgent business of~~ the court's other urgent business. ~~All proceedings~~ A hearing on the motion ~~shall~~ must be recorded in a manner approved by the court.

(g) ~~BURDEN OF PROOF.~~ **Burden of Proof.** The movant has the burden of establishing the grounds for relief by a preponderance of the evidence.

(h) ~~PRESENCE OF PRISONER.~~ **Presence of Movant.** When the movant is imprisoned, ~~T~~the ~~prisoner~~ movant ~~should~~ must be produced at the hearing on a motion ~~attacking a sentence~~ to vacate, set aside, or correct sentence ~~where~~ if there are substantial issues of fact ~~as to~~ regarding events in which the ~~prisoner~~ movant participated. ~~The~~ A sentencing court ~~has discretion to ascertain~~ may determine whether ~~the~~ a claim is substantial before granting ~~a full~~ an evidentiary hearing and requiring the ~~prisoner~~ movant to be present.

(i) ~~RIGHT TO COUNSEL.~~ **Right to Counsel.** If a motion to vacate, set aside, or correct a sentence presents a substantial ~~questions~~ question of law or triable ~~issues~~ issue of fact, the court ~~shall~~ must appoint counsel to ~~assist~~ represent ~~the movant if the movant is~~ an indigent ~~person~~ movant.

(j) ~~JUDGMENT.~~ **Judgment.** The court ~~shall~~ must make findings of fact and conclusions of law on all issues presented.

(k) ~~APPEAL.~~ **Appeal.** An appeal may be taken to the Court of Appeals from the order entered on ~~the~~ a motion to vacate, set aside, or correct a sentence as in a civil case.

(l) ~~COSTS.~~ **Costs.** If the district court finds that a movant desiring to appeal is ~~an~~ indigent, ~~person~~ it ~~shall~~ must authorize an appeal ~~in forma pauperis~~ *in forma pauperis* and furnish the movant without cost ~~such~~ the portions of the transcript ~~of such proceeding as~~ that are necessary for appellate review.

(m) ~~ATTORNEY.~~ **Attorney on Appeal.** If a movant desires to appeal and contends ~~he or she~~ the movant is without means to employ counsel to perfect the appeal, the district court ~~shall~~ must, if satisfied that the movant is ~~an~~ indigent ~~person~~, appoint competent counsel to conduct ~~such~~ the appeal.

(n) **Withdrawal of Counsel.** If ~~for good cause shown~~ appointed counsel for good cause is permitted to withdraw while the case is pending in either the district court or the ~~supreme~~ appellate court, the district court ~~shall~~ must appoint ~~new~~ substitute counsel ~~in his or her stead~~.

COMMENT

The language of Rule 183 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

References to "county attorney" throughout the rule have been changed to "county or district attorney."

The party filing the motion is consistently referred to as the movant.

The motion is consistently referred to as a motion to vacate, set aside, or correct a sentence.

New subsection (a)(3) corrects an inconsistency between the former rule and K.S.A. 60-2001(b) regarding the docket fee. Even if a poverty affidavit is filed, an inmate must pay at least $3 and later may be required to pay the remainder of the docket fee.

Rule 184

ANNULMENT OF CONVICTION AND EXPUNGEMENT
OF RECORD PROCEDURE

[**History:** Repealed effective September 14, 1978.]

Rule 185

~~The judge or judges of each judicial district may promulgate a rule for such district substantially as follows:~~

~~LIMITATION ON FREQUENCY OF GARNISHMENTS~~

~~Except as provided in this rule, no more than two garnishments shall be issued out of this court applicable to the same claim or claims and against the same judgment debtor in any thirty (30) day period.~~

~~A judge of this court may order an exception to this rule in any case in which the party seeking the garnishment shall in person or by attorney: (*a*) certify that the garnishment is not for the purpose of harassment of the debtor, and (*b*) state facts demonstrating to the satisfaction of the judge that there is reason to believe that the garnishee has property or credits of the debtor which are not exempt from execution.~~

[History: Repealed effective _____, _____.]

COMMENT

The Supreme Court Rules Advisory Committee recommends deletion of this rule because the Legislature, in 2002, enacted the limitation in K.S.A. 60-733(g).

RULE 186

~~SATISFACTION OF MONEY JUDGMENT~~
SATISFACTION OF MONEY JUDGMENT

(a) **Applicability.** In ~~all~~ a ~~cases~~ case ~~where there has been~~ in which a money judgment has been entered ~~with~~ and is accruing interest~~, accruing as set forth in~~ under the judgment or ~~pursuant to~~ K.S.A. 16-204, the judgment debtor may obtain under this rule a final settlement amount to satisfy the judgment to a particular date ~~may be obtained as follows:~~. An interested party may utilize the procedures made available to a judgment debtor under this rule.

~~(a)~~(b) **Filing; Form.** A judgment debtor may file in the district court in which the judgment is pending a ~~written~~ proffer of ~~a payoff figure of principal and interest to satisfy~~ satisfaction ~~the~~ of money judgment~~, shall be filed with the clerk of the district court of original jurisdiction specifying a date of payment~~ stating a dollar amount to satisfy the judgment and specifying a payment date. ~~A written payoff~~ The proffer ~~shall be~~ is ~~deemed~~ sufficient if ~~in substantial compliance with the~~ it is on the judicial council form~~, set forth by the judicial council~~ with the computation required under subsection (c) attached.

~~(b)~~(c) **Computation.** ~~The person~~ A party filing a ~~proffering~~ proffer under this rule ~~the payoff figure shall~~ must compute the amount of principal, interest, and court costs to the specified date ~~requested~~ to satisfy the judgment, together with interest per day ~~thereafter~~ after that date until paid, and attach ~~it~~ the computation to the ~~request in (a) above~~ proffer filed under subsection (b). The amount of court costs ~~shall be included in the calculation regardless of whether the plaintiff or judgment creditor was required to pay court costs~~, including the docket fee, must be included in the computation regardless of which party paid the court costs or docket fee at the time ~~of filing of~~ the case was filed.

~~(c)~~(d) **Service.** ~~The~~ A ~~proffering~~ party filing a proffer under this rule ~~shall~~ must serve ~~by first class mail on all counsel and parties of record involved in the case~~ a ~~copies~~ copy of the proffer and attached computation ~~of principal and interest and costs~~ on all counsel of record and unrepresented parties not in default for failure to appear. ~~Proof of service shall be filed with the clerk of the district court within fourteen (14) days of mailing the notices.~~

~~(d)~~(e) **Objections.** ~~All counsel and parties~~ An objection to a proffer under this rule – including the objecting party's computation under subsection (c) — must be filed and served ~~shall~~ on the proffering party ~~within~~ not later than ~~fourteen (~~14~~)~~ days ~~of~~ after service of the proffer ~~or any extension thereof by~~ unless the court ~~respond in writing if they have any objections to the computations, stating that party's computation of the principal, interest, per diem and costs~~ orders a longer time. If an objection is filed and the parties do not agree on the amount needed to satisfy the judgment, the court must settle the amount. To avoid accruing additional interest while an objection is pending, ~~T~~the judgment debtor may pay to the

judgment creditor~~, filing a notice with the court to this effect,~~ the amount of principal, interest, and costs ~~which~~ the judgment debtor believes to be due and owing, filing a notice of payment together with ~~the statement provided in this subsection~~ a copy of each party's computation. If the court determines that the judgment debtor's computation and amount paid ~~is~~ were correct, no additional interest ~~shall~~ may be charged to the judgment debtor.

~~(e)~~(f) **Settling of Amount Due.** If ~~there are~~ no ~~objections~~ objection is filed ~~at~~ before the expiration of the time ~~for serving objections~~ under subsection (e) for filing objections, ~~the clerk of the district court shall certify the original as~~ the amount ~~of principal and interest~~ stated in the proffer ~~to~~ of ~~satisfy~~ satisfaction ~~the~~ of judgment~~. If counsel or parties cannot agree as to the~~ is the amount ~~needed to satisfy the judgment, then the judge shall settle the amount due to satisfy judgment~~ that entitles the judgment debtor to a satisfaction and release of the judgment under K.S.A. 60-2803.

~~(f)~~(g) **Payment; Court Costs.** ~~Upon payment to~~ On receipt from the judgment ~~creditor~~ debtor of the amount ordered under subsection (e) or specified under subsection (f) to satisfy the judgment, including any court costs, the judgment creditor ~~shall~~ must file a ~~notice~~ satisfaction and release of judgment. If the payment included court costs, the judgment creditor must:

(1) ~~with the clerk~~ state in the satisfaction and release of judgment that court costs, including the docket fee~~,~~ if applicable, ~~and the judgment~~ have been satisfied; and

(2) ~~shall~~ tender to the clerk payment of the amount of any court costs paid to the judgment creditor ~~with such notice~~ if the judgment creditor ~~had not previously made an advance cost deposit at the time of filing the case. Upon receipt of the notice and cost payment, if required to be made under this rule, from the judgment creditor that the judgment has been satisfied, the clerk of the district court shall show the judgment satisfied in the case~~ did not make an advance cost deposit when the case was filed.

COMMENT

The language of Rule 186 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (a) allows an interested party, such as a party seeking a release of lien on real estate, to use the procedures made available to a judgment debtor.

The procedure for objecting to a proffer is clarified in new subsection (e).

New subsection (f) addresses a concern that a district court clerk does not have authority to certify the amount of principal and interest. The rule has been amended to state that, if the judgment creditor does not file a timely objection, the judgment debtor is entitled to a satisfaction and release of judgment of the amount stated in the proffer.

RULE 187

~~TAXATION OF COSTS BY THE CLERK~~
TAXATION OF COSTS BY CLERK

(a) ~~*Procedure for Taxation.*~~ **Bill of Costs; Timing.** In ~~any~~ a case ~~pursuant to~~ under K.S.A. Chapter 60 ~~or 61 where~~ in which the journal entry does not state an amount for costs ~~and a party wishes to have the clerk tax costs pursuant to K.S.A. 60-2002~~, ~~the~~ a party entitled to recover costs under K.S.A. 60-2002 may file and serve a bill of costs ~~within~~ not later than 30 days after:

(1) ~~after~~ the expiration of the time allowed for appeal of ~~a~~ the final judgment or decree~~,~~; or

(2) ~~after~~ receipt by the clerk of an order terminating the action on appeal.

(b) **Form.** The bill of costs ~~shall be deemed~~ is sufficient if in substantial compliance with the judicial council form ~~set forth by the judicial council~~.

(c) **Objection.** A party may object to ~~the~~ a bill of costs by filing and serving an objection ~~within~~ not later than ~~fourteen (~~14~~)~~ days ~~of~~ after service of the bill. If an objection is filed, the court — with or without a hearing — must determine the costs to be taxed. ~~both the bill of costs and the objection shall be referred to the judge for disposition after such hearing, if any, as the judge deems appropriate.~~

(d) **Taxation by Clerk; Motion to Retax.** If no timely objection to ~~the~~ a bill of costs is filed, the clerk may proceed to tax costs according to the bill. The clerk's action may be reviewed by the court if a motion to retax the costs is filed ~~within~~ not later than ~~fourteen (~~14~~)~~ days after taxation by the clerk.

~~(b)~~(e) ~~*Items Allowable as Costs.*~~ **Items Allowable as Costs.** The items allowable as costs ~~shall be~~ are those specified in K.S.A. 60-2003, unless otherwise ordered by the court.

~~(c)~~(f) ~~*To Whom Payable.*~~ **To Whom Payable.** Unless otherwise ordered by the court, all costs taxed are payable directly to the party entitled ~~thereto and not to the clerk~~ to the payment.

~~(d)~~(g) **Priority of Court Costs.** Notwithstanding any other provision of this rule or Rule 186, court costs, including the docket fee, ~~shall~~ must be assessed and collected by the judgment creditor in ~~those~~ a ~~cases~~ case ~~where~~ in which payment of court costs is excused under K.S.A. 28-110 and ~~K.S.A.~~ 60-2005. Unless otherwise required by law and except as otherwise directed by the court, moneys received by the judgment creditor ~~shall~~ must be credited first to court costs, including the docket fee, then to the principal and interest to satisfy the judgment.

Court costs, including the docket fee, ~~shall~~ have priority and ~~shall~~ must be paid to the clerk from the first moneys collected regardless of whether the judgment creditor recovers the total amount of principal and interest ordered or files notice that judgment has been satisfied ~~as set out in subsection (f) of~~ under Rule 186(g). Upon collection of costs, the judgment creditor ~~shall~~ must pay ~~the same~~ the collected costs to the clerk and, if applicable, ~~shall~~ file notice under Rule 186(g) ~~with the clerk~~ that the judgment has been satisfied ~~as set out in subsection (f) of Rule 186~~.

(h) **Applicability to Chapter 61 Cases.** This rule applies in a case under K.S.A. Chapter 61 when costs are taxed under K.S.A. 60-2002 and 61-4002.

COMMENT

The language of Rule 187 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

The reference to Chapter 61 has been deleted from subsection (a), and new subsection (h) has been added to explain more clearly the application of this rule to Chapter 61 cases.

Rule 196

~~PUBLIC ACCESS TO DISTRICT COURT ELECTRONIC CASE RECORDS~~
PUBLIC ACCESS TO DISTRICT COURT ELECTRONIC CASE RECORDS

(a) **Definitions.** In this rule:

(1) "Bulk distribution" means the distribution of all or a significant subset of the information in court case records in electronic form, as is, and without modification or compilation.

(2) "Case-by-case access" means that each electronic case record is available only individually and that when a search for an individual electronic case record returns multiple results, each result may be viewed only individually.

(3) "Compiled information" means information that is derived from the selection, aggregation, or reformulation of all or a subset of the information from more than one individual court case record in electronic form.

(4) "Court case record" means filings or other activity relating to a particular case. The term does not include e-mail, correspondence, notes, or similar papers not filed in a court case.

(5) "Electronic access" means access to court case records available to the public through a public terminal at a courthouse or remotely, unless otherwise specified in these rules.

(6) "Electronic case record" means a digital court case record, regardless of the manner in which it has been converted to digital form. The term does not include a case record that is maintained only on microfiche, paper, or any other medium that can be read without the use of an electronic device.

(7) "Judicial administrator" means the officer responsible to the Kansas Supreme Court for implementing the Court's policies governing the operation and administration of the district and appellate courts under the chief justice's supervision.

(8) "Public access" means the process by which a person may inspect the information in a court case record that is not closed by law or judicial order.

(9) "Records custodian" means the person responsible for the safekeeping of records held by a court.

(10) "Records officer" means the person responsible for safeguarding the access under the Kansas Open Records Act (K.S.A. 45-215 *et seq*. [KORA]), Kansas Supreme Court Rules and Administrative Orders, and relevant state and federal law to records held by a court.

(11) "Register of action" means basic information about an individual court case provided by the court, consisting of dates of case activity and a brief description of the case activity. Information provided by a register of action does not include all information pertinent to the case and does not include information that is not public.

(12) "Remote access" means the process by which a person may inspect information in an electronic case record through an electronic means at a location other than the courthouse.

~~(a)~~(b) ~~Scope~~ **Scope.**

(1) This rule governs public access to and confidentiality of electronic case records in district courts. Except as otherwise provided by this rule, access to electronic court records is governed by the KORA, Kansas Supreme Court Rules and Administrative Orders ~~Kansas Open Records Act (K.S.A. 45-215 *et seq*. [KORA]), Kansas Supreme Court Rules and Administrative Orders~~, and relevant state and federal law.

(2) Non-case records or case records ~~which are~~ not available in electronic form~~;~~ — which are ~~determined to be~~ open records under the KORA, Supreme Court rule or order, or other state or federal law~~s,~~ — will be made available in a format determined by the appropriate records officer.

(3) Information in district court electronic case records available for public access in electronic format will be available at each respective ~~court~~ courthouse through the use of a public access ~~terminals~~ terminal. Only information from the county in which the courthouse is located ~~in~~ will be available~~; access to information in other counties will not be available~~. ~~In addition, c~~County information may be available through the Internet at the discretion of the chief judge and the judicial administrator. ~~Statewide information is not available at each respective court.~~

(4) This rule applies only to electronic case records as defined in this rule and does not authorize or prohibit access to information gathered, maintained, or stored by a non-~~J~~judicial ~~B~~branch governmental agency or other entity.

~~(b) Definitions~~

~~For the purpose of this rule, the following definitions apply to the terms used in this rule.~~

~~(1) Bulk Distribution - the distribution of all or a significant subset of the information in court records in electronic form, as is, and without modification or compilation.~~

~~(2) Case-by-Case Access - each electronic case record is available only individually. When a search for an individual electronic case record returns multiple results, each result may be viewed only individually.~~

~~(3) Compiled Information - information that is derived from the selection, aggregation, or reformulation of all or a subset of all the information from more than one individual court case record in electronic form.~~

~~(4) Court Case Record - filings or other activity relating to a particular case. This does not include e-mail, correspondence, notes, etc. not filed in a court case.~~

~~(5) Electronic Access - access to court case records available to the public through both public terminals at courthouses and remotely, unless otherwise specified in these rules.~~

~~(6) Electronic Case Record - a digital court case record, regardless of the manner in which it has been converted to digital form. The term does not include a case record that is maintained only on microfiche, paper, or any other medium that can be read without the use of an electronic device.~~

~~(7) Public Access - the process whereby a person may inspect the information in a court record that is not closed by law or judicial order.~~

~~(8) Remote Access - the process whereby a person may inspect information in electronic case records through an electronic means at a location other than the court.~~

~~(9) Register of Action - Basic information for an individual court case provided by the court, consisting of dates of case activity and a brief description of the case activity. Information provided by a Register of Action does not include all information pertinent to the case and does not include information that is not public.~~

~~(10) Records Custodian - the person responsible for the safekeeping of records held by a court.~~

~~(11) Records Officer - the person responsible for safeguarding the access to records held by a court under the Kansas Open Records Act, Kansas Supreme Court Rules and Administrative Orders, and relevant state and federal law.~~

~~(12) Judicial Administrator - The position responsible to the Chief Justice of the Kansas Supreme Court for implementing the policies of the Court with respect to the operation and administration of the courts, under supervision of the Chief Justice.~~

(c) ~~Persons Who Have Access~~ **Persons Who Have Access.**

(1) All persons have the access to electronic case records ~~as~~ provided in this rule.

(2) Judges, court employees, and others as determined by the Supreme Court~~,~~ may ~~have~~ be granted greater access ~~than the public in general~~ to electronic case records than the access provided in this rule.

(3) This rule does not give any person a right of access to any record to which the person is not otherwise entitled.

(d) ~~Access Provisions and Restrictions~~ **Access Provisions and Restrictions.**

(1) Public access to electronic case records or information contained in electronic case records ~~shall~~ must be available on a case-by-case basis only and may be conditioned on the user's agreement ~~consent~~ to access the records only as instructed by the court and the user's consent to ~~the~~ monitoring of the user's access to electronic court records.

(2) A copy of a court record available electronically through a public access method does not constitute the official record of the court.

(3) Due to privacy concerns, some otherwise public information, as determined by the Supreme Court, may not be available through electronic access. ~~A nonexhaustive list of i~~Information generally not available electronically includes — but is not limited to — ~~S~~social ~~S~~security numbers, dates of birth, and street addresses. Except for electronically filed documents, to which adequate public access will be provided as determined by the records custodian, only information contained in the court's ~~R~~registers of ~~A~~action will be available electronically. A ~~D~~district ~~courts~~ court may seek authority ~~provide other information provided that first, a request~~ to provide other information ~~is made~~ by making ~~in writing~~ a written request to the judicial administrator, who will make a recommendation on the request and forward it to the Supreme Court.

(4) Electronic case records will be available for public access in the courthouse during regular business hours. Access may be disrupted due to unexpected technical failures or normal system maintenance.

(5) This rule applies to all electronic case records in the district courts; clerks and courts need not redact or restrict information that was otherwise public in court case records created before the effective date of this rule.

(e) ~~Bulk and Compiled Information Distribution~~ **Compiled Information and Bulk Distribution.** Compiled ~~I~~information ~~in~~ and bulk ~~or compiled format~~ distribution will not be available. This restriction does not apply to information provided to the Commission on Judicial Performance or its contractors or agents in connection with surveys of judicial performance ~~pursuant to~~ under K.S.A. ~~2006 Supp.~~ 20-3201 *et seq.*, as determined by the Supreme Court.

(f) ~~Correction of Electronic Case Records~~ **Correction of Electronic Case Records.** Clerical mistakes in electronic case records may be ~~addressed~~ corrected ~~as detailed in~~ under K.S.A. 60-260.

(g) ~~Contracts With Vendors Providing Information Technology Services Regarding Public Access to Statewide Electronic Case Records~~ **Contracts With Vendors Providing Information Technology Services Regarding Public Access Statewide to Electronic Case Records.**

(1) For purposes of this subsection, the term "vendor" includes a state, county, or local governmental entity that provides information technology services to a court.

~~(1)~~(2) Subject to the Supreme Court's approval ~~of the Supreme Court~~, the judicial administrator ~~shall have~~ has authority to contract with a ~~third party~~ vendor to provide access ~~to~~ statewide to electronic case records ~~in accordance with~~ under this rule. The Supreme Court retains ownership of all ~~court~~ electronic case records and retains the ~~right~~ authority to approve or disapprove any other ~~contracts~~ contract by any other records custodian.

~~(2)~~(3) A ~~Contracts~~ contract with a vendor to provide information technology support to gather, store, or make accessible electronic case records or information in ~~court~~ electronic case records ~~will~~ must require the vendor to comply with ~~the intent and provisions of~~ this rule. ~~For purposes of this section, the term "vendor" also includes a state, county, or local governmental entity that provides information technology services to a court.~~

~~(3)~~(4) ~~Each~~ A contract with a vendor ~~for~~ to provide access to statewide electronic case records ~~shall~~ must require the vendor to assist the Supreme Court in its role of educating litigants and the public about this rule. The vendor ~~also shall~~ will be responsible for training its employees and subcontractors to comply with ~~the provisions of~~ this rule.

~~(4)~~(5) ~~Each~~ A contract under paragraph (2) or (3) ~~shall~~ must require the vendor to acknowledge that:

(A) the Supreme Court owns the electronic case records; and ~~remain the property of the Supreme Court and are subject to the directions and orders of the Court with respect to the~~

(B) handling of and access to the records~~,~~ are subject to ~~as well as~~ the provisions of this rule and the Supreme Court's direction and order.

~~(5)~~(6) ~~These~~ The requirements in this subsection are in addition to those otherwise imposed by law.

(h) ~~Disclaimer of Immunity for Disclosure of Information~~ **Immunity for Disclosure of Information.** The ~~J~~judicial ~~B~~branch and its employees ~~shall~~ may not be held liable for monetary damages related to unintentional or unknowing disclosure of confidential or erroneous information.

COMMENT

The language of Rule 196 has been amended as part of the general restyling of the Rules Relating to District Courts to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

The Supreme Court Rules Advisory Committee retained the reference to the Kansas Commission on Judicial Performance in subsection (e). The Commission still exists although there is no current funding.