

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF OCTOBER 5, 2022, at 12:30 P.M.

TOPEKA, KS

IN ATTENDANCE:

HONORABLE DANIEL D. CRABTREE, JUDGE  
HONORABLE ERIC F. MELGREN, CHIEF JUDGE  
HONORABLE JOHN W. BROOMES, JUDGE (via Zoom)  
HONORABLE TERESA J. JAMES, MAGISTRATE JUDGE (via Zoom)  
HONORABLE KENNETH G. GALE, MAGISTRATE JUDGE  
HONORABLE DALE L. SOMERS, CHIEF BANKRUPTCY JUDGE (via Zoom)  
DUSTON J. SLINKARD, U.S. ATTORNEY  
MELODY BRANNON, FEDERAL PUBLIC DEFENDER  
TIMOTHY M. O'BRIEN, CHAIR, KANSAS BENCH-BAR  
DAVID PRELLE ERON, ESQ.  
BRADLEY T. WILDERS, ESQ.  
BRANDEN SMITH, ESQ.  
BRYAN C. CLARK, ESQ.  
ERIC W. BARTH, ESQ. (via Zoom)  
ANGELA D. GUPTA, ESQ. (via Zoom)  
TERELLE A. MOCK, ESQ.  
RAZMI M. TAHIRKHELI, ESQ.  
RYAN HUDSON, ESQ.  
SKYLER B. O'HARA, CLERK OF COURT  
KIM LEININGER, CHIEF DEPUTY CLERK  
STEPHANIE MICKELSEN, DIRECTOR OF COURT ADMINISTRATION

1) APPROVAL OF MAY 5, 2022, MINUTES

Judge Crabtree asked the committee if they noted any corrections or changes to the May 5, 2022, minutes. There were no corrections. David Prella Eron moved to adopt the minutes as written, Razmi M. Tahirkheli seconded the motion, and the motion passed unanimously.

2) PROPOSED LOCAL RULE AMENDMENTS

a) PUBLIC RESPONSE TO PROPOSED LOCAL RULES

Judge Crabtree introduced the first item in the agenda book under tab 2a, Proposed Local Rules Amendments. The proposed amendments to the local rules were approved by the

court for submitting to the public for comment and published on August 8 for the required 30-day notice and comment period. The court received responses from the bar. The court's Local Rules Committee, Chaired by Judge Angel Mitchell, is reviewing the submissions and will report to the court at its November meeting.

Judge Crabtree noted that most of the comments addressed LR 5.4.2 (change in sealing procedures) and the 30-page all-in limit on Memorandums in Support and dispositive motions. There was also some commentary on LR 37.1, the proposed amendment requiring parties to contact the magistrate judge before filing a discovery motion. Judge Crabtree asked the committee for their feedback on the responses.

Judge Gale believes the proposal to provisionally seal documents until the proponent files something to keep it in place is a much-needed rule. He was impressed with the work of the Rule One Ad Hoc Committee and was also impressed with the comments from the bar. Based on some of the concerns, the rule may need some tweaking.

Bradley Wilders supports the proposed changes regarding sealed documents and believes it may be helpful to tweak the rule to make it clear that parties are not required to give notice to all witnesses, rather only to the party that designated it as confidential. Judge Gale believes the only time it should come up is when the document is produced by a third party under the protective order and may need to receive notice. Judge James agreed that the proposed rule addresses an existing problem and will help to deal more efficiently with sealing requests. She agreed that we need to add additional language to address the third party issues.

Regarding concerns about possible confusion over different sealing requirements for criminal and civil cases, Melody Brannon and Duston Slinkard do not think that it will be an issue. The way sealing is done in criminal cases is not a problem and works well. However,

there may need to be some clarification in the local rules as to which civil rules also apply in criminal cases when the criminal rules don't separately address a topic.

The committee agreed that an oxford comma should be placed near the end of subsection 16(a), as proposed by Matt Shoger.

b) PROPOSED LOCAL RULE AMENDMENT TO D. KAN. RULE 83.5.2,  
ADMISSION TO BAR

Judge Crabtree referred the committee to item 2b, Proposed Amendments to Local Rule 83.5.2, Admission to the Bar, in the agenda book. The court received a letter from Thomas Alvord with Law HQ, P.C., proposing a rule change to LR 83.5.2(a). Mr. Alvord proposes that we no longer limit bar admission to only those persons admitted to practice in the courts of the State of Kansas and/or the United States District Court for the Western District of Missouri.

In the 10th Circuit, Colorado, New Mexico, and Oklahoma have similar rules to Mr. Alvord's proposal. The rules in Wyoming, Utah, and Kansas have a more limited admission rule.

Ms. Brannon shared that the proposal is similar to the rule she proposed and recently adopted that allowed the Federal Public Defender office to expand their ability to recruit diverse applicants. Mr. Slinkard stated that the U.S. Attorney's office still requires all attorneys to be licensed to practice in Kansas even though they are not required to do so by the District of Kansas. Chief Judge Melgren noted that this rule would make our pro hoc rules obsolete and would require our court to modify our attorney discipline practices.

Tim O'Brien shared that our district has had a long tradition of putting emphasis on Kansas lawyers since they have a better understanding of our rules and procedures. In the past, the Kansas State Office of Discipline has been reluctant to get involved if an attorney is not a

member of the Kansas Bar, although he is not sure if that is still their policy. Mr. O'Brien said that it would be cumbersome and costly for the court to oversee disciplinary matters.

Judge Gale believes all federal courts will adopt a version of the rule proposed by Mr. Alvord in the future. Mr. Eron agreed with Judge Gale but does not believe the federal court is the right place to make this happen because, unlike the state court, this court does not have the disciplinary structure in place. Judge Gale recommended that we have a court committee further consider this issue and combine forces with the Kansas Bar Association. Mr. O'Brien offered to follow up with the KBA and report back on their stance at a future meeting.

Judge Crabtree thanked the committee for their input and advised he would share the comments with the court.

### 3) UPDATE ON THE CRIMINAL JUSTICE SYSTEM MAP PUBLICATION

Judge Crabtree welcomed Ryan Hudson and referred the committee to Tab 3 in the agenda book. He explained that this project was presented to the Bench-Bar Committee for consideration in October 2021 and the committee approved funding for development of the map. Mr. Hudson is attending the meeting to seek substantive input on the map and talk about future work and supplemental funding needs.

Mr. Hudson explained the time-consuming and complicated process from a design point of view. Since the brochure was developed with special design software, it must be edited by the designer. The design company produced two deliverables – a foldable brochure map and a 24x36 inch poster. There is currently an outstanding balance of \$1,250 for overages. In the next stage of the design, they would like to convert the map to Spanish at a cost of \$400 for the translation fees, in addition to the cost of the design work.

The foldable map must be printed by a professional printer. Mr. Hudson recommended the committee consider additional funding to print an 11x17 inch map, which is easy to fold and carry around, as well as a .pdf version for sharing electronically. The design firm, Single Wing, quoted an addition cost of \$1,250 to design the 11x17 inch map and the .pdf version.

Judge Crabtree summarized that in addition to the original amount approved to fund the map of \$7,500, there is an additional fee of \$1,250 that is outstanding. Secondly, there is a proposal to create a bifold and .pdf version for an additional \$1,250. Third, is a request for funding to translate the map to Spanish. Mr. Hudson reported the translation cost is \$400 plus an additional design cost with Single Wing that is still to be determined.

The committee discussed options for printing the documents after they are complete. Professional printing would be costly, but each agency could print the .pdf versions in house. Ms. Brannon said that the FPD will distribute the brochures to their clients and assume the United States Probation Office may want to do the same. Mr. Hudson projected the cost of professionally printing the foldable map would be \$3.00 - \$4.00 each and the poster would be \$20.00 - \$30.00. [editor's note: after the meeting, Mr. Hudson reported the cost would be lower for bulk purchases]

Mr. Slinkard made a motion to approve spending up to \$4,000 for the completion of the design work to cover the additional costs, and the cost related to translating the document to Spanish, as well as the additional design work expense. Mr. Eron seconded the motion, and it passed unanimously. The Committee did not approve any funding for professionally printing the map.

Judge Crabtree asked Mr. Hudson to remove “Commissioned by: Bench-Bar Committee of the United States Court for the District of Kansas” and list the Bench-Bar Committee under the “Acknowledgments.” Further, remove Judge Lungstrum and Skyler O’Hara under the “Acknowledgments.” Judge Crabtree was concerned by the phrase “the defendant has a chance to talk with the judge,” in section 6.3. It was suggested to modify this to statement to, “the defendant has a chance to address the court.”

4) PROPOSED AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE

Judge Crabtree announced that this is not an action item; rather he was providing a report on the proposed amendments to the Federal Rules of Evidence. On August 15, 2022, the Judicial Conference Committee on Rules of Practice and Procedure approved for publication of public comment for proposed amendments to Federal Rules of Appellate Procedures, Federal Rules of Bankruptcy Procedures, Federal Rules of Civil Procedures, and the Federal Rules of Evidence. The public comment period goes through mid-February, and public hearings will be held in January 2023. If approved by the relevant committees, it would be submitted to the Supreme Court of the United States and, if adopted, it would be transmitted to Congress. Absent Congressional action, it would take effect in January 2024.

Federal Rule of Evidence, Rule 1006, establishes a process for addressing voluminous materials and use of illustrative aides. Subsection (b) of the proposed amendments requires “the proponent must make the underlying originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place.” As a trial judge, “a reasonable time and place” provides an opportunity for disputes among the parties. Judge Crabtree asked the committee to begin thinking about whether the “reasonable time and place” provision should

be addressed at the pretrial conference and included in the pretrial order. No further action or discussion took place at this meeting.

5) BENCH-BAR FINANCIAL STATEMENT AND THE FY2023 BUDGET PROPOSAL

Judge Crabtree referred the committee to Tab 5 of the agenda book and explained that the court's long time Court Financial Officer, Jeff Breon, recently passed away. Mr. Breon had an amazing ability to present budget issues in a way that was simple to understand. Judge Crabtree shared that it would be difficult to overstate Mr. Breon's value to the court as a financial leader and as a person.

Ms. Mickelsen explained that Mr. Breon's passing left large shoes to fill, and the finance team is working hard to adjust to the loss. Included in the report is a short summary that notes that overall spending in Fiscal Year (FY) 2022 was less than the budgeted amounts. For FY 2023, one notable expense is related to expanding wireless access in all three courthouses. The cost for this upgrade is estimated at \$135,000. Ms. Mickelsen referred the committee to page 67 of the agenda book showing the projected expenses for FY 2023. She also noted that the line item on developing the criminal justice map will be increased to \$4,000 following today's vote.

Ms. Brannon noted that the Federal Public Defender's Second Chair program would be suspended until July 2023 and inquired as to whether that amount should be amended. It was decided to leave it as is.

Tim O'Brien moved to accept the FY 2022 report and to approve the FY 2023 budget and Mr. Slinkard seconded the motion. The motion passed unanimously.

6) NEW BUSINESS AND NEXT MEETING

Judge Crabtree asked if there was any new business. Hearing none he mentioned our next meeting will be in the spring. If members have a recommended location, please let Kim Leininger know.

Tim O'Brien reported that Chief Justice Luckert asked him to take over her position on this committee so that she can focus on other state court issues. Matt Keenan will be the new director of Kansas Legal Services. Mr. Keenan plans to address the state bench-bar committee, and probably this committee, to discuss what services can be provided to better assist the poor. Mr. O'Brien said he will also present the admissions issue, discussed at today's meeting, to the state bench-bar committee at its next meeting in late November. Mr. O'Brien asked committee members to let him know if they have any issues the state bench-bar committee should address.

#### 7) SELECTION OF NEW MEMBERS

Judge Crabtree shared that the court received 19 applications for the three bench-bar vacancies. The number of applicants increased from our last solicitation, and we received high-quality applicants.

Committee members agreed that this was an impressive slate of applicants. After discussion and a vote on the Topeka vacancy, the committee decided to recommend Jennifer Hill to fill the Wichita vacancy; Jennifer Wieland for the Kansas City vacancy, and Kate Simpson for the Topeka/Lawrence vacancy.

Judge Crabtree thanked outgoing members Branden Smith, Bryan Clark, and Ryan Keith Meyer for their service and presented them with certificates.

The meeting having convened at 12:30 p.m., adjourned at 3:00 p.m.



Respectfully submitted,

s/ Kim Leininger

Chief Deputy Clerk