RULES OF PRACTICE
OF THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF KANSAS

Effective April 12, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
ORDER OF ADOPTION

Pursuant to the authority vested in this Court by Rule and Statute:

IT IS ORDERED that the rules attached hereto and designated "Rules of Practice of the United States District Court for the District of Kansas" are adopted and shall become effective April 12, 2021 and shall supersede the Court's existing rules which are repealed effective April 12, 2021.

DATED this 12th day of April 2021.

FOR THE COURT

s/ Julie A. Robinson
JULIE A. ROBINSON
Chief Judge

ATTEST:

s/ Timothy M. O'Brien
TIMOTHY M. O'BRIEN
CLERK OF COURT

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CHIEF JUDGE
Julie A. Robinson
511 Robert J. Dole
U.S. Courthouse
500 State Avenue
Kansas City, KS 66101

DISTRICT JUDGE
Eric F. Melgren
414 U.S. Courthouse
401 North Market Street
Wichita, KS 67202

DISTRICT JUDGE
Daniel D. Crabtree
628 Robert J. Dole
U.S. Courthouse
500 State Avenue
Kansas City, KS 66101

DISTRICT JUDGE
John W. Broomes
232 U.S. Courthouse
401 North Market Street
Wichita, KS 67202

DISTRICT JUDGE
Holly L. Teeter
537 U.S. Courthouse
500 State Avenue
Kansas City, KS 66101

DISTRICT JUDGE
Toby Crouse
405 U.S. Courthouse
444 Southeast Quincy Street
Topeka, KS 66683

SENIOR JUDGE
Sam A. Crow
430 U.S. Courthouse
444 Southeast Quincy Street
Topeka, KS 66683

SENIOR JUDGE
John W. Lungstrum
517 Robert J. Dole
U.S. Courthouse
500 State Avenue
Kansas City, KS 66101

SENIOR JUDGE
Kathryn H. Vratil
529 Robert J. Dole
U.S. Courthouse
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SENIOR JUDGE
J. Thomas Marten
423 U.S. Courthouse
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CHIEF MAGISTRATE JUDGE
James P. O'Hara
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MAGISTRATE JUDGE
Kenneth G. Gale
403 U.S. Courthouse
401 North Market Street
Wichita, KS 67202

MAGISTRATE JUDGE
Teresa J. James
208 Robert J. Dole
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500 State Avenue
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MAGISTRATE JUDGE
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322 U.S. Courthouse
401 North Market Street
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MAGISTRATE JUDGE
Angel D. Mitchell
475 U.S. Courthouse
444 Southeast Quincy Street
Topeka, KS 66683

Please see www.ksd.uscourts.gov for the most current telephone contact information.

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COMMITTEE OF THE COURT

Bench-Bar Committee

Hon. Chief Judge Julie A. Robinson, *ex officio*

Hon. Eric F. Melgren, Chair
Hon. Daniel D. Crabtree
Hon. John W. Broomes
Hon. James P. O'Hara
Hon. Teresa J. James
Chief Judge Dale Somers
Mr. Duston Slinkard
Ms. Melody Brannon
Chief Justice Marla Luckert
Mr. John Shaw
Mr. Stephen Netherton
Ms. Patricia Hamilton
Mr. Bryan C. Clark
Mr. Ryan Keith Meyer
Mr. David Prelle Eron
Mr. Bradley T. Wilders
Mr. Branden Smith

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http://ksd.uscourts.gov/index.php/local-rules/

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SCOPE OF RULES

RULE 1.1
SCOPE AND MODIFICATION OF RULES; DEFINITIONS; CITATION

(a) Scope. These rules govern the procedure in all proceedings before this court.

(b) Modification. In special cases, the court may modify these rules as necessary or appropriate to:

(1) meet emergencies; or

(2) avoid injustice or great hardship.

(c) Definitions. As used in these rules, the term "judge" refers to a United States District Judge, and the term "court" refers to either a United States District Judge or a United States Magistrate Judge.

(d) Citation. These rules should be cited as D. Kan. Rule 1.1, e.g.

* * *

As amended 2/16/95.

-II-
COMMENCEMENT OF ACTION; PROCESS; SERVICE AND FILING OF PLEADINGS, MOTIONS, AND ORDERS

RULE 3.1
COMMENCEMENT OF ACTIONS

A civil docket cover sheet, in a form supplied by the clerk, must be completed and submitted with any complaint commencing an action or any notice of removal from state court.

* * *

As amended 3/17/10, 11/16/90.

RULE 4.1
SERVICE OF PROCESS IN ACCORDANCE WITH STATE PRACTICE

Where the Federal Rules of Civil Procedure authorize service of process in accordance with state practice, the parties seeking such service must give the clerk: (1) forms of all necessary orders; (2) sufficient copies of all papers to comply with state requirements; and (3) specific instructions for making service.

* * *

RULE 4.2
APPOINTMENT OF STATE OFFICERS TO SERVE PROCESS

Whenever service is attempted on behalf of the United States or an officer or agency of the United States under Fed. R. Civ. P. 4(d), and waiver of service is requested but not waived, the following persons may make personal service: a United States Marshal or a Deputy United States Marshal, or a sheriff, undersheriff, or deputy sheriff of any county of the State of Kansas. In such cases, the court hereby specially appoints duly elected or appointed sheriffs, undersheriffs, and

deputy sheriffs of counties of the State of Kansas for serving process of this court within the territorial limits of their respective counties.

* * *

As amended 6/95.

RULE 5.1
FORM OF PLEADINGS AND PAPERS

(a) Form. Pleadings, motions, briefs, and other papers submitted for filing must be typewritten or printed on letter size paper. The pages must be fastened at the upper left corner without manuscript cover. Typewritten documents must be double-spaced. Documents filed electronically must comply with this rule to the extent practicable.

(b) Signing of Pleadings. The original of every pleading, motion, or other paper filed by an attorney must bear the genuine signature of at least one attorney of record. The original of every pleading, motion, or other paper filed by a party not represented by an attorney must bear the genuine signature of the pro se party. Stamped or facsimile signatures on original pleadings, motions, or other papers filed by pro se parties or by attorneys are not acceptable. D. Kan. Rule 5.4.8 governs signatures on documents filed electronically.

(c) Contact Information and Bar Registration Numbers.

(1) *Requirements for Pro Se Parties and Attorneys.* Parties or attorneys signing papers submitted for filing must include:
   (A) their names;
   (B) addresses;
   (C) telephone numbers;
   (D) facsimile numbers; and
   (E) email addresses.

(2) *Additional Requirements for Attorneys*. Attorneys must also include their state supreme court registration numbers or, where an attorney is not admitted to practice in Kansas, the equivalent. Attorneys admitted from the Western District of Missouri, by reciprocal admission, must include their Kansas District Court registration number.

(3) *Duty to Update Contact Information.* Each attorney or pro se party must notify the clerk in writing of any change of address or telephone number. Any notice mailed to the last address of record of an attorney or pro se party is sufficient notice.

(d) Entry of Appearance by Attorneys. An attorney enters his or her appearance by:

(1) signing and filing a formal entry of appearance; or

(2) signing the initial pleading, motion, or notice of removal filed in the case.

Entries of appearance must comply with subsection (c) of this rule.

(e) Attorney Appearances in Removed and Transferred Cases.

(1) *Duty to Clients*. The transfer or removal of a case to the District of Kansas does not relieve attorneys who appeared in the other court of their obligations to their clients.

(2) *Attorneys Admitted in this Court.* Attorneys admitted to practice in this court will be entered as attorneys of record in the action in this court.

(3) *Attorneys Not Admitted in this Court.* Attorneys not admitted to practice in this court must, within 21 days of the removal or transfer, either:

(A) obtain admission to practice in this court, if eligible;

(B) associate with an attorney admitted to practice in this court, who must move to admit the attorney not admitted to practice in this court in accordance with D. Kan. Rule 83.5.4; or

(C) move to withdraw in accordance with D. Kan. Rule 83.5.5.

(f) Exhibits to Pleadings or Papers. Bulky or voluminous materials should not be filed in their entirety or incorporated by reference unless the court finds the materials essential and grants leave to file them. The court may strike any pleading or paper filed in violation of this rule.

(g) Certificates of Service. Certificates of service of papers pursuant to Fed. R. Civ. P. 5(d) must state:

(1) the name and address of the attorney or party served;

(2) the capacity in which such person was served (i.e., as attorney for plaintiff or a particular defendant);

(3) the manner of service; and

(4) the date of service.

*** * ***

As amended 12/1/09, 4/13/06, 3/17/04, 6/22/98, 2/27/98, 10/20/93.

RULE 5.3
COPIES REQUIRED FOR A THREE-JUDGE COURT

(a) In General. This rule governs actions or proceedings that an Act of Congress requires be heard and determined by a district court of three judges.

(b) Conventional Filings. All pleadings, papers, and documents filed subsequent to the designation of the court, as provided in 28 U.S.C. § 2284(a), must be filed with the clerk in quadruplicate — an original and three copies — only if the pleading, paper, or document is filed in conventional paper format. The clerk must timely distribute the documents to the designated judges.

(c) Electronic Filings. If the pleading, paper, or document is filed electronically, additional copies should not be provided to the court in conventional paper format. *See* D. Kan. Rule 7.1(d).

*** * ***

As amended 3/17/04.

RULE 5.4.2
ELIGIBILITY, REGISTRATION, PASSWORDS

(a) In General. Attorneys admitted to the bar of this court — including those admitted pro hac vice — and pro se parties may register as Filing Users of the court's Electronic Filing System.

(b) Registration Requirements. Registration is in a form prescribed by the clerk and requires the Filing User's name, address, telephone number, and email address. If the registrant is an attorney, he or she must also provide a declaration that the attorney is either admitted to the bar of this court or has been admitted pro hac vice.

(c) Attorneys Admitted Pro Hac Vice.

(1) *Access to Electronic Filings.* Attorneys who are admitted pro hac vice and who register as Filing Users are granted access to the court's Electronic Filing System through PACER and will receive the automatically-generated notices of electronic filing.

(2) *Filing Prohibition.* Attorneys who are admitted pro hac vice may not file documents electronically unless they are employed by the United States of America.

(3) *Local Counsel's Involvement.* The court requires meaningful participation by local counsel and, to that end, requires local counsel to sign all pleadings and other papers filed. *See* D. Kan. Rule 83.5.4(c).

(d) Unrepresented Parties. A party who is not represented by an attorney may register as a Filing User in the Electronic Filing System. If, during the course of action, an attorney appears on the party's behalf, the attorney must immediately advise the clerk to terminate the party's Filing User registration.

(e) Effect of Registration. Registration as a Filing User constitutes consent to electronic service of all documents. *See* Fed. R. Civ. P 5(b)(2)(E). This consent extends not only to documents filed with the court, but also to electronic service of disclosure and discovery documents that must be served upon other parties but not filed with the court pursuant to D. Kan. Rule 26.3.

(f) Security. After registering, the Filing User will receive notification of the user login and password. Filing Users must protect the security of their passwords and immediately notify the clerk if they learn that their password has been compromised. The court may sanction Filing Users who fail to comply with this provision.

* * *

Adopted 3/17/04.

RULE 5.4.3
CONSEQUENCES OF ELECTRONIC FILING

(a) Effect of Electronic Transmissions. Electronic transmission of a document to the Electronic Filing System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the court, constitutes:

(1) filing of the document for all purposes of the Federal Rules of Civil Procedure and the Local Rules of this court; and

(2) entry of the document on the docket kept by the clerk under Fed. R. Civ. P. 58 and 79.

(b) Legibility. Before filing a scanned document with the court, a Filing User must verify its legibility.

(c) Official Record. The official record of an electronically-filed document is the electronic recording of the document as stored by the court. The filing party is bound by the document as filed.

(d) Time of Filing. An electronically-filed document is considered filed at the date and time stated on the Notice of Electronic Filing from the court, except where the document is first filed in paper form and later submitted electronically.

(e) Filing Deadlines. Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight central time to be considered timely filed that day.

* * *

Adopted 3/17/04.

RULE 5.4.4
ENTRY OF COURT ISSUED DOCUMENTS

(a) Entry in the Civil Docket. All orders, decrees, judgments, and proceedings of the court will be filed in accordance with these rules, which will constitute entry in the civil docket under Fed. R. Civ. P. 58 and 79. The court or court personnel will file all such documents electronically.

(b) Electronic Signature. Any such document filed electronically without the original signature of a judge, magistrate judge, or clerk has the same force and effect as if the judge, magistrate judge, or clerk, respectively, had signed a paper copy of the order and it had been entered on the docket in a conventional manner.

(c) "Text-only" Orders. Orders may also be issued as "text-only" entries on the docket without an attached document. Such orders are official and binding.

(d) Summons. The court may sign, seal, and issue a summons electronically, although a summons may not be served electronically.

(e) Proposed Orders. A Filing User must not submit a proposed order (whether pursuant to D. Kan. Rule 7.1(b), 77.2, or otherwise) by electronic filing, either as an attachment to a corresponding motion or otherwise. Rather, proposed orders must be submitted directly to the appropriate judge, magistrate judge, or clerk in the form and manner set forth in the Administrative Procedures Guide.

* * *

Adopted 3/17/04.

RULE 5.4.5
ATTACHMENTS AND EXHIBITS

(a) Electronic Form Generally Required. Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the Administrative Procedures Guide or the court permits conventional filing. Voluminous exhibits must be filed as set forth in the Administrative Procedures Guide.

(b) Use of Excerpts.

(1) *In General.* A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter before the court. Excerpted material must be clearly and prominently identified as such.

(2) *Right of Filers.* Filing Users who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or the complete document.

(3) *Right of Responding Parties.* Responding parties may timely file:

(A) additional excerpts that they believe are directly germane; or

(B) the complete document that they believe is directly germane.

(4) *Right of the Court.* The court may require parties to file additional excerpts or the complete document.

* * *

Adopted 3/17/04.

RULE 5.4.6
SEALED DOCUMENTS

(a) Procedure for Requesting Leave to File Under Seal.

(1) *Motion.* A party filing a motion for leave to file documents under seal in civil cases must file that motion electronically, under seal, in the Electronic Filing System.

(2) *Exhibit(s).* The motion for leave to file under seal must attach as sealed exhibits the document(s) the party requests to be filed under seal.

(3) *Proposed Order.* The party must email a proposed order to KSD_<Judge'sLastName>_chambers@ksd.uscourts.gov

(4) *Provision to Other Parties.* Finally, the party must simultaneously provide the document(s) it requests to be filed under seal to all other parties in the case.

(b) Order Granting Leave. If the court grants the motion for leave to file under seal, the assigned judge will enter electronically an order authorizing the filing of the document(s) under seal. The assigned judge will also direct the clerk's office to grant access to all attorneys who have entered an appearance in that case (and whose appearance has not been terminated) the ability to view sealed documents in that case (assuming this access has not previously been granted). The filing party may then file its document(s) electronically under seal.

(c) Order Denying Leave. If the court denies the motion for leave to file under seal, the assigned judge will enter electronically an order denying the filing of the document(s) under seal.

(d) Notification of Termination. Once the court has granted an attorney access to sealed documents in a case, that attorney is responsible for notifying the clerk's office if he or she is terminated from the case and the parties request that terminated attorneys no longer have access to sealed documents in that case.

* * *

As amended 3/17/08 (formerly D.Kan.S.O. 07-3).
Adopted 3/17/04.

ABOLISHED RULE 5.4.7
RETENTION REQUIREMENTS

* * *

ABOLISHED 4/12/21. Adopted 3/17/04.

RULE 5.4.8
SIGNATURES

(a) Effect of User Login and Password. The user login and password required to submit documents to the Electronic Filing System serve as the Filing User's signature on all electronic documents filed with the court. They also serve as a signature for purposes of Fed. R.

Civ. P. 11, the Federal Rules of Civil Procedure, the Local Rules of this court, and any other purpose for which court proceedings require a signature.

(b) Requirements of Electronically-Filed Documents. Each document filed electronically must, if possible, indicate that it has been electronically filed. Electronically-filed documents must include a signature block in compliance with D. Kan. Rule 5.1(c). In addition, the name of the Filing User under whose login and password the document is submitted must be preceded by an "s/" and typed in the space where the signature would otherwise appear.

(c) Signature of Non-Filing Users. Documents containing signatures of non-Filing Users must be filed electronically either as a scanned image or with the signature represented by an "s/" and the name typed in the space where the signature would otherwise appear.

Security. No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

(d) Signature of Multiple Parties. Documents requiring signatures of more than one party must be electronically filed by:

(1) submitting a scanned document containing all necessary signatures;

(2) representing the consent of the other parties on the document as permitted by the administrative procedure governing multiple signatures;

(3) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than seven days after filing; or

(4) in any other approves.

* * *

As amended 12/01/09. Adopted 3/17/04.

RULE 5.4.9
SERVICE OF DOCUMENTS BY ELECTRONIC MEANS

(a) Parties Who Have Consented to Electronic Service. The notice of electronic filing automatically generated by the court's Electronic Filing System constitutes service of the filed document on all parties who have consented to electronic service.

(b) Parties Who Have Not Consented to Electronic Service. Parties who have not consented to electronic service are entitled to service of paper copies of the notice of electronic filing and the electronically-filed pleading or other document. The filing party must serve such paper copies according to the Federal Rules of Civil Procedure and the Local Rules.

(c) Certificate of Service. All electronically-filed documents must include a certificate of service. The certificate must indicate:

(1) that service was accomplished through the Notice of Electronic Filing for parties and attorneys who are Filing Users; and

(2) how service was accomplished on any party or attorney who is not a Filing User.

* * *

Adopted 3/17/04.

RULE 5.4.10
NOTICE OF COURT ORDERS AND JUDGMENTS

Immediately upon the entry of an order or judgment in an action assigned to the Electronic Filing System, the clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed. R. Civ. P. 77(d). The clerk must give notice in paper form to a person who has not consented to electronic service in accordance with the Federal Rules of Civil Procedure.

* * *

Adopted 3/17/04.

RULE 5.4.11
TECHNICAL FAILURES

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

* * *

Adopted 3/17/04.

RULE 5.4.12
PUBLIC ACCESS

(a) In-Person Review. A person may review unsealed filings at the clerk's office.

(b) Online Review. A person may also access the Electronic Filing System at the court's internet site, www.ksd.uscourts.gov, by obtaining a PACER login and password. A person who has PACER access may retrieve docket sheets and documents.

(c) Electronic Filing. Only the following persons may file documents electronically, unless the court permits otherwise:

(1) a Filing User who is an attorney admitted to the bar of this court; and

(2) an unrepresented party registered as a Filing User.

See D. Kan. Rule 5.4.2.

* * *

As amended 3/17/10. Adopted 3/17/04.

RULE 5.4.13
ADMINISTRATIVE PROCEDURES

To facilitate implementation of the foregoing rules, the clerk is authorized to develop, adopt, publish, and modify as necessary *Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means in Civil Cases* ("Administrative Procedures Guide"), which will include the procedures for registration of attorneys and distribution of passwords to permit electronic filing and notice of pleadings and other papers.

* * *

Adopted 3/17/04.

RULE 6.1
TIME

(a) Motions for an Extension of Time to Perform an Act. All motions for an extension of time to perform an act required or allowed to be done within a specified time must show:

(1) whether there has been prior consultation with other parties and the views of other parties;
(2) the date when the act was first due;
(3) if prior extensions have been granted, the number of extensions granted and the date of expiration of the last extension; and
(4) the cause for the requested extension. Parties must file the motion before the specified time expires. Absent a showing of excusable neglect, the court will not grant extensions requested after the specified time expires.

(b) Motions for Continuance. A party must file motions to continue a pretrial conference, a hearing on a motion, or the trial of an action reasonably in advance of the hearing date and must specify the views of other parties.

(c) Joint or Unopposed Motions. Subject to Fed. R. Civ. P. 29, stipulations for extensions of time are subject to court approval. The court will not continue pretrial conferences, hearings, or trial upon stipulation of the parties.

(d) Time for Filing of Responses and Replies. Unless the court orders otherwise, the following time periods apply to the filing of responses and replies. These time periods include the additional three-day period allowed under Fed. R. Civ. P. 6(d) and, therefore, apply regardless of the method of service.

(1) *Non-dispositive motions*. Responses to non-dispositive motions (motions other than motions to dismiss, motions for summary judgment, motions to remand, or motions for judgment on the pleadings) must be filed and served within 14 days. Replies must be filed and served within 14 days of the service of the response.
(2) *Dispositive motions*. Responses to motions to dismiss, motions for summary judgment, motions to remand, or motions for judgment on the pleadings must be filed and served within 21 days. Replies must be filed and served within 14 days of the service of the response.

*** * ***

As amended 3/17/11, 12/1/09, 3/17/04, 9/00.

RULE 6.2
EFFECTIVE DATE OF COURT FILINGS FOR PURPOSES OF CALCULATING LIMITATION PERIODS

Unless specifically provided otherwise, in determining the filing deadlines under both the federal procedural rules and the Local Rules of this court, the relevant date for calculating a limitation period dependent on the filing of a court order is:

(1) for a conventionally-filed order, the file-stamp date appearing on the order; or

(2) for an electronically-filed order, the date stated on the Notice of Electronic Filing. Neither the date on which the judge or magistrate judge signs the order nor the date on which the clerk's office enters the order on the docket is relevant in calculating the limitation period.

* * *

As amended 3/17/04. Adopted 6/11/98.

-III-
PLEADINGS AND MOTIONS

RULE 7.1
MOTIONS IN CIVIL CASES

(a) Form and Filing. All motions, unless made during a hearing or at trial, must be filed in writing with the clerk. A brief or memorandum must accompany all motions unless:

(1) the motion is joint or unopposed;

(2) the motion is filed pursuant to D. Kan. Rule 6.1 or 77.2;

(3) these rules otherwise provide; or

(4) the court relieves the parties of complying with the requirement.

(b) Joint or Unopposed Motions. If a motion is joint or unopposed, the caption and the body of the motion must so state. Also, the movant must submit a proposed order with the motion. If the motion is filed electronically, the movant must submit a proposed order directly to the appropriate judge, magistrate judge, or the clerk, as set forth in D. Kan. Rule 5.4.4 and the Administrative Procedures Guide.

(c) Responses and Replies to Motions. Within the time provided in D. Kan. Rule 6.1(d), a party opposing a motion must file a responsive brief or memorandum. The moving party may file and serve a written reply brief or memorandum.

(d) Additional Copies of Documents.

(1) *Electronically-Filed Documents.* Parties should not provide the court with paper copies of electronically-filed documents unless the court specifically requests paper copies or they are otherwise required by:

(A) court order;

(B) this court's rules; or

(C) the Administrative Procedures Guide.

(2) *Conventionally-Filed Documents.* Copies of documents filed in conventional paper format must be filed with the clerk in duplicate, including an original and one copy.

(e) Page Limitations. The arguments and authorities section of briefs or memoranda must not exceed 30 pages absent a court order.

(f) Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's final brief has been filed — or after oral argument but before a decision — a party may promptly advise the court clerk by letter filed on the CM/ECF system, with a copy to all other parties, setting forth the citations. The letter must state reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally; if the supplemental citations refer to a brief, the letter must be linked in the ECF system to that brief. The body of the letter must not exceed 350 words. Any response must be made within five business days and must be similarly linked and limited.

* * *

As amended 10/13, 3/05, 3/04, 9/00.

RULE 7.2
ORAL ARGUMENT ON MOTIONS

The court may set any motion for oral argument or hearing at the request of a party or on its own initiative.

* * *

As amended 3/17/13.

RULE 7.3
MOTIONS TO RECONSIDER

A party may file a motion asking a judge or magistrate judge to reconsider an order or decision made by that judge or magistrate judge.

(a) Dispositive Orders and Judgments. Parties seeking reconsideration of dispositive orders or judgments must file a motion pursuant to Fed. R. Civ. P. 59(e) or 60. The court will not grant reconsideration of such an order or judgment under this rule.

(b) Non-Dispositive Orders. Parties seeking reconsideration of non-dispositive orders must file a motion within 14 days after the order is filed unless the court extends the time. A motion to reconsider must be based on:

(1) an intervening change in controlling law;
(2) the availability of new evidence; or
(3) the need to correct clear error or prevent manifest injustice.

* * *

As amended 12/01/09, 6/11/98.

RULE 7.4
FAILURE TO FILE AND SERVE MOTION PAPERS

(a) Motions. The court may summarily deny a motion not accompanied by a required brief or memorandum.

(b) Responsive Briefs or Memorandums. Absent a showing of excusable neglect, a party or attorney who fails to file a responsive brief or memorandum within the time specified in D. Kan. Rule 6.1(d) waives the right to later file such brief or memorandum. If a responsive brief or memorandum is not filed within the D. Kan. Rule 6.1(d) time requirements, the court will consider and decide the motion as an uncontested motion. Ordinarily, the court will grant the motion without further notice.

* * *

As amended 3/05.

RULE 7.5
APPLICATION OF THIS RULE

D. Kan. Local Rules 7.1 through 7.6 apply to all motions in civil cases, including motions and objections relating to discovery, to appeals in bankruptcy, and to motions to review orders of magistrate judges.

* * *

RULE 7.6
BRIEFS AND MEMORANDA

(a) Contents. All briefs and memoranda filed with the court must contain:

(1) a statement of the nature of the matter before the court;

(2) a concise statement of the facts, with each statement of fact supported by reference to the record;

(3) a statement of the question or questions presented; and

(4) the argument, which must refer to all statutes, rules, and authorities relied upon.

(b) Exhibits. The filing party must separately label any exhibits attached to motion briefs or memoranda and file an index of such exhibits.

(c) Citation of Unpublished Decisions. If an unpublished decision cited in a brief or memorandum is unavailable electronically (e.g., via Westlaw or LEXIS), it must be attached as an exhibit to the brief or memorandum. But parties should not furnish electronically-available unpublished decisions to the court. Parties should furnish electronically-available unpublished decisions to opposing parties only upon request. Unpublished decisions should be cited as follows: Smith v. Jones, No. 02-1234-KHV, 2003 WL 8763523, at *2 (D. Kan. Jan. 7, 2003).

* * *

As amended 3/04, 5/03, 9/00.

RULE 9.1
HABEAS CORPUS, MOTIONS TO VACATE, AND CIVIL RIGHTS COMPLAINTS BY PRISONERS

(a) Use of Official Forms Required. The following filings must be in writing, signed, and verified (meaning sworn under penalty of perjury):

(1) petitions for writs of habeas corpus pursuant to 28 U.S.C. § 2241 and 28 U.S.C. § 2254;

(2) motions to vacate sentence pursuant to 28 U.S.C. § 2255; and

(3) motions to correct or reduce sentence pursuant to Fed. R. Crim. P. 35 by persons in custody pursuant to a judgment of a court.

Such petitions, motions, and civil rights complaints by prisoners under 42 U.S.C. § 1983 and pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S. Ct. 1999, 29 L.Ed.2d 619 (1971), must be on forms approved by the court. Upon request, the clerk of the court will supply forms without charge.

(b) Required Information. Every petition, motion to vacate, and motion to correct or reduce sentence must contain the following information:

(1) petitioner's full name and prison number (if any);
(2) name of the respondent;
(3) place of petitioner's detention;
(4) name and location of the court that imposed sentence;
(5) case number and the offense or offenses for which sentence was imposed;
(6) the date on which sentence was imposed and the terms of the sentence;
(7) whether a finding of guilty was made after a plea of guilty, not guilty, or *nolo contendere;*
(8) in the case of a petitioner who has been found guilty following a plea of not guilty, whether that finding was made by a jury or a judge without a jury;
(9) whether petitioner appealed from his or her conviction or the imposition of sentence, and if so, the name of each court to which he or she appealed, the results of such appeals, and the date of such results;
(10) whether petitioner was represented by an attorney at any time during the course of the proceedings under which sentence was imposed, and the name(s) and address(es) of such attorney(s) and the proceedings in which petitioner was represented; whether the attorney was one of petitioner's own choosing or appointed by the court;
(11) whether a plea of guilty was entered pursuant to a plea bargain, and if so, the terms and conditions of the agreement;
(12) whether petitioner testified at trial (if any);
(13) whether petitioner has any petition, application, motion, or appeal currently pending in any court, and if so, the name of the court and the nature of the proceeding;
(14) whether petitioner has filed in any court, state or federal, previous petitions, applications, or motions with respect to this conviction; if so, the name and location of each such court, the specific nature of each proceeding, the disposition thereof, the date of each disposition, and citations (if known) of any written opinions or orders; and
(15) in concise form, the grounds upon which petitioner bases his or her allegations that he or she is held in custody unlawfully or his or her sentence is illegal, imposed in an illegal manner, or should be reduced; the facts that support each of the grounds; whether any such grounds have been previously presented to any court by petition, motion, or application; if so, which grounds have been previously presented and in what proceedings; and if any grounds have not been previously presented, which grounds have not been so presented and the reasons for not presenting them.

(c) Additional Information in Challenges of a State Conviction. A petitioner challenging a state conviction must supply the following additional information:

(1) if petitioner did not appeal from the judgment of conviction or imposition of sentence,
(2) the reasons why he or she did not do so, and
(3) a showing that he or she has exhausted his or her remedies in state court.

(d) Additional Information Required in Challenges to Federal Custody Pursuant to 28 U.S.C. § 2255. A petitioner in federal custody seeking a writ of habeas corpus or relief by motion pursuant to 28 U.S.C. § 2255 must provide the following additional information:

(1) the name of the judge who imposed sentence;

(2) in concise form, the grounds on which petitioner bases his or her allegation that the sentence imposed upon him or her is invalid; the facts that support each of the grounds; whether any such grounds have been presented to any federal court by way of petition for writ of habeas corpus, motion pursuant to 28 U.S.C. § 2255, or any other petition, motion, or application; if so, which grounds have been previously presented and in which proceedings; and if any grounds have not been previously presented, which grounds have not been so presented and the reasons for not presenting them;

(3) whether petitioner has filed in any court petitions for habeas corpus, motions pursuant to 28 U.S.C. § 2255, or any other petitions, motions, or applications with respect to the conviction; if so, the name and location of each such court, the specific nature of each proceeding, the disposition thereof, the date of each such disposition, and citations, if known, of any written opinion or order entered therein or copies (if available) of such opinions or orders; and

(4) if a previous motion pursuant to 28 U.S.C. § 2255 was not filed or if such a motion was filed and denied, the reasons petitioner's remedy by way of such motion was inadequate or ineffective to test the legality of his detention.

(e) All Grounds for Relief Required; Successive Petitions. Petitions and motions for post-conviction relief submitted pursuant to this rule must specify all grounds for relief available to the petitioner or movant and of which he or she has knowledge or, by the exercise of reasonable diligence, should have knowledge. Before filing a second or successive habeas corpus application, the applicant must file a motion, pursuant to 28 U.S.C. § 2244(b)(3), with the Tenth Circuit Court of Appeals for an order authorizing this court to consider the application. Absent such authorization from the Tenth Circuit Court of Appeals, the second or successive habeas corpus application must be dismissed.

(f) Information in Section 1983 Cases and Bivens Cases. A prisoner who is a plaintiff in a civil rights action filed pursuant to 42 U.S.C. § 1983 must supply the following information:

(1) plaintiff 's full name;

(2) place of plaintiff's residence;

(3) names of defendants;

(4) places of defendants' residences;

(5) title and position of each defendant;

(6) whether the defendants were acting under color of state law or as federal agents at the time the claim alleged in the complaint arose;

(7) a brief statement of the facts;

(8) the grounds upon which plaintiff bases his or her allegations that constitutional rights, privileges, or immunities have been violated, together with the facts that support each of those grounds;

(9) a statement of prior judicial and administrative relief sought; and

(10) a statement of the relief requested.

(g) Proceedings Without Prepayment of Fees, or *In Forma Pauperis*.

(1) *In General.* A pro se petitioner, movant, or plaintiff who tenders a petition, motion, or complaint for filing without prepayment of fees must:

(A) complete the motion for leave to proceed without prepayment of fees on the form supplied by the clerk;

(B) complete a supporting affidavit on the form supplied by the clerk; and

(C) set forth information regarding his or her ability to prepay the costs and fees of the proceeding or give security therefor.

. (2) *Inmates.*

(A) Where a petitioner, movant, or plaintiff is an inmate of a penal institution and desires to proceed without prepayment of fees, he or she must also submit a certificate executed by an authorized officer of the institution in which he or she is confined. The certificate must state the amount of money or securities on deposit to his or her credit in any account in the institution.

(B) The court may consider the certificate when it rules on the motion for leave to proceed without prepayment of fees.

(3) *Service.* If the court grants leave to proceed without prepayment of fees, the court may proceed under Fed. R. Civ. P. 4(d) to obtain waiver of service of summons on behalf of an inmate plaintiff. If waiver is not obtained, the court will order the United States Marshal or a Deputy United States Marshal to serve the summons and complaint.

(h) Tender of Pleadings to Clerk. Petitioners, movants, and plaintiffs need only submit the original petition, motion, or complaint to the clerk for filing. Additional copies are not required. If tendered for filing by mail, any petition, motion, or complaint must be addressed to:

Clerk of the United States District Court
for the District of Kansas
490 U.S. Courthouse
444 Southeast Quincy
Topeka, Kansas 66683

(i) Failure to Comply With Rules. The clerk may return a petition, motion, or complaint that does not comply with this rule, together with a copy of this rule and a statement of the reason or reasons for its return. The clerk will retain one copy of each noncomplying document returned. If the clerk cannot tell whether a document complies with this rule, the document will be referred to the court for determination. The clerk will return the document if the court so directs.

(j) Filing and Docketing. When the clerk receives a petition, motion, or complaint complying with this rule that is tendered for filing without prepayment of fees, the clerk will:

(1) docket the petition, motion, or complaint;

(2) refer it to the court for further proceedings; and

(3) serve a copy of the petition or motion, together with a notice of its filing, on the Attorney General of the state involved or on the United States Attorney for the district in which the judgment under attack was entered.

The filing without prepayment of fees of such petition, motion, or complaint does not require an answer or other responsive pleading unless the court orders otherwise.

(k) Case Management. All cases filed by a prisoner are exempt from requirements under the Federal Rules of Civil Procedure that mandate a scheduling order, Fed. R. Civ. P. 16(b); disclosure of information, Fed. R. Civ. P. 26(a); and a planning meeting between the parties or their attorneys, Fed. R. Civ. P. 26(f). But the court may impose any or all of these requirements if necessary to effectively manage an action.

* * *

NOTE: This is a mandated rule.

As amended 3/17/10, 2/27/98.

RULE 11.1
SANCTIONS

(a) Sanctions Under These Rules, Fed. R. Civ. P. 11, and Other Rules and Statutes.

(1) *On Court's Own Initiative*. The court, upon its own initiative, may issue an order to show cause why sanctions should not be imposed against a party and/or an attorney for violation of these rules, Fed. R. Civ. P. 11, 28 U.S.C. § 1927, or other provisions of the federal rules or statutes. The court will state the reasons for issuing the show cause order. Unless otherwise ordered, all parties may respond within 14 days after the filing of the order to show cause. The responses may include affidavits and documentary evidence as well as legal arguments.

(2) *On a Party's Motion*. A party may raise the issue of sanctions by a timely-filed motion. The responding party may respond in the same manner as specified above.

(3) *Procedure*. After the response time passes and without further proceedings, the court may rule on the issues of violation and the nature and extent of any sanction imposed. Discovery and evidentiary hearings on sanctions are permitted only by court order. The court will articulate the factual and legal bases for its rulings on sanctions.

(b) Imposition of Sanctions. If the court finds a violation of local rule or rules or statutes. In addition, the court may issue such orders as are just under the circumstances, including the following: court order, the court may impose sanctions pursuant to Fed. R. Civ. P. 11 or other federal

(1) an order that designated matters or facts are taken as established for purposes of the action;

(2) an order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting it from offering specified witnesses or introducing designated matters in evidence;

(3) an order striking pleadings or parts thereof, or staying proceedings until the rule is complied with, or dismissing the action or any part thereof, or rendering a judgment by default against the failing party; and

(4) an order imposing costs, including attorney's fees, against the party, or its attorney, who has failed to comply with a local rule.

(c) Sanctions Within the Discretion of the Court. The court has discretion whether to impose sanctions for violation of a local rule or order. In considering sanctions, the court may consider whether a party's failure was substantially justified or whether other circumstances make sanctions inappropriate.

* * *

As amended 12/01/09.

RULE 15.1
MOTIONS TO AMEND AND FOR LEAVE TO FILE

(a) Requirements of Motion. A party filing a motion to amend or a motion for leave to file a pleading or other document that may not be filed as a matter of right must:

(1) set forth a concise statement of the amendment or leave sought;
(2) attach the proposed pleading or other document; and
(3) comply with the other requirements of D. Kan. Rules 7.1 through 7.6.

(b) Where Motion Granted. If the court grants the motion, the moving party must file and serve the pleading within 14 days of the court's order granting the motion, or as the court otherwise directs.

* * *

As amended 12/01/09, 3/17/04, 12/19/00, 4/8/99, 10/22/98.

RULE 16.1
PRETRIAL CONFERENCES, SCHEDULING, CASE MANAGEMENT

(a) General Procedure. After a case is docketed, the clerk will forward it to a judge or magistrate judge for pretrial conferences, case supervision, and management as provided in Fed. R. Civ. P. 16. In cases other than those identified in subsection (b) of this rule, the court will hold conferences and hearings and issue orders in accordance with Fed. R. Civ. P. 16.

(b) Exempt Cases. Unless the court orders otherwise in a particular case, the following categories of actions are exempt from the requirements of Fed. R. Civ. P. 16(b):

(1) Social Security cases and other actions for review of administrative decisions;
(2) all cases filed by pro se prisoners or directly related to the litigant's incarceration;
(3) governmental administrative enforcement proceedings;
(4) forfeiture proceedings;
(5) eminent domain proceedings; and
(6) bankruptcy appeals.

In exempt cases, the court ordinarily will not issue scheduling orders, require compliance with the disclosure provisions of Fed. R. Civ. P. 26(a), or require compliance with Fed. R. Civ. P. 26(f) relating to planning meetings between the parties.

* * *

RULE 16.2
PRETRIAL CONFERENCES

(a) General Provisions. In most cases, the court will conduct a pretrial conference after discovery is complete and before the filing of dispositive motions (e.g., summary judgment). If the case remains at issue after dispositive motions have been decided, the judge who will preside at trial usually will conduct another pretrial conference (or conferences) to formulate a trial plan to facilitate the admission of evidence at trial; the court will set deadlines for filing and ruling on any objections to final witness and exhibit disclosures and deposition designations, motions in limine, proposed instructions in jury cases, proposed findings of fact and conclusions of law in non-jury cases, and any other matters calculated to make trial more efficient.

The pretrial conferences contemplated by Fed. R. Civ. P. 16(d) will be held before a judge or magistrate judge with court participation throughout unless otherwise directed by the court. Parties may be present at the pretrial conference and they must be present when ordered by the court.

The court will prepare the pretrial order or designate counsel to do so. At a time as may be ordered by the court under Fed. R. Civ. P. 16(b)(3)(B)(v), the parties must submit a proposed pretrial order in the form prescribed by the court. The parties have joint responsibility to attempt in good faith to formulate an agreed order which the judge can sign at the conference. If the parties disagree on any particulars, they are each to submit proposed language on the points in controversy, for the judge to rule on at the conference. To attempt in good faith to formulate an agreed order means more than mailing or faxing a form or letter to the opposing party. It requires that the parties in good faith converse, confer, compare views, consult and deliberate, or in good faith attempt to do so. Objections to the pretrial order must be made in writing and within such time as the court may specify.

(b) Effect of Pretrial Order. The pretrial order, when approved by the court and filed with the clerk, together with any memorandum entered by the court at the conclusion of the pretrial conference, will control the subsequent course of the action unless modified by consent of the parties and court, or by an order of the court to prevent manifest injustice.

(c) Sanctions. Should counsel or a pro se litigant fail to appear at the pretrial conference or fail to comply in good faith with the provisions of this rule, the court may, in its discretion, enter a judgment of dismissal or default. Alternatively, or in addition thereto, the court may impose any sanction provided for in Fed. R. Civ. P. 16(f) or D. Kan. Rule 11.1

(d) Witness and Exhibit Disclosures. At times ordered by the court under Fed. R. Civ. P. 16(b) and (c)(2)(G), the parties will exchange and file witness and exhibit disclosures pursuant to Fed. R. Civ. P. 26(a)(3).

(1) *Content of Disclosures.* Witness disclosures must set forth the address of each witness as well as the subject matter about which each witness is expected to testify. Witness and exhibits disclosed by one party may be called or offered by the other party. If a witness or exhibit appears on a final Fed. R. Civ. P. Rule 26(a)(3) disclosure that has not previously been included in a Fed. R. Civ. P. Rule 26(a)(1) disclosure (or timely supplement thereto), that witness or exhibit probably will be excluded at trial. *See* Fed. R. Civ. P. 37(c)(1). This restriction does not apply, however, to rebuttal witnesses or documents, the necessity of which could not reasonably be anticipated as of the deadline for filing final witness and exhibit disclosures. The disclosures of the parties must also

specifically identify specific deposition exhibits to be used. Witnesses expected to testify as experts must be so designated.

(2) *Trial Exhibits.* Before meeting with the courtroom deputy to mark exhibits, the parties must exchange copies of all proposed exhibits and attempt to agree as to their authenticity and relevancy.

(3) *Testimony by Deposition.* With respect to any witness who will appear by deposition, the disclosure must designate by page and line (or other appropriate designation in the case of a videotaped deposition) those portions of the deposition the offering party intends to read into evidence. The opposing party must then serve upon the offering party a counter designation of those portions of the deposition which the opposing party believes in fairness ought to be considered with the part the offering party has designated in accordance with Fed. R. Civ. P. 32(a)(4). Any disputes between the parties concerning deposition testimony, including any unresolved evidentiary objections, must be brought to the attention of the court by a separate filing with the Clerk of Court, by the deadline set forth in the pretrial order. The objecting party must deliver a copy of the deposition to the judge along with this filing. A party intending to offer deposition evidence at trial must provide the trial judge a copy of the deposition before the commencement of trial. For any depositions used at trial, all exhibit designations must be re-marked by the offering party to correspond to the trial exhibit designations.

* * *

As amended 10/13, 3/04, 9/00, 3/20/92

RULE 16.3
ALTERNATIVE DISPUTE RESOLUTION

(a) Authorization for and Purpose of Mediation. Pursuant to 28 U.S.C. § 652, the court may require litigants in civil cases to consider the use of an alternative dispute resolution ("ADR") process. The court's primary ADR procedure is mediation facilitated by a private mediator chosen by the parties. The mediation process is intended to improve communication among the parties and provide the opportunity for greater litigant involvement in the earlier resolution of disputes, with the ultimate goal of securing the just, speedy, and inexpensive disposition of civil cases.

(b) Summary Description of ADR Procedures.

(1) *Mediation*. Mediation utilizes a neutral third party to facilitate discussions among the parties to help them find a mutually acceptable resolution of the case. The goal of the mediator, who may meet with the parties jointly and separately, is to help them identify their underlying interests, improve communication, and generate settlement options. A mediator may employ traditional facilitative strategies (aimed at solutions to problems underlying the litigation), evaluative strategies (designed to present the strengths and weaknesses of the case, or its relative value), or a combination of both approaches. In limited circumstances, the court may conduct the mediation.

(2) *Other ADR Procedures*. In appropriate cases, the court will facilitate other forms of ADR, as authorized by 28 U.S.C. §§ 654-658, including, but not limited to, early neutral evaluation, mini-trial, and arbitration.

(c) Referral of Cases to Mediation. Consistent with Fed. R. Civ. P. 16, the court will discuss ADR procedures at the scheduling conference. In most cases, the court will direct the parties, at the earliest appropriate opportunity, to mediate their dispute with a private mediator.

(1) *Referral and Selection Process*. The court may refer a case to mediation at any appropriate time. If the court orders mediation, the parties will jointly select the mediator. The parties may select any person to serve as mediator, and the person need not be included on the court-maintained list of mediators. Absent substantial countervailing considerations, the court will appoint the jointly-selected mediator. If the parties cannot agree on a mediator, the parties will submit their nominations to the court, who will select the mediator.

(2) *Attendance at Mediation Session by Persons with Settlement Authority*. Attendance by a party or its representative with settlement authority at the mediation is mandatory, unless the court orders otherwise. The purpose of this requirement is to have the party or representative who can settle the case present at the mediation. A unit or agency of government satisfies this attendance requirement if represented by a person who has, to the greatest extent feasible, authority to settle, and who is knowledgeable about the facts of the case, the governmental unit's position, and the procedures and policies under which the governmental unit decides whether to accept proposed settlements. The parties' attorney(s) responsible for resolution of the case must also be present.

(3) *Notice to Interested Nonparties*. Attorneys must coordinate with the mediator and identify any nonparties who have an interest in the case (including, but not limited to, primary and excess liability insurance carriers, subrogees, and lienholders). The attorneys must provide written notice to all interested nonparties informing them of the date and location of the mediation and that their participation is strongly encouraged. A copy of such notice must be provided to all parties and the mediator.

(4) *Requests to be Excused*. Unless all parties agree, only the court may excuse the presence of a person with settlement authority from attending the mediation in person.

(5) *Sanctions*. In appropriate circumstances, the court may impose sanctions pursuant to Fed. R. Civ.P. 16(f).

(d) List of Mediators. The ADR administrator will maintain a list of mediators who have expressed a desire to mediate cases pending in this court and have complied with the requirements of this paragraph.

(1) *Minimum Qualifications and Training*. For placement on the list of mediators, the person must be a lawyer and:

(A) must have been a member of a state or federal bar in good standing for the preceding five years and satisfy one of the following additional requirements:

(i) participated in 40 hours of approved mediation training within the past two years;
(ii) approved as a mediator for civil cases pursuant to the rules adopted by the Kansas Supreme Court; or
(iii) participated as mediator, co-mediator, or attorney in 10 mediations in court cases in the past three years;

(B) must abide by the disclosure rule set forth in paragraph (g) below;

(C) must agree to participate periodically in court-approved ADR orientation or refresher training;

(D) must agree:
(i) to permit participants in the mediation sessions they conduct to give feedback to the court about how the process was conducted; and
(ii) to submit reports upon conclusion of the mediation; and

(E) must agree to serve as a mediator on a pro bono basis or, in the court's discretion, at a reduced fee in two cases per year.

(2) *Placement on the List of Mediators*. All applicants must complete the required application form. The ADR administrator will review the applications and place applicants meeting the minimum requirements on a list of mediators. Being on the list of mediators is not an indication a person is an effective mediator, and no certification results by placement on the list. The list serves as a resource of persons who offer mediation services and appear to meet the court's minimum requirements.

(3) *Evaluation*. The ADR administrator is authorized to develop an evaluation program to evaluate the mediation services of private mediators. Any comments or complaints concerning mediators on the list should be made to the ADR administrator.

(4) *Removal from the List of Mediators*. The ADR administrator may remove any person from the list of mediators for any reason consistent with the effective management of the program.

(e) Compensation of Private Mediators. Except when serving pro bono, private mediators must be compensated at the rate negotiated by the attorneys and the mediator. The fee must be divided by agreement of the parties or as ordered by the court.

(f) Mediation with Indigent Parties. If a party is indigent, the mediation services will be provided pro bono or at a reduced rate to that party. The court will determine whether a party is indigent.

(g) Required Disclosures by Mediator. The mediator must immediately disclose to the parties the relevant facts giving rise to any potential conflict of interest, including, but not limited to, the following:

(1) any basis upon which the mediator's impartiality might reasonably be questioned;
(2) any bias or prejudice concerning a party to this case;
(3) personal knowledge of evidentiary facts that are disputed in this case;
(4) the mediator or the mediator's spouse is serving as a lawyer in the case;
(5) any lawyer in the mediator's firm has served or is serving as a lawyer in the case;

(6) the mediator or the mediator's spouse is a party to the case or an officer, director, or trustee of a party to the case;

(7) the mediator or the mediator's spouse has been or is likely to be a material witness in the case;

(8) a lawyer with whom the mediator currently practices has been or is likely to be a material witness in the case; and/or

(9) the mediator (directly or as a fiduciary), the mediator's spouse, or any of the mediator's minor children who live with the mediator have a financial interest in the case or in any party to the case.

(h) Withdrawal. If a party requests the mediator to withdraw because of the disclosures made pursuant to paragraph (g) above, the mediator must withdraw, and the parties must agree on another mediator.

(i) Confidentiality. Except as provided in paragraph (j) below, this court, the mediator, all attorneys, the parties, and any other persons involved in the mediation must treat as "confidential information" the contents of written mediation statements, anything that happened or was said, any position taken, and any view of the merits of the case formed by any participant in connection with any mediation. "Confidential information" must not be:

(1) disclosed to anyone not involved in the mediation process;

(2) disclosed to the trial judge; or

(3) discoverable or subject to compulsory process or used for any purpose, except as provided in paragraph (j) below, in any pending or future proceeding in any court unless a court determines that such testimony or disclosure is necessary to:

(A) prevent manifest injustice;

(B) help establish a violation of law or ethical violation; or

(C) prevent harm to the public health or safety,

of such magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential.

(j) Limited Exceptions to Confidentiality. Paragraph (i) above does not prohibit:

(1) disclosures as may be stipulated by all parties and the mediator;

(2) disclosure of an agreement, by all parties to the agreement, which appears to constitute a settlement contract, if necessary in proceedings to determine the existence of a binding settlement contract;

(3) a report to or an inquiry by the ADR administrator regarding a possible violation of these Local Rules;

(4) a report of a possible violation of a court order to the judge or magistrate judge signing the order;

(5) any participant or the mediator from responding to an appropriate request for information duly made by persons authorized by the court to monitor or evaluate the court's ADR program; or

(6) disclosures as are otherwise required by law.

* * *

As amended 3/05 (formerly D.Kan.S.O. 04-1 and 03-6), 4/8/99, 2/28/97, 2/3/95.

-IV-
PARTIES

RULE 23.1
CLASS ACTIONS

(a) Class Action Complaint. The complaint in a class action case must bear next to its caption the legend, "Complaint — Class Action." The complaint must contain, under a separate heading styled "Class Action Allegations," the following:

(1) A reference to the portion or portions of Fed. R. Civ. P. 23 under which it is claimed that the suit is properly maintainable as a class action.

(2) Appropriate allegations thought to justify such claim, including, but not necessarily limited to:

(A) the size and definition of the alleged class;

(B) the basis upon which the plaintiff claims

(i) to be an adequate representative of the class; or

(ii) if the class is comprised of defendants, that those named as parties are adequate representatives of the class;

(C) the alleged question of law or fact claimed to be common to the class; and

(D) for actions sought to be maintained under Fed. R. Civ. P. 23(b)(3), allegations thought to support the findings required by that subdivision.

(b) Motion for Class Action Determination. Consistent with Fed. R. Civ. P. 23(c)(1), as early as is practicable, a party seeking certification of a class action must file a motion to determine whether the case may be maintained as a class action. If a party wishes to present oral testimony to support the class action motion, it must inform the court in its motion. In ruling on such a motion, the court may:

(1) allow the action to be so maintained;

(2) disallow and strike the class action allegations; or

(3) order postponement of the determination pending discovery or such other preliminary procedures as appropriate and necessary in the circumstances. Whenever possible, where the court postpones determination, the court will set a date for renewing the motion.

(c) Class Action Counterclaims or Crossclaims. The foregoing provisions apply, with appropriate adaptations, to any counterclaim or crossclaim alleged to be brought for or against a class.

(d) Burden of Proof; Notice. Any party seeking to maintain a case as a class action bears the burden of presenting an evidentiary basis to the court showing that the action is properly maintainable as such. If the court determines that an action may be maintainable as a class action, the party obtaining that determination must, unless the court orders otherwise, initially bear the expenses of and be responsible for giving such notice as the court may order to members of the class.

* * *

As amended 9/28/87.

RULE 23-A
NOTICE OF MULTI-DISTRICT LITIGATION RELATED CASE

(a) Notice of Related Case. If any party to a Multi-District Litigation ("MDL") is named in a civil action pending in this District which concerns the same subject matter as the cases in the MDL, it shall file a Notice of Related Case in the individual docket and the MDL docket, stating if the case should or should not be assigned to the judge coordinating the MDL in accordance with the rules governing centralization found in 28 U.S.C. § 1407(a). The Notice of Related Case shall be limited to five pages.

(b) Responses and Replies to Notice of Related Case. Any response to the Notice of Related Case, which need only be filed by any objecting parties, shall be filed within seven days after filing of the notice and shall be limited to five pages. Replies shall be filed within five days after the response is filed and limited to five pages.

(c) Failure to Respond or No Objection. If no response is filed or a response indicating no objection is filed, the case shall be assigned to the MDL judge for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407(a).

(d) Objection. If an objection is filed, the court will decide if the case should or should not be assigned to the MDL judge in accordance with the rules governing centralization found in 28 U.S.C. § 1407(a).

(e) Failure to Object. Failure by any party in the MDL to object as set forth herein shall constitute a waiver of any objection to assignment of the case to the MDL judge.

*** * ***

Adopted 3/17/16.

-V-
DEPOSITIONS AND DISCOVERY

RULE 26.1
COMPLETION TIME FOR DISCOVERY

Rule abolished as of 3/17/2014.

RULE 26.2
MOTIONS FOR PROTECTIVE ORDERS

(a) Stay of Discovery. The filing of a motion for a protective order pursuant to Fed. R. Civ. P. 26(c) or 30(d) stays the discovery at which the motion is directed pending order of the court.

(b) Stay of Deposition. A properly-noticed deposition is automatically stayed if:

(1) one of the following motions has been filed:

(A) motion to quash or modify a deposition subpoena pursuant to Fed. R. Civ. P. 45(c)(3)(A); or

(B) motion to order appearance or production only upon special conditions pursuant to Fed. R. Civ. P. 45(c)(3) (C); and

(2) the objecting party has filed and served the motion upon the attorneys or parties:

(A) by delivering a copy within 14 days after service of the deposition notice; and

(B) at least 48 hours prior to the noticed time of the deposition.

(c) No Appearance at Deposition Required. Pending resolution of any motion that stays a deposition under this rule, neither the objecting party, witness, nor any attorney is required to appear at the deposition to which the motion is directed until the court rules on the motion or it is otherwise resolved.

* * *

As amended 12/01/09.

RULE 26.3
DISCLOSURES AND DISCOVERY NOT TO BE FILED

(a) Papers Not to Be Filed. The following papers must be served upon other attorneys or unrepresented parties, but not filed with the clerk:

(1) disclosures required under Fed. R. Civ. P. 26(a)(1) and (2);

(2) interrogatories under Fed. R. Civ. P. 33;

(3) requests for production or inspection under Fed. R. Civ. P. 34;

(4) requests for admissions under Fed. R. Civ. P. 36; and

(5) the responses thereto.

(b) Conventionally-Served Verification. As stated in D. Kan. Rule 5.4.2, registration as a Filing User constitutes consent to electronic service of these documents. However, a party's original signature verifying answers to interrogatories must be served conventionally. The verification may be served as a separate document if it references the interrogatory answers with adequate specificity (e.g., "plaintiff's answers to defendant's Interrogatory Nos. 1 through 10, which answers were served by email on March 1, 2003").

(c) Certificate of Service. A party serving such disclosures and discovery must, at the time of service, file with the clerk a certificate of service stating the type of disclosure or discovery or response served, the date and type of service, and the party served.

* * *

As amended 3/04, 2/16/95.

RULE 26.4
EXPERT WITNESSES

(a) Court-Appointed Experts. If a judge determines that the appointment of expert witnesses in an action may be desirable, the judge will order the parties to show cause why expert witnesses should not be appointed. After opportunity for hearing, the judge may request nominations and appoint one or more such witnesses. If the parties agree in the selection of an expert or experts, the judge will appoint the agreed expert or experts. Otherwise, the judge may make the selection. The judge will determine the duties of the witness and inform the witness thereof at a conference at which the parties will have an opportunity to participate. A witness so-appointed must advise the parties of the findings of the witness, if any. The judge or any party may call the witness to testify. Any party may examine and cross-examine the witness.

This rule does not limit the parties in calling their own expert witnesses.

(b) Compensation. Expert witnesses appointed pursuant to this rule are entitled to reasonable compensation in such sum as the judge may allow. Such compensation must be paid as follows:

(1) In a criminal case, by the United States as the judge orders out of available funds;

(2) In a civil case, by the parties in equal portions, unless the judge otherwise directs, and the compensation taxed as costs in the case.

(c) Stipulations Regarding Experts. Notwithstanding Fed. R. Civ. P. 26(a)(2)(B), no exception to the requirements of the rule will be allowed by stipulation of the parties unless the stipulation is in writing and filed and approved by the court.

* * *

As amended 9/00.

RULE 30.1
NOTICE OF DEPOSITIONS

The reasonable notice provided by Fed. R. Civ. P. 30(b)(1) for the taking of depositions is seven days. For good cause, the court may enlarge or shorten such time. Fed. R. Civ. P. 6 governs the computation of time.

* * *

As amended 12/01/09.

RULE 30.2
DEPOSITIONS; NOT TO BE FILED; DELIVERY

(a) Depositions Not Filed. Parties are not to file depositions unless the court orders them to do so.

(b) Delivery of Depositions. The originals of all stenographically-reported depositions must be delivered to the party noticing the deposition:

(1) upon signature by the deponent if he or she has requested to review the transcript and to make changes to same;

(2) upon completion if the deponent has not requested to review the transcript; or

(3) upon certification by the shorthand reporter that following reasonable notice to the deponent and deponent's attorney of the availability of the transcript for signature, the deponent has failed or refused to sign it.

(c) Retention of Originals. The party to whom it is delivered must retain the original of the deposition to be available for appropriate use by any party in a hearing or trial of the case.

* * *

RULE 30.3
TIME FOR TAKING DEPOSITIONS

The deposition of a material witness not subject to subpoena should ordinarily be taken during the discovery period. However, the deposition of a material witness who agrees to appear at trial, but who later becomes unable or refuses to attend, may be taken at any time prior to trial.

* * *

RULE 32.1
USE OF DISCOVERY AT TRIAL

If depositions, interrogatories, requests for production or inspection, or admissions, or responses thereto are to be used at trial, the party seeking to use them must file the portions to be used at the beginning of trial, insofar as their use reasonably can be anticipated.

* * *

RULE 33.1
ADDITIONAL INTERROGATORIES TO THOSE PERMITTED BY FED. R. CIV. P. 33(a)

If a party seeks leave to serve additional interrogatories to those permitted by Fed. R. Civ. P. 33(a), a motion must be filed that sets forth (1) the proposed additional interrogatories; and (2) the reasons establishing good cause for their service. Such motion is subject to D. Kan. Rule 37.2.

* * *

RULE 33.2
FORMAT FOR INTERROGATORIES

Sufficient space for the insertion of an answer must be left following each interrogatory served pursuant to Fed. R. Civ. P. 33. The interrogatory being answered must immediately precede each answer to an interrogatory.

* * *

RULE 35.1
TRIAL PREPARATION AFTER CLOSE OF DISCOVERY

Subject to any deadlines set in a scheduling order for seeking a Fed. R. Civ. P. 35 physical or mental examination of a party or person who is in the party's custody or under its legal control, the court may order the examination at any time prior to trial.

* * *

RULE 37.1
MOTIONS RELATING TO DISCOVERY

(a) Content of Motions. Motions under Fed. R. Civ. P. 26(c) or 37(a) directed at depositions, interrogatories, requests for production or inspection, or requests for admissions under Fed. R. Civ. P. 30, 33, 34 or 36, or at the responses thereto, must be accompanied by copies of the notices of depositions, the portions of the interrogatories, requests, or responses in dispute. Motions under Fed. R. Civ. P. 45(d) directed at subpoenas must be accompanied by a copy of the subpoena in dispute.

(b) Time for Filing Motions. Any motion to compel discovery in compliance with D. Kan. Rules 7.1 and 37.2 must be filed and served within 30 days of the default or service of the response, answer, or objection that is the subject of the motion, unless the court extends the time for filing such motion for good cause. Otherwise, the objection to the default, response, answer, or objection is waived.

* * *

As amended 9/00.

RULE 37.2
DUTY TO CONFER CONCERNING DISCOVERY DISPUTES

The court will not entertain any motion to resolve a discovery dispute pursuant to Fed. R. Civ. P. 26 through 37, or a motion to quash or modify a subpoena pursuant to Fed. R. Civ. P. 45(c), unless the attorney for the moving party has conferred or has made reasonable effort to confer with opposing counsel concerning the matter in dispute prior to the filing of the motion. Every certification required by Fed. R. Civ. P. 26(c) and 37 and this rule related to the efforts of the parties to resolve discovery or disclosure disputes must describe with particularity the steps taken by all attorneys to resolve the issues in dispute.

A "reasonable effort to confer" means more than mailing or faxing a letter to the opposing party. It requires that the parties in good faith converse, confer, compare views, consult, and deliberate, or in good faith attempt to do so.

* * *

As amended 9/00.

-VI-
TRIALS

RULE 38.1
RANDOM SELECTION OF GRAND AND PETIT JURORS

The selection of grand and petit jurors will be as follows:

(a) Places for Holding Court and Designation of Counties. The counties designated as constituting each jury division are as follows:

(1) *Kansas City - Leavenworth Division*. Atchison, Doniphan, Douglas, Franklin, Johnson, Leavenworth, Miami, and Wyandotte.

(2) *Wichita - Hutchinson Division*. Butler, Cowley, Harper, Harvey, Kingman, Marion, McPherson, Reno, Rice, Sedgwick, and Sumner.

(3) *Topeka Division*. Brown, Chase, Clay, Dickinson, Geary, Jackson, Jefferson, Lyon, Marshall, Morris, Nemaha, Osage, Pottawatomie, Riley, Shawnee, Wabaunsee, and Washington.

(4) *Dodge City Division*. Barber, Barton, Clark, Comanche, Edwards, Finney, Ford, Grant, Gray, Greeley, Hamilton, Haskell, Hodgeman, Kearney, Kiowa, Lane, Meade, Morton, Ness, Pawnee, Pratt, Rush, Scott, Seward, Stafford, Stanton, Stevens, and Wichita.

(5) *Fort Scott Division.* Allen, Anderson, Bourbon, Chautauqua, Cherokee, Coffey, Crawford, Elk, Greenwood, Labette, Linn, Montgomery, Neosho, Wilson, and Woodson.

(6) *Salina Division*. Cheyenne, Cloud, Decatur, Ellis, Ellsworth, Gove, Graham, Jewell, Lincoln, Logan, Mitchell, Norton, Osborne, Ottawa, Phillips, Rawlins, Republic, Rooks, Russell, Saline, Sherman, Sheridan, Smith, Thomas, Trego, and Wallace.

(b) Applicability. This rule, except as otherwise provided, applies separately to each division designated herein.

(c) Management of the Jury Selection Process. Pursuant to 28 U.S.C. § 1863 (b)(1), the clerk is hereby authorized to manage the jury selection process in the District of Kansas. The clerk acts under the general supervision and control of the chief judge of the court.

Pursuant to 28 U.S.C. § 1863(a), the court may authorize other persons to assist the clerk in the jury selection process.

The clerk must keep one book for the entire district known as the "Jury Selection Journal." In the book, the clerk must enter chronologically:

(1) each order of the court pursuant to this rule; and

(2) a minute entry of each act the clerk performs under this rule.

(d) Source of Names. The names of prospective grand and petit jurors must be selected at random from the official lists of registered voters in each of the counties comprising the divisions herein designated. The names selected must be assigned serial numbers by division as determined by the clerk. The clerk must maintain a record of the names and numbers assigned to each name.

(e) Name Selection Procedures. At the clerk's option, and after consultation with the court, the clerk may use a properly programmed electronic data processing system to make the following selections by a purely randomized process:

(1) names from complete source list databases in electronic media for the master jury wheel;

(2) names from the master wheel for the purpose of determining qualification for jury service; and

(3) names from the qualified wheel for summoning persons to serve as grand or petit jurors.

Each county within the jury division must be substantially proportionally represented in the master jury wheel in accordance with 28 U.S.C. § 1863(b)(3). And the mathematical odds of any single person being picked from the source list, the master wheel, and the qualified wheel must be substantially equal.

(f) Master Jury Wheel. Each jury division must be provided with a master jury wheel into which the clerk must proportionately place the names of those selected from the voter registration lists under this rule.

The minimum number of names to be placed initially in each master jury wheel are as follows:

(1) *Kansas City - Leavenworth Division*: 7,500 names.

(2) *Wichita - Hutchinson Division*: 7,000 names.

(3) *Topeka Division*: 5,000 names.

(4) *Dodge City Division*: 1,000 names.

(5) *Fort Scott Division*: 1,000 names.

(6) *Salina Division*: 1,000 names.

The chief judge may order additional names to be placed in the master jury wheel as necessary. The additional names must be selected as provided in subsection (e) of this rule.

The master jury wheel must be emptied and refilled every two years.

(g) Drawing of Names from the Master Jury Wheel and Completion of Qualification Form.

(1) *Initial Draw.*

(A) *In General.* From time to time, as the court directs, the clerk must draw at random from each divisional master jury wheel, the names or numbers of as many persons as may be required for jury service. The clerk may draw either manually or by use of a properly programmed data computer. Whenever a divisional

master jury wheel is maintained on a data computer, the names to be drawn from the master jury wheel must be selected by using the random number formula, as the court directs.

(B) *Public Notice.* The clerk or jury commission must post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn.

(C) *Alphabetical List.* The clerk may, upon order of the court, prepare an alphabetical list of the names drawn from the master jury wheel. Such list must not be disclosed to any person except upon court order, and except as required by 28 U.S.C. §§ 1867-1868.

(D) *Jury Qualification Form.* Upon drawing names or numbers from a divisional master jury wheel, the clerk must mail a jury qualification form [as defined in 28 U.S.C. § 1869(h)] to every person whose name or number is drawn, for each person to fill out and return — duly signed and sworn — to the clerk by mail or through the court's internet site within 10 days. If it appears there is an omission, ambiguity, or error in a filled-out and returned qualification form, the clerk may return the form with instructions to:

(i) make such additions and corrections as may be necessary; and

(ii) return the form to the clerk within 10 days.

(2) *Supplementation for Undeliverable and Non-Responding Juror Qualification Forms.* For all juror qualification forms returned to the court as "undeliverable" or those to which no response has been received (after the clerk has sent a follow-up letter to the person who has not responded), the clerk — as soon as practicable — must issue the same number of new juror qualification forms to be mailed to addresses within the same zip code area to which the undeliverable or non-responding juror qualification forms had been sent. The clerk must draw these names or numbers from the Master Jury Wheel.

(3) *National Change of Address Database*. The clerk must submit the names on the Master Jury Wheel once a year to be updated and corrected through the national change-of-address system of the United States Postal Service.

(h) Qualified Jury Wheel.

(1) *In General.* The clerk must maintain a qualified jury wheel for each division of the court. Into each divisional qualified jury wheel, the clerk must place the names of all persons previously drawn from the divisional master jury wheels, in accordance with subsection (g) of this rule, who have been determined to be qualified as jurors and not exempt or excused pursuant to this rule.

(2) *Periodic Drawings.* From time to time, at the direction of any judge of this district, the clerk must draw at random as many names or numbers of persons as may be required for assignment to grand and petit jury panels. The clerk must draw from a divisional qualified jury wheel, either

manually or by use of a properly programmed data computer. Whenever a divisional qualified jury wheel is maintained on the computer, the names to be drawn from said wheel must be selected by using the random number formula, as directed by the court. The clerk must prepare or cause to be prepared a separate alphabetical list of names of all persons so drawn and assigned to each grand and petit jury panel.

(3) *Public Notice.* The clerk or jury commission must post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn.

(4) *Summons.* When the court orders a grand or petit jury to be drawn, the clerk must issue a summons for the required number of jurors. Persons drawn for jury service may, in accordance with 28 U.S.C. § 1866(b), be served personally or by mail addressed to such persons at their usual residence or business address.

(5) *Disclosure of Names.*

(A) *Petit Jurors.* The names of petit jurors drawn from the qualified jury wheel may be disclosed to the parties, the public, or the media on the day following the drawing upon leave of the court and the request of any party, member of the public, or the media. But the court in which any of the prospective jurors concerned are expected to serve may, by special order, require that the clerk keep these names confidential where the interests of justice so require.

(B) *Grand Jurors.* The names of grand jurors drawn from the qualified jury wheel must not be maintained in any public record or otherwise disclosed to the public, except upon the order of the judge in charge of the grand jury on a showing that exceptional circumstances have created a demonstrated need for disclosure.

(6) *Assignment of Jurors to Panels.*

(A) *Petit Jury Panels and Panels to be Assigned to the Bankruptcy Court.* In assigning prospective jurors to petit jury panels or to panels to be assigned to the Bankruptcy Court, the clerk must place the names or numbers of available petit jurors drawn from the divisional qualified jury wheel, as provided in this rule, and who are not excused, in a jury wheel. The clerk must then draw such necessary names and assign them to particular panels for each jury case as the court directs.

(B) *Grand Jury Panels.* Separate grand jury panels as may be required for service at the places in the district where court is held must be drawn at random as ordered by the court, either manually or by use of a programmed data computer, or by a combination thereof, from the qualified jury wheels on a divisional basis as follows:

(i) At Kansas City, Leavenworth, and Fort Scott: From the Kansas City - Leavenworth and Fort Scott jury wheels.

(ii) At Topeka and Salina: From the Topeka and Salina jury wheels.

(iii) At Wichita, Hutchinson, and Dodge City: From the Wichita - Hutchinson and Dodge City jury wheels.

The required number of names for each centralized grand jury panel must be taken at random from the qualified jury wheels in proportion as nearly as possible to the number of registered voters in each division every two years. For example, if the total number of registered voters in the Kansas City - Leavenworth and Fort Scott jury divisions was 150,000 and 90,000, respectively, and if 48 prospective jurors were to be summoned for grand jury service at Kansas City, Leavenworth, or Fort Scott, then 30 names should be selected at random from the Kansas City - Leavenworth qualified jury wheel and 18 names from Fort Scott's qualified wheel.

(C) *Summons.* The clerk must issue summonses for the required number of jurors to be called to be served personally or by mail addressed to their usual residence or business address.

(i) Disqualification or Exemption from Jury Service. Pursuant to 28 U.S.C. § 1865(a), the chief judge or clerk of this court under the supervision of the court, or, in his or her absence, any other district court judge, shall determine whether a prospective grand or petit juror is unqualified for, or exempt, or to be excused from jury service. The judge or clerk will make the determination from information provided on the juror qualification form and other competent evidence. The clerk shall enter such determination in the space provided on the juror qualification form or in the juror records in the database from a divisional master jury wheel.

(1) *Disqualification.* Pursuant to 28 U.S.C. § 1865(b), any person shall be determined to be qualified to serve on either grand or petit juries in the district court unless he or she:

(A) is not a citizen of the United States 18 years of age who has resided for a period of one year within the judicial district;

(B) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

(C) is unable to speak the English language;

(D) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

(E) has a charge pending against him for the commission of, or has been convicted in a state or federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored.

(2) *Exemption.* Pursuant to 28 U.S.C. § 1863(b), the following persons are barred from jury service on the grounds that they are exempt:

(A) members in active service in the Armed Forces of the United States;

(B) members of the fire or police departments of any State, the District of Columbia, or such territory possession;

(C) public officers in the executive, legislative, or judicial branches of the Government of the United States, or of any State, the District of Columbia, or such territory or possession, who are actively engaged in the performance of official duties.

(j) Individual Excuse from Jury Service. In addition to the members of groups and classes subject to excuse from jury service on request, as provided in subsection (i) of this rule, any person summoned for jury service may be excused by the court, or the clerk under the supervision of the court upon a showing of undue hardship or extreme inconvenience, or both, pursuant to 28 U.S.C. § 1866(c). The names of deferred persons are to be reinserted into the qualified jury wheel.

Whenever a person is excused for reason of undue hardship or extreme inconvenience, the clerk must note the reason for the excuse in the space provided on the jury qualification form or in the juror records in the database from a divisional master jury wheel.

(k) Groups and Classes, Members of Which are Subject to Excuse on Request. Pursuant to 28 U.S.C. § 1863(b)(5), and by the adoption of this rule, it is hereby found that jury service by the following groups of persons and occupational classes of persons would entail undue hardship or extreme inconvenience to the members thereof and that the excuse from jury service of the members thereof on request would not be inconsistent with 28 U.S.C. § 1861-1862:

(1) Persons over 70 years of age.

(2) Persons who have, within the past two years, served on a federal grand or petit jury.

(3) Persons having active care and custody of a child or children under 10 years of age whose health and/or safety would be jeopardized by their absence for jury service; or a person who is essential to the care of aged or infirm persons.

(4) Any person whose services are so essential to the operation of a business, commercial, or agricultural enterprise that said enterprise must close if such person were required to perform jury duty.

(5) Volunteer safety personnel if they serve without compensation as firefighters or members of a rescue squad or ambulance crew for a "public agency." "Public agency" for this purpose means the United States, any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, or other territory of the United States, "or any unit of local government, department, or instrumentality of any of the foregoing."

(l) Maintenance and Inspection of Records.

(1) *Disclosure Prior to Emptying and Refilling a Master Jury Wheel.* Pursuant to 28 U.S.C. § 1867(f), prior to the emptying and refilling of any master jury wheel, the contents of records and papers used by the clerk in connection with the juror selection process shall not be disclosed, except as provided elsewhere in this plan or upon written order of the court.

(2) *Disclosure After Emptying and Refilling a Master Jury Wheel.* Pursuant to 28 U.S.C. § 1868, after any master jury wheel is emptied and refilled as provided in this rule, and after all persons selected to serve as jurors before

the master wheel was emptied have completed such service, all of the records and papers compiled and maintained by the clerk before the master wheel was emptied shall be preserved in the custody of the clerk for 4 years or for such longer period as may be ordered by the court, and upon leave of the court, shall be available for public inspection at the office of the clerk of court during normal business hours for the purpose of determining the validity of the selection of any jury. No one may copy any document or remove any document from the premises, without leave of the court.

* * *

NOTE: Rule 38.1 is a mandated rule.
As amended 3/17/18, 3/17/10, 3/17/09, 3/17/08, 3/17/06, 4/8/99, 2/28/97, 3/13/92.

RULE 39.1
ORAL ARGUMENT AT JURY TRIALS

At trial, the party having the burden of proof has the right to open and close the jury argument regardless of whether the defendant has offered evidence. If each of the parties has the burden of proof on one or more issues, the court will determine the order of arguments. The court may set time limitations on arguments.

* * *

As amended 3/04. Formerly Rule 122(a).

RULE 40.1
ASSIGNMENT OF CASES

The chief judge is responsible for the business of the court and the assignment of cases to the judges. In the interest of justice or to further the efficient disposition of the business of the court, a judge may return a case to the clerk for reassignment or, with the approval of the chief judge, may transfer the case to another judge who consents to such transfer.

* * *

RULE 40.2
DETERMINATION OF PLACE OF TRIAL

(a) In General. At the time the complaint is filed, the plaintiff must file a request stating the name of the city where the plaintiff desires the trial to be held. Unless the court orders otherwise, the plaintiff's request governs where the case is filed, docketed, and maintained. If a case is conventionally filed, the plaintiff must file a sufficient number of copies of the request to enable service to be made upon all parties.

(b) Request for Location Without Record Office. If the plaintiff requests trial in a location where there is no record office of the court, the case will be docketed and maintained at the record office of the court where the case is filed, unless the court orders otherwise.

(c) Removed Actions. A removing party, at the time of filing the notice of removal as set forth in D. Kan. Rule 81.1, must also file a designation of place of trial.

(d) Responding Party's Request. The following parties must file a request stating the name of the city where they desire the trial to be held and, unless the court orders otherwise, serve the request upon each party affected thereby:

(1) each defendant, at the time it files its first pleading; and
(2) the plaintiff in a removed action, within 14 days after notice of the removal.

(e) Court Not Bound. The court is not bound by the requests for place of trial. It may determine the place of trial upon motion or in its discretion.

* * *

As amended 12/01/09, 11/16/90.

RULE 40.3
SETTLEMENT OF CASES SET FOR TRIAL

(a) Duty to Notify Court. The parties must immediately notify the court if they reach an agreement that resolves the litigation as to any or all parties.

(b) Failure to Timely Notify Court. Whenever a civil action scheduled for jury trial is settled or otherwise disposed of by agreement in advance of the trial date, except for good cause, jury costs paid or incurred must be assessed equally against the parties and their attorneys or otherwise assessed as the court directs. Jury costs include attendance fees, per diem, mileage, and parking.

(c) Timely Notification. No jury costs will be assessed if notice of settlement or disposition of the case is given to the jury coordinator at least one full business day prior to the scheduled trial date.

* * *

RULE 41.1
DISMISSAL FOR LACK OF PROSECUTION

At any time, the court may issue an order to show cause why a case should not be dismissed for lack of prosecution. If good cause is not shown within the time prescribed by the show cause order, the court may enter an order of dismissal. The dismissal will be with prejudice unless the court otherwise specifies.

* * *

RULE 47.1
COMMUNICATION WITH JURORS AFTER TRIAL

(a) Court Order Required. No one — including the parties, their attorneys, or the agents or employees of either — is permitted to examine or interview any juror, either orally or in writing, except:

(1) by order of the court in its discretion; and

(2) under such terms and conditions as the court establishes.

(b) Restrictions on Interviews. If the court permits examination or interviews of jurors, the following restrictions apply, in addition to any other restrictions the court imposes:

(1) Jurors may refuse all interviews or comments.

(2) If a juror refuses to be interviewed or questioned, no person may repeatedly ask for interviews or comments.

(3) If a juror agrees to an interview, he or she must not disclose any information with respect to:

(A) the specific vote of any juror other than the juror being interviewed; or

(B) the deliberations of the jury.

(c) Notice of Rule. When discharging or excusing empaneled jurors, the court will advise them of this rule.

* * *

As amended 6/18/97, 10/6/87.

RULE 51.1
JURY INSTRUCTIONS

(a) Filing Proposed Jury Instructions. All proposed jury instructions must be filed and served prior to trial, except for isolated unforeseeable instructions, which are addressed in sub-section (c)(1). Jury instructions are to be submitted in accordance with the following requirements:

(1) *Joint Submission.* The parties must jointly submit one set of agreed instructions. To this end, the parties must serve their proposed instructions upon each other, then meet, confer, and submit one complete set of agreed instructions.

(2) *Supplemental Individually-Proposed Instructions.* If the parties cannot agree upon one complete set of instructions, they must submit one set of those instructions that have been agreed, and each party must submit a supplemental set of instructions that are not agreed.

(3) *Consultation Requirement.* It is not sufficient that the parties merely agree upon general instructions, and then each submit their own set of substantive instructions. The parties are expected to meet, confer, and agree upon the substantive instructions for the case, if possible.

(b) Format of Proposed Instructions.

(1) *Annotation.* Each proposed instruction must indicate the number of the proposed instruction and the authority supporting the instruction.

(2) *Neutrality Requirement.* All instructions must be short, concise, understandable, and neutral statements of law. Argumentative instructions are improper, will not be given, and should not be submitted.

(3) *Single Legal Proposition.* Each proposed instruction must, as far as possible, embrace a single legal proposition.

(4) *Modification of Form Instructions.* Any modifications of instructions from statutory authority, Devitt and Blackmar, PIK, or other form instructions must specifically state the modification made to the original form instruction, along with the authority supporting the modification.

(c) Waiver.

(1) *Waiver of Instruction.* Instructions not requested as set forth above and not timely filed will be considered not properly requested within the meaning of Fed. R. Civ. P. 51 and may be deemed waived unless the subject of the request is one arising in the course of trial that could not have been anticipated prior to trial from the pleadings, discovery, or nature of the case.

(2) *Waiver of Objection.* The failure to timely file objections, consistent with the pretrial order, may constitute a waiver of such objection.

(d) Additional Copy of Proposed Instructions. In addition to filing proposed jury instructions, the parties must submit the instructions directly to the appropriate judge or magistrate judge in the form and manner used by that judge.

* * *

As amended 3/17/10. Renumbered 3/04. Formerly Rule 39.1(b).

RULE 52.1
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

(a) Requirements.

(1) *Plaintiff's Proposed Findings of Fact.* Plaintiff must organize proposed findings of fact as follows:

In consecutively numbered paragraphs and simple declarative sentences, plaintiff must set forth all of the facts relied on in support of plaintiff's claim for relief. Each finding must reference in parenthesis the supporting trial exhibit and/or pages in the trial transcript.

(2) *Plaintiff's Proposed Statement of Conclusions.* Plaintiff's statement of conclusions must set forth all conclusions necessary to demonstrate liability. Plaintiff must consecutively number and clearly and concisely state each conclusion. Plaintiff must include only one conclusion per paragraph, and must include a supporting citation to legal authority for each conclusion.

(3) *Defendant's Proposed Findings, Conclusions, and Response.* Defendant must prepare its proposed findings and conclusions in the manner described above. In addition to its own proposed findings and conclusions, defendant must respond to plaintiff's proposed findings and conclusions. Each response must bear the same number as the proposed finding or conclusion to which it is addressed.

(b) Definitions. As used in D. Kan. Rule 52.1(a), the term plaintiff includes plaintiffs as well as counterclaimants, cross-claimants, intervenors, and any other parties who assert affirmative claims for relief. The term defendant includes defendants as well as counterclaim defendants, crossclaim defendants, and any other parties who are defending against affirmative claims for relief.

* * *

As amended 3/04.

-VII-
JUDGMENT

RULE 54.1
TAXATION AND PAYMENT OF COSTS

(a) Procedure for Taxation.

(1) *Form and Deadline.* The party entitled to recover costs must file a bill of costs on a form provided by the clerk (available at the clerk's office or on the court's website under the Forms section) within 30 days after:

(A) the expiration of time allowed for appeal of a

final judgment or decree; or

(B) receipt by the clerk of an order terminating the action on appeal.

(2) *Memorandum Required.* The party seeking costs must file a memorandum in support of its costs with the bill of costs. The memorandum must:

(A) clearly and concisely itemize and describe the costs (the clerk may disallow costs for failure to itemize and verify costs);

(B) set forth the statutory and factual basis for the reimbursement of those costs under 28 U.S.C. § 1920;

(C) reference and include copies of relevant invoices, receipts, and disbursement instruments in support of the requested costs; and

(D) state that the party has made a reasonable effort, in a conference with the opposing counsel or pro se party, to resolve disputes regarding costs.

(3) *Waiver.* The failure of a prevailing party to timely file a bill of costs constitutes a waiver of taxable costs.

(4) *Stipulation.* If the parties resolve costs, the party seeking costs must file a stipulation setting forth the amount of costs agreed upon within 14 days after the conference with the opposing counsel or pro se party.

(b) Objections to Bill of Costs.

(1) *Response Memorandum*. Within 14 days from the date the bill was filed, a party who objects to any item in a bill of costs must file a memorandum setting forth such objections with supporting documentation.

(2) *Reply Memorandum*. Within seven days from the date the response memorandum was filed, the moving party may file a reply memorandum.

(3) *Clerk's Action*. When objections are filed, the clerk will consider the objections and any reply, and will tax costs subject to review by the court. If no timely objections are filed, the clerk may tax costs as claimed in the bill.

(c) Judicial Review. Pursuant to Fed. R. Civ. P. 54(d), the court may review the clerk's action when a party files and serves a motion for review within seven days of the date the clerk taxes costs.

(d) To Whom Payable. All costs taxed are payable directly to the party entitled thereto – not to the clerk or court – except in the following cases:

(1) where the court orders otherwise;

(2) in criminal cases;

(3) in suits for civil penalties for violations of criminal statutes; and

(4) in government cases not handled by the Department of Justice.

*** * ***

As amended 3/17/11; 11/16/90.

RULE 54.2
AWARD OF STATUTORY ATTORNEY'S FEES

(a) Consultation Required. A party who moves for statutory attorney's fees pursuant to Fed. R. Civ. P. 54(d)(2) must promptly initiate consultation with the other party or parties.

(b) Where the Parties Agree. If the parties reach agreement, they must file an appropriate stipulation and request for an order.

(c) Where the Parties Disagree. If they are unable to agree, the moving party must file the following within 30 days of filing the motion:

(1) a statement that, after consultation in accordance with this rule, the parties have been unable to reach an agreement with regard to the fee award; and

(2) a memorandum setting forth the factual basis for each criterion that the court is asked to consider in making an award.

(d) Statement of Consultation. The statement of consultation must set forth the date of the consultation, the names of those who participated, and the specific results achieved.

The court will not consider a motion for statutory attorney's fees made pursuant to Fed. R. Civ. P. 54(d)(2) until the moving party files the statement of consultation in compliance with this rule.

(e) Memorandum and Response. The memorandum in support of Fed. R. Civ. P. 54 motion must be supported by time records, affidavits, or other evidence. The memorandum need not be filed at the same time as the motion. This is an exception to D. Kan. Rule 7.1(a). Other parties have 14 days to file a response to the memorandum in compliance with this rule.

(f) Discovery. Discovery may not be conducted in connection with motions for awards of attorney's fees unless the court permits upon motion and for good cause.

* * *

RULE 56.1
MOTIONS FOR SUMMARY JUDGMENT

(a) Supporting Memorandum. The memorandum or brief in support of a motion for summary judgment must begin with a section that contains a concise statement of material facts as to which the movant contends no genuine issue exists. The facts must be numbered and must refer with particularity to those portions of the record upon which movant relies. All material facts set forth in the statement of the movant will be deemed admitted for the purpose of summary judgment unless specifically controverted by the statement of the opposing party.

(b) Opposing Memorandum.

(1) A memorandum in opposition to a motion for summary judgment must begin with a section containing a concise statement of material facts as to which the party contends a genuine issue exists. Each fact in dispute must be numbered by paragraph, refer with particularity to those portions of the record upon which the opposing party relies, and, if applicable, state the number of movant's fact that is disputed.

(2) If the party opposing summary judgment relies on any facts not contained in movant's memorandum, that party must set forth each additional fact in a separately numbered paragraph, supported by references to the record, in the manner required by subsection (a), above. All material facts set forth in this statement of the non-moving party will be deemed admitted for the

purpose of summary judgment unless specifically controverted by the reply of the moving party.

(c) Reply Memorandum. In a reply brief, the moving party must respond to the non-moving party's statement of additional material facts in the manner prescribed in subsection (b)(1).

(d) Presentation of Factual Material. All facts on which a motion or opposition is based must be presented by affidavit, declaration under penalty of perjury, and/or relevant portions of pleadings, depositions, answers to interrogatories, and responses to requests for admissions. Affidavits or declarations must be made on personal knowledge and by a person competent to testify to the facts stated that are admissible in evidence. Where facts referred to in an affidavit or declaration are contained in another document, such as a deposition, interrogatory answer, or admission, a copy of the relevant excerpt from the document must be attached.

(e) Duty to Fairly Meet the Substance of the Matter Asserted. If the responding party cannot truthfully admit or deny the factual matter asserted, the response must specifically set forth in detail the reasons why. All responses must fairly meet the substance of the matter asserted.

(f) Notice to Pro Se Litigant Who Opposes a Summary Judgment Motion. Any represented party moving for summary judgment against a party proceeding pro se must serve and file as a separate document, together with the papers in support of the motion, the following "Notice To Pro Se Litigant Who Opposes a Motion For Summary Judgment" with the full texts of Fed. R. Civ. P. 56 and D. Kan. Rule 56.1 attached. Where the pro se party is not the plaintiff, the movant must amend the form notice as necessary to reflect that fact.

"Notice to Pro Se Litigant Who Opposes a Motion for Summary Judgment"

The defendant in this case has moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. This means that the defendant has asked the court to decide this case without a trial, based on written materials, including affidavits, submitted in support of the motion. The claims you assert in your complaint may be dismissed without a trial if you do not respond to this motion on time by filing sworn affidavits and/or other documents as required by Rule 56(c) of the Federal Rules of Civil Procedure and by D. Kan. Rule 56.1. The full text of these two rules is attached to this notice.

In short, Fed. R. Civ. P. 56 provides that you may not oppose summary judgment simply by relying upon the allegations in your complaint. Rather, you must submit evidence, such as witness statements or documents, countering the facts asserted by the defendant and raising specific facts that support your claim. If you have proof of your claim, now is the time to submit it. Any witness statements must be in the form of affidavits. An affidavit is a sworn statement of fact based on personal knowledge stating facts that would be admissible in evidence at trial. You may submit your own affidavit and/or the affidavits of others. You may submit affidavits that were prepared specifically in response to defendant's motion for summary judgment.

If you do not respond to the motion for summary judgment on time with affidavits and/or documents contradicting the material facts asserted by the defendant, the court may accept defendant's facts as true, in which event your case may be dismissed and judgment entered in defendant's favor without a trial.

* * *

As amended 10/13, 9/00.

RULE 58.1
JOURNAL ENTRIES AND ORDERS

In all cases where the court directs that a judgment be settled by journal entry pursuant to Fed. R. Civ. P. 58, it must be prepared in accordance with the directions of the court. Attorneys preparing the journal entry must, within 14 days – unless the court orders otherwise – serve copies on all other attorneys involved who must, within 14 days after service is made, serve on the attorney(s) preparing said journal entry any objections in writing. At the expiration of the time for serving objections, the attorney(s) preparing said journal entry must submit the original, together with any objections received, to the court for approval. If the attorneys cannot agree as to the form of the journal entry, the court will settle the journal entry.

* * *

As amended 12/01/09.

RULE 62.1
MANDATES OF AN APPELLATE COURT

When an appellate court remands a case to this court for further proceedings, the clerk will refer the case to the judge who heard the case, unless the appellate court has otherwise directed. Any other order or mandate of an appellate court, when filed with the clerk of this court, automatically becomes the order or judgment of this court. The clerk will enter it as such without further order.

* * *

RULE 62.2
SUPERSEDEAS BONDS

A supersedeas bond staying execution of a money judgment must, unless the court otherwise directs, be in the amount of the judgment, plus 25% of that amount to cover interest and any award of damages for delay.

* * *

-VIII-
PROVISIONAL AND FINAL REMEDIES

RULE 65.1
RESTRAINING ORDERS AND TEMPORARY INJUNCTIONS

A request for a temporary injunction or restraining order set forth in a pleading is not sufficient to bring the issue before the court prior to trial. If a party desires a ruling before trial, the party must request relief by separate motion.

* * *

RULE 65.2
SURETIES

(a) Certain Persons Prohibited. No clerk or other court supporting personnel or any practicing attorney will be accepted as surety on any bond or undertaking in any action or proceeding in this court.

(b) Security. Unless the court directs otherwise, every bond or undertaking must be secured by:

(1) a cash deposit equal to the amount of the bond;

(2) a corporation authorized to execute bonds under 31 U.S.C. §§ 9304-9308; or

(3) an individual residing in the District of Kansas owning sufficient unencumbered real or personal property within the district above all homestead and exemption rights and all obligations as surety, to insure the payment of the amount of the bond and all costs incident to collecting the same.

(c) Minors or Incompetent Persons. In all cases where a minor or an incompetent person has sued and recovered by and through a representative, the bond to be made by the representative must, unless otherwise ordered by the court, be treated in all respects as provided by the existing laws of the State of Kansas with respect to the bond of such representative.

* * *

RULE 66.1
ADMINISTRATION OF ESTATES

(a) Authority for Rule. This rule is promulgated in the exercise of the authority granted to district courts by Fed. R. Civ. P. 66 and applies to the practice in the administration of estates by receivers or by other similar officers appointed by the court.

(b) Inventory by Receivers. Unless otherwise ordered, a receiver or other similar officer appointed by the court must file:

(1) an inventory of all property of which he has taken possession or control, as well as of any that he has not been able to reduce to possession and control;

(2) a list of the then-known liabilities of the estate; and

(3) a report explaining such inventory.

Such filing must be made as soon as practicable after appointment, but in any event not later than 30 days thereafter.

(c) Accountings of Receivers. From time to time thereafter, at intervals of six months or as otherwise ordered, a receiver must file a current report and account of his receipts and disbursements and of his acts as such officer.

(d) Administration of Estates. In all other respects, the administration of estates by receivers or other officers must follow the procedure in bankruptcy cases as nearly as possible. But the court will ascertain and award the allowance of compensation of:

(1) receivers or similar officers or their attorneys; and

(2) all those whom the court appointed to aid in the administration of the estate.

* * *

RULE 67.1
REGISTRY FUNDS

(a) Orders Pursuant to Fed. R. Civ. P. 67. Any party who seeks a court order for the deposit of funds pursuant to Fed. R. Civ.P. 67 must prepare a proposed order for the court and serve the same upon the clerk of this court. Filing Users in cases assigned to the Electronic Filing System must submit this proposed order directly to the appropriate judge or magistrate judge in the form and manner set forth in the Administrative Procedures Guide. Parties may and should utilize forms or

proposed motions and orders that are maintained and available at each record office of the court for this purpose.

(**b) Investment in Income-Earning Account.** In cases where a party depositing funds with the clerk desires that the funds be invested with a named institution, the order shall so specify but, in the absence of specific directions to the contrary, all registry funds will be invested in a general interest-bearing account in the bank selected for that period through appropriate bidding procedures.

(c) Disbursements from Income-Earning Account.

(1) All funds disbursed under this rule will be disbursed only on order of the court. Unless the court orders otherwise, the clerk will disburse the funds no earlier than 14 days after the date of the court order.

(2) All funds deposited in an income-earning account on or after December 1, 1990, will be assessed a charge of 10% of the income earned regardless of the nature of the case underlying the investment.

* * *

As amended 4/15/20, 3/17/10, 3/05, 3/04, 3/13/92.

-IX-
SPECIAL PROCEEDINGS; MAGISTRATE JUDGES

RULE 71A.1
CONDEMNATION ACTIONS

When the United States files separate condemnation actions and a single declaration of taking relating to those separate actions, the clerk may establish a master file in which the declaration of taking may be filed. The filing of the declaration of taking in the master file constitutes a filing of the same in each of the actions to which it relates.

* * *

RULE 72.1.1
AUTHORITY OF UNITED STATES MAGISTRATE JUDGES

(a) Duties Under 28 U.S.C. § 636(a). Each full-time United States Magistrate Judge of the court is authorized to perform the duties prescribed by 28 U.S.C. § 636(a), and may:

(1) Exercise all of the powers and duties conferred or imposed upon United States Commissioners by law and by the Federal Rules of Criminal Procedure.

(2) Administer oaths and affirmations, and take acknowledgments, affidavits, and depositions.

(3) Order that arrested persons be released or detained pending judicial proceedings pursuant to 18 U.S.C. § 3141 *et seq*.

(4) Conduct extradition proceedings in accordance with 18 U.S.C. § 3184.

(b) Disposition of Misdemeanor Cases. A magistrate judge may:

(1) Try persons accused of, and sentence persons convicted of, misdemeanors committed within this district in accordance with 18 U.S.C. § 3401;

(2) Direct the probation service of the court to conduct a presentence investigation in any misdemeanor case; and

(3) Conduct jury trials in misdemeanor cases where the defendant so requests and is entitled to trial by jury under the Constitution and laws of the United States.

(c) Determination of Nondispositive Pretrial Matters. In accordance with 28 U.S.C. § 636(b)(1)(A), a magistrate judge may hear and determine any procedural or discovery motion or other pretrial matter in a civil or criminal case, other than the motions that are specified in subsection (d) of this rule. A magistrate judge is also authorized to conduct such hearings and conferences and to issue such orders as are provided for by Fed. R. Civ. P. 16.

(d) Recommendations Regarding Case-Dispositive Motions. In accordance with 28 U.S.C. § 636(b)(1)(B), a magistrate judge may submit to a judge of the court a report containing proposed findings of fact and recommendations for disposition by the judge of the following pretrial motions in civil and criminal cases:

(1) Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;

(2) Motions for judgment on the pleadings;

(3) Motions for summary judgment;

(4) Motions to dismiss or permit the maintenance of a class action;

(5) Motions to dismiss for failure to state a claim upon which relief may be granted;

(6) Motions to involuntarily dismiss an action;

(7) Motions for review of default judgment;

(8) Motions to dismiss or quash an indictment or information made by a defendant; and

(9) Motions to suppress evidence in a criminal case.

A magistrate judge may determine any preliminary matters and conduct any necessary evidentiary hearings or other proceedings arising in the exercise of the authority conferred by this subsection.

(e) Prisoner Cases Under 28 U.S.C. §§ 2241, 2254, and 2255. A magistrate judge may perform any or all of the duties imposed upon a judge by the rules governing proceedings in the United States District Courts under 28 U.S.C. §§ 2241, 2254, and 2255. A magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and submit to a judge a report containing proposed findings of fact and recommendations for disposition of the petition by the judge. When specifically designated by a judge of the court and upon the consent of the parties, a magistrate judge may conduct any or all proceedings in such cases and may order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c).

(f) Prisoner Cases Under 42 U.S.C. § 1983 and Bivens Cases. A magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other

appropriate proceeding, and submit to a judge a report containing proposed findings of fact and recommendations for the disposition of petitions filed by prisoners pursuant to 42 U.S.C. § 1983 and Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 402 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d (1971). When specifically designated by a judge of the court and upon the consent of the parties, a magistrate judge may conduct any or all proceedings in such cases, including the conduct of a jury or nonjury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c).

(g) Special Master References. A magistrate judge may be designated by a judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 53. Upon the consent of the parties, a magistrate judge may be designated by a judge to serve as a special master in any civil case, notwithstanding the limitations of Fed. R. Civ. P. 53(a)(2).

(h) Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties. When specifically designated by a judge of the court and upon the consent of the parties, a full-time magistrate judge may conduct any or all proceedings in any civil case that is filed in this court, including the conduct of a jury or nonjury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c). In the course of conducting such proceedings upon consent of the parties, a magistrate judge may hear and determine any and all pretrial and post-trial motions that are filed by the parties, including case-dispositive motions.

(i) Authority to Perform Additional Duties. Pursuant to 28 U.S.C. § 636(b)(3), magistrate judges are to perform additional functions and duties, including the following:

(1) conduct scheduling conferences; pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil and criminal cases;
(2) conduct calendar and status calls for civil and criminal calendars, and determine motions to expedite or postpone the trial of cases;
(3) conduct arraignments in cases not triable by the magistrate judge to the extent of taking a not guilty plea or noting a defendant's intention to plead guilty or *nolo contendere* and ordering a presentence report in appropriate cases;
(4) take a felony guilty plea when the defendant consents and the district judge does not object;
(5) receive grand jury returns in accordance with Fed. R. Crim. P. 6(f);
(6) accept waivers of indictments pursuant to Fed. R. Crim. P. 7(b);
(7) conduct voir dire and select petit juries for the court when the parties consent and the district judge does not object;
(8) accept petit jury verdicts in civil cases in the absence of a judge;
(9) conduct necessary proceedings leading to the potential revocation of probation;
(10) issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses, or evidence needed for court proceedings;
(11) order the exoneration of forfeiture of bonds;
(12) conduct proceedings for the collection of civil penalties of not more than $200 assessed under the Federal Boat Safety Act of 1971 in accordance with 46 U.S.C. § 1484(d);

(13) conduct examinations of judgment debtors in accordance with Fed. R. Civ. P. 69;

(14) perform the functions specified in 18 U.S.C. §§ 4107, 4108, and 4109 regarding proceedings for verification of appointment of counsel therein;

(15) conduct such hearings as are necessary or appropriate, and submit to a judge proposed findings of fact and recommendations for disposition of applications for judgment by default pursuant to Fed. R. Civ. P. 55(b), or motions to set aside judgments by default pursuant to Fed. R. Civ. P. 55(c);

(16) require compliance with local rules with regard to pro se petitions under 42 U.S.C. § 1983, and enter orders appointing attorneys in civil rights cases; and

(17) perform any additional duty that is not inconsistent with the Constitution and laws of the United States.

(j) Part-time United States Magistrate Judges. Part-time United States Magistrate Judges are hereby authorized in accordance with the provision of 28 U.S.C. § 636 to perform all duties not otherwise prohibited by law, including but not limited to the following:

(1) issue summonses, warrants, and search warrants; to conduct proceedings under Fed. R. Crim. P. 5 and 32.1; appoint attorneys; and conduct proceedings under 18 U.S.C. § 3141 *et seq*., all as provided by the Federal Rules of Criminal Procedure;

(2) hear and dispose of misdemeanor and petty offenses as provided by 18 U.S.C. § 3401, in accordance with Fed. R. Crim. P. 58 and in such cases to direct the probation service of the court to conduct a presentence investigation;

(3) perform the duties set forth in §§ (e), (f), and (i) of this rule;

(4) conduct settlement conferences pursuant to D. Kan. Rule 16.3;

(5) appoint attorneys in civil rights and habeas cases referred to such magistrate judge;

(6) administer oaths and affirmations, and take acknowledgments, affidavits, and depositions; and

(7) perform such further duties as may be referred by a judge of the court in accordance with 28 U.S.C. § 636.

When a jury trial is requested in a misdemeanor case, such case will be transferred to a full-time magistrate judge sitting in Kansas City, Topeka, or Wichita.

* * *

As amended 3/17/10; 9/00, 10/22/98, 2/27/98, 2/2/95.

RULE 72.1.2
ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES

(a) Criminal Cases.

(1) *Misdemeanor Cases.* All misdemeanor cases will be assigned upon the filing of an information, complaint, or violation notice, or the return of an indictment to a magistrate judge, who will proceed in accordance with 18 U.S.C. § 3401 and the rules of procedure for the trial of misdemeanors.

(2) *Felony Cases*. Upon the return of an indictment or the filing of an information or complaint, all felony cases will be assigned to a magistrate

judge for proceedings pursuant to Fed. R. Crim. P. 5, the conduct of an arraignment, acceptance of waivers of indictment pursuant to Fed. R. Crim. P. 7(b), and such pretrial conferences including omnibus hearings as are necessary, and for the hearing and determination of all pretrial procedural and discovery motions.

(b) Civil Cases. The clerk of the court will assign civil cases to a magistrate judge or judge for the conduct of a Fed. R. Civ. P. 16(b) scheduling conference, the issuance of a scheduling order, and such other pretrial conferences as are necessary and appropriate, and for the hearing and determination of all pretrial, procedural, and discovery motions. Where the parties consent to the trial and disposition of a case by a magistrate judge under D. Kan. Rule 72.1.3, such case will, with the approval of the judge to whom it was assigned at the time of filing, be reassigned to a magistrate judge for the conduct of all further proceedings and the entry of judgment.

(c) Reservation of Proceedings by Judges. Nothing in these rules precludes a judge from reserving any proceedings for conduct by a judge, rather than by a magistrate judge.

*** * ***

RULE 72.1.3
CONSENT TO CIVIL TRIAL JURISDICTION

(a) Consent to Exercise of Civil Trial Jurisdiction.

(1) *In General.* A party who consents to the exercise of civil trial jurisdiction authorized in 28 U.S.C. § 636(c)(1) may communicate such consent to the clerk on a clerk-provided form signed by the party or his or her attorney.

(2) *Notice.* At the time an action is filed, the clerk will send notice to the plaintiff or his or her representative that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. The clerk will provide such notice to other parties as an attachment to copies of the complaint and summons when served. Additional notices may be furnished to the parties at later stages of the case, and may be included with pretrial notices and instructions.

(3) *Confidentiality.* A judge or magistrate judge must not be informed of a party's response to the clerk's notification unless all parties have consented to the referral to a magistrate judge.

(4) *Timing.* The consent must be filed with the clerk prior to the time of trial.

(b) Referral by the Court. After the consent form has been executed and filed, the clerk will transmit it to the judge to whom the case has been assigned for approval and referral of the case to a magistrate judge.

(c) Withdrawal of Consent. After a case has been referred, no party may withdraw its consent to the exercise of a magistrate judge's jurisdiction without court approval.

*** * ***

As amended 2/2/95.

RULE 72.1.4
OBJECTIONS; APPEALS; STAY OF MAGISTRATE JUDGE'S ORDERS

(a) Objections to Magistrate Judge's Order. The procedure for filing objections to an order of a magistrate judge in a nondispositive matter follows Fed. R. Civ. P. 72(a). Such objections must be made by filing a motion to review the order in question.

(b) Objections to Magistrate Judge's Recommendation. The procedure for filing objections to the recommendation of a magistrate judge on a dispositive or other matter follows Fed. R. Civ. P. 72(b).

(c) Appeal from Judgment. The procedure for appeal from a judgment in an action tried by consent to a magistrate judge follows Fed. R. Civ. P. 73.

(d) Application for Stay of Magistrate Judge's Order. Application for stay of a magistrate judge's order pending review of objections must first be made to the magistrate judge.

(e) Application in Criminal Cases. In criminal cases, motions for a judge to review a magistrate judge's order must be filed within 14 days of the date the magistrate judge's order is filed.

*** * ***

As amended 12/01/09, 6/18/97

-X-
DISTRICT COURT AND CLERK

RULE 77.1
RECORD OFFICES; FILING OF PLEADINGS AND PAPERS

(a) Record Offices. The record offices of the court are located in Topeka, Wichita, and Kansas City, Kansas. In cases of emergency or other exigent circumstances, a judge may order the closing of the record office of the court at such judge's duty station, with provision being made for the filing of pleadings and papers.

(b) Filing of Pleadings and Papers. Pleadings and other papers must be filed at one of the record offices or via the court's Electronic Filing System. Under extraordinary circumstances, pleadings and other papers may be filed with a judge or magistrate judge under Fed. R. Civ. P. 5(d)(2)(B).

(c) FAX Filing.

(1) *Represented Parties.* Where compelling circumstances exist, the clerk may accept for filing papers transmitted by facsimile transmission equipment.

(A) *Form, Format, Service, and Signature.* Such papers, when placed in the transmission equipment, must comply with all provisions of these rules and the Federal Rules of Civil Procedure regarding the form, format, service, and signature of pleadings and papers.

(B) *Certificate of Counsel.* A part of such facsimile transmission must be a certificate of counsel setting forth the facts constituting the compelling circumstance.

(C) *Notice.* A copy of the papers transmitted to the clerk must also be immediately transmitted by facsimile transmission to all parties who have the capability of receiving facsimile transmissions. The filer

must immediately notify parties not having such capability of the facsimile filing by telephone.

(D) *Court's Review.* Should the court later determine the certificate or affidavit does not describe compelling circumstances, or the allegations are untrue, the court will strike the papers filed by facsimile transmission and may impose other appropriate sanctions.

(2) *Unrepresented Parties.* Pro se filers may file papers by facsimile transmission equipment under any circumstance and do not need to provide an affidavit setting forth the facts constituting compelling circumstances.

(d) Email Filing.

(1) *Unrepresented Parties*. Only pro se filers may file papers in civil matters as an attachment to an email sent to the clerk's office.

(A) *Form, Format, Service, and Signature.* Such papers, when transmitted through email, must comply with all provisions of these rules and the Federal Rules of Civil Procedure regarding the form, format, service, and signature of pleadings and papers.

(B) *Notice*. A copy of the papers transmitted to the clerk must also be immediately transmitted to all parties who have the capability of receiving email transmissions. The filer must immediately notify parties not having such capability of the email filing by telephone.

(C) *Court's Review.* Pro se filers may file papers by email under any circumstance and do not need to provide an affidavit setting forth the facts constituting compelling circumstances.

* * *

As amended 3/17/16, 3/17/10, 3/17/08.

RULE 77.2
ORDERS AND JUDGMENTS GRANTABLE BY CLERK

(a) Orders and Judgments. The clerk may grant the following orders and judgments without direction by the court:

(1) Orders specially appointing a person to serve process under Fed. R. Civ. P. 4(c);

(2) Orders extending once for 14 days the time within which to answer, reply, or otherwise plead to a complaint, crossclaim, or counterclaim if the time originally prescribed to plead has not expired;

(3) Orders for the payment of money on consent of all parties interested therein;

(4) Consent orders for the substitution of attorneys;

(5) Consent orders dismissing an action, except in cases governed by Fed. R. Civ. P. 23 or 66; and

(6) Entry of default and judgment by default as provided for in Fed. R. Civ. P. 55(a) and 55(b)(1).

(b) Content of Proposed Orders. Any order submitted to the clerk under this rule must be signed by the party or attorney submitting it, and is subject to Fed. R. Civ. P. 11 and D. Kan. Rule 11.1. Any order submitted to the clerk for an extension of time under subparagraph (a)(2) of this subsection must specifically state:

(1) The date when the time for the act sought to be extended is due;
(2) The date to which the time for the act is to be extended; and
(3) That the time originally prescribed has not expired.

(c) Clerk's Action Reviewable. For good cause, the court may suspend, alter, or rescind the actions of the clerk under this rule.

* * *

As amended 12/01/09, 2/1/95.

RULE 77.3
CASE NUMBERING SYSTEM

(a) Civil Cases. The clerk assigns each civil case a number upon filing. The number will begin with a two-digit indicator of the year in which the case was filed, followed by a hyphen and the individualized case number of four digits, followed by another hyphen and the initials of the judge or magistrate judge to whom the case has been assigned. The four-digit individualized case numbers are as follows: Wichita cases begin with a "1" or a "6" (e.g., 98-1001-JTM); Kansas City cases begin with a "2" (e.g., 98-2001-KHV); and Topeka cases begin with a "4" (e.g., 98-4001- JAR). Prisoner cases begin with a "3" (e.g., 98-3001-KHV).

(b) Criminal Cases. The clerk assigns each criminal case a number upon filing. The number will begin with a two-digit indicator of the year in which the case was filed, followed by a hyphen and the individualized case number of five digits, followed by another hyphen and the number assigned to each particular defendant in the case. The five-digit individualized case numbers are as follows: Wichita cases begin with a "1" (e.g., 98-10001-01); Kansas City cases begin with a "2" (e.g., 98-20001-01); and Topeka cases begin with a "4" (e.g., 98-40001-01). Prisoner cases begin with a "3" (e.g., 98-30001-01).

* * *

As amended 3/16/92.

RULE 77.4
SEAL OF THE COURT

The seal of this court is an American eagle, with outspread wings, occupying a circular field beneath thirteen stars arranged in a semicircle, holding in its left talon four arrows and in its right talon a fruited olive branch. The circular field is bordered by the words "United States District Court, District of Kansas."

* * *

RULE 77.5
DISSEMINATION OF INFORMATION BY COURT SUPPORTING PERSONNEL

(a) Requirements. Court supporting personnel must not disclose to anyone, without authorization by the court, the following information:

(1) information relating to a pending civil case or matter under investigation by the judges, magistrate judges, or clerk of the court that is not a part of the public records of the court;

(2) information concerning pending grand jury proceedings or relating to criminal cases, including, *inter alia*, grand jury subpoenas, search warrants, copies of the returns thereof, and all papers in connection therewith;
(3) *in camera* arguments; and
(4) hearings or conferences held in chambers or otherwise outside the presence of the public or not a part of the public records of the court.

(b) Definition. The term "court supporting personnel," as used in this rule, includes United States probation officers, United States marshals, deputy marshals, judges' chambers personnel, bailiffs, official court reporters and employees or subcontractors retained by them, court reporters retained by parties, and clerks of the court or their deputies.

(c) Punishment. Any person violating this rule will be subject to punishment as for criminal contempt of court.

*** * ***

As amended 3/16/92.

RULE 77.6
BENCH-BAR COMMITTEE

There is a Bench-Bar Committee appointed by the court.

(a) Membership. The committee consists of the chief judge, such other judges as may from time to time be appointed by the court, the United States Attorney or an assistant he or she designates, the district public defender or an assistant he or she designates, and the chair of the Bench-Bar Committee of the Kansas Bar Association. The judges shall also select one law clerk and nine actively-practicing members of the bar of the court.

(b) Terms of Office. Each member from the United States Attorney's office, the public defender's office, and the active bar will serve a three-year term or such other term as the court may decide. The law clerk shall serve a three-year term or such other term as the court may decide.

(c) Meetings. The Bench-Bar Committee will meet at such times as it determines and at the call of the chief judge.

(d) Duties. The Bench-Bar Committee serves general advisory and liaison roles with respect to the operation of the court and will, among other things:

(1) provide a forum for the continuous study of the operating procedures of the court;
(2) serve as liaison among the court, its bar, and the public;
(3) study, consider, and recommend the adoption, amendment, or rescission of the Rules of Practice of the court;
(4) study and promote a continuing legal education program; and
(5) make studies and render reports and recommendations as the court directs.

*** * ***

As amended 3/17/12, 3/17/10, 5/03, 10/20/93.

RULE 79.1
ACCESS TO COURT RECORDS

(a) Access. The public records of the court are available for examination in the office of the clerk during normal business hours. Access to electronically-filed documents is available as set forth in D. Kan. Rule 5.4.12.

(b) Copies. The clerk will make and furnish copies of official public court records upon request and payment of prescribed fees.

(c) Sealed or Impounded Records. Records or exhibits ordered sealed or impounded by the court are not public records within the meaning of this rule.

(d) Search for Cases by the Clerk. The office of the clerk of this court may make a search of the most recent 10 years of the master index maintained in the office and issue a certificate of such search. The clerk charges a fee for each name for which a search is conducted, payable in advance.

* * *

As amended 3/05, 3/04, 6/01, 6/13/88.

RULE 79.2
COURT LIBRARIES

The court's libraries are maintained for the exclusive use of the judges and magistrate judges and their staffs.

* * *

RULE 79.3
CUSTODY AND DISPOSITION OF TRIAL EXHIBITS, SEALED DOCUMENTS, AND FILED DEPOSITIONS

(a) During Trial. After being marked for identification, all exhibits – except weapons, drugs, or other sensitive materials – will be placed in the custody of the clerk during the duration of the trial, unless the court orders otherwise. Any weapons, drugs, or other sensitive exhibits must be held in the custody of the counsel offering the exhibits during trial.

(b) After Trial. Upon completion of the trial, all exhibits will be returned to counsel offering them, unless the court orders otherwise. A party or his attorney who has custody of an exhibit must keep it available for the use of the court or an appellate court, and must grant the reasonable request of any party to examine or reproduce the exhibit for use in the proceeding. Such party is responsible for documentation of the chain of custody of such exhibits. This obligation continues until one year after: (1) any appeal has been finally resolved or (2) time for filing a notice of appeal or petition for writ of certiorari has expired.

(c) Disposition of Exhibits, Sealed Documents, and Filed Depositions by Clerk. Any exhibit, sealed document, or filed deposition in the clerk's custody more than 30 days after the time for appeal, if any, has expired or an appeal has been decided and mandate received, may be returned to the parties or destroyed by the clerk if unclaimed after reasonable notice.

* * *

As amended 4/15/20.

RULE 79.4
SEALED FILES AND DOCUMENTS IN CIVIL CASES

(a) Documents/Files Sealed after the Effective Date of This Rule.

(1) *10-Year Seal.* Any file, pleading, motion, memorandum, order, or other document placed under seal by order of this court in any civil action will be unsealed by operation of this rule 10 years after entry of a final judgment or dismissal unless the court otherwise ordered at the time of entry of such judgment or dismissal.

(2) *Renewal.* Any party may seek to renew the seal for an additional 10 years or less by filing a motion within six months of the time the seal is to be lifted and providing notice to the remaining parties. There is a rebuttable presumption that the seal will not be renewed. The moving party bears the burden to establish an appropriate basis for renewing the seal.

(b) Civil Case Application Only. By its terms, this rule applies only to civil actions and does not apply to sealed files, documents, records, transcripts, or any other matter sealed in criminal cases.

* * *

As amended 3/17/10. New rule adopted 10/22/98.

-XI-
GENERAL PROVISIONS

RULE 80.1
USE OF TRANSCRIPTS

Absent prior court authorization, only certified transcripts of prior sworn testimony ("Testimonial Transcripts"), and not unofficial real-time transcripts of such testimony, may be quoted from in arguments to the court or in filings with the court. Court approval is required to quote from a Testimonial Transcript to the jury, and absent good cause shown such approval will only be granted for quotations from certified transcripts. Any Testimonial Transcripts quoted from or attached as an exhibit to any pleading must contain the title page, quoted material, as well as the court reporter's certificate page authenticating such proceedings. Material filed in violation of this rule may be disregarded by the court, and quotations made in violation of this rule may be ordered stricken and disregarded by the court.

* * *

Adopted 4/15/20.

RULE 81.1
REMOVAL FROM STATE COURTS

(a) Notice of Removal. A defendant or defendants desiring to remove any civil action from a state court must file a notice of removal as required by 28 U.S.C. § 1446.

(b) Place of Filing Notice of Removal. Except in cases removed by the United States, notices of removal must be filed in the following record offices of the clerk of the court:

(1) In Kansas City — cases from the state court of the First, Sixth, Seventh, Tenth, Eleventh, Twenty-second, or Twenty-ninth Judicial Districts of Kansas;

(2) In Topeka — cases from the state court of the Second, Third, Fourth, Fifth, Eighth, Twelfth, Twenty-first, Twenty-eighth, or Thirty-first Judicial Districts of Kansas; and

(3) In Wichita — cases from the state court of the Ninth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-sixth, Twenty-seventh, or Thirtieth Judicial Districts of Kansas.

(c) Notice.

(1) *Notice to the Parties.* The removing party must promptly serve written notice of the filing of the notice of removal on all adverse parties.

(2) *Notice to State Court.* The removing party must forthwith file a copy of the notice of removal with the clerk of the state court from which the case is removed. Such filing effects the removal.

(3) *Proof of Service.* The removing party must file a certificate with the clerk of the court showing proof of service of all notices and filings with the clerk of the state court.

* * *

As amended 12/16/08, 3/10/92.

RULE 81.2
COPIES OF STATE COURT PROCEEDINGS IN REMOVED ACTIONS

Within 21 days after filing the notice of removal, the removing party must file with the clerk of this court a copy of all records and proceedings had in the state court. The court may remand any case sought to be removed to this court for failure to comply with this rule.

* * *

As amended 12/01/09.

RULE 83.1.1
AMENDMENT OF RULES

The public notice provided in 28 U.S.C. § 2071 and Fed. R. Civ. P. 83 for making and amending these rules consists of (1) publishing a notice of the proposed adoption or amendment of these rules on the court's website and (2) inviting written comment.

* * *

As amended 3/17/14, 2/14/89.

RULE 83.1.2
STANDING ORDERS AND MANDATED RULES

(a) Standing Orders. By vote of a majority of the judges, the court may from time to time issue standing orders dealing with administrative concerns or with matters of temporary or local significance. Each standing order, unless expressly made effective until further order, will include the effective date and the expiration date. Standing orders have the same force and effect as other rules of the court. They are numbered consecutively by calendar year (e.g., 98-1) and are located on the court's website under Local Rules. They must be cited as D. Kan. S.O. 98-1, e.g.

(b) Mandated Rules. Mandated rules are those adopted (1) in compliance with statute or the Federal Rules of Procedure (civil or criminal); or (2) by direction of a superior court; or (3) subject to approval by an external reviewing panel.

(c) Amendment. D. Kan. Rule 83.1.1 does not apply to the adoption, amendment, or rescission of standing orders and mandated rules. Standing orders and mandated rules may be adopted, amended, or rescinded by action of a majority of the judges.

* * *

RULE 83.2.1
PHOTOGRAPHS, RECORDINGS, AND BROADCASTS

Except for devices used in connection with official court records, the following are prohibited in the courthouse: (1) radio or television broadcasting; and (2) the use of reproduction or recording equipment that is (a) photographic, (b) electronic, or (c) mechanical. Ceremonial proceedings such as the administration of oaths of office to appointed officials of the court, naturalization, and presentation of portraits or awards may be photographed in or broadcast from the courtroom, only with permission and under the supervision of the court. This rule does not apply to employees who work in the courthouse, or to use of courtrooms by other government agencies.

There is a limited exception to the ban on recording and publication of district court proceedings as set forth in these rules for district judges participating in a pilot program established by the Judicial Conference of the United States in March 2020 (JCUS-MAR 2020, p. 9) to evaluate streaming of live audio of oral arguments in civil cases.

Any recording and broadcasting conducted pursuant to the pilot program must comply with the program guidelines issued by the Judicial Conference Committee on Court Administration and Case Management, pursuant to the pilot program (available at www.uscourts.gov).

* * *

As amended 4/12/21, 9/1/11, 3/17/05 (formerly Amended D. Kan. S.O. 04-2), 9/28/87.

RULE 83.2.2
COURT SECURITY

(a) Application of Rule. This rule applies to any building occupied or used by the United States Courts in the District of Kansas, and to the environs of any such building. It is in effect at all times that judges, magistrate judges, or court personnel are present, whether or not court proceedings are actively under way.

(b) Persons Subject to Search. All persons seeking entry to a courtroom, to the chambers of any district or magistrate judge, to any offices of the court, or to any of the halls or corridors adjacent thereto are subject to search by the United States Marshal, Deputy United States Marshals, or other officers designated by the Marshal or the court. Such search may include briefcases, parcels, purses, or other containers.

(c) Weapons.

(1) *In the Courthouse.* No weapons other than exhibits are permitted in the courthouse, with the exception of weapons carried by:

(A) the United States Marshal;
(B) Deputy United States Marshals;
(C) Court Security Officers;
(D) Federal Protective Officers;

(E) officers approved by the court, the United States Marshal, or by federal law; and

(F) authorized law enforcement officers whose official duty station is the courthouse.

(2) *In the Courtrooms.* No person other than a United States Marshal, Deputy United States Marshal, Court Security Officer, or officer approved by the court or United States Marshal is permitted to bring a weapon other than an exhibit into any courtroom, except as specifically permitted by this rule.

(3) *Exhibits.* Any firearm intended for introduction as an exhibit must be presented to the United States Marshal for a safety check before it is brought into any courtroom.

(d) Emergency Mutual Aid. This rule does not apply during emergency mutual aid situations occurring at any building occupied or used by this court. Exemptions include, but are not limited to, police response to calls for assistance, fire and/or first aid response to rescue calls, or law enforcement and emergency response to critical building emergencies. When possible, the United States Marshal and/or Court Security Officer should be notified of the need to exempt this rule.

* * *

As amended 2/95, 11/93.

RULE 83.2.3
SPECIAL ORDERS IN SENSATIONAL CASES

In a widely-publicized or sensational criminal or civil case, the court may enter a special order governing such matters as: extrajudicial statements by attorneys, parties, or witnesses; the seating and conduct of spectators and news media representatives; the management and sequestration of jurors and witnesses; and other matters the court finds necessary to ensure a fair trial.

* * *

RULE 83.2.4
ELECTRONIC COMMUNICATION DEVICES

(a) Definition. For purposes of this rule, an electronic communication device includes any computer, personal digital assistant, cell phone, digital camera or camcorder, pager, two-way radio, or other electronic communication device.

(b) Who May Possess. Federal law enforcement officers, employees, and tenants of the courthouse may bring electronic communication devices into the courthouse.

(c) Who May Possess Subject to Screening and Clearance. Possession of electronic communication devices is otherwise prohibited, except by:

(1) lawyers, including pro hac vice attorneys, who present photo identification and a current bar registration card from this or any other federal or state court;

(2) staff in the company of such lawyers; and

(3) court interpreters who come to the federal courthouse to perform interpreting services and who present photo identification and a current court interpreter identification card from this court; and

(4) individuals who are granted specific written permission from this court.

All such individuals and electronic communication devices are subject to proper screening and security clearance before entering the courthouse. Furthermore, lawyers are responsible for ensuring that their staff comply with all rules regarding use of electronic communication devices.

(d) Unauthorized Persons and Purposes. No person who is allowed to possess an electronic communication device in the courthouse may allow it to be used by any unauthorized person or for any unauthorized purpose.

(e) Use of Devices in the Courtroom. Laptop computers may be used in the courtroom. Personal digital assistants, cell phones, or other devices to allow communication may be used in the courtroom only during court recesses or when authorized by the presiding judge or appropriate staff. No other electronic communication device may be used in the courtroom except by federal law enforcement officers and court personnel.

(f) Limit on Use. No electronic communication device may be used in violation of D. Kan. Rule 83.2.1.

(g) Sanctions. Any electronic communication device used in violation of this rule or D. Kan. Rule 83.2.1 is subject to immediate, permanent confiscation. In addition, in the discretion of the court, the violator or other responsible party may be subject to other sanctions (including financial sanctions).

* * *

As amended 3/17/11, 3/05 (formerly D. Kan. S.O. 04-3).
New rule adopted 7/9/99.

RULE 83.2.5
CONFLICTS INVOLVING SPOUSES AND CHILDREN OF JUDGES

The following rule is designed to give guidance to parties and attorneys regarding the potential disqualification of a judge in a case involving the children and/or spouse of the judge. For purposes of this rule, the term "spouse" includes a person other than a spouse who maintains both a household and intimate relationship with the judge or child.

A judge of the court will be disqualified if the judge's spouse, child, or a spouse of a child is:

(a) a party in a case;
(b) likely to be a material witness in a case (to the judge's knowledge);
(c) an attorney involved in the case; or
(d) has an ownership interest in a law firm to come before the court.

In other situations involving a judge's spouse, child or child's spouse, a judge is not deemed subject to a conflict of interest and will not recuse unless additional aggravating factors warranting recusal are present. Mere employment of a spouse, child, or child's spouse by a law firm does not mandate that the judge per se recuse from every matter in which the law firm is involved. For example, the court would expect law firms to take reasonable steps to "wall off" any judge's spouse, child or child's spouse from working on or being privy to information about any cases pending before that judge for additional protection from a conflict. Additional aggravating factors and/or other relatives who might present potential conflicts will be individually considered pursuant to the applicable canons, advisory opinions, and case law.

* * *

Adopted 3/17/09 (formerly D. Kan. S.O. 08-2).

-XII-
ATTORNEYS AND BAR DISCIPLINE

RULE 83.5.1
ROLL OF ATTORNEYS

(a) Members. The bar of this court consists of those attorneys admitted to practice before this court who have taken the oath prescribed by the rules in force at the time they were admitted; who have signed the roll of attorneys maintained by the clerk; and who remain in good standing.

(b) Non-Members. Law firms, law partnerships, and corporations may not be members of the bar of this court. No attorney will be permitted to appear in any action or proceeding merely because he or she is associated in a firm, partnership, or corporation, one or more members of which are admitted to practice in this court.

(c) Pro Se Appearances. Only attorneys enrolled as provided in paragraph (a) of this rule or duly admitted pro hac vice may appear or practice in this court. But nothing in these rules prohibits any individual from appearing personally on his or her own behalf.

(d) Applicability. These rules governing attorneys who practice before the court are applicable to the United States Bankruptcy Court for the District of Kansas.

*** * ***

As amended 10/20/93.

RULE 83.5.2
ADMISSION TO BAR

(a) Who May Apply. 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 who are in good standing in any and all bars to which they have ever been admitted (or who have resigned from such a bar as a member in good standing, so long as such resignation was not made to avoid investigation or discipline) may apply for admission to the bar of this court.

(b) Requirements for Admission. Admission will be granted upon motion of a member of the bar of this court accompanied by the written statement of the applicant representing that the applicant:

(1) is of good moral character;
(2) meets the foregoing requirements;
(3) can demonstrate familiarity with the Rules of Practice of this court, the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Appellate Procedure, the Federal Rules of Evidence, and federal jurisdiction and venue. Such familiarity may be based upon course work completed, examination, experience, or such other evidence as the movant deems substantially equivalent; and
(4) acknowledges the obligation to render pro bono services as set forth in Kansas Rules of Professional Conduct 6.1 and 6.2.

(c) Oath or Affirmation. The following oath or affirmation must be administered to the applicants by or at the direction of a judge or magistrate judge of this district:

> You do solemnly swear/affirm that you will support the Constitution of the United States; that you will do no falsehood, nor consent to the doing of any in court; that you will not wittingly or willfully promote or sue any false,

groundless, or unlawful suit, nor give aid or consent to do the same; that you will delay no person for lucre or malice, but you will conduct yourself in the office of an attorney within the courts according to the best of your knowledge and discretion, and with good fidelity, as well to the court as to your clients.

(d) Temporary Permits. Persons who hold a temporary permit to practice law granted by the Supreme Court of Kansas may apply for a temporary permit to practice in this court. The granting of temporary admissions to practice in this court is governed by this rule, and is effective upon the applicant taking the oath prescribed by this rule. Such temporary permit to practice in this court is effective only so long as the temporary admittee's temporary permit to practice in the Kansas state courts is in effect.

* * *

As amended 3/17/19, 7/9/99, 11/13/97, 11/16/90.

RULE 83.5.2.1
SPECIAL ADMISSIONS – ATTORNEYS FOR THE UNITED STATES GOVERNMENT AND THE FEDERAL PUBLIC DEFENDER OFFICE

Any attorney representing the United States Government, or any agency thereof, or any attorney employed by the Federal Public Defender's Office may appear in an official capacity without having to comply with D. Kan. Rule 83.5.2(a), provided the attorney is in good standing of the bar of the highest court of any state, territory, or the District of Columbia.

***

Adopted 4/12/21.

RULE 83.5.3
REGISTRATION OF ATTORNEYS

(a) Annual Registration.

(1) In General. All attorneys admitted to the practice of law before this court, except as set out in paragraphs (b) and (c) below, must annually − on or before the first day of July − register with the clerk on such forms as the clerk prescribes.

(2) CLE Certification, Local Rules Familiarization, and Pro Bono. As a part of the registration form, the registrant must certify that,

(A) in the preceding 12-month period, he or she has earned at least the minimum number of credit hours required by the Rules of the Supreme Court of Kansas relating to continuing legal education;

(B) he or she has read and is familiar with the District of Kansas Local Rules; and

(C) he or she acknowledges the obligation to render pro bono services as set forth in Kansas Rules of Professional Conduct 6.1 and 6.2.

(3) Reciprocal Admission. If admitted to practice before this court solely because of admission to the United States District Court for the Western District of Missouri, the registrant must certify that he or she has earned the minimum number of credit hours required by the rules of the Missouri Supreme Court and the Western District of Missouri related to continuing legal education.

(4) Annual Fees. At the time of each registration, the registrant, if not excused by these rules from payment, must pay an annual fee in such amount as the court orders for the ensuing 12-month period. Any fee received after July 31 shall be accompanied by the $100 re-registration fee.

(5) Registration Card. The clerk will issue to each attorney duly registered hereunder a registration card on a form approved by the court.

(b) Exemption from Fees.

(1) State Court Judges and Federal Court Employees. State court judges who are barred by law or rule from the practice of law and federal court employees who do not actively practice before the court are exempt from payment of the registration fee.

(2) Attorneys Appearing Pro Hac Vice. Attorneys appearing pro hac vice are not required to pay the annual registration fee.

(3) Newly-Admitted Attorneys. No registration fee will be charged to any attorney newly admitted to this court after January 1 for the first registration period following such admission. Where an attorney newly admitted to the court pays the registration fee for the period in which the attorney is exempt and wishes to be refunded, the attorney must initiate a refund by requesting it in writing.

(c) Retired and Inactive Attorneys. An attorney who has retired from or is no longer engaged in the practice of law in this court may so notify the clerk in writing. An attorney filing such notice is thereafter ineligible to practice in this court until reinstated under such terms as the court directs. During any period of retirement or inactive status under this rule, the retired or inactive attorney need not pay the annual registration fee.

(d) Non-Appropriated Fund. The court maintains a non-appropriated fund derived from attorney registration fees in accordance with Volume 13, Chapter 12, of the Guide to Judiciary Policies and Procedures and in accordance with the Rules of Practice and Procedure for District and Bankruptcy Court for the District of Kansas.

(1) Fund Custodian. The clerk of the court is appointed as the fund custodian. The custodian will receive, safeguard, deposit, disburse, and account for all funds. The custodian will ensure the financial statements and reports are prepared in a timely manner to meet the needs of the court.

(2) Fund Management. All receipts will be deposited in federally insured banks or savings institutions and whenever feasible, will be placed in interest-bearing accounts. Funds must be segregated from all other monies in the court's custody, including other non-appropriated funds.

(3) Audits. The Administrative Office of the U.S. Courts or court-appointed outside auditors may perform audits. The written results of the audits will be provided to the court. Costs for outside audits will be paid by the fund. Annual audits will be performed for the fiscal year, October 1 through September 30.

(4) Budget. At the beginning of each fiscal year, the court will approve a budget for the year that forecasts fund income and expenses. The court-approved budget will serve as authorization for the custodian to spend monies for categories listed on the budget. The custodian is allowed to exceed budgeted

amounts by no more than 10%. A majority of the judges must approve expenditures beyond the 10% variance.

(5) Items Outside the Budget. For items not covered by the annual budget, the chief judge may issue an order of approval that disburses funds for expenditures not exceeding $1,000. For items exceeding $1,000 not covered by the annual budget, a majority of the judges must approve the order of approval issued by the chief judge.

(6) Calculation of Registration Fee. During the first three months of each calendar year, the judges will examine the accounts of the trustee of the fund and fix the registration fee for the next annual registration of attorneys. In fixing the fee, the judges will consider the amount on hand, the projected earnings from investments, and the probable expense of pending and anticipated proceedings.

(e) Disbursements. Disbursements from the Bar Registration and Disciplinary Fund are permitted only for the following purposes:

(1) To defray the expense of administering the registration and bar disciplinary procedures.

(2) As set forth in paragraph (f) of this rule, to reimburse court-appointed attorneys in civil cases for out-of-pocket expenditures that the attorneys are reasonably compelled to incur, that the client is not able to pay, and that are not otherwise recovered in the action.

(3) To reimburse members of official committees appointed by the court, who may not be otherwise reimbursed, for their expenses incurred in attending meetings and performing the duties required of committee members. Applications for such reimbursements must be made on forms supplied by the clerk. The clerk may approve applications for amounts not to exceed $300. The chief judge must also approve reimbursement for expenses exceeding $300. Travel expenses will be paid from the fund in an amount not to exceed the same rates as official travel for federal employees. Claims will be allowed for actual expenses, not to exceed the rates in effect at the time of travel.(4) To make such other expenditures the judges consider to be for the benefit of the court and bar.

(f) Reimbursement Procedures for Court-Appointed Counsel in Civil Cases.

(1) Allowable Expenses. Allowable expenses include items set out in 28 U.S.C. § 1920, fees for expert witnesses and other out-of-pocket expenditures that the attorneys are reasonably compelled to incur, that the client is not able to pay, and that are not otherwise recovered in the action. Reimbursements must not include general office overhead or items and services of a personal nature.

(2) Reimbursement Procedure. To qualify for reimbursement, all expenditures in excess of $500 for investigative expenses — for example, retrieval of medical records, employment records, and the like — must be approved in advance by the court. Before incurring any reimbursable expense, the attorney must:

(A) complete a reimbursement form, which is available from the clerk; and

(B) secure the requisite prior approval, in writing, by the judge to whom the case is assigned and, where required, by the chief judge.

(3) Who Must Approve Expenditures. The presiding judge may approve expenditures that total less than $3,000 for the entire case. The chief judge must approve expenditures that reach or exceed $3,000.

(4) Ex Parte Requests. Attorneys may request approval on an ex parte basis.

(5) Amount of Reimbursement. The clerk will reimburse attorneys such amount as the court approves.

(6) Any reimbursements paid from the Bar Fund must be repaid if money is recovered in the case, unless waived by the court.

(g) Suspension. The clerk will issue an order of suspension to any attorney who has failed to register as of August 1 of the registration year. Any attorney who continues to practice in this court while suspended will be subject to disciplinary procedures.

(h) Reinstatement. The court may reinstate an attorney who was suspended solely because of his or her failure to register or pay the annual registration fee upon:

(1) application;

(2) payment of a $100 re-registration fee (except that the court may waive the fee for good cause); and

(3) payment of such additional amount as the court requires.

(i) Criminal Charges, Potential Criminal Charges, and Disciplinary Proceedings. Any member of the bar of this court who is charged in any court of the United States or of any state, territory, district, commonwealth, or possession of the United States with the commission of a felony or with unprofessional conduct must notify the clerk in writing within 14 days after service of process or notice to him or her of such charge. This subsection also applies to diversion agreements relating to criminal charges, potential criminal charges, or disciplinary proceedings.

* * *

As amended 3/17/19, 3/17/16, 3/17/13, 10/17/13, 3/17/11, 12/01/09, 3/17/09, 5/03, 9/00.

RULE 83.5.3.1
APPOINTMENT OF COUNSEL IN CIVIL CASES

In those civil cases (other than a habeas corpus action) where a judge appoints an attorney to represent a party, reimbursement of out-of-pocket expenses may be made pursuant to D. Kan. Rule 83.5.3(e)(2).

* * *

As amended 6/5/95.

RULE 83.5.4
APPEARANCE FOR A PARTICULAR CASE

(a) Requirements for Pro Hac Vice Admission. An attorney who is not admitted to practice in this court may be admitted for the purposes of a particular case only, if the following conditions are met:

(1) The attorney must be a member in good standing of the bar of another state or federal court;

(2) A member in good standing of the bar of this court must move for his or her admission;
(3) The motion must be in writing;
(4) The motion must be accompanied by an affidavit on the form prescribed by court rule (see website); and
(5) The attorney seeking admission must pay a registration fee of $50 per case.

An attorney's admission is subject to 28 U.S.C. §§ 515, 517, and similar provisions of the United States Code. Attorneys employed by any department or agency of the United States government are not required to pay a pro hac vice registration fee.

(b) Felony Charges and Charges of Unprofessional Conduct. An attorney admitted pro hac vice who, while practicing in this court under such admission, is charged in any court of the United States or of any state, territory or possession of the United States with the commission of a felony or with unprofessional conduct, must notify the clerk in writing within 14 days after service of process or notice to him or her of such charge.

(c) Signatures. All pleadings or other papers signed by an attorney admitted pro hac vice must also be signed by a member of the bar of this court in good standing, who must participate meaningfully in the preparation and trial of the case or proceedings to the extent the court requires.

(d) Consent to Disciplinary Jurisdiction. An attorney who applies for admission pro hac vice by doing so consents to the exercise of disciplinary jurisdiction by this court over any alleged misconduct that occurs during the progress of the case in which the attorney so admitted participates. An attorney of record in an action transferred under 28 U.S.C. § 1407 may continue to represent his or her client in the District of Kansas. Parties in such actions need not obtain local counsel in this district.

(e) Preclusion from Practice. An attorney who has been permitted to appear pursuant to this rule who is found guilty of a serious crime or is publicly disciplined by another court may be precluded from continuing that special appearance and from appearing at the bar of this court in any other case.

(f) Refusal of Admission. In the event disciplinary or grievance proceedings or sanctions are pending, the court may refuse admission pending disposition of such proceedings.

(g) Appearance Pro Se. Any party appearing on his or her own behalf without an attorney is expected to read and be familiar with the Rules of Practice and Procedure of this court; the relevant Federal Rules of Civil Procedure, of Criminal Procedure, or the Bankruptcy Rules; and the pertinent Federal Rules of Evidence; and to proceed in accordance with them.

* * *

As amended 3/17/19, 12/01/09, 8/21/06, 9/00, 6/18/97, 10/20/93.

RULE 83.5.5
WITHDRAWAL OF APPEARANCE

An attorney who has appeared in a case may withdraw in accordance with the Kansas Rules of Professional Conduct as described in D. Kan. Rule 83.6.1. This rule does not apply to those attorneys who have entered a limited appearance pursuant to D. Kan. Rule 83.5.8.

(a) Withdrawal of Attorney Whose Client Will be Left Without Counsel. Withdrawal of an appearance for an attorney whose client will be left without counsel is authorized only upon court order. An attorney seeking to withdraw whose client will be left without counsel must:

(1) file a motion to withdraw that:
  (A) sets forth the reasons for the withdrawal, unless doing so would violate any applicable standards of professional conduct;
  (B) provides evidence that the withdrawing attorney provided the client with notice of:
    (i) the 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) the dates of any pending trial, hearings, conferences, and deadlines; and
  (C) provides the court with a current mailing address and telephone number for the client;
(2) serve the motion to withdraw on the withdrawing attorney's client either by personal service or by certified mail, with return receipt requested;
(3) serve the motion to withdraw on all attorneys of record and pro se parties in the case pursuant to Fed. R. Civ. P.5(b); and
(4) file either:
  (A) proof of personal service of the motion to withdraw or the certified mail receipt, signed by the client; or
  (B) an affidavit indicating that the client received a copy of the motion to withdraw. Withdrawal is not effective until the court enters an order authorizing withdrawal.

(b) Withdrawal of Attorney Whose Client Continues to Be Represented by Other Counsel of Record. Withdrawal of an appearance by an attorney whose client continues to be represented by other counsel of record is authorized without an order of the court, unless the only remaining counsel of record is admitted pro hac vice under D. Kan. Rule 83.5.4. In instances where the remaining counsel of record is admitted pro hac vice, the withdrawing attorney must comply with either subsection (a) or (c) of this rule.

An attorney seeking to withdraw whose client will continue to be represented by other counsel of record may withdraw provided the withdrawing attorney files a pleading entitled "Notice of Withdrawal of Appearance" signed by the withdrawing attorney. Such notice must identify the other attorneys of record who will continue to represent the withdrawing attorney's client. Such notice of withdrawal must be served pursuant to Fed. R. Civ. P. 5(b) on the client, all attorneys of record, and any pro se parties in the case.

(c) Withdrawal of Attorney Whose Client Will Be Represented by Substituted Counsel. Substitution of counsel admitted to practice in this court is authorized without an order of the court. Substitution of counsel and simultaneous withdrawal of counsel may be accomplished as follows:

The attorney to be substituted as counsel of record files a pleading entitled "Withdrawal of Counsel and Entry of Appearance of Substituted Counsel" signed by (1) the attorney withdrawing and (2) the attorney to be substituted as counsel. Such notice of withdrawal must be served pursuant to Fed. R. Civ. P. 5(b) on the client, all attorneys of record, and any pro se parties in the case.

(d) Substitution of Counsel for the United States, an Agency, or an Officer Thereof, or Substitution of Counsel for Individuals Represented by the Federal Public Defender. Substitution of counsel for the United States, an agency, or officer thereof, or

substitution of counsel for individuals represented by the Federal Public Defender is authorized without an order of the court. Substitution of counsel may be accomplished as follows:

The attorney to be substituted as counsel of record files a pleading entitled "Notice of Substitution of Counsel and Entry of Appearance of Substituted Counsel" signed by the attorney to be substituted as counsel. The substitution shall be effective upon the filing of the notice and the attorney to be withdrawn from representation need not sign or file any notice. The notice of substitution must be served pursuant to Fed. R. Civ. P. 5(b) on all attorneys of record and any pro se parties in the case.

(e) Withdrawal of Attorney for Criminal Appeal. Withdrawal of counsel for a defendant in a criminal case who wishes to appeal from a judgment of conviction after trial or a guilty plea or from a sentence imposed under the Sentencing Guidelines is governed by 10th Circuit Rules 46.3 and 46.4.

* * *

As amended 4/15/20, 3/17/14, 3/17/09, 10/22/98, 2/2/95.

RULE 83.5.6
LEGAL INTERNS

Legal interns, as defined by the Kansas Supreme Court, who meet the stated qualifications, may appear before the judges and magistrate judges of this district to perform the same services as defined by the Kansas Supreme Court. Legal interns appearing before this court are subject to all of the requirements and limitations defined by the Kansas Supreme Court. Prior to an appearance, whether by signature on a pleading, motion, or memorandum, or by appearance in court, the legal intern and the supervising attorney must file a copy of the order admitting the legal intern to practice as governed by the Kansas Supreme Court as well as all written consents and approvals required thereby.

* * *

As amended 2/27/98, 2/3/95.

RULE 83.5.7
APPEARANCES BY FORMER LAW CLERKS

An attorney who has served as a law clerk to a judge must not appear in any case that was pending before that judge during the tenure of the attorney as a law clerk.

A former law clerk must not appear in a case that is assigned to the judge by whom he or she was employed for a period of one year after leaving the employment of that judge.

This rule applies to former law clerks to district judges, magistrate judges, and bankruptcy judges.

* * *

Adopted 03/17/08 (formerly D. Kan. S.O. 95-1).

RULE 83.5.8
LIMITED SCOPE REPRESENTATION IN CIVIL CASES

(a) In General. A lawyer may limit the scope of representation in civil cases if the limitation is reasonable under the circumstances and the client gives informed consent in writing.

(b) Procedures. A lawyer who provides limited representation must comply with Kansas Supreme Court Rule 115A, as later amended or modified, with two exceptions. First, the lawyer must use the federal forms rather than the Kansas State Court forms. Second, Rule 115A(c)

does not apply in the District of Kansas. Any attorney preparing a pleading, motion, or other paper for a specific case must enter a limited appearance and sign the document. The Bankruptcy Court may have additional local rules that govern its limited scope practice.

(c) Participation. The United States District Court for the District of Kansas allows any attorney registered as active to practice before this court to offer limited scope representation.

* * *

New Rule Adopted 3/17/14.

RULE 83.6.1
PROFESSIONAL RESPONSIBILITY

(a) Kansas Rules. The Kansas Rules of Professional Conduct as adopted and amended by the Supreme Court of Kansas are adopted by this court as the applicable standards of professional conduct, except as otherwise provided by a specific rule of this court.

(b) Disciplinary Enforcement. For misconduct defined in these rules, and after proceedings conducted in accordance with these rules, any attorney within the disciplinary jurisdiction of this court may be disbarred, suspended from practice, reprimanded, or subjected to other appropriate disciplinary action.

(c) Standards of Conduct. Any of the following acts or omissions by an attorney constitute misconduct and are grounds for discipline:

(1) Acts or omissions that violate the standards of professional conduct adopted by this court;

(2) Conduct violating applicable rules of professional conduct of another jurisdiction;

(3) Willful disobedience of a court order requiring the attorney to do or forebear an act connected with or in the course of the practice of law;

(4) Willful violation of the attorney's oath prescribed by these rules;

(5) Neglect or refusal, on demand, to pay over or to deliver money or property due or belonging to a client, except where such money or property is retained under a bona fide claim of a lien for services;

(6) Destroying, secreting, fraudulently withdrawing, mutilating, or altering any paper, record, or exhibit belonging to the files or records in any action or proceeding;

(7) Willful violations of a valid order of the court, the Disciplinary Panel, or a hearing panel; and

(8) The willful failure to appear before or respond to a lawful demand from disciplinary authority, except that this rule does not require disclosure of information otherwise protected by applicable rules relating to confidentiality.

* * *

As amended 3/17/04, 9/17/99, 10/22/98.

RULE 83.6.2
DISCIPLINE OF ATTORNEYS

(a) Disciplinary Panel.

(1) *Composition of Disciplinary Panel.* The chief judge will assign a panel of three active or senior judges of the court to be known as the Disciplinary Panel. From time to time, the chief judge may designate other judges to serve as members or as alternates on the Disciplinary Panel.

(2) *Duties of Disciplinary Panel.* The Disciplinary Panel may, by a majority vote, provide for the investigation of a disciplinary complaint. The Disciplinary Panel has general supervision over all proceedings involving:

(A) the disbarment, suspension, censure, or other discipline of lawyers practicing in this court; or

(B) the alleged physical or mental disability of lawyers practicing in this court.

(b) Duties of the Clerk.

(1) *"Bar Disciplinary File."* The clerk will maintain as a public record a general file to be known as the "Bar Disciplinary File." The file must contain a copy of any procedural guidelines the Disciplinary Panel adopts and such other documents as the Disciplinary Panel directs. It must not contain complaints or other papers filed in individual disciplinary proceedings or sealed by court order.

(2) *"Bar Discipline Docket."* The clerk will keep a separate "Bar Discipline Docket" in which entries are made in bar disciplinary cases in the same manner as entries are made in the civil docket pursuant to Fed. R. Civ. P. 79. The Bar Discipline Docket is sealed and the entries are confidential except as otherwise provided by these rules or ordered by the court.

(3) *Duties When a Complaint is Filed.* When a complaint is filed the clerk must:

(A) ascertain from the disciplinary authorities of all bars of which the charged attorney is a member, his or her standing and disciplinary record (unless the facts are already known);

(B) file the information received; and

(C) report it to the Disciplinary Panel.

(4) *Notice To Disciplinary Authorities*. The clerk must transmit notice of all public discipline imposed against a lawyer, transfers to or from disability inactive status, and reinstatements to the Disciplinary Administrator of the Supreme Court of Kansas and to the National Discipline Data Bank maintained by the American Bar Association. The clerk must also transmit the same to the disciplinary authorities of any other bars of which the disciplined attorney is a member.

(c) Confidentiality.

(1) *Disclosure.* Prior to the filing and service of formal charges in a disciplinary matter, the proceedings are confidential, except that the pendency, subject matter, and status of an investigation may be disclosed:

(A) by the clerk if the respondent has waived confidentiality or if the proceeding is based upon allegations that include either the conviction of a crime or public discipline by another court; or

(B) by the Disciplinary Panel if it has determined:

(i) the proceeding is based upon allegations that have become generally known to the public; or

(ii) there is a need to notify another person or organization, including any recognized clients' security fund to protect the public, the administration of justice, or the legal profession.

(2) *Proceedings*. Upon filing and service of formal charges in a disciplinary matter, or filing of a petition for reinstatement, the proceeding is public except for:

(A) deliberations of the hearing panel or court; or

(B) information subject to a protective order.

(3) *Proceedings Alleging Disability*. Proceedings for transfer to or from disability inactive status are confidential. All orders transferring a lawyer to or from disability inactive status are public.

(4) *Protective Orders*. To protect the interests of a complainant, witness, third party, or respondent, the Disciplinary Panel may — upon application of any person and for good cause — issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential. The Disciplinary Panel may direct that the proceedings be conducted so as to implement the order. This may include requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

(5) *Duty of Participants*. All participants in a proceeding under these rules must conduct themselves so as to maintain the confidentiality mandated by this rule.

* * *

As amended 3/15/03, 10/22/98, 11/16/90.

RULE 83.6.3
PROCEDURE IN DISCIPLINARY CASES

(a) Jurisdiction.

(1) *In General.* Any lawyer admitted to practice law in this court is subject to the disciplinary jurisdiction of this court.

(2) *Definitions.* The term "any lawyer admitted to practice law in this court" includes the following persons:

(A) Any formerly-admitted lawyer with respect to the following acts:

(i) acts committed prior to resignation, suspension, disbarment, or transfer to inactive status; or

(ii) acts subsequent thereto that amount to the practice of law in violation of these rules or of the Model Rules of Professional Conduct as adopted by the Supreme Court of

Kansas or any standards of professional conduct adopted by the court in addition to or in lieu thereof;

(B) Any lawyer specially admitted for a particular proceeding; and

(C) Any lawyer not admitted to the bar of this court or the bar of Kansas who practices or attempts to practice law in this court.

(b) Complaints Generally.

(1) *Complaints Filed in This Court.* A complaint against an attorney practicing in this court for any cause or conduct that may justify disciplinary action must be:

(A) in writing;

(B) under oath – unless filed by a judge or magistrate judge of this court; and

(C) filed in the record office of the clerk at Kansas City.

The clerk must refer all complaints so-filed to the Disciplinary Panel.

(2) *Complaints Filed with the Kansas Disciplinary Administrator*. Alternatively, a complainant concerned with federal conduct may file a complaint with the Kansas Disciplinary Administrator.

(3) *Referral of Complaint.* Even where a complainant files a complaint in this court, the court or the Disciplinary Panel may refer the complaint to the Kansas Disciplinary Administrator.

(c) Initial Action by Disciplinary Panel.

(1) *Dismissal.* The Disciplinary Panel must dismiss the complaint if it finds from the face of the complaint that it is frivolous, groundless, or malicious. If it so finds, the Disciplinary Panel's order must recite the reasons for dismissal. Upon dismissal under this subparagraph, the clerk must mail a copy of the order of dismissal to the complainant by certified mail, return receipt requested.

(2) *Referral to Hearing Panel.* The Disciplinary Panel must refer the matter to a hearing panel if it finds from the face of the complaint the misconduct charged would, if true, justify disciplinary sanctions. The hearing panel consists of three members of the bar of this court appointed by the Disciplinary Panel. One member must be designated as chairperson of the hearing panel.

(d) Hearing Panel.

(1) *Hearings.* A hearing panel sits as a panel of inquiry. Upon reasonable notice to the complainant and respondent, the hearing panel may hold hearings on the issues. All hearings must be recorded verbatim pursuant to 28 U.S.C. § 753(b).

(2) *Actions of Chairperson.* The chairperson of the hearing panel conducting the inquiry is hereby designated and appointed master with authority to cause subpoenas to be issued commanding the appearance of witnesses, the production of books, papers, documents, or tangible things designated therein at such hearings or such other time designated in the subpoena. The chairperson may also administer oaths to the parties and witnesses.

(3) *Contempt Proceedings.* The Disciplinary Panel may order the initiation of contempt proceedings against witness when:

(A) the witness fails or refuses to attend or testify under oath; and
(B) his or her name is certified to the Disciplinary Panel.

(e) Investigation by Disciplinary Counsel.

(1) *Disciplinary Counsel's Duty.* With the approval of the chief judge, the chairperson of the hearing panel may appoint one or more members of the bar of this court (or if circumstances require of the bar of another court) in good standing, as Disciplinary Counsel. Disciplinary Counsel's duty is to:
(A) investigate, present, and prosecute charges; and
(B) prepare all orders and judgments as directed by the hearing panel.

(2) *Investigation and Report.* Disciplinary Counsel must conduct an initial investigation of the charges and submit a written report to the hearing panel recommending:
(A) dismissal of the complaint;
(B) informal admonition of the attorney; or
(C) prosecution of formal charges before a hearing panel.

(3) *Disposition.* The hearing panel may direct further investigation or take action by a majority vote.

(4) *Informal Admonition.* If informal admonition is contemplated, the attorney must first be notified. The attorney may demand a formal hearing by written request to the chairperson of the hearing panel.

(f) Formal Charges.

(1) *Formal Complaint.* If the hearing panel directs or demands formal prosecution, Disciplinary Counsel must, after making such additional investigation as he finds necessary, prepare and file with the clerk a formal complaint.
(A) *Requirements of Complaint.* The complaint must be sufficiently clear and specific to inform the respondent of the alleged misconduct.
(B) *Service.* A copy of the complaint, together with a summons, must be served upon the respondent. The summons must be in the general form of a civil summons issued pursuant to Fed. R. Civ. P. 4 and be served in accordance with that rule.
(C) *Response.* The respondent must serve a response upon Disciplinary Counsel and file a copy with the clerk within 21 days after service of the complaint unless the chairperson of the hearing panel extends the time.

(2) *Hearing.*
(A) *When Set.* The chairperson of the hearing panel must set the matter for hearing:
(i) Following the service of a response or upon the respondent's failure to respond; and
(ii) Upon completion of any additional investigation that the chairperson of the hearing panel allows either party.
(B) *Notice.* Disciplinary Counsel must serve a notice of hearing upon the respondent, respondent's attorney, and the complainant. The

notice must be served at least 14 days in advance of the hearing date and must state:

(i) the respondent is entitled to be represented by an attorney at his or her own expense, to cross-examine witnesses and to present evidence; and

(ii) the date and place of the hearing.

(C) *Rules of Evidence.* The Federal Rules of Evidence govern the hearing, except as these rules otherwise provide. All witnesses must be sworn and all proceedings and testimony must be recorded as provided by 28 U.S.C. § 753(b).

(D) *Burden of Proof.* Disciplinary Counsel bears the burden of establishing charges of misconduct by clear and convincing evidence.

(3) *Report.* At the conclusion of the hearing, Disciplinary Counsel must prepare a report setting forth the findings and recommendations of the hearing panel. A majority of the hearing panel must sign the report and submit it to the Disciplinary Panel.

(A) *Prior Record and Other Circumstances.* In recommending discipline, the hearing panel may consider the respondent's prior record, if any. The panel's report must fully set forth any mitigating or aggravating circumstances that affect the nature or degree of discipline recommended.

(B) *Failure to Reach Unanimous Decision.* If the panel cannot agree unanimously on either the findings of fact or the recommended discipline, or both, Disciplinary Counsel must, if requested, prepare a draft of a majority report for consideration by the majority. The minority member may file a minority report.

(C) *Filing and Distribution of Report.* Reports must be filed with the clerk for referral to the Disciplinary Panel. Disciplinary Counsel must mail or deliver a copy to the respondent and to attorneys of record.

(D) *Confidentiality.* The hearing panel's report is confidential, must be so marked, and must not become a public record unless the Disciplinary Panel so orders.

(4) *Referral to Disciplinary Administrator.* The hearing panel may, with or without preparing charges, refer the matter to the Disciplinary Administrator of the Supreme Court of Kansas. In considering whether to make this referral, the hearing panel will consider any prior discipline imposed, the nature of the conduct, the type of investigation necessary, and where the conduct occurred.

(g) Review of Report.

(1) *Items Forwarded to Disciplinary Panel.* With the hearing panel's report, the clerk must also forward to the Disciplinary Panel:

(A) copies of the complaint;

(B) the answer, if any;

(C) the transcript of the hearing;

(D) all evidence admitted before the panel; and
(E) all evidence properly offered but rejected.

Together, these items constitute the record in the case.

(2) *Citation Issued to the Respondent.* At the same time, the clerk must issue and serve a citation by certified mail to the respondent's last address registered with the clerk.

(A) *Content of the Citation.* The citation must direct the respondent to file within 21 days from the date of mailing either:

(i) a statement that the respondent does not wish to file exceptions to the report, findings, and recommendations; or

(ii) respondent's exceptions to the report.

(B) *Failure to File Exceptions.* Any part of the report, findings, or recommendations not timely excepted to will be deemed admitted.

(C) *Undeliverable Citation.* If the citation is not deliverable by mail directed to the respondent's last address registered with the clerk and the respondent cannot be otherwise served, the matter stands submitted upon the filing by the clerk of a certificate reporting such facts.

(3) *Procedure.*

(A) *Exceptions Not Timely Filed.* If the respondent fails to file timely exceptions, the hearing panel's findings of fact will be deemed admitted and the case submitted on the record.

(B) *Exceptions Timely Filed.* If exceptions are timely filed, the respondent has 30 days thereafter to file a brief; Disciplinary Counsel 30 days after service of the respondent's brief; and the respondent 14 days after service of Disciplinary Counsel's brief to file a responsive brief. The case will be submitted to the Disciplinary Panel on the record when all briefs have been filed or the time for filing them has expired.

(4) *Other Disability or Disciplinary Proceedings.* If the Disciplinary Panel receives reliable information that disability or disciplinary proceedings involving the same attorney or the same or connected circumstances are pending or contemplated in another jurisdiction, the Panel may stay the proceedings in this court or direct such other action as it deems appropriate.

(5) *Evidence to be Considered.* During its review, the Disciplinary Panel must not receive or consider any evidence that was not presented to the hearing panel, except after notice to the respondent and Disciplinary Counsel and opportunity to respond. If new evidence warranting a reopening of the proceeding is discovered, the case must be remanded to the hearing panel for a hearing. The hearing may be limited to specified issues.

(6) *Entry of Order.* Upon conclusion of the proceedings, the Disciplinary Panel must promptly enter an appropriate order for the court.

* * *

As amended 12/01/09, 3/17/04, 10/22/98, 11/16/90.

RULE 83.6.4
RECIPROCAL DISCIPLINE

(a) Discipline By Other Courts. Upon being disciplined in another jurisdiction, a lawyer admitted to practice before this court must promptly inform the clerk. Upon notification from any source that a lawyer within the jurisdiction of this court has been disciplined in another jurisdiction, the clerk must obtain and file a certified copy of the disciplinary order.

(b) Notice and Order to Show Cause.

(1) *Notice to Attorney.* Upon the filing of a certified or exemplified copy of a judgment or order demonstrating an attorney admitted to practice before this court has been publicly disciplined by another court, the clerk, in the name of the court, will forthwith issue a notice directed to the attorney containing:

(A) a copy of the judgment or order from the other jurisdiction or a statement of any information received relating to the discipline imposed by the other court;

(B) an order to show cause directing that the attorney inform the Disciplinary Panel within 30 days after service of that order upon the attorney, personally or by certified mail, return receipt requested, of any claim by the attorney predicated upon the grounds set forth in (d) hereof that the imposition of discipline substantially similar to that imposed by the other court would be unwarranted and the reasons therefore; and

(C) if the discipline administered in the other jurisdiction included suspension from the practice of law, disbarment, or if the attorney has surrendered his or her license, an order temporarily suspending the attorney from practice in the District Court and the Bankruptcy Court as provided for in D. Kan. Rule 83.6.6.

(2) *Notice to Other Court.* The other court will be given notice of the issuance of the order to show cause and of the response by the attorney and has the right to intervene in the proceedings for the purpose of demonstrating the discipline imposed by it was appropriate.

(c) Stays. In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this court must be deferred until such stay expires.

(d) Reciprocal Discipline Imposed; Exceptions. After 30 days has passed from service of the notice issued pursuant section (b) of this rule, the Disciplinary Panel must impose discipline substantially similar to that imposed by the other court unless the respondent-attorney demonstrates, or the Disciplinary Panel finds, that on the face of the record upon which the discipline in the other jurisdiction is predicated, it clearly appears:

(1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) There was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Disciplinary Panel could not, consistent with its duty, accept as final the conclusion on that subject;

(3) The imposition of the same discipline by the Disciplinary Panel would result in grave injustice; or

(4) The misconduct established warrants substantially different discipline.

Where the Disciplinary Panel finds that any of the above elements are present, it will enter an order that it finds appropriate. The party seeking a different discipline bears the burden to show that the same or substantially similar discipline is not appropriate.

(e) Final Adjudication in Other Courts. In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct establishes conclusively the misconduct for purposes of a disciplinary proceeding in this court.

(f) Referral to a Hearing Panel. At any stage, the Disciplinary Panel may refer proceedings under this rule to a hearing panel for investigation and report to the Disciplinary Panel.

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As amended 9/23/05, 3/17/04, 11/16/90.

RULE 83.6.5
ATTORNEYS CONVICTED OF CRIMES

(a) Attorney's Duty. Any attorney practicing before this court regularly or pro hac vice must notify the clerk in writing within 14 days after service of process or notice to him or her of:

(1) a charge of commission of a felony; or

(2) a grievance such as would subject the attorney to discipline in this court, in any other court of the United States, or the District of Columbia, or in any state, territory, commonwealth, or possession of the United States.

(b) Interim Suspension. The Disciplinary Panel must enter an order immediately suspending an attorney admitted to practice before this court when:

(1) a certified copy of a judgment of conviction is filed with the clerk of this court;

(2) the judgment shows that the attorney has been convicted of a serious crime as hereinafter defined;

(3) the conviction is in any other court of the United States, or the District of Columbia, or in any state, territory, commonwealth, or possession of the United States; and

(4) the conviction resulted from a plea of guilty or *nolo contendere* or from a verdict after a trial or otherwise.

The suspension must occur regardless of whether an appeal is pending and must last until final disposition of a disciplinary proceeding based upon such conviction. A copy of such order must immediately be served upon the attorney. Service may be made personally or by certified mail, return receipt requested, addressed to the attorney at his or her most current address on file with the clerk of this court. For good cause, the Disciplinary Panel may set aside such order in the interests of justice.

(c) Serious Crime. The term "serious crime" includes any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion,

misappropriation, theft, or an attempt or a conspiracy of solicitation of another to commit a "serious crime."

(d) Evidence of Crime. A certificate of a conviction of an attorney for any crime is conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against said attorney based upon the conviction. A diversion agreement, for the purpose of any disciplinary proceeding, constitutes a conviction of the crime originally charged.

(e) Reinstatement. An attorney suspended under this rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a crime has been reversed. But the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which must be determined on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

*** * ***

As amended 12/01/09, 3/17/04, 11/16/90.

RULE 83.6.6
INTERIM SUSPENSION

(a) Suspension, Disbarment, or the Surrender of a License in Another Jurisdiction.

(1) *Clerk's Duty.* The clerk must issue an order of interim suspension — temporarily suspending an attorney from practicing law in the District and Bankruptcy Courts of this District — upon receipt of a certified or exemplified copy of an order by another jurisdiction suspending, disbarring, or accepting the surrender of the license to practice law of the attorney.

(2) *Application for Relief.* An attorney may petition for relief from an order of interim suspension by directing a written application to a member of the Disciplinary Panel. Upon receipt of the application, the Disciplinary Panel may consider reinstatement of the attorney while the disciplinary proceedings are pending at a hearing to be conducted as provided for in subsection (b).

(3) *Notification to Judges.* The judges, magistrate judges, and bankruptcy judges of the District and Bankruptcy Courts assigned to any cases in which the attorney is an attorney of record must be notified of the filing of the application and the date and time of any hearing.

(b) Public or Private Censure in Another Jurisdiction.

(1) *Citation.* If the discipline administered by the other jurisdiction only includes the lesser sanction of public or private censure, the Disciplinary Panel may issue a citation on its own motion. The citation will direct an attorney against whom disciplinary or disability proceedings are pending in this court or in any other jurisdiction to:

(A) appear before a member of the Disciplinary Panel; and

(B) show cause why that attorney should not be suspended during the pendency of such proceedings.

The show cause order and a copy of the document initiating the disciplinary proceeding must be served personally or by certified mail,

return receipt requested, addressed to the attorney at his or her most current address on file with the clerk of this court.

(2) *Disciplinary Panel's Action.* After hearing, or if the respondent fails to appear as ordered, the Disciplinary Panel may enter an order suspending the attorney from practice for a definite or indefinite period or may discharge the citation.

* * *

As amended 9/23/05, 3/17/04, 11/16/90.

RULE 83.6.7
ATTORNEYS WHO RESIGN FROM THE BAR DURING AN INVESTIGATION OF MISCONDUCT OR DISBARMENT ON CONSENT

(a) Duty of Attorneys. Any attorney admitted to practice before this court who is disbarred on consent or resigns from the bar of this court or any other court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth, or possession of the United States while an investigation into allegations of misconduct is pending, must promptly inform the clerk of this court of such disbarment on consent or resignation.

(b) Duty of the Clerk. Upon receipt of information from any source that an attorney practicing in this court has been disbarred on consent or has resigned from the bar of any court, the clerk must report such information to the Disciplinary Panel.

* * *

As amended 11/16/90.

RULE 83.6.8
REINSTATEMENT AFTER DISCIPLINE

(a) Petitions for Reinstatement.

(1) *When an Attorney May Apply.*

(A) *Disbarred Attorney.* An attorney who has been disbarred may not apply for reinstatement within five years of the effective date of the disbarment. An attorney who has been disbarred may not resume practice until reinstated by the court.

(B) *Suspended Attorney.* An attorney suspended for three months or less will ordinarily be reinstated at the end of the period of suspension upon the filing with the court of an affidavit of compliance with the order.

(i) *Automatic Reinstatement with Affidavit.* An attorney suspended for three months or less must be automatically reinstated at the end of the period of suspension upon the filing with the court of an affidavit of compliance with the order.

(ii) *Reinstatement by Court.* An attorney may not resume practice until reinstated by the court.

(2) *Advance Cost Deposit.* If the attorney has been reinstated by the Kansas Supreme Court, no advance deposit shall be required. In all other cases, the Disciplinary Panel may request an advance cost deposit before considering

a petition for reinstatement. This deposit will be used to offset any costs involved in the reinstatement proceeding pursuant to D. Kan. Rule 83.6.10. Any funds remaining after the proceeding will be returned to the petitioner.

(3) *Successive Petitions.* No petition for reinstatement under this rule may be filed within one year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

(b) Burden of Proof. A petitioner seeking reinstatement bears the burden of demonstrating by clear and convincing evidence that:

(1) he or she has the moral qualifications, competence, and learning in the law required for admission to practice law before this court; and

(2) his or her resumption of the practice of law will not be:

(A) detrimental to the integrity and standing of the bar;

(B) detrimental to the administration of justice; or

(C) subversive of the public interest.

(c) Referral of Petition. The Disciplinary Panel may refer petitions for reinstatement to a hearing panel. When so referred, the chairperson of the hearing panel must conduct the investigation. The hearing panel, after review of the basic file and such investigation as it deems necessary, must report its findings of fact with supporting documents and its recommendations to the Disciplinary Panel.

(d) Entry of Order. After review of the files and the report of the hearing panel, the Disciplinary Panel must enter an order for the court, granting or denying reinstatement.

*** * ***

As amended 3/17/13, 3/17/04, 11/16/90.

RULE 83.6.9
PROCEEDINGS IN WHICH AN ATTORNEY IS DECLARED TO BE MENTALLY INCOMPETENT, IS ALLEGED TO BE INCAPACITATED, OR IS PLACED ON DISABILITY INACTIVE STATUS BY ANOTHER JURISDICTION

(a) Attorneys Declared Mentally Incompetent. The Disciplinary Panel must enter an order suspending a member of the bar of this court from the practice of law where the attorney:

(1) has been judicially declared incompetent; or

(2) has been involuntarily committed to a mental hospital; and

(3) the Disciplinary Panel has proper proof of the fact.

Such suspension is effective immediately and extends for an indefinite period, until further order of the Disciplinary Panel. A copy of such order must be served upon the attorney, his or her guardian, and the director of the mental hospital. Service may be effected in such manner as the Disciplinary Panel directs.

(b) Attorneys Alleged to Be Incapacitated.

(1) *Determination Whether Attorney is Incapacitated.* Through its chairperson, a hearing panel may petition the Disciplinary Panel to determine whether a member of the bar of this court is incapacitated from practicing law based on mental or physical infirmity or illness or use of drugs or intoxicants. When petitioned in this manner, the Disciplinary Panel may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated. This may include

designating qualified medical experts to examine the attorney. The attorney's failure or refusal to submit to such examination is prima facie evidence of incapacity. If after due consideration, the Disciplinary Panel concludes that the attorney is incapacitated from practicing law, it must enter an order suspending or transferring him or her to inactive status until further order of the Disciplinary Panel.

(2) *Notice.* The Disciplinary Panel may provide for such notice to the respondent of proceedings in the matter as is deemed proper and advisable.

(3) *Appointment of Representation.* The Disciplinary Panel may appoint an attorney to represent the respondent if he or she is without representation.

(c) Placement on Disability Inactive Status By Another Jurisdiction. If the Disciplinary Panel receives notice that another jurisdiction has placed a member of the bar of this court on disability inactive status, the Disciplinary Panel may enter an order suspending the attorney from the practice of law. Such suspension is effective immediately and extends for an indefinite period, until further order of the Disciplinary Panel. A copy of such order must be served upon the attorney, his or her guardian, and the director of the mental hospital. Service may be effected in such manner as the Disciplinary Panel directs.

(d) Claim of Disability During Disciplinary Proceedings. If, during a disciplinary proceeding, the respondent contends that he or she is suffering from a disability by reason of mental or physical infirmity or illness or use of drugs or intoxicants that makes it impossible for the respondent to adequately defend himself or herself, the Disciplinary Panel must enter an order immediately suspending the respondent from practicing law until a determination is made of the respondent's capacity to continue to practice law.

(e) Application for Reinstatement.

(1) *Determination Whether Disability Has Been Remedied*. Any attorney suspended for incompetency, mental or physical infirmity or illness, or because of use of drugs or intoxicants may apply to the Disciplinary Panel for reinstatement once a year, or at such shorter intervals as the Disciplinary Panel may direct in the order of suspension. The Disciplinary Panel must grant the application upon a showing by clear and convincing evidence that the attorney's disability has been removed and he or she is fit to resume the practice of law. The Disciplinary Panel may take or direct such action as it deems necessary or proper to determine whether the attorney's disability has been remedied. This includes directing the attorney be examined by such qualified medical experts as the Disciplinary Panel designates. The Disciplinary Panel may direct the applicant pay the expenses of such an examination.

(2) *Declaration of Competence.* When an attorney has been suspended because of a judicial declaration of incompetence or involuntary commitment to a mental hospital and has thereafter been judicially declared to be competent, the Disciplinary Panel may dispense with further evidence and direct the reinstatement of the attorney upon such terms as are deemed proper and advisable.

(f) Evidentiary Hearing.

(1) *Appointment of Disciplinary Counsel.* If an evidentiary hearing is held to determine whether an attorney is incapacitated or to consider an attorney's application for reinstatement, the Disciplinary Panel may appoint Disciplinary Counsel to appear for the purpose of examining and cross-examining witnesses and offering proof pertinent to the issues.

(2) *Burden of Proof.* The burden of proof in proceedings to transfer to disability inactive status is on Disciplinary Counsel. The burden of proof in proceedings seeking reinstatement, readmission, or transfer from disability inactive status is on the applicant.

(g) Waiver of Physician-Patient Privilege. By filing an application for reinstatement, an attorney who has been suspended for disability waives any physician-patient privilege regarding his or her treatment during the period of disability. The attorney must disclose the name of every psychiatrist, psychologist, physician, and hospital by whom or in which the attorney has been examined or treated since suspension. The attorney also must furnish the Disciplinary Panel with written consent for such psychiatrists, psychologists, physicians, or hospitals to divulge any information or records the medical experts designated by the Disciplinary Panel may request.

* * *

As amended 3/17/10, 3/17/04, 11/16/90.

RULE 83.6.10
FEES AND COSTS

(a) Taxation of Costs. The Disciplinary Panel may tax the costs of any disciplinary or disability proceeding under these rules to a respondent or to a person seeking reinstatement, or as hereinafter provided.

(b) Fees and Reimbursement. Disciplinary Counsel appointed pursuant to these rules may apply to the Disciplinary Panel for an order awarding fees and reimbursement of expenses. Other expenses in the administration of these disciplinary rules will be paid upon order of the Disciplinary Panel.

(c) Payments and Deposits. The clerk must make any payment under this rule from the Bar Registration and Disciplinary Fund. All costs or reimbursements paid to the clerk in disciplinary or disability cases must be deposited in the general account of the U.S. Treasury.

* * *

As amended 11/16/90.

RULE 83.6.11
APPLICABILITY OF FED. R. CIV. P. 11 TO DISCIPLINARY PROCEEDINGS

Fed. R. Civ. P. 11 is applicable to any pleading, motion, or other paper filed or submitted in disciplinary proceedings conducted under these rules and specifically to proceedings under D. Kan. Rule 83.6.1 through 83.6.12.

* * *

RULE 83.6.12
GENERAL PROVISIONS

(a) Court's Inherent Power. Nothing in these rules deprives this court of its inherent power to regulate the admission, practice, and discipline of attorneys practicing before it.

(b) Statute of Limitations. No statute of limitations bars any proceeding under these disciplinary rules.

(c) Deferral and Abatement. Processing of disciplinary complaints must not be deferred or abated because of substantial similarity to the material allegations of pending civil or criminal litigation unless expressly authorized by the Disciplinary Panel. Abatement of a complaint is not justified by:

(1) unwillingness or neglect of a complainant to sign a complaint or to prosecute a charge;

(2) settlement or compromise between the complainant and the attorney; or

(3) restitution by the attorney.

(d) Time Limitations. Except as otherwise provided in these rules, time limitations are directory and not jurisdictional.

(e) Deviation From Rules. Any deviation from the rules and procedures set forth in these rules is neither a defense in a disciplinary proceeding nor grounds for dismissal of any complaint absent actual prejudice to the respondent. The respondent must show any such prejudice by clear and convincing evidence.

(f) Judicial Immunity. Complaints, reports, or testimony in the course of disciplinary proceedings under these rules are deemed to be made in the course of judicial proceedings. All participants are entitled to judicial immunity and all rights, privileges, and immunities afforded public officials and other participants in actions filed in the courts of Kansas.

*** * ***

As amended 11/16/90.

-XIII-
REVIEW OF ADMINISTRATIVE PROCEEDINGS

RULE 83.7.1
REVIEW OF ORDERS OF ADMINISTRATIVE AGENCIES, BOARDS, COMMISSIONS, AND OFFICERS (INCLUDING SOCIAL SECURITY APPEALS)

(a) Review or Enforcement of an Agency Order-How Obtained.

(1) *Petition for review of agency order.* Review of an order of an administrative agency, board, commission, or officer must be obtained in the following manner:

(A) by filing a pleading with the clerk of the court;

(B) within the time prescribed by law;

(C) in the form indicated by the applicable statute;

(D) with a caption that names each party seeking review;

(E) naming the defendant or respondent designated in the applicable statute;

(F) identifying the order or part thereof to be reviewed; and

(G) containing a citation of the statute by which jurisdiction is claimed. If two or more persons are entitled to seek judicial review of the same order and their interests are such as to make joinder proper, they may file a joint pleading. As used in this rule, the term "agency" includes any federal agency, board, commission, or officer — including the Commissioner of Social Security under Title 42 of the United States Code.

(2) *Application for enforcement of order; cross-application for enforcement*. An application for enforcement of an order of an agency must contain a concise statement of the proceedings in which the order was entered, the facts upon which jurisdiction and venue are based, and the relief requested. In cases seeking review of an agency order, which the court has jurisdiction to enforce, the agency may file a cross-application for enforcement.

(3) *Service of process*. Service of process must be in the manner provided by Fed. R. Civ. P. 4, unless a different manner of service is prescribed by an applicable statute.

(b) The record on review or enforcement.

(1) *Composition of the record*. Unless the applicable statute provides otherwise, the record on review in proceedings to review or enforce an agency order is comprised of:

(A) the order sought to be reviewed or enforced;

(B) the findings or report on which it is based; and

(C) the pleadings, evidence, and proceedings before the agency.

(2) *Omissions from or misstatements in the record*. If anything material to any party is omitted from the record or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation, or the court may at any time direct the omission or misstatement be corrected and, if necessary, a supplemental record be prepared and filed.

(c) Filing of the record.

(1) *Review Proceedings.* In review proceedings, the agency must file the record with the clerk of this court when it files its answer unless the statute authorizing review provides a different time.

(2) *Enforcement Proceedings.* In enforcement proceedings, the record need not be filed unless the respondent has filed an answer contesting enforcement of the order. If the record is required, the court will fix the time for its filing.

(d) Filing and Service of Briefs. The party seeking review must serve and file a brief conforming to the requirements of D. Kan. Rule 7.6 within 45 days after the date on which the record is filed. The responding party must serve and file a brief within 30 days after service of the brief of the party seeking review. The party seeking review may serve and file a reply brief within 14 days after service of the brief of the respondent. The court may extend or shorten the time for filing and serving briefs. The case is submitted when all briefs have been filed. The court will render a decision upon the briefs and the record, without oral argument, unless the court otherwise directs.

(e) Applicability of Other Rules. The parties to any proceedings governed by this rule must give the same notice of the filing of pleadings, records, and other documents as is required by Fed. R. Civ. P. 5. All other provisions of the Federal Rules of Civil Procedure and the rules of this court apply to such proceedings to the extent they are applicable. This rule controls over any conflicting local rule.

* * *

As amended 3/04, 10/22/98.

RULE 83.7.2
PROCEEDINGS IN SOCIAL SECURITY APPEALS AFTER A "SENTENCE SIX" REMAND

(a) Transcript of Proceeding. 42 U.S.C. § 405 (g) requires in "sentence six" remand cases where the Commissioner's decision is not fully favorable to the plaintiff, that the Commissioner file the transcript of the proceeding upon which his or her decision was based. At the time the transcript is filed, the United States Attorney's Office for the District of Kansas must contact the plaintiff to determine whether the plaintiff intends to further pursue the case.

(b) Where the Plaintiff Will Not Pursue the Case. If the plaintiff does not intend to further pursue the case, a stipulation of dismissal pursuant to Fed. R. Civ. P. 41(a)(1) must be filed within 14 days of the date the transcript is filed.

(c) Where the Plaintiff Will Pursue the Case. If the plaintiff intends to pursue the case following remand, the plaintiff must file an amended complaint within 14 days of the date the Commissioner files the transcript, thereby making clear that he or she intends to challenge the unfavorable decision of the Commissioner following remand. The Commissioner must then file an answer within 14 days of the date plaintiff's amended complaint is filed. The case will then be set on a briefing schedule.

(d) Where the Plaintiff Takes No Action. If the plaintiff takes no action within 14 days of the date the Commissioner files the transcript, the court may schedule a conference to discuss the status of the case.

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As amended 12/01/09. Adopted 03/17/08 (formerly D. Kan. S.O. 07-1).

-XIV-
RULES APPLICABLE TO BANKRUPTCY PROCEEDINGS

RULE 83.8.1
THE BANKRUPTCY COURT

The serving bankruptcy judges of this district constitute and shall be known as "The United States Bankruptcy Court for the District of Kansas."

* * *

RULE 83.8.2
SCOPE OF RULES

These local district court rules govern practice and procedure in this district of all cases under Title 11 United States Code and of all civil proceedings arising under, in or related to Title 11. They implement and complement Title 11 United States Code, the Bankruptcy Amendments and

Federal Judgeship Act of 1984, the bankruptcy rules promulgated under 28 U.S.C. § 2075, and other local rules of this court.

* * *

RULE 83.8.3
FILING OF PAPERS

(a) Bankruptcy Rules 5005, 7001, 7003, and 9027 apply and all petitions, proofs of claim or interest, complaints, motions, applications, and other papers referred to in those rules shall be captioned "In the United States Bankruptcy Court for the District of Kansas."

(b) The filing requirements provided by subsection (a) of this rule include — but are not limited to — cases and proceedings within the purview of 28 U.S.C. § 1334(c)(2) and 28 U.S.C. § 157(b)(5).

* * *

RULE 83.8.4
MAINTENANCE OF CASE AND CIVIL PROCEEDING FILES; ENTRY OF JUDGMENTS

The clerk of the Bankruptcy Court shall maintain a complete file in each Title 11 case and in each proceeding arising in, under, or related to Title 11. A certified copy is sufficient for a judgment, order, decision, or proceeding separately docketed in the District Court. The entry of judgment by a district judge or a bankruptcy judge, as the case may be, shall be in accordance with Bankruptcy Rule 9021.

* * *

RULE 83.8.5
CLARIFICATION OF GENERAL REFERENCE TO BANKRUPTCY JUDGES

(a) Standing Order of Reference. The "Amended Standing Order of Reference," effective June 24, 2013, refers to the bankruptcy judges for this district, all cases under Title 11 and any or all proceedings arising under Title 11 or arising in or related to a case under Title 11.

(b) Particular Cases Within Reference. That reference includes, without limitation,

(1) personal injury tort and wrongful death claims or causes of action within the purview of 28 U.S.C. § 157(b)(5);

(2) state law claims or causes of action of the kind referred to at 28 U.S.C. § 1334(c)(2); and

(3) involuntary cases under 11 U.S.C. § 303.

(c) Proceedings Requiring Article III Jurisdiction. If a bankruptcy judge or district judge determines that entry of a final order or judgment by a bankruptcy judge would not be consistent with Article III of the United States Constitution in a particular proceeding referred under this rule, the bankruptcy judge shall, unless otherwise ordered by the District Court, hear the proceeding and submit proposed findings of fact and conclusions of law to the District Court. The District Court may treat any order of the Bankruptcy Court as proposed findings of fact and conclusions of law in the event the District Court concludes that the bankruptcy judge could not have entered a final order or judgment consistent with Article III of the constitution.

* * *

Amended 3/17/14.

RULE 83.8.6
TRANSFER OF PARTICULAR PROCEEDINGS FOR HEARING AND TRIAL BY A DISTRICT JUDGE

A particular proceeding commenced in or removed to the Bankruptcy Court shall be transferred to the District Court for hearing and trial by a district judge only in accordance with the procedure below.

(a) Filing of Motion Required. A party seeking such transfer shall file a motion therefore in the Bankruptcy Court certifying one or more of the following grounds:

(1) It is in the interest of justice, in the interest of comity with state courts, or respect for state law that this District Court should abstain from hearing the particular proceeding as is contemplated by 28 U.S.C. § 1334(c)(1).

(2) The particular proceeding is based upon a state law claim or state law cause of action with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under 28 U.S.C. § 1334; that an action on the claim or cause of action is commenced and can be timely adjudicated in a state forum; and that under 28 U.S.C. § 1334(c)(2) this District Court must abstain from hearing the particular proceeding.

(3) The particular proceeding is a personal injury tort or a wrongful death claim within the purview of 28 U.S.C. § 157(b)(5).

(4) Resolution of the particular proceeding requires con-sideration of both Title 11 U.S.C. and other laws of the United States regulating organizations or activities affecting interstate commerce and thus must be withdrawn to this District Court under 28 U.S.C. § 157(d).

(5) The proceeding is under 11 U.S.C. § 303, a jury trial is demanded, and no statement of consent to trial before a bankruptcy judge has been filed.

(6) Cause exists, within the contemplation of 28 U.S.C. § 157(d), for the withdrawal of the particular proceeding to this District Court (a specification of such alleged cause must be stated).

(b) Time for Filing Motion for Transfer.

(1) If movant is an original plaintiff, the motion shall be filed within 20 days after the proceeding is commenced.

(2) If movant is an original defendant, intervenor, or an added party, the motion shall be filed within 20 days after movant has entered appearance or been served with summons or notice.

(3) In a proceeding that has been removed under 28 U.S.C. § 1452, the removing party shall file the motion within 20 days after the removal; other parties shall file within 20 days after being served with summons or notice.

(4) In a proceeding of the kind designated in (a)(3) above, a recommendation to the District Court may be filed by a bankruptcy judge *sua sponte* at any time.

(5) Failure to timely move for transfer of a particular proceeding for hearing and trial by a district judge shall be construed as consent to final entry of judgment in the Bankruptcy Court.

(c) Transmission to District Court. The motion for transfer, together with a written recommendation of a bankruptcy judge, shall be transmitted by the clerk of the Bankruptcy Court to the clerk of the District Court. The latter shall assign the motion to a district judge who shall

rule *ex parte* or upon such notice as the district judge shall direct. The ruling shall be filed in the Bankruptcy Court as an order of the district judge.

(d) Continuation of Proceeding. In instances where the ruling is not dispositive of the particular proceeding transferred, the proceeding shall go forward to hearing, trial, and judgment as the district judge's order shall direct.

(e) Docketing. A proceeding retained for hearing and determination by a district judge shall be carried on the civil docket of the clerk of the District Court. Certified copies of all final orders and judgments entered by the district judge shall be transmitted by the clerk of the District Court and filed with the clerk of the Bankruptcy Court.

*** * ***

Amended 3/17/14.

RULE 83.8.7
DETERMINATION OF AUTHORITY OF BANKRUPTCY COURT TO ENTER FINAL JUDGMENT

Any proceeding where a party challenges the authority of the Bankruptcy Court to enter final judgment shall be subject to D. Kan. Rule 83.8.6 next above, and the motion required by D. Kan. Rule 83.8.6 shall be made within the time periods fixed by D. Kan. Rule 83.8.6(b) above. The Bankruptcy Court may also make this determination *sua sponte*.

*** * ***

As amended 3/17/14.

RULE 83.8.8
REVIEW OF NON-CORE PROCEEDINGS HEARD BY BANKRUPTCY JUDGE

(a) Applicability of Bankruptcy Rule 9033. Where the Bankruptcy Court has issued proposed findings of fact and conclusions of law in a particular matter, Bankruptcy Rule 9033 applies to the review of those findings and conclusions, regardless of whether the proceeding has been designated core or non-core.

(b) Objections; Designation of Record. If a party objects to the proposed findings of fact and conclusions of law filed by a bankruptcy judge, the party shall serve and file along with its objection a designation of the items contained in the Bankruptcy Court record that the party believes the district judge will need to review the proposed findings and conclusions as provided by Bankruptcy Rule 9033(d). Within the time allowed for responding to the objection, any other party shall serve and file a designation of any additional items in the record that the party believes the district judge will need. If any party designates a transcript of a proceeding or any part thereof, the party shall immediately deliver to the reporter (in the event the matter was recorded by a court reporter) and file with the clerk a written request for the transcript and make satisfactory arrangements for the payment of its cost.

(c) Transmission to District Court. The Bankruptcy Court clerk shall transmit to the District Court clerk a copy of the proposed findings and conclusions. On receiving the proposed findings and conclusions, the District Court clerk will assign the matter to a district judge.

(d) Specificity Required. The district judge may summarily overrule objections lacking specificity as to allegedly erroneous findings or conclusions.

(e) Entry of Order. If no objection has been timely filed or if the parties consent in writing, the district judge may accept the recommendations of the bankruptcy judge and enter appropriate orders without further notice.

* * *

As amended 3/17/14, 6/18/97.

RULE 83.8.9
POST-JUDGMENT MOTIONS

(a) Post-Judgment Motions in the Bankruptcy Court. In proceedings heard and finally determined by a bankruptcy judge, motions under Bankruptcy Rules 9023 and 9024 shall be filed in, and addressed to, the Bankruptcy Court.

(b) Post-Judgment Motions in the District Court. In proceedings heard and finally determined by a district judge, motions under Bankruptcy Rules 9023 and 9024 shall be filed in, and addressed to, the District Court.

* * *

As amended 3/17/14.

RULE 83.8.10
APPEALS

(a) Election-Where the Appeal Will be Heard. An appeal from a final or interlocutory order of a bankruptcy judge in a case under Title 11, a proceeding arising under Title 11, or a proceeding arising in or related to a case under Title 11 shall be heard by a panel of the 10th Circuit Bankruptcy Appellate Panel, unless one or more of the parties to the appeal elects pursuant to 28 U.S.C. § 158(c)(1), Fed. R. Bankr. P. 8005, and 10th Cir. B.A.P. Local Rule 8005-1 to have the appeal heard in the District Court or the appeal is certified for direct appeal to the Court of Appeals for the 10th Circuit under 28 U.S.C. § 158(d)(2).

(b) Procedure for Appeals to the District Court. Appeals to the District Court are governed by 28 U.S.C. § 158(a), and the procedure shall be according to Part VIII of the Federal Rules of Bankruptcy Procedure with the following modifications:

(1) A motion for leave to appeal an interlocutory order and any answer to the motion shall be submitted without oral argument unless otherwise ordered.

(2) The time limits specified in Fed. R. Bankr. P. 8016(e), 8017(e), and 8018 for filing briefs shall apply in appeals to the District Court unless the court fixes different limits in a specific case on its own motion or the motion of a party in interest.

(3) Fed. R. Bankr. P. 8022 shall not apply in this district unless, in the order entered on the appeal, the district judge grants leave to file a motion for rehearing.

(c) Procedure for Direct Appeals to the 10th Circuit. Direct appeals to the 10th Circuit Court of Appeals are covered by 28 U.S.C. § 158(d)(2), and the procedures shall be according to Fed. R. App. P. 5, and Fed. R. Bankr. P. 8006.

* * *

As amended 3/17/15, 3/17/07, 3/17/06, 6/18/97.

RULE 83.8.11
DIVISION OF BUSINESS OF BANKRUPTCY COURT; ASSIGNMENT OF TITLE 11 CASES

The business of the Bankruptcy Court shall be divided among the bankruptcy judges as provided in the supplemental Local Rules adopted by the Bankruptcy Court in accordance with D. Kan. Rule 83.8.12 subject to disapproval by the chief judge of the district. A particular Title 11 case may be reassigned in whole or in part in the same manner.

* * *

RULE 83.8.12
SUPPLEMENTAL BANKRUPTCY COURT LOCAL RULES

The Bankruptcy Court may adopt supplemental local rules not inconsistent with these District Court Rules, the Bankruptcy Rules, or Title 11 or Title 28 of the United States Code.

* * *

RULE 83.8.13
JURY TRIALS

(a) A district judge shall conduct jury trials in all bankruptcy cases and proceedings in which a party has a right to trial by jury, a jury is timely demanded, and no statement of consent to jury trial before a bankruptcy judge has been filed.

(b) A bankruptcy judge shall conduct jury trials in all bankruptcy cases and proceedings in which a party has a right to trial by jury, where a jury is timely demanded, and the parties have jointly or separately filed a statement of consent to trial before a bankruptcy judge. A bankruptcy judge may hear and determine all motions, dispositive or otherwise, filed by the parties in such a case or proceeding.

* * *

As amended 2/10/95.

-XV-
RULES APPLICABLE TO CRIMINAL CASES

RULE CR32.1
PRESENTENCE REPORTS

(a) Sentencing Hearing. When a presentence investigation and report are made under Fed. R. Crim. P. 32(c), the sentencing hearing shall be scheduled no earlier than 70 days following entry of guilty plea or a verdict of guilty.

(b) Delivery to Counsel. Delivering the defendant's copy to the defendant's counsel shall satisfy the requirement of furnishing the presentence report to the defendant for purposes of Fed. R. Crim. P. 32(e)(2). The probation officer's recommendation, if any, on the sentence shall not be disclosed.

(c) Sentencing Factors. After the final version of the presentence report has been provided to the parties, but no later than five days prior to the sentencing date, the attorney for the government and/or the attorney for the defendant may file with the court a written statement setting forth their respective positions in regard to the sentencing factors, and facts that have not been

resolved, in accordance with Guideline 6A1.2 and 6A1.3 and any amendments of the United States Sentencing Commission Guidelines Manual.

(d) Reports Made Available to U.S. Parole Commission or Bureau of Prisons. Any copy of a presentence report that the court makes available or has made available to the United States Parole Commission or to the Bureau of Prisons, constitutes a confidential court document and shall be presumed to remain under the continuing control of the court during the time it is in the temporary custody of those agencies. Such copies shall be provided to the Parole Commission and the Bureau of Prisons only for the purpose of enabling those agencies to carry out their official functions, including parole release and supervision, and shall be returned to the court after such use, or upon request.

(e) Disclosure Under Subpoena. When a demand for disclosure of presentence and probation records is made by way of subpoena or other judicial process to a probation officer of this court, the probation officer may file a petition seeking instruction from the court with respect to responding to the subpoena. No disclosure shall be made except upon an order issued by this court.

* * *

RULE CR44.1
REPRESENTATION OF INDIGENT DEFENDANTS

I. Authority.

Under the Criminal Justice Act (CJA) of 1964, as amended, 18 U.S.C. § 3006A, and *Guide to Judiciary Policy (Guide)*, Volume 7A, the judges of the United States District Court for the District of Kansas adopt this Plan, as approved by the circuit, for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. Statement of Policy.

(A) *Objectives.* The objectives of this Plan are:

(1) To attain the goal of equal justice under the law for all persons;

(2) to provide all eligible persons with timely appointed counsel services that are consistent with the best practices of the legal profession, are cost-effective, and protect the independence of the defense function so that the rights of individual defendants are safeguarded and enforced; and

(3) to particularize the requirements of the CJA, the USA Patriot Improvement and Reauthorization Act of 2005 (recodified at 18 U.S.C. § 3599), and *Guide,* Vol. 7A, in a way that meets the needs of this district.

This Plan must therefore be administered so that those accused of a crime, or otherwise eligible for services under the CJA, will not be deprived of the right to counsel, or any element of representation necessary to an effective defense, due to lack of financial resources.

(B) *Compliance.*

(1) The court, its clerk, the Office of the Federal Public Defender and private attorneys appointed under the CJA must comply with *Guide*, Vol. 7A, approved by the Judicial Conference of the United States or its Committee on Defender Services, and with this Plan.

(2) The CJA Resource Counsel will ensure that a current copy of the CJA Plan is made available on the Kansas Federal Public Defender website and

the Court's website and provided to CJA counsel upon the attorney's designation as a member of the CJA panel of private attorneys (CJA Panel). A current copy of *Guide*, Vol.7A will also be available on the Kansas Federal Public Defender website.

III. Definitions.

(A) *Representation*. "Representation" includes counsel and investigative, expert, and other services.

(B) *Appointed Attorney*. "Appointed attorney" is an attorney designated to represent a financially eligible person under the CJA and this Plan. Such attorneys include private attorneys, the federal public defender, and staff attorneys of the federal public defender organization.

(C) *Resource Counsel*. "CJA Resource Counsel" is an attorney designated by the federal public defender to administer the CJA Panel.

IV. Determination of Eligibility for CJA Representation.

(A) *Subject Matter Eligibility*.

(1) Mandatory. Representation must be provided for any financially eligible person who:

(a) is charged with a felony or with a Class A misdemeanor;

(b) is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;

(c) is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);

(d) is under arrest, when such representation is required by law;

(e) is entitled to appointment of counsel in parole proceedings;

(f) is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;

(g) is subject to a mental condition hearing under 18 U.S.C. chapter 313;

(h) is in custody as a material witness;

(i) is seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or § 2255;

(j) is entitled to appointment of counsel in verification of consent proceedings in connection with a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;

(k) is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or

(l) faces loss of liberty in a case and federal law requires the appointment of counsel.

(2) Discretionary.

(a) Whenever a district judge or magistrate judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:

(i) is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized; or

(ii) is seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 other than to set aside or vacate a death sentence;

(b) Counsel may be appointed under the CJA for a person charged with civil or criminal contempt who faces loss of liberty;

(c) Counsel may be appointed upon application of a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, counsel may be appointed where there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;

(d) Counsel may be appointed upon being advised by the United States Attorney or a law enforcement officer that they are the target of a grand jury investigation;

(e) Counsel may be appointed for financially eligible persons proposed by the United States attorney for processing under a pretrial diversion program; or

(f) Counsel may be appointed for persons held for international extradition under 18 U.S.C. Chapter 209.

(3) Ancillary Matters.

Representation may also be provided for financially eligible persons in ancillary matters appropriate to the criminal proceedings under 18 U.S.C. § 3006A(c). In determining whether representation in an ancillary matter is appropriate to the criminal proceedings, the Court should consider whether such representation is reasonably necessary to accomplish, among other things, one of the following objectives:

(a) to protect a constitutional right;

(b) to contribute in some significant way to the defense of the principal criminal charge;

(c) to aid in preparation for the trial or disposition of the principal criminal charge;

(d) to enforce the terms of a plea agreement in the principal criminal charge;

(e) to preserve the claim of the CJA client to an interest in real or personal property subject to civil forfeiture proceeding under 18 U.S.C. § 983, 19 U.S.C. § 1602, 21 U.S.C. § 881, or similar statutes, which property, if recovered by the client, may be considered for reimbursement under 18. U.S.C. § 3006A(f); or

(f) effectuate the return of real or personal property belonging to the CJA client, which may be subject to a motion for return of property under Fed. R. Crim. P. 41(g), which property, if recovered by the client, may be considered for reimbursement under 18 U.S.C. § 3006A(f).

(B) *Financial Eligibility*.

(1) Presentation of Accused for Financial Eligibility Determination.

(a) Duties of Law Enforcement.

(i) Upon arrest, and where the defendant has not retained or waived counsel, federal law enforcement officials must promptly notify, telephonically or electronically, the appropriate court personnel, who in turn will notify the federal public defender of the arrest of an individual in connection with a federal criminal charge.

(ii) Employees of law enforcement agencies should not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

(b) Duties of United States Attorney's Office.

(i) Upon the return or unsealing of an indictment or the filing of a criminal information, and where the defendant has not retained or waived counsel, the United States Attorney or their delegate will promptly notify, telephonically or electronically, appropriate court personnel, who in turn will notify the federal public defender.

(ii) Upon issuance of a target letter, and where the individual has not retained or waived counsel, the United States Attorney or their delegate must promptly notify, telephonically or electronically, the appropriate court personnel, who in turn will notify the federal public defender, unless the United States Attorney's Office is aware of an actual or potential conflict with the target and the federal public defender, in which case they must promptly notify the court or CJA Resource Counsel.

(iii) Employees of the United States Attorney's Office should not participate in the completion of the financial affidavit or seek to obtain information concerning financial eligibility from a person requesting the appointment of counsel.

(c) Duties of Federal Public Defender Office.

(i) In cases in which the federal public defender may be appointed, the office will:

- immediately investigate and determine whether an actual or potential conflict exists; and
- in the event of an actual or potential conflict, promptly facilitate the timely appointment of other counsel.

(ii) When practicable, the federal public defender will discuss with the person who indicates that he or she is not financially able to secure representation the right to appointed counsel and, if appointment of counsel seems likely, assist in the

completion of a financial affidavit (Form CJA 23) and arrange to have the person promptly presented before a magistrate judge or district judge of this court for determination of financial eligibility and appointment of counsel.

(d) Duties of Pretrial Services Office.

(i) When practicable, the pretrial services officer will not conduct the pretrial service interview of a financially eligible defendant until counsel has been appointed, unless the right to counsel is waived or the defendant otherwise consents to a pretrial service interview without counsel.

(ii) When counsel has been identified as being available for the appointment, or has been appointed, the pretrial services officer will provide counsel notice and a reasonable opportunity to attend any interview of the defendant by the pretrial services officer prior to the initial pretrial release or detention hearing.

(2) Factual Determination of Financial Eligibility.

(a) In every case where appointment of counsel is authorized under 18 U.S.C. § 3006A(a) and related statutes, the court must advise the person that he or she has a right to be represented by counsel throughout the case and that, if so desired, counsel will be appointed to represent the person if he or she is financially unable to obtain counsel.

(b) The determination of eligibility for representation under the CJA is a judicial function to be performed by the court after making appropriate inquiries concerning the person's financial eligibility. Other employees of the court may be designated to obtain or verify the facts relevant to the financial eligibility determination.

(c) In determining whether a person is "financially unable to obtain counsel," consideration should be given to the cost of providing the person and his or her dependents with the necessities of life, the cost of securing pretrial release, asset encumbrance, and the likely cost of retained counsel.

(d) The initial determination of eligibility must be made without regard to the financial ability of the person's family to retain counsel unless their family indicates willingness and ability to do so promptly.

(e) Any doubts about a person's eligibility should be resolved in the person's favor; erroneous determinations of eligibility may be corrected at a later time.

(f) Relevant information bearing on the person's financial eligibility should be reflected on a financial eligibility affidavit (Form CJA 23).

(g) If at any time after the appointment of counsel a judge finds that a person provided representation is financially able to obtain counsel or make partial payment for the representation, the judge may

terminate the appointment of counsel or direct that any funds available to the defendant be paid as provided in 18 U.S.C. § 3006A(f).

(h) If at any stage of the proceedings a judge finds that a person is no longer financially able to pay retained counsel, counsel may be appointed in accordance with the general provisions set forth in this Plan.

V. Timely Appointment of Counsel.

(A) *Timing of Appointment.*
Counsel must be provided to eligible persons as soon as feasible in the following circumstances, whichever occurs earliest:

(1) after they are taken into custody;
(2) when they appear before a magistrate or district court judge;
(3) when they are formally charged or notified of charges if formal charges are sealed; or
(4) when a magistrate or district court judge otherwise considers appointment of counsel appropriate under the CJA and related statutes.

(B) *Court's Responsibility*. The court, in cooperation with the federal public defender and the United States attorney, will make such arrangements with federal, state, and local investigative and police agencies as will ensure timely appointment of counsel.

(C) *Pretrial Service Interview.* When practicable, unless the right to counsel is waived or the defendant otherwise consents to a pretrial service interview without counsel, financially eligible defendants will be provided appointed counsel prior to being interviewed by a pretrial services officer.

(D) *Retroactive Appointment of Counsel.* Appointment of counsel may be made retroactive to include representation provided prior to appointment.

VI. Provision of Representational Services.

(A) *Federal Public Defender and Private Counsel.* This Plan provides for representational services by the federal public defender and for the appointment and compensation of private counsel from a CJA Panel list maintained by the federal public defender in cases authorized under the CJA and related statutes.

(B) *Administration.* Administration of the CJA Panel, as set forth in this Plan, is hereby delegated and assigned to the federal public defender.

(C) *Apportionment of Cases.* Where practical and cost effective, private attorneys from the CJA Panel will be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" will usually be defined as a minimum of twenty-five percent (25%) of the annual CJA appointments.

(D) *Number of Counsel.* More than one attorney may be appointed in any case determined by the court to be extremely difficult.

(E) *Capital Cases*. Procedures for appointment of counsel in cases where the defendant is charged with a crime that may be punishable by death, or is seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. §§ 2254 or 2255, are set forth in section XIV of this Plan.

VII. Federal Public Defender Organization.

(A) *Establishment.* The federal public defender is established in this district under the CJA and is responsible for rendering defense services on appointment throughout this district. The federal public defender will provide legal services throughout the district, and shall maintain offices in Kansas City, Topeka, and Wichita.

(B) *Standards.* The federal public defender organization must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained.

(C) *Workload.* The federal public defender organization will continually monitor the workloads of its staff to ensure high quality representation for all clients.

(D) *Professional Conduct*. The federal public defender organization must conform to the highest standards of professional conduct, including but not limited to the American Bar Association's Model Rules of Professional Conduct, the American Bar Association's Model Code of Professional Conduct, and the Code of Conduct for Federal Public Defender Employees.

(E) *Private Practice of Law*. Neither the federal public defender nor any defender employee may engage in the private practice of law except as authorized by the federal public defender Code of Conduct.

(F) *Supervision of Defender Organization.* The federal public defender will be responsible for the supervision and management of the federal public defender organization. Accordingly, the federal public defender will be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the federal public defender.

(G) *Training.* The federal public defender will assess the training needs of federal public defender staff and in coordination with the CJA Panel Attorney District Representative[1] the training needs of the local panel attorneys, and provide training opportunities and other educational resources.

VIII. CJA Panel of Private Attorneys.

(A) *Establishment of the CJA Panel Committee.*

(1) A CJA Panel Committee ("CJA Committee") will be established by the court in consultation with the federal public defender. There will be a CJA Committee in Wichita, in Kansas City, and in Topeka. Each CJA Committee will consist of one district court judge, one magistrate judge, the federal public defender, the CJA Panel Attorney District Representative (PADR), and a CJA panel member who practices regularly in the district. Each committee will be chaired by a magistrate judge or district court judge.

(2) The Chief Judge of the District and the CJA Resource Counsel will serve as ex officio members of the Committees.

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[1] The CJA Panel Attorney District Representative (PADR) is a member of the district's CJA Panel who is selected by the local federal public defender, with acquiescence from the chief judge, to serve as the representative of the district's CJA Panel for the national Defender Services CJA PADR program and local CJA committees.

(3) Membership on the CJA Committee will otherwise be for a term of three years and may be extended for an additional three years. Members' terms will be staggered to ensure continuity on the CJA Committee.

(4) The CJA Committee will meet at least once a year and at any time the court asks the Committee to consider an issue.

(B) *Duties of the CJA Committee.*

(1) Membership. Consider applications for the vacancies created by the terms expiring each year. Review the qualifications of each applicant and accept those applicants best qualified to fill the vacancies. Designate whether each attorney selected will serve on the General, Emeritus, or Training Panel.

If a Committee is reviewing and considering the application of a lawyer who is a member

of that Panel Selection Committee, that lawyer must recuse himself or herself from consideration.

If at any time during the year, the number of vacancies significantly decreases the membership of the panel, the appropriate Committee will request that the CJA Resource Counsel solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select new panel members.

All deliberations of the CJA Committee are confidential unless an exception is granted by the Chair of the Committee, upon good cause.

(2) Recruitment. Engage in recruitment efforts to establish a diverse panel and ensure that all qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases.

(3) Annual Report. Review the operation and administration of the CJA Panel over the preceding year and recommend any necessary or appropriate changes concerning the appointment process and panel management. The Committees will endeavor to keep the processes and administration consistent throughout the district.

(4) Removal

The Committee may remove any CJA panel member who:

(a) fails to satisfactorily fulfill the requirements of CJA panel membership during their term of service, including the failure to provide high quality representation to CJA clients and to attend the required amount of Continuing Legal Education, or

(b) engages in other conduct such that his or her continued service on the CJA Panel is inappropriate.

See also Section IX(C)(7).

IX. Establishment of a CJA Panel.

(A) *Approval of CJA Panel.*

(1) The existing, previously established panel of attorneys who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.

(2) The CJA Committee will approve attorneys for membership on the CJA Panel.

(3) There will be panels established in each location of Kansas City, Topeka, and Wichita. The General Panel is for attorneys willing to regularly accept the target number of appointments throughout the year. The Emeritus Panel is for attorneys who are interested in handling fewer CJA cases, or who are interested in a special type of case. The Training Panel is for attorneys who have less federal criminal experience; preference will be given to attorneys who have completed the Federal Public Defender's Second Chair Program.

(B) *Size of CJA Panel.*

(1) The size of the CJA Panel will be determined by the CJA Committee based on the caseload and activity of the panel members, subject to review by the Committees.

(2) The CJA Panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that CJA panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work enabling them to provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained. The target number of cases is six to eight cases per year.

(C) *Qualifications and Membership on the CJA Panel.*

(1) Application. Application forms for membership on the CJA Panel are available from the Court's website and the federal public defender website. Completed applications will be submitted electronically to the CJA Resource Counsel who will transmit the applications to each member of the Panel Selection Committees.

(2) Equal Opportunity. All qualified attorneys are encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin, sexual orientation, disability, ethnicity, ancestry, age, status as a veteran, marital status, parental status, gender identity, gender expression, or genetic information.

(3) Eligibility.

(a) Applicants for the CJA Panel must be members in good standing of the federal bar of this district and the Tenth Circuit Court of Appeals.

(b) Applicants must maintain a primary, satellite, or shared office in this district or in an adjacent district.

(c) Applicants must possess strong litigation skills and demonstrate proficiency with the federal sentencing guidelines, federal sentencing procedures, the Bail Reform Act, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence.

(d) Applicants must have significant experience representing persons charged with serious criminal offenses and demonstrate a commitment to the defense of people who lack the financial means to hire an attorney.

(e) Attorneys who do not possess the experience set forth above but believe they have equivalent other experience are encouraged to apply and set forth in writing the details of that experience for the CJA Committee's consideration.

(4) Terms of CJA Panel Members. To establish staggered CJA membership terms, the current CJA Panel will be divided into three groups, equal in number. Initially, members will be assigned to one of the three groups on a random basis. Members of the first group will continue to serve on the CJA Panel for a term of one year, members of the second group will continue to serve on the CJA Panel for a term of two years, and members of the third group will continue to serve on the CJA Panel for a term of three years. Thereafter, attorneys admitted to membership on the CJA Panel will each serve for a term of three years, subject to the reappointment procedures set forth in this plan. Each term begins on July 1.

(5) Reappointment of CJA Panel Members.

(a) The federal public defender will notify CJA panel members, prior to the expiration of their current term, of the need to apply for reappointment to the CJA Panel.

(b) A member of the CJA Panel who wishes to be considered for reappointment must apply for appointment to an additional term.

(c) The CJA Committee will solicit input concerning the quality of representation provided by lawyers seeking reappointment.

(d) The CJA Committee also will consider how many cases the CJA panel member has accepted and declined during the review period, whether the member has participated in training opportunities, whether the member has been the subject of any complaints, and whether the member continues to meet the prerequisites and obligations of CJA panel members as set forth in this Plan.

(e) If reappointment is not granted, any existing CJA appointments shall continue until the representation is concluded.

(6) Removal from the CJA Panel.

(a) Mandatory removal. Any member of the CJA Panel who is suspended or disbarred from the practice of law by the state court before whom such member is admitted, or who is suspended or disbarred from this court or any federal court, will be removed from the CJA Panel immediately. Substitute counsel will be appointed for any CJA clients of the suspended or disbarred attorney.

(b) Automatic disciplinary review. The CJA Committee will conduct an automatic disciplinary review of any CJA panel member against whom any licensing authority, grievance committee, or administrative body has taken action, or when a finding of probable cause, contempt, sanction, or reprimand has been issued against the panel member by any state or federal court.

(c) Complaints.

(i) Initiation. A complaint against a panel member may be initiated by the CJA Committee, a judge, another panel member, a defendant, or a member of the federal public defender office. A complaint need not follow any particular form, but it must be in writing and state the alleged deficiency with specificity. Any complaint should be directed to the CJA Committee, which will determine whether further investigation is necessary.

(ii) Notice. When considering the removal of an attorney, the CJA Committee will notify the panel member of the specific allegations.

(iii) Response. A panel member subject to removal consideration may respond in writing and appear, if so directed, before the CJA Committee.

(iv) Protective action. Prior to disposition of any complaint, the CJA Committee may recommend temporary suspension or removal of the panel member from any pending case, or from the panel, and may take any other protective action that is in the best interest of the client or the administration of this Plan.

(v) Review and recommendation. After consideration, the CJA Committee may recommend dismissing the complaint, or recommend appropriate remedial action and will determine whether the disciplined attorney should file motions to withdraw in any open CJA representations.

(vi) Confidentiality. Unless otherwise directed by the chair of the committee, any information acquired concerning any possible disciplinary action, including any complaint and any related proceeding, will be confidential.

(vii) None of these procedures create a property interest in being on or remaining on the CJA Panel.

(viii) These provisions do not apply to a CJA Panel Attorney who seeks reappointment to the panel.

(d) The federal public defender will be immediately notified when any member of the CJA Panel is removed or suspended.

X. CJA Panel Attorney Appointment in Non-Capital Cases.

(A) *Appointment List.* The federal public defender will maintain a current list of all attorneys included on the CJA Panel, with current office addresses, email addresses, and telephone numbers, as well as a statement of qualifications and experience.

(B) *Appointment Procedures*.

(1) The federal public defender is responsible for overseeing the appointment of cases to panel attorneys. The federal public defender will maintain a record of panel attorney appointments and, when appropriate, data

reflecting the apportionment of appointments between attorneys from the federal public defender office and panel attorneys.

(2) Appointment of cases to CJA panel members will ordinarily be made on a rotational basis, subject to the discretion of the CJA Resource Counsel or the court to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations.

(3) Under special circumstances the court may appoint a member of the bar of the court who is not a member of the CJA Panel. Such special circumstances may include cases in which the court determines that the appointment of a particular attorney is in the interests of justice, judicial economy, or continuity of representation, or for any other compelling reason. It is not anticipated that special circumstances will arise often, and the procedures set forth in the Plan are presumed to be sufficient in the vast majority of cases in which counsel are to be appointed.

(4) Unless otherwise impracticable, CJA panel attorneys must be available to represent defendants at the same stage of the proceedings as is the federal public defender.

XI. Duties of CJA Panel Members.

(A) *Standards and Professional Conduct*.

(1) CJA panel members must provide high quality representation consistent with the best practices of the legal profession and commensurate with those services rendered when counsel is privately retained.

Attorneys appointed under the CJA must conform to the highest standards of professional conduct, including but not limited to the Kansas Rules of Professional Conduct, the American Bar Association's Model Rules of Professional Conduct, and the American Bar Association's Model Code of Professional Conduct.

CJA panel members must notify within 10 days the chair of the CJA Committee when any licensing authority, grievance committee, or administrative body has taken action against them, or when a finding of contempt, sanction, or reprimand has been issued against the panel member by any state or federal court.

(B) *Training and Continuing Legal Education*.

(1) Attorneys on the CJA Panel are expected to remain current with developments in federal criminal defense law, practice, and procedure, including the Recommendation for Electronically Stored Information (ESI) Discovery Production in Federal Criminal Cases.

(2) Attorneys on the CJA Panel shall participate, annually, in at least six hours of continuing legal education provided by the federal public defender or equivalent training in federal criminal defense. The federal public defender will provide at least sixteen hours of continuing legal education each year. Attorneys shall notify the CJA Resource Counsel if federal criminal training other than through the federal public defender office is attended.

(3) Attorneys on the CJA Panel will be guided in their practice by the Federal Adaptation of the National Legal Aid and Defender Association Performance Guidelines for Criminal Defense Representations.

(4) Failure to comply with these training and legal education requirements may be grounds for removal from the CJA Panel.

(C) *Facilities and Technology Requirements*.

(1) CJA panel attorneys must have facilities, resources, and technological capability to effectively and efficiently manage assigned cases. CJA panel attorneys must comply with the requirements of electronic filing and eVoucher.

(2) CJA panel attorneys must comply with the requirements of electronic filing and eVoucher.

(3) CJA panel attorneys must know and abide by procedures related to requests for investigative, expert, and other services.

(D) *Continuing Representation*. Once counsel is appointed under the CJA, counsel will continue the representation until the matter, including appeals (as governed by the Tenth Circuit's CJA plan) or review by certiorari, is closed; or until substitute counsel has filed a notice of appearance; or until an order is entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by court order.

(E) *Miscellaneous*.

(1) Case budgeting. In non-capital representations of unusual complexity that are likely to become extraordinary in terms of cost, the Court has ordered case budgeting. See Standing Order 16-3.

(2) No receipt of other payment. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the CJA, unless such payment is approved by order of the court.

(3) Redetermination of need. If at any time after appointment, counsel has reason to believe that a party is financially able to obtain counsel, or make partial payment for counsel, and the source of counsel's information is not protected as a confidential communication, counsel will advise the Court.

XII. Compensation of CJA Panel Attorneys.

(A) *Policy of the Court Regarding Compensation*. Providing fair compensation to appointed counsel is a critical component of the administration of justice. CJA panel attorneys must be compensated for time expended in court and time reasonably expended out of court and reimbursed for expenses reasonably incurred.

(B) *Payment Procedures.*

(1) Claims for compensation must be submitted on the appropriate CJA form through the District of Kansas eVoucher system. Counsel are encouraged to submit interim vouchers, as allowed by the Court's Standing Order 14-2.

(2) Claims for compensation should be submitted no later than 45 days after final disposition of the case. Any voucher later than 180 days after final

disposition of the case must be accompanied by a Statement of Exceptional Circumstances, setting forth the reasons for the late submission.

(3) The federal public defender or her designee will review the claim for mathematical and technical accuracy and for conformity with Guide, Vol. 7A. CJA Resource Counsel will review the claim for reasonableness and will forward the claim for consideration and action by the presiding judge.

(4) The court will exert its best effort to avoid delays in reviewing vouchers and in submitting them for further processing. Vouchers should not be delayed or reduced for the purpose of diminishing Defender Services program costs in response to adverse financial circumstances. See Guide to Judiciary Policy, Vol. 7A, § 230.33.

(5) Except in cases involving mathematical corrections or claims that are not in conformity with the Act, no claim for compensation submitted for services provided under the CJA will be reduced without affording counsel notice and the opportunity to be heard. The notice to counsel may be made through the CJA Resource Counsel.

XIII. Investigative, Expert, and Other Services.

(A) *Financial Eligibility*. Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request such services in an *ex parte* application to the Court as provided in 18 U.S.C. § 3006A(e)(1), regardless of whether counsel is appointed under the CJA. Upon finding that the services are necessary, and that the person is financially unable to obtain them, the Court must authorize counsel to obtain the services.

(B) *Pro Se Requests for Service Providers*. Persons who are proceeding pro se may request investigative, expert, and other services available under 18 U.S.C. § 3006A(e)(1). These requests are reviewed by the Court in the same manner as requests made by CJA panel attorneys, although the Court shall first make a determination when appointment of counsel would be necessary, that the case is one in which the interests of justice would have required the furnishing of representation.

(C) *Applications*. Requests for authorization of funds for investigative, expert, and other services must be submitted in an *ex parte* application to the Court (using the Court's eVoucher system) and must not be disclosed except with the consent of the person represented or as required by law or Judicial Conference policy.

(D) *Compliance*. Counsel must comply with Judicial Conference policies set forth in *Guide*, Vol. 7A, Ch. 3.

XIV. Appointment of Counsel and Case Management in CJA Capital Cases.

(A) *Applicable Legal Authority*. The appointment and compensation of counsel in capital cases and the authorization and payment of persons providing investigative, expert, and other services are governed by 18 U.S.C. §§ 3005, 3006A, and 3599, and *Guide*, Vol. 7A, Ch. 6.

(B) *Number of Counsel*. Under 18 U.S.C. § 3005, a person charged with a federal capital offense is entitled to the appointment of two attorneys, at least one of whom must be learned in the law applicable to capital cases. Under 18 U.S.C. §

3599(a)(1)(B), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant.

Under 18 U.S.C. § 3599(a)(2), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. §§ 2254 or 2255 is entitled to appointment of one or more qualified attorneys. Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two counsel.

(C) *Qualifications*.

(1) Appointment of Counsel Prior to Judgment. Under 18 U.S.C. § 3599(b), at least one of the attorneys appointed must have been admitted to practice in the court in which the case will be prosecuted for not less than five years, and must have had not less than three years' experience in the actual trial of felony prosecutions in that court. Under 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.

Under 18 U.S.C. § 3005, in appointing counsel in federal capital prosecutions, the Court shall consider the recommendation of the federal public defender.

(2) Appointment of Counsel after Judgment. Under 18 U.S.C. § 3599(c), at least one of the attorneys appointed must have been admitted to practice in the Court of Appeals for not less than five years and must have had not less than three years' experience in the handling of appeals in felony cases in the Court.

(3) Attorney Qualification Waiver. Under 18 U.S.C. § 3599(d), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 18 U.S.C. § 3599(b) or (c), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

(D) *Representation in State Death Penalty Habeas Corpus Proceedings Under 28 U.S.C. § 2254.* The Court will appoint the federal public defender (with her consent) or a qualified attorney recommended by the federal public defender, or other attorney who qualifies for appointment under 18 U.S.C. § 3599 to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under 28 U.S.C. § 2254. In appropriate cases, preference ought to be given to transferring these cases to one of the Capital Habeas Units established within the District.

(E) *General Applicability and Appointment of Counsel Requirements*.

(1) Unless otherwise specified, the provisions set forth in this section apply to all capital proceedings in the federal courts, whether those matters originated in a district court (federal capital trials) or in a state court (habeas proceedings under 28 U.S.C. § 2254). Such matters include those in which the death penalty may be or is being sought by the prosecution, motions for a new trial, direct appeal, applications for a writ of certiorari to the Supreme Court of the United States, all post- conviction proceedings under 28 U.S.C. §§ 2254 or 2255 seeking to vacate or set aside a death sentence, applications

for stays of execution, competency proceedings, proceedings for executive or other clemency, and other appropriate motions and proceedings.

(2) Any person charged with a crime that may be punishable by death who is or becomes financially unable to obtain representation is entitled to the assistance of appointed counsel throughout every stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, competency proceedings, and proceedings for executive or other clemency as may be available to the defendant. See 18 U.S.C. § 3599(e).

(3) Qualified counsel must be appointed in capital cases at the earliest possible opportunity.

(4) Given the complex and demanding nature of capital cases, where appropriate, the court will utilize the expert services available through the Administrative Office of the United States Courts (AO), Defender Services Death Penalty Resource Counsel projects ("Resource Counsel projects") which include: (1) Federal Death Penalty Resource Counsel and Capital Resource Counsel Projects (for federal capital trials), (2) Federal Capital Appellate Resource Counsel Project, (3) Federal Capital Habeas § 2255 Project, and (4) National and Regional Habeas Assistance and Training Counsel Projects (§ 2254). These counsel are death penalty experts who may be relied upon by the court for assistance with selection and appointment of counsel, case budgeting, and legal, practical, and other matters arising in federal capital cases.

(5) The federal public defender should promptly notify and consult with the appropriate Resource Counsel projects about potential and actual federal capital trial, appellate, and habeas corpus cases, and consider their recommendations for appointment of counsel.

(6) The presiding judge may appoint an attorney furnished by a state or local public defender organization or legal aid agency or other private, non-profit organization to represent a person charged with a capital crime or seeking federal death penalty habeas corpus relief provided that the attorney is fully qualified. Such appointments may be in place of, or in addition to, the appointment of a federal defender organization or a CJA panel attorney or an attorney appointed pro hac vice. See 18 U.S.C. § 3006A(a)(3).

(7) All attorneys appointed in federal capital cases must be well qualified, by virtue of their training, commitment, and distinguished prior capital defense experience at the relevant stage of the proceeding, to serve as counsel in this highly specialized and demanding litigation.

(8) All attorneys appointed in federal capital cases must have sufficient time and resources to devote to the representation, taking into account their current caseloads and the extraordinary demands of federal capital cases.

(9) All attorneys appointed in federal capital cases should comply with the American Bar Association's 2003 Guidelines f o r the Appointment and

Performance of Defense Counsel in Death Penalty Cases (Guidelines and 10.2 et seq.), and the 2008 Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases.

(10) All attorneys appointed in federal capital cases should consult regularly with the appropriate Resource Counsel projects.

(11) Questions about the appointment and compensation of counsel and the authorization and payment of investigative, expert, and other service providers in federal capital cases should be directed to the AO Defender Services Office, Legal and Policy Division Duty Attorney at 202-502-3030 or via email at ods_lpb@ao.uscourts.gov.

(F) *Appointment of Trial Counsel in Federal Death-Eligible Cases*.[2]

(1) General Requirements.

(a) Appointment of qualified capital trial counsel must occur no later than when a defendant is charged with a federal criminal offense where the penalty of death is possible. See 18 U.S.C. § 3005.

(b) To protect the rights of an individual who, although uncharged, is the subject of an investigation in a federal death-eligible case, the court may appoint capitally-qualified counsel upon request, consistent with Sections C.1, 2, and 3 of these provisions.

(c) At the outset of every capital case, the court must appoint two attorneys, at least one of whom meets the qualifications for "learned counsel" as described below. If necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in a capital case. See 18 U.S.C. § 3005.

(d) When appointing counsel, the judge must consider the recommendation of the federal public defender/community defender, who will consult with Federal Death Penalty Resource Counsel to recommend qualified counsel. See 18 U.S.C. § 3005.

(e) To effectuate the intent of 18 U.S.C. § 3005 that the federal public defender/community defender's recommendation be provided to the court, the judge should ensure the federal public defender has been notified of the need to appoint capitally-qualified counsel.

(f) Reliance on a list for appointment of capital counsel is not recommended because selection of trial counsel should account for the particular needs of the case and the defendant, and be based on individualized recommendations from the federal public defender in conjunction with the Federal Death Penalty Resource Counsel and Capital Resource Counsel projects.

[2] The Judicial Conference adopted detailed recommendations on the appointment and compensation of counsel in federal death penalty cases in 1998 (JCUS-SEP 98, p. 22). In September 2010, the Defender Services Committee endorsed revised commentary to the Judicial Conference's 1998 recommendations. *CJA Guidelines*, Vol. 7A, Appx. 6A (Recommendations and Commentary Concerning the Cost and Quality of Defense Representation (Updated Spencer Report, September 2010)) ("Appx. 6A") is available on the judiciary's website.

(g) Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital trials to achieve high quality representation together with cost and other efficiencies.

(h) In evaluating the qualifications of proposed trial counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

(2) Qualifications of Learned Counsel

(a) Learned counsel must either be a member of this district's bar or be eligible for admission pro hac vice based on his or her qualifications. Appointment of counsel from outside the jurisdiction is common in federal capital cases to achieve cost and other efficiencies together with high quality representation.

(b) Learned counsel must meet the minimum experience standards set forth in 18 U.S.C. §§ 3005 and 3599.

(c) Learned counsel should have distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or distinguished prior experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high quality representation.

(d) "Distinguished prior experience" contemplates excellence, not simply prior experience. Counsel with distinguished prior experience should be appointed even if meeting this standard requires appointing counsel from outside the district where the matter arises.

(e) The suitability of learned counsel should be assessed with respect to the particular demands of the case, the stage of the litigation, and the defendant.

(f) Learned counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.

(g) Learned counsel should satisfy the qualification standards endorsed by bar associations and other legal organizations regarding the quality of representation in capital cases.

(3) Qualifications of Second and Additional Counsel.

(a) Second and additional counsel may, but are not required to, satisfy the qualifications for learned counsel, as set forth above.

(b) Second and additional counsel must be well qualified, by virtue of their distinguished prior criminal defense experience, training and commitment, to serve as counsel in this highly specialized and demanding litigation.

(c) Second and additional counsel must be willing and able to adjust other caseload demands to accommodate the extraordinary time required by the capital representation.

(d) The suitability of second and additional counsel should be assessed with respect to the demands of the individual case, the stage of the litigation, and the defendant.

(G) *Appointment and Qualifications of Direct Appeal Counsel in Federal Death Penalty Cases*.

(1) When appointing appellate counsel, the judge must consider the recommendation of the federal public defender, who will consult with Federal Capital Appellate Resource Counsel to recommend qualified counsel.

(2) Counsel appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial.

(3) Each trial counsel who withdraws should be replaced with similarly qualified counsel to represent the defendant on appeal.

(4) Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital appeals to achieve high quality representation together with cost and other efficiencies.

(5) Appellate counsel, between them, should have distinguished prior experience in federal criminal appeals and capital appeals.

(6) At least one of the attorneys appointed as appellate counsel must have the requisite background, knowledge, and experience required by 18 U.S.C. § 3599(c) or (d).

(7) In evaluating the qualifications of proposed appellate counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.

(8) In evaluating the qualifications of proposed appellate counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

(H) *Appointment and Qualifications of Post-Conviction Counsel in Federal Death Penalty Cases* (28 U.S.C. § 2255).

(1) A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2255 is entitled to appointment of fully qualified counsel. See 18 U.S.C. § 3599(a)(2).

(2) Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two attorneys.

(3) In light of the accelerated timeline applicable to capital § 2255 proceedings, prompt appointment of counsel is essential. Wherever possible, appointment should take place prior to the denial of certiorari on direct appeal by the United States Supreme Court.

(4) When appointing counsel in a capital § 2255 matter, the court should consider the recommendation of the federal public defender, who will consult with the Federal Capital Habeas § 2255 Project.

(5) Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital

§ 2255 cases to achieve high quality representation together with cost and other efficiencies.

(6) Counsel in § 2255 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post- conviction proceedings.

(7) When possible, post-conviction counsel should have distinguished prior experience in capital § 2255 representations.

(8) In evaluating the qualifications of proposed post-conviction counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.

(9) In evaluating the qualifications of proposed post-conviction § 2255 counsel, consideration should be given to their commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to effectively represent the interests of the client.

(I) *Appointment and Qualifications of Counsel in Federal Capital Habeas Corpus Proceedings* (28 U.S.C. § 2254).

(1) A financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 is entitled to the appointment of qualified counsel. See 18 U.S.C. § 3599(a)(2).

(2) Due to the complex, demanding, and protracted nature of death penalty proceedings, the court should consider appointing at least two attorneys.

(3) When appointing counsel in a capital § 2254 matter, the appointing authority should consider the recommendation of the federal public defender who will consult with the National or Regional Habeas Assistance and Training Counsel projects.

(4) Out-of-district counsel, including federal defender organization staff, who possess the requisite expertise may be considered for appointment in capital § 2254 cases to achieve cost and other efficiencies together with high quality representation.

(5) In order for federal counsel to avail themselves of the full statute of limitations period to prepare a petition, the court should appoint counsel and provide appropriate litigation resources at the earliest possible time permissible by law.

(6) Unless precluded by a conflict of interest, or replaced by similarly qualified counsel upon motion by the attorney or motion by the defendant, capital § 2254 counsel must represent the defendant throughout every subsequent stage of available judicial proceedings and all available post-conviction processes, together with applications for stays of execution and other appropriate motions and procedures, and must also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant. See 18 U.S.C. § 3599(e).

(7) Counsel in capital § 2254 cases should have distinguished prior experience in the area of federal post-conviction proceedings and in capital post-conviction proceedings.

(8) When possible, capital § 2254 counsel should have distinguished prior experience in capital § 2254 representations.

(9) In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to the qualification standards endorsed by bar associations and other legal organizations regarding the quality of legal representation in capital cases.

(10) In evaluating the qualifications of proposed capital § 2254 counsel, consideration should be given to proposed counsel's commitment to the defense of capital cases, their current caseload including other capital cases, and their willingness to represent effectively the interests of the client.

* * *

NOTE: This is a mandated rule.
As amended 3/17/18, 3/17/13, 3/17/09, 10/22/98, 2/2/95.

RULE CR44.2
APPEARANCE IN CRIMINAL CASES

Retained attorneys appearing for defendants in criminal cases shall promptly file a written entry of appearance.

* * *

RULE CR44.3
WITHDRAWAL OF APPEARANCE

An attorney who has appeared in a criminal case may withdraw in accordance with D. Kan. Rule 83.5.5.

* * *

Adopted 3/17/09.

RULE CR47.1
RELIEF FROM STATE DETAINERS

No petition lodged or filed by a prisoner under the Interstate Agreement on Detainers (18 U.S.C., Appendix III) for relief of any sort from the effect of a state detainer shall be entertained unless (a) the petitioner has, at least 180 days prior to the date of lodging or filing his petition, given or sent to the warden or other official having petitioner's custody for delivery to the prosecuting officer of the jurisdiction in which the case giving rise to the detainer is pending, and to the appropriate court, a written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint upon which the detainer is based; and (b) the petitioner has not been brought to trial on such indictment, information, or complaint.

* * *

RULE CR49.1
SCOPE OF ELECTRONIC FILING

As authorized by Fed. R. Crim. P. 49(d) and Fed. R. Civ. P. 5(d), the court will accept for filing all documents submitted, signed, or verified by electronic means that comply with procedures established by the court.

All criminal cases are assigned to the Electronic Filing System unless otherwise ordered by the court. All petitions, motions, memoranda of law, or other pleadings and documents filed with the court in connection with a case assigned to the Electronic Filing System shall be filed

electronically unless otherwise permitted in these rules or the Administrative Procedures Guide or unless otherwise authorized by the court. The filing of the charging documents, including the complaint, information, indictment, and superseding information or indictment, shall be accomplished as set forth in the Administrative Procedures Guide that is authorized by D. Kan. Rule CR49.13. All criminal cases that were pending on May 12, 2003, have a two-part file consisting of: (1) a conventional paper file containing documents filed before May 12, 2003; and (2) an electronic file containing documents filed on or after May 12, 2003.

* * *

Adopted 3/17/04.

RULE CR49.2
ELIGIBILITY, REGISTRATION, PASSWORDS

Attorneys admitted to the bar of this court, including those admitted pro hac vice, may register as Filing Users of the court's Electronic Filing System. Registration is in a form prescribed by the clerk and requires the Filing User's name, address, telephone number, internet email address, and a declaration that the attorney is either admitted to the bar of this court or has been admitted pro hac vice.

Attorneys who are admitted pro hac vice and who register as Filing Users shall have access to the court's Electronic Filing System through PACER and shall receive the automatically-generated notices of electronic filing. However, this court's rules require meaningful participation by local counsel and, to that end, require local counsel to sign all pleadings and other papers filed with the court. *See* D. Kan. Rule 83.5.4(c). Consistent with this rule, attorneys who are admitted pro hac vice may not file documents electronically unless they are employed by the United States of America.

A party to a criminal action who is not represented by an attorney may not register as a Filing User in the Electronic Filing System unless the court permits. If so permitted, registration is in a form prescribed by the clerk and requires identification of the action as well as the name, address, telephone number, and internet email address of the party. If, during the course of the action, an attorney appears on the party's behalf, the attorney must immediately advise the clerk to terminate the party's registration as a Filing User.

Registration as a Filing User constitutes consent to electronic service of all documents as provided in these rules in accordance with the Federal Rules of Civil Procedure.

Once registration is completed, the Filing User will receive notification of the user login and password. Filing Users agree to protect the security of their passwords and immediately notify the clerk if they learn that their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

* * *

Adopted 3/17/04.

RULE CR49.3
CONSEQUENCES OF ELECTRONIC FILING

Electronic transmission of a document to the Electronic Filing System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes of the Federal Rules of Criminal Procedure and the Local Rules of this court, and constitutes entry of the document on the docket kept by the clerk under

Fed. R. Crim. P. 49 and 55. Before filing a scanned document with the court, a Filing User must verify its legibility.

When a document has been filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted electronically, a document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the court.

Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight central time to be considered timely filed that day.

* * *

Adopted 3/17/04.

RULE CR49.4
ENTRY OF COURT ISSUED DOCUMENTS

All orders, decrees, judgments, and proceedings of the court will be filed in accordance with these rules, which will constitute entry on the docket kept by the clerk under Fed. R. Crim. P. 49 and 55. The court or court personnel will file all such documents electronically. Any such document filed electronically without the original signature of a judge, magistrate judge, or clerk has the same force and effect as if the judge, magistrate judge, or clerk, respectively, had signed a paper copy of the order and it had been entered on the docket in a conventional manner.

Orders may be issued as "text-only" entries on the docket without an attached document. Such orders are official and binding.

The court may issue a warrant or summons electronically, but a warrant or summons may only be served in accordance with Fed. R. Crim. P. 4(c).

A Filing User shall not submit a proposed order by electronic filing, either as an attachment to a corresponding motion or other- wise. Rather, proposed orders shall be submitted directly to the appropriate judge, magistrate judge, or clerk in the form and manner set forth in the Administrative Procedures Guide.

* * *

Adopted 3/17/04.

RULE CR49.5
ATTACHMENTS AND EXHIBITS

Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the Administrative Procedure Guide or the court permits. Voluminous exhibits shall be filed as set forth in the Administrative Procedures Guide.

A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or the complete document. Responding parties may timely file additional excerpts or the complete document that they believe are directly germane. The court may require parties to file additional excerpts or the complete document.

* * *

Adopted 3/17/04.

RULE CR49.6
SEALED DOCUMENTS

(a) Procedure for Requesting Leave to File Under Seal. In criminal cases, a party filing a motion for leave to file documents under seal must file that motion electronically, under seal, in the Electronic Filing System. The motion for leave to file under seal must attach as sealed exhibits the document(s) the party requests to be filed under seal. Finally, if required, the party must simultaneously provide the motion and document(s) it requests to be filed under seal to other parties in the case.

(b) Order Granting Leave. If the court grants the motion for leave to file under seal, the assigned judge will enter electronically a text entry only order authorizing the filing of the document(s) under seal. The filing party must then file its document(s) electronically under seal and, if required, provide them to other parties in the case. Further, if required, the party must submit, via email to KSD_<Judge'sLastName>_chambers@ksd.uscourts.gov a password protected proposed order (contact the clerk's office to obtain the password).

(c) Order Denying Leave. If the court denies the motion for leave to file under seal, the assigned judge will enter electronically an order denying the filing of the document(s) under seal.

* * *

Adopted 3/17/09 (formerly D. Kan. S.O. 08-1).

RULE CR49.6.1
COOPERATOR INFORMATION

When defendants potentially or actually cooperate with the government, such cooperation may be disclosed in a variety of documents and pleadings, including but not limited to: plea agreements, sentencing memoranda, cooperation agreements, motions for downward departure, and motions to reduce sentence. For the protection and safety of defendants who potentially or actually cooperate with the government, any and all pleadings or documents referencing, discussing or reflecting any such potential or actual cooperation ("cooperator information") shall be treated as follows.

The clerk's office will create a Restricted Document Folder in every felony criminal case as soon as practicable after case opening. In multi-defendant cases, a separate Restricted Document Folder will be created for each defendant. The docket entry and any documents the presiding judge orders filed in the Restricted Document Folder will be sealed and not reflected on the public docket sheet, nor will the docket sheet reflect any skipped numbers.

Any and all pleadings or documents containing cooperator information must be submitted by the prosecutor and the defendant to the presiding judge's chambers email account, for judicial review and determination whether placement in the Restricted Document Folder is warranted. The presiding judge will respond to the prosecutor and defendant by email, thus notifying them of the judge's decision to place, or not place the submitted document(s) in the Restricted Document Folder.

If the presiding judge determines the submitted document(s) should be placed in the Restricted Document Folder, the presiding judge shall forward the document(s) to the clerk's office and will direct the clerk's office to file such submitted document(s) in the Restricted Document Folder. If the presiding judge concludes the submitted document(s) should not be placed in the Restricted Document Folder, the document(s) will be returned by email to the prosecutor and defendant.

In the District of Kansas, a Restricted Document Folder is created in every felony criminal case, whether or not the defendant is cooperating with the government. Thus the presence of this Restricted Document Folder does not mean that this defendant has or will cooperate with the government.

* * *

Adopted 3/17/19.

RULE CR49.7
RETENTION REQUIREMENTS

Filing Users must maintain in paper format documents that are electronically filed and require original signatures of non-Filing Users until six years after all time periods for appeals expire. On request of the court, the Filing User must provide original documents for review.

* * *

Adopted 3/17/04.

RULE CR49.8
SIGNATURES

The user login and password required to submit documents to the Electronic Filing System serve as the Filing User's signature on all electronic documents filed with the court. They also serve as a signature for purposes of Fed. R. Civ. P. 11, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Local Rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court. Each document filed electronically must, if possible, indicate that it has been electronically filed. Electronically filed documents must include a signature block in compliance with D. Kan. Rule 5.1(c). In addition, the name of the Filing User under whose login and password the document is submitted must be preceded by an "s/" and typed in the space where the signature would otherwise appear.

No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

A document containing the signature of a defendant in a criminal case may at the court's option be filed either: (1) in paper form, or (2) in a scanned format that contains an image of the defendant's signature. Documents containing signatures of other non-Filing Users shall be filed electronically either as a scanned image or with the signature represented by an "s/" and the name typed in the space where the signature would otherwise appear.

Documents requiring signatures of more than one party must be electronically filed by: (1) submitting a scanned document containing all necessary signatures; (2) representing the consent of the other parties on the document as permitted by the administrative procedure governing multiple signatures; (3) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than seven days after filing; or (4) in any other manner approved by the court.

* * *

As amended 12/01/09. Adopted 3/17/04.

RULE CR49.9
SERVICE OF DOCUMENTS BY ELECTRONIC MEANS

The notice of electronic filing that is automatically generated by the court's Electronic Filing System constitutes service of the filed document on all parties who have consented to electronic service. Parties not deemed to have consented to electronic service are entitled to service of paper copies of the notice of electronic filing and the electronically filed pleading or other document. Service of such paper copies must be made according to the Federal Rules of Criminal Procedure and the Local Rules.

A certificate of service must be included with all documents filed electronically, indicating that service was accomplished through the Notice of Electronic Filing for parties and counsel who are Filing Users and indicating how service was accomplished on any party or counsel who is not a Filing User.

* * *

Adopted 3/17/04.

RULE CR49.10
NOTICE OF COURT ORDERS AND JUDGMENTS

Immediately upon the entry of an order or judgment in an action assigned to the Electronic Filing System, the clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed. R. Crim. P. 49(c). The clerk must give notice in paper form to a person who has not consented to electronic service in accordance with the Federal Rules of Criminal Procedure.

* * *

Adopted 3/17/04.

RULE CR49.11
TECHNICAL FAILURES

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

* * *

Adopted 3/17/04.

RULE CR49.12
PUBLIC ACCESS

A person may review at the clerk's office filings that have not been sealed by the court. A person may also access the Electronic Filing System at the court's internet site, www.ksd.uscourts.gov, by obtaining a PACER login and password. A person who has PACER access may retrieve docket sheets and documents. Unless otherwise specifically permitted by the court, only a Filing User who is an attorney admitted to the bar of this court may file documents electronically. *See* D. Kan. Rule CR49.2.

* * *

Adopted 3/17/04.

RULE CR49.13
ADMINISTRATIVE PROCEDURES

To facilitate implementation of the foregoing rules, the clerk is authorized to develop, adopt, publish, and modify as necessary *Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means in Criminal Cases* ("Administrative Procedures Guide"), which will include the procedures for registration of attorneys and distribution of passwords to permit electronic filing and notice of pleadings and other papers.

* * *

Adopted 3/17/04.

RULE CR50.1
IMPLEMENTATION OF THE SPEEDY TRIAL ACT

Pursuant to the requirement of the Speedy Trial Act of 1974 (18 U.S.C. Chapter 208, § 3161 *et seq*.), the Speedy Trial Act Amendments Act of 1979 (Pub. L. No. 96-43, 93 Stat. 327), and the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5036, 5037), the judges of the United States District Court for the District of Kansas have adopted the following time limits and procedures to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings:

(a) Applicability.

(1) *Offenses*. The time limits set forth herein are applicable to all criminal offenses triable in this court, including cases triable by magistrate judges, except for petty offenses as defined in 18 U.S.C. § 1(3). Except as specifically provided, they are not applicable to proceedings under the Federal Juvenile Delinquency Act (18 U.S.C. § 3172).

(2) *Persons*. The time limits are applicable to persons accused who have not been indicted or informed against as well as those who have, and the word "defendant" includes such persons unless the context indicates otherwise.

(b) Priorities in Scheduling Criminal Cases. Preference shall be given to criminal proceedings as far as practicable as required by Fed. R. Crim. P. The trial of defendants in custody solely because they are awaiting trial and of high-risk defendants as defined in subsection (e) of this rule should be given preference over other criminal cases [18 U.S.C. § 3164(a)].

(c) Time Within Which an Indictment or Information Must Be Filed.

(1) *Time Limits*. If an individual is arrested or served with a summons and the complaint charges an offense to be prosecuted in this district, any indictment or information subsequently filed in connection with such charge shall be filed within 30 days of arrest or service. [18 U.S.C. § 3161(b)].

(2) *Grand Jury Not in Session*. If the defendant is charged with a felony to be prosecuted in this district, and no grand jury in the district has been in session during the 30-day period prescribed in subsection (c)(1), such period shall be extended an additional 30 days. [18 U.S.C. § 3161(b)].

(3) *Measurement of Time Periods*. If a person has not been arrested or served with a summons on a federal charge, an arrest will be deemed to have been made at such time as the person (i) is held in custody solely for the purpose of responding to a federal charge; (ii) is delivered to the custody of a federal

official in connection with a federal charge; or (iii) appears before a judicial officer in connection with a federal charge.

(4) *Related Procedures*. At the time of the earliest appearance before a judicial officer of a person who has been arrested for an offense not charged in an indictment or information, the judicial officer shall establish for the record the date on which the arrest took place.

In the absence of a showing to the contrary, a summons shall be considered to have been served on the date of service shown on the return thereof.

(d) Time Within Which Trial Must Commence.

(1) *Time Limits*. The trial of a defendant shall commence not later than 70 days after the last to occur of the following dates:

(A) The date on which an indictment or information is filed in this district;

(B) The date on which a sealed indictment or information is unsealed; or,

(C) The date of the defendant's first appearance before a judicial officer of this district [18 U.S.C. § 3161(c)].

(2) *Retrial, Trial After Reinstatement of an Indictment or Information*. The retrial of a defendant shall commence within 70 days from the date the order occasioning the retrial becomes final, as shall the trial of a defendant upon an indictment or information dismissed by a trial court and reinstated following an appeal. If the retrial or trial follows an appeal or collateral attack, the court may extend the period if unavailability of witnesses or other facts resulting from passage of time make trial within 70 days impractical. The extended period shall not exceed 180 days. [18 U.S.C. § 3161(d)(2), (e)].

(3) *Withdrawal of Plea.* If a defendant enters a plea of guilty or *nolo contendere* to any or all charges in an indictment or information and is subsequently permitted to withdraw it, the time limit shall be determined for all counts as if the indictment or information were filed on the day the order permitting withdrawal of the plea became final [18 U.S.C. § 3161(i)].

(4) *Superseding Charges*. If, after an indictment or information has been filed, a complaint, indictment, or information is filed that charges the defendant with the same offense or with an offense required to be joined with that offense, the time limit applicable to the subsequent charge will be determined as follows:

(A) If the original indictment or information was dismissed on motion of the defendant before the filing of the subsequent charge, the time limit shall be determined without regard to the existence of the original charge [18 U.S.C. § 3161 (d)(1)].

(B) If the original indictment or information is pending at the time the subsequent charge is filed, the trial shall commence within the time limit for commencement of trial on the original indictment or information.

(C) If the original indictment or information was dismissed on motion of the United States Attorney before the filing of the subsequent

charge, the trial shall commence within the time limit for commencement of trial on the original indictment or information, but the period during which the defendant was not under charges shall be excluded from the computations. Such period is the period between the dismissal of the original indictment or information and the date the time would have commenced to run on the subsequent charge had there been no previous charge [18 U.S.C. § 3161 (h)(6)].

If the subsequent charge is contained in a complaint, the formal time limit within which an indictment or information must be obtained on the charge shall be determined without regard to the existence of the original indictment or information, but earlier action may in fact be required if the time limit for commencement of trial is to be satisfied.

(5) *Measurement of Time Periods*. For the purposes of this section:

(A) If a defendant signs a written consent to be tried before a magistrate judge and no indictment or information charging the offense has been filed, the time limit shall run from the date of such consent.

(B) In the event of a transfer to this district under Fed. R. Crim. P., the indictment or information shall be deemed filed in this district when the papers in the proceeding or certified copies thereof are received by the clerk.

(C) A trial in a jury case shall be deemed to commence at the beginning of voir dire.

(D) A trial in a non-jury case shall be deemed to commence on the day the case is called, provided that some step in the trial procedure immediately follows.

(6) *Related Procedures*.

(A) At the time of the defendant's earliest appearance before a judicial officer of this district, the officer will take appropriate steps to assure that the defendant is represented by counsel and shall appoint counsel where appropriate under the Criminal Justice Act and Fed. R. Crim. P. 44.

(B) The court shall have sole responsibility for setting cases for trial after consultation with counsel. At the time of arraignment or as soon thereafter as is practicable, each case will be set for trial on a day certain or listed for trial on a weekly or other short-term calendar [18 U.S.C. § 3161 (a)].

(C) Individual calendars shall be managed so that it will be reasonably anticipated that every criminal case set for trial will be reached during the week of original setting. A conflict in schedules of Assistant United States Attorneys or defense counsel will be ground for a continuance or delayed setting only if approved by the court and called to the court's attention at the earliest practicable time.

(D) In the event that a complaint, indictment, or information is filed against a defendant charged in a pending indictment or information or in an indictment or information dismissed on motion of the United States Attorney, the trial on the new charge shall commence

within the time limit for commencement of trial on the original indictment or information unless the court finds that the new charge is not for the same offense charged in the original indictment or information or an offense required to be joined therewith.

(E) At the time of the filing of a complaint, indictment, or information described in paragraph (D), the United States Attorney shall give written notice to the court of that circumstance and of his/her position with respect to the computation of the time limits.

(F) All pretrial hearings shall be conducted as soon after the arraignment as possible, consistent with the priorities of other matters on the court's criminal docket.

(e) Defendants in Custody and High-Risk Defendants.

(1) *Time Limits*. Notwithstanding any longer time periods that may be permitted under subsections (c) and (d), the following time limits will also be applicable to defendants in custody and high-risk defendants as herein defined [18 U.S.C. § 3164(b)]:

(A) The trial of a defendant held in custody solely for the purpose of trial on a federal charge shall commence within 90 days following the beginning of continuous custody.

(B) The trial of a high-risk defendant shall commence within 90 days of the designation as high-risk.

(2) *Definition of "High-Risk Defendant."* A high-risk defendant is one reasonably designated by the United States Attorney as posing a danger to himself or any other person or to the community.

(3) *Measurement of Time Periods*. For the purposes of this section:

(A) A defendant is deemed to be in detention awaiting trial when he is arrested on a federal charge or otherwise held for the purpose of responding to a federal charge. Detention is deemed to be solely because the defendant is awaiting trial unless the person exercising custodial authority has an independent basis (not including a detainer) for continuing to hold the defendant.

(B) If a case is transferred pursuant to Fed. R. Crim. P. 20 and the defendant subsequently rejects disposition under Fed. R. Crim. R. 20 or the court declines to accept the plea, a new period of continuous detention awaiting trial will begin at that time.

(C) A trial shall be deemed to commence as provided in subsections (d)(5)(C) and (d)(5)(D).

(4) *Related Procedures*.

(A) If a defendant is being held in custody solely for the purpose of awaiting trial, the United States Attorney shall advise the court at the earliest practicable time of the date of the beginning of such custody.

(B) The United States Attorney shall advise the court at the earliest practicable time (usually at the hearing with respect to bail) if the defendant is considered to be a high-risk.

(C) If the court finds that the filing of a "high-risk" designation as a public record may result in prejudice to the defendant, it may order the designation sealed for such period as is necessary to protect the defendant's right to a fair trial, but not beyond the time that the court's judgment in the case becomes final. During the time the designation is under seal, it shall be made known to the defendant and his counsel but shall not be made known to other persons without the permission of the court.

(f) Exclusion of Time for Computations.

(1) Applicability. In computing any time limit under subsections (c), (d), or (e), the periods of delay set forth in 18 U.S.C. § 3161(h) shall be excluded. Such periods of delay shall not be excluded in computing the minimum period for commencement of trial under subsection (g).

(2) Records of Excludable Time. The clerk of the court shall enter on the docket, in the form prescribed by the Administrative Office of the United States Courts, information with respect to excludable periods of time for each criminal defendant. With respect to proceedings prior to the filing of an indictment or information, excludable time shall be reported to the clerk by the United States Attorney.

(3) Stipulations.

(A) The attorney for the government and the attorney for the defendant may at any time enter into stipulations with respect to the accuracy of the docket entries recording excludable time.

(B) To the extent that the amount of time stipulated by the parties does not exceed the amount recorded on the docket for any excludable period of delay, the stipulation shall be conclusive as between the parties unless it has no basis in fact or law. It shall similarly be conclusive as to a co-defendant to the limited purpose of determining, under 18 U.S.C. § 3161(h)(7), whether time has run against the defendant entering into the stipulation.

(C) To the extent that the amount of time stipulated exceeds the amount recorded on the docket, the stipulation shall have no effect unless approved by the court.

(4) *Pre-Indictment Procedures*.

(A) In the event that the United States Attorney anticipates that an indictment or information will not be filed within the time limit set forth in subsection (c), he may file a written motion with the court for a determination of excludable time. In the event that the United States Attorney seeks a continuance under 18 U.S.C. § 3161(h)(8), he shall file a written motion with the court requesting such a continuance.

(B) The motion of the United States Attorney shall state (i) the period of time proposed for exclusion, and (ii) the basis of the proposed exclusion. If the motion is for a continuance under 18 U.S.C. § 3161(h)(8), it shall also state whether or not the defendant is being held in custody on the basis of the complaint. In appropriate circumstances, the motion may include a request that some or all of the supporting material be considered *ex parte* and *in camera*.

(C) The court may grant a continuance under 18 U.S.C. § 3161(h)(8) for either a specific period of time or a period to be determined by reference to an event (such as recovery from illness) not within the control of the government. If the continuance is to a date not certain, the court shall require one or both parties to inform the court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The court shall determine the frequency of such reports in light of the facts of the particular case.

(5) *Post-Indictment Procedures*.

(A) At each appearance of counsel before the court, counsel shall examine the clerk's record of excludable time for completeness and accuracy and shall bring to the court's immediate attention any claim that the clerk's record is in any way incorrect.

(B) In the event that the court continues a trial beyond the time limit set forth in subsections (d) or (e), the court shall determine whether the limit may be recomputed by excluding time pursuant to 18 U.S.C. § 3161(h).

(C) If it is determined that a continuance is justified, the court shall set forth its findings in the record, either orally or in writing. If the continuance is granted under 18 U.S.C. § 3161(h)(8), the court shall also set forth its reasons for finding that the ends of justice served by granting the continuance outweigh the best interest of the public and the defendant in a speedy trial. If the continuance is to a date not certain, the court shall require one or both parties to inform the court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The court shall determine the frequency of such reports in light of the facts of the particular case.

(g) Minimum Period for Defense Preparation. Unless the defendant consents in writing to the contrary, the trial shall not commence earlier than 30 days from the date on which the indictment or information is filed or, if later, from the date on which counsel first enters an appearance or on which the defendant expressly waives counsel and elects to proceed *pro se*. In circumstances in which the 70-day time limit for commencing trial on a charge in an indictment or information is determined by reference to an earlier indictment or information pursuant to subsection (d)(4), the 30-day minimum period shall also be determined by reference to the earlier indictment or information. When prosecution is resumed on an original indictment or information following a mistrial, appeal, or withdrawal of a guilty plea, a new 30-day minimum period will not begin to run. In all cases, the court will schedule trials so as to permit defense counsel adequate preparation time in the light of all circumstances. [18 U.S.C. § 3161(c)(2)].

(h) Time Within Which Defendant Should Be Sentenced.

(1) *Time Limit*. A defendant shall ordinarily be sentenced within 45 days of the date of his conviction or plea of guilty or *nolo contendere*.

(2) *Related Procedures*. If the defendant and his counsel consent, a presentence investigation may be commenced prior to a plea of guilty or *nolo contendere* or a conviction.

(i) Juvenile Proceedings.

(1) *Time Within Which Trial Must Commence*. An alleged delinquent who is in detention pending trial shall be brought to trial within 30 days of the date of which such detention was begun, as provided in 18 U.S.C. § 5036.

(2) *Time of Dispositional Hearing*. If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than 20 court days after trial, unless the court has ordered further study of the juvenile in accordance with 18 U.S.C. § 5037(c).

(j) Sanctions.

(1) *Dismissal or Release From Custody*. Failure to comply with the requirements of Title I of the Speedy Trial Act may entitle the defendant to dismissal of the charges against him or to release from pretrial custody. Nothing in this rule shall be construed to require that a case be dismissed or a defendant released from custody in circumstances in which dismissal would not be required by 18 U.S.C. §§ 3162 and 3164.

(2) *High-Risk Defendants*. A high-risk defendant whose trial has not commenced within the time limit set forth in 18 U.S.C. § 3164(b) shall, if the failure to commence trial was through no fault of the attorney for the government, have his release conditions automatically reviewed. A high-risk defendant who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying his nonfinancial conditions of release under Chapter 207 of Title 18, U.S.C., to insure that he shall appear at trial as required [18 U.S.C. § 3164(c)].

(3) *Discipline of Attorneys*. In a case in which counsel (A) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial, (B) files a motion solely for the purpose of delay that he knows is frivolous and without merit, (C) makes a statement

for the purpose of obtaining a continuance that he knows to be false and that is material to the granting of the continuance, or (D) otherwise willfully fails to proceed to trial without justification consistent with 18 U.S.C. § 3161, the court may punish such counsel as provided in 18 U.S.C. §§ 3162(b) and (c).

(4) *Alleged Juvenile Delinquents*. An alleged delinquent in custody whose trial has not commenced within the time limit set forth in 18 U.S.C. § 5036 shall be entitled to dismissal of his case pursuant to that section unless the Attorney General shows that the delay was consented to or caused by the juvenile or his counsel, or would be in the interest of justice in the particular case.

(k) Persons Serving Terms of Imprisonment. If the United States Attorney knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he shall promptly seek to obtain the presence of the prisoner for trial, or cause a detainer to be filed, in accordance with 18 U.S.C. § 3161(j).

(l) Effective Date.

(1) The amendments to the Speedy Trial Act made by Public Law 86-43 became effective August 2, 1979. To the extent that this revision of the district's plan does more than merely reflect the amendments, the revised plan shall take effect upon approval of the reviewing panel designated in accordance with 18 U.S.C. § 3165(c). However, the dismissal sanction and the sanctions against attorneys authorized by 18 U.S.C. § 3162 and reflected in subsections (j)(1) and (3) of this rule shall apply only to defendants whose cases are commenced by arrest or summons on or after July 1, 1980, and to indictments and informations filed on or after that date.

(2) If a defendant was arrested or served with a summons before July 1, 1979, the time within which an information or indictment must be filed shall be determined under the plan that was in effect at the time of such arrest or service.

(3) If a defendant was arraigned before August 2, 1979, the time within which the trial must commence shall be determined under the plan that was in effect at the time of such arraignment.

(4) If a defendant was in custody on August 2, 1979, solely because he was awaiting trial, the 90-day period under subsection (e) shall be computed from that date.

*** * ***

NOTE: This is a mandated rule.

RULE CR53.1
DISSEMINATION OF INFORMATION

(a) Prohibited Statements; Attorneys' Obligations.

(1) An attorney participating in or associated with a grand jury or other investigation of a criminal matter shall not make or participate in making any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

(A) Information contained in a public record;
(B) That the investigation is in progress;
(C) The general scope of the investigation including a description of the offense, and if permitted by law, the identity of the victim;
(D) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto;
(E) A warning to the public of any dangers.

(2) An attorney associated with the prosecution or defense of a criminal case to be tried by a jury shall not make or participate in making any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication that relates to:
(A) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused;
(B) The possibility of a plea of guilty to the offense charged or to a lesser offense;
(C) The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement;
(D) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examination or tests;
(E) The identity, testimony, or credibility of a prospective witness;
(F) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

(3) Subsection (a)(2) above does not preclude an attorney from announcing:
(A) The name, age, residence, occupation, and family status of the accused;
(B) Any information necessary to aid in the apprehension of an accused or to warn the public of any dangers he may present;
(C) A request for assistance in obtaining evidence;
(D) The identity of the victim of the crime;
(E) The fact, time and place of arrest, resistance, pursuit, and use of weapons;
(F) The identity of investigating and arresting officers or agencies, and the length of the investigation;
(G) The nature, substance, or text of the charge;
(H) Quotations from or references to public records of the court in the case;
(I) The scheduling or result of any step in the judicial proceedings;
(J) That the accused denies the charges made against him.

(4) The foregoing provisions of this rule do not preclude an attorney from replying to charges of misconduct publicly made against him or from participating in the proceedings of legislative, administrative, or other investigative bodies.

(b) Attorneys' Employees and Associates. An attorney must exercise reasonable care to prevent his employees and associates from making any extrajudicial statement that the attorney would be prohibited from making under this rule.

(c) **Fed. R. Crim. P. 6(e)(3) Materials.** Matters required to be filed with the District Court pursuant to Fed. R. Crim. P. 6(e)(3) shall be first presented to the District Court before whom was impaneled the grand jury whose material has been disclosed. The disclosure should include all persons who will have access to the grand jury material except those who are under the immediate supervision of the attorney for the government or the government personnel to whom disclosure is reported. In the event the court directs the filing of the disclosure with the clerk's office, it shall be sealed by the clerk and not released except by order of the court for good cause.

(d) **Closure of Proceedings.** Unless otherwise provided by law, all criminal proceedings shall be held in open court and shall be available for attendance and observation by the public; provided that upon motion made or agreed to by the defense, the court in the exercise of its discretion may order a proceeding closed to the public in whole or in part on the following grounds:

(1) There is a reasonable likelihood that the dissemination of information disclosed at such proceeding would impair the defendant's rights; and

(2) That reasonable alternatives to closure will not adequately protect a defendant's rights. If the court orders closure, it shall state for the record its specific findings concerning the need for closure.

* * *

RULE CR55.1
VERIFICATION OF RECEIPT OF TRANSCRIPTS

The clerk of the court is authorized to verify the receipt of transcripts from court reporters on behalf of *pro se* persons and all Criminal Justice Act parties.

* * *

RULE CR58.1
PAYMENT OF A FIXED SUM IN LIEU OF APPEARANCE IN CERTAIN PETTY OFFENSE CASES

A person charged in this district with the commission of specified petty offenses may pay a fixed sum to the clerk of this court in lieu of appearance before a judge or a magistrate judge. For the purposes of this rule, the Central Violations Bureau for the Tenth Circuit may act as agent for the clerk of the court. Payment of the fixed sum to the clerk signifies that the person charged with the petty offense does not contest the charge nor request a trial, and is tantamount to the entry of a plea of guilty. The amount so paid must be forfeited to the United States of America.

* * *

NOTE: The following categories of alleged offenders must appear for trial:

(a) Persons charged with any offense not listed in the standing order.

(b) Persons charged with an offense resulting in personal injury, death, or property damage in excess of $100.

(c) Persons charged with any listed offense may be required to appear before a judge or magistrate judge if in the opinion of the law enforcement officer the circumstances surrounding the alleged offense are aggravated.

* * *

-XVI-
STANDING ORDERS

IN THE UNITED STATES DISTRICT COURT
AND
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

IN THE MATTER OF THE KANSAS BAR ASSOCIATION'S PILLARS OF PROFESSIONALISM MEMORANDUM AND ORDER

This matter is pending before the District and Bankruptcy Courts of the District of Kansas on the recommendation of the Court's Bench Bar Committee's Rule 1 Working Group on Professionalism and Sanctions and affirmed by the District Court's Bench-Bar Committee to "adopt" the Kansas Bar Association's "Pillars of Professionalism."

The "Pillars of Professionalism" were suggested to the Kansas Bar Association by the late Kansas Supreme Court Chief Justice Robert E. Davis as a means of providing an inspirational and aspirational set of guidelines for lawyers across the State of Kansas. The Kansas Bar Association appointed a Commission on Professionalism and the Bar composed of lawyers and judges from around the state. This group worked over months to draft these goals. After consideration, the Board of Governors of the Kansas Bar Association approved and adopted the "Pillars of Professionalism" at their annual meeting on June 15, 2012. Subsequently, the Kansas Supreme Court issued an order on September 28, 2012 adopting the aspirational goals contained in the Pillars.

The District and Bankruptcy Courts have considered the recommendation of the Rule 1 Working Group and adopt the attached "Pillars of Professionalism" as aspirational goals to guide lawyers in their pursuit of civility, professionalism and service to the public.

IT IS SO ORDERED. The Clerks of the respective courts are directed to file this Memorandum and Order as a permanent record of the court and publicize it on the courts' website or otherwise publish at the Court's discretion.

DATED this 19th day of October, 2012.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
Chief District Judge

s/ Robert E. Nugent
ROBERT E. NUGENT
Chief Bankruptcy Judge

* * *

Pillars of Professionalism*

> Professionalism focuses on actions and attitudes. A professional lawyer behaves with civility, respect, fairness, learning and integrity toward clients, as an officer of the legal system, and as a public citizen with special responsibilities for the quality of justice.

Admission to practice law in Kansas carries with it not only the ethical requirements found in the *Kansas Rules of Professional Conduct,* but also a duty of professionalism. Law students who aspire to be members of the Kansas bar should also heed these guidelines. Kansas lawyers have a duty to perform their work professionally by behaving in a manner that reflects the best legal traditions, with civility, courtesy, and consideration. Acting in such a manner helps lawyers preserve the public trust that lawyers guard and protect the role of justice in our society. Lawyers frequently interact with clients, courts, opposing counsel and parties, and the public at large. A lawyer's actions also reflect on the entire legal profession. With those interactions in mind, the following Pillars of Professionalism have been prepared. These Pillars should guide lawyers in striving for professionalism.

With respect to clients:

1. Respect your clients' goals and counsel them about their duties and responsibilities as participants in the legal process. Treat clients with courtesy, respect, and consideration.

2. Be candid with clients about the reasonable expectations of their matter's results and costs.

3. Encourage clients to act with civility by, for example, granting reasonable accommodations to opponents. Maintaining a courteous relationship with opponents often helps achieve a more favorable outcome. Counsel clients against frivolous positions or delaying tactics, which are unprofessional even if they may not result in sanctions.

4. Counsel clients about the risks and benefits of alternatives before making significant decisions. Act promptly to resolve the matter once the relevant facts have been obtained and a course of action determined.

5. Communicate regularly with clients about developments. Keep them informed about developments, both positive and negative.

With respect to courts:

1. Treat judges and court personnel with courtesy, respect, and consideration.

2. Act with candor, honesty, and fairness toward the court.

3. Counsel clients to behave courteously, respectfully, and with consideration toward judges and court personnel.

4. Accept all rulings, favorable or unfavorable, in a manner that demonstrates respect for the court, even if expressing respectful disagreement with a ruling is necessary to preserve a client's rights.

With respect to opposing parties and counsel:

1. Be courteous, respectful, and considerate. If the opposing counsel or party behaves unprofessionally, do not reciprocate.

2. Respond to communications and inquiries as promptly as possible, both as a matter of courtesy and to resolve disputes expeditiously.

3. Grant scheduling and other procedural courtesies that are reasonably requested whenever possible without prejudicing your client's interests.

4. Strive to prevent animosity between opposing parties from infecting the relationship between counsel.

5. Be willing and available to cooperate with opposing parties and counsel in order to attempt to settle disputes without the necessity of judicial involvement whenever possible.

With respect to the legal process:

1. Focus on the disputed issues to avoid the assertion of extraneous claims and defenses.

2. Frame discovery requests carefully to elicit only the information pertinent to the issues, and frame discovery responses carefully to provide that which is properly requested.

3. Work with your client, opposing counsel, nonparties, and the court to determine whether the need for requested information is proportional to the cost and difficulty of providing it.

4. Maintain proficiency, not only in the subject matter of the representation, but also in the professional responsibility rules that govern lawyers.

5. Be prepared on substantive, procedural, and ethical issues involved in the representation.

With respect to the profession and the public:

1. Be mindful that, as members of a self-governing profession, lawyers have an obligation to act in a way that does not adversely affect the profession or the system of justice.

2. Be mindful that, as members of the legal profession, lawyers have an obligation to the rule of law and to ensure that the benefits and the burdens of the law are applied equally to all persons.

3. Participate in continuing legal education and legal publications to share best practices for dealing ethically and professionally with all participants in the judicial system.

4. Take opportunities to improve the legal system and profession.

5. Give back to the community through pro bono, civic or charitable involvement, mentoring, or other public service.

6. Defend the profession and the judiciary against unfounded and unreasonable attacks and educate others so that such attacks are minimized or eliminated.

7. Be mindful of how technology could result in unanticipated consequences. A lawyer's comments and actions can be broadcast to a large and potentially unanticipated audience.

8. In all your activities, act in a manner which, if publicized, would reflect well on the legal profession.

*The late Chief Justice Robert E. Davis (1937-2010) inspired these pillars of professionalism. The Chief Justice "always maintained his sense of grace and civility" and was a model of professionalism. See 79 J. Kan. B. Ass'n. 10 (Oct. 2010). Chief Justice Davis cited the pillars in the Ralph Waldo Emerson poem "A Nation's Strength" to inspire and recognize the staff of the Kansas Legal Services and, thus we believe it is fittingly used here. See 79 J. Kan. B. Ass'n. 9 (Jan. 2010). We dedicate these pillars of professionalism to the memory of Chief Justice Davis.

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A list of Standing Orders is available at the District of Kansas website:

http://ksd.uscourts.gov/index.php/local-rules/