

Summary of Authorities for Judges Considering Whether to Restrict Court Filings

Table of Contents

I.	Constitutional Right of Access to the Courts.....	1
II.	Are Filing Restrictions Justified?.....	1
A.	Civil cases in Kansas courts: Does a pattern of litigation activity justify restrictions?.....	2
1.	Kansas Appellate Courts.....	2
2.	United States District Court for the District of Kansas.....	2
B.	Habeas corpus petitions in Kansas: Are the pleadings repetitious?.....	3
1.	Challenges to confinement under K.S.A. 60-1501.	3
2.	Challenging a sentence under K.S.A. 60-1507.	4
C.	Miscellaneous situations that justify reasonable restrictions to limit activities of abusive litigants in a pending case.....	5
D.	For all filings, consider if exceptional circumstances exist.	6
E.	What do clerks do with pleadings submitted for filing that do not comply with restrictions imposed by a court order?	7
III.	What Restrictions Can be Imposed?.....	7
A.	Framework of Filing Restrictions approved by the Kansas Court of Appeals.	7
B.	Blanket restrictions that prohibit all pro se filings are not permitted.	8
C.	Pleadings that do not meet reasonable filing restrictions may be rejected.	9
D.	Filing restrictions by the US District Court for the District of Kansas.....	9
E.	Restrictions imposed by the US Court of Appeals for the Tenth Circuit.	10
IV.	Providing Due Process Protections.....	11
A.	Notice.....	11
B.	Opportunity to be heard.	12
C.	Order articulating filing restrictions.....	12
V.	Order Stating Findings and Filing Restrictions.	12
VI.	Record of Rejected Filings.....	13
VII.	Notices of Appeal.	13

Summary of Authorities for Judges Considering Whether to Restrict Court Filings

This document, which was prepared by the Kansas Supreme Court Access to Justice Committee, is intended to be a summary of current case law and legislation about restricting court filings submitted by abusive litigants. The Summary of Authorities does not constitute a rule or order of the court.

I. Constitutional Right of Access to the Courts.

The Fourteenth Amendment provides a right of access to the courts, which includes access by inmates. *Bounds v. Smith*, 430 U.S. 817 (1977). This right is neither absolute nor unconditional. A litigant has “no constitutional right of access to the courts to prosecute an action that is frivolous or malicious.” *Holt v. State*, 290 Kan. 491, 500, 232 P.3d 848 (2010). Yet, “[I]tigiousness alone will not support an injunction restricting filing activities.” *Tripati v. Beamani*, 878 F.2d 351, 353 (10th Cir. 1989). Federal courts have recognized a court’s inherent power to control the actions of abusive litigants “by imposing carefully tailored restrictions in appropriate circumstances.” *Ford v. Pryor*, 553 F.3d 1174, 1180 (10th Cir. 2008) (citations omitted). Citing these Tenth Circuit decisions, the Kansas Supreme Court has held that Kansas district courts have inherent power to impose carefully tailored restrictions on abusive litigants in appropriate circumstances and has authority to direct a district court clerk to refrain from filing pleadings in such cases. *Holt*, 290 Kan. at 500-02.

This Summary of Authorities reviews Kansas law for a judge of the district court to consider when encountering a litigant who repeatedly files frivolous, malicious, or duplicative pleadings. The court will need to evaluate several issues to determine whether filing restrictions are justified, to fashion appropriate restrictions for an abusive litigant, and to enforce those restrictions. The designation of a litigant as abusive should be an extraordinary remedy to be used in the most extreme cases.

II. Are Filing Restrictions Justified?

A judge of the district court may, upon his or her own motion, make a determination that an individual is an abusive litigant and make restrictions on filings in a particular case or future cases. The court must first determine whether filing restrictions are justified for a particular litigant. While some states have a statutory framework defining restrictions,¹ Kansas does not. Instead, except for certain habeas corpus filings,

¹ The number of states with statutory provisions is difficult to establish. Some statutes relate specifically to inmate filings and others have been held unconstitutional. Cf., Mulroony, Amanda L.B., *Indiana’s “Three Strikes” Inmate Litigation Limitations: 2009 Legislation Does Not Hit a Home Run*, 44 Ind. L. Rev. 957 (2011). State statutes not limited to inmate filings include: CAL. CCP. CODE § 391 (vexatious litigant is a person filing 5 cases in 7 years all decided against the litigant); FL Civil Prac. § 68.093 (vexatious litigant is a person filing 5 or more cases in previous 5 years that are decided against the litigant); Haw. Rev. Stat. § 634J-7 (vexatious litigant); Ohio Rev. Code § 2323.52 (vexatious conduct defined); TEX. CIV. PRAC. & REM. CODE ANN. § 11.051, *et seq.* (procedure to determine if vexatious litigant, prohibit filings, and place on state list of vexatious litigants).

a Kansas court must turn to case law for guidance about what circumstances justify imposition of filing restrictions.

A. Civil cases in Kansas courts: Does a pattern of litigation activity justify restrictions?

1. Kansas Appellate Courts.

The Kansas Court of Appeals has held a court should consider whether a litigant's "pattern of litigation activity" justifies imposing filing restrictions, noting numerous factors may be considered depending upon the circumstances. *State ex rel. Stoval v. Lynn*, 26 Kan. App. 2d 79, 82, 975 P.2d 813, 815, *rev. denied* 267 Kan. 890 (1999) (hereinafter *Lynn*). Paraphrasing, the court held that a "pattern of litigation activity" justifies imposition of filing restrictions if:

- (a) a litigant files numerous pleadings,
- (b) the pleadings are manifestly abusive toward the court or another litigant, and
- (c) prior pleadings have not been successful for the litigant.

The court found a pattern of litigation activity justified imposing filing restrictions where numerous cases were filed in state district court (eight are listed) seeking information to support a litigant's pending direct criminal appeal. Lawsuits filed against the victim of rape charges, witnesses, police investigators, prosecutors, judges, and a juror's spouse were held to be abusive and an attempt to harass those being sued. *Lynn*, 26 Kan. App. 2d at 79-82.

2. United States District Court for the District of Kansas.

The United States District Court for the District of Kansas has held that several factors are relevant in deciding future restrictions are appropriate, including:

- (a) a litigant's history of litigation and particularly whether this history entailed vexatious, harassing, or duplicative lawsuits;
- (b) a litigant's motive in pursuing litigation, such as whether the litigant has an objective good faith expectation of prevailing;
- (c) whether a litigant is represented by counsel;
- (d) whether a litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and court personnel; and
- (e) whether other sanctions would be adequate to protect the court and other parties.

An injunction issued by a federal district court was approved that restricted filings “where the litigant’s abusive and lengthy history of filings was properly set forth” in the court’s decision. *United States v. Kettler*, No. 90-3011, 1991 WL 94457 at *6 (10th Cir. June 3, 1991).

The Kansas federal district court has stated that the most important question in deciding if an injunction can issue restricting filings is “whether the litigant who has a history of vexatious litigation is likely to continue to abuse the judicial process and harass other parties.” *Landrith v. Schmidt*, No. 12-2161-CM, 2012 WL 5995342 at *6 (D. Kan. Nov. 30, 2012) (*Landrith*). The Court entered an injunction against a disbarred Kansas attorney who had filed multiple unsuccessful cases against individuals involved in his disbarment proceedings, including the panel that heard the proceedings, witnesses, and investigators. The restrictions adopted are set forth later in this Summary of Authorities. See also, *Salem v Kansas*, Case No. 15-2209-CM (D. KS March 26, 2015), Slip Op. pages 21-22 (filing restrictions recommended where 27 cases filed in 3 months with many duplicative parties named).

B. Habeas corpus petitions in Kansas: Are the pleadings repetitious?

Kansas has two forms of habeas corpus petitions: (1) general habeas corpus petitions allowing a person to challenge any confinement, which are filed in the county where the person is being confined, and (2) a specialized process allowing a person subject to a criminal sentence to challenge the validity of the conviction or sentence in the county where the conviction and sentencing occurred. These are discussed separately.

1. Challenges to confinement under K.S.A. 60-1501.

To challenge confinement, an individual files a habeas corpus petition under 60-1501, unless petitioner in custody is challenging a sentence under K.S.A. 60-1507, which is discussed in II(B)(2) below.

(a) Screening of 60-1501 petitions.

- (i) If petitioner is **not** in custody under 60-1501(b) or (c), the court should proceed to consider the petition under 60-1503, which is discussed in II.B.1(b).
- (ii) If petitioner is confined in the custody of the Department of Corrections, see 60-1501(b), the court must decide if petitioner exhausted administrative remedies:
 - (A) If administrative remedies are **not** exhausted, the judge may dismiss the petition.

- (B) If administrative remedies are exhausted, the judge should proceed with review under 60-1503.
- (iii) If petitioner is confined in the custody of the Secretary of the Department for Children and Families pursuant to K.S.A 59-29a01 (Sexually Violent Predators Act), see 60-1501(c), the court cannot require exhaustion of administrative remedies and should proceed to consider the petition under 60-1503. *Stanley v. Sullivan*, 300 Kan. 1015, 336 P.3d 870, 871, Syl. ¶ 4 (Oct. 31, 2014).
 - (A) K.S.A. 59-29a24(d) requiring committed sex offenders to exhaust administrative remedies as prerequisite to filing civil action does not apply to a petition for writ of habeas corpus. *Stanley*, 300 Kan. at 1018.
 - (B) If a sex offender committed under K.S.A. 59-29a24 seeks to exhaust administrative remedies, the 30-day deadline for filing a petition for writ of habeas corpus, 60-1501(c) is tolled while administrative remedies are pursued. *Stanley*, 100 Kan. at 1021.
- (b) Review under 60-1503(a).
A court should promptly review 60-1501 petitions to decide:
 - (i) If the petition and exhibits show plaintiff is **not** entitled to relief, “the petition shall be dissolved at the cost of the plaintiff.”
 - (ii) If plaintiff **may** be entitled to relief, the court shall issue the writ and order the custodian to answer by a specific time.
- (c) Exception to summary dismissal.
To avoid summary dismissal of a 60-1501 petition, the petition must allege shocking and intolerable conduct or continuing mistreatment of a constitutional stature. *Williams v. DesLauriers*, 38 Kan. App. 2d 629, 630, Syl. ¶ 7, 172 P.3d 42, 49 (2007). This exception should be considered if a petition alleges denial of medical treatment or other conditions that require immediate attention.

2. Challenging a sentence under K.S.A. 60-1507.

A person who is “in custody” under a sentence of a court of general jurisdiction must file a motion in the sentencing court under K.S.A. 60-1507 (60-1507 motion) to challenge the validity of the

sentence, including the conviction. A 60-1507 motion cannot be a substitute for a direct appeal or act as a second appeal.

- (a) Kansas Supreme Court Rule 183 (2014 Sp Ct. R. Annot. 285) adopts procedures a court must follow for 60-1507 motions.
- (b) Rule 183(d) prohibits consideration of a second or successive 60-1507 motion by the same movant when:
 - (i) the same ground for relief was determined adversely to movant in a prior pleading,
 - (ii) the prior pleading was decided on the merits, and
 - (iii) the ends of justice are not served by reaching the merits of a subsequent motion.

C. Miscellaneous situations that justify reasonable restrictions to limit activities of abusive litigants in a pending case.

Abusive litigants can participate in any case type filed in a Kansas court. A litigant who has a right to participate in a case can disrupt a proceeding using abusive conduct directed at a judge or other litigants. The Kansas Court of Appeals granted attorney fees against a litigant appealing a forcible detainer and quiet title action for filing a baseless appeal to harass another party. *Landrith v. Summers*, Case No. 112,315, 2015 W.L. 1784900 (KS COA, April 10, 2015). Family law judges in particular have expressed concern about abusive pleadings.

The Indiana Supreme Court addressed disruptive actions that justify lower courts imposing restrictions in *Zavodnik v. Harper*, 17 N.E.3d 259 (Ind. 2014) (*Zavodnik*). When dismissing the appeal of “a prolific, abusive litigant,” the court offered guidance to Indiana courts “confronted with abusive and vexatious litigation practices.” 17 N.E.3d at 262. The court reviewed restrictions that can be imposed on a litigant with a history of filing frivolous cases, 17 N.E.3d at 268-69, which are similar to those discussed in *Lynn*, 26 Kan. App. 2d at 81. The court also discussed the following restrictions that a court can consider imposing to curb abusive behavior in pending cases.

1. A litigant who has previously filed numerous frivolous claims can be required to pay attorney fees. *Zavodnik*, 17 N.E.3d at 266, *citing Gorman v. Gorman*, 871 N.E.2d 1019 (Ind. Ct. App. 2007) (noting damages are not effective against a litigant who is judgment-proof).
2. A litigant, who has alleged prior claims against another party and the other party’s attorney that were found frivolous, can be required to post a substantial appeal bond. *Zavodnik*, 17 N.E.3d at 266, *citing Gorman v. Gorman*, 871 N.E.2d 1019 (Ind. Ct. App. 2007).

3. A litigant can be required to state the relief requested clearly and concisely at the beginning of a motion. *Zavodnik*, 17 N.E.3d at 268.
4. A litigant can be required to provide specific page citations to documents that the litigant has alleged supports an argument or position. *Zavodnik*, 17 N.E.3d at 268.
5. The court can limit the number of requests for reconsideration and repetitive motions that a litigant can file. *Zavodnik*, 17 N.E.3d at 268.
6. For litigants filing excessively lengthy pleadings, a limit can be imposed on the number of pages or words of pleadings, motions, or other filings. *Zavodnik*, 17 N.E.3d at 268.
7. If a litigant has a history of submitting filings with “bewilderingly lengthy titles,” the court can limit the length of a title used for a filing. *Zavodnik*, 17 N.E.3d at 268.
8. The number and length of exhibits or attachments that may accompany a filing may be limited. *Zavodnik*, 17 N.E.3d at 269.
9. The court may instruct the clerk to reject without return for correction future filings that do not strictly comply with applicable rules of procedure and conditions ordered by the court. *Zavodnik*, 17 N.E.3d at 269.
10. Litigation on mortgage foreclosure and related litigation may be enjoined until litigant has paid prior judgments and obtained leave of the court to file. *Zavodnik*, 17 N.E.3d at 268, citing *Federal Land Bank of St. Paul v. Ziebarth*, 520 N.W.2d 51 (N.D. 1994).

A litigant’s verbally abusive behavior may be restricted. See *Kinnell v. Obama*, No. 13–4066–JAR–DJW, 2014 WL 896619 (D. Kan. March 6, 2014) (A litigant with “a history of verbally abusing the clerk’s office staff with offensive and profane remarks” was barred from physical access to the clerk’s office. The court directed that a court security officer detain the individual at the public entrance, notify the clerk’s office, and be present when a member of the clerk’s staff came to the public entrance to accommodate the individual’s request.).

D. For all filings, consider if exceptional circumstances exist.

A court may always consider whether a litigant has shown exceptional circumstances to justify filing a successive pleading. Usually assertions of exceptional circumstances involve an unusual event or intervening change in the law that prevented raising the issue before. *State v. Mitchell*, 284 Kan. 374, 379, 162 P.3d 18, 22 (2007). Although a frequently cited principle, Kansas appellate cases have rarely found exceptional circumstances exist.

E. What do clerks do with pleadings submitted for filing that do not comply with restrictions imposed by a court order?

1. If no order has adopted filing restrictions for an individual, a clerk must accept and file a pleading. The clerk may need to ask a judge for direction on how to treat a filing.
2. If an order has imposed filing restrictions, a clerk may hold a pleading in abeyance while a court reviews the pleading to determine if conditions imposed in the filing restrictions have been met. *Landrith*, 2012 WL 6100214, at *4.
3. If an order has imposed filing restrictions, and a court has determined the conditions imposed have **not** been met, the court should enter an order directing the clerk to reject the pleading. *Holt*, 290 Kan. at 501-02. See *State v. Lynn*, No. 106,922, 2012 WL 4937468, at *1-3 (Kan. Ct. App. Oct. 12, 2012) (*Lynn 2*). The clerk should return the pleading to petitioner with the order, but the clerk should retain a copy to defend against future lawsuits by petitioner.
4. If a court reviews a proposed pleading and finds the pleading should be filed under the circumstances, *Holt*, 290 Kan. at 496-97, the court should order the clerk to accept the pleading and direct how it should be treated upon filing. *Holt*, 290 Kan. at 501-02.

III. What Restrictions Can be Imposed?

Kansas case law offers guidance on approved – and rejected – filing restrictions.

A. Framework of Filing Restrictions approved by the Kansas Court of Appeals.

Any restrictions placed on a person’s right to access the courts must be carefully drawn and not be unnecessarily restrictive. *Lynn*, 26 Kan. App. 2d at 82. The Court of Appeals approved an injunction that imposed the following restrictions:

1. Petitioner must submit an application for leave to file a petition or pleading, excluding a notice of appeal.
2. Petitioner must include a copy of the injunction that imposed filing restrictions.
3. Petitioner must attach:
 - (a) a copy of the proposed petition or pleading,

- (b) a current list of all lawsuits pending or previously filed with this court or any other Kansas court involving the same claims or parties, and the disposition of these cases,
 - (c) a copy of all outstanding filing injunctions, and
 - (d) a notarized statement of petitioner’s prison account (when petitioner is in custody).
4. Petitioner must include a notarized affidavit certifying the claims filed in this pleading:
- (a) have not been previously asserted,
 - (b) are not frivolous or made in bad faith, and
 - (c) comply with all civil and appellate procedures and rules.
5. The chief judge or designee must review the filings to determine:
- (a) if the stated restrictions have been met, or
 - (b) if the pleading is lacking in merit, duplicative, or frivolous.

After reviewing the application, the court shall issue an order that sets out how the application will be handled.

- (a) If the application complies with filing restrictions, the order should grant the application and direct the clerk to file the petition or pleading.
- (b) If the application does not comply with filing restrictions, the order should deny the application and direct the clerk to return the pleadings to petitioner.

Based upon the facts, the Court of Appeals in *Lynn* (1) upheld issuance of an injunction imposing the filing restrictions listed above, which the court found were reasonable, and (2) affirmed the district court’s denial of an application to file a petition that did not comply with requirements of the filing restrictions. 26 Kan. App. 2d at 82.

B. Blanket restrictions that prohibit all pro se filings are not permitted.

The Court of Appeals found that restrictions prohibiting a litigant from submitting *any* further filings, unless filed by an attorney, resulted in a blanket prohibition against access to the courts and was contrary to Kansas Supreme Court decisions. *Lynn v. Anstaett*, No. 108,568, 2013 WL 5422344, at *3 (Kan. Ct. App. Sept. 27, 2013) (*Lynn 3*), *citing Holt*, 290 Kan. at 499-501. Even though the litigant’s nine prior cases in that county had no merit and the pleadings were “burdensome and vexatious” and filled with “vile, insulting, and threatening language,” the Court of Appeals held that the district court must manage this burden using reasonable restrictions.

C. Pleadings that do not meet reasonable filing restrictions may be rejected.

The Court of Appeals affirmed a court order that directed the clerk of the district court not to file a motion that did not comply with previously imposed filing restrictions. *Lynn 2*, 2012 WL 4937468, at *3.

D. Filing restrictions by the US District Court for the District of Kansas.

A federal judge issued an injunction that imposed the following filing restrictions after petitioner was given an opportunity to file written objections. *Landrith*, 2012 WL 5995342, at *7, and *Landrith v. Schmidt*, No. 12-2161-CM, 2012 WL 6100214, at *3 (D. Kan. Dec. 7, 2012) (*Landrith 2*).

1. A “Petition Pursuant to Court Order Seeking Leave to File a Pro Se Action” must contain the following information:
 - (a) As to each defendant, whether that defendant previously was a party, or was in any way involved in, any prior lawsuit by plaintiff, and if so, in what capacity; and
 - (b) As to any state or federal lawsuit to which plaintiff is or has been a party, the case caption, plaintiff’s involvement in the suit, and the status and disposition of each lawsuit.
2. An affidavit shall be in proper legal form and must state the following:
 - (a) whether plaintiff has previously raised the proposed claims in any federal or state court; and
 - (b) that the pleading is filed in good faith, is not malicious, and has arguable merit.
3. The proposed complaint must comply with the order setting forth the restrictions, the Federal Rules of Civil Procedure, and the Local Rules of the Court.

Handling of filed documents was also addressed in the injunction, as follows:

- (a) If a petition is filed, the Clerk will accept the documents, mark them received, and immediately forward them to the judge for review.
 - (i) Failure of a petition to comply with the procedures and principles mandated by the order “shall be sufficient grounds for denying plaintiff’s petition.”

- (ii) If a petition complies with the restrictions, the petition and related materials will be filed effective the date of the order and assigned under local practice rules.
- (b) If a petition does not meet with procedures imposed in the injunction, the filing is rejected and the pleadings are returned to the litigant.

Similar filing restrictions were imposed by the Kansas federal district court in *McKenzie v. United Access*, No. 12-2395, 2012 WL 5869897 (D. Kan. Nov. 19, 2012) (litigant had lengthy and abusive history filing cases in Kansas state and federal courts). After filing several cases that challenged ongoing divorce proceedings in Johnson County, KS, the federal district court proposed similar filing restrictions in *Blaylock v. Tinner*, Case No. 13-2045, 2013 WL 1491207 (D. Kan. April 11, 2013) (filing restrictions necessary to deter future frivolous motions).

E. Restrictions imposed by the US Court of Appeals for the Tenth Circuit.

Noting the litigant's abusive and lengthy history of filing cases, the Tenth Circuit outlined the following proposed filing restrictions and gave the litigant an opportunity to comment before it adopted them. *Landrith v. Schmidt*, 732 F. 3d 1171, 1174-75 (10th Cir. 2013) (*Landrith 3*).

1. The litigant will be enjoined from petitioning the Tenth Circuit for relief, including by appeal or through an original proceeding including mandamus, unless the litigant:
 - (a) is represented by an attorney admitted to practice before the court, or
 - (b) obtains permission to proceed pro se.
2. The litigant must meet the following steps to obtain permission to proceed pro se:
 - (a) Submit a petition to the clerk requesting leave to file a pro se action and set forth:
 - (i) a list of all pro se lawsuits currently pending or filed previously with this court, including the name, number, and citation of each case and the current status or disposition of the case; and
 - (ii) a list of all outstanding injunctions or orders limiting his access to federal court and identify each matter by name, number, and citation; and

- (b) File with the clerk a notarized affidavit that:
 - (i) recites the issues he seeks to present, including:
 - (A) a short discussion of the legal basis asserted therefore, and
 - (B) if appropriate, describe with particularity the order being challenged;
 - (ii) certifies to the best of the litigant's knowledge that:
 - (A) the legal arguments being raised are not frivolous or made in bad faith;
 - (B) the legal arguments are warranted by existing law or by a good-faith argument for the extension, modification, or reversal of existing law;
 - (C) the petition or appeal is not being filed for any improper purpose; and
 - (D) the litigant will comply with all appellate and local rules of the court.
3. Filed documents will be submitted to the chief judge of the Tenth Circuit and reviewed to decide whether to permit filing of the pro se proceeding.
- (a) If leave to file is not granted, the matter will be dismissed.
 - (b) If leave to file is granted, an order will allow the matter to proceed.

IV. Providing Due Process Protections

While a litigant does not have an absolute or unconditional right to access the courts, a litigant should receive notice of proposed restrictions and have an opportunity to respond before restrictions are adopted. *Holt*, 290 Kan. at 501, *citing Tripati*, 878 F. 2d at 354.

A. Notice.

To give notice, a court must provide the litigant with a description of the proposed restrictions or conditions being considered.

1. A court can issue an order that imposes temporary filing restrictions and notifies a litigant of a hearing to address imposing a permanent injunction. *Lynn*, 26 Kan. App. 2d at 81.
2. A court can issue a temporary restraining order that articulates proposed restrictions, which is served on the litigant and defines how the litigant can

respond. *Landrith*, 2012 WL 5995342, at *7, and *Landrith 2*, 2012 WL 6100214, at *3.

B. Opportunity to be heard.

A court must give the litigant an opportunity to present any objections to the proposed restrictions, but the court can exercise discretion in deciding how to allow the litigant to present these objections. *Tripati*, 878 F.2d at 354 (Petitioner “is perfectly capable of reducing his objections to writing.”).

1. The court can allow a litigant to present oral arguments. *Lynn*, 26 Kan. App. 2d at 81 (imprisoned litigant participated by telephone).
2. The court can allow for objections in writing by a specific deadline. *Landrith 3*, 732 F.3d at 1175 (litigant given 21 days to file objections).

C. Order articulating filing restrictions.

After considering any objections by the litigant, the court must issue an order stating whether filing restrictions are imposed. If a court concludes that proposed restrictions should be modified, *Holt*, 290 Kan. at 496-97, the court should state the final restrictions being imposed.

V. **Order Stating Findings and Filing Restrictions.**

The court must issue an order that summarizes its findings to explain why restrictions are justified and that articulates the proposed restrictions the litigant must meet to be allowed future filings. Although the court may announce the filing restrictions during a hearing, a written order needs to state the restrictions. That order must be served on the litigant. *Lynn*, 26 Kan. App. 2d at 82.

An order that restricts filings should discuss the following items:

- (a) factors the court has relied upon to find that the circumstances justify imposing filing restrictions on this litigant, which should include a summary of previous cases or filings by this litigant and discuss their frequency and abusive nature;
- (b) a list of proposed restrictions that the litigant must comply with to allow future filings;
- (c) the scope of restrictions, such as whether restrictions apply to all pleadings submitted by a litigant or only those pleadings filed in a specific case identified in the order;
- (d) the application process a litigant must follow to request permission to file future pleadings and to comply with the filing restrictions; and

- (e) the length of time the restrictions will be in place, such as during the time a specific case is open or until restrictions are modified by a subsequent court order.

VI. Record of Rejected Filings.

A court has authority to order the clerk of the district court not to file a pleading that does not comply with requirements of an order adopting filing restrictions. *Lynn 2*, 2012 WL 4937468, at *3. But as judges know, litigants who are frequent filers will likely challenge decisions that reject pleadings for not complying with filing restrictions. For this reason, the following recommendations are offered:

- A. A judge, not a clerk, should make the decision to reject documents. The judge should issue an order directing how the clerk should handle these documents. Judges have absolute immunity against allegations that a judicial decision is incorrect. A defense of absolute immunity can be asserted to seek summary dismissal of claims for monetary damages for wrongful rejection of a document.
- B. Retain a copy of all documents rejected for filing.
 - 1. Absolute immunity is not a defense to a writ of mandamus that is usually filed with the Kansas Supreme Court or a petition for an injunction that can be filed in state or federal court.
 - 2. To verify that a document was properly rejected for filing, a copy of the document actually rejected is the best evidence to show an inquiring federal judge, along with any correspondence with the litigant about the filing. If a copy of the submitted document is not retained, then neither the judge nor the clerk will be able to show the actual document rejected. Judges and clerks do not want to be in a position to have to guess whether a pleading a frequent filer has submitted in federal court is the same document the clerk previously rejected in state court.

VII. Notices of Appeal.

If a litigant submits a notice of appeal challenging an order restricting filings, the notice of appeal should be filed and treated as a regular appeal. A miscellaneous docket number can be assigned for filing purposes if needed.

If a litigant files a notice of appeal of a decision to reject a filing for failing to comply with filing restrictions, a legal question arises whether the notice of appeal should be accepted because nothing is pending in district court to appeal. This issue was present but not addressed in an appeal in which the Court of Appeals upheld the district judge's decision to reject a document because the litigant did not comply with filing restrictions in place when the document was submitted for filing. *Lynn 3*, 2013 WL 5422344, at *3.