

groups and classes subject to excuse from jury service on request as stated above, any person summoned for jury service may be excused by the court, or the clerk, upon a showing of undue hardship or extreme inconvenience, or both. The names of those so excused are to be reinserted into the jury pool unless otherwise directed by a judge.

22.3 **GROUPS AND CLASSES, MEMBERS OF WHICH ARE SUBJECT TO EXCUSE ON REQUEST:** It is hereby determined that jury service by the following groups of persons and occupational classes of persons may entail undue hardship or extreme inconvenience to the members thereof and that an excuse from jury service of the members thereof may be granted by the assigned judge or the clerk:

- (1) Persons over 75 years of age;
- (2) Persons who have, within the last one (1) year served on a jury;
- (3) Persons having active care and custody of a child or children under ten (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;

RULE 23 DOMESTIC RELATIONS CASES

23.1 **Captions in Divorce Cases.** The caption in divorce cases shall have both the petitioner's and respondent's full name pursuant to K.S.A. 60-210. Filings will not be accepted if legal names are not in the caption.

23.2 **Ex Parte Orders.** In domestic cases, motions for ex parte orders pursuant to K.S.A. 60-1607a shall be presented upon verified motion or application. Ex parte orders shall not be sought when the adverse party has counsel of record or is formally acting *pro-se*. Ex parte restraining orders shall be mutual to both parties concerning financial and personal matters. If an interlocutory order for legal custody, residency, or parenting time is sought, the party seeking the order shall file a proposed temporary parenting plan at the time the order is sought. The plan shall be served with any temporary orders. A temporary parenting plan is defined to mean an agreement or order issued defining the legal custody, residency, and parenting time to be exercised by parents with regard to a child between the time of filing of a matter in which a parenting plan may be entered, and any other provisions regarding the child's care which may be in the best interest of the child, until a final order is issued. A temporary parenting plan shall include, but not be limited to, the following provisions:

designation of the temporary legal custody of the child;

designation of a temporary residence for the child;

allocation of parental rights and responsibilities regarding matters pertaining to the child's health, education, and welfare; and

a schedule for the child's time with each parent, when appropriate.

If the court is asked to issue an *ex parte* order modifying a final custody or residential placement order based on emergency circumstances, court and counsel shall attempt to have the nonmoving party's counsel, if any, present before taking up the matter and shall set the matter for review hearing at the earliest possible court setting after issuance of the *ex parte* order, but in no case later than fifteen (15) days after issuance, and require personal service of the order and notice of review hearing on the nonmoving party.

No *ex parte* order modifying a final custody or residential placement order shall be entered without sworn testimony to support a showing of the alleged emergency.

- 23.3 **Supporting Documents Required for Interlocutory Orders.** All motions for temporary and permanent child support shall be accompanied by an Affidavit according to Supreme Court Rule 139 and Child Support Worksheet according to Supreme Court Administrative Order 107.

Any party requesting an *ex parte* interlocutory order affording extraordinary relief such as sole custody or supervised parental access may be required to present testimony to the Court. In any event counsel making such a request shall have their client present at the courthouse when the proposed order is presented to the Judge.

- 23.4. **Temporary Maintenance.** The court's approach to temporary maintenance is to allocate from the parties' joint net income amounts for their rent or house payments, assign responsibility for payments to creditors, provide for child support to the residential parent, then equally divide the funds available. These calculations require use of the total net income of both parties and can be made on Worksheet T. See Appendix E.

Health insurance should be provided, either as a deductions from gross income or assigned as a monthly payment. Usually, it is best to keep existing health insurance in place. If the cost of health insurance is paid through a payroll deduction, use the payor's net income after the deduction.

Frequently, due to the amount of debt and the increased expenses of dividing the household, there will not be sufficient funds to pay for separate shelter for each party and to pay all creditors. In those cases, payments on some debts must be delayed and/or the

parties must temporarily arrange to live with friends or relatives. Generally, the court will attempt to allow a minimum of \$300 per month to each party for personal discretionary spending over the amounts allocated for shelter, child support and assigned debts.

The temporary maintenance orders are entered for the purposes of providing for the parties' needs for several weeks during the pendency of the proceeding. The purpose of temporary maintenance is different than the factors which support an award of permanent maintenance and therefore the amounts will usually be different.

When calculating temporary maintenance with the use of Worksheet T, the parents' total child support obligation entered on line 3 of Worksheet T shall be the amount as determined on line 6 of the Kansas Child Support Worksheet. However, when calculating the parents' total child support obligation on the Child Support Worksheet, no adjustments to the Domestic Gross Income shall be made for temporary maintenance paid or temporary maintenance received on lines C3 and C4 of the Child Support Worksheet, as the parties' income has already been equalized on Worksheet T. Additionally, no income should be imputed to a party in the preparation of a Worksheet.

- 23.5 **Modification of *Ex Parte* Orders.** Requests to vacate or modify *ex parte* orders obtained under this rule shall be made by written motion and shall comply with Supreme Court Rule 139. **If any motion is filed to modify a interlocutory order for legal custody, residency, or parenting time, or is filed in opposition to a request for the issuance of *ex parte* orders, that party shall attach to such motion, or opposition, a proposed alternative parenting plan during the pendency of the action.**
- 23.6 **Documents Required.** In all domestic actions, counsel or *pro se* litigants shall bring to the final hearing (1) a proposed form of divorce decree if the case is uncontested; (2) a domestic relations affidavit; (3) if children are involved, a completed Child Support Worksheet required by Supreme Court Administrative Order 107, evidence that the parents attended an educational program for divorcing parents required by this rule and a proposed or agreed upon **PARENTING PLAN** the requirements of which are set forth below, and (4) the State of Kansas Department of Health and Environment Vital Statistic form. **The journal entry will not be filed by the Court until all of these documents are furnished.**
- 23.7 **Parenting Plans.** If both parents have submitted an agreed upon parenting plan, that plan will be presumed to be in the best interests of the child. This presumption may be overcome and the court may make a different order if the court makes specific findings of fact stating why the agreed parenting plan is not in the child's best interests. If the parties are not in agreement on the parenting plan, each party must submit a proposed parenting plan for the court's consideration prior to the final hearing. The development of the **PARENTING PLAN** will be an issue for the parties to address through mediation.

A **PERMANENT PARENTING PLAN** is defined to mean an agreement between the parents which is incorporated into an order at a final hearing or an order or decree issued at a final hearing without agreement that establishes legal custody, residency, parenting time, and other matters regarding a child custody arrangement in a matter in which a parenting plan may be entered. The objectives of a parenting plan, include the following: to establish a proper allocation of parental rights and responsibilities, to establish an appropriate working relationship between parents regarding the child, to provide for the child's physical care, to set forth an appropriate schedule of parenting time, to maintain the child's emotional stability, to provide for the child's changing needs as the child grows and matures in a way that minimizes the need for parental conflict, to encourage parents to meet their responsibilities through permanent parenting plan agreements rather than relying on judicial intervention, and to otherwise protect the best interests of the child.

The court will develop a permanent parenting plan when requested by either parent or when the parent or parents are unable to develop a parenting plan. **All** permanent parenting plans must set forth the following minimum provisions:

designation of the legal custodial relationship of the child;

a schedule for the child's time with each parent, when appropriate; and
a provision for a procedure by which disputes between parents may be resolved without court intervention.

A detailed permanent parenting plan shall include the above items and may also include the following types of provisions:

residential schedule, and holiday, birthday, and vacation planning;

weekends, including holidays and school in service days preceding or following weekends;

allocation of parental rights and responsibilities regarding matters pertaining to the child's health, education, and welfare;

sharing of, and access to, information regarding the child;

relocation of parents;

telephone access;

transportation; and

methods of resolving disputes.

The Clerk of the District Court may supply forms and information prescribed by the Supreme Court of the State of Kansas, which may be used for submission of temporary and permanent parenting plans.

- 23.8 **Motions to modify final orders of child custody or residential placement.** Motions to so modify must strictly comply with the requirements of K.S.A. 60-1628. Any such motions must include with specificity all known factual allegations which constitute the basis for requesting the change. If the court finds that the allegations set forth in the motion or the accompanying affidavit fail to establish a *prima facie* case, the motion shall be denied. If the court finds that the motion establishes a *prima facie* case, the matter may be tried on the issues.

The court may require a pre-hearing conference on any contested matter. If the court schedules a pre-hearing conference the parties shall complete the pertinent provisions of a domestic relations pretrial questionnaire and provide the court and opposing counsel copies no less than seven (7) days in advance of the pre-hearing conference. A copy of the required questionnaire is found in Appendix D. Failure to do so may result in the imposition of sanctions. Waiver of the necessity of preparation and filing of the questionnaire may be granted by the judge only upon written request.

- 23.9 **Hearings on Contested Cases.** Documents required. In all contested domestic cases the parties shall exchange, file and furnish to the trial judge, at least ten (10) days prior to hearing, a domestic relations affidavit, if children are involved a completed child support worksheet, and the parties' proposals for division of property, allocation of debt, and maintenance. If the above referred to documents are not provided to the court within the time frames required the hearing will be continued until such time as the requirements are met by counsel.

If the division of property is at issue a list of marital property with each parties valuations attached, and proposals with respect to its division must be filed before the final hearing. In such cases that the parties are able to agree to a property division and formalize the same in a Property Settlement Agreement, that agreement should set forth all property and obligations and a description of both real and personal property received by each party.

- 23.10 **Submission of Journal Entry.** Contested Cases. Unless otherwise specifically ordered by the trial judge, counsel directed to prepare the decree in contested domestic cases shall submit their proposed order to the Court and opposing counsel within ten (10) days following the decision pursuant to Supreme Court Rule 170.

- 23.11 **Real Estate Involved.** All divorce decrees in which title to real estate is involved should have prominently displayed on the margin of the first page of the journal entry the notation in capital letters “REAL ESTATE INVOLVED” so that the Clerk of the District Court can have notice comply with K.S.A. 58-2242(a). Further, counsel should file one additional copy of the journal entry for certification to the County Clerk pursuant to the statute. Pertinent pleadings must contain the formal legal description of the real estate involved.
- 23.12 **Parenting Through Divorce Classes and Mediation.** Parents with minor children who are the subject of a contested hearing shall attend an educational program approved by the Court which deals with the impact of divorce on children prior to the setting of said hearing or as directed by the trial judge. A party shall not be subject to this requirement if the Court finds that the party is indigent and that the fee will not be waived or reduced by the agency to permit attendance at such program. The requirement of this rule may be waived for good cause at any time by the trial judge.

A certificate verifying the completion of a Parenting Through Divorce class or other co-parenting class provided by a recognized provider must be filed before the court will schedule a final hearing.

- 23.13 **Payments for Child Support and Maintenance through Kansas Payment Center.** All orders for payment of child support entered in this district shall provide that payments be made to the Kansas Payment Center unless exempted by the Court.
- 23.14 **Mandatory Supplemental Child Support Collection Orders.** All orders for payment of child support, including modifications of existing support orders, entered in this district after March 1, 1986, shall contain the following as mandatory supplemental orders:
- (1) “IT IS FURTHER ORDERED that all child support and maintenance payments shall be paid to the Kansas Payment Center. Any payments of child support not made in accordance with this provision shall be presumptively disallowed. Any payments made payable to the obligee may be endorsed and cashed by the Kansas Payment Center.”
 - (2) “IT IS FURTHER ORDERED that the Office of SRS, or their contracting agent for IV cases, shall monitor and enforce the payments of support ordered herein and may pursue on behalf of any child all civil remedies available to the obligee to enforce payments of child support.”
 - (3) “IT IS FURTHER ORDERED that each party shall inform the Clerk of the District Court and SRS for IV-D cases, or the District Court Trustee for private cases in writing of any change of name, residence and employer including address within seven (7) days after such change.”

(4) “IT IS FURTHER ORDERED that withholding of income to enforce this order of support shall take effect without further notice to K.S.A. 23-4, 107, and all amendments thereto.”

(5) “IT IS FURTHER ORDERED that the amount of child support payable per month in this case is \$ _____, due on or before the _____ day of each month and \$ _____ on arrears each month. The payments in this case are to be paid monthly.”

(6) “IT IS FURTHER ORDERED that the home addresses and telephone number, employment names, addresses, and telephone numbers, and social security numbers of each party shall be included each time an order is entered.”

Exemptions from this Rule. The District Judge assigned to the case shall review for exemption determination all written motions from parties requesting exemption from this rule, and all journal entries submitted not in compliance with the mandatory supplement provisions of this rule pursuant to the following:

(1) It shall be the general rule that exemptions not be granted except for good cause shown pursuant to K.S.A. 23-4, et seq.100, and all amendments thereto;

(2) Consideration may be given as exceptions to the general rule of non-exemption when a movant proves the following:

- (A) The support order was made prior to March 1, 1986, has not been in arrears for more than one calendar month, and now is subject to the rule due to a post March 1, 1986, modification of the support order;
- (B) The support order is being regularly paid by an irrevocable mandatory military allotment; or
- (C) The support order has been satisfied by a posted security bond or endowed irrevocable trust.

(3) Exemptions granted shall be by written order.

23.15 **Filing.** The Clerk of the District Court shall not accept for filing any order for child support which does not contain the mandatory supplemental orders.

23.16 **Record of Support Payments.** The Kansas Payment Center, contracting agent for IV-D cases shall maintain a record of all child support. Payments will be first applied to current child support then to past due child support. Any support payment not received on the due

date set forth in the Order of Support will be considered overdue.

- 23.17 **Temporary Support Orders.** Temporary support orders shall not be enforced in a case after the entry of the final divorce decree unless a judgment for temporary support is specifically awarded by the Court in the final divorce decree.
- 23.18 **Payment Disbursement.** The Kansas Payment Center, contracting agent for IV-D cases is authorized to disburse all payments received pursuant to temporary or permanent support or maintenance orders to the party entitled to receive same without further order of the Court.

If the Kansas Payment Center receives any funds through an income withholding order that causes over-collection of support in the case, the Kansas Payment Center shall apply the excess amount to the current support obligation in the successive months following the over-collection. Upon satisfaction of all obligations of future support in such cases, the Kansas Payment Center shall refund the overage to the obligor within a reasonable time.

- 23.19 **Time Standards.** Divorce cases shall be set for final disposition within One-hundred twenty (120) days of filing or be subject to dismissal for lack of prosecution after notice by the Clerk of the District Court.
- 23.20 **Guardian Ad Litem for Minor in Domestic Relations Cases.** On the court's own motion, or on the motion of either party, the court may appoint an attorney as guardian *ad litem* to represent the interests of minor children in a divorce or separate maintenance action. The guardian *ad litem* shall enter an appearance and shall be notified of all hearings, receive subsequent pleadings and actively participate in the action. The guardian *ad litem* fees shall be determined by the court and **shall** be taxed as costs in the action.
- 23.21 **Dissemination of Custody Investigation Reports.** This rule applies to cases where the court directs that a written report be prepared by an investigator relating to child custody issues.

The term "investigator" includes anyone whom the court directs to make an investigation or evaluation, including court service officers, mental health counselors, or other professionals, guardian *ad litem*s and CASAs.

The investigator shall provide a copy of the report to the attorney of record for each party and a copy shall be provided to the judge. Attorneys may discuss the contents of the report with their clients, but shall not give a copy of the report to their clients and shall not permit their clients to read, copy or make notes from these reports. If a party is not represented by an attorney of record, the report shall be made available for review by the *pro se* litigant, but no copy of the report shall be given to unrepresented parties. The

review of the report by a *pro se* litigant shall be subject to such conditions as the court shall determine. If a *pro se* litigant is allowed to read the report, then the represented litigant shall be allowed the same privilege.

Exceptions to this policy shall be granted only upon a showing of necessity after a written motion and hearing. A copy of the motion and notice of hearing shall be served upon the investigator who prepared the report, who shall be allowed to advise the court regarding the investigator's recommendations as to the risks of providing a written copy of the report.

The following notice shall be included as part of any order for child custody investigation or report.

IT IS BY THE COURT ORDERED that the attorneys of record may discuss the contents of the report with their clients but shall not give a copy of the report to their clients and shall not permit the clients to read or make notes from the report.

IT IS FURTHER ORDERED that a party not represented by counsel shall be allowed to review the report, but shall not be provided with a copy of such report. The court may set forth conditions upon the review of the report by a party not represented by counsel.

IT IS FURTHER ORDERED that failure to comply with the terms of this order, by either attorney or a party, may be punishable by such sanctions for contempt as the court may determine.

- 23.22 **Necessary Parties in Child Support and Paternity Actions.** In any action brought for purpose of establishing or enforcing child support and/or for reimbursement of birth, medical, support, and education expenses of a child, both parents shall be joined as parties to the action if they are subject to service of process in this state. In the absence of good cause shown, custody and parenting time issues shall be addressed and resolved in the same proceeding.
- 23.23 **Poverty Affidavits.** A poverty affidavit submitted pursuant to K.S.A. 60-2001(b), or any other applicable chapter, shall include, or be accompanied by, an affirmation that no attorney fee has been paid and that none will be paid until such time as all docketing fees, including surcharges, have been fully paid.
- 23.24 **Filing for Extensions Out of Time.** An extension of time may be granted pursuant to Supreme Court Rule 113 or by the court ex parte as the interests of justice may demand. However, no ex parte permission shall be granted to file any pleading out of time. Anyone aggrieved by such an extension shall be entitled to a hearing upon three days notice.

23.25 **Parenting Time and Contact Guidelines.** The following is a sample parenting time and contact schedule that the judges in this district will normally consider minimally consistent with the best interests of the child(ren) under a joint legal custody and parenting time order. Provision should be made for extended summer visitation, as appropriate. The presumed minimum is at least ½ of the summer break.

1. Alternate Weekends: Parent B to have alternate weekend parenting time beginning at 6:00 p.m. on Friday until 7:00 p.m. on Sunday.
2. Evening Physical Custody: Parent B to have one weekday evening per week which, if feasible, should be overnight.
3. Easter Weekend: Parenting time with parent B from 6:00 p.m. Friday until 7:00 p.m. Sunday during even numbered years and with parent A during odd numbered years.
4. Spring Break: Parenting time with each parent during one half of the spring break, with a transfer to occur on Wednesday evening at 7:00 p.m.. The parent normally having the child during the first weekend of spring break shall continue to have the child until the Wednesday transfer.
5. Mother's Day: From 9:00 a.m. until 7:00 p.m. with the child's mother.
6. Memorial Day: From 6:00 p.m. Friday until 7:00 p.m. Monday with Parent A in even numbered years and parent B during odd numbered years.
7. Father's Day: From 9:00 a..m. until 7:00 p.m. with the child's father.
8. Independence Day: From 6:00 p.m. July 3 until 9:00 p.m. on July 5 with parent A during even numbered years and parent B during odd numbered years.
9. Labor Day: From 6:00 p.m. Friday until 7:00 p.m. Monday with parent B during even numbered years and parent A during odd numbered years.
10. Halloween: A minimum of three hours Halloween evening with parent A in even numbered years and parent B during the odd numbered years.
11. Thanksgiving: From 7:00 p.m. Wednesday until 7:00 p.m. Thursday with parent B during even numbered years and parent A during odd numbered years.
12. Christmas Eve. From 7:00 p.m. the day school is dismissed for Christmas

vacation until 10:00 p.m. Christmas Eve, December 24, with parent B during even numbered years and parent A during odd numbered years.

13. Christmas Period: From 7:00 p.m. December 24 until 7:00 p.m. December 30 with parent A during even numbered years and parent B during odd numbered years.
14. New Years Eve and New Years Day: From 7:00 p.m. December 30 until 7:00 p.m. on the evening before school resumes with parent B in even numbered years and parent A in odd numbered years.
15. Parent's Birthday: The child shall spend part of the day (a minimum of three hours) with the respective parent on that parent's birthday.
16. Child's Birthday: The child shall spend the child's birthday with parent B in even numbered years and with parent A in odd numbered years. The child shall spend the day before or the day after child's birthday with the other parent.
17. Vacation: After 30 days advance notice and consultation with the other parent, each parent may arrange to take a vacation trip with the child for a period not exceeding 14 days.
18. Conflicts and Good-faith Considerations:
 - A. Birthday - Holiday. Conflicts between a holiday and a birthday shall be resolved in favor of the holiday schedule. However, the parties are directed to be flexible in allowing the birthday to be celebrated before or after the holiday period.
 - B. Weekend - Holiday. Conflicts between weekends and holidays shall be resolved in favor of the holiday schedule.
 - C. Weekend. The schedule of weekend parenting time shall be determined without regard to whether the regular schedule has been preempted for time to time by one of the scheduled holidays. There shall be no adjustment for "missed" weekends due to interruption by the holiday visitation schedule, however, the parties are encouraged to compensate for missed parenting time so a non-residential parent will not go three weekends without seeing the child
 - D. Adjustments. It is expected that parents will exercise good faith

with each other and act in the best interests of their child(ren) so that each parent can have a full and active participation in the lives of their child(ren). Any parenting plan or schedule, for example, should take into consideration the age of the child. For infants and preschool children, consideration should be given to scheduling more frequent but shorter contacts with parent B during the week on a routine and consistent basis. Consideration should also be given to older adolescents whose personal schedules may interfere with these guidelines.

19. Telephone and Internet Communication. Telephone calls and Internet communication between parent and child should be liberally permitted at reasonable hours and at the expense of the calling parent. Weekly telephone communication with the child should be permitted.
20. Mail and e-mail Contact. Parents and children should have an unrestricted right to send cards, letters, packages, audio, video and e-mail communications to each other. Neither parent should interfere with this right.
21. Long Distance Parenting. When there is a significant geographical distance separating the two parents, parenting plans should provide for the following:
 - A. Weekly telephone contact.
 - B. Longer periods of parenting time during school holidays.
 - C. Extended summer residency for school age children.
 - D. The parent having residency where the child goes to school shall send school records, school calendars, school photographs, activities schedules, report cards, standardized test results, etc. on a frequent basis to the other parent.

23.26 **Docket Fee - Post Decree.** A post decree motion petitioning for a change in legal custody, residency, visitation rights, or parenting time, or for a modification of child support, requires the payment of a \$26.00 docket fee.

RULE 24 PROSECUTION OF DIVORCES PRO-SE

In the event pleadings in domestic relations cases are filed without an attorney and they do not comply fully with the requirements of Kansas law, the action will be

