

Fifth Judicial District  
State of Kansas

District Court Rules

These Rules for the Fifth Judicial District are supplementary to Supreme Court Rules relating to District Court and are enacted pursuant to [Rule No. 105](#).

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## ***Rule No. 1***

### **Administrative Judge**

The Administrative Judge shall perform the duties as specified by the Rules of the Supreme Court and the Kansas Statutes Annotated as amended.

## ***Rule No. 2***

### **Absence of Administrative Judge**

In the absence of the Administrative Judge, administrative duties shall be performed by any Judge the Administrative Judge designates.

## ***Rule No. 3***

### **Assignment of Civil Cases – Pursuant to Chapter 60**

Cases shall be assigned on a rotation basis according to the nature of the action to the District Judges unless otherwise assigned by the Administrative Judge.

The assigned Judge shall conduct discovery conferences, pretrial motions, pretrial conferences and other proceedings in the disposition of cases.

All civil jury and non-jury cases shall be set for trial either at the time of the discovery or pretrial conference.

The Assigned Judge shall specially set any case entitled to precedence under the statutes and may specifically set any other case which, at the Judge's discretion, merits special assignment.

## ***Rule No. 4***

### **Preparation and Filing of Pretrial Conference Orders**

All pretrial conference orders shall be prepared by the attorney designated by the Judge presiding at the pretrial conference and filed within fifteen (15) days following the pretrial, unless otherwise ordered by the Court.

## ***Rule No. 5***

### **Civil Post-Trial Motions**

All post-trial motions will be heard at a date and time set by the Judge who tried the case, unless otherwise ordered by the Administrative Judge.

## **Rule No. 6**

### **Assignment of Criminal Cases for Trial**

Cases will be assigned to the District Judges and will be disposed of in the manner and under the conditions herein set forth:

Assignment of cases:

all new felony cases shall be assigned on a rotation basis to the District Judges according to class of felony after the preliminary examination hearing, unless otherwise assigned by the Administrative Judge.

All misdemeanor non-jury cases shall be assigned to the District Magistrate, unless otherwise assigned by the Administrative Judge.

All misdemeanor jury cases, misdemeanor appeals and municipal court appeals shall be assigned on a rotation basis to the District Judges, unless otherwise assigned by the Administrative Judge.

All felony cases shall be set for trial at arraignment. All misdemeanor cases shall be set for trial at the arraignment or pretrial conference

## **Rule No. 7**

### **Criminal Case Assignment – Multiple Defendants, Multiple Cases**

All defendants who are on probation ordered by a Judge of this court and who desire to enter a plea of guilty or *nolo contendere* on a subsequent charge or to a charge of violation of probation shall be assigned to that Judge for plea, unless the Judge is sick or absent from the Court, or otherwise ordered by the Administrative Judge.

All defendants charged in the same information who desire to enter a plea of guilty or *nolo contendere* shall be assigned to the same Judge unless that Judge is sick or absent from the Court, or otherwise ordered by the Administrative Judge.

Any defendant who is charged in more than one case and desires to enter a plea of guilty or *nolo contendere* in more than one case shall be assigned to the same Judge unless that Judge is sick or absent from the Court, or otherwise ordered by the Administrative Judge.

## **Rule No. 8**

### **Tender of Plea of Guilty Form**

The Tender of Plea of Guilty form will be submitted to the Court fully filled out and executed by all parties in advance of the Court accepting any plea of guilty or *nolo contendere* in all criminal cases in the Fifth Judicial District.

## **Rule No. 9**

### **Fines, Costs, Restitutions and Paroles**

At the time of sentencing in criminal cases, the prosecuting attorney shall prepare and present to the Court the amount of restitution due, if any, and the party or parties to whom such restitution is due and their address.

When the prosecuting attorney enters into a diversionary agreement wherein restitution is to be paid through the Court, the diversionary agreement shall set forth the amount of restitution to be paid and the name and address of the party to receive the restitution.

Applications for modification of sentence or of misdemeanor parole shall be heard by the sentencing Judge unless otherwise ordered by the Administrative Judge.

## **Rule No. 10**

### **Criminal Post-Trial Motions and Petitions Filed under K.S.A. 60-1507**

All post-trial motions in criminal cases and petitions filed under K.S.A. 60-1507 shall be filed with the Clerk of the Court, and a date and time for hearing shall be set by the Judge who heard the case, and notice served on each attorney of record for the hearing.

All motions filed for expungement shall be referred to Court Services. A Court Services officer shall conduct a record check of the defendant. A written report shall be filed with the Court no later than forty-eight (48) hours prior to the hearing. Copies of the report shall be furnished to all attorneys of record.

## **Rule No. 11**

### **Criminal Sentencing – Public Service Work Project**

The Court will consider each criminal sentence in accordance with K.S.A. 21-4601 *et seq.* as amended and may impose community or public work service as provided by K.S.A. 21-4610.

When work service is imposed, it shall be of a non-hazardous nature and shall be performed in accordance with guidelines established by the Court and under the supervision of a Court Service Officer.

## **Rule No. 12**

### **Assignment of Domestic Cases for Trial**

Domestic cases shall include divorce, annulment, separate maintenance, reciprocals, paternity, writs of *habeas corpus* involving children, and cases brought under the Uniform Child Custody Jurisdiction Act.

All new domestic cases shall be assigned to the District Judges on a rotation basis according to the nature of the action unless otherwise assigned by the Administrative Judge.

All temporary orders, pretrial motions and post judgment motions shall be heard by the assigned Judge unless otherwise ordered by the Administrative Judge. In the absence, disability

or disqualification of the Judge assigned to hear the action, any other Judge of the District Court may make any order authorized by K.S.A. 60-1607 as amended.

Post-judgment motions in any domestic case will be set for hearing only after there is a showing that all parties and counsel have met and made a good faith effort to resolve the issues. A report of the meeting will be made in writing and presented to the judge's secretary when a hearing date is requested. The report must state the issues, which ones have been agreed upon, which ones have not, and must be signed by counsel.

### **Rule No. 13**

#### **Guardian *Ad Litem* and Attorney for Minors**

In domestic relations proceedings, the assigned Judge, on the Court's own motion or on the motion of one of the parties, may appoint an attorney as guardian *ad litem* to represent the interests of minor child(ren). The guardian *ad litem* as appointed shall enter his or her appearance and shall be notified of all hearings, receive subsequent pleadings, and actively participate in the action. Costs of the guardian *ad litem* shall be assessed as costs in the case.

### **Rule No. 14**

#### **Pretrial Conference in Contested Domestic Cases**

A pretrial conference with the assigned Judge and either both parties or retained counsel will be required in all contested domestic cases. Counsel shall have clients present or available to discuss settlement at the pretrial conference.

The required factual statements, inventory and proposals shall be exchanged by counsel and a copy provided to the assigned Judge no later than ten (10) days prior to the date of the pretrial conference or they will not be considered by the Court. The assigned Judge may waive these requirements for good cause shown.

The written domestic relations affidavit required by [Supreme Court Rule 164](#) shall, in addition to the items required by that rule, also include proposals for:

- child support;
- maintenance;
- division of real and personal property; and
- allocation of debts and liabilities.

Such written inventory and fact sheet shall be exchanged by counsel with a copy provided to the assigned Judge no later than 10 (10) days prior to the date of the pretrial conference.

Required statements shall be fully completed using detailed descriptions and statements and not approximations or general characterizations. If appraisals are obtained, copies shall be attached to all factual statements.



## ***Rule No. 15***

### **Final Hearing in Domestic Cases – Costs**

No final hearing shall be had in any divorce, separate maintenance or annulment case until all costs are paid in full, except by permission of the assigned Judge.

## ***Rule No. 16***

### **Journal Entries in Domestic Cases**

The substance of K.S.A. 60-1620 pertaining to change in a child's residence shall be set out in and be a part of all domestic case Journal Entries in which the residence of children is involved.

## ***Rule No. 17***

### **Dismissal of Domestic Cases by the Court**

All domestic cases pending for three months or more where no trial setting has been obtained will be dismissed, except for good cause shown. A Notice of Intended Dismissal shall be prepared by the Administrative Assistant/Secretary of the Judge and a copy of the same shall be mailed to all attorneys of record or practices not represented by counsel at least ten (10) days prior to the dismissal date shown thereon.

Whenever a domestic trial or motion is set for hearing and there is no appearance by counsel and/or parties, said case or motion may be peremptorily dismissed without further notice.

domestic cases dismissed under this rule may be reinstated without additional costs only within ninety (90) days after dismissal.

## ***Rule No. 18***

### **Divorce Workshop for Parents**

Parents of minor children in all divorce and separate maintenance cases are required to attend the Parenting After Divorce Workshop and file proof of attendance prior to trial.

## ***Rule No. 19***

### **Reconciliation/Dismissal**

Reconciliation of the parties to a divorce, annulment or separate maintenance case shall cause that case to be dismissed. No case may be revived after a reconciliation by the filing of amended pleadings.

In the event of a reconciliation, it shall be the duty of counsel for petitioner to promptly submit a Journal Entry of Dismissal.

## ***Amended Rule No. 20***

### **Child Support Guidelines**

Child support shall be determined pursuant to the Kansas Child Support Guidelines adopted by the Kansas Supreme Court by Supreme Court [Administrative Order No. 168](#).

The text of the Kansas Child Support Guidelines may be accessed at <http://www.kscourts.org/ctruls/csintro.htm>.

In all original applications for child support and all subsequent applications for modification thereof, each attorney of record of each party unrepresented by counsel shall attach a completed proposed Child Support Worksheet. The form of the Child Support is set forth in Appendix I of the Kansas Child Support Guidelines, Administrative Order No. 180.

This rule is effective April 14, 2004, and Amended Rule No. 20 (effective October 1, 1998) is hereby repealed

Approved this 14<sup>th</sup> day of April, 2004 (signed) Merlin G. Wheeler, Chief Judge, John O. Sanderson, District Judge, W. Lee Fowler, District Judge, John R. Conklin, District Magistrate Judge.

## ***Amended Rule No. 21***

### **District Court Trustee; Appointment; Enforcement of Court Orders; Additional Duties**

Pursuant to the provisions of K.S.A. 23-496, the Chief Judge of the Fifth Judicial District promulgates the following rule. This rule governs the appointment of a District Court Trustee along with rules relating to the enforcement of court orders for payment of fines, costs, and fees.

Michael A. Halleran is appointed District Court Trustee for the Fifth Judicial District to serve at the pleasure of the Chief Judge of the Fifth Judicial District.

### **Powers and Duties of the District Court Trustee**

The District Court Trustee shall be empowered to collect debts to the court as defined in K.S.A. 75-719, and shall be responsible for the collection of debts owed to the Court. As provided by statute, and this local rule, debts owed to the Court means any assessment of court costs, fines, fees, moneys expended by the State of Board of County Commissioners in providing counsel and other defense services to indigent defendants or other charges which a district court judgment has ordered to be paid to the court, and which remain unpaid in whole or in part, and includes any interest or penalties on such unpaid amounts as may be provided for in the judgment or by law.

The District Court Trustee shall be authorized to seek any remedy available at law for the collection of debts owed to the court, and the district court trustee shall specify the frequency of payments toward any debts owed to the court as needed to effectively collect the same. The District Court Trustee shall be authorized, subject to approval of the court or entity to whom any debt is owed, to compromise said debt upon agreement of all parties.

The District Court Trustee shall have access to all Fifth Judicial Court records, including, but not limited to, case records, court files, probation and parole information and at the pleasure of

the Board of County Commissioners all records maintained by county departments and agencies as required and without charge.

### **Orders for Payment of Debts Owed to the Court**

All orders for payment of debts owed to the court shall provide that such payment shall be made payable through the Clerk of the District Court.

Payment of fines, costs, and fees to the Clerk of the District Court shall be made pursuant to the provisions contained within K.S.A. 60-2610, *et seq.*

### **Record of Payments**

The Clerk of the District Court shall maintain a record of payment of fines, costs and fees in each case pursuant to K.S.A. 20-3102 and K.S.A. 75-719(f).

### **Waiver of Filing Fees**

All advance cost deposits, filing fees, or applicable surcharges usually required upon filing of any suit for collection are hereby waived.

### **Revocation**

District Court Rule No. 21 as promulgated prior to the effective date of this amendment is hereby repealed.

Effective this 8<sup>th</sup> day of April, 2003 (signed) Merlin G. Wheeler, Chief Judge, John O. Sanderson, District Judge, W. Lee Fowler, District Judge, John R. Conklin, District Magistrate Judge.

### **Rule No. 22**

#### **Assignment and Disposition of Probate Cases**

Cases filed under Chapters 59, 65 and related chapters of the Kansas Statutes Annotated shall be assigned to the District Judges on a rotation basis in Lyon County according to the nature of the action unless otherwise ordered by the Administrative Judge. In Chase County all Probate cases will be assigned to the Magistrate Judge unless otherwise directed by the Administrative Judge.

### **Rule No. 23**

#### **Assignment and Disposition of Civil Cases Pursuant to Chapter 61**

Except in forcible detainer matters, all answer dates in Lyon County in Chapter 61 cases shall be on Monday mornings at 9: a.m. in the Court to which the case is assigned. In Chase County all answer dates shall be at 9:00 a.m. on Friday mornings. It shall not be necessary for plaintiff's counsel to appear and if the defendant fails to appear or answer, default judgment as prayed will be entered against the defendant.

If default judgment is entered, a judgment form stating the date and amount of judgment shall be filed by the Clerk and copies mailed to plaintiff's counsel and the defendant against whom the judgment was taken. This judgment form shall serve as a Journal Entry of Judgment.

The Court reserves the right not to enter judgment as per the prayer where the prayer seeks punitive damages, attorney fees or unauthorized relief of any unliquidated damages without production of evidence. In cases involving property damage as a result of automobile accident, the Court will enter default judgment for attorney fees as authorized by K.S.A. 60-2006 in the amount of \$250.00 unless plaintiff requests an evidentiary hearing seeking approval of a greater fee.

If a defendant appears on the answer date without having filed a written answer, his or her appearance shall serve as a general denial. The defendant shall be required to plead all affirmative defenses and the cross-claims in writing within ten (10) days. In either of these events, except for forcible detainer actions, the case will be continued subject to call and scheduled for trial at the request of any party.

Pretrial conferences shall not be conducted in Chapter 61 proceedings except on the Courts own motion.

In all Chapter 61 proceedings wherein service of process has not been obtained within forty-five (45) days of the date that summons was issued, each case shall be dismissed. The order of dismissal shall be allowed to be set aside for good cause shown within ninety (90) days from the dismissal date without an additional filing fee.

## ***Rule No. 24***

### **Limitation of Frequency of Garnishments**

Except as provided in this rule, no more than two garnishments shall be issued applicable to the same claim or claims and against the same judgment debtor in any thirty (30) day period. For the purpose of this rule, each garnishee named in an order shall be considered a separate garnishment.

A Judge of this Court may order an exception to this rule in any case in which the party seeing the garnishment shall in person or by attorney certify in writing:

- (a) that the garnishment is not for the purpose of harassment of the debtor; and
- (b) that such person or attorney believes that the garnishee has property or credits of the debtor which are not exempt from execution. Such belief must be based upon a statement of facts that will satisfy the Judge assigned to the case.

## ***Rule No. 25***

### **Limitation of Frequency of Orders in Aid of Execution**

No more than one order in aid of execution directed to the same person shall be issued out of this Court in the same cause of action in any thirty (30) day period provided service is obtained.

## **Rule No. 26**

### **Small Claims Cases**

#### **Pleadings and Signatures: Form of Pleadings**

A party to an action filed pursuant to the Small Claims Procedures Act shall set forth the statement of his or her claim using substantially the form prescribed by K.S.A. 61-2713.

#### **Signatures of Parties**

Any pleading or other paper filed by a party in a Small Claims action shall be signed by the party filing the same.

#### **Responsive Pleadings**

Any defendant's claim in a Small Claims action shall be filed within such time before the scheduled trial date as to allow the plaintiff reasonable time and opportunity to prepare his or her case to the defendant's claim. If filed less than seven (7) working days prior to trial the plaintiff may be granted a continuance if requested.

#### **Case Setting**

All Small Claims cases shall be set on the Court's trial docket as soon as reasonably possible after filing, allowing proper time for service of process, and in any event, shall be set on the Court's trial docket no later than sixty (60) days after the original filing date unless otherwise extended by order of the Court.

#### **Continuances**

Unless by agreement of the parties, continuances of trial settings of Small Claims cases shall be for good cause only, or as justice shall demand. Parties applying for continuances of trial settings in Small Claims cases may do so as follows:

By filing with the Court a written request for a continuance setting forth the reasons for the necessity of the continuance; or

By appearing in person before the Court on any regularly scheduled Small Claims court day prior to the scheduled hearing date and orally presenting his or her reasons for the necessity of the continuance.

Applications for continuance shall be ruled upon by the Court as soon as practicable after they are filed and the Court shall cause notice to be sent to the parties of the Court's decision with regard to the requested continuance.

#### **Dismissal for Lack of Prosecution**

Cases may be dismissed by the Court for want of prosecution upon such terms and conditions and notice as the Judge shall prescribe.

Upon dismissal for lack of prosecution the Court shall cause the Clerk to mail notice of such dismissal to the parties at their last known mailing addresses appearing in the court file.

### **Entry of Appearance by Attorney After Judgment**

After judgment has been entered, an attorney shall file an entry of appearance and shall send appropriate notice thereof to the opposing party before appearing on behalf of or representing a party to a Small Claims Action.

### **Appeals**

An appeal from any judgment rendered under the Small Claims Procedures Act may be taken pursuant to K.S.A. 61-2709.

## ***Rule No. 27***

### **Juvenile Cases**

#### **Juvenile Offender Code**

In Lyon County at the time of the filing of a petition, the juvenile clerk shall schedule a plea hearing for the second Tuesday following the filing before the Magistrate Judge, provided the docket permits.

In Chase County, cases will be scheduled for plea hearing by the Magistrate Judge as the docket will permit but within two weeks of filing.

The juvenile clerk may continue the plea hearing for one week upon written notice of the attorney for the respondent.

At the plea hearing, if the juvenile's counsel stipulates to the petition or if counsel presents a deferment request, the Judge will schedule the matter for disposition, unless the Court finds adequate and current information is available from previous reports or other sources.

At the plea hearing, if the juvenile requests an evidentiary hearing, the Judge shall inquire of counsel the approximate length of time required to prepare for trial and the case will then be scheduled before the Magistrate Judge for trial. Trial should be scheduled within two weeks unless the Judge grants a continuance for good cause shown.

Motions filed pursuant to K.S.A. 38-1636 requesting a finding that the juvenile is not a fit person to be dealt with under the Juvenile Offender Code shall be assigned by the Clerk to a District Judge for hearing. If the motion is denied, the case shall be scheduled for plea or trial before the Magistrate Judge.

Any motions for review hearing following disposition will be scheduled before the Judge hearing the original action unless the Judge consents otherwise or is absent.

#### **Child in Need of Care Code**

Upon filing of a child in need of care petition the Clerk may schedule the detention hearing, if needed, before any available Judge. The Clerk shall schedule the hearing on the petition before

the Magistrate Judge unless a motion to terminate parental rights has been filed. That motion will be heard by a District Judge.

All review hearings following adjudication will be scheduled before the Judge hearing the original action unless the Judge consents otherwise or is unavailable.

The Clerk shall have no authority to agree to a continuance in child in need of care cases and all motions for continuance shall be in written form and presented to the Court not less than seventy-two (72) hours prior to a scheduled hearing.

## ***Rule No. 28***

### **Files and Records**

Files and records released pursuant to Supreme Court [Rule 106](#) shall be properly checked out by the Clerk of the District Court and shall not be kept by counsel for a period longer than fifteen (15) days. Such records shall be returned no later than ten (10) days prior to a scheduled hearing.

After a notice of appeal has been filed, court records, including exhibits, cannot be checked out unless approved by the Assigned Judge.

## ***Rule No. 29***

### **Poverty Affidavit in Lieu of Filing Fees**

No poverty affidavit in lieu of the filing fee may be filed in any case by parties possessing income or funds of any kind, unless approved by either the Administrative Judge or the Assigned Judge.

A verified financial statement signed by the party shall accompany the poverty affidavit filed under this rule. The filing of a verified financial statement may be waived by the Administrative Judge or the Assigned Judge for good cause shown.

## ***Rule No. 30***

### **Name of Judge on Journal Entries and Orders**

All Journal Entries and Orders shall show the name of the Judge who heard the matter.

## ***Rule No. 31***

### **Filing of Journal Entries**

When cases are settled or judgment is granted, a Journal Entry will be filed in the case within thirty (30) days from the date of settlement or judgment. If a Journal Entry is not filed within thirty (30) days, the Court will dismiss the case.

## ***Rule No. 32***

### **Continuances**

No continuance of a trial or scheduled hearing in a contested matter or where witnesses have been subpoenaed and/or a jury panel has been called shall be granted unless the following procedure is complied with

Applications for continuances of hearings and trials shall be made in writing specifying the grounds in support thereof, and a copy thereof shall be served upon the opposing party.

A written order granting the continuance will be prepared by the moving party and shall be made available to the Court at the time the application is heard.

Continuance by agreement of the parties will not be effective without approval in writing by the Court more than seventy-two (72) hours prior to the time set for the hearing or trial unless the Court finds that exceptional circumstances exist or that no one will be unduly inconvenienced by the continuance, including the Court.

No application for continuance shall be considered by the Court unless filed more than seventy-two (72) hours prior to the time set for hearing or trial, except where the Court finds an emergency or exceptional circumstance or the Court finds that no one will be unduly inconvenienced, including the Court, by the continuance.

Each party shall be responsible for notifying their subpoenaed witnesses if the continuance is granted.

This order shall apply to all contested cases pending in the Fifth Judicial District including matters scheduled as secondary cases.

## ***Rule No. 33***

### **Preparation of Summons, Executions and Garnishments**

The Clerks of the District Court shall not prepare summons, executions, garnishments or any other form which would be in effect rendering legal service, except as provided by law (K.S.A. 61-2701, et seq.) or by the Court rules of the Fifth Judicial District.

The Clerks of the District Court shall issue any such process that has been prepared and delivered to the Clerk's offices for issuance as provided by law and upon receiving written directions from the requesting party.

## ***Rule No. 34***

### **Failure to Appear**

In the event that all of the attorneys and/or parties fail to appear for trial, the Court may dismiss the case without further notice to the attorneys or parties.



## ***Rule No. 35***

### **Modification of Rules**

Any of the foregoing rules shall be subject to modification as the Judges may deem necessary for good cause and to avoid manifest injustice.

## ***Rule No. 36***

These rules are effective in the Fifth Judicial District upon filing with the Clerk of the Supreme Court pursuant to [Supreme Court Rule No. 105](#).

These rules supersede and void any prior rules of the Fifth Judicial District.

Signed September 19, 1991 by Judges Dick, Sanderson, Wheeler and Towle; signatures on file.

## ***Rule No. 37***

### **Fax Fees**

Effective November 1, 1992, the Clerk of the District Court will charge a fee of one dollar (\$1.00) per page to non-court personnel for sending FAX communications.

Approved October 21, 1992 and signed by Judges Dick, Sanderson, Wheeler and Towle; signatures on file.

## ***Rule No. 38***

In all criminal cases in which it appears from the nature of the charge that the transmission of bodily fluids from one person to another may have been involved, the office of the County Attorney shall advise the alleged victim(s) that AIDS testing of the defendant and counseling for the victim(s) are available pursuant to the provisions of K.S.A. 22-2913 (c) and (d). The office of the County Attorney shall be responsible for notifying the Court at or before sentencing of the request of any victim(s) for an order requiring the convicted person to submit to AIDS testing.

This Rule shall be effective in the Fifth Judicial District upon filing with the Clerk of the Appellate Courts pursuant to [Supreme Court Rule No. 105](#).

Approved March 2, 1993 and signed by Judges Dick, Sanderson, Wheeler and Towle; signatures on file.

## ***Rule No. 39***

### **Rule Implementing the Sentencing Guidelines in the 5th Judicial District**

In all criminal prosecutions for criminal acts occurring on or after July 1, 1993, the following procedures will be followed as to implement the spirit and purpose of sentencing guidelines in the 5<sup>th</sup> Judicial District required under 1992 Session Laws of Kansas, Chapter 291:

Upon conviction of a felony offense by either plea or trial, the trial court shall set a sentencing date not less than thirty (30) days in the future.

Immediately after conviction, defense counsel shall direct the defendant to the office of Court Services to begin the presentence investigation process.

In all felony cases, Court Services shall complete a presentence investigation in accordance with the provisions of the sentencing guidelines. This report shall be completed and filed with the Court at least ten (10) days prior to the date of sentencing. Upon completion of the report, the Court Services Officer responsible therefore shall cause the report to be served upon the county attorney and defense counsel (or his/her office) before filing the report with the Court. This service shall be accomplished as follows:

- personal service; or
- by FAX providing receipt is verified by personal contact; or
- by mailing, providing receipt is verified by personal contact.

Within five (5) court days after the presentence report has been filed with the Clerk, the state or defense may contest the criminal history of the defendant as set forth in such report by filing the appropriate motion with the Court. Such motion, whether filed by the state or defense, shall identify individually the alleged criminal conviction that is being contested and shall be accompanied by supporting affidavits or other information necessary to the determination of any alleged conviction. Motions generally denying the existence of convictions or challenging the sufficiency of any record shall not be sufficient for purpose of this Rule. If a party fails to file the appropriate motion within the time required, or fails to comply with the requirements of this Rule, such conviction or criminal record shall be deemed admitted by the party for purposes of sentencing under the sentencing guidelines. Copies of any motion contesting the criminal history shall be served upon Court Services with a chambers copy provided to the Court in addition to service upon opposing counsel.

If neither party files a motion to contest the criminal history of the defendant, the parties shall have an additional five (5) days in which to file a motion to request a departure from the sentencing guidelines at the time of sentencing. If a party does not file a motion requesting departure, that party will not be allowed to request a departure at the time of sentencing. During this additional five days, the Court may likewise give notice of its intention to depart. The motions filed by the parties shall state with particularity the aggravating circumstances or mitigating circumstances they are relying upon in requesting a departure. At the departure hearing, only those mitigating circumstances or aggravating circumstances set forth in the motion may be argued to the Court.

No party shall allege in their departure motion or argue at the departure hearing any “social factors” as aggravating or mitigating circumstances. All aggravating or mitigating circumstances raised should be limited to those set forth by statute, or circumstances pertaining to the crime for which the defendant stands convicted or pertaining to his past criminal history. “Social factors” may be raised and argued to the Court only when the issue of “terms of probation” is being considered.

If a party files a motion to contest the defendant’s criminal history, the sentencing date already established shall be used as the hearing date on that motion. At such hearing the Court shall take evidence and make a decision as to the correct criminal history. After such decision has been rendered, the Court shall set a new sentencing date at least seven (7) days in the future. Within five (5) days after the Court has announced its decision on the defendant’s criminal history, either party may file a motion for departure in the manner and form as outlined in No. 5 and 6 above.

All motions to contest criminal history or for departure should be served upon opposing counsel as soon as possible after the motion is filed with the Court.

All departure hearings will take place immediately prior to time of sentencing. Before proceeding to sentencing the Court will rule on all departure motions.

The five-day limitation for filing of motions as above provided will be rigidly enforced by the Court. No variance will be allowed except for good cause shown.

Approved November 29, 1993 and signed by Judges Dick, Sanderson, Wheeler and Towle; signatures on file.

## ***Rule No. 40***

### **Video First Appearances and Arraignments**

First appearances and arraignments shall be conducted by video unless otherwise ordered by the Judge conducting such hearings. Other non-evidentiary hearings including appointment of counsel and setting bail/bond may be conducted by video unless either the plaintiff or the defendant objects.

Approved June 16, 1994 and signed by Judges Dick, Sanderson, Wheeler and Towle; signatures on file.

## ***Rule No. 41***

### **Lyon County Only**

Effective May 19, 2000, there is established a deadline of Friday at noon to determine the status of all criminal cases set for misdemeanor trials or preliminary examinations the following week. Defense attorneys have the responsibility to call the county attorney before noon on Friday and the county attorney has the responsibility to notify the court of the status of all cases scheduled for the following week by 3:00 p.m. If the prime case is scheduled to proceed, the backup case(s) will be continued to a later date. Attorneys must appear at the hearing time with their clients and the cases will either be tried or plead, unless continued the previous Friday afternoon. If the case will be a waiver, it will be set accordingly.

Approved May 19, 2000 and signed by Judges Wheeler, Sanderson, Fowler and Conklin.

## ***Rule No. 42***

### **Recall of Warrants**

Section 1. Effective August 1, 2001, the Clerk of the District Court of Lyon and Chase Counties, Kansas, shall be authorized and directed to recall or withdraw all bench warrants which have been issued in civil cases which have been outstanding and unserved for a period of five (5) or more years. Bench warrants will not be withdrawn or recalled, however, If the attorney requesting the same shall have filed with the respective Clerk within 30 days of the fifth (5<sup>th</sup>) anniversary of the date of the warrant, a request that the same remain outstanding along with

proof demonstrating that the underlying judgment or order which is sought to be enforced by the warrant remains enforceable.

For purposes of this section, the term civil case shall include all cases initiated pursuant to the provisions of K.S.A. Chapters 60, 61, 59, 38, 39, and 20.

Section 2. Effective August 1, 2001, the Clerk of the District Court of Lyon and Chase Counties, Kansas, shall be authorized and directed to recall or withdraw all warrants which have been issued in criminal cases which have been outstanding and unserved for a period of five (5) or more years. Warrants shall not be withdrawn or recalled, however, if the attorney or office requesting the same shall have filed with the respective Clerk, within 30 days of the fifth (5<sup>th</sup>) anniversary of the date of the warrant, a request that the same remain outstanding

The provisions of this rule shall not apply to warrants charging crimes classified as off-grid or as severity level 1-3, inclusive, of the non-drug sentencing grid (or equivalent crimes if charged prior to July 1, 1993) of the Kansas Sentencing Guidelines Act, as the same may from time to time be amended.

For purposes of this section, the term criminal case shall include all cases charged under the provisions of K.S.A., Chapters 1, 2, 8, 9, and 12. 16, 16s, 17, 19, 20, 21, 22, 25, 32, 34, 38, 29, 40, 41, 44, 47, 50, 55, 58, 59, 65, 66, 68, 74, 75, 79, 82a, or any other statute for which the penalty for violation includes the possibility of incarceration, or a fine, or both.

Approved August 1, 2001 and signed by Judges Wheeler, Fowler, Sanderson and Conklin.

## ***Rule No. 43***

### **Party Identification Information Required With Pleadings**

WHEREAS, the respective district courts of the Fifth Judicial District are engaged in the implementation of a new integrated case management system; and,

WHEREAS, all retrieval mechanisms for this case management system utilize names of the parties; and,

WHEREAS, because it is important to be able to distinguish between different individuals who may have the same or similar names, additional identifying information regarding parties appearing before the courts will need to be obtained at the inception of the case; and,

WHEREAS, statutory references in the new system for criminal cases are based upon a reference system utilized by the Kansas Bureau of Investigation,

NOW, THEREFORE, the following rules of the Fifth Judicial District are hereby established:

Section 1. All case filings occurring after the date of this rule shall be accompanied by a data sheet which shall include full name (including middle name or initial and suffix, if any), alias names used, address (including apartment numbers and mailing address, if different), date of birth, social security number, driver's license number, telephone number (including area code) of all parties. All answers to petitions and cross-claims shall be accompanied by the same information as to the answering party or for additional parties included in the new pleadings. In probate cases, this shall include the identifying information as to the Petitioner, and in such cases, all subsequent petitions for relief by different petitioners or movants shall be accompanied by the same information. To the extent known, information such as height, weight, scars, tattoos, the name and address of any employer, and description of any vehicle driven should be provided. Providing of the information using the form attached hereto shall be deemed to be in substantial compliance with this rule.

Section 2. All counts described in criminal case filings shall contain the statutory reference code published by the Kansas Bureau of Investigation.

Section 3. The Clerks of the District Court of Lyon and Chase Counties shall be authorized to reject or not accept for filing any pleadings not accompanied by the information required in section 1 or 2 of this rule. Forms for the provision of the information required by this rule will be available in the Clerks' offices.

Section 4. This rule shall be effective immediately.

Approved September 29, 2003 and signed by Judges Wheeler, Fowler, Sanderson and Conklin.

### ***Local Rule 43 – Cover Sheets***

As per [Supreme Court Rule 123](#), cover sheets are required to be submitted with any new case. Cover sheets are available for download at <http://www.kscourts.org/council/cover-sheet-forms.htm>