

L O C A L R U L E S

of

The 6TH JUDICIAL

DISTRICT

RICHARD M. SMITH

Chief District Judge

GERALD W. HART

District Judge

AMY L. HARTH

District Judge

REBECCA R. STEPHAN

District Magistrate Judge

Sixth Judicial District Local Rules

INDEX

Rule 1 - Rules of Decorum.....	2
Rule 2 - Files and Records.....	3
Rule 3 - Sureties and Bondsmen.....	5
Rule 4 - Media Coordinator.....	7
Rule 5 - Assignment of Cases.....	7
Rule 6 - Consolidations and Dismissals.....	7
Rule 7 - Civil Motion Practice.....	8
Rule 8 - Motions to Reconsider.....	9
Rule 9 - Pleadings.....	9
Rule 10 - Funds Held by the Clerk.....	10
Rule 11 - Depositions and Interrogatories.....	11
Rule 12 - Civil Case Management Through Pretrial Conference.....	12
Rule 13 - Duty to Confer.....	18
Rule 14 - Rules Regarding Expert Witnesses.....	18
Rule 15 - Settlement Conferences.....	19
Rule 16 - Eminent Domain.....	19
Rule 17 - Requested Jury Instructions.....	19
Rule 18 - Cases Resulting in Judicial Sale.....	20
Rule 19 - Civility.....	20
Rule 20 - Extensions of Time and Continuances of Hearings.....	21
Rule 21 - Summoning of Jurors.....	21
Rule 22 - Jurors.....	22
Rule 23 - Domestic Relations Cases.....	23
Rule 24 - Prosecution of Divorces Pro Se.....	34
Rule 25 - Court Compliance with Supreme Court Rules 172 and 173.....	36
Rule 26 - Medical Malpractice Screening Panel.....	37
Rule 27 - Notice of Bankruptcy Stay.....	38
Rule 28 - Pleading Judgment Amounts and Interest.....	39
Rule 29 - Criminal Case Proceedings.....	39
Rule 30 - Extended Jurisdiction for Juvenile Prosecution.....	43
Rule 31 - Compliance with K.S.A. 39-1655.....	43
Rule 32 - Limited Actions Practice.....	43
Rule 33 - Probate Proceedings.....	45
Rule 34 - Small Claims Procedure.....	50
Rule 35 - Appointment of Interpreters.....	51
Rule 36 - Effectiveness.....	51

PREFACE

The following rules are adopted by the Judges of the 6th Judicial District, pursuant to Rule 105 of the Rules of the Supreme Court of the State of Kansas. They are intended to supplement and not contravene the Rules of the Supreme Court and Kansas Statutes. The rules that follow numbered 1 through 44 are hereby adopted and effective immediately. Rules adopted in the future will bear the effective date. The rules will become effective upon the filing of the same with the Clerk of the Supreme Court.

These rules shall apply to all matters pending before any court in this district unless specifically superseded by statute.

1. All administrative rules of the 6th Judicial District of Kansas which are in effect immediately prior to the effective date of these rules are hereby repealed.

Any of the rules of this District may be modified by the presiding judge in any action as that judge shall deem necessary to meet emergencies or to avoid injustice or great hardship.

In these rules, wherever there is a reference to a section of the statute by number, it shall be deemed to be a reference to the Kansas Statutes Annotated or supplement or amendment thereto unless a different statute is indicated. Likewise, wherever there is a reference to a rule of the Supreme Court by number, it shall be deemed to be a reference to the Kansas Supreme Court Rules relating to District Court, as amended, unless a different rule is indicated.

Current copies of these rules will be on file in each office of the Clerk of the District Court in this District.

RULE 1 RULES OF DECORUM

Notwithstanding any other provisions the individual Judges may make pursuant to their inherent powers to maintain the order and dignity of the court, the following rules of decorum for matters heard in any court of this district are hereby adopted:

- 1.1 Spectators will not be permitted to consume food or beverage in the courtroom. Spectators will not be permitted to read books, magazines, knit or engage in any other activity which interferes with giving attention to the court proceedings. Each individual judge may allow jurors to consume beverages while in the jury box.
- 1.2 No spectator, counsel or party shall carry a sign or display pins, buttons or other materials which is designed to communicate a position or message to others while a trial is proceeding.

- 1.3 These rules shall apply to any building occupied or used by the Court, and to the environs of any such building. It shall be in effect at all times that judges or court personnel are present whether or not court proceedings are actively under way.
- 1.4 All persons seeking entry to a courtroom are subject to search by the Sheriff or other officers designated by the Sheriff or by the court. Such search may include briefcases, parcels, purses or other containers carried by persons seeking entry to a courtroom.
- 1.5 With the exception of weapons carried by law enforcement personnel, no weapons other than exhibits shall be permitted in any courtroom. No other person shall bring a weapon other than an exhibit into any courtroom unless specifically permitted by this rule. The court may require that any firearm intended for introduction as an exhibit, be presented to the Sheriff for a safety check prior to its being brought into any courtroom.
- 1.6 Attorneys or *pro se* litigants shall rise when addressing the court, and shall make all statements to the court from the counsel table or the lectern facing the court. They shall not approach the bench except upon the permission of the court.
- 1.7 While questioning witnesses, attorneys or *pro se* litigants shall stand at the counsel table or at the lectern. They shall not approach the witness except with the court's permission. Only one attorney for each party may participate in the examination or cross-examination of a witness. When interrogating a witness, counsel shall not use first names, but shall always use surnames unless granted permission by the Court. The same attorney shall conduct the examination of and any objections pertaining to a witness.
- 1.8 When appearing in court, all attorneys shall be suitably attired, and to the extent possible shall advise their clients to be similarly attired in apparel other than shirts without collars, shorts, sandals, overalls, torn or tattered jeans.
- 1.9 No smoking shall be permitted within the courtroom at any time.
- 1.10 In keeping with the dignity and serious nature of court proceedings, proper attire is required in the courtrooms. No participant in a case may appear in t-shirts, tank-tops, tube-tops, cut-offs, shorts, excessive or distracting facial jewelry or other inappropriate clothing. Attorneys are responsible for ensuring that clients and witnesses comply with this dress code.

RULE 2 FILES AND RECORDS

- 2.1 **Removal of Records, Check Out Procedure.** All files requested for review will be retrieved only after the person requesting the file has filled out a "check-out" card. This card must reflect the case name and number, the name of the person checking out the file,

their phone number and date. This card will be given to a court clerk. Anyone wishing to review a file must specifically request that the file be retrieved from filing by a clerk. Public access to the filing cabinets will not be allowed. Upon return of the file, the “check-out” card will be discarded. No person or entity will be allowed to retain a file longer than 1 week at a time.

An attorney whose principal office is outside the 6th Judicial District may check out files only upon written request and with the permission of the judge assigned to the case. The attorney shall sign, or authorize in writing someone to sign on his or her behalf, the appropriate record kept in the Clerk’s office that he or she has checked out the file.

Files and records shall be returned immediately upon request of the Clerk and in any event at least three (3) days before a scheduled hearing.

Members of the general public may view the files in the courthouse, except those restricted by law, but may not check them out and take them.

Microfilmed records shall not be removed from the possession of the Clerk and may be viewed at the place provided within the courthouse.

All juvenile files and records, all mental illness and adoption files and records, all files and records pertaining to alcohol and/or drug abuse, all files not microfilmed and all other records required by law to be kept confidential shall not be disclosed to any person, except upon approval of a judge of this court.

No criminal files shall be removed from the office of the Clerk of the District Court, except on written permission of the Court after verification that it has been microfilmed. All files checked out must be returned within five (5) working days. (Also so Supreme Court Rule 106).

- 2.2 **Copy Expense.** The official custodian of the court records shall be authorized to charge and require advance payment of a fee for providing access to or furnishing copies of records. Executive branch agencies such as the Department of Social and Rehabilitation Services and local government agencies may be charged for access and copies on the same basis as members of the public. Photocopies of any papers in any non-confidential file may be obtained from the clerk twenty-five (.25) cents per page (.50 cents in Miami County) and at no cost if indigent or waived by the judge. Certification by the clerk of such papers may be obtained at a cost of One Dollar (\$1.00) for every certification. Payment shall be in cash or by check and shall not be charged to costs.

Attorneys are prohibited from utilizing copy or facsimile equipment for personal use.

RULE 3
SURETIES AND BONDSMEN

- 3.1 **Appearance and Bail Bonds, Approval of Surety.** Any person proposing to write appearance and bail bonds under the authority or approval of a judge or this judicial district shall submit a written application to the Chief Judge specifying the following information: (1) the name of the applicant seeking authority; (2) the name of the company or agency, if any, under which the applicant is employed, working or doing business; (3) the applicants business mailing address and street address; (4) the applicant's business telephone number(s); and (5) the county or counties where approval is sought. Where applicable, the following additional information shall be provided: (1) name of insurance company surety; (2) State of Kansas Insurance Agent's License number; and (3) surety limits.

Individuals proposing to write bonds on behalf of insurance companies shall attach to the application a certificate of insurance and of their authority to write bonds. Insurance companies must be authorized to do business in the State of Kansas.

Individuals writing bonds other than on behalf of an insurance company shall attach to the application a verified financial statement describing the property by which such surety proposed to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by such surety and remaining undischarged district exceeding the total amount approved by the Chief Judge for that county.

Certificates of insurance and financial statements shall be renewed annually on April 15 of each year.

Upon compliance with the terms and conditions set out herein, a Certificate of the authority and qualifications of the individual authorized to write bonds will be issued to the applicant and to the Sheriff, Clerk of the District Court, and County Attorney in each county where said individual is authorized to write bonds.

The discretion of the sheriff of any county of this district to accept and approve bonds pursuant to the authority of K.S.A. 22-2806, amendments thereto, and Kansas Supreme Court Rule No. 114, or other appropriate authority, shall not be affected by this Rule or any certificate issued pursuant to the terms of this Order.

Any bondsman failing to satisfy a bond forfeiture within thirty (30) days after judgment has been entered by the Court may be prohibited from writing any additional bond in the 6th Judicial District.

The Sheriff shall accord all bondsmen approved by the Chief Judge. The Chief

Judge shall furnish the Clerk of the District Court, and the Sheriff, a list of approved professional bondsmen and sureties.

Nothing in this rule shall negate K.S.A. 22-2806, which provides that the appearance bond may be approved and accepted by the Clerk of the District Court wherein the action is pending or by the Sheriff of the said county, according to law.

A professional surety shall not be qualified or may be disqualified to write bail bonds if:

- (1) the amount of the surety's liabilities equal or exceed the value of the surety's assets.
- (2) the surety or an agent of the surety has committed or attempted to commit an act of moral turpitude or dishonesty; or
- (3) the surety or an agent of the surety has demonstrated a pattern of disruptive conduct toward the Court or its personnel.

On the motion of the County Attorney or on the Court's own motion, any professional surety previously qualified to write bail bonds shall be required to show cause why such surety and/or its agent should not be disqualified from writing bail bonds. Nothing in this rule shall prevent any Judge from declining to approve any bondsman or bond written by a bondsman approved to do business within this District.

3.2 Cash Bond. Cash bonds from persons against whom charges have not yet been filed will not be accepted by the court from any person, including the Sheriff unless the information on the attached form (Appendix A) has been furnished to the court.

If charges have not been filed against the person or persons for whom the cash bond was posted within ninety (90) days from the date said cash bond was posted, it shall be returned to the owner of the cash bond at the address furnished to the court.

It is the responsibility of the person posting the cash bond to inform the court of any change in his or her address or residence. The court will attempt to return the cash bond to the address furnished to the court. If the court is unable to do so because the address has changed, or the cash bond cannot be delivered by U.S. Mail, the cash bond will be paid over to the unclaimed property fund maintained by the Kansas State Treasurer.

Any person who posts a cash bond for another is hereby notified that the same may be applied to restitution, unpaid judgment, court appointed attorney fees, court costs and any other costs the court has or may assess against the person for whom the cash

bond is posted. All persons posting cash bonds for others shall be so notified but proof of said notice is not necessary to apply the cash bond to these costs.

RULE 4 MEDIA COORDINATOR

In accordance with Rule 1001(9) as promulgated by the Supreme Court of the State of Kansas pertaining to Media Coverage of Judicial Proceedings, the Chief Court Clerk is designated as Media Coordinator for the 6th Judicial District.

RULE 5 ASSIGNMENT OF CASES

The District Judge of Division one (1) shall maintain his or her chambers in Paola. The District Judge of Division two (2) shall maintain his or her chambers in Mound City and the District Judge of Division three (3) shall maintain his or her chambers in Fort Scott.

The resident District Judge of each county shall be responsible for all the assignments and hearing of all cases within that county, subject to approval of the Chief Judge. The Chief Judge will maintain ultimate authority to assign and hear cases as provided in Supreme Court Rule 107.

RULE 6 CONSOLIDATIONS AND DISMISSALS

- 6.1 **Consolidation.** Cases appropriate for consolidation shall be consolidated with the lowest number case unless otherwise ordered by the Chief Judge. When a case with a higher number is consolidated with a case having a lower number, the judge assigned to the case with the higher number shall order the consolidation after conferring with the judge with the lower number case, if such case is in another division.

When cases are filed under two different Chapters (60-61-59-38) the judge shall notify in writing the judge succeeding to the case.

Any case dismissed and re-filed shall be transferred to the same division to which it was previously assigned. (See Supreme Court Rule 107 and K.S.A. 60-242(a).)

- 6.2 **Dismissal for lack of prosecution:** Periodically at such times as the assigned judge may deem appropriate, or at the suggestion of the Clerk, the judge may notify counsel of cases subject to dismissal for want of prosecution. Notification will consist of a notice of intent to dismiss for lack of prosecution. Upon dismissal a notice of final action will be

mailed, or deposited in counsel's box.

RULE 7
CIVIL MOTION PRACTICE

- 7.1 **Motions.** All motions, unless made during a hearing or at trial, shall be in writing and shall be filed with the clerk. An original shall be filed and shall be accompanied by or contain a brief or memorandum suggesting the reasons and authorities in support.

A party opposing a motion other than one to dismiss, one for summary judgment, or post judgment relief under Chapter 60, Article 16 shall, within ten (10) days after service of the motion upon it, file an original with the clerk and serve upon all other parties a written response to the motion containing a short, concise statement of his opposition to the motion, and if appropriate, a brief or memorandum in support thereof. A party shall have twenty-one (21) days to respond to a motion to dismiss or for summary judgment. The party may, within ten (10) days after the service of such a response, file an original with the clerk and serve upon all other parties a copy of a written reply memorandum. No other replies will be allowed. Any such motion, not responded to may be granted *sua sponte*.

- 7.2 **Hearings.** No contested hearing shall be scheduled on any regular docket without the specific approval of the Judge who has been assigned to hear that particular case. If oral argument or a fact hearing is allowed by the Court, after request by counsel, the Court will set the matter specially for hearing. At any time after the expiration of the initial response time to a motion when no request for a hearing or oral argument has been granted, the motion shall be deemed finally submitted for decision.

Exceptions. The exceptions to the above are as follows:

- (1) Initial applications to the court for additional time to plead which do not request extensions in excess of thirty (30) days will be ruled on instantly without supporting memoranda and without awaiting responses from adverse parties.
- (2) Motions which show on their face factual authorities sufficient to support the relief requested do not require additional memoranda. (Motions and supporting memoranda may be combined and where combined should be so labeled.)
- (3) Motions accompanied by an agreed order will be ruled on without further supporting or responsive memoranda.
- (4) Preliminary domestic motions may be supported and opposed by

affidavits in lieu of or in addition to other memoranda.

- (5) Contested motions for change of an ex-parte temporary custody order.

- 7.3 **Chambers Copies.** A copy of every civil brief, motion and response and reply filed with the clerk must be simultaneously mailed or delivered to chambers of the judge assigned to hear the case.
- 7.4 **Time Computations.** The provisions of K.S.A. 60-206 shall govern the computation of the time periods set forth in this rule.
- 7.5 **General.** Any motion may be dismissed by the Court for failure to comply with the requirements of this rule.

RULE 8 MOTIONS TO RECONSIDER

A motion to reconsider is in substance, if not form, a motion to alter or amend under K.S.A. 60-259(f). A party may file a motion asking the judge to reconsider an order or decision, in writing, within ten (10) days after the filing of the Journal Entry or Order, unless time is expanded by the court. A motion to reconsider should be based upon an (1) intervening change in controlling law, (2) the availability of new evidence, or (3) the need to correct clear error or prevent manifest injustice.

RULE 9 PLEADINGS

All pleadings and other papers in any case or proceeding with the Clerk of the Court shall have 2 inches of blank space in the upper right hand corner for use by the Clerk for filing stamping.

All pleadings, precipices, and correspondence shall contain the case number and the division involved.

All pleadings, briefs, and other papers prepared by attorneys or litigants for filing in the court shall, unless the judge specifically permits otherwise, be typed with black ink on one side only on standard size paper (8 ½ x 11) which includes the name, address, and telephone number and Supreme Court Registration Number of the attorney filing said documents. Typing shall be double-spaced except that single spacing may be used for subparagraphs, legal descriptions of real estate, itemizations, quotations, and similar subsidiary portions of the instrument.

**RULE 10
FUNDS HELD BY THE CLERK**

- 10.1 **General.** A Judge of the District Court may order that any monies in actions pending before the Court be invested in any local financial institution for safe keeping. As an alternative to investing said funds a Judge may also order that any such funds be held by the Clerk of the District Court in existing accounts.

If the funds are to be invested the Court order for investment may specify that the attorney holding the monies shall be responsible for opening an interest bearing account in such financial institution for deposit of said funds prior to determination of ownership by the Court. Proof of such investment must be placed in and become a part of the court record and be retained by the Clerk of the District Court.

Upon final determination by the Court as to the ownership of such funds, an order must be drawn directing the attorney who made the original investment to pay out all proceeds to the designated parties. Interest received from any investment of funds shall become the property of the person or persons found to be the owners of the monies by the Court unless otherwise ordered.

- 10.2 **Endorsement without Recourse.** When payment for temporary orders or judgments are made by check and received by the district court clerk's office, the clerk is authorized to endorse the check to the proper person "without recourse".

**RULE 11
DEPOSITIONS AND INTERROGATORIES**

- 11.1 **Depositions.** Counsel are expected to cooperate with, and be courteous to each other and deponents. Counsel are further expected to cooperate in selecting the least expensive and least disruptive manner of conducting the deposition. Counsel should consider such cost saving methods as telephone depositions, and sharing of expenses in bringing an out-of-state witness to Kansas for the deposition rather than all counsel traveling to the out-of-state location.

Unless contrary to, or inconsistent with an order of the Court, the parties (and, when appropriate, a non-party witness) may stipulate in any suitable writing to alter, amend, or modify any practice relating to noticing, conducting, or filing a deposition. Stipulations for the extension of discovery deadlines set by the Court shall be set forth in an agreed order to be approved by the Court.

Absent extraordinary circumstances, counsel shall consult in advance with opposing counsel and proposed deponents in an effort to schedule depositions at mutually

convenient times and places. (Reasonable notice for the taking of depositions shall be ten (10) days.) Depositions shall be scheduled to conform to normal business hours of 9:00 a.m. to 5:00 p.m. Monday through Friday unless otherwise mutually agreed by all counsel and the witness. The most convenient location for a party's deposition shall be presumed to be in the office of that party's counsel. Except for the principal plaintiff, defendant or key experts, the fact that some counsel may be unavailable shall not, in view of the number of attorneys involved in the litigation, be grounds for postponing a deposition if another attorney from the same firm is able to attend. (Unless by agreement of counsel or leave of court is first obtained, at least ten (10) days notice of any deposition shall be given.)

Unless otherwise mutually agreed by the parties, or ordered under K.S.A. 60-226(c), depositions may be attended by counsel of record, members and employees of their firms, attorneys specially engaged by a party for purpose of the deposition, the parties or the representative of a party, and counsel for the deponent. While a deponent is being examined about any stamped confidential document, or the confidential information contained therein, persons to whom disclosure is not authorized under the Confidentiality Order shall be excluded.

The only objections that should be raised at the deposition are those required to be made under K.S.A. 60-232(d)(3) in order to preserve the objection or to preserve a privilege, judicial limitations, or opportunity to seek court protection. Objections on other grounds are unnecessary and should generally be avoided. Relevance and materiality are not appropriate grounds for objection. All objections should be concise, stating the basis of the objection and nothing more than is necessary to preserve the objection and must not suggest answers to (Or otherwise coach) the deponent. Argumentative interruptions will not be permitted.

Directions to the deponent not to answer are improper except on the ground of privilege to enforce a judicial limitation or to enable a party or deponent to present a motion to the Court for termination of the deposition on the ground that it is being conducted in bad faith, or in such a manner as unreasonably to annoy, embarrass, or oppress the party or the deponent. When a privilege is claimed, the witness should nevertheless answer questions relevant to the existence, extent, or waiver of the privilege, such as the date of a communication, who made the statement, to whom the contents of the statement have been disclosed, and the general subject matter of the statement.

Private conferences between deponents and their attorneys during the actual taking of the deposition are improper except for the purpose of determining whether a privilege should be asserted. Unless prohibited by the Court for good cause shown, such conferences may, however, be held during normal recesses and adjournments.

11.2 **PRODUCTION OF DOCUMENTS:** Witnesses subpoenaed to produce numerous

documents must be served at least thirty (30) days before the scheduled deposition unless the witness agrees to a shorter time period. Depending upon the quantity of documents to be produced, some time may be needed for inspection of the documents before the interrogation commences.

- 11.3 **CONFIDENTIALITY ORDER:** A copy of any Confidentiality Order shall be proved to the deponent before the deposition commences if the deponent is to produce or may be asked about documents which may contain confidential information.
- 11.4 **DEPOSITIONS OF WITNESSES WHO HAVE NO KNOWLEDGE OF THE FACTS:** An officer, director or managing agent of a corporation, partnership, association other organization or a government entity serviced with a notice of a deposition or subpoena regarding a matter about which such person has no knowledge, may submit to the noticing party, a reasonable time before the date noticed, an affidavit so stating and identifying a person within the corporation or government entity believed to have such knowledge. Notwithstanding such an affidavit, the noticing party may proceed with the deposition, subject to the right of the witness to seek a protective order. A public or private corporation, partnership, association, other organization or governmental entity, noticed as the deponent under K.S.A. 60-230(b)(6) shall designate the person to be deposed as the representative of the entity who has the most knowledge regarding the subject matter on which the examination is requested.
- 11.5 **EXPERT WITNESSES:** Leave of the court is not necessary in order to depose expert witnesses in addition to, or in lieu of, discovery through interrogatories. Objection to such depositions may be made by motion. Experts shall, upon written request without the necessity of a subpoena, bring to the deposition, the expert's written report, complete file, documents or other materials reviewed and billing records regarding the compensation to be paid for the study and testimony.
- 11.6 **VIDEOTAPED DEPOSITIONS:** By indicating in its notice of a deposition that it will record the deposition by videotape, a party shall be entitled to videotape the deposition pursuant to the following terms and conditions. The videotaped deposition shall be simultaneously recorded stenographically by a qualified court reporter. The court reporter shall, on camera, administer the oath or affirmation to the deponents. The written transcript by the court reporter shall constitute the official record of the deposition for purposes of K.S.A. 60-230(e) (submission of witness) and K.S.A. 60-230(f) (filing; exhibits). The requesting party shall bear the expense of the videotaping. Any party may at its own expense obtain a copy of the videotape and the stenographic transcript. Requests for taxation of these costs and expenses may be made at the conclusion of the litigation in accordance with applicable law. The operator(s) of the videotape recording equipment shall be subject to the provision of K.S.A. 60-2288 unless otherwise agreed by the parties. At the commencement of the deposition, the court reporter shall swear or affirm to record the proceedings fairly and accurately. Each witness, attorney, and other

person attending the deposition shall be identified on camera at the commencement of the deposition. Thereafter, only the deponent (and demonstrative materials used during the deposition) will be videotaped. The deposition will be conducted in a manner to replicate, to the extent feasible, the presentation of evidence at a trial. Unless physically incapacitated, the deponent shall be seated at a table or in a witness box except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition will be conducted in a neutral setting, against a solid background, with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting, and field of view will be changed only as necessary to record accurately the natural body movements of the deponent or to portray exhibits and materials used during the deposition. Sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent. Eating and smoking by deponents or counsel during the deposition will not be permitted.

The videotape shall run continuously throughout the active conduct of the deposition. Videotape recording will be suspended during all off the record discussions.

Re-reading of questions or answers, when needed, will be done on camera by the stenographic court reporter.

The party requesting the videotape deposition shall preserve custody of the original videotape in its original condition until further order of the court. No part of a videotaped deposition shall be released or made available to any member of the public unless authorized by the Court.

Requests for pretrial rulings on the admissibility of evidence obtained during a videotaped deposition shall be accompanied by appropriate pages of the written transcript. If the objection involves matter peculiar to the videotaping, a copy of the videotape and equipment for viewing the tape shall also be provided to the Court.

A party desiring to offer a videotaped deposition at trial shall be responsible for having available appropriate playback equipment and a trained operator. After the designation by the parties of the portions of a videotape to be used at trial, an edited copy of the tape, purged of unnecessary portions (and any portions to which objections have been sustained), shall be prepared by the offering party to facilitate continuous playback, but a copy of the edited tape shall be made available to other parties at least ten (10) days before it is used, and the unedited original of the tape shall also be available at the trial.

The parties and deponents are authorized and encouraged to waive transcription and filing of depositions that prove to be of little or no usefulness in the litigation or to agree to defer transcription and filing until the need for using the deposition arises.

11.7 DISPUTES DURING DEPOSITIONS: Disputes arising during depositions that cannot

be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule or require a rescheduling of the deposition, may be presented by telephone to the Court. The presentation of the issue and Court's ruling will be recorded as part of the deposition by the court reporter taking the deposition.

- 11.8 **INTERROGATORIES:** Except by order of the Court, a party shall, without the receipt of formal discovery requests, provide to the other parties answers to standard interrogatories and responses to standard requests for production of documents properly requested by the other parties. The responding party shall print copies of the interrogatory questions and requests for production with the respective answers and responses and serve the questions, answers, requests and responses on all parties of record. No more than thirty (30) questions, including sub parts, and thirty (30) requests for production, may be requested without leave of Court. The responding party shall have thirty (30) days from the date the letter is served in which to provide the information requested. Additional interrogatories, including case specific interrogatories, or requests for production of documents, other than those contained in this rule, may be served when appropriate.

With respect to the information that falls within the scope of the preceding section, the Court will strictly enforce these written requests for information and will not entertain objections to the production of non-privileged information sought unless it falls within the scope of K.S.A. 60-226(c). Extensions of time in which to provide this information will be granted only in extreme cases where substantial hardship exists. Failure to timely provide the information required may result in the imposition of sanctions without the necessity of a motion to compel.

RULE 12 CIVIL CASE MANAGEMENT INCLUDING PRETRIAL CONFERENCE PROCEDURE

The following rules apply to all Chapter 60 civil actions except by order of the Court upon motion. The Court upon motion may order that these rules may be supplemented by adding discovery in complex civil cases, cases involving a large number of legal issues or parties, cases in which geographic considerations may delay the discovery process or any other case which the Court finds in its discretion would not be susceptible to proper management under these rules.

- 12.1 **CASE MANAGEMENT AND SCHEDULING:** A case management conference will be held in every contested civil case with the exception of domestic relations cases. A case management checklist shall be completed by counsel of record prior to the conference. The case management checklist shall be filed with the court and copies provided to all opposing counsel no later than three (3) days before the case management conference (See

appendix B for Case Management Checklist). In addition thereto counsel for all parties shall confer in an attempt to arrive at an agreed case management order. The order shall schedule all discovery for completion. Counsel shall schedule a conference call with the Judge of the division in which the case is pending to obtain a date for a case management conference. With approval of the Court the case management conference may be conducted by telephone. The case management/scheduling order shall then be filed within ten (10) days of the conference. Counsel shall exercise reasonable efforts in attempting to agree upon a scheduling order. Failure or refusal to confer may result in the issuance of sanctions.

- 12.2 **DUTY TO CONFER ON DISCOVERY DISPUTES:** Except as otherwise ordered, the Court will not entertain any motion under K.S.A. 60-237 unless counsel for the moving party has conferred with or has made a good faith effort to confer with opposing counsel concerning the matter in dispute prior to the filing of the motion. Counsel for the moving party shall submit a certificate of compliance with this rule with any motion filed under K.S.A. 60-237. All motions filed under K.S.A. 60-237 shall be filed and served within thirty (30) days of the default or the service of the response, answer, or objection which is the subject of the motion, unless the time for the filing of such motion is extended for good cause shown, or the objection to the default, response, answer or objection shall be waived.
- 12.3 **COMPARATIVE NEGLIGENCE ACTIONS:** With respect to comparative negligence actions, if any party is claiming the fault of another individual or entity to be compared, then, if requested, an identification of such person or entity shall be made no less than thirty (30) days before the close of non-expert discovery. If no such identification is timely made, the fault of such persons or entities will not be allowed except upon motion and order of the court finding good cause as to why the identification could not have been timely. In the event this identification designates persons or entities not already investigated through discovery the court shall allow any other parties additional time in which to complete necessary discovery with respect to such individuals or entities. Nothing in this provision shall prevent any party from seeking leave of court for an earlier identification if the interests of justice so require.
- 12.4 **PRETRIAL CONFERENCE PROCEDURE:** A pretrial questionnaire from each party in the form pre-approved by the Court shall be exchanged among the parties and furnished to the Court at least seven (7) working days prior to the Pretrial Conference, for form see Appendix C. Failure to timely exchange pretrial questionnaires and submit them to the Court may result in the imposition of sanctions. Likewise, if a party fails to appear in person or by counsel at a Pretrial Conference, after notice, an ex parte hearing may be held and appropriate judgment entered. Chambers copies of all pretrial questionnaires shall be provided within the time limitations set forth above.

The parties are encouraged to agree and resolve as many issues as possible and

submit an agreed upon Pretrial Order. If issues remain in dispute they shall be set out in the Pretrial Questionnaire and will be resolved at the pretrial conference. Ordinarily discovery shall have been completed at the time of hearing. If additional witnesses or evidence are discovered after the Pretrial Conference, the discovering party shall immediately make this known to all parties and to the court in writing. Parties are not necessarily required to attend the pretrial hearing unless ordered to do so by the court. The pretrial hearing must be held at least thirty (30) days prior to trial. Objections to the Pretrial Order must be made in writing and forwarded to the court within five (5) days of the hearing.

12.4(a) The pretrial conference shall be conducted substantially in conformity with the following procedural steps:

1. The parties shall state concisely their factual contentions and the theories supporting their claims, defense, and claims for relief.
2. The parties shall state their understanding as to the issues of law.
3. The parties will inform the court as to any proposed amendments to the pleadings. The court may rule upon any proposed amendments.
4. Court and counsel will confer as to matters not disputed and requests will be made for admissions and stipulations.
2. Pending motions shall be enumerated and anticipated motions shall be stated.
3. Limitations, identification and number of experts and other witnesses shall be discussed. Supreme Court Rule 140(g)(5) requires counsel both to name witnesses, and to state the essence of their testimony, especially if those witnesses have not been deposed. Ordinarily, only witnesses listed pursuant to the pretrial order may be called to give testimony at trial. However, the court may, in its discretion, permit a party to call a witness not listed by that party or any party under such circumstances as the court deems just.
4. Exhibits intended to be offered at trial will be identified. It is not necessary that the exhibits be admitted at the pretrial conference, however, if an exhibit was not disclosed at pretrial, and listed in the order, the court may refuse its admission.
5. A determination as to whether the case is for trial to the court or to a jury shall be made. If the trial is to be to a jury a stipulation as to

the number of jurors will be entered.

6. The position of the parties relative to settlement shall be considered and the possibility of settlement explored, including the feasibility of a settlement conference, summary trial, mediation, arbitration, or other alternative methods of dispute resolution.

12.4(b) The pretrial order, when approved by the court and filed with the clerk, will control the subsequent course of the action unless modified by consent of the parties and the court, or by an order of the court to prevent manifest injustice.

12.4(c) **PUNITIVE DAMAGES REQUESTED:** K.S.A. 60-3703 requires that any motion seeking punitive damages be filed on or before the date of the pretrial conference.

12.4(d) **SANCTIONS:** Should counsel or a *pro-se* litigant fail to appear at the pretrial conference, is substantially unprepared, or fails to comply in good faith with the provisions of this rule, the court may, in its discretion impose any sanction listed in Rule 12.4(c).

12.4(e) **SUBPOENA OF BUSINESS RECORDS:** A party serving a business records subpoena pursuant to the provisions of K.S.A. 60-245a shall serve notice of the service of the subpoena on all of the other parties to the action. The subpoena shall clearly reflect that the records produced in compliance with the subpoena shall be sent to the Clerk of the District Court. If an objection is filed, the clerk shall not release any records submitted until further order of the court. In the event the non-party witness sends the documents requested to counsel rather than to the clerk, it shall be the duty of counsel to immediately forward the original documents to the clerk. Copies will be made by or under the supervision of the Court Clerk.

1. Refuse to allow support or opposition of claims and defenses
2. Prohibit the introduction of evidence by that party
3. Strike pleadings or parts of pleadings
4. Dismiss the action or any part of the same; and/or
5. Render default judgment, judgment or dismissal.

**RULE 13
DUTY TO CONFER**

Unless otherwise ordered, the court will not entertain any motion to quash or modify a subpoena, any motion to order appearance or production only upon special conditions, or any motion under K.S.A. 60-226 or 237, unless counsel for the moving party has at least informally conferred or has made good faith effort to confer with opposing counsel concerning the matter in dispute prior to the filing of the motion. Counsel for the moving party shall file a certificate of compliance with this rule as a part of the motion describing the steps taken by all counsel to resolve the issues in dispute.

**RULE 14
RULES REGARDING EXPERT WITNESSES**

At the case management conference, or thereafter, the Court may limit the number of expert witnesses to be called by each party to avoid repetition and unnecessary expense. As set forth in these rules the Court shall determine the time that identification of experts will be made by the parties.

At the time of nomination the parties shall comply with the provisions of K.S.A. 60-226(b)(6) with respect to the disclosure of expert testimony. A written report signed by the witness shall be furnished to all parties of record which shall contain a complete statement of all opinions to be expressed and the bases and reasons therefore. The disclosure shall include a current curriculum vitae setting out the qualifications of the expert and identifying all published and unpublished writings of the expert pertaining to the expert's opinions in the case. The disclosure shall also identify all other data, writings or exhibits upon which the expert relies upon to support his or her opinions in the case. Published writings may be identified by citation. Copies of the expert's unpublished writings shall be furnished with the report.

At the status conference, or thereafter, the Court shall explore with counsel the possibility of using alternative means of discovery of the opinions of expert witnesses, however, the parties shall retain the right to depose opposing experts.

Treating physicians may be identified as experts without the necessity of a full disclosure as set forth in this rule. However, if counsel anticipated using them for opinions other than uncontested causation, the nature and extent of the injury, and the reasonableness and necessity of medical treatment and expenses, then full disclosure as an expert shall be made. Lawyers have a right to interview a treating physician after the physician-patient privilege is waived by the filing of a lawsuit, provided the physician is supplied with a written consent waiving the privilege by the person holding the privilege or by order of the Court. A treating physician may be interviewed outside the presence of parties or other counsel, provided the treating physician consents to the interview.

In any case in which the condition of a patient, as defined by K.S.A. 60-427(a)(1), is an element or factor of the claim or defense asserted by or on behalf of the patient, the attorneys representing the parties may interview any treating health care provider, as defined by K.S.A. 40-3401, or their employees without leave of the court.

Lawyers may not interview any opposing expert witness who has been retained or specially employed by another party in anticipation of litigation or preparation for trial without either consent of counsel or order of the Court.

RULE 15 SETTLEMENT CONFERENCES

Upon its own motion or upon the motion of a party to a civil action, the court may require the parties, their representatives and attorneys to appear for a settlement conference. The purpose of such a conference will be to explore the possibilities for settling the action and to propose suggestions to assist the parties in negotiation. The attorneys will initiate the scheduling of the settlement conference, which may be set in a court other than that to which a case is assigned or with a private mediator. Reasonable notice of the setting of the settlement conference shall be given to all parties at least five (5) days in advance of the conference. Each attorney shall be prepared to discuss the current position of his or her client with respect to settlement negotiations. No party shall be prejudiced at the trial of the action if settlement negotiations fail. Unless otherwise ordered the pretrial order shall be filed prior to the settlement conference.

RULE 16 EMINENT DOMAIN

The petitioner in every eminent domain proceeding shall file an original and one copy of the petition. Petitioner shall also file a scale drawing or plat of the tract or tracts sought to be taken, which plat shall become a permanent part of the record in such proceedings. The original petition and the plat shall not be loaned out by the Clerk while the matter is pending; but the copy of the petition may be checked out pursuant to court rule.

Promptly upon the expiration of time for appeal, counsel for petitioner shall prepare an order for the distribution of funds for each tract upon which no appeal has been taken.

RULE 17 REQUESTED JURY INSTRUCTIONS

- 17.1 **General.** Unless otherwise ordered by the Judge, any request for jury instructions and verdict forms, shall be presented in writing to the Court and served upon each adverse

party no later than one (1) week prior to the commencement of trial. At the discretion of the judge assigned to the case counsel may be required to submit agreed instructions and verdict forms. Any proposed instructions that remain in dispute shall be ruled upon by the court. However, the Court may receive additional requests relating to questions arising during the trial at any time prior to the giving of final instructions. Pattern jury instructions may be requested by title and number. Requested instructions altering pattern jury instructions shall show the deleted text and the new language requested shall be underlined. Jury instructions based upon statutes or case law shall include the citation of authority at the end of the requested instruction.

- 17.2 **JURY QUESTIONNAIRES:** Jury Questionnaires will be available to counsel prior to trial dates. Requests for questionnaires should be made to the clerk. Questions asked and answered on the juror questionnaire shall not be repeated in voir dire examination.

RULE 18 CASES RESULTING IN JUDICIAL SALE

In all cases resulting in judicial sale it shall be the responsibility of the party granted said sale to prepare the Motion and Order Confirming Sale, Sheriff's return and /or certificate of purchase and the Sheriff's Deed. Further, it shall be the duty of said party to prepare and provide any other document which the clerk reasonably requests to effect conclusion of the case such as Order to Pay Out and the like.

RULE 19 CIVILITY

A lawyer shall avoid taking action adverse to the interest of a litigant known to be represented without timely notice to opposing counsel unless *ex parte* proceedings are permitted.

A lawyer shall promptly return telephone calls and answer correspondence from other lawyers.

A lawyer shall respect opposing counsel's schedule by seeking agreement on deposition dates and court appearances (other than routine motions) rather than merely serving notice.

A lawyer shall avoid making ill considered accusations of unethical conduct toward an opponent.

A lawyer shall not engage in intentionally discourteous behavior.

A lawyer shall not intentionally embarrass another attorney and shall avoid

personal criticism of other counsel.

A lawyer shall not seek sanctions against or disqualification of another attorney unless necessary for the protection of a client and fully justified by the circumstances, not for the mere purpose of obtaining a tactical advantage.

A lawyer shall strive to maintain a courteous tone in correspondence, pleadings, and other written communication.

A lawyer shall not intentionally mislead or deceive an adversary and should honor promises or commitments made.

A lawyer shall recognize that the conflicts within a legal matter are professional and not personal and endeavor to maintain a friendly and professional relationship with other attorneys in the matter - "leave the argument in the courtroom."

A lawyer shall express professional courtesy to the Court and has the right to expect professional courtesy from the Court.

RULE 20
EXTENSIONS OF TIME AND CONTINUANCES
OF HEARINGS

All motions for an extension of time to perform an act required or allowed to be done within a specified time shall show (1) when there was a prior consultation with opposing counsel, which is required, and the views of opposing counsel; (2) the date when the act was first due; (3) if prior extensions have been granted, the number of extensions granted and the date of expiration of the last extension; (4) the cause for the requested extension. Extensions will not be granted unless the motion is made before the expiration of the specified time, except upon a showing of excusable neglect; and (5) if for extension of discovery, compliance with K.S.A. 60-216(b). Stipulations for extensions of time are subject to the approval of the court.

Motions to continue a pretrial conference, a hearing on a motion, or the trial of an action must be filed with the clerk reasonably in advance of the hearing date and shall reflect the views of opposing counsel. Continuances may not be granted upon stipulation of counsel without court approval or prior knowledge.

RULE 21
SUMMONING OF JURORS

The Clerk of the District Court will cause to be called for jury trial the following number of jurors in each case unless otherwise directed by the trial judge:

Chapter 60: 40 jurors

Chapter 61: 25 jurors

Off grid severity level 1 offenses: 80 jurors

Level 2-6 person or non-person felony or level 2 or 3 drug felony: 60 jurors

Unclassified felony or guideline felony not mentioned above: 50 jurors

Where there are multiple parties or where there is an off-grid or severity level 1 felony, or in cases wherein there are potential difficulties in impaneling jurors due to subject matter, publicity or notoriety, the Clerk shall verify the number of jurors with the assigned judge.

RULE 22 JURORS

22.1 The assigned judge shall determine whether a prospective juror is unqualified for, exempt, or to be excused from jury service. Any person shall be determined to be qualified to serve on juries in the District Court unless he or she:

- (A) Is not a citizen of the United States 18 years of age;
- (B) Is unable to read, write and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;
- (C) Is unable to speak the English language;
- (D) Is incapable, be reason of mental or physical infirmity, to render satisfactory jury service; or
- (E) Has a charge pending against him or her for the commission of, or has been convicted in a state or federal court of record, a crime punishable by imprisonment for more than one year and his or her civil rights have not been restored.

Members in active service in the Armed Forces of the United States are exempt from jury service.

22.2 **EXCUSE OF INDIVIDUAL FROM JURY SERVICE:** In addition to the members of

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

dismissed. It is not the job of the judge or of the court personnel to assist *pro-se* litigants as neither is allowed to practice law. A *pro-se* litigant in a civil case is required to follow the same rules of procedure and evidence which is binding upon a litigant who is represented by counsel. Our legal system cannot function on any basis other than equal treatment of all litigants. To have different rules for different classes of litigants is untenable. A party in civil litigation cannot expect the trial judge or an attorney for the other party to advise him/her of the law or court rules, or to see that his or her case is properly presented to the court. A *pro-se* litigant in a civil case cannot be given either an advantage or a disadvantage solely because of the fact that he or she is proceeding *pro-se* *Mangiaracina v Gutierrez*, 11 Kan.App. 2d 594.

Likewise, there are certain matters that must be presented to the Court at the time of the divorce hearing. If these items are not properly presented through sworn testimony or documentary evidence, the Court is without jurisdiction to grant the petition.

If the case is not properly presented, or a Decree not submitted consistent with the Order of the Court, a divorce will not be granted.

The Clerk of the District Court shall provide each *pro-se* litigant with a copy of this rule at the time of filing. Standardized forms for *pro-se* domestic relations litigation have been approved and adopted by this district. They shall be provided to all litigants at no cost. Any other forms will only be accepted after approval by the judge assigned to hear the matter.

Residency requirements. Either you or your spouse must have been a resident of the State of Kansas for at least sixty (60) days before the filing of the Petition for Divorce. Usually the divorce action should be filed in the county in which you reside or your spouse resides.

Starting the proceedings. The first step is to file a Petition for Divorce with the Clerk of the District Court. The petition must be accompanied by the appropriate filing fee or Poverty Affidavit if you are financially unable to pay the filing fee.

Service of Process. There are two ways to notify your spouse officially that you have filed a divorce action:

- A. Your spouse may sign a written receipt called an Entry of Appearance for a copy of the petition and any other papers filed at the same time. The signing of the receipt acknowledges that the court has jurisdiction over the parties and can therefore grant the relief requested. It does not mean that your spouse has agreed to any of the requests in the petition or other papers.
- B. If your spouse is unwilling to sign a receipt or you don't want to

handle the proceeding in that manner, the Sheriff will deliver or serve a copy of the Petition to your spouse. Your spouse will then have twenty (20) days if it is in-state service, or thirty (30) days if it is out-of-state service, in which to answer or oppose the relief requested in the Petition.

Domestic Relations Affidavit. A Domestic Relations Affidavit shall be filed with the Clerk of the District Court at the time of the filing of the Petition for divorce or before the hearing date.

Hearing Date. Kansas law provides that, unless there is a reason for acceleration, a divorce shall not be heard prior to the expiration of sixty (60) days from the date on which the petition for divorce is filed. Your case will be assigned to a District Judge. The judge's office or clerk can provide you with specific hearing dates.

As the petitioner you are required to send notice of the hearing to your spouse. Proof of this notice of hearing will have to be filed in your case prior to your divorce hearing.

On the day of the hearing you will be required to bring with you all documents required under Rule 23.5. Failure to comply will result in the decree not being filed and you will not be divorced.

Contested vs. Uncontested Divorce. The divorce will be considered contested unless both parties agree on all aspects of the property division, the payment of obligations and the payment of court costs. If one party disputes any of these issues the divorce will be considered contested. In either case a trial before the court is required and sworn testimony will need to be received. In the case of an uncontested divorce the hearing will be brief and shall be set for hearing on the assigned judge's regular docket day after the expiration of the required sixty (60) days. A contested divorce will need to be specially scheduled with the assigned judge. If issues concerning children are involved the parties must seek the advice and assistance of an attorney.

Name Change. The name of either party can be changed in the Divorce Decree if he or she took the name of the other spouse at the time of marriage and now wants to be returned to either a former or maiden name.

Forms. The following forms shall be utilized. (See appendix E)

**RULE 25
COURT COMPLIANCE WITH SUPREME
COURT RULES 172 AND 173**

The District Judges and District Magistrate Judge of this District are appointed to

preside as hearing officers in matter referred to them pursuant to Supreme Court Rule 172 to provide expedited judicial process in this district, and to preside as hearing officers as summary hearings relating to the establishment, modification, or enforcement of support pursuant to the Kansas Parentage Act, 1985 Session Laws, Chapter 114, K.S.A. 23-451, et seq., 39-718a, 39-755, or 60-1610, K.S.A. 2984 Supp. 38-1542, 38-1542, or 38-1563 or 1985 Session Laws, Chapter 115, Section 1 through 27, and enforcement of parent visitation rights.

The Chief Judge shall have authority pursuant to Rule 172 to appoint a hearing officer to conduct hearings for expedited judicial process pursuant to said rule. All orders entered by said hearing officer shall be approved by a district judge.

The Chief **Clerk** shall monitor cases subject to Rule 172 in order to ensure that any action to modify or enforce support obligations are completed from time of filing to time of deposition within the following time frames:

- (a) 90% in 90 days
- (2) 98% in 180 days
- (3) 100% in 365 days

The Chief Clerk shall monitor cases subject to expedited judicial process in order to ensure that any action to establish parentage or support obligations are completed from time of filing to time of disposition within the following time frames:

- (a) 75% in 270 days
- (b) 85% in 365 days
- (c) 90% in 455 days

The expedited judicial process mandated by Supreme Court Rule 173 shall be that the Clerk, upon receipt of a filing addressed by Supreme Court Rule 173, shall bring it to the attention of the judge then most available for immediate disposition in conformance with the law.

RULE 26

MEDICAL MALPRACTICE SCREENING PANEL

Any party filing a request for medical malpractice screening panel shall file with the request:

A short statement explaining the basic medical failures alleged

and the nature of the alleged injury. (That defendant was negligent or deviated from care generally is not sufficient. There must be some identification of the claimed injury and some brief statement of the suspected departures from standard practice.) This statement shall not be binding or limit the plaintiff from other allegations which become known thereafter.

An order signed by counsel and ready for the court's signature authorizing the release of medical records and x-rays, etc. to counsel for all named defendants. (The names of counsel need not be specified as they will be unknown at that time.)

A list of all health care providers who have rendered treatment to the plaintiff within the preceding five (5) years, including all hospitals where plaintiff received any treatment. To the extent possible, full names and addresses shall be provided.

Along with the notice convening the screening panel, the court shall provide to the parties copies of all additional documents required to be filed by these rules, including a certified copy of the order for production of medical records, and a notice of a status conference.

The court shall hold a status conference in all screening panel cases. Counsel for the parties and the chairperson shall appear and a schedule shall be established for the submission of records, contentions and the preliminary conference of the panel.

Except by agreement of all parties, no affidavits from the parties nor any "expert opinions," nor depositions taken in the case shall be submitted.

The chairperson shall provide a file stamped copy of the opinion of the panel to counsel for all parties and the Commissioners of Insurance as administrator of the Health Care Stabilization Fund.

RULE 27 NOTICE OF BANKRUPTCY STAY

Any party, or counsel for the same, to a civil case pending in the 6th Judicial District who files a bankruptcy case shall file a written notice thereof with the Clerk of the Court wherein the civil proceeding is pending within ten (10) days of the filing of the bankruptcy petition. The written notice shall be filed under the caption and number of the civil case and have attached to it a certified copy of the bankruptcy petition or other documents evidencing the filing of the bankruptcy case. Said party shall mail a copy of the notice to all other interested parties and the presiding judge.

If a hearing or trial is scheduled to occur within ten (10) days of the bankruptcy case filing, in addition to the written notice required above, the filing party shall immediately give oral notice to all other parties and to the presiding judge.

Upon termination of the stay, any party may move to reactivate the case.

Any of the foregoing rules shall in special cases be subject to such modifications as the judge may deem necessary to meet emergencies or to avoid injustice or great undo hardship.

RULE 28 PLEADING JUDGMENT AMOUNTS AND INTEREST

When presenting an order of judgment to the court, the presenting attorney shall set out the amount of the original judgment sum itself and separately set out the amount claimed as interest on the judgment, particularly detailing the pre- and post-judgment amounts and the interest rate and time periods that are claimed to be applicable.

RULE 29 CRIMINAL CASE PROCEEDINGS

- 29.1 **General.** Any party requesting a continuance of a criminal hearing shall prepare and file with the court a Motion for Continuance which shall be approved by the District Judge assigned to the case.

The motion shall include the position of (1) the written waiver of speedy trial by the defendant, if the request is to continue or affect a trial setting; (2) the position of other counsel requesting the continuance, including counsel representing any co-defendant's, and (3) any other requested information.

Upon approval the motion, shall be filed with the Clerk of the District Court.

If the continuance is not opposed then an agreed Order should be submitted and filed. If the request is opposed the matter will be taken up on the next available Criminal Docket assigned to that particular Judge.

All continuances should be accomplished prior to the day of hearing in question, thereby freeing the court's and counsel's schedule in order to attend to other business.

- 29.2 **Required Appearances.** If a defendant is charged with a misdemeanor, an attorney may appear for the defendant, however, the defendant shall appear for all trials, pleas, or sentence hearings, unless a waiver of his or her appearance is executed by the defendant and filed with the court. Either the misdemeanor defendant or defendant's attorney must appear at all hearings.

A defendant charged with a felony must appear personally at each hearing, unless the assigned judge approves a continuance in advance of the scheduled hearing.

- 29.3 **Appointed Attorneys (Non-Felony)** Attorneys will be appointed as counsel for indigent misdemeanor defendants, and in juvenile, mental illness, alcohol and drug and other cases for which the counties of the district are responsible on a rotation basis from the list of attorneys maintained in each county except in Linn County and except for juvenile and mental illness cases in Miami County.

The Linn County District Court shall contract with not less than three attorneys to provide indigent defense and other attorney services for which the county is responsible. Miami County District Court will contract with at least 1 attorney for mental illness cases and no less than 2 attorneys for juvenile matters.

Any person for whom the court has appointed counsel under this rule shall be required, consistent with the ability of such people to do so, to reimburse the county for the reasonable cost of the service provided by counsel.

The Chief Judge shall provide, by Administrative Order, a schedule of reimbursement amounts based upon reasonable categories of service rendered with reasonable amounts assessed for each category of service for which an attorney serves by contract. This schedule may be amended from time to time as the chief judge may deem appropriate.

- 29.4 **Motions in Criminal Cases.** All post arraignment motions in criminal cases, to be considered timely, shall be filed no later than twenty (20) days following arraignment in felony cases or seven (7) days following the Court's first notice of trial assignment in misdemeanor cases. All requests for jury trials in misdemeanor cases, to be timely filed, shall be made in writing not later than seven (7) days following the court's first notice of trial assignment.

For speedy trial purposes, any delay of trial occasioned by any motion later filed, if actually entertained by the Court, shall be charged to the party filing the untimely motion.

All motions shall contain the date for hearing set by the court. A copy of a motion shall be delivered to the assigned judge on or before the date of filing. All scheduling must be done in advance with the assigned Judge's office.

- 29.5 **Prosecutor to Track Speedy Trial Time.** When any criminal case is scheduled for trial or continued for trial, the prosecutor shall review the speedy trial time elapsed and advise the assigned judge forthwith if the beginning trial date is not within the speedy trial provisions of K.S.A. 22-3402. The Prosecutor is responsible for seeing that criminal trial settings comply with the speedy trial provisions of K.S.A. 22-3402.

29.6 **Pretrial Release.** The judge issuing a warrant shall set bond as provided by law. If a probable cause for detention determination is made at a time when court is not in session, the judge making the determination may set the amount of bond. If a probable cause for detention determination is made when court is in session, bond will be set by a judge.

For those offenses where no bond is set or is designated “see judge”, the accused shall be brought before a judge of the district court at the next court date to have a bond set.

Persons in custody with any of the following conditions are not eligible for bond and shall be brought before a judge, without unreasonable delay to have bail considered and appropriate bond set by the judge:

A defendant who:

- (a) Has prior bond forfeitures.
- (b) Has been extradited or is awaiting extradition to another state.
- (c) Has a detainer or hold from other states or federal authorities.
- (d) Has a prior conviction of a felony classified as A, B, or C or level 1 through 5.
- (e) Has been detained for a violation of probation.
- (f) The requesting officer believes in good faith may flee, pose a danger to public safety or is not eligible for bond.
- (g) Is to be charged with a felony and have bond set by a judge.
- (h) Is accused of a domestic violence offense.

All other persons arrested shall be subject to a standard bond schedule, approved by the resident district judge of the county, the same to be posted and followed by the Sheriff of said county.

All bail bonds issued in this judicial district are subject to this rule and the General Bond Conditions contained in the custody slip which may be appropriate for each case. Other special conditions may also be imposed by the court as a requirement of release on any bail bond.

All private or professional surety bonds issued in this judicial district shall have a condition that sureties agree to remain liable on any bail bond until all proceedings arising out of the arrest or case for which the bond posted are concluded, the surety has surrendered

the defendant to the Sheriff of county in which charges are filed, or until the surety is released by court order. No surety shall be released on an obligation on a bail bond without court approval. Either a surety or a person arrested and turned in on a bond by a surety may file a motion with the court for a determination of whether the bail bond should be revoked or continued in force.

Bail bonds designated shall be written only on terms specified by a judge of the district court.

Bond Modification. Any review or request for modification of a bond before arraignment in misdemeanor cases, or first appearance in felony cases shall be heard by the judge originally setting the bond. Thereafter, any modifications or review requested shall become the responsibility of the assigned judge.

- 29.7 **Petitions for Expungement.** Upon filing a petition for expungement under the Kansas Criminal Code or the Juvenile Offenders Code, petitioner's counsel shall obtain a date and time for hearing from the court and thereafter provide timely written notice to the county attorney. Upon the request of the county attorney, counsel for petitioner shall submit to the presiding judge a proposed order for referral and investigation by the Court Services Office. Copies of the proposed order shall be provided to the county attorney and Court Services Office by petitioner.

Petitioner shall be personally present at the expungement hearing unless specifically excused by the court. Petitioner's attorney shall prepare an appropriate order of expungement and provide the Clerk of the Court with adequate copies for mailing to law enforcement agencies.

- 29.8 **Pleas in Felony Cases.** In all felony cases, if the defendant elects to enter a plea of guilty or a plea of *nolo contendere* to the charge or charges filed against him, there shall be prepared and submitted to the court a written tender of plea of guilty and an accompanying certificate of counsel or a written tender of plea on *nolo contendere* and an accompanying certificate of counsel in substantially the form attached to this rule. See Appendix G.

If, for good cause shown, the presiding judge finds that the tender of plea form cannot or should not be executed by the defendant, then in such event the court shall make oral inquiry of the defendant in open court concerning the matters contained in the tender of plea form. Said inquiry shall be included verbatim in the journal entry of the proceeding.

- 29.9 **Misdemeanor Journal Entries (Computation of Time Served).** In every sentencing journal entry in which a defendant has been in custody or is sentenced to jail the journal entry shall reflect the number of days for which the defendant is entitled credit, and the length of the defendant's sentence.

RULE 30
EXTENDED JURISDICTION FOR JUVENILE PROSECUTION

Upon designation as an extended jurisdiction juvenile prosecution pursuant to K.S.A. 58-1636(f)(2), proceedings shall be transferred forthwith to a district judge (if not already so assigned) for scheduling in due course with the adult criminal process. The respondent shall be entitled to the full protection of the Kansas Code of Criminal Procedure. The district judge of assignment shall schedule a Preliminary Examination (if not previously held or waived) and such further hearings as necessary to facilitate trial by jury and timely prosecution of the pending charges. In the event of a conviction the case shall remain with the assigned judge for imposition of both an adult and juvenile sanction unless otherwise transferred by order of the chief judge.

RULE 31
COMPLIANCE WITH K.S.A. 39-1655

It shall be the duty of the Clerk of the District Court to forward to the superintendent of the school district in which a juvenile offender is enrolled or is to be enrolled, copies of adjudications pursuant to K.S.A. 39-1655.

RULE 32
LIMITED ACTIONS PRACTICE

- 32.1 **Answer Dates.** All answer dates in Chapter 61 cases will be on dates established by the Clerk of the District Court. If the defendant fails to appear or answer, default judgment as prayed may be entered against the defendant. Continuance of answer dates will not be granted. A written general denial is subject to K.S.A. 61-1706, K.S.A. 60-208(b) and K.S.A. 60-211, and amendments thereto.
- 32.2 **Continuances.** Except to prevent manifest injustice, continuances of a trial setting will only be granted upon written motion and order of the court entered prior to the scheduled time of trial or upon the joint request of all parties. Continuances of a trial setting will not be granted ex parte.
- 32.3 **Journal Entries.** Court files scheduled for hearing will be available to counsel at the answer date. It will be counsel's responsibility to ascertain the status of service of process and present the file to the court along with a proposed Journal Entry/Judgment Form reflecting service, appearances and the proposed judgment to be entered, if appropriate. Unless otherwise directed by the court, a Journal Entry/Judgment Form shall be presented to the court at the time the case is called.
- 32.4 **Post Judgment Activity.** The plaintiff's attorney or an authorized representative of plaintiff's attorney and all defendants are required to appear for all post-judgment activity unless said appearance is excused by the court.

- 32.5 **Eviction Cases.** Trial dates in eviction cases shall be given upon the filing of an answer. All other trial dates may at the direction of the court be assigned at the answer date. It shall be the responsibility of the plaintiff to timely prosecute the case.
- 32.6 **Continuing Effect of Aid in Execution Citations.** Aids in execution or citations properly serviced shall not be continued by the Court unless agreed to by all parties or ordered by the Court. The Court has authorized “order backs” in proceedings in aid of execution not more often than every eight (8) weeks except in exceptional circumstances.
- 32.7 **Signed Pleadings.** All Chapter 60 and Chapter 61 aids, citations and post judgment papers may bear a computer generated, stamped, or facsimile signature of the attorney.
- 32.8 **Automobile Negligence Cases.** In cases involving property damage as a result of automobile accidents, the court will enter default judgment for attorney fees as authorized by K.S.A. 60-2006 in the amount of \$300 unless plaintiff requests an evidentiary hearing.
- 32.9 **Service of Process.** Services by tacking is authorized on all Chapter 61 pre-judgment matters and all aids in execution. In cases where attempted service reveals the address furnished for service was not correct, no further attempt at service at that same address shall be made, unless the person or attorney seeking service certifies by letter that they have verified, subsequent to the service attempt, that the address is now good.

Judgment debtors shall be served with an “Order to Appear for Hearing in Aid of Execution” requiring the debtor to appear to give information. The proceeding held pursuant to this order shall permit the plaintiff or counsel for plaintiff to gather information for the purpose of collecting the judgment. If the debtor fails to appear for examination as ordered, the debtor may be cited in contempt for Failure to Appear. These citations shall be personally served and shall be scheduled for hearing on the same docket as other limited actions cases are handled. Absent a judicial finding to the contrary, submitting to the examination shall purge this contempt.

- 32.10 **Dismissals.** Debtors shall be dismissed from the docket after three months of regular payment, either by income withholding order or by voluntary payment. Application of cash deposit bail bond funds shall not be considered a regular payment. Debtors who have been judicially or administratively determined to be disabled to the extent that they are unable to work or have no other income shall be dismissed from the docket.
- 32.11 **Counsel in Contempt Cases.** The obligor shall not have counsel appointed if they have sufficient actual or imputed income to employ an attorney. A financial affidavit shall be used to determine the issues of income and indigency. The movant may rebut the obligor’s assertions regarding income and indigency by filing a motion to have the Court determine

the same.

- 32.12 **Bench Warrants, Bonds, Hearings.** A bench warrant may be issued if the obligor fails to appear for a contempt hearing. The amount of cash bond for bench warrants upon a first and subsequent failure to appear shall be the amount of the unpaid judgment.

If the debtor cannot post a cash bond, the amount of the bond shall be reviewed on a weekly basis.

- 32.13 **Multiple Defendants.** In multiple defendant cases, if service is made on less than all of the defendants, the plaintiff must elect to proceed against the served defendant(s), dismissing the unserved defendant(s), or allow the case to be dismissed as a whole.

RULE 33 PROBATE PROCEEDINGS

- 33.1 **Form of Pleadings.** In all cases coming under Chapter 59, K.S.A. applications made to the court are to be made in the form of a written petition, signed by the petitioning party, and verified upon oath taken before a notary public or other person authorized to administer oaths. Every application made to the court shall comply in form to the requirements of K.S.A. 59-2201, K.S.A. 59-2202, and K.S.A. 59-103(b) in a probate proceeding.

- 33.2 **Scheduling of Cases.** It shall be the duty of the filing attorney (or *pro-se* petitioner) to obtain, at the time of the filing of the petition, a hearing date for the hearing of the petition filed, and to provide an “Order for Hearing” presented to the Court for execution and filing.

Comment. Commencement of any action requires both the filing of the petition and the obtaining of an “Order for Hearing” (or equivalent.) Just filing the petition will not result in the matter being scheduled for hearing and may result in substantial prejudice to the petitioning party.

Cases shall be scheduled for hearing by contacting the Court Clerk’s Office or the office of the judge in order to obtain a calendar setting. The Order for Hearing shall be presented to the judge’s office for signing.

It shall be the duty of the filing attorney to know the law with respect to notice requirements and time limitations imposed by statute as it applies to the case being filed. It shall not be the duty of the Clerk of the Court to give advice either on substantive or procedural aspects of the law.

- 33.3 **Standing Orders; Scheduling Approval of Annual Accounting.** The Court shall issue an order to the Clerk directing the scheduling of Petitions to Approve Annual Accountings – Trusts, Conservatorships, Curatorships. Any order setting such hearing which is signed by the Clerk, or a duly appointed deputy, shall have the same effect as if signed personally by

the judge.

33.4 **DECEDENT’S ESTATES: Extension of Time for Final Settlement.** The verified accounting, as required by K.S.A. 59-1502, shall be filed at the same time as the filing of the petition requesting extension of time with notice given to the affected parties. Any approval of the extension shall require approval of the accounting before an extension is granted. Notice of the request for extension shall be given to the interested parties except where written consent or waiver has been executed and filed.

33.5 **TRUSTS: Accountings; Requirement for Filing; Approval.** The filing of annual accountings is required in every trust unless waived by the trust instrument or in writing by all beneficiaries.

No approval of accountings will be considered except where a petition for approval is filed and notice given to all beneficiaries.

33.6(a) **ADOPTIONS: Required Accounting.** The accounting required by K.S.A. 59-2121 is to be filed **at the time of filing the case.** No case will be set for hearing without the accounting having first been filed. The accounting shall be signed by all petitioners and by the attorney representing the petitioner(s).

33.6(b) **Required “Assessment”.** The Assessment, as required by K.S.A. 59-2132, shall be done by a person holding, at least, a masters degree in social work and holding a current Kansas license or shall be done by a licensed child-placing agency. The choice, subject to the above requirement, is left to the petitioner but shall be someone disinterested in the outcome of the proposed adoption.

33.6(c) **Rights of Missing Fathers - Notice.** In all adoptions where “identity” of a father is unknown or whereabouts unknown, notice by publication is required. An attorney, chosen by the Court, will be appointed, to represent the absent, or unknown, father’s interest and to aid in providing him notice.

Filing attorney is required to make known, at the time of scheduling the hearing on the petition, the fact of an “unknown” or “unknown whereabouts” status.

33.6(d) **Venue.** In an independent adoption venue shall be in the county in which the petitioner resides or in the county in which the child to be adopted resided. K.S.A. 59-2126.

Where reliance for venue is based on residence of a newborn child and mother has come to Kansas from another state during the time of her pregnancy, it shall be presumed that residence of mother and child is not in Kansas but in the former state. This presumption may be overcome if the mother appears in person before the Court and by her testimony, and any other evidence, concerning the matter, satisfies

that she was a resident of Kansas at the time of the placing of the child for adoption.

33.6(e) **Report of Adoption.** No adoption is complete until counsel for the adoptive parent(s) provides the “Report of Adoption” form required by the Bureau of Vital Statistics. No Decree of Adoption will be signed or filed without the simultaneous presentation of this form.

33.7(a) **GUARDIANSHIPS AND CONSERVATORSHIPS: Petition.** In addition to the content of the petition prescribed by the statute [K.S.A. 59-3009(b)] the petition shall include a statement of the reason for the need of a guardianship.

33.7(b) **Consent of Parents Required; Exceptions.** Consent of both natural parents is required in order to establish a guardianship of a minor. Exceptions are as follows:

1. Where the parent or parents are deceased;
2. Where the parental rights have been terminated by a separate court proceeding;
3. Where the child is the product of rape (no consent of the father shall be required);
4. Where lawful notice has been given to the parent and such parent then fails to appear at the time scheduled for hearing or otherwise answer;
5. Where, upon proper hearing, petitioner is able to establish, by clear and convincing evidence, that the non-consenting parent is an unfit parent.

33.7(c) **Notice Requirements.** The duty to provide notice shall be on the petitioner. Notice shall be given to the lawful custodian and to the parents (except where written consent has been obtained and filed in the record). Where the identity or whereabouts of a parent is unknown the Court may require that notice be given by publication.

33.7(d) **Hearings; Required Appearances.** Minors 14 years of age and older shall appear in person at the hearing on the petition for appointment of a guardian and/or conservator. In all other cases, the proposed ward and/or conservatee shall appear in person at the hearing on the petition unless such appearance has been excused, in advance, by the Court.

In all cases the nominee(s) for guardian and/or conservator shall appear personally before the Court at the time of the scheduled hearing. The petitioner shall have the duty to present evidence sufficient to show the nominee(s) to be qualified to serve in the position for which he or she has been nominated.

33.8(a) **GUARDIANSHIP; QUALIFICATION TO SERVE: Effect of Prior Abuse**

Confirmation. Any person whose name appears on (Child Abuse registry) such a report as having been confirmed for abuse shall be presumed to be ineligible to serve as guardian of a minor.

Every petitioner seeking to establish a guardianship for a minor shall have the duty to obtain and file with the court, prior to the hearing on the petition, a written report from (Child Abuse registry) with respect to the nominee(s).

33.8(b) **Effect of Criminal Record.** Any person who has a record of having committed, within the past ten (10) years, any crime identified as a felony or any crime of violence or of dishonesty shall be presumed to be ineligible to serve as guardian or other position of trust. Such presumption shall not be overcome by proof that the nominee is a relative of the proposed ward or conservatee.

33.8(c) **Bond; Surety Required; Use of “Order Freezing Assets”.** Bond with sufficient sureties shall be required in all conservatorships (and curatorships). “Personal bonds” shall not be accepted except where supported by sufficient non-exempt property with proof of same filed as part of the record.

The amount of the bond shall be set at 125% of the annual income plus the value of all the assets, not including real property, of the conservatorship estate. The amount of the bond requirement may be reduced by reducing the amount of the assets at risk by use of an “Order Freezing Assets”.

33.8(d) **Use of “Order Freezing Assets”.** Any asset otherwise subject to the bond requirement may be deposited in any federally insured banking institution authorized and doing business in Kansas and approval of the Court subject to an “Order Freezing Assets”. The amount of the bond to be required shall then be calculated excluding the amount subject to the “Order Freezing Assets”. No such order shall be effective unless the institution, by a qualified officer, agrees in writing to be subject to such order or the court. Release of all or part of assets subject to an Order Freezing Assets shall only be made upon proper application to and approval by the Court.

33.9 **Custody of Minors - Limitation on Changes.** No guardian, having been given custody of a minor, may thereafter return the minor to his or her parents or to any other person without first obtaining written authorization for the Court to do so. Violation of this provision shall be regarded as contempt of court and punished accordingly.

33.10 **Move Out of State Without Court Consent Prohibited.** No guardian shall permit or cause the ward under his or her care to be moved to any other state or foreign county without first having obtained the approval of the supervising court.

Violation of this provision shall be grounds for immediate termination of authority of

the guardian an such other action as necessary to protect the rights of the ward/conservatee.

- 33.11 **“Report of Guardian” or “Accounting” Required Form; Date Due.** The Report of Guardian shall be filed on an approved court form.

The due date shall be thirty (30) days after the end of the calendar year or thirty (30) days after the end of the 12 month period immediately following and including the month in which the case is filed. The period shall be considered to have started on the first day of the month in which the case is filed and the reporting period shall be for the 12-month period following that date and like periods thereafter. The Order establishing the guardianship or conservatorship shall include a statement of the due date of the Report or Accounting.

- 33.12(a) **Guardianship/Conservatorship Cases - Records, Limitation of Access.** No medical examination reports or other medical information used in establishing or maintaining a guardianship/conservatorship or curatorship case shall be made available to anyone without a written order of the supervising court. Provided, such prohibition shall not apply to: (1) the attorney representing the ward/conservatee, (2) the appointed guardian or conservator, or (3) the attorney representing the petitioner in establishing the guardianship/conservatorship or appointing any successor.

- 33.12(b) The medical information shall be maintained in an envelope in the file and may not be checked out with the file.

- 33.12(c) **Issuance of Subpoenas - Limitation.** The Clerk shall not issue a subpoena in any guardianship/conservatorship/curatorship case except where there is pending a hearing set by the Court for which the subpoena is intended to produce the appearance of a witness or production of records for such hearing.

- 33.12(d) **Curatorships - Accounting procedure.** Approval of accountings will not be considered unless same has been first submitted to and approved by the Veterans Administration Regional Office or such requirement is waived by that agency.

- 33.12(e) **Forms.** Guardianship and Conservatorship forms are, generally, those provided by Kansas Judicial Council, and the same are adopted by reference. The required inventory shall be filed on a form approved by the Court.

- 33.13 **Access to Adoption files.** Access to review an adoption file must be requested in writing and specifically authorized by a judge except:

Adoptive parents, upon proof of identification, may be given access by a clerk.

RULE 34
SMALL CLAIMS PROCEDURE

- 34.1 **Form of Pleadings.** A party to an action filed pursuant to the Small Claims Procedures Act shall set forth the statement of this claim using substantially the same form prescribed in K.S.A. 61-2713.
- 34.2 **Signature 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 before a person authorized by law to acknowledge signatures.
- 34.3 **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 the case as to the defendant's claims.
- 34.4 **Case Settings.** 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 one-hundred twenty (120) days after the original filing date unless otherwise extended by order of the court.
- 34.5 **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:
1. By filing with the court a written request for continuance setting for the reasons for the necessity of the continuance, or;
 2. By appearing in person before the court on any regularly scheduled small claims court day prior to the scheduled hearing date and orally presenting the reasons for the necessity of the continuance.
- Applications for continuances 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.
- 34.6 **Dismissals for Lack of Prosecution.** Small claims cases may be dismissed by the court for want of prosecution from time to time 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.
- 34.7 **Entry of Appearance by Attorney After Judgment.** After judgment has been entered, an

attorney filing an entry of appearance shall send appropriate notice thereof to the opposing party before appearing on behalf of and/or representing a party to a small claims action.

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

34.9 **Satisfaction of Judgement.** Upon payment, in full, of any judgement, it shall be the duty of the judgement plaintiff to prepare and file a satisfaction of judgement.

RULE 35 APPOINTMENT OF INTERPRETERS

The Court, upon inquiry and interview of any person before the Court or upon motion or notice by counsel or a party, shall make a determination as to the necessity for an interpreter in accordance with K.S.A. 75-4351, et. seq.

Any person in need of interpreter services shall, personally or through his or her attorney, make written request for an interpreter at least seventy-two (72) hours prior to any hearing, proceeding or trial at which such services are necessary. The notice shall contain the caption of the case and the date and time of the trial, hearing or proceeding. It shall also specify the type of interpretation required.

The Clerk of the District Court shall maintain a list of qualified interpreters in accordance with K.S.A. 75-4353. Upon receipt of the written notice, the Clerk shall secure a qualified interpreter from the list for the scheduled hearing. Any party objecting to the selected interpreter must file with the court their objections prior to the hearing or trial.

Interpreters shall be paid for services and milage shall be reimbursed at a rate determined by the chief judge. Fees for interpreters paid by the State Board of Indigent Defense Services shall be in accordance with standards adopted by such board. Interpreter costs may be assessed to any party, person or entity as the Court deems appropriate, subject to any limitations provided by applicable law.

RULE 36 EFFECTIVENESS

These Rules are effective in the 6th Judicial District upon filing of the same with the Clerk of the Supreme Court pursuant to Supreme Court Rule 105.

These Rules supersede and void any prior Rules of the 6th Judicial District. All administrative orders not specifically repealed remain in full force and effect.

APPROVED this _____ day of _____, 2005.

RICHARD M. SMITH
Chief District Judge

FILED by mail with the Kansas Supreme Court this _____ day of _____, 2005.

_____, Clerk of the Supreme Court.