REPORTS

OF

RULES

ADOPTED BY THE

SUPREME COURT

OF THE

STATE OF KANSAS

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DIRECTION OF THE SUPREME COURT OF KANSAS
SARA R. STRATTON
Official Reporter
CHRISTOPHER STILLIE
Rules and Annotations Editor

2021 Edition

Rules include historical notes, supplemental Supreme Court orders and guidelines, and amendments through January 29, 2021.

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PREFACE

This 2021 edition of the Rules adopted by the Kansas Supreme Court is published as a service to the subscribers of the Kansas Reports. Amendments to Rules and new Rules will continue to be printed in future Advance Sheets of the Kansas Reports; however, Rules will not be printed in the permanent volumes of the Kansas Reports. Rules will be printed in a separate pamphlet on an annual basis and mailed to subscribers of the Kansas Reports. Additional copies may be purchased for $25 each from the Kansas Law Librarian, Kansas Judicial Center, 301 West 10th, Topeka, Kansas 66612-1598.

Rules in this edition are current through January 29, 2021, and incorporate all amendments, new Rules, and Supreme Court guidelines through 312 Kan. No. 3. **All case annotations are now available online at https://www.kscourts.org/Rules-Orders/Rules/KSCourts-media-KsCourts-Rules-Full_Annots-pdf-ext**

Users of this Rule book are requested to call prompt attention to errors or omissions for correcting future editions. Correspondence may be addressed to Reporter of Decisions, Kansas Judicial Center, 301 W. 10th, Topeka, Kansas, 66612-1598; e-mail, strattons@kscourts.org.

Special thanks for the ongoing work of editing, restyling, and amending the rules go to the Rule Review Committee: Sarah Reichart, Jenny Quintin, Doug Shima, and Alison Schneider. Also, for the publication of this edition, thanks go to the Reporter's office staff: Rules editor, Christopher Stillie, and appellate reporter technician, Evie Deitrich.

SARA RAVENHILL STRATTON
Reporter of Decisions

RULES ADOPTED
BY THE
KANSAS
SUPREME COURT

Approved by the Kansas Supreme Court July 9, 1976,
effective January 10, 1977.

REPORTERS'S NOTE: Rules are current through January 29, 2021, incorporating all reported amendments through 312 Kan. No. 3. In addition, historical notations to rules indicating effective dates of new rules, repealed rules, and amendments since January 10, 1977, are included in brackets following applicable rules.

RULES RELATING TO SUPREME COURT, COURT OF APPEALS, AND APPELLATE PRACTICE

GENERAL AND ADMINISTRATIVE

Rule 1.01

PREFATORY RULE

(a) **Statutory References.** In these rules, a reference to a statute includes any subsequent amendment to the statute.

(b) **Judicial Council Forms.**

(1) **Location.** Judicial council forms referenced in these rules may be found at the judicial council's website: https://www.kansasjudicialcouncil.org.

(2) **Amendments.** Except as otherwise provided, judicial council forms referenced in these rules may be amended as follows:

(A) Supreme Court approval is required for:

(i) a new form; or

(ii) deletion or amendment of an existing form.

(B) The Judicial Council may add, modify, or delete material appended to a form, including Authority, Notes on Use, and Comments.

(c) **The Clerk.** The clerk of the Supreme Court is clerk of the Court of Appeals and is referred to in these rules as "the clerk of the appellate courts."

(d) **Applicability.** Unless otherwise indicated, the rules numbered 1.01 through 11.01 apply to both civil and criminal appeals and govern procedure in both the Court of Appeals and the Supreme Court.

[**History:** Am. effective May 14, 1987; Am. effective February 8, 1994; Am. effective July 1, 1997; (f), (g), and (h) repealed effective July 1, 2005; Restyled rule and amended effective July 1, 2012; Am. effective April 24, 2013; Am. effective August 28, 2017.]

Rule 1.02

CHIEF JUDGE OF THE COURT OF APPEALS

(a) **Designation.** The Supreme Court will designate a chief judge of the Court of Appeals.

(b) **Chief Judge's Administrative Powers.** The chief judge of the Court of Appeals has the following administrative powers:

(1) to designate and number hearing panels, assign judges to the panels, and designate the presiding judge of each panel of which the chief judge is not a member;

(2) to assign cases for hearing and determination to panels designated under paragraph (1);
(3) to designate the time and place for the hearing of each case—at any place within the state as provided in K.S.A. 20-3013—taking into consideration where the case arose and the relative convenience and expense of the parties, court, and counsel;
(4) to designate a judge to conduct a prehearing conference when the court has ordered one to be held before a single judge under Rule 1.04;
(5) to establish—after consultation with the other members of the court—internal operating procedures for the orderly handling of the court's business and the fair distribution of work among its members; and
(6) to perform any other necessary administrative duty not otherwise provided for by statute or supreme court rule.

[**History:** Am. effective February 8, 1994; Restyled rule and amended effective July 1, 2012.]

Rule 1.03

JUDICIAL ADMINISTRATION

(a) **Judicial Administrator's Duties.** The judicial administrator is responsible to the Supreme Court and must implement the Court's policies governing the operation and administration of the district and appellate courts under the supervision of the chief justice. The judicial administrator must:
(1) examine the state of the district courts' dockets and report to the Supreme Court if the judicial administrator determines that a district court needs assistance;
(2) collect and compile statistics on all cases filed in each district and appellate court and annually submit to the Supreme Court a detailed report on the state of the courts' dockets;
(3) determine periodically for the district and appellate courts the number of pending cases, the number disposed of since the previous report, and any additional information about the courts' judicial business the judicial administrator or the Supreme Court deems necessary.
(4) make recommendations to the departmental justices about interdistrict judicial assignments and assist the justices in making the assignments;
(5) supervise and examine the administrative methods and systems used in the district courts, including the offices of the clerks and other officers, and make recommendations to the Supreme Court for administrative improvements;

(6) assist the Supreme Court in the management of the judicial branch's fiscal affairs, including federal grants;
(7) coordinate judicial and nonjudicial personnel orientation and education; and
(8) perform any duty required by statute or assigned by the Supreme Court.

(b) **Court Clerk's Duties.** The clerks of the district and appellate courts must promptly:
(1) make required reports to the judicial administrator; and
(2) furnish information requested by the judicial administrator or a departmental justice on forms furnished by the judicial administrator and approved by the Supreme Court.

(c) **Judicial Departments.** Pursuant to K.S.A. 20-318 et seq., the State of Kansas is divided into the following six judicial departments:
(1) Judicial Department No. 1 – Twelfth, Fifteenth, Seventeenth, Twenty-third, and Twenty-eighth judicial districts;
(2) Judicial Department No. 2 – Second, Third, Eighth, and Twenty-first judicial districts;
(3) Judicial Department No. 3 – First, Fourth, Seventh, Twenty-second, and Twenty-ninth judicial districts;
(4) Judicial Department No. 4 – Sixth, Tenth, Eleventh, Fourteenth, and Thirty-first judicial districts;
(5) Judicial Department No. 5 – Fifth, Ninth, Thirteenth, Eighteenth, Nineteenth, and Thirtieth judicial districts; and
(6) Judicial Department No. 6 – Sixteenth, Twentieth, Twenty-fourth, Twenty-fifth, Twenty-sixth, and Twenty-seventh judicial districts.

(d) **Inter-district Assignment for Specific Case.** A departmental justice may assign a judge of the district court within that justice's department to hear or try a case in another district court within the department and may request the assignment of a judge of the district court from another department to hear or try a case.

(e) **Inter-district Request for Assistance.** The chief judge of a judicial district may request the assignment of a judge of the district court from another judicial district by filing the request with the judicial administrator, who must promptly refer the request—with the judicial administrator's recommendation on the request—to the appropriate departmental justice for consideration.

(f) **Retired Justice or Judge.** A departmental justice may recommend to the chief justice the assignment of a retired justice of the Supreme Court, judge of the Court of Appeals, or district judge to perform judicial duties in a district court in the department to the extent the

retiree is willing to serve. The departmental justice of a judicial district makes the recommendation to designate the retiree for service in the district. The chief justice may make the assignment.

(g) **Duty of Chief Judge of District Receiving Judicial Assistance.** A chief judge of a judicial district who requests and receives assistance from a judge of the district court from another district or from a retired justice or judge must—subject to the judicial administrator's supervision:

(1) refer cases to the assigned judge, giving preference to cases that are at issue and cannot be tried because of accumulation of business;

(2) arrange courtroom accommodations for the assigned judge; and

(3) designate a court employee to serve as contact for the assigned judge.

(h) **Kansas Open Records Act Administration.** This subsection governs the administration of the Kansas Open Records Act, K.S.A. 45-215 et seq. (KORA), for public records maintained by district and appellate courts.

(1) **Official Custodians.**

(A) The public information director for the Kansas Supreme Court is the official custodian of public records maintained by the Kansas Supreme Court, Court of Appeals, and office of judicial administration, other than records described in subparagraph (B).

(B) The clerk of the Kansas appellate courts is the official custodian of public records maintained by the office of the clerk of the appellate courts.

(C) The chief judge of each judicial district must appoint a district court employee in each county to serve as the official custodian for that district court. The public information director for the Supreme Court will work with the official custodian in a district court to facilitate prompt responses to KORA requests.

(2) **Procedure.** The judicial administrator must establish procedures consistent with K.S.A. 45-220 to be followed to request access to and obtain copies of public records from a district or appellate court.

(3) **Forms.** The judicial administrator must develop forms to be used to make or respond to public records requests. The request forms must be available to the public on the Judicial Branch website at www.kscourts.org.

(4) **Fees.**

(A) The judicial administrator must establish fees that may be imposed to provide access to or furnish copies of public records maintained by the Kansas Supreme Court, Court of Appeals, office of judicial administration, and the office of the clerk of the appellate courts.

(B) The fees established under subparagraph (A) may include:

(i) a fee for staff time required to provide access to or furnish copies of the records; and

(ii) a fee for time expended by a professional employee—such as an attorney, accountant, computer specialist, or similar employee—to research issues related to a records request.

(C) If an official custodian of requested records determines help from a third party is required to respond to a records request—such as a request that requires reviewing or producing electronic records—the third party's charges for that help may be imposed.

(D) A district court must prescribe reasonable fees for copying or certifying any paper or writ, as required by K.S.A. 28-170(a)3. A district court may impose the fees established by the judicial administrator if there is no local rule establishing fees for that district.

(i) **Debt Collection Contract Administration**. The judicial administrator is authorized under K.S.A. 20-169 to enter into contracts to collect debts owed to courts or restitution owed under an order of restitution. A contract under K.S.A. 20-169 must provide for payment by the contracting agent to the judicial administrator for administrative costs of up to 3% of the debt and restitution collected. Each contract must specify other terms and conditions appropriate to facilitate collections. The judicial administrator may establish procedures consistent with K.S.A. 20-169 to be used in the negotiation and execution of contracts to collect debts owed to courts and restitution owed under an order of restitution.

[**History**: Am effective May 19, 1980; Am. (e) effective February 25, 1982; Am. (i) effective July 1, 1982; Am. (e) effective July 1, 1983; Am. effective February 8, 1994; Am. (a), (c), (g), and (h) effective May 9, 2005; Restyled rule and amended effective July 1, 2012; Am. (h) effective May 5, 2014; Am. (i) effective July 23, 2015.]

Rule 1.04

PREHEARING CONFERENCE

On motion or on its own, an appellate court may direct the parties' attorneys to appear before the court or its designee for a prehearing conference to consider simplification of the issues and other matters that may aid in the disposition of the proceeding. The court must issue an order that recites the matters considered and limits the issues to those not disposed of by admissions or agreement. The order controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

[**History:** Restyled rule and amended effective July 1, 2012.]

Rule 1.05

FORM OF FILING GENERALLY

(a) **Paper Size, Type, and Statutory Requirements.** Unless the court permits otherwise, every petition, brief, motion, application, or other paper filed with the clerk of the appellate courts must be in black type or print on an 8½" x 11" sheet, with one-inch margins. All filings are subject to K.S.A. 60-205, 60-210, and 60-211.

(b) **Filing.** Every petition, brief, motion, application, or other paper filed with the clerk of the appellate courts must include the name, address, telephone number, fax number, and e-mail address of the person filing it. A paper filed by an attorney must include the attorney's Kansas registration number and indicate the party represented. If multiple attorneys appear on behalf of the same party, one must be designated lead attorney for purposes of subsequent filings and notices.

(c) **Paper Copies.** No paper copies of electronically filed documents are required from Kansas licensed attorneys who are active and in good standing.

(d) **Time Computation.** In the appellate courts, time is computed under K.S.A. 60-206(a) and (d).

(e) **Clerk's Duties.** The clerk of the appellate courts must keep a separate file for each case in which all filed documents must be preserved. The clerk must record the date on which each document is filed and must maintain an appearance docket comparable to that a clerk of the district court maintains under K.S.A. 60-2601.

(f) **Electronic Format.** Documents filed electronically must be submitted in an Adobe portable document format (PDF) or another format later specified by the Supreme Court.

(g) **Document Size.** An electronically filed document must not exceed 10 MB. For a document that exceeds this size restriction, an attorney

should contact the office of the clerk of the appellate courts for assistance.

(h) **Date and Effect of Electronic Filing.** An electronically filed document is deemed filed on the date and time reflected in the file stamp on the document. Electronically filed documents received on a Supreme Court holiday or after 12:00 a.m. Saturday through 11:59 p.m. Sunday will be deemed filed on the next business day that is not a Saturday, Sunday, or Supreme Court holiday.

[**History:** Am. effective July 1, 1982; Am. effective July 1, 1988; Am. effective February 8, 1994; Restyled rule and amended effective July 1, 2012; Am. effective December 19, 2016.]

Rule 1.06

REMOVAL OF DOCUMENT FROM FILE

No document in the files of the appellate courts may be taken from the office or custody of the clerk of the appellate courts unless authorized by the clerk.

[**History:** Restyled rule effective July 1, 2012.]

Rule 1.07

NEWS MEDIA RECORDINGS

[**History:** Repealed effective September 1, 1988; see Rule 1001.]

Rule 1.08

FAX FILING

(a) **Limitation on Use of Fax Filing.** An attorney subject to mandatory electronic filing under Supreme Court Rule 1.14 cannot utilize fax filing.

(b) **10-Page Limit.** A motion, pleading, or other document that does not require a filing fee will be accepted for filing by fax if the document, together with any supporting documentation, does not exceed 10 pages. Briefs and petitions for review may not be filed by fax. The fax transmission sheet required by subsection (d) and the certificate of service are not included in the 10-page limitation.

(c) **No Page Limit Using Fax Filing Agency.** A party may transmit a document by fax to a fax filing agency, without page limitation, for filing with an appellate court.

(d) **Fax Transmission Sheet.** A document transmitted by fax must include a fax transmission sheet on the judicial council form.

(e) **Copies.** Only one copy of a document must be transmitted. The clerk of the appellate courts will provide any additional copies required by these rules.

(f) **When a Fax Filing is Deemed Filed.** A fax filing received by the court is deemed filed at the time recorded on the court's electronic fax log.

(g) **Fax Signature.** A fax signature has the same effect as an original signature.

(h) **Certificate of Service.** A certificate of service for a fax filing must state the date of service and the fax numbers of both the sender and any party served by fax.

[**History:** New rule effective January 1, 1993; Restyled rule and amended effective July 1, 2012; Am. effective December 19, 2016.]

Rule 1.09

ENTRY OF APPEARANCE/WITHDRAWAL OF ATTORNEY

(a) **Entry of Appearance.** An attorney who enters an appeal or action after the case has been docketed must file with the clerk of the appellate courts an entry of appearance and proof of service on all parties.

(b) **Withdrawal of Attorney When Client Will Be Left Without Counsel.** When withdrawal of an attorney who has appeared of record in an appellate proceeding will leave the client without counsel, the attorney may withdraw only when:

(1) the attorney has served a motion for withdrawal on the client—and on all parties—that:

(A) states the reasons for the withdrawal, unless doing so would violate an applicable standard of professional conduct;

(B) provides evidence that the withdrawing attorney provided the client:

(i) an admonition that the client is personally responsible for complying with all orders of the court and time limitations established by the rules of procedure or by court order; and

(ii) notice of the date of any pending hearing, conference, or deadline; and

(C) provides the court with a current mailing address and telephone number for the client, if known;

(2) the attorney has filed the motion with the clerk of the appellate courts under Rule 5.01; and

(3) a justice or judge of the appellate courts issues an order approving the withdrawal.

(c) **Withdrawal of Attorney When Client Continues to Be Represented by Other Counsel of Record.** When the client will continue to be represented by other counsel of record, an attorney may withdraw without a court order by filing a notice of withdrawal of appearance with the clerk of the appellate courts. The notice must:
   (1) identify the attorney of record admitted to practice law in Kansas who will continue to represent the client; and
   (2) be served on the client and all parties.

(d) **Withdrawal of Attorney When Client Will Be Represented by Substituted Counsel.** An attorney may withdraw without court order upon simultaneous substitution of counsel admitted to practice law in Kansas by:
   (1) filing a notice of withdrawal of counsel and entry of appearance of substituted counsel signed by both the attorney withdrawing and the attorney to be substituted as counsel; and
   (2) serving the notice on the client and all parties.

(e) **Withdrawal of Attorney When Client is Represented by Appointed Counsel.** When an appointed attorney seeks to withdraw from a case:
   (1) the attorney must file a motion with the clerk of the appellate courts under Rule 5.01, stating the reasons for withdrawal, if the attorney may ethically do so;
   (2) the attorney must serve the motion for withdrawal on the client and all other parties;
   (3) if a judge or justice of the appellate courts issues an order approving the withdrawal, the case must be remanded to the appropriate district court for appointment of new appellate counsel unless substitute counsel has already entered an appearance. The district court must appoint new counsel within 30 days.

[**History**: New rule effective July 1, 2005; Restyled rule and amended effective July 1, 2012.]

Rule 1.10

ADMISSION PRO HAC VICE OF OUT-OF-STATE ATTORNEY BEFORE THE KANSAS APPELLATE COURTS

(a) **Eligibility for Admission Pro Hac Vice.** An attorney not admitted to practice law in Kansas may be admitted on motion to practice law in a Kansas appellate court—for a particular case only—if the attorney:
  (1) is regularly engaged in practicing law in another state, United States territory, or the District of Columbia;
  (2) is in good standing under the rules of the highest appellate court in that jurisdiction; and
  (3) shows association with an attorney of record in the case who:
    (A) is regularly engaged in practicing law in Kansas; and
    (B) is in good standing under the Kansas Supreme Court Rules.

(b) **Kansas Attorney's Duties.** The Kansas attorney of record under subsection (a) must:
  (1) be actively engaged in the case;
  (2) sign all pleadings, documents, and briefs; and
  (3) be present at a prehearing conference or oral argument, if scheduled.

(c) **Service.** Service of a paper in a case on the Kansas attorney of record under subsection (a) has the same effect as if personally served on the attorney admitted pro hac vice.

(d) **Pro Hac Vice Motion.** A separate motion for admission pro hac vice must be filed for each case.
  (1) **Requirements.** The motion must be:
    (A) filed by the Kansas attorney of record;
    (B) accompanied by the out-of-state attorney's verified application, complying with subsection (e);
    (C) filed with the clerk of the appellate courts when the case is docketed or, if the motion relates to briefing or oral argument, no later than 15 days before the brief due date or oral argument date; and
    (D) served on all parties and on the out-of-state attorney's client.
  (2) **Denial of Motion.** If the court denies the motion, it must state reasons for the denial.

(e) **Verified Application.**
  (1) **Contents.** An out-of-state attorney's verified application for admission pro hac vice must include:
    (A) a statement identifying the party or parties represented;

(B) the name, business address, telephone number, fax number, e-mail address, and Kansas attorney registration number of the Kansas attorney of record;
(C) the applicant's residence address and business address, telephone number, fax number, and e-mail address;
(D) the bar(s) to which the applicant is admitted, the date(s) of admission, and the applicable attorney registration number(s);
(E) a statement that the applicant is a member in good standing of each bar;
(F) a statement that the applicant has not been the subject of prior public discipline, including suspension or disbarment, in any jurisdiction;
(G) a statement that the applicant is not currently the subject of a disciplinary action or investigation in any jurisdiction or, if the applicant is currently the subject of a disciplinary action or investigation, the application must provide a detailed description of the nature and status of the action or investigation and the address of the disciplinary authority in charge; and
(H) if applicable, the case name, case number, and the court in which the applicant has been granted permission to appear pro hac vice in Kansas within the preceding 12 months.

(2) **Obligation to Report Changes.** The applicant has a continuing obligation to notify the clerk of the appellate courts if a change occurs in any of the information provided in the application.

(f) **Fee.** A non-refundable fee of $100, payable to the clerk of the appellate courts, must accompany a motion for admission pro hac vice in each case. An attorney representing the government or an indigent party may move—for good cause—for waiver of the fee.

(g) **Consent to Disciplinary Jurisdiction.** By applying for admission pro hac vice under this rule, an out-of-state attorney consents to the exercise of disciplinary jurisdiction by the Kansas appellate courts.

(h) **Appearance Pro Se.** This rule does not prohibit a party from appearing before an appellate court on the party's own behalf.

[**History:** New rule effective July 1, 2005; Restyled rule and amended effective July 1, 2012.]

Rule 1.11

SERVICE OF PAPERS GENERALLY

(a) **Service.** Service is subject to K.S.A. 60-205.

(b) **Service by Electronic Means.** A party agrees to service by electronic means under K.S.A. 60-205(b)(2)(F) when an attorney who is a registered electronic filing user enters an appearance on behalf of the party.
   (1) After a document has been approved by the clerk of the appellate courts, the electronic filing system generates a "Notice of Electronic Filing" available to registered case participants who have enrolled in the electronic filing system.
   (2) Transmission of the "Notice of Electronic Filing" to a registered attorney appearing as a case participant on behalf of a party is an acceptable form of service by electronic means.

(c) **Certificate of Service.** When service is required, a certificate of service must be included as the last page of the document filed with the appellate courts. The certificate of service must include the manner in which service was made, must comply with the signature requirements as set forth in Supreme Court Rule 1.12, and must comply with subsection (d)(2) when applicable.

(d) **Date of Service.** The following provisions apply to the date of service:
   (1) if service is obtained by the transmission of the "Notice of Electronic Filing" under subsection (b)(2), the date of service is the date reflected in the file stamp on the document; or
   (2) if service is obtained in a manner other than transmission of the "Notice of Electronic Filing," the certificate of service must also state the date on which service was made.

[**History:** New rule effective December 19, 2016.]

Rule 1.12

SIGNATURES

(a) **Signature Requirements.**
   (1) **Electronic Signature.** Filings must include a signature block with the name of the filing user under whose ID and password the document is submitted along with "/s/[Name of Filing User]" typed in the space where the signature would otherwise appear and the other information required by K.S.A. 60-211 and Supreme Court Rule 111.
   (2) **Written Signature.** A filing user may also satisfy the signature requirement by scanning a document containing the filing user's written signature.
   (3) **Noncompliance.** A filing that does not comply with this provision will be deemed in violation of K.S.A. 60-211 and Supreme

Court Rule 111. The document may be rejected via electronic notice or may be ordered stricken from the record.

(b) **Signatures of Multiple Parties.** Documents requiring signatures of more than one party may be filed electronically:
   (1) by submitting a scanned document containing all necessary written signatures,
   (2) by representing the consent of the other parties on the document, or
   (3) in any other manner approved by the court.

(c) **Signature of the Clerk of the Appellate Courts.** Records and judicial proceedings requiring the attestation of the clerk of the appellate courts may be authenticated by the clerk by using an electronic signature in lieu of the clerk's manual signature, and such electronic signature shall have the same legal effect as a manual signature.

(d) **Verified Affidavit or Waiver.** A verified affidavit or waiver that is required to be signed by a person who is not counsel of record must be submitted by written signature as described in subsection (a)(2). The electronic signature described in subsection (a)(1) will not comply.

[**History:** New rule effective December 19, 2016.]

Rule 1.13

NOTARIAL ACTS, ELECTRONIC NOTARIZATION, AND UNSWORN DECLARATIONS

(a) **Notarial Act.** Documents subject to a notarial act may be scanned and electronically filed if the notarial act meets the requirements of the uniform law on notarial acts as set forth in K.S.A. 53-501 et seq.

(b) **Electronic Notarization.** Electronic notarization may be used for electronically filed documents if the electronic notarization meets requirements adopted by the Kansas Secretary of State under K.S.A. 16-1611 and K.A.R. 7-43-1 et seq.

(c) **Unsworn Declarations.** Documents subject to unsworn declarations may be electronically filed if the declaration meets the requirements of K.S.A. 53-601.

[**History:** New rule effective December 19, 2016.]

Rule 1.14

ELECTRONIC FILING IN THE APPELLATE COURTS OF KANSAS

(a) **Mandated Electronic Filing.** The following applies to the electronic filing system in the Kansas Supreme Court and Kansas Court of Appeals (appellate courts):
   (1) All Kansas licensed attorneys in good standing must electronically file any document submitted to the appellate courts.
   (2) Only a Kansas licensed attorney in good standing is allowed to use the appellate courts' electronic filing system.

(b) **Unavailability of the Electronic Filing System.** The unavailability of the electronic filing system does not constitute a basis for an extension of time in which to file any matter with the court and does not affect any applicable statute of limitations or other statutory deadlines, except as provided by law. The provisions of K.S.A. 60-206 shall apply if the appellate clerk's office is inaccessible due to unavailability of the electronic filing system.

(c) **Pro Se Litigants.** Pro se litigants, except for Kansas licensed attorneys in good standing who are appearing pro se, cannot electronically file documents in the appellate courts' electronic filing system. Due to the transition of the appellate courts to electronic records, a party appearing pro se must file an original and one copy of any document filed with the appellate courts.

[**History:** New rule effective December 19, 2016.]

INITIATION AND DOCKETING OF APPEAL

Rule 2.01

FORM OF NOTICE OF APPEAL, SUPREME COURT

When an appeal directly to the Supreme Court is permitted, the notice of appeal must be filed in the district court, be under the caption of the district court case, and be in substantial compliance with the judicial council form.

[**History:** Restyled rule and amended effective July 1, 2012.]

Rule 2.02

FORM OF NOTICE OF APPEAL, COURT OF APPEALS

In a case in which a direct appeal to the Supreme Court is not permitted, the notice of appeal must be filed in the district court, be under the caption of the district court case, and be in substantial compliance with the judicial council form.

[**History:** Restyled rule and amended effective July 1, 2012.]

Rule 2.03

PREMATURE NOTICE OF APPEAL

(a) **When a Premature Notice of Appeal is Effective.** A notice of appeal that complies with K.S.A. 60-2103(b)—filed after a judge of the district court announces a judgment to be entered, but before the actual entry of judgment—is effective as notice of appeal under K.S.A. 60-2103 if it identifies the judgment or part of the judgment from which the appeal is taken with sufficient certainty to inform all parties of the rulings to be reviewed on appeal.

(b) **Timing of a Notice of Appeal Challenging Certain Posttrial Motions.** A party intending to challenge an order disposing of any of the following motions, or a judgment's alteration or amendment upon such a motion, must file a notice of appeal—in compliance with these rules—no later than 30 days after the entry of the order disposing of the last such remaining motion:
   (1) for judgment under K.S.A. 60-250(b);
   (2) to amend or make additional factual findings under K.S.A. 60-252(b), whether or not granting the motion would alter the judgment;
   (3) to alter or amend the judgment under K.S.A. 60-259;
   (4) for a new trial under K.S.A. 60-259; or
   (5) for relief under K.S.A. 60-260 if the motion is filed no later than 28 days after the judgment is entered.

[**History:** Restyled rule and amended effective July 1, 2012.]

Rule 2.04

DOCKETING AN APPEAL

(a) **Timing; Required Documents; Required Sequence.**
   (1) **Appellant.** No later than 60 days after a notice of appeal is filed in a district court, the appellant must complete or obtain and file with the clerk of the appellate courts:
      (A) the docketing statement required by Rule 2.041;
      (B) a file-stamped certified copy of the notice of appeal;
      (C) a file-stamped certified copy of the journal entry, judgment form, or other appealable order or decision;
      (D) a file-stamped certified copy of any posttrial motion and any ruling on the motion;
      (E) a file-stamped certified copy of any certification under K.S.A. 60-254(b);

(F) a copy of any request for transcript under Rule 3.03, a statement that no transcript will be requested, or a certificate of completion if a transcript has been requested and completed; and

(G) if applicable, any document required under subsections (b) and (c).

(2) **Cross-Appellant.** No later than 60 days after a notice of cross-appeal is filed in a district court, the cross-appellant must complete or obtain and file with the clerk of the appellate courts:

(A) the docketing statement required by Rule 2.041;

(B) a file-stamped certified copy of the notice of cross-appeal; and

(C) a copy of any request for transcript by the cross-appellant, a statement that no transcript will be requested, or a certificate of completion if a transcript has been requested and completed.

(3) **Required Sequence.** To electronically docket an appeal, an attorney must upload the required documents in the order listed under (a)(1) or (a)(2) and file the required documents as separate PDFs in a single submission in the appellate courts' electronic filing system.

(4) **Motion to Docket Out of Time.** A motion to docket an appeal out of time must state good cause for the failure to timely docket the appeal. An attorney must upload the motion to docket out of time followed by the required documents under (a)(1) or (a)(2) and file the documents as separate PDFs in a single submission in the appellate courts' electronic filing system.

(b) **Prior Appeal to the District Court From Decision of Municipal, District Magistrate, or Pro Tem. Judge.** If an appeal previously was taken to the district court, file-stamped certified copies of the municipal, district magistrate, or pro tem. judge's order and the notice of appeal to district court must accompany the documents filed under subsection (a).

(c) **Appeal From Decision of Administrative Tribunal.** If an appeal originates from an administrative tribunal's decision, certified copies of the agency decision, any motion for rehearing and the ruling on the motion, and the petition for judicial review must accompany the documents filed under subsection (a).

(d) **Docket Fee.**

(1) **Generally.** In addition to filing the documents required under subsections (a), (b), and (c), an appellant must pay at the time of docketing—unless payment is excused or delayed under this subsection—a docket fee of $145 in addition to any applicable

surcharge. The docket fee is nonrefundable and is the only cost assessed by the clerk's office for an appeal.

(2) **Indigent Appellant.** The docket fee is excused when:
   (A) the district court previously determined the appellant to be indigent, and the appellant's attorney certifies to the clerk of the appellate courts that the appellant remains indigent;
   (B) the district judge certifies that:
      (i) the judge believes the appellant is indigent; and
      (ii) in the interest of the appellant's right of appeal, an appeal should be docketed *in forma pauperis*; or
   (C) a poverty affidavit has been filed in lieu of a fee.

(3) **Government Entities.** The state of Kansas and its agencies and all cities and counties in this state are exempted from paying the docket fee required in (d)(1). If, on final determination of a civil case, the costs are assessed against the state, a state agency, or a city or county in this state, the costs must include the amount of the docket fee.

(e) **Clerk's Notice of Docketing.**

(1) **Required Notice.** On filing of the documents required under this rule and the payment or excuse for nonpayment of the docket fee, the clerk of the appellate courts must:
   (A) notify all parties that the appeal has been docketed; and
   (B) include in the notification the appellate number assigned to the appeal.

(2) **Parties Entitled to Notice.** The notice required by (e)(1) must be served on the attorney or party who signed the docketing statement and those on whom the docketing statement was served.

(3) **Others Desiring Notice.** A party not listed in (e)(2) must file an entry of appearance to receive notices.

[**History:** Am. effective March 6, 1978; Am. effective September 1, 1982; Am. effective June 14, 1988; Am. effective October 9, 1992; Am. effective February 8, 1994; Am. effective July 1, 2000; Am. effective May 9, 2005; Restyled rule effective July 1, 2012; Am. (d) effective February 9, 2015; Am. (d) effective September 1, 2015; Am. (a) effective December 19, 2016; Am. effective March 27, 2019.]

Rule 2.041

DOCKETING STATEMENT

(a) **Time to File.** No later than 60 days after a notice of appeal or cross-appeal is filed in a district court, the appellant or cross-appel-

lant must file with the clerk of the appellate courts a docketing statement, along with other documents required under Rule 2.04. A motion to docket an appeal out of time must state good cause for the failure to timely docket the appeal.

(b) **Service.** A copy of the docketing statement must be served on all parties to the appeal or cross-appeal.

(c) **Answer to Docketing Statement.** If the statement of facts or issues in a docketing statement is insufficient to provide the court a fair summary of the facts or issues on appeal, an appellee or cross-appellee may file an answer to the docketing statement. The answer must be filed no later than 15 days after the filing of either:
   (1) a timely filed docketing statement or
   (2) the order granting a motion to docket out of time.

(d) **No Grounds for Relief.** No party may file a motion based on the contents of a docketing statement or an answer to a docketing statement.

(e) **Form.** A docketing statement and an answer to a docketing statement must be on the applicable judicial council form.

[**History:** New rule effective October 1, 1982; Am. effective August 24, 1988; Am. effective February 8, 1994; Am. effective July 1, 1997; Am. (b) effective May 9, 2005; Am. (b) effective September 6, 2005; Am. (b) Ex. 3 effective July 7, 2008; Restyled rule and amended effective July 1, 2012; Am. (a) and (c) effective December 19, 2016; Am. effective March 27, 2019.]

Rule 2.042

CUSTODIAL STATUS OF DEFENDANT IN SENTENCING APPEAL

When a criminal appeal challenges sentencing, appellant's attorney must include on the docketing statement information about defendant's custodial status. After the appeal is docketed, the State is obligated to serve notice on the clerk of the appellate courts of any change in the defendant's custodial status while the appeal is pending.

[**History:** New rule effective July 7, 2008; Restyled rule effective July 1, 2012.]

Rule 2.05

MULTIPLE APPEALS

(a) **When Multiple Appeals Must Be Docketed Together.** When more than one appeal is taken to an appellate court from judgments or orders entered at or about the same time in a district court case, or from a consolidation of district court cases, the appeals must be

docketed together and only one docket fee is required. Thereafter, the record, briefs, and oral argument must proceed as consolidated unless the court orders a separation of the appeals.

(b) **Separate Appeal Required After Docketing.** An appeal from a judgment or order entered in the district court after an appeal in the same case is docketed in an appellate court must be docketed as a separate appeal, subject to consolidation under Rule 2.06.

[**History:** Am. effective March 29, 1984; Restyled rule effective July 1, 2012.]

Rule 2.06

CONSOLIDATION OF APPEALS

(a) **When Consolidation is Permitted.** Separate appeals may be consolidated when:
   (1) one or more common issues are so nearly identical that a decision in one appeal would be dispositive of all the appeals; or
   (2) the interest of justice otherwise would be served by consolidation.

(b) **Motion to Consolidate.** An appellate court may order consolidation:
   (1) on a party's motion under Rule 5.01; or
   (2) on its own after notice to the parties to show cause why the appeals should not be consolidated.

(c) **Docket Number of Consolidated Appeals.** When a court orders consolidation, all subsequent proceedings will be conducted under the lowest docket number.

(d) **Briefing and Oral Argument.** A party in a consolidated appeal may file a separate brief and be separately heard on oral argument.

(e) **Stay in Lieu of Consolidation.** In lieu of consolidation, an appellate court may issue an order staying proceedings in an appeal until common issues in a separately pending appeal are determined.

[**History:** Restyled rule effective July 1, 2012.]

RECORD ON APPEAL

Rule 3.01

CONTENT OF RECORD

(a) **Entire Record.** The entire record consists of:
   (1) all original papers and exhibits filed in the district court;
   (2) the court reporter's notes and transcripts of all proceedings;
   (3) any other court authorized record of the proceedings, including an electronic recording; and

(4) the entries on the appearance docket in the district court clerk's office.

(b) **Record on Appeal.**

(1) The record on appeal consists of that portion of the entire record which is required by these rules or requested by a party.

(2) An appellate court may, on its own, order that additional parts of the entire record be filed.

[**History:** Restyled rule effective July 1, 2012.]

Rule 3.02

PREPARATION OF RECORD ON APPEAL FOR FILING

(a) **Timing.** No later than 14 days after notice from the clerk of the appellate courts that an appeal has been docketed, the clerk of the district court must compile the record on appeal in one or more convenient volumes.

(b) **Volume; Requirements.** The following rules apply to a volume contained in a record on appeal:

(1) a "volume" may be a file, folder, or other binder into which papers are securely fastened;

(2) each page in a volume must be conveniently viewable and separately numbered;

(3) each volume must be numbered and display on its face the volume number and the case caption;

(4) to the extent possible, the papers within a volume—and, if applicable, the volumes within a record on appeal—must be arranged in chronological order by filing date; and

(5) in cases consolidated for appeal, the record on appeal should be prepared as if it were one case, using separate, continuous, nonrepeating volume numbers.

(c) **Contents of Record on Appeal.** The record on appeal consists of the following:

(1) A certified copy of the appearance docket and the following original documents:

(A) In a civil case:

(i) the petition or, if amended, the amended petition;

(ii) the answer or, if amended, the amended answer;

(iii) any reply or, if amended, the amended reply;

(iv) the pretrial order(s);

(v) the opinion, findings, and conclusions of the district court;

(vi) the jury verdict, if any;

(vii) the judgment; and

(viii) the notice of appeal.

(B) In a criminal case:
(i) the complaint, indictment, or information, and any amendment to the original;
(ii) any written plea;
(iii) the jury verdict, if any;
(iv) the journal entry of judgment;
(v) the notice of appeal; and
(vi) on filing of a request by trial or appellate counsel, the presentence report, any report received from the appropriate reception and diagnostic facility of the Kansas Department of Corrections, any report from the state security hospital, and all other diagnostic reports. If the inclusion of reports is requested under this paragraph, the clerk must include the specified reports in a separate volume of the record on appeal. The separate volume must be kept sealed except when being used by appellate counsel or the courts.

(2) All reporters' transcripts of proceedings before the district court that are available at the time the clerk of the district court compiles the record on appeal.
(3) Any other paper or exhibit that is added to the record on appeal under subsection (d).
(4) The clerk of the district court must prepare and include in the record on appeal a table of contents showing the volume and page number of each paper or exhibit contained in the record. A copy of the table of contents must be furnished to each party.

(d) **Addition to Record on Appeal.** A party may request adding to the record on appeal any part of the entire record under Rule 3.01(a). The following rules apply:
(1) **Addition Must Be Specified with Particularity.** A request under this subsection must specify the addition with particularity. A request for remaining portions of the entire record without particularization is not sufficient.
(2) **Requirement of Transcription.** A court reporter's notes and any court-authorized electronic recording of a court proceeding must be transcribed by a certified court reporter or court transcriptionist before being added to the record on appeal.
(3) **If Record on Appeal Has Not Been Transmitted.** If the record on appeal has not been transmitted to the clerk of the appellate courts, the following rules apply:
(A) The party requesting the addition must serve the request on the clerk of the district court and—if the requested addition is an exhibit that was offered or admitted into evidence and

is in a court reporter's custody—on the reporter, who promptly must deliver the exhibit to the clerk of the district court for inclusion in the record on appeal.

(B) The clerk must add the requested addition to the record on appeal. No court order is required.

(4) **If Record on Appeal Has Been Transmitted.** If the record on appeal has been transmitted to the clerk of the appellate courts, the party requesting the addition must file a motion in the proper appellate court. An addition to the record on appeal may be made only on an order of the clerk of the appellate courts or an appellate justice or judge. If a requested addition is an exhibit that was offered or admitted into evidence and is in a court reporter's custody, a copy of the order granting the motion must be served on the reporter, who promptly must deliver the exhibit to the clerk of the district court for inclusion in the record on appeal.

[**History:** Am. effective March 6, 1978; Am. effective July 1, 1982; Am. effective March 29, 1989; Am. effective February 8, 1994; Am. effective July 1, 2010; Restyled rule effective July 1, 2012; Am. (b) and (d) effective December 19, 2016; Am. (d) effective September 11, 2017; Am. effective September 6, 2018.]

Rule 3.03

TRANSCRIPT IN RECORD ON APPEAL

(a) **Requesting Transcript; Appellant's Duty; Stipulation.** When the appellant considers a hearing transcript necessary to properly present the appeal, the appellant must request the transcript no later than 21 days after filing the notice of appeal in the district court. The request must be clearly designated "for appeal purposes." Unless all affected parties stipulate that specific portions are not required for purposes of the appeal, the request must be for a complete transcript of the hearing. Counsel for the parties must make a good faith effort to stipulate to avoid unnecessary expenses. The appellate court may consider an unreasonable refusal to stipulate when apportioning the cost of the transcript under Rule 7.07(d). Jury voir dire, opening statements, and closing arguments of counsel will not be transcribed unless specifically requested.

(b) **No Court Order Required for Transcript Request.** Notwithstanding K.S.A. 22-4505(b), 22-4506(b), and 22-4509, a district court order is not required to request a transcript from a court reporter.

(c) **Transcript Requested by Appellee.** No later than 14 days after service of appellant's request under subsection (a), the appellee may

request a transcript of the jury voir dire, opening statements, closing arguments, or any other hearing not requested by appellant, but the appellee is responsible for payment for the additional transcript, including advance payment, in the same manner as the appellant is responsible for the main transcript.

(d) **Filing and Service of Transcript Request.** The original of a transcript request must be filed in the district court and served on the reporter and all parties. At the time the appeal is docketed under Rule 2.04, the appellant must file with the clerk of the appellate courts a copy of the initial transcript request and any stipulation for less than a complete transcript of a hearing. An additional transcript request must be served and filed in the same manner.

(e) **Time Schedule for Transcripts; Certificate of Completion.** A transcript must be completed no later than 40 days after service of a request unless the court reporter applies for and receives an extension of time under Rule 5.02. The court reporter must file the completed transcript with the clerk of the district court and must serve on the clerk of the appellate courts and each party a certificate of completion. A certificate of completion must identify the hearing date, the type of hearing transcribed, and the date the transcript was filed. The transcript and the certificate of completion must include the court reporter's Supreme Court certified court reporter registration number.

(f) **Advance Payment.** An appellant, other than the state or a state agency or subdivision, must advance the payment of the estimated cost of a requested transcript if the court reporter serves on the appellant—no later than 14 days after receipt of a request for a transcript—the estimated cost and demand for advance payment. A reporter who properly serves a demand for advance payment under this subsection is not required to begin the transcript until the reporter receives payment of the estimated cost. Failure to make advance payment no later than 14 days after service of a demand under this subsection is ground for dismissal of the appeal by the appellate court.

(g) **Electronically Filed Transcripts.** When filing a transcript electronically, a certified shorthand reporter must use an assigned username and password to access the appellate courts' electronic filing system.

(h) **Seal.** If a transcript is being filed electronically, an electronic signature by a certified shorthand reporter acts as a seal required by K.S.A. 20-913.

[**History:** Am. effective March 6, 1978; Am. effective July 1, 1982; Am. effective April 10, 1987; Am. effective August 30, 1990; Am. effective October 9, 1992; Am. (a) and (d) effective March 21, 2008; Am. (b) and

(e) effective July 1, 2010; Restyled rule effective July 1, 2012; Am. effective December 19, 2016.]

Rule 3.04

UNAVAILABILITY OF TRANSCRIPT OR EXHIBIT

(a) **Transcript.** If the transcript of a hearing or trial is unavailable, a party to an appeal may prepare a statement of the evidence or proceedings from the best available means, including the party's own recollection, for use instead of a transcript. The statement must be served on all parties, who may serve an objection or proposed amendment no later than 14 days after being served. The statement and any objection or proposed amendment then must be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the clerk of the district court in the record on appeal.

(b) **Exhibit.** If an exhibit offered, admitted, or excluded in a hearing or trial is unavailable, a party to an appeal may prepare a photocopy or any facsimile that accurately duplicates the original exhibit. The substitute exhibit must be served on all parties, who may serve an objection or proposed amendment no later than 14 days after being served. The substitute exhibit and any objection or proposed amendment then must be submitted to the district court for settlement and approval. As settled and approved, the substitute exhibit must be included by the clerk of the district court in the record on appeal.

[**History:** Am. effective July 1, 2010; Restyled rule and amended effective July 1, 2012.]

Rule 3.05

APPEAL ON AGREED STATEMENT

In place of the record on appeal as defined in Rule 3.01, the parties may prepare, sign, and submit to the district court no later than 21 days after filing the notice of appeal a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts asserted and proven or sought to be proven that are essential to the appellate court's resolution of the issues. The statement must include a copy of the judgment appealed from, a copy of the notice of appeal with its filing date, and a concise statement of the issues raised. If the statement is truthful, it—together with any additions that the district court may consider necessary to a full presentation of the issues on appeal—must be approved by the

district court. The statement then must be filed with the clerk of the district court and constitutes the record on appeal in lieu of the record specified in Rule 3.02.

[**History:** Am. effective March 6, 1978; Restyled rule and amended effective July 1, 2012.]

Rule 3.06

ACCESS TO RECORD ON APPEAL

(a) **Access to Paper Records.** Each volume of the record on appeal must be available to the parties to the appeal during the time allotted for the preparation of their respective briefs. During these times, an attorney who is a member of the Kansas bar and is counsel of record may—unless removal is restricted by the court for good cause—remove the record from the clerk's office but is responsible to the court to return the record in its original condition upon completion of the brief.

(b) **Access to Electronic Records.** A record on appeal prepared in electronic format must be made available to the parties in electronic format.

[**History:** Am. effective October 14, 2005; Restyled rule and amended effective July 1, 2012; Am. effective December 19, 2016.]

Rule 3.07

TRANSMISSION OF RECORD ON APPEAL

(a) **Request for Transmission; Time.** On expiration of the time for filing briefs permitted under Rule 6.01 or any granted extensions of that time, the clerk of the appellate courts may request that the clerk of the district court transmit the record on appeal prepared in compliance with Rules 3.02, 3.04, or 3.05 to the clerk of the appellate courts. The clerk of the district court must forward the record no later than 7 days after receipt of the clerk of the appellate court's request.

(b) **Exhibits.** A district court may transmit to the clerk of the appellate courts exhibits that are documents, photographs, or electronically stored information. A party wishing to include any other exhibit must prepare a photograph, not larger than 8 ½ by 11 ½ inches, that fairly and accurately depicts the exhibit and serve the photograph on opposing parties. Any objection must be served no later than 14 days after service of the photograph. The photograph and any objection must be submitted to the district court for settlement and approval. As approved, the clerk of the district court must include the photograph in the record on appeal.

(c) **Items of Unusual Bulk or Weight.** A party must make advance arrangements with the clerk of the district court for the transportation and cost of transporting all documents, photographs, or electronically stored information of unusual bulk or weight.

[**History:** Am. effective February 8, 1994; Am. effective July 1, 2010; Restyled rule effective July 1, 2012; Am. (b) and (c) effective September 11, 2017.]

Rule 3.08

COPY OF RECORD ON APPEAL

Before a record on appeal is transmitted to the clerk of the appellate courts, a party to the action in the district court may file a request with the clerk of the district court that all or part of the record be duplicated and that the duplicate be retained in the office of the clerk of the district court. On payment by the requesting party of the amount the clerk of the district court specifies as the cost of duplication, the clerk must duplicate the requested documents before transmitting to the clerk of the appellate courts the original record on appeal as required under Rule 3.07.

[**History:** Restyled rule effective July 1, 2012.]

Rule 3.09

PREPARATION OF RECORD FOR UNITED STATES SUPREME COURT

(a) **Request for Record.** When the United States Supreme Court grants a petition for writ of certiorari concerning a decision of a Kansas appellate court, the clerk of the appellate courts will certify and transmit the record on appeal to the United States Supreme Court on request of the clerk of the United States Supreme Court.

(b) **If Record in District Court.** When the record on appeal, or any part thereof, has been returned to the district court, the clerk of the appellate courts must request the clerk of the district court to transmit promptly to the clerk of the appellate courts the record on appeal.

[**History:** Restyled rule and amended effective July 1, 2012.]

INTERLOCUTORY APPEALS

Rule 4.01

INTERLOCUTORY APPEAL IN CIVIL CASE UNDER K.S.A. 60-2102(c)

(a) **Application; Filing and Service.** No later than 14 days after an order is entered from which an appeal is sought under K.S.A. 60-2102(c), an application for permission to take the appeal must be:
  (1) filed with the clerk of the appellate courts along with the required docket fee; and
  (2) served on all attorneys of record and unrepresented parties.

(b) **Amended Order; Timing.** An order may be amended to include the findings required by K.S.A. 60-2102(c) if a motion to amend is served and filed no later than 14 days after the order is filed. If an order is amended under this subsection, an application for permission to take an appeal must be served and filed no later than 14 days after the amended order is entered.

(c) **Docketing of Application.** An application under this rule will be docketed as a regular appeal to the Court of Appeals.

(d) **Application; Contents.** An application under this rule must:
  (1) state the relevant facts, including:
    (A) the facts necessary to understand the question presented;
    (B) the question itself;
    (C) the relief sought;
    (D) the nature of the district court proceedings; and
    (E) a brief history of the proceedings, including all important dates;
  (2) state briefly:
    (A) the controlling question of law involved;
    (B) the substantial ground for difference of opinion about the controlling question of law; and
    (C) the basis for belief that an immediate appeal may materially advance the ultimate termination of the litigation;
  (3) include as an attachment a file-stamped certified copy of the order—which must contain the findings required under K.S.A. 60-2102(c)—from which the appeal is sought to be taken; and
  (4) if an order has been amended under subsection (b), include as attachments file-stamped certified copies of the motion to amend and the amended order.

(e) **Response**. A party may serve and file a response to an application under this rule no later than 7 days after being served with the application. The application and response will be submitted without oral argument.

(f) **Notice of Appeal Not Required.** A notice of appeal need not be filed. The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(g) **Docketing the Appeal.** If permission to appeal is granted, no additional docket fee will be charged, and the record on appeal will be filed under the docket number assigned to the application. The appeal is deemed docketed when—no later than 21 days after the order granting permission to appeal is entered—the following are filed with the clerk of the appellate courts:
   (1) a copy of a request for transcript filed under Rule 3.03, a written statement that no transcript will be requested, or a certificate of completion of the transcript; and
   (2) the docketing statement required by Rule 2.041.

[**History:** Am. effective July 1, 1982; Am. effective February 20, 1985; Am. effective February 8, 1994; Am. effective July 1, 1997; Am. effective July 1, 2010; Restyled rule and amended effective July 1, 2012; Am. (a) and (g) effective December 19, 2016.]

Rule 4.01A

INTERLOCUTORY APPEAL IN CIVIL CASE UNDER K.S.A. 60-223(f)

(a) **Application; Filing and Service.** No later than 14 days after an order is entered from which an appeal is sought under K.S.A. 60-223(f), an application for permission to take the appeal must be:
   (1) filed with the clerk of the appellate courts along with the required docket fee; and
   (2) served on all other parties to the district court action.

(b) **Docketing of Application.** An application under this rule will be docketed as a regular appeal to the Court of Appeals.

(c) **Application; Contents.** An application under this rule must:
   (1) state the relevant facts, including:
      (A) the facts necessary to understand the question presented;
      (B) the question itself;
      (C) the relief sought;
      (D) the reasons why the appeal should be allowed;
      (E) the nature of the district court proceedings; and

(F) a brief history of the proceedings, including all important dates;

(2) include as an attachment a file-stamped certified copy of the order from which the appeal is sought to be taken.

(d) **Response.** A party may serve and file a response to an application under this rule no later than 7 days after being served with the application. The application and response will be submitted without oral argument.

(e) **Notice of Appeal Not Required.** A notice of appeal need not be filed. The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(f) **Docketing the Appeal.** If permission to appeal is granted, no additional docket fee will be charged, and the record on appeal will be filed under the docket number assigned to the application. The appeal is deemed docketed when—no later than 21 days after the order granting permission to appeal is entered—the following are filed with the clerk of the appellate courts:

(1) a copy of a request for transcript filed under Rule 3.03, a written statement that no transcript will be requested, or a certificate of completion of the transcript; and

(2) the docketing statement required by Rule 2.041.

[**History:** New rule adopted effective July 1, 2012; Am. (a) and (f) effective December 19, 2016.]

Rule 4.02

INTERLOCUTORY APPEAL BY PROSECUTION

(a) **Notice of Appeal.** When an appeal is taken to the Court of Appeals under K.S.A. 22-3601(a) and 22-3603, the notice of appeal must be filed with the clerk of the district court no later than 14 days after entry of the order from which the appeal is taken. A copy of the notice of appeal must be served on defense counsel or on the defendant, if unrepresented.

(b) **Docketing the Appeal.** No later than 21 days after the notice of appeal is filed, the prosecution must file with the clerk of the appellate courts the documents listed in paragraphs (1) through (4). The appeal will be docketed on filing of:

(1) a file-stamped certified copy of the notice of appeal;

(2) the docketing statement required by Rule 2.041;

(3) a file-stamped certified copy of the order appealed from—or, if the order is not in writing, a transcript of the court's announcement of its order—together with any written opinion or memorandum of the district court relating to the order; and

(4) a copy of a request for transcript filed under Rule 3.03, a written statement indicating no transcript is necessary, or a certificate of completion of the transcript.

(c) **Record on Appeal.** The clerk of the district court must prepare the record on appeal under Rule 3.02. The record on appeal consists of the following documents:
   (1) a copy of:
      (A) the warrant, search warrant, confession, or other written evidence quashed or suppressed; or
      (B) a description—approved by the district court—of any physical evidence or a summary of any oral admission or testimony suppressed;
   (2) a copy of any affidavit and the transcript of any testimony that:
      (A) provided the basis for the issuance of a warrant or search warrant that was quashed; or
      (B) served as the basis for the seizure of evidence that was suppressed;
   (3) if testimony was taken on the motion to quash or suppress, a copy of the transcript, or—if the parties agree—a narrative statement of the testimony; and
   (4) any other portion of the record required by the appellate court.

(d) **Briefing Schedule.** The prosecution must serve and file its brief no later than 30 days after being served with the certificate of completion of the transcript under Rule 3.03 or no later than 40 days after docketing if no transcript is requested. The defense must serve and file its brief no later than 30 days after being served with the prosecution's brief.

(e) **Stay of District Court Proceedings.** Further proceedings in the district court are stayed pending determination of the appeal.

(f) **Post-Mandate Action by District Court.** After receipt of the mandate, on the prosecution's motion, the district court must issue:
   (1) an order for the defendant to appear; or
   (2) an alias warrant for the defendant's arrest.

[**History:** Am. (a) effective July 1, 1982; Am. effective February 8, 1994; Am. (b) effective November 6, 2000; Am. (c) effective September 6, 2005; Am. (a) effective March 21, 2008; Am. (a) effective July 1, 2010; Restyled rule and amended effective July 1, 2012; Am. (b) effective December 19, 2016.]

MOTIONS

Rule 5.01

APPELLATE COURT MOTION

(a) **Generally.** Unless made during a hearing, an application to an appellate court must be by written motion filed with the clerk of the appellate courts and must state with particularity the ground for the motion and the relief or order sought. Each motion must contain only a single subject.
   (1) Except when docketing an appeal, an attorney must not file multiple pleadings in a single transmission within the appellate court's electronic filing system.
   (2) Due to the transition of the appellate courts to electronic records, a party appearing pro se must file an original and one copy of any motion filed with the appellate courts.

(b) **Response to a Motion.** A party may serve and file a response no later than 7 days after being served with a motion.

(c) **Oral Argument.** Oral argument on a motion will be permitted only by court order.

(d) **Motion by Represented Party.**
   (1) **Motion.** A party represented by counsel may file a motion on the party's own behalf only to take the following action:
      (A) remove counsel,
      (B) file a supplemental brief, or
      (C) file a supplemental petition for review raising only the issues raised in a supplemental brief if the party filed one in the Court of Appeals.
   (2) **Service.** A motion filed under subsection (d) must be served on the party's counsel and all other parties to the appeal.
   (3) **Pro Se Party.** Subsection (d) does not apply to a party appearing pro se.

[**History:** Am. effective June 14, 1988; Am. effective September 16, 1992; Am. effective September 6, 2005; Am. (a) effective July 1, 2010; Restyled rule and amended effective July 1, 2012; Am. effective December 19, 2016; Am. effective July 2, 2018.]

Rule 5.02

EXTENSION OF TIME

(a) **Motion for Extension of Time.** A party that may or must perform an act required under these rules within a specified time may file with the clerk of the appellate courts a motion for an extension of time. The motion must be served on all parties and must state:
   (1) the present due date;
   (2) the number of extensions previously requested;
   (3) the amount of additional time needed; and
   (4) the reason for the request.

(b) **Adverse Party's Consent.** An adverse party's consent to an extension of time will be considered, but is not controlling.

(c) **Motion Filed After Time Expired.** A motion for an extension of time filed after the time to act has expired must state the reasons constituting excusable neglect.

(d) **Extension of Time.** The clerk of the appellate courts or the court may grant an extension of time not exceeding 20 days without waiting for a response.

[**History**: Restyled rule and amended effective July 1, 2012; Am. (d) effective December 19, 2016.]

Rule 5.03

CLERK'S AUTHORITY ON MOTION

(a) **Clerk's Authority to Rule on Motion.** Unless a motion is opposed, the clerk of the appellate courts may rule on a motion:
   (1) for extension of time;
   (2) to correct a brief;
   (3) to substitute a party; or
   (4) to withdraw a brief to make corrections.

(b) **Clerk's Order.** The clerk of the appellate courts must enter on the appearance docket an order issued under this rule.

[**History:** Restyled rule effective July 1, 2012.]

Rule 5.04

VOLUNTARY DISMISSAL

(a) **Voluntary Dismissal; When Allowed; Effect.** Before an opinion is filed, an appellant may dismiss an appeal by stipulation or by filing with the clerk of the appellate courts and serving on all parties a notice of dismissal. A dismissal of one party's appeal does not affect any other party's appeal.

(b) **Assessment of Costs and Expenses.** Unless the parties agree to a dismissal by stipulation, the court on motion and reasonable notice may assess against the appellant the costs and expenses incurred by the appellee before the dismissal date that would have been assessed against the appellant if the case had not been dismissed and the judgment or order had been affirmed.

[**History:** Am. effective September 6, 2005; Restyled rule effective July 1, 2012.]

Rule 5.05

INVOLUNTARY DISMISSAL

(a) **Involuntary Dismissal.** An appellate court may dismiss an appeal due to a substantial failure to comply with these rules or for any other reason requiring dismissal by law:
   (1) on motion of a party with at least 14 days' notice to the appellant; or
   (2) on the court's own by issuing to the appellant a notice to show cause no later than 14 days after the notice why the appeal should not be dismissed.

(b) **Remand for Fact-Finding.** If dismissal depends on an issue of fact, the appellate court may remand the case to the district court with direction to make findings of fact.

(c) **Costs and Expenses.** When an appeal is dismissed under this rule, the court on motion and reasonable notice may assess against the appellant the costs and expenses incurred by the appellee before the dismissal date that would have been assessed against the appellant if the case had not been dismissed and the judgment or order had been affirmed.

[**History:** Am. effective July 1, 2010; Restyled rule effective July 1, 2012.]

Rule 5.051

DISMISSAL OF APPEAL BY DISTRICT COURT

(a) **District Court's Jurisdiction to Dismiss an Appeal.** When an appellant has filed a notice of appeal in the district court, but has failed to docket the appeal in compliance with Rule 2.04, the appeal is presumed abandoned and the district court may enter an order dismissing the appeal.

(b) **Finality of Order of Dismissal.** A district court's order of dismissal pursuant to subsection (a) is final unless:
   (1) the appellant, no later than 30 days after entry of the order:
      (A) files with the clerk of the appellate courts in compliance with Rule 5.01 an application for reinstatement showing good cause for reinstatement; and
      (B) submits all documents and pays the docket fee required by Rule 2.04, unless payment is excused; and
   (2) the appellate court having jurisdiction of the appeal reinstates it for good cause shown.

[**History:** New rule effective September 14, 1978; Am. effective July 1, 1997; Am. effective September 6, 2005; Restyled rule effective July 1, 2012.]

Rule 5.06

RELEASE AFTER CONVICTION

(a) **Generally.** An application for release after conviction, under K.S.A. 22-2804(2) or 21-6820(b), may be made to the appellate court having jurisdiction of the appeal.

(b) **Application; Requirements.** The application must:
   (1) state the district court's disposition of the application;
   (2) state the nature of the offense and sentence imposed;
   (3) state the amount of any appearance bond previously required in the case;
   (4) state the defendant's family ties, employment, and financial resources; the length of the defendant's residence in the community; and any record of defendant's prior convictions;
   (5) state the defendant's record of appearance at court proceedings, including failure to appear; and
   (6) include as an attachment a copy of the district court's order stating the reason for its action.

(c) **Conditions.** If release is granted, the order must state any conditions imposed by the appellate court or may remand to the district court to establish conditions for the release.

[**History:** Am. effective July 1, 1982; Am. effective September 6, 2005; Restyled rule and amended effective July 1, 2012; Am. (a) effective April 24, 2013.]

BRIEFS

Rule 6.01

TIME SCHEDULE FOR BRIEFS

(a) **Serving and Filing.** A brief must be served on all other parties and then filed with the clerk of the appellate courts no later than the time stated in subsection (b).

(b) **Brief Filing Schedule.**

(1) **Appellant's Brief.**

(A) If a reporter's transcript was not ordered or if all transcripts ordered were filed with the clerk of the district court before docketing, an appellant must file a brief no later than 40 days after the date of docketing.

(B) If a transcript was ordered, but was not filed before docketing, an appellant must file a brief no later than 30 days after service of the certificate of filing of the transcript under Rule 3.03.

(C) If a record on appeal includes a statement of proceedings under Rule 3.04 or an agreed statement under Rule 3.05, an appellant must file a brief no later than 30 days after the statement is filed with the clerk of the district court.

(2) **Appellee or Appellee/Cross-Appellant's Brief.** An appellee or appellee/cross-appellant must file a brief no later than 30 days after the appellant's brief is served.

(3) **Cross-Appellee's Brief.** A cross-appellee must file a brief no later than 21 days after the cross-appellant's brief is served.

(4) **Appellee/Cross-Appellee's Brief.** An appellee/cross-appellee must file a brief no later than 21 days after the appellee/cross-appellant's brief is served.

(5) **Reply Brief.** A reply brief must be filed no later than 14 days after service of the brief to which the reply is made.

[**History:** Am. effective February 8, 1994; Am. effective September 6, 2005; Restyled rule and amended effective July 1, 2012.]

Rule 6.02

CONTENT OF APPELLANT'S BRIEF

(a) **Required Contents.** An appellant's brief must contain the following:

(1) A table of contents that includes:

(A) page references to each division and subdivision in the brief, including each issue presented; and

(B) the authorities relied on in support of each issue.

(2) A brief statement of the nature of the case—e.g., whether it is a personal injury suit, injunction, quiet title, etc.—and a brief statement of the nature of the judgment or order from which the appeal was taken.

(3) A brief statement, without elaboration, of the issues to be decided in the appeal.

(4) A concise but complete statement, without argument, of the facts that are material to determining the issues to be decided in the appeal. The facts included in the statement must be keyed to the record on appeal by volume and page number. The court may presume that a factual statement made without a reference to volume and page number has no support in the record on appeal.

(5) The arguments and authorities relied on, separated by issue if there is more than one. Each issue must begin with citation to the appropriate standard of appellate review and a pinpoint reference to the location in the record on appeal where the issue was raised and ruled on. If the issue was not raised below, there must be an explanation why the issue is properly before the court.

(b) **Optional Appendix.** At the option of the appellant, an appellant's brief may contain an appendix—without comment—consisting of limited extracts from the record on appeal which the appellant considers to be of critical importance to the issues to be decided. The appendix is for the court's convenience and is not a substitute for the record itself. When an appendix is included, the statement of the case and the brief may make references to it, but the references are supplementary—and not in lieu of—the required references to the volume and page number of the record itself.

[**History:** Am. effective February 8, 1994; Am. effective September 6, 2005; Restyled rule effective July 1, 2012.]

Rule 6.03

CONTENT OF APPELLEE'S BRIEF

(a) **Required Contents.** An appellee's brief must contain the following:

(1) A table of contents that includes:

(A) page references to each division and subdivision in the brief, including each issue presented; and

(B) the authorities relied on in support of each issue.

(2) A statement either concurring in the appellant's statement of the issues involved or stating the issues the appellee considers necessary to disposition of the appeal.

(3) A statement, without argument, of the facts or a statement acknowledging the correctness of the appellant's statement of the facts or adding corrections and supplemental statements to the extent necessary. The statement must be supported by references to the record in the same manner as required of the appellant under Rule 6.02.

(4) The arguments and authorities relied on, separated by issue if there is more than one. Each issue must begin with citation to the appropriate standard of appellate review; appellee must either concur in appellant's citation to the standard of appellate review or cite additional authority.

(5) If the appellee is also a cross-appellant, a separate section for the cross-appeal with content comparable to that of an appellant under Rule 6.02, except without duplication of statements, arguments, or authorities already contained in the appellee's brief. To avoid duplication, references may be made to the appropriate portions of the appellee's brief.

(b) **Optional Appendix.** At the option of the appellee, an appellee's brief may contain an appendix containing limited extracts from the record on appeal for the same purpose and subject to the same limitations prescribed for the appellant's appendix under Rule 6.02.

[**History:** Am. effective February 8, 1994; Am. (d) effective July 1, 1997; Am. (f) effective September 6, 2005; Restyled rule effective July 1, 2012.]

Rule 6.04

CONTENT OF CROSS-APPELLEE'S BRIEF

The content of a cross-appellee's brief must be comparable to that of an appellee, but without duplication of statements, arguments, or authorities already contained in the appellant's or cross-appellant's brief. To avoid duplication, references may be made to the appropriate portions of the opposing brief.

[**History:** Restyled rule effective July 1, 2012.]

Rule 6.05

REPLY BRIEF

A reply brief may not be submitted unless made necessary by new material contained in the appellee's or cross-appellee's brief. A reply brief must include a specific reference to the new material being rebutted and may not include, except by reference, a statement, argument, or authority already included in a preceding brief. If a reply brief is permissible, a cross-appellee must combine the reply brief with the cross-appellee's brief as a separate section.

[**History:** Restyled rule effective July 1, 2012.]

Rule 6.06

BRIEF OF AMICUS CURIAE

(a) **When Permitted.** A brief of an amicus curiae may be filed when:
   (1) an application to file the brief is served on all parties and filed with the clerk of the appellate courts; and
   (2) the appellate court enters an order granting the application.

(b) **Filing and Service of Amicus Brief.** A brief of an amicus curiae must be:
   (1) filed no later than 30 days before oral argument; and
   (2) served on all parties.

(c) **Reply to *Amicus* Brief.** Any party may respond to a brief of an amicus curiae no later than 21 days after the brief is filed.

(d) **Oral Argument.** An amicus curiae is not entitled to oral argument.

[**History:** Am. effective February 8, 1990; Restyled rule effective July 1, 2012.]

Rule 6.07

FORMAT FOR BRIEFS

(a) **Text; Footnotes; Reproduction.**
   (1) **Text.** Text must be printed in a conventional style font not smaller than 12 point with no more than 12 characters per inch. The suggested size and fonts include 13 point in Times New Roman, Book Antigua, Century Schoolbook, and Palatino Linotype. Text, excluding pagination, must not exceed 6½ inches by 9 inches. All text must be double-spaced except block quotations and footnotes which may be single-spaced.
   (2) **Footnotes.** Footnotes should be avoided, but, if footnotes are absolutely necessary, every footnote must commence on the same page as the text to which it relates.
   (3) **Reproduction.** A brief may be reproduced by any process that yields a clear black image on white paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(b) **Brief Cover; Color and Content.**
   (1) The cover of any brief must be white.
   (2) The cover of a brief must contain the following:
      (A) the appellate court docket number in the following form: [two-digit year in which the case was docketed]-[six-digit assigned case number without a comma]-["A" for Court of Appeals or "S" for Supreme Court] (Example: 16-999999-A);

(B) the words "IN THE COURT OF APPEALS OF THE STATE OF KANSAS" or "IN THE SUPREME COURT OF THE STATE OF KANSAS," whichever is appropriate;
(C) the caption of the case as it appeared in the district court, except that a party must be identified not only as a plaintiff or defendant but also as an appellant or appellee;
(D) the title of the document, e.g., "Brief of Appellant" or "Brief of Appellee," etc.;
(E) the words "Appeal from the District Court of _____ County, Honorable _____, Judge, District Court Case No. _____";
(F) the name, address, telephone number, fax number, e-mail address, and attorney registration number of one attorney for each party on whose behalf the brief is submitted. An attorney may be shown as being of a named firm. Additional attorneys joining in the brief must not be shown on the cover but may be added at the conclusion of the brief; and
(G) when additional time for oral argument is requested in the Supreme Court under Rule 7.01(e) or in the Court of Appeals under Rule 7.02(f), the words "oral argument:" must be printed on the lower right portion of the brief cover, followed by the desired amount of time.

(c) **Page Limitation.** Unless the court orders otherwise, the length of briefs—excluding the cover, table of contents, appendix, and certificate of service—may not exceed the following:
(1) Brief of an Appellant – 50 pages;
(2) Brief of an Appellee – 50 pages;
(3) Brief of an Appellee and Cross-Appellant – 60 pages;
(4) Brief of an Appellee and Cross-Appellee – 60 pages;
(5) Brief of a Cross-Appellee – 25 pages;
(6) Reply Brief – 15 pages; and
(7) Brief of an Amicus Curiae – 15 pages.

(d) **Motion to Exceed Page Limitation.** A motion to exceed a page limitation in subsection (c) must be submitted prior to submission of the brief and must include a specific total page request. The court may rule on the motion without waiting for a response from any other party.

(e) **Abbreviated Briefs.** The appellate court hearing a matter may order briefs to be abbreviated in content or format.

(f) **Acceptance for Filing.** A brief that does not conform substantially with the provisions of this rule will not be accepted for filing.

[**History:** Am. effective September 1, 1989; Am. effective February 8, 1994; Am. (a) effective July 1, 1997; Am. (g) effective May 12, 2004; Am. effective September 6, 2005; Restyled rule effective July 1, 2012; Am. effective December 19, 2016.]

Rule 6.08

REFERENCE WITHIN BRIEF

Unless the context particularly requires a distinction between parties as appellant or appellee, parties normally should be referred to in the body of a brief by their status in the district court, e.g., plaintiff, defendant, etc., or by name. Citation of a court decision must be by the official citation followed by any generally recognized reporter system citation. [**History**: Restyled rule effective July 1, 2012.]

Rule 6.09

ADDITIONAL AUTHORITY

(a) **Notification Letter; Timing.**

(1) **Before Oral Argument or Before the First Day of the Docket on Which a No-Argument Case Is Set.** No later than 14 days before oral argument or 14 days before the first day of the docket on which a no-argument case is set, a party may advise the court, by letter, of citation to persuasive or controlling authority that has come to the party's attention after the party's last brief was filed. If a persuasive or controlling authority is published or filed less than 14 days before oral argument or less than 14 days before the first day of the docket on which a no-argument case is set, a party promptly may advise the court, by letter, of the citation.

(2) **After Oral Argument or After the First Day of the Docket on Which a No-Argument Case Was Set.** After oral argument or after the first day of the docket on which a no-argument case was set, but before decision, a party may advise the court, by letter, of citation to persuasive or controlling authority that was published or filed after the date of oral argument or after the first day of the docket on which a no-argument case was set.

(3) **After Petition for Review Is Filed.** After a petition for review is filed but before the petition has been ruled on, a party may advise the court, by letter, of citation to persuasive or controlling authority that was published or filed after the petition for review was filed. If a petition for review is granted, a party may notify the court of additional authority under subparagraphs (1) and (2).

(b) **Contents of Notification Letter.** The letter must contain a reference either to the page(s) of the brief intended to be supplemented or to a point argued orally to which the citation pertains. A brief statement may be made concerning application of the citation, but the body of a letter submitted under this subsection must not exceed 350 words. The letter may not be split into multiple filings to avoid the word limitation.

(c) **Service and Filing.** A copy of the letter must be served on all adverse parties united in interest. The letter, with proof of service, must be filed with the clerk of the appellate courts.

(d) **Response.** A response, if any, must be:
   (1) filed with the clerk of the appellate courts no later than 7 days after service of the letter;
   (2) limited to the reference, brief statement, and number of words allowed under paragraph (b); and
   (3) served on all adverse parties united in interest.

[**History:** Am. effective September 16, 1992; Am. effective June 3, 1993; Am. effective February 8, 1994; Am. effective October 7, 2004; Am. (a) effective September 6, 2005; Restyled rule effective July 1, 2012; Am. (b) effective May 21, 2013; Am. (b) effective August 28, 2014; Am. effective December 19, 2016.]

Rule 6.10

BRIEF IN CRIMINAL OR POSTCONVICTION CASE

[**History:** Repealed effective September 1, 2017.]

ORAL ARGUMENT, DECISION, AND REHEARING

Rule 7.01

HEARING IN THE SUPREME COURT

(a) **Sessions.** The Supreme Court hears cases on dates fixed by court order.

(b) **Assignment of Cases.** Cases are assigned for hearing as nearly as practicable in the order docketed except cases entitled by law to preferential setting. The court on motion may advance other cases as justice or the public interest may require.

(c) **Summary Calendar—General Calendar.**
   (1) **Screening Procedures.** A case is subjected to screening procedures after an appeal is docketed in the court. When screening procedures have been completed, the chief justice will assign the case to the summary calendar or the general calendar.

(2) **Basis for Determining Summary Calendar Cases.** A case that fails to present a new question of law and in which oral argument is deemed neither helpful to the court nor essential to a fair hearing of the appeal may be placed on the summary calendar. All other cases must be placed on the general calendar. The clerk of the appellate courts must maintain separate calendars for this purpose.

(3) **Notice of Calendaring.** The clerk of the appellate courts must notify the parties when a case has been placed on the summary calendar.

(4) **Argument in Summary Calendar Cases.** When a case is placed on the summary calendar, it is deemed submitted to the court without oral argument unless a party's motion for oral argument is granted. The motion must be served on all parties, filed with the clerk of the appellate courts no later than 14 days after the clerk mails notice of calendaring, and state the reason why oral argument would be helpful to the court. If a motion for oral argument is granted, oral argument will be limited to 15 minutes on each side unless sufficient reason is given to grant 20, 25, or 30 minutes.

(d) **Dockets; Notice of Hearing or Submission.** Not less than 30 days before each sitting of the court, the clerk of the appellate courts must prepare and submit to all parties in cases assigned for hearing during that sitting a docket showing the place and time at which the cases from the general and summary calendar will be argued and heard. The docket will contain a list of cases from the summary calendar submitted for decision without oral argument. The daily docket will be called in open court at the commencement of each day's session. Failure of a party to be represented at the call of the day's docket constitutes a waiver of oral argument by the party.

(e) **Argument.**

(1) **Generally.** If oral argument is scheduled, the court will designate on the oral argument calendar the amount of time granted. Unless more time is ordered, oral argument is limited to 15 minutes each for the appellant and the appellee. The appellant and the appellee will be granted the same amount of time. A party that does not have a brief on file will not be permitted oral argument.

(2) **Requesting More Time.** The appellant or the appellee may request 20, 25, or 30 minutes for argument by printing "oral argument:" on the lower right portion of the front cover of the party's initial brief, followed by the desired amount of time.

(3) **Reserving Rebuttal Time.** The appellant may reserve for rebuttal a portion of the time granted by making an oral request at the time of hearing.

(4) **Court May Extend Time.** The court on its own during the hearing may extend the time for oral argument.

(5) **Multiple Parties.** If on either side of a case there are multiple parties that are not united in interest in the issues of the appeal and are separately represented, the court on motion will allot time for the separate arguments. If multiple parties are united in interest in the issues on appeal, they must divide the allotted time among themselves by mutual agreement.

[**History:** Am. (c)(1) effective July 1, 1982; Am. (a) effective February 8, 1994; Am. effective August 1 and August 29, 1997; Am. (e) effective May 9, 2005 and July 1, 2005; Restyled rule and amended effective July 1, 2012; Am. (d) effective December 19, 2016.]

Rule 7.02

HEARING IN THE COURT OF APPEALS

(a) **Hearing Panels.**

(1) **Generally.** The chief judge of the Court of Appeals must designate panels of judges of the court to conduct hearings. An appeal or other proceeding will be before a panel of the Court of Appeals unless a majority of the judges order the appeal or other proceeding be heard or reheard en banc.

(2) **Assigned Judge's Participation At and After Oral Argument.** Except in exigent circumstances, oral argument will be heard by the full panel to which the case has been assigned. The chief judge may change the composition of a panel at any time before oral argument. When a member of a panel is not present at the oral argument, the case is deemed submitted to that member on the record and briefs. If a member of a panel is unable to participate after the case is submitted for decision, the chief judge must appoint a substitute judge and the case is deemed submitted to the new member on the record and briefs.

(b) **Suggestion for Hearing or Rehearing En Banc.** A party may suggest the appropriateness of a hearing or rehearing en banc. A suggestion for hearing en banc must be filed no later than the time prescribed for filing appellee's brief. A suggestion for rehearing en banc must be filed no later than the time prescribed for filing a motion for rehearing.

(c) **Summary Calendar—General Calendar.**

(1) **Screening Procedures.** A case is subjected to screening procedures after an appeal is docketed in the court. When screening procedures have been completed, the chief judge will assign the case to the summary calendar or the general calendar.

(2) **Basis for Determining Summary Calendar Cases.** A case that fails to present a new question of law and in which oral argument is deemed neither helpful to the court nor essential to a fair hearing of the appeal may be placed on the summary calendar. All other cases must be placed on the general calendar. The clerk of the appellate courts must maintain separate calendars for this purpose.

(3) **Notice of Calendaring.** The clerk of the appellate courts must notify the parties when a case has been placed on the summary calendar.

(4) **Argument in Summary Calendar Cases.** When a case is placed on the summary calendar, it is deemed submitted to the court without oral argument unless a party's motion for oral argument is granted. The motion must be served on all parties, be filed with the clerk of the appellate courts no later than 14 days after the clerk mails notice of calendaring, and state the reason why oral argument would be helpful to the court. If a motion for oral argument is granted, oral argument will be limited to 15 minutes on each side unless sufficient reason is given to grant 20, 25, or 30 minutes.

(d) **Sessions; Location of Hearings.**

(1) A hearing before the court sitting en banc will be in Topeka, Kansas, unless otherwise ordered by the chief judge.

(2) A hearing before a panel of the court may be held in any county in the state as provided in K.S.A. 20-3013.

(3) To assist the court in determining the place of hearing, a party may suggest in writing a desired place of hearing. The suggestion must be filed no later than the time for filing appellee's brief.

(e) **Dockets; Notice of Hearing or Submission.** Not less than 30 days before each sitting of the court, the clerk of the appellate courts must prepare and submit to all attorneys of record in cases assigned for hearing during that sitting a docket showing the place and time at which cases from the general and summary calendar will be argued and heard. The docket will contain a list of cases from the summary calendar submitted for decision without oral argument.

(f) **Argument.**

(1) **Generally.** If oral argument is scheduled, the court will designate on the oral argument calendar the amount of time granted. Unless more time is ordered, oral argument is limited to 15 minutes each for the appellant and the appellee. The appellant and the appellee will be granted the same amount of time. A party that does not have a brief on file will not be permitted oral argument.

(2) **Requesting More Time.** The appellant or the appellee may request 20, 25, or 30 minutes for argument by printing "oral argument:" on the lower right portion of the front cover of the party's initial brief, followed by the desired amount of time.

(3) **Reserving Rebuttal Time.** The appellant may reserve for rebuttal a portion of the time granted by making an oral request at the time of hearing.

(4) **Court May Extend Time.** The court on its own during the hearing may extend the time for oral argument for either party.

(5) **Multiple Parties.** If on either side of a case there are multiple parties that are not united in interest in the issues of the appeal and are separately represented, the court on motion will allot time for the separate arguments. If multiple parties are united in interest in the issues on appeal, they must divide the allotted time among themselves by mutual agreement.

[**History:** New subsection (f) effective April 1, 1979; Am. (f)(1) effective July 1, 1982; Am. (f)(4) effective September 11, 1985; Am. (a), (e) effective June 14, 1988; Am. (e), (f) effective July 1, 1997; Am. (e) effective August 29, 1997; Am. (e) effective July 1, 2005; Restyled rule effective July 1, 2012; Am. (e) effective December 19, 2016.]

Rule 7.03

DECISION OF APPELLATE COURT

(a) **Decision.** A decision of an appellate court will be announced by the filing of the opinion with the clerk of the appellate courts. The opinion will be electronically filed. On the date of filing, the clerk of the appellate courts will send one copy of the decision to the party if the party has appeared in the appellate court but has no counsel of record and will provide notice of the decision to the judge of the district court from which the appeal was taken. A certified copy of the opinion will be mailed to the clerk of the district court when the mandate issues.

(b) **Mandate.** A mandate must be mailed to the clerk of the district court, accompanied by a certified copy of the opinion.

(1) **Issuance and Effective Date.**
   (A) **When Issued.** An appellate court's mandate will issue 7 days after:
      (i) the time to file a petition for review or motion for rehearing or modification expires;
      (ii) entry of an order denying a timely petition for review or motion for rehearing or modification; or
      (iii) any other event that finally disposes of the case on appeal.
   (B) **Court May Modify Time.** The court may shorten or extend the time for issuing the mandate.
   (C) **Effective Date.** A mandate is effective when issued.

(2) **Staying the Mandate.** The timely filing of a petition for review or a motion for rehearing or modification stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

[**History:** Am. effective February 8, 1994; Restyled rule and amended effective July 1, 2012; Am. (a) effective December 19, 2016; Am. (a) effective March 30, 2020.]

Rule 7.04

OPINION OF APPELLATE COURT

(a) **Memorandum or Formal Opinion—Governed by K.S.A. 60-2106.** An opinion of an appellate court, whether signed or per curiam, will be a memorandum opinion or formal opinion as provided in K.S.A. 60-2106. Disposition by memorandum, without a published formal opinion, does not mean the case is considered unimportant. It means the case does not involve a new point of law or is otherwise considered as having no value as precedent.

(b) **Determining Whether Opinion Will Be Memorandum or Formal.** An opinion will be prepared in memorandum form unless it meets the requirements in paragraphs (1) and (2).
   (1) **Substantive Requirement.** To be published as a formal opinion, the opinion must:
      (A) establish a new rule of law or alter or modify an existing rule;
      (B) involve a legal issue of continuing public interest;
      (C) criticize or explain existing law;
      (D) apply an established rule of law to a factual situation significantly different from that in published opinions of the courts of this state;
      (E) resolve an apparent conflict of authority; or

(F) constitute a significant and nonduplicative contribution to legal literature:
(i) by a historical review of law; or
(ii) by describing legislative history.

(2) **Procedural Requirement.** A formal opinion will be written and published in the official reports only if the majority of the justices or judges participating in the decision finds that one of the standards set out in paragraph (1) is satisfied. The court or panel that decides the case must make a tentative decision whether or not a formal opinion is required before or at the time the case is conferenced.

(c) **Concurring or Dissenting Opinion.** A concurring or dissenting opinion will be published only if the majority opinion is published.

(d) **Memorandum Opinion Publication.** A memorandum opinion will be published only if:
(1) there is a separate concurring or dissenting opinion in the case, and the author of the separate opinion requests that it be published; or
(2) the Supreme Court orders publication.

(e) **Motion Requesting Publication.** A party or other interested person that believes an opinion of either the Supreme Court or Court of Appeals that is not designated by the court for publication meets the requirement for publication in subsection (b)(1) or otherwise has substantial precedential value may file a motion in the Supreme Court asking that it be published. The motion must:
(1) state the grounds for the belief that the opinion should be published;
(2) be accompanied by a copy of the opinion; and
(3) comply with Rule 5.01, including service on all parties to the appeal.

(f) **Opinion Modified on Rehearing.** An opinion that is superseded by an opinion on rehearing will not be published. An opinion that is modified on rehearing will be published as modified if it otherwise meets the standards of this rule.

(g) **Unpublished Memorandum Opinion.**
(1) A memorandum opinion, unless required by subsection (d) to be published, must be marked: "Not Designated for Publication."
(2) An unpublished memorandum opinion:
(A) is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel;

(B) is not favored for citation and may be cited only if the opinion:
  (i) has persuasive value with respect to a material issue not addressed in a published opinion of a Kansas appellate court; and
  (ii) would assist the court in disposition of the issue; and
(C) must be attached to any document, pleading, or brief that cites the opinion.

[**History:** Am. effective May 30, 1980; Am. effective February 7, 2003; Am. (c) effective June 24, 2004; Restyled rule and amended effective July 1, 2012.]

Rule 7.041

SUMMARY DISPOSITION

(a) **On the Court's Initiative.** In a case in which it appears that a controlling appellate decision is dispositive of the appeal, the court may summarily affirm or reverse, citing in its order of summary disposition this rule and the controlling decision. The order may be entered on the court's initiative after 14 days' notice to the parties, citing the decision deemed controlling and providing an opportunity to show cause why the order should not be filed.
(b) **On a Party's Motion.** During the pendency of an appeal, a party may move for summary disposition, citing a controlling appellate decision that is dispositive of the appeal. The motion must be served on all parties, who may respond no later than 14 days after the motion is served. On expiration of the time to respond, the court may enter an order summarily affirming or reversing, or denying the motion.

[**History:** New rule effective July 16, 1980; Am. effective July 1, 2010; Restyled rule effective July 1, 2012.]

Rule 7.041A

SUMMARY DISPOSITION OF SENTENCING APPEAL

(a) **Motion for Summary Disposition.** A party may move for summary disposition of a sentencing appeal when no substantial question is presented by the appeal. A fact stated in the motion must be keyed to the record on appeal to make verification reasonably convenient. The motion must be served on opposing counsel, who may respond no later than 14 days after the motion is served.
(b) **Review Solely on Record Unless Briefing Is Ordered.** If the appellate court grants a motion for summary disposition, review will

be made solely on the record that was before the sentencing court. Written briefs will not be permitted unless ordered by the appellate court.

(c) **No Oral Argument.** A sentencing appeal scheduled for summary disposition under this rule will be expedited without oral argument.

(d) **Disposition.** The court may summarily affirm, reverse, or dismiss, citing this rule, or may affirm, reverse, or dismiss by issuing a written opinion.

[**History:** New rule effective October 1, 1997; Am. (c) effective September 6, 2005; Am. (a) effective July 1, 2010; Restyled rule effective July 1, 2012; Am. effective August 28, 2014.]

Rule 7.042

AFFIRMANCE BY SUMMARY OPINION

(a) **Generally.** The court may affirm by summary opinion a case in which the requirements of subsection (b) are satisfied.

(b) **Requirements for Affirmance by Summary Opinion.** A case may be affirmed by summary opinion if the court determines after argument or submission on the briefs that no reversible error of law appears and:

(1) the appeal is frivolous;

(2) the appeal is without merit;

(3) the findings of fact of the district court, the findings of fact of the administrative tribunal, or the verdict of the jury is supported by substantial competent evidence;

(4) the findings of fact of the district court, the findings of fact of the administrative tribunal, or the verdict of the jury is supported by clear and convincing evidence;

(5) the opinion or findings of fact and conclusions of law of the district court or administrative tribunal adequately explain the decision; or

(6) the district court or administrative tribunal did not abuse its discretion.

(c) **Form of Opinion.** An opinion issued under this rule must cite the rule and indicate one or more factors under subsection (b) the court has determined are applicable. The opinion must be in the following form: "Affirmed under Rule 7.042(b) [(1) (2) (3) (4) (5) and/or (6)]."

[**History:** New rule effective January 16, 1981; Am. effective October 7, 2004; Am. effective September 2, 2008; Restyled rule effective July 1, 2012.]

Rule 7.043

REFERENCE TO CERTAIN PERSONS

(a) **Purpose.** This rule establishes guidelines for identifying certain persons in an appellate case to avoid unnecessary trauma and to maintain statutory requirements of confidentiality.

(b) **Applicability.** This rule applies when referencing any of the following persons in an appellate case:
   (1) a minor;
   (2) a person whose identity could reveal the name of a minor;
   (3) a victim of a sex crime;
   (4) a party in a protection from abuse case;
   (5) a party in a protection from stalking, sexual assault, or human trafficking case; and
   (6) a juror or venire member.

(c) **Reference.** Except for certified district court documents required when docketing an appeal under Rule 2.04, any document filed in an appellate case and any appellate court decision must reference a person described in subsection (b) by the following:
   (1) initials;
   (2) pseudonym;
   (3) familial relationship or generic descriptor; or
   (4) juror number.

(d) **Attachment or Appendix.** A person filing an attachment or appendix to a document must either redact the name of any person described in subsection (b) or must follow subsection (c) in referencing the person.

(e) **Exception.** This rule does not prohibit the use of a defendant's full name in a criminal case unless the defendant is a minor.

[**History:** New rule effective August 8, 1985; Am. effective September 6, 2005; Am. effective July 7, 2008; Restyled rule effective July 1, 2012; Am. effective January 1, 2021.]

Rule 7.05

REHEARING OR MODIFICATION IN COURT OF APPEALS

(a) **Motion for Rehearing or Modification.** A motion for rehearing or modification in a case decided by the Court of Appeals may be served and filed no later than 14 days after the decision is filed. A copy of the court's opinion must be attached to the motion.

(b) **Effect of Motion.** A motion for rehearing or modification stays the issuance of the mandate pending determination of the issues raised

by the motion. A motion for rehearing or modification is not a prerequisite for review and does not extend the time for filing a petition for review by the Supreme Court.

(c) **If Motion for Rehearing Is Granted.** If a motion for rehearing is granted, the order suspends the effect of the original decision until the matter is decided on rehearing.

[**History:** Am. effective September 30, 1991; Am. effective February 8, 1994; Am. (a) effective July 1, 2010; Restyled rule effective July 1, 2012.]

Rule 7.06

REHEARING OR MODIFICATION IN SUPREME COURT

(a) **Motion for Rehearing or Modification.** A motion for rehearing or modification in a case decided by the Supreme Court may be served and filed no later than 21 days after the decision is filed. A copy of the court's opinion must be attached to the motion.

(b) **Effect of Motion.** A motion for rehearing or modification stays the issuance of the mandate pending determination of the issues raised by the motion.

(c) **If Motion for Rehearing Is Granted.** If a motion for rehearing is granted, the order suspends the effect of the original decision until the matter is decided on rehearing.

[**History:** Am. effective September 30, 1991; Am. effective February 8, 1994; Restyled rule and amended effective July 1, 2012.]

Rule 7.07

APPELLATE COSTS AND FEES AND ATTORNEY FEES

(a) **Generally.**

(1) **Fees and Expenses Separately Assessed When Applicable.** In an appellate case there will be separately assessed, when applicable, all fees for service of process, witness fees, reporter's fees, fees and expenses of a master or commissioner appointed by the appellate court, and any other proper fees and expenses.

(2) **Court Approval or Statutory Authority Required.** An appellate court must approve fees and expenses assessed under this rule unless specifically fixed by statute.

(3) **Appellate Court May Require Advance Deposit.** An appellate court may require a party to make a deposit in advance to secure the payment of anticipated fees and expenses under this rule.

(4) **Fees and Expenses May Be Apportioned.** An appellate court may apportion and assess a part of the original docket fee, the

expenses for transcripts, and any additional fees and expenses allowed in the case, against one or more of the parties as justice may require.

(5) **Recovery of Docket and Transcript Fees on Reversal of District Court.** When a decision of the district court is reversed, the mandate will direct that appellant recover the original docket fee and expenses for transcripts, if any.

(b) **Attorney Fees.**

(1) **Generally.** An appellate court may award attorney fees for services on appeal in a case in which the district court had authority to award attorney fees.

(2) **Motion for Attorney Fees.** A motion for attorney fees on appeal must be made under Rule 5.01 and be filed no later than 14 days after oral argument. If oral argument is waived, the motion must be filed no later than 14 days after the day argument is waived or the date of the letter assigning the case to a non-argument calendar, whichever is later. An affidavit must be attached to the motion specifying:

(A) the nature and extent of the services rendered;

(B) the time expended on the appeal; and

(C) the factors considered in determining the reasonableness of the fee. (See KRPC 1.5 Fees.)

(c) **Frivolous Appeal.** If an appellate court finds that an appeal has been taken frivolously, or only for the purpose of harassment or delay, it may assess against the appellant or appellant's counsel, or both, the cost of reproduction of the appellee's brief and a reasonable attorney fee for the appellee's counsel. A motion for attorney fees under this subsection must comply with subsection (b)(2). If the motion is granted, the mandate must include a statement of the assessment, and execution may issue on the assessment as for any other judgment, or in an original case the clerk of the appellate courts may issue an execution.

(d) **Unnecessary Transcript.** An appellate court—on its own or on the motion of an aggrieved party filed no later than 14 days after an assessment of costs under this rule—may assess against a party or the party's counsel, or both, all or part of the cost of the trial transcript that the court finds was prepared as the result of an unreasonable refusal to stipulate under Rule 3.03 to the preparation of less than a complete transcript of the proceedings in the district court.

[**History:** Am. effective March 22, 1989; Am. effective February 8, 1994; Am. (b) effective May 9, 2005; Am. (d) effective July 1, 2010; Restyled rule and amended effective July 1, 2012.]

TRANSFER TO AND REVIEW BY SUPREME COURT

Rule 8.01

TRANSFER TO SUPREME COURT ON CERTIFICATE

(a) **Court of Appeals May Request Transfer.** The Court of Appeals may request that an undetermined case pending before it be transferred to the Supreme Court for final determination.

(b) **Form and Content of Request.** A request for transfer under this rule must be by certificate of the chief judge of the Court of Appeals and filed with the clerk of the appellate courts. The certificate must:
   (1) state the nature of the case;
   (2) demonstrate that the case is within the jurisdiction of the Supreme Court; and
   (3) show the existence of one or more of the grounds for transfer specified in K.S.A. 20-3016(a) by specifying:
      (A) the issue or issues not within the jurisdiction of the Court of Appeals, with citation to controlling constitutional, statutory, or case authority;
      (B) the subject matter of the case that has significant public interest;
      (C) the particular legal question raised that has major public significance; or
      (D) sufficient data concerning the state of the docket of the Court of Appeals and of the Supreme Court to demonstrate that the expeditious administration of justice requires the transfer.

[**History:** Restyled rule effective July 1, 2012; Am. (b) effective December 19, 2016.]

Rule 8.02

TRANSFER TO SUPREME COURT ON MOTION

(a) **Party May Request Transfer.** A party may request under K.S.A. 20-3017 that an undetermined case pending in the Court of Appeals be transferred to the Supreme Court for final determination.

(b) **Timing and Content of Motion.** A motion for transfer must be filed with the clerk of the appellate courts no later than 30 days after service of the notice of appeal. The motion must:
   (1) state the nature of the case;
   (2) demonstrate that the case is within the jurisdiction of the Supreme Court; and

(3) show the existence of one or more of the grounds for transfer specified in K.S.A. 20-3016(a) by specifying:
   (A) the issue or issues not within the jurisdiction of the Court of Appeals, with citation to controlling constitutional, statutory, or case authority;
   (B) the subject matter of the case that has significant public interest;
   (C) the particular legal question raised that has major public significance; or
   (D) sufficient data concerning the state of the docket of the Court of Appeals and of the Supreme Court to demonstrate that the expeditious administration of justice requires the transfer.

[**History:** Am. effective July 1, 2011; Restyled rule effective July 1, 2012; Am. (b) effective December 19, 2016.]

Rule 8.03

SUPREME COURT REVIEW OF COURT OF APPEALS DECISION

(a) **Generally.** A party aggrieved by a decision of the Court of Appeals may petition the Supreme Court for discretionary review under K.S.A. 20-3018. In this rule, "decision" means any formal or memorandum opinion, order, or involuntary dismissal under Rule 5.05.
   (1) **Purpose of Petition for Review.** The purpose of a petition for review, cross-petition, conditional cross-petition, response, and reply is to state the reason why the Supreme Court should grant or deny review of the Court of Appeals decision.
   (2) **Documents Considered.** Generally, the only documents considered by the Supreme Court will be the petition for review and any cross-petition, conditional cross-petition, response, and reply.

(b) **Petition for Review.**
   (1) **Filing and Service.** No later than 30 days after the date of the decision of the Court of Appeals, the petitioner must file the petition for review with the clerk of the appellate courts and serve a copy on each party that has appeared in the Court of Appeals. The 30-day period for filing a petition for review is jurisdictional and cannot be extended.
   (2) **Effect of Motion for Rehearing or Modification.** The filing of a petition for review does not preclude the filing of a timely motion for rehearing or modification under Rule 7.05.

(A) If a timely motion for rehearing or modification is filed, the Court of Appeals retains jurisdiction over the case and will proceed under Rule 7.05. The Supreme Court will take no action on a petition for review until the Court of Appeals has made a final determination of all motions for rehearing and modification under Rule 7.05.

(B) If the petitioner seeks review of a modified Court of Appeals decision, the petitioner must file an amended petition for review no later than 30 days after the date of the modified decision.

(i) A party opposing the amended petition for review may file a cross-petition, conditional cross-petition, or response under subsections (c) and (d).

(ii) The petitioner may file a reply under subsection (e).

(3) **Format of Petition for Review.** The format of a petition for review must comply with the applicable provisions of Rule 6.07. The petition for review may not exceed 15 pages in length, exclusive of the cover, table of contents, appendix, and certificate of service.

(4) **Expedited Petition for Review.** The Supreme Court will expedite petitions for review filed in cases the Court of Appeals expedited by a court order or statute. Petitions for review filed in these expedited cases must be titled "Expedited Petition for Review." The court may expedite other petitions for review on motion by a party or on its own.

(5) **Summary Petition for Review.** When a petitioner concedes that controlling caselaw is dispositive of all issues raised in the appeal or that no substantial question is presented by the appeal, a petitioner may file a summary petition for review under Rule 8.03A. If controlling caselaw is dispositive of only one issue in a multiple-issue petition for review, cross-petition, or conditional cross-petition, a petitioner may not file a summary petition for review under Rule 8.03A. But the petitioner may cite Rule 8.03A in its petition for review and request summary disposition of that issue. The argument on that issue must comply with Rule 8.03A(b)(4)(E).

(6) **Content of Petition for Review.** A petition for review, cross-petition, or conditional cross-petition must contain concise statements of the following, in the order indicated.

(A) A prayer for review, clearly stating the nature of the relief sought and why review is warranted.

(B) The date of the Court of Appeals decision.

(C) A statement of the issues the petitioner wishes to be decided by the Supreme Court. The statement of the issues should not merely be identical to the statement of the issues contained in the brief to the Court of Appeals; rather, it must be tailored to address why review is warranted.
  (i) The Supreme Court will not consider issues not raised before the Court of Appeals or issues not presented or fairly included in the petition for review, cross-petition, or conditional cross-petition. The court, however, may address a plain error not presented.
  (ii) If the petitioner wishes to have the Supreme Court determine issues that were presented to the district court and the Court of Appeals but not decided by the Court of Appeals, the petitioner must also present those issues.
  (iii) In a criminal case, the Supreme Court will not review a conviction reversed by the Court of Appeals unless the prosecution preserves the issue by filing a petition for review or cross-petition.

(D) A short statement of relevant facts. Facts correctly stated in the Court of Appeals decision need not be restated.

(E) A short argument, including appropriate authority, stating for each issue why review is warranted. Reasons for review may include, but are not limited to, the following:
  (i) The presence of an issue of public importance, consequence, or attention.
  (ii) The presence of an issue of first impression.
  (iii) The need for an update, clarification, or synthesis of caselaw.
  (iv) The existence of a conflict between the Court of Appeals decision and Supreme Court precedent or other Court of Appeals decisions.
  (v) A persuasive dissenting opinion.
  (vi) The decision reaches an incorrect result.
  (vii) The presence of an issue likely to recur that is in need of immediate resolution by the court.

  Failure to include an argument showing how the Court of Appeals erred or why review is warranted may result in the denial of a petition for review.

(F) An appendix containing a copy of the Court of Appeals decision. The appendix also should include copies of opin-

ions, findings of fact, conclusions of law, orders, judgments, or decrees issued by the district court or administrative agency, if relevant to the issues presented for review.

(c) **Cross-Petition and Conditional Cross-Petition.** A respondent may file a cross-petition or conditional cross-petition.

(1) **Filing and Service.** No later than 30 days after the date a petition for review is filed, the respondent must file the cross-petition or conditional cross-petition with the clerk of the appellate courts and serve a copy on all parties that have appeared in the Court of Appeals.

(2) **Format and Content of Cross-Petition and Conditional Cross-Petition.** A cross-petition and conditional cross-petition must be in the same format; adhere to the same length restriction; and have the same contents, in the same order, as a petition for review.

(3) **Purpose of Cross-Petition.** The purpose of a cross-petition is to seek review of specific holdings the Court of Appeals decided adversely to the cross-petitioner.

(A) If the Court of Appeals assumes an outcome on an issue without deciding it, the cross-petitioner must raise that issue to preserve it for review.

(B) If the Court of Appeals does not decide an issue properly presented to it, the cross-petitioner must raise that issue to preserve it for review.

(C) The cross-petition also may present for review adverse rulings or decisions of the district court that should be considered by the Supreme Court in the event it orders a new trial, provided the cross-petitioner raised the issues in the Court of Appeals.

(4) **Purpose of Conditional Cross-Petition.** The purpose of a conditional cross-petition is to preserve specific claims or issues for review only if the court grants the petition for review.

(A) If the Court of Appeals assumes an outcome on an issue without deciding it, the conditional cross-petitioner must raise that issue to preserve it for review.

(B) If the Court of Appeals does not decide an issue properly presented to it, the conditional cross-petitioner must raise that issue to preserve it for review.

(C) The conditional cross-petition also may present for review adverse rulings or decisions of the district court that should be considered by the Supreme Court in the event it orders a new trial, provided the conditional cross-petitioner raised the issues in the Court of Appeals.

(d) **Response.** A party opposing a petition for review, cross-petition, or conditional cross-petition may file a response.
   (1) **Filing and Service.** No later than 30 days after the petition for review, cross-petition, or conditional cross-petition is filed, the party must file the response to the petition for review, cross-petition, or conditional cross-petition with the clerk of the appellate courts and serve a copy on all parties that have appeared in the Court of Appeals.
   (2) **Format of Response.** The format of a response must comply with the applicable provisions of Rule 6.07. The response may not exceed 15 pages in length, exclusive of any cover, table of contents, appendix, and the certificate of service.
   (3) **Content of Response.** A response must be confined to argument that replies to issues presented in the petition for review, cross-petition, or conditional cross-petition. The response may also provide alternative grounds for affirming the Court of Appeals decision, if those grounds were raised and briefed in the Court of Appeals.
   (4) **Effect of Failure to File Response.** Failure to file a response is not an admission that the petition for review, cross-petition, or conditional cross-petition should be granted.

(e) **Reply.** A reply is permitted to an argument raised in a response that is not covered sufficiently in the petition for review, cross-petition, or conditional cross-petition. A reply must be filed no later than 14 days after the response is filed and may not exceed 10 pages in length, exclusive of any cover, table of contents, appendix, and the certificate of service.

(f) **Additional Authority.** Under Rule 6.09, a party may advise the court of additional authority.

(g) **Discretion in Granting Review.**
   (1) **Review as a Matter of Right.** Under K.S.A. 60-2101(b) and 22-3602(e), a party may petition as a matter of right from a final decision of the Court of Appeals in a case in which a question under the Constitution of either the United States or the State of Kansas arises for the first time as a result of the Court of Appeals decision.
   (2) **Discretionary Review.** In a case other than one described in paragraph (1), review by petition is a matter of judicial discretion, not a matter of right. The vote of three justices is required to grant the petition for review.

(h) **Order Denying Review; Effect.** If the Supreme Court denies review, the clerk of the appellate courts must notify the parties of the denial. The Court of Appeals decision is final as of the date of the

decision denying review, and the clerk must issue the mandate under Rule 7.03(b). A denial of a petition for review imports no opinion on the merits of the case. The denial of a petition for review is not subject to a motion for reconsideration by the Supreme Court.

(i) **Order Granting Review; Subsequent Procedure.**

(1) **Issues Subject to Review.** An order granting review may limit the issues on review. If review is not limited, the issues before the Supreme Court include all issues properly before the Court of Appeals that the petition for review, cross-petition, or conditional cross-petition allege were decided erroneously by the Court of Appeals or warrant review for other reasons.

(2) **Record; Briefs.** Unless the Supreme Court otherwise orders, the case will be considered on the basis of the record before the Court of Appeals, the petition for review, and any cross-petition, conditional cross-petition, response, or reply. The court will also consider the briefs previously filed with the Court of Appeals. No later than 14 days after the date of the order granting review, the parties must file with the clerk of the appellate courts a copy of the paper briefs, if any, originally filed with the Court of Appeals.

(3) **Supplemental Briefs.** No later than 30 days after the date of the order granting review, a party may file a supplemental brief.

(A) An opposing party may file a brief in response to a supplemental brief no later than 30 days after the date the supplemental brief is filed.

(B) A party may file a reply brief no later than 14 days after the date a response to a supplemental brief is filed.

(C) Except by order of the Supreme Court, a supplemental brief, response, or reply under this subsection may not exceed one-half the number of pages permitted for original briefs under Rule 6.07.

(4) **Oral Argument.** Unless otherwise ordered by the Supreme Court, the party whose petition for review was granted will argue first and may reserve time for rebuttal.

(j) **Other Dispositions.**

(1) **Review Improvidently Granted.** If the Supreme Court determines that review was improvidently granted, it may issue an order stating that the petition for review was improvidently granted and that the Court of Appeals decision is final.

(2) **Voluntary Dismissal before Ruling on Petition for Review.** Before the Supreme Court grants or denies a petition for review, a party that has filed a petition for review may dismiss the petition for review by stipulation or by filing with the clerk of the

appellate courts and serving on all parties a notice of dismissal. A dismissal of one party's petition for review does not affect any other party's petition for review or cross-petition. A conditional cross-petition will automatically be dismissed if a petition for review is dismissed.

(3) **Voluntary Dismissal after Petition for Review Granted**. Before the Supreme Court files an opinion, a party that has filed a petition for review may dismiss the petition for review by stipulation or by filing with the clerk of the appellate courts and serving on all parties a notice of dismissal. A dismissal of one party's petition for review does not affect any other party's petition for review or cross-petition. A conditional cross-petition will automatically be dismissed if a petition for review is dismissed.

(4) **Remand for Reconsideration.** When review is granted, the Supreme Court may remand the appeal to the Court of Appeals, district court, or agency for reconsideration of issues in light of authority identified in the Supreme Court's order or may dispose of the issues as it deems appropriate.

(5) **Issues Not Decided by Court of Appeals.** If issues decided by the district court were presented to, but not decided by, the Court of Appeals and review of those issues was preserved, the Supreme Court may consider and decide the issues, remand the appeal to the Court of Appeals for decision of the issues, or dispose of the issues as it deems appropriate.

(6) **Moot Questions.** If a case becomes moot after a petition for review has been granted, the Supreme Court may dismiss the appeal.

(k) **Effect of Court of Appeals Decision Pending Review.** The timely filing of a petition for review stays the issuance of the mandate of the Court of Appeals.

(1) Pending the Supreme Court's determination on the petition for review and during the time in which a petition for review may be filed, the Court of Appeals decision is not binding on the parties or on the district courts. An interested person that wishes to cite a Court of Appeals decision for persuasive authority before the mandate has issued must note in the citation that the case is not final and may be subject to review or rehearing.

(2) If a petition for review is granted, the Court of Appeals decision has no force or effect, and the mandate will not issue until disposition of the appeal on review.

(3) If a petition for review is granted in part, a combined mandate will issue when appellate review is concluded, unless otherwise specifically directed by the Supreme Court.

(4) If a petition for review is denied, the Court of Appeals decision is final as of the date of the denial, and the clerk of the appellate courts must issue the mandate of the Court of Appeals.

[**History:** Am. effective April 15, 1992; Am. effective February 8, 1994; Am. (b), (c), (g) effective July 1, 1997; Am. (i) effective October 7, 2004; Am. (i) effective September 6, 2005; Am. (a) effective March 18, 2009; Am. (b), (c), and (g) effective July 1, 2010; Am. (g)(4) effective July 21, 2011; Restyled rule and amended effective July 1, 2012; Am. effective April 24, 2013; Am. effective August 28, 2014; Am. (f) effective September 1, 2015; Am. effective December 19, 2016; Am. effective July 1, 2018.]

Rule 8.03A

SUMMARY PETITION FOR REVIEW

(a) **Generally.** In lieu of a petition for review under Rule 8.03, a party aggrieved by a decision of the Court of Appeals may petition the Supreme Court to summarily consider one or more issues raised before the Court of Appeals when controlling authority is dispositive of the entire appeal or no substantial question is presented by the appeal. In this rule, "decision" means any formal or memorandum opinion, order, or involuntary dismissal under Rule 5.05.

(b) **Summary Petition for Review.**

(1) **Filing and Service.** No later than 30 days after the date of the decision of the Court of Appeals, the petitioner must file the summary petition for review with the clerk of the appellate courts and serve a copy on each party that has appeared in the Court of Appeals. The 30-day period for filing a summary petition for review is jurisdictional and cannot be extended.

(2) **Effect of Motion for Rehearing or Modification.** The filing of a summary petition for review does not preclude the filing of a timely motion for rehearing or modification under Rule 7.05.

(A) If a timely motion for rehearing or modification is filed, the Court of Appeals retains jurisdiction over the case and will proceed under Rule 7.05. The Supreme Court will take no action on a summary petition for review until the Court of Appeals has made a final determination of all motions for rehearing and modification under Rule 7.05.

(B) If the petitioner seeks review of a modified Court of Appeals decision, the petitioner must file an amended summary petition for review no later than 30 days after the date of the modified decision.

(3) **Format of Summary Petition for Review.** The format of a summary petition for review must comply with the applicable provisions of Rule 6.07. The summary petition for review must be titled "Rule 8.03A Summary Petition for Review." The summary petition for review may not exceed two pages in length, exclusive of the appendix and certificate of service.

(4) **Content of Summary Petition for Review.** The summary petition for review must contain concise statements of the following, in the order indicated.

(A) A prayer for review, clearly stating why the summary petition for review is being filed under Rule 8.03A.

(B) The date of the decision of the Court of Appeals.

(C) A statement of the issues the petitioner wishes to be decided by the Supreme Court.

(i) The Supreme Court will not consider issues not raised before the Court of Appeals or issues not presented or fairly included in the summary petition for review.

(ii) The court may address a plain error not presented.

(D) A short statement of any relevant facts not correctly stated in the Court of Appeals decision.

(E) A short argument, including citation to the controlling authority that is dispositive of the issue or issues raised in the summary petition for review or an explanation of why no substantial question is presented by the appeal.

(F) An appendix containing a copy of the Court of Appeals decision.

(c) **Response.** A party opposing a summary petition for review may file a response. The response may not exceed two pages in length, exclusive of the appendix and certificate of service. All other provisions of Rule 8.03(d) apply to a response filed under Rule 8.03A.

(d) **Applicable Provisions.** The provisions of Rule 8.03(c) and (f)-(k) also apply to this rule.

(e) **Exhaustion.** The filing of a summary petition for review under this rule exhausts any issues raised in the summary petition for review for the purposes of federal review.

[**History:** New rule effective July 1, 2018.]

Rule 8.03B

EXHAUSTION OF STATE REMEDIES IN CRIMINAL CASES

(a) **Exhaustion.** In all appeals from criminal convictions or post-conviction relief on or after July 1, 2018, a party is not required to petition for Supreme Court review under Rule 8.03 from an adverse decision of the Court of Appeals to exhaust all available state remedies respecting a claim of error. Rather, when a claim has been presented to the Court of Appeals and relief has been denied, the party is deemed to have exhausted all available state remedies.

(b) **Savings Clause.** If a party's petition for federal habeas corpus is dismissed or denied for failure to exhaust state remedies based on a decision that this rule is ineffective, the party will have 30 days from the date of such dismissal or denial to file in the state case:
   (1) a motion to recall the mandate that attaches a copy of the federal decision; and
   (2) a petition for review in compliance with Rule 8.03 presenting any claim of error not previously presented in reliance on this rule.

[**History:** New rule effective July 1, 2018.]

ORIGINAL ACTIONS

Rule 9.01

ORIGINAL ACTION

(a) **Petition.**
   (1) **Service and Filing.** The petitioner in an original action must file the petition with the clerk of the appellate courts, with proof of service on all respondents or their counsel of record. When the relief sought is an order in mandamus against a judge involving pending litigation before that judge, the judge and all parties to the pending litigation are deemed respondents. The petition must contain a statement of the facts necessary to understand the issues presented and a statement of the relief sought. The petition must be accompanied by a short memorandum of points and authorities and available documentary evidence necessary to support the facts alleged.
   (2) **Docket Fee and Poverty Affidavit.** The petitioner must pay a docket fee of $145 and any applicable surcharge or file a poverty affidavit under K.S.A. 60-2001(b). On receipt of the prescribed docket fee or a poverty affidavit, the clerk of the appellate courts must docket the petition and submit it to the court. If the petitioner is an inmate, the clerk will assess the initial $3

filing fee. A poverty affidavit applies only to the amount that must be paid to file the action and does not prevent the court from later assessing the remainder of the docket fee or other fees and costs against the movant. No docket fee will be charged to file a petition for writ of habeas corpus.

(b) **Concurrent Jurisdiction.** An appellate court ordinarily will not exercise original jurisdiction if adequate relief appears to be available in a district court. If relief is available in the district court, a petition must state—in addition to all other necessary allegations—the reason why the action is brought in the appellate court instead of in the district court. If the appellate court finds that adequate relief is available in the district court, it may dismiss the action or order it transferred to the appropriate district court. A dismissal under this subsection is not an adjudication on the merits.

(c) **Court Action on Petition.**

(1) **Denial.** If the court determines that relief should not be granted, it will deny the petition.

(2) **Ex Parte Disposition.** If the right to relief is clear and it is apparent that no valid defense to the petition can be offered, relief may be granted ex parte.

(3) **Order Directing Response.** If the petition is not granted or denied ex parte, the court will order that the respondent(s) either show cause why relief should not be granted or file a response to the petition within the time fixed by the order. The following rules apply:

(A) the order must be served by the clerk of the appellate courts on all named respondents by mail or as otherwise directed by the court;

(B) two or more respondents may jointly respond to an order to show cause or to a petition;

(C) a judge named as respondent in a mandamus action who decides not to appear in the proceeding may so advise the clerk and all parties by letter, but the petition will not thereby be taken as admitted; and

(D) a response to an order to show cause or to a petition may be accompanied by additional documentary evidence necessary for the court's understanding of the case.

(d) **The Record.** The petition, response to an order to show cause or to a petition, and accompanying documents constitute the record. If there are disputed questions of material fact that can be resolved only by oral testimony, the court may refer the matter to a judge of the district court or a commissioner to take the testimony and make a report recommending findings of fact. The commissioner's report

and the transcript of the testimony must be filed with the clerk of the appellate courts and will become part of the record.

(e) **Further Proceedings.** If the petition, response to an order to show cause or to a petition, and record clearly indicate the appropriate disposition, the court will enter an order without further briefs or argument. Otherwise, the court may order a prehearing conference under Rule 1.04. The court will enter an order designating dates for the filing of briefs. The proceeding thereafter will be governed by the rules relating to appellate procedure.

[**History:** Am. effective March 6, 1978; Am. (b) effective September 1, 1982; Am. effective February 8, 1994: Am. effective July 1, 2000; Restyled rule effective July 1, 2012; Am. (a) effective February 9, 2015; Am. (c) effective September 1, 2015; Am. effective November 18, 2016.]

Rule 9.02

UTILITY RATE CASE

(a) **Filing; Docket Fee.** When an application for judicial review of an order of the state corporation commission is filed in the Court of Appeals, the filing is treated, for the purpose of further proceedings, in the same manner as the docketing of an appeal from the district court, and the rules relating to appellate practice apply. The application for judicial review must be filed with the clerk of the appellate courts, accompanied by the docket fee and any applicable surcharge under Rule 2.04.

(b) **Record; Briefing Schedule.** Unless otherwise ordered by the court:
   (1) The commission must transmit promptly the record to the clerk of the appellate courts.
   (2) An applicant's brief must be filed no later than 21 days after the application for review is filed.
   (3) A respondent's brief must be filed no later than 21 days after service of applicant's brief.
   (4) A reply brief must be filed no later than 7 days before the date set for hearing.

(c) **Notice of Hearing.** Rule 7.02(e) does not apply. The clerk of the appellate courts must give the attorneys not less than 14 days' notice of the time and place of hearing.

(d) **Extension of Time Requires Waiver in Certain Cases.** In a case in which a public utility claims the rates allowed by the commission are inadequate, a motion for extension of time to file the utility's brief will not be considered unless it includes or is accompanied by a waiver of the 120-day time limit imposed by K.S.A. 66-118g(b). So that respondent may have an equal amount of time to file its brief,

the waiver must be for at least twice the additional time requested by the utility.

(e) **Prehearing Conference.** A motion that requests a prehearing conference must be filed no later than 7 days after the filing of the application for judicial review. A motion for a prehearing conference filed later will be considered only on good cause.

[**History:** New rule effective November 8, 1979; Am. effective July 16, 1980; Am. effective July 1, 1997; Am. effective July 1, 2010; Restyled rule and amended effective July 1, 2012; Am. (a) effective December 19, 2016.]

Rule 9.03

TAX APPEAL CASE

(a) **Petition.** When an appeal is taken from the board of tax appeals to the Court of Appeals under K.S.A. 74-2426, the appellant must file with the clerk of the appellate courts a petition for judicial review in compliance with K.S.A. 77-614. The petition for judicial review must be:

(1) accompanied by certified copies of the order of the board of tax appeals, the petition for reconsideration, and the board of tax appeals order on the petition for reconsideration;

(2) accompanied by the docket fee, any applicable surcharge, and the docketing statement required by Rule 2.04; and

(3) served in compliance with K.S.A. 77-613 through 77-615.

(b) **Statutory Bond.** When an appeal under K.S.A. 74-2426 relates to excise, income, or estate taxes—and the appellant is not the director of taxation—the statutory bond required by K.S.A. 74-2426(d) must accompany the petition for judicial review and be filed with the clerk of the appellate courts. Unless a bond for a lesser amount is requested, the bond must be in the amount of 125% of the tax assessed and must be approved by the clerk. Appellant may request a bond in a lesser amount by filing with the petition for judicial review a motion under Rule 5.01 in lieu of the bond. The appropriate bond then must be filed no later than 14 days after entry of the order granting or denying the motion.

(c) **Record and Transcript Requests.** No later than 14 days after the filing of a petition for judicial review under subsection (a), the appellant must:

(1) request in writing that the board of tax appeals certify the record of the proceedings;

(2) if a hearing before the board was recorded, request a transcript; and

(3) file copies of the requests for transcript and certification of the record with the clerk of the appellate courts and serve copies on all other parties at the time the requests are filed with the board of tax appeals.

(d) **Transcript Preparation; Advance Payment.** The transcript must be prepared and advance payment made under Rule 3.03.

(e) **Transmission.** On completion of the transcript, if any, the board of tax appeals promptly must transmit the record to the clerk of the appellate courts and send notice of the transmission—with a copy of the table of contents of the record—to the parties.

(f) **Appellant's Brief.** The brief of the appellant must be filed no later than 30 days after the date the record is transmitted to the appellate courts.

(g) **Rules Relating to Appellate Practice Apply.** The rules relating to appellate practice govern all other proceedings and matters in an appeal under K.S.A. 74-2426 not provided for in this rule.

[**History:** New rule effective January 18, 1984; Am. effective February 8, 1994; Am. (c) effective July 1, 1997; Am. (b) effective March 21, 2008; Am. effective July 7, 2008; Am. (b) and (c) effective July 1, 2010; Restyled rule and amended effective July 1, 2012; Am. effective July 1, 2014.]

Rule 9.04

WORKERS COMPENSATION CASE

(a) **Petition.** When an appeal is taken from the workers compensation board to the Court of Appeals under K.S.A. 44-556, the appellant must file with the clerk of the appellate courts a petition for judicial review in compliance with K.S.A. 77-614. The petition for judicial review must be:

(1) accompanied by certified copies of the decision(s) of the administrative law judge, the request for workers compensation board review, and the order of the workers compensation board;

(2) accompanied by the docket fee, any applicable surcharge, and the docketing statement required by Rule 2.04; and

(3) served in compliance with K.S.A. 77-613 through 77-615.

(b) **Cross-appeal.** If a party seeks to cross-appeal under K.S.A. 44-556, the party must file a cross-petition for review that complies with K.S.A. 77-614.

(c) **Record and Transcript Requests.** No later than 14 days after the filing of a petition for judicial review under subsection (a), the appellant must:
   (1) request in writing that the director certify the record of the proceedings;
   (2) if a hearing before the board was recorded, request a transcript; and
   (3) file copies of the requests for transcript and certification of the record with the clerk of the appellate courts and serve copies on all other parties at the time the requests are filed with the director.

(d) **Transcript Preparation; Advance Payment.** The transcript must be prepared and advance payment made under Rule 3.03.

(e) **Transmission.** On completion of the transcript, if any, the director promptly must transmit the record to the clerk of the appellate courts and send notice of the transmission—with a copy of the table of contents of the record—to the parties.

(f) **Appellant's Brief.** The brief of the appellant must be filed no later than 30 days after the date the record is transmitted to the appellate courts.

(g) **Rules Relating to Appellate Practice Apply.** The rules relating to appellate practice govern all other proceedings and matters in an appeal under K.S.A. 44-556 not provided for in this rule.

[**History:** New rule effective July 28, 1995; Am. effective March 11, 1999; Am. effective July 7, 2008; Am. (b) effective July 1, 2010; Restyled rule effective July 1, 2012.]

EXPEDITED APPEALS

Rule 10.01

EXPEDITED APPEAL FOR WAIVER OF PARENTAL CONSENT REQUIREMENT

(a) **Docketing; Briefing; Oral Argument.** On receipt of a notice of appeal from a district judge's decision under Rule 173 of the rules relating to district courts, together with a certified copy of the district judge's opinion, the clerk of the appellate courts must docket the appeal in the Court of Appeals. No docketing statement is required. Counsel for the minor must file the appellant's brief no later than 7 days after the date the appeal is docketed. No amicus curiae briefs will be accepted. Unless otherwise ordered by the Court of Appeals, no oral argument will be held.

(b) **Expedited Decision.** The Court of Appeals must expedite the determination of an appeal under this rule to the extent necessary to protect the rights of the minor. The decision of the Court of Appeals must be filed no later than 14 days after the appeal is docketed.

(c) **Protection of Minor's Anonymity.** In an appellate proceeding under this rule, the minor's anonymity must be protected. A motion, brief, or opinion or order of the appellate court must refer to the minor as "Jane Doe."

(d) **Decision of the Court of Appeals.**

(1) **Decision Not Subject to Reconsideration or Modification.** The decision of the Court of Appeals under this rule is not subject to reconsideration or modification by the Court of Appeals.

(2) **If District Court Decision Is Affirmed.** If the Court of Appeals affirms the decision of the district judge, the appellant may petition for discretionary review by the Supreme Court under Rule 8.03. If a petition for review is not granted within 14 days after the petition is filed, the petition is deemed denied. If a petition for review is granted, the Supreme Court will review the matter on the record submitted to the Court of Appeals and will file its opinion no later than 14 days after the date the petition is granted.

(3) **If District Court Decision Is Reversed.** If the Court of Appeals reverses the decision of the district judge, the Court of Appeals decision is not subject to discretionary review by the Supreme Court, and the clerk of the appellate courts must issue the mandate immediately.

(e) **Computation of Time.** K.S.A. 60-206(a) governs the computation of a period of time prescribed by this rule.

[**History:** New rule effective July 1, 1992; Am. effective February 8, 1994; Am. effective July 1, 2010; Restyled rule and amended effective July 1, 2012.]

Rule 10.02

DIRECT APPEAL IN DEATH PENALTY CASE

(a) **Generally.** When a notice of appeal is filed in a criminal case in which a sentence of death has been imposed, the rules relating to appellate practice will govern unless otherwise provided by this rule.

(b) **Automatic Stay.** When a notice of appeal is filed, the execution of a death sentence is stayed until the appellate proceedings are concluded.

(c) **Preparation of Record on Appeal.** The clerk of the district court must compile the record on appeal no later than 30 days after notice from the clerk of the appellate courts that the appeal has been docketed.

(d) **Transcript.** A transcript must be prepared of all proceedings that have been reported by a court reporter or otherwise recorded. A transcript must be completed no later than 120 days after service of a request for transcript.

(e) **Time Schedule for Briefs.** An appellant's brief must be filed no later than 120 days after service of the certificate of filing of the transcript under Rule 3.03. An appellee's brief must be filed no later than 120 days after service of the appellant's brief. A reply brief, if any, must be filed no later than 60 days after service of the brief to which the reply is made.

(f) **Page Limitations.** The length of briefs—excluding the cover, table of contents, appendix, and certificate of service—may not exceed the following:
   (1) Brief of Appellant – 100 pages;
   (2) Brief of Appellee – 100 pages; and
   (3) Reply Brief – 30 pages.

(g) **Oral Argument.** Oral argument is limited to 60 minutes each for the appellant and the appellee.

(h) **Stay of Mandate.** Issuance of a mandate in a capital case that affirms a death sentence is automatically stayed until the time for filing a petition for writ of certiorari in the United States Supreme Court has expired or, in a case in which a petition for writ of certiorari has been filed, until the clerk of the appellate courts is notified by the United States Supreme Court that the petition has been denied or, if the petition is granted, until the conclusion of proceedings in the United States Supreme Court.

[**History:** New rule effective May 28, 1997; Restyled rule and amended effective July 1, 2012.]

NOTICE REQUIREMENTS

Rule 11.01

NOTICE TO ATTORNEY GENERAL OF CHALLENGE TO STATUTE OR CONSTITUTIONAL PROVISION

(a) **Notice Requirements.** In any matter before the Supreme Court or Court of Appeals, or any justice or judge thereof, a party that files a pleading, brief, written motion, or other filing or paper contesting or calling into doubt the validity of any Kansas statute or constitutional provision on grounds that the law violates the state constitution, federal constitution, or any provision of federal law must serve the filing on the attorney general of Kansas, accompanied by a notice stating that the attorney general is being served under K.S.A. 75-764.

(b) **Form of Document.** In addition to the notice required by subsection (a), a pleading, brief, written motion, or other filing or paper served under this rule must include these words in bold, 12-point font under the case caption on the first page: "Served on the attorney general as required by K.S.A. 75-764."

(c) **Filing of Notice.** A party that gives notice under this rule must promptly file a copy of the notice with the clerk of the appellate courts, along with a certificate of service. If the document that contests the validity of the law has already been filed with the clerk of the appellate courts, the document must not be filed again with the copy of the notice.

(d) **Sufficiency of Notice.** A notice provided under this rule will be deemed sufficient if it is in substantial compliance with the form set forth by the judicial administrator.

(e) **Application.** This rule does not apply in any action or proceeding in which the attorney general is the party disputing or defending the validity of the law at issue.

[**History:** New rule effective September 6, 2016; Am. (b) effective August 28, 2017.]

RULES RELATING TO KANSAS ECOURT

Rule 20

PREFATORY RULE

(a) **Kansas eCourt Rules.** This set of rules when referred to as a whole will be identified as the Kansas eCourt Rules.

(b) **Purpose.** The Kansas Supreme Court has developed a centralized case management system that maintains case records of the Kansas judicial branch. The case management system provides efficient, effective court operations and increases access to justice for the people of Kansas. This set of rules standardizes the processing of case filings to provide consistent user experience and allow for workshare among judicial branch employees. These rules expand access to case records available publicly through an internet, browser-based access point using a public access portal. These rules balance the importance of protecting the interests of parties participating in the judicial system, including personally identifiable information and proprietary business information, with the goal of expanding access to case records and increasing transparency of the judicial branch.

(c) **Statutory References.** In these rules, a reference to a statute includes any subsequent amendment to the statute.

(d) **Applicability.** Unless otherwise indicated, these rules apply to courts as the Kansas eCourt case management system is implemented.

[**History:** New rule adopted effective June 14, 2019; Am. effective June 12, 2020.]

Rule 21

DEFINITIONS

(a) **"Attachment"** means a document efiled simultaneously with a pleading that is referenced within the pleading as support for the filing user's statement of facts or legal argument.

(b) **"Business hours"** means the hours of the day the court is open to the public to conduct court-related business.

(c) **"Case management system"** means the Kansas judicial branch system to receive, maintain, and store electronic case records in an internet, browser-based format.

(d) **"Case record"** means all electronic documents filed in a case. Each document in a case record must either be certified by the filer as compliant with Rule 24 or be filed under Rule 23(b).

(e) **"Certification"** means that an attorney or a party if not represented by an attorney certifies that, to the best of the person's knowledge, the document being submitted for filing complies with requirements of K.S.A. 60-211(b).

(f) **"Citation"** means:
   (1) a Uniform Notice to Appear and Complaint issued by a law enforcement officer to a person alleged to have violated any of the statutes, rules, or regulations listed in, or authorized by, K.S.A. 8-2106 when signed by the officer and filed with a court having jurisdiction over the alleged offense;
   (2) an electronic citation as that term is defined by K.S.A. 8-2119; and
   (3) a citation, as defined by K.S.A. 32-1049a(b), by a conservation officer or employee of the Kansas Department of Wildlife, Parks, and Tourism having law enforcement authority as described in K.S.A. 32-808 to a person alleged to have violated any of the wildlife, parks, or tourism statutes, rules, or regulations listed in, or authorized by, K.S.A. 32-1049(a) when signed by the officer or employee and filed with a court having jurisdiction.

(g) **"Courthouse terminal"** means a computer terminal available to the public to access public case records at a courthouse. The courthouse terminal may be in a kiosk.

(h) **"Efiling"** means the submission of a document through the use of either an approved district court electronic filing system as defined in Rule 122 or the appellate courts' electronic filing system as mandated by Rule 1.14.

(i) **"Efiling interface"** means the contact point where a filing user submits an electronic document.

(j) **"Electronic access"** means access to case records available to the public through a courthouse terminal or remotely through the public access portal, unless otherwise specified in these rules.

(k) **"Events index"** means items listed in a chronological index of filings, actions, and events in a specific case, which may include identifying information of the parties and counsel; a brief description or summary of the filings, actions, and events; and other case information. The events index, also referred to as the register of actions, is a record created and maintained by the judicial branch only for administrative purposes that is not part of the case record. The events index must comply with Rule 24.

(l) **"Filing user"** means any individual who is authorized to submit a document through the Kansas Court eFiling System. This term does

not include the following individuals when acting in their official capacity:

(1) an employee of the Kansas judicial branch;

(2) a judge of the district court as defined by K.S.A. 20-301a;

(3) a temporary judge assigned as described by K.S.A. 20-310b(a); or any retired justice of the Supreme Court, retired judge of the Court of Appeals, or retired judge of the district court assigned as described by K.S.A. 20-2616;

(4) a retired justice of the Supreme Court, a retired judge of the Court of Appeals, or a retired judge of the district court who has entered into a written agreement with the Supreme Court under K.S.A. 20-2622;

(5) a judge of the Court of Appeals as described by K.S.A. 20-3002(d); and

(6) a justice of the Supreme Court as described by Kansas Constitution, article 3, section 2.

(m) **"Judicial branch"** means the judicial branch of government, which includes all district and appellate courts, judicial officers, offices of the clerks of the district and appellate courts, the Office of Judicial Administration, court services offices, and judicial branch employees.

(n) **"Kansas Court eFiling System"** means the Kansas Court Electronic Filing System that the Kansas Supreme Court has approved for use to submit documents in an electronic format to the case management system for Kansas district and appellate courts. The Kansas Court eFiling System (also referred to as the efiling system) provides a means to view case histories, check the status of submissions, send follow-up documents, and access service lists.

(o) **"Nondocketable event"** means a note, bench note, memorandum, draft, worksheet, or work product of a judge or court personnel that does not record court action taken in a case.

(p) **"Nonpublic case record"** means any case record that is sealed or made confidential by statute, caselaw, Supreme Court rule, or court order.

(q) **"Public"** means any person, business, nonprofit entity, organization, association, and member of the media.

(r) **"Public access portal"** means an internet, browser-based access point for the public to freely and conveniently access certain public case records. At the discretion of the Kansas judicial branch, the public access portal may require user registration, email or identity verification, or other protocol and may restrict bulk record access.

(s) **"Public case record"** means any case record that is not sealed or made confidential by statute, caselaw, Supreme Court rule, or court order.

(t) **"Sealed"** means a case type or document to which access is limited by statute, Supreme Court rule, or court order.

(u) **"Standard operating procedures"** means those procedures adopted by the judicial administrator, with input from stakeholders, that ensure documents submitted electronically are processed efficiently, increase effectiveness of court operations, and enhance access to justice for the people of Kansas.

(v) **"Transcript"** means any written verbatim record of a court proceeding or deposition taken in accordance with the rules of civil or criminal procedure**.**

(w) **"Trial exhibit"** means a document or object introduced or admitted into evidence in a court proceeding.

[**History:** New rule adopted effective June 14, 2019; Am. effective June 12, 2020.]

Rule 22

ACCESS TO PUBLIC ELECTRONIC DISTRICT COURT CASE RECORDS

(a) **Purpose.** Members of the public may access a public case record and the events index through multiple outlets, including a courthouse terminal and the public access portal. Allowing use of the public access portal, an internet, browser-based access point, expands access to public case records and events indices and increases transparency of the judicial branch. Not all public case records and events indices will be available using the public access portal due to their sensitive nature. This rule identifies the types of cases and documents that will not be accessible through the public access portal. These cases and documents may still be accessible through alternative means, such as at a courthouse terminal. Nonpublic case records are not available at the public access portal or the courthouse terminal.

(b) **Access.** The ability of the public to access a case record and the events index will depend on the type of case; the nature of the document; and the applicable statutes, caselaw, Supreme Court rules, and court orders. Access to a case record and the event index by an attorney of record or a party if not represented by an attorney is not governed by this rule. Two levels of public access are possible.

(1) **Public Access Through the Public Access Portal.** Unless excluded under subsections (c) or (d), a public case record and the

events index are accessible for viewing using the public access portal as permitted by statutes, caselaw, Supreme Court rules, and court orders.

(2) **Public Access at a Courthouse Terminal.** A public case record and the events index are accessible for viewing at a courthouse terminal as permitted by statutes, caselaw, Supreme Court rules, and court orders.

(A) Each district court must maintain a courthouse terminal accessible to the public for viewing and obtaining case records and events indices.

(B) A clerk will not compile information or provide bulk distribution of information under Rule 106B(e).

(C) A request for documents is subject to the Kansas Open Records Act, K.S.A. 45-215 et seq., and other statutes, caselaw, Supreme Court rules, and court orders.

(c) **Inaccessible Cases.** The following case types are not accessible through the public access portal:

(1) **Adoptions:** a case filed under the Kansas Adoption and Relinquishment Act, K.S.A. 59-2111 et seq.;

(2) **Care and treatment:** a case filed under the Care and Treatment Act for Mentally Ill Persons, K.S.A. 59-2945 et seq., or under the Care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem, K.S.A. 59-29b45;

(3) **Child custody or support proceedings:** a child custody or support proceeding under the Kansas Family Law Code, K.S.A. 23-2101 et seq.;

(4) **Child in need of care:** a case filed under the Revised Kansas Code for Care of Children, K.S.A. 38-2201 et seq.;

(5) **Coroner inquests:** a coroner inquest under K.S.A. 22a-230;

(6) **Divorces:** a dissolution of marriage case filed under the Kansas Family Law Code, K.S.A. 23-2101 et seq.;

(7) **Expunged cases:** a case expunged under K.S.A. 21-6614 or K.S.A. 22-2410;

(8) **Grand jury proceedings:** a grand jury proceeding under K.S.A. 22-3001 through K.S.A. 22-3016;

(9) **Guardianship and conservatorship cases:** a proceeding under the Act for Obtaining a Guardian or a Conservator, or Both, K.S.A. 59-3050 et seq.;

(10) **Inquisitions:** an inquisition proceeding under K.S.A. 22-3101 through K.S.A. 22-3105;

(11) **Juvenile offender:** a juvenile offender proceeding under the Revised Kansas Juvenile Justice Code, K.S.A. 38-2301 et seq.;

(12) **Parentage:** a case filed under the Kansas Parentage Act, K.S.A. 23-2201 et seq.;
(13) **Parental bypass:** a parental bypass proceeding under K.S.A. 65-6705;
(14) **Protection from abuse:** a case filed under the Protection from Abuse Act, K.S.A. 60-3101 et seq.;
(15) **Protection from stalking, sexual assault, or human trafficking:** a case filed under the Protection from Stalking, Sexual Assault, or Human Trafficking Act, K.S.A. 60-31a01 et seq.; and
(16) **Uniform interstate enforcement of domestic violence protection orders:** a case filed under the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, K.S.A. 60-31b01 et seq.

(d) **Inaccessible Documents.** The following documents are not accessible through the public access portal:
(1) **Child Death Review Board:** a Child Death Review Board document filed under K.S.A. 22a-244;
(2) **Citations:** a citation filed under K.S.A. 8-2106, K.S.A. 8-2119, or K.S.A. 32-1049;
(3) **Coroner reports:** a coroner report filed under K.S.A. 22a-232;
(4) **Marriage license documents:** a marriage license document other than the limited marriage license record the district court clerk creates under Rule 106(d);
(5) **Poverty affidavits:** a poverty affidavit prepared under K.S.A. 22-4504 or K.S.A. 60-2001;
(6) **Presentence investigation reports:** a presentence investigation report prepared under K.S.A. 21-6703 or K.S.A. 21-6813;
(7) **Probable cause affidavits:** a probable cause affidavit or sworn testimony in support of an arrest warrant or summons under K.S.A. 22-2302 or in support of a search warrant under K.S.A. 22-2502 except as permitted by those statutes;
(8) **Record of an agency proceeding:** a record of an agency proceeding under the Kansas Administrative Procedure Act, K.S.A. 77-501 et seq., or the Kansas Judicial Review Act, K.S.A. 77-601 et seq.;
(9) **Trial exhibits**; and
(10) **Warrants:** an arrest warrant issued under K.S.A. 22-2302 that has not been executed, a search warrant issued under K.S.A. 22-2502 that has not been executed, and any bench warrant that has not been executed.

Comments

[1] Rule 22(d)(10): Arrest Warrants. A criminal complaint initiating a criminal case is not sealed in the new case management system (Odyssey) even if a proposed arrest warrant is filed at the same time or an arrest warrant is signed and issued. In the prior case management system (FullCourt), a criminal case was automatically sealed when an arrest warrant was approved by a judge; when a return on an arrest warrant was filed, the case was unsealed. In Odyssey, unless previously sealed by court order, a criminal complaint remains accessible to the public even when an arrest warrant is issued. In Odyssey, an arrest warrant will be sealed when it is issued and will remain sealed until a return is filed. Upon filing of the return, the arrest warrant and return will become public unless sealed by a court order.

[2] Rule 22(d)(10): Search Warrants. If a search warrant is filed in a criminal case, the warrant is sealed when issued and will remain sealed until a return is filed. Upon filing of the return, the search warrant and return will become public unless sealed by a court order. If a request for a search warrant is filed in a separate case, the case is sealed when the request is filed and remains sealed until the return is filed. Upon filing of the return, the search warrant and return will become public unless sealed by a court order.

[3] Rule 22(d)(10): Bench Warrants. A bench warrant is sealed when issued and will remain sealed until a return is filed. Upon filing of the return, the bench warrant and return will become public unless sealed by a court order.

[**History:** New rule adopted effective June 14, 2019; Am. effective June 12, 2020.]

Rule 23

FILING IN A DISTRICT COURT

(a) **Filing User's Obligations.** When filing a document with the district court, at the efiling interface, a filing user must correctly designate the case and document type and indicate if the document is submitted under subsection (b) or certify that the document complies with Rule 24. The requirement to certify compliance with Rule 24(b) does not apply to those individuals exempted from the definition of "filing user" in Rule 21(l).

(1) A court employee is not required to review a document that a filing user submits to ensure that the filing user appropriately designated a case, document, or information.

(2) If a document does not comply with these rules, the court may order that the document be segregated from public view until a ruling has been made on its noncompliance.

(b) **Filing Under Seal.**

(1) If a filing user submits a document under a pre-existing seal order, the filing user must affirm by certification on the efiling interface that such an order exists.

(2) If at the time of filing a filing user believes that a document not covered by a pre-existing seal order should be sealed, the filing user must submit a motion to seal that includes a general description of the document at issue. The filing user must affirm by certification on the efiling interface that the motion complies with Rule 24.

(3) A filing user may file a motion to seal a document already on file. The motion must specify the document that is proposed to be sealed. When a motion to seal is filed, the identified document will be segregated from public view until the court rules on the motion to seal. A court employee is not required to search for a document that is not identified with specificity in a motion to seal.

(4) A case or document may be sealed only by a court order that is case or document specific or as required by a statute or Supreme Court rule.

(c) **District Court Clerk Processing of an eFiled Document.**

(1) **Document Review.** Upon receipt of a document submitted to a district court using the Kansas Court eFiling System, a clerk of the district court is authorized to return the document only for the following reasons:

(A) the document is illegible or in a format that prevents it from being opened;

(B) the document does not leave a margin sufficient to affix a file stamp, as required by Rule 111;

(C) the document does not have the correct county designation, case number, or case caption; or

(D) the applicable fee has not been paid or no poverty affidavit is submitted with the document or already on file in the case.

(2) **Timeline for a Clerk to Process a Document.** A clerk of the district court must process a document for filing as quickly as possible but not more than four business hours after the filing user submits the document for filing.

(3) **Return of Document.** If a clerk determines that a document must be returned for any of the reasons listed in subsection (c)(1), the clerk must designate the reason for its return.

(4) **Quality Review.** If a document is not rejected under subsection (c)(1), a clerk will approve the document for filing in the case management system. The clerk may flag the document for further review as authorized by the standard operating procedures adopted by the judicial administrator.

(5) **File Stamping a Document.** A document submitted through the Kansas Court eFiling System will be marked with the date and time of original submission.

(d) **Inclusion of a Paper Document.** If a clerk is authorized to accept a paper document for filing in a case record under a standard operating procedure adopted by the judicial administrator, the clerk must follow the requirements of that procedure for including the document in the case management system.

Comments

[1] Rule 23(c)(1) applies to a document filed in an existing case where the clerk must match the county designation, the names of the parties in the case caption, and the case number with those of the existing case.

[2] The Kansas eCourt Rules make clear that the responsibility for correctly filing a document in a court case rests with the person filing the document.

[**History:** New rule adopted effective June 14, 2019; Am. effective June 12, 2020.]

Rule 24

PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION

(a) **Obligation to Redact Personally Identifiable Information.** In all filings, an attorney, or a party if not represented by an attorney, is solely obligated to protect the confidentiality of personally identifiable information as identified in this rule by ensuring that the filing contains no personally identifiable information. A district court clerk has no duty to review a document to ensure compliance with this rule.

(b) **Personally Identifiable Information.** The following is personally identifiable information:

(1) the name of a minor who is not a named party in a case and, if applicable, the name of a person whose identity could reveal the name of a minor who is not a named party in a case;

(2) the name of an alleged victim of a sex crime;

(3) the name of a petitioner in a protection from abuse case;

(4) the name of a petitioner in a protection from stalking, sexual assault, or human trafficking case;
(5) the name of a juror or venire member;
(6) a person's date of birth except for the year;
(7) any portion of the following:
  (A) an email address except when required by statute or rule;
  (B) a computer username, password, or PIN; and
  (C) a DNA profile or other biometric information;
(8) the following numbers except for the last four digits:
  (A) a Social Security number;
  (B) a financial account number, including a bank, credit card, and debit card account;
  (C) a taxpayer identification number (TIN);
  (D) an employee identification number;
  (E) a driver's license or nondriver's identification number;
  (F) a passport number;
  (G) a brokerage account number;
  (H) an insurance policy account number;
  (I) a loan account number;
  (J) a customer account number;
  (K) a patient or health care number;
  (L) a student identification number; and
  (M) a vehicle identification number (VIN);
(9) any information identified as personally identifiable information by court order; and
(10) the physical address of an individual's residence.

(c) **Exceptions.** The following is not personally identifiable information:
(1) an account number that identifies the property alleged to be the subject of a proceeding;
(2) the name of an emancipated minor;
(3) information used by the court for case maintenance purposes that is not accessible by the public;
(4) information a party's attorney, or a party if not represented by an attorney, reasonably believes is necessary or material to an issue before the court;
(5) the first name, initials, or pseudonym of any person identified in subsections (b)(1) to (b)(5);
(6) any information required to be included by statute or court rule; and
(7) any information in a transcript.

(d) **Administrative Information Required.** When a filing user submits a new case through the Kansas Court eFiling System, the filing

user must complete the administrative information requested at the efiling interface to the extent possible. If an initial pleading in a new case is in paper form, the filer must submit a paper cover sheet that substantially complies with the form located on the judicial council website. The following rules apply.

(1) Personally identifiable information gathered for administrative purposes when a new case is efiled:
   (A) if stored electronically, must be accessible only by authorized court personnel and
   (B) is not subject to reproduction and disposition of court records under Rule 108.

(2) Personally identifiable information gathered for administrative purposes using a paper cover sheet:
   (A) must not be retained in the case file;
   (B) is not subject to reproduction and disposition of court records under Rule 108; and
   (C) may be shredded or otherwise destroyed within a reasonable time after the case is entered electronically into the case management system.

(3) In an action for divorce, child custody, child support, or maintenance, the administrative information provided must include, to the extent known:
   (A) the parties' Social Security numbers;
   (B) the parties' birth dates; and
   (C) the parties' child's full name or pseudonym, Social Security number, and birth date.

(e) **Certification.** Each document submitted to a court must be accompanied by a certification by an attorney, or by a party if not represented by an attorney, that the document has been reviewed and is submitted under Rule 23(b) or complies with this rule.

(f) **Remedies and Sanctions.** Failure to comply with this rule is grounds for sanctions against an attorney or a party. Upon motion by a party or interested person, or sua sponte by the court, the court may order remedies for a violation of any requirements of the Kansas eCourt Rules. Following notice and an opportunity to respond, the court may impose sanctions if such filing was not made in good faith.

(g) **Motions Not Restricted.** This rule does not restrict a party's right to request a protective order, to move to file a document under seal, or to request the court to seal a document.

(h) **Application.** This rule does not affect the application of constitutional provisions, statutes, or court rules regarding confidential information or access to public information.

Comments

[1] Rule 24 applies to information contained in a filing, not to information contained in an oral communication, whether made in a court proceeding or otherwise.

[2] If use of a person's initials is unwieldy, parties may consider using other options such as a first name with the first initial of the last name, a generic descriptor such as "child 1," or a pseudonym in lieu of a name.

[3] Rule 24(b)(10) includes "the physical address of an individual's residence" in the definition of personally identifiable information. However, if an exception in Rule 24(c) applies, this information is no longer considered to be personally identifiable information. If a party is required by law to include the physical address of an individual's residence, then it may be provided under Rule 24(c)(6). For example, if a document will be served by leaving a copy at a person's dwelling, see K.S.A. 60-205(b)(2)(B)(ii) or K.S.A. 61-3003(d), or by mailing the document to a person's last known address, see K.S.A. 60-205(b)(2)(C) or K.S.A. 61-3003(c), then providing the physical address is required by law to perfect service. In that situation, the physical address is needed and will not be considered personally identifiable information because it meets the exception of Rule 24(c)(6).

[4] Under Rule 24(c)(4), "necessary" means information essential for the document to make sense or for the proper processing of the document or information requested on a Judicial Council form. Examples include information necessary to establish the court's personal or subject matter jurisdiction, to process a protective order, to serve a filed document on another party, or to issue and execute a subpoena.

[**History:** New rule adopted effective June 14, 2019; Am. effective June 12, 2020.]

Rule 25

EXPANDED ACCESS

(a) **Purpose.** This rule creates a stakeholder access program that allows the judicial administrator to grant governmental agencies and other entities access to information in the Kansas eCourt case management system that is not available to the general public.

(b) **Definitions.**

(1) **"Expanded Access"** means access to specifically identified information in the eCourt case management system that is not available to the general public and might include access to personally identifiable information.

(2) **"Stakeholder"** means a governmental agency, a contractor for a governmental agency, or another entity that is not part of the Kansas Judicial Branch and that is granted expanded access through the stakeholder access program.
(3) **"User"** means a person performing work on behalf of a stakeholder, including an employee, a subcontractor, and an agent.

(c) **Methods for Access.** The judicial administrator may provide for expanded access through various methods, including the following:
(1) an expanded access portal using a unique username and password;
(2) integration; and
(3) periodic reports.

(d) **Standard Operating Procedures.** The judicial administrator is authorized to adopt standard operating procedures for expanded access. In developing these procedures, the judicial administrator will consult with stakeholders when appropriate.

(e) **Powers and Duties.** In administering the stakeholder access program, the judicial administrator's powers and duties will include the following:
(1) determining the case groups, case types, documents, and information that a stakeholder may access;
(2) approving or denying a prospective stakeholder's request for expanded access;
(3) working with a stakeholder to create methods to access information;
(4) approving or denying a user's request for a unique username and password that will allow expanded access;
(5) developing procedures to allow expanded access;
(6) developing procedures to safeguard information from unauthorized access, use, and disclosure;
(7) providing technical support for expanded access;
(8) monitoring adherence to rules, policies, and procedures regarding access, use, and disclosure of information by a stakeholder and its users, including the use of audits and reports; and
(9) periodic reporting to the Kansas eCourt project liaison justices and the Chief Justice regarding expanded access efforts.

(f) **Stakeholder Agreement.** An approved stakeholder must enter into an Expanded Access Agreement that sets forth the following:
(1) the procedures for accessing information;
(2) the procedures for safeguarding information from unauthorized access, use, and disclosure; and
(3) any other procedures or information the judicial administrator deems necessary.

(g) **User Agreements.**

(1) **Information Subscription Agreement.** To obtain expanded access through the expanded access portal, a user must enter into an Information Subscription Agreement.

(2) **Confidentiality Agreement.** To obtain expanded access by a method other than through the expanded access portal, a user must complete a Confidentiality Agreement.

(3) **Agreement Provisions.** An agreement under subsection (g)(1) or (g)(2) must set forth the following:

(A) the procedures regarding the allowable use of information;

(B) the procedures for safeguarding information from unauthorized access, use, and disclosure; and

(C) any other procedures or information the judicial administrator deems necessary.

(h) **Penalty for Breach.** If a stakeholder or user breaches this rule, an expanded access policy or procedure, or an agreement described in subsection (f) or (g), the following provisions will apply.

(1) The judicial administrator may suspend expanded access for the stakeholder or user. The decision to suspend expanded access is within the sole discretion of the judicial administrator.

(2) If the judicial administrator determines the breach warrants revocation of expanded access, the judicial administrator will refer the stakeholder or user to the attention of the Chief Justice.

(3) The Chief Justice may revoke expanded access for the stakeholder or user or impose any other lesser restriction.

(i) **Lift of Suspension; Reinstatement.**

(1) The judicial administrator may lift any suspension that has been imposed under subsection (h). The decision to lift a suspension is within the sole discretion of the judicial administrator.

(2) Subject to any terms and conditions necessary to prevent unauthorized access, use, and disclosure of information, the Chief Justice may reinstate expanded access that has been revoked under subsection (h).

[**History:** New rule adopted effective January 26, 2021.]

RULES RELATING TO DISTRICT COURTS

REPORT OF SUPREME COURT STANDARDS COMMITTEE

The attached report, adopted by the Supreme Court Standards Committee on October 24, 1980, was adopted by the Supreme Court, effective December 11, 1980, as a statement of the goals of the Kansas judicial system and of the general principles and time standards to be used as guidelines for the processing of cases by the District Courts of this State.

GENERAL PRINCIPLES AND GUIDELINES FOR THE DISTRICT COURTS

(1) We approve the credo of the Joint Committee for the Effective Administration of Justice adopted in the 1960's as a general statement of the goals and purposes of the Kansas Judicial System.

Justice is effective when it is:

(A) *Fairly administered without delay*

With all litigants, indigent and otherwise, and especially those charged with crime, represented by competent counsel,

(B) *By Competent Judges*

Selected through non-political methods based on merit,
In sufficient numbers to carry the load,
Adequately compensated, with fair retirement benefits,
With security of tenure, subject to an expeditious method of removal for cause,

(C) *Operating in a Modern Court System*

Simple in structure, without overlapping jurisdictions or multiple appeals,
Businesslike in management with nonjudicial duties performed by a competent administrative staff,
With practical methods of equalizing the judicial workload,
With an annual conference of the judges for the purpose of appraising and improving judicial techniques and administration,

(D) *Under Simple and Efficient Rules of Procedure*

Designed to encourage advance trial preparation,
Eliminate the element of surprise,
Facilitate the ascertainment of truth,
Reduce the expense of litigation,
And expedite the administration of justice.

(2) Litigation delay causes litigants expense and anxiety. Judges and lawyers have a professional obligation to avoid misuse and overuse of discovery and to terminate litigation as soon as it is reasonably possible to do so.

(3) The ultimate judicial goal should be justice, not speed, in the disposition of cases. Cases should be determined on an individual basis, not on an assembly line. Litigants and counsel should be afforded a reasonable time to prepare and present their cases.

(4) No case should be permitted to float in the system. It is the responsibility of the trial judge assigned the case to take charge of the case at an early date in the litigation and to control the progress of the case thereafter until the case is determined.

(5) There should be time standards established *as a guide* for the disposition of cases, with the understanding that the system must have flexibility to accommodate the differences in the complexity of cases and the different problems arising in urban and rural judicial districts. A certain amount of delay may be necessary in an individual case.

(6) Assuming adequate trial court staffing and facilities, trial court delay, i.e., unnecessary waiting time, is not inevitable. The pace of litigation is not necessarily determined by court size, individual caseloads, or the percentage of cases that go to trial.

(7) The pace of litigation is often the result of "local legal culture" rather than court procedures, case load, or backlog. Local legal culture consists of the established expectations, practices, and informal rules of behavior of judges, attorneys and the public.

(8) The most effective way of combating court delay is to modify the local legal culture by the adoption and use of a case management system. The basic concept of case management is that the court, rather than the attorneys, should control the pace of litigation. It is the duty of the judge to the people to run the court and not abdicate the responsibility to counsel.

(9) An effective case management system requires that specific steps be taken to monitor and control the pace of litigation. Among these are the following:

   (A) Early and continuous control of the court calendar by the judge;

   (B) Identifying cases subject to alternative dispute resolution processes;

   (C) Developing rational and effective trial-setting policies;

   (D) Applying a firm continuance policy. Trial continuances should be few; good cause should be required, and all requests should be heard and resolved by a judge;

(E) Older cases should be emphasized and ordinarily given priority in trial settings;

(F) A useful and efficient information system should be available to identify cases that are at variance with the suggested time standards and to provide a continuing evaluation of the system as a whole.

(10) The judges and the lawyers of Kansas should work together with interested citizens to monitor the workings of the judicial system in the state and each judicial district. They should explore methods of improvement, keep the public informed of the operation of the courts, and seek public suggestions and support for the improvement of the judicial system.

TIME STANDARDS

(1) All Chapter 60 civil cases, except domestic relations cases, should ordinarily be set for an initial case management conference within forty-five (45) days of the filing of an answer to explore prospects for settlement, a time schedule for completion of discovery, and the setting of a date for a pretrial conference and for trial;

(2) Any civil case which has been pending for more than one-hundred-eighty (180) days shall be of special concern to the trial judge and should ordinarily be given priority in all trial settings.

(3) The trial judge to whom cases are assigned should be responsible for the disposition of those cases and should, so far as reasonably possible, bring them to trial or final disposition in conformity with the following median time standards:

Civil Cases

Chapter 61 Cases—to final disposition, within a median time of sixty (60) days from date of filing.

Chapter 60 Cases—

Non-Domestic Civil—to final disposition, within a median time of one-hundred-eighty (180) days from date of filing.

Domestic Relations—to final disposition, within a median time of one-hundred-twenty (120) days from date of filing.

Chapter 59 Cases—(Probate and administration of estates)—to final disposition, within a median time of one year from date of filing.

Criminal Cases

Felony—to trial or plea, within a median time of one-hundred-twenty (120) days from date of first appearance.

Misdemeanor—(excluding traffic)—to trial or plea, within a median time of sixty (60) days from date of first appearance.

Traffic—to trial or plea, within a median time of thirty (30) days from date of filing.

The term "median" as used in these time standards means that at least 50% of the cases subject to judicial determination are tried or disposed of within the established time standards.

(4) When a report of the Judicial Administrator shows that a civil case has been pending for more than two years, such case shall be given priority over all subsequently filed cases and the chief judge should report the reason for delay in disposition to the departmental justice.

(5) In every judicial district in the state, there should be established a bench-bar committee composed of judges and lawyers to monitor the operation of the courts in the district, to develop programs for improvement of court services, and to formulate and carry on a continuing educational program to inform the citizens in the district about the functions and operations of the courts and the basic liberties and freedoms guaranteed by our form of government.

(6) In the setting of cases for trial, a trial judge shall respect and accede to a prior prime or firm setting of a case in another court involving the same attorney or attorneys. Trial judges shall cooperate in resolving conflicts in trial settings as the interests of justice may require. In resolving conflicts in trial settings, jury cases should ordinarily take precedence over nonjury cases.

[**History**: New section (6) under Time Standards effective July 1, 1982; (1) Am. effective March 11, 1999; Am. effective September 8, 2006.]

STANDARDS RELATING TO JURY USE AND MANAGEMENT

The following Standards Relating to Jury Use and Management were adopted by the Supreme Court effective July 15, 1983, as guidelines to assist the district courts in the management of jury systems within the State of Kansas.

PART A. STANDARDS RELATING TO SELECTION OF PROSPECTIVE JURORS

STANDARD 1: OBLIGATION OF AND OPPORTUNITY FOR JURY SERVICE

Jury service is the solemn obligation of all qualified citizens. The opportunity for jury service should not be denied or limited on the basis of race, national origin, gender, age, disability, religious belief, income, occupation, or any other factor that discriminates against a cognizable group in the county.

STANDARD 2: JURY SOURCE LIST

(a) The names of potential jurors should be drawn from a jury source list compiled from one or more regularly maintained lists of persons residing in the county.
(b) The jury list should be representative and should be as inclusive of the adult population in the county as is feasible.
(c) Each district court should periodically review the jury source list for its representativeness and inclusiveness of the adult population in the county.
(d) Should the district court determine that improvement is needed in the representativeness or inclusiveness of the jury source list, appropriate corrective action should be taken.

STANDARD 3: RANDOM SELECTION PROCEDURES

(a) Random selection procedures should be used throughout the juror selection process. Any method may be used, manual or automated, that provides each eligible and available person with an equal probability of selection.
(b) Random selection procedures should be employed in:
    (i) selecting persons to be summoned for jury service,
    (ii) assigning prospective jurors to panels, and
    (iii) calling prospective jurors for voir dire.

(c) Departures from the principle of random selection are appropriate:
  (i) to exclude persons ineligible for service in accordance with Standard 4,
  (ii) to excuse or defer prospective jurors in accordance with Standard 6,
  (iii) to exercise challenges for cause and peremptory challenges in accordance with Standards 8 and 9, and
  (iv) to provide all prospective jurors with an opportunity to be called for jury service and to be assigned to a panel in accordance with Standard 13.

STANDARD 4: ELIGIBILITY FOR JURY SERVICE

All persons should be eligible for jury service except those who:
(a) are less than eighteen years of age;
(b) are not citizens of the United States;
(c) are not residents of the county in which they have been summoned to serve;
(d) are unable to understand the English language with a degree of proficiency sufficient to respond to a jury questionnaire;
(e) are presently under an adjudication of incompetence; or
(f) within the 10 years immediately preceding have been convicted of or pleaded guilty, or nolo contendere, to an indictment or information charging a felony;
(g) have served as jurors in the county within one year immediately preceding;
(h) are mothers breastfeeding children;
(i) are otherwise excluded by the operation of law.

STANDARD 5: TERM OF JURY SERVICE

The period of time that persons' lives are disrupted by jury service should be the shortest period consistent with the needs of justice, financial considerations, and proper notice in order that the sacrifices and personal inconveniences of jury service might be minimized.

(a) Unless otherwise prescribed by local rule, at least 20 days' notice of the initial date of jury service should be given whenever possible.
(b) A procedure that utilizes first notification of jury service and summoning for a specific day is recommended.
(c) Except in areas with few jury trials, persons should not be required to maintain a status of availability for jury service for longer than one week.

(d) In areas with few jury trials, availability status should be the shortest time possible, but a period of no longer than one month is recommended. However, availability status of no longer than three months is acceptable. In either event, settings of the appearance date should be limited to three times during that period.
(e) Telephone call-in systems should be utilized to inform jurors whether they are needed and, if so, when they should report to the courthouse.
(f) Attendance of one day or the completion of one trial, whichever is longer, is recommended. However, attendance during one week or the completion of one trial, whichever is longer, is acceptable.

STANDARD 6: EXEMPTION, EXCUSE, AND DEFERRAL

(a) All automatic excuses or exemptions from jury service should be eliminated for all persons determined eligible under Standard 4.
(b) Eligible persons who are summoned may be excused from jury service by a judge or duly authorized court official only if:
  (i) their ability to receive and evaluate information is so impaired that they are unable to perform their duties as jurors and, if the impairment is due to a disability, that the impairment cannot be overcome through the use of a reasonable accommodation made available by the court;
  (ii) their service would be an extraordinary or compelling personal hardship;
  (iii) their presence elsewhere is required for the public welfare, health, or safety;
  (iv) they have a personal relationship to the parties or the person's information or interest in the case to be tried is such that there is a probability such persons would find it difficult to be impartial.
(c) Requests by eligible persons for deferral of jury service for a reasonable period of time should be liberally permitted by a judge or duly authorized court official to minimize the inconvenience and financial sacrifice of jury service.
(d) Guidelines for determining requests for excusal and deferral should be adopted by the judges of each judicial district.

PART B. STANDARDS RELATING TO SELECTION OF A PARTICULAR JURY

STANDARD 7: VOIR DIRE

A voir dire examination should be limited to matters relevant to determining removal of a juror for cause and exercising peremptory challenges.

(a) If the court determines that it will use juror questionnaires, they shall be made available to counsel for each party as soon as possible before jury selection begins.
(b) Counsel for the parties shall conduct the examination of prospective jurors. The court may conduct an additional examination at any time.
(c) The court may limit the examination by counsel if the court believes such examination to be harassment, is causing unnecessary delay, or serves no useful purpose.
(d) The judge should ensure that the privacy of prospective jurors is reasonably protected and the questioning by counsel is consistent with the purpose of the voir dire process.
(e) The voir dire examination shall be held on the record unless waived.

STANDARD 8: REMOVAL FROM THE JURY PANEL FOR CAUSE

If the judge determines during the voir dire process that any individual is unable or unwilling to hear the particular case at issue fairly and impartially, that individual should be removed from the panel. Such a determination may be made on motion of counsel or on the judge's own initiative.

STANDARD 9: PEREMPTORY CHALLENGES

(a) The number of and procedure for exercising peremptory challenges should be uniform throughout the State.
(b) Peremptory challenges should be limited to a number no larger than necessary to provide reasonable assurance of obtaining an unbiased jury.
(c) Peremptory challenges should be exercised following the completion of the voir dire examination. Counsel should exercise their strikes in an alternating manner out of the hearing of the panel. However, if the parties agree, then examination and challenging may be sequential.

PART C. STANDARDS RELATING TO EFFICIENT JURY MANAGEMENT

STANDARD 10: ADMINISTRATION OF THE JURY SYSTEM

The responsibility for administration of the jury system should be vested exclusively in the judicial branch of government.

(a) All procedures concerning jury selection and service should be governed by statute or court rules promulgated by the Supreme Court.
(b) A single, unified jury system should be established in each county.
(c) Responsibility for administering the jury system should be vested in an administrator acting under the supervision of the court.

STANDARD 11: NOTIFICATION AND SUMMONING PROCEDURES

(a) The notice summoning a person to jury service and the questionnaire, if used, eliciting essential information regarding that person should be:
  (i) combined into a single mailing,
  (ii) phrased so as to be readily understood by an individual unfamiliar with the legal terminology, and
  (iii) delivered by first-class mail.
(b) A summons should clearly explain how and when the recipient must respond, the consequences of a failure to respond, the possibility of resetting the appearance date, and the amount of time involved in jury service.
(c) The questionnaire, if used, should be phrased and organized so as to facilitate quick and accurate screening and should request only that information essential for:
  (i) determining whether a person meets the criteria for eligibility
  (ii) providing basic background information ordinarily sought during voir dire examination, and
  (iii) efficiently managing the jury system.
(d) Policies and procedures should be established by each district court for enforcing a summons to report for jury service.

STANDARD 12: MONITORING THE JURY SYSTEM

District courts and the Office of Judicial Administration should collect and analyze information regarding the performance of the jury system on a regular basis in order to ensure:

(a) the representativeness and inclusiveness of the jury source list,
(b) the effectiveness of qualification and summoning procedures,

(c) the responsiveness of individual citizens to jury duty summonses,
(d) the efficient use of jurors, and
(e) the cost effectiveness of the administration of the jury system.

STANDARD 13: JUROR USE

(a) Courts should employ the services of prospective jurors so as to achieve optimum use with a minimum of inconvenience to jurors.
(b) Courts should determine the minimally sufficient number of jurors needed to accommodate trial activity in an efficient manner. This information and appropriate management techniques should be used to adjust both the number of persons summoned for jury duty and the number assigned to jury panels.
(c) Courts should provide all prospective jurors with an opportunity to be called for service and assigned to a panel before others are called or assigned a second time.
(d) Courts should coordinate jury management and calendar management to make effective use of jurors.

STANDARD 14: JURY FACILITIES

Courts should provide an adequate and suitable environment for jurors to the extent feasible.

(a) The entrance and registration area should be clearly identified and appropriately designed to accommodate the flow of prospective jurors to the courthouse.
(b) Jurors should be accommodated in pleasant waiting facilities furnished with suitable amenities.
(c) Jury deliberation rooms should include space, furnishings, and facilities conducive to reaching a fair verdict. The safety and security of the deliberation rooms should be ensured.
(d) Juror facilities should be arranged to minimize contact between jurors, parties, counsel, and the public.

STANDARD 15: JUROR COMPENSATION

(a) Persons called for jury service should receive such fees as are required by law.
(b) Such amounts and fees should be paid at least monthly, unless impracticable.
(c) State law should prohibit employers from discharging, laying off, denying advancement opportunities to, or otherwise penalizing employees who miss work because of jury service.

PART D. STANDARDS RELATING TO JUROR PERFORMANCE AND DELIBERATIONS

STANDARD 16: JUROR ORIENTATION AND INSTRUCTION

(a) Courts should provide some form of orientation or instructions to persons called for jury service:
  (i) upon first contact before service, preferably in the form of a juror handbook or pamphlet;
  (ii) upon first appearance at the courthouse;
  (iii) upon reporting to a courtroom for voir dire;
  (iv) following empanelment but prior to the presentation of evidence;
  (v) during the trial;
  (vi) prior to deliberations; and
  (vii) after the verdict has been rendered or when a proceeding is terminated without a verdict.

(b) Orientation programs should be:
  (i) designed to increase prospective jurors' understanding of the judicial system and prepare them to serve competently as jurors; and
  (ii) presented in a uniform, brief, and effective manner using written, oral, or audiovisual materials, or any combination of the methods.

(c) The trial judge should:
  (i) give preliminary instructions directly following empanelment of the jury that explain the jury's responsibility and basic relevant legal principles;
  (ii) give instructions on the law and on the appropriate procedures to be followed during deliberations, recorded or reduced to writing and made available to the jurors during deliberations; and
  (iii) to the extent possible, phrase all instructions so as to be readily understood by individuals unfamiliar with the legal system.

(d) Before dismissing a jury at the conclusion of a case, the trial judge should:
  (i) release the jurors from their duty of confidentiality;
  (ii) explain their rights regarding inquiries from counsel or the press;
  (iii) either advise them that they are discharged from service or specify where they must report; and

(iv) express appreciation to the jurors for their service, but if a verdict has been rendered, the judge should not express approval or disapproval of the jury's decision.

(e) Before the jury is discharged all communications between the judge and jury panel concerning a case should be in writing or on the record in open court. Counsel for each party should be informed of such communication and given the opportunity to be heard.

STANDARD 17: JURY SIZE AND UNANIMITY OF VERDICT

A unanimous decision should be required for a verdict in all criminal cases. A less than unanimous decision should be permitted in all civil cases.

(a) Juries in criminal cases should consist of:
  (i) twelve persons, if a felony; or
  (ii) six persons, if a misdemeanor.

(b) Juries in civil cases should consist of no fewer than six and no more than twelve persons.

(c) The selection of alternate jurors shall be at the judge's discretion.

STANDARD 18: JURY DELIBERATIONS

Jury deliberations should take place under conditions and pursuant to procedures that are designed to ensure impartiality and to enhance rational decision making.

(a) The judge should instruct the jury concerning appropriate procedures to be followed during deliberations in accordance with Standard 16(c).

(b) A jury should not be required to deliberate after normal working hours unless the trial judge, after consultation with jurors and counsel, determines that evening or weekend deliberations would not impose an undue hardship upon the jurors and are required in the interest of justice.

(c) Training should be provided to bailiffs.

STANDARD 19: SEQUESTRATION OF JURORS

(a) A jury should be sequestered only when absolutely necessary to protect the jury or ensure justice.

(b) The trial judge should have the discretion to sequester a jury on the motion of counsel or on the judge's own initiative. The judge should have the responsibility to oversee the conditions of sequestration.

(c) Instructions regarding the proper methods for complying with sequestration procedures should be provided to persons who escort, protect, and assist jurors during sequestration.

[**History:** Jury Standards 1, 4, 5, 6, 15, and 17 amended effective September 8, 2006.]

KANSAS CHILD SUPPORT GUIDELINES

Pursuant to Kansas Supreme Court Administrative Order No. 307
Effective January 1, 2020.

I. USE OF THE GUIDELINES

The Kansas Child Support Guidelines are the basis for establishing and reviewing child support orders in Kansas, including cases settled by agreement of the parties. Judges and hearing officers must follow the guidelines and the court shall consider all relevant evidence presented in setting an amount of child support.

The Net Parental Child Support Obligation is calculated by completing a Child Support Worksheet (Appendix I).

The calculation of the respective parental child support obligations on Line D.13 of the worksheet is a rebuttable presumption of a reasonable child support order. If a party alleges that the Line D.13 support amount is unjust or inappropriate in a particular case, the party seeking the adjustment has the burden of proof to show that an adjustment should apply. If the court finds from relevant evidence that it is in the best interest of the child to make an adjustment, the court shall consider Section E of the Child Support Worksheet.

II. DEFINITIONS AND EXPLANATION

II.A. Child Support

The purpose of child support is to pay for and provide for the needs of the child whether the child lives with a parent or a third party. The needs of the child include direct and indirect expenses related to the day-to-day care and well-being of the child.

II.A.1. Direct Expenses

Direct expenses for a child shall include those fixed expenses paid directly to a third party, such as a school, church, recreational club, or sports club to allow participation in an activity or event, or to attend school. Direct expenses also include all necessary supplies and equipment purchased to support such activity.

Direct expenses shall include:

- All school and school-related expenses including school lunches.
- Extracurricular activities.

- Clothing.

II.A.2. Indirect Expenses

Indirect expenses are those expenses that benefit the child but are not paid directly for their personal needs. These include food (excluding school lunches), transportation, housing, or utilities. The indirect expenses are usually borne by the respective parents within their own household and are not shared.

II.B. Child Support Worksheet

The worksheet should contain the actual calculation of the child support based on child support income, work-related child care costs, health, dental, orthodontic, and optometric insurance premiums, and any child support adjustments. (See Section IV, Specific Instructions for the Worksheet and a completed sample worksheet on the Kansas Judicial Branch website.) In divided residency situations or if the child lives with a third party, separate child support worksheets may have to be prepared for each parent.

II.C. Child Support Schedules

The child support schedules (Appendix II) are adopted by the Kansas Supreme Court based on the recommendation of the Kansas Child Support Guidelines Advisory Committee.[1] The schedules are based upon national data regarding average family expenditures for children, which vary depending upon three major factors: the parents' combined income, the number of children in the family, and the ages of the children.[2] The schedules are derived from an economic model initially developed in 1987 by Dr. William Terrell.[3] In the fall of 1989, Dr. Ann Coulson updated the schedules,[4] which were then modified downward at lower income levels in 1990 at the Court's request, and adjusted for current economic data in 1993.[5] Dr. William Terrell reviewed various studies and foundation data in 1998 and 2002. These reviews led to updated schedule proposals; however, no changes were made in 1998. His more recent statistical analyses and attendant schedule changes provide the bases for the committee's recommendations that were adopted by the Court in 2003.[6] Dr. Jodi Pelkowski worked with Dr. Terrell during the review period which led to the adoption of Kansas Supreme Court Administrative Order No. 180 effective January 1, 2004, and took over Dr. Terrell's work during 2005.[7] Her anal-

yses of economic data in spending on children served as the basis for the committee recommendations in 2007, 2011, 2015, and 2018.

The schedules take into consideration that income deductions for social security, federal retirement, and federal and state income taxes, as well as property taxes on owner-occupied housing, are not available to the family for spending.[8] Thus, although the schedules use combined gross monthly income as an index that identifies values in the child support schedules, the entries in the schedules used to calculate the actual child support obligation are based upon either consumption spending[9] or after-tax income, whichever is lower. The schedules also include a built-in reduction from average expenditures per child (the dissolution burden), because of the financial impact on the family of maintaining two households instead of one.[10]

II.D. Domestic Gross Income - Wage Earner

The domestic gross income for the wage earner is income from all sources, including that which is regularly or periodically received, excluding public assistance and child support received for other children in the residency of either parent. For purposes of these guidelines, the term "public assistance" means all income, whether in cash or in-kind, which is received from public sources and for which the recipient is eligible on the basis of financial need. It includes, but is not limited to, Supplemental Security Income (SSI), Earned Income Credit (EIC), food stamps, Temporary Assistance for Needy Families (TANF), General Assistance (GA), Medicaid, Low Income Energy Assistance Program (LIEAP), Section 8, and other forms of public housing assistance.

VA Disability payments, Social Security Disability Insurance (SSDI) payments, Social Security Retirement payments, and any employer provided or private disability insurance payments shall be considered income for child support purposes.[11]

It may be necessary for the court to consider historical information and the seasonal nature of employment. For example, if overtime is regularly earned by one of the parties, then a historical average of one year should be considered.

In instances where one or both of the parties is employed by a branch of the armed forces or is called to active duty by a branch of the armed forces, then the court shall include the basic pay

of the party plus Basic Allowance for Housing (BAH) and Basic Allowance for Subsistence (BAS). The court may consider cost of living differences in determining the domestic gross income. Depending upon the facts of the case, the court may consider all military pay including any allowances, special pay, and other forms of compensation and benefits.

Frequently, a wage earner's income is adjusted for a salary reduction arrangement for qualified benefits offered under a cafeteria plan. In such cases, the use of gross wages (total income before any salary reduction amounts) results in the simplest and fairest application of the guidelines. Therefore, the gross income of the wage earner, regardless of whether it is taxable or nontaxable, is to be used to compute child support payments.

II.E. Income Computation - Self-Employed

II.E.1. Self-Employment Gross Income

Self-employment gross income is income from self-employment and all other income including that which is regularly and periodically received from any source excluding public assistance and child support received for other children in the residency of either parent.

II.E.2. Reasonable Business Expenses

In cases of self-employed persons, reasonable business expenses are those actual expenditures reasonably necessary for the production of income. Depreciation shall be included only if it is shown that it is reasonably necessary for the production of income. Reasonable business expenses shall include the additional self-employment tax paid over and above the FICA rate. The qualified business income (QBI) deduction shall not be considered a reasonable business expense for child support purposes.

II.E.3. Domestic Gross Income - Self-Employed

Domestic gross income for self-employed persons is self-employment gross income less reasonable business expenses.

II.F. Ability to Earn Income

II.F.1. Income may be imputed to either parent in appropriate circumstances. If the Court, within its discretion, decides to impute income in a particular case, the Court must take into consideration the specific circumstances of the non-custodial parent and the custodial parent, to the extent known. Such factors include:

- the non-custodial and the custodial parent's assets,
- residence,
- employment and earnings history,
- job skills,
- educational attainment,
- literacy,
- age,
- health,
- criminal record and other employment barriers,
- and record of seeking work, as well as the local job market, the availability of employers willing to hire the parent,
- prevailing earnings level in the local community, and
- other relevant background factors in the case.

The Court must make written findings in support of imputing income.

II.F.1.a. After considering the factors listed in Section II.F.1, the Court may find that a parent is able to earn at least the federal minimum wage and to work 40 hours per week.

II.F.1.b. When a parent is deliberately unemployed, although capable of working, employment potential and probable earnings may be based on the parent's recent work history, occupational skills, and the prevailing job opportunities in the community.

II.F.1.c. If a parent is terminated from employment for misconduct, rather than laid off, their previous wage may be imputed, but shall not be less than federal minimum wage.

II.F.1.d. When a parent receives significant in-kind payment or reimbursement that reduces personal living expenses as a result of employment, such as a company car, free housing, or reimbursed meals, the value of such in-

kind payment or reimbursement should be added to gross income.

II.F.1.e. When there is evidence that a parent is deliberately underemployed, the court may evaluate the circumstances to determine whether actual or potential earnings should be used.

II.F.1.f. Incarceration by itself may not be treated as voluntary unemployment for purposes of establishing or modifying an order of support. However, circumstances surrounding the incarceration of the payor may be considered with all other factors and circumstances related to the incarcerated payor's ability to pay support and any other equitable considerations relevant to the specific circumstances of the case.

II.F.2. Income may be imputed to the parent having primary residency in appropriate circumstances, but should not result in a higher support obligation for the other parent.

II.G. Child Support Income

Child support income is the domestic gross income after adjustments for child support paid in other cases and for maintenance paid or received in the present case or other cases. (See Section IV, Specific Instructions for the Worksheet, subsection IV.D.1. and the Kansas Judicial Branch website for a sample worksheet.)

II.H. Child Support Adjustments

Child support adjustments are considerations of additions or subtractions from the net parental child support obligation to be made if in the best interests of the child. (See section IV.E., Specific Instructions for the Worksheet)

II.I. Effect of Social Security Disability Insurance (SSDI) Benefits or Retirement Benefits.

a. Current Support Obligation

1. Dependent/auxiliary benefits received for a child based upon the disability of the payee are not a credit toward the child support obligation of the payor. The

amount of the payee's benefit is included in the income for the purpose of calculating the child support obligation.

2. Dependent/auxiliary benefits received by a payee, as representative payee of the child, based upon the earnings or disability of the payor shall be considered as a credit to satisfy the payor's child support obligation as follows:

   i. The payor's benefits shall be included in the payor's Gross Domestic Income and the child's dependent/auxiliary benefit shall be applied as a credit to the payor's current child support obligation. The credit shall be entered in Section F, line 6 on the child support worksheet.

   ii. Any portion of the benefit that exceeds the child support obligation shall be considered a gratuity for the benefit of the child(ren).

3. In those situations in which both the payee and payor receives Social Security benefits and the child is eligible to receive dependent/auxiliary benefits, the judge will make findings as to how the dependent/auxiliary benefits will be applied to the child support obligation.

b. Arrearages

1. Credit for retroactive lump sum payment. If the payee, as a representative payee, received a lump sum payment of retroactive SSDI benefits, the amount shall be applied as a credit against the child support arrearage that accumulated during the months covered by the lump-sum payment. The payee must notify the court and all parties within 30 days of receipt of the lump sum payment. The court may issue sanctions if notice is not provided (See Section V.B.2).

2. Any portion of the lump sum payments of retroactive SSDI dependent/auxiliary benefits paid to children in excess of the child support obligation should not be credited against the child support arrearage and is a gift/gratuity to the children.

III. GENERAL INSTRUCTIONS

III.A. Documentation

The party requesting a child support order or modification shall present to the court a completed worksheet, together with a completed Domestic Relations Affidavit (Appendix III) or Short-Form Domestic Relations Affidavit (Appendix IV). This information shall assist the court in confirming or adjusting the various amounts entered on the worksheet. The information required shall be attached to the application for support or motion to modify support.

A worksheet approved by the court shall be filed in every case where an order of child support is entered.

III.B. Applications

III.B.1. Rounding

Calculations should be rounded to the nearest tenth for percentages. Calculations should be rounded to the nearest dollar in all instances. In using the child support schedules for income amounts not shown, income should be rounded to the nearest basic child support obligation amounts.

III.B.2. Age

In determining the age of a child, use the age on the child's nearest birthday.

III.B.3. Income Beyond the Child Support Schedule

If the combined child support income exceeds the highest amount shown on the schedules, the court should exercise its discretion by considering what amount of child support should be set in addition to the highest amount on the child support schedule. For the convenience of the parties, a formula is contained at the end of each child support schedule (Appendix II) to compute the amount that is not set forth on the schedules (see the Kansas Judicial Branch website for an example).

III.B.4. More than Six Children

If the parties share legal responsibility for more than six children, support should be based upon the established needs of the children and be greater than the amount of child support on the six child families' schedule.

III.B.5. Divided Residency Situations

Divided residency is when parents have two or more children and each parent has residency of one or more of the children.

For divided residency, if each parent has primary residency of one or more children, a worksheet should be prepared for each family unit using the child support schedule which corresponds with the total number of children of the parties living in each family unit. If the parties' children are covered by the same health insurance policy, the cost should be prorated based upon the number of children in each family unit. Upon completion of the two worksheets, the lower net parental child support obligation is subtracted from the higher amount. The difference is the amount of child support the party having the higher obligation will pay to the party with the lower obligation. (See the Kansas Judicial Branch website for an example)

III.B.6. Multiple-Family Application

The multiple-family application may be used to adjust the child support obligation of the parent not having primary residency when that parent has legal financial responsibility for the support of other children who reside with that parent. The multiple-family application may be used only by a parent not having primary residency when establishing an original order of child support or an increase in support is sought by the parent having primary residency. If using the multiple-family application will result in a gross child support obligation (Line D.3 in the Child Support Worksheet) below the poverty level as shown on the child support schedules, the use of the multiple-family application is discretionary.

For the multiple-family application, if the parent not having primary residency has children by another relationship who reside with him/her, use the child support schedule representing the total number of children the parent not having primary residency is legally obligated to support to determine the basic child support obligation. (See the Kansas Judicial Branch website for an example.)

If the wife of the parent not having primary residency or the parent not having primary residency herself is pregnant at the time of the motion to increase child support, the court shall complete two child support worksheets, one with the multiple-family application including the unborn child, and one without

the unborn child. The court shall then order that, until the birth of the child, the child support amount from the child support worksheet without a multiple-family application based on the new child will be utilized. Beginning with the first payment following the birth of the child, the child support amount from the child support worksheet including the new child shall be utilized.

In the instance of shared residency or divided residency, the multiple-family application is available to either party in defense of a requested child support increase.

III.B.7. Sharing Equal Time and Expenses

Use of this section is discretionary with the court. To qualify for shared residential custody treatment, the parties must share the children's time on an equal basis, not based on a non-primary residency extended parenting time basis (i.e. summer visitation, holidays, etc.). Second, the parties must be sharing the direct expenses of the child as defined in Section I and II.A.1.

Parents who share the children's time equally may be eligible for one of the following: the shared expense formula (see Section III.B.7.a.) or the equal parenting time formula (Section III.B.7.b.). Parents who share their children's time equally but do not want or are not able to agree to share direct expenses should consider using the equal parenting time formula (Section III.B.7.b.).

III.B.7.a. Shared Expense Formula

Sharing expenses and using the shared expense formula is an alternative method of paying expenses related to the children. Sharing expenses and using the shared expense formula requires parents to effectively communicate and cooperate regularly. Sharing expenses and using the formula should only be attempted by parents who:

i. communicate well,
ii. are highly cooperative co-parents,
iii. have the ability and willingness to keep accurate records for the period of time necessary to raise their children,
iv. will share the children's direct expenses in a timely manner,
v. have similar values and tastes,

vi. have considered the current and future needs of their children carefully, and
vii. are willing and able to resolve minor problems without the intervention of others.

III.B.7.a.(1) Court Approval

No shared expense formula shall be ordered without the court having approved the following six requirements:

III.B.7.a.(1)(a) Equal Parenting Time

A court must have made a determination that equal parenting time is in the best interests of the minor children. The children's time with each parent must be regular and equal rather than equal based on a non-primary residency extended parenting time basis (i.e., summer visitation, holidays, etc.).

III.B.7.a.(1)(b) Agreed Detailed Plan

The parties have executed a detailed written agreement to share the direct expenses of the children on an equal basis. Direct expenses include, but are not limited to, clothing and education expenses, but do not include household food, transportation, housing, or utilities.

III.B.7.a.(1)(c) Unreimbursed Health Expenses

Unreimbursed health expenses should continue to be shared in proportion to the parties' income. See Section IV, Specific Instruction for the Worksheet, Subsection D.4.b. and worksheet Line D.2.

III.B.7.a.(1)(d)

Direct expenses may be shared by dividing each expense or by offsetting expenses using an agreed expense sharing plan. See Appendix VI for a sample plan.

III.B.7.a.(1)(e) Worksheet

The parties must present a child support worksheet using the shared expense or equal parenting

time formula.

III.B.7.a.(1)(f) Alternative Dispute Provision

Neither party may unilaterally modify or terminate the agreed upon shared expense plan. The parties' shared expense agreement must include an alternative dispute process for any disagreements the parents may have concerning the children's expenses.

III.B.7.a.(2) Sanctions

Failure to share expenses pursuant to the expense sharing agreement or failure to abide by the time sharing agreement may result in termination of the use of the shared expense formula or other appropriate sanctions.

III.B.7.a.(3) Shared Expense Calculation

The support is calculated using one worksheet. The amount of the lower adjusted subtotal (Line F.6.b) is subtracted from the higher adjusted subtotal (Line F.6.b) and the difference is then multiplied by .50. The resulting amount is the child support the party having the higher obligation will pay to the party with the lower obligation. After calculating the enforcement fee, the fee is added to the child support obligation and this amount is entered on Line F.8 of the child support worksheet for the parent with the higher adjusted subtotal on Line F.6.b.

III.B.7.b. Equal Parenting Time Formula

Applying the equal parenting time formula eliminates the need for parents to exchange receipts for the purpose of dividing their share of the direct expenses. If the equal parenting time formula is utilized, the parent receiving the equal parenting time child support amount/credit shall be responsible for the payment of the reasonable direct expenses listed in Section II.A.1.

The equal parenting time formula is discretionary with the court and may be used to set child support when the court determines that: 1) a shared residential custody arrange-

ment is in the best interests of the minor child, 2) the parents share the child's time equally, and 3) one or more of the following conditions apply:

i. the parties either do not agree to use the shared expense formula, or
ii. applying the shared expense formula would place the parent who would otherwise be designated to pay the direct expenses without sufficient funds to be responsible for all direct expenses, or
iii. applying the shared expense formula is not in the best interests of the child for other reasons.

See the Kansas Judicial Branch website for an example.

When the equal parenting time formula is used to set child support, absent agreement of the parties as to which parent is to pay the direct expenses, the court shall consider, including but not limited to, the following factors, in establishing which parent shall pay the direct expenses.

a. Historical roles of the parties for the children.
b. Familiarity of parties with purchasing needs of children.
c. Demonstrated performance under previous EPT or shared expense formula, if applicable.
d. Demonstrated responsibility with money.
e. Ability of party to cooperate with other party.
f. Demonstrated payment of historical percentages of child's medical/dental bills.
g. Relative incomes of the parties.

The equal parenting time formula calculation shall consist of three steps:

Step 1: A child support worksheet shall be prepared. The amount of the lower adjusted subtotal on Line F.3 shall be subtracted from the higher adjusted subtotal on Line F.3. The resulting figure shall be multiplied by 0.5 and shall constitute the first portion of the formula.

Unless otherwise ordered by the court, the parents are presumed to each provide the child's clothing in their own home. Use either Step 2.a. or 2.b. depending on whether the parents each provide clothing for the child in their own home.

Step 2.a.: For parents providing clothing for the child in their own home, the Line D.3 child support obligation figure will be multiplied by one of the following percentages:

- 7% if total combined monthly child support income on Line D.1 is equal to or less than $4,690;
- 10.5% if total combined monthly child support income on Line D.1 is more than $4,690 and less than $8,125;
- 15% if total combined monthly child support income on Line D.1 is equal to or greater than $8,125, or;

Step 2.b.: If the parents do not provide the child's clothing in their own home, the Line D.3 child support obligation amount will be multiplied by one of the following percentages:

- 11% if total combined monthly child support income on Line D.1 is equal to or less than $4,690;
- 14% if total combined monthly child support income on Line D.1 is more than $4,690 and less than $8,125;
- 18% if total combined monthly child support income on Line D.1 is equal to or greater than $8,125, or;

Choose either Step 3.a. or 3.b. depending on which parent is designated to pay the direct expenses for the child to determine the percentage by which the result on Line D.3 will be multiplied.

Step 3.a.: If the parent with the lower adjusted subtotal from Line F.3 of the child support worksheet (the parent receiving support) is responsible for paying all direct expenses of the child, the resulting figure from Step 1 shall be added to the resulting figure from either Step 2.a. or Step 2.b. This result shall be the amount the parent with the higher support obligation on Line F.3 pays to the parent with the lower support obligation on Line F.3 before the child support enforcement fee is calculated. This amount is entered on Line F.4 of the child support worksheet. The equal parenting time worksheet, or a worksheet in substantially the same form, shall be filed with the child support worksheet.

Step 3.b.: If the parent with the higher adjusted subtotal from Line F.3 is responsible for paying all direct expenses of the child, the resulting figure from either Step 2.a. or Step 2.b. shall be subtracted from the resulting figure from Step 1. This result shall be the amount the parent with the higher support obligation on Line F.3 is credited on Line F.3 before the child support enforcement fee is calculated. This amount is entered on Line F.4 of the child support worksheet.

If the result on Line 14 of the Equal Parenting Time Worksheet (Appendix 5) is less than zero, the court shall consider the overall financial circumstances of the parties to determine whether an adjustment should be made. The equal parenting time worksheet, or a worksheet in substantially the same form, shall be filed with the child support worksheet. (Sample worksheets may be found on the Kansas Judicial Branch website).

In situations where the Equal Parenting Time formula has previously been established with one parent paying the direct expense portion and there is a subsequent realignment of the relative incomes, absent agreement of the parties, the Court shall determine which parent should pay the direct expense portion.

III.B.8. Residence with a Third Party

If the child is residing with a third party, the court shall order each of the parties to pay to the third party their respective amounts of child support as determined by the worksheet.

III.B.9. Cost of Living Differential

The cost of living varies among states. The "Regional Price Parities by State" as reported by the United States Department of Commerce, Bureau of Economic Analysis can be used to compute a value for the cost of living differential. (See the Kansas Judicial Branch website for tables, instructions, and examples.) The adjusted monthly income figure is entered on Line A.1, Line B.1, or Line C.5 of the child support worksheet, as appropriate. There is a rebuttable presumption that the adjusted pay amount reflects the variance in cost of living. The application of the cost of living differential is discretionary. The cost of living differential is not applicable in cases where a cost of living adjustment has already been applied to a person's wages. The

child support worksheet should be marked to indicate whether the cost of living differential is used.

The income of the parties will not be subject to a cost of living differential if both parties live in Kansas or reside in the same metropolitan statistical area (MSA).

III.B.10. Birth Expenses

If a judgment for birth expenses is awarded, the presumed amount is the parent's proportionate share as reflected on Line D.2 of the Worksheet.

If a parent's proportionate share of the birth expenses is more than 5% of the parent's current gross annual income projected over five years, the parent may request deviation from the presumed amount.

IV. SPECIFIC INSTRUCTIONS FOR THE WORKSHEET

IV.A. Income Computation - Wage Earner (Section A)

Section A of the worksheet determines the domestic gross income for wage earners. Federal and State taxes and Social Security are already considered within the child support schedules. The amount of the domestic gross income is entered on Line A.1 and also on Line C.1 (sample worksheets may be found on the Kansas Judicial Branch website).

IV.B. Income Computation - Self-Employed (Section B)

Section B of the worksheet determines the domestic gross income (Line B.3) for self-employed persons. Reasonable business expenses (Line B.2) will be deducted from the self-employment gross income (Line B.1). The qualified business income (QBI) deduction shall not be considered a reasonable business expense for child support purposes. The resulting amount on Line B.3 is also entered on Line C.1 (see the Kansas Judicial Branch website for a completed worksheet and examples).

IV.C. Adjustments to Domestic Gross Income (Section C)

Section C of the child support worksheet contains adjustments to domestic gross income for individuals who are wage earners in Section A or self-employed persons in Section B of the work-

sheet. The payments of child support arrearages shall not be deducted. The following adjustments to domestic gross income may be appropriate in individual circumstances:

IV.C.1. Domestic Gross Income (Line C.1)

This amount is transferred from either Line A.1 or Line B.3 above or both, if applicable.

IV.C.2. Court-Ordered Child Support Paid (Line C.2)

Child support obligations in other cases shall be deducted to the extent that these support obligations are actually paid. These amounts are entered on Line C.2. The payment of child support arrearages shall not be deducted.

IV.C.3. Spousal Maintenance Paid (Line C.3)

(a) For orders entered on or before December 31, 2018, the amount of spousal maintenance **paid** pursuant to a court-approved separation agreement or a court order shall be deducted to the extent that the spousal maintenance is actually paid. This amount is entered on Line C.3. The payments of court-approved separation agreement or a court order spousal maintenance arrearages shall not be deducted.

(b) For orders entered after December 31, 2018, as a result of the 2017 Tax Cuts and Jobs Act Tax Reform, the amount of spousal maintenance paid pursuant to a court-approved separation agreement or a court order, income for child support purposes may be calculated by taking the total maintenance awarded, increasing it by the federal and state marginal tax rate of the payor, and subtracting the total from payor's income while also taking the total maintenance awarded, increasing it by the marginal tax rate of the payee, and adding this amount to the payee's income.

(c) Rather than using the calculation stated in paragraph (b), if the parties agree, the amount of spousal maintenance paid may be increased by an average tax rate of 25%. This amount is entered on Line C.3. The payments of court-ordered spousal maintenance arrearages shall not be deducted.

IV.C.4. Spousal Maintenance Received (Line C.4)

(a) For orders entered on or before December 31, 2018, the amount of spousal maintenance **received** pursuant to a court-approved separation agreement or a court order shall be added on Line C.4 to the extent that the spousal maintenance is actually received and is not for arrearages.

(b) For orders entered after December 31, 2018, as a result of the 2017 Tax Cuts and Jobs Act Tax Reform, the amount of any spousal maintenance received by a party pursuant to a court-approved separation agreement or court order, income for child support purposes shall be calculated by taking the total maintenance awarded, increasing it by the federal and state marginal tax rate of the payor, and subtracting the total from payor's income while also taking the total maintenance awarded, increasing it by the marginal tax rate of the payee, and adding this amount to the payee's income.

(c) Rather than using the calculation stated in paragraph (b), if the parties agree, the amount of spousal maintenance shall be increased by an average tax rate 25%, added as income to the extent that the spousal maintenance is actually received and is not for arrearages. This amount is entered on Line C.4.

IV.C.5. Child Support Income (Line C.5)

The result of the adjustments to the domestic gross income is entered on Line C.5 of the worksheet and then transferred to Line D.1 (see the Kansas Judicial Branch website for a completed worksheet and examples).

IV.D. Computation of Child Support (Section D)

IV.D.1. Child Support Income (Line D.1)

The Child Support Income amounts are transferred from Line C.5. The amounts for the parties are added together for the Combined Child Support Income amount and entered on Line D.1.

IV.D.2. Proportionate Shares of Combined Income (Line D.2)

To determine each parent's proportionate share of the combined child support income, each parent's child support income is divided by the total of the combined child support income. These

percentages are entered on Line D.2 (see the Kansas Judicial Branch website for a completed worksheet and examples).

IV.D.3. Gross Child Support Obligation (Line D.3)

The gross child support obligation is determined using the child support schedules. The child support schedules have three major factors: the number of children in the family, the combined child support income, and the age of each child. The child support schedule corresponding to the total number of children for whom the parents share responsibility should be found. If the multiple-family application applies, then the child support schedule for the number of children the parent not having primary residency is supporting under the multiple-family application should be used. (If using the multiple-family application will result in a gross child support obligation (Line D.3) below the poverty level shown on the second page of the applicable child support schedule, the use of the multiple-family application is discretionary.)

The combined child support income amount should be identified in the left-hand column of the applicable child support schedule. The amount for each child should be identified in the appropriate age column for each child. The amounts for all of the children should be added together to arrive at the total gross child support obligation. The total gross child support obligation is entered on Line D.3. If there is divided residency as defined in Section III.B.5., two child support schedules must be prepared (see Child Support Schedules in Appendix II and the Kansas Judicial Branch website for sample worksheets and examples).

IV.D.4. Health, Dental, Orthodontic, and Optometric Expenses (Line D.7)

IV.D.4.a. Health, Dental, Orthodontic, and Optometric Premiums

The cost to the parent or parent's household to provide for health, dental, orthodontic, or optometric insurance coverage for the minor child or children is to be added to the gross child support obligation. If coverage is provided without cost to the parent or parent's household, then zero should be entered as the amount. If there is a cost, the amount to be used on Line D.7 is the actual cost for the child or children.

The court has the discretion to determine whether the proposed insurance cost is reasonable, taking into consideration the income and circumstances of each of the parties and the quality of the insurance proposed, and to make an adjustment as appropriate. The cost of insurance coverage should be entered in the column of the parent or parent's household which is providing it, and the total is entered on Line D.7 (see the Kansas Judicial Branch website for examples).

IV.D.4.b. Unreimbursed Medical Expenses

(1) In all residential arrangements, including shared residency, the court shall provide that all necessary medical expenses (including, but not limited to, health, dental, orthodontic, therapeutic or optometric and/or any other necessary medical expenses incurred for the benefit of the minor children) not covered by insurance (including deductibles and co-pays) shall be assessed to the parties in accordance with the parties' proportional share shown on Line D.2 of the worksheet.

(2) If either party owes reimbursement to the other party for any non-covered or uninsured medical expense as described in the preceding paragraph, the owing party shall indemnify and hold the other party harmless from the owing party's respective share of the non-covered/uninsured expense.

(3) Any party seeking reimbursement from the other party shall, within thirty (30) days of receipt of said billing statement from provider, submit to the other a copy of the billing statement along with (a) proof of the expenditure and (b) proof of payment of the uninsured portion of the expenditure; and, if applicable, (c) proof of having submitted the claim to the insurance provider for reimbursement and (d) proof of insurance considerations, payment or exclusion. The Court may deny any request for reimbursement that is not submitted in compliance with the provisions of this section.

(4) The party receiving the demand for reimbursement shall have thirty (30) days after receipt of the demand to pay the party's respective Line D.2 percentage of the amount not covered by insurance to the requesting

party or directly to the provider if payment in full has not already been made to the provider by the requesting party.

(5) In the event the receiving party fails to pay the amount due to the other party or fails to make satisfactory payment arrangements with the other party within the thirty (30) day period, the court may impose appropriate sanctions against the non-complying party for their failure to pay which may include assessing 100% of the uninsured balance, and/or attorney's fees incurred by the paying party.

(6) In the event one party receives a payment for reimbursement of medical expenses from the insurer, they shall notify the other party of such payment. If one party has advanced the expense which has been submitted to the insurer, that party shall be entitled to the insurance/reimbursement check to the extent of the advanced payment made by them. If the obligation has not been paid in full to the healthcare provider at the time that the insurance reimbursement check is received, said check shall be endorsed directly to the healthcare provider to the extent of the outstanding obligation.

IV.D.5. Work-Related Child Care Costs (Line D.9)

Actual, reasonable, and necessary child care costs paid to permit employment or job search of a parent should be added to the support obligation. "Paid" means the net amount after deducting any third party reimbursements. The court has the discretion to determine whether proposed or actual child care costs are reasonable, taking into consideration the income and circumstances of each of the parties. The monthly figure is the average annual amount, including variations for school breaks. This amount is entered on Line D.9.

Projected child care expenses should be reduced by the anticipated/available tax credit for child care before an amount is entered on the worksheet (see the Kansas Judicial Branch website for examples):

IV.D.5.a. The annual adjusted gross income, as defined by the IRS, of the party incurring the child care costs should be used to determine the applicable percentage.

IV.D.5.b. The appropriate percentage should be applied to the monthly child care costs incurred for children under 13 years of age. The tax credit applies to actual child care expenditures up to $250 per month for one child or $500 per month for two or more children receiving child care. See the Kansas Judicial Branch website for more information on the maximum allowable monthly child care credit.

IV.D.5.c. The federal credit is to be subtracted from the monthly child care costs to determine the basic child care costs entered on Line D.9 of the worksheet.

IV.D.5.d. Note that the amounts and percentages used in this section may change from time to time due to changes in federal and/or Kansas tax law. Current tax law should be reviewed for any potential changes.

IV.D.5.e. The proportionate share of the work-related child care costs should be entered on Line D.10.

IV.D.6. Proportionate Child Support Obligation for Each Parent (Line D.11)

The proportionate child support obligation of each parent is the sum of the gross child support obligation (Line D.6), the health, dental, orthodontic, and optometric premiums (Line D.8), and the work-related child care costs (Line D.10). This amount is entered on Line D.11 (see the Kansas Judicial Branch website for examples).

IV.D.7. Adjustment for Health, Dental, Orthodontic, and Optometric Premiums and Work-Related Child Care Costs (Line D.12)

If costs of health, dental, orthodontic, and optometric premiums and/or work-related child care costs are included in the total child support obligation, the parent or the parent's household actually making the payment is credited. The amount paid is entered in the column of the parent(s) providing the payment on Line D.12 (see the Kansas Judicial Branch website for examples).

IV.D.8. Basic Parental Child Support Obligation (Line D.13)

The basic parental child support obligation is the parental child support obligation (Line D.11) minus the adjustment for health,

dental, orthodontic, and optometric premiums and work-related child care costs paid by each party (Line D.12) and is entered on Line D.13. The parent having primary residency retains his/her portion of the net obligation. The net obligation of the parent not having primary residency becomes the rebuttable presumption amount of the support order (see the Kansas Judicial Branch website for examples).

IV.E. Child Support Adjustments (Section E)

Child support adjustments apply only when requested by a party. The request for the adjustment must be made in writing by the requesting party prior to the hearing. If no adjustment is requested, this section does not need to be completed. All requested adjustments are discretionary with the court. The party requesting the adjustment is responsible for proving the basis for the adjustment. The court shall determine if a requested adjustment should be granted in a particular case based upon the best interests of the child. If granted, the court has discretion to determine the amount to be allowed as either an addition or a subtraction. The allowed adjustment should be annualized to a monthly amount. The amount granted for each requested child support adjustment should be entered on the appropriate line in Section E. All adjustments shall be totaled on Line E.6.

IV.E.1. Long-Distance Parenting Time Costs (Line E.1)

(a) Any substantial and reasonable long-distance transportation or communication costs directly associated with parenting time shall be considered by the court. If the parties are equally sharing the transportation of the child for long-distance parenting time, this adjustment should not be used.

(b) In making the calculation, the court should divide the total amount by 2 so that the noncustodial parent is only given a credit for the other parent's portion of the costs. The court is not required to use federal mileage cost in the calculation. The court may consider the circumstances that created the long-distance situation. The amount allowed should be prorated to an annualized monthly amount. The amount allowed, if any, should be entered on Line D.5.

IV.E.2. Parenting Time Adjustment (Line D.5)

The court may allow a parenting time adjustment to a parent under the following subsections. The court may allow a parenting time adjustment in favor of the parent not having primary

residency using either subsection IV.E.2.a. or subsection IV.E.2.b. but not both. The court may allow an extended parenting time adjustment pursuant to IV.E.2.c. The court may allow a non-exercise of parenting time adjustment to the parent having primary residency pursuant to IV.E.2.d.

The parenting time adjustment, like all other adjustments, is subject to the 10% rule pursuant to Section V.A. Because the adjustment is prospective and assumes that parenting time will occur, the court may consider the historical exercise or historical non-exercise of parenting time as a factor in denying, limiting, or granting an adjustment under this section. Adjustments under this section may be prorated over twelve months unless the parent having primary residency requests otherwise. If the shared expense formula or the equal parenting time formula (Section III.B.7.) applies in shared residency situations, no parenting time adjustment may be made under this section.

IV.E.2.a. Actual Cost Adjustment: The court may consider: 1) the fixed obligations of the parent having primary residency that are attributable to the child and any savings because of the time spent with the non-primary residency parent; and 2) the increased cost of additional parenting time to the parent having non-primary residency. The amount allowed should be entered on line D.5 of the child support worksheet.

IV.E.2.b. Parenting Time Formula Adjustment: The court may consider the amount of time that the parent spends with the child. If the child spends 35% or more of the child's time with the parent not having primary residency, the court shall determine whether an adjustment in child support is appropriate. In calculating the parenting time adjustment, the child's time at school or in day care shall not be considered. To assist the court, the following table may be used to calculate the amount of parenting time adjustment. The adjustment percentage should be averaged if there is more than one child and if the percentages are not the same for each child. The amount of the parenting time adjustment allowed should be entered on the child support worksheet.

Nonresidential Parent's % of Child's Time	Parenting Time Adjustment
35%-39%	10%
40%-44%	20%
45%-49%	30%

IV.E.2.c. Steps to complete the child support calculation for the parenting time formula, health insurance, and work-related child care adjustments.

Step 1: To make the parenting time calculation, the appropriate parenting time adjustment percentage should be determined and entered at the bottom of page one of the child support worksheet.

Step 2: The Line D.3 Combined Child Support amount is multiplied by Line D.2 Proportionate Share of the parent entitled to the Parenting Time Adjustment and the respective amounts should be entered on Line D.4.

Step 3**:** The parenting time adjustment amount from Step 1 should be entered at Line D.5 of the child support worksheet as a credit against the parent's Line D.4 Proportionate Parental Child Support Obligation.

Step 4: The respective Proportionate Parent Child Support Obligation amounts after credit for the Parenting Time adjustment should be entered on Line D.6.

Step 5: The amount of the health insurance premium paid for the child and the parent paying the premium designated should be entered on Line D.7.

Step 6: The amount from Line D.7 should be multiplied by the respective income share percentages and resulting amounts should be entered on Line D.8.

Step 7: The amount of the work related child care paid for the child and the parent paying the premiums should be entered on Line D.9

Step 8: The combined amount of the work related child care should be multiplied by the respective income share percentages and the resulting amounts entered on Line D.10.

Step 9: The amounts from Lines D.6, D.8 and D.10 should be added and the respective amounts should be entered on Line D.11.

Step 10: The amounts paid by each parent for Insurance from Line D.7 and Day Care from Line D.9 should be entered on Line D.12 as a respective credit for the parent who made the payment.

Step 11: The resulting amount after credit for payment of Insurance and Day Care should be entered as the Basic Proportionate Child Support Obligation of each parent on Line D.13.

IV.E.2.d. Extended Parenting Time Adjustment: In situations where a child spends fourteen (14) or more consecutive days with the parent not having primary residency, or when the child spends time on a shared time schedule during the summer, the support amount of the parent not having primary residency from Line F.5 (calculated without a parenting time adjustment) may be proportionately reduced by up to 50% of the monthly support from Line F.5. Brief parenting time with the parent having primary residency shall not be deemed to interrupt the consecutive nature of the time. The amount allowed should be entered on the child support worksheet.

IV.E.2.e. Non-Exercise of Parenting Time Adjustment: The court may make an adjustment based on the historical non-exercise of parenting time as set forth in the parenting plan. The amount allowed should be entered on the child support worksheet.

IV.E.3. Income Tax Considerations (Line E.2)

The parties are encouraged to maximize the tax benefits of the dependency exemption and credits for a minor child and to share those actual economic benefits.

If the parties do not agree to share the actual economic benefits of the dependency exemption for a minor child or, if after agreeing, the parent having primary residency refuses to execute IRS Form 8332, the court shall consider the actual economic effect to both parties and may adjust the child support.

The party seeking the income tax consideration adjustment shall have the burden of proof.

The court also may consider any other income tax impacts, regardless of an agreement upon the dependency exemption and tax credit issues.

See the Kansas Judicial Branch website for additional discussion and examples.

IV.E.4. Special Needs (Line E.3)

Special needs of the child are items which exceed the usual and ordinary expenses incurred, such as ongoing treatment for health problems, orthodontist care, special education, or therapy costs, which are not considered elsewhere in the support order or in computations on the worksheet.

The amount of the special needs expenses, reduced to a monthly average, should be entered on Line E.3 (Special Needs).

IV.E.5. Support of Children Beyond the Age of Majority (Line E.4)

If the parties have a written agreement for a parent to continue to support a child beyond the age of majority, it may be considered in setting child support.

The fact that a parent is currently supporting a child of the parties in college (or past the age of majority) may be considered if the parent having primary residency seeks to increase the child support for the benefit of any children still under the age of eighteen. The amount allowed should be entered on Line E.4.

IV.E.6. Overall Financial Conditions of the Parties (Line E.5)

The financial situation of the parties may be reason to deviate from the calculated basic parental child support obligation if the deviation is in the best interests of the child. The amount allowed should be entered on Line E.5.

One example might be if either party has more than one job or works overtime, the circumstances requiring the additional employment/income should be considered. If the additional employment/income was historically relied upon by the parties prior to the dissolution of the relationship, then all of the income should be included in the calculation of the child support obligation. However, if the additional employment/income was secured after the dissolution of the relationship in an effort to meet additional financial responsibilities, consideration should be

given to that circumstance, provided that the court shall keep in mind the best interests of the child. In such a situation, two worksheets can be prepared with one worksheet including all income and the other worksheet including only the primary employment/income to determine the margin of deviation.

IV.E.7. Total (Line E.6)

The total of all child support adjustments allowed should be entered on Line E.6. The total(s) specified on this line should be transferred to Line F.2 (see the Kansas Judicial Branch website for examples Appendix VIII, Example 1, Subsection E).

IV.F. Deviation(s) From Rebuttable Presumption Amount (Section F)

The court must make written findings regarding deviations to the child support guideline amount and include a justification of why the deviation is in the best interest of the child. The final part of the worksheet shows the adjustments allowed under Section E to the basic parental child support obligation, and any enforcement fee charged against payments in IV-D cases and cases assigned to a court trustee for enforcement.

IV.F.1. Basic Parental Child Support Obligation (Line F.1)

The amount from Line D.13 above is transferred to Line F.1.

IV.F.2. Ability to Pay Calculation

The court must take into consideration the basic subsistence needs of the noncustodial parent, and at the court's discretion, the custodial parent and children. In calculating child support, the court must take into consideration the current federal poverty guidelines for a household of one. The current poverty guidelines can be found at https://aspe.hhs.gov.

To calculate this adjustment, the court must subtract the federal poverty guidelines for a household of one from the child support income (Line D.1). This amount is the income available for support.

If the income available for support is greater than the child support owed by the noncustodial parent, the lesser of the two amounts shown in F.5.a should be entered on Line F.5.b as the amount of child support owed by the noncustodial parent.

If the income available for support is less than the child support owed by the noncustodial parent, the court shall set a child support obligation based on the best interest of the child and enter it on Line F.5.b as the amount of child support owed by the noncustodial parent.

IV.F.3. Total Child Support Adjustments (Line F.2)

The amount from Line E.6 above is transferred to Line F.2.

IV.F.4. Adjusted Subtotal (Line F.3)

The result of adding or subtracting the total child support adjustments on Line F.2 to or from the basic parental child support obligation is entered on Line F.3.

IV.F.5. Equal Parenting Time Obligation

If the shared expense formula or the equal parenting time formula is used to determine the child support obligation, the result is entered on Line F.4.

IV.F.6. Social Security Disability or Retirement Dependent/Auxiliary Benefits

If the child receives Social Security dependent/auxiliary benefits through the payor, the actual amount of such benefits received must be entered on Line F.6. If the amount received is equal to or exceeds the Line F.5.b subtotal, the payor's obligation is $0, which amount must be entered on Line F.6.b. If the amount received is less than the Line F.5.b subtotal, the payor's support obligation is the difference between Line F.5.b subtotal and the benefit received, which amount must be entered on Line F.6.b.

IV.F.7. Enforcement Fee Allowance (Line F.7)

In instances where the court trustee or DCF is providing assistance in collecting child support for which a fee is charged, the fee should be divided equally between the parties. One half of the total monthly fee should be entered as an additional amount allowed on Line F.7 for the parent not having primary residency. In areas where the court trustee or DCF charge a percentage of each payment, this amount is determined by multiplying the percentage fee charged by the court trustee or DCF by the figure on Line F.3 and then multiplying by .5 ((Line F.3 x Collection Fee %) x .5). In areas where a flat fee is charged,

that flat fee is multiplied by .5 to find the amount applied on Line F.4 (Monthly Flat Fee x .5). These fees may vary and should be entered on Line F.7 (see the Kansas Judicial Branch website for examples and a fee chart).

IV.F.8. Net Parental Child Support Obligation (Line F.8)

The net parental child support obligation is determined by adding the enforcement fee allowance (Line F.7), if any, to the adjusted subtotal on Line F.6.b. The resulting amount is entered on Line F.8 and becomes the amount of the child support order.

IV.F.9. Required Worksheet Signatures

The person preparing the worksheet shall sign and date the worksheet submitted to the judge for approval. The judge approving the worksheet used to establish the parents' child support obligation shall sign and date the approved child support worksheet. Worksheets submitted but not approved shall not be signed by the judge.

IV.G. Payment of Child Support

IV.G.1. Except for good cause shown, every order requiring payment of child support shall require that the support be paid through the Kansas Payment Center.

IV.G.2. A written agreement between the parties to make direct child support payments to the payee and not pay through the state distribution unit shall constitute good cause, unless the court finds the agreement is not in the best interests of the child or children.

IV.G.3. The payor shall file such an agreement with the court and shall maintain written evidence of the payment of the support obligation, which shall consist of cancelled checks negotiated by the payee or receipts signed by the payee or evidence of direct electronic deposit in an account designated by the payee. The payor shall, at least annually on the date the first payment under the agreement was to be made, provide such evidence to the court and the payee.

IV.G.4. Each court order authorizing direct payment to the payee shall include language requiring the payor to comply with the above requirements for maintaining written evidence and providing it to the court and the payee.

IV.G.5. Failure of the payor to maintain records or failure to make payments are grounds for immediate modification of the order to require payments to be made through the state distribution unit for collection and disbursement of support payments pursuant to K.S.A. 23-3004 and amendments thereto.

V. CHANGE OF CIRCUMSTANCES

V.A. Courts have continuing jurisdiction to modify child support orders to advance the welfare of the child when there is a material change of circumstances.

V.B. In addition to changes of circumstances which have traditionally been considered by courts, any of the following constitute a material change of circumstances to warrant judicial review of existing support orders:

V.B.1. 10% Rule

Change of financial circumstances of the parents or the guidelines which would increase or decrease by 10% the amount shown on Line F.3 of the worksheet, except that the income from a second job taken by the parent not having primary residency shall not alone be considered a material change of circumstances to warrant a modification of the parent's child support obligation. Income from bonuses not shown to be regularly paid by the employer shall not be considered a material change of circumstances to warrant a modification of the parent's child support obligation.

An increase in the gross income of the parent having primary residency is not a material change of circumstances for the purpose of increasing the child support obligation.

In a case in which the court has approved either a shared residency or divided residency plan, any change in income by either parent may be used as a material change in circumstance if the change would increase or decrease by 10% the amount shown on Line F.3 of the worksheet.

A parent shall notify the other parent of any change of financial circumstances including, but not necessarily limited to, income, work-related child care costs, and health insurance premiums which, if changed, could constitute a material change of circumstances.

V.B.2. Duty to Notify

In the event of a failure to disclose a material change of circumstances, such as the understatement, overstatement, or concealment of financial information, as a result of such breach of duty, the court may determine the dollar value of a party's failure to disclose, and assess the amount in the form of a credit on the Line F.3 child support amount or an amount in addition to the Line F.3 child support amount for a determinate amount of time. The court may also adopt other sanctions.

Upon receipt of written request for financial information, a parent shall have thirty days within which to provide the requested information in writing to the other parent. Refusal to provide the requested information may make the non-complying parent responsible for the costs and expenses, including attorney fees, incurred in obtaining the requested information.

V.B.3. Age Change

The child is in a higher age group as a result of having passed the child's 6th or 12th birthday, or because the child's age places the child in the higher age group as a result of the change in the guidelines.

V.B.4. Termination of Child Support Obligation

Support orders for One Child. In child support orders for one child, child support stops pursuant to court order or pursuant to K.S.A. 23-3001, et seq. and amendments thereto.

Support Orders for Two or More Children. In child support orders, support amounts for two or more children, are stated as a total amount rather than on a per child basis. Absent judicial modification of the order, as each child emancipates as defined in K.S.A. 23-3001, et seq. and amendments thereto, or by court order, the total obligation will decrease proportionately based on the number of minor children at the time of the termination or emancipation.

Parents may seek to modify child support orders and income withholding orders when the legal obligation to pay child support terminates for any child or any child is emancipated.

V.B.5. Termination from Employment

Termination from Employment for Misconduct: Termination

from employment for misconduct will not ordinarily constitute a material change of circumstances that justifies a reduction in child support.

Voluntary Termination from Employment: Voluntary termination from employment will not ordinarily constitute a material change of circumstances that justifies a reduction in child support.

The court may consider the circumstances surrounding termination from employment.

V.B.6. Failure to Comply

Failure to comply with the terms of a positive or negative adjustment to the basic parental child support obligation awarded by the court, such as failure to exercise parenting time or nonutilization of a special needs allocation, would constitute a change in circumstance.

VI. REVIEW OF GUIDELINES

Chapter 45, Code of Federal Regulations, Section 302.56 requires that the state guidelines for child support must be "reviewed at least every four years to ensure that their application results in the determination of appropriate child support amounts." Therefore, these Kansas guidelines shall be reviewed by the Child Support Guidelines Advisory Committee as required by federal mandate.

ENDNOTES

[1] The original child support guidelines, promulgated pursuant to K.S.A. 20-165 by the Supreme Court on October 1, 1987, were proposed by the Kansas Commission on Child Support following a two-year study. See Kansas Commission on Child Support, "Proposed Kansas Child Support Guidelines," 1987 (available in Kansas Supreme Court Law Library, Topeka, Kansas). The report includes a detailed background discussion, including the policy criteria upon which the original guidelines were based.

The Child Support Guidelines Advisory Committee was initially appointed by the Supreme Court on April 7, 1989, to review the implementation of the statewide child support guidelines, solicit public input regarding the guidelines, and make recommendations to address the new federal mandates of the Family Support Act of 1988. The committee has been convened periodically to conduct a comprehensive review of the guidelines and to update the economic data. The

current Advisory Committee's members are:

	Date First Appointed
Hon. Keven Michael P. O'Grady, District Court Judge, 10th Judicial District	Appointed Chair, 06/24/20
Charles F. Harris, Wichita Attorney	04/07/89
Sherri Loveland, Lawrence Attorney	04/07/89
Hon. Constance Alvey District Court Judge, 29th Judicial District	07/01/09
Hon. Amy Harth Chief Judge, 6th Judicial District	07/01/09
Amy Fletcher, Wichita Parent Representative	04/03/14
Doni Mooberry, Lawrence Attorney	06/02/14
Michelle Slinkard, Topeka Attorney	07/01/16
Marc White, Topeka District Court Trustee, 3rd Judicial District	09/01/17
Richard Samaniego, Wichita Attorney	07/01/18
Sara Beezley, Girard Attorney	07/01/18
Ryan Brady, Hutchinson Parent Representative	08/06/18
Elizabeth Cohn, Topeka Director of Child Support Services	08/29/18

[2] *See* Linda Henry Elrod, *Kansas Child Support Guidelines: An Elusive Search for Fairness in Support Orders*, 27 WASHBURN L.J. 104, 120-25 (1987). Expenditures per child are assumed to increase with increases in parents' combined income, decrease per child as the total number of children in the family increases, and increase as the child grows older.

[3] William T. Terrell, Ph.D., is a consultant in private practice. Prior to his retirement, he served as an Associate Professor of Economics at Wichita State University, Wichita, Kansas. For an explanation of Dr. Terrell's economic model, *see* W.T. Terrell, "Expenditures on Children for Child Support: Economist as Policy Advisor" (paper presented to the Eastern Economic Association at Baltimore, Maryland, March 1989) (available in Kansas Supreme Court Law Library, Topeka, Kansas). *See also* Kansas Commission on Child Support; *supra* note 1, at 13-15.

[4] At the time of the review, Ann Coulson, Ph.D., held a position as an Assistant Professor in the Department of Human Development and Family Studies, Kansas State University, Manhattan, Kansas. The following sources were used to update the model: Bureau of Labor Statistics, *Consumer Expenditure Survey Series: Interview Survey, 1986-87* (1989); U.S. Bureau of the Census, Current Population Reports, Household After-Tax Income: 1986, ser. P-23, No. 157 (1989); U.S. Department of Agriculture, Agricultural Research Service, *Updated Estimates of the Cost of Raising a Child*, Family Economics Review, No. 2 (May 1989). *See* Letter from Dr. Ann Coulson to Hon. Herbert Walton, February 21, 1990, at 1, 3 (available in Kansas Supreme Court Law Library, Topeka, Kansas).

Adjustments were made to the national expenditure data to avoid double-counting certain expenditures, such as health care, health insurance, and child care services. Because social security was considered [as] a tax in the initial stage of the development of the schedule, the category of social security and pension plan contributions was also excluded so that the expenditure would not be counted twice. Additionally, the Committee excluded a number of expenditures considered to be discretionary or not attributable to children. Expenditures thus excluded were for alcoholic beverages, tobacco, vacation homes, boarding costs for children away at school, and cash contributions.

[5] *See* Child Support Guidelines Committee Report dated November 1993. Ann Coulson, Ph.D. prepared a description of the derivation of the 1993 child support schedules.

[6] The 2002 support schedule relies upon three data sources: Bureau of Labor Statistics, *Consumer Expenditure Survey, 1999-2000* (integrated diary and interview components); United States Department of Agriculture, Mark Lino, Ph.D., *Expenditures on Children by Families: 2001 Annual Report;* United States Department of Health and Human Services, *The 2002 HHS Poverty Guidelines*, 67 (31) FED. REGISTER (Feb. 14, 2002).

[7] Jodi Messer Pelkowski, Ph.D., is an Associate Professor of Economics at the Barton School of Business, Wichita State University, Wichita, Kansas.

[8] *See* Terrell, *supra* note 3, at 7; Letter from Dr. Ann Coulson to Hon. Herbert Walton, February 21, 1990, *supra* note 4, at 2.

[9] Consumption spending means household outlays for consumer goods and services as opposed to the purchase of assets or savings accounts.

[10] This reduction involves subtracting the age 16-18 child's share of a total family burden at two points on the equation that relates average spending per the age 16-18 child to gross family income. Once the two lower points are determined, then the entire equation is reduced in order to compute the support schedules. For example, the one child aged 16-18 family calls for a reduction of $228 at the poverty level income of $1,650. Hence, the poverty level average spending of $579 becomes the schedule entry of $351. Similarly, at an income of $15,500 per month, average spending of $2,580 per child declines by $324 to the support amount of $2,256. The tabled values derive from an equation that passes through these two diminished values.

[11] In deciding to include Veteran's Disability pay as income for child support payments, the Kansas Child Support Guidelines Advisory Committee determined that it was consistent with the rule of *Andler v. Andler*, 217 Kan. 538 (1975). In that case the Supreme Court held that Social Security payments to a parent were to be considered as income for child support purposes. The only difference between veteran's disability and Social Security, the situation in *Andler,* is that in the context of Social Security disability, the child received a Social Security dependent amount. In the Social Security disability situation, under the *Andler* Rule, the amount of the parent's Social Security disability award is treated as income and included on the child support worksheet. The amount of disabled parent's child support obligation as calculated on the child support worksheet is then compared to the amount of the dependent award that the child is receiving. If the dependent award exceeds the amount of the child support obligation, no child support is ordered. If the amount of the child support exceeds the dependent award, the difference is paid as child support. In the VA disability situation, there is no child benefit as a result of the disability.

[**History:** Order No. 59 effective October 1, 1987; Order No. 70 effective October 13, 1989; Order No. 75 effective April 1, 1990; Order No. 83 effective February 6, 1993; Order No. 90 effective August 1, 1994; Order No. 107 effective January 1, 1996; Order No. 128 effective October 1, 1998; Order No. 180 effective January 1, 2004; Order No. 216 effective January 1, 2008; Order No. 260 effective December 29, 2011; Order No. 261 effective April 1, 2012; Order No. 284 effective January 1, 2016; Order No. 287 effective September 1, 2016; Order No. 307 effective January 1, 2020.]

APPENDIX I

Child Support Worksheet

IN THE _____ JUDICIAL DISTRICT
_____ COUNTY, KANSAS

IN THE MATTER OF:

_____

and

CASE NO. _____

_____

CHILD SUPPORT WORKSHEET OF (name) _____

			PARTY NAME	PARTY NAME
A.	INCOME COMPUTATION – WAGE EARNER			
	1. Domestic Gross Income (Insert on Line C.1. below)*		$_____	$_____
B.	INCOME COMPUTATION – SELF-EMPLOYED			
	1. Self-Employment Gross Income		_____	_____
	2. Reasonable Business Expenses	(-)	_____	_____
	3. Domestic Gross Income (Insert on Line C.1. below)*		_____	_____
C.	ADJUSTMENTS TO DOMESTIC GROSS INCOME			
	1. Domestic Gross Income		_____	_____
	2. Court-Ordered Child Support Paid	(-)	_____	_____
	3. Court-Ordered Maintenance Paid _____%	(-)	_____	_____
	4. Court-Ordered Maintenance Received _____%	(+)	_____	_____
	5. Child Support Income (Insert on Line D.1. below)		_____	_____
D.	COMPUTATION OF CHILD SUPPORT			
	1. Child Support Income		_____	+ _____
				= _____

2. Proportionate Shares of Combined Income (Each parent's income divided by combined income) _____% _____%
3. Gross Child Support Obligation** (Using the combined income from Line D.1., find the amount for each child and enter total for all children)

Age of Children	0-5		6-11		12-18		Total
Number Per Age Category	____		____		____		
Total Amount	____	+	____	+	____	=	_____

* Cost of Living Differential Adjustment? ____ Yes ____ No
**Multiple Family Application? ____ Yes ____ No
Parenting Time Adjustment ____ Yes ____ No ____ %
Income Beyond the Child Support Schedule calculation used ____ Yes ____ No

		PARTY NAME	PARTY NAME
4. Proportionate Share (Line D.3 x Line D.2)		_____	_____
5. Parenting Time Adjustment _____% x Line D.4	(-)	_____	_____
6. Proportionate Shares after Parenting Time Adjustment		_____	_____
7. Health and Dental Insurance Premium		$ _____	+ $ _____
8. Proportionate Shares Health Insurance Premium		_____	_____
9. Work-Related Child Care Costs Formula: Amt. – (Amt. x %) for each child care credit Example: 200 – (200 x 30%)		_____	_____
10. Proportionate Shares Work-Related Child Care Costs		_____	_____
11. Proportionate Child Support Obligation for Each Parent (Line D.6 + D.8 + D.10)		_____	_____
12. Credit for Insurance or Work-Related Child Care Paid	(-)	_____	_____
13. Basic Parental Child Support Obligation ((Line 11-Line D.12); Insert on			

Line F.1. below) _____ _____

E. CHILD SUPPORT ADJUSTMENTS

APPLICABLE	N/A	CATEGORY	PARTY NAME	PARTY NAME
1. ☐	☐	Long Distance Parenting Time Costs	(+/-) _____	(+/-) _____
2. ☐	☐	Income Tax Considerations	(+/-) _____	(+/-) _____
3. ☐	☐	Special Needs	(+/-) _____	(+/-) _____
4. ☐	☐	Agreement Past Majority	(+/-) _____	(+/-) _____
5. ☐	☐	Overall Financial Condition	(+/-) _____	(+/-) _____
6		TOTAL (Insert on Line F.2. below	_____	_____

F. DEVIATION(S) FROM REBUTTABLE PRESUMPTION AMOUNT

	AMOUNT ALLOWED	
	PARTY NAME	PARTY NAME
1. Basic Parental Child Support Obligation _____ (Line D.13. from above)	_____	
2. Total Child Support Adjustments (+/-) _____ (Line E.6. from above)	_____	
3. Adjusted Subtotal (Line F.1. +/- Line F.2.)	_____	_____
4. Equal Parenting Time Obligation (☐ EPT Worksheet or ☐ Shared Expense Formula)	_____	_____
5.a. Ability to Pay Calculation Child Support Income (D.1) _____ - Poverty Guidelines for Household of One _____ = _____		
5.b. Subtotal (lesser amount of F.3 and F.5.a)	_____	_____
6. Social Security Dependent Benefits	(-) _____	(-) _____
6.b. Final Subtotal	_____	_____
7. Enforcement Fee Allowance** (Applied only to Nonresidential Parent) ((Line F.3. x Collection Fee %) x .5) or (Monthly Flat Fee x .5)	Percentage % _____ Flat Fee $ _____ (+) _____	(+) _____
8. Net Parental Child Support Obligation _____ (Line 5.b. + Line F.4.)	_____	

**Parent paying support.

_____	_____
Prepared By (Signature)	Judge/Hearing Officer Signature
_____	
Prepared By (Print Name)	
_____	_____
Date Submitted	Date Approved

APPENDIX II

Child Support Schedules

ONE CHILD FAMILIES: CHILD SUPPORT SCHEDULE
Dollars Per Month Per Child

Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18
50	9	10	11	**1650**	305	342	363	**4500**	676	757	805
100	19	21	22	**1700**	315	352	375	**4600**	688	770	819
150	28	31	33	**1750**	324	362	386	**4700**	699	783	833
200	37	41	44	**1800**	331	370	394	**4800**	711	796	846
250	46	52	55	**1850**	338	378	403	**4900**	723	809	860
300	56	62	66	**1900**	345	386	411	**5000**	734	821	874
350	65	72	77	**1950**	352	394	419	**5100**	745	834	887
400	74	83	88	**2000**	359	402	428	**5200**	757	847	901
450	83	93	99	**2100**	373	418	444	**5300**	768	860	914
500	93	104	110	**2200**	387	433	461	**5400**	779	872	928
550	102	114	121	**2300**	401	448	477	**5500**	791	885	941
600	111	124	132	**2400**	414	464	493	**5600**	802	897	955
650	120	135	143	**2500**	428	479	509	**5700**	813	910	968
700	130	145	154	**2600**	441	493	525	**5800**	824	922	981
750	139	155	165	**2700**	454	508	541	**5900**	835	935	994
800	148	166	176	**2800**	467	523	556	**6000**	846	947	1007
850	157	176	187	**2900**	480	537	572	**6100**	857	959	1020
900	167	186	198	**3000**	493	552	587	**6200**	868	971	1033
950	176	197	209	**3100**	506	566	602	**6300**	879	984	1046
1000	185	207	220	**3200**	518	580	617	**6400**	890	996	1059
1050	194	217	231	**3300**	531	594	632	**6500**	901	1008	1072
1100	204	228	242	**3400**	543	608	647	**6600**	911	1020	1085
1150	213	238	253	**3500**	556	622	662	**6700**	922	1032	1098
1200	222	248	264	**3600**	568	636	676	**6800**	933	1044	1111
1250	231	259	275	**3700**	580	650	691	**6900**	944	1056	1123
1300	241	269	286	**3800**	593	663	706	**7000**	954	1068	1136
1350	250	280	297	**3900**	605	677	720	**7100**	965	1080	1149
1400	259	290	308	**4000**	617	690	734	**7200**	975	1091	1161
1450	268	300	319	**4100**	629	704	749	**7300**	986	1103	1174
1500	278	311	330	**4200**	641	717	763	**7400**	996	1115	1186
1550	287	321	341	**4300**	653	730	777	**7500**	1007	1127	1199
1600	296	331	352	**4400**	664	744	791	**7600**	1017	1138	1211

ONE CHILD FAMILIES: CHILD SUPPORT SCHEDULE (Continued)
Dollars Per Month Per Child

Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18
7700	1028	1150	1224	**10400**	1299	1454	1547	**13100**	1555	1740	1852
7800	1038	1162	1236	**10500**	1309	1465	1558	**13200**	1565	1751	1863
7900	1049	1173	1248	**10600**	1319	1476	1570	**13300**	1574	1761	1874
8000	1059	1185	1261	**10700**	1328	1486	1581	**13400**	1583	1771	1884
8100	1069	1196	1273	**10800**	1338	1497	1593	**13500**	1592	1782	1895
8200	1079	1208	1285	**10900**	1348	1508	1604	**13600**	1601	1792	1906
8300	1090	1219	1297	**11000**	1357	1519	1616	**13700**	1611	1802	1917
8400	1100	1231	1309	**11100**	1367	1530	1627	**13800**	1620	1813	1928
8500	1110	1242	1322	**11200**	1376	1540	1639	**13900**	1629	1823	1939
8600	1120	1254	1334	**11300**	1386	1551	1650	**14000**	1638	1833	1950
8700	1130	1265	1346	**11400**	1396	1562	1661	**14100**	1647	1843	1961
8800	1141	1276	1358	**11500**	1405	1572	1673	**14200**	1656	1853	1972
8900	1151	1288	1370	**11600**	1415	1583	1684	**14300**	1665	1863	1982
9000	1161	1299	1382	**11700**	1424	1594	1695	**14400**	1674	1874	1993
9100	1171	1310	1394	**11800**	1434	1604	1707	**14500**	1683	1884	2004
9200	1181	1321	1406	**11900**	1443	1615	1718	**14600**	1692	1894	2015
9300	1191	1333	1418	**12000**	1452	1625	1729	**14700**	1701	1904	2026
9400	1201	1344	1429	**12100**	1462	1636	1740	**14800**	1710	1914	2036
9500	1211	1355	1441	**12200**	1471	1646	1752	**14900**	1719	1924	2047
9600	1221	1366	1453	**12300**	1481	1657	1763	**15000**	1728	1934	2058
9700	1230	1377	1465	**12400**	1490	1667	1774	**15100**	1737	1944	2068
9800	1240	1388	1477	**12500**	1499	1678	1785	**15200**	1746	1954	2079
9900	1250	1399	1488	**12600**	1509	1688	1796	**15300**	1755	1964	2090
10000	1260	1410	1500	**12700**	1518	1699	1807	**15400**	1764	1974	2100
10100	1270	1421	1512	**12800**	1527	1709	1818	**15500**	1773	1984	2111
10200	1280	1432	1523	**12900**	1537	1720	1829				
10300	1289	1443	1535	**13000**	1546	1730	1840				

*2018 Federal Poverty Guideline values converted to monthly values and rounded up to nearest $50 increment are $1050 for a one-person household and $1750 for a three-person household.

**The schedules show the nearest dollar value based on support functions. The numerical values for the 0-5 and 6-11 age ranges are calculated by multiplying 0.84 and 0.94, respectively, by the 12-18-year-old nonrounded calculated value.

To determine child support at higher income levels:
Age 12-18: Raise income to the power .61209 and multiply the result by 5.749332.
Age 6-11: Determine child support for Age 12-18 and then multiply by 0.94.
Age 0-5: Determine child support for Age 12-18 and then multiply by 0.84.

TWO CHILD FAMILIES: CHILD SUPPORT SCHEDULE
Dollars Per Month Per Child

Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18
50	7	8	9	**1650**	236	264	281	**4500**	526	589	627
100	14	16	17	**1700**	243	272	289	**4600**	535	599	637
150	21	24	26	**1750**	250	280	298	**4700**	543	608	647
200	29	32	34	**1800**	257	288	306	**4800**	552	618	657
250	36	40	43	**1850**	264	296	315	**4900**	560	627	667
300	43	48	51	**1900**	271	304	323	**5000**	569	637	677
350	50	56	60	**1950**	278	312	332	**5100**	577	646	687
400	57	64	68	**2000**	286	320	340	**5200**	586	655	697
450	64	72	77	**2100**	300	336	357	**5300**	594	665	707
500	71	80	85	**2200**	310	347	370	**5400**	602	674	717
550	79	88	94	**2300**	321	359	382	**5500**	610	683	727
600	86	96	102	**2400**	331	370	394	**5600**	618	692	736
650	93	104	111	**2500**	341	382	406	**5700**	627	701	746
700	100	112	119	**2600**	351	393	418	**5800**	635	710	756
750	107	120	128	**2700**	361	404	430	**5900**	643	719	765
800	114	128	136	**2800**	371	415	441	**6000**	651	728	775
850	121	136	145	**2900**	381	426	453	**6100**	659	737	784
900	129	144	153	**3000**	390	437	465	**6200**	667	746	794
950	136	152	162	**3100**	400	447	476	**6300**	675	755	803
1000	143	160	170	**3200**	409	458	487	**6400**	682	764	812
1050	150	168	179	**3300**	419	468	498	**6500**	690	772	822
1100	157	176	187	**3400**	428	479	509	**6600**	698	781	831
1150	164	184	196	**3500**	437	489	520	**6700**	706	790	840
1200	171	192	204	**3600**	446	500	531	**6800**	714	799	850
1250	179	200	213	**3700**	456	510	542	**6900**	721	807	859
1300	186	208	221	**3800**	465	520	553	**7000**	729	816	868
1350	193	216	230	**3900**	474	530	564	**7100**	737	824	877
1400	200	224	238	**4000**	482	540	574	**7200**	744	833	886
1450	207	232	247	**4100**	491	550	585	**7300**	752	842	895
1500	214	240	255	**4200**	500	560	595	**7400**	760	850	904
1550	221	248	264	**4300**	509	570	606	**7500**	767	859	913
1600	228	256	272	**4400**	518	579	616	**7600**	775	867	922

TWO CHILD FAMILIES: CHILD SUPPORT SCHEDULE
Dollars Per Month Per Child

Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18
7700	782	875	931	**10400**	976	1093	1162	**13100**	1158	1296	1378
7800	790	884	940	**10500**	983	1100	1171	**13200**	1164	1303	1386
7900	797	892	949	**10600**	990	1108	1179	**13300**	1171	1310	1394
8000	805	900	958	**10700**	997	1116	1187	**13400**	1177	1317	1401
8100	812	909	967	**10800**	1004	1124	1195	**13500**	1184	1325	1409
8200	819	917	975	**10900**	1011	1131	1203	**13600**	1190	1332	1417
8300	827	925	984	**11000**	1018	1139	1212	**13700**	1197	1339	1425
8400	834	933	993	**11100**	1025	1147	1220	**13800**	1203	1346	1432
8500	841	942	1002	**11200**	1031	1154	1228	**13900**	1210	1353	1440
8600	849	950	1010	**11300**	1038	1162	1236	**14000**	1216	1361	1448
8700	856	958	1019	**11400**	1045	1169	1244	**14100**	1222	1368	1455
8800	863	966	1028	**11500**	1052	1177	1252	**14200**	1229	1375	1463
8900	870	974	1036	**11600**	1058	1184	1260	**14300**	1235	1382	1470
9000	878	982	1045	**11700**	1065	1192	1268	**14400**	1241	1389	1478
9100	885	990	1053	**11800**	1072	1199	1276	**14500**	1248	1396	1485
9200	892	998	1062	**11900**	1079	1207	1284	**14600**	1254	1403	1493
9300	899	1006	1070	**12000**	1085	1214	1292	**14700**	1260	1411	1501
9400	906	1014	1079	**12100**	1092	1222	1300	**14800**	1267	1418	1508
9500	913	1022	1087	**12200**	1099	1229	1308	**14900**	1273	1425	1516
9600	920	1030	1096	**12300**	1105	1237	1316	**15000**	1279	1432	1523
9700	928	1038	1104	**12400**	1112	1244	1324	**15100**	1286	1439	1531
9800	935	1046	1113	**12500**	1118	1252	1331	**15200**	1292	1446	1538
9900	942	1054	1121	**12600**	1125	1259	1339	**15300**	1298	1453	1546
10000	949	1062	1129	**12700**	1132	1266	1347	**15400**	1305	1460	1553
10100	956	1069	1138	**12800**	1138	1274	1355	**15500**	1311	1467	1560
10200	963	1077	1146	**12900**	1145	1281	1363				
10300	970	1085	1154	**13000**	1151	1288	1371				

*2018 Federal Poverty Guideline values converted to monthly values and rounded up to nearest $50 increment are $1050 for a one-person household and $2100 for a four-person household.

**The schedules show the nearest dollar value based on support functions. The numerical values for the 0-5 and 6-11 age ranges are calculated by multiplying 0.84 and 0.94, respectively, by the 12-18-year-old nonrounded calculated value.

To determine child support at higher income levels:
Age 12-18: Raise income to the power .61209 and multiply the result by 4.24994.
Age 6-11: Determine child support for Age 12-18 and then multiply by 0.94.
Age 0-5: Determine child support for Age 12-18 and then multiply by 0.84.

THREE CHILD FAMILIES: CHILD SUPPORT SCHEDULE
Dollars Per Month Per Child

Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18
50	6	7	7	**1650**	198	221	236	**4500**	456	510	543
100	12	13	14	**1700**	204	228	243	**4600**	463	518	551
150	18	20	21	**1750**	210	235	250	**4700**	470	526	560
200	24	27	29	**1800**	216	242	257	**4800**	477	534	568
250	30	34	36	**1850**	222	248	264	**4900**	484	542	576
300	36	40	43	**1900**	228	255	271	**5000**	491	550	585
350	42	47	50	**1950**	234	262	278	**5100**	498	558	593
400	48	54	57	**2000**	240	268	286	**5200**	505	565	601
450	54	60	64	**2100**	252	282	300	**5300**	512	573	610
500	60	67	71	**2200**	264	295	314	**5400**	519	581	618
550	66	74	79	**2300**	276	309	328	**5500**	526	588	626
600	72	81	86	**2400**	288	322	343	**5600**	533	596	634
650	78	87	93	**2500**	300	336	357	**5700**	539	604	642
700	84	94	100	**2600**	308	345	367	**5800**	546	611	650
750	90	101	107	**2700**	317	354	377	**5900**	553	619	658
800	96	107	114	**2800**	325	364	387	**6000**	559	626	666
850	102	114	121	**2900**	333	373	397	**6100**	566	633	674
900	108	121	129	**3000**	341	382	406	**6200**	573	641	682
950	114	128	136	**3100**	349	391	416	**6300**	579	648	689
1000	120	134	143	**3200**	357	400	426	**6400**	586	655	697
1050	126	141	150	**3300**	365	409	435	**6500**	592	663	705
1100	132	148	157	**3400**	373	418	444	**6600**	599	670	713
1150	138	154	164	**3500**	381	426	454	**6700**	605	677	720
1200	144	161	171	**3600**	389	435	463	**6800**	612	684	728
1250	150	168	179	**3700**	396	444	472	**6900**	618	692	736
1300	156	175	186	**3800**	404	452	481	**7000**	624	699	743
1350	162	181	193	**3900**	412	461	490	**7100**	631	706	751
1400	168	188	200	**4000**	419	469	499	**7200**	637	713	758
1450	174	195	207	**4100**	426	477	508	**7300**	643	720	766
1500	180	201	214	**4200**	434	486	517	**7400**	650	727	773
1550	186	208	221	**4300**	441	494	525	**7500**	656	734	781
1600	192	215	228	**4400**	448	502	534	**7600**	662	741	788

THREE CHILD FAMILIES: CHILD SUPPORT SCHEDULE (Continued)
Dollars Per Month Per Child

Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18
7700	668	748	795	**10400**	828	926	985	**13100**	976	1092	1161
7800	674	755	803	**10500**	833	933	992	**13200**	981	1098	1168
7900	680	761	810	**10600**	839	939	999	**13300**	986	1104	1174
8000	687	768	817	**10700**	845	945	1006	**13400**	991	1110	1180
8100	693	775	825	**10800**	850	951	1012	**13500**	997	1115	1187
8200	699	782	832	**10900**	856	958	1019	**13600**	1002	1121	1193
8300	705	789	839	**11000**	861	964	1026	**13700**	1007	1127	1199
8400	711	796	846	**11100**	867	970	1032	**13800**	1012	1133	1205
8500	717	802	853	**11200**	873	976	1039	**13900**	1018	1139	1212
8600	723	809	861	**11300**	878	983	1045	**14000**	1023	1145	1218
8700	729	816	868	**11400**	884	989	1052	**14100**	1028	1151	1224
8800	735	822	875	**11500**	889	995	1059	**14200**	1033	1156	1230
8900	741	829	882	**11600**	895	1001	1065	**14300**	1038	1162	1236
9000	747	836	889	**11700**	900	1007	1072	**14400**	1044	1168	1242
9100	753	842	896	**11800**	906	1013	1078	**14500**	1049	1174	1249
9200	758	849	903	**11900**	911	1020	1085	**14600**	1054	1179	1255
9300	764	855	910	**12000**	917	1026	1091	**14700**	1059	1185	1261
9400	770	862	917	**12100**	922	1032	1098	**14800**	1064	1191	1267
9500	776	868	924	**12200**	927	1038	1104	**14900**	1069	1197	1273
9600	782	875	931	**12300**	933	1044	1110	**15000**	1074	1202	1279
9700	788	881	938	**12400**	938	1050	1117	**15100**	1080	1208	1285
9800	793	888	945	**12500**	944	1056	1123	**15200**	1085	1214	1291
9900	799	894	951	**12600**	949	1062	1130	**15300**	1090	1219	1297
10000	805	901	958	**12700**	954	1068	1136	**15400**	1095	1225	1303
10100	811	907	965	**12800**	960	1074	1142	**15500**	1100	1231	1309
10200	816	914	972	**12900**	965	1080	1149				
10300	822	920	979	**13000**	970	1086	1155				

*2018 Federal Poverty Guideline values converted to monthly values and rounded up to nearest $50 increment are $1050 for a one-person household and $2500 for a five-person household.

**The schedules show the nearest dollar value based on support functions. The numerical values for the 0-5 and 6-11 age ranges are calculated by multiplying 0.84 and 0.94, respectively, by the 12-18-year-old nonrounded calculated value.

To determine child support at higher income levels:
Age 12-18: Raise income to the power .61209 and multiply the result by 3.566057.
Age 6-11: Determine child support for Age 12-18 and then multiply by 0.94.
Age 0-5: Determine child support for Age 12-18 and then multiply by 0.84.

FOUR CHILD FAMILIES: CHILD SUPPORT SCHEDULE
Dollars Per Month Per Child

Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18
50	5	6	6	**1650**	163	183	194	**4500**	391	437	465
100	10	11	12	**1700**	168	188	200	**4600**	397	444	472
150	15	17	18	**1750**	173	194	206	**4700**	403	451	480
200	20	22	24	**1800**	178	199	212	**4800**	409	458	487
250	25	28	29	**1850**	183	205	218	**4900**	415	464	494
300	30	33	35	**1900**	188	210	224	**5000**	421	471	501
350	35	39	41	**1950**	193	216	230	**5100**	427	478	508
400	40	44	47	**2000**	198	221	236	**5200**	433	484	515
450	45	50	53	**2100**	208	233	247	**5300**	439	491	522
500	49	55	59	**2200**	218	244	259	**5400**	445	498	529
550	54	61	65	**2300**	228	255	271	**5500**	451	504	536
600	59	66	71	**2400**	237	266	283	**5600**	456	511	543
650	64	72	77	**2500**	247	277	295	**5700**	462	517	550
700	69	78	82	**2600**	257	288	306	**5800**	468	524	557
750	74	83	88	**2700**	267	299	318	**5900**	474	530	564
800	79	89	94	**2800**	277	310	330	**6000**	479	536	571
850	84	94	100	**2900**	286	320	340	**6100**	485	543	577
900	89	100	106	**3000**	293	327	348	**6200**	491	549	584
950	94	105	112	**3100**	299	335	357	**6300**	496	555	591
1000	99	111	118	**3200**	306	343	365	**6400**	502	562	597
1050	104	116	124	**3300**	313	350	373	**6500**	507	568	604
1100	109	122	130	**3400**	320	358	381	**6600**	513	574	611
1150	114	127	135	**3500**	327	365	389	**6700**	519	580	617
1200	119	133	141	**3600**	333	373	397	**6800**	524	586	624
1250	124	138	147	**3700**	340	380	404	**6900**	530	593	630
1300	129	144	153	**3800**	346	387	412	**7000**	535	599	637
1350	134	149	159	**3900**	353	395	420	**7100**	540	605	643
1400	139	155	165	**4000**	359	402	427	**7200**	546	611	650
1450	143	161	171	**4100**	365	409	435	**7300**	551	617	656
1500	148	166	177	**4200**	372	416	443	**7400**	557	623	663
1550	153	172	183	**4300**	378	423	450	**7500**	562	629	669
1600	158	177	188	**4400**	384	430	458	**7600**	567	635	675

FOUR CHILD FAMILIES: CHILD SUPPORT SCHEDULE (Continued)
Dollars Per Month Per Child

Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18
7700	573	641	682	**10400**	709	794	844	**13100**	836	936	995
7800	578	647	688	**10500**	714	799	850	**13200**	841	941	1001
7900	583	653	694	**10600**	719	805	856	**13300**	845	946	1006
8000	588	658	700	**10700**	724	810	862	**13400**	850	951	1011
8100	594	664	707	**10800**	729	815	867	**13500**	854	956	1017
8200	599	670	713	**10900**	733	821	873	**13600**	859	961	1022
8300	604	676	719	**11000**	738	826	879	**13700**	863	966	1028
8400	609	682	725	**11100**	743	831	884	**13800**	868	971	1033
8500	614	687	731	**11200**	748	837	890	**13900**	872	976	1038
8600	619	693	737	**11300**	752	842	896	**14000**	877	981	1043
8700	625	699	744	**11400**	757	847	901	**14100**	881	986	1049
8800	630	705	750	**11500**	762	853	907	**14200**	885	991	1054
8900	635	710	756	**11600**	767	858	913	**14300**	890	996	1059
9000	640	716	762	**11700**	771	863	918	**14400**	894	1001	1065
9100	645	722	768	**11800**	776	868	924	**14500**	899	1006	1070
9200	650	727	774	**11900**	781	874	929	**14600**	903	1011	1075
9300	655	733	780	**12000**	785	879	935	**14700**	908	1016	1080
9400	660	739	786	**12100**	790	884	941	**14800**	912	1020	1086
9500	665	744	792	**12200**	795	889	946	**14900**	916	1025	1091
9600	670	750	798	**12300**	799	894	952	**15000**	921	1030	1096
9700	675	755	803	**12400**	804	900	957	**15100**	925	1035	1101
9800	680	761	809	**12500**	809	905	963	**15200**	929	1040	1106
9900	685	766	815	**12600**	813	910	968	**15300**	934	1045	1112
10000	690	772	821	**12700**	818	915	974	**15400**	938	1050	1117
10100	695	777	827	**12800**	822	920	979	**15500**	942	1055	1122
10200	700	783	833	**12900**	827	925	984				
10300	704	788	839	**13000**	831	930	990				

*2018 Federal Poverty Guideline values converted to monthly values and rounded up to nearest $50 increment are $1050 for a one-person household and $2850 for a six-person household.

**The schedules show the nearest dollar value based on support functions. The numerical values for the 0-5 and 6-11 age ranges are calculated by multiplying 0.84 and 0.94, respectively, by the 12-18-year-old nonrounded calculated value.

To determine child support at higher income levels:
Age 12-18: Raise income to the power .61209 and multiply the result by 3.055748.
Age 6-11: Determine child support for Age 12-18 and then multiply by 0.94.
Age 0-5: Determine child support for Age 12-18 and then multiply by 0.84.

FIVE CHILD FAMILIES: CHILD SUPPORT SCHEDULE
Dollars Per Month Per Child

Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18
50	4	5	5	**1650**	141	157	167	**4500**	348	389	414
100	9	10	10	**1700**	145	162	173	**4600**	353	395	421
150	13	14	15	**1750**	149	167	178	**4700**	359	402	427
200	17	19	20	**1800**	153	172	183	**4800**	364	408	434
250	21	24	25	**1850**	158	177	188	**4900**	370	414	440
300	26	29	30	**1900**	162	181	193	**5000**	375	420	446
350	30	33	36	**1950**	166	186	198	**5100**	380	426	453
400	34	38	41	**2000**	171	191	203	**5200**	386	432	459
450	38	43	46	**2100**	179	200	213	**5300**	391	437	465
500	43	48	51	**2200**	188	210	223	**5400**	396	443	472
550	47	52	56	**2300**	196	219	233	**5500**	401	449	478
600	51	57	61	**2400**	205	229	244	**5600**	407	455	484
650	55	62	66	**2500**	213	239	254	**5700**	412	461	490
700	60	67	71	**2600**	222	248	264	**5800**	417	466	496
750	64	72	76	**2700**	230	258	274	**5900**	422	472	502
800	68	76	81	**2800**	239	267	284	**6000**	427	478	508
850	72	81	86	**2900**	247	277	294	**6100**	432	484	514
900	77	86	91	**3000**	256	286	305	**6200**	437	489	520
950	81	91	96	**3100**	264	296	315	**6300**	442	495	526
1000	85	95	102	**3200**	273	305	325	**6400**	447	500	532
1050	90	100	107	**3300**	279	312	332	**6500**	452	506	538
1100	94	105	112	**3400**	285	319	339	**6600**	457	511	544
1150	98	110	117	**3500**	291	325	346	**6700**	462	517	550
1200	102	114	122	**3600**	297	332	353	**6800**	467	522	556
1250	107	119	127	**3700**	303	339	360	**6900**	472	528	562
1300	111	124	132	**3800**	308	345	367	**7000**	477	533	567
1350	115	129	137	**3900**	314	352	374	**7100**	481	539	573
1400	119	134	142	**4000**	320	358	381	**7200**	486	544	579
1450	124	138	147	**4100**	326	364	388	**7300**	491	549	585
1500	128	143	152	**4200**	331	371	394	**7400**	496	555	590
1550	132	148	157	**4300**	337	377	401	**7500**	501	560	596
1600	136	153	162	**4400**	342	383	408	**7600**	505	565	602

FIVE CHILD FAMILIES: CHILD SUPPORT SCHEDULE (Continued)
Dollars Per Month Per Child

Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18
7700	510	571	607	**10400**	632	707	752	**13100**	745	833	887
7800	515	576	613	**10500**	636	712	757	**13200**	749	838	891
7900	519	581	618	**10600**	640	717	762	**13300**	753	842	896
8000	524	587	624	**10700**	645	722	768	**13400**	757	847	901
8100	529	592	630	**10800**	649	726	773	**13500**	761	851	906
8200	533	597	635	**10900**	653	731	778	**13600**	765	856	911
8300	538	602	641	**11000**	658	736	783	**13700**	769	860	915
8400	543	607	646	**11100**	662	741	788	**13800**	773	865	920
8500	547	612	652	**11200**	666	745	793	**13900**	777	869	925
8600	552	618	657	**11300**	670	750	798	**14000**	781	874	930
8700	556	623	662	**11400**	675	755	803	**14100**	785	878	934
8800	561	628	668	**11500**	679	760	808	**14200**	789	883	939
8900	565	633	673	**11600**	683	764	813	**14300**	793	887	944
9000	570	638	679	**11700**	687	769	818	**14400**	797	892	948
9100	575	643	684	**11800**	691	774	823	**14500**	801	896	953
9200	579	648	689	**11900**	695	778	828	**14600**	805	900	958
9300	583	653	695	**12000**	700	783	833	**14700**	808	905	962
9400	588	658	700	**12100**	704	788	838	**14800**	812	909	967
9500	592	663	705	**12200**	708	792	843	**14900**	816	913	972
9600	597	668	711	**12300**	712	797	848	**15000**	820	918	976
9700	601	673	716	**12400**	716	801	853	**15100**	824	922	981
9800	606	678	721	**12500**	720	806	857	**15200**	828	927	986
9900	610	683	726	**12600**	724	811	862	**15300**	832	931	990
10000	614	688	731	**12700**	728	815	867	**15400**	836	935	995
10100	619	692	737	**12800**	733	820	872	**15500**	840	940	999
10200	623	697	742	**12900**	737	824	877				
10300	628	702	747	**13000**	741	829	882				

*2018 Federal Poverty Guideline values converted to monthly values and rounded up to nearest $50 increment are $1050 for a one-person household and $3200 for a seven-person household.

**The schedules show the nearest dollar value based on support functions. The numerical values for the 0-5 and 6-11 age ranges are calculated by multiplying 0.84 and 0.94, respectively, by the 12-18-year-old nonrounded calculated value.

To determine child support at higher income levels:

Age 12-18: Raise income to the power .61209 and multiply the result by 2.722181.

Age 6-11: Determine child support for Age 12-18 and then multiply by 0.94.

Age 0-5: Determine child support for Age 12-18 and then multiply by 0.84.

SIX CHILD FAMILIES: CHILD SUPPORT SCHEDULE
Dollars Per Month Per Child

Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18
50	4	4	4	**1650**	124	139	148	**4500**	316	354	377
100	8	8	9	**1700**	128	143	152	**4600**	321	360	383
150	11	13	13	**1750**	132	147	157	**4700**	326	365	389
200	15	17	18	**1800**	135	152	161	**4800**	331	371	394
250	19	21	22	**1850**	139	156	166	**4900**	336	376	400
300	23	25	27	**1900**	143	160	170	**5000**	341	382	406
350	26	29	31	**1950**	147	164	175	**5100**	346	387	412
400	30	34	36	**2000**	151	168	179	**5200**	351	393	418
450	34	38	40	**2100**	158	177	188	**5300**	356	398	423
500	38	42	45	**2200**	166	185	197	**5400**	360	403	429
550	41	46	49	**2300**	173	194	206	**5500**	365	409	435
600	45	51	54	**2400**	181	202	215	**5600**	370	414	440
650	49	55	58	**2500**	188	211	224	**5700**	375	419	446
700	53	59	63	**2600**	196	219	233	**5800**	379	424	451
750	56	63	67	**2700**	203	227	242	**5900**	384	430	457
800	60	67	72	**2800**	211	236	251	**6000**	388	435	462
850	64	72	76	**2900**	218	244	260	**6100**	393	440	468
900	68	76	81	**3000**	226	253	269	**6200**	398	445	473
950	72	80	85	**3100**	233	261	278	**6300**	402	450	479
1000	75	84	90	**3200**	241	270	287	**6400**	407	455	484
1050	79	88	94	**3300**	248	278	296	**6500**	411	460	490
1100	83	93	99	**3400**	256	286	305	**6600**	416	465	495
1150	87	97	103	**3500**	263	295	314	**6700**	420	470	500
1200	90	101	108	**3600**	270	302	321	**6800**	425	475	506
1250	94	105	112	**3700**	275	308	328	**6900**	429	480	511
1300	98	109	116	**3800**	281	314	334	**7000**	434	485	516
1350	102	114	121	**3900**	286	320	340	**7100**	438	490	521
1400	105	118	125	**4000**	291	326	346	**7200**	442	495	527
1450	109	122	130	**4100**	296	331	353	**7300**	447	500	532
1500	113	126	134	**4200**	301	337	359	**7400**	451	505	537
1550	117	131	139	**4300**	306	343	365	**7500**	455	510	542
1600	120	135	143	**4400**	311	349	371	**7600**	460	514	547

SIX CHILD FAMILIES: CHILD SUPPORT SCHEDULE (Continued)
Dollars Per Month Per Child

Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18	Combined Gross Monthly Income	Support Amount ($ Per Child) Age Group Age 0-5	Age 6-11	Age 12-18
7700	464	519	552	**10400**	575	643	684	**13100**	678	758	807
7800	468	524	557	**10500**	579	648	689	**13200**	681	762	811
7900	473	529	563	**10600**	583	652	694	**13300**	685	766	815
8000	477	534	568	**10700**	587	656	698	**13400**	689	771	820
8100	481	538	573	**10800**	590	661	703	**13500**	692	775	824
8200	485	543	578	**10900**	594	665	708	**13600**	696	779	828
8300	489	548	583	**11000**	598	669	712	**13700**	699	783	833
8400	494	552	588	**11100**	602	674	717	**13800**	703	787	837
8500	498	557	593	**11200**	606	678	721	**13900**	707	791	841
8600	502	562	598	**11300**	610	682	726	**14000**	710	795	846
8700	506	566	603	**11400**	614	687	731	**14100**	714	799	850
8800	510	571	608	**11500**	617	691	735	**14200**	718	803	854
8900	514	576	612	**11600**	621	695	740	**14300**	721	807	859
9000	519	580	617	**11700**	625	700	744	**14400**	725	811	863
9100	523	585	622	**11800**	629	704	749	**14500**	728	815	867
9200	527	589	627	**11900**	633	708	753	**14600**	732	819	871
9300	531	594	632	**12000**	636	712	758	**14700**	735	823	876
9400	535	599	637	**12100**	640	716	762	**14800**	739	827	880
9500	539	603	642	**12200**	644	721	767	**14900**	743	831	884
9600	543	608	646	**12300**	648	725	771	**15000**	746	835	888
9700	547	612	651	**12400**	652	729	776	**15100**	750	839	892
9800	551	617	656	**12500**	655	733	780	**15200**	753	843	897
9900	555	621	661	**12600**	659	737	785	**15300**	757	847	901
10000	559	626	665	**12700**	663	742	789	**15400**	760	851	905
10100	563	630	670	**12800**	666	746	793	**15500**	764	855	909
10200	567	634	675	**12900**	670	750	798				
10300	571	639	680	**13000**	674	754	802				

*2018 Federal Poverty Guideline values converted to monthly values and rounded up to nearest $50 increment are $1050 for a one-person household and $3550 for an eight-person household.

**The schedules show the nearest dollar value based on support functions. The numerical values for the 0-5 and 6-11 age ranges are calculated by multiplying 0.84 and 0.94, respectively, by the 12-18-year-old nonrounded calculated value.

To determine child support at higher income levels:
Age 12-18: Raise income to the power .61209 and multiply the result by 2.476429.
Age 6-11: Determine child support for Age 12-18 and then multiply by 0.94.
Age 0-5: Determine child support for Age 12-18 and then multiply by 0.84.

APPENDIX III

Domestic Relations Affidavit

IN THE _____ JUDICIAL DISTRICT
_____ COUNTY, KANSAS

IN THE MATTER OF)
)
_____)
Party Name)
)
and) Case No. _____
)
)
_____)
Party Name)

DOMESTIC RELATIONS AFFIDAVIT OF_____
(name)

1. Party Name Residence _____
   Party Name _____ XXX-XX-_ _ _ _ _____
   Birth Month/Year Social Security Number Telephone

2. Party Name Residence _____
   Party Name _____ XXX-XX-_ _ _ _ _____
   Birth Month/Year Social Security Number Telephone

3. Date of Marriage: _____

4. Number of Marriages: _____ _____
   Party Name Party Name

5. Number of children of the relationship: _____

6. Names, Social Security Numbers, the month and year of each child's birth and ages of minor children of the relationship:

Name	Social Security Number XXX-XX-_ _ _ _	Birth Month /Year	Age	Custodian
_____	_____	_____	___	_____
_____	_____	_____	___	_____
_____	_____	_____	___	_____
_____	_____	_____	___	_____

7. Names, Social Security Numbers, and ages of minor children of previous relationships and facts as to custody and support payments paid or received, if any.

Name	Social Security No. XXX-XX-____	Age	Custodian	Support Payment	Paid or Rec'd
_____	_____	____	_____	$ _____	_____
_____	_____	____	_____	$ _____	_____
_____	_____	____	_____	$ _____	_____
_____	_____	____	_____	$ _____	_____

8. Party Name is employed by (name) _____
(address) _____

Party Name is employed by (name) _____
(address) _____

with monthly income as follows:

A.	Wage Earner	Party Name	Party Name
	1. Gross Income	$ _____	$ _____
	2. Other Income	$ _____	$ _____
	3. Subtotal Gross Income	$ _____	$ _____
	4. Federal Withholding (Claiming _____ exemptions)	$ _____	$ _____
	5. Federal Income Tax	$ _____	$ _____
	6. OASDHI	$ _____	$ _____
	7. Kansas Withholding	$ _____	$ _____
	8. Subtotal Deductions	$ _____	$ _____
	9. Net Income	$ _____	$ _____
B.	Self-Employed	Party Name	Party Name
	1. Gross Income from self-employment	$ _____	$ _____
	2. Other Income	$ _____	$ _____
	3. Subtotal Gross Income	$ _____	$ _____
	4. Reasonable Business Expenses (Itemize on attached exhibit)	(-) $ _____	$ _____
	5. Self-Employment Tax (-)	$ _____	$ _____
	6. Business Net Income	$ _____	$ _____
	7. Estimated Tax Payments (Claim _____ exemptions)	$ _____	$ _____
	8. Federal Income Tax	$ _____	$ _____
	9. Kansas Withholding	$ _____	$ _____
	10. Subtotal Deductions	$ _____	$ _____

11. Net Income (Line B.3. minus Line B.9.) $ _____ $ _____

Pay period: _____ _____
Party Name Party Name

9. The liquid assets of the parties are:

Item	Amount	Joint or Individual (Specify)
A. Checking Accounts (Do not list account numbers):		
_____	$ _____	_____
_____	$ _____	_____
B. Savings Accounts (Do not list account numbers):		
_____	$ _____	_____
_____	$ _____	_____
C. Cash		
Party Name	$ _____	_____
Party Name	$ _____	_____
D. Other		
_____	$ _____	_____
_____	$ _____	_____

10. The monthly expenses of each party are: (Please indicate with an asterisk all figures which are estimates rather than actual figures taken from records.)

A. Item	Party Name (Actual or Estimated)	Party Name (Actual or Estimated)
1. Rent	$ _____	$ _____
2. Food	$ _____	$ _____
3. Utilities/services:		
Trash Service	$ _____	$ _____
Newspaper	$ _____	$ _____
Telephone	$ _____	$ _____
Cell Phone	$ _____	$ _____
Cable	$ _____	$ _____
Gas	$ _____	$ _____
Water	$ _____	$ _____
Lights	$ _____	$ _____
Other	$ _____	$ _____
4. Insurance:		
Life	$ _____	$ _____
Health	$ _____	$ _____

	Car	$ _____	$ _____
	House/Rental	$ _____	$ _____
	Other	$ _____	$ _____
5.	Medical and dental	$ _____	$ _____
6.	Prescriptions drugs	$ _____	$ _____
7.	Child care (work-related)	$ _____	$ _____
8.	Child care (non-work-related)	$ _____	$ _____
9.	Clothing	$ _____	$ _____
10.	School expenses	$ _____	$ _____
11.	Haircuts and beauty	$ _____	$ _____
12.	Car repair	$ _____	$ _____
13.	Gas and oil	$ _____	$ _____
14.	Personal property tax	$ _____	$ _____
	Item	Party Name (Actual or Estimated)	Party Name (Actual or Estimated)
15.	Miscellaneous (Specify)		
	_____	$ _____	$ _____
	_____	$ _____	$ _____
16.	Debt Payments (Specify)		
	_____	$ _____	$ _____
	_____	$ _____	$ _____
	Total	$ _____	$ _____

*Show house payments, mortgage payments, etc., in Section 10.B.

B. Monthly payments to banks, loan companies or on credit accounts: (Indicate actual or estimated monetary amount in each column; use asterisk for secured.) DO NOT LIST ANY PAYMENTS INCLUDED IN PART 10.A. ABOVE.

Creditor	When Incurred	Amount of Payment	Date of Last Payment	Balance	Responsibility Party Name	Party Name
_____	_____	_____	_____	$ _____	$ _____	$ _____
_____	_____	_____	_____	$ _____	$ _____	$ _____
_____	_____	_____	_____	$ _____	$ _____	$ _____
_____	_____	_____	_____	$ _____	$ _____	$ _____
_____	_____	_____	_____	$ _____	$ _____	$ _____
_____	_____	_____	_____	$ _____	$ _____	$ _____
			Subtotal of Payments		$ _____	$ _____

Total	$ _____	$ _____

C. Total Living Expenses

	Party Name (Actual or Estimated)	Party Name (Actual or Estimated)
1. Total funds available to Both Parties (from No. 8)	$ _____	$ _____
2. Total needed (from No. 10.A. and B.)	$ _____	$ _____
3. Net Balance	$ _____	$ _____
4. Projected child support	$ _____	$ _____

D. Payments or contributions received, or paid, for support of others. Specify source and amount.

Source	Party Name	Party Name
_____(+/-)	$ _____	$ _____
_____(+/-)	$ _____	$ _____

11. How much does the party who provides health care pay for family coverage?
$ _____ per _____.
How much does it cost the provider to furnish health insurance only on the provider?
$ _____ per _____.

FURNISH THE FOLLOWING INFORMATION IF APPLICABLE.

12. Income and financial resources of children.

Income/Resources	Amount
_____	$ _____
_____	$ _____

13. Child support adjustments requested.
□ parenting time adjustment □ agreement past majority
□ income tax consideration □ long distance parenting time
□ special needs □ overall financial conditions
□ other: _____

14. All other personal property including retirement benefits (including but not limited to qualified plans such as profit-sharing, pension, IRA, 401(k), or other savings-type employee benefits, nonqualified plans, and deferred income plans), and ownership thereof (joint or individual), including policies of insurance, identified as to nature

or description, ownership (joint or individual), and actual or estimated value.

Joint or Individual	Amount	(Specify)
_____	$ _____	_____
_____	$ _____	_____
_____	$ _____	_____
_____	$ _____	_____

THE FOLLOWING NEED NOT BE FURNISHED IN POST JUDGMENT PROCEDURES.

15. List real property identified as to description, ownership (joint or individual) and actual or estimated value.

Property Description	Ownership	Actual/Estimated Value
_____		
_____		
_____		
_____		

16. Identify the property, if any, acquired by each of the parties prior to marriage or acquired during marriage by a will or inheritance.

Property Description	Ownership	Source of Ownership	Actual/ Estimated Value
_____			
_____			
_____			

17. List debt obligations, including maintenance, not listed in Section 10.A. or 10.B. above, identified as to name or names of payor or payors and payees, balance due and rate at which payable; and, if secured, identify the encumbered property.

Debt Obligation	Payor	Payee	Balance Due	Payment Rate	Encumbered Property
_____					
_____					
_____					

18. List health insurance coverage and the right, pursuant to ERISA §§ 601-608, 29 U.S.C. §§ 1161-1168 (1986), to continued coverage by the spouse who is not a member of the covered employee group.

Health Insurance	COBRA Continuation		
	Yes	No	Unknown
_____	_____	_____	_____
_____	_____	_____	_____

I declare under penalty of perjury under the laws of the State of Kansas that the foregoing is true, correct and complete.

Executed on the _____ day of _____, 20____.

Name (Print): _____
Signature _____

APPENDIX IV

In the District Court of _____ County, Kansas

_____

vs.

_____ Case No. _____

SHORT-FORM DOMESTIC RELATIONS AFFIDAVIT
(To be used for Paternity Actions, Child Support Actions, and Post-Judgment Motions to Establish or Modify Child Support)

Name: _____

I am the: □ Parent □ IV-D Agency □ Other: _____

This case involves these dependents:

Child 1:_____ Year of Birth: _____
Child 2:_____ Year of Birth: _____
Child 3:_____ Year of Birth: _____
Child 4:_____ Year of Birth: _____
Child 5:_____ Year of Birth: _____
Child 6:_____ Year of Birth: _____

CONTACT INFORMATION

Please provide the following information about yourself:
Home #: _____ Cell #: _____ Other phone #: _____
Email: _____
Current Mailing address: _____

CHILD(REN)

A. How many children live in your household currently? _____

B. How many children do you have that are not part of this court order? _____

C. What children reside with you in your home? □ none

Child 1:_____ Year of Birth: _____ Relationship: _____
Child 2:_____Year of Birth: _____ Relationship: _____
Child 3:_____ Year of Birth: _____ Relationship: _____
Child 4:_____ Year of Birth: _____ Relationship: _____
Child 5:_____Year of Birth: _____ Relationship: _____
Child 6:_____Year of Birth: _____ Relationship: _____

D. For which children do you pay child support?
□ None □ Court Order □ Verbal Agreement

Child 1: _____Year of Birth: _____ State of order: _____
Child 2: _____Year of Birth: _____ State of order: _____
Child 3: _____Year of Birth: _____ State of order: _____

E. Do you have any parenting agreements for these children?
□ None □ Court Order □ Verbal Agreement:
_____

F. Who claims the child(ren) for tax purposes?
□ _____ claims every year □ Alternate
□ other arrangement □ Unknown □ No one

EDUCATION & TRAINING

Check all levels of education you have completed:
□ G.E.D. □ High School Diploma
□ Associate's Degree □ Bachelor's Degree
□ Graduate Degree/Professional License/Trade/Certification: _____

YOUR CURRENT WORK & OTHER INCOME

I am currently: □ Not working □ Employed through an employer
□ have more than one job □ Self-Employed
□ A stay-at-home parent □ Other: _____
Employer Name: _____ Employer Address: _____
Employer Phone: _____ Employer Fax: _____
Type of Work: _____ Position or Title: _____
□ I am paid hourly; the amount is $_____ per hour. I usually work _____ hours each week.
□ I am paid a salary; the amount is $_____ every □ week □ two weeks □ month □ year.

Please list information about any other jobs you currently have and/or information about previous jobs:
Type of job/position: _____ Wage/Salary: $ _____
Type of job/position: _____ Wage/Salary: $ _____
□ I pay $_____ for work-related expenses such as union dues or uniform.
Explain: _____

□ I have $____ income from other sources (side business, odd jobs, investments, etc.).

Explain: _____

I receive $_____ □ Unemployment Compensation □ Worker's Compensation □ Social Security Disability Insurance (SSDI) □ Supplemental Security Income (SSI) □ VA Disability □ Other Disability □ Other: _____

□ I receive $_____ each month Social Security benefits for a child on this case.

OTHER PARENT'S CURRENT WORK & OTHER INCOME

The other parent currently: □ Is not working □ Is employed through an employer □ Has more than one job □ Self-Employed □ A stay-at-home parent □ Other: _____
Employer Name: _____ Employer Address: _____
Employer Phone: _____ Employer Fax: _____
Type of Work: _____ Position or Title: _____
□ The other parent is paid hourly; the amount is $____ per hour. The other parent usually works _____ hours each week.
□ The other parent is paid a salary; the amount is $_____ every □ week □ two weeks □ month □ year.

Please list information about any other jobs the other parent currently has and/or information about previous jobs:
Type of job/position: _____ Wage/Salary: $ _____
Type of job/position: _____ Wage/Salary: $ _____

□ The other parent pays $_____ for work-related expenses such as union dues or uniform.
Explain: _____

□ The other parent has $_____ income from other sources (side business, odd jobs, investments, etc.).
Explain: _____

The other parent receives $_____ □ Unemployment Compensation □ Worker's Compensation □ Social Security Disability Insurance (SSDI) □ Supplemental Security Income (SSI) □ VA Disability □ Other Disability □ Other: _____

□ The other parent receives $_____ each month Social Security benefits for a child on this case.

Remember: Provide documentation for each type of employment and income.

IF YOU ARE NOT CURRENTLY WORKING

Have you had a job in the past? □ Yes □ No

If yes, when did you become unemployed? Month: _____ Year: ____

If yes, why did you become unemployed? □ I was laid off. □ I was terminated. □ I quit.

Are you looking for work? □ Yes □ No and I do not plan to.
□ Not currently, but I plan to in the future.

Please list information about your last 2 jobs (if applicable):
Type of job/position: _____ Wage/Salary: $ _____
Type of job/position: _____ Wage/Salary: $ _____

Do you have trouble gaining/keeping employment or are not looking for work? Explain:

_____
_____
_____

If it applies, attach any proof of lay off or medical records affecting your ability to work.

CHILDCARE AND HEALTH INSURANCE

Do you pay for child care for the child(ren) on this case? □ Yes □ No

For which child(ren)? _____
Does DCF pay any portion of the child care? □ Yes □ No If yes, how much? $_____

Do you pay child care □ every month □ summer only □ after school only □ other: _____

How much do you pay for child care? $_____ □ each week □ every two weeks □ monthly

Remember: Attach receipts, a bill, a letter from a provider on business letterhead, or a notarized letter from a provider.

Who pays for the child(ren)'s health insurance?

□ I carry the children's health insurance. □ My current spouse carries the children's health insurance. □ The other party on this case carries the children's insurance. □ Medicaid □ Someone else carries the children's health insurance. □ The children have no insurance.

If you -or- your current spouse carry private health insurance for the children, we need your current plan info:

Insurance company name: _____

Insurance company address: _____

What type of plan is it? □ Employee only (Single) $_____
□ Employee + children $_____ □ Family $_____
□ Other: _____

Plan effective date: _____ Policy #: _____
Group #: _____

List all dependents covered on the plan: 1) _____
2) _____ 3)_____ 4) _____
5) _____

ADJUSTMENTS

I am requesting that my child support worksheet include the following adjustments:

□ parenting time adjustment □ agreement past majority
□ income tax consideration □ long distance parenting time
□ special needs □ overall financial conditions
□ other: _____

SIGNATURE

I declare under penalty of perjury under the laws of the State of Kansas that the foregoing is true, correct and complete.

Signature: _____ Date: _____

APPENDIX V

Equal Parenting Time (EPT) Worksheet

(The Equal Parenting Time Worksheet shall be filed with the Child Support Worksheet. References like "Line F.3" correspond to lines shown on the Child Support Worksheet (CSW). References to "line 9" are to the lines on this worksheet.)

Step #	Line #	Instruction	Amount
Step 1	1	Enter the higher amount of the adjusted subtotal from Line F.3	
	2	Enter the lower amount of the adjusted subtotal from Line F.3	
	3	Subtract line 2 from line 1 and enter the result here	
	4	Multiply line 3 by 50% (.5) and enter the result here	
Step 2	5	Enter the total from Line D.1 (Child Support Income)	
	6	Enter the total from Line D.3 (Gross Child Support Obligation)	
	7	If the parents have a written agreement to each provide clothing for the children in their own home, go to line 8. If not, go to line 9.	
Step 2.a	8	If the amount on line 5 is: A. equal to or less than $4,690, enter 7% (.07). B. greater than $4,690 but less than $8,125, enter 10.5% (.105). C. equal to or greater than $8,125 enter 15% (.15) and go to line 10.	_____%
Step 2.b	9	If the amount on line 5 is: A. equal to or less than $4,690, enter 11% (.11). B. greater than $4,690 but less than $8,125, enter 14% (.14). C. equal to or greater than $8,125 enter 18% (.18) and go to line 10.	_____%
	10	Multiply line 6 by the percentage on line 8 or line 9 and enter the result here.	

Step 3	11	If the parent designated by the court to pay all of the child(ren)'s direct expenses is: A. ☐ the parent with the lower adjusted subtotal from Line F.3 of the child support worksheet, go to line 12. B. ☐ the parent with the higher adjusted subtotal on Line F.3 of the child support worksheet, go to line 14.	
Step 3.a	12	Add line 4 and line 10.	
	13	Enter the amount on line 12 onto Line F.4 of the child support worksheet for the parent with the higher adjusted subtotal on Line F.3. Calculate the enforcement fee (if any) on Line F.5. The result on Line F.6 is the amount the parent with the higher adjusted subtotal on Line F.3 will pay to the parent with the lower adjusted subtotal on Line F.3.	
Step 3.b	14	Subtract line 10 from line 4.	
	15	Enter this amount on line 14 onto Line F.4 of the child support worksheet for the parent with the higher adjusted subtotal on Line F.3. Calculate the enforcement fee (if any) on Line F.5. The result on Line F.6 is the amount the parent with the higher adjusted subtotal on Line F.3 will pay to the parent with the lower adjusted subtotal on Line F.3. If the amount is less than zero, the court shall consider the overall financial circumstances of the parties to determine whether an adjustment should be made.	

APPENDIX VI

IN THE_____JUDICIAL DISTRICT
DISTRICT COURT, _____ COUNTY, KANSAS

☐ IN THE MATTER OF THE MARRIAGE OF

☐ IN THE MATTER OF THE PARENTAGE OF

Petitioner,

and

Case No.

Respondent.

AGREED SHARED EXPENSE PLAN

Petitioner and Respondent, having entered into a shared residential custody arrangement, make the following agreed plan for sharing of the reasonable direct expenses of the minor child(ren) pursuant to Section III.B.7.a.(1)(b) of the Kansas Child Support Guidelines. This plan must be filed with a child support worksheet and an order approving the child support worksheet and shared expense plan.

1. **The parties understand that costs for work related child care and health insurance are already included in the child support worksheet**. The parties also agree they shall share the following direct expenses of the minor child(ren) equally as set forth in this plan, which shall be in addition to the monetary child support as required by the shared residency arrangement (check all that apply):

   ☐ All items listed below
   - OR -
   ☐ Regular clothing (if parties are not maintaining clothing in each home)
   ☐ Special event clothing (including but not limited to formal dances, prom, graduation)
   ☐ School uniforms
   ☐ School supplies
   ☐ School fees (including but not limited to enrollment, book/activity fees tuition)

☐ Miscellaneous school related expenses (including but not limited to school pictures, yearbook, field trips)
☐ Extracurricular activity fees, equipment, apparel, and uniform costs
☐ Sports activity fees, equipment, apparel, and uniform costs
☐ Extracurricular activity travel costs of the child
☐ Haircuts
☐ Cell phones
☐ Summer related activities such as summer camps or summer school not included in the child support worksheet
☐ Other (specify) _____

2. In the event of school lunches, the parties shall share the cost by:

☐ _____ shall pay the cost and the _____ shall reimburse the paying party for their respective 50% share by the end of the following month

or

☐ The parties shall each prepay one half of cost of school lunches on a _____weekly _____ monthly basis.

3. The parties agree that it is in the best interest of the child(ren) to be involved in reasonable extracurricular activities with the consent of both parties, which consent shall not be unreasonably withheld.

4. The parties agree that they must consult with each other about the reasonable direct expenses of the minor child(ren) for which they seek reimbursement **before** the expense is incurred.

5. The parties agree that in sharing the direct expenses of the minor child(ren) they may do so by having one parent advance the entire cost and being reimbursed for one half by the other or by splitting the cost equally at the time it is incurred.

6. In the event that one of the parties seeks reimbursement of the direct expense they have advanced, the paying party shall provide the reimbursing party with a copy of the receipt for the expense within thirty (30) days of incurring the expense and the reimbursing party shall have thirty days after the receipt is sent in which to reimburse the paying party for their respective one half of the cost.

7. The parties agree that failure to pay the party's 50% share of the direct expenses may result in modification of child support or other sanctions.

8. The parties agree to use an alternative dispute resolution process for any disagreements the parents may have concerning the children's expenses.

_____ _____

Petitioner Date

_____ _____

Respondent Date

GENERAL AND ADMINISTRATIVE

PREFATORY RULE

(a) **Statutory References.** In these rules, a reference to a statute or administrative regulation includes any subsequent amendment to the statute or regulation.

(b) **Judicial Council Forms.**

(1) **Location.** Judicial council forms referenced in these rules may be found at the judicial council's website: https://www.kansasjudicialcouncil.org.

(2) **Amendments.** Except as otherwise provided, judicial council forms referenced in these rules may be amended as follows:

(A) Supreme Court approval is required for:

(i) a new form; or

(ii) deletion or amendment of an existing form.

(B) The Judicial Council may add, modify, or delete material appended to a form, including Authority, Notes on Use, and Comments.

(c) **Applicability.** Unless otherwise indicated, the rules numbered 105 through 192 apply to both civil and criminal cases and govern procedure in Kansas state district courts.

[**History:** Restyled and amended effective July 1, 2012; Am. effective April 24, 2013; Am. effective August 28, 2017.]

Rule 101

TERMS OF COURT

[**History:** Repealed effective September 8, 2006.]

Rule 102

TERMS OF COURT—HOLIDAYS

[**History:** Repealed effective September 8, 2006.]

Rule 103

REQUIRED DAYS OF COURT

[**History:** Repealed effective September 8, 2006.]

Rule 104

DOCKET CALLS

[**History:** Repealed effective September 8, 2006.]

Rule 105

LOCAL RULES

(a) **Local Rules Permitted.** After consultation with the district magistrate judges, the district judges of a judicial district, by majority vote, may adopt rules that are:
  (1) clear and concise;
  (2) necessary for the judicial district's administration;
  (3) consistent with applicable statutes; and
  (4) consistent with—but not duplicative of—Supreme Court Rules.

(b) **Publication and Accessibility of Local Rules.** Local rules adopted under K.S.A. 20-342 must be:
  (1) made accessible to the public; and
  (2) posted on the Judicial Branch website.

(c) **Effective Date of Local Rules.** Local rules are effective upon filing with the clerk of the appellate courts and posting on the Judicial Branch website.

[**History:** Am. effective September 8, 2006; Restyled rule and amended effective July 1, 2012.]

Rule 106

COURT RECORDS

(a) **Court Files and Records.** Except as otherwise provided in subsection (b), court files and records must remain in the court's physical possession and control.

(b) **Authorized Check Out.** An attorney or abstracter may check out a court file or record—subject to immediate return on request of the clerk of the district court—on the following conditions:
  (1) the attorney or abstracter must sign a receipt;
  (2) the file or record must not be taken outside the county unless authorized by the clerk or a court order; and
  (3) the file or record must be returned in its original condition.

(c) **Court Services Officer Files.** All court services officer files—including case notes—are confidential and are not subject to subpoena or other process. Unless otherwise ordered by the court, the records may be disclosed only to the court, a court employee assigned to the case, or a person legally entitled to receive the disclosure. Orders to produce drug and alcohol abuse patient records must comply with 42 C.F.R. Part 2.

(d) **Marriage Licensing Documents**. Except for marriage records identified in subsection (d)(3) and K.S.A. 65-2422d(h), marriage licensing documents in the custody of a district court are confidential

and are not subject to disclosure under the Kansas Open Records Act, K.S.A. 45-215 et seq.

(1) **Marriage licensing document defined.** A marriage licensing document refers to the following:
   (A) the confidential cover sheet for the uniform marriage license application prescribed by the judicial administrator;
   (B) the uniform marriage license application prescribed by the judicial administrator;
   (C) a document containing the personal and statistical information the Kansas Department of Health and Environment requires on forms issued under K.S.A. 23-2509; and
   (D) the license for individuals to enter a marriage under K.S.A. 23-2505.

(2) **When disclosure permitted.** Unless otherwise ordered by the court, marriage licensing documents may be disclosed only to the court, a court employee assigned to the case, the Kansas Department of Health and Environment, or a person to whom the marriage license was issued. A person making a request for his or her own marriage licensing documents must display government-issued photo identification, which is sufficient proof of identity for purposes of this subsection.

(3) **Limited marriage license record.** District courts must make publicly available a limited marriage license record which contains only the uniform marriage license application prescribed by the judicial administrator. The uniform marriage license application must not include the following personal information:
   (A) an applicant's Social Security number;
   (B) an applicant's date or city of birth;
   (C) an applicant's mother's maiden name; or
   (D) any information expressly designated as confidential on forms promulgated by the Kansas Department of Health and Environment under K.S.A. 23-2509.

(4) **Existing marriage licensing documents**. Marriage licensing documents created before October 1, 2015, may be closed in whole or in part by redaction at the discretion of the chief judge of a judicial district or in accordance with an applicable exception to the Kansas Open Records Act. An applicant whose marriage licensing documents remain open may petition the court for closure of the documents, and any judge of the district court may rule on the petition for closure.

[**History:** Am. effective September 8, 2006; Am. (b) effective August 28, 2008; Restyled rule and amended effective July 1, 2012; Am. effective October 1, 2015.]

Rule 106A

ACCESSIBILITY OF CHILD IN NEED OF CARE COURT RECORD

(a) **Applicability.** This section applies to all district court cases filed under the Revised Kansas Code for Care of Children, K.S.A. 38-2201 et seq.

(b) **Definitions.**

(1) "Court record" means all contents of a court case file, regardless of physical form, characteristic, or means of transmission, made or received by a district court, including documents and filings; transcripts filed with the clerk; exhibits made part of the court record; and electronic recordings, such as videotapes, tape recordings, or stenographic tapes of other proceedings filed with the clerk.

(2) "Events index" means items listed in a chronological index of filings, actions, and events in a specific case, which may be identifying information of the parties and counsel; a brief description or summary of the filings, actions, and events; and other case information. The events index, also referred to as the register of actions, is created and maintained by the judicial branch only for administrative purposes and is not part of the court record.

(3) "Nonpublic court record" means any court record designated by statute, caselaw, Supreme Court rule, or court order as not accessible to the public.

(c) **Accessibility.**

(1) K.S.A. 38-2209 classifies certain documents and filings in a case filed under the Revised Kansas Code for Care of Children as constituting the official file or the social file. K.S.A. 38-2211 identifies persons and entities having access to the official and social files.

(2) The court record in a case filed under the Revised Kansas Code for Care of Children must be designated as a nonpublic court record.

(3) The events index of a case filed under the Revised Kansas Code for Care of Children must not be accessible by the public.

(4) When state or federal law requires disclosure of information in a case filed under the Revised Kansas Code for Care of Children, the information designated by the state or federal law must be disclosed in strict compliance with the law's requirements.

[**History:** New rule effective December 9, 2020.]

Rule 106B

PUBLIC ACCESS TO DISTRICT COURT ELECTRONIC CASE RECORDS

(a) **Definitions.** In this rule:

(1) "Bulk distribution" means the distribution of all or a significant subset of the information in court case records in electronic form, as is, and without modification or compilation.

(2) "Case-by-case access" means that each electronic case record is available only individually and that when a search for an individual electronic case record returns multiple results, each result may be viewed only individually.

(3) "Compiled information" means information that is derived from the selection, aggregation, or reformulation of all or a subset of the information from more than one individual court case record in electronic form.

(4) "Court case record" means filings or other activity relating to a particular case. The term does not include e-mail, correspondence, notes, or similar papers not filed in a court case.

(5) "Electronic access" means access to court case records available to the public through a public terminal at a courthouse or remotely, unless otherwise specified in these rules.

(6) "Electronic case record" means a digital court case record, regardless of the manner in which it has been converted to digital form. The term does not include a case record that is maintained only on microfiche, paper, or any other medium that can be read without the use of an electronic device.

(7) "Judicial administrator" means the officer responsible to the Kansas Supreme Court for implementing the Court's policies governing the operation and administration of the district and appellate courts under the chief justice's supervision.

(8) "Public access" means the process by which a person may inspect the information in a court case record that is not closed by law or judicial order.

(9) "Records custodian" means the person responsible for the safekeeping of records held by a court.

(10) "Records officer" means the person responsible for safeguarding the access under the Kansas Open Records Act (K.S.A. 45-215 et seq. [KORA]), Kansas Supreme Court Rules and Administrative Orders, and relevant state and federal law to records held by a court.

(11) "Register of action" means basic information about an individual court case provided by the court, consisting of dates of case activity and a brief description of the case activity. Information provided by a register of action does not include all information pertinent to the case and does not include information that is not public.

(12) "Remote access" means the process by which a person may inspect information in an electronic case record through an electronic means at a location other than the courthouse.

(b) **Scope.**

(1) This rule governs public access to and confidentiality of electronic case records in district courts. Except as otherwise provided by this rule, access to electronic court records is governed by the KORA, Kansas Supreme Court Rules and Administrative Orders, and relevant state and federal law.

(2) Non-case records or case records not available in electronic form—which are open records under the KORA, Supreme Court rule or order, or other state or federal law—will be made available in a format determined by the appropriate records officer.

(3) Information in district court electronic case records available for public access in electronic format will be available at each respective courthouse through the use of a public access terminal. Only information from the county in which the courthouse is located will be available. County information may be available through the Internet at the discretion of the chief judge and the judicial administrator.

(4) This rule applies only to electronic case records as defined in this rule and does not authorize or prohibit access to information gathered, maintained, or stored by a non-judicial branch governmental agency or other entity.

(c) **Persons Who Have Access.**

(1) All persons have the access to electronic case records provided in this rule.

(2) Judges, court employees, and others as determined by the Supreme Court may be granted greater access to electronic case records than the access provided in this rule.

(3) This rule does not give any person a right of access to any record to which the person is not otherwise entitled.

(d) **Access Provisions and Restrictions.**

(1) Public access to electronic case records or information contained in electronic case records must be available on a case-by-case basis only and may be conditioned on the user's agreement to access the records only as instructed by the court and the user's consent to monitoring of the user's access to electronic court records.

(2) A copy of a court record available electronically through a public access method does not constitute the official record of the court.

(3) Due to privacy concerns, some otherwise public information, as determined by the Supreme Court, may not be available through electronic access. Information generally not available electronically includes—but is not limited to—social security numbers, dates of birth, and street addresses. Except for electronically filed documents, to which adequate public access will be provided as determined by the records custodian, only information contained in the court's registers of action will be available electronically. A district court may seek authority to provide other information by making a written request to the judicial administrator, who will make a recommendation on the request and forward it to the Supreme Court.

(4) Electronic case records will be available for public access in the courthouse during regular business hours. Access may be disrupted due to unexpected technical failures or normal system maintenance.

(5) This rule applies to all electronic case records in the district courts; clerks and courts need not redact or restrict information that was otherwise public in court case records created before the effective date of this rule.

(e) **Compiled Information and Bulk Distribution.** Compiled information and bulk distribution will not be available.

(f) **Correction of Electronic Case Records.** Clerical mistakes in electronic case records may be corrected under K.S.A. 60-260.

(g) **Contracts with Vendors Providing Information Technology Services Regarding Public Access Statewide to Electronic Case Records**.

(1) For purposes of this subsection, the term "vendor" includes a state, county, or local governmental entity that provides information technology services to a court.

(2) Subject to the Supreme Court's approval, the judicial administrator has authority to contract with a vendor to provide access statewide to electronic case records under this rule. The Supreme Court retains ownership of all electronic case records and retains the authority to approve or disapprove any other contract by any other records custodian.

(3) A contract with a vendor to provide information technology support to gather, store, or make accessible electronic case records or information in electronic case records must require the vendor to comply with this rule.

(4) A contract with a vendor to provide access to statewide electronic case records must require the vendor to assist the Supreme Court in its role of educating litigants and the public about this rule. The vendor will be responsible for training its employees and subcontractors to comply with this rule.

(5) A contract under paragraph (2) or (3) must require the vendor to acknowledge that:

(A) the Supreme Court owns the electronic case records; and

(B) handling of and access to the records are subject to the provisions of this rule and the Supreme Court's direction and order.

(6) The requirements in this subsection are in addition to those otherwise imposed by law.

(h) **Immunity for Disclosure of Information**. The judicial branch and its employees may not be held liable for monetary damages related to unintentional or unknowing disclosure of confidential or erroneous information.

[**History:** New rule effective June 1, 2005; Am. (e) effective June 21, 2007; Restyled rule effective July 1, 2012; Am. (e) effective July 1, 2016; Rule 196 renumbered without amendment to Rule 106B effective January 19, 2021.]

Rule 107

DUTIES AND POWERS OF CHIEF JUDGE

(a) **Appointment and Term; Recommendation.** A chief judge of a judicial district is appointed as follows:
   (1) **Appointment.** The Supreme Court will appoint a chief judge in each judicial district.
   (2) **Term.** A chief judge is appointed for a 2-year term that begins January 1 in an even-numbered year. An interim appointment is for the remainder of the 2-year term.
   (3) **Reappointment.** On or before November 30 in an odd-numbered year, an incumbent chief judge must notify the Supreme Court whether the judge wishes to be reappointed.
   (4) **Recommendation.** A judge of the district court may recommend to the departmental justice the appointment of a chief judge for the judge's district. The Supreme Court must keep any recommendations confidential.

(b) **Chief Judge's Duties and Powers.** The chief judge's duties and administrative powers include:
   (1) **Clerical and Administrative Functions.** The chief judge is responsible for and has supervisory authority over the court's clerical and administrative functions.
   (2) **Personnel Matters.**
      (A) **General Responsibility.** The chief judge is responsible for and has supervisory authority over recruitment, removal, compensation, and training of the court's nonjudicial employees.
      (B) **Appointment of Clerk and Chief Clerk.** The chief judge must appoint a clerk of the district court for each county in the judicial district and appoint one clerk of the district court to be chief clerk of the district, except that a chief clerk is not required to be designated in a judicial district which is authorized to have a court administrator. On appointment:
         (i) a copy of each appointment order must be sent to the judicial administrator; and
         (ii) the clerk or chief clerk appointed under this subparagraph must subscribe to an oath or affirmation under K.S.A. 54-106.

(C) **Appointment of Local Language Access Coordinator.** The chief judge must appoint a local language access coordinator for the judicial district and give notice of the appointment to the office of judicial administration.

(3) **District Court Case Assignment.** Under the Supreme Court's supervision, the chief judge is responsible for case assignment. The following guidelines apply:
   (A) To the extent reasonably possible, the chief judge must distribute the district's judicial work equally.
   (B) The chief judge should reassign cases when necessary.
   (C) The chief judge is responsible for assigning cases to the court's special divisions, if any.

(4) **Judge Assignment.**
   (A) Subject to approval by a majority of the other judges, the chief judge must:
      (i) assign judges to the court's special divisions, if any; and
      (ii) prepare an orderly vacation plan that is consistent with statewide guidelines.
   (B) Subject to the departmental justice's approval, the chief judge may appoint another judge of the district to act pro tem. in the chief judge's absence.
   (C) A judge must accept an assigned case unless the judge is disqualified or the interests of justice require the judge's recusal.

(5) **Information Compilation.** The chief judge is responsible for developing and coordinating statistical and management information.

(6) **Fiscal Matters.** The chief judge must supervise the court's fiscal affairs.
   (A) **Designation of Fiscal Officer.** The chief judge must designate a fiscal officer for each county in the judicial district to assist in managing the court's budget. The chief judge may designate a clerk of the district court or court administrator as fiscal officer. In multicounty districts, the same person may serve as fiscal officer for one or more counties.
   (B) **Fiscal Officer's Duties.** The fiscal officer in each county must:
      (i) under the chief judge's supervision, initiate expenditures from the court's budget and process expenditures for the operation of all court offices within the county;
      (ii) maintain accounts on all budgetary matters; and

(iii) regularly report to the chief judge on the status of the court's budget.

(C) **Preparation of County Operating Budget; Copies.** In preparing and submitting a district court county operating budget, the chief judge—or a fiscal officer under the chief judge's supervision—must:

(i) use forms prescribed by the judicial administrator;

(ii) follow in detail the district court county operating budget guidelines distributed by the office of judicial administration;

(iii) forward to the judicial administrator a copy of the budget at the time the budget is submitted to the board of county commissioners; and

(iv) no later than August 25, forward to the judicial administrator a second copy of the budget, signed by the presiding officer of the county commission indicating approval of the budget as submitted or as amended.

(7) **Committees.** The chief judge may appoint standing and special committees necessary to perform the court's duties.

(8) **District Judicial Meetings.** At least once each month in a single-county district and at least once every 3 months in a multi-county district, the chief judge must call a meeting of all judges of the district court to review the district's dockets and to discuss other business affecting the court's efficient operation.

(9) **Liaison and Public Relations.** The chief judge represents the court in business, administrative, and public relations matters. When appropriate, the chief judge should meet with—or designate other judges to meet with—bench, bar, and news media committees to review problems and promote understanding.

(10) **Improvement in the Court's Functioning.** The chief judge must evaluate the court's effectiveness in administering justice and recommend changes.

[**History:** Am. effective September 8, 2006; Am. (a) effective May 6, 2009; Restyled rule and amended effective July 1, 2012; Am. effective July 1, 2016.]

Rule 108

REPRODUCTION AND DISPOSITION OF COURT RECORDS

(a) **Generally.** This rule governs the retention, reproduction, disposition, and destruction of court records. The following general rules apply:
   (1) **"Court Records" Include.** As used in this rule, "court records" include all original court records, documents, and filings, including electronic transmissions.
   (2) **Reproduction Preferred.** Unless reproduced, disposed of, or destroyed under this rule, court records must be retained. Reproduction is preferred to retaining the originals.
   (3) **Retention and Disposition File.** The clerk of the district court in the county in which court records are located must maintain a permanent file containing all correspondence, orders, and other records regarding reproduction, disposal, and destruction of records and notification under subsection (c).

(b) **Reproduction of Court Records.**
   (1) **Chief Judge's Authority.** Under K.S.A. 20-357 and 20-159, the chief judge may:
      (A) provide for reproduction of all court records in the judicial district;
      (B) acquire appropriate files, containers, or storage systems to store and preserve the reproductions; and
      (C) provide for equipment to convert the reproductions to usable form.
   (2) **Indexing and Storing Reproduced Records.** All records reproduced under this rule must be indexed and stored for convenient retrieval and copying.
   (3) **Guidelines.** The judicial administrator must provide guidelines to ensure:
      (A) retrieval and reproduction of court records meet acceptable standards; and
      (B) reproduced records are stored and preserved in compliance with K.S.A. 20-159.
   (4) **Reproductions Considered Originals.** When court records are reproduced under this rule, the reproductions are considered original records under K.S.A. 60-465a.

(c) **Destruction or Disposal of Court Records.**
   (1) **Court Records May Not Be Destroyed Until Case Is Closed.** Original court records that have not been reproduced and are being used for active legal proceedings must not be destroyed until the case is closed.

(A) In a criminal case, "closed" means:
(i) the case has been terminated, and all appeals have been terminated or the time to appeal has expired; and
(ii) any sentence imposed upon conviction has expired or been satisfied and the defendant has been discharged.
(B) In an action or proceeding other than a criminal case, "closed" means:
(i) an order terminating the action or proceeding has been filed and all appeals have been terminated, or the time to appeal has expired; and
(ii) if a judgment was entered, the judgment is either satisfied or barred under K.S.A. 60-2403.

(2) **Notification to Historical Societies.** The clerk of the district court must notify the Kansas State Historical Society and county historical societies of the county in which the court is located before disposition or destruction of any court records except records the State Historical Society has exempted from notification. An exemption must be approved by the judicial administrator. Unless the State Historical Society or a county historical society files with the clerk an objection in writing no later than 30 days after the notice is served, the court may proceed with disposition or destruction. If a county historical society objects in writing to disposition or destruction of a record, the objection is considered a permanent refusal to consent to disposition or destruction of all court records of the same type unless the refusal is changed in writing by the society. The State Historical Society has priority over a county historical society if both societies want possession of a record.

(3) **Destruction After Reproduction.** Unless otherwise provided in this rule—after reproduction and, if required, notification under paragraph (2)—the chief judge may, by written order, authorize the destruction of appearance dockets, journals, minute record books, original case files, including any trial or hearing transcripts, and trial dockets in all categories of cases. Any trial or hearing transcript not reproduced must be retained under subsection (e)(6).

(4) **Method of Destruction.** The chief judge may order court records be destroyed by supervised shredding, burning, or other method. Electronic or tape-recorded records may be destroyed by employing magnetic or electromagnetic fields. Tapes or films from which all records have been erased may be reused.

(d) **Court Records That May Not Be Destroyed Until Reproduced.** The following court records must be retained until reproduced:
(1) Chapter 59 (Probate except Care and Treatment and Wills on Deposit);
(2) Chapter 60 (Civil);
(3) Chapter 23 (Family Law Code);
(4) General Index (Civil and Probate) kept pursuant to statute;
(5) Chapter 38, Article 22 (formerly Article 15), Termination of Parental Rights (Child in Need of Care);
(6) Driving Under the Influence (K.S.A. 8-1567);
(7) Criminal investigation records, including presentence investigation reports—described in K.S.A. 21-6704 (formerly 21-4605), K.S.A. 21-6813 (formerly 21-4714), and K.S.A. 45-221;
(8) Expunged criminal records—subject to K.S.A. 21-6614 (formerly 21-4619);
(9) Uniform marriage license application prescribed by the judicial administrator under Rule 106(d); and
(10) Returned marriage license (K.S.A. 23-2514).

(e) **Court Records That May Be Destroyed Without Reproduction.** Reproduction is preferred to retention of original court records. But court records listed in this subsection may be destroyed without reproduction, after notice if notice is required under subsection (c)(2). The periods of time stated are the minimum number of years the original records must be retained, if not reproduced.
(1) **Civil.** The following categories of civil court records must be retained for:
(A) Chapter 61 (Limited Actions and Small Claims) – 10 years after the date of filing.
(B) Chapter 38, Child in Need of Care official and social files – 100 years after the date of filing.
(C) Fish and Game, Watercraft – 5 years after the date of filing.
(D) Mechanics' Liens – the later of 2 years after filing of the lien or upon maturity of an attached promissory note.
(E) Chapter 59, Article 29 (Care and Treatment) – 80 years after the date of filing.
(F) Confidential cover sheet for the uniform marriage license application prescribed by the judicial administrator under Rule 106(d) – Upon issuance of the marriage license or 1 year from the date of submission of the application, whichever occurs first.
(2) **Criminal.** The following categories of criminal court records must be retained for, at minimum, the stated number of years

before disposal or destruction, if not reproduced:

Adult criminal, juvenile offender, felony, and misdemeanor criminal records and criminal appeals filed with a district court from a municipal court – 100 years after the date of filing.

(3) **Traffic and Chapter 8 Violations.** The following categories of traffic and Chapter 8 violation court records must be retained for, at minimum, the stated number of years before disposal or destruction, if not reproduced:

(A) DUIs K.S.A. 8-1567, Reckless Driving K.S.A. 8-1566, Driving on a Suspended License K.S.A. 8-262(a), No Driver's License K.S.A. 8-235; Failure to Stop at an Injury Accident K.S.A. 8-1602, Eluding a Police Officer K.S.A. 8-1568, Transporting an Open Container K.S.A. 8-1599 and all previous cites, and Habitual Violator K.S.A. 8-286 – 50 years after the date of filing.

(B) All other traffic violations – 5 years after the date of filing.

(4) **Wills.**

(A) Sealed wills on deposit under former K.S.A. 59-620 must be maintained for 75 years after the year of deposit. All sealed wills on deposit for 75 years or longer must be destroyed under subsection (c)(4). The formerly required will index must be maintained to include the date of destruction in compliance with subsection (a)(3).

(B) Wills filed under K.S.A. 59-618a must be maintained for 75 years after the year of filing, after which time they must be destroyed under subsection (c)(4).

(5) **Records of Special or Limited Jurisdiction Courts Prior to 1977.** The chief judge may, by written order, authorize destruction of all categories of cases transferred to the district court under K.S.A. 20-335(a)(1), (2), (3), (4), and (5) from courts of special or limited jurisdiction prior to 1977.

(6) **Court Reporters' Notes.** The chief judge may by order authorize the destruction or other disposition under subsection (c)(4) of all mechanical or electronic recordings of proceedings, including court reporters' notes, electronic tapes, video tapes, and computer disks, as follows:

(A) **Civil.** Chapter 38 (except Article 23 [formerly Article 16], Juvenile Offenders); Chapter 59, Article 21 (Adoptions); Chapter 23 (Divorce and Maintenance) – 25 years after the record is taken.

(B) **Other Civil** – the later of 5 years after the case is closed or 20 years after the record is taken.

(C) **Criminal and Juvenile Offender** – 100 years after the record is taken.

(7) **Depositions.** The chief judge may authorize the withdrawal, disposition, or destruction of a deposition in the court's custody as follows:

(A) Counsel of record may withdraw a deposition when the case is closed upon giving a receipt to the court.

(B) A deposition may be destroyed by written order of the chief judge under subsection (c)(4) – 60 days after the case is closed and notification to counsel of record.

(C) In a closed case, a deposition filed prior to July 1, 1987, may be destroyed by written order of the chief judge under subsection (c)(4) – after notification under subsection (c)(2).

(D) A deposition filed with the court:

(i) must remain sealed and confidential unless opened as allowed by the court; and

(ii) must, if opened, be considered an open record associated with the case unless otherwise prohibited by statute or court rule.

(E) In this subparagraph, "deposition" includes depositions taken by video, teleconference, videotape, or other electronic means pursuant to statute or court rule.

(8) **Exhibits.** An exhibit in the court's custody may be withdrawn, disposed of, or destroyed as follows:

(A) The court—on its own or on motion of a party, counsel, or other interested entity—may order that an exhibit introduced in a case may be withdrawn. An exhibit withdrawn must be made available for trial or appeal.

(i) **Civil Exhibits.** An exhibit not withdrawn within 60 days after the judgment becomes final, if no appeal is taken, or within 60 days after all appeals of the judgment terminate, is considered unclaimed and subject to disposition or destruction.

(ii) **Criminal Exhibits.** An exhibit not withdrawn within 60 days after completion of a sentence—including probation, parole, and post-release supervision—and full discharge of the defendant is considered unclaimed and subject to disposition or destruction. An exhibit may be disposed of or destroyed prior to sentence completion and discharge of the defendant only

by order of the chief judge with 30 days prior notice to all interested parties. If no interested party responds 30 days after the notice, the court may proceed with disposition or destruction of the exhibit.

(B) When the chief judge determines an unclaimed exhibit has value, it may be retained and used as county property, or be sold at public auction with the net proceeds paid to the state treasurer under K.S.A. 20-2801, 21-6307, 22-2512, or other applicable statute.

(C) When the chief judge determines an unclaimed exhibit has no value, it may be disposed of or destroyed in the manner the chief judge orders.

(9) **Court Accounting Records.**

(A) The court's accounting records may be destroyed only on the chief judge's written order.

(B) Criminal, juvenile, and all other case ledger reports may be destroyed without notice 100 years after the date the case was filed.

(C) Bank statements, daily reports, and monthly reports may be destroyed without notice 5 years after the statements and reports have been audited and approved.

(D) Receipts, canceled checks, check stubs, and deposit slips may be destroyed at any time.

(E) Computerized accounting records not purged from the computer system must be preserved by computer backups.

(F) An accounting record not listed in subparagraphs (B), (C), (D), or (E) may be destroyed as follows:

(i) if not reproduced – without notice 5 years after they have been audited and approved.

(ii) if reproduced – without notice after they have been audited and approved.

(G) Fax transmission sheets containing debit or credit information must be kept for a minimum of 1 year after audit.

(10) **Miscellaneous.** All other miscellaneous court records may be withdrawn, disposed of, or destroyed in compliance with guidelines established by the judicial administrator. If no guidelines have been established for a particular court record, the chief judge must comply with subsection (c)(2) and (4).

[**History:** New rule effective July 15, 1977; Am. effective September 30, 1982; Am. effective December 3, 1997; Am. effective September 8, 2006; Restyled rule and amended effective July 1, 2012; Am. effective October 1, 2015; Am. (e)(4), effective July 1, 2016.]

Rule 109

SUPERVISION AND REPORTING IN PROBATE CASES

(a) **Reporting/Accounting Period; When Due.** Unless the court orders otherwise, the annual fiscal accounting or other reporting period for a guardianship, conservatorship, trusteeship, absentee's estate, curatorship, and special personal representative's estate case is the 12-month period immediately preceding the anniversary date of the case filing. The required annual report and accounting must be filed no later than 30 days after the end of the reporting period.

(b) **Notification of Late Report/Accounting.** If a required annual or final report or accounting is not filed within the time prescribed by law or supreme court rule, the district court must notify the fiduciary or fiduciary's attorney that the report or accounting is due.

(c) **Form**. A guardian's annual or final report and a conservator's annual or final accounting under K.S.A. 59-3083 are sufficient if in substantial compliance with the judicial council form.

[**History:** New rule promulgated January 31, 1984, effective April 9, 1984; Am. effective September 8, 2006; Restyled rule and amended effective July 1, 2012.]

Rule 110

CASA VOLUNTEERS AND PROGRAMS

(a) **Duties and Prerequisites for Court-Appointed Special Advocate (CASA) Volunteer.**

(1) **Duties.** The primary duties of a CASA volunteer are to investigate and become acquainted with the facts, conditions, and circumstances affecting a child's welfare, to advocate the best interests of the child, and to assist the court in obtaining the most permanent, safe, and homelike placement possible. A CASA volunteer should:

(A) visit the child as often as necessary to monitor the child's safety and observe whether the child's essential needs are being met;

(B) attend court hearings involving the child or, if not excused from attendance by the court, arrange for attendance of a qualified substitute approved by the court;

(C) participate in staffings and, to the extent possible, other meetings about the child's welfare;

(D) participate in the development of a written reintegration plan or modification of an existing plan, or both;

(E) submit a written report to the court before each regularly scheduled court hearing involving the child; and

(F) act on the child's behalf as directed by the program director and the standards promulgated by the judicial administrator under subsection (b).

(2) **Volunteer Prerequisites.** A CASA volunteer must:

(A) be at least 18 years old;

(B) submit a written application to the local program staff; and

(C) successfully complete screening procedures and a review by the local program staff.

(b) **Program Standards.** A local CASA volunteer program must follow standards promulgated by the judicial administrator and adopted by the Supreme Court. The standards must include requirements for:

(1) certification of local CASA volunteer programs by the judicial administrator; and

(2) certification and training of CASA volunteers by the local program.

(c) **Written Agreement Required for Privately Administered Program.** A district court using a privately administered CASA program must have a written agreement with the person or group sponsoring the program. The term of the written agreement may not exceed two years. The agreement governs operation of the privately administered CASA program and must:

(1) require the program to meet the judicial administrator's standards for CASA volunteer programs;

(2) state the court's and the CASA program's responsibilities to each other;

(3) require that CASA volunteers be certified by the local program;

(4) specify procedures for assigning the program to a case and for removal of the program from a case;

(5) establish procedures for resolving grievances and conflicts for both the CASA program and a CASA volunteer; and

(6) state the requirements the program must meet to be eligible to renew the agreement.

(d) **Local Rules.** The district court must adopt a local court rule governing operation of a CASA program administered by the court. The rule must include the items specified in subsection (c)(1) through (5).

(e) **Volunteer Notice and Access.** A CASA volunteer must be given:

(1) notice of a court hearing involving the child; and

(2) access to any district court record within the state pertaining to the child.

(f) **Reporting Requirements.** The district court or a privately administered CASA program, as applicable, must provide statistical and other information required by the judicial administrator.

[**History:** New rule effective January 1, 1986; Restyled rule and amended effective July 1, 2012.]

Rule 110A

STANDARDS FOR GUARDIANS *AD LITEM*

(a) **Generally.** Unless the appointing judge authorizes departure from these standards for good cause, these standards apply when the judge appoints a guardian *ad litem* for a child in a case under the Revised Kansas Code for Care of Children, K.S.A. 38-2201 et seq.; the Revised Kansas Juvenile Justice Code, K.S.A. 38-2301 et seq.; and the Kansas Family Law Code, K.S.A. Chapter 23. The judge must:

(1) issue an order appointing the guardian *ad litem* on a form substantially in compliance with the judicial council form; and

(2) ensure compliance with this rule.

(b) **Prerequisite and Continuing Education.**

(1) **Requirements.**

(A) **Number of Hours; Timeframe.** As a prerequisite to appointment, a guardian *ad litem* must complete at least 6 hours of education, including 1 hour of professional responsibility. An appointed guardian *ad litem* also must participate in continuing education consisting of at least 6 hours per year.

(B) **Areas of Education.** Areas of education should include, but are not limited to:

- dynamics of abuse and neglect;
- roles and responsibilities;
- cultural awareness;
- communication skills, including communication with children;
- information gathering and investigatory techniques;
- advocacy skills;
- child development;
- mental health issues;
- permanency and the law;
- community resources;
- professional responsibility;
- special education law;
- substance abuse issues;
- school law; and

- the revised code for care of children.

(2) **Waiver of Prerequisite.** The appointing judge may waive the prerequisite education when necessary to make an emergency temporary appointment. The educational requirements must be completed within 6 months after appointment.

(3) **Continuing Education Requirements; Judicial Approval.** If approved by the Continuing Legal Education Board, the education hours required by paragraph (1) also can be counted to satisfy Supreme Court Rule 803's continuing legal education requirements. These standards do not modify the minimum total hours annually required under that rule. The appointing judge may approve prerequisite education and continuing education hours not otherwise approved by the Continuing Legal Education Board.

(4) **Recordkeeping.** Each guardian *ad litem* must maintain a record of the guardian's participation in prerequisite and continuing education programs. Upon request of the appointing judge, the guardian must provide evidence of compliance with this subsection.

(c) **Guardian *Ad Litem* Duties and Responsibilities.** A guardian *ad litem* must comply with the following standards:

(1) **Conducting an Independent Investigation.** A guardian *ad litem* must conduct an independent investigation and review all relevant documents and records, including those of social service agencies, police, courts, physicians, mental health practitioners, and schools. Interviews—either in person or by telephone—of the child, parents, social workers, relatives, school personnel, court-appointed special advocates (CASAs), caregivers, and others having knowledge of the facts are recommended. Continuing investigation and ongoing contact with the child are mandatory.

(2) **Determining the Best Interests of the Child.** A guardian *ad litem* must determine the best interests of the child by considering such factors as:

- the child's age and sense of time;
- the child's level of maturity;
- the child's culture and ethnicity;
- degree of the child's attachment to family members, including siblings;
- continuity;
- consistency;
- permanency;

- the child's sense of belonging and identity; and
- results of the investigation.

(3) **Representing in Court.** A guardian *ad litem* must:
(A) file appropriate pleadings and other papers on the child's behalf;
(B) represent the best interests of the child at all hearings;
(C) present all relevant facts, including the child's position;
(D) submit the results of the guardian's independent investigation and the guardian's recommendations regarding the child's best interests; and
(E) vigorously advocate for the child's best interests by:
(i) calling, examining, and cross-examining witnesses;
(ii) submitting and responding to other evidence; and
(iii) making oral and written arguments based on the evidence that has been or is expected to be presented.

(4) **Explaining to the Child.** A guardian *ad litem* must explain the court proceedings and the guardian's role in terms the child can understand.

(5) **Making Recommendations for Services.** A guardian *ad litem* must recommend appropriate services for the child and the child's family.

(6) **Monitoring.** A guardian *ad litem* must monitor implementation of service plans and court orders.

(d) **When Recommendation Conflicts with Child's Wishes.** If the child disagrees with the guardian *ad litem's* recommendation, the guardian must inform the court of the disagreement. The court may, for good cause, appoint an attorney to represent the child's expressed wishes. If the court appoints an attorney for the child, that individual serves in addition to the guardian *ad litem*. The attorney must allow the child and the guardian to communicate with one another but may require the communications to occur in the attorney's presence.

(e) **Participation Limited by Rules of Professional Conduct.** An attorney in a proceeding in which the attorney serves as guardian *ad litem* may submit reports and recommendations to the court and testify only as permitted by Kansas Rule of Professional Conduct 3.7(a).

[**History:** New rule adopted effective July 1, 2012.]

Rule 110B

COURT SERVICES OFFICER ASSESSMENT OF ADULT OFFENDERS

(a) **Level of Service Inventory-Revised Assessment Instrument—Generally.** The Level of Service Inventory-Revised (LSI-R) is the standardized risk and needs assessment tool specified by the Kansas sentencing commission in accordance with K.S.A. 75-5291(a)(2) to determine placement under supervision in Kansas. Nothing in this rule is intended to prevent a court from ordering a risk and needs assessment in other circumstances.

(b) **Use of LSI-R; Exceptions.**

(1) **Felony Conviction.** Except as described in paragraph (b)(3), all judicial branch court services officers must use the LSI-R to conduct a risk and needs assessment of an adult offender who is convicted of a felony on or after July 1, 2014.

(2) **Misdemeanor Conviction.** Except as described in paragraph (b)(3), all judicial branch court services officers must use the LSI-R—or, unless otherwise provided by law, the LSI-R: Screening Version (LSI-R:SV)—to conduct a risk and needs assessment of an adult offender who is convicted of a misdemeanor on or after the later of:

(A) January 1, 2015; or

(B) 60 days after the judicial administrator has advised chief court services officers that an electronic version of the LSI-R is available statewide.

(3) **Exceptions.** A court services officer is not required to use the LSI-R to assess an offender assigned to court services for supervision if:

(A) the offender is placed on probation for six months or less; or

(B) the crime severity level and offender criminal history establish a presumptive prison sentence under Kansas sentencing guidelines unless probation is ordered in lieu of prison.

(c) **Timing of Assessment.** A court services officer must complete the assessment required under subsection (b):

(1) as a component of the presentence investigation; or

(2) no later than 45 days after the offender is placed on probation.

(d) **Training and Educational Requirements; Record.**

(1) Subject to the policies and procedures adopted by the judicial administrator under subsection (e), a court services officer must successfully complete:

(A) initial training on the use of the LSI-R before using the LSI-

R or LSI-R:SV to assess an adult offender;

(B) six hours of continuing LSI-R educational training annually after initial training has been successfully completed; and

(C) refresher LSI-R training before using the LSI-R or LSI-R:SV to assess an adult offender if the court services officer has not completed an LSI-R or LSI-R:SV assessment within the last six months.

(2) The judicial administrator may waive or extend the time for a court services officer to complete continuing education credits or refresher training due to hardship, disability, or other good cause.

(3) The judicial administrator must maintain a record of training and education credits completed by judicial branch court services officers.

(e) **Policies and Procedures.** The judicial administrator is authorized to adopt policies and procedures consistent with this rule for judicial branch employees who use the LSI-R or LSI-R:SV to assess the risk and needs of adult offenders.

(1) **Training.** The policies and procedures must:

(A) specify initial and refresher training requirements; and

(B) establish a procedure for review and approval of continuing education credits for training programs.

(2) **Implementation.** The policies and procedures may include any provisions the judicial administrator deems necessary to implement this rule.

[**History**: New rule effective June 26, 2014.]

Rule 110C

RECOGNITION OF TRIBAL JUDGMENTS

(a) **Definitions**.

(1) **"Judicial officer"** means a judge, justice, magistrate, or other officer authorized under federal or tribal law to resolve disputes and enter tribal judgments in a tribal court.

(2) **"Record"** means information on a tangible medium or stored in an electronic format.

(3) **"Tribal court"** means a court or constitutionally established tribunal of a federally recognized Indian nation, tribe, pueblo, band, or Alaska Native village established under federal law or tribal law, including a court of Indian offenses organized under Title 25, Part 11 of the Code of Federal Regulations.

(4) **"Tribal judgment"** means a final written judgment, decree, or order of a tribal court signed by a judicial officer and filed in a tribal court.

(b) **Recognition of Tribal Judgments—Full Faith and Credit**. A Kansas district court must grant full faith and credit and enforce a tribal judgment if the tribal court that issued the judgment grants full faith and credit to the judgments of the courts of the state of Kansas.

(c) **List of Tribal Courts Granting Full Faith and Credit**. The judicial administrator must maintain a list of the tribal courts that grant full faith and credit to the judgments of the courts of the state of Kansas. The list will include any tribal court that has provided the following documents to the judicial administrator:
   (1) a copy of the tribal ordinance, statute, court rule, or other evidence demonstrating that the tribal court grants full faith and credit to the judgments of the courts of the state of Kansas; and
   (2) a copy of the tribal ordinance, statute, court rule, or other evidence of the tribal court's requirements for authentication of copies of an official record.

(d) **Filing of Tribal Judgments**. A copy of a tribal judgment authenticated in accordance with K.S.A. 60-465, the applicable act of Congress, or the law of the tribe may be filed with the clerk of the district court of any Kansas county. The district court clerk must treat the tribal judgment in the same manner as a judgment of the district court of any Kansas county that may be enforced or satisfied in a like manner.

(e) **Filing Procedure**.
   (1) A tribal judgment filed under this rule must be accompanied by the following:
      (A) an affidavit, signed by the filing party or that party's attorney, stating the name and last-known address of each party in the action and the name and last-known address of each party's attorney, if any; and
      (B) payment for the docket fee required under K.S.A. 60-3020.
   (2) Promptly on the filing of a tribal judgment and affidavit, the filing party must mail notice of the filing of the tribal judgment to the party against whom the judgment was rendered at the address given. The notice must include the name and address of the party filing the judgment and the name and address of the party's attorney, if any. In addition, the party filing the judgment must file a certificate of mailing with the district court clerk within seven days after the date the tribal judgment was filed with the district court clerk.

(f) **Stay of Enforcement.** The party against whom the tribal judgment was rendered may seek a stay of enforcement of the judgment as provided in K.S.A. 60-3004.

(g) **Conditions for Execution or Enforcement.** No execution or other process for enforcement of a tribal judgment filed under this rule may issue until the proof of mailing of the notice has been filed with the district court clerk and 21 days have passed from the date the judgment was filed in the district court.

(h) **Communication Between Courts**.

(1) A district court may communicate with a tribal court concerning a tribal judgment filed under this rule. Except as otherwise provided in subsection (h)(2), a record must be made of the communication and the parties must be informed promptly of the communication and granted access to the record.

(2) Communication between a district court and a tribal court concerning court records and similar ministerial matters may occur without informing the parties. A record need not be made of the communication.

(i) **Other Applicable Statutes, Regulations, and Rules.**

(1) This rule does not modify, limit, or impose additional conditions on the obligation of a district court to follow applicable state and federal statutes, regulations, and rules that provide for recognition and enforcement of judgments or acts of the tribal courts of any federally recognized Indian tribe.

(2) Applicable statutes may include the following:

(A) Violence Against Women Act, 18 U.S.C. § 2265;

(B) Indian Child Welfare Act, 25 U.S.C. § 1911;

(C) National Indian Forest Resources Management Act, 25 U.S.C. § 3106;

(D) American Indian Agricultural Resources Management Act, 25 U.S.C. § 3713;

(E) Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B;

(F) Uniform Interstate Family Support Act, K.S.A. § 23-3601 et seq.;

(G) Uniform Child-Custody Jurisdiction and Enforcement Act, K.S.A. § 23-37,101 et seq.; and

(H) Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, K.S.A. § 60-31b01 et seq.

[**History:** New rule effective June 16, 2020.]

COMMENCEMENT OF ACTIONS, PLEADINGS, AND RELATED MATTERS

Rule 111

FORM OF FILING GENERALLY

(a) **Applicability.** Except as provided in subsection (f), this rule sets out requirements that apply to every document prepared for and filed with the court.

(b) **Typeface.** The document must be:
   (1) in a dark ink on light colored paper;
   (2) in a conventional style font not smaller than 12-point with no more than 12 characters per inch;
   (3) legible upon scanning and copying; and
   (4) on only one side of an 8½" x 11" sheet.

(c) **Margins.** The margin on the top of a document must be at least 1½ inches. Margins on the bottom and sides of the document must be at least 1 inch.

(d) **Spacing.** Text must be double-spaced, except that single spacing may be used for a subparagraph, legal description of real estate, itemization, quotation, headers and footers, and similar subsidiary portions of the document.

(e) **Required Information.** The document must include the following:
   (1) the name of the court in the center of the top of the first page;
   (2) the case caption and, if the document is filed in an existing case, the case number on the top of the first page below the name of the court;
   (3) the name, signature, address, telephone number, fax number if any, and e-mail address if any, of the person filing the document; and
   (4) the attorney's Kansas registration number after the attorney's name if the document is filed by a Kansas attorney or the attorney's state and registration number if the document is filed by an attorney not licensed in Kansas.

(f) **Exceptions.** The requirements in this rule specifying type size, margins, and spacing do not apply to:
   (1) a form approved by the Supreme Court or the Kansas Judicial Council;
   (2) a form required by a governmental agency, such as a form prepared by the Kansas Sentencing Commission;
   (3) a document prepared in accordance with the requirements in a statute or other Supreme Court rule, such as preparation of a transcript; or

(4) a document submitted by a self-represented litigant.

[**History:** Am. effective September 8, 2006; Restyled rule and amended effective July 1, 2012; Am. effective November 18, 2016; Am. effective June 14, 2019; Am. effective October 11, 2019.]

Rule 112

DUTY TO PROVIDE ADDRESS FOR SERVICE

A party must provide an address for service of any process or other paper filed by the party which is required to be served by a sheriff or clerk.

[**History:** Am. effective September 6, 2006; Restyled rule effective July 1, 2012.]

Rule 113

CLERK'S EXTENSION

The clerk may extend for a period of no more than 14 days the initial time to plead to a petition in a civil action governed by the rules of civil procedure, other than an action commenced pursuant to the code of civil procedure for limited actions. The party seeking the extension must prepare an order for the clerk's signature, and copies must be served on all other parties. Any other extension of time to plead must be by court order.

[**History:** Am. effective July 1, 1982; Am. effective July 1, 2010; Restyled rule effective July 1, 2012; Am. effective April 3, 2014.]

Rule 114

SURETY ON BOND

(a) **Corporate Surety.** When a clerk or sheriff is permitted or required under Chapter 60 to take a bond without court approval, it is sufficient if the surety on the bond is a surety company admitted to do business in this state. No corporation other than a surety company may be accepted as a surety unless the court orders.

(b) **Individual Surety.** When a clerk or sheriff accepts an individual as a surety, the surety must attach to the bond a sworn financial statement that reasonably identifies the assets relied on for qualification as a surety and the total amount of any liabilities, contingent or otherwise, that may affect the individual's qualification as a surety.

(c) **Attorney and Spouse Disqualified.** An attorney or the attorney's spouse may not act as a surety on a bond in a case in which the attorney is counsel.

(d) **Cash Bond.** The principal on a bond may, in lieu of providing a surety, deposit with the clerk the full amount of the bond. The clerk must retain the deposit until the bond is fully discharged and the principal released or the court orders disposition of the deposit.

[**History:** Am. effective September 8, 2006; Restyled rule effective July 1, 2012.]

Rule 115

ENTRY OF APPEARANCE

If a party appears in an action solely by filing a signed entry of appearance, and no attorney subsequently appears of record on the party's behalf, the entry of appearance has the effect under K.S.A. 60-203(c) of service of summons only if the party's signature was acknowledged.

[**History:** Am. effective September 8, 2006; Restyled rule effective July 1, 2012.]

Rule 115A

LIMITED REPRESENTATION

(a) **Written Consent Required.** An attorney may limit the scope of representation if the limitation is reasonable under the circumstances, and the client gives informed consent, confirmed in writing.

(b) **Limited Appearance.** An attorney, pursuant to this rule, may make a limited appearance on behalf of an otherwise unrepresented party.

(1) **Notice of Limited Entry of Appearance Required.** An attorney making a limited appearance must file a notice of limited entry of appearance. The notice is sufficient if it is on the judicial council form. The notice must:

(A) state precisely the court proceeding to which the limited appearance pertains; and

(B) if the appearance does not extend to all issues to be considered at the proceeding, identify the specific issues covered by the appearance.

(2) **Scope and Number of Limited Appearances.** An attorney may file a notice of limited entry of appearance for one or more court proceedings in a case. At any time—including during a proceeding—an attorney may, with the client's consent, file a new notice of limited entry of appearance.

(3) **A Paper Filed in a Limited Appearance.**

(A) **Statement Required on Signature Page.** A pleading, motion, or other paper filed by an attorney making a limited

appearance must state in bold type on the signature page of the document: "Attorney for [party] under limited entry of appearance dated ____."

(B) **Filing Outside Scope of Limited Appearance Constitutes General Appearance.** If an attorney files a pleading, motion, or other paper that is outside the scope of a limited appearance without filing a new notice of limited entry of appearance, the attorney will be deemed to have entered a general appearance in the case.

(4) **Service.** When service is required or permitted to be made on a party represented by an attorney making a limited appearance under this rule:

(A) for all matters within the scope of the limited appearance, service must be made on both the attorney and the party;

(B) the party must be served at the party's address stated in the notice of limited entry of appearance, but if the party's address has been made confidential by court order or rule, service on the party must be made in accordance with the court order or rule; and

(C) service on the attorney is not required for matters outside the scope of the limited appearance.

(5) **Restrictions on Limited Appearances.**

(A) An attorney may not enter a limited appearance for the sole purpose of making evidentiary objections.

(B) An attorney making a limited appearance and the litigant for whom the attorney appears may not argue on the same legal issue during the period of the limited appearance.

(6) **Withdrawal.**

(A) **On Completion of Limited Appearance.** On completion of a limited appearance—including completion and filing of an order or journal entry resolving the court proceeding for which the attorney was retained—an attorney must withdraw by filing a notice of withdrawal of limited appearance and serving the notice on the client and parties. The notice must state that the withdrawal is effective unless an objection is filed no later than 14 days after the notice is filed. The notice is sufficient if it is on the judicial council form and—unless otherwise provided by law—must include the client's name, address, and telephone number. The attorney must file a notice of withdrawal of limited entry of appearance for each court proceeding for which the attorney has filed a notice of limited appearance. The court

may impose sanctions for failure to file a notice of withdrawal under this paragraph.

(B) **Before Completion of Limited Appearance.** If an attorney wishes to withdraw from a limited appearance before it is completed—including before completion and filing of an order or journal entry documenting the court proceeding for which the attorney was retained—the attorney must comply with Rule 117.

(c) **Document Preparation Assistance.** An attorney may help a party prepare a pleading, motion, or other paper to be signed and filed in court by the client. The following rules apply:

(1) The attorney or party preparing a pleading, motion, or other paper under this rule must insert at the bottom of the paper the notation "prepared with assistance of a Kansas licensed attorney";

(2) The attorney is not required to sign the paper; and

(3) The filing of a pleading, motion, or other paper prepared under this rule does not constitute an appearance by the preparing attorney.

[**History:** New rule adopted March 15, 2012.]

COMMENT:

Making a legal form available to a self-represented litigant to complete for themselves, whether in person, by mail, electronically or through the Internet, (at no cost) is not considered document preparation assistance and is not covered by this rule.

Rule 116

ADMISSION PRO HAC VICE OF OUT-OF-STATE ATTORNEY

(a) **Eligibility for Admission Pro Hac Vice.** An attorney not admitted to practice law in Kansas may be admitted on motion to practice law in a Kansas court or administrative tribunal—for a particular case only—if the attorney:

(1) is regularly engaged in practicing law in another state, United States territory, or the District of Columbia;

(2) is in good standing under the rules of the highest appellate court in that jurisdiction; and

(3) is associated with an attorney of record in the case who:

(A) is regularly engaged in practicing law in Kansas; and

(B) is in good standing under the Kansas Supreme Court Rules.

(b) **Kansas Attorney's Duties.** The Kansas attorney of record under

subsection (a) must:

(1) be actively engaged in the case;

(2) sign all pleadings, documents, and briefs;

(3) be present throughout all court or administrative appearances; and

(4) attend each deposition or mediation unless excused by the court or tribunal or under local rule.

(c) **Service.** Service of a document in a case on the Kansas attorney of record under subsection (a) has the same effect as if personally served on the attorney admitted pro hac vice.

(d) **Pro Hac Vice Motion.** A separate motion for admission pro hac vice must be filed for each case.

(1) **Requirements.** The motion must be:

(A) filed by the Kansas attorney of record;

(B) accompanied by the out-of-state attorney's verified application, complying with subsection (e);

(C) filed with the court or administrative tribunal in which the case is pending as soon as reasonably possible but no later than the date the out-of-state attorney files a pleading or appears personally; and

(D) served on all counsel of record, unrepresented parties not in default for failure to appear, and the out-of-state attorney's client.

(2) **Denial of Motion.** If the court or administrative tribunal denies the motion, it must state reasons for the denial.

(e) **Verified Application.**

(1) **Contents.** An out-of-state attorney's verified application for admission pro hac vice must include:

(A) a statement identifying the party or parties represented;

(B) the name, business address, telephone number, fax number, e-mail address, and Kansas attorney registration number of the Kansas attorney of record;

(C) the applicant's residence address and business address, telephone number, fax number, and e-mail address;

(D) each bar to which the applicant is admitted, the date of admission to each bar, and each applicable attorney registration number;

(E) a statement that the applicant is a member in good standing of each bar;

(F) a statement that the applicant has not been the subject of prior public discipline, including suspension or disbarment, in any jurisdiction;

(G) a statement that the applicant is not currently the subject of a disciplinary action or investigation in any jurisdiction or, if the applicant is currently the subject of a disciplinary action or investigation, a detailed description of the nature and status of the action or investigation and the address of the disciplinary authority in charge; and

(H) if applicable, the case name, case number, and the court in which the applicant has been granted permission to appear pro hac vice in Kansas within the preceding 12 months.

(2) **Obligation to Report Changes.** The applicant has a continuing obligation to notify the court or administrative tribunal if a change occurs in any of the information provided in the application.

(f) **Fee.** The motion under subsection (d) must be accompanied by a non-refundable fee of $100, payable to the clerk. An administrative tribunal may impose a similar fee. The Kansas attorney of record may seek waiver of the fee—for good cause—if the out-of-state attorney represents the government or an indigent party.

(g) **Consent to Disciplinary Jurisdiction.** By applying for admission pro hac vice under this rule, an out-of-state attorney consents to the exercise of disciplinary jurisdiction by Kansas courts and administrative tribunals.

(h) **Appearance Pro Se.** This rule does not prohibit a party from appearing before a court or administrative tribunal on the party's own behalf.

(i) **Exemption for Out-of-State Attorney in Qualifying Indian Child Welfare Act Proceeding.**

(1) **Association with Kansas Attorney and Fee Not Required; Other Inapplicable Provisions.** If a court determines that an out-of-state attorney has met the requirements under paragraph (2):

(A) the out-of-state attorney is not required to associate with a Kansas attorney of record under subsection (a)(3);

(B) the out-of-state attorney is not required to pay the fee established under subsection (f); and

(C) subsections (b), (c), and (d)(1)(A) are inapplicable.

(2) **Exemption Requirements.** To qualify for the exemptions under paragraph (1), the out-of-state attorney must establish:

(A) that the attorney seeks to appear in a Kansas court for the limited purpose of participating in a child custody proceeding as defined by 25 U.S.C. § 1903, under the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq.;

(B) that the attorney represents an Indian tribe, parent, or Indian custodian, as each of those terms is defined by 25 U.S.C. § 1903; and

(C) one of the following:

(i) if the attorney represents an Indian tribe, the tribe has asserted the tribe's intent to intervene and participate in the state court proceeding and affirming the child's membership or eligibility for membership under tribal law or

(ii) if the attorney represents a parent or Indian custodian, the tribe has affirmed the child's membership or eligibility for membership under tribal law.

[**History:** Am. effective May 14, 1987; Am. effective July 1, 2005; Restyled rule and amended effective July 1, 2012; Am. effective May 8, 2019.]

Rule 117

WITHDRAWAL OF ATTORNEY

(a) **Withdrawal of Attorney When Client Will Be Left Without Counsel.** When withdrawal of an attorney who has appeared of record in a proceeding will leave the client without counsel, the attorney may withdraw only when:

(1) the attorney has served a motion for withdrawal on the client—and on all counsel of record and unrepresented parties not in default for failure to appear—that:

(A) states the reasons for the withdrawal, unless doing so would violate an applicable standard of professional conduct;

(B) provides evidence that the withdrawing attorney provided the client:

(i) an admonition that the client is personally responsible for complying with all orders of the court and time limitations established by the rules of procedure or by court order; and

(ii) notice of the date of any pending trial, hearing, conference, or deadline; and

(C) provides the court with a current mailing address and telephone number for the client, if known;

(2) the attorney has filed a copy of the motion and proof of service; and

(3) the court issues an order approving the withdrawal.

(b) **Withdrawal of Attorney When Client Continues to Be Represented by Other Counsel of Record.** When the client will continue

to be represented by other counsel of record, an attorney may withdraw without a court order by filing a notice of withdrawal of appearance. The notice must:

(1) identify the attorney of record admitted to practice law in Kansas who will continue to represent the client; and

(2) be served on the client and all counsel of record and unrepresented parties not in default for failure to appear.

(c) **Withdrawal of Attorney When Client Will Be Represented by Substituted Counsel.** An attorney may withdraw without court order upon simultaneous substitution of counsel admitted to practice law in Kansas by:

(1) filing a notice of withdrawal of counsel and entry of appearance of substituted counsel signed by both the attorney withdrawing and the attorney to be substituted as counsel; and

(2) serving the notice on the client and all counsel of record and unrepresented parties not in default for failure to appear.

[**History:** Am. effective September 8, 2006; Restyled rule and amended effective July 1, 2012.]

Rule 118

STATEMENT OF DAMAGES WHEN PLEADING DOES NOT DEMAND SPECIFIC AMOUNT

(a) **Request for Actual Amount of Money Damages.** When a pleading contains a demand for money damages which states only that the amount sought as damages is in excess of $75,000, as provided in K.S.A. 60-208(a)(2), a party against whom relief is sought may serve on the party seeking relief a request for the actual amount of monetary damages sought. No later than 14 days after service of the request, the party seeking relief must serve a statement of the total amount of monetary damages sought and file a copy of the statement. The amount recited in the statement may be amended downward at any time before the action is submitted to the trier of fact. The amount may be amended upward on motion if the court determines the reason stated in the motion justifies the amendment.

(b) **Disclosures Allowed in Jury Trial.** A statement filed under subsection (a) may not be admitted in evidence during a jury trial or referred to in the jury's presence. The final amount sought may be disclosed to the jury, but earlier amounts sought, and whether the amount has been amended, may not be referred to in the jury's presence.

(c) **Frivolous Damages Amount.** If the court—on a party's motion or on its own—finds the amount of damages stated in the last statement filed under subsection (a) was chosen frivolously, the court must apportion the costs as justice requires.

(d) **Default Judgment.** Before a default judgment is taken in an action subject to this rule, the party seeking relief must notify the party against whom relief is sought of the amount of money for which judgment will be taken. Notice must be given by return receipt delivery, or as the court orders, at least 14 days before the date judgment is sought.

[**History:** Am. effective September 14, 1978; Am. effective February 1, 1988; Am. effective March 5, 1991; Am. (a) effective March 11, 1999; Am. (a) effective May 28, 1999; Am effective September 8, 2006; Am. (a) and (d) effective July 1, 2010; Restyled rule and amended effective July 1, 2012.]

Rule 119

FAX FILING AND SERVICE BY FAX

(a) **Applicability.** This rule applies to all district court proceedings except a small claim as defined in K.S.A. 61-2703.

(b) **Limitation on Use of Fax Filing.** A Kansas-licensed attorney is subject to the provisions of Rule 122 when filing any document with a district court.

(c) **Definitions.** The following definitions apply in this rule, unless the context requires otherwise.

(1) "Document" includes a pleading, motion, or other paper and attached exhibits. "Document" does not include a pleading, motion, other paper, or exhibit if a statute requires the original to be filed with the court.

(2) "Fax filing" or "filing by fax" means transmitting a facsimile of an original document by electronic means to a court or fax filing agency for filing with the court. The term includes receipt of the transmission by the court or agency.

(3) "Fax filing agency" means an entity that receives documents by fax for processing and filing with the court.

(4) "Transmission record" means a document printed by a sending fax machine stating the telephone number of the receiving machine, the number of pages sent, and the transmission time, indicating no errors in transmission.

(d) **Filing by Fax.** An unrepresented party may file a document by fax directly with a district court at the fax number designated by the clerk. The following rules apply.

(1) **Separate Transmission for Each Court Filing.** Each document filed by fax must be transmitted separately. The document may include attached exhibits.

(2) **Transmission Sheet Required.** A fax filing must be accompanied by a Fax Transmission Sheet on the judicial council form. The transmission sheet must be the first page(s) transmitted, followed by any special processing instructions. When the second page of the transmission sheet contains credit or debit card information, that page must not be retained in the case file or publicly disclosed.

(3) **Other Fax Content Requirements.** The following additional requirements apply to the content of a document filed by fax:
   (A) the first page must include the words "By Fax"; and
   (B) each page must be numbered and must include a short caption of the case and an abbreviated title of the document.

(4) **Retention of Fax Transmission Record and Original Document.**
   (A) **Transmission Record.** An unrepresented party filing by fax must retain a transmission record.
   (B) **Original Document.** An unrepresented party that files or serves a document by fax must retain the original document during the pendency of the action and must produce it on request by the court or a party. If the unrepresented party fails to produce the document, the court may strike the fax filing and impose sanctions under K.S.A. 60-211.

(5) **When a Fax Filing is Deemed Filed.** Subject to the provisions of paragraph (7)(C), a fax filing received by a court is deemed filed at the time printed by the court fax machine on the final page of the fax document received or at the time recorded on the court's electronic fax log.

(6) **Motion Procedure When Fax Filing Fails.**
   (A) **Applicability.** A court, on motion of the sender, may order filing of a document nunc pro tunc if a fax filing is not filed with the court because of:
      (i) an error—the occurrence of which was unknown to the sender—in the transmission of the document; or
      (ii) the court's failure to process the fax filing on receipt.
   (B) **Motion Requirement.** A motion under subparagraph (A) must be accompanied by:
      (i) the transmission record;
      (ii) a copy of the document transmitted; and

(iii) a Declaration of Transmission by Fax on the judicial council form.

(7) **Payment of Fees.** The following rules govern the payment of fees associated with a document filed by fax.

(A) Only a credit or debit card system designated by the judicial administrator may be used to pay a docket fee, filing fee, and any other fee or charge.

(B) When payment of a fee is required with a fax filing, the second page of the transmission sheet must include:

(i) the name of the credit or debit card system and the account number to which the fee is to be charged;

(ii) the signature of the cardholder authorizing the charge; and

(iii) the credit or debit card's expiration date.

(C) If a charge for a fee is rejected by the credit or debit card issuing company, the document is not deemed filed under K.S.A. 60-203 or 60-2001.

(8) **Rules Applicable to a Court.** The following rules apply to a district court.

(A) A court must have its fax machine available on a 24-hour basis.

(B) A court may impose limits, by order or local rule, on the number of fax filings by an unrepresented party.

(e) **Service by Fax.**

(1) **How Made.** Service by fax is made by transmitting a document to the attorney's or unrepresented party's designated fax number.

(2) **Fax Service by Court.** A court may serve a notice by fax if the notice may be served by mail.

(3) **Must Make Fax Machine Available.** An attorney or unrepresented party that has listed a fax number on a paper in compliance with Rule 111 must make the fax machine available for receipt of documents on a 24-hour basis.

(4) **When Fax Service Deemed Complete.** Service by fax is complete when the transmitting machine generates a transmission record indicating successful transmission of the entire document.

(5) **Certificate of Service by Fax.** A certificate of service by fax must include:

(A) the transmission date and time;

(B) the name and fax number of the person served;

(C) a statement that the document was transmitted by fax and the transmission was reported as complete and without error; and

(D) the signature of the attorney or person making the transmission.

(f) **Fax Signature.** A fax signature has the same effect as an original signature.

(g) **Fax Filing Agency.**

(1) An unrepresented party may transmit a document, without a page limit, by fax to a fax filing agency for filing with a court. The fax filing agency acts as the filing party's agent, not as the court's agent.

(2) A fax filing agency is not required to accept a document for filing unless the sender has made appropriate arrangements for payment of any docket or other required fee before the document is transmitted to the agency.

[**History:** New rule effective January 1, 1993; Am. July 15, 1993; Am. effective September 8, 2006; Restyled rule and amended effective July 1, 2012; Am. (c) and (d) effective July 1, 2017; Am. effective June 25, 2018; Am. (d) effective March 16, 2020.]

Rule 120

DEATH PENALTY CASE—NOTICE TO APPELLATE COURT

If a county or district attorney files notice under K.S.A. 21-6617 that the attorney intends—on conviction of a defendant charged with capital murder—to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death, the clerk must forward a copy of the notice to the clerk of the appellate courts no later than 7 days after filing.

[**History**: New rule effective May 28, 1997; Am. effective July 1, 2010; Rule restyled effective July 1, 2012.]

Rule 121

PROCEDURE UNDER KANSAS STANDARD ASSET SEIZURE AND FORFEITURE ACT, K.S.A. 60-4101 et seq.

(a) **Procedure for Filing.** When a forfeiture proceeding is commenced under K.S.A. 60-4109 by filing a notice of pending forfeiture, the notice must be filed with the district court having jurisdiction under K.S.A. 60-4103. The clerk must file stamp and assign a case number to the notice. No filing fee is required.

(b) **Uncontested Forfeiture Proceeding.** If a forfeiture proceeding is uncontested, the court may order forfeiture under K.S.A. 60-4116 without additional notice.

(c) **Contested Forfeiture Proceeding.** If a judicial forfeiture proceeding to resolve a proper claim is commenced after a notice of pending forfeiture, no additional notice of the judicial forfeiture proceeding is required.

[**History**: New rule effective September 6, 2000; Restyled rule effective July 1, 2012.]

Rule 122

ELECTRONIC FILING AND SERVICE BY ELECTRONIC MEANS

(a) **District Court Electronic Filing System.**

(1) **Approved District Court Electronic Filing System.** The Supreme Court approves for electronic filing in the district courts the Kansas Courts Electronic Filing System (Kansas Courts eFiling system) and the Johnson County District Court Electronic Filing System (Johnson County eFiling system).

(2) **Filing User.** A Kansas-licensed attorney who is permitted to practice law under Rule 206 or who is authorized under Rule 712B must register as a filing user with the approved district court electronic filing system prior to filing a document with a district court.

(b) **Electronic Filing Required; Exceptions.** A Kansas-licensed attorney who is permitted to practice law under Rule 206 must electronically file any document submitted to a district court through the approved district court electronic filing system, unless:

(1) a judge of the district court grants permission for a document, including an exhibit, to be filed by paper when the unique characteristics of the document require review or preservation of the document in its original form;

(2) the procedures adopted by the judicial administrator under subsection (g) permit a document to be filed by paper; or

(3) the provisions of subsection (e) apply.

(c) **Service by Electronic Means.** The following provisions apply to service by electronic means under K.S.A. 60-205(b)(2)(F).

(1) **Parties Who Consent to Service by Notice of Electronic Filing.**

(A) A party consents to service by electronic means under K.S.A. 60-205(b)(2)(F) when an attorney who is a filing user enters an appearance on behalf of the party.

(B) The notice of electronic filing automatically generated by the approved district court electronic filing system is an acceptable form of service by electronic means.

(2) **Parties Who Are Unable to Consent to Service by Notice of Electronic Filing.** An attorney must serve an unrepresented party by a manner authorized under K.S.A. 60-205(b).

(d) **Certificate of Service.** An electronically filed document must include a certificate of service when service is required under K.S.A. 60-205. A certificate of service must include: the name of the party served, the manner in which service was made, the signature of the attorney making the submission, and if service is obtained in a manner other than transmission of the notice of electronic filing, the date on which service was made. If service is obtained by the transmission of the notice of electronic filing, the date of service is the date reflected in the file stamp on the document.

(e) **Procedure When Electronic Filing Fails.**

(1) **Unavailability of the Electronic Filing System.** The provisions of K.S.A. 60-206 apply if the district court clerk's office is inaccessible because the approved district court electronic filing system is unavailable. An attorney whose filing is untimely made due to the unavailability of the system may seek relief from the court.

(2) **Failure of Attorney's Technology.** If a document cannot be electronically filed by the filing deadline because of a failure of the filing attorney's technology, the attorney may file the document by fax or by paper and must accompany the filing with a motion to accept the document. The motion must state the specific technology failure that prevented the document from being electronically filed with the district court. The attorney must file this motion no later than noon on the first day the district court clerk's office is open for business following the original filing

deadline. The court may order filing of the document nunc pro tunc as of the date the attorney's technology failed if the filing occurs after the filing deadline. If the court orders filing of the document nunc pro tunc, the response time runs from the date the nunc pro tunc order is entered.

(f) **Fees.** The Supreme Court may approve reasonable fees to support the expenses associated with the electronic filing system.

(g) **Standard Operating Procedures.** The judicial administrator is authorized to adopt standard operating procedures consistent with this rule to facilitate the electronic filing process in district courts. In developing these procedures, the judicial administrator will consult with stakeholders, as appropriate.

[**History:** New rule effective September 6, 2000; Am. effective September 8, 2006; Restyled rule and amended effective July 1, 2012; Am. (d) effective May 12, 2017; Am. effective June 25, 2018; Am. (a) and (b) effective October 17, 2019.]

Rule 123

COVER SHEET; PRIVACY POLICY REGARDING PERSONAL IDENTIFIERS

(a) **Cover Sheet Required.** A party that files a case must submit a cover sheet with the initial pleading or complete the information required for electronically filing a new case. The judicial administrator may exclude categories of cases from this requirement. The cover sheet must be in substantial compliance with the forms located on the judicial council website. The following rules apply:

(1) **Cover Sheet Handling.** The cover sheet:

(A) must not be retained in the case file;

(B) is not subject to Rule 108; and

(C) may be shredded or otherwise destroyed within a reasonable time after the case is entered into the case information system.

(2) **Confidential Information.** Social security numbers and birth dates supplied on a cover sheet or for electronic filing are confidential and may not be disclosed to the public.

(3) **Divorce, Child Custody, Child Support, and Maintenance Cases.** In an action for divorce, child custody, child support, or maintenance, the cover sheet or electronic filing information must include, if known, social security numbers and birth dates for the parties and the parties' children.

(b) **Exclusion of Personal Identifiers from Documents.** Unless otherwise required by law or court order, parties and their attorneys must

not include—or must partially redact when inclusion is necessary—the following personal identifiers from all documents and accompanying exhibits filed with the court:

(1) **Social Security Number.** If an individual's social security number must be included in a pleading, only the last four digits should be used.

(2) **Birth Date.** If an individual's birth date must be included in a pleading, only the year should be used.

(3) **Financial Account Number.** If a financial account number is relevant, only the last four digits of the number should be used.

(c) **Clerk Does Not Review Document for Personal Identifiers.** A party and the party's attorney are solely responsible for redacting personal identifiers. The clerk will not review a document for compliance with this rule.

[**History**: New rule effective July 1, 2005; Am. effective September 8, 2006; Restyled rule and amended effective July 1, 2012; Am. (a) and (b) effective November 18, 2016.]

Rule 124

CONTACT INFORMATION

(a) **Collection of Information.**

(1) To facilitate case processing, scheduling, or participation in a hearing or trial, a court may request contact information from any witness or potential juror.

(2) The contact information a court may request is limited to a current mailing address, phone number, and email address.

(b) **Form.** The court must use a form available from the Office of Judicial Administration to collect the contact information.

(c) **Completion of Form Is Voluntary.** A witness or potential juror's decision to complete the form requesting contact information is voluntary.

(d) **Not a Public Record.** The form containing the contact information is not a public record under the Kansas Open Records Act.

(e) **Access to Completed Form.** A completed form containing contact information must be kept confidential and may only be accessed by court personnel. Court personnel may only use the form to facilitate case processing, scheduling, or participation in a hearing or trial.

(f) **Retention of Completed Form.**

(1) The court must retain the completed form in a secure electronic or physical location.

(2) The court must not retain the completed form in the case file maintained by the clerk of the district court.
(3) If the court retains the completed form in a physical location, it must keep the form in a separate paper file.

(g) **Destruction of Completed Form.** The court must destroy a completed form containing contact information, whether stored in an electronic or physical location, when the following time period expires:
(1) if the information is from a witness, 30 days after the case is closed;
(2) if the information is from a potential juror, 30 days after the court dismisses the potential juror from serving on a jury; or
(3) if the information is from a juror, 30 days after the court dismisses the jury.

[**History:** New rule adopted effective September 29, 2020.]

MOTIONS, DISCOVERY, PRETRIAL PROCEDURES, AND RELATED MATTERS

Rule 131

NOTICE OF HEARINGS AND TRIAL SETTINGS

[**Histor**y: Repealed effective July 1, 2012.]

Rule 132

ATTENDANCE AT DEFAULT JUDGMENT AND EX PARTE MATTER

When required by the court, a party or the party's attorney personally must present a request for default judgment, an ex parte application, or a formal matter not requiring a hearing.

[**History:** Rule restyled and amended effective July 1, 2012.]

Rule 133

MEMORANDUM AND ARGUMENT ON MOTION

(a) **Form of Motion.** Every written motion must—in the motion or in an accompanying memorandum—without extended elaboration, state the reasons for the motion and cite authorities, if any, the court should consider in ruling on the motion.

(b) **Response.** An adverse party may file a memorandum in opposition to a motion, stating without extended elaboration the reasons the motion should be denied and citing authorities, if any, the court

should consider in ruling on the motion. Except as otherwise provided by statute or these rules, the response must be filed no later than 7 days after service of the motion or as otherwise provided by the court.

(c) **Oral Argument.** The following rules govern oral argument and rulings on motions.
   (1) **When Oral Argument Is Requested.** A party may request oral argument—either in the motion or in a response filed by the adverse party under subsection (b). The court must grant a timely request for oral argument unless it states in the ruling or by separate communication that oral argument would not aid the court materially.
   (2) **When Oral Argument Is Not Requested.** If no party requests oral argument, the court may:
      (A) set the matter for hearing; or
      (B) rule on the motion immediately and communicate the ruling to the parties.

[**History:** Am. effective September 8, 2006; Am. (c) effective July 1, 2010; Restyled rule and amended effective July 1, 2012.]

Rule 134

NOTICE OF RULING

(a) **General Rule.** If the court rules on a motion or other application when an affected party who has appeared in the action is not present—either in person or by the party's attorney—the court immediately must serve notice of the ruling.

(b) **Exception for Case with Large Number of Parties.** The court may modify the notice requirement in subsection (a)—on motion or on its own—in an action involving an unusually large number of parties.

[**History:** Am. effective September 8, 2006; Restyled rule effective July 1, 2012.]

Rule 135

WRITTEN DISCOVERY: FORM AND LIMITATIONS

(a) **Interrogatories.**
   (1) **Form.** An interrogatory must:
      (A) state the question in clear, concise language; and
      (B) leave sufficient space after the question to insert an answer.

(2) **Service.** The original must be served on adverse counsel, or the opposing party if unrepresented, and copies must be served on all counsel of record and unrepresented parties not in default for failure to appear.

(3) **Number Limited in Chapter 60 Damage Action.** Unless the court orders otherwise, the number of interrogatories in a damage action under K.S.A. Chapter 60 is limited to 30, counting subparagraphs.

(b) **Responses to Interrogatories.**

(1) **Form.** If an answer does not fit in the space provided, it must be attached as an appendix and clearly identified by number.

(2) **Service.** The original, with answers inserted or attached under paragraph (1), must be served on counsel for the party propounding the interrogatories and copies must be served on all counsel of record and unrepresented parties not in default for failure to appear.

(c) **Alternative Service Method for Written Discovery, Requests, and Responses.** In lieu of service by mail, interrogatories, a request for production, and a request for admission, and responses to them, may be served as an attachment—in a commonly used word processing format—to an electronic mail transmission.

[**History:** Amended effective August 25, 1987; Am. effective September 8, 2006; Am. (a) and (c) effective July 30, 2009; Restyled rule and amended effective July 1, 2012.]

Rule 136

DISCOVERY CONFERENCE

[**History**: Repealed effective March 11, 1999.]

Rule 137

WRITTEN COMMUNICATION WITH COURT

(a) **In General.** This rule does not supersede any statute or rule that governs document filing.

(b) **Brief, Memorandum, or Other Communication with the Court.** Unless the court directs otherwise:

(1) the original of a brief, memorandum, or other communication with the court must be filed in the county where the case is pending;

(2) a copy must be served on all counsel of record and unrepresented parties not in default for failure to appear; and

(3) if the court is part of a multicounty judicial district, a copy of each brief, memorandum, or other communication with the

court must be sent to the assigned judge at the judge's chambers.

(c) **Counsel's Duty to Notify Court When Matter is Ready for Decision.** When a brief or memorandum relates to a matter being submitted to the court for decision, counsel must notify the court when the filings with the clerk are completed or the matter is otherwise ready for decision.

[**History:** Am. effective September 8, 2006; Restyled rule and amended effective July 1, 2012.]

Rule 138

OPENING OF DEPOSITION

A deposition in a pending case—which has been filed under K.S.A. 60-205(d) or by court order under K.S.A. 60-230(f)—may be opened as allowed by the court.

[**History:** Am. effective September 8, 2006; Restyled rule and amended effective July 1, 2012.]

Rule 139

DOMESTIC RELATIONS AFFIDAVIT; SUPPORT ORDER AND PAYMENT

(a) **Domestic Relations Affidavit Required in Divorce, Annulment, or Separate Maintenance Case.** All parties—including unrepresented parties—in a divorce, annulment, or separate maintenance case must prepare and file a domestic relations affidavit on the form set forth in the appendix of the Kansas Child Support Guidelines. In a contested case, the parties must exchange domestic relations affidavits before trial.

(b) **Domestic Relations Affidavit Required in Matter Involving Support.** A domestic relations affidavit must be included with:
   (1) an ex parte motion that includes a request for temporary support;
   (2) a motion to modify an existing support order; and
   (3) a response or answer challenging:
      (A) a support order; or
      (B) facts contained in a domestic relations affidavit.

(c) **When Child Support Worksheet Required.** When child support is an issue, a child support worksheet—on the form set forth in the appendix of the Kansas Child Support Guidelines—must accompany the domestic relations affidavit.

(d) **No Ex Parte Order Without Required Attachment.** An ex parte support order may not be issued in the absence of an accompanying domestic relations affidavit or child support worksheet required under subsection (b) or (c).

(e) **Service**.
   (1) **Ex Parte Order.** A copy of an ex parte support order—and any accompanying domestic relations affidavit or child support worksheet if required under subsection (b) or (c)—must be served promptly on the individual to whom it is addressed.
   (2) **Motion to Modify Support Order.** A party filing a motion to modify a support order must serve the motion, along with a copy of the domestic relations affidavit—and a copy of the child support worksheet if the order is for child support—on the adverse party.

(f) **Filing and Service of Required Document in Response to Motion to Modify.** A person challenging a motion to modify a support order or facts contained in an accompanying domestic relations affidavit or child support worksheet must file and serve a domestic relations affidavit—and a child support worksheet if the motion seeks to modify child support—prior to the hearing on the motion to modify.

(g) **Support Payment.** Unless the court orders otherwise, every child support or spousal support payment—whether temporary or permanent—must be made to the Kansas Payment Center.

[**History:** Am. effective December 30, 1985; Am. effective April 1, 1990; Am. (c) effective October 7, 2004; Am. (g) effective September 8, 2006; Restyled rule and amended effective July 1, 2012.]

Rule 140

FINAL PRETRIAL CONFERENCE PROCEDURE

(a) **Timing.** A final pretrial conference under K.S.A. 60-216(e) may be held when discovery is complete. The parties must be prepared to complete the procedural steps stated in subsection (c). If a final pretrial conference is held, it must be held at least 14 days before trial.

(b) **Participants.** If a final pretrial conference is held, the court must conduct the conference and participate throughout. An attorney who will participate in the trial must attend the conference. A party may be—and if the court orders, must be—present at the conference.

(c) **Procedural Steps.** A final pretrial conference must be conducted substantially in conformity with the following procedural steps:
   (1) Each party, beginning with the plaintiff, states concisely:
      (A) the party's factual contentions; and
      (B) the theory of the party's action, defense, or claim for relief.

(2) The court rules on any proposed amendments.
(3) The court and parties confer about undisputed matters and request admissions and stipulations.
(4) Parties submit in writing the names and addresses of witnesses parties plan to call. Parties must be prepared to state the essence of each witness' testimony.
(5) Parties inform the court and opposing parties of all exhibits parties intend to use at the trial. The exhibits may be marked for identification and admitted into evidence.
(6) The court may rule on any motions, including motions in limine, for dismissal, judgment on the pleadings, or summary judgment.
(7) Parties state:
    (A) whether a jury is requested and, if so, whether a jury of less than 12 will be accepted; and
    (B) the amount of time required for trial.
(8) If needed, the court appoints a guardian *ad litem*.
(9) The court considers and rules on limiting the number of expert and cumulative witnesses each party may call.
(10) The court states the factual issues.
(11) The court states and may rule on the legal issues.
(12) The court states and may rule on evidentiary issues.
(13) The court may rule on jury instruction issues.
(14) The parties discuss and explore settlement possibilities.
(15) The court determines whether briefs may be filed and, if so, specifies the time for filing them.
(16) The court determines any procedures that may aid in disposition of the case, including:
    (A) submission on special verdict or general verdict and interrogatories;
    (B) consolidated or split trials;
    (C) reference to a master; and
    (D) less than unanimous verdict.

(d) **Additional Matters in Condemnation Case.** In a condemnation case, the following additional matters must be considered:
(1) Date of the taking.
(2) Any inconsistency between the appraisers' report and the petition's stated description of the taking.
(3) Legal description and size of the original tract before the taking.
(4) Legal description and size of the original tract taken.
(5) Size of the tract or parcel remaining after the taking.

(6) The nature of the taking—whether a fee simple interest or an easement—and any limitations on the taking established in the petition or appraisers' report.
(7) Access rights taken.
(8) Any other factors to be considered in ascertaining compensation, i.e., K.S.A. 26-513(d).
(9) The parties' positions regarding highest and best use.
(10) Requests for admissions and stipulations.
(11) Exhibits, plats, or demonstrative evidence to be introduced.
(12) Views of the premises.
(13) For each witness-appraiser who will testify as to the value or damage, the party calling the witness must state the witness' valuation of the entire property or interest immediately before the taking and, when appropriate, the valuation of that portion of the tract or interest remaining immediately after the taking.
(14) Any special instructions needed.
(15) In the case of a temporary taking, the duration of the taking.
(16) Any motion in limine not previously ruled upon.

(e) **Post-Conference Discoveries.** If an additional witness or evidence is discovered after the final pretrial conference, the discovering party immediately must inform, in writing, the court and all parties not in default for failure to appear.

(f) **Pretrial Order.** The court must prepare—or designate counsel to prepare—the pretrial order.

(g) **Objection to Pretrial Order.** If a party objects to a pretrial order, the objection must be filed, with a copy of the pretrial order attached. An objection must be filed no later than 14 days after the pretrial order is filed unless trial begins in that 14-day period, in which case the objection must be filed at the beginning of trial.

[**History**: Am. effective March 11, 1999; Am. (f) and (g) effective September 8, 2006; Am. (h) effective February 12, 2010; Am. (a) and (f) effective July 1, 2010; Restyled rule and amended effective July 1, 2012.]

Rule 141

SUMMARY JUDGMENT

(a) **Motion for Summary Judgment; Requirements.** A motion for summary judgment must be accompanied by a filing fee and a memorandum or brief that:
(1) states concisely, in separately numbered paragraphs, the uncontroverted contentions of fact on which the movant relies;

(2) for each fact, contains precise references to pages, lines and/or paragraphs—or to a time frame if an electronic recording—of the portion of the record on which the movant relies; and
(3) is filed and served on all counsel of record and unrepresented parties not in default for failure to appear.

(b) **Response to Motion for Summary Judgment; Requirements.** A memorandum or brief opposing a motion for summary judgment must:
(1) state—in separately numbered paragraphs that correspond to the numbered paragraphs of movant's memorandum or brief—whether each of movant's factual contentions is:
(A) uncontroverted;
(B) uncontroverted for purposes of the motion only; or
(C) controverted, and if controverted:
(i) concisely summarize the conflicting testimony or evidence and any additional genuine issues of material fact that preclude summary judgment; and
(ii) provide precise references as required in subsection (a)(2); and
(2) be filed and served on all counsel of record and unrepresented parties not in default for failure to appear no later than 21 days after service of the motion, unless the time is extended by local rule or court order.

(c) **Reply to Motion for Summary Judgment; Requirements.** Any reply must be filed and served on all counsel of record and unrepresented parties not in default for failure to appear no later than 14 days after service of the response, unless the time is extended by local rule or court order.

(d) **Objection That a Fact Is Not Supported by Admissible Evidence.** A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(e) **Materials Not Cited.** The court need consider only the parts of the record that have been cited in the parties' briefs, but it may consider other materials in the record.

(f) **Hearing or Final Submission for Decision.** A motion for summary judgment may be heard only when the movant has complied with subsection (a), and one of the following has occurred:
(1) the opposing party has complied with subsection (b) and the movant has filed a reply or the time for the movant to reply has expired; or

(2) the court orders that the motion is deemed finally submitted because the opposing party failed to comply timely with subsection (b), in which case the uncontroverted factual contentions stated in the moving party's memorandum or brief are deemed admitted for purposes of the motion.

(g) **Findings and Conclusions by the Court.** When granting a motion for summary judgment, the court must state its findings of fact and conclusions of law in compliance with Rule 165. When denying a motion, the court must state the reasons for the denial.

[**History**: Am. effective September 23, 1980; Restyled rule and amended effective July 1, 2012; Am. (a) effective February 9, 2015.]

Rule 142

MEDICAL AND PROFESSIONAL MALPRACTICE SCREENING PANELS

(a) **Applicability.** This rule governs the procedure for a medical malpractice screening panel under K.S.A. 65-4901 et seq. and a professional malpractice screening panel under K.S.A. 60-3501 et seq.

(b) **Definitions and General Provisions.**

(1) **Definitions.** As used in this rule:

(A) "Plaintiff" includes:

(i) a party that has filed a petition; and

(ii) a claimant that has not formalized a dispute by filing a petition.

(B) "Defendant" includes:

(i) a party that is a defendant in a pending action; and

(ii) a health care provider or professional licensee against whom a claim has been made, but no petition has been filed.

(C) "Judge" means the judge specified in K.S.A. 65-4901 et seq. and 60-3501 et seq.

(D) "Party" includes a plaintiff or defendant as defined in subparagraphs (A) and (B). If a party is represented, "party" includes counsel.

(2) **General Provisions.**

(A) Whenever notice is required, notice must be served under K.S.A. 60-205.

(B) When this rule requires that a party file a document with a chairperson, the party must include the original and three copies. This requirement does not apply to an x-ray, of which only the original must be provided. The panel chairperson must make the original x-ray available for review by panel members and parties.

(C) A screening panel is convened on the date the judge notifies the parties under subsection (e).

(c) **Requesting a Screening Panel.** A party may request a screening panel by filing a written request with the judge before or after a petition is filed, but no later than 60 days after the defendant subject to the screening panel is served with process.

(d) **Record Release Authorization.** A plaintiff that files a request for a screening panel before filing a petition must furnish—to all health care providers or professional licensees that have provided services or treatment to the plaintiff in connection with the claim—an authorization releasing records to the screening panel or parties. The authorization is not a waiver for any other purpose.

(e) **Notice.** After a request for a screening panel is filed—or when a petition is filed and the judge, under K.S.A. 65-4901, determines a screening panel should be convened—the judge must notify the parties. The notice must include the name of the attorney selected as chairperson and instruct the parties to select the other panel members no later than 14 days after the notice is served.

(f) **If Multiple Parties Cannot Agree on Panel.** If a claim involves multiple plaintiffs or multiple defendants and the parties cannot agree on a three-member panel or enlarged panel, the judge may:
(1) convene one or more screening panels;
(2) select the same chairperson for all panels; and
(3) suggest or require that all panels meet separately or jointly.

(g) **Discovery in a Pending Action.** The judge may issue an order partially or completely staying discovery pending a screening panel's report.

(h) **Plaintiff to Provide Documents.** No later than 30 days after the judge notifies the parties that a screening panel will be convened, the plaintiff must file a copy with the chairperson—serving a copy on the other party—of all medical records, medical care facility records, x-rays, test results, treatises, documents, tangible evidence, and written contentions on which the plaintiff relies.

(i) **Defendant to Provide Documents.** No later than 30 days after plaintiff's filing under subsection (h), a defendant must file a copy with the chairperson—serving a copy on the plaintiff—of all medical records, medical care facility records, x-rays, test results, treatises, documents, tangible evidence, and written contentions not yet provided on which the defendant relies.

(j) **Written Contentions.** A party's written contentions under subsection (h) or (i) must contain:
(1) a statement of the factual and legal issues;

(2) a brief statement of the facts—limited to facts included in material filed with the chairperson—in support of the party's claim or defense; and
(3) a brief statement of the applicable law, including citation of authority.

(k) **Panel Member Qualifications and Requirements.**
(1) A health care provider or professional licensee may not serve on a screening panel if the provider or licensee has:
(A) knowledge of any material facts in the case; or
(B) a relationship with a party that would affect the panel member's impartial consideration of the case.
(2) To serve on a screening panel, a health care provider or professional licensee must have expertise in the subject matter of the claim.
(3) A panel member must not discuss the facts of the case outside the regular meetings of the screening panel or permit others to discuss the facts with the panel member. A panel member must report immediately to the chairperson any attempt by anyone to discuss the facts of the case with the panel member.
(4) A panel member must sign a statement acknowledging the duty to consider the case impartially. The statement must be in substantially the following form:

Statement of Panel Member

I have no knowledge of material facts of the case, or relationship with any of the parties, which might affect my impartial consideration of the case.

I have had no contact with any party concerning the facts of the case other than contacts disclosed to the chairperson of the panel.

I will not discuss the facts of the case outside the regular meetings of the panel and will report immediately to the chairperson any attempt by anyone to discuss the facts of the case with me.

_____
(Signature of Panel Member)

(5) The chairperson must provide to panel members for signature the statement required by paragraph (4), accompanied by a copy of this rule, the relevant statutes concerning the screening panel, and a letter briefly explaining or describing:
(A) the parties involved;
(B) the panel's composition;
(C) the panel's basic procedure;
(D) the general issues the panel must determine;
(E) the requirement of impartial consideration; and
(F) the panel members' compensation.

(l) **Organization and Conduct of Meetings.**

(1) As soon as practicable, the chairperson of a screening panel must convene the screening panel at a time and place agreed upon by the panel members and must notify the parties of the meeting date.

(2) A screening panel may not take oral testimony.

(3) A party may not attend a screening panel meeting.

(4) A screening panel must determine whether the parties have provided sufficient material to enable the panel to decide:

(A) whether there was a departure from the standard of practice required of the health care provider or professional licensee; and

(B) if there was a departure, whether the departure from the required standard of practice caused the plaintiff's claimed damages.

(5) If a screening panel determines that it requires further information or legal authority, the chairperson may:

(A) request the parties to provide the additional information or authority required, which must be limited to the factual issues stated in the parties' contentions; and

(B) submit written questions to the parties.

(6) Requested additional information or authority and answers—which need not be verified under oath—must be filed with the chairperson no later than 14 days after service of the request or written questions under paragraph (5). A copy of additional material or answers provided to the chairperson must be served on the other party.

(7) A chairperson's duties include:

(A) conducting such meetings as may be necessary to determine the facts; and

(B) advising other panel members of the applicable rules of law, which must be stated in the panel's opinion.

(8) A screening panel must:

(A) review all materials submitted by the parties;

(B) decide the facts;

(C) from the decided facts determine whether there was a departure from the standard of practice required of the health care provider or professional licensee; and

(D) if it determines that there was a departure from the standard of practice, whether the departure caused the plaintiff's claimed damages.

(9) A screening panel's findings must be based on reasonable probability but need not be based on scientific certainty.

(10) A screening panel must prepare a written opinion that includes its findings. Any materials considered by the panel that were not provided by the parties must be itemized in the panel's report. The opinion must be supported by corroborating references to published literature and other relevant documents and must:

(A) state the standard of practice of the health care provider specialty or profession involved under the facts of the claim;

(B) state whether there was a departure from the standard of practice of the health care provider specialty or profession involved or state the reasons why the panel is unable to determine whether there was a departure; and

(C) if the panel finds there was a departure, state:

(i) the facts that support the finding;

(ii) whether the departure caused the plaintiff's claimed damages or state the reasons why the panel is unable to determine whether the departure caused the damages; and

(iii) if the panel finds the departure caused the damages, state the facts that support the finding.

[**History:** New rule promulgated February 7, effective March 15, 1977; Am. (d)(1), (6), (8), (10) effective September 11, 1979; Am. (c) promulgated May 7, effective July 1, 1986; Am. effective August 24, 1988; Am. (a) effective September 8, 2006; Am. (d) effective July 1, 2010; Restyled rule and amended effective July 1, 2012.]

Rule 143

PROBATE PROCEEDING: TIME FOR HEARING WHEN DEFENSE TO PETITION FILED

(a) **Hearing Continued When Defense Filed.** When a defense to a petition—other than a general denial such as one by a guardian *ad litem* or an attorney under the Servicemembers Civil Relief Act—is filed in a probate proceeding, the court must continue the hearing on the petition for at least 14 days unless the court finds there is a compelling reason to hear the petition immediately or continue the matter for a shorter period of time.

(b) **Notice of Hearing.** Notice of a modified hearing date ordered under subsection (a), with a copy of the filed defense, must be given under K.S.A. 59-2208.

[**History:** New rule promulgated May 23, effective September 1, 1977; Am. effective April 1, 1987; Am. effective September 8, 2006; Restyled rule and amended effective July 1, 2012.]

Rule 144

APPLICATION OF DISCOVERY TO K.S.A. CHAPTER 59 PROCEEDING

In a proceeding under Kansas Statutes Annotated, Chapter 59, the parties may use the discovery procedures in K.S.A. 60-226 through 60-237 if a factual issue has been raised by a written defense. Local and Supreme Court rules governing these discovery procedures also apply.
[**History:** New rule effective December 23, 1977; Am. effective June 26, 1995; Restyled rule effective July 1, 2012.]

Rule 145

USE OF TELEPHONE OR OTHER ELECTRONIC CONFERENCE

The court may use a telephone or other electronic conference to conduct any hearing or conference other than a trial on the merits. For a trial on the merits, K.S.A. 60-243(a) applies. The court may require the parties to reimburse the court for any costs incurred.
[**History**: New rule effective December 11, 1980; Am. effective September 8, 2006; Restyled rule and amended effective July 1, 2012.]

Rule 146

CONSOLIDATION OF MULTIDISTRICT LITIGATION ON MOTION OF PARTY

(a) **Motion to Consolidate.** A motion by a party to consolidate multidistrict litigation under K.S.A. 60-242(c) must be filed with the clerk of the appellate courts with proof of service on all counsel of record, unrepresented parties not in default for failure to appear, and the clerks of the district courts in which the actions are pending.
(b) **Proof of Service.** Proof of service under subsection (a) must include the address, telephone number, fax number, and e-mail address of all counsel of record and unrepresented parties not in default for failure to appear.
(c) **Docketing.** On receipt of a motion and proof of service under subsection (a), the clerk must docket the motion and submit it to the court. There is no docket fee for a motion under this rule.

(d) **Applicable Statutes and Rules.** A motion under subsection (a) and any response to the motion are subject to Rule 5.01 and K.S.A. 60-205, 60-206(a) and (d), 60-210, and 60-211.

(e) **Effect on District Court Proceedings.** A motion under subsection (a) does not stay any part of the district court proceedings or deprive the district courts of jurisdiction over the pending actions.

[**History**: New rule effective October 17, 1985; Restyled rule and amended effective July 1, 2012.]

Rule 147

NOTICE OF CHALLENGE TO STATUTE OR CONSTITUTIONAL PROVISION IN CRIMINAL CASE

(a) **Notice Requirements.** A party in a criminal case before a district court or any judge of a district court that contests or calls into doubt the validity of any Kansas statute or constitutional provision on grounds that the law violates the state constitution, federal constitution, or any provision of federal law must serve notice of the disputed validity on the prosecuting attorney representing the state in the matter. The notice must state that the prosecuting attorney is being provided notice under K.S.A. 75-764.

(b) **Filing of Notice.** A party that gives notice under this rule must promptly file a copy of the notice with the clerk of the district court, along with a certificate of service.

(c) **Failure to Respond to Notice.** A prosecuting attorney is deemed to have failed to respond to the notice if the prosecuting attorney does not file a written response addressing the validity of the challenged law within 21 days after notification is served.

(d) **Notice to Attorney General.** If a prosecuting attorney fails to respond, a judge of the district court must direct the clerk of the district court to give notice to the attorney general of Kansas on a form prescribed by the judicial administrator. The clerk of the district court must record the date notice was given to the attorney general in the register of actions for the case.

(e) **Sufficiency of Notice.** Any notice provided under this rule will be deemed sufficient if it is in substantial compliance with the form set forth by the judicial administrator.

(f) **Application**. This rule does not apply in any action or proceeding in which the attorney general is the party disputing or defending the validity of the law at issue.

[**History:** New rule effective September 6, 2016.]

Rule 148

NOTICE OF CHALLENGE TO STATUTE OR CONSTITUTIONAL PROVISION IN CIVIL CASE

(a) **Notice Requirements.** A party in a civil case before a district court or any judge of a district court that contests or calls into doubt the validity of any Kansas statute or constitutional provision on grounds that the law violates the state constitution, federal constitution, or any provision of federal law must serve a notice of the disputed validity on the attorney general of Kansas. The notice must state the attorney general is being provided notice under K.S.A. 75-764.

(b) **Filing of Notice.** A party that gives notice under this rule must promptly file a copy of the notice with the clerk of the district court, along with a certificate of service.

(c) **Failure to Give Notice.** If a party fails to give notice as required by this rule, a judge of the district court may direct the clerk of the district court to give notice to the attorney general on a form prescribed by the judicial administrator. The clerk of the district court must record the date notice was given to the attorney general in the register of actions for the case.

(d) **Sufficiency of Notice.** Any notice provided under this rule will be deemed sufficient if it is in substantial compliance with the form set forth by the judicial administrator.

(e) **Application**. This rule does not apply in any action or proceeding in which the attorney general is the party disputing or defending the validity of the law at issue.

[**History:** New rule effective September 6, 2016.]

TRIALS AND RELATED MATTERS

Rule 161

COURTROOM DECORUM

(a) When present during a court proceeding, an attorney or party must—through conduct, demeanor, and attire—show respect for the dignity and authority of the court, and the proceedings must be maintained as an objective search for the applicable facts and the correct principles of law.

(b) Except as permitted under Rule 1001, photographic or electronic recording is not allowed.

(c) Unless otherwise authorized by local rule or permitted by the court:
(1) An attorney or party must stand, if physically able, when addressed by the court or when speaking to the court;
(2) An attorney or party must stand, if physically able, when interrogating a witness and should refrain from moving about unless necessary to present an exhibit or otherwise assist the court; and
(3) Only one attorney may examine or cross-examine a witness on behalf of all parties united in interest.

[**History:** Am. effective September 8, 2006; Restyled rule and amended effective July 1, 2012.]

Rule 162

CONFLICT IN TRIAL SETTINGS IN DISTRICT COURT

When an attorney has a conflict in trial settings and the involved district judges cannot resolve the conflict, the matter must be referred to the departmental justice. If the district courts are in different judicial departments, the matter must be referred to both departmental justices.

[**History**: Am effective September 8, 2006; Restyled rule effective July 1, 2012.]

Rule 163

INEFFECTIVE STIPULATION

A court is not required to give effect to a stipulation between counsel or an oral admission of counsel which is not:
(a) in writing and signed by the counsel to be charged with the stipulation or admission; or
(b) made a part of the record.

[**History:** Rule restyled effective July 1, 2012.]

Rule 164

REQUIRED FACTUAL STATEMENTS IN DIVORCE, ANNULMENT, AND SEPARATE MAINTENANCE CASES

[**History:** Repealed effective July 1, 2012. The content appears now in Rule 139.]

Rule 165

REASONS FOR DECISION

(a) **Court Must State Findings of Fact and Conclusions of Law.** In a contested matter submitted to the court without a jury—and when the court grants a motion for summary judgment—the court must

state its findings of fact and conclusions of law in compliance with K.S.A. 60-252.

(b) **Presumption That Evidence Was Considered.** If evidence was admitted over proper objection in a matter submitted to the court without a jury, and in the reasons for the decision the court does not state that the evidence—specifying the evidence with particularity—was not considered, then it will be presumed in a subsequent proceeding that the court did consider the evidence in reaching its decision.

[**History:** Am. effective September 8, 2006; Restyled rule and amended effective July 1, 2012.]

Rule 166

TIME FOR RULING ON MOTION; MATTER TAKEN UNDER ADVISEMENT

(a) **Ruling on Motion.** A judge of the district court must issue a ruling on a civil motion no later than 30 days after the motion's final submission except for a ruling on a motion for summary judgment, which must be issued no later than 60 days after final submission.

(b) **Ruling on Other Civil Matter Taken Under Advisement.** A judge of the district court who takes under advisement a civil matter other than a motion must issue a ruling on the matter no later than 90 days after the matter's submission.

(c) **Reporting Requirement.** If a judge of the district court fails to issue a ruling within the time required under subsection (a) or (b), the judge must—no later than 7 days after the expiration of the time period—file with the judicial administrator a written report stating the title of the case and case number, the nature of the matter taken under advisement, and the reason the judge has not entered a judgment, ruling, or decision. The judicial administrator may require supplemental reports until final disposition of the matter taken under advisement and must furnish copies of all reports received to the appropriate departmental justice.

[**History:** Am. effective December 11, 1980; Am. effective July 1, 2010; Restyled rule and amended effective July 1, 2012.]

Rule 167

USE OF JUROR QUESTIONNAIRE

A district court may use a juror questionnaire. A juror questionnaire is not a public record under the Kansas Open Records Act. A juror questionnaire may be substantially similar to the judicial council form.
[**History:** Am. effective July 1, 2010; Restyled rule effective July 1, 2012.]

Rule 168

CLOSING ARGUMENT TO JURY

(a) **Plaintiff's Closing Argument.** The following rules apply to the final portion of plaintiff's closing argument to a jury:
   (1) The argument may not exceed the lesser of:
      (A) one-half the aggregate time allotted for plaintiff's closing argument; or
      (B) the time used in the opening portion of plaintiff's closing argument;
   (2) Plaintiff may not argue a general issue not discussed in the opening portion of plaintiff's closing argument, unless in rebuttal; and
   (3) If, after the opening portion of plaintiff's closing argument, defendant waives argument, no further argument is permitted.
   (4) As used in subsection (a), "plaintiff" includes the State in a criminal case.

(b) **Defendant's Closing Argument.** If plaintiff does not have the burden of persuasion on any issue, the rules in subsection (a) apply to defendant's closing argument.

[**History:** Am. effective September 8, 2006; Restyled rule and amended effective July 1, 2012.]

Rule 169

POSTTRIAL COMMUNICATION WITH JURORS

[**History:** Repealed effective October 2, 2018.]

Rule 170

PREPARATION OF ORDER

(a) **Order; Content.** When the court directs a party to prepare an order, the party must prepare the order in accordance with the court's directions. As used in this rule, "order" includes a journal entry or other document containing a court ruling.

(b) **Duties of Party Preparing Order.** A party directed to prepare an order must, no later than 14 days after the court's direction, unless the court specifies a different time:
  (1) serve on counsel of record and unrepresented parties not in default for failure to appear a copy of:
    (A) the proposed order; and
    (B) a notice that, unless an objection is received no later than 14 days after service of the proposed order, the order will be filed with the court; and
  (2) file a certificate of service with a copy of the order and notice attached.

(c) **Objections.** An objection to a proposed order must be served—no later than 14 days after service of the proposal—on the party that drafted it.

(d) **Submission to Court.**
  (1) If no objection to a proposed order is served before the expiration of the time under subsection (c) for serving objections, the drafter must submit the original to the court for approval.
  (2) If there is an objection, the parties must make a reasonable effort to confer to resolve the objection and, if agreement is reached, the drafter must submit the agreed journal entry to the court for approval. A "reasonable effort to confer" requires more than sending a communication to the opposing party. It requires that the parties in good faith converse, compare views, and deliberate, or in good faith attempt to do so.
  (3) If—after reasonable effort to confer—the parties have not agreed on the terms of the order, the drafter must submit the original draft and the objection to the court and the court must settle the order, with or without a hearing.

(e) **Title to Real Estate.** An order, journal entry, or judgment that changes the ownership or title to real estate must contain on the margin of the first page the notation "TITLE TO REAL ESTATE INVOLVED."

[**History:** Am. effective September 1, 1982; Am. effective September 8, 2006; Am. (a) effective July 1, 2010; Restyled rule and amended effective July 1, 2012.]

Rule 171

BAILIFF'S OATH OR AFFIRMATION

A person ordered by the court to have charge of a jury during the jury's deliberations must subscribe to an oath or affirmation. The oath or

affirmation must be filed with the clerk. The oath or affirmation remains in effect after filing unless the court sets it aside, and a new oath or affirmation is not required if the person acts as a bailiff in a subsequent case.

The form of the oath or affirmation should be as follows:

[OATH] [AFFIRMATION]

I, the undersigned, a duly appointed, qualified, and acting officer of the District Court of _____ County, Kansas, do solemnly [swear] [affirm] to perform faithfully the duties of bailiff as assigned and in the manner prescribed by the court.

Further, when acting in the capacity of bailiff and a jury is entrusted to me by the court, I will keep the jurors together only in places designated by the court until they agree upon a verdict or are discharged by the court, subject to an order of the court permitting them to separate temporarily at night and at their meals.

I do solemnly [swear] [affirm] that I will not allow any communications to be made to the jurors or make any myself unless by order of the court and, before their verdict is rendered, I will not communicate to any person the state of their deliberations or the verdict agreed upon.

[So help me God.]

_____

Subscribed and [sworn] [affirmed] before me this _____ day of _____, 20___.

Clerk of the District Court

By _____
Deputy Clerk

[**History:** New rule effective September 1, 1982; Am. effective September 8, 2006; Rule restyled effective July 1, 2012.]

Rule 172

EXPEDITED JUDICIAL PROCESS; SUPPORT; VISITATION

(a) **Hearing Officer; Appointment.** To increase effectiveness in support, visitation, and parentage proceedings, the chief judge in each judicial district may appoint a judge of the district court, a court trustee, or an attorney licensed to practice law in the state of Kansas to preside as a hearing officer at a summary hearing on:

(1) the establishment, modification, or enforcement of support (under the Kansas Parentage Act, K.S.A. 23-2201 et seq.; the Uniform Interstate Family Support Act, K.S.A. 23-36,101 et seq.; K.S.A. 39-718b; K.S.A. 39-755; K.S.A. 23-3001 to 23-3006; K.S.A. 38-2242; K.S.A. 38-2243; K.S.A. 38-2264; and the Income Withholding Act, K.S.A. 23-3101 et seq.); and

(2) the modification or enforcement of parent visitation rights and parenting time.

(b) **Hearing Officer; Judge Pro Tem.** On approval by a judicial district's departmental justice, the chief judge of the district may appoint a hearing officer who is not a judge of the district court as a judge pro tem. A judge pro tem. appointed under this provision has jurisdiction and full authority to preside over matters within the scope of this rule unless the order of appointment imposes limitations.

(c) **Hearing Officer; Authority.** A hearing officer appointed under subsection (a) is authorized to:
   (1) take testimony;
   (2) evaluate evidence and decide the most expeditious manner to establish, modify, or enforce a court order;
   (3) accept voluntary acknowledgment of support liability and a stipulated agreement setting the amount of support to be paid;
   (4) accept voluntary acknowledgment of parentage;
   (5) modify and enforce visitation or parenting time;
   (6) prepare written findings of fact and conclusions of law; and
   (7) issue an order, including a default order, but an order proposed by a hearing officer who is not a judge of the district court and has not been appointed as a judge pro tem. under subsection (b) must be approved by a judge before the order is entered.

(d) **Hearing to Contest Income Withholding Order.** If an obligor contests an income withholding order, a hearing officer appointed under subsection (a) must:
   (1) set a hearing at which the obligor may assert any affirmative defense authorized by K.S.A. 23-3106; and
   (2) no later than 45 days after notice of delinquency to the obligor, issue a decision on whether to withhold income.

(e) **Support or Maintenance Order Requirements.** A support or maintenance order must specify the payment period, such as monthly or weekly, and the date by which the first payment must be made.

(f) **Support Obligation; Time Frame.** The chief judge must monitor cases subject to expedited judicial process to ensure that an action to establish, modify, or enforce a support obligation is completed—from filing to disposition—within the following time frames:
   (1) 90% in 90 days.
   (2) 98% in 180 days.
   (3) 100% in 365 days.

(g) **Parentage; Time Frame.** The chief judge must monitor cases subject to expedited judicial process to ensure that an action to establish

parentage and a support obligation is completed—from filing to disposition—within the following time frames:
(1) 75% in 270 days.
(2) 85% in 365 days.
(3) 90% in 455 days.

(h) **Review of Hearing Officer Order.** An order of a hearing officer—other than a district judge—appointed under this rule is subject to review by a district judge on a party's motion filed no later than 14 days after the order is entered. The district judge will review the transcript or a recording of the hearing and admitted exhibits and, applying an abuse of discretion standard, may affirm, reverse, or modify an order. If a transcript is not available, the district judge will conduct a de novo proceeding.

[**History:** New rule effective July 29, 1985; Am. effective July 1, 1994; Am. effective September 8, 2006; Am. (h) effective July 1, 2010; Am. effective May 18, 2011; Am. effective September 15, 2011; Rule restyled and amended effective July 1, 2012.]

Rule 173

EXPEDITED PETITION FOR WAIVER OF PARENTAL CONSENT REQUIREMENT

(a) **Immediate Case Assignment.** The chief judge in each district must provide for an expedited judicial process for a petition to waive the consent requirement in K.S.A. 65-6705. A petition filed under K.S.A. 65-6705 must be assigned immediately to a district judge for consideration, hearing, and decision.

(b) **Attorney List.** The chief judge must maintain a confidential list of attorneys willing—at no cost—to assist or represent a minor in a proceeding under K.S.A. 65-6705. On notification that a minor desires assistance in preparing and filing a petition for waiver of the consent requirement, or on filing of a petition for waiver of the consent requirement, the judge must appoint counsel from the attorney list to assist or represent the minor.

(c) **Recording; Confidentiality.** A proceeding under K.S.A. 65-6705 must be recorded. A record of the evidence in the proceeding must be maintained confidentially, and the court must protect the anonymity of the minor. The case must be captioned "In the Matter of the Petition of Jane Doe for Waiver of Consent." A court employee who breaches the confidentiality of a minor seeking a waiver under K.S.A. 65-6705 is subject to disciplinary action, including termination of employment, under the Kansas Court Personnel Rules.

(d) **Forms.** The forms for a petition for waiver of the consent requirement and for instructions for delivery of the order must be available

in each district court clerk's office on request. The forms must be in substantial compliance with the judicial council forms.

(e) **Hearing; Order.** The court must hold a hearing and issue its order—stating findings of fact and conclusions of law—no later than 48 hours after the petition is filed, excluding Saturdays, Sundays, and holidays. If the court fails to issue its order within the required period, the petition is deemed granted, and the court promptly must issue an order to that effect.

(f) **Notice of Appeal.** If a minor files a notice of appeal from an order denying a petition to waive the consent requirement in K.S.A. 65-6705, the court immediately must order preparation of a confidential transcript of the proceedings at no cost to the minor. Copies of the order and the notice of appeal must be filed by the appellant with the clerk of the appellate courts immediately upon filing the notice of appeal in district court. The transcript must be filed with the clerk of the district court no later than 3 days after the filing of the notice of appeal in district court.

(g) **Record on Appeal.** The clerk of the district court, no later than 7 days after the filing of the notice of appeal, must compile and transmit to the clerk of the appellate courts, insofar as possible in the chronological order of their filing:
   (1) the following original documents:
      (A) the petition for waiver of the consent requirement;
      (B) the district court's order;
      (C) the notice of appeal;
   (2) the transcript of the district court proceeding; and
   (3) any other document or exhibit that is part of the record.

(h) **Time Computation.** Except as otherwise specifically provided by subsection (e), K.S.A. 60-206(a) governs in computing any prescribed period of time.

[**History:** New rule effective July 1, 1992; Am. effective February 8, 1994; Am. effective September 8, 2006; Am. (f) effective July 1, 2010; Restyled rule and amended effective July 1, 2012.]

Rule 174

JOURNAL ENTRY FORMS FOR CHILD IN NEED OF CARE, JUVENILE OFFENDER, AND DOMESTIC RELATIONS CASES

(a) **When Use of Judicial Council Forms is Mandated.** To ensure compliance with the federal Adoption and Safe Families Act, a district court must use the appropriate Judicial Council form when:
   (1) placing a child in the custody of a person other than the child's

parent or legal guardian in a child in need of care, juvenile offender, or divorce proceeding; or

(2) ruling on child in need of care and juvenile offender permanency hearings.

(b) **Attachments.** An additional order or supplemental affidavit may be attached to a form order if a court desires to include additional information.

(c) **District Court Administrative Matters.**

(1) **Official Court File Contents.** All journal entries and attached orders must be maintained in the district court's official file.

(2) **Required Data Entry.** All required data—described in the Juvenile Compliance Training Manual distributed by the Office of Judicial Administration—must be entered into the court's case management system.

(d) **Form Changes.** The Supreme Court may create, modify, or delete forms under this rule after review by the Judicial Council and the Supreme Court Task Force on Permanency Planning.

[**History:** New rule adopted effective May 1, 2013.]

POSTTRIAL MATTERS

Rule 181

POSTTRIAL CALLING OF JURORS

A juror may be called to testify at a hearing on a posttrial motion only if the court—after a hearing to determine whether all or any jurors should be called—grants a motion to call the juror. If a juror is called, informal means should be used to obtain the juror's attendance at the hearing, rather than subpoena.

[**History:** Restyled rule effective July 1, 2012.]

Rule 182

WITHDRAWAL AND DISPOSITION OF EXHIBITS

[**History**: Repealed effective December 4, 1997.]

Rule 183

PROCEDURE UNDER K.S.A. 60-1507

(a) **Nature of Remedy.** K.S.A. 60-1507 provides a procedure to challenge the validity of a sentence of a court of general jurisdiction and is intended to provide in the sentencing court the same remedy that previously was available—by habeas corpus under K.S.A. 60-1501—in the county where the prisoner was confined. The following rules apply:
   (1) a motion under K.S.A. 60-1507 to vacate, set aside, or correct a sentence is an independent civil action that must be docketed separately;
   (2) the procedure on a motion under K.S.A. 60-1507 is governed by the rules of civil procedure, K.S.A. 60-201 et seq., to the extent the rules are applicable;
   (3) if the movant files a poverty affidavit under K.S.A. 60-2001(b), the court will assess the initial filing fee, which may not be less than $3;
   (4) a poverty affidavit applies only to the amount that must be paid to file the action and does not prevent the court from later assessing the remainder of the docket fee or other fees and costs against the movant; and
   (5) when a K.S.A. 60-1507 motion is filed, the clerk must serve a copy of the motion on the county or district attorney and complete a certificate of service.

(b) **Exclusiveness of Remedy.** The remedy afforded by K.S.A. 60-1507 is exclusive unless it is inadequate or ineffective to test the legality of a movant's custody.

(c) **When Remedy May Be Invoked.**
   (1) The provisions of K.S.A. 60-1507 may be invoked only by a person in custody claiming the right to be released.
   (2) A motion to vacate, set aside, or correct a sentence may not be filed while an appeal from the conviction and sentence is pending or during the time within which an appeal may be perfected.
   (3) A proceeding under K.S.A. 60-1507 ordinarily may not be used as a substitute for direct appeal involving mere trial errors or as a substitute for a second appeal. Mere trial errors must be corrected by direct appeal, but trial errors affecting constitutional rights may be raised even though the error could have been raised on appeal, provided exceptional circumstances excuse the failure to appeal.

(4) Unless the court complies with the requirements of K.S.A. 60-1507(f) by stating in writing the factual and legal basis for finding that manifest injustice will result if the time is not extended, a motion under K.S.A. 60-1507 must be filed no later than one year after the later of:
   (A) the date the mandate is issued by the last appellate court in this state which exercises jurisdiction on a movant's direct appeal or the termination of the appellate court's jurisdiction; or
   (B) the date the United States Supreme Court denies a petition for the writ of certiorari from the movant's direct appeal or issues its final order after granting the petition.

(d) **Successive Motions.** A sentencing court may not consider a second or successive motion for relief by the same movant when:
   (1) the ground for relief was determined adversely to the movant on a prior motion;
   (2) the prior determination was on the merits; and
   (3) justice would not be served by reaching the merits of the subsequent motion.

(e) **Sufficiency of Motion.** A motion to vacate, set aside, or correct a sentence is sufficient if it is in substantial compliance with the judicial council form. The form must be furnished by the clerk on request.

(f) **Hearing.** Unless the motion to vacate, set aside, or correct a sentence and the files and records of the case in the sentencing court conclusively show that the movant is entitled to no relief, the court must grant a prompt hearing and notify the county or district attorney. "Prompt" means as soon as reasonably possible considering the court's other urgent business. A hearing on the motion must be recorded in a manner approved by the court.

(g) **Burden of Proof.** The movant has the burden of establishing the grounds for relief by a preponderance of the evidence.

(h) **Presence of Movant.** When the movant is imprisoned, the movant must be produced at the hearing on a motion to vacate, set aside, or correct a sentence if there are substantial issues of fact regarding events in which the movant participated. A sentencing court may determine whether a claim is substantial before granting an evidentiary hearing and requiring the movant to be present.

(i) **Right to Counsel.** If a motion to vacate, set aside, or correct a sentence presents a substantial question of law or triable issue of fact, the court must appoint counsel to represent an indigent movant.

(j) **Judgment.** The court must make findings of fact and conclusions of law on all issues presented.

(k) **Appeal.** As in a civil case, an appeal may be taken to the Court of Appeals from the order entered on a motion to vacate, set aside, or correct a sentence.

(l) **Costs.** If the district court finds that a movant desiring to appeal is indigent, it must authorize an appeal *in forma pauperis* and furnish the movant without cost the portions of the transcript that are necessary for appellate review.

(m) **Attorney on Appeal.** If a movant desires to appeal and contends the movant is without means to employ counsel to perfect the appeal, the district court must, if satisfied that the movant is indigent, appoint competent counsel to conduct the appeal.

(n) **Withdrawal of Counsel.** If appointed counsel is permitted to withdraw for good cause while the case is pending in either the district court or the appellate court, the district court must appoint substitute counsel.

[**History:** Am. effective September 8, 2006; Restyled rule and amended effective July 1, 2012; Am. effective November 18, 2016.]

Rule 184

ANNULMENT OF CONVICTION AND EXPUNGEMENT OF RECORD PROCEDURE

[**History:** Repealed effective September 14, 1978.]

Rule 185

LIMITATION ON FREQUENCY OF GARNISHMENTS

[**History:** Repealed effective July 1, 2012.]

Rule 186

SATISFACTION OF MONEY JUDGMENT

(a) **Applicability.** In a case in which a money judgment has been entered and is accruing interest, under the judgment or K.S.A. 16-204, the judgment debtor may obtain under this rule a final settlement amount to satisfy the judgment to a particular date. An interested party may utilize the procedures made available to a judgment debtor under this rule.

(b) **Filing; Form.** A judgment debtor may file in the district court in which the judgment is pending a proffer of satisfaction of money judgment, stating a dollar amount to satisfy the judgment and specifying a payment date. The proffer is sufficient if it is on the judicial

council form, with the computation required under subsection (c) attached.

(c) **Computation.** A party filing a proffer under this rule must compute the amount of principal, interest, and court costs to the specified date to satisfy the judgment, together with interest per day after that date until paid, and attach the computation to the proffer filed under subsection (b). The amount of court costs, including the docket fee, must be included in the computation regardless of which party paid the court costs or docket fee at the time the case was filed.

(d) **Service.** A party filing a proffer under this rule must serve a copy of the proffer and attached computation on all counsel of record and unrepresented parties not in default for failure to appear.

(e) **Objections.** An objection to a proffer under this rule—including the objecting party's computation under subsection (c)—must be filed and served on the proffering party no later than 14 days after service of the proffer unless the court orders a longer time. If an objection is filed and the parties do not agree on the amount needed to satisfy the judgment, the court must settle the amount. To avoid accruing additional interest while an objection is pending, the judgment debtor may pay to the judgment creditor the amount of principal, interest, and costs the judgment debtor believes to be due and owing, filing a notice of payment together with a copy of each party's computation. If the court determines that the judgment debtor's computation and amount paid were correct, no additional interest may be charged to the judgment debtor.

(f) **Settling of Amount Due.** If no objection is filed before the expiration of the time under subsection (e) for filing objections, the amount stated in the proffer of satisfaction of judgment is the amount that entitles the judgment debtor to a satisfaction and release of the judgment under K.S.A. 60-2803.

(g) **Payment; Court Costs.** On receipt from the judgment debtor of the amount ordered under subsection (e) or specified under subsection (f) to satisfy the judgment, including any court costs, the judgment creditor must file a satisfaction and release of judgment. If the payment included court costs, the judgment creditor must:

(1) state in the satisfaction and release of judgment that court costs, including the docket fee if applicable, have been satisfied; and

(2) tender to the clerk payment of the amount of any court costs paid to the judgment creditor if the judgment creditor did not make an advance cost deposit when the case was filed.

[**History:** New rule effective April 26, 2000; Am. effective September 8, 2006; Am. (b) and (f) effective March 5, 2008; Restyled rule and amended effective July 1, 2012.]

Rule 187

TAXATION OF COSTS BY CLERK

(a) **Bill of Costs; Timing.** In a case under K.S.A. Chapter 60 in which the journal entry does not state an amount for costs, a party entitled to recover costs under K.S.A. 60-2002 may file and serve a bill of costs no later than 30 days after:
   (1) the expiration of the time allowed for appeal of the final judgment or decree; or
   (2) receipt by the clerk of an order terminating the action on appeal.

(b) **Form.** The bill of costs is sufficient if in substantial compliance with the judicial council form.

(c) **Objection.** A party may object to a bill of costs by filing and serving an objection no later than 14 days after service of the bill. If an objection is filed, the court—with or without a hearing—must determine the costs to be taxed.

(d) **Taxation by Clerk; Motion to Retax.** If no timely objection to a bill of costs is filed, the clerk may proceed to tax costs according to the bill. The clerk's action may be reviewed by the court if a motion to retax the costs is filed no later than 14 days after taxation by the clerk.

(e) **Items Allowable as Costs.** The items allowable as costs are those specified in K.S.A. 60-2003, unless otherwise ordered by the court.

(f) **To Whom Payable.** Unless otherwise ordered by the court, all costs taxed are payable directly to the party entitled to the payment.

(g) **Priority of Court Costs.** Notwithstanding any other provision of this rule or Rule 186, court costs, including the docket fee, must be assessed and collected by the judgment creditor in a case in which payment of court costs is excused under K.S.A. 28-110 and 60-2005. Unless otherwise required by law and except as otherwise directed by the court, moneys received by the judgment creditor must be credited first to court costs, including the docket fee, then to the principal and interest to satisfy the judgment. Court costs, including the docket fee, have priority and must be paid to the clerk from the first moneys collected regardless of whether the judgment creditor recovers the total amount of principal and interest ordered or files notice that judgment has been satisfied under Rule 186(g). Upon collection of costs, the judgment creditor must pay the collected costs to the clerk and, if applicable, file notice under Rule 186(g) that the judgment has been satisfied.

(h) **Applicability to Chapter 61 Cases.** This rule applies in a case under K.S.A. Chapter 61 when costs are taxed under K.S.A. 60-2002 and 61-4002.

[**History:** New rule effective September 8, 2006; Am. (a) effective November 29, 2006; Am. (d) effective March 5, 2008; Am (a) effective July 1, 2010; Restyled rule and amended effective July 1, 2012.]

SPECIALTY COURTS

Rule 190

SPECIALTY COURT

(a) **Specialty Court—Defined.** A specialty court is a court program that uses therapeutic or problem-solving procedures to address underlying factors that may be contributing to a party's involvement in the criminal justice system, i.e., mental illness or drug, alcohol, or other addiction. Procedures may include treatment, mandatory periodic testing for a prohibited drug or other substance, community supervision, and appropriate sanctions and incentives.

(b) **Specialty Court Allowed.** A judicial district may establish a specialty court.

(c) **Receipt of Ex Parte Communication.** A judge presiding over a specialty court docket established under subsection (b) may initiate, permit, and consider an ex parte communication with a probation officer, case manager, treatment provider, or other member of a specialty court team, either at a team meeting or in a document provided to all members of the team.

(d) **Disclosure of Ex Parte Communication.** A judge who receives an ex parte communication under subsection (c) may preside over any subsequent proceeding if:
   (1) the judge discloses to the parties the existence of the communication and, if known, the nature of the communication; and
   (2) the judge obtains the parties' consent to the judge's participation in the proceeding.

[**History:** New rule adopted effective January 28, 2009; Restyled rule and amended effective July 1, 2012; Am. effective July 5, 2017; Rule 109A renumbered without amendment to Rule 190 effective January 27, 2021.]

Rule 191

SPECIALTY COURT COMMITTEE

(a) **Purpose.** The Specialty Court Committee is established to make recommendations to the Supreme Court regarding the development and administration of specialty courts in Kansas district courts.

(b) **Membership.** The Committee will have no fewer than 12 members.

(c) **Appointment.** The Chief Justice of the Supreme Court will appoint the Committee members.

(d) **Terms.**

(1) **Inaugural Members.** The terms of the inaugural Committee members will be staggered. The terms of four members will be three years, the terms of four members will be two years, and the terms of four members will be one year. Each inaugural member may be reappointed to serve two consecutive three-year terms.

(2) **Terms.** Other than the inaugural members, the term of each Committee member will be three years. No Committee member may serve more than two consecutive terms.

(3) **Return to Service.** Any member will be eligible for additional terms after a break in service.

(4) **Vacancy.** The Chief Justice of the Supreme Court will appoint a new Committee member to fill a vacancy. A member appointed to fill a vacancy will serve the unexpired term of the previous member and may serve two consecutive three-year terms thereafter.

(e) **OJA Representative and Liaison Justice.**

(1) In addition to the members described in subsection (b), the following provisions apply:

(A) there will be a permanent, nonvoting seat on the Committee for a representative of the Office of Judicial Administration; and

(B) the Chief Justice of the Supreme Court will designate a Supreme Court justice to serve as liaison to the Committee.

(2) The term limits in subsection (d) do not apply to a person designated under subsection (e)(1).

[**History:** New rule adopted effective January 27, 2021.]

Rule 192

SPECIALTY COURT STANDARDS

(a) **General Standards.** A specialty court should meet the following general standards:

(1) *Goals and Objectives.* The court should have measurable goals and objectives.

(2) *Policy and Procedure Manual.* The court should have a policy and procedure manual covering general administration, organization, personnel, and budget matters.

(3) *Evidence-Based Practices.* The court should establish and adhere to practices that are evidence-based and outcome-driven and should be able to articulate the research basis for the practices it uses.

(4) *Eligibility Criteria.* The court should have written eligibility criteria. To the extent possible, the court should use evidence-based screening tools as part of the eligibility criteria.

(5) *Treatment Providers.* All treatment providers used by the specialty court should be appropriately licensed by the applicable state regulatory authority and trained to deliver necessary services according to the standards of their profession. The court should have a monitoring or quality-assurance process to ensure that treatment providers are incorporating training and services consistent with evidence-based best practices.

(6) *Participant Compliance.* The court should have written procedures for incentives, rewards, sanctions, and therapeutic responses to participant behavior while under court supervision. Court responses should be evidence-based when possible. Participant progress should be measured on a regular basis.

(7) *Judicial Education.* A judge handling a specialty court docket should be knowledgeable about underlying medical or social-science research relevant to that docket. When feasible, the court should have at least one backup judge who is familiar with the court's policies and practices so that the court's operation remains consistent even when the assigned judge is unavailable.

(b) **Drug-Court Standards.** A specialty court that targets drug-addicted offenders or others charged with drug offenses should substantially comply with the Adult Drug Court Best Practice Standards (Vol. 1, 2013; Vol. 2, 2015) published by the National Association of Drug Court Professionals.

[**History:** New rule adopted effective July 5, 2017; Rule 109B renumbered without amendment to Rule 192 effective January 27, 2021.]

RULES RELATING TO DISCIPLINE OF ATTORNEYS

Rule 200

PREFATORY RULE

(a) **Rules Relating to Discipline of Attorneys.** The Rules Relating to Discipline of Attorneys are numbered 200 through 240 and are effective January 1, 2021.

(b) **Repeal of Former Rules.** Supreme Court Rules 201 through 224 and the Prefatory Rule that were in effect immediately prior to the effective date of these rules are repealed as of January 1, 2021.

(c) **Kansas Rules of Professional Conduct.** The Kansas Rules of Professional Conduct are designated as Rule 240.

(d) **Statutory References.** In these rules, a reference to a statute includes any subsequent amendment to the statute.

[**History:** New rule adopted effective January 1, 2021.]

Rule 201

DEFINITIONS

(a) **"Attorney"** means a person described in Rule 202(a).

(b) **"Board"** means the Kansas Board for Discipline of Attorneys appointed under Rule 204.

(c) **"Board proceeding"** means a disciplinary or reinstatement matter pending before the Board.

(d) **"Case"** means a disciplinary matter pending before the Kansas Supreme Court.

(e) **"Disciplinary administrator"** means the disciplinary administrator, a member of the disciplinary administrator's staff, or a person the disciplinary administrator designates to act on the disciplinary administrator's behalf.

(f) **"Disciplinary board proceeding"** means a disciplinary matter pending before the Board.

(g) **"Docketed complaint"** means an initial complaint or a report that the disciplinary administrator dockets under Rule 208(c) for investigation under Rule 209.

(h) **"Exception"** means a formal objection to a hearing panel's finding of fact or conclusion of law.

(i) **"Final hearing report"** means the report issued by a hearing panel following a hearing on a formal complaint, petition for reinstatement, or motion to revoke probation.

(j) **"Formal complaint"** means the pleading filed by the disciplinary administrator to initiate a disciplinary board proceeding.

(k) **"Good standing"** means an attorney's license to practice law is not suspended for any reason; the attorney has not been disbarred; the attorney has not surrendered the attorney's license; and the attorney is registered as active, inactive, disabled, or retired.

(l) **"Hearing panel"** means the panel appointed under Rule 204.

(m) **"Initial complaint"** means the information submitted on a form available from the disciplinary administrator and relied on by the disciplinary administrator to initiate an investigation.

(n) **"Misconduct"** means an act or omission by an attorney, individually or with another person, that violates the Kansas Rules of Professional Conduct, the Rules Relating to Discipline of Attorneys, or the attorney's oath of office.

(o) **"Petitioner"** means an attorney who files a petition for reinstatement.

(p) **"Presiding officer"** means the hearing panel member appointed by the Board chair to preside over a hearing on a formal complaint, petition for reinstatement, or motion to revoke probation and to speak on the hearing panel's behalf.

(q) **"Reinstatement board proceeding"** means a reinstatement matter pending before the Board.

(r) **"Report"** means the information, other than an initial complaint, relied on by the disciplinary administrator to initiate an investigation.

(s) **"Respondent"** means an attorney against whom an initial complaint is submitted or a report is made.

(t) **"Review committee"** means the committee appointed by the Supreme Court under Rule 204.

(u) **"Serve" or "Service"** means to deliver a document using a method specified under K.S.A. 60-205 unless otherwise specified in these rules.

(v) **"Writing" or "Written"** means any representation of words, letters, symbols, numbers, or figures on a tangible medium or stored in an electronic format.

[**History:** New rule adopted effective January 1, 2021.]

Rule 202

APPLICABILITY; JURISDICTION

(a) **Applicability.** Rules 201 through 241 apply to each attorney:
   (1) admitted to practice law in Kansas;
   (2) granted a restricted license to practice law under Rule 712;
   (3) granted a temporary restricted license to practice law under Rule 712A;

(4) providing legal services under Kansas Rule of Professional Conduct 5.5;
(5) admitted to practice law pro hac vice under Rule 1.10 or Rule 116; or
(6) authorized to provide pro bono or low-cost direct legal services under Rule 712B.

(b) **Jurisdiction.** An attorney is subject to the jurisdiction of the Kansas Supreme Court and the Board.

(c) **Other Proceedings.** These rules must not be construed to deny a court any power necessary for the court to maintain control over its proceedings.

[**History:** New rule adopted effective January 1, 2021.]

Rule 203

GENERAL PRINCIPLES

(a) **Professional and Personal Duties.** An attorney is required to act at all times, both professionally and personally, in conformity with the standards established by the Kansas Rules of Professional Conduct, the Rules Relating to Discipline of Attorneys, and the attorney's oath of office.

(b) **Ground for Discipline.** Misconduct is a ground for discipline, regardless of whether the act or omission occurred in the course of an attorney-client relationship.

[**History:** New rule adopted effective January 1, 2021.]

Rule 204

KANSAS BOARD FOR DISCIPLINE OF ATTORNEYS; REVIEW COMMITTEE; HEARING PANEL

(a) **Kansas Board for Discipline of Attorneys.** The Supreme Court will appoint 20 attorneys to serve as Board members.

(1) **Term.** Each Board member is appointed for a term of four years. The Supreme Court will appoint a new member to fill a vacancy. A new member appointed to fill a vacancy serves the unexpired term of the previous member. No member may serve more than three consecutive four-year terms, except a member initially appointed to serve an unexpired term may serve three consecutive four-year terms thereafter. A Board member may return to service on the Board after a one-term break in service.

(2) **Chair and Vice-Chair.** The Supreme Court will designate one Board member as chair and one Board member as vice-chair.

(b) **Review Committee.** The Supreme Court will appoint three attorneys, at least two of whom must be Board members, as the review committee.
   (1) **Purpose.** The review committee will review each docketed complaint and direct a disposition under Rule 211(a).
   (2) **Prohibited Participation.** A review committee member must not participate in a hearing on a formal complaint when the committee member considered a docketed complaint under Rule 211.

(c) **Hearing Panel.** The Board chair will appoint three attorneys, at least two of whom must be Board members, to conduct a hearing on a formal complaint, petition for reinstatement, or motion to revoke probation. The chair will appoint one Board member to serve as the presiding officer. The third member must be registered under Rule 206 as an active attorney.

(d) **Recusal.** A review committee member and a hearing panel member must not participate in a board proceeding if a judge similarly situated would be required to recuse.

(e) **Compensation.** The Supreme Court will pay Board members, review committee members, and hearing panel members compensation for their service from the disciplinary fee fund.

(f) **Other Rules.** The Board may adopt procedural rules consistent with these rules.

[**History:** New rule adopted effective January 1, 2021.]

Rule 205

DISCIPLINARY ADMINISTRATOR

(a) **Disciplinary Administrator.** The Supreme Court will appoint a disciplinary administrator. The disciplinary administrator serves at the pleasure of the Supreme Court.

(b) **Compensation.** The Supreme Court will determine the compensation of the disciplinary administrator and the disciplinary administrator's staff. The Supreme Court will pay the compensation from the disciplinary fee fund.

(c) **Financial Information.** The disciplinary administrator must submit annually to the Supreme Court a report of receipts and expenditures.

(d) **Qualification.** The disciplinary administrator must be registered as an active Kansas attorney.

(e) **Practice Restriction.** The disciplinary administrator and the disciplinary administrator's staff must not engage in the private practice of law. The disciplinary administrator may, however, set a reasonable transition period for staff after the start of employment.

(f) **Powers and Duties.** The disciplinary administrator has the following powers and duties:
  (1) investigating an initial complaint or a report that appears to have merit as set forth in Rule 208(c);
  (2) declining to investigate and dismissing an initial complaint or report as set forth in Rule 208(b);
  (3) presenting all docketed complaints to the review committee;
  (4) informing the Supreme Court when an attorney is convicted as defined in Rule 219(a)(1) of a felony crime or a crime mandating registration as an offender;
  (5) prosecuting a disciplinary board proceeding before a hearing panel and a case before the Supreme Court;
  (6) defending a reinstatement board proceeding before a hearing panel and a case before the Supreme Court with respect to a petition for reinstatement of a disabled, inactive, suspended, or disbarred attorney;
  (7) providing investigative and prosecutorial services for the Kansas Board of Law Examiners;
  (8) providing investigative services as needed for the Kansas Commission on Judicial Conduct;
  (9) employing and supervising staff to perform the disciplinary administrator's duties; and
  (10) performing other duties as directed by the Supreme Court.

(g) **Special Prosecutor.** If the disciplinary administrator has a conflict in performing a duty listed in subsection (f), the disciplinary administrator must request that the Supreme Court appoint a special prosecutor.

(h) **Record Retention.**
  (1) The disciplinary administrator must maintain for five years records relating to initial complaints or reports not docketed for investigation and docketed complaints terminated by dismissal.
  (2) The disciplinary administrator must maintain relevant records permanently if they relate to participation in the attorney diversion program or cases in which discipline was imposed.

[**History:** New rule adopted effective January 1, 2021.]

Rule 206

ATTORNEY REGISTRATION

(a) **Definitions.**
  (1) **"Licensing Period"** means the period of one year beginning July 1 and ending June 30.

(2) **"Registration fee"** means the fee established by Supreme Court order for a status listed in subsection (b)(1).

(b) **Annual Registration.** In the year an attorney is admitted to the practice of law by the Supreme Court, the attorney must register with the Office of Judicial Administration on a form provided by the Office of Judicial Administration no later than 30 days after taking the oath of admission under Rule 720. Each year thereafter, an attorney admitted to the Kansas bar, including a justice or a judge, must register with the Office of Judicial Administration as provided in this rule.

(1) **Status.** An attorney may register as active, inactive, retired, or disabled due to mental or physical disability.

(2) **Practice of Law.** Except as otherwise provided in subsection (b)(3), Rule 1.10, Rule 116, Rule 710, and Kansas Rule of Professional Conduct 5.5, only an attorney registered as active may practice law in Kansas.

(3) **Pro Bono Exception.** An attorney registered as retired or inactive may practice law as provided in Rule 712B.

(4) **Fee.** An attorney must pay an annual registration fee in an amount established by Supreme Court order. The attorney must pay the registration fee based on the attorney's status shown in the records of the Office of Judicial Administration as of July 1. No registration fee will be charged to the following:

(A) an attorney newly admitted to the practice of law in Kansas until the first regular registration date following admission;

(B) an attorney who has retired from the practice of law, has reached the age of 66 on or before June 30, and has requested a change to retired status; or

(C) an attorney who is on disabled status due to physical or mental disability.

(5) **Exemptions.** The following attorneys are exempt from annual registration:

(A) an attorney appearing pro hac vice in any action or proceeding in Kansas solely in accordance with Supreme Court Rules 1.10 or 116;

(B) an attorney who has registered as retired or as disabled due to mental or physical disability; and

(C) an attorney who has been transferred to disabled status by the Supreme Court under Rule 234.

(6) **Continuing Legal Education Fee.** Payment of the annual continuing legal education fee and any applicable late fee under Rule 808 of the Rules Relating to Continuing Legal Education is required for an active attorney.

(7) **Reaffirmation of Attorney Oath Under Rule 720.** During annual registration, an attorney must reaffirm the oath under Rule 720 in the manner directed by the Supreme Court.

(c) **Registration Form; Statement of Registration Fee.** By June 1 of each year, the Office of Judicial Administration will mail to each registered attorney, at the attorney's preferred address on record with the Office of Judicial Administration, a registration form that states the amount of the registration fee that must be paid by June 30 of the year in which the Licensing Period begins. As a substitute for mailing under this subsection, the Office of Judicial Administration may email to each registered attorney instructions for completing an online annual registration.

(d) **Registration Deadline.** Online registration must be completed by June 30 prior to the start of the next Licensing Period that begins July 1. Failure of an attorney to receive a statement of the registration fee from the Office of Judicial Administration or instructions for online registration from the Office of Judicial Administration does not excuse payment of the fee.

(e) **Late Fee.** Completion of online registration, including payment of the registration fee, after June 30 will cause a $100 late fee to be assessed automatically.

(f) **Failure to Complete Annual Registration.** An attorney required to register annually who has not completed online registration by June 30 or who fails to pay any late fee may be administratively suspended from the practice of law under the following procedure.

(1) **Notice.** The Office of Judicial Administration will mail a notice to an attorney who has failed to register, pay the registration fee, or pay any late fee, stating that the attorney's right to practice law is subject to being summarily suspended after 30 days from the mailing of the notice if the registration form and any applicable fees are not received by the Office of Judicial Administration within that time. The Office of Judicial Administration will mail the notice by return receipt delivery to the attorney's preferred address on record with the Office of Judicial Administration.

(2) **Certification.** The judicial administrator will certify to the Supreme Court the name of an attorney who fails to register or pay the applicable fees under subsection (f)(1) before the expiration of the period of time specified in the notice.

(3) **Administrative Suspension.** The Supreme Court will issue an order suspending from the practice of law an attorney whose name the judicial administrator certifies under subsection (f)(2).

The Office of Judicial Administration will provide a list of suspended active attorneys to the clerk of the district court and the chief judge of each judicial district.

(g) **Change of Status from Inactive to Active.** An attorney may apply for a change of status from inactive to active as follows.

(1) **Inactive Less than Two Years.** An attorney who is registered as inactive for less than two years may change status to active by satisfying the following requirements:

(A) submitting a request for change of status to active to the Office of Judicial Administration;

(B) complying with any condition imposed by the Supreme Court;

(C) completing any requirement imposed by the Kansas Continuing Legal Education Board; and

(D) paying any fees imposed by the Supreme Court, including a $25 fee for change in status.

(2) **Inactive For at Least Two but Less than Ten Years.** An attorney who has been registered as inactive for at least two years but less than ten years may change status to active by satisfying the following requirements:

(A) submitting an Application for Change of Registration Status Form to the Office of Judicial Administration; and

(B) complying with the requirements in subsection (g)(1)(B)-(D).

(3) **Inactive Ten Years or More.** An attorney who has been registered as inactive for ten years or more may change status to active by satisfying the following requirements:

(A) complying with the requirements in subsection (g)(2); and

(B) if required by the Supreme Court after it reviews the application, completing a bar review course approved by the Supreme Court.

(4) **Effective Date of Change of Status.** A change of an attorney's registered status from inactive to active is not effective until approved by the Supreme Court.

(A) A request for change in status to active effective prior to July 1 requires payment of the change of status fee and the difference between the active fee and the inactive fee for the current Licensing Period. The attorney will then be responsible for paying the active fee for the next Licensing Period when it becomes due.

(B) A request for change in status to active effective July 1 requires payment of the change of status fee and the active fee by June 30.

(5) **Investigation.** The Supreme Court may order the disciplinary administrator to investigate the request for change of status.

(h) **Change of Status from Retired to Active.** An attorney may apply for a change of status from retired to active by submitting to the Office of Judicial Administration an Application for Change of Registration Status Form. The Supreme Court may take the following action:

(1) order the disciplinary administrator to investigate the request for change of status;

(2) order the attorney to appear before a hearing panel of the Kansas Board for Discipline of Attorneys to consider the application; and

(3) impose appropriate conditions, costs, and registration fees before or upon granting the change of status.

(i) **Change of Status from Active to Inactive or from Active to Retired.** An attorney who is registered as active may change status to inactive or retired. To be eligible for retired status, an attorney must have retired from the practice of law and have reached the age of 66. A change of registration status under this subsection must be received by June 30 to be effective for the next Licensing Period. An attorney may change to inactive or retired status by satisfying the following requirements:

(1) submitting a signed, written request to the Office of Judicial Administration for change of status to either inactive or retired; and

(2) completing any requirement imposed by the Kansas Continuing Legal Education Board.

(j) **Reinstatement After Administrative Suspension.** An attorney who has been suspended under subsection (f)(3) or Rule 808 may seek an order of the Supreme Court to be reinstated to active or inactive status by satisfying the following requirements:

(1) submitting an Application for Reinstatement Form to the Office of Judicial Administration;

(2) submitting to an investigation if the Supreme Court orders the disciplinary administrator to conduct an investigation of the attorney;

(3) paying all delinquent registration fees and a $100 reinstatement fee, unless the Supreme Court for good cause waives any portion of payment;

(4) paying any additional amount ordered and complying with any additional condition imposed by the Supreme Court; and

(5) completing any requirement imposed by the Kansas Continuing Legal Education Board.

(k) **Service Fee.** The Office of Judicial Administration will charge a $30 service fee for a check that is returned unpaid. An attorney whose check is returned unpaid must pay the service fee before a change of status can be approved, annual registration can be considered complete, or reinstatement can be granted.

(l) **Registration Card.** The Office of Judicial Administration will issue an annual registration card in a form approved by the Supreme Court to each attorney registered as active.

(m) **Disciplinary Fee Fund.** The Office of Judicial Administration will deposit all registration fees in the disciplinary fee fund. Compensation and expenses of the Office of the Disciplinary Administrator and the Kansas Board for Discipline of Attorneys will be paid from the fund. Payment from the fund will be made only on receipt of a voucher signed by a Supreme Court justice or the court's designee. Any unused balance in the fund may be applied to an appropriate use determined by the Supreme Court.

(n) **Change of Address and Contact Information.** A registered attorney must notify the Office of Judicial Administration no later than 30 days after a change of legal name, residential address, business address, email address, business telephone number, residence/personal telephone number, liability insurer, or trust account information.

(o) **Online Registration.** Online registration will be mandatory in 2021 and each year thereafter.

[**History:** New rule adopted effective January 1, 2021.]

Rule 207

MANDATORY DISCLOSURE OF PROFESSIONAL LIABILITY INSURANCE

(a) **Certification.** An attorney registered under Rule 206 as an active attorney must certify as part of the attorney's annual registration whether the attorney is engaged in the private practice of law and, if so, whether the attorney maintains professional liability insurance coverage.

(b) **Notice of Change in Policy.** If after certification under subsection (a), the attorney's insurance policy lapses, is no longer in effect, or terminates for any reason, the attorney must provide written notification to the Office of Judicial Administration of the change no later than 30 days after the change occurs.

(c) **Public Information.** The information submitted under this rule will be made available to the public in a manner designated by the Supreme Court.

(d) **Failure to Comply; Supplying False Information.** Any attorney registered under Rule 206 as an active attorney who fails to comply with this rule may be suspended from the practice of law. An attorney who submits false information in response to this rule is subject to discipline.

[**History:** New rule adopted effective January 1, 2021.]

Rule 208

INITIAL COMPLAINT OR REPORT OF MISCONDUCT

(a) **Submission to Disciplinary Administrator.** An initial complaint or a report of attorney misconduct must be submitted to the disciplinary administrator. An initial complaint or a report submitted to the Board, a board member, the clerk of the appellate courts, the Office of Judicial Administration, or a state or local bar association must be delivered immediately to the disciplinary administrator.

(b) **Dismissal.** The disciplinary administrator may decline to investigate and may dismiss an initial complaint or a report received under subsection (a) under the following circumstances:
   (1) if the allegations in the initial complaint or report do not constitute misconduct;
   (2) if the initial complaint or report is facially frivolous, lacks adequate factual detail, or is duplicitous; or
   (3) if the matter is outside the Board's jurisdiction.

(c) **Investigation.** Unless the disciplinary administrator dismisses an initial complaint or a report under subsection (b), the disciplinary administrator must proceed as follows:
   (1) conduct an informal inquiry to determine whether to dismiss the initial complaint or report if it appears to be frivolous or without merit or to docket the initial complaint or report for investigation under Rule 209; or
   (2) promptly docket the initial complaint or report for investigation under Rule 209.

[**History:** New rule adopted effective January 1, 2021.]

Rule 208A

MANDATORY DISCLOSURE OF PROFESSIONAL LIABILITY INSURANCE

[**History:** Repealed effective January 1, 2021.]

Rule 209

INVESTIGATION OF DOCKETED COMPLAINT

(a) **Assignment.** The disciplinary administrator may assign the investigation of a docketed complaint to the following:
   (1) the disciplinary administrator's office;
   (2) a state or local bar association's ethics and grievance committee; or
   (3) an attorney.

(b) **Investigation.** The investigator assigned to investigate a docketed complaint may proceed as follows:
   (1) interview the complainant, the respondent, and other witnesses;
   (2) gather pertinent documents, including copies of the respondent's file, the respondent's billing records, the respondent's trust account records, court records, and other relevant records;
   (3) seek a subpoena under Rule 217(a); and
   (4) take a sworn statement.

(c) **Investigative Report.** Following the completion of an investigation of a docketed complaint, the investigator must prepare an investigative report that includes factual findings and conclusions regarding the alleged misconduct. The investigator must forward the investigative report to the disciplinary administrator. On request, the disciplinary administrator must provide a copy of the investigative report to the respondent.

(d) **Disciplinary Administrator's Summary and Recommendation.** After receiving a report under subsection (c), the disciplinary administrator must prepare a summary of the investigation and recommend to the review committee an appropriate disposition under Rule 211(a).

(e) **Dismissal with Permission.** For good cause, the disciplinary administrator may seek permission from the Board chair or the Supreme Court liaison justice to dismiss a docketed complaint any time before docketing a case in the Supreme Court under Rule 228.

[**History:** New rule adopted effective January 1, 2021.]

Rule 210

DUTY TO ASSIST; DUTY TO RESPOND; DUTY TO REPORT

(a) **Duty to Assist.** An attorney must assist the Supreme Court, the Board, and the disciplinary administrator in the investigation and prosecution of an initial complaint or a report, a docketed complaint, and a formal complaint and in other matters relating to the discipline of attorneys.

(b) **Duty to Respond.** An attorney must timely respond to a request from the disciplinary administrator for information during an investigation and prosecution of an initial complaint or a report, a docketed complaint, and a formal complaint.

(c) **Duty to Report.** An attorney who has knowledge of any action or omission that in the attorney's opinion constitutes misconduct must report the action or omission to the disciplinary administrator.

[**History:** New rule adopted effective January 1, 2021.]

Rule 211

REVIEW COMMITTEE DISPOSITION

(a) **Consideration by Review Committee.** The review committee will review each docketed complaint, the respondent's written response, the investigative report, any relevant attachments, and the disciplinary administrator's summary and recommendation. The review committee may defer decision or place the docketed complaint on hold until the next review committee meeting. A majority of the review committee may direct one of the following dispositions:
   (1) dismissal of the docketed complaint for lack of probable cause of a violation;
   (2) dismissal of the docketed complaint for lack of clear and convincing evidence of a violation, with or without a letter of caution;
   (3) referral of the respondent to the attorney diversion program;
   (4) informal admonition of the respondent; or
   (5) a hearing on a formal complaint before a hearing panel.

(b) **Probable Cause Finding.** Before the review committee directs any of the dispositions in subsections (a)(3)-(a)(5), the review committee must find probable cause to believe that the respondent engaged in misconduct.

(c) **Notice.** The review committee will notify the disciplinary administrator in writing of the disposition of each docketed complaint. The

disciplinary administrator must serve the respondent in writing with notice of the disposition.

(d) **Demand for Hearing When Informal Admonition Directed.** If the review committee directs the disciplinary administrator to impose an informal admonition, the respondent, no later than 21 days after service of notice under subsection (c) of the review committee's disposition, may serve the disciplinary administrator with a demand for a hearing on a formal complaint. The hearing will be held under Rule 222.

[**History:** New rule adopted effective January 1, 2021.]

Rule 212

ATTORNEY DIVERSION PROGRAM

(a) **Description.** The attorney diversion program is an alternative to a traditional disciplinary board proceeding.

(b) **Eligibility.** A respondent is eligible to participate in the attorney diversion program if participation reasonably can be expected to cure, treat, educate, or alter the respondent's behavior. A respondent is ineligible to participate in the program if the misconduct involved self-dealing, dishonesty, or breach of a fiduciary duty. Unless there are unique circumstances, a respondent is also ineligible to participate in the program if the respondent has been disciplined in any jurisdiction or previously participated in an attorney diversion program.

(c) **Disciplinary Administrator's Duties.**

(1) At the time a complaint is docketed for investigation, the disciplinary administrator must inform a respondent of the following:

(A) the respondent may request to participate in the attorney diversion program;

(B) a request to be considered for the attorney diversion program is not an admission of misconduct; and

(C) to participate in the attorney diversion program the respondent must stipulate that the respondent committed misconduct.

(2) If the respondent requests to participate in the program, the disciplinary administrator must submit the respondent's request and the disciplinary administrator's recommendation to the review committee for decision.

(d) **Consideration by Review Committee.**
   (1) The review committee may consider participation in the attorney diversion program only if a majority of the review committee finds there is probable cause to believe that the respondent committed misconduct.
   (2) The review committee, in determining whether to approve the request, must consider whether participation in the program will prevent future misconduct and protect the public by improving the respondent's professional competency and by providing educational, remedial, and rehabilitative programs for the respondent.

(e) **Agreement.** To participate in the attorney diversion program, a respondent must enter into an attorney diversion agreement with the disciplinary administrator that contains the following:
   (1) a stipulation that the respondent committed misconduct;
   (2) a factual statement that supports the stipulation in subsection (e)(1); and
   (3) the conditions for the respondent's participation in the program.

(f) **Failure to Reach Agreement**. If the disciplinary administrator and the respondent cannot agree under subsection (e) to the facts to include in the factual statement, any provision that was violated, or the conditions of participation in the program, the traditional disciplinary board proceeding will resume. The failure to reach an agreement cannot be considered an aggravating factor in the disciplinary board proceeding.

(g) **Fees.** A respondent approved to participate in the attorney diversion program must pay an initial fee of $250. The respondent also must pay a monitoring fee of $50 per month during the period of diversion. All fees are payable to the disciplinary fee fund. Upon written request of a respondent, the disciplinary administrator may grant a hardship waiver of the fees for good cause.

(h) **Successful Completion.**
   (1) When a respondent successfully completes the conditions of an attorney diversion agreement under subsection (e), the following provisions apply:
      (A) the disciplinary administrator must inform the review committee and request that the review committee dismiss the docketed complaint; and
      (B) the stipulation that the respondent committed misconduct remains confidential, except as provided by subsection (h)(2) and Rule 237.

(2) In any future disciplinary board proceeding commenced against the respondent, completion of an attorney diversion agreement will be considered as an aggravating factor of prior discipline. The diversion agreement will be conclusive evidence of the facts contained in the factual statement and each violation specified in the agreement. The respondent may present evidence in mitigation.

(i) **Failure to Comply or Complete.** If the disciplinary administrator determines that a respondent failed to comply with the conditions of an attorney diversion agreement under subsection (e), the following provisions will apply.

(1) The disciplinary administrator must serve the respondent with written notice of the failure and afford the respondent a reasonable opportunity to refute the determination.

(2) If the respondent fails to refute the determination, the disciplinary administrator must inform the review committee and request that the committee terminate the respondent's participation in the attorney diversion program.

(3) If the respondent and the disciplinary administrator cannot agree on whether the respondent failed to comply with the conditions of the agreement, the disciplinary administrator must inform the review committee and the review committee must make a determination of whether to terminate the respondent's participation in the program.

(4) If the review committee terminates the respondent's participation in the program, the traditional disciplinary board proceeding will resume.

(5) At the hearing on the formal complaint, the agreement will be conclusive evidence of the facts contained in the factual statement and each violation specified in the agreement. The respondent may present evidence in mitigation.

(6) Failure to complete the agreement will be considered as an aggravating factor.

[**History:** New rule adopted effective January 1, 2021.]

Rule 213

TEMPORARY SUSPENSION

(a) **Procedure.** On motion of the disciplinary administrator, the Supreme Court for good cause may temporarily suspend a respondent's license to practice law.

(b) **Good Cause.** Good cause under subsection (a) is shown by evidence of the following:
  (1) the respondent failed to timely file an answer to the formal complaint under Rule 215(b); or
  (2) the respondent poses a substantial threat of harm to clients, the public, or the administration of justice.

(c) **Response Required.** The respondent must respond to a motion under subsection (a) no later than 14 days after service of a copy of the motion.

(d) **Appearance May Be Required.** Before ruling on a motion under subsection (a), the Supreme Court may order the respondent to appear before the Supreme Court or any Supreme Court justice.

(e) **Ruling.** The Supreme Court or any Supreme Court justice may rule on a motion under subsection (a).

(f) **Disciplinary Board Proceeding.** Regardless of the disposition of a motion under subsection (a), the disciplinary board proceeding continues under these rules.

[**History:** New rule adopted effective January 1, 2021.]

Rule 214

DISMISSAL NOT JUSTIFIED

(a) **Generally.** Except as described in subsection (b), the following situations will not justify dismissal of an initial complaint or a report, a docketed complaint, or a formal complaint:
  (1) the unwillingness or neglect of the complainant to cooperate in the disciplinary investigation or board proceeding;
  (2) a settlement or compromise between the complainant and the respondent; or
  (3) restitution by the respondent.

(b) **Exception.** Unique circumstances may justify dismissal.

[**History:** New rule adopted effective January 1, 2021.]

Rule 215

PLEADINGS; SERVICE

(a) **Formal Complaint; Notice of Hearing.**
  (1) The disciplinary administrator must file a formal complaint with the Board as follows:
    (A) at 701 Southwest Jackson Street, First Floor, Topeka, Kansas 66603; or
    (B) by email to kbda@kscourts.org.

(2) The disciplinary administrator must serve the respondent and each hearing panel member with a copy of the formal complaint and notice of hearing no later than 45 days before the hearing on the formal complaint.

(3) Service under subsection (a)(2) on the respondent must be made by one of the following methods:
   (A) personal service;
   (B) certified mail to the respondent's most recent registration address with the Office of Judicial Administration; or
   (C) on respondent's counsel by personal service, first-class mail, or email.

(4) Service under subsection (a)(2) on each hearing panel member must be made by personal service, first-class mail, or email.

(b) **Answer**.

(1) The respondent must file an answer to the formal complaint with the Board as follows:
   (A) at 701 Southwest Jackson Street, First Floor, Topeka, Kansas 66603; or
   (B) by email to kbda@kscourts.org.

(2) The respondent must serve the disciplinary administrator and each hearing panel member with a copy of the answer. The answer must be filed and served no later than 21 days after service of the formal complaint on the respondent.

(3) Service under subsection (b)(2) must be made by personal service, first-class mail, or email.

(4) For good cause, the presiding officer may extend the time for the respondent to file and serve an answer to the formal complaint.

(5) If the respondent fails to file and serve the disciplinary administrator and each hearing panel member with a timely answer to the formal complaint, the disciplinary administrator may file a motion under Rule 213 for temporary suspension.

(c) **Motion, Response, and Other Filing.**

(1) The disciplinary administrator and respondent must file any other pleading, motion, response, reply, notice, or other filing with the Board as follows:
   (A) at 701 Southwest Jackson Street, First Floor, Topeka, Kansas 66603; or
   (B) by email to kbda@kscourts.org.

(2) The disciplinary administrator must serve a copy of any other pleading, motion, response, reply, notice, or other filing as follows:
   (A) on the respondent by personal service, certified mail, first-

class mail, or email to the respondent's most recent registration address or email address; and

(B) on each hearing panel member by personal service, first-class mail, or email.

(3) The respondent must serve the disciplinary administrator and each hearing panel member with a copy of any other pleading, motion, response, reply, notice, or other filing by personal service, first-class mail, or email.

(d) **Complete When Mailed.** Service under this rule by certified mail or first-class mail is deemed complete on mailing, regardless of whether the mail is actually received.

[**History:** New rule adopted effective January 1, 2021.]

Rule 216

PREHEARING PROCEDURE

(a) **Prehearing Investigation.** When the review committee directs or when the respondent demands a hearing on the formal complaint, the disciplinary administrator may conduct additional investigation necessary for a hearing.

(b) **Prehearing Scheduling Order.** A hearing panel may issue a prehearing scheduling order.

(c) **Motions.** Unless there are unique circumstances or a prehearing scheduling order specifies otherwise, all prehearing motions must be filed no later than 14 days before a hearing on a formal complaint or petition for reinstatement. The opposing party may serve the moving party with a copy of a response to the motion no later than seven days after service of the motion. The moving party may not reply to the response. The panel may schedule a hearing on the motion.

(d) **Prehearing Conference.** If the circumstances warrant, a hearing panel may schedule a prehearing conference to consider any pending motion, obtain admissions, or otherwise narrow the issues presented by the pleadings. The presiding officer may designate a panel member to conduct the conference. The panel may issue a prehearing conference order. The panel may modify the order.

[**History:** New rule adopted effective January 1, 2021.]

Rule 216A

COMPLIANCE EXAMINATIONS BY THE DISCIPLINARY ADMINISTRATOR

[**History:** Repealed effective January 1, 2021.]

Rule 217

SUBPOENA

(a) **Investigation.** During an investigation conducted under these rules or a compliance examination conducted under Rule 236, the disciplinary administrator may issue a subpoena to compel the attendance of a witness or the production of pertinent books, papers, documents, and electronically stored information before the disciplinary administrator or an investigator.

(b) **Formal Hearing.**

(1) **Disciplinary Administrator's Evidence.** The disciplinary administrator may compel the attendance of a witness or the production of pertinent books, papers, documents, and electronically stored information at a formal hearing by issuing a subpoena and serving it no later than 21 days before the hearing.

(2) **Respondent's Evidence**. A respondent may compel the attendance of a witness or the production of pertinent books, papers, documents, and electronically stored information at a formal hearing by obtaining a subpoena from the presiding officer. The respondent must request the subpoena in writing at least 30 days before the hearing. The respondent must serve the subpoena no later than 21 days before the hearing.

(3) **Service, Fees, and Mileage**.

(A) **Location**. Service of a subpoena may be made anywhere within Kansas.

(B) **Attendance Fee and Mileage**. If the subpoena requires attendance of a witness, the subpoena must be accompanied by the mileage allowed by law, unless waived by the witness.

(C) **Payment of Necessary Expenses**.

(i) The disciplinary administrator must pay from the disciplinary fee fund the expenses for necessary travel, meals, and lodging of a witness called by the disciplinary administrator.

(ii) The respondent must pay the expenses for necessary travel, meals, and lodging of a witness called by the respondent.

(4) **Quashing or Modifying Subpoena.**

(A) **When Required**. On motion filed no later than 14 days after service of a subpoena, the hearing panel will quash or modify the subpoena under the following circumstances:

(i) if it fails to allow a reasonable time for compliance;

(ii) if it requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iii) if it subjects a person to undue burden.

(B) **When Permitted**. On motion filed no later than 14 days after service of a subpoena, the hearing panel may quash or modify the subpoena if it requires disclosure of the following:

(i) a trade secret or other confidential research development or commercial information; or

(ii) an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party.

(C) **Appearance by Telephone or Video**. On motion filed no later than 14 days after service of a subpoena on a witness, the hearing panel may permit the witness to appear by telephone or video.

(c) **Enforcement of Subpoena.** In accordance with K.S.A. 20-1204a, the Supreme Court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena.

(d) **Reciprocal Subpoena.** When a subpoena is sought in Kansas by a disciplinary authority of another jurisdiction for use in an attorney disciplinary investigation or proceeding and counsel for the disciplinary authority certifies that issuance of the subpoena has been approved under the law of the other jurisdiction, the Board chair, on petition for good cause, may issue a subpoena to compel the attendance of a witness or the production of pertinent books, papers, documents, and electronically stored information in the county where the witness or custodian resides or is employed, or elsewhere as agreed to by the witness or custodian. The person or entity seeking the subpoena must pay the witness' mileage expenses allowed by Kansas law and must pay the witness' actual and necessary expenses for travel, meals, and lodging.

[**History:** New rule adopted effective January 1, 2021.]

Rule 218

DEPOSITION

(a) **When Permitted.** Either party in a disciplinary board proceeding may request in writing to take the deposition of a witness. The presiding officer may grant the request if the following applies:
  (1) the witness is not subject to service of a subpoena;
  (2) the witness is unable to attend or testify at the hearing because of age, illness, or other infirmity; or
  (3) the parties agree to the deposition.

(b) **Notice.** The party requesting a deposition must give reasonable written notice to the other party. The notice must state the time and place of the deposition and the deponent's name.

(c) **Method of Recording.** A deposition must be taken under oath or affirmation and recorded by stenographic means.

(d) **Persons Attending Deposition.** Unless otherwise stipulated by the parties or ordered by the presiding officer, no person may attend a deposition except the court reporter, the parties, and the deponent.

(e) **Remote Means.** The parties may stipulate or for good cause the presiding officer may order that a deposition be taken by telephone or other remote means. The deposition takes place where the deponent answers the questions.

(f) **Original; Copy.** The party requesting a deposition must file with the Board the original transcript of the deposition and serve the opposing party with a copy.

(g) **Costs.** The party requesting a deposition must pay any costs.

[**History:** New rule adopted effective January 1, 2021.]

Rule 219

CRIMINAL CHARGE; CONVICTION

(a) **Definitions.**
  (1) "Conviction" means the following:
    (A) a finding based on a plea or trial that a person is guilty of a felony or misdemeanor; or
    (B) entry by a person into a diversion agreement or other comparable disposition for a felony or misdemeanor charge.
  (2) "Felony crime or a crime mandating registration as an offender" means the following:
    (A) a crime classified as a felony;
    (B) a crime mandating registration by the defendant as an offender under the Kansas Offender Registration Act (KORA), K.S.A. 22-4901 et seq.; or

(C) a comparable offense in any jurisdiction that if committed in Kansas would constitute a felony or mandate registration under KORA.

(3) "Reportable crime" means the following:

(A) a felony crime or a crime mandating registration as an offender; or

(B) a class A or B misdemeanor or an offense of comparable classification.

(b) **Deferral.** If a criminal action is pending based on substantially similar allegations as a disciplinary matter, the following provisions will apply.

(1) The investigation of an initial complaint or a report will not be deferred unless the disciplinary administrator authorizes deferral.

(2) The investigation of a docketed complaint and prosecution of a formal complaint will not be deferred unless the review committee, hearing panel, or Supreme Court authorizes deferral.

(c) **Attorney's Duty When Charged with Reportable Crime.** An attorney who has been charged with a reportable crime must notify the disciplinary administrator in writing of the charge and court of jurisdiction no later than 14 days after the charge is filed.

(d) **Attorney's Duty Upon Conviction.** An attorney who has been convicted of a reportable crime must notify the disciplinary administrator in writing of the conviction and court of jurisdiction no later than 14 days after the conviction. The pendency of sentencing or the filing of a notice of appeal, a motion for new trial, or a motion for other relief does not stay the reporting requirement.

(e) **Duty of Clerk of Court.** The clerk of any Kansas court in which an attorney is convicted of a reportable crime must notify the disciplinary administrator in writing of the conviction no later than 14 days after the conviction.

(f) **Conviction is Conclusive Evidence**. A certified copy of a judgment of conviction of a respondent for a reportable crime is conclusive evidence of the commission of that crime. The respondent may not present evidence that the respondent is not guilty of the crime.

(g) **Automatic Temporary Suspension.**

(1) **Disciplinary Administrator's Duties.** When the disciplinary administrator receives notice that an attorney has been convicted of a felony crime or a crime mandating registration as an offender, the disciplinary administrator must commence a disciplinary board proceeding and file with the Supreme Court an

ex parte motion for temporary suspension of the attorney's license to practice law. The disciplinary administrator must attach evidence of the conviction to the motion.

(2) **Supreme Court Order.** After the filing of a motion under subsection (g)(1), the Supreme Court will issue an order temporarily suspending the respondent from the practice of law until final disposition of the disciplinary board proceeding. The filing of a notice of appeal, a motion for new trial, or a motion for other relief does not stay a temporary order of suspension.

(3) **Notice to Respondent.** The clerk of the appellate courts will provide the respondent with a copy of the Supreme Court's order.

(4) **Respondent's Duties.** After receipt of the order, the respondent must comply with Rule 231.

(h) **Temporary Suspension Following Conviction of Other Crime.** This rule does not preclude the disciplinary administrator from seeking the temporary suspension under Rule 213 of a respondent for the conviction of a reportable crime.

(i) **Motion to Vacate Order of Temporary Suspension.**

(1) A respondent may file with the Supreme Court a motion to vacate an order of temporary suspension for good cause or because a court reversed the conviction that was the basis of the temporary suspension. The respondent must attach a certified copy of the judgment reversing the conviction.

(2) The respondent must serve the disciplinary administrator with a copy of the motion.

(3) A Supreme Court order vacating a temporary order of suspension does not terminate the disciplinary board proceedings.

(j) **Disciplinary Board Proceeding.** A disciplinary board proceeding arising out of a conviction for a crime will proceed the same as any other matter under these rules.

[**History:** New rule adopted effective January 1, 2021.]

Rule 220

EFFECT OF OTHER PROCEEDING OR JUDGMENT

(a) **Deferral.** If a civil action, administrative agency action, or other proceeding is pending against a respondent based on substantially similar allegations as a disciplinary matter, the following provisions will apply:

(1) the investigation of an initial complaint or a report will not be deferred unless specifically authorized by the disciplinary administrator; and

(2) the investigation of a docketed complaint and prosecution of a formal complaint will not be deferred unless specifically authorized by the review committee, the hearing panel, or the Supreme Court.

(b) **Judgment or Ruling.** Except as otherwise provided in subsection (c), a certified copy of a judgment or ruling in any action involving substantially similar allegations as a disciplinary matter is prima facie evidence of the commission of the conduct that formed the basis of the judgment or ruling, regardless of whether the respondent is a party in the action. The respondent has the burden to disprove the findings made in the judgment or ruling.

(c) **Judgment or Ruling Based on Clear and Convincing Evidence.** For the purpose of a disciplinary board proceeding, a certified copy of a judgment or ruling described in subsection (b) that is based on clear and convincing evidence is conclusive evidence of the commission of the conduct that formed the basis of the judgment or ruling. The respondent may not present evidence that the respondent did not commit the conduct that formed the basis of the judgment or ruling.

[**History:** New rule adopted effective January 1, 2021.]

Rule 221

DISCIPLINE IMPOSED IN ANOTHER JURISDICTION

(a) **Deferral.** If a disciplinary action is pending against a respondent in another jurisdiction based on substantially similar allegations as a disciplinary matter in Kansas, the following provisions will apply:

(1) the investigation of an initial complaint or a report will not be deferred unless specifically authorized by the disciplinary administrator; and

(2) the investigation of a docketed complaint and prosecution of a formal complaint will not be deferred unless specifically authorized by the review committee, the hearing panel, or the Supreme Court.

(b) **Duty to Report Discipline**. When the licensing authority of another jurisdiction disciplines an attorney for a violation of the rules governing the legal profession in that jurisdiction or refers an attorney to the attorney diversion program or comparable program in that jurisdiction, the attorney must notify the disciplinary administrator in writing of the discipline or referral no later than 14 days after the discipline is imposed or the referral is made.

(c) **Reciprocal Discipline.** When the licensing authority of another jurisdiction disciplines an attorney for a violation of the rules governing the legal profession in that jurisdiction, for the purpose of a disciplinary board proceeding under these rules, the following provisions apply.
  (1) If the determination of the violation was based on clear and convincing evidence, the determination is conclusive evidence of the misconduct constituting the violation of the rules.
  (2) If the determination of the violation was based on less than clear and convincing evidence, the determination is prima facie evidence of the commission of the conduct that formed the basis of the violation and raises a rebuttable presumption of the validity of the finding of misconduct. The respondent has the burden to disprove the finding in a disciplinary proceeding.

(d) **Supreme Court's Discretion.** This rule does not limit the Supreme Court's power to impose different discipline for misconduct than the discipline imposed in another jurisdiction.

[**History:** New rule adopted effective January 1, 2021.]

Rule 222

HEARINGS

(a) **Hearing Open to Public.** A disciplinary or reinstatement hearing is open to the public and the media in the same manner as a district court hearing. A hearing may be closed only in accordance with *Kansas City Star Co. v. Fossey*, 230 Kan. 240, 630 P.2d 1176 (1981). Under Rules 1001 and 1002, the hearing panel may limit or prohibit the use of an electronic device during the hearing.

(b) **Location.** A hearing will be conducted in Topeka, Kansas. For good cause, the presiding officer may order that a hearing be conducted at another location in Kansas.

(c) **Notice of Hearing**. The hearing panel will set the date for the hearing. The notice must state the following:
  (1) the date, time, and location of the hearing;
  (2) the name and business address of each panel member; and
  (3) that the respondent is entitled to be represented by counsel, to cross-examine witnesses, and to present evidence.

(d) **Rules of Civil Procedure.** Except as otherwise provided in subsection (e), the Rules of Civil Procedure do not apply in a board proceeding.

(e) **Hearing Procedure.**
  (1) **Rules of Evidence.** A hearing is governed by the Rules of Evidence, K.S.A. 60-401 et seq.

(2) **Witness Placed Under Oath.** A witness called to testify during a hearing must be placed under oath.

(3) **Record of Board Proceeding.** A hearing must be recorded by stenographic means.

(4) **Witness Sequestration.** The complaining witness may remain in the hearing room during presentation of all matters. All other witnesses may remain in the hearing room unless, before the start of the hearing, the respondent or the disciplinary administrator requests that the witnesses be excluded from the hearing room except while testifying.

[**History:** New rule adopted effective January 1, 2021.]

Rule 223

SUMMARY SUBMISSION

(a) **Definition.** "Summary submission" is submission by agreement of an attorney disciplinary case to the Supreme Court on a written record.

(b) **Agreement.** An agreement between the disciplinary administrator and the respondent to proceed by summary submission must be in writing and contain the following:

(1) an admission that the respondent engaged in the misconduct;

(2) a stipulation as to the contents of the record, findings of fact, and conclusions of law—including each violation of the Kansas Rules of Professional Conduct, the Rules Relating to Discipline of Attorneys, or the attorney's oath of office;

(3) a recommendation for discipline;

(4) a waiver of the hearing on the formal complaint; and

(5) a statement by the parties that no exceptions to the findings of fact or conclusions of law will be taken.

(c) **Timing.** The disciplinary administrator and the respondent may enter into the agreement at any time after the review committee directs a hearing on a formal complaint but no later than 30 days before the scheduled hearing on the formal complaint.

(d) **Notice to Complainant.** After the disciplinary administrator and the respondent enter into an agreement to proceed by summary submission, the disciplinary administrator will provide a copy of the agreement to the complainant. The complainant has 21 days to provide the disciplinary administrator with the complainant's position regarding the agreement.

(e) **Procedure.**
  (1) **Board Chair.** After the disciplinary administrator and the respondent enter into an agreement to proceed by summary submission, the disciplinary administrator will forward a copy of the agreement and the complainant's position to the Board chair for consideration of the summary submission.
  (2) **Approved.** If the chair approves the summary submission, a hearing on the formal complaint is cancelled and the case proceeds according to Rule 228.
  (3) **Rejected.** If the chair rejects the summary submission, the case proceeds according to Rule 222.

(f) **Supreme Court's Discretion.** An agreement to proceed by summary submission is advisory only and does not prevent the Supreme Court from making its own conclusions regarding rule violations or imposing discipline greater or lesser than the parties' recommendation.

[**History:** New rule adopted effective January 1, 2021.]

Rule 224

WITNESSES AND EXHIBITS

(a) **Disciplinary Administrator's Witness List and Exhibits.** No later than 14 days after service of a formal complaint, the disciplinary administrator must file a witness and exhibit list and the original exhibits, marked numerically. The disciplinary administrator must serve the respondent and each hearing panel member with a copy of the list and a copy of each exhibit.

(b) **Respondent's Witness List and Exhibits.** No later than 14 days after the answer to a formal complaint is due, the respondent must file a witness and exhibit list and the original exhibits, marked alphabetically. The respondent must serve the disciplinary administrator and each hearing panel member with a copy of the list and a copy of each exhibit.

(c) **Procedures for Calling an Expert Witness.**
  (1) No later than 21 days after service of a formal complaint, a party planning to call an expert witness must file notice of intent to call an expert witness.
    (A) Written notice and any expert witness' report must be served on each hearing panel member and the opposing party.
    (B) If the expert witness has not issued a report, the notice must include a proffer of the subject matter on which the expert is expected to testify and the substance of the facts and opinions to which the expert is expected to testify.

(2) If the opposing party plans to call a rebuttal expert witness, the opposing party must file notice of intent to call a rebuttal expert witness no later than 21 days after service of a notice under subsection (c)(1).
   (A) Written notice of intent to call a rebuttal expert witness and any rebuttal expert witness' report must be served on each hearing panel member and the other party.
   (B) If the rebuttal expert witness has not issued a report, the notice must include a proffer of the subject matter on which the rebuttal expert is expected to testify and the substance of the facts and opinions to which the rebuttal expert is expected to testify.

(d) **Scope of Testimony.** An expert witness may not testify unless the following apply:
   (1) the witness is qualified as an expert by knowledge, skill, experience, training, or education;
   (2) the testimony will help the hearing panel understand the evidence;
   (3) the testimony is based on sufficient facts or data;
   (4) the testimony is the product of reliable principles and methods; and
   (5) the witness has reliably applied the principles and methods to the facts of the formal complaint.

(e) **Additional Witness and Exhibit; Time Limit.** For good cause, the hearing panel may allow a party to endorse an additional witness or offer an additional exhibit at any time, including at the hearing on the formal complaint.

[**History:** New rule adopted effective January 1, 2021.]

Rule 225

TYPES OF DISCIPLINE

(a) **Discipline.** An attorney who commits misconduct may be disciplined by any of the following:
   (1) disbarment by the Supreme Court;
   (2) suspension by the Supreme Court for an indefinite period of time;
   (3) suspension by the Supreme Court for a definite period of time;
   (4) probation by the Supreme Court for a definite period of time under Rule 227;
   (5) censure by the Supreme Court, which the Supreme Court may order to be published in the Kansas Reports;

(6) informal admonition, which is not published and is the least serious form of public discipline and which may be imposed by a hearing panel or by the disciplinary administrator at the direction of the review committee; or

(7) any other discipline or condition the Supreme Court determines is appropriate.

(b) **Disciplinary History.** All types of discipline become a permanent part of an attorney's reportable disciplinary history.

[**History:** New rule adopted effective January 1, 2021.]

Rule 226

FINAL HEARING REPORT

(a) **Final Hearing Report.**

(1) **Contents.** Following a hearing on a formal complaint, the hearing panel will issue a final hearing report setting forth findings of fact, conclusions of law, aggravating and mitigating factors, and a recommendation of discipline or that no discipline be imposed.

(A) **Findings of Fact.** Each finding of fact must be established by clear and convincing evidence.

(B) **Conclusions of Law.** Each conclusion of law must be set forth separately.

(C) **Aggravating and Mitigating Factors.**

(i) Aggravating factors are any considerations that may justify an increase in the discipline to be imposed.

(ii) Mitigating factors are any considerations that may justify a reduction in the discipline to be imposed.

(D) **Recommendation Regarding Discipline.** The recommendation by the hearing panel regarding discipline is advisory only and does not prevent the Supreme Court from imposing discipline greater or lesser than the panel's recommendation.

(2) **Concurring or Dissenting Opinion.** If a member of the hearing panel cannot agree on a finding of fact, conclusion of law, aggravating or mitigating factor, or the recommendation regarding discipline, the panel member's concurring or dissenting opinion will be included in the final hearing report.

(3) **Distribution.** The following distribution must occur after the hearing panel issues the final hearing report:

(A) the panel must file the report and provide the disciplinary administrator and the respondent with a copy of the report; and

(B) the disciplinary administrator must provide a copy of the

report to the complainant.

(b) **Case Docketed in Supreme Court.** If a majority of a hearing panel finds misconduct and recommends discipline under Rule 225(a)(1), (2), (3), (4), (5), or (7) or if a written objection is filed under subsection (c) or (d) of this rule, the disciplinary administrator must docket a case in the Supreme Court under Rule 228.

(c) **Informal Admonition.** If the hearing panel imposes an informal admonition under Rule 225(a)(6), the disciplinary administrator will not docket a case in the Supreme Court unless the disciplinary administrator or the respondent files a written objection with the hearing panel no later than 21 days after service of the final hearing report. If the disciplinary administrator or the respondent timely files a written objection, the case will be docketed in the Supreme Court and will proceed under Rule 228.

(d) **Dismissal.** If the hearing panel dismisses a disciplinary board proceeding or recommends that no discipline be imposed, the disciplinary administrator will not docket a case in the Supreme Court unless the disciplinary administrator files a written objection with the hearing panel no later than 21 days after service of the final hearing report. If the disciplinary administrator timely files a written objection, the case will be docketed in the Supreme Court and will proceed under Rule 228.

[**History:** New rule adopted effective January 1, 2021.]

Rule 227

PROBATION

(a) **Proposed Probation Plan.** If a respondent seeks to be placed on probation for committing misconduct, the respondent must file and serve each hearing panel member and the disciplinary administrator with a copy of a probation plan at least 14 days before the hearing on the formal complaint.

(b) **Plan Contents.** A probation plan under this rule must meet the following requirements:

(1) be workable, substantial, and detailed;

(2) contain adequate safeguards that address the professional misconduct committed, protect the public, and ensure the respondent's compliance with the Kansas Rules of Professional Conduct, the Rules Relating to Discipline of Attorneys, and the attorney's oath of office;

(3) include the name of a practice supervisor if practice supervision is proposed; and

(4) include a provision that the respondent will not commit misconduct.

(c) **Compliance with Plan.** At the hearing on the formal complaint, the respondent must establish that the respondent has been complying with each condition in the probation plan for at least 14 days prior to the hearing.

(d) **Restrictions on Recommendation of Probation.** A hearing panel may not recommend that the respondent be placed on probation unless the following requirements are met:
(1) the respondent complies with subsections (a) and (c) and the proposed probation plan satisfies the requirements in subsection (b);
(2) the misconduct can be corrected by probation; and
(3) placing the respondent on probation is in the best interests of the legal profession and the public.

(e) **Inclusion of Specific Conditions.** If a hearing panel recommends to the Supreme Court that the respondent be placed on probation, the panel will include specific conditions of probation in the final hearing report.

(f) **Procedure Following Hearing on Formal Complaint.** Regardless of whether the hearing panel recommends probation, the following provisions apply to a respondent who seeks to be placed on probation.
(1) The respondent must comply with each condition of the respondent's proposed probation plan.
(2) At least 14 days before oral argument before the Supreme Court, the respondent must complete the following:
(A) file with the Supreme Court and serve the disciplinary administrator with a copy of an affidavit describing the respondent's compliance with each condition of the respondent's proposed probation plan; and
(B) serve the disciplinary administrator with a copy of all relevant reports from any medical, mental health, and drug and alcohol treatment provider, supervising attorney, and monitoring attorney, if applicable, that verify the statements in the affidavit.

(g) **Successful Completion.**
(1) **Respondent's Motion for Discharge.** If a respondent placed on probation by the Supreme Court complies with each condition of probation contained in the Supreme Court's opinion, the respondent, at the end of the probation period, may file with the Supreme Court and serve the disciplinary administrator with a

motion to be discharged from probation. The motion must include the following as an attachment:

(A) an affidavit describing the respondent's compliance with each condition of probation; and

(B) an affidavit from the supervising attorney, if applicable, describing the respondent's compliance with the conditions of probation.

(2) **Disciplinary Administrator's Duties.** When a respondent files a motion that complies with subsection (g)(1), the disciplinary administrator no later than seven days after service of the motion must file and serve the respondent with a response to the motion that addresses the respondent's compliance and eligibility for discharge from probation.

(3) **Court Action.** The Supreme Court may rule on the respondent's motion without oral argument.

(h) **Remains on Probation.** The respondent remains on probation, subject to each condition of probation, until the Supreme Court discharges the respondent from probation, regardless of whether the ordered term of probation has expired.

(i) **Procedure When a Violation Is Alleged.**

(1) **Respondent's Duty.** If a respondent fails to comply with a condition of probation, the respondent must immediately inform the disciplinary administrator and the supervising attorney, if applicable, of the failure.

(2) **Supervising Attorney's Duty.** The supervising attorney must immediately inform the disciplinary administrator when the supervising attorney knows or reasonably believes that the respondent has failed to comply with a condition of probation.

(3) **Disciplinary Administrator's Duty.** After receiving information that the respondent failed to comply with a condition of probation, the disciplinary administrator must determine whether to file a motion to revoke probation with the Board. The filing of a motion automatically suspends the running of the period of probation and continues the probation until the motion is resolved.

(4) **Chair's Duty.** When the disciplinary administrator files a motion under subsection (i)(3) to revoke probation, the Board chair will do one of the following:

(A) appoint one Board member to conduct an expedited hearing to determine whether the respondent failed to comply with a condition of probation; or

(B) if another disciplinary matter concerning the respondent is

pending, decide whether to consolidate the motion with the pending matter for hearing under Rule 222.

(5) **Expedited Hearing Procedure.**

(A) At an expedited hearing on a motion to revoke probation, the disciplinary administrator has the burden to establish by clear and convincing evidence that the respondent failed to comply with a condition of probation.

(B) The respondent is entitled to be represented by counsel, to cross-examine witnesses, and to present evidence.

(6) **Probation Violation; Final Hearing Report.**

(A) **Contents.** Following a hearing on a motion to revoke probation, the Board member or panel conducting the hearing will issue a final hearing report setting forth findings of fact and conclusions of law, including a conclusion regarding whether the respondent failed to comply with a condition of probation. If the respondent failed to comply with a condition of probation, the Board member or panel will include a recommendation regarding revocation and discipline.

(i) **Findings of Fact.** Each finding of fact must be established by clear and convincing evidence.

(ii) **Conclusions of Law.** Each conclusion of law must be set forth separately.

(iii) **Recommendation.** Any recommendation regarding revocation and discipline by the Board member or panel is advisory only. The Supreme Court is not prevented from allowing a respondent to remain on probation or from imposing discipline greater or lesser than the Board member's or the panel's recommendation.

(B) **Separate Final Hearing Reports.** If under subsection (i)(4) the chair consolidates a motion to revoke probation with a pending matter for hearing, the hearing panel will issue the following:

(i) a final hearing report concerning the motion to revoke probation; and

(ii) a separate final hearing report concerning the pending matter for hearing.

(C) **Distribution.** The Board member or panel will serve the disciplinary administrator and the respondent with a copy of the final hearing report.

(7) **Finding of No Violation**. If the Board member or panel con-

cludes that the respondent did not violate a condition of probation, the following provisions will apply:

(A) the Board member or panel will deny the motion to revoke probation;

(B) the disciplinary administrator will not seek revocation of probation with the Supreme Court; and

(C) the respondent will remain on probation until discharged by the Supreme Court under subsection (h).

(8) **Finding of a Violation.** If the Board member or panel concludes that the respondent violated a condition of probation, the following provisions will apply.

(A) The disciplinary administrator must file the motion to revoke in the pending case before the Supreme Court.

(B) No later than 21 days after the disciplinary administrator files the motion in the pending case, the respondent may file with the Supreme Court an exception to any finding of fact or conclusion of law in the final hearing report. If the respondent files an exception, the respondent must serve the disciplinary administrator with a copy of the exception. Upon the filing of an exception or the expiration of the time to file an exception, the matter will be submitted for the Supreme Court's consideration. Neither briefs nor oral arguments are permitted unless requested by the Supreme Court.

[**History:** New rule adopted effective January 1, 2021.]

Rule 228

PROCEDURE BEFORE SUPREME COURT

(a) **Case Caption.** A case in the Supreme Court under these rules must be captioned as follows:

In the Matter of No. _____

_____

(Respondent) or (Petitioner).

(b) **Docketing.** To docket a case in the Supreme Court, the disciplinary administrator must complete the following:

(1) file any formal complaint, answer, and final hearing report; and

(2) submit the record and table of contents as directed by the clerk of the appellate courts.

(c) **Record.** The record must include the following:
   (1) each filing by the disciplinary administrator and respondent, any order issued by the hearing panel, the final hearing report issued by the panel, and any agreement regarding a summary submission entered into by the disciplinary administrator and respondent;
   (2) a transcript of any hearing and deposition;
   (3) the disciplinary administrator's exhibits offered for admission into evidence; and
   (4) the respondent's exhibits offered for admission into evidence.

(d) **Notice of Docketing.** After the disciplinary administrator dockets a case, the clerk of the appellate courts will notify the respondent by certified mail that the case has been docketed.

(e) **When Exception Required.** No later than 21 days after providing the notice under subsection (d), the disciplinary administrator and the respondent must file one of the following:
   (1) an exception to a finding of fact or conclusion of law in the final hearing report to preserve the issue for review by the Supreme Court; or
   (2) a statement that the party will not file an exception to the findings of fact or conclusions of law in the final hearing report.

(f) **When Exception Not Required or Allowed.**
   (1) The disciplinary administrator and the respondent may contest the recommendation of discipline made by a hearing panel without filing an exception.
   (2) Neither party may file an exception in a case submitted to the Supreme Court by summary submission under Rule 223.

(g) **No Exception.**
   (1) **By Respondent.** If the respondent files a statement under subsection (e)(2) that the respondent will not file an exception or if the respondent fails to timely file an exception, the findings of fact and conclusions of law in the final hearing report will be deemed admitted by the respondent.
   (2) **By Disciplinary Administrator.** If the disciplinary administrator files a statement under subsection (e)(2) that the disciplinary administrator will not file an exception or if the disciplinary administrator fails to timely file an exception, the findings of fact and conclusions of law in the final hearing report will be deemed admitted by the disciplinary administrator.

(h) **Exception.** When the disciplinary administrator or the respondent timely files an exception under subsection (e)(1) to a finding of fact or conclusion of law, the following provisions apply.

(1) **Transcript.** The clerk of the appellate courts will order a copy of the transcript of the hearing on the formal complaint. The clerk will provide the copy to the respondent.

(2) **Briefs.**

(A) The party filing the exception must file an opening brief no later than 30 days after the clerk provides the transcript to the respondent. If both parties file an exception, the disciplinary administrator must file an opening brief no later than 30 days after the clerk provides the transcript to the respondent.

(B) The party responding to the opening brief must file a response brief no later than 30 days after service of the opening brief.

(C) The party filing the opening brief may file a reply brief no later than 14 days after service of the response brief.

(D) The parties must file and serve the briefs as directed by the clerk of the appellate courts, and the briefs must be in the format provided by Rule 6.02 et seq.

(E) If either party fails to file a brief, that party will be deemed to have admitted the findings of fact and conclusions of law in the final hearing report.

(i) **Oral Argument.** The clerk of the appellate courts will set the case for oral argument before the Supreme Court. The clerk will notify the respondent and the disciplinary administrator of the date, time, and location or manner of the oral argument. The respondent and the disciplinary administrator must appear at the oral argument. This subsection applies even if the case is submitted under Rule 223 or if the respondent or the disciplinary administrator fails to file an exception or a brief.

(j) **Discipline Effective Immediately.** Any discipline ordered by the Supreme Court is effective immediately on the filing of the order or opinion with the clerk of the appellate courts, unless otherwise ordered by the court.

(k) **Motion for Rehearing; Motion for Modification.** No later than 21 days after the filing of an order or opinion of the Supreme Court imposing discipline, the respondent may file a motion for rehearing or a motion for modification under Rule 7.06. The filing of the motion does not stay the effect of an order of discipline, unless otherwise ordered by the court.

[**History:** New rule adopted effective January 1, 2021.]

Rule 229

COSTS

(a) **Assessment.** The Supreme Court may assess costs against a respondent.

(b) **Certification.** If the Supreme Court assesses costs against the respondent, the disciplinary administrator must certify to the Supreme Court the costs incurred for the following:
   (1) an investigation under Rule 209;
   (2) a hearing under Rule 222 on the formal complaint; or
   (3) a hearing under Rule 227(i) on a motion to revoke probation.

(c) **Service.** The disciplinary administrator must serve the respondent with a copy of the certificate of costs under subsection (b).

(d) **Payment of Costs.** Costs assessed against a respondent must be paid to the clerk of the appellate courts no later than 30 days after service of a copy of the certificate of costs or as otherwise ordered by the Supreme Court. Costs received will be deposited in the disciplinary fee fund.

(e) **Effect of Failure to Pay Costs.** If a respondent fails to pay any costs assessed, the disciplinary administrator may seek the temporary suspension of the attorney's license to practice law under Rule 213.

[**History:** New rule adopted effective January 1, 2021.]

Rule 230

VOLUNTARY SURRENDER OF LICENSE

(a) **Voluntary Surrender Procedure.** An attorney may voluntarily surrender the attorney's license to practice law. The attorney must complete the following requirements:
   (1) file a request to surrender the attorney's license with the Supreme Court on a form provided by the disciplinary administrator or the Office of Judicial Administration;
   (2) serve the disciplinary administrator with a copy of the request; and
   (3) return to the Office of Judicial Administration the attorney's certificate of admission to the bar and the attorney's current bar registration card or, if either document is unavailable, explain why the document cannot be returned.

(b) **Voluntary Surrender of License by Respondent or Suspended Attorney.**
   (1) **Effect of Voluntary Surrender.** If a respondent or suspended attorney voluntarily surrenders the respondent's or attorney's

license to practice law under subsection (a), the following provisions apply:

(A) the Supreme Court will issue an order disbarring the attorney;

(B) the Office of Judicial Administration will strike the attorney's name from the roll of attorneys; and

(C) any pending board proceeding or case terminates, but the disciplinary administrator may direct an investigator to complete a pending investigation to preserve evidence.

(2) **Reinstatement.** An attorney who voluntarily surrendered the attorney's license to practice law under subsection (b)(1) may seek reinstatement under Rule 232.

(c) **Voluntary Surrender of License by Attorney in Good Standing.**

(1) **Voluntary Surrender.**

(A) The following provisions apply if an attorney voluntarily surrenders the attorney's license to practice law when the attorney is in good standing and is not a respondent:

(i) the attorney must provide an affidavit to the Supreme Court that establishes the attorney is not counsel of record in any matter pending before a court or tribunal in Kansas and the attorney is not providing legal services to any client in Kansas;

(ii) the Supreme Court will issue an order accepting the attorney's surrender; and

(iii) the Office of Judicial Administration will strike the attorney's name from the roll of attorneys.

(B) If an attorney is not in good standing due to an administrative suspension, the attorney must comply with the requirements of the suspension order and obtain reinstatement before voluntarily surrendering the license.

(C) After the Supreme Court issues an order accepting an attorney's voluntary surrender, the attorney is no longer authorized to practice law.

(2) **Reinstatement.** An attorney who voluntarily surrendered the attorney's license to practice law under subsection (c)(1) may seek reinstatement.

(A) The attorney must complete the following requirements:

(i) file with the Supreme Court a petition for reinstatement;

(ii) pay the current active attorney registration fee and the active attorney registration fee required for each year since the voluntary surrender;

(iii) pay the current continuing legal education fee and the continuing legal education fee required for each year since the voluntary surrender; and

(iv) complete the continuing legal education hours required for each year since the voluntary surrender.

(B) The Supreme Court may require the attorney to do the following:

(i) appear before a Board hearing panel for a reinstatement hearing under Rule 232; and

(ii) demonstrate compliance with other conditions for reinstatement.

(3) **Misconduct.** An attorney remains subject to disciplinary proceedings for misconduct that occurred prior to the voluntary surrender of the attorney's license to practice law.

[**History:** New rule adopted effective January 1, 2021.]

Rule 231

NOTICE TO CLIENTS, OPPOSING COUNSEL, AND COURTS FOLLOWING SUSPENSION OR DISBARMENT

(a) **Attorney's Duty.**

(1) **Notice.** No later than 14 days after the Supreme Court issues an order suspending an attorney's license to practice law or disbarring an attorney, the attorney must complete the following requirements.

(A) **Client Notice.** The attorney must notify in writing each client that the client should obtain new counsel because the attorney is suspended or disbarred and is no longer authorized to practice law in Kansas.

(B) **Withdrawal.** The attorney must file in each proceeding in which the attorney is counsel of record a notice of withdrawal stating that the attorney is suspended or disbarred and is no longer authorized to practice law in Kansas.

(C) **Opposing Counsel and Court.** The attorney must notify the following individuals and jurisdictions in writing that the attorney is suspended or disbarred and is no longer authorized to practice law in Kansas:

(i) all opposing counsel;

(ii) the clerk of the district court and the chief judge of each judicial district where the attorney is counsel of record; and

(iii) each United States jurisdiction and each foreign jurisdiction where the attorney is or has been authorized to practice law.

(2) **Certification.** No later than 30 days after the Supreme Court issues an order suspending an attorney's license to practice law or disbarring an attorney, the attorney must provide an affidavit to the Supreme Court certifying that the attorney complied with subsection (a)(1).

(b) **Continued Practice.** It is the unauthorized practice of law and a violation of Kansas Rule of Professional Conduct 5.5 for an attorney to continue to practice law in Kansas after the Supreme Court issues an order suspending or disbarring the attorney.

(c) **Notice by Clerk.** No later than 14 days after the Supreme Court issues an order suspending or disbarring an attorney, the clerk of the appellate courts will provide notice that the attorney is suspended or disbarred to the chief judge of the district in which the attorney resides and the clerk of the supreme court of any other state and any federal court in which the attorney is licensed to practice law.

[**History:** New rule adopted effective January 1, 2021.]

Rule 232

REINSTATEMENT FOLLOWING SUSPENSION OR DISBARMENT

(a) **Eligibility.**

(1) **Definite Suspension.** A respondent suspended by the Supreme Court for a definite period of time is eligible to petition for reinstatement after the stated period of suspension has passed.

(2) **Indefinite Suspension.** A respondent indefinitely suspended by the Supreme Court is eligible to petition for reinstatement three years after the date of suspension.

(3) **Disbarment.** A respondent disbarred by the Supreme Court is eligible to petition for reinstatement five years after the date of disbarment.

(b) **Petition for Reinstatement.**

(1) A respondent seeking reinstatement must file with the Supreme Court a verified petition for reinstatement that sets forth facts establishing the following:

(A) the respondent is eligible to petition for reinstatement under subsection (a);

(B) the respondent has complied with Rule 231 and the Supreme Court's orders;

(C) the respondent has paid any costs assessed under Rule 229; and

(D) the respondent should be reinstated to the practice of law.

(2) At the time the petition is filed, the petitioner must complete the following requirements:
(A) pay a reinstatement filing fee of $1,250 to the clerk of the appellate courts to be deposited in the disciplinary fee fund, unless the attorney's license was transferred to disabled status under Rule 234; and
(B) serve the disciplinary administrator with a copy of the petition.

(c) **Disciplinary Administrator's Response.** No later than seven days after service of the petition for reinstatement, the disciplinary administrator must file a response to the petition with the Supreme Court and serve the respondent with a copy. In the response, the disciplinary administrator must certify the following:
(1) whether the petitioner complied fully with the provisions in subsection (b)(1)(A)-(D); and
(2) considering the gravity of the misconduct leading to disbarment or suspension, whether the disciplinary administrator believes that sufficient time has elapsed since the date of disbarment or suspension to justify the Supreme Court's reconsideration of its order.

(d) **Reinstatement Hearing Not Specified.** If the Supreme Court suspends a respondent for a definite period of time and does not specify in the suspension order that the respondent is required to undergo a reinstatement hearing, the following provisions will apply:
(1) the Supreme Court will reinstate the petitioner without a hearing if the petitioner establishes and the disciplinary administrator certifies in the response that the petitioner complied fully with subsection (b); or
(2) if the disciplinary administrator certifies in the response to the petition that the petitioner has not complied fully with subsection (b), the disciplinary administrator must file a motion for a reinstatement hearing.

(e) **Reinstatement Hearing Required or Specified.** When the Supreme Court disbars or indefinitely suspends a respondent or when the Supreme Court suspends a respondent for a definite period of time and specifies in the suspension order that the respondent must undergo a reinstatement hearing, the following rules apply.
(1) **Supreme Court's Determination.** After the disciplinary administrator files a response to the petition for reinstatement under subsection (c), the Supreme Court will determine whether sufficient time has elapsed since the date of disbarment or suspension to justify reconsideration of its order. The court will consider the gravity of the misconduct leading to the discipline.

(A) If the Supreme Court determines that sufficient time has not elapsed to justify reconsideration of its order, the court will dismiss the petition.

(B) If the Supreme Court determines that sufficient time has elapsed to justify reconsideration of its order, the court will direct the disciplinary administrator to conduct an investigation of the facts alleged in the petition and the petitioner's conduct since the court imposed discipline.

(2) **Hearing Panel.** After the disciplinary administrator's investigation, the Board chair will appoint a hearing panel to conduct a hearing on the petition. The panel will schedule the reinstatement hearing.

(3) **Burden of Proof.** The petitioner has the burden of proof to establish that the petitioner is fit to practice law and that the factors in subsection (e)(4) weigh in favor of reinstatement.

(4) **Reinstatement Factors.** At the reinstatement hearing, the petitioner must present evidence that establishes the following:

(A) the petitioner's current moral fitness;

(B) the petitioner's consciousness of the wrongful nature of the petitioner's misconduct and the disrepute the misconduct brought the profession;

(C) the seriousness of the misconduct leading to disbarment or suspension does not preclude reinstatement;

(D) the petitioner's conduct since the Supreme Court imposed discipline;

(E) the petitioner's present ability to practice law;

(F) the petitioner's compliance with the Supreme Court's orders;

(G) the petitioner has not engaged in the unauthorized practice of law;

(H) the petitioner has received adequate treatment or rehabilitation for any substance abuse, infirmity, or problem; and

(I) the petitioner has resolved or attempted to resolve any other initial complaint, report, or docketed complaint against the petitioner.

(f) **Reinstatement Final Hearing Report.**

(1) **Contents.** Following a hearing on a petition for reinstatement, the hearing panel will issue a reinstatement final hearing report that includes findings of fact, conclusions of law, a discussion of the reinstatement factors under subsection (e)(4), and a recommendation regarding reinstatement.

(A) **Findings of Fact.** Each finding of fact must be established

by clear and convincing evidence.

(B) **Conclusions of Law.** Each conclusion of law must be set forth separately.

(C) **Reinstatement Factors.** The hearing panel must consider each factor in subsection (e)(4).

(D) **Recommendation Regarding Reinstatement.** The hearing panel's recommendation regarding reinstatement is advisory only.

(2) **Concurring or Dissenting Opinion.** If a member of the hearing panel cannot agree on a finding of fact, conclusion of law, reinstatement factor, or the recommendation regarding reinstatement, the panel member's concurring or dissenting opinion will be included in the reinstatement final hearing report.

(3) **Distribution.** After the hearing panel issues the reinstatement final hearing report, the panel will serve the disciplinary administrator and the petitioner with a copy of the report.

(g) **Procedure Following Distribution.**

(1) **Submission to Supreme Court.** On service under subsection (f)(3) of the reinstatement final hearing report, the disciplinary administrator must complete the following:

(A) file the reinstatement final hearing report with the Supreme Court; and

(B) submit the record and a table of contents as directed by the clerk of the appellate courts.

(2) **Record.** The record in a reinstatement case must include the following:

(A) the petition for reinstatement, each filing by the petitioner and the disciplinary administrator in the reinstatement action, any order issued by the hearing panel, and the reinstatement final hearing report issued by the panel;

(B) the transcript of the reinstatement hearing and any deposition;

(C) the petitioner's exhibits offered for admission into evidence; and

(D) the disciplinary administrator's exhibits offered for admission into evidence.

(3) **Reinstatement Recommended.** If the hearing panel recommends granting the petition for reinstatement, the matter will be submitted for the Supreme Court's consideration.

(4) **Reinstatement Not Recommended.**

(A) If the hearing panel recommends denying the petition for reinstatement, the petitioner may file with the Supreme Court an exception to a finding of fact or conclusion of law

no later than 21 days after service of a copy of the reinstatement final hearing report.

(B) If the petitioner files an exception, the petitioner must serve the disciplinary administrator with a copy of the exception.

(C) On filing of an exception or the expiration of the time to file an exception, the matter will be submitted for the Supreme Court's consideration.

(D) Neither briefs nor oral arguments will be permitted unless requested by the Supreme Court.

(h) **Condition for Reinstatement; Limitation on Practice.** If the Supreme Court grants a petition for reinstatement, it may order the attorney to comply with any condition or limitation on the attorney's practice. The court may also order that the attorney's practice be supervised for a period of time.

[**History:** New rule adopted effective January 1, 2021.]

Rule 233

LAWYERS ASSISTANCE PROGRAM

(a) **KALAP Purpose.** The Kansas Lawyers Assistance Program (KALAP) is established to provide immediate and continuing assistance to any lawyer needing help with issues, including physical or mental disabilities that result from disease, addiction, disorder, trauma, or age and who may be experiencing difficulties performing the lawyer's professional duties. KALAP will have the following purposes:

(1) to protect citizens from potential harm that may be caused by lawyers in need of assistance;

(2) to provide assistance to lawyers in need; and

(3) to educate the bench and bar about the causes of and services available for lawyers needing assistance.

(b) **KALAP Services.** KALAP will provide the following services:

(1) offer immediate and continuing assistance at no cost to lawyers;

(2) plan and present educational programs to:

(i) increase the awareness and understanding of members of the bench and bar about problems of lawyers with physical or mental disabilities as defined in subsection (a);

(ii) enable members of the legal profession to recognize and identify problems in themselves and in their colleagues;

(iii) reduce the stigma associated with addiction and other physical and mental disabilities; and

(iv) enable members of the legal profession to understand appropriate ways of interacting with affected individuals; and

(3) provide assistance to lawyers and their firms, including lawyers against whom disciplinary complaints are pending.

(c) **KALAP Executive Director.** The Supreme Court will appoint an Executive Director who will serve at the pleasure of the court. The Executive Director must be a lawyer, preferably with several years' experience in assisting individuals with physical or mental disabilities that result from disease, addiction, disorder, trauma, or age. The Executive Director must have sufficient experience and training to assist the Board in fulfilling its purpose.

(d) **Kansas Lawyers Assistance Board.** The Supreme Court will appoint a Board known as the Kansas Lawyers Assistance Board. The Board will be comprised of no fewer than 11 members who:

(1) are lawyers, active or retired;

(2) have diverse experience and knowledge; and

(3) demonstrate an understanding of and ability to assist lawyers in the problems of physical or mental disabilities that result from disease, addiction, disorder, trauma, or age.

(e) **Board Terms.** Effective July 1, 2012, the terms of all current and future board members will be subject to the following:

(1) Terms of service on the Board will be 6 years each and no member, current or future, may serve more than 18 consecutive years. A member who completes 18 consecutive years of service may not be reappointed until at least 3 years have elapsed since the end of the 18 years.

(2) At the expiration of the terms of the existing members, the term of each new or succeeding member of the Board will be 6 years.

(3) A new member appointed to fill a vacancy will serve the unexpired term of the previous member and may subsequently be appointed to two additional 6-year terms.

(4) The Supreme Court may also appoint two law students from either or both of the law schools in Kansas for terms of 1 or 2 years.

(f) **Chair, Vice-chair, and Secretary.** The Board will designate a chair, a vice-chair, and a secretary.

(g) **Quorum.** A majority of the Board members who have been duly appointed will constitute a quorum, and any action taken by the Board will require a majority of those present and eligible to vote.

(h) **Board Powers and Duties.** The Board has the power and duty to:
  (1) advise and recommend to the Supreme Court candidates for appointment as members of the Board and Executive Director;
  (2) establish policy and adopt procedural rules consistent with this rule;
  (3) oversee the operation of the program to achieve the purposes stated in subsection (a); and
  (4) make reports to the Supreme Court as the court may require.

(i) **Budget, Salaries, and Expenses.** The Supreme Court will determine the salaries of the Executive Director and program staff, who will also be reimbursed for actual travel and other expenses incidental to their duties. Board members and KALAP volunteers will receive per diem and expenses. The KALAP budget will be paid out of fees collected under Rule 206.

(j) **KALAP Volunteer Responsibilities.** The responsibilities of a KALAP volunteer may include:
  (1) assisting in interventions;
  (2) serving as a mentor and/or monitor;
  (3) acting as a contact or liaison with KALAP and the courts, bar organizations and local committees, law firms, and law schools;
  (4) providing compliance monitoring where appropriate; and
  (5) performing any other function deemed appropriate and necessary by the Board to fulfill the program purposes.

(k) **Confidentiality.**
  (1) All records and information maintained by KALAP, its Board, employees, agents, designees, volunteers, or reporting parties is confidential, privileged, and not subject to discovery or subpoena. All communication between a participant and the aforementioned individuals is privileged against disclosure to the same extent and subject to the same conditions as confidential communications between attorney and client. The Executive Director may compile and disclose statistical information, devoid of all identifying data.
  (2) The Executive Director, Board, employees, agents, designees, volunteers, or reporting parties are relieved from the provisions of Rule 8.3 of the Kansas Rules of Professional Conduct and Supreme Court Rule 210 as to work done and information obtained in carrying out their duties and responsibilities under this rule.
  (3) Any person violating subsection (k)(1) may be subject to punishment for contempt of the Supreme Court.

(4) The KALAP office will be in a location where privacy and confidentiality requirements of this rule can be maintained.

(l) **Immunity.** The duties and responsibilities of the Executive Director, members of the Board, employees, agents, designees, volunteers, or reporting parties are owed to the Supreme Court and the public in general, not to any individual lawyer or another person. Nothing in this rule is to be construed as creating a civil cause of action against the aforementioned individuals, and they are immune from liability for any omission or conduct in the course of carrying out their official duties and responsibilities or failing to fulfill their duties and responsibilities under this rule.

(m) **Local Committees.** A local bar association in this state may establish and fund a committee for providing assistance to a Kansas attorney needing help because of physical or mental disabilities that result from disease, addiction, disorder, trauma, or age that impact the attorney's ability to perform the attorney's professional duties. A committee formed under this rule will be subject to the requirements of subsections (b) and (k). A local committee must compile and disclose to KALAP statistical information, devoid of all identifying data, on request of the Executive Director. A local committee, its members, and volunteers are entitled to the immunities of subsection (l), so long as the requirements of this rule are met. On request, KALAP will provide assistance to a committee established under this subsection.

[**History:** New rule adopted effective January 1, 2021.]

Rule 234

TRANSFER TO DISABLED STATUS

(a) **Definition.** In this rule, "disabled" means unable to continue the practice of law due to a mental or physical limitation.

(b) **Automatic Transfer.**

(1) **District Court Clerk's Duty.** When a court has entered an order declaring an attorney to be incapacitated or subject to involuntary civil commitment, the clerk of the district court must send a certified copy of the order to the disciplinary administrator.

(2) **Disciplinary Administrator's Duty.** When the disciplinary administrator receives a certified copy of an order declaring an attorney to be incapacitated or subject to involuntary civil commitment, the disciplinary administrator must notify the Supreme Court that the attorney should be transferred to disabled status.

(3) **Supreme Court Action.** The Supreme Court will automatically transfer the attorney to disabled status without a hearing when the court receives notification from the disciplinary administrator under subsection (b)(2).

(c) **When Docketed Complaint Not Pending.** When no docketed complaint is pending against an attorney and the attorney serves the disciplinary administrator with a copy of evidence that establishes the attorney is disabled, the attorney may register as a disabled attorney under Rule 206(b)(1).

(d) **When Docketed Complaint Pending.**

(1) **Voluntary Transfer.** When an investigation of a docketed complaint is pending, the respondent may request transfer to disabled status. The following rules apply.

(A) **Respondent's Duties.** The respondent must cease practicing law and serve the disciplinary administrator with a copy of evidence that establishes the respondent is disabled.

(B) **Disciplinary Administrator's Duty.** If the respondent serves the disciplinary administrator with a copy of evidence that establishes the respondent is disabled, the disciplinary administrator must petition the Supreme Court to transfer the respondent to disabled status.

(2) **Involuntary Transfer.** When an investigation of a docketed complaint is pending, the Supreme Court may involuntarily transfer the respondent to disabled status. The following rules apply**.**

(A) **Motion.** The disciplinary administrator may file with the Supreme Court a motion to transfer the respondent to disabled status.

(B) **Burden of Proof.** The disciplinary administrator must establish by clear and convincing evidence that the respondent is disabled.

(C) **Appointment of Counsel.** The Supreme Court may appoint counsel to represent the respondent. The costs of appointed counsel may be paid from the disciplinary fee fund and charged as costs of the action.

(D) **Examination.** The disciplinary administrator may file with the Supreme Court a motion for an order requiring the respondent to submit to examination by a physician, psychologist, or other treatment professional.

(i) **Consent.** By registering as an active attorney under Rule 206, an attorney consents to submit to examination by a physician, psychologist, or other treatment professional when ordered to do so by the Supreme Court and to waive all objections to the admissibility of the examination report.

(ii) **Submission.** If the Supreme Court grants the motion, the attorney must submit to examination by a physician, psychologist, or other treatment professional designated by the court to determine whether the attorney is disabled.

(iii) **Costs of Examination.** The costs of examination may be paid from the disciplinary fee fund and charged as costs of the action.

(iv) **Refusal to Submit to Examination.** If the attorney refuses to submit to examination when required under subsection (d)(2)(D)(ii) or fails to appear for a scheduled appointment for an examination, the Supreme Court will issue an order temporarily suspending the attorney's license to practice law.

(v) **Reinstatement.** If the Supreme Court temporarily suspends the attorney's license to practice law under subsection (d)(2)(D)(iv), the attorney may petition for reinstatement under Rule 232. The petition for reinstatement must show the following:

(I) the attorney has completed examination by the physician, psychologist, or other treatment professional; and

(II) the attorney is no longer disabled and is eligible for reinstatement to the practice of law.

(E) **Report of Examination and Other Evidence.**

(i) The disciplinary administrator must file with the Supreme Court and serve the attorney with the report of any examination under subsection (d)(2)(D)(ii) and any other evidence regarding whether the attorney is disabled.

(ii) No later than 30 days after the disciplinary administrator files the report and any other evidence, the attorney may file with the Supreme Court and serve the disciplinary administrator with additional evidence regarding whether the attorney is disabled.

(F) **Transfer.** If the Supreme Court determines based on the record that the attorney is disabled, the court will issue an

order transferring the attorney to disabled status.

(e) **Service.** When the Supreme Court transfers an attorney to disabled status, the clerk of the appellate courts will serve a copy of the order on the following individuals:
  (1) the attorney;
  (2) the director of any institution where the attorney is committed as described in subsection (b)(1);
  (3) the disciplinary administrator; and
  (4) the administrative judge in the judicial district where the attorney's office is located, according to the attorney's most recent registration address with the Office of Judicial Administration.

(f) **Practice of Law.** An attorney transferred to disabled status may not engage in the practice of law until the Supreme Court reinstates the attorney to active status.

(g) **Reinstatement.** An attorney on disabled status may file a petition for reinstatement with the Supreme Court when the attorney is no longer disabled. The following rules apply regardless of whether the attorney registered as disabled under Rule 206(b)(1) or whether the attorney's status changed through an automatic, a voluntary, or an involuntary transfer under this rule.
  (1) **Waiver of Privilege.** By filing a petition for reinstatement, the attorney waives any privilege applicable to treatment received while the attorney was on disabled status.
  (2) **No Fee Required**. The attorney is not required to pay the reinstatement fee required by Rule 232(b)(2)(A).
  (3) **Evidence.** The attorney must attach to the petition evidence that the attorney is no longer disabled.
  (4) **Investigation.** If the Supreme Court determines from the petition and the evidence that there is probable cause to believe the attorney is no longer disabled, the Supreme Court will direct the disciplinary administrator to investigate the attorney's petition.
    (A) **Examination.** During the investigation of the petition, the disciplinary administrator may direct the attorney to submit to examination by a physician, psychologist, or other treatment professional. The costs of examination may be paid from the disciplinary fee fund and charged as costs of the action.
    (B) **Attorney's Duties.** The attorney must cooperate in the following ways with the disciplinary administrator's investigation:
      (i) timely respond to requests for information;

(ii) submit to examination by a physician, psychologist, or other treatment professional on direction of the disciplinary administrator;

(iii) disclose the name of every physician, psychologist, treatment professional, institution, hospital, or facility that examined the attorney or provided treatment to the attorney while the attorney was on disabled status;

(iv) consent in writing to allow the disciplinary administrator to obtain information and records regarding any examination or treatment of the attorney while the attorney was on disabled status; and

(v) comply with other requests made by the disciplinary administrator.

(5) **Disciplinary Administrator's Recommendation.** When the investigation is complete, the disciplinary administrator must determine whether the attorney has established by clear and convincing evidence that the attorney is no longer disabled.

(A) If the disciplinary administrator determines the attorney is no longer disabled, the disciplinary administrator will recommend that the Supreme Court grant the petition for reinstatement.

(B) If the disciplinary administrator determines the attorney has not established that the attorney is no longer disabled, the disciplinary administrator will recommend to the Supreme Court that the petition be set for hearing before a hearing panel.

(6) **Supreme Court.**

(A) If the disciplinary administrator recommends that the Supreme Court grant the petition, the court will reinstate the attorney without further proceedings, subject to any condition or limitation imposed under subsection (g)(10).

(B) If the disciplinary administrator recommends that the petition be set for hearing before a hearing panel, the Supreme Court may do one of the following:

(i) reinstate the attorney without further proceedings, subject to any condition or limitation imposed under subsection (g)(10); or

(ii) direct the Board chair to appoint a hearing panel to conduct a hearing on the petition.

(7) **Hearing Procedure.**

(A) **Hearing.** The hearing panel will schedule the reinstatement hearing.

(B) **Burden of Proof.** To be reinstated to the active practice of

law, an attorney must establish by clear and convincing evidence that the attorney is no longer disabled.

(8) **Reinstatement Final Hearing Report.**

(A) **Contents.** Following a hearing on the petition, the hearing panel will issue a reinstatement final hearing report setting forth findings of fact, conclusions of law, and a recommendation regarding whether the attorney should be reinstated to the active practice of law.

(i) **Findings of Fact.** Each finding of fact must be established by clear and convincing evidence.

(ii) **Conclusions of Law.** Each conclusion of law must be set forth separately.

(iii) **Recommendation Regarding Reinstatement.** The hearing panel's recommendation regarding reinstatement is advisory only.

(B) **Concurring or Dissenting Opinion.** If a member of the hearing panel cannot agree on a finding of fact, conclusion of law, or the recommendation regarding reinstatement, the panel member's concurring or dissenting opinion will be included in the reinstatement final hearing report.

(C) **Distribution.** After the hearing panel issues the reinstatement final hearing report, the panel will serve the disciplinary administrator and the attorney with a copy of the report.

(9) **Procedure Following Distribution.**

(A) **Case Docketed with Supreme Court.** On service of the reinstatement final hearing report, the disciplinary administrator must complete the following:

(i) file the petition for reinstatement, response, and reinstatement final hearing report with the Supreme Court; and

(ii) submit the record and table of contents as directed by the clerk of the appellate courts.

(B) **Record.** The record in a reinstatement case must be filed under seal and include the following:

(i) the petition for reinstatement, each filing by the attorney and the disciplinary administrator in the reinstatement action, any order issued by the hearing panel, and the reinstatement final hearing report issued by the panel;

(ii) the transcript of the reinstatement hearing and any deposition;

(iii) the attorney's exhibits offered for admission into evidence; and

(iv) the disciplinary administrator's exhibits offered for admission into evidence.

(C) **Reinstatement Recommended.** If the hearing panel recommends granting the petition for reinstatement, the matter is submitted for the Supreme Court's consideration.

(D) **Reinstatement Not Recommended.**

(i) If the hearing panel recommends denying the petition for reinstatement, the attorney may file with the Supreme Court an exception to a finding of fact or conclusion of law no later than 21 days after service of a copy of the reinstatement final hearing report.

(ii) If the attorney files an exception, the attorney must serve the disciplinary administrator with a copy of the exception.

(iii) On filing of an exception or the expiration of the time to file an exception, the matter will be submitted for the Supreme Court's consideration.

(iv) Briefs and oral arguments are not permitted unless requested by the Supreme Court.

(10) **Condition for Reinstatement; Limitation on Practice.** If the Supreme Court grants the petition for reinstatement, the court may order the attorney to comply with any condition or limitation on the attorney's practice. The court may also order that the attorney's practice be supervised for a period of time.

(11) **Reinstatement Denied.** If the Supreme Court denies the petition for reinstatement, the attorney may not file another petition for reinstatement until one year after the date of the order denying the petition or as otherwise directed by the court.

(h) **Board Proceedings.**

(1) When the Supreme Court transfers an attorney to disabled status or temporarily suspends an attorney's license to practice law under subsection (d)(2)(D)(iv), a pending disciplinary board proceeding against the attorney will be stayed. But the disciplinary administrator may direct the investigator to complete a pending investigation to preserve evidence.

(2) When the Supreme Court reinstates an attorney from disabled status, a disciplinary board proceeding that was pending at the time of the transfer will resume.

[**History:** New rule adopted effective January 1, 2021.]

Rule 235

APPOINTMENT OF COUNSEL TO PROTECT CLIENT INTERESTS

(a) **Appointment of Counsel.**
  (1) **Circumstances.** The chief judge of a judicial district may appoint counsel to protect the interests of an attorney's clients under the following circumstances:
    (A) the Supreme Court has transferred the attorney to disabled status under Rule 234;
    (B) the attorney has disappeared or died;
    (C) the Supreme Court has suspended or disbarred the attorney and the attorney has not complied with Rule 231; or
    (D) the attorney has neglected client affairs.
  (2) **Action.** The chief judge may authorize counsel appointed under subsection (a)(1) to do the following:
    (A) review and inventory the attorney's client files;
    (B) access the attorney's trust account; and
    (C) take any other action necessary to protect the interests of the attorney and the attorney's clients.

(b) **Confidentiality.** Counsel appointed under subsection (a) to review and inventory client files or to access the attorney's trust account must not disclose any information unless necessary to carry out the chief judge's order.

(c) **Chief Judge's Duty.** No later than seven days after issuing an order under this rule, the chief judge must provide a copy of the order to the disciplinary administrator.

[**History:** New rule adopted effective January 1, 2021.]

Rule 236

COMPLIANCE EXAMINATION BY DISCIPLINARY ADMINISTRATOR

(a) **Authority.** The disciplinary administrator may conduct a compliance examination of any trust account or other fiduciary account held by an attorney or the attorney's law firm.

(b) **Disciplinary Administrator's Duties.** In conducting a compliance examination, the disciplinary administrator has the following duties.
  (1) The disciplinary administrator must determine whether the attorney's or law firm's records and accounts are being maintained in accordance with applicable rules.

(2) The disciplinary administrator must employ sampling techniques to examine selected accounts, unless a discrepancy is found that indicates a need for a more detailed examination. Selected accounts may include the following:
(A) money, securities, and other trust assets held by an attorney or law firm;
(B) a safe deposit box or similar device;
(C) deposit records;
(D) canceled checks and their equivalent; and
(E) any other record that pertains to a trust account transaction affecting an attorney's or a law firm's practice of law.

(c) **Cooperation.** The attorney or law firm must cooperate in a compliance examination by providing records and answering questions. Failure to cooperate in the examination is a violation of Rule 210 and Kansas Rule of Professional Conduct 8.1.

(d) **Investigative Subpoena.** The disciplinary administrator may issue an investigative subpoena to compel the production of pertinent books, papers, documents, records, and electronically stored data and information that relate to the account. The subpoena must state that it was issued under this rule.

(e) **Report.** At the conclusion of the compliance examination, the disciplinary administrator must prepare a written report containing the disciplinary administrator's findings. The disciplinary administrator must serve a copy of the report on the attorney or law firm.

(f) **Deficiencies.** If a compliance examination report specifies a deficiency in the attorney's or law firm's records or procedures, the following provisions apply.
(1) No later than 14 days after service of the report, the attorney or law firm must serve the disciplinary administrator with evidence that the alleged deficiency either is incorrect or has been corrected.
(2) If corrective action requires additional time, the attorney or law firm must apply for an extension of time to correct the deficiency.

(g) **Confidential.** Except as otherwise provided in subsection (h) and Rule 237, all records produced for a compliance examination are confidential.

(h) **Disclosure of Records.** The disciplinary administrator may disclose a record produced for a compliance examination as follows:
(1) to a court if disclosure is necessary to complete the examination;
(2) in a board proceeding; or
(3) as directed by the Supreme Court.

[**History:** New rule adopted effective January 1, 2021.]

Rule 237

CONFIDENTIALITY AND DISCLOSURE

(a) **Confidentiality.** Except as otherwise provided in this rule or by order of the Supreme Court, the following documents are confidential and must not be divulged:
  (1) an initial complaint or a report, a docketed complaint, and an investigative report; and
  (2) notes, correspondence, and work product of the disciplinary administrator, an investigator, the review committee, a hearing panel, and the Board.

(b) **Complaint and Response.** The disciplinary administrator must provide the initial complaint or report to the respondent. If the respondent files a response to the initial complaint or report, the disciplinary administrator may provide the response to the complainant.

(c) **Disclosure by Complainant or Respondent.** This rule does not prohibit a complainant or respondent from disclosing the existence of an initial complaint or a report, a docketed complaint, or any document or correspondence filed by, served on, or provided to that person.

(d) **Disclosure to Respondent.** On request, the disciplinary administrator must disclose to the respondent the investigative report and all evidence in the disciplinary administrator's possession. Except as otherwise provided in Rule 218, no other discovery is permitted. The disciplinary administrator is not required to disclose any work product, including a summary and recommendation prepared under Rule 209(d).

(e) **Disclosure to Third Person.** The following provisions apply to disclosure by the disciplinary administrator to a third person.
  (1) If the review committee directs the disciplinary administrator to impose an informal admonition, the disciplinary administrator may disclose, and must disclose upon request, the nature and disposition of the case.
  (2) If a review committee directs a hearing on a formal complaint, the disciplinary administrator may disclose, and must disclose upon request, the pleadings filed under Rule 215; the exhibits admitted during the hearing on the formal complaint, subject to any seal order; and the disposition of the board proceeding.
  (3) If a respondent voluntarily surrenders the respondent's license to practice law, the disciplinary administrator may disclose the

nature and disposition of the complaint; the disciplinary administrator must disclose a copy of an order of disbarment upon request.

(4) The disciplinary administrator and anyone appointed to assist the disciplinary administrator in conducting an investigation may disclose information reasonably necessary to complete the investigation.

(5) The disciplinary administrator may disclose relevant information and submit all or part of a disciplinary file to the following:

(A) the Kansas Lawyers Assistance Program or other lawyer assistance program;

(B) a government official, commission, committee, or body for use in evaluating an applicant or prospective appointee or nominee for a judicial appointment;

(C) the Supreme Court for use in evaluating an applicant or prospective appointee or nominee for service on a commission, committee, or board; or

(D) a law enforcement agency, licensing authority, or other disciplinary authority.

(f) **Disclosure to Complainant.** On dismissal under Rules 208, 209, or 211 or on imposition of an informal admonition, the disciplinary administrator must notify the complainant of the action taken and may reveal to the complainant information necessary to adequately explain the basis for the decision and the action taken.

[**History:** New rule adopted effective January 1, 2021.]

Rule 238

ABSOLUTE IMMUNITY

(a) **Complainant or Witness**. A person is absolutely immune from liability for making an initial complaint or a report or giving testimony in an investigation or board proceeding under these rules.

(b) **Protected Individuals and Entities.** The following individuals and entities are absolutely immune from liability for an act within the scope of their duties under these rules:

(1) the Supreme Court;

(2) the Board;

(3) the disciplinary administrator;

(4) a Board member;

(5) a review committee member;

(6) a hearing panel member;

(7) an attorney assigned to investigate a docketed complaint under Rule 209;

(8) an attorney supervising a respondent on diversion under Rule 212 or on probation under Rule 227;
(9) counsel appointed to protect client interests under Rule 235; and
(10) any staff member or other person acting on behalf of an individual or entity listed in this subsection.

[**History:** New rule adopted effective January 1, 2021.]

Rule 239

ADDITIONAL RULES OF PROCEDURE

(a) **Time Limitation.** Except as otherwise provided in these rules, a time limitation is directory and not jurisdictional.
(b) **Deviation from Rules.** A deviation from these rules may not be asserted as a defense or be a ground for dismissal unless it causes prejudice to the respondent.

[**History:** New rule adopted effective January 1, 2021.]

INTERNAL OPERATING RULES OF THE KANSAS BOARD FOR DISCIPLINE OF ATTORNEYS

OUTLINE

A. GENERAL RULES
(Rules 202, 203, 204)

A.1. These rules are adopted by the Kansas Board for Discipline of Attorneys (hereinafter Board) pursuant to Rule 204(f).

A.2. The Board shall meet at the call of the Chairperson of the Board (hereinafter Chair).

A.3. The Chair and the Disciplinary Administrator shall prepare an agenda for Board meetings.

A.4. Necessary expenses incurred by Board members and other persons in performing Board work will be reimbursed from the Disciplinary Fee fund through the Disciplinary Administrator's office.

A.5. Board members, family members of board members, partners, associates, and employees of a Board member shall not represent a respondent after the case has been scheduled for a hearing before a hearing panel or appear before any hearing panel as a special prosecutor.

A.6. The Board should periodically review the operation of the disciplinary system in Kansas and if warranted propose rules of procedure for lawyer disciplinary and disability proceedings for promulgation by the Court.

B. THE REVIEW COMMITTEE
(Rules 204, 211)

B.1. The Review Committee of the Board shall be appointed by the Supreme Court and shall consist of the Chair, one other Board member, and one practicing lawyer. The Chair may appoint a temporary member to the Review Committee for a particular

case if a Review Committee member has a conflict or for a period of time if a Review Committee member is unable to act.

B.2. The primary function of the Review Committee is to determine if there is probable cause to believe a Respondent's conduct violates the Court's rules and to take appropriate action under Rule 211.

B.3. After investigation the Disciplinary Administrator shall submit to each Review Committee member a copy of the docketed complaint together with investigative materials and a recommendation.

B.4. Each Review Committee member shall review the written material and make a recommendation as to the complaint's resolution to the Chair. The Chair shall record the individual recommendations of the Review Committee members. If the recommendations of the Review Committee members are unanimous and in agreement with the Disciplinary Administrator's recommendation then that shall constitute the action of the Review Committee. If any Review Committee members disagree with any other member or with the Disciplinary Administrator, then that complaint shall be resolved by a majority vote of the Review Committee at the next Review Committee meeting.

B.5. The Review Committee shall meet at the call of the Chair who shall designate the time, date, and place of the meeting. Meetings may be conducted by telephone conference. Complaints not acted upon pursuant to B.4. above shall be presented to the Review Committee at its meeting for discussion and resolution.

B.6. At the Review Committee meeting and after oral presentations by the Disciplinary Administrator and deliberation by the Review Committee the Review Committee shall act on each docketed complaint pursuant to Rule 211.

B.7. A record reflecting each action of the Review Committee shall be prepared by the Chair and distributed to the Review Committee members and the Disciplinary Administrator.

B.8. The Review Committee, upon a proper showing, may reconsider any decision. After reconsidering an order, the Review Committee may direct any action pursuant to Rule 211.

C. APPOINTMENT OF HEARING PANELS
(Rule 204)

C.1. The Chair shall appoint all Hearing Panel members and designate one of the Board members as the chair, hereafter called the Presiding Officer. A person may not sit on a disciplinary Hearing Panel that involves a complaint presented to the Review Committee while that person was a member of the Review Committee. Review Committee members may sit as a Hearing Panel member in a reinstatement hearing.

C.2. The non-Board member of all Hearing Panels shall be appointed from lawyers licensed, registered as active, and in good standing in Kansas. The Chair shall ensure that as many lawyers as possible participate in the disciplinary process as a Hearing Panel member.

C.3. The Chair shall notify the Disciplinary Administrator and the Hearing Panel members of their appointment to a Hearing Panel. The Hearing Panel will schedule the hearing and the Disciplinary Administrator will notify the Respondent and the Respondent's counsel of the hearing date. The Disciplinary Administrator shall provide the Respondent with the name and address of each Hearing Panel member.

C.4. For good cause shown the Chair may replace a Hearing Panel member.

C.5. In unusual circumstances, if the Disciplinary Administrator and the Respondent agree, the Hearing Panel may consist of two members.

D. PRE-HEARING AND FORMAL HEARING PROCEDURES
(Rules 215, 216, 218, 222, 232, 237)

D.1. The Presiding Officer, after consultation with the other Hearing Panel members, shall rule on the prehearing motions presented and notify the parties of the Hearing Panel's decision.

D.2. Continuance of a scheduled hearing is disfavored except on valid showing of extreme circumstances requiring the hearing to be continued.

D.3. The Presiding Officer of the Hearing Panel shall rule on all motions and objections presented during the hearing.

D.4. Except as provided by Rule 218, no discovery shall be permitted. See also Rule 237(d).

D.5. Any Hearing Panel member may question any witness or counsel at any time during the hearing.

D.6. The hearing is a formal proceeding which shall be conducted in a judicious manner pursuant to Rule 161. All parts of the hearing shall be on the record.

D.7. The investigator shall be allowed to remain in the hearing room during presentation of all matters if requested by the Disciplinary Administrator and if approved by the Presiding Officer.

D.8. The Respondent when called as a witness by himself or herself may testify in either question-and-answer form or by a narrative statement. In either event, the Respondent shall be subject to cross-examination and interrogation.

D.9. Briefs and suggested findings of fact and conclusions of law are not normally allowed or required but may be requested by the Hearing Panel in very unusual circumstances.

D.10. Copies of any document, pleading, or exhibit presented to a Hearing Panel shall be presented to each Hearing Panel member, opposing counsel, counsel for the Hearing Panel, and the court reporter.

D.11. Respondents and their attorneys shall acquaint themselves with these Rules and the Rules of the Supreme Court relating to disciplinary matters. All parties are expected to present their case in an expeditious manner.

E. THE PANEL REPORT
(Rules 226, 228)

E.1. The Hearing Panel shall strive to complete the Final Hearing Report as soon as possible after the record has been closed. The writing and filing of the Final Hearing Report is the responsibility of the Presiding Officer. After the Presiding Officer prepares the Final Hearing Report, the Presiding Officer shall submit the report to the other Hearing Panel members for approval. In the event the Presiding Officer failed to write the Final Hearing Report and submit it to the other Hearing Panel members,

the Chair shall direct the other Board member of the Hearing Panel to write and submit the Final Hearing Report.

E.2. The Final Hearing Report shall set forth the appearances, jurisdictional matters, findings of fact, conclusions of law, and the recommendation of discipline of the Disciplinary Administrator, the Respondent, and the Hearing Panel. If mitigating or aggravating circumstances affect the nature or degree of discipline to be imposed or recommended it must be fully set forth in the Final Hearing Report.

E.3. The A.B.A. Standards for Imposing Lawyer Sanctions may be applied in determining the proper disposition and/or discipline recommended by a Hearing Panel. The Standards may be referenced and discussed in the Final Hearing Report.

E.4. The original Final Hearing Report shall be forwarded to the Disciplinary Administrator to be filed with the Kansas Supreme Court, as required by Rule 228. The Disciplinary Administrator shall distribute copies to the Respondent, Respondent's counsel, Complainant, and all other members of the Board.

E.5. Consistency and uniformity in application of the rules of discipline to the individual matters before a Hearing Panel should be considered by the Hearing Panel throughout the disciplinary process.

E.6. All exhibits admitted into evidence shall be retained under the control of the Disciplinary Administrator who shall file them with the Court when required to do so by the disciplinary rules.

F. REINSTATEMENT
(Rules 222, 232)

F.1. After receiving notice from the Court directing that a petition for reinstatement be processed, the Disciplinary Administrator shall conduct an investigation into the petition and the petitioner's character and fitness to practice law.

F.2. After receipt of the Court's notice the Chair shall appoint a hearing panel as directed in Section C. above to hear the reinstatement petition.

F.3. After the Disciplinary Administrator completes the investigation of petitioner, the matter shall be scheduled for hearing by notice of hearing from the Disciplinary Administrator. The procedures and rules stated in Rule 222 and above in Sections D.

and E. apply to reinstatement hearings, unless modified by Rule 232.

F.4. The Hearing Panel shall consider the reinstatement factors in Rule 232(e)(4).

Rule
240

KANSAS RULES OF PROFESSIONAL CONDUCT

PREFATORY RULE

The Kansas Rules of Professional Conduct and comments, as amended by this court on May 1, 2007, are adopted as the Rules of this court as general standards of conduct and practice required of the legal profession in Kansas. Violation of such standards constitutes grounds for disciplinary action.

The Rules herein adopted may be referred to and cited as KRPC 1.1, etc.

[**History:** Amended March 11, 1999; Am. effective July 1, 2007; Rule 226 renumbered without amendment to Rule 240 effective January 1, 2021.]

PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As an evaluator, a lawyer acts as evaluator by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a

client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest. The attributes contained in this paragraph for lawyers' conduct shall be an aspirational goal of all lawyers.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more

likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when a lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in a private client-lawyer relationship. For example, a lawyer

for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the rules can be subverted when they are involved by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule.

[21] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

[**History:** Am. effective March 11, 1999; Am. effective July 1, 2007; Am. effective March 1, 2014.]

RULE 1.0 Terminology

(a) "Belief" or "Believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (f) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "Consult" or "Consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(d) "Firm" or "Law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(e) "Fraud" or "Fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(f) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(g) "Knowingly," "Known," or "Knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(h) "Partner" denotes a member of a partnership and a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(i) "Reasonable" or "Reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(j) "Reasonable belief" or "Reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(k) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(l) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(m) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(n) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(o) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostatting, photography, audio or videorecording, and electronic communications. A "signed" writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

[**History:** Am. effective March 11, 1999; Am. effective July 1, 2007; Am. effective March 1, 2014.]

Comment

Confirmed in Writing

[1] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

[2] Whether two or more lawyers constitute a firm within paragraph (d) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be

regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.

[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[4] Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

Fraud

[5] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

[6] Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 1.2(c), 1.6(a) and 1.7(b). The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who

is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of Rules require that a person's consent be confirmed in writing. See Rules 1.7(b) and 1.9(a). For a definition of "writing" and "confirmed in writing," see paragraphs (o) and (b). Other Rules require that a client's consent be obtained in a writing signed by the client. See, e.g., Rules 1.8(a) and (g). For a definition of "signed," see paragraph (o).

Screened

[8] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.11 or 1.12.

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce, and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other information, including information in electronic form, relating to the matter, written notice, and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files, or other information, including information in electronic form, relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

[10] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

CLIENT-LAWYER RELATIONSHIP

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Comment

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

[6] Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer should ordinarily obtain informed consent from the client and must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also Rules 1.2 (allocation of authority), 1.4 (communication with client), 1.5(g) (fee sharing), 1.6 (confidentiality), and 5.5(a) (unauthorized practice of law). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience, and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm

lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

[7] When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.

RULE 1.2 Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the lawful objectives of representation, subject to paragraphs (c), (d), and (e), and shall consult with the client as to the means which the lawyer shall choose to pursue. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

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

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) When a lawyer knows that a client expects assistance not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

[**History:** Am. effective July 1, 2007; Am. (c) effective January 11, 2011.]

Comment

Scope of Representation

[1] Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Law defining the lawyer's scope of authority in litigation varies among jurisdictions.

[2] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[3] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Services Limited in Objectives or Means

[4] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[5] An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1, or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

Criminal, Fraudulent and Prohibited Transactions

[6] A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. However, a lawyer may not know-

ingly assist a client in criminal or fraudulent conduct. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[7] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing, except where permitted by Rule 1.6. However, the lawyer is required to avoid furthering the purpose, for example, by suggesting how it might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposes is legally proper but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required.

[8] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[9] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer should not participate in a sham transaction; for example, a transaction to effectuate criminal or fraudulent escape of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

RULE 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. A lawyer's workload should be controlled so that each matter can be handled adequately.

[2] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness.

[3] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client but has not been specifically instructed concerning pursuit of an appeal, the lawyer should advise the client of the possibility of appeal before relinquishing responsibility for the matter.

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment

[1] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. For example, a lawyer negotiating on behalf of a client should provide the client with facts relevant to the matter, inform the client of communications from another party and take other reasonable steps that permit the client to make a decision regarding a serious offer from another party. A lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case should promptly inform the client of its substance unless prior discussions with the client have left it clear that the proposal will be unacceptable. See Rule 1.2(a). Even when a client delegates authority to the lawyer, the client should be kept advised of the status of the matter.

[2] Adequacy of communication depends in part on the kind of advice or assistance involved. For example, in negotiations where there is time to explain a proposal, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that might injure or coerce others. On the other hand, a lawyer ordinarily cannot be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation.

[3] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client. Practical exigency may also require a lawyer to act for a client without prior consultation.

Withholding Information

[4] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

[5] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. A lawyer should promptly respond to or acknowledge client communications.

RULE 1.5 Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
(3) the fee customarily charged in the locality for similar legal services;
(4) the amount involved and the results obtained;
(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(c) A lawyer's fee shall be reasonable but a court determination that a fee is not reasonable shall not be presumptive evidence of a violation that requires discipline of the attorney.

(d) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (f) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, and the litigation and other expenses to be deducted from the recovery. All such expenses shall be deducted before the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the client's share and amount and the method of its determination. The statement shall advise the client of the right to have the fee reviewed as provided in subsection (e).

(e) Upon application by the client, all fee contracts shall be subject to review and approval by the appropriate court having jurisdiction of the matter and the court shall have the authority to determine whether the contract is reasonable. If the court finds the contract is not reasonable, it shall set and allow a reasonable fee.

(f) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) Any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony, support, or property settlement; or

(2) a contingent fee for representing a defendant in a criminal case; or

(3) a contingent fee in any other matter in which such a fee is precluded by statute.

(g) A division of fee, which may include a portion designated for referral of a matter, between or among lawyers who are not in the same firm may be made if the total fee is reasonable and the client is advised of and does not object to the division.

(h) This rule does not prohibit payments to former partners or associates or their estates pursuant to a separation or retirement agreement. [**History:** Am. (g) effective March 11, 1999.]

Comment

Basis or Rate of Fee

[1] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. In a new client-lawyer relationship, however, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth.

Terms of Payment

[2] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(j). However, a fee paid in property instead of money may be subject to special scrutiny because it involves questions concerning both the value of the services and the lawyer's special knowledge of the value of the property.

[3] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures. When there is doubt whether a contingent fee is consistent with the client's best interest, the lawyer should offer the client alternative bases for the fee and explain their implications. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage.

Division of Fee

[4] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist, or when a lawyer refers a matter to a lawyer in another jurisdiction. Paragraph (g) permits the lawyers to

divide a fee by agreement between the participating lawyers if the client is advised, does not object, and the total fee is reasonable. It does not require disclosure to the client of the share that each lawyer is to receive.

[5] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

Disputes over Fees

[6] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure. The fact that a fee may be lower than the customary fee charged in the locality for similar service shall not be a basis for finding the fee to be unreasonable.

RULE 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) To prevent the client from committing a crime;

(2) to secure legal advice about the lawyer's compliance with these Rules;

(3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(4) to comply with other law or a court order; or

(5) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.
[**History**: Am. effective March 1, 2014.]

Comment

[1] The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

[2] The observance of the ethical obligation of a lawyer to hold inviolate confidential information of the client not only facilitates the full development of facts essential to proper representation of the client but also encourages people to seek early legal assistance.

[3] Almost without exception, clients come to lawyers in order to determine what their rights are and what is, in the maze of laws and regulations, deemed to be legal and correct. The common law recognizes that the client's confidences must be protected from disclosure. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[4] A fundamental principle in the client-lawyer relationship is that the lawyer maintain confidentiality of information relating to the representation. The client is thereby encouraged to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter.

[5] The principle of confidentiality is given effect in two related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in all situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law.

Authorized Disclosure

[6] A lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority. In litigation, for example, a lawyer may disclose information by admitting a fact that cannot properly be disputed, or in negotiation by making a disclosure that facilitates a satisfactory conclusion.

[7] Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

[8] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to

comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(2) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

Disclosure Adverse to Client

[9] The confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends serious harm to another person. However, to the extent a lawyer is required or permitted to disclose a client's purposes, the client will be inhibited from revealing facts which would enable the lawyer to counsel against a wrongful course of action. The public is better protected if full and open communication by the client is encouraged than if it is inhibited.

[10] Several situations must be distinguished:

[11] First, the lawyer may not counsel or assist a client in conduct that is criminal or fraudulent. See Rule 1.2(d). Similarly, a lawyer has a duty under Rule 3.3(a)(3) not to use false evidence. This duty is essentially a special instance of the duty prescribed in Rule 1.2(d) to avoid assisting a client in criminal or fraudulent conduct.

[12] Second, the lawyer may have been innocently involved in past conduct by the client that was criminal or fraudulent. In such a situation the lawyer has not violated Rule 1.2(d), because to "counsel or assist" criminal or fraudulent conduct requires knowing that the conduct is of that character.

[13] Third, the lawyer may learn that a client intends prospective conduct that is criminal. As stated in paragraph (b)(1), the lawyer has professional discretion to reveal such information. Where practical, the lawyer should seek to dissuade the client from illegal action. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to the purpose. A lawyer's decision not to take preventive action permitted by paragraph (b)(1) does not violate this Rule.

[14] Fourth, the attorney-client privilege is differently defined in various jurisdictions. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, Rule 1.6(a) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with valid final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client. When the court or other tribunal erroneously denies the claim of privilege, however, the lawyer is faced with a dilemma: refuse to reveal and incur contempt charges or reveal the information and bring often unfortunate consequences to the client. If the first option is chosen, a test of the validity of the denial is usually made through habeas corpus proceedings. The latter permits usual appellate relief. The provisions of paragraph (b) state that it is the lawyer's discretion which avenue to pursue. Both are permitted, and circumstances, such as serious harm to the client upon revelation, often dictate the choice.

[15] The Rules of Professional Conduct in various circumstances permit or require a lawyer to disclose information relating to the representation. See Rules 2.2, 2.3, 3.3 and 4.1. In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client.

Whether another provision of law supersedes Rule 1.6 is a matter of interpretation beyond the scope of these Rules, but a presumption should exist against such a supersession.

[16] If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in Rule 1.16(a)(1).

[17] After withdrawal the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise provided in Rule 1.6. Neither this rule nor Rule 1.8(b) nor Rule 1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like.

[18] Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this Rule, the lawyer should make inquiry within the organization as indicated in Rule 1.13(b).

Dispute Concerning Lawyer's Conduct

[19] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(3) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend, of course, applies where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be not greater than the lawyer reasonably believes is necessary to vindicate innocence, the disclosure should be made in a manner which limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[20] If the lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. Such a charge can arise in a civil, criminal, or professional disciplinary proceeding, and can be based on a wrong allegedly committed by the lawyer against the client, or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together. A lawyer entitled to a fee is permitted by paragraph (b)(3) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to

obtain protective orders or make other arrangements minimizing the risk of disclosure.

Detection of Conflict of Interest

[21] Paragraph (b)(5) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See Rule 1.18, Comment [7]. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, paragraph (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.

[22] Any information disclosed pursuant to paragraph (b)(5) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (b)(5) does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph (b)(5). Paragraph (b)(5) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, see Comment [5], such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

[23] A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(4) permits the lawyer to comply with the court's order.

[24] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to

take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[25] Paragraph (b) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(4). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 1.2(d), 4.1(b), 8.1, and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).

Acting Competently to Preserve Confidentiality

[26] Paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1, and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Comments [3]-[4].

[27] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients.

This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

Former Client

[28] The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

[29] The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

RULE 1.7 Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a substantial risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

[**History:** Am. effective July 1, 2007.]

Comment

General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rule 1.0(f) and (b).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer had obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9. See also Comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9(c).

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

Personal Interest Conflicts

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

[11] When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

[12] A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See Rule 1.8(k).

Interest of Person Paying for a Lawyer's Service

[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations

[14] Ordinarily, clients may consent to representation notwithstanding conflict. However, as indicated in paragraph (b), some conflicts are nonconsentable,

meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

[16] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.

[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(n)), such representation may be precluded by paragraph (b)(1).

Informed Consent

[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0(f) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing

[20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0(b). See also Rule 1.0(o) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict

[22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph (b).

Conflicts in Litigation

[23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

[24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

[25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts

[26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family

members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interest can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose

to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(c).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16.

Organizational Clients

[34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

[35] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise.

The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

RULE 1.8 Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client; and

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.

(j) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(k) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(l) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (j) that applies to any one of them shall apply to all of them.

[**History:** Am. (b) effective March 11, 1999; Am. effective July 1, 2007; Am. (c) effective November 14, 2016.]

Comment

Business Transactions Between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See Rule 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.0(f) (definition of informed consent).

[3] The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal advisor and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors

the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[4] If the client is independently represented in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

Use of Information Related to Representation

[5] Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer; for example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(c), 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3.

Gifts to Lawyers

[6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

[7] If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, the client should have the detached advice that another lawyer can provide. The sole exception to this Rule is where the client is a relative of the donee.

[8] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the

client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights

[9] An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraphs (a) and (i).

Financial Assistance

[10] Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Person Paying for a Lawyer's Services

[11] Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also Rule 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

[12] Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer

(for example, when the third-party payer is a co-client). Under Rule 1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that paragraph. Under Rule 1.7(b), the informed consent must be confirmed in writing.

Aggregate Settlements

[13] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 1.0(f) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Limiting Liability and Settling Malpractice Claims

[14] Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[15] Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.

Acquiring Proprietary Interest in Litigation

[16] Paragraph (j) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like paragraph (e), the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (j) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.

Client-Lawyer Sexual Relationships

[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

[18] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[19] When the client is an organization, paragraph (k) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters.

Imputation of Prohibitions

[20] Under paragraph (l), a prohibition on conduct by an individual lawyer in paragraphs (a) through (j) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first lawyer is not personally involved in the representation of the client. The prohibition set forth in paragraph (k) is personal and is not applied to associated lawyers.

RULE 1.9 Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

Unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

[**History:** Am. (b) effective March 11, 1999; Am. effective July 1, 2007.]

Comment

[1] After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule. Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has

prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. See Comment [9]. Current and former government lawyers must comply with this Rule to the extent required by Rule 1.11.

[2] The scope of a "matter" for purposes of Rule 1.9(a) depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdiction. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

Lawyers Moving Between Firms

[4] When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[5] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10(b) for the restrictions on a firm once a lawyer has terminated association with the firm.

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

[7] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9(c).

[8] Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

[9] The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). See Rule 1.0(f). With regard to

the effectiveness of an advance waiver, see Comment [22] to Rule 1.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.

RULE 1.10 Imputation of Conflicts of Interest: General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

[**History:** Am. effective July 1, 2007.]

Comment

Definition of "Firm"

[1] For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. See Rule 1.0(d). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0, Comments [2]-[4].

Principles of Imputed Disqualification

[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When

a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(b).

[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

[4] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

[5] Rule 1.10(c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7(b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7, Comment [22]. For a definition of informed consent, see Rule 1.0(f).

[6] Where a lawyer has joined a private firm after having represented the government, imputation is governed by Rule 1.11(b) and (c), not this Rule. Under Rule 1.11(d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

[7] Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (l) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

RULE 1.11 Successive Government and Private Employment

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or

employee, unless the appropriate government agency consents after consultation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

(b) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.

(c) Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not:

(1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or

(2) negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(d) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

(e) As used in this Rule, the term "confidential government information" means information which has been obtained under governmental authority and which, at the time this Rule is applied, the government

is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.
[**History:** Am. (c) effective March 11, 1999.]

Comment

[1] This rule prevents a lawyer from exploiting public office for the advantage of a private client. It is a counterpart of Rule 1.10(b), which applies to lawyers moving from one firm to another.

[2] A lawyer representing a government agency, whether employed or specially retained by the government, is subject to the Rules of Professional Conduct, including the prohibition against representing adverse interests stated in Rule 1.7 and the protections afforded former clients in Rule 1.9. In addition, such a lawyer is subject to Rule 1.11 and to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule.

[3] Where the successive clients are a public agency and a private client, the risk exists that power or discretion vested in public authority might be used for the special benefit of a private client. A lawyer should not be in a position where benefit to a private client might affect performance of the lawyer's professional functions on behalf of public authority. Also, unfair advantage could accrue to the private client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. However, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. The provisions for screening and waiver are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service.

[4] When the client is an agency of one government, that agency should be treated as a private client for purposes of this Rule if the lawyer thereafter represents an agency of another government, as when a lawyer represents a city and subsequently is employed by a federal agency.

[5] Paragraphs (a)(1) and (b) do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement. They prohibit directly relating the attorney's compensation to the fee in the matter in which the lawyer is disqualified.

[6] Paragraph (a)(2) does not require that a lawyer give notice to the government agency at a time when premature disclosure would injure the client; a requirement for premature disclosure might preclude engagement of the lawyer. Such notice is however, required to be given as soon as practicable in order that the government agency will have a reasonable opportunity to ascertain that the lawyer is complying with Rule 1.11 and to take appropriate action if it believes the lawyer is not complying.

[7] Paragraph (b) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

[8] Paragraphs (a) and (c) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

[9] Paragraph (c) does not disqualify other lawyers in the agency with which the lawyer in question has become associated.

RULE 1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

[**History:** Am. (a) effective March 11, 1999; Am. effective July 1, 2007.]

Comment

[1] This Rule generally parallels Rule 1.11. The term "personally and substantially" signifies that a judge who was a member of a multi-member court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative

responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the Comment to Rule 1.11. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges.

[2] Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This Rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See Rule 1.0(f) and (b). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 2.3.

[3] Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

[4] Requirements for screening procedures are stated in Rule 1.0(l). Paragraph (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[5] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

RULE 1.13 Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to

the representation to persons outside the organization. Such measures may include among others:

(1) asking for reconsideration of the matter;

(2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and

(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer shall follow Rule 1.16.

(d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(e) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

[**History:** Am. (b) effective July 1, 2007.]

Comment

The Entity as the Client

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents.

[2] Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

[3] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrong-doing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, the constituents of an organizational client are the clients of the lawyer.

The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

[4] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. However, different considerations arise when the lawyer knows that the organization may be substantially injured by action of a constituent that is in violation of law. In such a circumstance, it may be reasonably necessary for the lawyer to ask the constituent to reconsider the matter. If that fails, or if the matter is of sufficient seriousness and importance to the organization, it may be reasonably necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. Clear justification should exist for seeking review over the head of the constituent normally responsible for it. The stated policy of the organization may define circumstances and prescribe channels for such review, and a lawyer should encourage the formulation of such a policy. Even in the absence of organization policy, however, the lawyer may have an obligation to refer a matter to higher authority, depending on the seriousness of the matter and whether the constituent in question has apparent motives to act at variance with the organization's interest. Review by the chief executive officer or by the board of directors may be required when the matter is of importance commensurate with their authority. At some point it may be useful or essential to obtain an independent legal opinion.

[5] In an extreme case, it may be reasonably necessary for the lawyer to refer the matter to the organization's highest authority. Ordinarily, that is the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions highest authority reposes elsewhere; for example, in the independent directors of a corporation.

Relation to Other Rules

[6] The authority and responsibility provided in paragraph (b) are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rules 1.6, 1.8, and 1.16, 3.3 or 4.1. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rule 1.2(d) can be applicable.

Government Agency

[7] The duty defined in this Rule applies to governmental organizations. However, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful official act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. Therefore, defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context. Although in some circumstances the client may be a specific agency, it is generally the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the government as a whole may

be the client for purpose of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. This Rule does not limit that authority. See note on Scope.

Clarifying the Lawyer's Role

[8] There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization, of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity or interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

[9] Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation

[10] Paragraph (e) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative Actions

[11] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

[12] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

RULE 1.14 Client with Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

[**History:** Am. effective July 1, 2007.]

Comment

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).

Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision; variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the law-

yer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

RULE 1.15 Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state of Kansas. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d) Preserving identity of funds and property of a client.

(1) All funds of clients paid to a lawyer or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable accounts maintained in the State of Kansas with a federal or state chartered or licensed financial institution and insured by an agency of the federal or state government, and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(i) Funds reasonably sufficient to pay bank charges may be deposited therein.

(ii) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(2) The lawyer shall:

(i) Promptly notify a client of the receipt of the client's funds, securities, or other properties.

(ii) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(iii) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them.

(iv) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

(v) Produce all trust account records for examination by the Disciplinary Administrator upon request of the Disciplinary Administrator in compliance with Rule 236.

(3) Except as provided in subsection (3)(iv), any lawyer or law firm that creates or maintains an account for funds of clients or third persons that are nominal in amount or that are expected to be held for a short period of time and on which interest is not paid to the clients or third persons shall comply with the following provisions:

(i) Such an account shall be established and maintained with a federal or state chartered or licensed financial institution located in Kansas and insured by an agency of the federal or state government. Funds shall be subject to withdrawal upon request and without delay.

(ii) If the account bears interest, the rate of interest payable shall not be less than the rate paid by the institution to regular, nonattorney depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or law firm so long as there is no impairment of the right to withdraw or transfer principal immediately.

(iii) If the account bears interest, lawyers or law firms that deposit client funds in such an account shall direct the depository institution:

(aa) to remit at least quarterly, to the Kansas Bar Foundation, Inc., interest or dividends, as the case may be, on the average monthly balance in the account or as otherwise computed in accordance with the institution's standard accounting practice; and

(bb) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent and the rate of the interest applied; and

(cc) to transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied, and the average account balance of the period for which the report is made.

(iv) A lawyer or law firm that elects not to comply with Rule 1.15(d)(3)(iii):

(aa) shall file a Notice of Declination with the Clerk of the Appellate Courts on or before the beginning

of the next annual registration period under Supreme Court Rule 206; or

(bb) notwithstanding the foregoing, may file a Notice of Declination with the Clerk of the Appellate Courts at such other time, after July 1, 1992, that a decision to decline is effected.

(v) Every lawyer who has not previously registered or who is required to register under Supreme Court Rule 206 shall be provided the opportunity, at the time of initially registering, to elect or decline to comply with Rule 1.15(d)(3)(iii) (the IOLTA program) on such forms as the Clerk of the Appellate Courts may prescribe.

(e) Every Kansas lawyer engaged in the private practice of law in Kansas shall, as a part of his or her annual registration, certify to the following:

"I am familiar with and have read Kansas Supreme Court Rule 240, KRPC 1.15, and I and/or my law firm comply/complies with KRPC 1.15 pertaining to preserving the identity of funds and property of a client."

(f) (1) Every federal or state chartered or licensed financial institution referred to in KRPC 1.15(d)(1) shall be approved as a depository for lawyer trust accounts if it files with the Disciplinary Administrator an agreement, in a form provided by the Disciplinary Administrator, to report to the Disciplinary Administrator in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, whether or not the instrument is honored. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty (30) days' notice in writing to the Disciplinary Administrator. The Disciplinary Administrator shall annually publish a list of approved financial institutions.

(2) The overdraft notification agreement shall provide that all reports made by the financial institution shall contain the following information:

(i) the identity of the financial institution;

(ii) the identity of the lawyer or law firm;

(iii) the account number;

(iv) either (i) the amount of the overdraft and the date created; or (ii) the amount of returned instrument(s) and date returned.

The information required by the notification agreement shall be provided within five (5) banking days of the date the item(s) were paid or returned unpaid.

(3) Every lawyer admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

(4) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule. The Disciplinary Administrator's Office shall reimburse the financial institution for the reasonable cost of producing the reports and records required by this rule should the lawyer or law firm fail to do so.

(5) This rule shall not create any cause of action for any person or organization against the financial institution based upon the failure of the financial institution to provide the notices required by this rule.

[**History:** Am. effective June 1, 1992; Am. effective April 30, 1993; Am. effective March 11, 1999; Am. effective July 1, 2007.]

Comment

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Rule 1.15(a) requires that trust funds be deposited in an account separate and apart from the lawyer's, at a financial institution in the state of Kansas. Interest earned on client's funds shall not be retained by an attorney. The lawyer or law firm must deposit trust funds in one or more of the following insured accounts:

1. a separate interest-bearing account for each matter, on which the interest will be paid to the client or a third party; or
2. a pooled noninterest-bearing account for the deposit of all trust funds that are not invested for the benefit of the client or third person if the lawyer or law firm elects to decline under Rule 1.15(d)(3)(iv); or
3. a pooled interest-bearing account for the deposit of all trust funds that are nominal in amount or that are expected to be held for a short period of time, with interest earnings paid to the Kansas Bar Foundation under the IOLTA program (Interest on Lawyer Trust Account); or
4. a pooled interest-bearing account for the deposit of all trust funds that are nominal in amount or expected to be held for a short period of time, with interest earnings credited proportionately to the client or third party for the benefit of whom the funds are held.

[2] Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

[3] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust, and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client and, accordingly, may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party.

[5] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction.

[6] A "client's security fund" provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer should participate.

[7] Rule 1.15 of the Kansas Rules of Professional Conduct requires that lawyers in the practice of law who are entrusted with the property of law clients and third persons must hold that property with the care required of a professional fiduciary. The basis for Rule 1.15 is the lawyer's fiduciary obligation to safeguard trust property and to segregate it from the lawyer's own property, and not to benefit personally from the possession of the property.

[8] Rule 1.15 specifically requires a lawyer to preserve "complete records" concerning the law firm's trust accounts. It also obligates a lawyer to "promptly render a full accounting" for the receipt and distribution of trust property. A violation of Rule 1.15 subjects a lawyer to professional discipline.

[9] Paragraph (e) requires lawyers who are engaged in private practice, as a part of their annual lawyer registration, to certify compliance with Rule 1.15 concerning their trust account(s).

RULE 1.16 Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;
(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client;
(3) the lawyer is discharged; or
(4) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(1) the client has used the lawyer's services to perpetrate a crime or fraud;
(2) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;
(3) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
(4) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
(5) other good cause for withdrawal exists.

(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

Comment

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion.

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may wish an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring the client to represent himself or herself.

[6] If the client is mentally incompetent, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and, in an extreme case, may initiate proceedings for a conservatorship or similar protection of the client. See Rule 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is required if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer should not be associated with such conduct even if the lawyer does not further it. Withdrawal is permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer also may withdraw where the client insists on a repugnant or imprudent objective.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client Upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law.

[10] Whether or not a lawyer for an organization may under certain unusual circumstances have a legal obligation to the organization after withdrawing or being discharged by the organization's highest authority is beyond the scope of these Rules.

RULE 1.17 Sale of Law Practice

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the state in which the practice has been conducted;

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) The seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within 90 days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(d) The fees charged clients shall not be increased by reason of the sale.

[**History**: New rule adopted effective March 1, 2014.]

Comment

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Termination of Practice by the Seller

[2] The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a judiciary position.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

[4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice on the occasion of moving to another state. Some states are so large that a move from one locale therein to another is tantamount to leaving the jurisdiction in which the lawyer has engaged in the practice of law. To also accommodate lawyers so situated, states may permit the sale of the practice when the lawyer leaves the geographical area rather than the jurisdiction. The alternative desired should be indicated by selecting one of the two provided for in Rule 1.17(a).

[5] This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5(g). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice

[6] The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied,

however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Model Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. See Rule 1.6(b)(5). Providing the purchaser access to detailed information relating to the representation, such as the client's file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

[8] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera. (A procedure by which such an order can be obtained needs to be established in jurisdictions in which it presently does not exist.)

[9] All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such

approval must be obtained before the matter can be included in the sale (see Rule 1.16).

Applicability of the Rule

[13] This Rule applies to the sale of a law practice of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a nonlawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[15] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

RULE 1.18 Duties to Prospective Client

(a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

[**History:** New rule adopted effective July 1, 2007; Am. effective March 1, 2014.]

Comment

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's discussions with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer's advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. See also Comment [4]. In contrast, a consultation does not occur if a person provides information to a lawyer in response to advertising that merely describes the lawyer's education, experience, areas of practice, and contact information, or provides legal information of general interest. Such a person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client" within the meaning of paragraph (a). Moreover, a person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a "prospective client."

[3] It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial consultation to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for nonrepresentation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all

affected present or former clients must be obtained before accepting the representation.

[5] A lawyer may condition a consultation with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. See Rule 1.0(f) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

[6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

[7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule 1.0(l) (requirements for screening procedures). Paragraph (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[8] Notice, including a general description of the subject matter about which the lawyer was consulted, and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[9] For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see Rule 1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see Rule 1.15.

[10] Screening permitted pursuant to Rule 1.18(d) is to be distinguished from the screening prohibited by the Kansas Supreme Court in the cases of *Zimmerman v. Mahaska Bottling Co.*, 270 Kan. 810, 19 P.3d 784 (2001), and *Lansing-Delaware Water District v. Oak Lane Park, Inc.*, 248 Kan. 563, 808 P.2d 1369 (1991).

COUNSELOR

RULE 2.1 Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Comment

Scope of Advice

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrowly legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, duty to the client under Rule 1.4 may require that the lawyer act if the client's course of action is related to the representation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

RULE 2.2 Evaluation for Use by Third Persons

(a) A lawyer may undertake an evaluation of a matter affecting a client for the use of someone other than the client if:

(1) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and

(2) the client gives informed consent.

(b) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

[**History:** Rule renumbered from Rule 2.3 to Rule 2.2 and Am. (a) effective July 1, 2007.]

Comment

Definition

[1] An evaluation may be performed at the client's direction but for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government agency; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

[2] Lawyers for the government may be called upon to give a formal opinion on the legality of contemplated government agency action. In making such an evaluation, the government lawyer acts at the behest of the government as the client but for the purpose of establishing the limits of the agency's authorized activity. Such an opinion is to be distinguished from confidential legal advice given agency officials. The critical question is whether the opinion is to be made public.

[3] A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in this Rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duty to Third Person

[4] When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken on behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible

with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclosure of Information

[5] The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations which are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances.

Financial Auditors' Requests for Information

[6] When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

RULE 2.3 Lawyer Serving as Third-Party Neutral

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

[**History:** New rule effective July 1, 2007.]

Comment

[1] Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such

as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decisionmaker depends on the particular process that is either selected by the parties or mandated by a court.

[2] The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution.

[3] Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

[4] A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

[5] Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 1.0(n)), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

ADVOCATE

RULE 3.1 Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Comment

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person or if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

RULE 3.2 Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Comment

[1] Dilatory practices bring the administration of justice into disrepute. Delay should not be indulged merely for the convenience of the advocates, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

RULE 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

[**History:** Am. effective July 1, 2007.]

Comment

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(n) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's

duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(d), see the Comment to that Rule. See also the Comment to Rule 8.4(b).

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(3), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction which has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence

[5] Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness' testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or

statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment [9].

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(e). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] Although paragraph (a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [7].

Remedial Measures

[10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done—making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus,

the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of Adjudicative Process

[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

Duration of Obligation

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Ex Parte Proceedings

[14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in an ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal

[15] Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

RULE 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Comment

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information.

[3] With regard to paragraph (b), it is not improper to pay a witness' expenses or to compensate an expert witness on terms permitted by law. The common-law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

[4] Paragraph (f) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also Rule 4.2.

RULE 3.5 Impartiality and Decorum of the Tribunal

A lawyer shall not:

(a) give or lend anything of value to a judge, official, or employee of a tribunal except as permitted by the Kansas Code of Judicial Conduct as it may, from time to time be adopted in Kansas, nor may a lawyer attempt to improperly influence a judge, official or employee of a tribunal, but a lawyer may make a contribution to the campaign fund of a candidate for judicial office in conformity with the Kansas Code of Judicial Conduct;

(b) communicate or cause another to communicate with a member of a jury or the venire from which the jury will be selected about the matters under consideration other than in the course of official proceedings until after the discharge of the jury from further consideration of the case;

(c) communicate or cause another to communicate as to the merits of a cause with a judge or official before whom an adversary proceeding is pending except:

(1) in the course of official proceedings in the cause;

(2) in writing, if the lawyer promptly delivers a copy of the writing to opposing counsel or to the adverse party if unrepresented;

(3) orally upon adequate notice to opposing counsel or the adverse party if unrepresented;

(4) as otherwise authorized by law or court rule;

(d) engage in undignified or discourteous conduct degrading to a tribunal.

[**History:** Am. (a) effective July 1, 2007; Am. (a) effective September 13, 2016.]

Kansas Comment

[1] Rule 3.5 has imposed an absolute prohibition upon a lawyer giving or lending anything of value to a judge or official, except as permitted by the Code of Judicial Conduct. In other words, a lawyer may ethically give what a judge may ethically receive.

RULE 3.6 Trial Publicity

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a) a lawyer may state:

(1) the claim or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of the matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

[**History:** Am. effective July 1, 2007.]

Comment

[1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair

trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

[2] Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.4(c) requires compliance with such Rules.

[3] The Rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the rule applies only to lawyers who are, or who have been, involved in the investigation or litigation of a case, and their associates.

[4] Paragraph (b) identifies specific matters about which a lawyer's statements would not ordinarily be considered to present a substantial likelihood of material prejudice and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a).

[5] There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;
(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;
(5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or
(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an

accusation and that the defendant is presumed innocent until and unless proven guilty.

[6] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Nonjury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

[7] Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

[8] See Rule 3.8(f) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

RULE 3.7 Lawyer as Witness

(a) A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as an advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Comment

[1] Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

Advocate-Witness Rule

[2] The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's right in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

[3] To protect the tribunal, paragraph (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in paragraphs (a)(1) through (a)(3). Paragraph (a)(1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph (a)(2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has first-hand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

[4] Apart from these two exceptions, paragraph (a)(3) recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The conflict of interest principles stated in Rules 1.7, 1.9 and 1.10 have no application to this aspect of the problem.

[5] Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, paragraph (b) permits the lawyer to do so except in situations involving a conflict of interest.

Conflict of Interest

[6] In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with Rules 1.7 or 1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer, the representation involves a conflict of interest that requires compliance with Rule 1.7. This would be true even though the lawyer might not be prohibited by paragraph (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by paragraph (a)(3) might be precluded from doing so by Rule 1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent, confirmed in writing. In some cases, the lawyer will be precluded from seeking the client's consent. See Rule 1.7. See Rule 1.0(b) for the definition of "confirmed in writing" and Rule 1.0(f) for the definition of "informed consent."

[7] Paragraph (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by paragraph (a). If, however, the testifying lawyer would also be disqualified by Rule 1.7 or Rule 1.9 from representing the client

in the matter, other lawyers in the firm will be precluded from representing the client by Rule 1.10 unless the client gives informed consent under the conditions stated in Rule 1.7.

RULE 3.8 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

[**History:** Am. (e) and (f) effective July 1, 2007.]

Comment

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required

to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

[2] In some jurisdictions, a defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not seek to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented accused persons. Paragraph (c) does not apply, however, to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of an uncharged suspect who has knowingly waived the rights to counsel and silence.

[3] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[4] Paragraph (e) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship.

[5] Paragraph (f) supplements Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements which a prosecutor may make which comply with Rule 3.6(b) or 3.6(c).

[6] Like other lawyers, prosecutors are subject to Rules 5.1 and 5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Paragraph (f) reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, paragraph (f) requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

RULE 3.9 Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative or administrative tribunal in a nonadjudicative proceeding shall disclose that the appearance

is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

Comment

[1] In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body should deal with the tribunal honestly and in conformity with applicable rules of procedure.

[2] Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

[3] This Rule does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency; representation in such a transaction is governed by Rules 4.1 through 4.4.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

RULE 4.1 Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by or made discretionary under Rule 1.6.

Comment

Misrepresentation

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing person of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by failure to act.

Statements of Fact

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.

Fraud by Client

[3] Paragraph (b) recognizes that substantive law may require a lawyer to disclose certain information to avoid being deemed to have assisted the client's crime or fraud. The requirement of disclosure created by this paragraph is, however, subject to the obligations created by Rule 1.6.

RULE 4.2 Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. [**History:** Am. effective July 1, 2007.]

Comment

[1] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounselled disclosure of information relating to the representation.

[2] This Rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

[3] The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

[4] This Rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this Rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this Rule through the acts of another. See Rule 8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make. Also, a lawyer having independent justification for communicating with the other party is permitted to do so. Communications authorized by law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

[5] Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication

does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this Rule.

[6] A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[7] In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

[8] The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See Rule 1.0(g). Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

[9] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to Rule 4.3.

RULE 4.3 Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Comment

[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. During the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel.

RULE 4.4 Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

[**History:** Am. (b) effective July 1, 2007; Am. effective March 1, 2014.]

Comment

[1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalog all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusion into privileged relationships, such as the client-lawyer relationship.

[2] Paragraph (b) recognizes that lawyers sometimes receive a document or electronically stored information that was mistakenly sent or produced by opposing parties or their lawyers. A document or electronically stored information is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that such a document or electronically stored information was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the document or electronically stored information, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document or electronically stored information has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document or electronically stored information that the lawyer knows or reasonably should know may have been inappropriately obtained by the sending person. For purposes of this Rule, "document or electronically stored information" includes, in addition to paper documents, email and other forms of electronically stored information, including embedded data (commonly referred to as "metadata"), that is subject to being read or put into readable form. Metadata in electronic documents creates an obligation under this Rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving lawyer.

[3] Some lawyers may choose to return a document or delete electronically stored information unread, for example, when the lawyer learns before receiving it that it was inadvertently sent. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document or delete electronically stored information is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

LAW FIRMS AND ASSOCIATIONS

RULE 5.1 Responsibilities of Partners, Managers and Supervisory Lawyers

(a) A partner in a law firm and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the rules of professional conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the rules of professional conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the rules of professional conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

[**History:** Am. effective July 1, 2007.]

Comment

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0(d). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its

practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4(a).

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has such supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2(a).

RULE 5.2 Responsibilities of a Subordinate Lawyer

(a) A lawyer is bound by the rules of professional conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the rules of professional conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Comment

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

RULE 5.3 Responsibilities Regarding Nonlawyer Assistance

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

[**History:** Am. effective July 1, 2007; Am. effective March 1, 2014.]

Comment

[1] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters act in a way compatible with the professional obligations of the lawyer. See Comment [6] to Rule 1.1 (retaining lawyers outside the firm) and Comment [1] to Rule 5.1 (responsibilities with respect to lawyers within a firm). Paragraph (b) applies to lawyers who have supervisory authority over such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

Nonlawyers Within the Firm

[2] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Nonlawyers Outside the Firm

[3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience, and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a) (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

[4] Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer. See Rule 1.2. When making such an allocation in a matter pending

before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

RULE 5.4 Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

[**History:** Am. effective July 1, 2007.]

Comment

[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of

judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

[2] This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also Rule 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).

RULE 5.5 Unauthorized Practice of Law: Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law (including Kansas Supreme Court Rule 712), establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are services in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates; are not services for which the forum requires pro hac vice admission; and, when performed by a foreign lawyer and requires advice on the law of this or another jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; and otherwise complies with Kansas Supreme Court Rule 712; or

(2) are services that the lawyer is authorized by federal law or other law or rule to provide in this jurisdiction.

(e) For purposes of paragraph (d), the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or a public authority.

[**History:** Am. effective March 1, 2014.]

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for his or her work. See Rule 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants, and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by

the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b)(1) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

[5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public, or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a United States or foreign lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory, or commonwealth of the United States. Paragraph (d) also applies to lawyers admitted in a foreign jurisdiction. The word "admitted" in paragraphs (c), (d), and (e) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally uniform, foreign, or international law. Lawyers desiring to provide pro bono legal services on a temporary basis in a juris-

diction that has been affected by a major disaster, but in which they are not otherwise authorized to practice law, as well as lawyers from the affected jurisdiction who seek to practice law temporarily in another jurisdiction, but in which they are not otherwise authorized to practice law, should consult the American Bar Association's Model Court Rule on Provision of Legal Services Following Determination of Major Disaster.

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States or a foreign jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, or the equivalent thereof, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law. Pursuant to paragraph (c) of this Rule, a lawyer admitted in any United States jurisdiction may also provide legal services in this jurisdiction on a temporary basis. See also Model Rule on Temporary Practice by Foreign Lawyers. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another United States or foreign jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a United States or foreign lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers, and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work. To further decrease any risk to the client, when advising on the domestic law of a United States jurisdiction or on the law of the United States, the foreign lawyer authorized to practice under paragraph (d)(1) of this Rule needs to base that advice on the advice of a lawyer licensed and authorized by the jurisdiction.

[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education. See also Kansas Supreme Court Rule 712, governing the admission of attorneys performing legal services for a single employer.

[18] Paragraph (d)(2) recognizes that a United States or foreign lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation, or judicial precedent.

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5.

[20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is

not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction.

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services in this jurisdiction is governed by Rules 7.1 to 7.5.

RULE 5.6 Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

[**History:** Am. effective July 1, 2007.]

Comment

[1] An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

RULE 5.7 Responsibilities Regarding Law-Related Services

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

[**History:** New rule effective July 1, 2007.]

Comment

[1] When a lawyer performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests, and obligations of a lawyer to maintain professional independence apply to the provision of law-related services when that may not be the case.

[2] Rule 5.7 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related services are performed and whether the law-related services are performed through a law firm or a separate entity. The Rule identifies the circumstances in which all of the Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a lawyer involved in the provision of law-related services is subject to those Rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. See, e.g., Rule 8.4.

[3] When law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer in providing the law-related services must adhere to the requirements of the Rules of Professional Conduct as provided in paragraph (a)(1). Even when the law-related and legal services are provided in circumstances that are distinct from each other, for example through separate entities or different support staff within the law firm, the Rules of Professional Conduct apply to the lawyer as provided in paragraph (a)(2) unless the lawyer takes reasonable measures to assure that the recipient of the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not apply.

[4] Law-related services also may be provided through an entity that is distinct from that through which the lawyer provides legal services. If the lawyer individually or with others has control of such an entity's operations, the Rule requires the lawyer to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Rules of Professional Conduct that relate to the client-lawyer relationship do not apply. A lawyer's control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case.

[5] When a client-lawyer relationship exists with a person who is referred by a lawyer to a separate law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with Rule 1.8(a).

[6] In taking the reasonable measures referred to in paragraph (a)(2) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a

manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

[7] The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.

[8] Regardless of the sophistication of potential recipients of law-related services, a lawyer should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a)(2) of the Rule cannot be met. In such a case a lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required by Rule 5.3, that of nonlawyer employees in the distinct entity that the lawyer controls complies in all respects with the Rules of Professional Conduct.

[9] A broad range of economic and other interests of clients may be served by lawyers engaging in the delivery of law-related services. Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting.

[10] When a lawyer is obliged to accord the recipients of such services the protections of those Rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (Rules 1.7 through 1.11, especially Rules 1.7(a)(2) and 1.8(a), (b) and (f)), and to scrupulously adhere to the requirements of Rule 1.6 relating to disclosure of confidential information. The promotion of the law-related services must also in all respects comply with Rules 7.1 through 7.3, dealing with advertising and solicitation. In that regard, lawyers should take special care to identify the obligations that may be imposed as a result of a jurisdiction's decisional law.

[11] When the full protections of all of the Rules of Professional Conduct do not apply to the provision of law-related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest and permissible business relationships with clients. See also Rule 8.4 (Misconduct).

PUBLIC SERVICE

RULE 6.1 Pro Bono Public Service

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

Comment

[1] The ABA House of Delegates has formally acknowledged "the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services" without fee, or at a substantially reduced fee, in one or more of the following areas: poverty law, civil rights law, public rights law, charitable organization representation and the administration of justice. The Rule expresses that policy but is not intended to be enforced through disciplinary process.

[2] The rights and responsibilities of individuals and organizations in the United States are increasingly defined in legal terms. As a consequence, legal assistance in coping with the web of statutes, rules and regulations is imperative for persons of modest and limited means, as well as for the relatively well-to-do.

[3] The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the needs. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services and other related programs have been developed, and others will be developed by the profession and government. Every lawyer should support all proper efforts to meet this need for legal services.

RULE 6.2 Accepting Appointments

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the rules of professional conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Comment

[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing *pro bono publico* service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel

[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

RULE 6.3 Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

[**History:** Am. effective March 11, 1999.]

Comment

[1] Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of

such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

RULE 6.4 Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

Comment

[1] Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. See also Rule 1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefited.

INFORMATION ABOUT LEGAL SERVICES

RULE 7.1 Communications Concerning a Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law; or

(c) compares the lawyer's services with other lawyer's services, unless the comparison can be factually substantiated.

Comment

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them should be truthful. The prohibition in paragraph (b) of statements that may create "unjustified expectations" would ordinarily preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, and advertisements containing client endorsements. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances.

[2] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

RULE 7.2 Advertising

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertisements or communications permitted by this rule and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

(d) Any communication made pursuant to this rule shall include the name of at least one lawyer responsible for its content.

[**History:** Am. effective March 11, 1999; Am. (a) effective July 1, 2007.]

Comment

[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal

services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. But see Rule 7.3(a) for the prohibition against a solicitation through a real-time electronic exchange initiated by the lawyer.

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Record of Advertising

[5] Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this Rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits and may be of doubtful constitutionality.

Paying Others to Recommend a Lawyer

[6] Except as permitted under paragraphs (b)(1)-(b)(4), lawyers are not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouchers for a lawyer's credentials, abilities, competence, character, or other professional qualities. Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents, and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads,

so long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(g) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[7] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services [i] permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of the public; [ii] require each participating lawyer to carry reasonably adequate malpractice insurance; [iii] act reasonably to assess client satisfaction and address client complaints; and [iv] do not make referrals to lawyers who own, operate or are employed by the referral service).

[8] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

RULE 7.3 Solicitation of Clients

(a) A lawyer shall not by in-person, live telephone, or real-time electronic contact solicit professional employment when a significant

motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress, or harassment.

(c) Every written, recorded, or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal service in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer which uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

[**History:** Am. effective March 11, 1999; Am. effective July 1, 2007; Am. effective March 1, 2014.]

Comment

[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial; is in response to a request for information; or is automatically generated in response to Internet searches.

[2] There is a potential for abuse when a solicitation involves direct in-person, live telephone or real-time electronic contact by a lawyer with someone known to need legal services. These forms of contact subject a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

[3] This potential for abuse inherent in direct in-person, live telephone, or real-time electronic solicitation justifies its prohibition, particularly since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not involve real-time contact and do not violate other laws governing solicitations. These forms of communication and solicitations make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to direct in-person, telephone or real-time electronic persuasion that may overwhelm the person's judgment.

[4] The use of general advertising and written, recorded, or electronic communications to transmit information from lawyer to the public, rather than direct in-person, live telephone, or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone, or real-time electronic contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in abusive practices against a former client, or a person with whom the lawyer has a close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee, or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[6] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information that is false or misleading within the meaning of Rule 7.1; which involves coercion, duress, or harassment within the meaning of Rule 7.3(b)(2); or which involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b).

[7] This rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of and

details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[8] The requirement in Rule 7.3(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

[9] Paragraph (d) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2, and 7.3(b). See 8.4(a).

RULE 7.4 Communication of Fields of Practice

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

(c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.

(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and

(2) the name of the certifying organization is clearly identified in the communication.

[**History:** Am. (b), (c), and (d) effective July 1, 2007.]

Comment

[1] Paragraph (a) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services; for example, in a telephone directory or other advertising. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted so to indicate. However, stating that the lawyer is a "specialist" is not permitted. This term has acquired a secondary meaning implying formal recognition as a specialist. Hence, use of this term may be misleading unless the lawyer is certified or recognized in accordance with procedures in the state where the lawyer is licensed to practice.

[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes that designation of Admiralty practice has a long historical tradition associated with maritime commerce and federal courts.

[3] Paragraph (d) permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

RULE 7.5 Firm Names and Letterheads

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization

and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Comment

[1] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable as long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

[2] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones," for that title suggests partnership in the practice of law.

MAINTAINING THE INTEGRITY OF THE PROFESSION

RULE 8.1 Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

Comment

[1] The duty imposed by this Rule extends to persons seeking admission

to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including Rule 1.6 and, in some cases, Rule 3.3.

RULE 8.2 Judicial and Legal Officials

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the code of judicial conduct.

Comment

[1] Assessment by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

RULE 8.3 Reporting Professional Misconduct

(a) A lawyer having knowledge of any action, inaction, or conduct which in his or her opinion constitutes misconduct of an attorney under these rules shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This rule does not require disclosure of information otherwise protected by Rule 1.6. In addition, a lawyer is not required to disclose information concerning any such violation which is discovered through participation in a Substance Abuse Committee, Service to the Bar Committee or similar committee sponsored by a state or local bar association, or by participation in a self-help organization such as Alcoholics Anonymous, through which aid is rendered to another lawyer who may be impaired in the practice of law.

[**History:** Am. (a) effective March 11, 1999; Am. (b) effective July 1, 2007.]

Comment

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where it would not substantially prejudice the client's interests.

[3] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship.

[4] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These Rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.

Kansas Comment

[5] Substance Abuse Committees have earned an important position in the organization of bar association activities and render a valuable and important service to the profession and the public. As such, these committees and other recognized self-help organizations, and the lawyers who serve on them, should be allowed to function without fear of the requirement to report every violation which might be uncovered during the course of their service. To provide otherwise might inhibit free and open communication by the incapacitated lawyer and result in neglected matters remaining so. In this instance, the Kansas Committee feels that the public is better served by providing a measure of confidentiality to the incapacitated lawyer's communications with those who would help the lawyer in serving clients.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

Comment

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is

personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[4] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

RULE 8.5 Jurisdiction

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.

Comment

[1] In modern practice lawyers frequently act outside the territorial limits of the jurisdiction in which they are licensed to practice, either in another state or outside the United States. In doing so, they remain subject to the governing authority of the jurisdiction in which they are licensed to practice. If their activity in another jurisdiction is substantial and continuous, it may constitute practice of law in that jurisdiction. See Rule 5.5.

[2] If the rules of professional conduct in the two jurisdictions differ, principles of conflict of laws may apply. Similar problems can arise when a lawyer is licensed to practice in more than one jurisdiction.

[3] Where the lawyer is licensed to practice law in two jurisdictions which impose conflicting obligations, applicable rules of choice of law may govern the situation. A related problem arises with respect to practice before a federal tribunal, where the general authority of the states to regulate the practice of law must be reconciled with such authority as federal tribunals may have to regulate practice before them.

Rule 241

RULE RELATING TO THE LAWYERS' FUND FOR CLIENT PROTECTION

(a) **Purpose and Scope.**

(1) The purpose of the Lawyers' Fund for Client Protection is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing the loss to a client caused by the dishonest conduct of a lawyer admitted and licensed to practice law in Kansas when the loss occurs in the course of a lawyer-client relationship between the lawyer and the claimant.

(2) The Supreme Court, in the exercise of its inherent power to oversee the administration of justice and to regulate the practice of law and Kansas attorneys in the exercise of their professional responsibility, finds the need to participate in collective efforts of the bar to reimburse and to protect, insofar as reasonably possible, persons who may be injured by the dishonest conduct of lawyers. Therefore, the Supreme Court adopts this rule to carry out that purpose.

(3) The Fund is not a guarantor of honesty in the practice of law. Dishonest conduct by a member of the bar imposes no separate legal obligation on the profession collectively, or on the Fund, to compensate for the lawyer's misconduct. The Fund is a lawyer-financed public service, and the payment of reimbursement is a matter of grace and discretion by the Client Protection Fund Commission.

(4) Losses caused by the dishonest conduct of lawyers serving as fiduciaries outside of a lawyer-client relationship are not reimbursable.

(b) **Establishment.**

(1) The Lawyers' Fund for Client Protection is established.

(2) Under the supervision of the Supreme Court, the Client Protection Fund Commission is established. The Commission may award payments to qualified claimants and authorize disbursements from the Fund under this rule.

(3) This rule is effective for claims arising out of conduct occurring on or after July 1, 1993.

(4) The Chief Justice has authority to contract on behalf of the Commission for the investment of money with the Pooled

Money Investment Board established under K.S.A. 75-4221a prior to the organizational meeting of the Commission.

(c) **Funding.**

(1) The Supreme Court may provide for funding by Kansas lawyers through annual assessments and from transfers of money from the disciplinary fee fund.

(2) The Fund is not a part of the state treasury. Any money recovered by the Commission will be redeposited into the Fund.

(3) Any lawyer whose actions have caused payment of funds to a claimant from the Fund must make restitution or be subject to an action for restitution to the Fund for all money paid as a result of the lawyer's conduct with interest at the prejudgment rate under K.S.A. 16-201, in addition to payment of the procedural costs of processing the claim, including any attorney fees.

(d) **Funds and Disbursements.** All money or other assets of the Fund will be held in the name of the Fund. All disbursements and expenditures must be made upon warrants of the director of accounts and reports issued through vouchers prepared by the Commission and approved by the Chief Justice or the Chief Justice's designee. The chief financial officer with the Office of Judicial Administration will conduct an annual review of financial internal controls, processes and procedures, and reports.

(e) **Composition and Officers of the Commission.**

(1) The Commission is comprised of four lawyers registered as active under Rule 206; one active or retired district judge, Court of Appeals judge, or Supreme Court justice; and two nonlawyers appointed by the Supreme Court for initial terms as follows:

(A) two lawyers for one year;

(B) one nonlawyer for two years;

(C) one judge or justice and one lawyer for two years;

(D) one nonlawyer for three years; and

(E) one lawyer for three years.

(2) Subsequent appointments will be for a three-year term. The Supreme Court will fill any vacancy occurring on the Commission. A person appointed to fill a vacancy on the Commission will serve the unexpired term of the previous member. No member will serve more than two consecutive three-year terms, except that any person initially appointed for less than three years may then serve two consecutive three-year terms.

(3) The Supreme Court may appoint a temporary Commission member on the request of the Commission.

(4) Commission members will serve without compensation but will be reimbursed for their necessary expenses incurred in the discharge of their duties.
(5) The Commission must elect a chair and vice-chair to serve for a term of one year and until a successor is elected. The vice-chair will perform all of the duties and exercise the authority of chair in the chair's absence.
(6) The disciplinary administrator will act as the custodian of the official files and records of the Commission and perform other ministerial functions as the Commission directs. All papers and pleadings will be filed with the disciplinary administrator.

(f) **Commission Meetings.**
(1) The Commission will meet as necessary to conduct the business of the Fund and to timely process claims.
(2) A quorum for any meeting of the Commission is four members of the Commission.
(3) Minutes of meetings will be taken and maintained by the disciplinary administrator.

(g) **Duties and Responsibilities of the Commission.** The Commission has the following duties and responsibilities:
(1) to receive, investigate, evaluate, and pay or deny claims, or portions thereof, as the Commission deems appropriate;
(2) to promulgate rules of procedure not inconsistent with this rule;
(3) to contract with the Pooled Money Investment Board—the Commission's status to contract and authority for such contract is established by this rule;
(4) to advise and consult with the Pooled Money Investment Board on appropriate general investment objectives and cash flow needs of the Fund;
(5) to provide an annual financial report to the Supreme Court and to make other reports as necessary;
(6) to publicize its activities to the public and the bar;
(7) to retain and compensate legal counsel to make or supervise an investigation and the gathering of evidence, to present evidence to the Commission, and to take any other legal action necessary to effectuate the purpose of the Fund;
(8) to prosecute claims for restitution to which the Fund is entitled;
(9) to participate in studies and programs for client protection and prevention of dishonest conduct by lawyers; and
(10) to perform all other acts necessary or proper for the fulfillment of the purposes of the Fund and its effective administration.

(h) **Money and Investments.**

(1) All money received as interest earned by the investment of Fund money by the Pooled Money Investment Board will be credited to the Fund.

(2) All money transferred from the disciplinary fee fund under this rule will be credited to the Fund.

(3) Any return on investment is to be compatible with the Fund's responsibility to consider and pay, in full or in part, legitimate claims as determined within the sole discretion of the Commission.

(i) **Conflict of Interest.**

(1) A Commission member who has or has had a lawyer-client relationship or financial relationship with a claimant or lawyer who is the subject of a claim must not participate in the investigation or determination of a claim involving that claimant or lawyer.

(2) A Commission member with a past or present relationship, other than as provided in subsection (i)(1), with a claimant or the lawyer who is the subject of the claim must disclose such relationship to the Commission and, if the Commission deems appropriate, that Commission member will not participate in any proceeding relating to such claim.

(j) **Immunity.** Commission members, commission counsel, commission staff, a person investigating a claim on behalf of the Commission, the disciplinary administrator, members of the Office of the Disciplinary Administrator, claimants, and lawyers who assist claimants are entitled to judicial immunity from civil liability for all acts in the course of their official duties.

(k) **Reimbursement from Fund Is a Matter of Grace.** No person has the legal right to reimbursement from the Fund.

(l) **Eligible Claims.**

(1) The claimant's loss must be caused by the dishonest conduct of a member or former member of the Kansas bar and must have arisen under the following circumstances:

(A) in the course of a lawyer-client relationship between the lawyer and the claimant; and

(B) in Kansas or as a result of the lawyer's federal practice based on the lawyer's Kansas license.

(2) The claim must have been filed no later than one year after the claimant knew or should have known of the dishonest conduct of the lawyer.

(3) As used in this rule, "dishonest conduct" means any of the following:
  (A) acts committed by a lawyer in the wrongful taking or conversion of money, property, or other things of value;
  (B) refusal to refund unearned fees received in advance where the lawyer performed no services or such an insignificant portion of the service that the refusal to refund the unearned fees constitutes a wrongful taking or conversion of money;
  (C) the borrowing of money from a client without an intention to repay it or with disregard of the lawyer's inability or reasonably anticipated inability to repay it; or
  (D) a lawyer's act of intentional dishonesty that proximately leads to the loss of money or property.

(4) Except as provided by subsection (l)(5), the following losses and damages are not reimbursable:
  (A) a loss incurred by a spouse, child, parent, grandparent, sibling, partner, associate, or employee of the lawyer causing the loss;
  (B) a loss covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety, or insurer is subrogated to the extent of that subrogated interest;
  (C) a loss incurred by any business entity controlled by the lawyer or any person or entity described in subsection (l)(4)(A);
  (D) a loss incurred by any governmental entity or agency; and
  (E) interest and other incidental and out-of-pocket expenses.

(5) In a case of extreme hardship or special and unusual circumstances, the Commission may, in its discretion, recognize a claim arising out of conduct occurring on or after July 1, 1993, that would otherwise be excluded under this rule.

(m) **Procedures and Responsibilities for Submitting a Claim.**

(1) The Commission must prepare and approve a form for submitting a claim for reimbursement.

(2) The form will require at least the following information provided by the claimant under penalty of perjury:
  (A) the name and address of the claimant, home and business telephone number, occupation and employer, and social security number or federal tax identification number;
  (B) the name, address, and telephone number of the lawyer alleged to have dishonestly taken the claimant's money or property, and any family or business relationship of the

claimant to the lawyer;

(C) the legal or other fiduciary services the lawyer was to perform for the claimant;

(D) the amount paid to the lawyer;

(E) a copy of any written agreement pertaining to the claim;

(F) the form of the claimant's loss, e.g., money, securities, or other property;

(G) the amount of the loss and the date when the loss occurred;

(H) the date when the claimant discovered the loss and how the claimant discovered the loss;

(I) a description of the lawyer's dishonest conduct and the name and address of any person who has knowledge of the loss;

(J) the name of any person to whom the loss has been reported, e.g., district attorney, police, disciplinary agency, or other person or entity, and a copy of any complaint and description of any action that was taken;

(K) any source from which the loss can be reimbursed, including any insurance, fidelity, or surety agreement;

(L) a description of any steps taken to recover the loss directly from the lawyer or any other source;

(M) the circumstances under which the claimant has been or will be reimbursed for any part of the claim, including the amount received or to be received and the source, along with a statement that the claimant agrees to notify the Commission of any reimbursements the claimant receives during the pendency of the claim;

(N) any other facts believed to be important to the Commission's consideration of the claim;

(O) the manner in which the claimant learned about the Fund;

(P) the name, address, and telephone number of the claimant's present lawyer, if any;

(Q) a statement that the claimant agrees to cooperate with the Commission in reference to the claim or as required by subsection (q) in reference to civil actions that may be brought in the name of the Commission under a subrogation and assignment clause contained within the claim;

(R) the name and address of any other state's fund to which the claimant has applied or intends to apply for reimbursement, together with a copy of the application; and

(S) a statement that the claimant agrees to the publication of appropriate information about the nature of the claim and the amount of reimbursement if reimbursement is made.

(3) The claimant has the responsibility to complete the claim form and provide satisfactory evidence of a reimbursable loss.
(4) The claim will be submitted to the Commission by filing the statement of claim form with the Office of the Disciplinary Administrator, 701 Southwest Jackson Street, First Floor, Topeka, Kansas 66603.
(5) As a condition precedent to the filing of a claim, the claimant must report the dishonest conduct to the disciplinary administrator.

(n) **Processing Claims.**
(1) When a claim is filed, the accused lawyer will be notified and given an opportunity to respond to the claim. A copy of the claim will be mailed by certified mail return receipt requested to the lawyer's last registered address under Rule 206. The lawyer will have 20 days from the date of mailing to respond. A response is not required from the lawyer.
(2) The disciplinary administrator will investigate the claim, or the Commission will retain and compensate legal counsel as provided in subsection (g)(7).
(3) Whenever it appears that a claim is not eligible for reimbursement, the Commission will advise the claimant and lawyer of the reasons that the claim is not eligible for reimbursement and that, unless additional facts to support eligibility are submitted to the Commission within 30 days, the claim will be dismissed.
(4) A copy of an order disciplining a lawyer for the same act or conduct alleged in a claim, or a final judgment imposing civil or criminal liability, is evidence that the lawyer committed such act or conduct.
(5) The disciplinary administrator will furnish a report of the investigation of the matter to the Commission.
(6) Upon receipt of the disciplinary administrator's report of the investigation, the Commission will evaluate whether the investigation is complete and determine whether the Commission should conduct additional investigation or await the pendency of any disciplinary investigation or proceeding involving the same act or conduct that is alleged in the claim.
(7) The Commission may conduct additional investigation or may request the disciplinary administrator to conduct additional investigation and to verify any claim not previously investigated by the disciplinary administrator.
(8) The Commission may request that testimony or evidence be presented to complete the record. Upon request, the claimant or

lawyer, or their personal representatives, will be given an opportunity to be heard. The chairman, vice-chairman, or any member of the Commission acting under this rule may administer oaths and affirmations and compel by subpoena the attendance of witnesses and the production of pertinent books, papers, and documents. All subpoenas will be issued by and returned to the disciplinary administrator. A judge of the district court of any judicial district in which the attendance or production is required must, upon proper application, enforce the attendance and testimony of any witness and the production of any documents subpoenaed. Subpoena and witness fees and mileage are the same as in the district court.

(9) The Commission may make a finding of dishonest conduct for purposes of determining a claim. The determination is not a finding of dishonest conduct for purposes of disciplinary proceedings or for civil or criminal judgments and is inadmissible in any other proceeding.

(10) When the record is complete, the claim will be determined on the basis of all available evidence, and the Commission will notify the claimant and the lawyer of its determination and reasoning. The approval or denial of the claim requires the affirmative votes of at least four Commission members.

(11) Any proceeding on a claim need not be conducted according to technical rules relating to evidence, procedure, and witnesses. Any relevant evidence will be admitted if it is the sort of evidence that responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common-law or statutory rule that might make improper the admission of such evidence in court proceedings. The claimant has the duty to supply relevant evidence to support the claim.

(12) The Commission will determine the order and manner of payment and pay all approved claims.

(o) **Payment of Reimbursement.**

(1) The Commission is vested with the power, which it will exercise in its sole discretion, to determine whether a claim merits reimbursement from the Fund and, if so: the amount of such reimbursement, not to exceed $125,000 for any claimant, with an aggregate limit of $350,000 for claims against any one lawyer; the time, place, and manner of its payment; the conditions upon which payment will be made; and the order in which payment will be made. In making such determinations, the Commission may consider, together with such other factors as it

deems appropriate, the following:

(A) the amounts available and likely to become available to the Fund for payment of claims;

(B) the size and number of claims that are likely to be presented in the future;

(C) the total amount of losses caused by the dishonest conduct of any one lawyer or associated group of lawyers;

(D) the unreimbursed amount of claims recognized by the Commission in the past as meriting reimbursement but for which reimbursement has not been made in the total amount of the loss sustained;

(E) the amount of the claimant's loss as compared with the amount of the losses sustained by others who may merit reimbursement from the Fund;

(F) the degree of hardship the claimant has suffered by the loss; and

(G) any conduct of the claimant that may have contributed to the loss.

(2) If a claimant is a minor or an incompetent person, the reimbursement may be paid to another person or an entity for the benefit of the claimant.

(p) **Reconsideration.** The claimant may request reconsideration within 30 days of the denial or the determination of the amount of reimbursement of the claim. If the claimant fails to make a request or the request is denied, the decision of the Commission is final.

(q) **Restitution and Subrogation.**

(1) A lawyer whose dishonest conduct results in reimbursement to a claimant may be liable to the Fund in an action for restitution. The Commission may bring such action as it deems advisable to determine and enforce its rights to restitution and as a subrogee or assignee of the claimant's rights.

(2) As a condition of reimbursement, a claimant is required to provide the Fund with a transfer of the claimant's rights against the lawyer and the lawyer's legal representative, estate, or assigns and of the claimant's rights against any third party or entity who may be liable for the claimant's loss, to the extent of the amount of the Fund's expenses and payments attributable to the claim. The Commission may sue to enforce such assigned or subrogated rights for the purposes of preserving its rights and recovering its expenses and payments to the claimant. The claimant retains all other rights arising and accruing by reason of the lawyer's dishonest conduct.

(3) Upon commencement of an action by the Commission as subrogee or assignee of a claimant, the Commission will advise the claimant, who may then join in such action to recover the claimant's unreimbursed losses.

(4) In the event that the claimant commences an action to recover unreimbursed losses against the lawyer or another entity who may be liable for the claimant's losses, the claimant will be required to notify the Commission of such action.

(5) The claimant will be required to agree to cooperate in all efforts that the Commission undertakes to achieve restitution for the Fund.

(r) **Judicial Relief.**

(1) When a claim has been filed, the Commission may make application to the appropriate lower court for relief to protect the interests of the claimant or the Fund where the assets of the claimant appear to be in danger of misappropriation or loss or to secure the claimant's or Fund's right to restitution or subrogation.

(2) A court's jurisdiction in a proceeding includes the authority to appoint and compensate a custodial receiver to conserve the assets and to close the practice of a missing, incapacitated, or deceased lawyer.

(s) **Confidentiality.**

(1) A claim form, proceedings, and reports involving a claim for reimbursement are confidential until the Commission authorizes reimbursement to the claimant, except as provided in this rule. Any person violating this subsection may be subject to punishment for contempt of the Supreme Court.

(2) The rule of confidentiality does not apply to the claimant or the lawyer or to any information that the Commission considers to be relevant to any current or future criminal prosecution against the lawyer.

(3) The disciplinary administrator and anyone appointed to conduct an investigation may receive and disclose information reasonably necessary to complete the investigation.

(4) The Commission in its discretion is authorized to disclose to the Supreme Court Nominating Commission, the District Judicial Nominating Commissions, the Commission on Judicial Conduct, or the Governor all or any part of the file involving any judge or prospective nominee for judicial appointment and to make public any part of its files involving any candidate for election to or retention in public office.

(5) Both the claimant and the lawyer will be advised of the status of the Commission's consideration of the claim and will be informed of the final determination. After payment of reimbursement, the Commission may publicize the nature of the claim, the amount of reimbursement, and the name of the lawyer. The Commission will not publicize the name and address of the claimant unless the claimant has granted specific written permission.

(t) **Compensation for Representing Claimant.** It is not intended that the claimant's application for reimbursement will be an adversarial process, and for that reason, counsel for the claimant generally will not be needed. If a claimant needs a lawyer, it is intended that lawyers will recognize this responsibility and provide assistance as a public service. It is also intended that all members of the Kansas bar will cooperate in providing any services that claimants may need.

Comments

Subsection (a)—Purpose and Scope.

[1] The Model Rules for the Lawyers' Fund for Client Protection, approved by the American Bar Association House of Delegates on August 9, 1989, as modified, have been generally adopted by the Supreme Court. The comments are intended solely to explain the intent of the rules to the Commission, the bar, and the public.

[2] Subsection (a)(2) recognizes that lawyers individually, and the bar collectively, have the obligation to support reimbursement programs for clients who have lost money or property as a result of a lawyer's dishonest conduct. The term "dishonest conduct" is defined in subsection (l).

[3] Despite the best attempts of the legal profession to establish high standards of ethics and severe disciplinary penalties for their breach, some lawyers steal money from their clients. Typically, those lawyers lack the financial means to make restitution to their clients.

[4] The organized bar throughout the United States has responded by creating security funds to provide necessary reimbursement. The funds have been created by court rule, legislation, and voluntary action of state and local bar associations.

[5] Client protection funds reimburse claimants for dishonest conduct by members of the bar within the licensing state. Generally, a reimbursable loss must occur within a lawyer-client relationship.

[6] The underlying philosophy for these funds is that the legal profession functions by seeking and obtaining the trust of clients. The public is therefore vulnerable to the rare dishonest lawyer who breaches that trust. Moreover, the misdeeds of a lawyer in handling client money frequently taint the public atmosphere of trust on which the profession depends.

[7] Although these programs are essentially remedial in nature and do not provide preemptive public protection in the same manner as admission criteria and codes of professional responsibility, they address the growing awareness that discipline without reimbursement to claimants does not meet the profession's responsibility to itself and the public.

Subsection (b)—Establishment.

[8] The practice of law is so directly connected to the exercise of judicial power and the administration of justice that the right to define and regulate it belongs to the Supreme Court. The Supreme Court bears the responsibility for establishing qualifications for practice and for ensuring that lawyers subject to its jurisdiction adhere to the standards of conduct the Supreme Court mandates.

[9] Subsection (b)(2) links the establishment of a Fund to the Supreme Court's power to regulate the practice of law.

[10] Under subsection (b)(3), the Commission will not pay claims for losses incurred as a result of dishonest conduct committed prior to July 1, 1993.

Subsection (c)—Funding.

[11] Subsection (c)(1) suggests that the single most important factor in establishing and maintaining an effective client reimbursement program is ensuring adequate and continuous funding through a reliable source.

[12] The Supreme Court has the inherent power to establish a Fund and to require lawyers admitted to the practice of law in Kansas to contribute to it. For legislative acknowledgment, see Senate Concurrent Resolution No. 1644 (1992).

[13] Subsection (c)(3) assigns potential liability for payment of restitution to the lawyer who caused the loss that the Fund reimbursed. See subsection (q) for restitution and subrogation enforcement standards.

Subsection (d)—Funds and Disbursements.

[14] Matters and expenses for which the Fund may be used should be considered and stated by the Commission in written policies.

[15] Administrative expenses will be incurred in operating the Fund even though lawyers volunteer their services to the Commission. The cost of administering the Fund, e.g., expenses of the Commission, hearings on claims, record keeping, and salaries for full-time and part-time staff, will be paid out of either the disciplinary fee fund or the Fund as determined by the Supreme Court.

Subsection (e)—Composition and Officers of the Commission.

[16] A Commission composed of lawyers and nonlawyers results in balanced evaluation of claims within the full context of the lawyer-client relationship.

[17] A Commission of seven members is small enough to accomplish the work of the Fund and not so large as to discourage active involvement by each member or to be cumbersome.

[18] Terms of office are staggered to encourage continuity of experience and the development of policy and precedent.

[19] Commission members will serve without compensation, pro bono publico, but will be reimbursed for expenses incurred in the discharge of their office.

Subsection (g)—Duties and Responsibilities of the Commission.

[20] Investing money that is not needed to cover current claims permits a reasonable return without risking the integrity of the Fund. Investments should be of appropriate duration to maintain liquidity of assets and enable the Commission to pay losses promptly.

[21] Subsections (g)(5) and (g)(6) can require public information programs. The Commission has the affirmative obligation to publicize its activities to the bench, the bar, and the general public. It is suggested that the services of the Supreme Court's public information officer be utilized.

[22] The assets of the Fund should not be unduly diminished by employing investigative or other personnel who would duplicate the efforts of others interested in lawyer professional responsibility. See subsection (n) regarding the cooperative effort anticipated between the Commission and the disciplinary administrator.

[23] The Commission should make an attempt to prosecute all claims for restitution. Restitution is one way of replenishing the Fund's assets. See also subsection (q), which focuses on subrogation and other methods of restitution.

[24] Commission members should also consider involvement in seminars and continuing legal educational programs focusing on client protection. As programs for client protection become more sophisticated, the Commission should take advantage of planning or participating in these educational programs as a further deterrent to dishonest conduct.

Subsection (j)—Immunity.

[25] Immunity from civil liability encourages lawyers and nonlawyers to serve on the Commission and protects their independent judgment in the evaluation of claims. Immunity also protects the fiscal integrity of the Fund and encourages claimants and lawyers to participate in seeking reimbursement for eligible losses.

Subsection (k)—Reimbursement from Fund is a Matter of Grace.

[26] Although this rule establishes procedures for the processing of claims seeking reimbursement from the Fund, the rule is not intended to create either substantive rights to reimbursement, compensation, damages, or restitution for a lawyer's dishonest conduct or procedural rights subject to judicial review with respect to the determination of claims.

Subsection (l)—Eligible Claims.

[27] Subsection (l)(1) sets forth the basic criteria for compensability of a loss. The successful claimant is one who proves the following factors: (1) a demonstrable loss; (2) caused by the dishonest conduct of a lawyer; and (3) the loss was within or arising out of a lawyer-client relationship. Determining whether a loss arose out of a lawyer-client relationship can be difficult especially where the loss asserted occurred following an "investment." One approach to use is a "but for" test. The loss arose out of and in the course of a lawyer-client relationship. But for the lawyer-client relationship with the client, such loss could not have occurred. The following four factors may be considered in applying this test: the disparity in bargaining power be-

tween the lawyer and client, the extent to which the lawyer's status overcame the normal prudence of the client, the extent to which the lawyer received information about the financial affairs of the client, and whether the principal part of the transaction was an activity that required a license to practice law.

[28] Subsection (l)(2) contains a one-year limitation on the filing of claims from the date the claimant knew or should have known of the dishonest conduct.

[29] Subsection (l)(3) adds to the rule a definition of "dishonest conduct." Subsection (l)(3)(A) sets forth the basic concept as one of conversion or embezzlement. Subsections (l)(3)(B), (C), and (D) make clear that if the essential nature of the transaction was conversion, dishonest conduct will be found even where the lawyer took money in the guise of a fee, a loan, or an investment. Indeed, employing such a ruse is part of the dishonesty. Subsection (l)(3)(B) sets forth a standard for the handling of problematic unearned fee claims. It is not intended to encompass legitimate fee disputes. Where money received by a lawyer was clearly neither earned nor returned, however, the client may feel violated, hardship can result, and the Commission may find dishonest conduct. Subsection (l)(3)(C) anticipates overreaching by a lawyer, in the context of a loan to the lawyer by the client, to such an egregious extent as to be tantamount to theft. Similarly, under subsection (l)(3)(D), use by the lawyer of a purported "investment" to induce a client to turn over money will not preclude a finding of dishonest conduct where the "investment" is worthless or nonexistent.

[30] Subsection (l)(3) must be read in light of subsection (l)(1). In focusing on dishonest conduct, it must be kept in mind that such conduct must occur within or as a result of a lawyer-client relationship in order to be compensable.

[31] Subsection (l)(4) presents various exclusions from reimbursable claims. Subsections (l)(4)(A), (C), and (D) declare classes of potential claimants to be ineligible for policy reasons. Subsection (l)(4)(E) excludes as nonreimbursable such consequential damages as lost interest and a claimant's incidental and out-of-pocket expenses. Third parties such as title insurance companies and banks cashing checks over forged endorsements are suggested in subsection (l)(4)(B); to the extent possible, recourse from a third party should be sought prior to seeking it from the Fund. Third parties lack the lawyer-client relationship necessary to prosecute a claim in their own right.

[32] Subsection (l)(5) reiterates the critical importance of vesting in the Commission the discretion to do justice in each claim considered, without strictly following technical rules. Subsection (l)(5) recognizes that it is impossible to predict every factual circumstance that will be presented to the Commission.

Subsection (m)—Procedures and Responsibilities for Filing a Claim.

[33] The Commission is required to develop a claim form for claimants to establish their eligibility for reimbursement. The form should be comprehensive enough to minimize the investigative burden of the Commission but not so detailed as to discourage eligible claimants from applying for reimbursement.

[34] Subsection (m)(3) assigns the ultimate burden of establishing eligibility for reimbursement on the claimant. Consistent with the evidentiary standards in subsection (n), no formal or technical quantum of proof is imposed on the claimant or the Commission. In a case where the lawyer's dishonest conduct was already established in a disciplinary action based on the clear and convincing evidence standard under Rule 226 or the beyond a reasonable doubt standard in a criminal proceeding involving the same facts that constitute the claim for reimbursement, the Commission may grant a reimbursement to the claimant without further investigation or delay.

Subsection (n)—Processing Claims.

[35] This subsection seeks to set forth a framework that balances the Fund's duty to address the claimant's allegations efficiently with the need to present the respondent lawyer with an opportunity to defend. See subsections (n)(1), (3), (8), and (10).

[36] The overriding policy implicit in subsection (n) is that the Commission exercise its discretion so as to make the best possible decision in each claim presented. Under subsection (n)(11), technical rules of evidence will not be employed to hinder the Commission from accomplishing its mission. Under subsection (n)(7), the Commission may conduct any investigation it deems appropriate, including the taking of testimony as provided in subsection (n)(8). The order and manner of payment of claims is likewise within the Commission's discretion under subsection (n)(12). Under subsection (n)(10), the Commission is to articulate to each side the reason for its determination on a given claim.

[37] Note that under subsection (n)(10) the affirmative vote of at least four Commission members is required to dispose of a claim. For example, if the minimum four Commission members necessary for a quorum under subsection (f)(2) are present, any motion that cannot garner unanimous support will fail. Thus, a majority of the quorum present will not suffice. Subsection (n)(10) does not prevent determinations of claims by mail ballot.

[38] Ideally, the initial investigation should be done by the disciplinary administrator to avoid duplication of effort and inconsistent findings of both entities. The financial integrity of the Fund is preserved by using existing resources. Investigation by the Commission should be utilized to gather additional evidence or to provide evidence if necessary.

[39] In most matters, a criminal conviction or a finding during disciplinary proceedings will establish "dishonest conduct" for purposes of the Commission's determination of the claim.

Subsection (o)—Payment of Reimbursement.

[40] Full reimbursement is the goal of the Fund, and adequate financing is essential to its achievement. Realistically, however, this ideal must be tempered with the Fund's need to provide all eligible claimants with meaningful, if not total, reimbursement for their losses.

[41] A maximum limitation on reimbursement permits the assets of the developing fund to accumulate while establishing a historical record of claims presented. It also serves to protect the Fund from catastrophic losses.

[42] Maximum limitations, whether individual or aggregate, should be reviewed periodically in light of the Fund's actual experience in providing reimbursement to eligible claimants for their documented losses.

[43] Subsection (o)(1) assigns responsibility for the determination of the actual amount of each reimbursement to the discretion of the Commission not to exceed individual claimant and aggregate limits set by the Supreme Court.

[44] Subsection (o)(1) also grants the Commission flexibility in paying reimbursement. Depending on the Fund's financial and administrative needs, periodic payment dates can be established, and reimbursement can be paid in lump sums or in installments.

[45] Similarly, where a loss involves a minor or an incompetent person, subsection (o)(2) permits the Commission to pay the reimbursement directly to a parent or legal representative for the benefit of the claimant.

Subsection (p)—Reconsideration.

[46] Authorization for payment is within the discretion of the Commission. A procedure providing an opportunity for reconsideration of a claim permits an aggrieved claimant further consideration without creating a right of appeal or judicial review. The opportunity for reconsideration also provides a safeguard against dismissal of a claim not fully presented earlier.

Subsection (q)—Restitution and Subrogation.

[47] As fiduciaries of the Fund, the Commission has the obligation to seek restitution in appropriate cases for reimbursement paid to claimants. Successful restitution efforts can enlarge the Fund's financial capacity to provide reimbursement to eligible claimants and also reduce the need to increase assessments on lawyers to finance the Fund's operations.

[48] The Commission may seek restitution by direct legal action against a lawyer, as well as by the enforcement of rights provided by subrogation and assignment against the lawyer, the lawyer's estate, or any other person or entity who may be liable for the claimant's loss.

[49] Subsection (q)(1) is a statement of the Fund's right to seek restitution from the lawyer whose dishonest conduct resulted in a payment of reimbursement.

[50] Subsection (q)(2) requires the Commission to establish a subrogation policy that requires claimants who receive reimbursement from the Fund to contractually transfer to the Fund their rights against the lawyer and any other person or entity who may be liable for the reimbursed loss. This ordinary transfer of rights by subrogation is to the extent of the reimbursement provided by the Fund.

[51] Subsections (q)(3) and (q)(4) provide for appropriate notice and joinder of parties in subrogation actions by the Fund or by a claimant where the claimant has received less than full reimbursement from the Fund.

[52] Subsection (q)(5) requires that a claimant agree to cooperate with the Fund in its efforts to secure restitution.

[53] The provisions of subsections (q)(2), (3), (4), and (5) will ordinarily be incorporated into the Fund's subrogation agreement with the claimant.

[54] Subrogation agreements should be carefully drawn to maximize the Commission's creditor rights. In appropriate cases, subrogation should be supplemented with assignment of specific rights possessed by a claimant, such

as a payee's rights as a party to a negotiable instrument or as a judgment creditor.

Subsection (r)—Judicial Relief.

[55] Occasionally a situation arises in which the protection of clients and this subsection require the appointment of a custodial receiver to wind down a lawyer's practice and to preserve assets. Subsection (r) makes explicit the Commission's authority to seek these remedies when available under Kansas law.

Subsection (s)—Confidentiality.

[56] The need to protect wrongly accused lawyers and to preserve the independence of the Commission's deliberations should be balanced with the interests of protecting the public and enhancing the administration of justice.

[57] It is within the discretion of the Commission to determine which agencies other than the disciplinary administrator should be given access to claim files. Criminal prosecutors and agencies considering judicial or administrative appointments may be assisted by access to information contained in claims for reimbursement from the Fund. Subsection (s)(2) adopts Rule 237(c)'s exclusion of the claimant and the lawyer from the rule of confidentiality.

[58] Publication of the decisions of the Commission highlights the responsiveness of the legal profession to clients and its commitment to self-regulation. The Commission should be aware that on occasion the need to protect the client's identity from the results of publicity may occur. Timing of the release may be based on other pending proceedings. Responsible public information programs are essential to achieve the Fund's purpose. Both the public and the news media should be kept informed of the Commission's activities and the Fund's status. After payment of reimbursement, the Commission may publicize the reimbursement through the Supreme Court's public information officer or in any other manner directed by the Commission.

Subsection (t)—Compensation for Representing Claimant.

[59] Claimants occasionally may appear before the Commission represented by counsel. Claimants in need of counsel in preparing or presenting a claim should receive such assistance. Since the Commission members volunteer their services, lawyers should also contribute their legal services pro bono publico. However, it is not the intent of this subsection to require assisting lawyers to spend their own money. They may request the Fund to reimburse out-of-pocket expenses.

[**History:** New rule effective March 30, 1993; Am. effective December 1, 1999; Am. effective December 2, 2002; Am. effective February 13, 2008; Am. effective June 25, 2010; Am. effective April 30, 2012; Rule 227 renumbered to Rule 241 and Am. effective January 1, 2021.]

RULES RELATING TO THE STATE BOARD OF EXAMINERS OF COURT REPORTERS

Rule 301

STATE BOARD OF EXAMINERS OF COURT REPORTERS

There is hereby created a board to be known as the State Board of Examiners of Court Reporters that, subject to direction and approval of the Supreme Court, will have general supervision over granting certificates of eligibility for certified court reporters and over the conduct of all court reporters holding such certificates.
[**History:** Am. effective September 5, 1991; Am. effective January 3, 2006; Am. effective July 1, 2020.]

Rule 302

MEMBERSHIP—APPOINTMENT

The Supreme Court will appoint Board members. The Board will consist of no more than nine members and will have at least two judges of the district court, two attorneys engaged in the active practice of law, and one official reporter of the district court. Each appointment is for a three-year term. The Supreme Court will appoint a new member to fill a vacancy on the Board occurring during a term. A new member appointed to fill a vacancy serves the unexpired term of the previous member. No member may serve more than three consecutive three-year terms, except that a member initially appointed to serve an unexpired term may serve three consecutive three-year terms thereafter. If any reporter or judge ceases to hold office, that person's membership on the Board terminates.
[**History:** Am. effective September 5, 1991; Am. effective July 28, 1995; Am. effective July 1, 2012; Am. effective July 1, 2020.]

Rule 303

ORGANIZATION—QUORUM

At the annual October meeting, the Board will elect one of its members as the chairperson. The judicial administrator or a designee will serve as secretary but will not be a member of the Board. Five members constitute a quorum for the transaction of business.
[**History:** Am. effective September 5, 1991; Am. effective July 1, 2012; Am. effective July 1, 2020.]

Rule 304

DUTIES; IMMUNITY

(a) The Board will perform the following duties:
   (1) conduct preliminary investigations to determine the qualifications of the applicants to be examined;
   (2) conduct examinations of applicants for certificates; and
   (3) investigate complaints and conduct hearings as outlined in Rule 367, No. 9.

(b) Complaints, reports, and testimony in the course of proceedings under these rules will be deemed to be made in the course of judicial proceedings. Members of the Board and Board staff are absolutely immune from suit for all conduct in the course of their official duties. All other participants are entitled to all rights, privileges, and immunities afforded to participants in actions filed in the courts of this state.

[**History:** Am. effective January 3, 2006; Am. effective July 1, 2020.]

Rule 305

MEETINGS

In October of each year, the Board will hold a regular meeting to conduct examinations of applicants for certificates at a time and place designated by the Board. The Board may also hold special meetings as needed to address Board business or to conduct additional examinations.
[**History:** Am. effective May 18, 1977; Am. effective July 12, 1994; Am. effective July 1, 2020.]

Rule 306

RULES

Subject to approval by the Supreme Court, the Board may make rules relating to the examination of applicants, as well as rules governing the conduct of any reporter who holds a certificate. When approved by the court, they will be published as a part of the Rules of the Supreme Court.
[**History:** Am. effective January 3, 2006; Am. effective July 1, 2020.]

Rule 307

APPLICATION—EXAMINATION FEE

(a) **Qualifications**. An applicant for examination must be at least 18 years old and must be a high school graduate or possess an equivalent education.

(b) **Application and Fee**. An application for examination must be on a form approved by the Board and furnished by the Office of Judicial Administration. The application must be received by the Office of Judicial Administration at least 30 days before any regular or special examination and must be accompanied by the following:

(1) a nonrefundable payment of $125, payable to the Office of Judicial Administration; and

(2) at least three affidavits or certificates, on forms supplied by the Office of Judicial Administration, from responsible persons unrelated to the applicant by marriage or blood attesting that the applicant is a person of good moral character.

(c) **When Application Valid for Next Examination**. If the applicant does not take the examination for which application is made or if the applicant fails to pass the required examination, the original application remains valid for the next ensuing examination if the applicant:

(1) notifies the Office of Judicial Administration in writing by the submission deadline that the applicant intends to take the examination;

(2) files with the Office of Judicial Administration an updated application or a letter verifying that the application previously submitted remains current; and

(3) includes a nonrefundable payment of $125, payable to the Office of Judicial Administration.

[**History:** Am. effective March 15, 1986; Am. effective November 14, 1988; Am. effective September 5, 1991; Am. effective February 8, 1994; Am effective December 3, 1996; Am. effective October 20, 1999; Am. effective November 30, 2000; Am. effective January 3, 2006; Am. effective January 25, 2016; Am. effective July 1, 2020.]

Rule 308

EXAMINATION

(a) Notes may be taken by stenographic or voice writing machine. Each applicant must state the system the applicant uses in taking notes

and demonstrate that the applicant follows the principles of the system with sufficient accuracy that other persons who use the same system can read the notes readily. Applicants must write from dictation at speeds of 180 words per minute (medical testimony, two voices), 200 words per minute (solid matter, one voice), and 225 words per minute (ordinary testimony, two voices) and transcribe therefrom as may be determined by the Board. Each dictation segment must be transcribed at 95% accuracy or better with no more than 45 errors at 180 words per minute, 50 errors at 200 words per minute, and 57 errors at 225 words per minute. Each dictation segment will be five minutes in duration. Applicants must furnish their own equipment and materials.

(b) Applicants must be examined by written examination and obtain a score of at least 70% with respect to their knowledge of the duties of a court reporter, court procedure, and general legal terminology.

(c) Speed and accuracy in taking, transcribing, and reading notes will be the chief basis of the test, but the Board will also consider punctuation, spelling, and style of transcribing and general education.

(d) Any certificate holder who desires certification in a system of verbatim reporting different than the system in which the reporter has already been certified by the Board must, prior to employing that system in the courts of this state, submit an application to the Office of Judicial Administration on a form prescribed by the Board, asking permission to take an examination for certification in that system. The application must be accompanied by a nonrefundable fee of $125. No certificate will be valid for any system of verbatim reporting other than that for which it is issued.

[**History:** Am. effective September 5, 1991; Am. effective January 3, 2006; Am. effective July 1, 2020.]

Rule 309

ISSUANCE OF CERTIFICATE

(a) Any person who desires to obtain a certificate must submit an application and take the examination as provided by Rules 307 and 308. The Supreme Court will issue a certificate to each person who takes the examination and is favorably recommended by the Board unless some reason appears why it should not be done.

(b) If any person who has previously passed the examination but has not received certification because of residency desires to receive certification, such person must, without payment of additional fees, submit a current application for certification for the Board to consider.

(c) An individual who holds a Registered Professional Reporter (RPR) certificate from the National Court Reporters Association or a Certified Verbatim Reporter (CVR) certificate from the National Verbatim Court Reporters Association and is in good standing with such association may, on application to the Board as provided by Rule 307, become a Kansas Certified Court Reporter upon successfully passing a written examination with respect to the individual's knowledge of the duties of a court reporter, court procedure, and general legal terminology.

(d) An individual who holds a valid certified court reporter or certified shorthand reporter certificate or license issued by a state other than Kansas may, on application to the Board as provided by Rule 307, become a Kansas Certified Court Reporter after satisfying the following conditions:
   (1) providing proof of passage of another state's examination that is at least as difficult as the Kansas examination;
   (2) providing proof of passage of the other state's examination within three years prior to submitting an application in Kansas or providing proof acceptable to the Board of five years of experience as a court reporter; and
   (3) successfully completing Kansas' written examination with respect to the applicant's knowledge of the duties of a court reporter, court procedure, and general legal terminology.

[**History:** Am. effective September 5, 1991; Am. effective January 3, 2006; Am. effective July 1, 2020.]

Rule 310

TITLE AND RIGHT TO USE CERTIFICATE; ANNUAL REGISTRATION

(a) **Title and Right to Use Certificate.**
   (1) **Title.** A person issued a certificate has the right to use the title "Certified Court Reporter" or "C.C.R." A person with a certificate issued prior to July 1, 2006, may continue to use the title "Certified Shorthand Reporter" or "C.S.R."
   (2) **Contempt of Court.** A person who does not hold a certificate but uses "Certified Court Reporter," "C.C.R.," "Certified Shorthand Reporter," or "C.S.R." may be found to be in contempt of court and may be punished accordingly.
   (3) **Function.** Only a court reporter registered as active under subsection (b) may serve as a certified court reporter.

(b) **Annual Registration**. A court reporter in Kansas must register annually on a form provided by the Office of Judicial Administration.
  (1) **Categories.** A court reporter may register as active, inactive, or retired.
  (2) **Fee.** A court reporter must pay an annual registration fee established by Supreme Court order.
  (3) **Exemptions.** The following exemptions apply to the annual registration fee.
    (A) A newly certified court reporter will not be charged a registration fee until the first regular registration date following certification.
    (B) A court reporter who has retired and is at least 66 years old before June 30 will not be charged a registration fee.

(c) **Notice.** Before May 1 of each year, the Office of Judicial Administration will send each court reporter a statement of the amount of the registration fee to be paid by June 30.

(d) **Registration Deadline.** The registration fee and form must be received by the Office of Judicial Administration by June 30. Failure of any court reporter to receive a statement of the applicable registration fee from the Office of Judicial Administration does not excuse payment of the fee.

(e) **Change of Address.** Every court reporter must notify the Office of Judicial Administration within 30 days of any change of address.

(f) **Failure to Register; Late Fee.** Registration fees received by the Office of Judicial Administration after June 30 of the year in which due must be accompanied by a late payment fee equal in amount to the registration fee. All certificates that have not been renewed by payment of the annual registration and late payment fees will expire on December 31 of each year.

(g) **Transcript Production and Certification Status.** A court reporter who is retired or no longer certified may produce certified transcripts of proceedings that took place while the reporter's certificate was valid.

(h) **Reinstatement; Failure to Register.** A court reporter with an expired certification due to failure to register may submit an application for reinstatement and must comply with any conditions imposed by the Board for reinstatement. The Board may impose appropriate conditions, costs, renewal fees, or reexamination requirements before or upon granting reinstatement.

(i) **Recertification.** An inactive or retired court reporter with an expired certification may apply for recertification.
  (1) **Inactive.** A court reporter who is registered as inactive may become active by complying with the following.

(A) **Inactive less than 2 years.** A court reporter must submit a change of status form, pay a recertification fee, and pay the current annual registration fee.

(B) **Inactive 3-5 years.** A court reporter must submit an application for recertification and comply with any conditions imposed by the Board for reinstatement. The Board may impose appropriate conditions, costs, renewal fees, or reexamination requirements before or upon granting reinstatement.

(C) **Inactive 5 or more years.** A court reporter must submit an application for recertification and comply with any conditions imposed by the Supreme Court for recertification.

(2) **Retired.** A retired court reporter may become active by submitting an application for recertification and by complying with any conditions imposed by the Supreme Court for recertification.

[**History:** Am. effective January 3, 2006; Am. effective May 30, 2018; Am. effective July 1, 2020.]

Rule 311

SUSPENSION OR REVOCATION

After reasonable notice to the court reporter and a hearing, the Supreme Court may suspend or revoke for good cause any certificate previously issued to the reporter.

[**History:** Am. effective July 1, 2020.]

Rule 312

TEMPORARY CERTIFICATE

(a) Any applicant to take the court reporter examination whose application the Board has approved may submit a request for a temporary certificate to the Office of Judicial Administration. The request must be accompanied by a nonrefundable $50 fee.

(b) A temporary certificate may be issued to an official court reporter only if recruitment efforts in a particular county have been unsuccessful and the personnel officer requests the Supreme Court to issue a temporary certificate to a person who the personnel officer deems qualified and who has submitted an application to the Office of Judicial Administration. No fee shall be required.

(c) The temporary certificate will be valid until the next regular or special examination held by the Board, but if such examination is given

within 40 days after issuance of a temporary certificate, the reporter may continue to serve under the temporary certificate until the next regular or special examination. No more than one temporary certificate may be issued to the same person except upon the Board's written recommendation.

(d) Any reporter working under a temporary certificate must have in place a tape back-up for any proceedings taken.

(e) A transcript certified by a reporter working under a temporary certificate will have the same effect as one certified by a regularly licensed court reporter.

[**History:** Am. effective July 1, 1982; Am. effective December 3, 1996; Am. effective May 29, 2003; Am. (b) effective January 3, 2006; Am. effective July 1, 2020.]

Rule 313

FUND—EXPENSES

The examination fees referred to in Rule 307 and the renewal fees referred to in Rule 310 constitute a fund known as the "Court Reporters Fund" and will be held and accounted for by the Office of Judicial Administration as provided by law. From this fund the judicial administrator will pay all Board expenses incident to considering applications, conducting examinations, issuing certificates, considering complaints, and conducting hearings. The judicial administrator will also pay Board members their actual and necessary expenses incurred in the performance of Board duties. The Office of Judicial Administration will make such payments upon approval by the Chief Justice of the Supreme Court.

[**History:** Am. effective September 5, 1991; Am. effective January 3, 2006; Am. effective July 1, 2020.]

Rule 314

REPORTING SYSTEMS

[**History:** Repealed effective July 1, 1991.]

Rule 315

RESIDENCE

[**History:** Repealed effective July 1, 1982.]

OFFICIAL COURT REPORTERS

Rule 350

Appointment of official court reporters will be in accordance with the provisions of the Rules Relating to the Kansas Court Personnel System.
[**History:** Am. effective July 1, 1982; Am. effective January 3, 2006; Am. effective July 1, 2020.]

Rule 351

[**History:** Repealed effective July 1, 1982.]

Rule 352

All court reporters appointed under Rule 350 are officers of the court and will be known as official court reporters of the judicial district. Each official court reporter must take the oath or affirmation prescribed by K.S.A. 54-106.
[**History:** Am. effective July 1, 2020.]

Rule 353

No official court reporter may be related by blood or marriage to the judge of the division of court in which the reporter is employed or assigned.
[**History:** Am. effective July 1, 2020.]

Rule 354

The official court reporter must attend the sessions of the court where the reporter is assigned when required by the judge or the chief judge. The official court reporter will take verbatim notes of the proceedings tried before the court as the judge directs. Such notes must be taken on a machine with read-back capability. The judge will enter the name of the court reporter taking verbatim notes of any proceeding on the appearance/trial docket.
[**History:** Am. effective May 11, 1995; Am. effective January 3, 2006; Am. effective July 1, 2020.]

Rule 355

The official court reporter or anyone acting in that capacity must file all original verbatim notes and any electronic representation of those notes, including audio or .wav files, if applicable, in the office of the

clerk of the court, along with all exhibits admitted into evidence and retained by the reporter. Notes backed up and stored electronically on a judicial district's network computer server—in a format readable by non-reporter software—may be substituted for the original. The notes and exhibits must remain a part of the files in the office of the clerk until further order of the court.
[**History:** Am. effective January 10, 1995; Am. effective January 3, 2006; Am. effective October 24, 2011.]

Rule 356

Any person ordering a transcript must pay the official court reporter a reasonable fee based on rates fixed by the Board with the approval of the Supreme Court. Upon payment, the official court reporter must furnish the requested transcript. Preparation of transcripts for use in an appeal are governed by Rule 3.03.
[**History:** Am. effective July 1, 2020.]

Rule 357

Official court reporters will be subject to assignment to any court or division within a judicial district by the chief judge of such judicial district. They will also be subject to assignment on a temporary basis to serve any court or judge outside the district by departmental justices. Official court reporters, when assigned, will not receive additional compensation for such services but will be entitled to reimbursement by the state for travel and subsistence expenses incurred while in the performance of their official duties away from their official stations.
[**History:** Am. effective July 1, 1982; Am. effective January 3, 2006; Am. effective July 1, 2020.]

Rule 358

The district court may employ a certified court reporter on a temporary or relief basis who will be compensated for such services at a sum approved by the chief judge, not to exceed $200 per full day, plus necessary travel and subsistence expenses, to be paid from the court's county operating fund.
[**History:** Am. effective July 1, 1982; Am. effective December 3, 1996; Am. effective January 3, 2006; Am. effective July 1, 2020.]

Rule 359

[**History:** Repealed effective July 1, 1982.]

ELECTRONIC RECORDINGS—TRANSCRIPTS

Rule 360

A district court may provide for the electronic sound recording of court proceedings by use of equipment that meets specifications approved by the Supreme Court.
[**History:** Am. effective July 1, 2020.]

Rule 361

Each electronic recording must be distinctively marked. The clerk of the district court must maintain an index to the electronic recordings that identifies the proceedings contained on the electronic recordings. The clerk must also maintain general control and provide for the safekeeping of all electronic recordings.
[**History:** Am. effective January 3, 2006; Am. effective July 1, 2020.]

Rule 362

Written transcripts of electronic recordings will be prepared by court personnel under the direction of the clerk of the district court. The person making the transcript must certify under seal of the court that the transcript is a correct transcript of the specified recorded proceedings. Upon request of counsel-of-record in a case, the clerk of the district court will make arrangements for counsel to review the electronic recordings of that case. The clerk may correct a transcript of recorded proceedings upon stipulation by counsel or upon order of the court.
[**History:** Am. effective January 3, 2006; Am. effective July 1, 2020.]

Rule 363

A certified transcript produced from approved electronic recordings will have the same legal effect as one produced by an official court reporter.
[**History:** Am. effective July 1, 2020.]

Rule 364

Supreme Court rules relating to the ordering, preparation, and delivery of official transcripts prepared by official court reporters will also apply to transcripts prepared from electronic recordings under direction of the clerk of the district court.
[**History:** Am. effective January 3, 2006; Am. effective July 1, 2020.]

Rule 365

A request for preparation of a transcript from an electronic recording must be filed with the clerk of the district court. A copy of the request must also be served on the managing court reporter or the court reporter designated by the clerk of the district court. The rate charged by the clerk for the transcript will be the same as the rate authorized for a transcript prepared by an official court reporter.

[**History:** Am. effective July 1, 1982; Am. effective January 3, 2006; Am. effective April 15, 2020.]

Rule 366

[**History:** Repealed effective July 1, 1982.]

Rule 367

RULES ADOPTED BY THE STATE BOARD OF EXAMINERS OF COURT REPORTERS

No. 1. The word "Board," as used in these rules, means the State Board of Examiners of Court Reporters.

No. 2. The terms "verbatim notes" and "verbatim reporting," as used in these rules include stenographic and voice methods of preserving the record.

No. 3. An applicant to become a certified court reporter will not be examined until the applicant has satisfied the Board of the following.

A. The applicant is a person of good moral character.

B. The applicant's educational and special training includes at least one of the following:

1. Graduation from and completion of a court reporting course in a business college or other school licensed or accredited by the State of Kansas or the state where the school is located. For good cause shown the Board may waive the formal educational requirement.
2. The applicant is certified as a Registered Professional Reporter (RPR) by the National Court Reporters Association or certified as a Certified Verbatim Reporter (CVR) by the National Verbatim Court Reporters Association.
3. The applicant has had at least two years of experience in making verbatim records of judicial or related proceedings in the system of verbatim reporting for which the applicant seeks certification.

4. The applicant holds a valid and unrevoked certificate as a certified shorthand reporter or certified court reporter issued under the laws of any other state or territory of the United States.

No. 4. An application to obtain a certificate as a certified court reporter must be on the form prepared by the Board and must be received by the Office of Judicial Administration at least 30 days before any regular or special examination by the Board.

No. 5. Upon receiving an application, the Board will make any preliminary inquiries it deems proper and determine whether the applicant appears to have the requisite learning and other qualifications suitable to take an examination for certification as a certified court reporter and inform the judicial administrator of the result of its investigation.

No. 6. *Examination*.

A. Applicants will be required to take verbatim notes from dictation of regular court proceedings or another matter the Board selects. An applicant who passes one or more portions of the dictated examination may carry over those passing scores for three consecutive examinations.
B. Any generally recognized system of reporting may be used in taking the examination.
C. Applicants will be examined with respect to their knowledge of the duties of a court reporter, court procedure, and general legal terminology.
D. Applicants will be required to transcribe or read aloud portions of the dictation as the Board may indicate.
E. Applicants must furnish their own equipment and materials and will print their own transcripts for submission to the Board.
F. Speed and accuracy in taking, transcribing, and reading of notes will be the chief basis of the tests, but the Board will also consider punctuation, spelling, and style of transcript and general education.
G. After completion of an examination, all verbatim notes, transcripts, and other papers in connection with the examination must be returned to and remain in the custody of the Board.

No. 7. In October of each year, the Board will hold a regular meeting to conduct examinations of applicants for certificates at a time and place designated by the Board. The Board may also hold special meetings as needed to address Board business or to conduct additional examinations. The Board will give advance notice of the time and place of the examination.

No. 8. Any person who has successfully passed the examinations provided for by these rules will be recommended by the Board to the Supreme Court for the issuance of a certificate as a Certified Court Reporter.

No. 9. The Board may, on its own motion or on complaint of a third party, initiate an investigation and, if necessary, commence disciplinary proceedings against any certificate holder the Board determines has committed any of the prohibited conduct set forth in subsection F below.

A. Complaints against a certificate holder brought by a third party must be in writing, signed by the complainant, filed with the Board, and contain substantiating evidence to support the complainant's allegations. The complaint must include the complainant's address and telephone number.

B. Any complaint, which will be held in confidence by the staff in the Office of Judicial Administration and the Board, must be reviewed by the Board. If the Board determines that the complaint has no merit, the Board will order it dismissed. If the Board determines the complaint has merit, the Board must, in writing, advise the certificate holder of the complaint. The certificate holder will have 20 days from receipt of the Board's notice to answer the complaint in writing. Once an answer has been received, the Board will then review the complaint again. If the Board determines the complaint has no merit, the Board will order the complaint dismissed. The Board may, in its discretion, issue to the certificate holder an accompanying letter of caution or of informal advice with copies to the complaining party or other interested persons as deemed appropriate. If the Board determines that the complaint and answer provide probable cause to believe that a conduct rule of this Board has been violated by a certificate holder, the Board will order that the proceedings continue as provided in subsection D below.

C. Investigation. Subject to the availability of funds, the Board may appoint a third party to investigate and prosecute a complaint before the Board.

D. Formal disciplinary proceedings.

1. The notice of hearing must be in writing and served either by personal service or certified mail, return receipt requested. The notice must include the following:
   a. a statement of the nature of the hearing;
   b. a reference to the particular sections of the rules allegedly involved; and
   c. a concise statement of the matters asserted or, if the Board is unable to state the matters in detail at the time

the notice is served, the initial notice may be limited to a statement of the issues involved.

2. Within 20 days after service of the notice of hearing, the certificate holder may file an answer.
3. The time and place for hearing will be set after the filing of the certificate holder's answer or after the expiration of the time for its filing on not less than 20 days' notice to all parties.
4. If the Board deems it necessary or if the certificate holder requests, subpoenas may be issued, subject to the rules of civil procedure, to ensure the attendance of any party or other person. Each Board member is empowered to administer oaths and affirmations, subpoena witnesses, require the production of records relevant to the hearing, and take evidence at any place within the state concerning any matter within the jurisdiction of the Board. A judge of the district court of any judicial district where the attendance or production is required must, upon proper application, enforce the attendance and testimony of any witness and the production of documents subpoenaed.
5. If a certificate holder fails to appear after proper notice, the Board may, if no adjournment is granted, proceed with the hearing and make a decision in the absence of the certificate holder.
6. Opportunity will be afforded all parties to present evidence and cross-examine witnesses, present argument on all issues involved, and be represented by counsel at their expense. The proceedings at the hearing will be recorded verbatim.
7. At the conclusion of the hearing, the Board may take any of the actions set forth in subsection E of this rule. If action is taken pursuant to E.1., E.2., or E.3., the court reporter must be notified in writing and the complainant may be notified in the Board's discretion. If a recommendation of discipline is made to the Kansas Supreme Court pursuant to E.4., a copy of the Board's recommendation, findings of fact, and conclusions of law must be served on all parties and the Kansas Supreme Court. Any determination or report of the Board need only be concurred in by a majority of the sitting Board members, and any member has the right to file a dissent from the majority determination or report.

8. Nothing in these rules prevents the Board from informally stipulating and settling any matter relating to the certificate holder's discipline.

E. Disciplinary sanctions. The Board may, based upon clear and convincing evidence, take one or more of the following actions:
   1. dismiss the charges;
   2. admonish the certificate holder;
   3. issue a private order of cease and desist; or
   4. recommend discipline to the Kansas Supreme Court. "Discipline" means public reprimand, imposition of a period of probation with special conditions that may include additional professional education or re-education, suspension of the certificate, or revocation of the certificate. In addition to any discipline imposed pursuant to these rules, if the certificate holder is a state employee, the reporter may be disciplined under the Rules Relating to the Kansas Court Personnel System.

F. Prohibited Conduct. The Board may investigate complaints lodged for the following reasons:
   1. Fraud or misrepresentation in procuring a license.
   2. Professional incompetency.
   3. Knowingly making misleading, deceptive, untrue or fraudulent representations as a court reporter. Proof of actual injury need not be established.
   4. Habitual intoxication or addiction to drugs.
   5. Commission of any felony or of a misdemeanor if the misdemeanor is substantially related to the functions and duties of a court reporter or if the misdemeanor erodes public confidence in the integrity of the court system. A certified copy of the record of conviction or plea of guilty is conclusive evidence of the commission of such crime.
   6. Fraud in representations relating to skill or ability as a court reporter.
   7. Use of untruthful or misleading statements in advertisements.
   8. A finding of contempt by any court of record that arose out of the reporter's conduct in performing or attempting to perform any act as a court reporter.
   9. Failure to maintain impartiality toward each participant in all aspects of reported proceedings or other court-related matters.
   10. Violation of a district court rule, Supreme Court rule, or Board rule.

11. Refusal to cooperate in an investigation conducted by the Board or obstructing such investigation.

No. 10. *Rates for Official District Court Transcripts*.

A. The rate for official district court transcripts shall be $2.75 for each 25-line page of the original transcript and $0.50 for each 25-line page of a copy of the original transcript if copies are ordered. Effective January 1, 2008, the rate for official district court transcripts shall be $3.00 for each 25-line page of the original transcript. Effective January 1, 2010, the rate for official district court transcripts shall be $3.25 for each 25-line page of the original transcript. Effective January 1, 2012, the rate for official district court transcripts shall be $3.50 for each 25-line page of the original transcript. No one is required to purchase a copy when requesting production of an original transcript, and access to the record shall be permitted by the district court under the Kansas Open Records Act and Supreme Court Rule 3.06. The "official district court transcript" shall be a transcript produced by any Kansas Certified Court Reporter or person authorized by these rules to produce official transcripts.

B. The rate for "expedited" production of official district court transcripts shall be no more than twice the rate provided in (A) above for each 25-line page of the original transcript and one-fourth of this "expedited" rate for each 25-line page of a copy of the original transcript. Expedited production of official district court transcripts means delivery of the transcript on or before the third business day after the request is made for expedited production.

C. The rate for "daily copy" production of official district court transcripts shall be no more than four times the rate provided in (A) above for each 25-line page of the original transcript and one-fourth of this "daily copy" rate for each 25-line page of a copy of the original transcript. Requested "daily copy" production of official district court transcripts means delivery of the transcript at or before 9:00 a.m. the next day.

D. A Kansas Certified Court Reporter may provide unedited text or a "Rough Draft" of proceedings if requested. The rate for an unedited text provided either in print or in electronic format shall be no more than $1.50 for each 25-line page. The unedited text shall not be certified and may not be used to contradict the official district court transcript. Each page of such unedited text, whether delivered in print or electronically, shall bear the words "Rough Draft–Not Certified" at the top or bottom of each page.

E. A Kansas Certified Court Reporter who holds the designation of Certified Realtime Reporter (CRR) from the National Court Reporters Association or Realtime Verbatim Reporter (RVR) from the National Verbatim Reporters Association may provide realtime reporting services. The rate to the receiving party of the realtime text shall be no more than $2.50 for each 25-line page. A Kansas Certified Court Reporter who is not a Certified Realtime Reporter may provide realtime reporting services, but the rate shall be no more than $1.50 per 25-line page. The words "Rough Draft from Realtime Not Certified" must appear at the top or bottom of each page. The unedited text from realtime reporting services may not be used to contradict the official district court transcript. Realtime services delivered to judges shall be at no charge.

F. A 25-line page of transcript, other than the title, index or final pages of a transcript, consists of any 25 or more consecutive typewritten lines, double-spaced on copyable paper not less than 8 1/2 inches in width, with a margin of not more than 1 1/2 inches on the left and 5/8 of an inch on the right, exclusive of lines disclosing page and numbering. Type shall be a conventional style typeface with no more than 12 and no fewer than 9 characters per inch. Questions and answers shall each begin a new line, and indentations for questions and answers shall not be more than four spaces from the left margin line, including the designations for "Q" and "A." Indentations for speakers or paragraphs shall not be more than 15 spaces from the left margin line, and such paragraphed material shall not be more than four spaces from the left margin line. Indentations for parenthetical notations shall not be more than 20 spaces from the left margin.

[**History:** No. 3 Am. effective May 18, 1977; Nos. 3(B)(1) and 12 Am. effective April 18, 1980; No. 7 Am. effective December 10, 1982; No. 12 Am. effective July 1, 1988; Nos. 3 and 12 Am. effective July 1, 1996; No. 8 Am. effective December 9, 1996; No. 12 Am. effective February 26, 1999; No. 12 Am. effective July 1, 2002; No. 6 Am. A. effective January 28, 2005; Am. effective January 3, 2006; No. 10 (A.) Am. effective June 25, 2007; No. 10 Am. effective September 30, 2015; No. 4 Am. effective January 25, 2016; Am. effective July 1, 2020.]

CLAIMS UNDER INDIGENT CRIMINAL DEFENDANTS ACT

Rule 401

[**History:** Repealed effective July 1, 1982.]

Rule 402

[**History:** Repealed effective July 1, 1982.]

Rule 403

[**History:** Repealed effective July 1, 1982.]

Rule 404

[**History:** Repealed effective July 1, 1982.]

RULES RELATING TO REQUIRED CONTINUING JUDICIAL EDUCATION

Rule 501

REQUIRED CONTINUING JUDICIAL EDUCATION APPELLATE AND DISTRICT JUDGES

(a) **Applicability**. This rule applies to each active Supreme Court justice, Court of Appeals judge, district court judge, district court magistrate judge, and retired justice or judge who is acting under a senior judge contract in Kansas. The Supreme Court Rules Relating to Continuing Legal Education apply to a retired justice or judge who is not acting under a senior judge contract in Kansas but who serves as a judge pro tem. or hearing officer.

(b) **Education Requirement**. A justice or judge must earn a minimum of 13 continuing judicial education credit hours each calendar year. Of the 13 hours, at least 2 hours must have been accredited for judicial ethics credit.

(c) **Carry-forward**. A justice or judge who completes more than the minimum requirements in subsection (b) may carry forward up to six general continuing judicial education credit hours to the next calendar year. A justice or judge may carry forward judicial ethics credit hours as general continuing judicial education hours but not as judicial ethics hours. The justice or judge must satisfy the following requirements:

(1) report the carry-forward hours in the annual compliance report required under subsection (j) for the calendar year in which the hours were earned; and

(2) designate the hours as carry-forward hours.

(d) **Credit Calculation**. A justice or judge earns one credit hour for each 50 minutes of attendance and one-half credit hour for each 25 minutes of attendance at instructional activities of a program accredited under this rule.

(e) **Accreditation—General Continuing Judicial Education.**

(1) Except as provided in subsections (e)(2) and (e)(3), the Supreme Court must approve a program for general continuing judicial education credit before a justice or judge can use attendance at the program to satisfy the education requirement under subsection (b). The Supreme Court, through the Judicial Education Advisory Committee or the judicial administrator, will designate at the time of accreditation the number of general continuing judicial education credit hours a justice or judge can

earn by attending the program, including whether the hours qualify for nontraditional program credit under subsection (h).

(2) A continuing legal education program accredited by the Kansas Continuing Legal Education Board, including a nontraditional continuing education program under subsection (h), will be considered accredited by the Supreme Court for general continuing judicial education credit.

(3) A general continuing judicial education program, including a nontraditional program, sponsored by one of the following organizations is presumptively approved for general continuing judicial education credit, and a justice or judge does not need written notice of accreditation from the Supreme Court before the justice or judge can use attendance at the program to satisfy the education requirement under subsection (b):
   (A) National Judicial College;
   (B) American Bar Association;
   (C) American Academy of Judicial Education;
   (D) National Council of Juvenile and Family Court Judges;
   (E) American Judicature Society;
   (F) Institute for Court Management;
   (G) any state continuing legal education accrediting organization other than the Kansas Continuing Legal Education Board;
   (H) American Parole and Probation Association;
   (I) Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice;
   (J) National Drug Court Institute;
   (K) National Association of Drug Court Professionals;
   (L) National Center for State Courts;
   (M) National Association of Women Judges;
   (N) American Judges Association;
   (O) Local Inns of Court established in Kansas; and
   (P) Association of American Family and Conciliation Courts.

(4) A justice or judge must use a form approved by the Supreme Court to request accreditation of a general continuing judicial education program not sponsored by the Supreme Court or accredited by the Kansas Continuing Legal Education Board.
   (A) If the program is presumptively approved under subsection (e)(3), the justice or judge may submit the request at the same time the justice or judge submits the annual compliance report required under subsection (j).
   (B) If the program is not presumptively approved, the justice or judge must submit the request at least 30 days before the

program, and the justice or judge cannot use attendance at the program to satisfy the education requirement under subsection (b) until the justice or judge receives written notice of accreditation from the Supreme Court.

(f) **Accreditation—Judicial Ethics.**

(1) Except as provided in subsection (f)(2), the Supreme Court must approve a program for judicial ethics credit before a justice or judge can use attendance at the program to satisfy the judicial ethics requirement under subsection (b). The Supreme Court, through the Judicial Education Advisory Committee or the judicial administrator, will designate at the time of accreditation the number of judicial ethics credit hours a justice or judge can earn by attending the program, including whether the hours qualify for nontraditional program credit under subsection (h).

(2) A judicial ethics program, including any nontraditional program, sponsored by one of the following organizations is presumptively approved for judicial ethics credit, and a justice or judge does not need written notice of accreditation from the Supreme Court before the justice or judge can use attendance at the program to satisfy the judicial ethics requirement under subsection (b):

(A) National Judicial College;
(B) American Academy of Judicial Education;
(C) National Council of Juvenile and Family Court Judges;
(D) American Judicature Society;
(E) National Center for State Courts;
(F) National Association of Women Judges;
(G) American Judges Association; and
(H) Association of American Family and Conciliation Courts.

(3) A justice or judge must use a form approved by the Supreme Court to request accreditation of a judicial ethics program not sponsored by the Supreme Court.

(A) If the program is presumptively approved under subsection (f)(2), the justice or judge may submit the request at the same time the justice or judge submits the annual compliance report required under subsection (j).

(B) If the program is not presumptively approved, the justice or judge must submit the request at least 30 days before the program, and the justice or judge cannot use attendance at the program to satisfy the judicial ethics requirement under

subsection (b) until the justice or judge receives written notice of accreditation from the Supreme Court.

(g) **Teaching Credit**. A justice or judge may earn up to five credit hours for 50 minutes spent teaching an accredited continuing judicial or legal education program. In determining the number of credit hours to award, the judicial administrator will calculate time spent in preparation and teaching.

(h) **Nontraditional Program.** A justice or judge may claim continuing judicial education credit for up to four hours of nontraditional programs each calendar year, regardless of whether those hours were earned in that year or were carried forward from the previous year. Nontraditional programs include programs accessed by an individual judge, such as a webinar, an online workshop, and a video broadcast.

(i) **Legislative Service**. Upon a request submitted to the Office of Judicial Administration, a part-time judge as defined by the Kansas Code of Judicial Conduct who is serving in the Kansas Legislature will receive a reduction of 6.5 of the 11 general continuing judicial education hours required for the compliance period in which the judge serves in the Legislature.

(j) **Annual Compliance Report.** Each justice or judge must submit an annual report of compliance with this rule in the format and manner approved by the Supreme Court. The justice or judge must submit the report to the judicial administrator no later than March 1 following the calendar year for which hours are being claimed.

(k) **Waiver, Extension of Time.** The Supreme Court may grant a waiver of the requirements of this rule or an extension of time to complete continuing judicial education requirements because of hardship, disability, or other good cause. A judge must submit a request for waiver or extension in writing to the judicial administrator prior to March 1 following the calendar year for which the waiver or extension is sought.

(l) **Oversight.** The judicial administrator will implement and administer the continuing judicial education program established by this rule and will develop any forms, subject to approval by the Supreme Court, necessary for that purpose.

[**History:** Prior Rule 501 repealed effective May 25, 2010; Rule effective May 26, 2010; Rule adopted effective January 1, 2013; Am. effective December 31, 2020.]

Rule 502

MUNICIPAL COURT JUDGES

(a) **Applicability.** This rule applies only to municipal court judges who are not licensed to practice law in Kansas.
   (1) Municipal court judges who are also district magistrate judges are governed by Rule 501.
   (2) Municipal court judges who are licensed to practice law in Kansas but who are not district magistrate judges are governed by Rule 801 et seq.

(b) **Education Requirement.** A judge must earn a minimum of 13 continuing judicial education credit hours each calendar year. Of the 13 hours, at least 2 hours must have been accredited for judicial ethics credit.

(c) **Carry-forward.** A judge cannot carry forward excess continuing judicial education credit hours to the next calendar year.

(d) **Credit Calculation.** A judge earns one credit hour for 50 minutes of attendance and one-half credit hour for 25 minutes of attendance at instructional activities of a continuing judicial education program accredited under this rule.

(e) **Accreditation—General Continuing Judicial Education.**
   (1) Courses not applicable to the functions of a municipal court do not satisfy the education requirement under subsection (b).
   (2) The Supreme Court must approve a program for general continuing judicial education credit before a judge can use attendance at the program to satisfy the education requirement under subsection (b). The Supreme Court, through the Municipal Judges Education Committee or the judicial administrator, will designate at the time of accreditation the number of general continuing judicial education credit hours a judge can earn by attending the program.
   (3) A continuing legal education program accredited by the Kansas Continuing Legal Education Board is considered approved by the Supreme Court for general continuing judicial education credit if the program is applicable to the functions of a municipal court.
   (4) A judge must use a form approved by the Supreme Court to request accreditation of a general continuing judicial education program not sponsored by the Supreme Court or accredited by the Kansas Continuing Legal Education Board. The judge must submit the request at least 30 days before the program, and the

judge cannot use attendance at the program to satisfy the education requirement under subsection (b) until the judge receives written notice of accreditation from the Supreme Court.

(f) **Accreditation—Judicial Ethics.**

(1) The Supreme Court must approve a program for judicial ethics credit before a judge can use attendance at the program to satisfy the judicial ethics requirement under subsection (b). The Supreme Court, through the Municipal Judges Education Committee or the judicial administrator, will designate at the time of accreditation the number of judicial ethics credit hours a judge can earn by attending the program.

(2) A judge must use a form approved by the Supreme Court to request accreditation of a judicial ethics program not sponsored by the Supreme Court. The judge must submit the request at least 30 days before the program, and the judge cannot use attendance at the program to satisfy the judicial ethics requirement under subsection (b) until the judge receives written notice of accreditation from the Supreme Court.

(g) **Teaching Credit.** A judge may earn up to five credit hours for 50 minutes spent teaching an approved program. In determining the number of credit hours to award, the judicial administrator will calculate time spent in preparation and teaching.

(h) **Legislative Service**. Upon a request submitted to the Office of Judicial Administration, a part-time judge as defined by the Kansas Code of Judicial Conduct who is serving in the Kansas Legislature will receive a reduction of 6.5 of the 11 general continuing judicial education hours required for the compliance period in which the judge serves in the Legislature.

(i) **Annual Compliance Report**. Each judge must submit an annual report of the judge's compliance with this rule in the format and manner prescribed by the Supreme Court. The judge must submit the report to the judicial administrator no later than February 1 following the calendar year for which hours are being claimed.

(j) **Waiver, Extension of Time.** The Supreme Court may grant a waiver of the requirements of this rule or an extension of time to complete continuing judicial education requirements because of hardship, disability, or other good cause. A judge must submit a request for waiver or extension in writing to the judicial administrator prior to February 1 following the calendar year for which the waiver or extension is sought.

(k) **Oversight.** The judicial administrator will implement and administer the continuing judicial education program established by this rule

and will develop any forms, subject to approval by the Supreme Court, necessary for that purpose.

[**History:** New rule effective February 15, 1990; Repealed effective January 1, 2018; Rule adopted effective January 1, 2018; Am. effective December 31, 2020.]

Rule 503

JUDICIAL EDUCATION ADVISORY COMMITTEE

(a) **Purpose.** A Judicial Education Advisory Committee is established to recommend and organize education and training programs for Kansas appellate judges, district judges, and district magistrate judges. Programs will be designed to accomplish the following goals:
   (1) to educate judges regarding the knowledge, skills, and techniques required to perform judicial responsibilities fairly, correctly, and efficiently; and
   (2) to improve the administration of justice, reduce court delay, and promote fair and efficient management of all court proceedings.

(b) **Membership.** The Committee is composed of:
   (1) one representative of the appellate judges;
   (2) up to ten representatives of the district judges and district magistrate judges with the goal of maximizing balance among each of the six judicial departments and among district judges and district magistrate judges;
   (3) and one nonvoting representative of the Office of Judicial Administration.

(c) **Appointment.** All members of the Judicial Education Advisory Committee will be appointed by the Supreme Court.

(d) **Terms.**
   (1) The term of each member of the Committee will be three years. No member of the Committee will be eligible to serve more than two consecutive terms, with the exception that a member appointed to complete an unexpired term will be eligible to serve two more consecutive three-year terms. A member may serve additional terms after a break in service.
   (2) Notwithstanding the limitation on the number of representatives in subsection (b)(2), all representatives of the district judges and magistrate judges as of July 1, 2019, will remain on the Committee until their terms expire.

(e) **OJA Representative and Liaison Justice.**

(1) In addition to the membership described in subsection (b):

(A) there will be a permanent, nonvoting seat on the Committee for a representative of the Office of Judicial Administration and

(B) the chief justice of the Supreme Court will designate a liaison justice who will serve as the nonvoting chair of the Committee.

(2) A person serving on the Committee under this subsection is not subject to a term limit under subsection (d).

[**History:** New rule effective June 30, 2010; Am. effective November 26, 2019.]

Rule 504

DISTRICT JUDGES MANUAL COMMITTEE

[**History:** Repealed effective June 25, 2019.]

Rule 505

DISTRICT MAGISTRATE JUDGES CERTIFICATION COMMITTEE

A District Magistrate Judges Certification Committee is hereby established for the purpose of certifying district magistrate judges as required by K.S.A. 20-337.

The membership of the District Magistrate Judges Certification Committee shall be composed of four district magistrate judges and one nonvoting representative of the Office of Judicial Administration.

All members of the District Magistrate Judges Certification Committee shall be appointed by the Supreme Court. The terms of the inaugural members of the Committee shall be staggered: The term of one member shall be one year; the term of one member shall be two years; the term of one member shall be three years; and the term of one member shall be four years. At the expiration of the terms of these inaugural members, the term of each succeeding member of the Committee shall be four years. With the exception of the representative of the Office of Judicial Administration and a member whose service on the Committee begins with completion of another's unexpired term, no member of the Committee shall be eligible for more than two consecutive terms. Should a district magistrate judge not complete a term for any reason, a new member shall be appointed to complete the unexpired term. The new member shall be eligible to serve two more full consecutive terms. A district magistrate judge may serve one or more additional terms after a break in service.

In addition to the membership described above, the nonvoting Chair of the District Magistrate Judges Certification Committee shall be the Supreme Court Justice who serves as liaison to the Committee, as designated from time to time by the Chief Justice of the Supreme Court. The Chair shall be not subject to a term limit.

[**History:** New rule adopted effective July 1, 2012.]

RULES RELATING TO JUDICIAL CONDUCT

Rule 601

CODE OF JUDICIAL CONDUCT

[**History**: Superseded by Rule 601A, effective June 1, 1995.]

Rule 601A

CODE OF JUDICIAL CONDUCT

[**History**: Superseded by Rule 601B, effective March 1, 2009.]

Rule 601B

KANSAS CODE OF JUDICIAL CONDUCT

Grateful recognition is due the Commission on Judicial Qualifications for its assistance in the extensive analysis and study that preceded the adoption of Rule 601B. The Commission members were: Chairman, Hon. Robert J. Fleming, District Court Judge, Parsons, Kansas; Vice-Chairman, Nancy S. Anstaett, Attorney, Overland Park, Kansas; Secretary, Carol G. Green, Appellate Court Clerk, Topeka, Kansas; Hon. J. Patrick Brazil, Court of Appeals Chief Judge, Retired, Topeka, Kansas; Bruce Buchanan, Lay Member, Hutchinson, Kansas; Dr. Mary Davidson Cohen, Lay Member, Leawood, Kansas; Hon. Theodore B. Ice, District Court Judge, Retired, Newton, Kansas; Hon. Jennifer L. Jones, Municipal Judge, Wichita, Kansas; Hon. David J. King, District Court Chief Judge, Leavenworth, Kansas; Jeffery A. Mason, Attorney, Goodland, Kansas; Christina Pannbacker, Lay Member, Washington, Kansas; Mikel L. Stout, Attorney, Wichita, Kansas; William B. Swearer, Attorney, Hutchinson, Kansas; Carolyn Tillotson, Lay Member, Leavenworth, Kansas; Hon. Thomas L. Toepfer, District Court Judge, Hays, Kansas; and former member participating in this Code revision, Hon. Lawrence E. Sheppard, District Court Judge, Olathe, Kansas.

The revised Model Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association on February 12, 2007, as hereinafter modified, is adopted as a rule of this Court to be designated the Kansas Code of Judicial Conduct. The Kansas Code of Judicial Conduct as hereinafter set forth shall be effective as of March 1, 2009. All alleged violations committed before March 1, 2009, shall be subject to Rule 601A (2008 Kan. Ct. R. Annot. 645).

PREAMBLE

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. Our legal system is based upon the principle that

an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Kansas Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary procedures.

SCOPE

[1] The Kansas Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide authoritative guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.

[2] The Canons state general principles of judicial ethics that all judges must observe.

[3] The Rules of the Kansas Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

[4] The Comments that accompany the Rules serve two functions. First, they provide authoritative guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as

articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

[5] When this Code uses "shall" or "shall not," binding obligations are imposed, the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is cautionary and a statement of what is or is not appropriate conduct but not a binding rule under which a judge may be disciplined. "May" denotes permissible discretion or, depending on the context, action that is not covered by specific proscriptions.

[6] Although the black letter of the Canons and Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Canons and Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

[7] The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

TERMINOLOGY

Terms defined below are noted in italics in the Canons and Rules where they appear.

"Appropriate authority" means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported. See Rules 2.14 and 2.15.

"Candidate" See "Judicial Candidate."

"Contribution" means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. See Rules 3.7, 4.1, and 4.4.

"De minimis," in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality. See Rule 2.11.

"Domestic partner" means a person with whom another person maintains a household and an intimate relationship, other than a person

to whom he or she is legally married. See Rules 2.11, 2.13, 3.13, 3.14, and 3.15.

"Economic interest" means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

See Rules 1.3 and 2.11.

"Fiduciary" includes relationships such as executor, administrator, trustee, or guardian. See Rules 2.11, 3.2, and 3.8.

"Harassment" See Rule 2.3, Comment [3].

"Impartial," "impartiality," and **"impartially"** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, and 4.2.

"Impending matter" is a matter that is imminent or expected to occur in the near future. See Rules 2.9, 2.10, 3.13, and 4.1.

"Impropriety" includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality. See Canon 1 and Rule 1.2.

"Independence" means a judge's freedom from influence or controls other than those established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and Rule 1.2.

"Invidious discrimination" See Rule 3.6, Comment [2].

"Judge" See Application section I(B).

"Judicial candidate" means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as

soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office. See Rules 2.11, 4.1, 4.2, and 4.4.

"Knowingly," "knowledge," "known," and **"knows"** means actual or constructive knowledge of the fact in question. Constructive knowledge may be inferred from circumstances. See Rules 2.11, 2.15, 2.16, 3.6, and 4.1.

"Law" encompasses court rules as well as statutes, constitutional provisions, and decisional law. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, 4.1, 4.2, and 4.4.

"Member of the candidate's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship. See Rule 4.1, Comment [5].

"Member of the judge's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Rules 3.7, 3.8, 3.10, 3.11, and 4.1, Comment [5].

"Member of a judge's family residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Rules 2.11 and 3.13.

"Nepotism" See Rule 2.13, Comment [2].

"Nonpublic information" means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Rule 3.5.

"Pending matter" is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Rules 2.9, 2.10, 3.13, and 4.1.

"Personally solicit" means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. See Rule 4.4.

"Political organization" means a political party or a political action committee required to file financial information with federal or state election or campaign commissions. For purposes of this Code, the

term does not include a judicial candidate's own campaign committee created as authorized by Rule 4.4. See Rules 4.1 and 4.2.

"Public election" includes primary and general elections, as well as partisan elections, nonpartisan elections, and retention elections as specifically designated. See Rule 4.2.

"Sexual Harassment" See Rule 2.3, Comment [4]. See also Rule 2.3, Comment [3].

"Third degree of relationship" includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece. See Rule 2.11.

[**History**: Am. "Political organization" effective December 4, 2015.]

APPLICATION

The Application section establishes when the various Rules apply to a judge or judicial candidate.

I. Applicability of this Code

(A) All judges shall comply with this Code, except as provided below.

(B) Anyone, whether or not a lawyer, who is an officer of the judicial system, is a judge within the meaning of this Code. Judge is defined as: any judicial officer who performs the functions of a judge in the courts of this state including Kansas Supreme Court Justices, Court of Appeals Judges, District Judges, District Magistrate Judges, Senior Judges, Retired Judges who accept judicial assignments, and Municipal Court Judges.

(C) The term "judge" also includes Masters, Referees, Judicial Hearing Officers, Temporary Judges, Pro Tempore Judges, Part-time Judges, and Commissioners if they perform any functions of a judge in any court of this state.

(D) The term "judge" also includes a judicial candidate. Canon 4 applies to judicial candidates.

II. Full-time Judge

All provisions of this Code apply to judges serving full-time in a judicial capacity.

III. Retired Judge

(A) A retired judge under contract to the senior judge program shall be deemed a part-time judge.

(B) A retired judge not under contract to the senior judge program but who is recalled for specific cases or specific periods of service shall be deemed a part-time or occasional part-time judge, depending on the repeated or occasional nature of the service.

(C) A retired judge who does not accept judicial assignments is not required to comply with this Code.

IV. Part-time Judge

(A) A part-time judge is a judge who serves or expects to serve repeatedly on a part-time basis whether by election or under an appointment for a period of time or for each case heard.

(B) A part-time judge shall not practice law of the type which the judge is assigned to hear in the court on which the judge serves and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any proceeding related thereto.

(C) The following provisions of the Code are not applicable to part-time judges at any time:

- Rule 3.4 Appointments to Governmental Positions
- Rule 3.7 Participation in Educational, Religious, Charitable, Fraternal or Civic Organizations and Activities
- Rule 3.8 Appointments to Fiduciary Positions
- Rule 3.9 Service as Arbitrator or Mediator
- Rule 3.10 Practice of Law [unless specifically prohibited by the terms of an appointment]
- Rule 3.11 Financial, Business or Remunerative Activities
- Rule 3.15 Reporting Requirements [unless the judge derives at least $15,000 of his or her annual income from the performance of judicial duties]
- Rule 4.1 Political and Campaign Activities of Judges and Judicial Candidates in General
- Rule 4.2 Political and Campaign Activities of Judicial Candidates in Public Elections
- Rule 4.3 Activities of Candidates for Appointment to Judicial Office
- Rule 4.4 Campaign Committees
- Rule 4.5 Activities of Judges Who Become Candidates for Nonjudicial Office

(D) The following additional provisions of the Code are not applicable to part-time judges, except when serving as a judge:

- Rule 2.10(A) Judicial Statements on Pending and Impending Cases [no statements that would impair fair hearing]
- Rule 2.10(B) Judicial Statements on Pending and Impending Cases [no pledges, promises, or commitments inconsistent with the impartial performance of adjudicative duties]

V. Occasional Part-time Judge

(A) An occasional part-time judge is a judge who serves or expects to serve once or only sporadically [occasionally] under a separate appointment for each period of service or for each case heard.

(B) An occasional part-time judge shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

(C) In addition to the provisions of the Code not applicable to part-time judges at any time, the following additional provision of the Code is not applicable to an occasional part-time judge at any time:

- Rule 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(D) The following additional provisions of the Code are not applicable to occasional part-time judges, except when serving as a judge:

- Rule 1.2 Promoting Confidence in the Judiciary
- Rule 2.4 External Influences on Judicial Conduct
- Rule 2.10 Judicial Statements on Pending and Impending Cases
- Rule 3.2 Appearances Before Governmental Bodies and Consultation with Government Officials

VI. Time for Compliance

A person to whom this Code becomes applicable shall comply immediately with its provisions except for Rule 3.8 (Appointments to Fiduciary Positions) and Rule 3.11 (Financial, Business or Remunerative Activities). These Rules shall be complied with as soon as reasonably possible. Compliance must occur within the period of one year.

[**History**: New rule effective March 1, 2009; Am. I(C) effective February 8, 2010.]

COMMENT

[1] The three categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. The determination of which category and, accordingly, which specific Code provisions apply to an individual judicial officer, depend upon the facts of the particular judicial service.

[2] When a person who has been a part-time judge is no longer a part-time judge (no longer accepts appointments) or whose service as an occasional part-time judge in a proceeding has concluded, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to Rule 1.12(a) of the Kansas Rules of Professional Conduct (KRPC 1.12[a] [2008 Kan. Ct. R. Annot. 487]).

[3] If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE *INDEPENDENCE, INTEGRITY,* AND *IMPARTIALITY* OF THE JUDICIARY, AND SHALL AVOID *IMPROPRIETY* AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.1

Compliance with the *Law*

A judge shall comply with the *law* and the Kansas Code of Judicial Conduct.

RULE 1.2

Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the *independence*, *integrity*, and *impartiality* of the judiciary, and shall avoid *impropriety* and the appearance of impropriety.

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that support ethical conduct among judges and lawyers, professionalism within the judiciary and the legal profession, and access to justice for all.

[5] Actual improprieties include violations of law, court rules, or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

[6] A judge may initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

RULE 1.3

Avoiding Inappropriate Use of the Prestige of Judicial Office

A judge shall not lend the prestige of judicial office to advance the personal or *economic interests* of the judge or others, or allow others to do so.

COMMENT

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead in conducting his or her personal business.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. However, the use of judicial letterhead for anything other than official court business should be exercised with the utmost caution. A judge should only use judicial letterhead when its use could not be reasonably perceived as an attempt to inappropriately use the prestige of judicial office to influence others.

[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

CANON 2

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE *IMPARTIALLY*, COMPETENTLY, AND DILIGENTLY.

RULE 2.1

Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by *law*, shall take precedence over all of a judge's personal and extrajudicial activities.

COMMENT

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

RULE 2.2

Impartiality and Fairness

A judge shall uphold and apply the *law*, and shall perform all duties of judicial office fairly and *impartially*.

COMMENT

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard. On the other hand, judges should resist unreasonable demands of assistance that might give an unrepresented party an advantage. If an accommodation is afforded a self-represented litigant, the accommodation shall not relieve the self-represented litigant from following the same rules of procedure and evidence that are applicable to a litigant represented by an attorney.

[**History:** Am. Comment (4) effective September 6, 2016.]

RULE 2.3

Bias, Prejudice, and *Harassment*

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in *harassment*, including but not limited to bias, prejudice, or *harassment* based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in *harassment*, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

COMMENT

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

RULE 2.4

External Influences on Judicial Conduct

(A) A judge shall not be swayed by public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

COMMENT

An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

RULE 2.5

Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties, competently and diligently.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

COMMENT

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

RULE 2.6

Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to *law*.

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement. But see Rule 2.11 Disqualification.

COMMENT

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] Increasingly, judges have before them self-represented litigants whose lack of knowledge about the law and about judicial procedures and requirements may inhibit their ability to be heard effectively. A judge's obligation under Rule 2.2 to remain fair and impartial does not preclude the judge from making reasonable accommodations to ensure a self-represented litigant's right to be heard, so long as those accommodations do not give the self-represented litigant an advantage. If the judge chooses to make a reasonable accommodation, such accommodation shall not relieve the self-represented litigant from following the same rules of procedure and evidence that are applicable to a litigant represented by an attorney.

[**History:** Am. Comment (2) effective September 6, 2016.]

RULE 2.7

Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other *law*.

COMMENT

Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

RULE 2.8

Decorum, Demeanor, and Communication with Jurors

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

COMMENT

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

RULE 2.9

Ex Parte Communications

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a *pending* or *impending matter*, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the *law* applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge. But see Rule 2.6(B) Ensuring the Right to Be Heard and Rule 2.11 Disqualification.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by *law* to do so.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

COMMENT

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may initiate, permit, or consider ex parte communications as authorized by Supreme Court Rule 190 when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

RULE 2.10

Judicial Statements on *Pending* and *Impending* Cases

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter *pending* or *impending* in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the *impartial* performance of the adjudicative duties of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

COMMENT

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

RULE 2.11

Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's *impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal *knowledge* of facts that are in dispute in the proceeding.

(2) The judge *knows* that the judge, the judge's spouse or *domestic partner*, or a person within the *third degree of relationship* to either of them, or the spouse or *domestic partner* of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a *de minimis* interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge *knows* that he or she, individually or as a *fiduciary*, or the judge's spouse, *domestic partner*, parent, or child, or any other *member of the judge's family residing in the judge's household*, has an *economic interest* in the subject matter in controversy or in a party to the proceeding.

(4) The judge, while a judge or a *judicial candidate*, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(B) A judge shall keep informed about the judge's personal and fiduciary *economic interests*, and make a reasonable effort to keep informed about the personal *economic interests* of the judge's spouse or *domestic partner* and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply. The term "recusal" is used interchangeably with the term "disqualification."

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law

firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

RULE 2.12

Supervisory Duties

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

COMMENT

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

RULE 2.13

Administrative Appointments

(A) In making administrative appointments, a judge:

(1) shall exercise the power of appointment *impartially* and on the basis of merit; and

(2) shall avoid *nepotism*, favoritism, and unnecessary appointments.

(B) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

COMMENT

[1] Appointees of a judge include assigned counsel, officials such as case managers, appraisers, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or *domestic partner* of such relative.

RULE 2.14

Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

COMMENT

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority. See Rule 2.15.

RULE 2.15

Responding to Judicial and Lawyer Misconduct

(A) A judge having *knowledge* that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the *appropriate authority*.

(B) A judge having *knowledge* that a lawyer has committed a violation of the Kansas Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the *appropriate authority*.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Kansas Rules of Professional Conduct shall take appropriate action.

COMMENT

[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Kansas Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority.

RULE 2.16

Cooperation with Disciplinary Authorities

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person *known* or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

COMMENT

Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

CANON 3

A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

RULE 3.1

Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by *law* or this Code. However, when engaging in extrajudicial activities, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's *independence*, *integrity*, or *impartiality*; or demean the judicial office; or

(D) engage in conduct that would appear to a reasonable person to be coercive.

COMMENT

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal, or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

RULE 3.2

Appearances Before Governmental Bodies and Consultation with Government Officials

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(A) in connection with matters concerning the *law*, the legal system, or the administration of justice; or

(B) when the judge is acting pro se in a matter involving the judge's legal or *economic interests*, or when the judge is acting in a *fiduciary* capacity.

COMMENT

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities,

however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

RULE 3.3

Testifying as a Character Witness

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

COMMENT

A judge who, without being subpoenaed, testifies as a character witness inappropriately uses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

RULE 3.4

Appointments to Governmental Positions

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the *law*, the legal system, or the administration of justice.

COMMENT

[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

[2] A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

RULE 3.5

Use of *Nonpublic Information*

A judge shall not intentionally disclose or use *nonpublic information* acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

COMMENT

[1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge

must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

[2] This rule is not intended, however, to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or others if consistent with other provisions of this Code.

RULE 3.6

Affiliation with Discriminatory Organizations

(A) A judge shall not hold membership in any organization that practices *invidious discrimination* on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

(B) A judge shall not use the benefits or facilities of an organization if the judge *knows* or should know that the organization practices *invidious discrimination* on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

COMMENT

[1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

[5] This Rule does not apply to national or state military service.

RULE 3.7

Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the *law*, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting *contributions* for such an organization or entity, but only from *members of the judge's family*, or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the *law*, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the *law*, the legal system, or the administration of justice;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the *law*, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(B) A judge may encourage lawyers to provide pro bono legal services.

COMMENT

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph (A)(4). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations so long as such activities are not solicitation and do not present an element of coercion or inappropriately use the prestige of judicial office.

[4] The letterhead may list the judge's title or judicial office if comparable designations are used for other persons. Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead is appropriate so long as the letterhead is not used for fund-raising or membership solicitation.

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono legal services, if in doing so the judge does not employ coercion, or inappropriately use the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono legal work, and participating in events recognizing lawyers who have done pro bono work.

RULE 3.8

Appointments to *Fiduciary* Positions

(A) A judge shall not accept appointment to serve in a *fiduciary* position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a *member of the judge's family*, and then only if such service will not interfere with the proper performance of judicial duties.

(B) A judge shall not serve in a *fiduciary* position if the judge as *fiduciary* will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

(C) A judge acting in a *fiduciary* capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(D) If a person who is serving in a *fiduciary* position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

COMMENT

A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

RULE 3.9

Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by *law*.

COMMENT

Rule 3.9 does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties.

RULE 3.10

Practice of *Law*

A judge must not practice *law*. A judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a *member of the judge's family*, but the judge is prohibited from serving as the family member's lawyer in any forum. This rule does not prohibit the practice of law pursuant to, and in the context of, a judge's military service.

COMMENT

[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

[2] A judge will remain subject to conflict of interest and impropriety constraints. See Rule 2.11.

[**History:** Am. effective March 1, 2018.]

RULE 3.11

Financial, Business, or Remunerative Activities

(A) A judge may hold and manage investments of the judge and *members of the judge's family*.

(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or *members of the judge's family*; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or *members of the judge's family*.

(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or

(4) result in violation of other provisions of this Code.

COMMENT

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

RULE 3.12

Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other *law* unless such acceptance would appear to a reasonable person to undermine the judge's *independence*, *integrity*, or *impartiality*.

COMMENT

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable, commensurate with the task performed, and does not exceed what a person who is not a judge would receive for the same activity. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

RULE 3.13

Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by *law* or would appear to a reasonable person to undermine the judge's *independence*, *integrity*, or *impartiality*.

(B) Unless otherwise prohibited by *law*, or by paragraph (A), a judge may accept the following without publicly reporting such acceptance:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding *pending* or *impending* before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(5) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(6) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a *domestic partner*, or other *family member of a judge residing in the judge's household*, but that incidentally benefit the judge.

(C) Unless otherwise prohibited by *law* or by paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15:

(1) gifts incident to a public testimonial;

(2) invitations to the judge and the judge's spouse, *domestic partner*, or guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the *law*, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge;

(3) gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges; and

(5) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria.

COMMENT

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) to publicly report it.

[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary pro-

motion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

[5] Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including Rules 4.3 and 4.4.

RULE 3.14

Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other *law*, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, *domestic partner*, or guest.

(C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, *domestic partner*, or guest shall publicly report such acceptance as required by Rule 3.15.

COMMENT

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of

their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

RULE 3.15

Reporting Requirements

(A) A judge shall publicly report:

(1) compensation received for extrajudicial activities as permitted by Rule 3.12 and compensation received by the judge's

spouse or *domestic partner*. Reportable compensation means income received for the personal services of the judge in an amount in excess of $500 from any single payor or in excess of $3,000 from all payors during the reporting period; income received for the personal services of the judge's spouse or *domestic partner* in an amount in excess of $3,000 from a single source during the reporting period; and income derived from business; royalties, including ownership of mineral rights; annuities; life insurance and contract payments.

(2) fees and commissions. A judge shall report each client or customer who pays fees or commissions to a business or combination of businesses from which fees or commissions the judge, the judge's spouse, or the judge's *domestic partner* received an aggregate in excess of $3,000 during the reporting period. The phrase "client or customer" relates only to businesses or combination of businesses. The term "business" means any corporation, association, partnership, proprietorship, trust, joint venture, or a governmental agency unit, or a governmental subdivision, and every other business interest, including ownership or use of land for income. The term "combination of businesses" means any two or more businesses owned or controlled directly by the same interests. The term "other business interest" means any endeavor which produces income, including appraisals, consulting, authorships, inventing or the sale of goods and services.

(3) ownership interests. A judge shall report any corporation, partnership, proprietorship, trust, retirement plan, joint venture, and every other business interest, including land used for income, in which either the judge, the judge's spouse or *domestic partner*, dependent children, or dependent stepchildren have owned a legal or equitable interest exceeding $5,000 during the reporting period.

(4) gifts and other things of value as permitted by Rule 3.13(C), unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed $200.

(5) reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(A), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed $200. Expense reimbursement limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or *domestic partner* should be reported as a gift. Any payment in excess of such an amount is to be reported as compensation.

(6) positions. A judge shall report any business, organization, labor organization, educational or other institution or entity in which the judge now holds or has held a position of officer, director, associate, partner, proprietor, trustee, guardian, custodian, or similar *fiduciary*, representative, employee, or consultant at the time of filing this report or during the reporting period.

(7) liabilities. A judge shall report all of the judge's, the judge's spouse's or *domestic partner's*, dependent children's, and dependent stepchildren's liabilities to any creditor which exceeded $10,000 at any time during the reporting period except for any liability owed to a spouse, parent, brother, sister, or child; any mortgage secured by real property which is a personal residence of the judge or the judge's spouse or *domestic partner*; any loan secured by a personal motor vehicle, household furniture, or appliances that does not exceed the purchase price of the item securing the liability; student loans or loans from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; any revolving charge account, the balance of which did not exceed $10,000 at the close of the reporting period; and political campaign funds.

(B) A judge shall report annually the information listed above in (A)(1) through (7) on a form provided by the Commission on Judicial Conduct. The judge's report for the preceding calendar year shall be submitted as a public document with the Office of the Judicial Administration on or before April 15 of each year.

[**History:** Am. (b) effective February 4, 2020.]

CANON 4

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE *INDEPENDENCE, INTEGRITY,* OR *IMPARTIALITY* OF THE JUDICIARY.

RULE 4.1

Political and Campaign Activities of Judges and *Judicial Candidates* in General

(A) A judge or a *judicial candidate* shall not:

(1) make speeches on behalf of a *political organization*;

(2) use or permit the use of campaign *contributions* for the private benefit of the judge, the candidate, or others;

(3) use court staff, facilities, or other court resources in a campaign for judicial office;

(4) *knowingly*, or with reckless disregard for the truth, make any false or misleading statement;

(5) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter *pending* or *impending* in any court; or

(6) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the *impartial* performance of the adjudicative duties of judicial office.

(B) Except as permitted by *law*, or by Rules 4.2, 4.3, and 4.4, a judge or a *judicial candidate* shall not:

(1) act as a leader in, or hold an office in, a *political organization*;

(2) publicly endorse or oppose another candidate for any public office;

(3) solicit funds for, pay an assessment to, or make a *contribution* to a *political organization* or a candidate for public office;

(4) attend or purchase tickets for dinners or other events sponsored by a *political organization* or a candidate for public office;

(5) publicly identify himself or herself as a candidate of a *political organization*; or

(6) seek, accept, or use endorsements from a *political organization*.

(C) A judge or *judicial candidate* shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or *judicial candidate*, any activities prohibited under paragraphs (A) and (B).

COMMENT

GENERAL CONSIDERATIONS

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.

PARTICIPATION IN POLITICAL ACTIVITIES

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political

influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (B)(1) from assuming leadership roles in political organizations unless allowed under Rule 4.3(B).

[4] Paragraphs (A)(1) and (B)(2) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from inappropriately using the prestige of judicial office to advance the interests of others. See Rule 1.3. These Rules do not prohibit candidates from campaigning on their own behalf in a retention election [See Rule 4.2(B)(2)], campaigning on their own behalf or against any opponent in a nonpartisan election [See Rule 4.2(C)(2)], or from campaigning on their own behalf or from endorsing or opposing candidates for the same judicial office for which they are running in a partisan public election [See Rule 4.2(D)(3)(a) and (c)].

[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in paragraph (B)(2) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure is not prohibited by paragraphs (A)(1) or (B)(2).

STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(4) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(4), (A)(5), or (A)(6), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[9] Subject to paragraph (A)(5), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her

during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[10] Paragraph (A)(5) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[12] Paragraph (A)(6) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(6) does not specifically address judicial responses to such inquiries. Judicial candidates may respond but, depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(6), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and

impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

RULE 4.2

Political and Campaign Activities of *Judicial Candidates* in *Public Elections*

(A) A *judicial candidate* in a retention, nonpartisan, or partisan *public election* shall:

(1) act at all times in a manner consistent with the *independence*, *integrity*, and *impartiality* of the judiciary;

(2) comply with all applicable election, election campaign, and election campaign fund-raising *laws* and regulations of this jurisdiction;

(3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and

(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1.

(B) A candidate for retention to judicial office may, unless prohibited by *law*, and not earlier than one year before the retention election in which the candidate is running:

(1) establish a campaign committee pursuant to the provisions of Rule 4.4;

(2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature and;

(3) obtain and use publicly stated support from any person or organization other than a partisan *political organization*.

(C) A candidate for nonpartisan election to judicial office may, unless prohibited by *law*, and not earlier than one year before the first applicable primary election, caucus, or general election in which the candidate is running:

(1) establish a campaign committee pursuant to the provisions of Rule 4.4;

(2) speak on behalf of his or her candidacy or against any opponents' candidacies through any medium, including but not limited to advertisements, websites, or other campaign literature; and

(3) obtain and use publicly stated support from any person or organization other than a partisan *political organization*.

(D) A judge or a *judicial candidate* subject to partisan *public election* may, unless prohibited by *law*:

(1) at any time

(a) attend or purchase tickets for dinners or other events sponsored by a *political organization* or a candidate for public office:

(b) identify himself or herself as a member of a political party; and

(c) contribute to a *political organization*;

(2) establish a campaign committee pursuant to the provisions of Rule 4.4;

(3) when a candidate for election

(a) speak on behalf of his or her own candidacy or against any opponents' candidacies through any medium, including but not limited to advertisements, web sites, or other campaign literature;

(b) distribute pamphlets and other promotional campaign literature supporting his or her candidacy;

(c) publicly endorse or publicly oppose other candidates for the same judicial office in a *public election* in which the judge or *judicial candidate* is running;

(d) identify himself or herself as a candidate of a *political organization*, including permitting the candidate's name to be listed on election materials along with the names of other candidates for elective public office and appearing in promotions of the ticket; and

(e) obtain and use publicly stated support from any person or organization, including a *political organization*.

COMMENT

[1] Paragraphs (B), (C), and (D) permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1(B).

[2] Despite paragraphs (B), (C), and (D), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A), paragraphs (4) and (6).

[3] In partisan public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a

political organization, including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of political party or similar designations on campaign literature and on the ballot.

[4] In nonpartisan public elections or retention elections, paragraphs (B)(3) and (C)(3) prohibit a candidate from obtaining and using publicly stated support from a partisan political organization.

[5] A judge or judicial candidate subject to partisan public election is permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.

[6] For purposes of paragraph (D)(3)(c) candidates are considered to be running for the same judicial office if they are competing for a single judgeship or if several judgeships on the same court are to be filled as a result of the election. In endorsing or opposing another candidate for a position on the same court, a judicial candidate must abide by the same rules governing campaign conduct and speech as apply to the candidate's own campaign.

RULE 4.3

Activities of Candidates for Appointment to Judicial Office

(A) A candidate for appointment to judicial office may:

(1) communicate with the appointing authority, including any selection, screening, or nominating commission or similar agency; and

(2) seek endorsements for the appointment from any person or organization other than a partisan *political organization*.

(B) a nonjudge candidate for appointment to judicial office may, in addition, unless otherwise prohibited by *law*:

(1) retain an office in a *political organization*,

(2) attend or purchase tickets for dinners or other events sponsored by a *political organization* or a candidate for public office, and

(3) solicit funds for, pay an assessment to, or make a *contribution* to a *political organization* or a candidate for public office.

COMMENT

When seeking support or endorsement, or when communicating directly with an appointing authority, a candidate for appointment to judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(A)(6).

RULE 4.4

Campaign Committees

(A) A *judicial candidate* for retention, nonpartisan, or partisan election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable *law*. A judicial candidate may also *personally solicit* or accept campaign *contributions*.

(B) A *judicial candidate* for retention, nonpartisan, or partisan election shall direct his or her campaign committee:

(1) to solicit and accept only such campaign *contributions* as are permitted by *law*.

(2) not to solicit or accept *contributions* for a candidate's current campaign more than one year before the applicable primary election, caucus, or general or retention election, nor more than 90 days after the last election in which the candidate participated; and

(3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign *contributions*.

COMMENT

[1] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.

[2] At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are permitted by law. Although lawyers and others who might appear before a successful candidate for judicial office are permitted to make campaign contributions, the candidate should instruct his or her campaign committee to be especially cautious in connection with such contributions, so they do not create grounds for disqualification if the candidate is elected to judicial office. See Rule 2.11.

RULE 4.5

Activities of Judges Who Become Candidates for Nonjudicial Office

(A) Upon becoming a candidate for election to a nonjudicial office either in a primary or in a general election or upon election or appointment to fill a vacancy in an elective nonjudicial office, a judge shall resign from judicial office.

(B) Upon becoming a candidate for appointment to a nonjudicial office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

COMMENT

[1] In campaigns for election to nonjudicial public offices, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for election to nonjudicial office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The "resign to run" rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointment to nonjudicial office, however, the dangers are not sufficient to warrant imposing the "resign to run" rule.

[3] A judge cannot hold judicial office while holding an elective nonjudicial office, whether the nonjudicial office is held by election or by appointment.

[**History**: New Code adopted effective March 1, 2009.]

PREFATORY RULE

(a) **Rules Adopted.** The following Rules of the Supreme Court numbered 602-622 are effective May 1, 2019.

(b) **Repeal of Former Rules.** The Supreme Court Rules Relating to Judicial Conduct numbered 602-627 that were in effect immediately prior to the effective date of these rules are repealed as of May 1, 2019.

(c) **Statutory References**. In these rules, a reference to a statute includes any subsequent amendment to the statute.

[**History:** New rule adopted effective May 1, 2019.]

Rule 602

COMMISSION ON JUDICIAL CONDUCT

(a) **Creation and Purpose.** Under authority granted by Article 3, §§ 1 and 15 of the Kansas Constitution, the Commission on Judicial Conduct (formerly known as the Commission on Judicial Qualifications) is created. The Commission on Judicial Conduct is subject to the Supreme Court's direction and approval and assists the court in the exercise of its responsibility in judicial disciplinary matters.

(b) **Members and Terms.** The Commission consists of 14 members appointed by the Supreme Court, including 6 active or retired judges, 4 nonlawyers, and 4 lawyers. Each appointment is for a term of 4 years. The Supreme Court will appoint a new member to fill a

vacancy. A new member appointed to fill a vacancy serves the unexpired term of the previous member. No member may serve more than 3 consecutive 4-year terms, except a member initially appointed to serve an unexpired term may serve 3 consecutive 4-year terms thereafter. A vacancy occurs when the qualifications for the appointment of any member are no longer met.

(c) **Panels.** The Commission is divided into two 7-person panels, one designated Panel A and the other Panel B. Each panel consists of 3 judges, 2 nonlawyers, and 2 lawyers. The chair of the Commission will chair one panel, and the vice-chair of the Commission will chair the other panel.

(d) **Meetings.** The Commission must meet each June; the Commission will also meet when directed by the Supreme Court, upon call by a panel chair, or in accordance with Commission rules. Panel A or Panel B will meet alternating months. A Hearing Panel meets as needed.

(e) **Officers.** The Commission will elect officers at the annual June meeting to serve a 1-year term beginning July 1. The officers include a chair and vice-chair of the Commission and a vice-chair for Panel A and a vice-chair for Panel B.

(f) **Quorum.** A quorum for transacting business by the Commission is 9 members. A quorum for transacting business by an Inquiry Panel is 4 members. A quorum for transacting business by a Hearing Panel is 5 members.

(g) **Temporary Commission or Panel Members.** If the Commission anticipates difficulty in discharging its responsibilities due to the disqualification or unavailability of its members, the Supreme Court, upon request of the Commission chair or vice-chair, may appoint temporary Commission members to serve as specified.

(h) **Compensation and Expenses.** Commission members will be reimbursed their actual and necessary expenses incurred in discharging their official duties. Members who are not active judges will receive compensation for their services as determined by the Supreme Court.

(i) **Other Fees and Expenses.** The Supreme Court will pay from available funds all reasonable costs, fees, and expenses incurred in administering these rules.

[**History:** New rule adopted effective May 1, 2019.]

Rule 603

DEFINITIONS

In the Rules Relating to the Commission on Judicial Conduct, unless the context or subject matter otherwise requires, the following definitions apply.

(a) **"Commission"** means Commission on Judicial Conduct.

(b) **"Judge"** has the same meaning as used in Rule 601B. Except as provided in Rules 614 and 619, "judge" means any judicial officer who performs the functions of a judge in Kansas courts, including Supreme Court Justice, Court of Appeals Judge, District Judge, District Magistrate Judge, Senior Judge, Retired Judge accepting judicial appointments, and Municipal Court Judge. Where applicable, the term "judge" includes Master, Referee, Judicial Hearing Officer, Temporary Judge, Pro Tempore Judge, Part-time Judge, and Commissioner who performs any functions of a judge in any court of this state. The term "judge" also includes a candidate for judicial office; a candidate is a person seeking selection for or retention in judicial office by election or appointment.

(c) **"Examiner"** means an attorney retained by the Kansas Judicial Branch to take assignments as needed; to investigate a complaint, gather evidence, and report to an Inquiry Panel; to present evidence, argument, and recommendations to the Hearing Panel; and to present argument and authority to the Supreme Court.

(d) **"Panel"** means either Panel A or Panel B serving as either the Inquiry Panel or Hearing Panel.

(e) **"Inquiry Panel"** is the panel that considers and investigates a complaint. The Inquiry Panel handles the complaint until conclusion by either dismissal, panel disposition, or referral for formal proceedings.

(f) **"Hearing Panel"** is the panel not assigned as the Inquiry Panel that handles a matter after formal proceedings are instituted. The Hearing Panel must have no member who has served on the Inquiry Panel for the same complaint.

(g) **"Complainant"** means a person or entity who has made a complaint against a judge.

[**History**: New rule adopted effective May 1, 2019.]

Rule 604

POWERS OF THE COMMISSION

(a) **Generally.** In addition to the powers expressly granted by these rules, the Commission on Judicial Conduct has all powers necessary to institute, conduct, and dispose of proceedings.

(b) **Jurisdiction.** The Commission has jurisdiction to receive and investigate a complaint against a judge and to resolve the complaint as provided in these rules if the complaint is based on one or more violations of the Code of Judicial Conduct.

(c) **Disposing of a Complaint.** The Inquiry Panel has the power to dispose of a complaint as set out in Rule 614. The Hearing Panel has the power to dispose of a complaint as set out in Rule 619.

(d) **Oaths.** The chair, vice-chair, or any Commission member, acting under these rules, may administer oaths and affirmations.

(e) **Subpoena Power.** Under Rule 610, the Commission or a panel has the authority to compel by subpoena the attendance of witnesses and the production of documents, electronically stored information, or tangible things.

(f) **Rule Changes.** The Commission, on its own motion or at the Supreme Court's request, will study and recommend changes in either the Code of Judicial Conduct or the Rules Relating to the Commission on Judicial Conduct.

(g) **Internal Operating Rules.** The Commission has authority to adopt internal operating rules necessary to carry out its function.

[**History:** New rule adopted effective May 1, 2019.]

Rule 605

SECRETARY OF THE COMMISSION AND PANELS

(a) **Secretary and Staff.** The clerk of the appellate courts serves as Secretary of the Commission and each panel. The Secretary is not a member of the Commission or a panel. The Secretary may delegate specific tasks to a staff member who acts at the Secretary's direction.

(b) **Office Files and Records.** The Secretary is the custodian of official Commission and panel files and records. All papers and pleadings must be filed with the Secretary of the Commission.

(c) **Duties of the Secretary.** The Secretary's duties and responsibilities include the following:

(1) receiving a complaint and considering information regarding judicial misconduct;

(2) performing an initial review, screening, and evaluation of a complaint;

(3) assigning a number to a complaint;
(4) assigning a complaint to either Panel A or Panel B to act as the Inquiry Panel;
(5) directing and supervising the Secretary's staff who are assisting the Commission or a panel;
(6) keeping minutes of Commission and panel meetings;
(7) attending all meetings and hearings of the Commission and panels;
(8) preparing and filing documents as needed by the Commission or a panel;
(9) maintaining the Commission and panel records;
(10) maintaining statistics concerning the Commission's operation;
(11) preparing an annual report;
(12) referring a matter to the Examiner or an investigator at a panel's discretion; and
(13) performing other duties at the direction of the Commission, chair, or vice-chair.

(d) **Powers of the Secretary.** The Secretary may administer oaths and affirmations and, subject to the Rules of Civil Procedure, issue subpoenas to compel the attendance of witnesses and the production of documents, electronically stored information, or tangible things. Under Rule 610(e), all subpoenas must be issued by and returned to the Secretary.

[**History:** New rule adopted effective May 1, 2019.]

Rule 605A

POWERS OF HEARING PANEL

[**History:** Repealed effective May 1, 2019.]

Rule 606

EXAMINER FOR THE COMMISSION

(a) **Role of the Examiner.** The Examiner acts in a dual capacity as follows:
(1) when an Inquiry Panel is considering a complaint against a judge, the Examiner assists the Inquiry Panel, when requested, in investigating the complaint; and
(2) after formal proceedings are instituted, the Examiner prosecutes the formal complaint before a Hearing Panel and in any proceedings before the Supreme Court.

(b) **Powers and Duties of the Examiner.** The Examiner's duties and responsibilities include the following:
(1) conducting or directing an investigation of matters referred by an Inquiry Panel;
(2) administering oaths during investigation;
(3) requesting the issuance of subpoenas by the Secretary;
(4) employing others to assist with investigations;
(5) notifying the judge, during the investigation, of the investigation and the general nature of the complaint;
(6) allowing the judge to respond and present information or evidence;
(7) making interim reports to the Inquiry Panel as needed or requested;
(8) making a final report to the Inquiry Panel at the conclusion of an investigation;
(9) preparing a formal complaint as directed and approved by the Inquiry Panel;
(10) presenting the case to the Hearing Panel in support of charges in the formal complaint;
(11) handling all proceedings filed in the Supreme Court under Rule 620;
(12) entering into settlement discussions with a judge and presenting a joint settlement proposal to a Hearing Panel after formal proceedings are instituted; and
(13) performing other duties at the direction of the Commission.

[**History:** New rule adopted effective May 1, 2019.]

Rule 607

COMPLAINTS RELATING TO JUDICIAL CONDUCT

(a) **Form of a Complaint.** A complaint must be in writing, contain the complainant's name and address, and be signed by the complainant. A complaint must be submitted on a form provided by the Commission, and each complaint must be against only one judge.
(b) **Other Complaints.** The Commission may consider referrals from the Office of Judicial Administration and the Office of the Disciplinary Administrator. The Commission may consider matters of judicial misconduct on its own motion or on the motion of one of its members.
(c) **Complaint Number.** The Secretary will assign each complaint a number used to identify the complaint at all steps in the Commission process.
(d) **Initial Review.** The Secretary will acknowledge in writing the receipt of a complaint to the complainant. The Secretary will make an

initial review of the complaint. The Secretary is authorized to return the complaint if it is illegible or does not conform to the requirements of subsection (a). If the complaint fails to state a violation of the Code of Judicial Conduct or does not state a matter within the Commission's jurisdiction, the Secretary will notify the complainant. The Secretary's decision will be reviewed by the next sitting Inquiry Panel. If the Inquiry Panel disagrees with the Secretary's decision, the complaint will be considered. If the Inquiry Panel agrees with the Secretary's decision, the complaint is considered closed.

(e) **Assignment to an Inquiry Panel.**

(1) Any complaint not resolved by the initial review process in subsection (d) will be assigned to an Inquiry Panel.

(2) The complaint will be distributed to the Inquiry Panel for consideration at its next monthly meeting. Supporting documents and additional materials may also be distributed to the Inquiry Panel. All supporting documents submitted by a complainant will be available for review by Inquiry Panel members.

(f) **Request for Additional Information.** The Secretary may request or assemble additional documents or information for the Inquiry Panel. The Secretary may obtain case specific documents or records, ask a judge for information, or ask the complainant to provide additional information.

(g) **Sufficiency of a Complaint.**

(1) An Inquiry Panel will determine whether the complaint states sufficient credible facts that cause a reasonable person to believe that a violation of the Code of Judicial Conduct may have been committed.

(2) Statements of opinion, speculative assertions, and conclusory allegations do not constitute facts and are not sufficient to warrant further investigation or a finding that there is reason to believe a violation of the Code of Judicial Conduct has occurred.

(3) A complaint or objection related to a judge's rulings on legal issues or matters involving a judge's discretion are ordinarily insufficient. Such matters are subject to review and correction on appeal and do not constitute a violation of the Code of Judicial Conduct.

(h) **Notice of Disposition.** Upon disposition of a complaint by either a finding of violation or no violation, the complainant will be notified of the Inquiry Panel's action. If there is a finding of a violation, the judge or other interested persons will be notified. If there is a finding of no violation, the judge or other interested persons may be notified within the Inquiry Panel's discretion.

[**History:** New rule adopted effective May 1, 2019.]

RULES APPLICABLE TO BOTH PANELS AND PROCEDURES BEFORE EITHER PANEL OF THE COMMISSION

Rule 608

COOPERATION

A judge must cooperate with the Commission, an Inquiry Panel, or a Hearing Panel. A judge must respond to any inquiry concerning the judge's conduct within the time required by a panel. A judge's lack of response may be considered a failure or refusal to cooperate. A judge's failure or refusal to cooperate in an investigation, use of dilatory practices, frivolous or unfounded responses or argument, or other uncooperative behavior may be considered a violation of Canon 1 of the Code of Judicial Conduct.

[**History:** New rule adopted effective May 1, 2019.]

Rule 609

DISQUALIFICATION OR RECUSAL

(a) **Complaint against a Judge Member.** A judge who is a Commission member is disqualified from participation as a member in all proceedings involving a complaint against the judge. A proceeding against a judge who is a Commission member will be conducted in the same manner as a proceeding against any other judge.

(b) **Motion to Disqualify a Panel Member.** A motion to disqualify a panel member must be in writing and state with particularity the grounds for disqualification. If formal proceedings have been commenced, a motion to disqualify must be filed no later than 20 days after the formal complaint is served. The panel member may, within 14 days after a motion to disqualify is filed, file a response. A motion to disqualify must be determined by majority vote of the panel if the member does not voluntarily recuse. The panel member whose disqualification is requested is not eligible to vote on the motion for disqualification.

(c) **Voluntary Recusal.** Any Commission or panel member may voluntarily recuse at any time. If a member recuses, he or she must not be present when the matter is discussed.

[**History:** New rule adopted effective May 1, 2019.]

Rule 610

SUBPOENAS

(a) **Subpoena for Investigation.** After a complaint is referred to the Examiner, the Examiner may compel by subpoena for purposes of investigation the attendance of the judge or witnesses and the production of documents, electronically stored information, or tangible things. Subpoenas issued before formal proceedings should clearly state they are issued in connection with a confidential investigation under these rules. A person subpoenaed may consult with his or her attorney without committing a breach of confidentiality.

(b) **Subpoena for Deposition or Hearing.** After formal proceedings are filed, the Examiner and the respondent may compel by subpoena for a deposition or a hearing the attendance of witnesses and the production of documents, electronically stored information, or tangible things.

(c) **Enforcement of Subpoena.** Upon application, a district court judge of any judicial district where the attendance or production is required must enforce the attendance and testimony of any witness and the production of any documents or materials subpoenaed.

(d) **Quashing or Modifying Subpoenas.** The Inquiry or Hearing Panel handling the matter must consider and decide any motion to quash or modify a subpoena.

(e) **Issuance of Subpoenas.** The Secretary issues all subpoenas.

(f) **Fees and Costs.** Subpoena and witness fees and costs are the same as those provided for in proceedings in civil matters in Kansas district courts.

(g) **Service.** K.S.A. 60-245(b) controls service of any subpoena permitted by these rules.

[**History:** New rule adopted effective May 1, 2019.]

Rule 611

CONFIDENTIALITY

(a) All complaints, investigations, reports, correspondence, proceedings, and Commission records are private and confidential and must

not be divulged except as provided in these rules or by Supreme Court order.

(b) This rule does not prohibit:
  (1) an Inquiry Panel from disclosing a complaint to a judge when a response is requested from the judge;
  (2) an Inquiry Panel from disclosing a copy of a judge's response to the complainant; or
  (3) the complainant or the judge from disclosing the existence of a complaint or from disclosing any documents or correspondence filed by, served on, or provided to that person.

(c) The confidentiality provisions of this rule do not apply to the following:
  (1) a formal complaint under Rule 615 or any document filed with or issued by the Hearing Panel;
  (2) any hearing held before a Hearing Panel;
  (3) any information the Commission or a panel submits for use in any current or future criminal prosecution or ouster proceeding against a judge; and
  (4) the final disposition of a formal proceeding.

(d) The Commission or a panel is authorized, in its discretion, to disclose relevant information and to submit all or any part of its files to the following:
  (1) the disciplinary administrator for use and consideration in investigating or prosecuting alleged violations of the Kansas Rules of Professional Conduct; and
  (2) the Judges Assistance Committee.

(e) Upon written request, the Commission will disclose complaint dispositions that find a violation of the Code of Judicial Conduct to the Supreme Court Nominating Commission, District Judicial Nominating Commissions, and the Governor for use and consideration in evaluating any person being considered for judicial appointment.

(f) The Examiner's work product, Hearing Panel deliberations, and records of the Hearing Panel's deliberations are confidential and not subject to disclosure.

[**History:** New rule adopted effective May 1, 2019.]

Rule 612

IMMUNITY

Complaints, reports, or testimony in the course of proceedings under these rules are deemed to be made in the course of judicial proceedings. Commission and panel members, the Examiner, the Secretary, and the Secretary's staff are absolutely immune from suit for all conduct in the course of their official duties. As to all other participants, any complaint,

report, or testimony in the course of proceedings under these rules is deemed to be made in the course of judicial proceedings.
[**History:** New rule adopted effective May 1, 2019.]

RULES APPLICABLE TO AN INQUIRY PANEL

Rule 613

PROCEDURES OF AN INQUIRY PANEL

(a) **Generally.** In addition to the powers expressly granted by these rules, an Inquiry Panel has all powers necessary to institute, conduct, and dispose of proceedings.

(b) **Inquiry Panel Meetings.** An Inquiry Panel (either Panel A or Panel B) meets every month if there are complaints or other matters to be considered.
   (1) The Inquiry Panel will:
      (A) consider all complaints assigned to the panel;
      (B) consider all actions taken by the Secretary;
      (C) take action on all complaints assigned to the panel; and
      (D) provide a copy of the complaint to the judge when a response is requested from the judge.
   (2) The Inquiry Panel may:
      (A) direct the Secretary to request a response from the judge;
      (B) ask the Secretary to obtain additional documents or information from the complainant or other sources;
      (C) direct the Secretary to refer the matter to the Examiner; or
      (D) stay a complaint.
   (3) The Inquiry Panel will not:
      (A) hold a public hearing;
      (B) interview or take testimony from complainants or other interested persons or witnesses; or
      (C) discuss its proceedings with Hearing Panel members.

(c) **Decisions by an Inquiry Panel.** An Inquiry Panel may make one of the dispositions set forth in Rule 614(b) or 614A.

(d) **Copies or Notice Provided by an Inquiry Panel.** Notice of disposition will be provided under Rule 607(h). In the panel's discretion, it may provide a copy of a judge's response to the complainant.

(e) **Requests for Reconsideration.** Initial requests for reconsideration will be submitted to the Inquiry Panel assigned the complaint. The panel will reconsider the matter. After reconsideration, the panel

may affirm a prior decision or request further information or additional investigation. The Inquiry Panel has no duty to consider subsequent requests for reconsideration.

[**History:** New rule adopted effective May 1, 2019.]

Rule 614

DISPOSITIONS OF AN INQUIRY PANEL; JUDGE

(a) **Judge.** "Judge," as used in this rule, means any Court of Appeals Judge, District Judge, District Magistrate Judge, Senior Judge, Retired Judge accepting judicial appointments, Municipal Court Judge, Master, Referee, Judicial Hearing Officer, Temporary Judge, Pro Tempore Judge, Part-time Judge, or Commissioner who performs any functions of a judge in any court of this state. A "judge" also includes a candidate for judicial office; a candidate is a person seeking selection for or retention in judicial office by election or appointment.

(b) **Dispositions.** An Inquiry Panel may make one of the following dispositions by a majority vote of the panel members voting.

(1) If no violation is found, the Inquiry Panel may:
   (A) dismiss the complaint; or
   (B) dismiss the complaint and issue a letter of informal advice to the judge.

(2) If a violation is found, the Inquiry Panel may:
   (A) issue a letter of caution to the judge;
   (B) issue a cease-and-desist order as set forth in subsection (c) below; or
   (C) refer the matter for formal proceedings under Rule 615.

(c) **Cease-and-Desist Order.** A cease-and-desist order must specify if it is private or public. If the Inquiry Panel issues an order directing a judge to cease and desist, the Secretary must serve a copy of the order on the judge. K.S.A. 60-303(c) controls service of any papers or notices, unless otherwise provided in these rules. Within 20 days after service of the order, the judge must either (1) agree to comply with the order by accepting the order in writing where indicated and returning a signed copy of the order to the Secretary, or (2) refuse to accept the order by notifying the Secretary it is not accepted. The order is deemed to have been refused if the Secretary receives no response from the judge within 20 days after service of the order. If a judge accepts a public cease-and-desist order, the complainant will be provided a copy of the order. If the judge refuses to accept the order, the Inquiry Panel may refer the matter to the Examiner and may institute formal proceedings.

[**History:** New rule adopted effective May 1, 2019.]

Rule 614A

DISPOSITIONS OF AN INQUIRY PANEL; JUSTICE

When a complaint is made against a Kansas Supreme Court Justice, an Inquiry Panel may make the following dispositions by a majority vote of the panel members voting. If no violation is found, the Inquiry Panel must dismiss the complaint. If a violation is found, the Inquiry Panel may issue a letter of caution to the Justice or refer the matter for formal proceedings under Rule 615, consistent with Article 3, §§ 1 and 15 of the Kansas Constitution.

[**History:** New rule adopted effective May 1, 2019.]

Rule 615

FORMAL PROCEEDINGS

(a) **Generally.** If the Inquiry Panel concludes formal proceedings should be instituted, the panel will direct the Examiner to prepare a formal complaint for approval by the Inquiry Panel.

(b) **Title of Proceeding.** The formal proceeding is entitled:

"BEFORE A HEARING PANEL FOR FORMAL JUDICIAL COMPLAINTS
Inquiry Concerning Judge _____, No. _____."

(c) **Formal Complaint.** The formal complaint must specify in ordinary language the charges against the judge and the alleged facts that are the basis for the charges. The formal complaint must advise the judge of the right to file a written answer to the charges within 20 days after service of the formal complaint.

(d) **Service.** Unless service is waived in writing, the Secretary must serve the formal complaint on the judge. K.S.A. 60-303(c) controls service of any papers or notices, unless otherwise provided in these rules.

(e) **Referral to Hearing Panel.** After the Secretary serves the formal complaint, all matters relating to the formal proceedings are referred to the Hearing Panel.

[**History:** New rule adopted effective May 1, 2019.]

RULES RELATING TO FORMAL PROCEEDINGS AND A HEARING PANEL

Rule 616

PROCEDURES OF A HEARING PANEL

(a) **Generally.** In addition to the powers expressly granted by these rules, a Hearing Panel has all powers necessary to institute, conduct, and dispose of proceedings.

(b) **Chair.** The chair of the assigned panel chairs the Hearing Panel or designates a panel member to serve as chair of the Hearing Panel. The Hearing Panel chair, acting under these rules, may administer oaths and affirmations and has the authority to rule on motions and evidentiary objections.

(c) **Computation and Extension of Time.** The provisions of K.S.A. 60-206 apply to the computation of any time period specified by these rules. At the respondent's request, a Hearing Panel may extend for periods not to exceed 30 days the time for filing an answer and the commencement of a hearing. A request for continuance of the hearing must be filed at least 7 days before the hearing date.

(d) **Answer.** The respondent's answer is due 20 days after service of the formal complaint.

(e) **Prehearing Conference.** After the time for filing an answer has expired, the Hearing Panel chair will conduct a prehearing conference. The conference may be conducted in person, by telephone, or by other electronic means. A written order reflecting the matters determined at the conference must be entered. The purpose of the conference is to address the following matters:
   (1) identify and state the issues of fact or law in controversy;
   (2) establish a deadline and procedure for the exchange of information required to be disclosed by the parties under subsection (f);
   (3) establish of record the admission of any facts or stipulations between the parties;
   (4) determine requests for discovery under subsection (g);
   (5) establish the time, place, and estimated duration of the formal hearing; and
   (6) determine any other matters the panel chair deems necessary to ensure the fair and orderly resolution of the hearing.

(f) **Disclosure.** Upon request, the Examiner must disclose to the respondent or the respondent's attorney all statements, including those in writing and stenographically or electronically recorded. Both the

Examiner and the respondent or the respondent's attorney must disclose and serve the following information:

(1) the name, address, and a brief summary of the testimony for each proposed witness at the hearing; and

(2) the documents and/or other exhibits proposed for use or as evidence at the hearing.

(g) **Discovery.** Requests for authority to conduct discovery allowed by the Kansas Code of Civil Procedure must be presented and determined at the Prehearing Conference.

(h) **Setting for Hearing.** A time and place for hearing will be set at the Prehearing Conference, after consultation with the Hearing Panel members to determine availability. If the respondent or the respondent's attorney does not appear or participate in the Prehearing Conference, the Secretary will provide notice of the date, time, and place of hearing. This notice must be given at least 20 days prior to the hearing.

(i) **Service.** Unless otherwise provided in these rules, K.S.A. 60-205 controls service of any papers or notices required by these rules.

(j) **Amendments to Complaint or Answer**. At any time before disposition, a Hearing Panel may allow or require amendments to the formal complaint and may allow amendments to the answer. The formal complaint may be amended to set forth additional facts or charges that were unknown either at the time the formal complaint was filed or before the commencement of the hearing or to conform to the evidence presented at the hearing. If the formal complaint is amended, a respondent must be given reasonable time to answer the amendment and to prepare and present a defense against the matters charged.

(k) **Record of Proceedings.** A Hearing Panel must keep a record of all proceedings.

[**History:** New rule adopted effective May 1, 2019.]

Rule 617

PROCEDURAL RIGHTS OF A RESPONDENT IN FORMAL PROCEEDINGS

(a) **Right to Counsel, Defend, and Offer Evidence.** A respondent has the following rights:

(1) a right to be represented by counsel;

(2) a right and reasonable opportunity to defend against the charges by the introduction of evidence and examination and cross-examination of witnesses; and

(3) a right to the issuance of subpoenas for the attendance of witnesses or for the production of documents, electronically stored information, or tangible things.

(b) **Transcript of Formal Hearing.** A respondent has the right, at the respondent's expense, without any order or approval, to a copy of all or any portion of the formal hearing transcript.

(c) **Guardian Ad Litem if Incompetent.** If a respondent is adjudged an incapacitated person, or if it appears to the Hearing Panel at any time during the proceedings that the respondent is not competent to act, the Hearing Panel may appoint a guardian ad litem. The guardian ad litem may claim and exercise any right and privilege and make any defense for the respondent with the same force and effect as if claimed, exercised, or made by the respondent if competent. When these rules provide for service or notice to the respondent, the service or notice must be to the guardian ad litem.

[**History:** New rule adopted effective May 1, 2019.]

Rule 618

FORMAL HEARING PROCEDURE

(a) At the time and place set for hearing, the Examiner will present the case in support of the charges in the formal complaint. The respondent may present any evidence or testimony in defense of the formal complaint.

(b) The respondent's failure to answer or appear at the hearing will not stay the formal proceeding or be taken as evidence of the truth of the facts alleged in the formal complaint.

(c) The proceedings at the hearing must be recorded verbatim.

(d) No fewer than 5 members of the Hearing Panel must be present when evidence is introduced.

(e) Rules of evidence applicable to civil cases apply at the formal hearing.

(f) Procedural and other interlocutory rulings will be made by the Hearing Panel chair.

(g) While the matter is pending before the Hearing Panel and upon application of the Examiner, the respondent, or on the Panel's own initiative, the Hearing Panel may reopen the hearing and take additional evidence related to the pending matter. The order must set the time and place of the reopened hearing and must indicate the matters on which the Panel will hear additional evidence.

(h) The Hearing Panel's deliberations are not public.

[**History:** New rule adopted effective May 1, 2019.]

Rule 619

DISPOSITIONS OF A HEARING PANEL; JUDGE

(a) **Judge.** "Judge," as used in this rule, means a Court of Appeals Judge, District Judge, District Magistrate Judge, Senior Judge, Retired Judge accepting judicial appointments, Municipal Court Judge, Master, Referee, Judicial Hearing Officer, Temporary Judge, Pro Tempore Judge, Part-time Judge, or Commissioner who performs any functions of a judge in any court of this state. A "judge" also includes a candidate for judicial office; a candidate is a person seeking selection for or retention in judicial office by election or appointment.

(b) **Burden of Proof; Dispositions.** To sustain the charges against a judge, at least four Hearing Panel members must find the charges have been proven by clear and convincing evidence. If the panel finds the charges have been proven, it must make one of the following dispositions:
   (1) admonish the respondent;
   (2) issue a cease-and-desist order;
   (3) recommend to the Supreme Court a discipline of public censure, suspension, or removal; or
   (4) recommend to the Supreme Court compulsory retirement of the respondent.

(c) **No Recommendation to the Supreme Court.** If the panel finds the charges have not been proven or its disposition is admonishment or issuance of a cease-and-desist order, the proceedings will terminate and the examiner, the respondent or the respondent's attorney and any complainant will be notified.

(d) **Recommendation to the Supreme Court.** If the panel's disposition is a recommendation to the Supreme Court, then the matter is referred for proceedings before the Supreme Court. In its referral to the Supreme Court, a Hearing Panel, for good cause, may recommend that a respondent be temporarily suspended from performing judicial duties pending final decision by the Supreme Court.

(e) **Factors Considered for Disposition.** In making a disposition, a Hearing Panel may consider the following:
   (1) the extent of the misconduct;
   (2) the nature of the misconduct;
   (3) the respondent's conduct in response to the Commission's proceedings;
   (4) the respondent's discipline record and reputation;

(5) the effect the misconduct had on the integrity of and respect for the judiciary; and
(6) any other relevant factors.

(f) **Written Findings, Conclusions, and Recommendations.** In all proceedings resulting in a recommendation to the Supreme Court for discipline or compulsory retirement, a Hearing Panel must submit in writing findings of fact, conclusions of law, and the basis for the recommendation.

[**History:** New rule adopted effective May 1, 2019.]

Rule 619A

DISPOSITIONS OF A HEARING PANEL; JUSTICE

(a) **Burden of Proof.** To sustain the charges against a Kansas Supreme Court Justice, at least four Hearing Panel members must find the charges have been proven by clear and convincing evidence.

(b) **Dispositions.** If the panel finds the charges have not been proven, the proceedings will terminate and the examiner, the respondent or the respondent's attorney and any complainant will be notified. If the panel finds the charges have been proven, it must forward the matter to the Supreme Court for proceedings under Rule 620, consistent with Article 3, §§ 1 and 15 of the Kansas Constitution.

(c) **Written Findings and Conclusions.** In all proceedings resulting in a referral to the Supreme Court, a Hearing Panel will submit in writing findings of fact and conclusions of law. The panel will not make a recommendation of discipline.

[**History:** New rule adopted effective May 1, 2019.]

Rule 620

PROCEEDINGS BEFORE THE SUPREME COURT

(a) **Examiner; Special Counsel.** All proceedings filed in the Supreme Court under this rule must be conducted in the name of the State of Kansas by the Examiner or by special counsel appointed by the court.

(b) **Docketing a Complaint in the Supreme Court.** The Hearing Panel's findings of fact, conclusions of law, and recommendations will be filed with the clerk of the appellate courts. The matter will be docketed by the clerk as:

IN THE SUPREME COURT OF THE
STATE OF KANSAS

In re _____,	No. _____
(Judge's name)	Original Proceeding
_____	Relating to Judicial
(Judge's judicial title)	Conduct

(c) **Notice; Citation to the Respondent.** Upon docketing the case, the clerk will take the following action for notice and citation to the respondent.

(1) The clerk will send the respondent the Hearing Panel's findings of fact, conclusions of law, and recommendations by certified mail return receipt requested. If the respondent's address is unknown and a copy of the findings of fact, conclusions of law, and recommendations cannot be mailed to the respondent, the matter will stand submitted on the merits upon the filing of a certificate by the clerk disclosing such facts.

(2) The clerk will issue a citation directing the respondent to file with the clerk either:

(A) a statement that the respondent does not wish to file exceptions to the findings of fact, conclusions of law, and recommendations;

(B) a statement that the respondent does not wish to file exceptions to the findings of fact and conclusions of law but reserves the right to address the Supreme Court with respect to disposition of the case; or

(C) the respondent's exceptions.

(d) **No Exceptions by the Respondent.** If the respondent fails to file exceptions within 20 days after receipt of the citation or the respondent files a statement that the respondent does not wish to file exceptions, the Supreme Court will fix a time and place for the imposition of discipline and the clerk will notify the respondent by certified mail return receipt requested of the time and place. A Hearing Panel's findings of fact and conclusions of law are conclusive and cannot be challenged by the respondent unless exceptions have been timely filed. The respondent must appear in person at the time and place designated by the Supreme Court, may be accompanied by

counsel, and may make a statement with respect to the disposition of the case.

(e) **Exceptions by the Respondent.** A respondent must file exceptions within 20 days after receipt of citation. If the respondent files exceptions, the following steps are taken.

(1) **Record.** The clerk immediately causes a transcript of the record of the Hearing Panel's proceedings to be prepared and filed and a copy to be served on the respondent. The transcript is part of the record, and the State and the respondent may cite it in the briefs. As part of the record, the clerk files the formal complaint, any answer submitted by the respondent, any transcripts that were before a Hearing Panel, the exhibits, and other documents as the Supreme Court may direct. All facts included in the respondent's or Examiner's brief must be keyed to the record by volume and page number.

(2) **Brief Filing Schedule.**

(A) **Respondent's Brief.** The respondent's brief is due 30 days after the Hearing Panel's transcript is filed.

(B) **Examiner's Brief.** The Examiner's brief is due 30 days after the respondent's brief is filed.

(C) **Reply Brief.** A reply brief is due 14 days after the Examiner's brief is filed.

(D) **Failure to File Brief.** If the respondent fails to file a brief within 30 days from filing of the transcript, the respondent will be deemed to have conceded that the findings of fact made by the Hearing Panel are supported by the evidence.

(3) **Hearing.** The matter will be set for hearing after briefs are filed or the time for filing briefs has expired. The respondent must appear in person at the time and place designated by the Supreme Court, may be accompanied by counsel, and may make a statement with respect to the disposition of the case.

(f) **Supreme Court Disposition.** The Supreme Court may enter any of the following dispositions:

(1) refer the matter back to a Hearing Panel for any further proceedings as directed by the court;
(2) reject the Hearing Panel's recommendations;
(3) dismiss the proceedings;
(4) order discipline;
(5) order compulsory retirement; or
(6) make any other disposition as justice requires.

(g) **Discipline against Supreme Court Justice.** If the respondent is a Supreme Court Justice, the Supreme Court must determine whether

the charges were proven by clear and convincing evidence. The discipline imposed is subject to the limitations of Article 3, §§ 1 and 15 of the Kansas Constitution governing the removal and retirement of justices of the Supreme Court.

(h) **Application of Appellate Procedure Rules.** Unless expressly provided otherwise or where the application of a particular rule would be clearly impracticable, inappropriate, or inconsistent, the rules of appellate procedure apply to proceedings in the Supreme Court for review of a recommendation of a Hearing Panel.

[**History:** New rule adopted effective May 1, 2019.]

Rule 621

COSTS

No costs are assessed against a respondent who is exonerated. In cases where admonition, cease and desist, or discipline is adjudged, costs must be equitably assessed. Costs may include court reporter charges for the recording and preparation of transcripts for depositions used in evidence or for other proceedings before the Commission, witness fees and expenses, and the docket fee.

[**History:** New rule adopted effective May 1, 2019.]

Rule 622

PUBLICATION

A public cease-and-desist order issued by an Inquiry Panel that has been accepted by the judge and the final disposition of a Hearing Panel following formal proceedings must be published on the Kansas Judicial Branch website.

[**History:** New rule adopted effective May 1, 2019.]

Rule 623

PROCEEDINGS BEFORE THE SUPREME COURT

[**History:** Repealed effective May 1, 2019.]

Rule 624

COSTS

[**History:** Repealed effective May 1, 2019.]

Rule 625

COMPENSATION AND EXPENSES—COMMISSION

[**History:** Repealed effective May 1, 2019.]

Rule 626

OTHER FEES AND EXPENSES

[**History:** Repealed effective May 1, 2019.]

Rule 627

ADDITIONAL RULES

[**History:** Repealed effective May 1, 2019.]

Rule 640

JUDGES ASSISTANCE COMMITTEE

(a) **The Committee.** A Judges Assistance Committee is created to provide assistance to any Kansas judge who is experiencing mental health issues such as depression, stress, grief, and anxiety; addiction issues such as alcohol abuse, drug abuse, and gambling; age-related issues; or any other issue that may affect the judge's quality of life or ability to perform the judge's judicial duties.

(b) **Definition of "Judge."** For purposes of this rule, "judge" means any Supreme Court justice, Court of Appeals judge, district judge, district magistrate judge, Municipal Court judge, or any retired judge or justice accepting judicial assignments.

(c) **Membership.** The Committee will consist of seven judges appointed by the Supreme Court and must always include at least two active district judges and two active district magistrate judges. The other three members may be active or retired judges. The court will consider population and geographical representation in the appointment process.

(d) **Terms.** Each Committee member is appointed for a term of four years. The court will appoint a new member to fill a vacancy on the Committee occurring during a term. A new member appointed to fill a vacancy serves the unexpired term of the previous member. No member may serve more than three consecutive four-year terms, except that a member initially appointed to serve an unexpired term may serve three more consecutive four-year terms. A vacancy occurs when the qualifications for the appointment of any member are no longer met.

(e) **Chair and Meetings.** The Supreme Court will designate one member as chair of the Committee. The Committee will meet when the need arises and when called by the chair.

(f) **Objectives.** The Committee's objectives are to:

(1) identify a judge whose ability to perform the judge's duties is affected by mental health issues such as depression, stress, grief, and anxiety; addiction issues such as alcohol abuse, drug abuse, and gambling; age-related issues; or any other issue that may affect the judge's quality of life or ability to perform the judge's judicial duties;

(2) arrange intervention in a manner that a judge involved will recognize issues that may affect the judge's quality of life or ability to perform the judge's judicial duties, accept help from the Committee and medical professionals, and be treated and monitored for a period of time so that the judge may return to performing judicial duties when able;

(3) recommend avenues of treatment and provide a program of peer support; and

(4) act as an advocate of a judge and assist the judge in recognizing issues that may affect the judge's quality of life or ability to perform the judge's judicial duties, in obtaining effective treatment when possible, and in returning to the responsible performance of the judge's profession.

(g) **Office of Judicial Administration.** The Office of Judicial Administration will assist the Committee in achieving its purpose and objectives by:

(1) helping judges and other persons contact the Committee;

(2) educating the public and the legal community about the nature of issues that may affect the judge's quality of life or ability to perform the judge's judicial duties and developing a program that will generate confidence to warrant early referrals and self-referrals to the Committee so that such issues may be avoided, limited, or reversed;

(3) compiling and creating reports required by the Supreme Court; and

(4) providing any other assistance requested by the Supreme Court or the Committee.

(h) **Contact.** Rather than asking the Office of Judicial Administration for assistance in contacting the Committee, a judge or anyone on the judge's behalf may contact the Committee or one of its members directly.

(i) **Designees.** The Committee may designate persons to assist the Committee in its work.

(j) **Immunity.** The Committee members, Office of Judicial Administration staff assisting the Committee, designees, and all other participants are entitled to the immunities of Rule 612 and are relieved from the provisions of Rule 8.3 of the Kansas Rules of Professional Conduct, Rule 2.15(A) and (C) of the Kansas Code of Judicial Conduct, and Rule 210 as to work done for and information obtained in carrying out the Committee's work.

(k) **Confidentiality.** All proceedings, information, meetings, reports, and records of the Committee or the Office of Judicial Administration pertaining to individual judges are privileged and must not be divulged except:
   (1) when a judge fails or refuses to address the issues of concern, the Committee, upon a vote of the majority, may refer the matter to the Commission on Judicial Conduct;
   (2) when a judge has been referred to the Committee by the Commission on Judicial Conduct, the Committee will provide progress reports and recommendations to the Commission;
   (3) when the Committee, upon a vote of the majority, seeks the assistance of the Kansas Lawyers Assistance Program;
   (4) when the judge consents to the release of information; or
   (5) by order of the Supreme Court.

(l) **Annual Report.** The Committee must file an annual statistical report of its activities with the Supreme Court and the Commission on Judicial Conduct. The court may order additional reports.

(m) **Internal Procedural Rules.** The Committee may adopt rules of procedure consistent with this rule.

(n) **Expenses.** Members and designees of the Committee will be reimbursed their actual and necessary expenses, including the use of professional intervention assistance, incurred in the discharge of their official duties. Any psychological, medical, or rehabilitative programs undertaken will not be the financial responsibility of the Committee.

(o) **Cooperation.** A judge's interaction with the Committee is voluntary. However, a judge's cooperation, or failure to cooperate, with the Committee may be considered by the Commission on Judicial Conduct and the Supreme Court in any disciplinary proceeding.

[**History:** New rule effective April 19, 1994; Am. (g) effective May 11, 1995; Am. effective November 10, 1998; Am. (a), (b), and (g) effective July 1, 2012; Am. effective July 10, 2012; Am. effective January 1, 2020.]

Rule 650

JUDICIAL ETHICS ADVISORY PANEL

(a) Pursuant to Article 3, Section 15 of the Constitution of the State of Kansas and the inherent power of the Supreme Court, there is hereby created a judicial ethics advisory panel to serve as an advisory committee for judges seeking opinions concerning the compliance of an intended, future course of conduct with the Code of Judicial Conduct.

(b) The panel shall consist of no more than three retired justices or judges. Each appointment shall be for a term of 4 years. The Supreme Court will appoint a new member to fill a vacancy on the panel occurring during a term. A new member appointed to fill a vacancy serves the unexpired term of the previous member. No member may serve more than three consecutive 4-year terms, except that a member initially appointed to serve an unexpired term may serve three consecutive 4-year terms thereafter. A vacancy shall occur when the qualifications for the appointment of any member are no longer met.

(c) The Supreme Court shall designate one member as chair of the panel, which shall meet when the need arises and as called by the chair.

(d) Members of the advisory panel shall be reimbursed their actual and necessary expenses incurred in the discharge of their official duties and shall be compensated in the manner determined by the Supreme Court.

(e) A request for a judicial ethics advisory opinion shall be directed to the Clerk of the Appellate Courts, who shall forward the request to the panel if the requirements of this rule are satisfied. Requests will be accepted only from persons subject to Supreme Court Rule 601B et seq.

(f) Requests for judicial ethics advisory opinions shall relate to prospective conduct only and shall contain a complete statement of all facts pertaining to the intended conduct together with a clear, concise question of judicial ethics. The identity of the judge, whose proposed conduct is the subject of the request, shall be disclosed to the panel. The requesting judge shall include with the request a concise memorandum setting forth the judge's own research and conclusions concerning the question. Requests shall not be accepted or referred for opinion unless accompanied by this memorandum.

(g) Advisory opinions shall address only whether an intended, future course of conduct violates the Code of Judicial Conduct and shall provide an interpretation of the Code with regard to the factual situation presented. The opinion shall not address issues of law nor shall it address the ethical propriety of past or present conduct. The identity of the requesting judge shall not be disclosed in the opinion.

(h) The Clerk shall provide a copy of each advisory opinion to the Chief Justice, the Commission on Judicial Conduct and the requesting judge, and the state law library. The Clerk shall keep the original opinion in a permanent file.

(i) The fact that a judge or candidate for judicial office (as defined in the Terminology Section of this Code) has requested and relied upon an advisory opinion shall be taken into account by the Commission on Judicial Conduct in its disposition of complaints and in determining whether to recommend to the Supreme Court discipline of a judge or judicial candidate. The advisory opinion, however, shall not be binding on the Commission on Judicial Conduct, the hearing panel, or the Supreme Court in the exercise of their judicial discipline responsibilities.

[**History:** Am. effective March 6, 1984; Am. effective November 17, 1987; Am. (f) effective May 11, 1995; Am. (b) and (f) effective May 1, 1999; Am. effective August 31, 2015.]

Advisory Opinion Annotations

Year Issued	Advisory Opin. No.	Topic
		Advisory Opinions Based on Rule 601
1984	JE-1	Soliciting funds for Nat'l Judges Education & Research Foundation, Inc.; judge's role as officer in such organization. Canon 5 and its Comment B(2).
1984	JE-2	Seeking election to different division than presently occupied in partisan, multi-division judicial district. Canons 2 and 7.
1984	JE-3	Participation of judge in spouse's political campaign for spouse's elective office.
1984	JE-4	Application of Canons to municipal court judges; resignation from judicial office upon candidacy for county attorney position. Canon 7A(3).
1984	JE-5	Judicial participation in debate surrounding the method for selection of district judges. Canons 4, 5, and 7.
1984	JE-5A	Solicitation of funds to support position on selection of district judges. Canons 4C, 5B(c), and 7B(2).
1984	JE-6	Involvement of members of the District Court Nominating Commission, the Supreme Court Nominating Commission, and the Commission on Judicial Qualifications in debate surrounding method for selection of district judges. S. Ct. Rule 650.
1984	JE-7	Receipt of award from special interest bar association. Canons 2 and 2A and S. Ct. Rule 650(d).
1984	JE-8	Involvement of judge in fellow judge's campaign for office. Canon 7A(1)(b).
1984	JE-9	Appearance of attorney who is judge's daughter before other judges in district. Canon 3C.
1984	JE-10	Participation in ABA's Network of Concerned Correspondents. Canon 5.
1984	JE-11	Appearance before or appointment of attorney/spouse by magistrate judge/spouse. Canon 2 and 3B(4). Preparation of tax returns by attorney who is newly elected district magistrate judge. Canon 5F. Attorney's advice to clients upon being appointed to the bench; recommendation of spouse/attorney. Canon 2. Use of firm letterhead with name of attorney who is newly appointed judge during interval before appointment is effective.
1984	JE-12	Appearance of firm members before former partner, now district judge, who is also owner/landlord of firm's office

		building and son of former partner who is retired and receiving an annuity from the firm and whose name remains on firm letterhead. Canons 2B and 3C.
1985	JE-13	Attendance of judge's spouse at political gatherings; political contributions by judge's spouse from spouse's business income maintained in separate account.
1985	JE-14	Judge as member of country club board of directors. Canon 5.
1986	JE-15	Judge as investor in abstract company. Canon 5C(1), (2), and (3).
1986	JE-16	Solicitation of funds from charitable foundations by judge as member of board of directors of private, not-for-profit corporation "_____ County Substance Abuse Services, Inc." Canon 5B(2).
1986	JE-17	Judge, legatee under father's will, acting as co-executor with mother and as attorney for executors. Canon 5D and Kan. Const. Art. 3, § 13.
1987	JE-18	Solicitation of funds from law school classmates to provide gift to law school; use of judicial stationery. Canon 5B(2).
1987	JE-19	Involvement of judge in cases handled by judge's former law firm; effect of "blind trust" set up by judge to administer proceeds due him upon his leaving practice. Canons 2; 3C(1), (2), and (3); and 3D. Judge as stockholder and director of abstract and title company. Canon 5C(1), (2), and (3). Judge as holder of tenant in common interest in 36-acre strip-pit used for recreational and not income-producing purposes. Canon 5C(2).
1987	JE-20	Fundraising for non-profit organization by submitting to mock arrest and soliciting "bail money" from family and acquaintances. Canon 5B(2).
1987	JE-21	Propriety of newly-appointed district judge remaining as co-trustee of former client's revocable trust. Canon 5D.
1987	JE-22	Judge's participation in medical/legal seminar at resort; degree of involvement/sponsorship. Canon 2B.
1987	JE-23	Judge as political party's precinct committeeman; "holding office." Canon 7A(1)(a); KSA 25-3801, 25-3802.
1988	JE-24	Participation of judge, in nonpartisan judicial district, in political party's presidential caucus. Canon 7A(3)(b).
1988	JE-25	Judicial candidate's continuation as weekend pastor. Canon 5A and 5B(2).
1988	JE-26	Recusal due to relationship disqualification under Canon 3C(1)(d)(iv); procedure for remittal of such relationship under Canon 3D.
1989	JE-27	Judge's endorsement of a candidate for public office. Canon 7A(1)(b).

1989	JE-28	Municipal judge's compliance with code; serving as indigent defense counsel. Canons 5C(2), D, E, F, G and 6C; Rule 601 compliance section A.
1989	JE-29	Retired judge, elected to nonjudicial office, sitting pro tempore. Canon 7A(4) and Rule 601 compliance section C and B(1).
1989	JE-30	Remittal of disqualification because of relationship. Canons 3C(d)(i) and 3D.
1989	JE-31	Effect of judge's spouse's appointment to professional teacher negotiating team. Canon 2.
1990	JE-32	Judge's business of writing and selling law-related computer programs. Canons 5C(1), (2), and 6(A).
1990	JE-33	Use of judge's home for political reception. Canons 2 and 7A(1)(b).
1990	JE-34	Political endorsement by judicial candidates in elective judicial district. Canon 7A(2) and A(3).
1990	JE-35	Judicial involvement in legislative appropriations to educational institutions. Canon 5B(2).
1991	JE-36	Listing of judge's name on for-profit legal publication's editorial advisory board. Canon 2B.
1992	JE-37	Judge's spouse as campaign manager in partisan county-wide election.
1992	JE-38	Judge as member of Kansas Commission on Governmental Standards and Conduct. Kan. Const., art. 3, § 13.
1992	JE-39	Application of Code of Judicial Conduct to unsuccessful judicial candidates. Rule 601 and Canon 7.
1992	JE-40	Propriety of judge's recommending nominees to appellate courts; distinguished from recommendation of candidates for public office. Canons 4 and 7.
1993	JE-41	Whether settlement conference is arbitration or mediation. Canon 5E.
1993	JE-42	Judge presiding at docket call wherein son or son's law firm represents a party. Canon 3C(1)(d)(i), (ii), (iii).
1993	JE-43	Newly-appointed judge presiding over case in which he had been representing a party.
1993	JE-44	Judge's participation in civic affairs. Canon 5B.
1993	JE-45	Endorsement by judge of federal nominee. Canon 7A(1)(b).
1993	JE-46	City council member serving as part-time municipal judge in nearby community. Canons 5C(2), D, E, F, G; 6C; 7(A)(4).
1994	JE-47	Judge as member of non-profit corporation board of directors. Canon 5B.
1994	JE-48	Judge, robed and in courtroom, as model for advertising purposes. Canon 2B.
1994	JE-49	Part-time city attorney serving as part-time municipal judge for a different city.

1994	JE-50	Judge as executor of estate of former legal secretary. Canon 5D.
1994	JE-51	Part-time judge as precinct committeeperson. Canon 7A(1)(a).
1994	JE-52	Judge serving as director of a not for profit corporation created to administer a CASA program in the district. Canon 4.
1994	JE-53	Newly-appointed municipal judge, who was an assistant city attorney handling civil cases, conducting arraignments for trials. Canon 2 and 3C(1)(b).
1995	JE-54	District Magistrate Judge serving as mediator in domestic relations cases. Canon 3 and 5E.
1995	JE-55	Effect of judge's spouse sharing office and overhead with other attorneys.

JE Opinions Nos. 56-166 written under Rule 601A.

1995	JE-56	Full-time municipal court judge serving as a member of the local board of education. Canon 5A(2).
1995	JE-57	"Continuing part-time judge" and "periodic part-time judge," as defined in the terminology section of Rule 601A, all prohibited from practicing law before the court they serve. (Definitions were deleted from terminology section on July 15, 1996.)
1995	JE-58	"Substitute judge" is "periodic part-time judge" defined in terminology section of Rule 601A. (Periodic part-time judge definition was deleted from terminology section on July 15, 1996.)
1995	JE-59	Judge serving on advisory committee for proposed justice center. Canon 4C(1) and (2).
1995	JE-60	Judge appointed as special administrator and executor of decedent's estate to serve temporarily. Canon 4E(1).
1996	JE-61	Judge's spouse in nonpartisan district as campaign manager for candidate for office in congressional district. Canons 2, 5A(1) and 5D.
1996	JE-62	Judge's participation in spouse's political campaign for county office. Canons 2, 5A(1) and 5C(1)(a).
1996	JE-63	Judge or judicial candidate serving as precinct committeeperson. Canons 5A(1), 5B(2) and 5C(1); terminology section of Rule 601A; and K.S.A. 25-3801 and 25-3902.
1996	JE-64	Judicial candidate's comments and reference during campaign to former public statements and records in public office. Canon 5A(3)(d) and (e).
1996	JE-65	Judicial candidate serving as own campaign treasurer. Canon 5C(2).
1996	JE-66	Candidate for judge and also candidate for precinct committeeperson. Canon 5A(1)(a) and (3).
1996	JE-67	Judge may serve as chairman, co-chairman, or member of committees of bar associations. Canon 4C(3).

1996	JE-68	Campaign committee may solicit funds for 90 days after election and contributions may be used to pay expenses and indebtedness incurred in the primary election. Canon 5C(2). Judge-elect may enter into agreement with another lawyer but fee-splitting arrangement is not appropriate. Judge-elect may not arrange to route the calls generated by advertisement to another lawyer. Canon 2B.
1996	JE-69	Canon 3E applies to Administrative Hearing Officer (AHO). AHO would be disqualified as to all cases he or she actually handled. "Matter in controversy" in Canon 3E(1)(b) refers to whole case. Canon 3F can be utilized.
1996	JE-70	District judge may not serve on police department community advisory board.
1996	JE-71	Judge may not refer cases and accept referral fees. Canon 4G.
1997	JE-72	Municipal judge who is also assistant county attorney may serve as prosecutor under certain conditions.
1997	JE-73	Judge may not serve as trustee for community organization which aims to improve quality of life for children and youth. Canon 4A(1), 4C(4).
1997	JE-74	Judge may lecture or serve as panelist without compensation at CLE seminar sponsored by law firms and/or corporations. Canon 4B, 2B.
1997	JE-75	Law student summer intern in county attorney's office may live with judge and his wife. Canon 3E(1)(a).
1997	JE-76	Judge may not contribute a dinner to be auctioned for national charitable organization. Canon 4C(4)(b). [Vacated by JE-78.]
1997	JE-77	Judge may serve as elder of church as long as judge does not solicit funds. Canon 4C(4)(b).
1997	JE-78	Judge may contribute a dinner to be auctioned for charity. [Vacates JE-76.][1]
1998	JE-79	Judge may send official comments per K.S.A. 1997 Supp. 22-3717(h) to the Kansas Parole Board without violation of Canon 2B.
1998	JE-80	Judge may be a candidate in a contested election and serve as an officer of KBA. Canon 4B, 4C(3).
1998	JE-81	Judge should not purchase property from an estate pending in the judge's court even though the transaction was at arm's length and in good faith. Canons 1, 2A, 4A(1) and 4D(1).
1998	JE-82	Judge may attend a political reception and contribute to campaign committee of a fellow judge who is up for election. Canon 5C(1)(a).
1998	JE-83	Candidate for judge in an elective district may not serve as campaign treasurer; 1996 JE-65 followed.
1998	JE-84	Judge may serve on a land purchase committee for his church if he will do no legal work or fundraising.

1998	JE-85	Certain provisions of city's proposed contract of employment for its municipal judges attempt to limit the independence of the individual judge and thus violate Canon 1.
1999	JE-86	Municipal judge may accept criminal appointment and represent other defendants in the district court; other lawyers housed in the municipal judge's building may practice before the judge; municipal judge may serve as district judge pro tempore; judge pro tempore may appear as a lawyer in the district court. Canons 3E(1) and 3E(b).
1999	JE-87	Judge may appear before local civic and religious groups to promote the passage of sales tax for the construction of a new judicial center. Canons 4B and 4C(c).
1999	JE-88	Part-time municipal judge may permit charitable solicitations to be made from his private office over his private telephone lines as long as he does not make the calls and is not identified with the solicitations. Canons 2B and 4C(4)(b).
1999	JE-89	Part-time municipal judge may serve as judge in a case in which the judge represented an adverse party more than a year ago in an unrelated civil case. Canon 3E(1)(a).
1999	JE-90	Newly appointed judge may complete a term on a local school board; better practice of voluntary resignation suggested. Canon 5A(2).
2000	JE-91	Judge may be honored by private donation to public school to fund classroom to bear the judge's name. Canon 2B.
2000	JE-92	Retired judge may serve as an executor of the estate of a person to whom the judge is not related. Canon 4E(1).
2000	JE-93	Judge must disqualify himself or herself whenever the judge's ex-spouse or another member of the firm appears before the judge. Canon 2.
2000	JE-94	Judge may preside in the court where spouse of the judge's court reporter and members of the firm appear. Canon 2A.
2000	JE-95	Judge must cease all participation in ownership interest in a law firm building. Canon 4D(1)(6).
2000	JE-96	Judicial candidate may serve on governmental committee but must resign upon taking office. Canon 4C(2).
2000	JE-97	Judge's article on dangers of underage drinking may be published under facts. Canons 2 and 4.
2000	JE-98	District judge who is also a municipal judge and tribal judge may hear and rule on request for temporary orders in the district court and in the tribal court; the same judge may attend the tribal court training programs and serve as tribal and municipal judge.
2000	JE-99	Retired judge may actively support a candidate for judicial office. Canon 5.
2000	JE-100	Split decision. Majority view: Judge up for retention without active opposition, should not respond to a questionnaire

		from local newspaper. Canon 5C(2). Minority view disagreed: Judge up for retention without active opposition may respond to questionnaire from local newspaper. Canon 5.[2]
2001	JE-101	Judicial candidate should not submit unsubstantiated complaint or petition to the news media regarding the opposing judicial candidate. Canon 5A(3).
2001	JE-102	District magistrate judge may release log or written record of all closed cases to the media as long as the judge does not comment on pending cases. Canon 3B(9).
2001	JE-103	A judge should not write a letter of recommendation or testify on former client's behalf as character witness. Canon 2B.
2001	JE-104	A district judge may serve on the board of directors of the local United Way but should not solicit funds or use his/her office for fundraising purposes. Canon 4C(4).
2001	JE-105	A newly elected judge may continue to serve as Honorary Vice Consul of another nation as long as the position is not concerned with issues of fact or policy and there is no interference with performing regular judicial duties. Canon 4C(4).
2001	JE-106	A judicial candidate, subject to election, may contribute to his or her political party, subject to any limitations provided by law. Canon 5C(1)(a)(iii).
2001	JE-107	A district magistrate judge may also serve as municipal judge on weekdays between 8 a.m. and 5 p.m.; as a district magistrate judge, no proceedings involving the city should be heard.
2001	JE-108	A judge may not permit a defendant convicted of a misdemeanor to make a charitable contribution in lieu of paying a fine. Canon 2A and B and Canon 4C(4)(b).
2002	JE-109	A judge in an elective district may place a "thank you" letter in the local newspaper.
2002	JE-110	A part-time municipal judge may serve as a precinct committee member and may serve as city council member if written in on the ballot and elected without his or her consent.
2003	JE-111	A judge may serve on a screening panel which will interview candidates and forward names to the Governor for consideration to fill a judicial position in an elective district. Canon 4C(3).
2003	JE-112	A judge may volunteer to cook and serve meals at a community soup kitchen sponsored by a local church and open to the public daily. Canon 4C(4).
2003	JE-113	A candidate for municipal judge, whose brother is the chief of police, if appointed and upon hearing cases, would be required to recuse himself under the canons, unless there is a

		remittal of disqualification in every case under Canon 3F. Canon 2A and Canon 3E.
2003	JE-114	Participation by a judge on an SRS advisory committee regarding contracts for adoption and foster care privatization is prohibited by Canon 4C, since these are policy matters and not matters involving the improvement of the law, the legal system, or the administration of justice.
2003	JE-115	The canons do not prohibit members of a district judge's reelection committee from making campaign contributions and under Canon 5C(2), the committee may solicit contributions no earlier than one year before an election.
2004	JE-116	The spouse of the chief district judge may not serve as a district magistrate judge in the same judicial district. Canon 3C(1) and Canon 2A. However, the spouse could serve as a district magistrate judge in the same judicial district so long as the district judge does not consider appeals of decisions made by the spouse as district magistrate judge.
2004	JE-117	A judge may retain the office of municipal judge while running for magistrate judge, but cannot solicit signatures to a nomination petition under Canon 5C(2) which prohibits a candidate for a judgeship from soliciting publicly stated support.
2004	JE-118	A candidate for judge may not personally solicit campaign contributions or publicly stated support; however, the candidate's election committee may send out campaign literature.
2004	JE-119	A judge may attend a program and have expenses paid by an agency whose attorneys regularly appear before the judge, since the program is an activity devoted to the administration of justice and, thus, allowable under Canon 4D(5)(a).
2004	JE-120	A part-time municipal judge may not be a candidate for a nonjudicial office under Canon 5A(2), but can resign as judge, be appointed as pro tem. judge for certain court dates during the candidacy, and run for election to the nonjudicial position.
2004	JE-121	A judge shall not attend a conference sponsored by an agency whose agents and employees frequently appear before the court. Canon 2A and Canon 3B(7).
2004	JE-122	A judge who must run for office on a partisan ticket may attend political meetings at any time and may utilize a "calling tree" to area citizens as part of a campaign activity.
2004	JE-123	A judge may continue to serve as a part-time judge if he or she is elected County Commissioner.
2005	JE-124	A judge should not buy assets from an estate which is in a court in which he or she is sitting, either directly or through an agent or whether it is a private sale or a public auction. Canons 1, 2A, 4A(1), and 4D(1).
2005	JE-125	A judge may appear and speak at zoning board and other governmental meetings if he or she is acting pro se in his or

		her own interests. The judge should be careful to comply with the provisions of Canon 2B. See Canon 4C(1).
2005	JE-126	Judges should not attend or participate in a conference sponsored or presented by a law enforcement agency which would in effect train judges to consider these matters in future cases. See JE-121. Canon 2A and Canon 3B(7).
2005	JE-127	Judge may attend a national symposium with transportation, meals, and lodging paid by a national foundation whose mission is to address legal policy issues affecting the law and civil justice system. The Code of Judicial Conduct does not prohibit the judge from attending the symposium.
2005	JE-128	A judge may not write a letter to a nominating committee regarding the qualifications of a candidate since a judge shall not publicly endorse or publicly oppose a candidate for public office. Canon 5A(1).
2005	JE-129	Appellate judges should not attend a national conference on education since it is not a bar-related function or an activity devoted to the improvement of the law, legal system, or administration of justice; attendance would also violate Canon 2A. Canon 4D(5)(a).
2005	JE-130	An adverse ruling, standing alone, is not grounds for disqualification of a judge who is being sued by a pro se counterclaimant. Canon 3E.
2005	JE-131	A judge may attend an open house sponsored by a law firm; however, a judge should not accept a golf and poker invitation from a law firm since it would create a perception of impropriety due to the expense. Canon 2.
2005	JE-132	Judges may contribute to the Kansans for Impartial Courts Committee of the Kansas Appleseed Center for Law and Justice; however, judges may not solicit funds for the Committee. Canons 4C(1) and 5A(1) and C.
2005	JE-133	A judge may sell his law books to an attorney who occasionally appears before him since the transaction would be an isolated sale at market value, which would not be a violation of the Canons. Canon 4D(1)(b).
2005	JE-134	A judge may work as a volunteer at a concession stand at a sporting event since it is not a solicitation. Canon 4C(4)(b).
2005	JE-135	A judge may bid for land at a public auction arising out of a foreclosure action if the judge has nothing to do with the foreclosure action, since it would not exploit his position or give an appearance of impropriety. Canon 4D(1) and Canon 2A.
2006	JE-136	A judge who owns real estate subject to a lease to the Department of Corrections may accept assignment to the criminal docket. Canon 3E.

2006	JE-137	A judge may make contributions to Kansans for Simple Justice since it is not a political organization. (2005 Kan. Ct. R. Annot. 558).
2006	JE-138	A judge may attend a national symposium with all costs paid by a national foundation without violating any Canons. See JE-127.
2006	JE-139	A candidate for judge may not respond to a questionnaire which seeks to address judicial issues as well as the constitutionality of the Code of Judicial Conduct. Canon 5A(3)(d)(i) and (ii).[3]
2006	JE-140	Designation of two volunteer awards in a judge's honor does not place a recipient in a position to influence the judge nor does it convey that impression. Canon 2B.
2006	JE-141	A sitting judge seeking a district court appointment should not ask attorneys who have appeared or may appear before him to write letters of support. Canon 2A.[4]
2006	JE-142	A judge can publicly encourage the voters to approve a bond issue to finance construction of a new jail in the judge's district. Canon 4B.
2006	JE-143	A judge may make contributions to charitable organizations and should support charitable activities. Canon 4A Commentary and 4C(4).
2006	JE-144	A judge's spouse may own and lease a building to another lawyer who may be before the court on which her husband serves without violating the Code of Judicial Conduct. Canon 4D.
2006	JE-145	A judge may allow a charitable organization to use her photograph and a biography to depict a positive role model for youths without conveying the impression that the organization is in a special position to influence the judge. Canon 2B.
2006	JE-146	Judges of a judicial district hosting a dinner at their personal expense for state representatives and county commissioners in that district are not violating the Canons as long as the discussions are limited to items of general local interest. Canon 2B and Canons 4A(1) and 4C(1).
2006	JE-147	The attendance of a judge being inducted into a hall of fame as a fundraiser for the education of youth through innovative programs offered by a charity would violate Canon 4C(4)(b); the judge should decline the honor. See JE-1.
2006	JE-148	A response by a judge to a request from Martindale-Hubbell for an opinion as to a local lawyer's legal ability and general ethical standards would not violate Canon 2B.
2006	JE-149	Service on the Kansas Wildlife and Parks Commission by a judge would violate Canon 4C(2), since it is a governmental commission that is concerned with issues of policy on matters other than the improvement of the law, the legal system, or the administration of justice. See JE-38.
2007	JE-150	It is inappropriate for a judge to serve on a committee formed by a school district to formulate a student drug testing policy

since the committee would be concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice; a judge should not serve also if it is likely that the organization would be engaged regularly in adversary proceedings in any court. Canon 4C(2) and Canon 4C(4)(a). See JE-70, 73, and 114.

2007 JE-151 A district judge participating as a player and/or auctioneer in his or her country club's fundraising member guest tournament clearly violates Canon 4C(4)(b) which prohibits fundraising.

2007 JE-152 A judge may serve on an Alumni Association Board of Directors so long as he does not solicit funds or offer legal advice. Canon 4C(4) and Canon 4G. See JE-77, 104, and 134.

2007 JE-153 K.S.A. 2006 Supp. 23-602(a) specifically allows a chief district judge to assign a district magistrate judge to mediate domestic cases as part of the judge's judicial duties in the judicial district in which they serve and the district magistrate judge may ethically conduct the mediations. Canon 4F.

2007 JE-154 A judge may serve on the Board of Trustees of the Kansas Bar Foundation so long as he does not solicit funds or offer legal advice. Canon 4C(4) and Canon 4G. JE-77, 104, 134, and 152.

2007 JE-155 A judge may accept an invitation from a former law partner and spouse to stay in their condo, without cost, since a judge may accept a favor from a close personal friend whose appearance or interest in a case would in any event require disqualification. Canon 3E and Canon 4D(5)(e).

2007 JE-156 A retired district judge is not prohibited from the practice of law under the Application of the Code of Judicial Conduct, paragraph B, or Canon 4G, and may assist his son-in-law in a criminal jury trial.

2007 JE-157 A judge may be a member of the Offender Registration Working Group, which is a group that is devoted to the improvement of the law, the legal system, and the administration of justice. The judge may also assist the group in raising funds and may participate in their management and investment, but should not personally participate in fundraising activities. See Canon 4C(3).

2007 JE-158 Judges currently in office and retired judges who accept assignments would be in violation of Canon 4C(3) by speaking at functions during which brochures requesting financial contributions to uphold the nonpartisan method for selection of judges are distributed. Retired judges who do not accept assignments would not be in violation of Canon 4C(3) by speaking at functions during which these brochures would be distributed. See Canon 4C(3).

2007	JE-159	The utilization of a judge's picture in a newspaper advertisement which will identify the judge as a graduate of a university would violate Canon 2B by lending the prestige of judicial office to advance the private interests of the judge or others. See Canon 2B.
2008	JE-160	A judge cannot serve as the director of a county disaster agency, consistent with JE opinions 38 and 149, since the agency is entirely concerned with issues of fact and policy and on matters other than the improvement of the law, the legal system, and the administration of justice. See Canon 4C(2).
2008	JE-161	A judge cannot provide an affidavit in a case in which the judge formerly was the plaintiff's lawyer, although it is now assigned to a different judge. The requested affidavit would constitute a public comment and would violate Canon 3B(9).
2008	JE-162	A judge may not hold a position such as an active reserve deputy sheriff while such person is a judge. Canon 4C(2).
2008	JE-163	A response by a judge, even if not identified as a judge, to a newspaper editorial discussing issues regarding the criminal code would be a violation of Canon 3B(9).
2009	JE-164	A judge is not required to disqualify himself or herself in cases involving a county attorney's office if his or her spouse is employed in the county attorney's office. See Canon 3E(1).
2009	JE-165	If a judge is a member of the class in a class action lawsuit that has been filed in Kansas, it would be a violation of Canon 2B for the judge to be a named plaintiff in the class action.
2009	JE-166	Under Canon 4C(4)(b), a judge may not solicit fellow judges to contribute to a fund for the benefit of another judge's family member that is experiencing a medical emergency; however, a judge is not prohibited from contributing to the fund; the fund may also accept contributions from lawyers who may appear before the judge in the future if the judge complies with Canon 4D(5)(b) and reports a gift if the contribution exceeds $150.

Subsequent JE Opinions governed by Rule 601B

2009	JE-167	A judge is required to disqualify himself or herself in any proceeding in which the partner of the judge's spouse represents a party before the judge. See Canon 2, Rule 2.11(A) and Canon 1, Rule 1.2
2009	JE-168	The attendance of a judge at a presentation by the DUI Victims Center of Kansas would convey the impression that the organization is in a position to influence the judge, thereby violating Rule 2.4(c) of the Kansas Code of Judicial Conduct; this conclusion is consistent with JE-121 and JE-126.

2009	JE-169	A sitting judge may attend a forum sponsored by a non-partisan institute which is aimed at improving the legal and judicial systems. See Comment [4] of Rule 1.2 and Rule 3.7(A) of the Code of Judicial Conduct.
2010	JE-170	A judge's presentation on appellate procedure presented by a for-profit organization would be a direct violation of Rule 1.3 of the Code of Judicial Conduct. See Rule 1.3 and Comment [1] to Rule 3.1.
2011	JE-171	A judge and his or her spouse who own an office building may lease the building to attorneys or law firms who practice and appear in the judge's district as long as the attorneys appear before other judges in the district and the conflicts appear only periodically. See Rules 1.2, 2.1, 2.11, 3.11.
2012	JE-172	A judge is required to disqualify himself or herself in any proceeding in which members of the law firm that employs the judge's child represents a party, although Rule 2.11(c) is applicable. See Canon 2, Rule 2.11, Canon 1, Rule 1.2.
2012	JE-173	A candidate for judicial office could not continue to own or operate a substance abuse facility or offer substance abuse assessments and treatment if elected judge. See Rules 1.3, 2.1, 2.9(c), 2.11, 3.1, 3.11.
2012	JE-174	A district judge and the judge's spouse in a multi-judge district may provide licensed foster parent services to a child, providing the case is pending in another judge's division. See Rules 1.2, 3.1.
2012	JE-175	It is a violation of Rule 601B, Application, section IV, for an attorney to act as a municipal court judge and the judge's law firm to perform under a contract to collect municipal court debt for the city where a firm's member serves as its municipal court judge.
2012	JE-176	A district judge appointee may not continue service as a volunteer fire chief or as a board member to the county fire district although the judge may continue to serve the fire district as a volunteer or emergency medical technician. See Rules 2.1, 3.4.
2012	JE-177	A judge may serve as the color commentator for the radio broadcast of the state university's home basketball games and the compensation being paid is reasonable and would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. See Rule 3.1(A), (B), (C), or (D).
2013	JE-178	A presiding judge, who is responsible for all juvenile offender and child in need of care cases and is actively engaged with problems involving truancy, may be involved in supervision of a citizen review board, which will set up a program focusing on truancy, and the judge's actions will not be an ethical violation.

2014	JE-179	A district judge whose family member is a candidate in an election for district judge may attend a political event at which the family member speaks but may not: solicit signatures or sign the nomination petition; contribute money or time to the campaign; place campaign yard signs; campaign door-to-door or pass out campaign literature; or publicly support the candidacy of the family member. See Canon 4, Rule 4.1(B) and (C).
2014	JE-180	A judge may not author a newspaper column for a for-profit newspaper, even if the judge receives no compensation, as this would contribute to the economic benefit of the newspaper in violation of Canon 1, Rule 1.3. See Canon 3, Rule 3.1, Comment [1]; JE-170.
2014	JE-181	A judge should not accept nomination as chairperson of a medical malpractice screening panel even if for an adjoining judicial district. Such membership by a judge was not intended by the authorizing statute and would take time away from required court business in his or her own judicial district. The participation of the judge who could be subpoenaed to testify as chairperson of the panel may appear to undermine the judge's independence, integrity, or impartiality or demean the judicial office and may violate Canon 3, Rule 3.1(C) and (D).
2015	JE-182	A judge should not serve as a member of the Protection Order Judicial Workgroup of the Kansas Coalition Against Sexual and Domestic Violence, as such group does not include all parties who regularly are involved with protection from abuse cases. See Canon 1, Rule 1.2; Canon 3, Rule 3.7, Comment [2]; JE-121; JE-126.
2015	JE-183	In case where one attorney is also a county commissioner who votes on the budget for the district court, judge should disqualify himself or herself from the case, as judge's impartiality might reasonably be questioned. See Canon 1; Canon 2; Rule 2.2; Rule 2.3; Rule 2.4(C); Rule 2.11(A).[5]
2015	JE-184	Where judge's involvement in uncontested foreclosure proceedings was largely administrative and the case had been concluded, purchase of foreclosed property by judge would not be a violation of Canon 1, Rule 1.2
2017	JE-185	Without violating Canon 1, Rule 1.3 or Canon 4, Rule 4.1(B)(2), a district judge may appear in a sibling's campaign video for an office outside the judge's judicial district so long as the video does not mention that the judge is a Kansas district judge.
2020	JE-186	A judge may write and be compensated for writing book reviews to appear in printed or internet publications of an out-of-state, for-profit, geographically distant newspaper without violating the Kansas Code of Judicial Conduct, where

such activity will not interfere with judicial duties and the judge will not be identified as a judge in such reviews.

[1] **Judicial Qualifications Commission's Reporter's Note:** The Commission on Judicial Qualifications expresses concern that JE-78 may not be valid under all factual circumstances and notes that the Commission is not bound by advisory opinions.

[2] **Judicial Qualifications Commission's Reporter's Note:** The Commission on Judicial Qualifications respectfully rejects the majority view and adopts the minority view expressed in JE-100. The Commission is not bound by advisory opinions.

[3] **Judicial Qualifications Commission's Reporter's Note:** The Commission on Judicial Qualifications respectfully rejects the panel's conclusion in JE-139. Under *Republican Party of Minnesota v. White*, 536 U.S. 765, 122 S. Ct. 2528, 153 L. Ed. 2d 694 (2002), judges and judicial candidates are allowed to publicly announce their views on legal, political, or other issues. The Commission is not bound by advisory opinions.

[4] **Judicial Qualifications Commission's Reporter's Note:** The Commission on Judicial Qualifications respectfully disagrees with the Panel's conclusion in JE-141. Canon 5B(2)(a)(ii) states that a candidate for appointment to judicial office may "seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Section 5B(2)(a) . . . ." The Commission is not bound by advisory opinions.

[5] **Judicial Qualifications Commission's Reporter's Note:** The Commission is not bound by advisory opinions. The Commission on Judicial Qualifications respectfully disagrees with the Panel's conclusion in JE-183. "The standard to be applied to a charge of lack of impartiality is whether such charge is grounded on facts that would create reasonable doubt concerning the judge's impartiality . . . in the mind of a reasonable person with knowledge of all of the circumstances." *State v. Griffen*, 241 Kan. 68, Syl. ¶ 5 (1987). It is the Commission's position that a determination of reasonable doubt concerning a judge's impartiality must be made on a case-by-case basis. Solely because an attorney appearing in court is a county commissioner for that county does not create a reasonable doubt concerning the judge's impartiality.

Rule 651

LIMITATIONS ON JUDICIAL SERVICE

No general jurisdiction district judge shall serve as a municipal court judge at any time during the term of his or her office.

This rule does not apply to judges serving as such only on a pro tempore basis under K.S.A. 20-310a and amendments thereto.

[**History:** New rule effective July 1, 1993.]

RULES RELATING TO ADMISSION OF ATTORNEYS

Rule 701

KANSAS BOARD OF LAW EXAMINERS

(a) The Supreme Court shall appoint a board consisting of ten members to be known as the Kansas Board of Law Examiners (hereinafter referred to as the Board).

Effective July 1, 2012, the terms of existing Board members will be vacated and each will be assigned a term between one and five years. At the conclusion of that term, any member who has not yet served ten years on the Board may be appointed to one additional five-year term.

At the expiration of the terms of existing members, the term of each succeeding member of the Board shall be five years. The Supreme Court will appoint a new member to fill a vacancy on the Board occurring during a term. A new member appointed to fill a vacancy serves the unexpired term of the previous member. No member may serve more than two consecutive five-year terms, except that a member initially appointed to serve an unexpired term may serve two consecutive five-year terms thereafter.

(b) The Supreme Court shall designate one member as chairman and another as vice chairman.

(c) The Board shall act only with the concurrence of a majority of those present and eligible to vote. Seven members shall constitute a quorum.

(d) No individual member of the Board shall communicate with applicants regarding completion of applications for admission or character and fitness investigations. Neither the Board nor any member thereof shall conduct post-examination interviews with applicants pertaining to questions asked on the written examination or answers given, grading procedures, or an applicant's performance.

(e) The Board may employ or otherwise obtain the services of other persons to assist in carrying out its duties herein. Compensation for any person so employed shall be that agreed upon between such person and the Board, subject to prior approval of the Supreme Court.

(f) Each member of the Board shall receive, as compensation for his or her services, an amount set by order of the Supreme Court. All compensation due under this rule shall be paid monthly or in such other manner as shall be provided by law. In addition, each member of the Board shall be paid all actual and necessary expenses incurred in the performance of services.

(g) All compensation and expenses of the Board shall be paid out of the bar admission fee fund.
(h) The Board may adopt such rules and procedures not inconsistent with these rules, which it shall deem necessary to facilitate the performance of its duties.

[**History:** New rule effective July 1, 2009; Am. (a) effective July 1, 2012; Am. (f) effective September 1, 2016; Am. (b) effective January 24, 2020.]

Rule 701A

ADMISSIONS ATTORNEY

(a) The disciplinary administrator shall appoint an attorney on the disciplinary administrator's staff to serve as the Admissions Attorney for the Board.
(b) The duties of the Admissions Attorney include:
    (1) conducting character and fitness investigations of all applicants for admission to the Kansas bar;
    (2) approving an application when the applicant meets character and fitness qualifications under Rule 707;
    (3) referring to the Review Committee applications that present character and fitness issues; and
    (4) prosecuting hearings before the Board when recommended by the Review Committee.

[**History:** New rule effective February 3, 2014; Am. (a) effective January 24, 2020.]

Rule 701B

ADMISSIONS REVIEW COMMITTEE

(a) The Supreme Court shall appoint an Admissions Review Committee (Review Committee) consisting of three active attorneys in good standing and engaged in the practice of law in Kansas who are not members of the Board. The Supreme Court shall designate one member as chair.
(b) The initial terms for each of the three members shall be for one, two, or three years. Subsequent terms shall be for three years, except an appointment to fill an unexpired term. The Supreme Court shall appoint a new member to fill a vacancy occurring during a term. No member may serve more than three consecutive three-year terms, except that a member whose initial term is less than three years may serve three consecutive three-year terms thereafter. Temporary ap-

pointments may be made by the Supreme Court for a particular application if a Review Committee member has a conflict or for a period of time if a Review Committee member is unable to act.

(c) The Review Committee shall meet on call of the Admissions Attorney who shall designate the time, date, and place of the meeting. Meetings may be conducted by telephone conference.

(d) Individual members of the Review Committee may review written materials, interview bar applicants referred by the Admissions Attorney, and report to the full committee. The Review Committee may approve an applicant or request additional investigation or materials from the Admissions Attorney or an applicant. On a finding of probable cause that an applicant has failed to meet the applicant's burden to establish by clear and convincing evidence the requisite character and fitness qualifications under Rule 707, the Review Committee shall refer the applicant to the Board for a hearing, subject to Rule 721(f). The Review Committee shall take final action only on a majority vote of the members.

(e) The chair shall maintain records reflecting each action of the Review Committee and shall distribute copies of the records to members of the Review Committee, the Admissions Attorney, and the Office of Judicial Administration.

(f) The Review Committee may employ or otherwise obtain the services of other persons to assist in carrying out its duties herein. Compensation for any person so employed shall be that agreed upon between such person and the Review Committee, subject to prior approval of the Supreme Court.

(g) Each member of the Review Committee shall be paid all actual and necessary expenses incurred in the performance of services. All expenses of the Review Committee shall be paid out of the bar admission fee fund.

[**History:** New rule effective February 3, 2014; Am. (e) effective January 24, 2020.]

Rule 702

CONFIDENTIALITY

(a) The Board and the Review Committee shall maintain such records as are generated in the course of accepting and processing applications for admission to the bar and results of taking the bar examination. The following records, and no others, shall be maintained as public records:

(1) With respect to application for admission to the bar, the name,

address, and educational achievement of each applicant.

(2) With respect to each written examination required for admission to the bar:

(i) The names and addresses of persons who passed the examination and have met all the requirements for admission to the bar.

(ii) Such statistical summaries as may be specifically authorized by the Supreme Court.

(b) Except as otherwise specifically provided herein, all other information provided by or obtained with respect to an applicant, including examination results, shall be deemed confidential and privileged communications, and as such shall not be released to any person or agency.

(c) Notwithstanding the foregoing restrictions, applications and other information required incident to an application for admission to the bar may be released to:

(1) the National Conference of Bar Examiners and to the bar admissions authority of any United States jurisdiction where the applicant has applied for admission to the practice of law, provided the applicant shall have made written request for such release and the receiving authority has agreed not to give the information to the applicant;

(2) the Attorney General of Kansas, the Office of the Disciplinary Administrator, the Review Committee, and the Office of Judicial Administration, for purposes of investigations and hearings as to moral and educational qualifications, for disciplinary purposes, or for administrations of bar examinations; and

(3) such other parties and in such instances as shall be provided by order of the Supreme Court.

[**History:** New rule effective July 1, 2009; Am. effective February 3, 2014; Am. (c) effective January 24, 2020.]

Rule 703

IMMUNITY

(a) Applications for admission, reports, decisions, Board proceedings, and documents obtained, or testimony received in the course thereof pursuant to these Rules shall be deemed to be made in the course of judicial proceedings. The Office of the Disciplinary Administrator, Review Committee members, and Board members shall be entitled to all rights, privileges and immunities afforded public officials in the performance of their duties; and the Office of the Disciplinary Administrator, Review Committee members, Board members, and other participants shall be entitled to the immunity afforded public

officials in actions filed in the courts of this state, whether in providing testimony in such actions, or as parties thereto with respect to the performance of their duties or the testimony rendered.

(b) Any person who communicates information concerning a person applying for admission to the bar to any member of the Review Committee or the Board or to any attorney, employee or agent of the Board, or to any employee of the Office of Judicial Administration, or to any investigator acting on behalf of the Review Committee or the Board is immune from all civil liability that, except for this rule, might result from any such communication. The grant of immunity provided by this rule applies only to those communications made by such person as a part or for the purpose of the investigation of character and fitness.

[**History:** New rule effective July 1, 2009; Am. (a) and (b) effective February 3, 2014; Am. effective January 24, 2020.]

Rule 704

APPLICATION FEES

(a) Each applicant shall pay application processing fees for each of the following, which fees may not be waived and shall not be refunded, except as provided in section (d) below:
   (1) Legal intern under Rule 719: $50.
   (2) Temporary permit to practice law under Rule 710: $100.
   (3) Admission to the bar upon written examination under Rule 709: $700.
   (4) Admission to the bar by transfer of Uniform Bar Examination score under Rule 709A: $1250.
   (5) Admission to the bar without written examination under Rule 708: $1250.
   (6) Restricted license to practice law under Rule 712: $1250.
   (7) Temporary Restricted license to practice law under Rule 712A: $1250.
   (8) Reapplication for an individual whose application to take the bar examination has been previously denied for failure to establish good moral character or mental and emotional fitness: $1250.

(b) The amount of the fee for each of the foregoing categories shall be that established by order of the Supreme Court and may be changed from time to time. Applicants shall be advised as to the amount of the fees then applicable upon inquiry to the Office of Judicial Administration.

(c) Applicant fees shall constitute a fund to be known as the bar admission fee fund. Disbursements for compensation and expenses in connection with the duties of the Review Committee or the Board shall be from this fund. By order of the Supreme Court any unused balance in the bar admission fee fund may be applied to such appropriate usage as shall be determined by the Supreme Court.

(d) Any applicant who is unable to take a bar examination due to active military service may receive a refund of the application processing fee, on request.

[**History:** New rule effective July 1, 2009; Am. (c) effective February 3, 2014; Am. (a) effective April 2, 2015; Am. (a) effective August 31, 2016; Am. (b) effective January 24, 2020.]

Rule 705

ELIGIBILITY

(a) The practice of law is a licensed privilege, not a right, and the burden of establishing eligibility for licensure by clear and convincing evidence shall rest upon the applicant.

(b) In order for an applicant to establish eligibility to sit for the bar examination in the State of Kansas, the applicant must comply with the educational requirements and prove that the applicant possesses the requisite good moral character and current mental and emotional fitness to engage in the active and continuous practice of law.

[**History**: New rule effective July 1, 2009.]

Rule 706

EDUCATIONAL QUALIFICATIONS FOR ADMISSION TO THE BAR

(a) Each applicant seeking admission to the bar of Kansas shall satisfy the Board that he or she:
   (1) has been granted and holds a baccalaureate degree based upon a full course of study in a college, university or other institution of higher learning accredited by a regional accreditation body recognized by the United States Department of Education; and
   (2) has been granted and holds a Juris Doctor degree or Bachelor of Laws degree from a law school approved by the American Bar Association at the time of the applicant's graduation.

(b) If regional accreditation is not available, the standard for determining the sufficiency of undergraduate degrees earned or of the courses leading thereto shall be that recognized by the University of Kansas.

(c) Proof that an applicant has been granted and holds the requisite degrees shall be provided to the Office of Judicial Administration by

certified copies of transcripts issued by the registrar or equivalent officer of each institution granting such degrees and shall be mailed directly by said issuing authority to the Office of Judicial Administration. Official transcripts must be received by the Office of Judicial Administration no later than January 15 for the February examination and June 15 for the July examination.

(d) The Board may allow to sit for the bar examination, on a conditional basis, an applicant who presents to the Board a certification from the law school attended that the applicant is currently enrolled in a course of study which, if satisfactorily completed, will result in graduation within thirty days following administration of the bar examination. Failure to provide an official transcript establishing law school graduation within thirty days following the administration of the bar examination will result in the bar examination scores being voided.

[**History**: New rule effective July 1, 2009; Am. (c) effective January 24, 2020.]

Rule 707

CHARACTER AND FITNESS QUALIFICATIONS FOR ADMISSION TO THE BAR

(a) Before an applicant shall receive a license to practice law pursuant to Rules 708, 709, 709A, 712, or 712A or a temporary permit pursuant to Rule 710, the applicant must establish by clear and convincing evidence that the applicant possesses the requisite good moral character and current mental and emotional fitness to engage in the active and continuous practice of law.

(b) Good moral character includes, but is not limited to, the qualities of honesty, fairness, responsibility, trustworthiness, integrity, respect for and obedience to the laws of the state and nation, and respect for the rights of others and for the judicial process.

(c) In determining whether an applicant possesses good moral character, the Office of the Disciplinary Administrator, the Review Committee, and the Board shall consider evidence of the following:
   (1) unlawful conduct;
   (2) academic misconduct;
   (3) misconduct in employment;
   (4) acts involving dishonesty, fraud, deceit, or misrepresentation;
   (5) acts which demonstrate disregard for the rights or welfare of others;

(6) abuse of legal process, including the filing of vexatious or frivolous lawsuits;
(7) neglect of financial responsibilities;
(8) violation of a court order, including child support orders;
(9) the making of false or misleading statements or omission of relevant information, including any false or misleading statement or omission on law school or bar applications in this state or any jurisdiction;
(10) denial of admission to the bar in another jurisdiction on character grounds;
(11) disciplinary action by any professional disciplinary agency of any jurisdiction;
(12) any other conduct which reflects adversely on the character of the applicant.

(d) Current mental and emotional fitness to engage in the active and continuous practice of law involves an assessment of conduct that affects the applicant's competence to practice law and carry out duties to clients, courts, and the profession. An applicant may be of good moral character but unable to discharge his or her duties as an attorney as evidenced by conduct arising from a mental or emotional illness or condition.

(e) In determining whether an applicant is currently mentally and emotionally fit to engage in the active and continuous practice of law, the Office of the Disciplinary Administrator, the Review Committee, and the Board shall consider:
(1) evidence of conduct that exhibits mental or emotional instability that may impair the applicant's ability to practice law; and
(2) evidence of drug or alcohol dependency or abuse or other addictive behaviors that may impair the applicant's ability to practice law.

(f) In determining whether an applicant possesses good moral character and current mental and emotional fitness to engage in the active and continuous practice of law, the Office of the Disciplinary Administrator, the Review Committee, and the Board shall also consider:
(1) the applicant's age at the time of the conduct;
(2) the recency of the conduct;
(3) the reliability of the information concerning the conduct;
(4) the seriousness of the conduct;
(5) the factors underlying the conduct;
(6) the cumulative effect of the conduct or information;
(7) evidence of rehabilitation;
(8) the applicant's social contributions since the conduct;
(9) candor in the admissions process; and

(10) materiality of any omissions or misrepresentations.

[**History:** New rule effective July 1, 2009; Am. (c), (e), and (f) effective February 3, 2014; Am. effective June 26, 2014; Am. (a) effective April 2, 2015; Am. (a) effective August 31, 2016; Am. effective January 24, 2020.]

Rule 708

ADMISSION TO THE BAR WITHOUT WRITTEN EXAMINATION

(a) Any applicant for admission to the bar of Kansas who was duly admitted to the practice of law upon written examination by the highest court of another state or in the District of Columbia may be admitted to practice in this state without written examination, upon showing that the applicant:

(1) has an active license in at least one jurisdiction that permits mutuality of admission without examination for members of the Kansas bar;

(2) has never failed a written Kansas bar examination;

(3) presently meets the requirements of Rules 706 and 707 to take the Kansas bar examination;

(4) has never received professional discipline of suspension, disbarment, or loss of license in any other jurisdiction;

(5) is not currently the subject of a pending disciplinary investigation in any other jurisdiction;

(6) is a person of good moral character and mentally and emotionally fit to engage in the active and continuous practice of law; and

(7) has been lawfully engaged in the active practice of law outside the State of Kansas, or in Kansas under Rule 712 or 712A, for five of the seven years immediately preceding the date of his or her application. For purposes of this rule, the "active practice of law" shall include the following activities:

(i) Representation of one or more clients in the practice of law;

(ii) Service as a lawyer with a local, state or federal agency, including military service, with the primary duties of furnishing legal counsel, drafting legal documents and pleadings, interpreting and giving advice regarding the law or preparing, trying or presenting cases before courts, departments of government or administrative agencies;

(iii) Service as corporate counsel with the same primary duties as described in subsection (7)(ii) above;

(iv) Employment as a teacher of law at a law school approved by the American Bar Association throughout the applicant's employment;
(v) Service as a judge in a federal, state or local court, provided that such employment is available only to licensed attorneys;
(vi) Service as a judicial law clerk; or
(vii) Any combination of the above.

(8) has not previously engaged in the unauthorized practice of law in Kansas or any other jurisdiction.

Applicants shall furnish such proof of practice as may be required by the Board of Law Examiners.

(b) Each applicant to the bar without written examination shall pay an application fee as provided in Rule 704 and shall submit in duplicate on forms approved by the Supreme Court and procured from the Office of Judicial Administration:
(1) a verified application for admission,
(2) such other and further information as the Office of the Disciplinary Administrator, the Review Committee, or the Board may require in the consideration of his or her application, and
(3) a designation of the Office of Judicial Administration for service of process.

(c) The provisions of Rule 721 apply to applicants under this rule.

(d) When the Board recommends denial of an application under this rule without hearing, its recommendation shall be submitted to the Supreme Court and a copy thereof shall be submitted to the Office of Judicial Administration, which will mail or otherwise furnish a copy to the applicant. The applicant may, within twenty days of service thereof, submit to the Office of Judicial Administration exceptions to the Board's recommendation. The Board shall submit a response to any such exceptions within twenty days following service of the exceptions. The Supreme Court will then make a final determination based upon the record, exceptions and response, if any, and enter its final order, subject to the provisions of Rule 722(g) and (h).

(e) When an application under this rule is granted by the Supreme Court, the applicant shall take an oath pursuant to Rule 720. The judicial administrator shall thereafter issue the applicant a certificate of authority to practice law in this State.

[**History**: Am. effective July 1, 2009; Am. (a) effective November 12, 2010; Am. (a) effective June 26, 2014; Am. (e) effective August 26, 2015; Am. (a) effective August 31, 2016; Am. effective January 24, 2020.]

Rule 709

ADMISSION TO THE BAR UPON WRITTEN EXAMINATION

(a) The Board shall conduct written bar examinations on the last Tuesday and Wednesday in February and the last Tuesday and Wednesday in July.

(b) Only those applicants whose applications have been considered and approved by the Office of the Disciplinary Administrator, the Review Committee, or the Board will be permitted to take the bar examination.

(c) Each applicant for admission to the bar upon written examination shall submit a completed application for admission to be received in the Office of Judicial Administration on or before October 1 (for the February examination) and on or before March 1 (for the July examination) on forms approved by the Court and procured from the Office of Judicial Administration. The completed application shall consist of:
   (1) a verified application for admission;
   (2) not less than three affidavits, on forms to be supplied by the Office of Judicial Administration, from responsible persons attesting that the applicant is a person of good moral character, or such other evidence of character as shall be satisfactory to the Board; and
   (3) any other and further information as the Board then or thereafter may require for its consideration of the application.

(d) Any applicant who wishes to submit a completed application for admission after the submission deadline, but on or before November 1 (for the February examination) and on or before April 1 (for the July examination), shall pay a late penalty fee in the amount of $200 in addition to the application fee.

(e) Notwithstanding the deadlines set out above, any applicant who is unsuccessful on the February Kansas Bar Examination will be given 30 days from the date of the letter announcing results to make reapplication for the following July examination without imposition of a late penalty fee. Reapplication for the following July examination will not be accepted after that 30-day period.

(f) Any application returned to the applicant due to deficiencies, pursuant to Rule 713, will not be considered as timely submitted.

(g) Any application received after November 1 (for the February examination) and April 1 (for the July examination) shall be considered as an application for the next ensuing bar examination.

(h) If the applicant does not take the examination for which application is made, the original application shall remain valid for the next ensuing examination; however, the applicant must, by the submission deadline, submit an updated application or an affidavit verifying that the application on file remains current. The current application fee and late penalty fee, if applicable, shall be paid on or before the submission date. If the failure of an applicant to take the bar examination for which application is made is the result of delay attendant to investigation of the applicant's fitness and/or character, the need for a hearing thereon, or actions of the Office of the Disciplinary Administrator, the Review Committee, the Board, or the Supreme Court, the period for taking the examination and the viability of the application fee shall be extended for such additional time as shall be determined by the Board.

(i) An applicant who is retaking the examination shall submit a completed application with the current application fee and late penalty fee, if applicable, on or before the submission date.

(j) Upon the submission of an application, the name and address of the applicant shall be posted in a conspicuous place in the Office of Judicial Administration for not less than forty-five days prior to the date of the bar examination.

(k) The Board shall conduct examinations of applicants for admission to the bar as to their learning in the law and educational qualifications for admission to the practice of law. The Board shall test applicants by administering the Uniform Bar Examination prepared by the National Conference of Bar Examiners which consists of six Multistate Essay Examination questions; two Multistate Performance Test questions; and the Multistate Bar Examination.

(l) At every bar examination each applicant may be required to provide evidence of identification satisfactory to the Office of Judicial Administration. Each applicant shall place his or her name on the form furnished by the Office of Judicial Administration and deposit it in a sealed envelope with the Office of Judicial Administration. When the applicant shall have finished the examination, he or she shall mark it with his or her examination number only, as directed by the Board. Any other mark of identification placed upon the examination paper shall disqualify it, and the Board may refuse to read or consider it.

(m) In lieu of taking the Multistate Bar Examination portion of the first Kansas bar examination taken by the applicant, the Board may, if requested by the applicant, accept any Multistate Bar Examination score achieved in another jurisdiction in a concurrent examination or in a prior examination conducted within thirteen months of the

current examination, provided the applicant successfully passed the entire bar examination in the other jurisdiction in one sitting and achieved a minimum scaled score of 125 on the Multistate Bar Examination. An applicant desiring to use the Multistate Bar Examination score from a concurrent bar examination in another state will not be eligible for admission to the practice of law in Kansas until it is shown that the applicant successfully passed the entire bar examination of the other state in one sitting, regardless of the score obtained on the Multistate Essay Examination and the Multistate Performance Test portions of the Kansas examination. Applicants transferring a Multistate Bar Examination score to Kansas will not receive a Uniform Bar Examination score. In the event the applicant fails the bar examination in the other jurisdiction, the Multistate Bar Examination score may not be used in Kansas in the current or any succeeding examination. If the applicant fails the Kansas examination, the Multistate Bar Examination score so transferred may not be used in any succeeding Kansas Bar Examination. All applicants shall notify the Office of Judicial Administration of their intention to use Multistate Bar Examination scores achieved in another jurisdiction at the time their application is submitted. It shall be the responsibility of the applicant to cause his or her Multistate Bar Examination scores to be certified to the Office of Judicial Administration by the National Conference of Bar Examiners or by the appropriate bar examination authority where the prior Multistate Bar Examination was taken. The Office of Judicial Administration shall adopt such procedures as are necessary to report such scores to the Board without divulging the identity of the applicant to the Board members.

(n) To be eligible to sit for the Uniform Bar Examination in Kansas, an applicant must:
   (1) complete the Multistate Professional Responsibility Examination;
   (2) request the official score to be reported to the Office of Judicial Administration; and
   (3) receive a passing score as determined by the Board.

   An official score report must be sent by the National Conference of Bar Examiners and received by the Office of Judicial Administration no later than January 15 for the February examination and June 15 for the July examination.

(o) As soon as practicable after the completion of a bar examination, the Board shall submit a report to the Office of Judicial Administration recommending granting or denying admission of the applicant.

When such report recommends granting admission, unless some reason appears to the contrary, the Supreme Court will make an order admitting the applicant to practice in all the courts of the state, which order shall become effective upon taking an oath pursuant to Rule 720.

(p) When the Board recommends denying admission by reason of an applicant's failure to make a satisfactory grade on the bar examination, its report shall be final and shall be submitted to the Office of Judicial Administration.

(q) An applicant who has failed the examination four times shall no longer be eligible to apply for admission.

(r) Any applicant whose admission is denied because of failure to make a satisfactory grade on the bar examination shall have the right to receive a copy of his or her Multistate Essay Examination and Multistate Performance Test papers if such request is made in writing no later than the ninetieth day after the mailing by the Office of Judicial Administration of the notice of denial of admission. Because of the need for confidentiality to protect the integrity of the examination, no review or inspection of questions asked or answers given on the Multistate Bar Examination is permitted. No examination papers of an applicant who successfully passes the examination shall be retained beyond the administration date of the next succeeding examination.

[**History:** Am. effective July 1, 2009; Am. (c), (d), and (g) effective December 1, 2012; Am. (b) and (h) effective February 3, 2014; Am. effective October 2, 2015; Am. (n) effective November 2, 2017; Am. effective January 24, 2020; Am. effective February 4, 2020.]

Rule 709A

ADMISSION TO THE BAR BY UNIFORM BAR EXAMINATION SCORE

(a) Any applicant for admission to the bar of Kansas who has taken the Uniform Bar Examination (UBE) in another jurisdiction may be admitted to practice in this state by acceptance of a UBE score, upon showing that the applicant:

(1) has achieved a minimum UBE score of 266 on a 400 point scale from an examination that occurred within 36 months of the date the application for admission to the bar of Kansas is submitted;

(2) has requested transfer of the score from the jurisdiction where the score was achieved or from the National Conference of Bar Examiners directly to the Kansas Board of Law Examiners;

(3) has never failed a written Kansas bar examination;

(4) presently meets the requirements of Rules 706 and 707 to take the Kansas bar examination;
(5) has never received professional discipline of suspension, disbarment, or loss of license in any other jurisdiction;
(6) is not currently the subject of a pending disciplinary investigation in any other jurisdiction;
(7) is a person of good moral character and mentally and emotionally fit to engage in the active and continuous practice of law; and
(8) has not previously engaged in the unauthorized practice of law in Kansas or any other jurisdiction.

(b) Each applicant to the bar by transfer of UBE score shall pay an application fee as provided in Rule 704 and shall submit in duplicate on forms approved by the Supreme Court and procured from the Office of Judicial Administration:
(1) a verified application for admission and
(2) such other and further information as the Office of the Disciplinary Administrator, the Review Committee, or the Board may require in the consideration of his or her application.

(c) An applicant may submit a verified application for admission under this rule any time after the applicant has submitted an application to sit for the next administration of the UBE in another UBE jurisdiction.

(d) To be eligible to submit a verified application for admission to the bar of Kansas, an applicant must:
(1) request the official Multistate Professional Responsibility Exam score report from the National Conference of Bar Examiners to be reported to the Office of Judicial Administration; and
(2) receive a passing score as determined by the Board.

(e) The provisions of Rules 715, 716, 717, 718 and 721 apply to applicants under this rule.

(f) Any application returned to the applicant due to deficiencies, pursuant to Rule 713, will not be considered as timely submitted.

(g) When an application under this rule has been considered and approved by the Office of the Disciplinary Administrator, the Review Committee, or the Board, the applicant after providing proof of education as required in Rule 706, shall take an oath pursuant to Rule 720. The judicial administrator shall thereafter issue the applicant a certificate of authority to practice law in this State.

[**History:** New rule effective April 2, 2015; Am. effective June 3, 2015; Am. (f) effective August 26, 2015; Am. effective November 2, 2017; Am. effective January 24, 2020.]

Rule 710

TEMPORARY PERMIT TO PRACTICE

(a) **Application for Temporary Permit to Practice.** An applicant for admission to the bar may submit to the Office of Judicial Administration an application for a temporary permit to practice law if the applicant has:
   (1) satisfied the educational requirements;
   (2) achieved the required Kansas score on the Multistate Professional Responsibility Examination; and
   (3) met the character and fitness requirements under Rule 707 and been certified by the Office of the Disciplinary Administrator, the Review Committee, or the Board, under Rule 721.

(b) **Certificate from the Supervising Attorney.** The application must include a written certificate from an attorney in good standing who is actively engaged in the practice of law in Kansas that such attorney will supervise and be responsible for the acts of the applicant during the period covered by the temporary permit.

(c) **Issuing a Temporary Permit to Practice.** If the Supreme Court shall find that the circumstances are such to justify it, a temporary permit may be issued.

(d) **Effective Date of a Temporary Permit to Practice.** The temporary permit shall be effective upon the applicant's taking an oath to support the Constitution of the United States and the Constitution of the State of Kansas, in conformity with the oath prescribed by Rule 720.

(e) **Expiration of Temporary Permit to Practice.**
   (1) For applicants seeking admission to the bar upon written examination, the temporary permit will expire on the date the results of the examination are announced, if unsuccessful, or, if successful, on the last Friday in April or September following the bar examination. If the applicant withdraws the application, the temporary permit expires on the date the application is withdrawn. If the applicant does not take the bar examination, the temporary permit expires on the first day of administration of the bar examination. If the Office of the Disciplinary Administrator, the Review Committee, or the Board re-opens the investigation into the applicant’s good moral character and current mental and emotional fitness to engage in the active and continuous practice of law, the temporary permit is revoked on the date the applicant is informed that the investigation has been re-opened.
   (2) For applicants seeking admission to the bar by Uniform Bar Examination score, the temporary permit will expire at the time

the applicant takes the oath and signs the roll of attorneys or 90 days after the applicant's UBE score is released, whichever date is earlier. If the applicant withdraws the application, the temporary permit expires on the date the application is withdrawn. If the Office of the Disciplinary Administrator, the Review Committee, or the Board re-opens the investigation into the applicant's good moral character and current mental and emotional fitness to engage in the active and continuous practice of law, the temporary permit is revoked on the date the applicant is informed that the investigation has been re-opened.

(3) For applicants seeking admission to the bar by Uniform Bar Examination score who have not yet taken the UBE in another jurisdiction, the applicants must, within 7 days of official notification of the Uniform Bar Examination score, request that the National Conference of Bar Examiners transfer the Uniform Bar Examination score to the Office of Judicial Administration. Failure to timely report a minimum passing score on the Uniform Bar Examination will result in expiration of the temporary permit to practice.

(4) For applicants seeking admission to the bar without written examination, the temporary permit will expire at the time the applicant takes the oath and signs the roll of attorneys or 90 days after issuance. If the applicant withdraws the application, the temporary permit expires on the date the application is withdrawn. If the Office of the Disciplinary Administrator, the Review Committee, or the Board re-opens the investigation into the applicant's good moral character and current mental and emotional fitness to engage in the active and continuous practice of law, the temporary permit is revoked on the date the applicant is informed that the investigation has been re-opened.

(f) **Eligibility to Receive a Temporary Permit to Practice.** An applicant who, within 10 years prior to submission of an application in Kansas, has failed a bar examination in Kansas or any other state or jurisdiction will not thereafter be eligible for a temporary permit.

[**History:** New rule effective July 1, 2009; Am. (a) and (c) effective February 3, 2014; Am. effective June 3, 2015; Am. effective January 24, 2020; Am. (f) effective February 4, 2020.]

Rule 711

NON-STANDARD TESTING ACCOMMODATIONS FOR WRITTEN EXAMINATION

(a) The bar examination shall be administered by the Board to all eligible applicants in a manner that is fair.

(b) Applicants needing non-standard testing accommodations on the examination shall submit a non-standard testing application and all supporting documentation to the Office of Judicial Administration by November 1 for the February examination and April 1 for the July examination.

(c) The Board may, upon favorable review of the non-standard testing application, modify the manner in which the examination is administered to an applicant while maintaining the security and integrity of the examination.

[**History**: New rule effective July 1, 2009; Am. (b) effective December 1, 2012; Am. (b) effective January 24, 2020.]

Rule 712

RESTRICTED LICENSURE OF ATTORNEYS PERFORMING LEGAL SERVICES FOR SINGLE EMPLOYERS

(a) Any applicant for admission to the Bar of Kansas who was duly admitted to and continuously licensed for the practice of law upon written examination by the highest Court of another state's judicial system or that of the District of Columbia, and who has accepted or intends to accept or continue employment by a person, firm, association, corporation, or accredited law school engaged in business in Kansas other than the practice of law, and whose full time is, or will be, limited to the business of such employer, and who receives, or will receive, his or her entire compensation from such employer for the rendering of services, which include legal services, may be granted a restricted license to practice law in Kansas and the courts of this state, without examination, upon showing that the applicant:

(1) has submitted a completed application pursuant to subsection (b) of this rule within ninety (90) days of the beginning of employment;

(2) would be fully qualified to take the written bar examination in Kansas under the Rules of the Supreme Court;

(3) has satisfied any applicable continuing legal education requirements specified by the rules of the jurisdictions in which the applicant has been admitted prior to making application in Kansas;

(4) is now and has been a person of good moral character, is currently mentally and emotionally fit to engage in the active and continuous practice of law, and in all respects is a proper person to be granted a restricted license to practice law in this state; and

(5) has never failed a Kansas bar examination.

(b) Subsequent to submitting the completed application and pending issuance of the restricted license, an applicant may engage in the business of his or her employer, including legal services, if an attorney actively engaged in the practice of law in Kansas agrees, in writing, to supervise and be responsible for the acts of the applicant during that interim period. A restricted license granted under the provisions of this rule shall remain in effect for so long as such person remains in the employ of, and devotes his or her full time to the business of, and receives compensation for legal services from no source other than such employer. Upon the termination of such employment, the right of such person to practice law in Kansas shall terminate unless he or she shall have accepted like employment with another Kansas employer. Persons granted a restricted license under this rule shall be subject to all of the rules for practice in this state, including the requirements for continuing legal education.

(c) Each applicant for a restricted license under this rule shall submit in duplicate on forms approved by the Court and procured from the Office of Judicial Administration:

(1) a verified application for admission;

(2) a written certificate from the authority charged with the administration of discipline in each jurisdiction in which the applicant holds a license to practice law, certifying that the applicant is in good standing, has not been disciplined by such jurisdiction for violations of the Code of Professional Responsibility, Kansas Rules of Professional Conduct or any other ethical standards therein applicable, and that there are no complaints of such violations then pending against the applicant;

(3) where required by the rules of such jurisdictions, a written certificate from the authority charged with the administration of continuing legal education in the jurisdictions in which the applicant has been admitted to practice, certifying that the applicant has satisfied the continuing legal education requirements of such jurisdictions for any required years prior to making application in Kansas;

(4) a written certificate from the employer of such applicant evidencing the applicant's employment by such employer and that

his or her full-time employment will be by such employer in Kansas; and

(5) not less than three affidavits, on forms to be supplied by the Office of Judicial Administration, from responsible persons attesting that the applicant is a person of good moral character, or such other evidence of character as shall be satisfactory to the Office of the Disciplinary Administrator, the Review Committee, or the Board; and

(6) such other and further information as the Office of the Disciplinary Administrator, the Review Committee, or the Board may require in the consideration of the application.

(d) The provisions of Rules 706, 707, and 721 apply to applicants under this rule.

(e) When the Board recommends denial of an application under this rule, its recommendation shall be submitted to the Supreme Court and a copy thereof shall be submitted to the Office of Judicial Administration, which will mail or otherwise furnish a copy to the applicant. The applicant may, within twenty days of service thereof, submit to the Office of Judicial Administration exceptions to the Board's recommendation. The Board shall submit a response to any such exceptions within twenty days following service of the exceptions. The Supreme Court will then make a final determination based upon the record, exceptions and response, if any, and enter its final order, subject to the provisions of Rule 722(g) and (h).

(f) When an application under this rule is granted by the Supreme Court, the applicant shall take an oath pursuant to Rule 720. The judicial administrator shall thereafter issue the applicant a restricted license to practice law in this State. The restricted license shall recite that it is issued under this rule and shall limit the licensee to perform only legal services for the employer's business. Such restricted license shall expire upon (i) termination of the applicant's employment by his full-time employer, or (ii) admission of the applicant to practice in Kansas under the terms of Rule 708, 709, 709A or, if the applicant shall fail the bar examination, on the date the results of the examination are announced.

(g) Time in practice under a restricted license issued pursuant to this rule may not be used to satisfy requirements of any statute or regulation of the State of Kansas.

(h) Any applicant for admission under this rule who withdraws or fails to pursue his or her application within one year of the date of submitting thereof, shall thereafter be required to submit a

new application and pay the same fee required for the initial application. However, if the failure of an applicant to pursue said application during such period is the result of delay attendant to investigation of the applicant's fitness and/or character, the need for a hearing thereon, or actions of the Office of the Disciplinary Administrator, the Review Committee, the Board, or the Supreme Court, such period shall be extended for such additional time as shall be determined by the Board.

(i) An attorney licensed under this rule is authorized to practice as provided in Rule 712B.

[**History:** New rule effective July 1, 2009; Am. effective February 3, 2014; Am. (f) effective April 2, 2015; Am. (f) effective August 26, 2015; Am. (i) effective September 6, 2018; Am. effective October 17, 2019; Am. effective January 24, 2020; Am. (b) and (h) effective February 4, 2020.]

Rule 712A

TEMPORARY RESTRICTED ADMISSION TO THE BAR FOR ATTORNEY SPOUSES OF ACTIVE UNITED STATES MILITARY SERVICE MEMBERS

(a) An applicant for admission to the Kansas bar who is currently married to a military service member stationed in Kansas and has been duly admitted to the practice of law upon written examination by the highest court of another state or in the District of Columbia may be admitted to practice in Kansas without written examination upon showing that the applicant:

(1) has an active license in at least one United States jurisdiction or territory;

(2) currently meets the requirements of Rules 706 and 707 to take the Kansas bar examination;

(3) has never been suspended, disbarred, or otherwise lost or surrendered a license to practice law as a result of disciplinary action in any other jurisdiction;

(4) is not the subject of a pending disciplinary investigation in any other jurisdiction;

(5) is a person of good moral character and mentally and emotionally fit to engage in the active and continuous practice of law;

(6) is residing in Kansas as a spouse of a member of the United States Uniformed Services currently stationed in Kansas;

(7) will be employed as an attorney in Kansas by or with an active attorney in good standing in Kansas who will have ultimate responsibility for clients; and
(8) has not previously engaged in the unauthorized practice of law in Kansas or any other jurisdiction.

(b) An applicant to the bar by temporary restricted admission must pay an application fee under Rule 704 and must submit in duplicate on forms approved by the Supreme Court and procured from the Office of Judicial Administration:
(1) a verified application for admission;
(2) any further information requested by the Office of the Disciplinary Administrator, the review committee, or the Board for use in consideration of the application;
(3) a form completed by the applicant designating the Office of Judicial Administration for service of process; and
(4) a written certificate signed by the attorney referenced in (a)(7) evidencing that the attorney:
(A) is in good standing in Kansas;
(B) is engaged in the active practice of law;
(C) is the applicant's employer or is employed by or with the same employer as the applicant; and
(D) agrees to have ultimate responsibility for clients.

(c) The provisions of Rules 714, 715, 716, 717, 718 and 721 apply to applicants under this rule.

(d) When the Board recommends denial of an application under this rule, the recommendation will be submitted to the Supreme Court and a copy of the recommendation must be submitted to the Office of Judicial Administration, which must mail or otherwise furnish a copy to the applicant. The applicant may, no later than twenty days after service of the Board's recommendation, submit to the Office of Judicial Administration exceptions to the recommendation. The Board must submit a response to any exceptions no later than twenty days after service of the exceptions. The Supreme Court will then make a final determination based upon the record, exceptions, and response, if any, and enter its final order, subject to the provisions of Rule 722(g) and (h).

(e) When an application under this rule is granted by the Supreme Court, the applicant must take the oath pursuant to Rule 720. The judicial administrator must thereafter issue the applicant a certificate of authority to practice in Kansas.

(f) All of the rules for practice in this state, including the requirements for continuing legal education, apply to a person granted a temporary restricted license under this rule.

(g) A temporary restricted license granted under this rule remains in effect for so long as the licensee: remains married to a member of the United States Uniformed Services; the service member remains stationed at a military installation in Kansas; the licensee resides in Kansas; and the licensee remains employed as an attorney by or with an active Kansas attorney in good standing who has ultimate responsibility for clients. If the employment required under this rule is terminated, the right of the licensee to practice law in Kansas terminates unless the licensee has accepted employment qualified under subsection (a)(7) and provides written documentation of that acceptance of employment to the Office of Judicial Administration.

[**History**: New rule effective September 15, 2016; Am. effective January 24, 2020.]

Rule 712B

PRO BONO OR LOW-COST DIRECT LEGAL SERVICES PROVIDED BY RETIRED, INACTIVE, OR SINGLE-EMPLOYER ATTORNEYS

(a) **Definitions.** For purposes of this rule, the following definitions apply.
   (1) "Accredited law school clinic" means a clinic established by an accredited law school whose primary mission is to provide pro bono or low-cost direct legal services to low-income Kansas residents or not-for-profit entities.
   (2) "Not-for-profit program" means an initiative within a not-for-profit organization if the initiative's primary mission is to provide pro bono or low-cost direct legal services to low-income Kansas residents or not-for-profit entities.
   (3) "Not-for-profit provider of legal services" means an organization whose primary mission is to provide pro bono or low-cost direct legal services to low-income Kansas residents or not-for-profit entities.
   (4) "Pro bono or low-cost direct legal services" means civil, criminal, and administrative legal advice or representation provided free of charge or at a low cost.

(b) **Applicability.** This rule applies to the following:
   (1) an attorney who is registered under Rule 206 as retired or inactive or admitted under Rule 712 and who seeks to provide pro bono or low-cost direct legal services through a not-for-profit

provider of legal services, a not-for-profit program, or an accredited law school clinic; and

(2) a not-for-profit provider of legal services, a not-for-profit program, or an accredited law school clinic that seeks to have an attorney who is registered under Rule 206 as retired or inactive or admitted under Rule 712 provide pro bono or low-cost direct legal services.

(c) **Attorneys.** An attorney to whom this rule applies:

(1) must be in good standing in Kansas and in other jurisdictions where licensed to practice law;

(2) must have no docketed complaint pending before the Kansas Board for Discipline of Attorneys and the Kansas Supreme Court, and no disciplinary complaint pending in any other jurisdiction;

(3) is subject to the jurisdiction of the Supreme Court for disciplinary purposes under Rule 200 et seq.;

(4) may provide only pro bono or low-cost direct legal services under this rule;

(5) may not ask for or receive personal compensation for any pro bono or low-cost direct legal services provided under this rule, except for reimbursement of costs and expenses as described in subsection (g); and

(6) must be authorized to provide pro bono or low-cost direct legal services under subsection (e).

(d) **Application for Approval of Provider, Program, or Clinic.**

(1) **Form.** A not-for-profit provider of legal services, a not-for-profit program, or an accredited law school clinic seeking approval under this rule must submit an application available from the Office of Judicial Administration that requires the following information:

(A) the primary mission of the provider, program, or clinic;

(B) the fee structure of the provider, program, or clinic;

(C) the sources of funds received by the provider, program, or clinic during the last fiscal year and the percentage of total funds from each source;

(D) the criteria to be used to determine a potential client's eligibility for pro bono or low-cost direct legal services;

(E) the type of pro bono or low-cost direct legal services to be provided;

(F) a certification that an active Kansas licensed attorney will supervise and be responsible for the acts of any attorney providing pro bono or low-cost direct legal services under this rule;

(G) a certification that the provider, program, or clinic has professional liability insurance that covers an attorney providing pro bono or low-cost direct legal services; and

(H) a certification that any low-income Kansas resident or not-for-profit entity who receives pro bono or low-cost direct legal services under this rule will receive those services free of charge or at a low cost.

(2) **Process.** The following process applies after submission of an application under subsection (d)(1).

(A) The Office of Judicial Administration will review and may verify the contents of the application. If the application is incomplete, the Office of Judicial Administration will request additional information. If the application is complete, the Office of Judicial Administration will present the application to the Supreme Court.

(B) The Supreme Court will approve or deny the application.

(3) **Amendments to Application.** If information submitted under subsection (d)(1) changes, the provider, program, or clinic must give written notice of the change to the Office of Judicial Administration no later than 14 days after the change occurs. No later than 30 days after the notice is given, the provider, program, or clinic must submit a new application.

(e) **Application for Authorization for Attorney.** Before an attorney may provide pro bono or low-cost direct legal services under this rule, a not-for-profit provider of legal services, a not-for-profit program, or an accredited law school clinic must receive authorization for the attorney.

(1) **Form.** A provider, program, or clinic seeking authorization for an attorney under this rule must submit an affidavit from the attorney on a form available from the Office of Judicial Administration that affirms the attorney:

(A) is in good standing in Kansas and in other jurisdictions where licensed to practice law;

(B) has no docketed complaint pending before the Kansas Board for Discipline of Attorneys and the Kansas Supreme Court and no disciplinary complaint pending in any other jurisdiction;

(C) is subject to the jurisdiction of the Supreme Court for disciplinary purposes under Rule 200 et seq.;

(D) may provide only pro bono or low-cost direct legal services under this rule;

(E) may not ask for or receive personal compensation for any

pro bono or low-cost direct legal services provided under this rule, except for reimbursement of costs and expenses as described in subsection (g); and

(F) authorizes the Office of Judicial Administration to verify the contents of the affidavit.

(2) **Process.** The following process applies after submission of an application under subsection (e)(1).

(A) The Office of Judicial Administration will review and may verify the contents of the application. If the application is incomplete, the Office of Judicial Administration will request additional information. If the application is complete, the Office of Judicial Administration will present the application to the Supreme Court.

(B) The Supreme Court will approve or deny the application.

(3) **Amendments to Application.** If information under subsection (e)(1) changes, the provider, program, or clinic must give written notice of the change to the Office of Judicial Administration no later than 14 days after the change occurs. No later than 30 days after the notice is given, the provider, program, or clinic must submit a new application.

(f) **Continuing Legal Education.** A retired or inactive attorney providing pro bono or low-cost direct legal services under this rule is exempt from the requirements of Rule 803.

(g) **Fees, Costs, and Expenses.** An attorney who provides pro bono or low-cost direct legal services under this rule may not receive compensation from the not-for-profit provider of legal services, not-for-profit program, or accredited law school clinic or any client of the provider, program, or clinic, except for reimbursement of costs and expenses. This prohibition does not prevent the attorney from seeking costs and expenses from an opposing party on behalf of the provider, program, or clinic.

(h) **Renewal.** No later than June 1 of each year, a not-for-profit provider of legal services, a not-for-profit program, or an accredited law school clinic approved by the Supreme Court under this rule must submit an application for renewal available from the Office of Judicial Administration. The approval period is a period of one year from July 1 through June 30.

(1) **Application for Renewal.** The application must include the following:

(A) a statement that the provider, program, or clinic remains in compliance with this rule;

(B) a list of the names of all attorneys providing pro bono or

low-cost direct legal services under this rule for the provider, program, or clinic;

(C) a general summary of the types of pro bono or low-cost direct legal services provided under this rule;

(D) the total number of hours of pro bono or low-cost direct legal services provided by the provider, program, or clinic under this rule; and

(E) for each attorney authorized to provide pro bono or low-cost direct legal services for the provider, program, or clinic under this rule either of the following:

(i) an affidavit that the information contained in the attorney's application for authorization remains accurate, or

(ii) a new application for authorization under subsection (e).

(2) **Process.** The following process applies after submission of an application for renewal under subsection (h)(1).

(A) The Office of Judicial Administration will review and may verify the contents of the application. If the application is incomplete, the Office of Judicial administration will request additional information. If the application is complete, the Office of Judicial Administration will present the application to the Supreme Court.

(B) The Supreme Court will approve or deny the application.

(i) **Termination of Authorization.**

(1) **Grounds.** An attorney's authorization to provide pro bono or low-cost direct legal services under this rule terminates if the attorney:

(A) accepts personal compensation for pro bono or low-cost direct legal services provided under this rule, except as provided for in subsection (g);

(B) ceases to provide pro bono or low-cost direct legal services under this rule with the not-for-profit provider of legal services, not-for-profit program, or accredited law school clinic;

(C) is disciplined in Kansas under Rule 225(a) or another jurisdiction for professional misconduct;

(D) registers as disabled due to mental or physical disability under Rule 206;

(E) is transferred to disabled status under Rule 234; or

(F) engages in any other conduct that adversely reflects on the lawyer's honesty, trustworthiness, or fitness as a lawyer in

other respects.

(2) **Notice.** No later than 14 days after the provider, program, or clinic becomes aware that an attorney's authorization to provide pro bono or low-cost direct legal services has terminated under subsection (i)(1), the provider, program, or clinic must give written notice to the Supreme Court on a form available from the Office of Judicial Administration.

(j) **Filing User.** Attorneys authorized under this rule are considered filing users under Rule 122 for the limited purpose of providing pro bono or low-cost direct legal services.

(k) **Previously Approved Providers, Programs, and Clinics.** A not-for-profit provider of legal services, a not-for-profit program, or an accredited law school clinic previously approved by the Supreme Court under former Rule 208 (2019 Kan. S. Ct. R. 252) must comply with this rule no later than 45 days after its effective date.

[**History:** New rule adopted effective October 15, 2019; Am (e) effective January 24, 2020; Am. effective January 1, 2021.]

Rule 713

DEFECTIVE APPLICATIONS

Applications for admission to the bar of the State of Kansas initially submitted in a defective condition, e.g., without notarization, without supporting documents, or having blank or incomplete items, shall not be accepted and shall be returned to the applicant. An application which is not accompanied by the applicable fee will be returned.

[**History**: New rule effective July 1, 2009; Am. effective January 24, 2020.]

Rule 714

ACCURACY AND HONESTY IN COMPLETING BAR APPLICATIONS

(a) Each applicant for admission to the bar has a duty to be candid and to respond carefully and accurately to questions in all phases of the application and admission process. Each applicant must respond fully to all inquiries.

(b) Failure to accurately and completely answer all questions on the application, failure to disclose requested information, lack of candor in any answer or falsification of any answer may result in denial of an application for admission to practice law in Kansas and may constitute grounds for revocation of the license to practice law granted to any person based thereon.

[**History:** New rule effective July 1, 2009.]

Rule 715

EFFECT OF COMMISSION OF FELONY CRIME

(a) Any person who, as an adult or juvenile, has been found guilty by plea or by trial of any felony crime, whether sentence was imposed or not, or who participated in a pretrial diversion or similar program for a felony crime is not eligible to apply for admission to the bar of the State of Kansas until five years after the date of successful completion of any sentence, period of probation or parole, or term of pretrial diversion. A felony crime includes any crime which is punishable by incarceration for more than one year or any crime which is designated as a felony by the State of Kansas, the United States of America, any state, or any United States territory.

(b) Any person who, as an adult or juvenile, has been found guilty, by plea or by trial of any felony crime, or who has participated in a pretrial diversion or similar program for a felony crime, shall show affirmatively, in addition to the other requirements of the application, that:
   (1) Any sentence, period of probation, or term of pre-trial diversion was completed at least five years prior to the date of the application;
   (2) The circumstances which led to the commission of the offense have changed;
   (3) Full restitution has been paid;
   (4) All special conditions imposed have been fulfilled;
   (5) The applicant's civil rights have been restored; and
   (6) The applicant meets all qualifications for character and fitness pursuant to Rule 707.

[**History:** New rule effective July 1, 2009.]

Rule 716

EFFECT OF PENDING CRIMINAL ACTION

(a) Any person who is charged in any criminal action is not eligible to apply for admission to the bar of the State of Kansas until after the charge is dismissed or after the date of successful completion of any sentence, period of probation or parole, or term of pretrial diversion, subject to the provisions of Rule 715.

(b) Any person who is charged in a criminal action after applying for admission to the bar of the State of Kansas but before such person has taken the bar examination is not eligible to sit for the examina-

tion until after the dismissal of the charge or after the date of successful completion of any sentence, period of probation or parole, or term of pretrial diversion, subject to the provisions of Rule 715.

(c) Any person who is charged in a criminal action after sitting for the bar examination but before becoming a member of the bar is not eligible to become a member of the bar until after the dismissal of the charge or after the date of successful completion of any sentence, period of probation or parole, or term of pretrial diversion, subject to the provisions of Rule 715.

[**History**: New rule effective July 1, 2009.]

Rule 717

EFFECT OF DISCIPLINARY COMPLAINT IN ANOTHER JURISDICTION

(a) Any person having an attorney disciplinary complaint pending before the licensing authority of any other jurisdiction is not eligible to apply for admission to the bar of the State of Kansas while such complaint is pending.

(b) Any person who has been suspended or disbarred from the practice of law by the licensing authority of any other jurisdiction is not eligible to apply for admission to the bar of the State of Kansas until such time as the person has been fully reinstated in the other jurisdiction.

(c) The underlying facts of an attorney disciplinary complaint in another jurisdiction may be considered by the Office of the Disciplinary Administrator, the Review Committee, or the Board in determining whether the person possesses the requisite good moral character and current mental and emotional fitness to engage in the active and continuous practice of law.

[**History:** New rule effective July 1, 2009; Am. (c) effective February 3, 2014; Am. (c) effective January 24, 2020.]

Rule 718

SUBSTANCE-ABUSE AND/OR PSYCHOLOGICAL REFERRALS AND EVALUATIONS

(a) The Office of the Disciplinary Administrator, the Review Committee, or the Board may refer an applicant to the Kansas Lawyers Assistance Program if recommended by a qualified professional.

(b) The Office of the Disciplinary Administrator, the Review Committee, or the Board may require an applicant to submit to a substance-abuse evaluation by a qualified professional of that entity's choosing.

(c) The Office of the Disciplinary Administrator, the Review Committee, or the Board may require an applicant to submit to a psychological evaluation by a qualified professional of that entity's choosing.
(d) The expense of an evaluation ordered by the Office of the Disciplinary Administrator, the Review Committee, or the Board shall be paid out of the bar admission fee fund.

[**History:** New rule effective July 1, 2009; Am. effective February 3, 2014; Am. (d) effective June 26, 2014; Am. effective January 24, 2020.]

Rule 719

LEGAL INTERN PERMIT

(a) **Purpose.** The bench and bar are primarily responsible for providing competent legal services for all persons, including those unable to pay for these services. This rule provides a law student the opportunity to gain practical skills in a supervised environment by assisting a licensed attorney in providing competent legal services for all persons and entities, including those unable to pay for these services. Law schools are encouraged to provide clinical instruction for legal interns.
(b) **Supervising Attorney Fully Responsible.** A legal intern with a legal intern permit may practice law only under the supervision of a licensed attorney. A supervising attorney must meet all of the requirements under subsection (d) and is fully responsible for all of the legal intern's activities performed under the attorney's supervision.
(c) **Application for a Legal Intern Permit.** A law student wishing to obtain a legal intern permit must submit an application to the Office of Judicial Administration and:
    (1) be a student enrolled at a law school approved by the American Bar Association;
    (2) have successfully completed, or be concurrently enrolled in, the professional responsibility course required by the law school's curriculum;
    (3) have completed:
        (A) at least 59 hours of legal studies; or
        (B) at least 44 hours of legal studies, if the intern's work will be supervised by a licensed Kansas attorney who is regularly engaged in the teaching of law at a law school approved by the American Bar Association and whose duties include participation in a legal clinic operated as a regular part of the law school's educational program;

(4) submit to the Office of Judicial Administration certification by the dean of the law school where the intern is enrolled, or the dean's designee, that the student meets the required number of hours under (c)(3) and is of good character, competent legal ability, and adequately trained to perform as a legal intern;
(5) pay the fee required under Rule 704;
(6) submit to the Office of Judicial Administration certification that the intern has read and will abide by the rules relating to discipline of attorneys and subscribe to an oath to support the United States and Kansas Constitutions and faithfully perform the duties of a legal intern;
(7) secure a qualified supervising attorney under subsection (d); and
(8) provide an expected date of graduation.

(d) **Supervising Attorney.** A legal intern must be supervised by a supervising attorney.
(1) To qualify as a supervising attorney, an attorney must:
(A) be a Kansas attorney in good standing;
(B) not have received professional discipline of probation, suspension, disbarment, or loss of license;
(C) be regularly engaged in the practice of law in Kansas;
(D) provide written consent to the Office of Judicial Administration that includes the following:
(i) a statement that the supervising attorney is professionally responsible for guiding the legal intern's work and for supervising the quality of the intern's work; and
(ii) the dates the supervision of the intern begins and ends, which may extend no later than the intern's date of graduation.
(E) train and assist the legal intern to the extent necessary to assure proper performance of the duties entrusted to the intern; and
(F) immediately submit written notice to the Office of Judicial Administration and the intern when supervision of the intern ends or is terminated for any reason, at which time the intern's permit is considered inactive until a new supervising attorney provides written consent under (d)(1)(D) and the permit is transferred under subsection (f).
(2) The supervising attorney must not supervise more than two legal interns at the same time, but this limitation does not apply to the following:
(A) a full-time staff member of a state or local legal aid society;

(B) a county attorney, district attorney, municipal attorney, attorney general, or public defender; or

(C) a licensed Kansas attorney who is regularly engaged in the teaching of law at a law school approved by the American Bar Association and whose duties include participation in a legal clinic or field placement program operated as a regular part of the law school's educational program.

(3) An intern may have more than one supervising attorney if each supervising attorney submits to the Office of Judicial Administration the written consent required under (d)(1)(D).

(e) **Permit Status.**

(1) A legal intern permit terminates at the conclusion of the term of supervision stated in the consent provided under subsection (d)(1)(D)(ii), unless terminated early under this section. No permit will be valid after the date of the intern's graduation.

(2) The law school dean, or the dean's designee, must immediately submit to the Office of Judicial Administration a notice of withdrawal of the certification provided under subsection (c)(4) if the intern:

(A) graduates earlier than provided in subsection (c)(8);

(B) withdraws from law school;

(C) fails to remain in good standing;

(D) engages in conduct that would prevent the law school from certifying the intern's character and fitness for any jurisdiction's board of bar examiners; or

(E) engages in conduct that demonstrates the intern is unfit for the duties and responsibilities of a legal intern.

(3) If the law school dean, or the dean's designee, submits to the Office of Judicial Administration a notice of withdrawal of the certification provided under subsection (c)(4), the intern's permit is terminated immediately. The Office of Judicial Administration must send notice of the termination to the intern and the supervising attorney.

(4) The law school dean, or the dean's designee, need not provide the intern notice, a hearing, or any showing of cause prior to withdrawal of the certification provided under subsection (c)(4).

(5) When a supervising attorney provides notice to the Office of Judicial Administration that an intern's permit is terminated for any reason other than completion of the stated time period under subsection (d)(1)(D)(ii), the Office of Judicial Administration must

send notice of the termination to the intern, the supervising attorney, and the law school dean.

(6) The Supreme Court may terminate a legal intern permit without notice, a hearing, or any showing of cause. The Supreme Court will submit notice of the termination to the Office of Judicial Administration. The Office of Judicial Administration must send notice of the termination to the intern, the supervising attorney, and the law school dean.

(f) **Transfer of Permit.** If a legal intern obtains a new supervising attorney, the legal intern's permit may be transferred without submitting a new application or fee under subsection (c) as set forth below.

(1) The new supervising attorney must provide the Office of Judicial Administration a written consent under subsection (d)(1)(D).

(2) Upon receipt of the new supervising attorney's consent, the Office of Judicial Administration must provide notice to the legal intern that the permit has been transferred. A legal intern must not perform any service under this rule until receipt of the Office of Judicial Administration's notice that the permit has been transferred.

(g) **Client's Written Consent.** Before a legal intern may represent a nongovernment client, the client must consent in writing to representation by the legal intern under the supervision of the supervising attorney. The client must specifically consent in writing to the legal intern appearing in court under subsection (i)(2) without a supervising attorney present.

(h) **Entry of Appearance.**

(1) Subject to the requirements of this rule, a legal intern may appear in any court or before any administrative tribunal.

(2) A supervising attorney admitted to practice in the court in which an intern is appearing must introduce the intern in the manner prescribed by the individual court.

(3) An entry of appearance must be filed with the clerk of the court.

(A) In each case, the supervising attorney must:

(i) file with the clerk of the court an entry of appearance that states the intern's representation in the case; and

(ii) attach to the entry of appearance a copy of the client's written consent under subsection (g) that is countersigned by the supervising attorney.

(B) Notwithstanding paragraph (A), when the intern represents the government:

(i) the client's written consent is not required; and

(ii) the intern must file with the clerk of the court the type of notice required for appearance before the court.

(i) **In-Court Appearance.** A legal intern's appearance is subject to the following requirements.

(1) The supervising attorney must be personally present for any in-court proceeding, except a proceeding under paragraph (2) or (3).

(2) With the client's consent under subsection (g), the supervising attorney's written consent, and the court's approval, a legal intern may appear in court without the personal presence of the supervising attorney in the following matters:

(A) a civil matter, other than a domestic matter, when the amount in controversy is less than $1,000; and

(B) a criminal matter when the intern is appearing on behalf of a defendant who does not have the right to counsel under any constitutional provision, statute, or court rule.

(3) With the supervising attorney's written consent and the court's approval, a legal intern may appear on behalf of the government in a criminal matter without the personal presence of the supervising attorney.

(4) A legal intern may not participate in oral argument in the Supreme Court or the Court of Appeals unless the court grants special permission after a motion is filed by the supervising attorney.

(j) **Out-of-Court Practice.** A legal intern may perform any function of an attorney subject to the following guidelines.

(1) With the supervising attorney's approval, a legal intern may engage in the out-of-court practice of law outside the personal presence of the supervising attorney.

(2) The supervising attorney must:

(A) sign all documents filed with a court or administrative body, unless the administrative body specifically allows intern-only signature; and

(B) approve any other legal document prepared on behalf of a client that affects the client's rights or interests.

(k) **Compensation.** A client must not directly compensate a legal intern in any form. But an attorney, law firm, legal aid bureau, public defender agency, state, county, or municipality may:

(1) compensate the legal intern and

(2) charge a client for the intern's services.

(l) **Master of Law Student.** A student who is enrolled in a master of law program (LL.M.) at a law school approved by the American Bar

Association and who has previously received a juris doctor degree from a law school approved by the American Bar Association is eligible to apply for a legal intern permit under this rule.

(m) **Notice and Change of Contact Information.** When the Office of Judicial Administration is required by this rule to send notice to the legal intern, the Office of Judicial Administration will send notice to the intern's address on file with the Office of Judicial Administration. A legal intern must immediately notify the Office of Judicial Administration after a change of legal name, residential address, or residential/personal telephone number if this information changes during the pendency of the legal intern permit.

[**History:** New rule effective July 1, 2009; Repealed effective May 30, 2019; Rule adopted effective May 30, 2019; Am. effective January 24, 2020.]

Rule 720

OATH

(a) Before becoming eligible to practice law in the State of Kansas, an applicant must take the following oath:

"You do solemnly swear or affirm that you will support and bear true allegiance to the Constitution of the United States and the Constitution of the State of Kansas; that you will neither delay nor deny the rights of any person through malice, for lucre, or from any unworthy desire; that you will not knowingly foster or promote, or give your assent to any fraudulent, groundless or unjust suit; that you will neither do, nor consent to the doing of any falsehood in court; and that you will discharge your duties as an attorney and counselor of the Supreme Court and all other courts of the State of Kansas with fidelity both to the Court and to your cause, and to the best of your knowledge and ability. So help you God."

(b) Unless otherwise permitted by the Supreme Court, an applicant shall take the oath of admission within one year after the date of the letter notifying an applicant that he or she has met the requirements under Rule 708, 709, 709A, 712, or 712A for admission to the Kansas Bar. Failure to take the oath in the prescribed period will result in revocation of the letter of licensure.

(c) If the oath is administered by a judge of record in the United States or a United States territory, the applicant must also submit a completed written oath on a form provided by the Office of Judicial Administration.

(d) After taking the oath, an applicant shall sign his or her name upon the roll of attorneys of the Supreme Court, and the judicial administrator will issue a certificate of such applicant's authority to practice law in all courts of this state. For good cause shown, the judicial administrator may waive the personal signature of the applicant on the roll of attorneys, and the judicial administrator shall enter his or her name on the roll.

[**History**: New rule effective July 1, 2009; Am. (b) effective April 2, 2015; Am. (b) effective August 31, 2016; Am. (c) and (d) effective January 24, 2020.]

Rule 721

INVESTIGATION AND HEARING PROCEDURES

(a) The Admissions Attorney shall review all applications; investigate matters that bear on the applicant's good moral character and current mental and emotional fitness to engage in the active and continuous practice of law; direct applicants to submit to evaluations under Rule 718, if deemed necessary; and interview applicants, if deemed necessary.

(b) The Office of the Disciplinary Administrator or the Review Committee may also call on any state or local bar association, or one or more members of the bar of the judicial district where the applicant resides, to make such investigation and report the results to the Office of the Disciplinary Administrator or the Review Committee.

(c) Applicants are required to submit fingerprints for investigative purposes.

(d) In no event will permission be granted to sit for the bar examination pursuant to Rule 709 or a license to practice law be issued pursuant to Rules 708, 709A, 712, or 712A until the investigation as to good moral character and current mental and emotional fitness to engage in the active and continuous practice of law has been satisfactorily completed.

(e) Following the investigation, the Office of the Disciplinary Administrator shall approve and certify to the Board the names of those applicants who appear to be qualified for admission.

(f) The applicants not certified by the Office of the Disciplinary Administrator shall be referred to the Review Committee. The Review Committee, or one of its members, may conduct additional investigation, including applicant interviews, if deemed necessary. If the Review Committee finds probable cause that an applicant has failed to meet the applicant's burden to establish by clear and convincing

evidence the requisite character and fitness qualifications under Rule 707, the Review Committee may initiate remedial action on agreement with the applicant but shall refer the applicant to the Board for a formal hearing under Rule 721 if an agreement with the applicant cannot be reached.

(g) The Chairman of the Board shall inform the Office of Judicial Administration that a hearing is to be scheduled. Thereafter, the Office of Judicial Administration shall inform the applicant of the date, time, and location of the hearing.

(h) The applicant is entitled to retain counsel at any time. The applicant is also entitled to cross-examine witnesses and to present evidence at the hearing.

(i) If an applicant who applied pursuant to Rule 709 is not allowed to take the bar examination for which the application was made due to an ongoing investigation into or because of a hearing regarding the applicant's good moral character and current mental and emotional fitness to engage in the active and continuous practice of law, the application shall be considered for the bar examination following the completion of the investigation and/or the hearing.

(j) During the investigation of the applicant's good moral character and current mental and emotional fitness to engage in the active and continuous practice of law, the Office of the Disciplinary Administrator and the Review Committee may obtain information, take and hear testimony, administer oaths and affirmations, and, by subpoena issued at the request of either the Office of the Disciplinary Administrator or the Review Committee, compel the attendance of witnesses and the production of books, papers, and documents.

(k) During the hearing on the applicant's good moral character and current mental and emotional fitness to engage in the active and continuous practice of law, the Board may obtain information, take and hear testimony, administer oaths and affirmations, and, by subpoena issued at the request of either the applicant or the Office of the Disciplinary Administrator, compel the attendance of witnesses and the production of books, papers, and documents.

(l) The Office of the Disciplinary Administrator shall submit and serve a notice of hearing on the applicant not less than forty-five days prior to a formal hearing. The notice of hearing shall include factual allegations that generally inform the applicant of issues that appear to bear on the applicant's character and fitness. The notice must adequately inform the applicant of the nature of the evidence against the applicant, although the Office of the Disciplinary Administrator need not list every item and source of information to be presented at the hearing. A copy of the notice of hearing shall be served on the

applicant. The original and fifteen copies of the notice of hearing shall be served on the Office of Judicial Administration, which shall forward the notice of hearing to each member of the Board.

(m) Within twenty days of service of the notice of hearing, the applicant shall submit a response to the notice of hearing, admitting or denying each of the factual allegations contained in the notice of hearing. A copy of the response to the notice of hearing shall be served on the Office of the Disciplinary Administrator. The original and fifteen copies of the response to the notice of hearing shall be served on the Office of Judicial Administration, which shall forward the response to the notice of hearing to each member of the Board.

(n) At the hearing, the applicant bears the burden of establishing, by clear and convincing evidence, that the applicant possesses the requisite good moral character and current mental and emotional fitness to engage in the active and continuous practice of law.

(o) An applicant may not be required to testify or produce records over objection if to do so would be in violation of the applicant's constitutional privilege against self-incrimination.

(p) A certified journal entry of conviction of an applicant for any crime shall be conclusive evidence of the commission of that crime. A diversion agreement or other similar document, for the purposes of any admissions proceeding, shall be deemed a conviction of the crimes originally charged.

(q) A certified copy of a civil judgment based on clear and convincing evidence shall be conclusive evidence of the commission of that civil wrong.

(r) All other civil judgments shall be prima facie evidence of the findings made therein and shall raise a presumption as to their validity. The burden shall be on the applicant to disprove the findings made in the civil judgment.

(s) A final adjudication in another jurisdiction that an applicant has been guilty of misconduct in an attorney disciplinary proceeding shall establish conclusively the misconduct for purposes of an admissions proceeding in this state.

(t) Anytime after an applicant is approved to sit for the written examination pursuant to Rule 709 or for licensure pursuant to Rules 708, 709A, 712, or 712A, but before the applicant receives a license to practice law in the State of Kansas, an investigation may be reopened if additional information is received that bears on the applicant's good moral character or current mental and emotional fitness to engage in the active and continuous practice of law. In that event, the Board may hold a hearing pursuant to this rule.

(u) If the Board has cause to believe that an applicant who applied pursuant to Rule 709 engaged in misconduct during the administration of the bar examination, the Board may re-open the investigation into the applicant's good moral character and current mental and emotional fitness to engage in the active and continuous practice of law. In that event, the applicant's bar examination scores will not be released until the matter has been resolved. The Board may hold a hearing pursuant to this rule.

(v) All hearings held before the Board shall be transcribed by a certified court reporter.

(w) All investigations and hearings into an applicant's good moral character and current mental and emotional fitness to engage in the active and continuous practice of law, and the records thereof, shall be confidential, and such records shall be subject to release only as provided in Rule 702. However, if the applicant requests the Board may hold any hearing, or any portion thereof, as an open hearing.

(x) Following the hearing, the Board shall issue a written decision detailing its findings of fact, conclusions of law, and recommendation whether the applicant should be allowed to sit for the written examination or be approved for licensure pursuant to Rules 708, 709A, 712, or 712A. If the Board approves the applicant, the matter is concluded. If the Board does not recommend approval of the applicant, the matter shall be referred to the Supreme Court for review and decision.

[**History:** New rule effective July 1, 2009; Am. effective February 3, 2014; Am. effective April 2, 2015; Am. (d), (t), and (x) effective August 31, 2016; Am. effective January 24, 2020.]

Rule 722

PROCEEDINGS BEFORE THE SUPREME COURT FOLLOWING AN ADVERSE BOARD RULING

(a) An original and ten copies of the Board's written decision following a character and fitness hearing shall be submitted to the Office of Judicial Administration, which will mail a copy to the applicant.

(b) Upon the submission of the written decision, the Office of Judicial Administration shall order a copy of the transcript of the hearing before the Board that shall be mailed to the applicant upon receipt in the Office of Judicial Administration.

(c) The applicant may, within twenty days of service of the transcript of the hearing, submit to the Office of Judicial Administration exceptions to the written decision of the Board. Any part of the written decision which is not specifically excepted to shall be deemed admitted.

(d) If exceptions are submitted, the Board shall submit a response to the Office of Judicial Administration within twenty days after service of the exceptions.

(e) If the applicant fails to submit exceptions to the written decision of the Board within twenty days of service of the transcript on the applicant, the findings of fact and conclusions of law in the written decision shall be deemed submitted to the Supreme Court.

(f) The notice of hearing, the response to the notice of hearing, the written decision of the Board, the applicant's exceptions and the Board's response, if any, the transcript of the hearing, and all other evidence admitted before the Board shall constitute the record before the Supreme Court.

(g) The Board's factual findings will be accepted if a reasonable fact-finder could have been persuaded that the factual finding was proved to be highly probable. The Supreme Court shall make the final determination as to those persons who shall be admitted to practice law in the State of Kansas.

(h) Oral argument will not be permitted. The Supreme Court will make a determination based on the record before the Board and enter its final order.

(i) Any applicant whose petition for admission to the practice of law in the State of Kansas is denied by the Supreme Court by reason of lack of good moral character or current mental and emotional fitness to engage in the active and continuous practice of law shall not be permitted to reapply in Kansas until three years shall have elapsed from the date the previous application was denied by the Court.

(j) Any subsequent reapplication shall be heard by the Board, following a full investigation by the Office of the Disciplinary Administrator and consideration by the Review Committee. The applicant shall have the burden of establishing by clear and convincing evidence that the applicant possesses the requisite good moral character and current mental and emotional fitness to engage in the active and continuous practice of law. Additionally, the applicant shall have the burden of establishing by clear and convincing evidence that:

    (1) The applicant has demonstrated consciousness and acknowledged the seriousness of any wrongful conduct to the extent that wrongful conduct gave rise to the denial of the previous application;

    (2) The applicant has engaged in conduct since the denial of the previous application that demonstrates that the applicant has been an active and productive citizen;

(3) The time elapsed since any misconduct, to the extent that wrongful conduct gave rise to the denial of the previous application, is sufficient;
(4) The applicant has not engaged in the unauthorized practice of law; and
(5) The applicant has received adequate treatment and rehabilitation and experienced a sustained period of rehabilitation from any substance abuse or mental or emotional illness or condition, to the extent that such conduct gave rise to the denial of the previous application.

[**History:** New rule effective July 1, 2009; Am. (j) effective February 3, 2014; Am. effective January 24, 2020; Am. (b) effective February 4, 2020.]

Rule 723

ADDITIONAL RULES OF PROCEDURE

(a) Except as otherwise provided in these rules, time limitations are directory and not jurisdictional.
(b) Except as otherwise provided, the Rules of Civil Procedure apply generally in admission cases before the Board. The Board shall not be bound by the formal rules of evidence.
(c) Any deviation from the rules and procedures set forth herein shall not be grounds for any relief absent a showing of actual prejudice. The burden of showing actual prejudice must be made by clear and convincing evidence.

[**History**: New rule effective July 1, 2009; Am. (a) effective January 24, 2020.]

RULES RELATING TO CONTINUING LEGAL EDUCATION

Rule 800

PURPOSE AND SCOPE

Because it is essential to the public and the legal profession that an attorney admitted to practice law in Kansas maintain and improve the attorney's professional competence, continuing legal education is required. These rules establish the minimum continuing legal education requirements an attorney must satisfy to remain authorized to practice law in this state.

[**History:** New rule adopted effective October 2, 2019.]

Rule 801

DEFINITIONS

(a) **"Active attorney"** means an attorney who is required to pay the annual registration fee, is registered as active under Rule 206 for the current Licensing Period, and is not suspended or disbarred from the practice of law by the Supreme Court.

(b) **"Approved program"** means a continuing legal education program that has been approved pursuant to these rules.

(c) **"Board"** means the body created under Rule 802(b).

(d) **"Compliance period"** means the period of one year from July 1 through June 30.

(e) **"Continuing legal education program" or "CLE program"** means a legal educational program, course, or activity designed to maintain and improve an attorney's professional competence.

(f) **"Distance learning program"** means a CLE program offered by live webinar, live teleconference, or any prerecorded program.

(g) **"Ethics"** means the standards set by the Kansas Rules of Professional Conduct that an attorney must comply with to practice law in Kansas and remain in good standing.

(h) **"Guidelines"** means a document that prescribes administrative requirements for CLE programs that are not set forth in these rules.

(i) **"Inactive attorney"** means an attorney who is registered as inactive under Rule 206.

(j) **"In-house program"** means a CLE program given for a select private audience from the same law firm, corporation, or single governmental entity and not open for attendance by other members of the general legal community. The term includes a program offered by invitation and a program not advertised to a broad attorney population.

(k) **"Law practice management program"** means a CLE program specifically designed for attorneys on nonsubstantive topics that address ways to enhance the quality and efficiency of an attorney's service to clients.

(l) **"Live program"** means a CLE program offered in one of the following formats or any other format approved under these rules.

(1) **"Standard Classroom Setting."** A CLE program that is presented in a suitable classroom setting devoted to the program.

(2) **"Satellite."** A live CLE program that is broadcast to a classroom setting or a central viewing or listening location and advertised to a broad attorney population. There must be a live connection to the speaker to comment and answer questions. There is no minimum attendance requirement.

(3) **"Video Replay."** A recorded CLE program presented in a suitable classroom setting or in a central viewing location advertised to a broad attorney population. The attorney must be able to contact the moderator, either in-person or by telephone or email, to comment or ask questions. There is no minimum attendance requirement.

(4) **"Live Webcast."** A CLE program that is broadcast in real-time via Internet in audio or audio plus video form to viewers in remote locations and accessed solely by an individual attorney. The attorney must be able to contact the moderator or presenters during the program to comment and ask questions.

(5) **"Live Teleconference."** A CLE program that is broadcast in real-time via telephone in audio or audio plus video form to listeners in remote locations and accessed solely by an individual attorney. The attorney must be able to contact the moderator or presenters during the program to comment and ask questions.

(m) **"OJA"** means the Kansas Supreme Court Office of Judicial Administration and staff.

(n) **"Prerecorded program"** means a CLE program accessed solely by an individual attorney in one of the following formats: audiotape, videotape, CD, podcast, CD-ROM, DVD, or another format approved pursuant to these rules and defined in the Guidelines for Live Telephone/Webinars and Prerecorded Programming.

(o) **"Professionalism"** means conduct consistent with the tenets of the legal profession by which an attorney demonstrates civility, honesty, integrity, character, fairness, competence, ethical conduct, public service, and respect for the rules of law, the courts, clients, other attorneys, witnesses, and unrepresented parties.

[**History:** New rule adopted effective July 1, 2011; Am. (d) effective April 29, 2013, Am. (h) effective July 1, 2017; Am. (i) effective July 1, 2019; Am. effective October 2, 2019.]

Rule 802

KANSAS CONTINUING LEGAL EDUCATION

(a) **Administration.** Kansas continuing legal education shall be administered and regulated by the Supreme Court through OJA.

(b) **The Board.** The Kansas Continuing Legal Education Board is established for the purpose of assisting the Supreme Court and OJA with administering and regulating continuing legal education. The Board replaces the Continuing Legal Education Commission.

(c) **Duties and Responsibilities.** The Board's responsibilities include:
   (1) approving providers and programs;
   (2) determining the number of hours of CLE credit to be given for participating in a program;
   (3) granting or withdrawing approval of provider programs;
   (4) granting waivers and extensions of time to complete requirements; and
   (5) as defined in Rule 801(h).

(d) **Membership.** The Board consists of nine members appointed by the Supreme Court. All attorney members must be registered under Rule 206. The members must include:
   (1) five practicing attorneys, at least one of whom has been admitted to practice law in Kansas for fewer than 10 years;
   (2) a faculty representative from each of the University of Kansas and Washburn University Schools of Law;
   (3) one nonattorney member; and
   (4) a justice or judge.

(e) **Terms.** Each Board member is appointed for a three-year term. No member may serve more than two consecutive three-year terms. The Supreme Court will appoint a new member to fill a vacancy on the Board; the new member will serve the remainder of the unexpired term and is then eligible to serve an additional two consecutive three-year terms. A member is eligible for one or more additional terms after a break in service.

(f) **Election of Officers.** At the first Board meeting held in each annual compliance period, the Board will elect from its members a chair and a vice chair.

(g) **Meetings.** The Board will meet quarterly and at such additional times as the need arises. Five members constitute a quorum for the transaction of business.

(h) **Confidentiality.** All files, records, proceedings, or other documents maintained by OJA that relate to or arise out of an attorney's compliance with or failure to satisfy continuing legal education requirements are private and confidential and must not be divulged except as provided in these rules, by Supreme Court order, or on request of the attorney affected. OJA is authorized, at its discretion, to disclose relevant information and to submit any part of its files to the Board for the furtherance of the Board's duties. This confidentiality provision does not apply to anonymous statistical abstracts.

[**History:** New rule adopted effective July 1, 2011; Am. effective July 1, 2017; Am. effective October 2, 2019.]

Rule 803

MINIMUM REQUIREMENTS

(a) **Credit Hours.** An active attorney must earn a minimum of 12 CLE credit hours at approved programs in each compliance period as defined in Rule 801. Of the 12 hours, at least 2 hours must be in the area of ethics and professionalism.

(b) **Carryover Credit.** If an active attorney completes CLE credit hours at approved programs during a compliance period exceeding the number of hours required by subsection (a) and the attorney complies with the requirements of Rule 806, the attorney may carry forward to the next compliance period up to 10 unused general attendance CLE credit hours from the compliance period during which the credit hours were earned. An active attorney may carry forward ethics and professionalism CLE credit hours in excess of the 2-hour requirement in subsection (a) as general attendance CLE credit hours but not as ethics and professionalism CLE credit. CLE credit hours approved for teaching, authorship, or law practice management credit do not qualify for carryover credit.

(c) **Reporting.** CLE credit hours at an approved program for each attorney must be reported in the form and manner prescribed by OJA.

(d) **Exemptions.** The following attorneys are exempt from the CLE requirement in subsection (a):

(1) an attorney newly admitted to practice law in Kansas until the first compliance period following admission to practice;

(2) an attorney registered under Rule 206 as inactive, retired, or disabled due to mental or physical disability;

(3) all active and retired federal and state judges or justices, bankruptcy judges, and full-time magistrates of the United States

District Court for the District of Kansas who are not engaged in the practice of law, but federal and state administrative judges are not eligible for this exemption; and

(4) an attorney exempted by the Board for good cause pursuant to subsection (e).

(e) **Exemptions for Good Cause.** The Board may grant an exemption to the strict requirement of these rules to complete continuing legal education because of good cause, e.g., disability or hardship. A request for exemption must be submitted to OJA in writing with a detailed explanation of the circumstances necessitating the request. An attorney with a disability or hardship that affects the attorney's ability to attend CLE programs may file annually a request for a substitute program in lieu of attendance and must propose a substitute program the attorney can complete. The Board must review and approve or disapprove a request for exemption on an individual basis. An attorney who receives an exemption is responsible for the annual CLE fee required by Rule 808.

(f) **Legislative Service.** Upon a request submitted to OJA, an attorney serving in the Kansas Legislature will receive a reduction of 6 of the 10 general attendance CLE credit hours required for the compliance period in which the attorney serves.

(g) **Accommodation for Attorneys Employed Out-of-Country.** An attorney employed full time outside the United States for a minimum of eight months during the compliance period may, upon written request to OJA and preapproval from the Board, complete the annual CLE requirement by distance learning programs.

[**History:** New rule adopted effective July 1, 2011; Am. (b) effective July 1, 2011; Am. (g) effective November 8, 2011; Am. (d) effective August 24, 2012; Am. effective July 1, 2017; Am. effective October 2, 2019.]

Rule 804

PROGRAM APPROVAL

(a) **Provider Live Program Approval.** A provider sponsoring a live CLE program may request prior approval of the CLE program.

(1) At least 60 days before the program, a provider should submit to OJA an application for approval of CLE activity and any additional information requested by OJA. This time limit does not apply to an in-house CLE program which is governed by Rule 804(c).

(2) An application must be accompanied by a $25 nonrefundable fee.
(3) OJA staff must notify the provider of the status of its review of the application no later than 30 days after OJA receives it. A program is not approved until the provider is notified of approval.
(4) A provider seeking approval of a CLE program must comply with Rule 805(a).

(b) **Individual Attorney Course Approval.** An attorney seeking CLE credit for attendance at a live CLE program that was not previously approved must submit to OJA an application for approval of CLE activity and any additional information requested by OJA. OJA must notify the attorney of the status of its review of the application no later than 30 days after OJA receives it. A program is not approved until the attorney is notified of approval.

(c) **In-House Program.** To receive approval, an in-house CLE program must meet the following requirements:
(1) A provider offering the CLE program is responsible for approval of the program. For purposes of Rule 804(c), a "provider" means a law firm, corporation, or single governmental entity hosting the CLE program.
(2) The host must submit to OJA an application for approval of CLE activity and any additional information requested by OJA no later than 21 days before the in-house CLE program.
(3) The program must be scheduled at a time and location so that attorneys attending are free of interruptions from telephone calls and other office matters and so that Board members or a representative from OJA may audit the program.
(4) A provider seeking approval of an in-house program must also satisfy the requirements set forth in Rule 804(a)(2)-(4).

(d) **Interdisciplinary Program.** An attorney seeking CLE credit for an interdisciplinary program that crosses academic lines must submit to OJA an application as set forth in Rule 804(b). The attorney must include with the application a statement describing how the program is beneficial to the attorney's practice.

(e) **Prerecorded Program Course Approval.** A provider seeking approval of a prerecorded program must submit to OJA an application for approval of prerecorded programming courses. The program must comply with the Guidelines for Live Telephone/Webinars and Prerecorded Programming. An application for approval of prerecorded programming courses must be accompanied by a $100 nonrefundable fee. Approval will be valid for one year.

(f) **Attendance Reporting.** Upon the Board approving a program for CLE credit, OJA will issue to the provider a notice of accreditation/affidavit.
   (1) **In-State Program**. A provider holding an in-state program is responsible for distributing the appropriate Kansas affidavit for signature and for reporting the attendance to OJA within 30 days after the program.
   (2) **Out-of-State Program.** For an out-of-state program, the attorney is responsible for submitting the executed affidavit to OJA within 30 days after the program.
   (3) **Distance Learning Program.** For a distance learning program, the provider is responsible for reporting attendance in the approved format to OJA within 30 days after the program.

(g) **Appeal of Determination.** If an application for approval of a CLE program or CLE credit is denied, the applicant may appeal the decision to the Board by submitting a letter of appeal to OJA within 30 days after notice of the denial was issued. No other appeal may be taken.

(h) **Standards.** To be approved, a CLE program must comply with the following requirements.
   (1) CLE credit must be awarded on the basis of 1 credit hour for each 50 minutes actually spent in attendance at instructional activities, excluding introductory remarks, meals, breaks, and other noneducational activities. One-half credit hour must be awarded for attendance of at least 25 but less than 50 minutes. No credit will be claimed or awarded for smaller fractional units.
   (2) The program must have significant intellectual or practical content designed to promote attorney competence and primarily address matters related to the practice of law, ethics and professionalism, or law practice management.
   (3) The program must be presented by a person qualified by practical or academic experience to present the subject. Generally, a legal subject should be presented by an attorney.
   (4) Thorough, high quality, readable, useful, and carefully prepared instructional materials must be made available to all participants by the time the program is presented, unless the Board approves the absence of instructional materials. A brief outline without citations or explanatory notations is not sufficient. Instructional materials must satisfy the criteria set forth in the Guidelines for Instructional Materials.

(5) A live program must be presented in, or broadcast to, a suitable classroom setting or central viewing or listening location devoted to the program. Generally, credit will not be approved for keynote speeches.

(6) Integration of ethics or professionalism instruction into substantive law topics is encouraged, but integrated material does not count toward the two-hour minimum annual ethics and professionalism requirement.

[**History:** New rule adopted effective July 1, 2011; Am. (a) and (b) effective February 22, 2012; Am (e) effective October 1, 2015; Am. effective July 1, 2017; Am. effective October 2, 2019.]

Rule 805

PROVIDER RESPONSIBILITY

(a) **Marketing Prior to Approval.** A provider of a CLE program for which approval has been sought but not yet approved must announce in any marketing that credit is pending. A provider may not advertise a CLE program as approved until a notice of accreditation/affidavit is received.

(b) **Late Report of Attendance.** A provider of an approved in-state CLE program held by June 30 of a compliance period must report the attendance for the program by July 31. Otherwise, the provider is responsible for the fees set forth in Rule 807(c).

(c) **Audit of a Program.** A provider must allow Board members or a representative of OJA to attend, free of charge, any CLE program to audit compliance with these rules. Such attendance does not qualify for CLE credit for the Board member or OJA representative.

(d) **Evaluations.** At the conclusion of an approved program, each participating attorney must be given the opportunity to complete an evaluation form addressing the quality, effectiveness, and usefulness of the program. OJA may request copies of the evaluations.

(e) **Record Retention.** A provider must keep on file for a minimum of three years attendance records and evaluation summaries for a program.

[**History:** New rule adopted effective July 1, 2011; Am. effective July 1, 2017; Am. effective October 2, 2019.]

Rule 806

CREDITS

(a) **Credit for Attendance.** The number of CLE credit hours assigned to an approved program reflects the maximum that may be earned by attending the entire program. Only actual attendance earns CLE

credit. No attorney will receive more than eight hours of credit in one day of CLE attendance.

(b) **Carryover Credit.** CLE credit hours that are to be carried forward under Rule 803(b) must be received by OJA by July 31 or submitted via U.S. mail postmarked by July 31 and reflect attendance during the compliance period in which they were earned. An attorney will not receive carryover credit if an application or affidavit is received after that date.

(c) **Credit for Teaching.** An attorney can earn up to five CLE credit hours for each 50 minutes spent teaching an approved program. The attorney must file an application for approval of teaching credit that outlines program content, teaching methodology, and time spent in preparation and instruction. In determining the number of CLE credit hours to award, the Board will calculate time spent in preparation and teaching. For example, an attorney who spends 150 minutes preparing a program and 50 minutes teaching it will be awarded four credit hours. One-half credit hour will be awarded for teaching at least 25 but less than 50 minutes. No CLE credit hours will be claimed or awarded for smaller fractional units. A repeat presentation will only qualify for additional credit hours for time actually spent updating the presentation and teaching. Because CLE teaching credit hours are awarded as an incentive to attorneys to benefit the legal profession, instruction must be directed toward an audience composed primarily of attorneys. No CLE credit hours will be awarded for teaching undergraduate, graduate, or law school classes.

(d) **Credit for Authorship.** CLE credit hours may be awarded for authorship of legal publications. The attorney author must complete an application for approval of authorship credit. An attorney author can earn CLE credit hours if the attorney's research (1) has produced a published article, chapter, monograph, or book, personally authored, in whole or part, by the attorney, and (2) contributes substantially to the continuing legal education of the attorney author and other attorneys. One credit hour may be awarded for each 50 minutes spent directly in preparing the publication. Publication must occur during the compliance period for which CLE credit hours are requested. An article, chapter, monograph, or book directed to a nonattorney audience does not qualify for authorship credit.

(e) **Credit for Attendance Prior to Admittance.** No CLE credit hours will be awarded for any CLE program attended before the applicant is admitted to practice law in Kansas.

(f) **Credit for Attending Law School Course.** An attorney can earn CLE credit hours for postgraduate education by enrollment in a course, either for credit or by audit, from a law school accredited by the American Bar Association. The Board will award one credit hour for each 50 minutes of class attendance.

(g) **Duplicate Attendance.** No CLE credit hours will be awarded for attendance at a program the attorney previously attended during the compliance period.

(h) **Law Practice Management Program.** An attorney can earn CLE credit hours for participation in an approved CLE program as defined in the Guidelines for Accreditation of Law Practice Management Programming. No more than two general credit hours will be applied toward the annual CLE requirement to an attorney in any compliance period for attendance at law practice management programs.

(i) **Prerecorded Program Limitation.** No more than six CLE credit hours will be applied toward the annual CLE requirement to an attorney in any compliance period for attendance at or participating in prerecorded programs.

(j) **Self-Study Prohibition.** An attorney cannot earn credit for a self-study program.

[**History:** New rule adopted effective July 1, 2011; Am. effective July 1, 2017; Am. effective October 2, 2019; Am. effective July 1, 2020.]

Rule 807

REPORTING REQUIREMENTS AND NONCOMPLIANCE FEE

(a) **Annual Report.** Every August, OJA will notify each active attorney when the annual report for the preceding compliance period is generated. If the report is accurate, the attorney is not required to respond; the report will be filed automatically as the attorney's annual report. If the report is not accurate, the attorney must notify OJA within 30 days of the date of the report.

(b) **Failure to Comply.** If it appears an attorney has not earned the minimum number of CLE credit hours required for a compliance period, OJA must send notice of the apparent noncompliance to the attorney at the attorney's last known address by certified mail, return receipt requested. No later than 30 days after mailing of the notice, the attorney, to avoid suspension from the practice of law, must cure the failure to comply or show cause for an exemption.

(c) **Noncompliance Fee.** An attorney must pay a noncompliance fee of $75 if:
   (1) report of attendance is successfully submitted electronically after July 31 or submitted via U.S. mail postmarked after July 31; or
   (2) the attorney fails to complete the hours required under Rule 803(a) within the compliance period.

(d) **Address Change.** An attorney must notify OJA within 30 days after a change of the attorney's address.

[**History:** New rule adopted effective July 1, 2011; Am. (c) and (d) effective December 6, 2012; Am. effective July 1, 2017; Am. effective October 2, 2019.]

Rule 808

FEES

(a) **Annual CLE Fee.** An active attorney must pay an annual CLE fee established by the Supreme Court.

(b) **Notice of Fee.** By June 1 of each year, OJA will send a statement to every attorney showing the annual CLE fee due for the next compliance period.

(c) **Failure to Receive Notice.** Failure of an attorney to receive a statement under subsection (b) does not excuse the attorney from paying the required fee.

(d) **Due Date and CLE Late Fee.** The annual CLE fee is due by June 30 prior to the start of the next compliance period that begins July 1. A payment is considered timely if successfully submitted electronically by June 30 or remitted via U.S. mail postmarked by June 30. Late payments must be accompanied by a $50 late fee.

(e) **Attorney Returning to Practice.** An attorney whose status changes to active status after a period of disbarment or suspension and an attorney who is returning to active status after a period of time on inactive, retired, or disabled due to mental or physical disability status must pay the annual CLE fee required by subsection (a) for the current compliance period, together with any other fee required for a change in status.

(f) **Active Status with Attorney Registration and CLE.** Payment of the annual CLE fee and any applicable late fee is a prerequisite to completing registration as an active attorney under Rule 206.

(g) **Returned Check.** A service fee of the maximum amount allowed by law will be assessed for a check returned unpaid.

[**History:** New rule adopted effective July 1, 2011; Am. effective July 1, 2017; Am. (d) effective April 25, 2019; Am. effective October 2, 2019.]

Rule 809

SUSPENSION FROM THE PRACTICE OF LAW

(a) **Reasons for Suspension.** An attorney who is required to submit CLE credit hours and fails to do so, who fails to meet the minimum requirements of these rules, or who fails to pay the annual CLE registration fee will be suspended from the practice of law in this state.

(b) **Notice of Noncompliance.** OJA must notify an attorney who appears to have failed to meet the requirements of these rules that the attorney's name will be certified to the Supreme Court for suspension from the practice of law in this state, unless the attorney shows cause why the certification should not be made. Notice must be sent to the attorney at the attorney's last known address by certified mail, return receipt requested. Thirty days after the notice is mailed, if no hearing is requested under subsection (c), the Board must certify to the Supreme Court, for an order of suspension, the name of the attorney who has not met the requirements of these rules.

(c) **Hearing.** An attorney to whom OJA has sent notice of noncompliance under subsection (b) may, no later than 30 days after the date the notice was mailed, submit to OJA a request for a hearing, stating the issues the attorney raises. The Board must grant a timely request for a hearing to consider the issues raised by the attorney. The attorney's name must not be certified to the Supreme Court for suspension unless suspension is recommended by the Board after the hearing. OJA must provide for a record and the costs thereof when needed.

[**History:** New rule adopted effective July 1, 2011; Am. effective July 1, 2017; Am. effective October 2, 2019.]

Rule 810

CHANGE OF STATUS PROCEDURE FOR INACTIVE ATTORNEY

(a) **Request for Change of Status.** An inactive attorney seeking to become an active attorney must submit to OJA a written request for change of status. This request is in addition to the request to the Attorney Registration Office for change of status required by Rule 206.

(b) **Required Fees.** In addition to any amount to be paid to the Attorney Registration Office under Rule 206, a request for change of status submitted to OJA by an inactive attorney must be accompanied by a check or money order payable to "Kansas CLE" for or proof of

electronic payment of the annual CLE fee for the current compliance period plus a change of status fee of $25.

(c) **Required Hours.** Any inactive attorney whose status changes to active and is authorized to practice law in Kansas must complete the annual CLE requirement under Rule 803(a) by the end of the compliance period in which the attorney's status changes.

[**History:** New rule adopted effective July 1, 2011; Am. (c) effective September 21, 2011; Am. effective July 1, 2017; Am. effective October 2, 2019.]

Rule 811

CHANGE OF STATUS PROCEDURE FOR SUSPENDED ATTORNEY

(a) **Suspended Less than 1 Year.** A suspended attorney returning from suspension of less than 1 year must:
   (1) submit to OJA a written request for change of status, accompanied by a check or money order payable to "Kansas CLE" for or proof of electronic payment of a change of status fee of $100;
   (2) between the date of suspension and the date the attorney's status changes, complete any hours required to satisfy any deficiency in CLE requirements under Rule 803(a) and pay any fees incurred prior to suspension;
   (3) complete the annual CLE requirement under Rule 803(a) by the end of the compliance period in which the attorney's status changes; and
   (4) prior to the change in status, complete any requirements imposed by the Attorney Registration Office under Rule 206.

(b) **Suspended 1 Year or More.** A suspended attorney returning from suspension of 1 year or more must:
   (1) submit to OJA a written request for change of status, accompanied by a check or money order payable to "Kansas CLE" for or proof of electronic payment of a change of status fee of $100;
   (2) between the date of suspension and the date the attorney's status changes, complete any hours required to satisfy any deficiency in CLE requirements under Rule 803(a) and pay any fees incurred prior to suspension;
   (3) between the date of suspension and the date the attorney's status changes, complete an additional 12 hours of CLE credit, including 2 hours of ethics and professionalism, for each year during which the attorney was suspended, unless waived or modified by order of the Supreme Court;

(4) complete the annual CLE requirement under Rule 803(a) by the end of the compliance period in which the attorney's status changes; and
(5) prior to the change of status, complete any requirements imposed by the Attorney Registration Office under Rule 206.

[**History:** New rule adopted effective July 1, 2011; Am. effective May 30, 2014; Am. effective July 1, 2017; Am. effective October 2, 2019.]

[**History of CLE Rules:** Rules 801-809 and CLE Implementing Rules effective July 1, 1985, repealed effective July 1, 2011; Rules 801-811 adopted effective July 1, 2011.]

RULES RELATING TO DISPUTE RESOLUTION

Rule 901

MEDIATION

[**History:** Repealed effective January 1, 2020.]

Rule 902

QUALIFICATIONS OF DISPUTE RESOLUTION PROVIDERS UNDER THE DISPUTE RESOLUTION ACT

[**History:** Repealed effective January 1, 2020.]

Rule 903

ETHICAL STANDARDS FOR MEDIATORS

[**History:** Repealed effective January 1, 2020.]

Rule 904

CONTINUING EDUCATION FOR MEDIATORS

[**History:** Repealed effective January 1, 2020.]

APPENDIX

[**History:** Repealed effective January 1, 2020.]

Rule 905

PREFATORY RULE

(a) **Rules Adopted.** The following Supreme Court Rules numbered 905 through 922 are effective January 1, 2020.

(b) **Repeal of Former Rules.** Supreme Court Rules 901 through 904 and the Mediation Appendix and Preamble are repealed as of January 1, 2020.

(c) **Authority.** For authority, see K.S.A. 5-501 et seq. and K.S.A. 23-3501 et seq.

(d) **Statutory References.** In these rules, a reference to a statute includes any subsequent amendment to the statute.

(e) **Applicability.** Unless otherwise indicated, these rules apply to the following:

(1) an individual seeking approval to provide dispute resolution as an approved mediator, approved domestic conciliator, approved parenting coordinator, or approved case manager;

(2) an organization or entity seeking to be recognized as an approved program to provide at least one of the following:
(A) dispute resolution;
(B) approved training courses; or
(C) continuing dispute resolution education;
(3) an individual seeking to become an approved mentor mediator to provide a practicum for prospective mediators;
(4) an approved mediator, approved domestic conciliator, approved parenting coordinator, approved case manager, approved program, or approved mentor mediator; and
(5) any dispute—other than litigation—referred by a court to dispute resolution.

(f) **Forms.** The director of dispute resolution may provide and require use of standardized forms to implement these rules.

[**History:** New rule adopted effective January 1, 2020.]

Rule 906

DEFINITIONS

(a) **General.** The definitions in subsection (b) apply when the words and phrases defined are used in these rules.

(b) **Definitions.**
(1) **"Approval"** means the program or individual has applied for inclusion on a list of programs and individuals and has been found to have met the requirements and guidelines to be considered for the receipt of public funding or to be recommended to the court as an approved service provider.
(2) **"Approved individual"** means a neutral person whom the director has approved under Rule 911. The term includes an approved mediator, approved domestic conciliator, approved parenting coordinator, and approved case manager.
(3) **"Approved mentor mediator"** means a neutral person whom the director has approved under Rule 912.
(4) **"Approved program"** means an organization or entity that the director has approved under Rule 913.
(5) **"Case management"** means a nonconfidential process in which a court-appointed neutral case manager assists the parties by providing a procedure, other than mediation, that facilitates negotiation of a plan for child custody, residency, or parenting time or in which the case manager makes recommendations to the court under K.S.A. 23-3507.
(6) **"Case manager"** means a neutral person who assists the parties through case management or limited case management and meets the qualifications under K.S.A. 23-3508 and Rule 911.

(7) **"CDRE"** means continuing dispute resolution education as described in Rule 916.
(8) **"Chairperson"** means the person elected as chairperson of the advisory council on dispute resolution under K.S.A. 5-504.
(9) **"Council"** means the advisory council on dispute resolution under the Dispute Resolution Act and Rule 1501.
(10) **"Director"** means the director of dispute resolution as established by K.S.A. 5-503.
(11) **"Dispute resolution"** means a process by which the parties involved in a dispute voluntarily agree or are referred or ordered by a court to enter into discussion and negotiation with the assistance of a neutral person.
(12) **"Dispute Resolution Act"** means the Act described in K.S.A. 5-501 et seq.
(13) **"Domestic conciliation"** means a nonconfidential process in which a neutral person assists the parties in reconciliation efforts by: improving communication; reconciling differences; and helping the parties develop solutions to a dispute, complaint, or conflict.
(14) **"Domestic conciliator"** means a neutral person with no decision-making authority who assists the parties through domestic conciliation and whom the director has approved under Rule 911.
(15) **"Limited case management"** is case management that is restricted as to issue and duration under Rule 910(f).
(16) **"Mediation"** means a confidential process in which a third party—who has no decision-making authority and is impartial to the issues being discussed—assists the parties in defining the issues in dispute, facilitates communication between the parties, and assists the parties in reaching a resolution.
(17) **"Mediator"** means a neutral person with no decision-making authority who assists the parties in mediation and meets the qualifications under Rule 911 or, in domestic cases, K.S.A. 23-3502.
(18) **"Neutral person"** or "neutral" means an impartial third party who intervenes in a dispute at the request of the parties or the court to facilitate settlement or resolution of a dispute.
(19) **"Parenting coordination"** means a nonconfidential, child-focused process in which a neutral person assists the parties with implementation of court orders or daily parenting matters through: assessing parties' parenting skills and the child's needs; educating the parties regarding the needs of the child;

coordinating professional services for the family; and assisting the parties in reducing harmful family conflicts.

(20) **"Parenting coordinator"** means a neutral person who assists the parties through parenting coordination and whom the director has approved under Rule 911.

(21) **"Practicum"** means a supervised practical application of mediation skills in accordance with Rule 915. The term includes co-mediation and mediation simulation.

[**History:** New rule adopted effective January 1, 2020.]

Rule 907

MEDIATION

(a) **Court-Ordered Mediation.**

(1) A mediator helps the parties reach a resolution. A mediator has no decision-making authority.

(2) Before ordering mediation, a district court must determine whether mediation is appropriate. In a domestic case, a district court must consider K.S.A. 23-3502.

(3) When referring a dispute to mediation, a district court must appoint a person who meets the qualifications under subsection (b).

(b) **Qualifications of a Mediator.**

(1) **Approved Mediator.** An approved mediator is an individual who has received a certificate of approval under Rule 911.

(2) **Attorney Appointed as a Mediator.** A district court may appoint an individual licensed to practice law in the state of Kansas as a mediator under K.S.A. 5-509 and, in domestic cases, K.S.A. 23-3502(b). An attorney who has not received a certificate of approval under Rule 911 is not considered an approved mediator.

(c) **Court Order.** If a district court determines that mediation is appropriate, the court must issue an order for mediation. The mediator must receive the written order specifying the dispute to be resolved before initiating mediation. The order must include a statement that mediation is a confidential process, subject to the exclusions described in K.S.A. 5-512(b) and, in domestic cases, K.S.A. 23-3505(b).

(d) **Written Agreement.** A mediator must enter into a written agreement with each party. The written agreement must include the items listed in paragraphs (1) through (5).

(1) **Fees and Costs**. The written agreement must state:

(A) an explanation of the fee each party must pay, including any fee associated with postponement, cancellation, or

nonappearance;

(B) all mediation costs apportioned between the parties as ordered by the court or agreed to under K.S.A. 23-3506; and

(C) that the apportionment of mediation costs may be modified only by written agreement of the parties or court order.

(2) **Method of Payment.** The written agreement must explain the accepted payment methods, billing practices, and whether any fees or costs must be paid in advance.

(3) **Confidentiality.** The written agreement must:

(A) state that mediation is a confidential process, subject to the exclusions described in K.S.A. 5-512 and, in domestic cases, K.S.A. 23-3505;

(B) state that an approved mediator is not permitted to disclose any matter that a party expects to be confidential unless all parties consent or the disclosure is required by law or other public policy;

(C) state that the participants waive the right to compel the mediator to testify or provide any materials concerning the mediation in any legal proceeding;

(D) explain the use of caucus or individual sessions and the degree to which they are confidential; and

(E) explain that an approved mediator may report to the court whether a party appeared at a scheduled mediation but the approved mediator must avoid communicating information about how the party acted regarding the mediation process, the merits of the case, or settlement offers.

(4) **Subpoenas or Other Requests to Testify.** The written agreement must explain that if subpoenaed or otherwise noticed to testify, the approved mediator is required to inform the participants immediately to afford them an opportunity to quash the subpoena.

(5) **Other Information**. The written agreement should include any other information the mediator deems necessary when providing mediation services.

(e) **Domestic Violence Screening.** A mediator must screen and continually monitor each dispute for domestic violence. A mediator should adapt the methods used during mediation to avoid coercion or an imbalance of power and control between the parties. If a mediator does not have the competency to manage a dispute involving domestic violence, the mediator must not accept the mediation or must terminate an existing mediation.

(f) **Termination of Mediation in a Domestic Case.** A mediator appointed in a domestic case under K.S.A. 23-3502 must terminate mediation if the mediator believes:
   (1) continuation of the process would harm or prejudice one or more of the parties or the child; or
   (2) the ability or willingness of any party to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely.

(g) **Reporting of CDRE Hours to the District Court.** If requested by a district court, an approved mediator must report to the district court the number of CDRE credit hours the mediator has attended in the current compliance period.

[**History:** New rule adopted effective January 1, 2020.]

Rule 908

DOMESTIC CONCILIATION

(a) **Court-Ordered Domestic Conciliation.**
   (1) A domestic conciliator helps the parties reach a resolution and, if ordered, provides a report to the court. A domestic conciliator has no decision-making authority.
   (2) Before ordering domestic conciliation, a district court must determine whether domestic conciliation is appropriate.
   (3) When referring a dispute to domestic conciliation, a district court must appoint a person who meets the qualifications under subsection (b).

(b) **Qualifications of a Domestic Conciliator.**
   (1) **Approved Domestic Conciliator.** An approved domestic conciliator is an individual who has received a certificate of approval under Rule 911.
   (2) **Attorney Appointed as a Domestic Conciliator.** A district court may appoint an individual licensed to practice law in Kansas as a domestic conciliator under K.S.A. 5-509. Before appointing an attorney to be a domestic conciliator, a district court must consider the attorney's knowledge and experience in domestic relations cases. An attorney who has not received a certificate of approval under Rule 911 is not considered an approved domestic conciliator.

(c) **Court Order.** If a district court determines that domestic conciliation is appropriate, the court must issue an order for domestic conciliation. The domestic conciliator must receive the written order specifying the dispute to be resolved before initiating conciliation. The order must include the provisions listed in paragraphs (1) through (5).

(1) **Not a Confidential Process.** The order must include a statement explaining that domestic conciliation is not a confidential process, the parties waive confidentiality of the proceeding under K.S.A. 5-512, and the domestic conciliator has the responsibility to report to the court and to other authorities as the court order directs.

(2) **Written Report.** The order must specify:
   (A) whether the domestic conciliator must file a written report with the court; and
   (B) any information the domestic conciliator must include in a filed report.

(3) **Communication with Each Party.** The order must specify whether the domestic conciliator may communicate individually with each party.

(4) **Communication with a Nonparty.** The order must specify whether the domestic conciliator may communicate with a nonparty. If communication with a nonparty is permitted, the district court should direct the parties to execute a release or written consent authorizing the communication.

(5) **Fees and Other Charges.** The order must address the allocation of fees between the parties, including a retainer amount or an apportionment of domestic conciliation costs between the parties. Any fee for domestic conciliation should be based on the actual time expended by the domestic conciliator relating to the dispute between the parties, unless the court directs otherwise. A fee for domestic conciliation must not include costs for professional time wholly unrelated to the purpose of appointment.

(d) **Written Agreement.** A domestic conciliator must enter into a written agreement with each party. The written agreement should include the domestic conciliator's expectations and procedures; billing practices, method of payment, and use of collections; and any other information the domestic conciliator deems necessary when providing conciliation services.

(e) **Domestic Violence Screening.** A domestic conciliator must screen and continually monitor each dispute for domestic violence. A domestic conciliator should adapt the methods used during domestic conciliation to avoid coercion or an imbalance of power and control between the parties. If a domestic conciliator does not have the competency to manage a dispute involving domestic violence, the domestic conciliator must not accept the domestic conciliation or must terminate an existing domestic conciliation.

(f) **Withdrawal or Removal.** The district court may permit the withdrawal of or remove a domestic conciliator if the court finds:
  (1) loss of neutrality by the domestic conciliator;
  (2) nonpayment by a party;
  (3) lack of cooperation by a party;
  (4) threat to a party or the domestic conciliator; or
  (5) any other reason found by the district court.

(g) **Reporting of CDRE Credit Hours to the District Court.** If requested by a district court, an approved domestic conciliator must report to the district court the number of CDRE credit hours the domestic conciliator has attended in the current compliance period.

[**History:** New rule adopted effective January 1, 2020.]

Rule 909

PARENTING COORDINATION

(a) **Court-Ordered Parenting Coordination.**
  (1) A parenting coordinator helps the parties implement court orders and with daily parenting matters. A parenting coordinator must not make decisions that would change legal or physical custody from one parent to the other or substantially change the parenting plan.
  (2) Before ordering parenting coordination, a district court must determine whether parenting coordination is appropriate.
  (3) An appropriate case for parenting coordination must involve the following:
    (A) the child's parents are persistently in conflict with one another over child-related issues;
    (B) parenting coordination is in the best interests of the child; and
    (C) one or more of the following circumstances exist:
      (i) parental problem-solving or communication is ineffective;
      (ii) a parent has a history of substance abuse;
      (iii) a history of domestic violence is present;
      (iv) concerns exist about the mental health or behavior of a parent;
      (v) a child has special needs; or
      (vi) the district court otherwise determines parenting coordination is appropriate.
  (4) When referring a dispute to parenting coordination, a district court must appoint a person who meets the qualifications under subsection (b).

(b) **Qualifications of a Parenting Coordinator.**

(1) **Approved Parenting Coordinator.** An approved parenting coordinator is an individual who has received a certificate of approval under Rule 911.

(2) **Attorney Appointed as a Parenting Coordinator.** A district court may appoint an individual licensed to practice law in Kansas as a parenting coordinator under K.S.A. 5-509. Before appointing an attorney to be a parenting coordinator, a district court must consider the attorney's knowledge and experience in domestic relations cases. An attorney who has not received a certificate of approval under Rule 911 is not considered an approved parenting coordinator.

(c) **Court Order.** If a district court determines that parenting coordination is appropriate, the court must issue an order naming the parenting coordinator appointed to the case. The parenting coordinator must receive the written order before initiating parenting coordination. The order must include the provisions listed in paragraphs (1) through (5).

(1) **Appointment of Parenting Coordinator.** The order must:

(A) specify the dispute to be resolved; and

(B) specify the parenting coordinator's term of appointment under the following guidelines:

(i) the term of appointment for a parenting coordinator must not exceed 24 months; and

(ii) at the end of a parenting coordinator's term of appointment, if the district court determines that parenting coordination is still appropriate, the court may reappoint the same parenting coordinator under this rule.

(2) **Not a Confidential Process.** The order must include a statement explaining that parenting coordination is not a confidential process, the parties waive confidentiality of the proceeding under K.S.A. 5-512, and the parenting coordinator has the responsibility to report to the court and to other authorities as the court order directs.

(3) **Written Reports or Recommendations.** The order must specify:

(A) whether the parenting coordinator must file written reports or recommendations with the court; and

(B) any information the parenting coordinator must include in a filed report or recommendation.

(4) **Communication with Each Party.** The order must specify whether the parenting coordinator may communicate individually with each party.

(5) **Communication with a Nonparty.** The order must specify whether the parenting coordinator may communicate with a nonparty, such as any person involved with the family, including a stepparent, the custody evaluator, an attorney, a school official, a physical or mental health provider, or any person the parenting coordinator determines to have a significant role in contributing to or resolving the dispute between the parties. If communication with a nonparty is permitted, the district court should direct the parties to execute a release or written consent authorizing the communication.

(6) **Fees and Other Charges.** The order must address the allocation of fees between the parties, including any prepayment amount or an apportionment of parenting coordination costs between the parties. Any fee for parenting coordination should be based on the actual time expended by the parenting coordinator relating to the dispute between the parties unless the court directs otherwise. A fee for parenting coordination services must not include costs for professional time wholly unrelated to the scope of appointment.

(d) **Written Agreement.** A parenting coordinator must enter into a written agreement with each party. The written agreement should include the parenting coordinator's expectations and procedures; billing practices, method of payment, and use of collections; and any other information the parenting coordinator deems necessary when providing parenting coordination services.

(e) **Domestic Violence Screening.** A parenting coordinator must screen and continually monitor each dispute for domestic violence. A parenting coordinator should adapt the methods used during parenting coordination to avoid coercion or an imbalance of power and control between the parties. If a parenting coordinator does not have the competency to manage a dispute involving domestic violence, the parenting coordinator must not accept the parenting coordination or must terminate an existing parenting coordination.

(f) **Objections to the Report or Recommendations.** A party may object to a parenting coordinator's report or recommendations by filing a motion with the district court.

(g) **Withdrawal or Removal.** The district court may permit the withdrawal of or remove a parenting coordinator if the court finds:

(1) loss of neutrality that prevents objectivity by the parenting coordinator;

(2) nonpayment by a party;
(3) lack of cooperation by a party;
(4) threat to a party or the parenting coordinator;
(5) retirement or case load reduction by a parenting coordinator; or
(6) any other reason found by the district court.

(h) **Reporting of CDRE Credit Hours to the District Court.** If requested by a district court, an approved parenting coordinator must report to the district court the number of CDRE credit hours the parenting coordinator has attended in the current compliance period.

[**History:** New rule adopted effective January 1, 2020.]

Rule 910

CASE MANAGEMENT

(a) **Court-Ordered Case Management.**
(1) A case manager helps the parties by providing a procedure, other than mediation, that facilitates negotiation of a plan for child custody, residency, or parenting time. If the parties are unable to reach an agreement, the case manager must make recommendations to the court.
(2) Before ordering case management, a district court must determine whether case management is appropriate.
(3) An appropriate case for case management must involve at least one of the circumstances identified in K.S.A. 23-3508(b).
(4) When referring a dispute to case management, a district court must appoint a person who meets the qualifications under subsection (b).

(b) **Qualifications of a Case Manager.** An approved case manager is an individual who:
(1) meets the requirements of K.S.A. 23-3508(d)(1)(A) or (d)(1)(B); and
(2) has received a certificate of approval under Rule 911.

(c) **Court Order.** If a district court determines that case management is appropriate, the court must issue an order naming the case manager appointed to the case. The case manager must receive the written order before initiating case management. The order must include the provisions listed below.
(1) **Appointment of Case Manager.** The order must:
(A) specify the dispute to be resolved; and
(B) specify the case manager's term of appointment under the following guidelines:
(i) the term of appointment for any case manager must not

exceed 36 months; but

(ii) at the end of a case manager's term of appointment, if the district court determines that case management is still appropriate, the court may reappoint the same case manager under this rule and K.S.A. 23-3508.

(2) **Not a Confidential Process.** The order must include a statement explaining that case management is not a confidential process, the parties waive confidentiality of the proceeding under K.S.A. 5-512, and the case manager has the responsibility to report to the court and to other authorities under K.S.A. 23-3509 and as the court order directs.

(3) **Written Reports or Recommendations.** The order must specify:

(A) whether the case manager must file written reports or recommendations with the court; and

(B) any information the case manager must include in a filed report or recommendations under K.S.A. 23-3509.

(4) **Communications with Each Party.** The order must specify whether the case manager may communicate individually with each party.

(5) **Communication with a Nonparty.** The order must specify whether the case manager may communicate with a nonparty, such as any person involved with the family, including a stepparent, the custody evaluator, an attorney, a school official, a physical or mental health provider, or any person the case manager determines to have a significant role in contributing to or resolving the dispute between the parties. If communication with a nonparty is permitted, the district court should direct the parties to execute a release or written consent authorizing the communication.

(6) **Fees and Other Charges.** The order must address the allocation of fees between the parties, including any prepayment amount or an apportionment of case management costs between the parties, and address the case manager's duty to notify the court when a party fails to meet the financial obligations of the case management process under K.S.A. 23-3509. Any fee for case management should be based on the actual time expended by the case manager relating to the dispute between the parties unless the court directs otherwise. A fee for case management services must not include costs for professional time wholly unrelated to the scope of appointment.

(d) **Written Agreement.** A case manager must enter into a written agreement with each party. The written agreement should include

the case manager's expectations and procedures; billing practices, method of payment, and use of collections; and any other information the case manager deems necessary when providing case management services.

(e) **Domestic Violence Screening.** A case manager must screen and continually monitor each case for domestic violence. A case manager should adapt the methods used during case management to avoid coercion and an imbalance of power and control between the parties. If the case manager does not have the competency to manage a dispute involving domestic violence, the case manager must not accept the case management or must terminate an existing case management.

(f) **Limited Case Management.** Limited case management is subject to all Supreme Court Rules and laws governing case management, except:
   (1) the district court may restrict the case manager to resolving specified issues; and
   (2) the appointment of a case manager terminates when a negotiated agreement has been filed with the district court or the case manager has filed a written report, including any recommendations, with the district court.

(g) **Objections to a Report or Recommendations.** A party may object to a case manager's report or recommendations by filing a motion under K.S.A. 23-3509.

(h) **Withdrawal or Removal.** The district court may permit the withdrawal of or remove a case manager under K.S.A. 23-3509(b).

(i) **Reporting of CDRE Credit Hours to the District Court.** If requested by a district court, a case manager must report to the district court the number of CDRE credit hours the case manager has attended in the current compliance period.

[**History:** New rule adopted effective January 1, 2020.]

Rule 911

INDIVIDUAL APPROVAL AND RENEWAL—MEDIATOR, DOMESTIC CONCILIATOR, PARENTING COORDINATOR, OR CASE MANAGER

(a) **Application for Approval.** An individual seeking approval as a mediator, domestic conciliator, parenting coordinator, or case manager must submit an application to the director. The application must include:
  (1) documentation of the information required under K.S.A. 5-507(a), unless the applicant is connected with a court;
  (2) documentation that the applicant has satisfied the applicable requirements under subsection (c);
  (3) written letters of recommendation from at least two people—other than an approved mentor mediator—who will attest to the applicant's character and capacity to serve as a mediator based on temperament, experience, and the requisite mental and emotional fitness to engage in the active and continuous practices of dispute resolution;
  (4) documentation of the applicant's sliding scale system for assessing fees under K.S.A. 5-508;
  (5) a verified statement regarding the applicant's criminal history;
  (6) a verified statement that the applicant agrees to comply with these rules;
  (7) the application fee in an amount determined by the Supreme Court unless:
    (A) the applicant is a judicial branch employee who will provide dispute resolution for the judicial branch or other state agencies; or
    (B) the application fee has been waived on written request by an applicant who will not receive compensation for providing dispute resolution; and
  (8) any other information the director requests.

(b) **Waiver of Requirements.** If an applicant does not meet a requirement listed in subsection (a), the applicant may request in writing that the director waive the requirement. On receipt of the request, the director must:
  (1) grant the request and waive the requirement;
  (2) request more information from the applicant; or
  (3) deny the request.

(c) **Application Prerequisites.** An applicant must meet the applicable requirements in paragraphs (1) through (4).

(1) **Mediator.** An applicant for a certificate of approval as a mediator must meet the requirements in subparagraphs (A) and (B) or qualify for dual approval under subparagraph (C).

(A) **Training and Experience.**

(i) **Core Mediation.** To mediate disputes such as neighborhood, community, small claims, or other similar matters, the applicant must complete 16 hours of approved core mediation training.

(ii) **Domestic Mediation.** To mediate child custody, residency, visitation, parenting time, division of property, or other issues under K.S.A. 23-3501, the applicant must be an approved core mediator and complete 24 hours of approved domestic mediation training.

(iii) **Parent-Adolescent Mediation.** To mediate parent-adolescent disputes, the applicant must be an approved core mediator and complete 16 hours of approved parent-adolescent mediation training.

(iv) **General Civil Mediation.** To mediate general civil disputes, other than small claims, the applicant must be an approved core mediator and complete 24 hours of approved general civil mediation training.

(v) **Juvenile Dependency Mediation.** To mediate juvenile dependency disputes, the applicant must be an approved core mediator; complete 24 hours of approved juvenile dependency mediation training; and meet one of the following requirements:

(aa) have a bachelor's degree or higher in psychology, social work, marriage and family therapy, conflict resolution, or other behavioral science substantially related to family relationships;

(bb) have a juris doctor degree with experience in the field of juvenile law or family law;

(cc) be an approved domestic or parent-adolescent mediator with at least three years of experience in mediation, counseling, psychotherapy, social work, or any combination thereof, preferably in a setting related to juvenile dependency court or domestic relations; or

(dd) have status as a court services officer practicing in juvenile dependency court.

(B) **Practicum.** The applicant must participate in an approved practicum under Rule 915 in the area for which the applicant received approved mediation training. The practicum must be completed within one year of completing the relevant training requirement under paragraph (A).

(C) **Dual Approval.** An applicant may qualify as an approved core mediator and an approved domestic mediator, parent-adolescent mediator, general civil mediator, or juvenile dependency mediator in a single application if the applicant completes the following:

(i) core mediation training under paragraph (A)(i);

(ii) additional mediation training under paragraph (A)(ii), (iii), (iv), or (v); and

(iii) a practicum in the mediation area selected under paragraph (C)(ii).

(2) **Domestic Conciliator.** An applicant for a certificate of approval as a domestic conciliator must meet the following requirements:

(A) be an approved mediator in domestic mediation under subsection (c)(1)(A)(ii);

(B) have mediated at least 10 domestic cases; and

(C) have completed six hours of approved domestic conciliation training.

(3) **Parenting Coordinator.** An applicant for a certificate of approval as an approved parenting coordinator must meet the following requirements:

(A) be an approved mediator in domestic mediation under subsection (c)(1)(A)(ii);

(B) have mediated at least 10 domestic cases; and

(C) have completed 16 hours of approved parenting coordination training.

(4) **Case Manager.** An applicant for a certificate of approval as an approved case manager must meet the following requirements:

(A) comply with the requirements of K.S.A. 23-3508(d)(1)(A) or (d)(1)(B);

(B) be an approved mediator in domestic mediation under subsection (c)(1)(A)(ii);

(C) have mediated at least three domestic cases; and

(D) have completed 16 hours of approved case management training.

(d) **Application Review Process.**
  (1) **Director's Decision.**
    (A) On receipt of an application for approval, the director must review the application within the time period provided in K.S.A. 5-507(b).
    (B) At the completion of the review, the director will either approve the application and issue a certificate of approval or deny the application.
    (C) Before the approval or denial of an application, the director may require the applicant to obtain additional training or to submit more information, including any information relevant to the applicant's character, fitness, and general qualifications.
  (2) **Written Request for Reconsideration.** If the director has denied an application, the applicant may submit to the director a written request for reconsideration. The director will present the request to the Council for review and decision.

(e) **Renewal of Approval.** An approved mediator, domestic conciliator, parenting coordinator, or case manager, including a mediator approved at the time Rule 902 was repealed, must annually apply for approval renewal. The renewal application and fee must be postmarked by January 30. Failure to submit the renewal application and fee under this subsection may result in nonrenewal of approval status.
  (1) **Renewal Application.** The application for renewal must include:
    (A) proof of compliance with the CDRE credit requirements under Rule 916;
    (B) the number of cases—and a mediator also must submit the types of cases—handled in the prior year;
    (C) a verified statement that the applicant agrees to comply with these rules;
    (D) a renewal application fee in an amount determined by the Supreme Court unless:
      (i) the applicant is a judicial branch employee who provides dispute resolution for the judicial branch or other state agencies; or
      (ii) the renewal fee has been waived for an applicant who will not receive compensation for providing dispute resolution; and
    (E) any other information the director requests.

(2) **Waiver of Requirements.** If an applicant has specialized experience or training but does not meet a requirement listed in paragraph (1), the applicant may submit a written request that the director waive the requirement. On receipt of the request, the director must:
   (A) grant the request and waive the requirement;
   (B) request more information from the applicant; or
   (C) deny the request.

(3) **Application Review Process.** The renewal of approval will be reviewed in the same manner as an application for approval under subsection (a).

(f) **Nonrenewal.** An individual who does not meet the renewal requirements of subsection (e) must apply for approval under subsection (a).

(g) **Confidentiality of Records.** Except as provided in Rule 920, any record obtained or provided during the approval or renewal process is confidential and not subject to disclosure under the Kansas Open Records Act, K.S.A. 45-215 et seq.

(h) **List of Individuals Approved.** The director must keep a public listing of individuals approved under this rule, separated by category. The list must include information for each approved individual, such as types of services, fees, and region of service. An approved individual may opt out of the public listing.

[**History:** New rule adopted effective January 1, 2020.]

Rule 912

INDIVIDUAL APPROVAL AND RENEWAL—MENTOR MEDIATOR

(a) **Application for Approval.** An individual seeking approval as a mentor mediator must submit an application to the director. The application must include:
   (1) documentation that the applicant has satisfied the requirements under subsection (c);
   (2) written letters of recommendations from at least two people who will attest to the applicant's character and capacity to serve as a mentor mediator based on temperament, experience, and the requisite mental and emotional fitness to engage in the active and continuous practice of mentoring mediators;
   (3) a verified statement that the applicant agrees to comply with these rules;
   (4) the application fee in an amount determined by the Supreme Court unless:
      (A) the applicant is a judicial branch employee who will act as

a mentor mediator for the judicial branch or other state agencies; or

(B) the application fee has been waived on written request for an applicant who will not receive compensation for acting as a mentor mediator; and

(5) any other information the director deems necessary.

(b) **Waiver of Requirements.** If an applicant does not meet a requirement listed in subsection (a), the applicant may request in writing that the director waive the requirement. On receipt of the written request, the director must:

(1) grant the written request and waive the requirement;

(2) request more information from the applicant; or

(3) deny the written request.

(c) **Application Prerequisites.** An applicant for a certificate of approval as a mentor mediator must:

(1) be an approved mediator;

(2) have served as lead mediator for 10 mediation cases in the area in which the mediator is seeking approval as a mentor mediator;

(3) have completed a minimum of 40 hours of CDRE after becoming a mediator; and

(4) have either:

(A) completed six hours of approved mentor mediation training; or

(B) completed a mentor mediator course presented prior to the effective date of this rule and served as a mentor mediator on or before the effective date of this rule. The applicant must provide to the director a copy of the course agenda, hours completed, and proof of attendance.

(d) **Application Review Process.**

(1) **Director's Decision.**

(A) On receipt of an application for approval, the director must review the application within the time period provided in K.S.A. 5-507(b).

(B) At the completion of the review, the director will either approve the application and issue a certificate of approval or deny the application.

(C) Before the approval or denial of an application, the director may require the applicant to obtain additional training or to submit more information, including any information relevant to the applicant's character, fitness, and general qualifications.

(2) **Written Request for Reconsideration.** If the director has denied an application, the applicant may submit to the director a written request for reconsideration. The director will present the request to the Council for review and decision.

(e) **Renewal of Approval**. An approved mentor mediator must annually apply for approval renewal. The renewal application and fee must be postmarked by January 30. Failure to submit the renewal application and fee under this subsection may result in nonrenewal of approval status.

(1) **Renewal Application.** The application for renewal must include:

(A) proof of compliance with the CDRE credit requirements under Rule 916;

(B) the number of prospective mediators mentored in the prior year;

(C) a verified statement that the applicant agrees to comply with these rules;

(D) a renewal application fee in an amount determined by the Supreme Court unless:

(i) the applicant is a judicial branch employee who acts as an approved mentor mediator for the judicial branch or other state agencies; or

(ii) the renewal fee has been waived for an applicant who will not receive compensation for acting as an approved mentor mediator; and

(E) any other information the director requests.

(2) **Waiver of Requirements.** If an applicant has specialized experience or training but does not meet a requirement under paragraph (1), the applicant may submit a written request that the director waive the requirement. On receipt of the written request, the director may:

(A) grant the written request and waive the requirement;

(B) request more information from the applicant; or

(C) deny the written request.

(3) **Application Review Process.** The renewal of approval will be reviewed in the same manner as an application for approval under subsection (a).

(f) **Nonrenewal.** An individual who does not meet the renewal requirements of subsection (e) must apply for approval under subsection (a).

(g) **Confidentiality of Records.** Except as provided in Rule 920, any record obtained or provided during the approval or renewal process

is confidential and not subject to disclosure under the Kansas Open Records Act, K.S.A. 45-215 et seq.

(h) **List of Approved Mentor Mediators.** The director must keep a public listing of approved mentor mediators that includes information for each approved individual, such as types of practicums and fees. An approved mentor mediator may opt out of the public listing.

[**History:** New rule adopted effective January 1, 2020.]

Rule 913

PROGRAM APPROVAL AND RENEWAL

(a) **Application for Approval.** An organization or entity seeking approval as a program under the Dispute Resolution Act must submit an application to the director. The application must include:
   (1) documentation of the information required under K.S.A. 5-507(a), unless the applicant is connected with a court;
   (2) identification of the dispute resolution services, approved training courses, or CDRE that will be provided by the applicant;
   (3) documentation of one of the following:
      (A) the applicant's sliding scale system for assessing fees under K.S.A. 5-508 if the applicant will be providing dispute resolution services;
      (B) a verified statement that the applicant's courses will meet the requirements of Rule 914 if the applicant will be providing approved training courses; or
      (C) a verified statement that the applicant's CDRE presentations will meet the requirements of Rule 916 if the applicant will be providing CDRE;
   (4) the application fee in an amount determined by the Supreme Court;
   (5) a verified statement that the applicant agrees to comply with these rules; and
   (6) any other information the director deems necessary.

(b) **Waiver of Requirements.** If an applicant program does not meet a requirement listed in subsection (a), the applicant may submit a written request that the director waive the requirement. On receipt of the written request, the director must:
   (1) grant the written request and waive the requirement;
   (2) request more information from the applicant; or
   (3) deny the written request.

(c) **Application Review Process.**
  (1) **Director's Decision.**
    (A) On receipt of the application for approval, the director must review the application within the time period provided in K.S.A. 5-507(b).
    (B) At the completion of the review, the director will either approve the application and issue a certificate of approval or deny the application.
    (C) Before the approval or denial of an application, the director may require the applicant program to submit more information.
  (2) **Written Request for Reconsideration.** If the director has denied an application, the applicant may submit to the director a written request for reconsideration. The director will present the request to the Council for review and decision.

(d) **Renewal of Approval.** An approved program must annually apply for approval renewal. The application and fee must be postmarked by January 30. Failure to submit the renewal application and fee under this subsection may result in nonrenewal of approval status.
  (1) **Renewal Application.** The application for renewal must include:
    (A) an annual report that:
      (i) complies with K.S.A. 5-507(c);
      (ii) summarizes the dispute resolution services or approved training courses that have been provided by the applicant in the prior year; and
      (iii) identifies the number, types, dates, agenda, and approved education hours or CDRE credit provided for courses approved in the prior year;
    (B) if the applicant provides approved training courses or CDRE, a verified statement by the applicant that its courses will meet the requirements under Rules 914 and 916;
    (C) a verified statement that the applicant agrees to comply with these rules;
    (D) a renewal application fee in an amount determined by the Supreme Court; and
    (E) any other information the director requests.
  (2) **Waiver of Requirements.** If an applicant does not meet a requirement listed in paragraph (1), the applicant may submit a written request that the director waive the requirement. On receipt of the written request, the director must:
    (A) grant the written request and waive the requirement;
    (B) request more information from the applicant program; or

(C) deny the written request.

(3) **Application Review Process.** The renewal of approval will be reviewed in the same manner as an application for approval under subsection (a).

(e) **Nonrenewal.** A program that does not meet the renewal requirements of subsection (d) must apply for approval under subsection (a).

(f) **Confidentiality of Records.** Except as provided in Rule 920, any record obtained or provided during the approval or renewal process is confidential and not subject to disclosure under the Kansas Open Records Act, K.S.A. 45-215 et seq.

(g) **List of Approved Programs.** The director must keep a public listing of approved programs that includes information for each approved program, such as types of services, fees, and region of service. An approved program may opt out of the public listing.

[**History:** New rule adopted effective January 1, 2020.]

Rule 914

PRIMARY TRAINING COURSES

(a) **General.** An individual seeking approval under Rule 912 or 913 must have completed approved training courses before submitting an application. The prerequisite training courses must be approved by the director and must meet the applicable requirements under subsection (b).

(b) **Training Course Requirements.**

(1) **Core Mediation.** An approved core mediation course must be presented as an integrated and unified training module that includes the following components: role and duties of a mediator; mediation process, practice, and techniques; rules and laws governing mediation; communication skills; neutrality; evaluation of cases; impact of culture and diversity; writing summaries of understandings or agreements of the parties; role playing; and ethics.

(2) **Domestic Mediation**. An approved domestic mediation course must be presented as an integrated and unified training module that includes the following components in accordance with K.S.A. 23-3502(b)(3) and (4): role and duties of a domestic mediator; domestic mediation process, practice, and techniques; rules and laws governing domestic mediation; the Kansas judicial system and procedure used in domestic relations cases;

child development; clinical issues relating to children; the effects of divorce on children; the psychology of families in separation and divorce; dynamics of domestic violence and child abuse; evaluation of cases; impact of culture and diversity; writing summaries of understandings or agreements of the parties; other community resources to which parties can be referred for assistance; role playing; and ethics.

(3) **Parent-Adolescent Mediation**. An approved parent-adolescent mediation course must be presented as an integrated and unified training module that includes the following components: role and duties of a parent-adolescent mediator; parent-adolescent mediation process, practice, and techniques; rules and laws governing parent-adolescent mediation; Kansas family law as it relates to parent-adolescent mediation; child and adolescent development; the parent-adolescent relationship; family systems; interviewing children; dynamics of domestic violence and child abuse; evaluation of cases; impact of culture and diversity; writing summaries of understandings or agreements of the parties; role playing; and ethics.

(4) **General Civil Mediation**. An approved general civil mediation course must be presented as an integrated and unified training module that includes the following components: role and duties of a general civil mediator; general civil mediation process, practice, and techniques; rules and laws governing general civil mediation; the Kansas civil litigation system and procedure; overcoming deadlock; evaluation of cases; writing summaries of understandings or agreements of the parties; role playing; and ethics.

(5) **Juvenile Dependency Mediation**. An approved juvenile dependency mediation course must be presented as an integrated and unified training module that includes the following components: role and duties of a juvenile dependency mediator; juvenile dependency mediation process, practice, and techniques; rules and laws governing juvenile dependency mediation; Kansas child in need of care and related laws; child and adolescent development; family systems; interviewing children; dynamics of domestic violence and child abuse; evaluation of cases; impact of culture and diversity; writing summaries of understandings or agreements of the parties; role playing; and ethics.

(6) **Mentor Mediator**. An approved mentor mediator course must be presented as an integrated and unified training module that includes the following components: role and duties of a mentor mediator; mentoring process, practice, and techniques; rules

and laws governing mentor mediators; adult learning theory; mediator styles; principles of effective coaching, feedback, and evaluation; role playing; and ethics.

(7) **Domestic Conciliator**. An approved domestic conciliator course must be presented as an integrated and unified training module that includes the following components: role and duties of a domestic conciliator; conciliation process, practice, and techniques; rules and laws governing domestic conciliation; writing reports and recommendations; family dynamics in separation and divorce; high-conflict personality traits; dynamics of domestic violence and child abuse; and ethics.

(8) **Parenting Coordinator.** An approved parenting coordinator course must be presented as an integrated and unified training module that includes the following components: role and duties of a parenting coordinator; parenting coordination process, practice, and techniques; rules and laws governing parenting coordination; writing reports and recommendations; family dynamics in separation and divorce; high conflict personality traits; interviewing children; dynamics of domestic violence and child abuse; and ethics.

(9) **Case Management.** An approved case management course must be presented as an integrated and unified training module that includes the following components: role and duties of a case manager; case management process, practice, and techniques; rules and laws governing case management; writing reports and recommendations; family dynamics in separation and divorce; high conflict personality traits; interviewing children; dynamics of domestic violence and child abuse; and ethics.

[**History:** New rule adopted effective January 1, 2020.]

Rule 915

MEDIATION PRACTICUM

(a) **General.** Before applying for approval under Rule 911, a prospective mediator must participate in an approved practicum with an approved mentor mediator. In a practicum, the approved mentor mediator evaluates whether the prospective mediator has demonstrated the required basic skills and knowledge to become an approved mediator.

(b) **Written Mentoring Agreement.** Before beginning a practicum, an approved mentor mediator and the prospective mediator must enter

into a written mentoring agreement. The written agreement must include:

(1) an explanation of the approved mentor mediator's expectations and procedures;

(2) an explanation of any fees and costs assessed to the prospective mediator, along with accepted method of payment;

(3) a statement confirming that the approved mentor mediator retains ultimate responsibility for any actual mediation case used in the mentoring process; and

(4) any other information the mentor mediator deems necessary when providing a mediation practicum.

(c) **Practicum.**

(1) **Provider.** A practicum that qualifies under Rule 911 must be supervised or conducted by an approved mentor mediator.

(2) **Practicum Approval.**

(A) An approved mentor mediator must obtain written approval from the director before offering a practicum in an area of mediation approved under Rule 911.

(B) A practicum must:

(i) include at least three cases, consisting of co-mediations, mediation simulations, or a combination of co-mediations and mediation simulations; and

(ii) be supervised or conducted by the same approved mentor mediator unless the director waives this requirement.

(C) The director or a designee may attend, monitor, and observe the practicum.

(d) **Approved Mentor Mediator's Responsibilities in a Practicum.**

(1) **Assessment and Feedback.** An approved mentor mediator must assess and provide feedback when supervising or conducting a practicum. At a minimum, the assessment and feedback should cover the following: the process and practice of mediation, including techniques and skills; time management; agreement writing; maintaining neutrality; and ethics.

(2) **Participation.** An approved mentor mediator must engage the prospective mediator in the actual practice of mediation. A prospective mediator who solely observes a mediation case without further participation will not meet this requirement.

(3) **Evaluation.** At the conclusion of the practicum, the approved mentor mediator must complete an evaluation in the form and manner the director prescribes. In the evaluation, the approved mentor mediator must assess whether the prospective mediator has demonstrated the required basic skills and knowledge to be

an approved mediator. The approved mentor mediator must provide a copy of the evaluation to the prospective mediator.

[**History:** New rule adopted effective January 1, 2020.]

Rule 916

CONTINUING DISPUTE RESOLUTION EDUCATION

(a) **Compliance Period.** The compliance period means the period from January 1 through December 31.

(b) **Credit Hours.**

(1) An approved individual must earn at least six credit hours of CDRE in each compliance period.

(2) Of the six CDRE credit hours, at least one hour must be in the area of domestic violence or ethics.

(3) CDRE credit will be awarded on the basis of one credit hour for each 50 minutes spent participating in instructional activities, exclusive of introductory remarks, meals, breaks, or other non-educational activities. One-half credit hour will be awarded for attendance of at least 25 but less than 50 minutes. No credit may be claimed for attendance of less than 25 minutes.

(c) **No Carryover of Credit.** No CDRE credit hours may be carried forward to the next compliance period.

(d) **Approval for CDRE Credit.**

(1) **Approved Presentation.** To offer CDRE credit for any presentation, the provider sponsoring the presentation must obtain written approval from the director. On approval, the director will designate the number of CDRE credit hours that can be earned. The director or a designee may attend, monitor, and observe the presentation.

(2) **Presentation that Has Not Been Approved.** To receive CDRE credit for attendance at a presentation that has not been approved, the attendee must submit to the director a written request for CDRE credit. The request must include documentation of the topics addressed and the hours attended. If approved, the director will grant the number of CDRE credit hours that were earned.

(3) **Credit for Teaching**. One CDRE credit hour may be awarded for each 50 minutes spent preparing for and teaching an approved CDRE presentation or approved training course, up to a total of five CDRE credit hours per compliance period. An approved individual must submit to the director a written request

for CDRE credit that outlines program content, teaching methodology, and time spent in preparation and instruction. In determining the number of credit hours to grant, the director will calculate time spent in preparation and teaching. A repeat presentation may qualify for CDRE credit hours, but the number will be limited to time actually spent updating the presentation and teaching. Instruction must be directed toward an audience composed primarily of dispute resolution professionals. CDRE credit will not be awarded for teaching undergraduate, graduate, or law school classes.

(4) **Credit for Authorship.** One CDRE credit hour may be awarded for each 50 minutes spent researching, writing, and preparing articles on dispute resolution for publication, up to a total of five CDRE credit hours per compliance period. An approved individual must submit to the director a written request for CDRE credit. The director may award CDRE credit if the approved individual's work has produced a published article, chapter, monograph, or book personally authored, in whole or part, that contributes substantially to the education of dispute resolution professionals. Publication must occur during the compliance period for which credit is requested.

(5) **Materials.** Thorough, high quality, readable, useful, and carefully prepared instructional materials must be made available to all participants at or before the time the program is presented, unless the director approves the absence of instructional materials as reasonable.

(6) **Other Activities for Credit.** The director may approve other activities for CDRE credit if the activity promotes and improves the practice of dispute resolution.

(e) **Exemption for Good Cause.** The director may grant an exemption from the annual CDRE requirement for good cause, such as hardship or disability. A written request for exemption must be submitted to the director with a full explanation of the circumstances necessitating the request.

(f) **List of Approved Presentations for CDRE credit.** The director must keep a public listing of approved presentations for CDRE credit. A provider may opt out of the public listing.

[**History:** New rule adopted effective January 1, 2020.]

Rule 917

APPROVED PROGRAM PROVIDING TRAINING COURSES AND CDRE

(a) **Approved Training Course.** An approved program may provide an approved training course under Rule 914 that complies with the requirements under this subsection.

(1) **Course Approval.** An approved program must obtain written approval from the director before advertising or offering an approved course for applicants under Rule 911 or 912. The director may approve the training course for mediation, domestic conciliation, parenting coordination, case management, or mentor mediation training and designate the number of qualifying hours that can be earned.

(2) **Approved Training Courses and Future Offerings.**

(A) An approved training course may be offered again if the approved program makes no substantive changes to the course and notifies the director in advance of the subsequent offering. An approved program must keep attendance records and evaluation summaries for each course on file for a minimum of three years.

(B) Notification to the director must include the time, date, and agenda for the course and the number of approved hours that can be earned.

(C) The director may reconsider approval of an approved training course at any time.

(3) **Monitoring or Observation by Director.** The director or a designee may attend, monitor, and observe an approved training course.

(4) **Trainer Requirements.** An approved training course must be presented by a person or persons qualified by practical or academic experience to present the subject. At least one of the persons presenting must have three years of practical experience using that dispute resolution process.

(b) **CDRE.**

(1) **CDRE Approval.** An approved program that offers CDRE credit must comply with Rule 916.

(2) **Approved CDRE and Future Offerings.**

(A) An approved presentation may be offered again if the approved program makes no substantive changes to the presentation and notifies the director in advance of the sub-

sequent offering. An approved program must keep attendance records and evaluation summaries for each CDRE presentation on file for a minimum of three years.

(B) Notification to the director must include the time, date, and agenda for the CDRE presentation and the number of approved hours that can be earned by attending.

(C) The director may reconsider approval of an approved CDRE presentation at any time.

(3) **Monitoring or Observation by Director**. The director or a designee may attend, monitor, and observe an approved CDRE presentation.

[**History:** New rule adopted effective January 1, 2020.]

Rule 918

ETHICS

(a) **Application of Rule.** This rule applies to approved individuals, approved programs, and approved mentor mediators. A violation of the ethics requirements under this rule constitutes grounds for disciplinary action, which may include suspension or revocation of approval status.

(b) **Approved Individuals.** All approved individuals must follow the ethics requirements in this subsection.

(1) **Impartiality.**

(A) An approved individual must conduct any process under the Dispute Resolution Act in an impartial manner. Impartiality means freedom from favoritism or bias in word, action, or appearance and includes a commitment to assist all participants as opposed to any one individual. An approved individual employing a dispute resolution process that requires a recommendation does not, by itself, establish that the approved individual lacks impartiality.

(B) An approved individual must avoid any conduct that gives the appearance of partiality.

(i) An approved individual must not act with partiality or prejudice based on a participant's personal characteristics, background, values and beliefs, or any other reason.

(ii) An approved individual must neither give to nor accept from a party participating in a dispute resolution process a gift, favor, loan, or other item of value except for the purposes specified in subsection (b)(1)(B)(iii).

(iii) An approved individual may accept or give *de minimis* gifts or incidental items or services that are provided

to facilitate a dispute resolution process or respect cultural norms if it does not raise questions about the approved individual's actual or perceived impartiality.

(iv) An approved individual must not coerce or improperly influence a party to make a decision.

(v) An approved individual must not intentionally or knowingly misrepresent or omit a material fact, law, or circumstance in a dispute resolution process.

(vi) An approved individual must not accept an engagement, provide any service, or perform an act outside the role of the approved individual that would compromise the integrity or impartiality in a dispute resolution process.

(C) An approved individual must withdraw from a dispute if unable to conduct the dispute resolution process in an impartial manner.

(2) **Conflicts of Interest.**

(A) An approved individual must not serve in a dispute that presents a conflict of interest. A conflict of interest is an association or relationship that might create an impression of possible bias. A conflict of interest arises when a relationship between the approved individual and the participants or the subject matter of the dispute compromises or appears to compromise an approved individual's impartiality.

(B) An approved individual must disclose an actual or potential conflict of interest to the participants and, if applicable, to the court.

(C) An approved individual may recommend or refer services of other professionals to a party, but in making the recommendation or referral, the approved individual must avoid any actual or apparent conflict of interest. A conflict of interest under this subparagraph includes the giving or receiving of a commission, rebate, or similar remuneration by an approved individual for a recommendation or referral.

(D) Unless paragraph (E) applies, an approved individual may proceed with the dispute resolution process after disclosure of the actual or potential conflict if all participants agree in writing.

(E) If the conflict of interest casts serious doubt on the integrity of the process or impairs the approved individual's impartiality, the approved individual must withdraw from the dispute.

(F) An approved individual must avoid the appearance of a conflict of interest both during and after the dispute resolution process.

(3) **Competence.** An approved individual must provide competent services to each party in a dispute resolution process. Competent services require the training, skill, knowledge, experience, thoroughness, and preparation reasonably necessary to provide effective services in the applicable process under the Dispute Resolution Act.

(4) **Confidentiality.**

(A) An approved individual must maintain the reasonable expectations of the participants with regard to confidentiality.

(B) If an approved individual participates in teaching, research, or evaluation of the dispute resolution process, the approved individual must protect the anonymity of the participants and abide by the participants' reasonable expectations regarding confidentiality.

(5) **Quality of the Process.**

(A) An approved individual must conduct any process under the Dispute Resolution Act and related Supreme Court Rules in a manner consistent with principles of diligence and procedural fairness.

(B) An approved individual must define the dispute resolution process being conducted so that participants understand its scope and how it may differ from other dispute resolution processes. When relevant, an approved individual must distinguish the dispute resolution process from therapy or counseling.

(C) An approved individual must discuss the issue of separate sessions, including whether and under what circumstances the approved individual may meet alone with a participant or with a third party.

(D) An approved individual must strive for full disclosure and development of relevant factual information in a process employed under the Dispute Resolution Act.

(E) At the beginning of a dispute resolution process, an approved individual must inform participants that the approved individual cannot represent any participant in the process.

(F) An approved individual must inform the participants that no participant is receiving legal representation from the dispute resolution provider, that the approved individual is not providing the services attorneys typically provide, and that no attorney-client relationship exists. The approved individual should inform each participant of the participant's right to seek independent legal counsel for advice throughout the process and before any agreement is signed.

(G) An approved individual must not permit the individual's behavior to be guided by a desire for a higher settlement rate.

(H) An approved individual must withdraw from a dispute resolution process when incapable of serving.

(6) **Advertising and Solicitation.**

(A) An approved individual must be truthful in advertising.

(B) An approved individual must not include any promises or guarantee of results in the approved individual's communications, including business cards, stationary, or electronic communications.

(C) An approved individual must obtain written permission prior to communicating the name of any participant in promotional materials or through other forms of communication.

(7) **Fees and Other Charges.**

(A) An approved individual must provide true and complete written information to the participants about fees, expenses, and any other actual or potential charges that may be incurred in connection with the dispute resolution process.

(B) A fee must be reasonable, considering various factors such as the type of dispute resolution service, complexity of the matter, expertise of the approved individual, time required, and rates customary in the community.

(C) An approved individual must return any unearned fees to the participants.

(D) An approved individual must not enter into a fee agreement that is contingent on the result of the dispute resolution process or the amount of the settlement.

(E) An approved individual must maintain records necessary to support any charge for services and expenses.

(8) **Obligations to the Dispute Resolution Profession.** An approved individual has a duty to promote and improve the practice of dispute resolution.

(9) **Dual, Multiple, or Sequential Roles.** An approved individual must not serve in dual, multiple, or sequential roles in a case that may create a conflict of interest, unless all participants in the dispute give informed written consent.

(10) **Self Reporting Professional Misconduct.** An approved individual must immediately report to the director any professional misconduct that may affect the individual's approval. It is professional misconduct to:

(A) commit a criminal act that reflects adversely on the approved individual's honesty or trustworthiness;

(B) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(C) engage in conduct that is prejudicial to the administration of justice or the administration of dispute resolution in Kansas; or

(D) engage in any other conduct that adversely reflects on an approved individual's character, fitness, and general qualifications to practice dispute resolution.

(11) **Responsibility to Supervise.** An approved individual must make reasonable efforts to ensure that all staff supervised by the approved individual conform to the ethics requirements in this rule.

(12) **Self-Determination.** If an approved individual is providing mediation, the approved individual must recognize that mediation is based on the principle of self-determination by the participants. Self-determination requires the mediation process rely on the ability of the participants to reach a voluntary and uncoerced agreement. To assure self-determination:

(A) a mediator must provide adequate opportunity for each party in the mediation to participate in discussions;

(B) a mediator must safeguard the participants' discretion to decide when and under what conditions they will reach an agreement or terminate mediation, unless otherwise ordered by statute or court order; and

(C) a mediator must terminate or suspend the mediation or postpone a session if a party is unable to participate due to drug, alcohol, or other physical or mental capacity.

(c) **Approved Programs.** An approved program must follow the ethics requirements prescribed for approved individuals unless otherwise specified in this subsection.

(1) **Administrative Oversight of Approved Individuals and Staff.** An approved program must make reasonable efforts to ensure that all employees of the approved program, including approved individuals, conform to the ethics requirements in this rule.

(2) **Court-Appointed Dispute Resolution Services.** Court-appointed dispute resolution services provided by an approved program must be conducted by an approved individual who has received approval to perform that particular dispute resolution process.

(3) **Approved Training Courses and CDRE Presentations.** An approved program must ensure its approved training courses and CDRE presentations:

(A) meet the requirements prescribed by the Supreme Court Rules adopted under the Dispute Resolution Act; and

(B) are presented by a person or persons qualified by practical or academic experience to present the subject in accordance with Rule 914.

(d) **Approved Mentor Mediators.**

(1) An approved mentor mediator must follow the ethics requirements prescribed for approved individuals unless otherwise specified in this subsection.

(2) An approved mentor mediator must provide competent instruction to a prospective mediator. Competent instruction requires a mentor mediator to coach prospective mediators and share knowledge and expertise.

[**History:** New rule adopted effective January 1, 2020.]

Rule 919

COMPLAINTS

(a) **Complaint Concerning an Approved Individual or Approved Program.** A person who alleges that an approved individual or program has violated Rule 918 may submit a complaint under this rule. This rule does not govern an allegation of misconduct if an approved individual has been court-appointed and the court still has jurisdiction over the case.

(b) **Complaint Requirements.** The complaint must be submitted to the director using the standardized form and must include the following:

(1) name, mailing address, phone number, and email address of the person filing the complaint;

(2) name, mailing address, phone number, and email address of the dispute resolution provider;
(3) name, mailing address, phone number, and email address of each party and, if applicable, the party's attorney;
(4) case number, if applicable;
(5) a detailed description of the basis for the complaint, including identification of the specific provisions of Rule 918 alleged to have been violated; and
(6) a detailed description of any effort to informally address the incident identified in the complaint.

(c) **Initial Review.** The director promptly must conduct an initial review of each complaint received.

(d) **Action Following Initial Review.** On conclusion of an initial review, the director may:
(1) dismiss the complaint, if the director determines the complaint is frivolous or without merit; or
(2) refer the complaint to the chairperson for investigation under Rule 920.

(e) **Director May Request Investigation.** The director may request an investigation of a potential violation of Rule 918 on the director's own initiative.

[**History:** New rule adopted effective January 1, 2020.]

Rule 920

INVESTIGATIONS

(a) **Investigator Appointment.** Upon receipt of a referral under Rule 919(d) or a request under Rule 919(e), the chairperson must appoint a current or former council member to investigate the complaint. The director must forward a copy of the complaint and letter of appointment to:
(1) the appointed investigator;
(2) the approved individual or program; and
(3) the complainant.

(b) **Response.** The approved individual or program may submit to the investigator a written response no later than 21 days after receipt of the complaint.

(c) **Report and Recommendation.** On conclusion of the investigation, the investigator must submit a written report to the chairperson. The investigator must recommend:
(1) dismissing the complaint;
(2) additional training; or
(3) suspending the approved individual's or program's status for a stated period of time or indefinitely.

(d) **Confidentiality of Records.** Any investigation conducted or information obtained or provided under these rules is subject to the confidentiality provisions and exceptions contained in K.S.A. 5-512, 23-3505, 60-452a, and any other applicable state or federal law regarding privacy and confidentiality. Information that is not reasonably necessary for any investigation or action under K.S.A. 5-512(b)(1), 23-3505(b)(1), or 60-452a(b)(1) remains confidential. Any record pertaining to any investigation conducted or information obtained or provided under this process is not subject to disclosure under the Kansas Open Records Act, K.S.A. 45-215 et seq.

[**History:** New rule adopted effective January 1, 2020.]

Rule 921

COMPLAINT RESOLUTION

(a) **Investigator's Recommendation.** When the chairperson receives a report from the investigator under Rule 920(c), the chairperson will consider the investigator's recommendation and issue a written determination.

(b) **Chairperson's Determination.** The director will forward a copy of the chairperson's determination to the complainant and the approved individual or program. The chairperson's determination is final if no timely appeal is submitted under subsection (c).

(c) **Appeal.** The approved individual or program may appeal the chairperson's determination to the Supreme Court no later than 21 days after issuance.

(d) **Review Panel.** The chief justice of the Kanas Supreme Court will appoint a three-person review panel to consider the appeal. The review panel must include at least two current or former council members. One of the members must be approved in the dispute resolution area practiced by the approved individual or program under investigation. The chief justice will also designate one of the appointees to be the presiding member of the review panel. The director will provide copies of the complaint, response, investigative report, chairperson's determination, and request for appeal to the review panel no later than 14 days after the panel's appointment.

(e) **Review Panel's Determination.** The review panel must submit to the director its written determination. On receipt of the determination, the director must forward copies of the determination to the chairperson and the approved individual or program. The determination of the review panel is final and not subject to further review.

(f) **Individual Licensed or Approved by Another Body.** If the final determination results in action as stated in Rule 920(c)(2) or (c)(3) and it concerns an approved individual that is licensed as an attorney in Kansas, the director must forward a copy of the complaint to the disciplinary administrator under Supreme Court Rule 208. If the approved individual possesses a license, certificate, or approval by another licensing body, including one that is out of state, the director may forward a copy of the complaint to the applicable licensing body.

[**History:** New rule adopted effective January 1, 2020.]

Rule 922

IMMUNITY

Applications, complaints, investigations, or investigative reports made in the course of proceedings under these rules are deemed to be made in the course of judicial proceedings. The chairperson, chairperson's appointee, members of the council, and employees of the office of judicial administration shall be immune from suit for all conduct in the course of their official duties. All other participants shall be entitled to all rights, privileges, and immunities afforded to participants in actions filed in the courts of this state.

[**History:** New rule adopted effective January 1, 2020.]

RULES RELATING TO MEDIA COVERAGE OF JUDICIAL PROCEEDINGS

Rule 1001

ELECTRONIC AND PHOTOGRAPHIC MEDIA COVERAGE OF JUDICIAL PROCEEDINGS

(a) **Preface.** The increasing use of various electronic devices including phones, tablets, and other wireless communication devices continually challenges a court's legitimate concerns for courtroom security, participant distraction, and decorum.

These electronic devices are redefining the news media, the informational product disseminated, and the timeliness of the content. They also result in new expectations for the court and participants for immediate access to information.

Policies developed to address the court's concerns should include enough flexibility to take into consideration that electronic devices have become a necessary tool for court observers, journalists, and participants and continue to rapidly change and evolve. The courts should champion the enhanced access and the transparency made possible by use of these devices while protecting the integrity of proceedings within the courtroom.

(b) **Applicability.** The following provisions are subject in all cases to a judicial district or court issuing specific orders, local rules, or guidelines for the use of electronic devices in judicial proceedings.

(c) **Permissible Use of Electronic Device.**

(1) During a judicial proceeding a person may possess—but not use—any of the following electronic devices unless the possession is prohibited by the presiding judge or justice:
   (A) A cell phone,
   (B) A laptop or tablet computer, with or without video or audio capabilities,
   (C) A digital or tape audio recorder,
   (D) A personal digital assistant (PDA), with or without video or audio recording capabilities,
   (E) A still or video camera, and
   (F) Any other electronic device that can broadcast, record, or take photographs.

(2) All cell phones must be turned off in the courtroom. During court proceedings, all electronic devices must be put away and out of sight, unless use of the devices is authorized by the presiding judge or justice under this rule. A person may use a cell

phone or other electronic device in a court facility, but not in a courtroom, to make or receive phone calls, e-mails, and/or text messages only.

(d) **Prohibited Use of Electronic Device.**

(1) A person is prohibited from using a cell phone or any other electronic device in a court facility to:

(A) Take pictures,

(B) Take videos,

(C) Make sound recordings,

(D) Broadcast sound, and

(E) Broadcast still or moving images (video).

(2) Violating this rule may result in the device being confiscated.

(e) **Permission Required for Exception to Rule.** The presiding judge or justice may make an exception to this rule. The news and educational media and others—such as a publisher, editor, reporter, or other person employed by a newspaper, magazine, news wire service, television station, or radio station who gathers, receives, or processes information for communication to the public, or an online journal in the regular business of newsgathering and disseminating news or information to the public—must request specific permission in advance to use an electronic device to record and transmit public proceedings, including real-time coverage, in Kansas courts. If permission is granted, use of the permitted electronic device must be in accordance with the following applicable conditions and procedures and such other conditions and procedures as may be required by the presiding judge or justice.

(1) The privilege to photograph, record, or provide real-time coverage of court proceedings may be exercised only by those obtaining prior permission of the court. Video, photography, audio reproductions, and other electronic communications may be used only for the purpose of education or news dissemination.

(2) The judge must be given at least one week's notice of the request to bring cameras, recording equipment, or other electronic communication devices into the courtroom. The judge may waive this requirement for good cause.

(3) The privilege granted by this rule does not limit or restrict the judge's power, authority, or responsibility to control the proceedings before the judge. The judge's authority to disallow possession of electronic devices at a proceeding or during the testimony of a particular witness extends to any person engaging in the privilege authorized by this rule.

(4) Audio pickup and audio recording of a conference between an attorney and client, or among cocounsel, counsel and opposing counsel, or among attorneys and the judge are prohibited regardless of where conducted. Photographing such a conference is not prohibited.
(5) Focusing on and/or photographing materials on counsel tables or in designated areas is prohibited.
(6) An individual juror may not be photographed. In a courtroom in which photography is impossible without including the jury as part of the unavoidable background, photography is permitted as long as no close-ups identify individual jurors.
(7) The trial judge must prohibit the audio recording and photographing of a participant in a court proceeding if the participant so requests and (a) the participant is a victim or witness of a crime, a police informant, an undercover agent, or a relocated witness or juvenile, or (b) the hearing is an evidentiary suppression hearing, a divorce proceeding, or a case involving trade secrets. Subject to a court directive to the contrary, the news media may record and photograph a juvenile who is being prosecuted as an adult in a criminal proceeding as authorized by K.S.A. 38-2347.
(8) No video, photograph, audio reproduction, or other electronic communication of a court proceeding will affect the official court record of the proceeding for purposes of appeal or otherwise.
(9) An interview for broadcast or other electronic transmission may not be recorded in a hallway immediately adjacent to a courtroom entrance if a passageway is blocked or a judicial proceeding is disturbed thereby. Photographing or other recording through a window or open door of a courtroom is prohibited. Prior to rendition of the verdict, a criminal defendant may not be photographed or otherwise recorded in restraints as the defendant is being escorted to or from a court proceeding.
(10) The judge may ban cameras, audio recorders, and other electronic communications devices from the entire floor on which a proceeding is conducted.
(11) The chief judge must designate a coordinator or other court personnel who will work with the chief judge, the trial judge, the media, and others making a request under this rule in district court.
(12) A request to photograph, record, or provide live coverage of a court proceeding must be directed to the coordinator. When

more than one television station, still photographer, or audio recorder desires to cover a court proceeding, the coordinator must designate the pool photographer and audio recorder. If there is a dispute as to the pool designation or the equipment to be used, no audio or visual equipment will be permitted at the proceeding. Requests for copies of audio recordings, video, or photographs must be directed to the pool representative, who will supply copies upon request to media representatives at a price not exceeding actual cost. Pool designations are not necessary for individuals providing text accounts via approved electronic devices.

(13) The trial judge will designate the location in the courtroom for the audio, video equipment, and operators. Under the general supervision of the chief justice, the clerk of the appellate courts will supervise the location of media equipment within the Supreme Court courtroom. The presiding judge of a Court of Appeals panel will supervise the location of media equipment, and personnel using the equipment, at hearings before the Court of Appeals. Equipment and operators ordinarily should be restricted to areas open to the public. The equipment and operators, however, must not impede the view of persons seated in the public area of the courtroom. Operators must occupy only the area authorized by the judge and may not move about the courtroom for picture-taking purposes during the court proceeding.

(14) Media equipment must not be placed within or removed from the courtroom except prior to commencement or after adjournment of proceedings each day, or during a recess. Such equipment must not be operated in any manner that disrupts proceedings.

(15) One television camera, operated by one person, and one still photographer, using not more than two cameras, are authorized in any court proceeding. The judge may authorize additional cameras or persons at the request of the coordinator. If a still camera is not manufactured for silent operation, use of a quieting device is recommended. The court may restrict operation of cameras or electronic devices which emit distracting sounds during court proceedings.

(16) Only audio, visual, or electronic communications equipment that does not produce distracting light or sound may be used to cover court proceedings. An artificial lighting device may not be used in connection with any audio or visual equipment. A modification in the lighting of a district court facility may be

made only with the approval of the chief judge. Approval of other authorities may be required.

[**History:** New rule effective September 1, 1988; Restyled rule and amended effective October 18, 2012.]

Rule 1002

NON-MEDIA USE OF ELECTRONIC DEVICES IN JUDICIAL PROCEEDINGS

(a) **Prohibited Use of Electronic Devices.** Any electronic device, including a cell phone, smart phone, laptop, or still or video camera, must be turned off in the courtroom unless prior written permission of the presiding judge or justice has been obtained. An electronic device must be put away and out of sight in the courtroom, unless use of the device is permitted by subsection (b) or authorized by the presiding judge or justice under this subsection.

(b) **Permissible Use of Electronic Devices.** Court personnel, counsel of record, and unrepresented parties appearing before the court may use a smart phone, laptop, or tablet computer during a court proceeding if the sound is off, no disruption occurs, and that person is sitting in a designated area. Notwithstanding the foregoing, an electronic device must not be used for oral communication during a court proceeding, except under Rule 145.

(c) **Confiscation.** Violating this rule may result in the device being confiscated during the remainder of the proceeding.

[**History:** New rule effective June 12, 2013.]

RULES RELATING TO JUDICIAL NOMINATING COMMISSION

Rule 1101

CONFIDENTIALITY OF JUDICIAL NOMINATING COMMISSION RECORDS

(a) **Judicial Nominating Commission Records.** All records of a judicial nominating commission are confidential and not subject to disclosure to anyone not a member of the commission or assisting the commission. The following information regarding judicial applicants may be disclosed by the commission, in a form within its discretion: names, current employment positions, educational degrees received, previous employment or positions, and cities of residence.

(b) **Disclosure to the Governor.** Nothing in this rule prohibits disclosure by a commission of information to the Governor as needed for consideration of nominated candidates.

(c) **Records Defined.** For purposes of this rule, and Rule 1102, the term "records" includes, but is not limited to, all application materials submitted to a judicial nominating commission; all information collected or recorded by members or agents of the commission regarding a judicial applicant; the minutes of a commission meeting; and any other information, regardless of form, characteristics, or location, which members or agents of the commission have prepared, recorded, or collected and is related to the functions, activities, programs, or operations of the commission.

[**History:** New rule effective August 31, 2005; Am. effective February 2, 2017.]

Rule 1102

RETENTION OF JUDICIAL NOMINATING COMMISSION RECORDS

(a) **Retention Period.** Except for the minutes of a judicial nominating commission meeting, all records relating to a commission's selection of nominees or a district magistrate judge must be retained for 3 years after the commission's decision. If a commission receives notice of a legal action challenging the commission's decision prior to the expiration of the 3-year period, the records will be retained until the expiration of the 3-year period or until the legal action becomes final, whichever occurs later. The minutes of a judicial nominating commission meeting must be retained indefinitely.

(b) **Official Custodians**. For purposes of complying with the Kansas Open Records Act, K.S.A. 45-215 et seq., the public information

director for the Kansas Supreme Court is the official custodian of all district judicial nominating commission records, and the clerk of the Kansas appellate courts is the official custodian of all Supreme Court nominating commission records.

[**History:** New rule effective February 2, 2017.]

RULES RELATING TO MUNICIPAL COURT

Rule 1201

MUNICIPAL COURT JUDGES EDUCATION COMMITTEE

A Municipal Court Judges Education Committee is hereby established for the purpose of recommending and organizing education and training programs for Kansas municipal judges. Such programs shall be designed to accomplish the following goals:

A. To educate municipal judges regarding the knowledge, skills, and techniques required to perform judicial responsibilities fairly, correctly, and efficiently.
B. To improve the administration of justice, reduce court delay, and promote fair and efficient management of all court proceedings.

This committee shall also be responsible for the certification and training of municipal judges as required by K.S.A. 12-4114.

The membership of the Municipal Judges Education Committee shall be composed of eight municipal court judges and one nonvoting representative of the Office of Judicial Administration. In addition, the president and immediate past-president of the Kansas Municipal Judges Association shall serve on the Municipal Court Judges Education Committee for the duration of their Association terms of office.

All members of the Municipal Court Judges Education Committee other than the president and immediate past-president of the Kansas Municipal Judges Association shall be appointed by the Supreme Court. The terms of the inaugural members of the Committee shall be staggered: The terms of three members shall be three years, the terms of three members shall be two years, and the terms of two members shall be one year. These inaugural members are eligible to serve a second term. At the expiration of the terms of these inaugural members, the term of each succeeding member of the Committee shall be three years. With the exception of the representative of the Office of Judicial Administration and a member whose service on the Committee begins with the completion of another's unexpired term, no member of the Committee shall be eligible for more than two consecutive terms. Should a municipal court judge not complete a term for any reason, a new member shall be appointed to complete the unexpired term. The new member shall be eligible to serve two more full consecutive terms. A municipal court judge may serve one or more additional terms after a break in service.

In addition to the membership described above, the nonvoting Chair of the Municipal Court Judges Education Committee shall be the Supreme Court Justice who serves as liaison to the Committee, as designated by

the Chief Justice of the Supreme Court. The Chair shall be not subject to a term limit.

[**History:** New rule adopted effective July 1, 2012.]

Rule 1202

MUNICIPAL COURT CLERKS EDUCATION COMMITTEE

A Municipal Court Clerks Education Committee is hereby established for the purpose of recommending and organizing education and training programs for Kansas municipal court clerks. This committee is also responsible for reviewing and updating the Municipal Court Clerks Manual.

The membership of the Municipal Court Clerks Education Committee shall be composed of seven municipal court clerks or municipal court administrators and one nonvoting representative of the Office of Judicial Administration. In addition, the president and immediate past-president of the Kansas Association for Court Management shall serve on the Municipal Court Clerks Education Committee for the duration of their Association terms of office.

All members of the Municipal Court Clerks Education Committee other than the president and immediate past-president of the Kansas Association for Court Management shall be appointed by the Supreme Court. The terms of the inaugural members of the Committee shall be staggered: The terms of three members shall be three years, the terms of two members shall be two years, and the terms of two members shall be one year. These inaugural members are eligible to serve a second term. At the expiration of the terms of these inaugural members, the term of each succeeding member of the Committee shall be three years. With the exception of the representative of the Office of Judicial Administration and a member whose service on the Committee begins with the completion of another's unexpired term, no member of the Committee shall be eligible for more than two consecutive terms. Should a municipal court clerk or municipal court administrator not complete a term for any reason, a new member shall be appointed to complete the unexpired term. The new member shall be eligible to serve two more full consecutive terms. A municipal court clerk or municipal court administrator may serve one or more additional terms after a break in service.

In addition to the membership described above, the nonvoting Chair of the Municipal Court Clerks Education Committee shall be the Supreme Court Justice who serves as liaison to the Committee, as designated by the Chief Justice of the Supreme Court. The Chair shall be not subject to a term limit.

[**History:** New rule adopted effective July 1, 2012.]

RULE RELATING TO CHILD SUPPORT GUIDELINES ADVISORY COMMITTEE

Rule 1301

CHILD SUPPORT GUIDELINES ADVISORY COMMITTEE

(a) **Purpose.** The Child Support Guidelines Committee is established for the purpose of complying with Chapter 45, Code of Federal Regulations, Section 302.56, which requires that state guidelines for child support be "reviewed at least every four years to ensure that their application results in the determination of appropriate child support amounts." This Committee is responsible for reviewing economic data relating to the cost of raising children and analyzing case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines.

(b) **Appointment, Qualifications.** The Supreme Court will appoint the members of the Committee, which must include district judges, attorneys with considerable experience representing parents paying and receiving child support, attorneys employed by the State IV-D agency's child support enforcement division, attorneys with accounting or tax preparation experience, and child support obligors and obligees.

(c) **Terms.** The terms of the inaugural members of the Committee will be staggered. The terms of five members will be six years, the terms of four members will be five years, and the terms of four members will be four years. At the expiration of the inaugural member's term, the term of each succeeding member of the Committee will be four years. No member of the Committee will be eligible for more than three consecutive four-year terms. A member appointed to complete an unexpired term is eligible to serve two more consecutive four-year terms. A member is eligible for one or more additional terms after a break in service.

(d) **Chair.** The Supreme Court will designate a member of the Committee to serve as the chair.

(e) **Member Disqualification.** A member who, for any reason, no longer represents the entity which the member represented at the time of appointment must notify the Kansas Supreme Court through the Office of Judicial Administration within 30 days of the change in status. This notice of a change in status may, at the discretion of the Court, constitute the member's resignation as a member of the committee, and the Court may appoint another individual to the committee to represent that entity.

(f) **OJA Representative and Liaison Justice.**

(1) In addition to the members described in subsection (b):

(A) there will be a permanent, nonvoting seat on the committee for a representative of the Office of Judicial Administration; and

(B) the Chief Justice of the Supreme Court will designate a Supreme Court Justice to serve as liaison to the Committee.

(2) The persons serving the Committee under paragraph (1) are not subject to a term limit under subsection (c).

[**History:** New rule adopted effective July 1, 2012.]

RULES RELATING TO ACCESS TO JUSTICE

Rule 1401

ACCESS TO JUSTICE COMMITTEE

(a) **Purpose.** An Access to Justice Committee is established for the purpose of making recommendations to the Supreme Court about issues such as:
  (1) increasing the resources available for legal services for low-income litigants in civil cases;
  (2) improving planning and coordination of legal services delivery; and
  (3) reducing potential barriers to equal access to justice.

(b) **Membership.** The Committee will be composed of at least eighteen members.

(c) **Appointment.** The Supreme Court will appoint the members of the Committee.

(d) **Terms.** The terms of the inaugural members of the Committee will be staggered. The terms of six members will be three years, the terms of six members will be two years, and the terms of six members will be one year. At the expiration of the inaugural member's term, the term of each succeeding member of the Committee will be three years. No member of the Committee will be eligible for more than two consecutive 3-year terms. A member appointed to complete an unexpired term will be eligible to serve two more consecutive 3-year terms. A member is eligible for one or more additional terms after a break in service.

(e) **OJA Representative and Liaison Justice.**
  (1) In addition to the members described in subsection (b):
    (A) there will be a permanent, nonvoting seat on the committee for a representative of the Office of Judicial Administration; and
    (B) the Chief Justice of the Supreme Court will designate a Supreme Court Justice to serve as liaison to the Committee.
  (2) The persons serving the Committee under paragraph (1) are not subject to a term limit under subsection (d).

[**History:** New rule adopted effective July 1, 2012.]

Rule 1402

PROVIDING ASSISTANCE TO THE PUBLIC

(a) **Purpose.** The purpose of this rule is to assist court staff in answering questions posed by a member of the public about the operation of

the judicial system. The rule is intended to enable court staff to provide the best possible service and to provide accurate information without giving legal advice. The best suggestion to offer in many situations may be for the court user to seek the advice of an attorney. The rule does not restrict Kansas judicial branch employees from performing duties authorized by law, court rule, or court order, such as collecting applicable fees or costs, or educating the public about court procedures and processes.

(b) **Terms Defined.** Court staff refers to Kansas judicial branch employees and court volunteers who answer questions posed by the public.

(1) A Kansas judicial branch employee is an employee of the state of Kansas who is employed by the judicial branch and is subject to the Kansas Court Personnel Rules adopted by the Kansas Supreme Court.

(2) A court volunteer is a person who volunteers for the court by providing information to the public. A court volunteer is not volunteering as or on behalf of an attorney, law firm, or law practice and, as such, does not provide legal advice. Before participating as a court volunteer, the individual must receive appropriate training required by the Judicial Administrator.

(3) A member of the public includes a self-represented litigant who seeks information to file, pursue, or respond to a case without the assistance of an attorney authorized to practice before the court.

(c) **Required Assistance.** In all circumstances court staff must treat the public respectfully and provide information in a fair and impartial manner. Court staff also must provide consistent information to all members of the public, including all parties to an action. In appropriate situations, court staff must act as follows when assisting the public.

(1) Offer information about entities that provide pro bono legal services, low-cost legal services, legal aid programs, lawyer referral services, and other places where legal information may be available, such as public libraries.

(2) Explain where an individual can find forms, instructions, and other resources that have been developed to comply with Kansas law.

(3) Encourage self-represented litigants to consider obtaining legal advice. Not every type of case can be competently handled by someone representing himself or herself. Some legal matters may seem simple but can actually be highly technical and complex. It may be in the best interests of a self-represented litigant

to consult an attorney to determine the complexity of the case before beginning any legal process. Some attorneys will provide low-cost or no-cost initial consultations or will provide limited, low-cost assistance.

(4) Provide information about alternative dispute resolution programs, including mediation services.

(5) Provide information about court proceedings based on the assumption that the information provided by the member of the public is accurate.

(d) **Permitted Assistance.** When assisting the public, court staff may provide the assistance listed below.

(1) Check for completion of forms when offered for filing and explain instructions or define terms used in the forms.

(2) Provide information about court processes and procedures.

(3) Provide information regarding the existence of child support guidelines.

(4) Assist a self-represented litigant by recording verbatim information provided by the self-represented litigant on approved forms if that person is unable to complete the forms due to disability or literacy barriers.

(5) Provide information as directed by the court about local resources and programs.

(6) Identify language-access resources to assist in communication.

(7) Assist with obtaining public records that are within the custody of the court.

(e) **Prohibited Assistance.** Court staff must not:

(1) represent a litigant in court;

(2) perform legal research for a member of the public;

(3) deny a member of the public access to the court by providing information court staff knows to be incorrect;

(4) lead a litigant to believe that court staff represents the litigant as an attorney in any capacity;

(5) induce a member of the public to rely on court staff for legal advice;

(6) investigate facts of a litigant's case; or

(7) disclose information in violation of a statute, court rule, court order, or caselaw.

(f) **Disclosure.** All courts should provide conspicuous notice of the following.

(1) Communications between court staff and a member of the public do not create an attorney-client relationship.

(2) Communications with court staff are neither privileged nor confidential.
(3) Court staff must remain neutral and impartial in providing information.
(4) Court staff are not responsible for the outcome of a case.
(5) A member of the public should consult with an attorney if the individual desires personalized legal advice or strategy, confidential communications with an attorney, or representation by an attorney.

(g) **Notice to the Public.** The Judicial Administrator, upon consultation with the Access to Justice Committee, will provide a document for courts to post that describes assistance that court staff can and cannot provide to the public.

[**History:** New rule adopted effective July 8, 2019.]

Rule 1403

ACCESS TO JUSTICE LIAISONS

(a) **Purpose.** To assure that access to justice is promoted at all levels of the judicial branch, this rule provides for the designation of representatives from each court to work with the Access to Justice Committee to remove barriers and promote equal access to justice throughout the state.

(b) **Local Access to Justice Liaisons.** Each judicial district and the Court of Appeals will designate a judge and a court employee to act as local access to justice liaisons.

(c) **Responsibilities of Liaisons.** A local access to justice liaison will have the following responsibilities:
(1) transmitting information between the courts and the Access to Justice Committee about efforts to expand access to justice and improve court operations;
(2) maintaining a list of judges and employees within the judicial district or appellate court who frequently interact directly with self-represented litigants;
(3) reporting programs and technology the judicial district or appellate court has established and utilized to improve the delivery of legal services and to reduce barriers to equal access to justice;
(4) sharing information with the Access to Justice Committee about barriers to justice, including technological barriers, that have been observed and any programs the judicial district or appellate court has considered or adopted to reduce those barriers; and

(5) providing feedback to the Access to Justice Committee about training, technology, or resources needed to improve access to the courts and to better serve the public.

[**History:** New rule adopted effective August 28, 2020.]

RULE RELATING TO ADVISORY COUNCIL ON DISPUTE RESOLUTION

Rule 1501

ADVISORY COUNCIL ON DISPUTE RESOLUTION

(a) **Purpose.** The Advisory Council on Dispute Resolution is established under the Dispute Resolution Act, K.S.A. 5-501 et seq., to:
   (1) advise the director of dispute resolution on the administration of the Dispute Resolution Act and on developing policy under the Act;
   (2) assist the director of dispute resolution in providing technical assistance to programs, individuals, courts, and other entities requesting the study and development of dispute resolution programs;
   (3) consult with appropriate and necessary state agencies and offices to promote a cooperative and comprehensive implementation of the Dispute Resolution Act;
   (4) advise the director of dispute resolution about the awarding of grants or any other financial assistance program that is administered under the Dispute Resolution Act;
   (5) advise the director of dispute resolution about applications that programs and individuals have submitted for approval under K.S.A. 5-507, and amendments thereto, and Supreme Court Rules 911, 912, and 913;
   (6) assist the director of dispute resolution with reviewing, supervising, and evaluating dispute resolution programs; and
   (7) make recommendations to the director of dispute resolution about legislation affecting dispute resolution.

(b) **Membership.** The council is composed of no more than 19 members.

(c) **Appointment.** The Supreme Court appoints the council members.

(d) **Terms.** Each council member is appointed for a three-year term. No member of the council will be eligible for more than two consecutive three-year terms. A member appointed to complete an unexpired term is eligible to serve two more consecutive three-year terms. A member may serve one or more additional terms after a break in service.

(e) **OJA Representative and Liaison Justice.**
   (1) In addition to the members described in subsection (b):
      (A) there will be a permanent, nonvoting seat on the council for a representative of the office of judicial administration; and

(B) the chief justice of the Supreme Court will designate a supreme court justice to serve as liaison to the council.

(2) A person serving the council under paragraph (1) is not subject to a term limit under subsection (d).

[**History:** New rule adopted effective July 1, 2012; Am. effective January 1, 2020.]

RULE RELATING TO SUPREME COURT TASK FORCE ON PERMANENCY PLANNING

Rule 1601

SUPREME COURT TASK FORCE ON PERMANENCY PLANNING

(a) **Purpose.** The Supreme Court Task Force on Permanency Planning is established as a requirement of the federal Administration for Children, Youth, and Families Program Instruction ACYF-CB-PI-12-02 Section II(a)(i) and will constitute the Statewide Multidisciplinary Task Force referenced in the Program Instruction.

The Task Force is established for the purpose of demonstrating meaningful, ongoing collaboration among the district courts of Kansas, the Kansas Department for Children and Families, and Indian tribes located in the State of Kansas. The Task Force must develop and implement strategic plans and monitor progress toward outcomes to meet requirements of pertinent program instructions.

The Task Force will provide oversight to federal Court Improvement Grants awarded to the Kansas Supreme Court by advising the Office of Judicial Administration on the purposes, projects, and functions for which Court Improvement Grants are used.

(b) **Membership.** The Supreme Court will appoint the members of the Task Force, which must include individuals representing the following groups or entities:
   (1) district court judges;
   (2) district magistrate judges;
   (3) Indian tribal courts;
   (4) the State Title IV-B/IV-E agency;
   (5) parents' counsel:
   (6) guardians *ad litem*;
   (7) prosecutors;
   (8) Court Appointed Special Advocate (CASA):
   (9) Citizen Review Board (CRB);
   (10) mental health/behavioral health treatment provider community;
   (11) substance abuse treatment provider community; and
   (12) state department of education.

(c) **Terms.** The terms of the inaugural members of the Task Force will be staggered. The terms of five members will be four years, the terms of four members will be three years, the terms of four members will be two years, and the terms of five members will be one year. At the expiration of the inaugural member's term, the term of

each succeeding member of the Task Force will be four years. No member of the Task Force will be eligible for more than two consecutive four-year terms. An inaugural member is eligible for one four-year term immediately after the expiration of the inaugural term. A member appointed to complete an unexpired term is eligible to serve two more consecutive four-year terms. A member may serve one or more additional terms after a break in service.

(d) **Member Disqualification.** A member who, for any reason, no longer represents the group or entity which the member represented at the time of appointment must notify the Kansas Supreme Court through the Office of Judicial Administration within 30 days of the change in status. This notice of a change in status may, at the discretion of the Court, constitute the member's resignation as a member of the Task Force, and the Court may appoint another individual to the Task Force to represent that group or entity.

(e) **OJA Representative and Liaison Justice.**

(1) In addition to the members described in subsection (b):

(A) there will be a permanent, nonvoting seat on the committee for a representative of the Office of Judicial Administration; and

(B) the Chief Justice of the Supreme Court will designate a Supreme Court Justice to serve as liaison to the Committee.

(2) The persons serving the Committee under paragraph (1) are not subject to a term limit under subsection (c).

[**History:** New rule adopted effective July 1, 2012.]

RULES RELATING TO LANGUAGE ACCESS

Rule 1701

LANGUAGE ACCESS COMMITTEE

(a) **Purpose.** A language access committee is established to make recommendations to the Supreme Court regarding the development and administration of a comprehensive language access program. The goal of the program is to further accessibility to the Kansas courts by persons with limited English proficiency.

(b) **Membership.** The committee is composed of not more than 12 members.

(c) **Appointment.** The Supreme Court appoints the committee members.

(d) **Terms.** The terms of the inaugural members of the committee will be staggered. At the expiration of each inaugural member's term, the term of each succeeding member will be 3 years. No member of the committee will be eligible for more than two consecutive 3-year terms. A member appointed to complete an unexpired term will be eligible to serve two more consecutive 3-year terms. A member is eligible for one or more additional terms after a break in service.

(e) **OJA Representative and Liaison Justice.**

(1) In addition to the members described in subsection (b):

(A) there will be a permanent, nonvoting seat on the committee for a representative of the Office of Judicial Administration; and

(B) the chief justice of the Supreme Court will designate a liaison justice to the committee.

(2) The persons serving on the committee under paragraph (e)(1) are not subject to a term limit under subsection (d).

[**History:** New rule adopted effective May 2, 2014; Am. effective July 1, 2016; Am. effective June 11, 2019.]

Rule 1702

LANGUAGE ACCESS COORDINATORS FOR EACH JUDICIAL DISTRICT

(a) **Local Language Access Coordinator.** Each judicial district must have a local language access coordinator under Rule 107(b)(2)(C).

(b) **Responsibilities.** A local language access coordinator's responsibilities include:

(1) maintaining a list of the district's court interpreters;

(2) complying with Rule 1704(b)(2);

(3) maintaining familiarity with the Kansas code of professional responsibility for court interpreters, Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), and Kansas statutes and Supreme Court rules related to interpreters and language access;
(4) receiving complaints regarding alleged code violations and following local court procedures for responding to the complaints; and
(5) performing other related responsibilities assigned by the district's chief judge.

[**History:** New rule effective July 1, 2016.]

Rule 1703

KANSAS CODE OF PROFESSIONAL RESPONSIBILITY FOR COURT INTERPRETERS

(a) **Applicability.** An interpreter, other than a sign language interpreter, who provides an interpretation or translation service in a district court must comply with the Kansas code of professional responsibility for court interpreters.
(b) **Kansas Code of Professional Responsibility for Court Interpreters.** The Kansas Code of professional responsibility for court interpreters is as follows:

Kansas Code of Professional Responsibility for Court Interpreters

CANON 1: ACCURACY AND COMPLETENESS

An interpreter must render a complete and accurate interpretation or sight translation by reproducing in the target language the closest natural equivalent of the source language message without altering, omitting, or adding anything to what is stated or written, and without explanation.

CANON 2: REPRESENTATION OF QUALIFICATIONS

An interpreter must accurately and completely represent the interpreter's certifications, training, and pertinent experience.

CANON 3: IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST

An interpreter must be impartial and unbiased and must refrain from conduct that may give an appearance of bias. An interpreter must disclose any real or perceived conflict of interest.

CANON 4: CONFIDENTIALITY

An interpreter must protect the confidentiality of privileged and confidential information.

CANON 5: SCOPE OF PRACTICE

While serving as an interpreter, an interpreter must not give legal advice or express a personal opinion to the individual receiving the interpretation service or engage in any other activity that appears to constitute a service other than interpretation or sight translation.

CANON 6: RESTRICTION OF PUBLIC COMMENT

An interpreter must not publicly discuss, report, or offer an opinion concerning a court matter in which the interpreter has been engaged, even when that information is not privileged or required by law to be confidential.

CANON 7: ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE

An interpreter must constantly assess the interpreter's professional ability. If an interpreter has any reservation about the interpreter's ability to competently satisfy an assignment, the interpreter must immediately notify the court.

CANON 8: PROFESSIONAL DEMEANOR

An interpreter's conduct must be professional, respectful, and as unobtrusive as possible.

CANON 9: DUTY TO REPORT ETHICAL VIOLATIONS

An interpreter must report to the proper judicial authority any effort to impede the interpreter's compliance with any law, provision of this code, or other official policy governing court interpreting.

CANON 10: PROFESSIONAL DEVELOPMENT

An interpreter must continually improve the interpreter's skills and knowledge. An interpreter must advance the profession through activities such as professional training and education and interaction with colleagues and specialists in related fields.

[**History:** New rule effective July 1, 2016.]

Rule 1704

INTERPRETER'S ACKNOWLEDGMENT AND AGREEMENT

(a) **Applicability.** This rule applies to an interpreter who provides interpretation or translation services in a district court, except for:
   (1) a sign language interpreter; or
   (2) an interpreter providing interpretation services from a remote location who is employed by an agency that requires the interpreter to comply with ethical standards deemed by the judicial administrator to be substantially similar to the Kansas code of professional responsibility for court interpreters.

(b) **Acknowledgment and Agreement Required to Interpret.** An interpreter must complete and sign an acknowledgment and agreement form approved by the judicial administrator and distributed by the district court which verifies that the interpreter has received and reviewed the Kansas code of professional responsibility for court interpreters and agrees to adhere to the code. The interpreter must return the completed and signed form to the local language access coordinator listed on the form.
   (1) **Signed Form Required to Interpret.** An interpreter may not provide an interpretation or translation service in a district court unless the interpreter has completed and signed an acknowledgment and agreement form, except in a case of emergency as determined by the presiding judge.
   (2) **Signed Form Retention**. During the period of an interpreter's service, the local language access coordinator must retain the interpreter's completed and signed acknowledgment and agreement form. The form may be retained in electronic format. The local language access coordinator must promptly forward a copy of the form to the office of judicial administration.
   (3) **Electronic List.** After receiving a copy of an interpreter's completed and signed acknowledgment and agreement form, the office of judicial administration must place the interpreter's name on an electronic list, available to the district courts.
   (4) **Only One Form Required.** If an interpreter is named on the office of judicial administration's electronic list, the requirements of (b)(1) are satisfied.
   (5) **Not a Substitute for Qualification or Oath.** The presence of a signed acknowledgment and agreement form is not a substitute for a judicial determination of an interpreter's qualifications under K.S.A. 75-4353, or the taking of an interpreter's oath under K.S.A. 75-4354.

[**History:** New rule effective July 1, 2016.]

Rule 1705

KANSAS JUDICIAL BRANCH COURT INTERPRETER ORIENTATION

(a) **Applicability.** The Kansas judicial branch court interpreter orientation is a free, web-based overview of court interpretation skills, best practices, and ethics and the Kansas court system. This rule applies to an interpreter who provides interpretation or translation services in a district court, except for the following:
   (1) an interpreter for a person who is deaf, hard of hearing, or speech impaired; or
   (2) an interpreter providing interpretation services from a remote location outside of Kansas.

(b) **Orientation Registration Information.** The Office of Judicial Administration provides registration information for the Kansas judicial branch court interpreter orientation on the Kansas judicial branch website.

(c) **Completion of Orientation Required.**
   (1) An interpreter must not provide an interpretation or translation service in a district court unless the interpreter has completed the Kansas judicial branch court interpreter orientation, except in a case of emergency as determined by the judge.
   (2) The requirement of subsection (c)(1) becomes effective six months after the effective date of this rule.

(d) **Certificate of Completion; Responsibilities.**
   (1) Upon completion of the Kansas judicial branch court interpreter orientation, an interpreter may print a certificate of completion. The interpreter must provide a copy of the certificate of completion to a Kansas judicial district's local language access coordinator.
   (2) A local language access coordinator who receives an interpreter's certificate of completion must retain it during the period of the interpreter's service. The certificate of completion may be retained in electronic format. The local language access coordinator must promptly forward an electronic copy of the certificate of completion to the Office of Judicial Administration.

(e) **Electronic List.** After receiving a copy of an interpreter's certificate of completion, the Office of Judicial Administration must note receipt of the certificate of completion on an electronic list available to the district courts. The notation on the electronic list is verification that the interpreter has completed the Kansas judicial branch court interpreter orientation.

(f) **Not a Substitute for Qualification or Oath.** The presence of a certificate of completion is not a substitute for a judicial determination of an interpreter's qualifications under K.S.A. 75-4353 or the taking of an interpreter's oath under K.S.A. 75-4354.

[**History:** New rule effective January 1, 2021.]

RULE RELATING TO SUPERVISION OF OFFENDERS

Rule 1801

EARNED DISCHARGE CREDIT FOR JUVENILE PROBATIONERS

(a) **Generally**. A juvenile adjudicated as a juvenile offender and placed on probation under K.S.A. 38-2361, and any subsequent amendments, is eligible to earn credit toward early discharge from probation.

(b) **Substantial Compliance; Calculation**. A juvenile probationer may earn credit to reduce the term of probation when the juvenile has substantially complied with the conditions of probation.

(1) **Substantial Compliance**. Substantial compliance means the following:

(A) the juvenile has made significant progress in meeting the conditions of probation; and

(B) the juvenile has had no violations filed with the court under K.S.A. 38-2368, and any subsequent amendments.

(2) **Calculation**. For each full calendar month of substantial compliance with probation conditions, a juvenile will earn seven days' credit. Calculation of credit will begin the first full calendar month after placement on probation.

(c) **Procedures; Forms**. The judicial administrator is authorized to adopt procedures and forms consistent with this rule to standardize the process of calculating earned discharge credit for juvenile probationers.

(d) **Effective Date**. This rule applies to juvenile probationers adjudicated on and after January 1, 2018.

[**History:** New rule adopted effective January 1, 2018.]