

LOCAL RULES OF COURT
FOR THE 19TH JUDICIAL DISTRICT OF KANSAS
COWLEY COUNTY, KANSAS
EFFECTIVE MAY 1, 2012
REVISED April 1, 2018

JUDGES

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PREFACE

The following rules have been adopted by the Judges of the Nineteenth Judicial District of Kansas pursuant to Supreme Court Rule 105 and K.S.A. 60-267. These rules may be amended, or new rules may be promulgated, from time to time as necessary, by the judges of this judicial district. Current copies of the rules are on file in the office of each Clerk of the District Court in this District, will be available on the official Cowley County website and will be filed with the Office of Judicial Administration in Topeka, Kansas. Nothing herein is intended to contravene any statute or Supreme Court rule.

Except as specifically set forth herein, all previous court rules and/or administrative orders of this Court are hereby repealed.

Cowley County District Court
311 East 9th, P. O. Box 472
Winfield, KS 67156
(620)221-5470
Website: www.cowleycounty.org/court

Rule No. 1

Application of Rules.

These rules shall apply to all matters pending before any Court in this District, whether originally filed within this District or transferred to this District from another court. The following rules shall be applied as written except as they may be modified by the presiding judge in any pending action as may be deemed necessary by such judge to meet emergencies or to avoid injustice or great hardship.

These rules shall apply to all attorneys practicing within or before this District, and to all parties appearing without counsel.

Rule No. 2

Administrative Orders.

District Court Administrative orders may be promulgated from time to time by the Chief Judge of this District and shall be effective upon filing in the office of the Clerk of the District Court. Such orders shall be binding on all Court employees, staff and attorneys practicing in this District, and shall control administrative procedures and personnel policies in the District. The Clerk of the District Court shall maintain an official file of such orders, which shall be available for public inspection during normal business hours, and shall be available through the official Cowley County website, www.cowleycounty.org/court. Nothing in such orders shall be interpreted to contravene any statute or court rule, or to affect the substantive rights of any litigant in any judicial proceeding.

Rule No. 3

Assignment of Cases.

A. All assignments shall be made by the Chief Judge in a manner that will equalize the caseload among the judges and may be changed by the Chief Judge as deemed necessary. After such assignment, all proceedings shall be held in the division to which the case has been assigned unless otherwise determined by the assigned judge. In the event of the absence or disqualification of such judge, or upon the request of a party, the Chief Judge may appoint the judge of another division to hear the case. In the absence of the assigned judge, any other judge may approve or sign any order, judgment, warrant, or other document as may be necessary as such judge deems appropriate and in the interest of justice, without reassignment by the Chief Judge.

B. All domestic cases shall be filed in the Winfield domestic division, including those filed by out-of-county attorneys. All domestic proceedings shall be held in Winfield unless otherwise directed by the assigned or Chief Judge.

As may be requested by the Thirteenth Judicial District, and in compliance with Supreme Court Assignment No. 28, the Chief Judge shall approve or deny, as may be necessary, the assignment of Cowley County judges to the Thirteenth Judicial District. In addition, the Chief Judge may assign such cases filed in the Nineteenth Judicial District to a judge in the Thirteenth Judicial District as may be necessary or appropriate, subject to the approval of the Chief Judge of the Thirteenth judicial District, and in compliance with Supreme Court Assignment No. 28.

C. All Limited Action cases shall be filed in Winfield unless the plaintiff resides or conducts business south of Strother Field and files twenty-four (24) or less limited action cases in a calendar year, then such plaintiff may file in Arkansas City. All out of county plaintiffs shall file in Winfield.

D. Unless otherwise directed by the Chief Judge, all crimes alleged to have occurred south of 212th Road shall be assigned to Division 2 in Arkansas City; all crimes alleged to have occurred north of 212th Road shall be assigned to Division 1 in Winfield.

E. Any case dismissed and re-filed shall be assigned to the same division to which it was previously assigned.

F. Any case assigned to a division of court may be reassigned by the Chief Judge to another division of court as the judicial work of the district may require.

Case Settings.

Each judge maintains his/her individual calendar and has specific settings for some case assignments. For specific information regarding case settings for each judge, please consult the Cowley County website. (www.cowleycounty.org/court)

Rule No. 4

Electronic Filing.

Effective June 25, 2018, all documents filed within new or existing cases shall be electronically filed in accordance with Supreme Court Rule.

Rule No. 5

Courtroom Formality and Decorum.

- A. The flag of the United States shall, at all times while Court is in session, be displayed at, or in close proximity to, the bench.
- B. In order to show the appropriate honor and respect to our judicial system and the authority of the presiding judge, every individual present in the courtroom shall rise at the entrance of the judge into the courtroom.
- C. When appearing before the Court, all persons having business before the Court shall be properly attired in a professional and business manner as may be dictated by the weather or other conditions. At no time shall excessively casual attire be permitted in the courtroom, including but not limited to shorts, cut-offs, tank tops, flip-flop shoes, hats, caps, sunglasses, or any other casual or inappropriate attire as may be determined by the presiding judge.

All attorneys and/or court personnel, as may be proper and applicable, shall advise clients, witnesses, spectators or other attendees, of the appropriate and acceptable attire prior to attending court in order to avoid potential embarrassment or undue delay in the proceedings.

- D. Upon entering the courtroom, all cell phones or other technology shall be turned off or adjusted so that it shall not disturb or interrupt court proceedings. Repeated violation of this rule may result in the confiscation of said device by the presiding judge at such judge's discretion and determination.

- E. Electronic and photographic media coverage of judicial proceedings shall be undertaken only in accordance with Supreme Court Rule 1001. Still or motion pictures, audio or videotapes and recording equipment and cameras of all types are otherwise prohibited in

the courtroom. Nothing within this rule shall prohibit the authorized use of cameras or recording equipment in the presentation of evidence at any hearing or trial.

F. The swearing of witnesses is an essential and significant part of the judicial process, the violation of which can have serious and severe consequences. It should, therefore, be a serious and impressive ceremony and not a mere formality. Unless an exception is made by the presiding judge, each witness shall be sworn individually at the witness stand by the Court Reporter, if in attendance, or by the presiding judge if the Reporter is not in attendance.

G. Attorneys appearing before the Court of this District shall:

- (1) address the Court from the lectern or a position at the counsel table;
- (2) stand at the lectern or counsel table while examining witnesses, except when handling exhibits. When a sound amplification or recording system is being utilized, they shall address the Court and jury, and examine witnesses, from a position in effective proximity to the microphone;
- (3) advise their clients, witnesses, and any staff accompanying them, of the formalities of the Court and seek their full cooperation therewith, in order to avoid embarrassment to the Court and laymen as well;
- (4) examine all witnesses with courtesy and respect, and presume a good faith attendance by each witness until the contrary clearly appears;
- (5) not approach the bench or the witness stand without permission of the Court, nor appear to engage the Court in a confidential manner;
- (6) not exhibit familiarity with witnesses, jurors, opposing counsel or the presiding judge during hearing or trial, and the use of first names shall be avoided. No juror shall be addressed individually or by name during jury arguments.

(7) make all objections to the Court. Attorneys and *pro se* litigants will not be permitted to argue with each other during court proceedings. Objections shall be brief, concise and no longer than is necessary to state the nature of the objection. Argument or a “talking objection” is improper. Once the Court has ruled on an objection, there will be no additional argument.

H. Spectators will not be permitted to consume food or beverage in the courtroom or on the second floor of the courthouse, unless specifically allowed by the presiding judge.

I. No spectator, counsel or party shall carry a sign or display pins, buttons or other materials that are designed to communicate a position or message to others during a trial or when a juror is present, except as specifically allowed by the presiding judge.

J. Spectators will not be permitted to engage in any activity that interferes with giving attention to the court proceedings.

K. Counsel, parties and spectators shall have due respect for proceedings being conducted while court is in session, and toward that end shall exercise restraint in carrying on conversations with other spectators, counsel or parties.

Rule No. 6

Court Safety.

A. All persons seeking entry to a Courtroom or any Court areas of operation are subject to search by the Sheriff or other officers designated by the Sheriff or by the Court. Such search may include the person of and/or their briefcases, parcels, purses or other containers carried by such persons seeking entry to a Courtroom or Court area.

B. Notwithstanding any other provision herein, it shall be within the discretion of the presiding judge to permit or restrict a Prosecuting Attorney, law enforcement officer, retired law enforcement officer, attorney or security officer to possess, wear or carry a firearm or other weapon in the Courtroom or Court area in accordance with Kansas law.

C. With the exception of weapons carried by law enforcement personnel, no weapons, other than exhibits, shall be permitted in any Courtroom. No other person shall bring a weapon other than an exhibit into any Courtroom except as specifically permitted by this rule. The Court may require that any firearm intended for introduction as an exhibit be presented to the Sheriff for a safety check prior to its being brought into any Courtroom; further, the Court may require that any weapon intended for introduction as an exhibit be retained in the custody of the Sheriff or other person designated by the Court before and after its introduction as an exhibit.

D. No lay person may wear or carry a concealed or visible firearm, knife, or other weapon into a Courtroom or Court area, even if licensed to so carry, unless it is specifically authorized by the presiding judge.

E. "Courtroom or any Court areas of operation" means those areas in any building, which are used for Court proceedings, or to conduct Court-related business, including but not limited to, courtrooms, ancillary courtrooms, jury rooms, Judge's chambers, office of the Clerk

of the District Court, Court Reporter, Court Services, and/or any other offices and areas used for official Court business, together with waiting areas, corridors and hallways adjacent thereto.

F. This rule shall not apply when the Courtroom or other Court areas of operation are being utilized for public meetings conducted after court hours of operation.

G. See also, Administrative Order 16-2.

Rule No. 7

Files, Records & Transcripts.

A. Removal of Court Files from Courthouse.

(1) Abstractors and attorneys of record, whose places of business are within the district and who are in good standing, shall be permitted to check out a court file with the Clerk of the Court as set forth in Supreme Court Rule 106. No file shall be held by an abstractor or attorney for more than seven (7) working days without the permission of the assigned judge, or in the absence of the assigned judge, the Chief Judge.

(2) Files shall be returned to the Court no later than 4:00 p.m. two (2) working days before scheduled hearings on a case, even if the file has been checked out less than seven (7) days.

(3) Files checked out shall not be entrusted to anyone other than the attorney, abstractor, or their employees.

(4) The Clerk shall maintain an index of files removed from the Clerk's office, and shall retain the completed check out slip until the file has been returned to the Court.

B. Public Records Search Requests.

(1) The purpose and goal of this rule is to guide the access of public records under control of the courts in this district, to protect court records from damage and disorganization, to prevent excessive disruption of court functions, to provide guidelines for requesting and obtaining information and to ensure effective and timely action in response to requests for inspection of public records as required by statute and Supreme Court Rules.

(2) The Clerk of the District Court shall be the public information officer for the judicial district.

(3) Public records shall be open for inspection during the time the District Court Clerk offices are open to the general public.

(4) Inspection requests should be made in writing on a form to be provided by the Clerk. The use of the form is encouraged but not mandatory in all circumstances. The Clerk of the Court in this district has designated all trial court clerks as additional persons to be custodians of the records for the purposes of the Open Records Act.

(5) The fee to be paid for a copy of any record shall be \$0.50 per page and \$2.00 per authentication or certification. An access fee and/or research fee of \$12.00 per hour may be assessed for employee time when concentrated attention of a custodian of the records is required. Payment in advance of the custodian's estimated fees may be required.

(6) In the event a District Court employee is required to conduct a search to provide the records requested, such search will be done in a timely and prompt fashion, but such employee may not be able to do so immediately due to the employee's regular court duties. In such case, the search will be conducted and the records produced within three (3) business days of the request being made and the employee shall inform the individual requesting the information of the potential delay.

(7) No District Court employee may conduct a search that requires the making of a legal judgment or determination.

(8) Requests for criminal record searches for employment, credit or the like shall be referred to the executive branch agency most likely to have centralized reference files, e.g., the Kansas Bureau of Investigation or the Division of Vehicles.

(9) Certain court records are confidential and are excepted from public examination and disclosure under the Kansas Open Records Act. The disclosure of these records is specifically prohibited or restricted by federal law, state law or by Kansas Supreme Court Rule.

C. Requests for Transcripts of Court Proceedings

(1) In any proceeding before a Court in this District, counsel requesting a written transcript of such proceeding shall submit a written request for same to the Court Reporter who took the proceedings, or who has direct access to the electronic recording of the proceeding.

(2) The Court Reporter may, at her discretion, require prepayment for any requested transcript.

(3) When a party has filed a written request for a transcript and subsequently elects to withdraw the request, they shall be responsible for advising the assigned Court Reporter prior to transcription. Notification after complete or partial transcription will not relieve the party of costs incurred to the point of notification.

(4) The transcript and one copy will be prepared at the requesting individual's expense. Upon completion, the original transcript shall be filed with the Clerk of the District Court and the copy delivered to the requesting individual.

D. Review of Electronic Tapes of Court Proceedings

(1) Counsel may review the electronic tape recording of court proceedings only upon first obtaining the consent of the presiding judge. The Clerk of the District Court may designate the time, place and manner of review and shall designate either a Certified Shorthand Reporter or a Clerk of the Court to assist counsel and monitor the review. Under no circumstances shall the tape recordings be taken from the Court, the office of the presiding judge or the office of the Clerk of the District Court.

(2) At the discretion of the presiding judge, a copy of the digital record may be placed upon a CD, DVD or other electronic format; however, a CD, DVD or other electronic format will not be cited in Court as the official record. The Clerk of the Court shall charge a reasonable handling fee for reproduction upon a CD, DVD or other electronic format, which funds shall be paid to the General Fund of the County.

E. Every attorney, party or other individual shall provide a self-addressed, stamped envelope to the Clerk of the District Court when requesting that a copy of any document be mailed by said Clerk.

F. Except as set forth in section "A" above, no one other than a District Court Clerk shall disassemble a court record or make any markings on any document therein.

Rule No. 8

Monetary Deposits with District Court Clerk.

- A. No money shall be deposited with the District Court Clerk without a court order entered and/or approved by either the presiding judge or the Chief Judge.
- B. Upon deposit with the Clerk, such money shall be held until a subsequent court order directing how the money is to be disbursed is entered and/or approved by the presiding judge or the Chief Judge.
- C. Every order entered with the Court and served upon the District Court Clerk shall set forth that the funds are to be paid directly to an attorney of record in such case and shall further set forth specifically how such attorney is to disburse and pay out such funds.
- D. Upon the entry of an order of disbursement, the District Court Clerk shall forthwith, and as soon as practicable, disburse the funds to the attorney as set forth in the order.

Rule No. 9

Pro Se Litigants.

A. Due to the specialized knowledge and training necessary to conduct a trial, it is advisable for a litigant to have an attorney. *Pro se* litigants should be aware that the assigned judge will not give or offer to give personal instruction regarding Courtroom procedures, take over responsibilities that would ordinarily be attended to by trained legal counsel as a matter of course (e.g., preparation of motions, framing questions which comply with the rules of evidence, selecting a jury, preparing jury instructions, and similar duties), or otherwise aid or assist the *pro se* litigant in presenting his/her case.

B. *Pro se* litigants shall be permitted to review court records in the same manner as the general public and as prescribed by the Clerk of the District Court.

C. No *pro se* litigant shall be allowed to check out or disassemble any court file or other record.

D. Requirements imposed by these Cowley County District Court Rules, Kansas statutory and case law, and the Kansas Supreme Court Rules, upon any counsel or attorney of record, also apply to parties appearing *pro se* and without benefit of legal counsel. All *pro se* litigants are required to follow the same standards, rules of procedure and rules of evidence as are binding upon litigants who are represented by counsel.

Rule No. 10

Process Servers.

A. Process servers appointed under the provisions of K.S.A. 60-303 and 61-3003 shall be appointed for no more than a period of one (1) year, expiring on December 31 of each year for which appointed.

B. The appointment of a process server shall be limited and so state in the Order of Appointment that it is for the purpose of serving process under K.S.A. 60-303 and 61-3003, **without authority** to serve Writs of Execution, Orders of Attachment, Replevin Orders, Orders for Delivery, Writs of Restitution and Writs of Assistance.

C. All process servers shall comply with the general guidelines for process servers issued by the Court and hereinafter set forth, which are on file in the office of the Clerk of the Court.

D. The application for appointment of process server shall be submitted by an attorney duly authorized to practice law in the State of Kansas, which attests to the good reputation of the person applying for appointment. The appointment may be made by any District Judge in this district.

E. All process servers appointed in this judicial district shall abide by the following:

(1) Professionalism. Appointees for the service of process are expected to act in a professional manner during the execution of their assigned duties.

(2) Use of force. The use of force by process servers will not be authorized in this district.

(3) A process server is expected to know the legal rights of party litigants and the rights of third persons.

Rule No. 11

Interpreters.

The use of interpreters shall comply with requirements as set forth in Supreme Court Rules 1701 through 1704, Rules Relating to Language Access.

Rule No. 12

Cowley County CASA Program.

A. The Cowley County Court Appointed Special Advocate Program (CASA) shall be administered by the Cowley County District Court and shall be subject to the rules, regulations and standards set forth in Supreme Court Rule 110, shall meet the standards relating to CASA volunteer programs promulgated by the Judicial Administrator and shall abide by the rules set forth below.

B. All CASA volunteers must be certified by the local program and shall meet the criteria established and set forth by the Cowley County CASA and as approved by the Chief Judge.

C. The responsibilities of the Court to the CASA program and of the CASA program to the Court shall be those set forth in the current Memorandum of Agreement between Cowley County CASA and the Nineteenth Judicial District. A copy of the agreement shall be available in the CASA office.

D. Cowley County CASA shall, when directed by the Court, investigate those facts and circumstances affecting the welfare of a child for whom appointed, and to advocate the best interests of the child and assist the Court in obtaining for said child the most permanent, safe, and homelike placement possible.

E. Upon motion of any party, or upon its own motion, the Court may appoint a CASA to any child that is alleged to be, or has been adjudicated, a child in need of care as defined by law, a juvenile offender, or to any child that is involved in a domestic relations dispute. All such orders of appointment shall be in accordance with K.S.A. 38-1505(a) and shall authorize the CASA to carry out those duties prescribed by Supreme Court Rule 110. The Order of Appointment shall be signed by the judge assigned and delivered to the Clerk of the District Court for filing.

F. The Clerk of the Court shall file the Order of Appointment in the pending proceeding and provide file-stamped copies of said order to the Cowley County Attorney, when appropriate, the guardian *ad litem*, counsel for the parents or the parents, if *pro se*, CASA, SRS, and any other party or agency as designated in the order or by the Court.

G. Upon receipt of a copy of the Order of Appointment, the Director of Cowley County CASA shall select an appropriate and qualified volunteer and file with the Clerk of the District Court a Notice of Assignment designating the name of said volunteer. Cowley County CASA shall thereafter direct copies of said notice to the Cowley County Attorney, when appropriate, the guardian *ad litem*, counsel for the parents or the parents, if *pro se*, the CASA volunteer, SRS, and any other party or agency as reflected in the Order of Appointment.

H. Upon designating the assigned CASA volunteer, the CASA Director shall prepare and cause to be executed before the Clerk of the District Court an oath subscribed by the volunteer, which oath shall be filed with the Clerk in said proceedings.

I. In the event an alternate or substitute CASA volunteer becomes necessary, the Director of CASA shall comply with the provisions of paragraphs G and H above as they apply to the alternate or substitute volunteer.

J. In the event a grievance or conflict should arise concerning the Cowley County CASA program, such grievance or conflict shall be stated in writing and presented to the Chief Judge for resolution. Any conflict or grievance concerning a volunteer shall be referred to the CASA Director and the assigned judge for resolution.

K. The assigned judge may, at any time during the pendency of a matter, issue an order terminating the appointment of the CASA. The Court, acting within its discretion, may issue said order upon motion of any party or upon its own motion. The Court shall issue such order or ensure that such order is included within the journal entry when said proceedings have reached a judicial conclusion and no other court intervention is foreseen or warranted.

Rule No. 13

Jury Selection.

A. At such times as the Court deems it necessary to secure a panel of jurors to serve herein, said Court, as jury commissioner, shall direct that a sufficient number of jurors be selected from the computer program used by the County Clerk from voter registration and driver's license records by random selection.

B. The list of names so selected, and any additional names drawn herein, shall be certified by the County Clerk to the Clerk of the District Court. The County Clerk shall assist the Commissioner in the preparation, drawing and maintenance of a record of such jury panels and by performing such additional duties as may be directed by the Commissioner.

C. At least five days before the attendance date of a jury panel, the Commissioner shall summon the person so selected by mailing a written notice to each such person by first class mail, postage prepaid.

D. In all cases where an insufficient number of jurors appear, or if a panel be exhausted by challenge or otherwise before the jury is sworn, the Court may order the Sheriff or the Clerk to summon a sufficient number of other persons to complete the jury. The Court may order such additional members to be summoned within a reasonable time prior to the attendance date.

E. Questions asked and answered on the juror affidavit shall not be repeated unnecessarily in *voir dire* examination. Counsel shall not inquire with reference to anticipated instructions by the Court nor attempt to elicit promises from the jury. Questions shall be group questions as far as practicable and shall not be argumentative.

F. Pursuant to K.S.A. 60-251, proposed jury instructions shall be presented to the Court in writing and served on each adverse party no later than ten (10) days prior to the opening of trial and before the taking of evidence, or as the presiding judge may direct. Parties

may submit additional requested instructions pertaining to questions arising during the trial or requests for modification of previously submitted instructions at any time prior to the giving of final instructions to the jury. Pattern instructions may be requested by number.

Rule No. 14

Form of Pleadings.

A. Counsel shall prepare all legal forms required to prosecute litigation in which they are involved including, but not limited to, summons, subpoenas, writs, child support and income withholding forms, garnishments, executions and other documents. The Clerks shall not prepare such forms. The original document, together with the required copies shall be submitted to the Clerk at the time of filing.

B. Counsel shall furnish the Clerk of the District Court with one (1) additional copy of the journal entry wherein title to real estate is involved for certification to the County Clerk pursuant to K.S.A. 58-2242(a).

C. In all cases in which title to real estate is affected by the decree of the Court, the legal description shall be set forth in full in the journal entry.

D. Sufficient conformed copies of every petition shall be filed to supply copies for defendants. Conformed copies of all subsequent motions and pleadings shall be delivered or mailed to all counsel of record with proper certificate thereon and filed and served in accordance with K.S.A. 60-205 and 60-211.

E. Any request for the return of a file-stamped or certified copy of any document filed with the court shall be accompanied by any required fee as set forth in Rule #7 and a self-addressed, stamped envelope.

Rule No. 15

Civil Motions.

A. All motions, unless made during a hearing or at trial, shall be in writing and shall be filed with the Clerk. An original shall be filed and shall be accompanied by a notice of hearing setting forth the date and time to be heard or such motion will not be accepted for filing.

B. Before a motion is filed and either oral argument or an evidentiary hearing is requested, the attorney filing the motion is required to either set the matter on the appropriate hearing docket, or shall, with opposing counsel, obtain from the assigned judge a date and time for hearing on the motion.

C. Request for oral argument upon a motion shall not be necessary and shall be afforded every movant and respondent as a matter of course. In the event the moving or respondent party determines an evidentiary hearing is necessary, such party shall notify the Court and opposing counsel to determine a mutually convenient hearing date for such evidentiary hearing.

D. Each motion shall provide the reasons and authorities in support of the motion either within the body of the motion or within a brief or memorandum attached to or filed contemporaneously with the motion.

E. Any motion may be dismissed by the Court for failure to comply with the requirements of this rule.

Rule No. 16

Pre-Trial Conference.

A. A pre-trial conference shall be held when called by the judge upon the request of any party or upon the Court's own motion, unless counsel for the parties submit to the Court an agreed pre-trial order and such pre-trial order is approved by the judge to whom the case is assigned. An agreed order submitted pursuant to this paragraph shall contain at least the information and orders set forth in the form of the pre-trial order attached to these rules as Appendix II (for civil cases) or Appendix XIII (for domestic cases), as may be applicable.

B. Upon receipt of notice setting a pre-trial conference, counsel for each party shall complete the appropriate pre-trial questionnaire and furnish same to counsel for all parties and to the Court at least seven (7) days prior to the conference. All questions shall be answered or indicated as not applicable and shall be typed. The parties shall state with particularity the factual basis and theories for their respective claims. App. I and XII.

C. Should a party, or his/her attorney, fail to appear at a pre-trial conference after notice, an *ex parte* hearing may be held and appropriate judgment or dismissal entered.

D. If a party or his/her attorney fails to comply with the pre-trial rules as promulgated, the Court may enter an order dismissing the action, taxing attorney's fees incurred as costs, or any other appropriate judgment.

E. The official Court Reporter or an Electronic Recording Machine shall be available to record each pre-trial conference if requested by a party or ordered by the Court.

F. At the close of the pre-trial conference, the Court shall direct that a pre-trial order be prepared by counsel, which shall comply with either Appendix II (civil cases) or Appendix XIII (domestic cases), and shall include any other provisions as the Court may direct. The Court shall designate the attorney who will be required to prepare and submit a proposed pre-trial order to opposing counsel and obtain written approval thereon, and file the same with the

Court. In the event counsel are unable to agree on the form of the pre-trial order, each of the parties shall file with the Court a suggested pre-trial order as directed by the judge, and in no event later than one (1) week before trial, and the judge shall settle the order on notice.

G. Once entered and approved by the Court, the pre-trial order shall control the subsequent course of the action and shall not be modified except by order of the Court on its own motion or a motion of a party to prevent manifest injustice.

H. If additional exhibits or writings are discovered after the pre-trial conference is held, the party intending to use such exhibits or writings shall immediately furnish copies to opposing counsel and may submit such exhibits to the reporter to be marked for identification. If additional witnesses are discovered, opposing counsel shall be notified immediately and furnished their names, addresses and the nature of their testimony. Such notification shall be in writing and filed with the Court. Failure to comply with these requirements shall make such exhibits and writings inadmissible and any such witnesses incompetent to testify.

I. All pre-trial conferences in condemnation cases shall comply with Supreme Court Rule 140(d).

Rule No. 17

Discovery.

A. The party propounding interrogatories or requests for admissions shall first set forth each question or request in clear and concise language, leaving an appropriate space for the answer. The answer or response to each interrogatory or request shall be made in the space provided immediately following the interrogatory or request and shall not be provided on separate answer pages except as needed for continuation of the answer or request when insufficient space has been provided. The adverse party shall prepare the affidavit to be signed by the appropriate party and shall attach it as the last page of the interrogatory.

B. The original and two copies of the propounded interrogatories or requests for admissions shall be served upon adverse counsel with copies to all other counsel, with a notice of discovery being filed with the Court.

C. The original interrogatories with the answers or request for admissions with responses shall be returned to the opposing counsel upon completion, with a notice of response to discovery being filed with the Court.

Rule No. 18

Domestic Relations.

A. *Ex parte* Orders.

(1) *Ex parte* restraining orders, temporary support orders and temporary custody orders will be heard only upon the verified application by the petitioner, provided that such applications and orders are prepared in accordance with forms prescribed by the Court, and provided further, that the opposing party is not represented by counsel. (See Appendices)

(2) Requests to modify *ex parte* orders obtained under this rule shall be made upon application and shall comply with Supreme Court Rule 139, where applicable.

(3) Temporary support applications shall be accompanied by a Domestic Relations Affidavit and Child Support Worksheet as set forth in the Kansas Child Support Guidelines.

B. Family Workshop.

(1) Parents in divorce, annulment, separate maintenance, and paternity actions, whether upon original filing or in post-judgment matters, in which child custody and/or parenting time is or becomes at issue, shall attend the Divorce Workshop conducted by Four County Mental Health Center, Family Transition Educational Seminars, or such comparable course as the Court may pre-approve, and as may be ordered by the Court. (App. IX)

(2) Each parent shall be responsible for prepayment of the fee for the class and for enrolling in such class.

(3) The Court may suspend the parenting time of, hold in contempt, or grant judgment against, any party who fails or refuses to comply with this rule.

C. Mediation.

(1) All parties to a divorce, annulment, separate maintenance or paternity action, whether upon original filing or in post-judgment matters, in which child custody,

parenting time, or any other matter is contested, shall participate in mediation with either a Cowley County Court Services Officer or a private mediator regarding any or all contested issues, as may be ordered by the Court.

(2) Parties directed by court order to participate in mediation services provided by Court Services Officers of the Nineteenth Judicial District shall pay a fee, as may be determined from time to time by the Chief Judge, to the Clerk of the District Court of Cowley County, Kansas. The fee shall be paid by cash, certified check or money order, or drawn upon the trust account of the attorney of record in the case. The party requesting mediation and submitting the order for court approval shall pay his or her portion of the fee at such time as the order for mediation is submitted to the Court for approval. The adverse party in the matter shall pay his or her portion of said fee within fourteen (14) days of the entry of the order for mediation.

Any order of mediation wherein services are to be provided by a Court Services Officer shall contain language directing the payment of this fee as set forth in this rule. The failure of a party to pay said fee shall result in the party being subject to sanction by the Court. (App. X)

Upon receipt of the mediation fee, the Clerk of the District Court shall cause said funds to be deposited into the Special District Court Fund created by resolution number 2011-03 as established by the Board of County Commissioners for Cowley County, Kansas, on March 15, 2011.

(3) In the event the parties elect, or are ordered by the Court, to hire a private mediator to provide such services, each party shall be responsible for prepayment of said mediator's fee as agreed with the mediator. The failure of a party to pay said fee shall result in the party being subject to sanction by the Court. (App. XI)

(4) All *pro se* litigants shall be assigned to the Court Services Officers for mediation, unless both parties consent to the use of a private mediator.

(5) All cases ordered to mediation for division of property, resolution of financial matters, or concerning any other issue in controversy, whether or not such issues also include custody or parenting time, shall be ordered to a private mediator approved by the Court.

(6) Failure to participate in mediation as ordered shall result in the party so failing being subject to sanction by the Court, including contempt of court, suspension of parenting time, or any other sanction deemed appropriate by the Court.

(7) The assigned judge may waive mediation requirements in post-judgment matters for good cause shown.

(8) Any attorney or other individual submitting him/herself as a private mediator in Cowley County shall be certified as having completed the domestic relations mediation training program approved by the Supreme Court.

D. Case Management/Limited Case Management.

In the event the presiding judge orders, or the parties agree to, either case management or limited case management, which may require the appointment or hiring of an out-of-county case manager, such case management or limited case management shall be governed by K.S.A. 23-3507 through 23-3509. The procedure for limited case management as utilized by Sedgwick County District Court and set forth in Sedgwick County Local Rule 423 shall not apply nor be followed in a Cowley County matter assigned to limited case management.

E. All final orders concerning support of minor children shall include language concerning reimbursement between the parties of unpaid or deductible health and medical

expenses, as set forth in Appendix XIV, and a health insurance notice per the Internal Revenue Code.

F. With the consent of the presiding judge, temporary and permanent parenting plans may include language authorizing and directing law enforcement agencies to assist in enforcing the provisions of the parenting plan as set forth in Appendix XV.

G. Child Support Orders.

(1) In the event a deviation from the Child Support Guidelines is requested by either party, that party shall present such testimony or other evidence supporting the deviation requested, which shall be more than mere agreement of the parties.

(2) Before the shared expense formula of the Child Support Guidelines can be applied to the computation of child support, on either a temporary or permanent basis, the parties shall enter into and present to the Court for approval, an agreed, shared direct expense plan as set forth in the Child Support Guidelines.

(3) There shall be no trustee or enforcement fee added to the computation of child support in any Cowley County domestic matter.

H. Prior to the Court hearing any matter for final determination in which division of property and/or marital debt, custody, parenting time, maintenance or child support are in issue, including post-judgment actions, each party shall submit a Domestic Relations Affidavit with current and/or updated information, and a Proposed Final Order (formerly local Rule 11A proposal) setting forth his/her proposals for the division of property, custody of and parenting time with the minor child(ren), the award of maintenance and child support, and the allocation of indebtednesses owed by the parties.

Any argument or legal authority which the party believes to be pertinent to the issues in controversy shall be provided separate from and in addition to the party's proposed order.

Both documents shall be served on opposing counsel, or a party not represented by counsel, and the Court not less than five (5) days prior to the date scheduled for hearing of the case, or as otherwise ordered by the Court.

I. When child custody is in dispute, the Court shall not admit, pursuant to K.S.A. 60-460(a) (testimony of available declarant exception to hearsay rule), testimony respecting hearsay statements of the child or children whose custody is in dispute, or that of a sibling, without agreement between or waiver by the parties and their counsel. If a party intends to offer testimony of a child or children whose custody is in dispute, or that of a sibling, counsel proposing to introduce such testimony shall advise the Court and opposing counsel at least fourteen (14) days in advance of the trial date and a pretrial conference shall be held to determine, in the discretion of the Court, if such testimony will be allowed and the circumstances under which it will be allowed.

In the event a party intends to request that the Court speak with a minor child pursuant to K.S.A. 23-3209, such party shall advise the Court and opposing counsel at least fourteen (14) days in advance of the trial date and a pretrial conference shall be held to determine, in the discretion of the Court, if such testimony will be allowed and the circumstances under which it will be allowed.

J. The Family Law Committee of the Cowley County Bar Association has compiled guidelines for use in domestic cases in Cowley County. The guidelines are included in the Appendices. The guidelines are not rules of this Court but may be submitted and used by either party, whether in agreement or not. The adoption of the guidelines by the assigned judge, however, will be determined on a case-by-case basis and as is in the best interests of the child(ren) and/or the parties.

K. In the event valuations, ownership or other factors affecting the information in the Domestic Relations Affidavit changes from the initial filing of the action until the final hearing,

counsel shall update and modify such affidavit to reflect said changes before the matter will be heard by the Court.

L. All separation agreements or property settlement agreements found to be fair, just and equitable, adopted by the Court and incorporated into the Court's orders, shall be set forth in full in the Decree of Divorce.

M. No final hearing in a domestic matter shall be heard until all costs are paid in full.

N. Several forms for *ex parte* and other domestic documents are attached as Appendices to these rules. In the event the documents presented to the Court vary substantially from those set forth in the Appendices, counsel shall specifically notify the Court of such variances.

Rule No. 19

Limited Actions & Small Claims.

A. Default judgment will not be entered against a defendant for attorney's fees, prejudgment interest, an interest rate higher than that allowed by statute, unliquidated damages, or punitive damages without production of evidence.

B. A request for attorney's fees must be accompanied by supporting evidence and a statement of charges setting forth the reasonableness of the request. Irrespective of the terms of the contract, a flat 15% attorney's fees will not be granted without proof it is a reasonable amount under the circumstances of the case. The Court will not grant prospective attorney's fees in any case.

C. All attorneys representing either the plaintiff or the defendant in an eviction action filed under the Limited Action Procedure shall appear on behalf of his/her client at all scheduled court dates, including the initial admit/deny hearing, and whether or not an answer has already been filed on behalf of the defendant. In the event the plaintiff's attorney in any other limited action matter chooses not to appear at the first appearance court date and seeks the entry of default or consent judgment, all proof must be attached to the petition or otherwise provided to the Court prior to said appearance date or it will not be considered in rendering judgment against the defendant(s).

D. Upon written answer of a defendant, all further case management conferences, pretrial conferences or trial settings shall be made at the request of either the plaintiff or the defendant or upon the Court's own motion.

E. Hearings in Aid of Execution

(1) A judgment debtor shall not be required to return to Cowley County District Court for a hearing in aid of execution, or any continuance thereof, more than a total of three (3) times in any 12-month period. In the event a single plaintiff/judgment creditor has

more than one (1) judgment against the same defendant(s)/judgment debtor(s), all of which judgments are handled by the same law firm or agency, the limitation on hearings in aid shall be applied to all such cases or judgments collectively, not individually.

(2) A hearing in aid may be continued no more than two (2) times at the request of either party upon the entry of an order of continuance signed by the parties or their counsel. A contempt hearing shall not be continued without prior approval of the Court. Signature of the debtor may be waived at the discretion of the Court upon verification by plaintiff's counsel of notice being provided to said debtor either personally or by U.S. Mail sent to the debtor's last known address, except and unless, said debtor is the defendant in multiple cases before the Court and a signature will assist either the debtor or the Court in clarifying actual notice and reduce confusion.

(3) All motions for contempt of court for failure to appear at a hearing in aid or a continuation thereof shall be filed within three (3) months of the debtor/defendant's failure to appear. Failure of the plaintiff/creditor to bring a contempt citation within such three (3) month period will be deemed a waiver of plaintiff/creditor's right to do so.

F. At the discretion of the Court, a debtor may be allowed to purge him/herself of contempt as may be requested by Plaintiff's counsel or determined by the Court.

G. Plaintiffs shall make every effort to combine multiple claims against the same defendants into one action in order to increase the efficiency of the judicial system and to avoid unnecessary confusion for the defendant(s).

H. After judgment in a small claims action has been entered, an attorney shall file an entry of appearance and shall send appropriate notice thereof to the opposing party before appearing on behalf of or representing a party to a small claims action.

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

J. Docket and filing fees exempted from payment at the time of filing, pursuant to K.S.A. 60-2005, K.S.A. 61-4001(b), S.Ct.R. 186(g) and S.Ct.R. 187(g)&(h), shall be paid to the Cowley County District Court in accordance with Administrative order 15-1.

Rule No. 20

Mortgage Foreclosure Cases.

A. Jurisdiction.

(1) Before any decree of foreclosure will be entered by the Court, the plaintiff shall provide sufficient documentation to establish that said plaintiff is the proper party in interest to bring the action as either the original lender or the successor in interest of the original lender.

(2) Any decree of foreclosure shall state for each named party defendant, whether they have been served with summons and process; if so, when and how, and whether each has answered or otherwise pled.

(3) If the Court does not have personal jurisdiction over a party defendant, or if a personal judgment against the mortgagor is not otherwise available, and if the Court has jurisdiction over the mortgage contract, the note, and/or the property, the Court may enter an *in rem* judgment in such case, but no personal judgment will be entered against the party over whom the Court does not have *in personam* jurisdiction.

(4) A signed copy of the original note and mortgage, with proof of proper recording, shall be attached to the petition in each case.

B. Judgments of Foreclosure.

(1) Default judgment upon a petition seeking unliquidated damages will not be granted absent proof of compliance with the notice requirement of Supreme Court Rule 118(d).

(2) When any proposed journal entry includes judgment for attorney's fees and/or the mortgagee's costs or expenses of the foreclosure proceeding, the fees, costs and expenses shall be supported by the record. This support may be provided by affidavit establishing the mortgagee's entitlement to, and the amount, reasonableness and basis of, each such item. The decree shall state the total amount of the judgment.

C. A motion to confirm a Sheriff's sale shall be accompanied by a copy of the signed Sheriff's Return of Sale, an Itemization of Judgment and a proposed Order Confirming Sale.

D. Redemption.

(1) If a decree of foreclosure or other order determines the owner's period of redemption to be less than twelve (12) months, it shall state the reason, which shall be supported by the record.

(2) Any motion to shorten or extinguish the period of redemption of the defendant owner pursuant to K.S.A. 60-2414(a) shall be set for hearing with not less than twenty-one (21) days notice to all parties and proof of service being filed with the Court. The facts on which the motion relies must be supported by the record which, in the Court's discretion, may be provided by affidavit.

(3) The defendant owner or assignee may redeem for the amount paid by the then current holder of the Certificate of Purchase, including expenses incurred in accordance with K.S.A. 60-2414(a) and 60-2414(d), which expenses are evidenced by vouchers or receipts filed in the office of the Clerk of the District Court in accordance with K.S.A. 60-2414(d) and are entered on the appearance docket of the case. The holder of the certificate or a creditor who has redeemed prior to a defendant owner or assignor, shall be entitled to interest in accordance with K.S.A. 16-204(e)(1) on the net amount paid to redeem the property.

E. Upon the filing of an application for writ of assistance, the Court may, in its discretion grant the writ upon a showing that the applicant is entitled to possession. The required showing may be made either by showing that the applicant is the current holder of the Certificate of Purchase and any applicable period of redemption has run; or, in the alternative, the presentation of a recorded Sheriff's Deed to the applicant as grantee. All writs of assistance shall set forth that the plaintiff in the action is required to do any inventory of personal property as may be applicable under the writ requested.

Rule No. 21

Bankruptcy.

A. Under federal bankruptcy law, a petition filed pursuant to 11 U.S.C. 301, 302 or 303, operates as a stay of actions against the property of the bankruptcy estate, property of the debtor, or against the debtor. Thus, when a party to any action in this Court files for bankruptcy protection, the party shall, as soon as possible, but no later than ten (10) days thereafter, file with this Court and all parties to the litigation in this Court, a copy of the party's Notice of Bankruptcy Filing in the relevant case in this Court. If the party debtor fails to file said notice, the party prosecuting the action shall file the Notice of Bankruptcy Filing with this Court within a reasonable time after receipt of the notice from the bankruptcy court.

B. If a party prosecuting an action obtains relief from the automatic stay, that party shall notify this Court by filing a Notice of Right to Proceed and attach thereto a copy of the bankruptcy court order granting relief from the automatic stay; or, in the alternative, the party prosecuting the action in this Court shall file a Notice of Right to Proceed with an affidavit attached explaining the basis of its right to proceed as to debtor/defendant(s) and/or any other defendant(s).

C. Upon the party debtor's discharge in bankruptcy by the Bankruptcy Court, the prosecuting party shall file an order of dismissal of the action, to which shall be attached a copy of the bankruptcy order of discharge.

Rule No. 22

Criminal Procedure.

A. Every complaint and information charging the commission of a crime classified as a felony under the laws of the state of Kansas shall set forth, in addition to all other required statements, the severity level of the crime charged, the designation of the crime as a person or nonperson offense, and the minimum and maximum terms of presumptive punishment applicable under the lowest and highest categories of criminal history for a crime of the severity level charged as determined from the sentencing guidelines grids set forth in K.S.A. 21-6804 and K.S.A. 21-6805, except that the penalty for an off-grid crime shall be stated as set forth by statute.

B. At first appearance, the Court shall ascertain defendant's true name, and defendant shall be furnished a copy of the complaint and advised of the nature of the crime he/she is alleged to have committed. Defendant shall be advised of the applicable penalty upon conviction of the crime charged, his/her procedural and constitutional rights and privileges, including the right to preliminary examination, to the assistance of counsel, to obtain counsel of his/her own choosing if able to do so and to appointment of counsel under the provisions of K.S.A. 22-4503 and 22-4504, and his/her right to release prior to trial as provided in K.S.A. 22-2802 and 22-2803. Determination of defendant's financial ability to employ counsel under K.S.A. 22-4504 shall be made at first appearance. If the complaint alleges a felony charge, a preliminary examination shall be scheduled as provided by law.

C. Upon request, the County Attorney shall provide information known to the County Attorney, or his/her staff, concerning the defendant's criminal history to defense counsel as soon as possible, but in no event later than seven (7) days before arraignment.

D. The presentence investigation report and criminal history worksheet as provided by K.S.A. 21-6813 and K.S.A. 21-6814, shall be served upon the defendant or defendant's

counsel at least seven (7) days prior to the date scheduled for sentencing upon any felony conviction. This time deadline may be waived by the Court if Court Services is waiting for documentation of criminal history or court-ordered evaluations. If so, the deadline set forth in Paragraph C may be waived or adjusted.

E. Notice by defendant of an error in the criminal history set forth in the criminal history worksheet, as provided in K.S.A. 21-6814(c), shall be filed with the Court and served upon the County Attorney three (3) days prior to the date scheduled for sentencing upon any conviction.

F. A motion for imposition of a departure sentence as provided in K.S.A. 21-6815 shall be filed with the Court and served on the opposing party at least three (3) days prior to the date scheduled for sentencing upon any felony conviction. The motion shall be accompanied by proposed findings of fact and conclusions of law respecting mitigating or aggravating factors that are alleged to be substantial and compelling reasons for departure. If the party requesting a departure sentence intends to introduce evidence in support thereof, notice of such intent shall be stated in the motion and the nature of the evidence shall be stated, including the names of witnesses who will be called to testify.

Rule No. 23

Journal Entries of Sentencing in Felony Criminal Cases.

Journal entries of sentencing in felony criminal cases shall be prepared on the form provided by the Kansas Sentencing Commission and filed with the Court within ten (10) days of the effective date of the judgment, order or decision. If the defendant is remanded to serve a sentence of incarceration in the Kansas Department of Corrections, then the journal entry shall be submitted to and filed with the Court within seven (7) days of the effective date of the judgment, order or decision. All other journal entries shall be submitted and filed within fourteen (14) days of the effective date of the judgment, order or decision.

Rule No. 24

Plea Bargain Agreements in Criminal Cases.

A. Unless the parties and the presiding judge waive the requirement, in all felony cases where a plea or pleas of guilty or *nolo contendere* are to be entered, the defendant shall file a written plea bargain agreement with the Court. The agreement shall be filed with the Court at least twenty-four (24) hours in advance of the hearing where the plea is to be entered. For purposes of this rule, a plea bargain agreement is defined as an agreement between the prosecution and the defendant in a criminal action in which the defendant agrees to enter a plea of guilty or a plea of *nolo contendere*, and receives in exchange therefor, some consideration in the form of: (1) an affirmative action by the State, such as the reduction or dismissal of a charge, or a recommendation as to sentencing or probation; or, (2) the relinquishment by the State of some right to prosecutorial action, such as the filing of additional charges, requesting enhancement of any sentence to be imposed because of a prior felony conviction, or the possible opportunity to comment upon the sentence desired by the prosecution or to express opposition to the granting of probation. The examples included in this definition are meant to be illustrative and not exhaustive.

B. Plea Bargain agreements shall be signed by the County Attorney or a Deputy County Attorney, by the defendant and by counsel for defendant. A plea bargain agreement shall be regularly filed and docketed by the Clerk as a pleading in the case.

C. Plea bargain agreements shall be plainly entitled as: "PLEA BARGAIN AGREEMENT".

D. Plea bargain agreements shall set forth, in separately numbered paragraphs, in simple declarative sentences, the following information:

- (1) The original charge or charges set forth in the complaint;

(2) If any charge or charges originally filed have been reduced to a lesser offense or offenses as a condition of the plea bargain agreement, that fact shall be clearly stated, and the amended charge or charges shall be set forth in the agreement.

(3) If any charge is to be dismissed as a condition of a plea bargain, the charge or charges to be so dismissed shall be stated with particularity.

(4) If the State has agreed to remain silent as to sentencing recommendation or to recommend a particular sentence or to recommend a dispositional or durational departure or probation or to refrain from comment upon defendant's application for a departure or probation from the sentence imposed or to refrain from seeking sentence enhancement under a particular statute, those matters shall be clearly stated.

(5) If the State has agreed not to oppose probation upon certain conditions of probation being imposed, the conditions of probation sought by the State shall be clearly stated.

(6) If restitution to the victim of any offense charged is a condition of the plea bargain, the exact amount of restitution shall be stated, and, if it is to be ascertained at a later time, the method of ascertainment of the amount of restitution shall be set forth.

E. In the plea bargain agreement, the defendant shall acknowledge that he understands that the plea bargain is not binding upon the Court and that the Court may, in its discretion, impose any sentence permitted by law without regard to the plea bargain. Including a sentence greater than that recommended by the State or to which the State has agreed not to object, and that the Court may refuse to grant probation from any sentence imposed, disregarding any recommendation of the State or any agreement of the State not to oppose probation.

F. When a plea bargain agreement is entered in multiple cases involving the same defendant, a separate copy of the agreement shall be provided for and filed in each case.

Rule No. 25

Withdrawal in Criminal Cases.

In all criminal cases where counsel has been retained, no motion for leave to withdraw as counsel for nonpayment of fees will be granted following arraignment unless other counsel has been retained or unless extraordinary circumstances are shown.

THESE RULES AMENDED, ADOPTED AND PRESCRIBED THIS ____ DAY OF MAY,
2018, BY THE DISTRICT COURT JUDGES OF THE NINETEENTH JUDICIAL DISTRICT.

NICHOLAS M. ST. PETER

LaDONNA LANNING

CHRISTOPHER SMITH