

RULES OF THE DISTRICT COURT
FOR THE
TWENTY-FIRST JUDICIAL DISTRICT
STATE OF KANSAS

**JUDGES OF THE DISTRICT COURT
TWENTY-FIRST JUDICIAL DISTRICT**

MERYL D. WILSON
Chief Judge

DAVID L. STUTZMAN
District Judge

JOHN F. BOSCH
District Judge

WILLIAM M. MALCOLM
District Magistrate Judge I

SHEILA P. HOCHHAUSER
District Magistrate Judge II

Revised November 2015
(please check www.rileycountyks.gov/courtrules for the most current court rules)

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RULES ADOPTED

1.01

The following rules of the Twenty-First Judicial District numbered 1.01 to 4.09, are hereby adopted and are effective November 2015.

APPLICATION

1.02

These rules shall apply to all cases pending before any court in the district unless specifically superseded by statute or special rule governing proceedings in specialized divisions of this court.

REPEAL OF FORMER RULES

1.03

All prior rules of the Twenty-First Judicial District are hereby repealed effective November 2015.

MODIFICATION

1.04

Any of these rules may be modified by the assigned judge as the judge deems necessary to avoid injustice or hardship.

REFERENCES

1.05

All references to statutes and other rules are to the Kansas Statutes Annotated or to the Kansas Supreme Court Rules relating to District Courts, unless otherwise indicated.

COPIES OF MOTIONS

1.06

Counsel shall provide the assigned judge a chambers copy of all motions, briefs, and supporting memorandum at the time that they are filed with the Clerk.

SUMMARY JUDGMENT MOTIONS

1.07

Motions for summary judgment will not be heard until discovery is complete, unless all issues to be considered can be determined as matters of law and unless the issues will not be affected by later discovered facts.

SUPPORTING MEMORANDA FOR MOTIONS

1.08

Except as noted, all motions must be accompanied by a memorandum presenting the reasons and authorities supporting the same. The exceptions are:

- 1) Initial motions for additional time to plead which do not request extensions in excess of thirty (30) days will be ruled on without supporting memoranda and without awaiting responses from adverse parties.
- 2) Motions which show facts or authorities sufficient to support the relief requested do not require additional memoranda. Motions and supporting memoranda may be combined.
- 3) Motions accompanied by an agreed order will be ruled on without further supporting or responsive memoranda.
- 4) Preliminary domestic motions may be supported and opposed by affidavits in lieu of or in addition to other memoranda.
- 5) Motions for temporary or permanent change of custody.

Any Motion may be denied by the court for failure to comply with the requirements of this rule.

HEARINGS - SCHEDULING

1.09

When a hearing date has been scheduled and a party or counsel requests a continuance or different hearing date, it is the responsibility of the requesting party to obtain a new setting and coordinate and confirm the new date with the other parties. If a case has been noticed for hearing, and the parties are unable to agree on an alternate date, the setting will be changed only by order of the court after a motion for continuance has been filed.

HEARINGS ON MOTIONS

1.10

When a motion is filed, if argument is requested or a hearing is required, the attorney or party filing the motion shall obtain a time for hearing. The hearing date and time must be incorporated into a notice of hearing served on the opposing counsel or party. Motions which are not noticed for hearing will be deemed submitted and oral argument will be deemed to have been waived, unless opposing counsel or the opposing party makes a request for oral argument pursuant to Supreme Court Rule 133.

In the event opposing counsel or the opposing party requests oral argument, they shall obtain a time for hearing on the motion and shall notify opposing counsel of the date and time of hearing, through service of a notice of hearing. If a request is made, but the motion is not noticed for hearing, the request will be denied and the motion deemed to have been submitted for decision by the court.

PRETRIAL CONFERENCE – GENERAL

1.11

All discovery shall be completed by the time of the pretrial conference. Though pretrial questionnaires may be helpful, they are not required unless requested by the court. Counsel who will try the case shall attend the pretrial conference and be prepared to comply in full with the procedure outlined in Supreme Court Rule 140. Additionally, counsel advancing any claim for relief shall be prepared to state and discuss the elements of proof necessary to sustain the claim.

POVERTY AFFIDAVITS

1.12

When a party filing a civil case claims inability to pay the filing fee because of poverty, inquiry will be made into the ability of the party to pay the fee before the case is tried. If the party has sufficient property or income from which to pay the filing fee, the case will not be tried until the fee has been paid. Counsel shall make a good faith financial inquiry before proceeding for a client based on a poverty affidavit.

JURY INSTRUCTIONS

1.13

Pursuant to K.S.A. 60-251 written requests for instructions made by any party shall be presented to the court and served upon each adverse party no later than fourteen (14) days prior to the opening of the trial, or as otherwise ordered by the court. The court may receive additional requests relating to questions arising during the trial at any time prior to the giving of final instructions. Pattern Jury Instructions are to be typed with the PIK number indicated on each instruction. Instructions shall also be submitted to the court in a digital format designated by the court.

DOMESTIC RELATIONS – INTERLOCUTORY ORDERS

2.01

In domestic cases, those matters which by statute may be heard ex parte will be heard upon verified application of either party. Barring extraordinary circumstances ex parte relief will be granted only after a hearing. Ex parte child support orders, barring unusual compelling circumstances, will follow the court's published guidelines then in effect.

Agreed orders providing for temporary custody, support and/or agreed orders of restraint will not be subject to the requirements of this rule, however, such order must be approved in writing by counsel for the parties, or if no counsel, then by the parties themselves.

Clay County — Applications for interlocutory orders filed in Clay County shall initially be scheduled and heard by the District Magistrate Judge. In the absence, illness, or disqualification of the District Magistrate Judge, such applications may be heard by the District Judge to whom the case is assigned. Interlocutory orders may be made by the District Magistrate Judge notwithstanding that the District Judge may have made other orders relative to discovery or arising out of a pretrial conference.

DOMESTIC RELATIONS - EVALUATIONS

2.02

In all domestic relations litigation relating to child custody or parenting time, the parties may jointly or individually request, or the judge may order, an investigation or evaluation allowed by statute.

- a) Any request shall be filed within forty-five (45) days after the expiration of the time to file the last responsive pleading in the action.
- b) The pretrial conference will not be scheduled until after the court has received the requested investigation or evaluation report unless otherwise ordered by the court.
- c) Costs of the investigation or evaluation shall be paid as ordered by the court.

DOMESTIC RELATIONS – WORKSHOP FOR PARENTS

2.03

In all domestic relations cases in which the parties have minor children, the parties shall attend a workshop for parents approved by the court. Regardless of the type of case, the parties shall attend the workshop prior to the final hearing and file proof of attendance with the court. The court will not set the case for final hearing without compliance with this requirement. This requirement extends to the parties to post-divorce custody or parenting time motions if those parties have not previously attended an approved workshop. Each party shall bear the cost of the workshop subject to a later decision by the court to assess the costs to one party or the other.

MANDATORY MEDIATION

2.04

- 1) Parties to a contested case involving child custody or parenting time must attempt to settle the issues through mediation. Every post-divorce motion to modify custody, or parenting time, must show that the parties participated in mediation, but were unsuccessful.
- 2) The court will not set a divorce, separate maintenance, or post-divorce proceeding involving minor children until the parents have complied with this rule. The court may waive this requirement for good cause.

DOMESTIC RELATIONS – PRETRIAL CONFERENCE

2.05

Pretrial conferences shall be held in all contested domestic cases. Discovery will be completed and any custody evaluations concluded prior to the pretrial conference, unless otherwise ordered by the judge. Upon the request of either party or upon the court's own motion, the court may hold a pretrial conference in any action seeking post-judgment relief in child support, maintenance, or custody matters. Domestic Relations Affidavits and proposed Child Support Worksheets shall be filed and exchanged by the parties at the time of the pretrial conference. The parties shall be present unless excused by the court.

CHILD SUPPORT

2.06

No party ordered to pay child support shall be relieved of the obligation to pay child support during any parenting time period unless such relief is expressly ordered by the court.

DIVORCE DECREE

2.07

When title to real estate is involved in property division, the divorce decree shall have prominently displayed in the margin of the first page of the journal entry the notation in capital letters "Real Estate Involved".

CRIMINAL CASE SCHEDULING: APPEALS AND JURY REQUESTS

3.01

Felony trial dates will be set at the time of felony arraignments. Counsel shall bring their calendars.

In Riley County, all counsel representing criminal misdemeanor defendants, who request a jury trial or who have appealed the conviction from Municipal Court or from the District Magistrate Judge, shall appear before the assigned District Judge within seven (7) days from the date of the appeal or request for jury trial. It is the responsibility of defense counsel, county and city attorneys to secure the date and time of appearance before the assigned judge. As appropriate, county and city attorneys shall appear. Counsel shall bring their calendars. A trial date will be set at that time.

In Clay County, all counsel representing criminal misdemeanor defendants who request a jury trial, or who have appealed a conviction from Municipal Court or from the District Magistrate Judge, shall appear on the next court day that the judge assigned to the case will be sitting. It is the responsibility of counsel, county and city attorneys to secure the next court date and time of appearance from the Clerk of the District Court. As appropriate, county and city attorneys shall appear. Counsel shall bring their calendars. A trial date will be set at that time.

CONTINUANCE – PRELIMINARY HEARING

3.02

Motions for continuances of preliminary hearings shall be filed at least three (3) days prior to the scheduled date, unless good cause is shown for a later request.

WITHDRAWAL IN CRIMINAL CASES – NON-PAYMENT OF FEES

3.03

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

CRIMINAL – MOTIONS

3.04

Motions to dismiss or to suppress evidence or statements shall be filed at least thirty (30) days prior to the time of trial unless otherwise ordered by the court.

DEFENDANTS – TRANSFER

3.05

When a defendant in custody is to be brought to court, the judge or judge's staff or the County Attorney, shall request the Riley County Police Department or the Clay County Sheriff's Office to bring the defendant before the court. The officer in charge of the custody of the defendant is free to use any restraint necessary and reasonable under the circumstances to prevent escape or harm to the officer or others while transporting the defendant to and from court, provided:

- 1) Other than at trial, defendants may be brought into the courtroom bound or shackled at the discretion of the transporting officer.
- 2) Upon conviction of the defendant, the officer in charge may shackle the defendant in the courtroom if deemed necessary by the officer or by the judge.
- 3) The defendant shall be taken to the hallway or holding cell at each recess and his counsel shall have access to him at all times. No other person shall have access to or visit with a defendant during a recess without express permission of the judge.
- 4) At all times that the defendant is returned to the jail from the court, the officer in charge shall transport the defendant directly to the jail and not allow any person, except his counsel to confer with the defendant en route without express permission of the judge.
- 5) In all jury trials, the defendant shall be allowed to wear suitable civilian clothes or shall be brought into court in unmarked garments and not in distinctive jail attire.
- 6) In all jury trials, during the time the defendant is in the courtroom, at least one officer shall remain in the courtroom continually.

**ARREST FOR VIOLATING CONDITION OF PROBATION, ASSIGNMENT TO
COMMUNITY CORRECTIONS, SUSPENSION OF SENTENCE OR NONPRISON SANCTION**

3.06

- 1) Pursuant to, and in accordance with the provisions and authority stated in K.S.A. 22-3716 and amendments thereto, supervision officers of Riley County Court Services and Riley County Community Corrections are hereby authorized to exercise the use of an Arrest and Detain Affidavit, to facilitate the apprehension of those defendants who are determined to be in violation of court ordered conditions of probation, or misdemeanor parole, as a result of a conviction as an adult, which occurred in Riley County, Kansas, with such conditions having been ordered adhered to by the Magistrate and District Court Judges of the 21st Judicial District.
- 2) Appearance bond for all adult probation or misdemeanor parole violations will be set at the equivalent of the bond as initially posted for previous appearance, or the last bond set in those cases where the defendant fails to make bond. Any changes must be approved by a District Judge.
- 3) All Arrest and Detain Affidavits shall have the authorization and approval of the Chief Court Services Officer/Director of Community Corrections.

COURTROOM SECURITY

3.07

Upon the request of any party to any hearing, or upon the court's own motion, the court may require the Security Officer to provide security for the courtroom. Requests should be made through the judge assigned to the case. The judge will determine the level of security needed.

EXTENDED JURISDICTION JUVENILE PROSECUTION

3.08

Upon designation as an extended jurisdiction juvenile prosecution pursuant to K.S.A. 38-2347, proceedings shall be set for appearance and scheduling in due course within the adult criminal process. The respondent shall be entitled to the full protections of the Kansas Code of Criminal Procedure.

The assigned judge shall schedule further hearings as necessary to facilitate trial by jury and timely prosecution of the pending charges.

ELECTRONIC FILING MANDATORY

4.01

All licensed attorneys must submit all new cases and documents to be filed within existing cases for filing with the District Courts of Riley County and Clay County, Kansas, utilizing the Kansas Courts Electronic Filing System. Attorneys utilizing the system should acquaint themselves with and follow Kansas Supreme Court Order No. 268. Except as modified herein all local rules presently in effect continue to apply to all cases and documents filed through the e-filing system.

SERVICE OF PAPERS

4.02

Service of papers under K.S.A. 60-205 by electronic means is authorized.

An electronic unsworn digitally signed complaint or affidavit can be used, pursuant to K.S.A. 22-2301 and 22-2302, to make a probable cause determination for issuing an arrest warrant, summons to appear, or filing a complaint to commence a criminal prosecution.

CHAMBERS COPIES

4.03

When e-filing any motion, reply to a motion and/or briefs in support of such motions, counsel shall deliver a printed chamber copy of the documents to the assigned judge. If the individual judge agrees to receive chamber copies in electronic format counsel may submit them to that judge electronically.

TRANSCRIPT ORDERS

4.04

Counsel should notify the court reporter responsible for producing the transcript when an order for transcript is signed by the judge.

INDIGENT DEFENSE PANEL VOUCHERS

4.05

Appointed counsel should deliver felony vouchers directly to the judge presiding over the case. Counsel should not e-file the vouchers. Attorneys appointed in misdemeanor cases should e-file the face sheet of the voucher containing the total amount being claimed. The attorney should deliver any documents containing supporting itemizations of the time expended by the attorney to the presiding judge. Attorneys should deliver motions and orders requesting that the judge find that the case was exceptional. Attorneys should deliver such motions and orders directly to the judge. The court will return felony vouchers to the attorney once they are approved. The attorney should then submit the voucher to the Board of Indigent Defense Services.

ATTACHMENTS TO MOTIONS AND BRIEFS

4.06

When possible persons filing pleadings with documents attached should file the attachments as part of the original documents to which they are attached. If the filer is unable to include the attachment with the original document because of size restrictions, the attorney should e-file the attachments separately and should label the attachments in E-flex in such a way that the label identifies the document to which it is appended.

DOCUMENT NAMES

4.07

When e-filing documents, attorneys should use names or descriptive terms that fully identify the document.

JOURNAL ENTRIES IN CRIMINAL CASES

4.08

Prior to filing a proposed journal entry for the judge's signature in a felony case, the County Attorney shall give a copy of the journal entry to the defense attorney. The County Attorney shall wait ten days from submission of the proposed journal entry to the defense attorney to file the proposed journal entry. This waiting period does not apply if the defense attorney approves the journal entry prior to the expiration of ten days.

FILING OF THE ORIGINAL WILLS IN PROBATE

4.09

When a party files a petition to admit a will to probate, the party should attach a copy of the will to the petition. The party should also file the original of the will with the clerk of the district court.