

Other Rules Drafted

ADMINISTRATIVE ORDER NO. 100

GUIDELINES FOR GUARDIANS AD LITEM

The Supreme Court guidelines are recommended for the representation of children by guardians *ad litem* in cases pursuant to the Kansas Code for the Care of Children, K.S.A. 38-1501 *et seq.*; the Parentage Act, K.S.A. 38-1110 *et seq.*; and Domestic Relations, K.S.A. 60-1601 *et seq.* unless departure is authorized by the presiding judge or designee for good cause shown.

The appointing judge or designee should:

- 1) issue an Order appointing the guardian *ad litem* on a form substantially as attached, and
- 2) insure compliance with this Administrative Order.

A guardian *ad litem* should:

- 1) Conduct an independent investigation consisting of the review of all relevant documents and records including those of social service agencies, police, courts, physicians (including mental health), and schools. Interviews either in person or by telephone with 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) Determine the best interests of the child by considering such factors as the child's age and sense of time; level of maturity; culture and ethnicity; degree of attachment to family members, including siblings; as well as continuity, consistency, permanency and the child's sense of belonging and identity.
- 3) File appropriate pleadings on behalf of the child. Appear for and represent the best interests of the child at all hearings. All relevant facts should be presented to the court, including the child's position. If the child disagrees with the guardian *ad litem*'s recommendations, the guardian *ad litem* must inform the court of the disagreement. The court may, on good cause shown, 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 *ad litem* to communicate with one another but may require such communications to occur in the attorney's presence.
- 4) Not submit reports and recommendations to the court, act as a witness or testify in any proceeding in which he or she serves as guardian *ad litem*, except as permitted by the exceptions to Kansas Rules of Professional Conduct 3.7(a). The guardian *ad litem* should submit the results of his or her investigation and the conclusion regarding the child's best interest in the same manner as any other lawyer presents a case on behalf of a client: by calling, examining and cross-examining witnesses, submitting and responding to other evidence, and making oral and written arguments based on the evidence that has been or is expected to be presented.

- 5) Explain the court proceedings and the role of the guardian ad litem in terms the child can understand.
- 6) Make recommendations for specific appropriate services for the child and the child's family.
- 7) Monitor implementation of service plans and court orders.
- 8) Participate in prerequisite education prior to appointment as a guardian *ad litem* which consists of not less than six (6) hours including one (1) hour of professional responsibility, and participate in annual continuing education consisting of not less than six (6) hours. Areas of education should include, but are not limited to, dynamics of abuse and neglect; roles and responsibilities; cultural awareness; communication and communication with children skills and information gathering and investigatory techniques; advocacy skills; child development; mental health issues; permanence and the law; community resources; professional responsibility; special education law; substance abuse issues; school law; and the code for the care of children. Such hours of continuing education, if approved by the Continuing Legal Education Commission, shall apply to the continuing legal education requirements of Supreme Court Rule 802 and the minimum total hours annually required by that rule are not modified by these guidelines. The appointing judge or designee shall have the authority to approve the prerequisite education and continuing education not otherwise approved by the Continuing Legal Education Commission. Guardians ad litem shall be responsible for maintaining a record of their own participation in prerequisite and continuing education programs. Upon the request of the appointing judge or designee, the guardian ad litem shall be required to provide evidence of compliance with this order. Such prerequisite education may be waived by the appointing Judge or designee upon showing of a need for emergency temporary appointment. The educational requirements shall be completed within six (6) months of appointment. These educational requirements shall not be effective for a period of six (6) months from the date this order is adopted by the Supreme Court.

RULE 121

PROCEDURE UNDER KANSAS STANDARD ASSET SEIZURE AND FORFEITURE ACT, K.S.A. 60-4101, et seq.

- (a) *Procedure for filing.* Whenever a forfeiture proceeding is commenced by the filing of a notice of pending forfeiture pursuant to K.S.A. 60-4109, such notice shall be filed with the clerk of the district court having jurisdiction pursuant to K.S.A. 60-4103. The clerk shall file stamp and assign a case number to the notice. No filing fee shall be required.
- (b) *Uncontested forfeiture action.* If a forfeiture proceeding is uncontested, the district court may enter an order of forfeiture pursuant to K.S.A. 60-4116 without requiring any further notice.
- (c) *Contested forfeiture action.* If a judicial forfeiture proceeding is commenced following a notice of pending forfeiture in order to resolve any proper claim, no additional notice of the judicial forfeiture proceeding shall be required.

RULE 122

ELECTRONIC FILING AND TRANSMISSION OF DISTRICT COURT DOCUMENTS

A district court may, by local rule, permit documents to be filed, signed, or verified by electronic means that are consistent with technical standards for electronic filing and transmission as approved by the Supreme Court. Any such local rule must also be consistent with Supreme Court Rule 119 regarding facsimile filing.

[History: New rule effective September 6, 2000.]

ORDER ADOPTING TECHNICAL STANDARDS

The following technical standards provide guidelines for implementation of electronic filing and transmission systems in Kansas district courts pursuant to Supreme Court Rule 122.

TECHNICAL STANDARDS GOVERNING ELECTRONIC FILING AND TRANSMISSION OF DISTRICT COURT DOCUMENTS

A. Technical Standards

The following technical standards are mandatory requirements which guide implementation of electronic document filing and transmission systems in Kansas district courts. The standards are phrased as functional requirements that any electronic filing and transmission system must meet; there may be a variety of technical implementations by which each functional standard may be met. The standards focus on ensuring the integrity of the court record and providing a capability for filing that is at least as good as existing paper systems.

B. Electronic Filing and Transmission

Electronic filing and transmission is the process by which information is delivered by electronic means rather than in the conventional paper form. This includes any documents which normally become part of the case file, whether submitted by the court or the litigants.

C. Document and File Format Standards

1. Documents filed electronically shall comply with all applicable rules of the Kansas Supreme Court and of the receiving court regarding form and content.
2. All documents filed electronically must be capable of being printed as paper documents without loss of content or appearance.
3. Electronic documents must be stored in, or convertible to, a format that can be archived in accordance with specifications set forth in Kansas Supreme Court Rule 108.
4. Electronic documents must be retained in the electronic format in which they are submitted.

Documents submitted to the court in paper form may subsequently be imaged to facilitate the creation of an electronic case file after which the paper document does not need to be retained by the court.

5. Every implementation of electronic filing must accommodate submission of nonelectronic documents or exhibits.

6. The appearance docket shall indicate the time of filing of every item and from whom it came. This docket entry shall satisfy the duty of the clerk outlined in K.S.A. 60-2601 to file stamp and initial all filed documents.

D. Signatures

1. An electronic signature is defined under K.S.A. 2000 Supp. 16-1602(i) of the Uniform Electronic Transactions Act, K.S.A. 2000 Supp. 16-1601 et seq., as an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

2. A digital signature is defined under K.S.A. 2000 Supp. 16-1602(e) as a type of electronic signature consisting of a transformation of an electronic message using an asymmetric crypto system such that a person having the initial message and the signer's public key can accurately determine whether:

a. the transformation was created using the private key that corresponds to the signer's public key; and

b. the initial message has not been altered since the transformation was made.

3. A digital signature, per K.S.A. 2000 Supp. 16-1602(e), may be accepted as a substitute for, and, if accepted, shall have the same force and effect as, any other form of signature.

4. Digital signature standards based on public-private key encryption technology may be used to authenticate filer identity and to ensure the integrity of a document's content.

5. An electronic, digital signature contained in an electronic court filing will be treated as an original signature and has the assurances of a signature under K.S.A. 2000 Supp. 60-211. An electronic signature contained in an electronic document originating from a clerk of a court shall be treated as an original signature and has the assurances of a signature under K.S.A. 2000 Supp. 20-365.

E. Authorization of Electronic Filers

1. Persons intending to file documents electronically with a district court shall follow the district court's established procedures for enrolling in the electronic filing system. The district court may request information necessary to establish that person as an authorized system user. The information shall include:

- a. the filer's public key which will serve to authenticate the filer's future electronic transmissions;
 - b. the filer's full name, business address, phone number, e-mail address, and Kansas Supreme Court registration number if the filer is an attorney;
 - c. the name and account number of the filer's financial institution, which will be debited to pay any required case and electronic filing fees. Lack of funds for a bank draft will be treated the same as an insufficient funds check.
2. Payment of bank charges for debit transactions will be paid by the court from interest earned on the court bank account per Supreme Court Administrative Order 30.
 3. No person shall file documents electronically with a district court until the filer has received confirmation and registration approval from the district court.
 4. Payment of court costs through the debit transaction referenced in E.1.c. above shall satisfy the statutory requirements for payment of court costs as stated in K.S.A. 2000 Supp. 61-2501 and K.S.A. 2000 Supp. 60-2001.

F. Document and System Security Standards

1. A mechanism must be provided to ensure the authenticity of the electronically filed document. This will include the ability to verify the identity of the filer and the ability to verify that a document has not been altered since it was filed.
2. The authentication private key shall remain under the exclusive control of the filer. If security of the public-private key pair is compromised, the filer will promptly notify the district court, will discontinue use of the compromised key pair, and will replace the compromised key pair in the court authentication and registration process.
3. If a court implements an interactive electronic filing process, the court must control interactive access to the electronic filing system via a user authentication process.
4. Media capable of carrying viruses into court computers (e.g., floppy disks and electronic mail) must be scanned for computer viruses prior to processing.
5. It is necessary to isolate access to computers used for electronic filing from access to other court networks and applications.
6. Computer systems used for electronic filings must protect electronic filings against system and security failures during periods of system availability. In addition, they must provide normal backup and disaster recovery mechanisms.

G. Electronic Filing and Transmission Process Standards

1. Court computers shall be available on a 24-hour basis to receive electronic filings. This provision does not prevent the court from providing for normal repair and maintenance of the

receiving computer.

2. All electronic document submissions must generate a positive acknowledgment that is given to the filer to indicate that the document has been received by the court. The positive acknowledgment must include the date and time of the document receipt and a court-assigned document reference number (case number).

3. Electronic filings received by the court shall be deemed filed as of the time the transmission ends and the court computer provides acknowledgement to the sender of the successful transmission of the electronic document.

4. Electronic filing systems must provide a mechanism for quality assurance and quality control of the submitted documents and case management data by both the court and the filer. The court will provide notice to the filer if a transmission is received with errors.

5. Adequate public access to electronically filed documents must be provided.

H. Pro Se Filings

The court may provide the ability for pro se filers to file electronically.

I. Possession of Documents

A person filing or transmitting court documents electronically shall retain, in his or her possession or control, a record of the transmission from which a full copy of the document can be made during the pendency of the action and shall produce such document upon request under K.S.A. 2000 Supp. 60-234 by the court or any party to the action. Upon failure to produce such document, the court may strike the electronically filed document and may impose sanctions under K.S.A. 2000 Supp. 60-211. Retention of electronic documents shall include all documents filed with the district court and any other electronic communication related to the action.

J. Service by Electronic Mail

1. A party consents to service by electronic mail by: (a) filing a document by electronic mail in that proceeding; (b) serving a document by electronic mail in that proceeding; or (c) serving a pleading which includes the party's electronic mail address on the pleading.

2. Service by electronic mail shall be made by transmitting the document to the party's designated electronic mail address. To insure that the document is transmitted in a readable format, any attachments transmitted as part of an electronic mail message must be formatted in a universal computer language such as American Standard Code Information Interchange (ASCII) text file or Rich Text Format (RTF).

3. A court may serve notice by electronic mail if the notice may be served by regular mail. The notice may be served by electronic mail on the party's attorney, when represented by counsel, or on the party, if the party consents to electronic mail service under subsection (1) of this section.

4. Service by electronic mail shall be complete when the mail message is transmitted unless the message is returned to the sender as undeliverable.

[History: New order effective September 6, 2000.]