

May 10, 2012

## **Proposed Amendments to Kansas Supreme Court Rules Judicial Council Supreme Court Rules Advisory Committee**

### **Introduction**

In June 2010, the Judicial Council accepted a request from the Supreme Court to create a committee to study Supreme Court Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice and Rules Relating to District Courts. The catalyst for the Court's request was the passage of 2010 HB 2656, which was a major restyling of the Kansas Code of Civil Procedure to conform Kansas statutes to the recently restyled Federal Rules of Civil Procedure. The Committee was charged with following the same style guidelines that had been used to restyle the Federal Rules and Kansas Code of Civil Procedure to restyle the Supreme Court Rules to improve readability. Because 2010 HB 2656 included both stylistic and substantive amendments, the Committee was also assigned the task of reviewing the rules to determine whether substantive amendments were necessary to ensure consistency with the legislative changes. Finally, the Committee was invited to recommend additional substantive amendments to the Supreme Court Rules.

### **Restyling Objectives**

At a glance, a reader will notice that the restyled rules look very different. The Committee used formatting to organize most rules into subparts. The new formatting provides a better "roadmap" to separate and label each different substantive element within a rule so that a user can quickly find the desired section. The rules also use indenting and cascading to illustrate the appropriate hierarchy of content.

Although the formatting change will likely first catch a reader's eye, the text of the rules was also transformed. The Committee followed Bryan Garner's *Guidelines for Drafting and Editing Court Rules* (Fifth Printing, 2007). Mr. Garner's four basic principles are to be clear, make the draft readable, be as brief as clarity and readability permit, and organize the rule to serve clarity, readability, and brevity.

The restyled rules reduce the use of inconsistent terms that say the same thing in different ways. Because different words are presumed to have different meanings, such inconsistencies can result in confusion. The restyled rules reduce inconsistencies by using the same words to express the same meaning. For example, consistent expression is achieved without affecting meaning by the changes from "upon motion, or on its own initiative" in Rule 134 and variations in other rules to "on motion or on its own." None of the changes, when made, alters the rule's meaning.

The restyled rules minimize the use of inherently ambiguous words. For example, the word “shall” can mean “must,” “may,” or something else, depending on context. “Kansas courts have read ‘shall’ to mean ‘may’ where the context requires.” *State v. Porting*, 29 Kan. App. 2d 869, 892 P.2d 915 (1995) (citing *Paul v. City of Manhattan*, 212 Kan. 381, 385, 511 P.2d 244 (1973)). The potential for confusion is exacerbated by the fact that “shall” is no longer generally used in spoken or clearly written English. The restyled rules replace “shall” with “must,” “may,” or “should,” depending on which one the context and established interpretation make correct in each section.

The restyled rules minimize the use of redundant “intensifiers.” These are expressions that attempt to add emphasis, but instead state the obvious and create negative implications for other rules. “The court in its discretion may” becomes “the court may.” “Unless the court specifically permits otherwise” becomes “unless the court permits otherwise.” The absence of intensifiers in the restyled rules does not change the substantive meaning.

### **Substantive Changes**

Although the Committee’s primary objective was to restyle the rules without changing the substantive meaning, the Committee did suggest substantive amendments to some rules. Some amendments were dictated by statutory amendments, and the Committee has suggested other amendments either to conform to current practice or to establish a better practice. If a substantive amendment has been suggested, the reason for the change is explained in the Comment that follows each rule.

### **Kansas Judicial Council Supreme Court Rules Advisory Committee**

**Carol G. Green** (Chair) - Clerk of the Appellate Courts; Topeka

**Hon. Bruce Brown** - District Court Judge in 18<sup>th</sup> Judicial District; Wichita

**Sen. Terry Bruce** - State Senator and practicing attorney; Hutchinson

**Hon. Brenda M. Cameron** - District Court Judge in 10<sup>th</sup> Judicial District; Olathe

**Prof. Jim Concannon** – Distinguished Professor of Law at Washburn University School of Law; Topeka

**Hon. Daniel D. Creitz** - District Court Judge in 31<sup>st</sup> Judicial District; Iola

**Hon. Brian Grace** - Magistrate Judge in 12<sup>th</sup> Judicial District; Lincoln

**Todd M. Heitschmidt** - Court Administrator for the 28<sup>th</sup> Judicial District; Salina

**Hon. Marla J. Luckert** - Supreme Court Justice and Rules Liaison for the Court; Topeka

**Cindy MacDonald** - District Court Clerk in 8<sup>th</sup> Judicial District; Abilene

**Dave Snapp** – Practicing attorney; Dodge City

**Sara Stratton** - Office of the Appellate Reporter; Topeka

**Nancy Strouse** (Reporter) – Executive Director, Kansas Judicial Council; Topeka