

RULE 5.1
FORM OF PLEADINGS AND PAPERS

(a) **Form.** Pleadings, motions, briefs, and other papers submitted for filing shall be typewritten or printed on letter size paper. The pages shall be fastened at the upper left corner without manuscript cover. Typewritten documents shall be double-spaced. Documents filed electronically shall comply with this rule to the extent practicable.

(b) **Signing of Pleadings.** The original of every pleading, motion or other paper filed by an attorney shall bear the genuine signature of at least one attorney of record. The original of every pleading, motion or other paper filed by a party not represented by an attorney shall bear the genuine signature of such *pro se* party. Stamped or facsimile signatures on original pleadings, motions or other papers filed by *pro se* parties or by attorneys are not acceptable. D. Kan. Rule 5.4.8 governs signatures on documents filed electronically.

(c) **Contact Information and Bar Registration Numbers.** Parties or attorneys signing papers submitted for filing shall include their addresses, telephone numbers, facsimile numbers, and e-mail addresses. Attorneys shall include their state supreme court registration numbers or, in cases where the attorney is not admitted to practice in Kansas, their equivalents. Attorneys admitted from the Western District of Missouri, by reciprocal admission, shall include their Kansas District Court registration number. Each attorney or party appearing *pro se* is under a continuing duty to notify the clerk in writing of any change of address or telephone number. Any notice mailed to the last address of record of an attorney or a party appearing *pro se* shall be sufficient notice.

Subsections (d)-(g) of Rule 5.1 remain unchanged.

RULE 5.3
COPIES REQUIRED FOR A THREE-JUDGE COURT

In any action or proceeding required by act of Congress to be heard and determined by a district court of three judges, all pleadings, papers and documents filed subsequent to the designation of the court, as provided in 28 U.S.C. § 2284(a), shall be filed with the clerk in quadruplicate, an original and three copies, only if the pleading, paper or document is filed in conventional paper format. The clerk shall make timely distribution of documents to the designated judges.

However, if the pleading, paper or document is filed electronically, additional copies shall not be provided to the court in conventional paper format. *See* D. Kan. Rule 7.1(d).

RULE 5.4.1
SCOPE OF ELECTRONIC FILING

As authorized by Fed. R. Civ. P. 5(e), the court will accept for filing all documents submitted, signed, or verified by electronic means that comply with procedures established by the court.

All civil cases ~~pending, filed on, or filed after March 20, 2003, shall be~~ *are* assigned to the Electronic Filing System unless otherwise ordered by the court. All petitions, motions, memoranda of law, or other pleadings and documents filed with the court ~~on or after March 20, 2003,~~ in connection with a case assigned to the Electronic Filing System ~~must~~ *shall* be filed electronically unless otherwise permitted in these rules or the administrative procedures guide or unless otherwise authorized by the ~~assigned judge~~ *court*. The filing of the initial papers, including the complaint and the issuance and service of the summons, ~~will~~ *shall* be accomplished as set forth in the administrative procedures guide which is authorized by D. Kan. Rule 5.4.13.

~~For a~~ All civil cases ~~that were~~ pending as of *on* March 3, 2003, ~~it will not be feasible to transfer the existing files to the court's Electronic Filing System retroactively. Therefore, those cases will have a two-part file that consists~~ *consisting* of: (1) a conventional paper file containing documents filed before March 3, 2003; and (2) an electronic file containing documents filed on or after March 3, 2003. ~~Parties shall not provide the clerk with electronic copies of documents that were filed in paper form prior to March 20, 2003. Rather, the clerk shall continue to retain all documents filed prior to March 20, 2003, in conventional paper format.~~

RULE 5.4.2
ELIGIBILITY, REGISTRATION, PASSWORDS

Attorneys admitted to the bar of this court, including those admitted pro hac vice, may register as Filing Users of the court's Electronic Filing System. Registration is in a form prescribed by the clerk and requires the Filing User's name, address, telephone number, Internet e-mail address, and a declaration that the attorney is either admitted to the bar of this court or has been admitted pro hac vice.

Attorneys who are admitted pro hac vice and who register as Filing Users shall have access to the court's Electronic Filing System through PACER and shall receive the notices of electronic filing that are automatically generated by the court's Electronic Filing System. However, this court's rules require meaningful participation by local counsel and, to that end, require local counsel to sign all pleadings and other papers filed with the court. See D. Kan. Rule 83.5.4(c). Consistent with this rule, attorneys who are admitted pro hac vice may not file documents electronically. *[However, attorneys admitted pro hac vice who are employed by the United States of America may file documents electronically.]*

A party to a pending civil action who is not represented by an attorney may not register as a Filing User in the Electronic Filing System unless permitted to do so by the court. If so permitted, registration is in a form prescribed by the clerk and requires identification of the action as well as the name, address, telephone number, and Internet e-mail address of the party. If, during the course of the action, the party retains an attorney who appears on the party's behalf, the attorney must advise the clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

Registration as a Filing User constitutes consent to electronic service of all documents as provided in these rules in accordance with the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 5(b)(2)(D). This consent extends not only to documents filed with the court, but shall also constitute consent to electronic service of disclosure and discovery documents that are required to be served upon other parties but not filed with the court pursuant to D. Kan. Rule 26.3.

Once registration is completed, the Filing User will receive notification of the user log-in and password. Filing Users agree to protect the security of their passwords and immediately notify the clerk if they learn that their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

RULE 5.4.3 CONSEQUENCES OF ELECTRONIC FILING

Electronic transmission of a document to the Electronic Filing System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure and the local rules of this court, and constitutes entry of the document on the docket kept by the clerk under Fed. R. Civ. P. 58 and 79.

Before filing a scanned document with the court, a Filing User must verify its legibility.

When a document has been filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted electronically, a document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the court.

Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight local time where the court is located in order to be considered timely filed that day.

RULE 5.4.4
ENTRY OF COURT ~~ORDERS~~ ISSUED DOCUMENTS

All orders, decrees, judgments, and proceedings of the court will be filed in accordance with these rules which will constitute entry on the docket kept by the clerk under Fed. R. Civ. P. 58 and 79. All ~~signed orders~~ *such documents* will be filed electronically by the court or court personnel. Any ~~order~~ *such document* filed electronically without the original signature of a judge, *magistrate judge*, or clerk has the same force and effect as if the judge, *magistrate judge*, or clerk, respectively, had signed a paper copy of the order and it had been entered on the docket in a conventional manner.

Orders may also be issued as "text-only" entries on the docket without an attached document. Such orders are official and binding.

The court may sign, seal, and issue a summons electronically, although a summons may not be served electronically.

A Filing User shall not submit a proposed order (whether pursuant to D. Kan. Rule 7.1(b), 77.2, or otherwise) by electronic filing, either as an attachment to a corresponding motion or otherwise. Rather, proposed orders shall be submitted directly to the appropriate judge, *magistrate judge*, or clerk in the form and manner set forth in the administrative procedures guide.

RULE 5.4.5
ATTACHMENTS AND EXHIBITS

Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless conventional filing is permitted by the court or the administrative procedures guide. Voluminous exhibits shall be filed as set forth in the administrative procedures guide.

A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or the complete document. Responding parties may timely file additional excerpts or the complete document that they believe are directly germane. The court may require parties to file additional excerpts or the complete document.

**RULE 5.4.6
SEALED DOCUMENTS**

Until the Electronic Filing System has adequate confidentiality procedures for sealed documents, documents ordered to be placed under seal must be filed conventionally and not electronically unless specifically authorized by the court. A motion to file documents under seal may be filed electronically unless prohibited by law. The order of the court authorizing the filing of documents under seal may be filed electronically unless prohibited by law. A paper copy of the order must be attached to the documents to be filed under seal and be delivered to the clerk.

**RULE 5.4.7
RETENTION REQUIREMENTS**

Documents that are electronically filed and require original signatures ~~other than that of the Filing User~~ *of non-Filing Users* must be maintained in paper form by the Filing User until 6 years after all time periods for appeals expire. On request of the court, the Filing User must provide original documents for review.

**RULE 5.4.8
SIGNATURES**

The user log-in and password required to submit documents to the Electronic Filing System serve as the Filing User's signature on all electronic documents filed with the court. They also serve as a signature for purposes of Fed. R. Civ. P. 11, the Federal Rules of Civil Procedure, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court. Each document filed electronically must, if possible, indicate that it has been electronically filed. Electronically filed documents must include a signature block in compliance with D. Kan. Rule 5.1(c) and must set forth the name, address, telephone number, facsimile number, e-mail address, and the attorney's state supreme court registration number or the equivalent of said number; attorneys admitted from the Western District of Missouri, by reciprocal admission, shall include their Kansas District Court registration number. In addition, the name of the Filing User under whose log-in and password the document is submitted must be preceded by an "s/" and typed in the space where the signature would otherwise appear.

Documents containing signatures of non-Filing Users shall be filed electronically either as a scanned image or with the signature represented by an "s/" and the name typed in the space where the signature would otherwise appear.

No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

Documents requiring signatures of more than one party must be electronically filed by: (1) submitting a scanned document containing all necessary signatures; (2) representing the consent of the other parties on the document as permitted by the administrative procedure governing multiple signatures; (3) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three business days after filing; or (4) in any other manner approved by the court.

RULE 5.4.9
SERVICE OF DOCUMENTS BY ELECTRONIC MEANS

The notice of electronic filing that is automatically generated by the court's Electronic Filing System constitutes service of the filed document on all parties who have consented to electronic service. Parties not deemed to have consented to electronic service are entitled to service of paper copies of the notice of electronic filing and the electronically filed pleading or other document. Service of such paper copies must be made according to the Federal Rules of Civil Procedure and the local rules.

A certificate of service must be included with all documents filed electronically, indicating that service was accomplished through the Notice of Electronic Filing for parties and counsel who are Filing Users and indicating how service was accomplished on any party or counsel who is not a Filing User.

RULE 5.4.10
NOTICE OF COURT ORDERS AND JUDGMENTS

Immediately upon the entry of an order or judgment in an action assigned to the Electronic Filing System, the clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed. R. Civ. P. 77(d). The clerk must give notice in paper form to a person who has not consented to electronic service in accordance with the Federal Rules of Civil Procedure.

RULE 5.4.11
TECHNICAL FAILURES

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

**RULE 5.4.12
PUBLIC ACCESS**

A person may review at the clerk's office filings that have not been sealed by the court. A person may also access the Electronic Filing System at the court's Internet site, www.ksd.uscourts.gov, by obtaining a PACER log-in and password. A person who has PACER access may retrieve docket sheets and documents. Unless otherwise specifically permitted by the court, only a Filing User who is an attorney admitted to the bar of this court may file documents electronically. *See* D. Kan. Rule 5.4.2.

**RULE 5.4.13
ADMINISTRATIVE PROCEDURES**

In order to facilitate implementation of the foregoing rules, the clerk is authorized to develop, adopt, publish, and modify as necessary *Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means in Civil Cases* ("administrative procedures guide"), which will include the procedures for registration of attorneys and distribution of passwords to permit electronic filing and notice of pleadings and other papers.

**RULE 6.1
TIME**

(e) Time for Filing of Responses and Replies. Unless otherwise ordered by the court, the following time periods shall apply to the filing of responses and replies. These time periods include the additional three-day period allowed under Fed. R. Civ. P. 6(e) and, therefore, apply regardless of the method of service.

(1) Nondispositive motions. Responses to nondispositive motions (motions which are not motions to dismiss or for summary judgment) shall be filed and served within 14 days. Replies shall be filed and served within 14 days of the service of the response.

(2) Dispositive motions. Responses to motions to dismiss or for summary judgment shall be filed and served within 23 days. Replies shall be filed and served within 23 days of the service of the response.

Subsection (c) of Rule 6.1 is deleted. Accordingly, proposed orders shall not be submitted with motions for extensions of time.

Subsections (a)-(b), and (d) of Rule 6.1 remain unchanged.

RULE 6.2
EFFECTIVE DATE OF COURT FILINGS FOR
PURPOSES OF CALCULATING LIMITATION PERIODS

Unless specifically provided otherwise, in determining the filing deadlines under both the federal procedural rules and the local rules of this court, the relevant date for calculating a limitation period dependent on the filing of a court order shall be the file-stamp date appearing on the order in the case of an order filed conventionally or, in the case of an order filed electronically, shall be the date stated on the Notice of Electronic Filing that is automatically generated by the court's Electronic Filing System. Neither the date on which the judge *or magistrate judge* signs the order nor the date on which the clerk's office enters the order on the docket has any relevance for purposes of calculating the limitation period.

RULE 7.1
MOTIONS IN CIVIL CASES

(a) Form and Filing. All motions, unless made during a hearing or at trial, shall be in writing and shall be filed with the clerk. Except for motions pursuant to D. Kan. Rules 6.1(a) through (d) and 7.2, all motions shall be accompanied by a brief or memorandum unless otherwise provided in these rules. With the approval of the court, parties may be relieved from the requirement of serving and filing written briefs or memoranda in support of motions, responses and replies.

(b) Joint or Unopposed Motions. If a motion is joint or unopposed, a statement to this effect shall be contained in the caption and in the body of the motion. Also, a proposed order shall be submitted with the motion. If the motion is filed electronically, the proposed order shall be submitted directly to the appropriate judge, *magistrate judge*, or the clerk as set forth in D. Kan. Rule 5.4.4 and the administrative procedures guide.

(c) Responses and Replies to Motions. Within the time provided in D. Kan. Rule 6.1(e), a party opposing a motion shall file and serve a written response to the motion containing a short, concise statement of its opposition to the motion, and if appropriate, a brief or memorandum in support thereof. The moving party may file and serve a written reply memorandum.

(d) Additional Copies of Documents. Copies of documents filed electronically shall not be provided to the court in conventional paper format unless otherwise required by court order, this court's rules, or the administrative procedures guide, or unless the court specifically requests that a party provide the court with paper copies. However, copies of documents that are filed in conventional paper format shall be filed with the clerk in duplicate, including an original and one copy.

RULE 7.6
BRIEFS AND MEMORANDA

(b) Citation of Unpublished Decisions. An unpublished decision cited in a brief or memorandum shall be attached as an exhibit to the memorandum or brief only if it is unavailable via electronic means (e.g., Westlaw or LEXIS). Unpublished decisions that are available via electronic means shall not be furnished to the court and shall be furnished to opposing parties only on request. Unpublished decisions should be cited as follows: Smith v. Jones, No. 02-1234, 2003 WL 8763523, at *2 (D. Kan. Jan. 7, 2003).

Subsection (c) of Rule 7.6 is deleted. See D. Kan. Rule 7.1(d) above, which addresses the circumstances under which additional copies of documents must be provided to the court.

Subsection (a) of Rule 7.6 remains unchanged.

RULE 15.1
MOTIONS TO AMEND AND FOR LEAVE TO FILE

In addition to the other requirements of D. Kan. Rules 7.1 through 7.5, a motion to amend or a motion for leave to file a pleading or other document that may not be filed as a matter of right shall set forth a concise statement of the amendment or leave sought to be allowed with the proposed pleading attached. If the court grants the motion, the moving party shall file and serve the pleading within 10 days of the court's order granting the motion.

RULE 16.2
FINAL PRETRIAL CONFERENCE

(e) Witness and Exhibit Lists and Disclosures. At times ordered by the court under Fed. R. Civ. P. 16(b) and (c)(7), the parties will exchange and file ~~lists of proposed witnesses and exhibits~~ disclosures pursuant to Fed. R. Civ. P. 26(a)(3).

(1) Content of Lists and Disclosures. Witness ~~lists~~ disclosures shall set forth the address of each witness, as well as the subject matter, and a brief synopsis of the substance of the facts to which each witness is expected to testify. Witness and exhibits ~~listed~~ disclosed by one party may be called or offered by the other party. ~~Witnesses and exhibits not identified and exchanged as required by the court's order shall not be permitted to testify or be received in evidence, respectively, except by agreement of counsel or upon order of the court. *If a witness or exhibit appears on a final Rule 26(a)(3) disclosure that has not previously been included in a Rule 26(a)(1) disclosure (or timely supplement thereto), that witness or exhibit probably will be excluded at trial. See Fed. R. Civ. P. 37(c)(1).*~~ This restriction does not apply, however, to rebuttal witnesses or documents, the necessity of which could not reasonably be anticipated as of the deadline for filing final witness and exhibit disclosures. ~~The provisions of Fed. R. Civ. P. 26(a)(3) and 26(a)(4) shall apply to disclosures.~~ The parties' disclosures shall designate deposition testimony (transcript or

videotaped) by reference to specific pages and lines or other appropriate method for videotape testimony, and also shall specifically identify specific deposition exhibits to be used. Witnesses expected to testify as experts shall be so designated.

....

(3) Testimony by Deposition. With respect to any witness who will appear by deposition, the disclosure shall designate by page and line (or other appropriate designation in the case of a videotaped deposition) those portions of the deposition the offering party intends to read into evidence. The opposing party shall then serve upon the offering party a counter designation of those portions of the deposition which the opposing party believes in fairness ought to be considered with the part the offering party has designated in accordance with Fed. R. Civ. P. 32(a)(4). Any disputes between the parties concerning deposition testimony, including any unresolved evidentiary objections, shall be brought to the attention of the Court by a separate filing with the Clerk of Court; ~~not later than the Friday before trial~~ *by the deadline set forth in the pretrial order*. The objecting party shall deliver a copy of the deposition to the judge along with this filing. A party intending to offer deposition evidence at trial shall provide the trial judge a copy of the deposition before the commencement of trial. For any depositions used at trial, all exhibit designations shall be re-marked by the offering party to correspond to the trial exhibit designations.

Subsections (a)-(d) and (e)(2) of Rule 16.2 remain unchanged.

RULE 26.3 DISCLOSURES AND DISCOVERY NOT TO BE FILED

Disclosures required under Fed. R. Civ. P. 26(a)(1) and (2), interrogatories under Fed. R. Civ. P. 33, requests for production or inspection under Fed. R. Civ. P. 34, and requests for admissions under Fed. R. Civ. P. 36, and the responses thereto, shall be served upon other counsel or parties, if not represented by counsel, but shall not be filed with the clerk.

As stated in D. Kan. Rule 5.4.2, registration as a Filing User constitutes consent to electronic service of these documents. However, a party's original signature verifying answers to interrogatories must be served conventionally. The verification may be served as a separate document if it references the interrogatory answers with adequate specificity (*e.g.*, "plaintiff's answers to defendant's Interrogatory Nos. 1 through 10, which answers were served by e-mail on March 1, 2003").

A party serving such disclosures and discovery shall at the time of service file with the clerk a certificate of service stating the type of disclosure or discovery or response served, the date and type of service, and the party served.

RULE 39.1
ORAL ARGUMENT AT JURY TRIALS

~~(a) — **Order and Length of Oral Argument.**~~ At trial, the party having the burden of proof shall have the right to open and close the jury argument without regard to whether the defendant has offered evidence. If each of the parties has the burden of proof on one or more issues, the court, in its discretion, shall determine the order of arguments. All arguments shall be subject to such time limitations as may be imposed by the court.

Subsection (b) of Rule 39.1 has been moved to Rule 51.1(a).

~~**RULE 39.2**~~
~~**TRIALS TO THE COURT**~~

Rule 39.2 has been moved to a new Rule 52.1.

RULE 51.1
REQUESTS FOR JURY INSTRUCTIONS

(a) Proposed Jury Instructions. Except for isolated instructions whose need could not have been foreseen, all proposed jury instructions must be filed and served prior to trial. Jury instructions are to be submitted in the following format:

(1) The parties are required to jointly submit one set of agreed instructions. To this end the parties must serve their proposed instructions upon each other, then meet, confer, and submit one complete set of agreed instructions.

(2) If the parties cannot agree upon one complete set of instructions, they are required to submit one set of those instructions that have been agreed, and each party shall submit a supplemental set of instructions which are not agreed.

(3) It is not sufficient that the parties merely agree upon general instructions, and then each submit their own set of substantive instructions. The parties are expected to meet, confer, and agree upon the substantive instructions for the case, if possible.

(4) Each proposed instruction should indicate the number of the proposed instruction and the authority supporting the instruction.

(5) In addition to written format, jury instructions shall be submitted on 3.5" high-density diskette, labeled with case caption, case number and document number. The court utilizes WordPerfect 7.0 and 9.0. Alternatively, Filing Users in cases assigned to the Electronic Filing System shall submit these jury instructions directly to the appropriate judge *or magistrate judge* in the form and manner set forth in the court's administrative procedures guide.

(6) Instructions not requested as set forth above and not timely filed shall be deemed to have been not properly requested within the meaning of Fed. R. Civ. P. 51, and may be

deemed waived unless the subject of the request is one arising in the course of trial which could not have been anticipated prior to trial from the pleadings, discovery or nature of the case.

(7) The failure to timely file objections, consistent with the pretrial order, may constitute a waiver of such objection.

(8) All instructions should be short, concise, understandable, and neutral statements of law. Argumentative instructions are improper, will not be given, and should not be submitted.

(9) Any modifications of instructions from statutory authority, Devitt and Blackmar, PIK, or other form instructions must specifically state the modification made to the original form instruction, along with the authority supporting the modification.

(b) Requests for Jury Instructions. Requested instructions to the jury shall be filed with the clerk, and a copy served upon each party at the opening of the trial, before the taking of evidence, or at such earlier time as may be required by court order or by the trial judge's procedural guidelines. Requested instructions that are not filed electronically shall be filed with the clerk in duplicate, including an original and one copy. The court may receive additional requests relating to questions arising during the trial at any time prior to the arguments. Each requested instruction shall, as far as possible, embrace a single legal proposition. Each instruction shall be numbered and written on a separate page, together with a citation of authorities supporting the proposition of law stated in the requested instruction. Each requested instruction shall identify the party submitting it.

Subsection (a) consists of the former Rule 39.1(b). Subsection (b) is the entirety of former Rule 51.1.

RULE 52.1
TRIALS TO THE COURT
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

(a) Proposed Findings of Fact and Conclusions of Law. Plaintiff's proposed findings of fact shall be organized as follows: Plaintiff's statement of facts shall set forth in simple declarative sentences all the facts relied on in support of plaintiff's claim for relief. The proposed findings shall be constructed in consecutively numbered paragraphs so that each opposing party may specifically admit or deny each proposed finding. Each finding shall reference in parenthesis the supporting trial exhibit and/or pages in the trial transcript.

Plaintiff's statement of legal conclusions shall set forth all conclusions necessary to demonstrate liability. Such conclusions shall be separately numbered and clearly and concisely stated in consecutively numbered paragraphs, with one proposed conclusion per page. Each proposed conclusion shall include a supporting citation to legal authority.

Defendant shall prepare its proposed findings and conclusions in the manner described above. In addition to its own proposed findings and conclusions, defendant shall put its response to plaintiff's proposed findings and conclusions. Each response shall bear the same number as the proposed finding or conclusion to which it is addressed.

(b) As used in Rule ~~39.2(a)~~ 52.1(a), the term plaintiff includes plaintiffs as well as counterclaimants, crossclaimants, intervenors and any other parties who assert affirmative claims for relief. The term defendant includes defendants as well as counterclaim defendants, crossclaim defendants and any other parties who are defending against affirmative claims for relief.

Rule 52.1 consists of the former Rule 39.2.

RULE 67.1 REGISTRY FUNDS

(a) **Orders Pursuant to Fed. R. Civ. P. 67.** It shall be the responsibility of any party seeking an order of the court for the deposit of funds pursuant to Fed. R. Civ. P. 67 to prepare such an order for the signature of the court, and to serve the same upon the clerk of this court. Filing Users in cases assigned to the Electronic Filing System shall submit this proposed order directly to the appropriate judge *or magistrate judge* in the form and manner set forth in the administrative procedures guide. It is suggested that parties utilize forms or proposed motions and orders which are maintained and available at each record office of the court for this purpose.

Subsections (b)-(d) of Rule 67.1 remain unchanged.

RULE 77.1 RECORD OFFICES; FILING OF PLEADINGS AND PAPERS

(b) **Filing of Pleadings and Papers.** Pleadings and other papers shall be filed at one of the record offices, via the court's Electronic Filing System, or, under extraordinary circumstances, may be filed with a judge or magistrate judge under the provisions of Fed. R. Civ. P. 5(e). Each record office of the court is to maintain a depository for the filing of pleadings and papers which shall be accessible 24 hours each day.

(c) **FAX Filing.** Where compelling circumstances exist, the clerk is authorized to accept for filing papers transmitted by facsimile transmission equipment. Such papers, when placed in the transmission equipment, shall comply with all provisions of these rules and the Federal Rules of Civil Procedure regarding the form, format, service and signature of pleadings and papers. A part of such facsimile transmission shall be a certificate of counsel, or the affidavit of a party not represented by counsel, setting forth the facts constituting the compelling circumstance. A copy of the papers transmitted to the clerk shall also be immediately transmitted by facsimile transmission to all parties who have the capability of receiving facsimile transmissions. Parties not having such capability shall be given notice of the facsimile filing immediately by telephone. Should the court later determine that the certificate or affidavit does not describe compelling circumstances, or that the allegations are untrue, the papers filed by facsimile transmission shall be stricken, and other appropriate sanctions may be imposed. ~~Any paper filed by facsimile transmission shall be stricken~~

~~unless the original is filed with the clerk within five days of the facsimile filing unless the time is extended by the court for good cause shown.~~

Subsection (a) of Rule 77.1 remains unchanged.

RULE 79.1 ACCESS TO COURT RECORDS

(a) Access. The public records of the court are available for examination in the office of the clerk during normal business hours. Access to electronically filed documents is available as set forth in D. Kan. Rule 5.4.12.

Subsections (b)-(d) of Rule 79.1 remain unchanged.

RULE 83.5.4 APPEARANCE FOR A PARTICULAR CASE

(a) Subject to the provisions of 28 U.S.C. §§ 515, 517, and other similar provisions of the United States Code, persons not admitted to practice in this court who are members in good standing of the bar of another state or of the bar of another federal court may, upon motion made by a member of the bar of this court in good standing, be admitted for the purposes of a particular case only. The motion shall be in writing and shall be accompanied by an affidavit on the form prescribed by court rule (See Appendix). ~~Effective July 1, 2003, †~~ The motion and affidavit shall be accompanied by payment of a registration fee in the sum of ~~\$25.00~~ 50.00 per case. Attorneys employed by any department or agency of the United States government shall not be required to pay a pro hac vice registration fee.

RULE 83.6.1 PROFESSIONAL RESPONSIBILITY

(a) Kansas Rules. The Kansas Rules of Professional Conduct as adopted by the Supreme Court of Kansas, and as amended by that court from time to time, except as otherwise provided by a specific rule of this court, are adopted by this court as the applicable standards of professional conduct.

(b) Disciplinary Enforcement. For misconduct defined in these rules, and after proceedings conducted in accordance with these rules, any attorney within the disciplinary jurisdiction of this court may be disbarred, suspended from practice, reprimanded or subjected to such other disciplinary action as the circumstances may warrant.

(c) Standards of Conduct. Any of the following acts or omissions by an attorney shall constitute misconduct and shall be grounds for discipline:

- (1) Acts or omissions which violate the standards of professional conduct adopted by this court;
- (2) Conduct violating applicable rules of professional conduct of another jurisdiction;
- (3) Willful disobedience of an order of court requiring the attorney to do or forebear an act connected with or in the course of the practice of law;
- (4) Willful violation of the attorney's oath prescribed by these rules;
- (5) Neglect or refusal, on demand, to pay over or to deliver money or property due or belonging to a client except where such money or property is retained under a bona fide claim of a lien for services;
- (6) Destroying, secreting, fraudulently withdrawing, mutilating or altering any paper, record or exhibit belonging to the files or records in any action or proceeding;
- (7) Willful violations of a valid order of the court, the Disciplinary Panel, ~~the Committee on Conduct of Attorneys~~ or a hearing panel; the willful failure to appear before or respond to a lawful demand from disciplinary authority, except that this rule does not require disclosure of information otherwise protected by applicable rules relating to confidentiality.

RULE 83.6.2 DISCIPLINE OF ATTORNEYS

(a) Disciplinary Panel. The chief judge shall assign a panel of three active or senior judges of the court to be known as the Disciplinary Panel which shall have general supervision over all proceedings involving the disbarment, suspension, censure or other discipline of lawyers practicing in this court or the alleged physical or mental disability of lawyers. The chief judge may, from time to time, designate other judges to serve as members or as alternates on the Disciplinary Panel. The Disciplinary Panel may, by a majority vote, provide for the investigation of a disciplinary complaint.

(b) Duties of the Clerk.

(1) The clerk shall maintain as a public record a general file to be known as the "Bar Disciplinary File." In it shall be kept a copy of any procedural guidelines which may be adopted by the Disciplinary Panel and such other documents as the Disciplinary Panel may direct. It shall not contain complaints or other papers filed in individual disciplinary proceedings or sealed by order of the court.

(2) The clerk shall keep a separate "Bar Discipline Docket" in which entries shall be made in bar disciplinary cases in the same manner as entries are made in the civil docket pursuant to Fed.R.Civ.P. 79. The bar discipline docket shall be marked "sealed" and confidentiality with respect to entries therein shall be maintained except as otherwise provided by these rules or ordered by the court.

(3) The clerk, when a complaint is filed shall, unless the facts already are known, ascertain from the disciplinary authorities of all bars of which the charged attorney is a member, his or her standing and disciplinary record, file the information received and report it to the Disciplinary Panel.

(4) Notice To Disciplinary Authorities. The clerk shall transmit notice of all public discipline imposed against a lawyer, transfers to or from disability inactive status, and reinstatements

to the Disciplinary Administrator of the Supreme Court of Kansas and to the National Discipline Data Bank maintained by the American Bar Association; and to the disciplinary authorities of any other bars of which the disciplined attorney may be a member.

(c) Confidentiality.

(1) Prior to the filing and service of formal charges in a disciplinary matter, the proceedings are confidential, except that the pendency, subject matter, and status of an investigation may be disclosed (A) by the clerk if the respondent has waived confidentiality or if the proceeding is based upon allegations that include either the conviction of a crime or public discipline by another court; (B) by the Disciplinary Panel if it has been determined by it that the proceeding is based upon allegations that have become generally known to the public; or that there is a need to notify another person or organization, including any recognized clients' security fund in order to protect the public, the administration of justice, or the legal profession.

(2) Proceedings. Upon filing and service of formal charges in a disciplinary matter, or filing of a petition for reinstatement, the proceeding is public except for deliberations of the hearing panel, board or court or information with respect to which the hearing panel or court has issued a protective order.

(3) Proceedings Alleging Disability. Proceedings for transfer to or from disability inactive status are confidential. All orders transferring a lawyer to or from disability inactive status are public.

(4) Protective Orders. In order to protect the interests of a complainant, witness, third party, or respondent, the Disciplinary Panel may, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

(5) Duty of Participants. All participants in a proceeding under these rules shall conduct themselves so as to maintain the confidentiality mandated by this rule.

RULE 83.6.3 PROCEDURE IN DISCIPLINARY CASES

(a) Jurisdiction. Any lawyer admitted to practice law in this court, including any formerly admitted lawyer with respect to acts committed prior to resignation, suspension, disbarment, or transfer to inactive status, or with respect to acts subsequent thereto which amount to the practice of law in violation of these rules or of the Model Rules of Professional Conduct as adopted by the Supreme Court of Kansas or any standards of professional conduct adopted by the court in addition to or in lieu thereof, and any lawyer specially admitted for a particular proceeding, or any lawyer not admitted to the bar of this court or the bar of Kansas who practices or attempts to practice law in this court is subject to the disciplinary jurisdiction of this court.

(b) Complaints Generally. Any person seeking to complain against an attorney practicing in this court for any cause or conduct which may justify disciplinary action shall do so in writing and under oath except that a complaint by a judge or magistrate judge of this court need not be verified. All complaints shall be filed in the record office of the clerk at Kansas City and shall be referred by the clerk to the Disciplinary Panel for such action as may be required or authorized by these rules.

(c) Initial Action by Disciplinary Panel. If, after due consideration, the Disciplinary Panel shall:

(1) Find from the face of the complaint that it is frivolous, groundless or malicious, dismiss it. In which event the order shall recite the reasons for dismissal. When a complaint is dismissed

under this subparagraph, the clerk shall mail a copy of the order of dismissal to the complainant by certified mail, return receipt requested;

(2) Find from the face of the complaint that the misconduct charged in the complaint would, if true, justify the imposition of disciplinary sanctions, it shall refer the matter to ~~the chairperson of the Committee on Conduct of Attorneys who shall name~~ a hearing panel ~~consisting of three members of the Committee on Conduct of Attorneys~~, one of whom shall be designated as chairperson of the hearing panel.

(d) Hearing Panel. A hearing panel shall sit as a panel of inquiry and, upon reasonable notice to the complainant and respondent, may hold hearings on the issues made. All hearings shall be recorded verbatim pursuant to 28 U.S.C. 753(b). The chairman of the hearing panel conducting the inquiry is hereby designated and appointed master with authority to cause subpoenas to be issued commanding the appearance of witnesses, the production of books, papers, documents or tangible things designated therein at such hearings or such other time designated in the subpoena. The chairman of the hearing panel, as such master, is further authorized to administer oaths to the parties and witnesses. Should any witness fail or refuse to attend or to testify under oath, the name of that witness may be certified to the Disciplinary Panel which may order the initiation of contempt proceedings against such witness.

(e) Investigation by Disciplinary Counsel.

(1) The chairman ~~of the Committee on Conduct of Attorneys with the concurrence~~ of the hearing panel ~~and~~ with the approval of the Chief Judge may appoint one or more members of the bar of this court (or if circumstances require of the bar of another court) in good standing, as Disciplinary Counsel whose duty it shall be to investigate, present and prosecute charges and prepare all orders and judgments as directed by the hearing panel.

(2) Disciplinary Counsel shall conduct an initial investigation of the charges and shall submit a written report to the hearing panel recommending dismissal of the complaint, informal admonition of the attorney concerned, or prosecution of formal charges before a hearing panel. Disposition shall thereupon be made by a majority vote of the hearing panel unless it directs further investigation.

(3) If informal admonition is contemplated the attorney involved shall first be notified and may, by written request to the chairman of the ~~Committee on Conduct of Attorneys~~ hearing panel, demand a formal hearing.

(f) Formal Charges.

(1) If formal prosecution is directed or demanded, Disciplinary Counsel shall, after making such additional investigation as he deems necessary, prepare and file with the clerk a formal complaint which shall be sufficiently clear and specific to inform the respondent of the alleged misconduct. A copy of the complaint, together with a summons in the general form of a civil summons issued pursuant to Rule 4, Fed.R.Civ.P., shall be served upon the respondent as a summons may be served under that rule. The respondent shall serve a response upon Disciplinary Counsel and file a copy thereof with the clerk within twenty (20) days after service of the complaint unless that time is extended by the chairman of the hearing panel. Following the service of a response, or upon respondent's failure to respond, and upon completion of any additional investigation allowed either party by the chairman of the hearing panel, the matter shall be set for hearing by the chairman of the hearing panel.

(2) Disciplinary Counsel shall serve a notice of hearing upon the respondent, respondent's counsel, and the complainant. The notice shall state that the respondent is entitled to be represented by counsel at his own expense, to cross-examine witnesses and to present evidence. The notice shall also state the date and place of the hearing and shall be served at least fifteen (15) days in advance of the hearing date. The hearing, except as otherwise provided by these rules, shall be governed by the Federal Rules of Evidence. All witnesses shall be sworn and all proceedings and testimony shall

be recorded as provided by 28 U.S.C. 753(b). The burden is on Disciplinary Counsel to establish charges of misconduct by clear and convincing evidence.

(3) At the conclusion of the hearing, disciplinary counsel shall prepare a report setting forth the findings and recommendations of the hearing panel which shall be signed by a majority of the panel and submitted to the Disciplinary Panel. In recommending discipline, the hearing panel may take into consideration the prior record, if any, of the respondent. Mitigating or aggravating circumstances which affect the nature or degree of discipline recommended shall be fully set forth in the panel's report. If the panel cannot agree unanimously on either the findings of fact or the recommended discipline, or both, the Disciplinary Counsel shall prepare and file a majority report. The minority member may file a minority report. The reports shall be filed with the clerk for reference to the Disciplinary Panel and a copy shall be mailed or delivered by Disciplinary Counsel to the respondent and to counsel of record. The hearing panel's report is confidential, shall be so marked, and shall not become a public record unless so ordered by the Disciplinary Panel.

(4) The hearing panel may, with or without preparing charges, refer the matter to the Disciplinary Administrator of the Supreme Court of Kansas.

(g) Review of Report.

(1) The clerk shall forward to the Disciplinary Panel with the hearing panel's report copies of the complaint; the answer, if any; the transcript of the hearing; all evidence admitted before the panel; and all evidence properly offered but rejected; which together shall constitute the record in the case. He shall at the same time issue and serve, by certified mail to the respondent's last address registered with the clerk, a citation directing the respondent to file within twenty (20) days from the date of mailing either (A) a statement that the respondent does not wish to file exceptions to the report, findings and recommendations, or (B) respondent's exceptions to the report. Any part of the report, findings or recommendations not timely excepted to shall be deemed admitted. If the citation is not deliverable by mail directed to the respondent's last address registered with the clerk and the respondent cannot be otherwise served, the matter shall stand submitted upon the filing by the clerk of a certificate reporting such facts.

(2) If the respondent fails to file timely exceptions, the hearing panel's findings of fact shall be deemed admitted and the case submitted on the record. If exceptions are timely filed, the respondent shall have thirty (30) days thereafter to file a brief; Disciplinary Counsel thirty (30) days after service of the respondent's brief; and the respondent ten (10) days after service of Disciplinary Counsel's brief to file a responsive brief. The case will be submitted to the Disciplinary Panel on the record when all briefs have been filed or the time for filing them has expired.

(3) If the Disciplinary Panel shall receive reliable information that disability or disciplinary proceedings involving the same attorney or the same or connected circumstances are pending or contemplated in another jurisdiction, the Panel may stay the proceedings in this court or direct such other action as it deems appropriate.

(4) During its review the Disciplinary Panel shall not receive or consider any evidence that was not presented to the hearing panel, except after notice to the respondent and Disciplinary Counsel and opportunity to respond. If new evidence warranting a reopening of the proceeding is discovered, the case shall be remanded to the hearing panel for a hearing which may be limited to specified issues.

(5) Upon conclusion of the proceedings the Disciplinary Panel shall, for the court, promptly enter an appropriate order.

RULE 83.6.4
RECIPROCAL DISCIPLINE

(a) Discipline by Other Courts. Upon being disciplined in another jurisdiction, a lawyer admitted to practice before this court shall promptly inform the clerk. Upon notification from any source that a lawyer within the jurisdiction of this court has been disciplined in another jurisdiction the clerk shall obtain and file a certified copy of the disciplinary order.

(b) Notice and Order to Show Cause. Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this court has been publicly disciplined by another court the clerk, in the name of the court, shall forthwith issue a notice directed to the attorney containing: (1) a copy of the judgment or order from the other jurisdiction or a statement of any information received relating to the discipline imposed by the other court; and (2) an order to show cause directing that the attorney inform the Disciplinary Panel within 30 days after service of that order upon the attorney, personally or by certified mail, return receipt requested, of any claim by the attorney predicated upon the grounds set forth in (d) hereof that the imposition of discipline substantially similar to that imposed by the other court would be unwarranted and the reasons therefor. The other court shall be given notice of the issuance of the order to show cause and of the response by the attorney, and shall have the right to intervene in the proceedings for the purpose of demonstrating that the discipline imposed by it was appropriate.

(c) Stays. In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this court shall be deferred until such stay expires.

(d) Reciprocal Discipline Imposed; Exceptions: Upon the expiration of the 30 days from service on the respondent of the notice issued pursuant to the provisions of this rule, the Disciplinary Panel shall impose discipline substantially similar to that imposed by the other court unless the respondent-attorney demonstrates, or the Disciplinary Panel finds, that upon the face of the record upon which the discipline in the other jurisdiction is predicated it clearly appears:

(1) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Disciplinary Panel could not, consistent with its duty, accept as final the conclusion on that subject; or

(3) that the imposition of the same discipline by the Disciplinary Panel would result in grave injustice; or

(4) that the misconduct established is deemed by the Disciplinary Panel to warrant substantially different discipline.

Where the Disciplinary Panel determines that any of said elements exist, it shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same or substantially similar discipline is not appropriate.

(e) Final Adjudication in Other Courts. In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this court.

~~**(f) Referral to Committee on Conduct of Attorneys.** The Disciplinary Panel may at any stage refer proceedings under this rule to the Committee on Conduct of Attorneys for investigation and report to the panel.~~

RULE 83.6.5
ATTORNEYS CONVICTED OF CRIMES

(a) Attorney's Duty. It shall be the duty of any attorney practicing before this court, regularly or pro hac vice, who is charged with commission of a felony or a grievance such as would subject the attorney to discipline in this court, in any other court of the United States or of any state, territory, district, commonwealth or possession, to notify the clerk in writing on or before ten (10) days after the filing of such charge or grievance.

(b) Interim Suspension. Upon the filing with the clerk of this court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before this court has been convicted in any other court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States, of a serious crime as hereinafter defined, the Disciplinary Panel shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty or *nolo contendere* or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding based upon such conviction. A copy of such order shall immediately be served upon the attorney. Such service may be made personally or by certified mail, return receipt requested, addressed to the attorney at his or her most current address on file with the clerk of this court. For good cause shown the Disciplinary Panel may set aside such order when it appears in the interests of justice so to do.

(c) Serious Crime.

(1) The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy of solicitation of another to commit a "serious crime."

~~(2) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime" the Disciplinary Panel may refer the matter to the Committee on Conduct of Attorneys for its investigation and recommendation.~~

(d) A certificate of a conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against said attorney based upon the conviction. A diversion agreement, for the purpose of any disciplinary proceeding, shall be deemed a conviction of the crime originally charged.

(e) An attorney suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

RULE 83.6.6
INTERIM SUSPENSION

Interim Suspension of Attorneys. The Disciplinary Panel may, on its own motion, ~~or on the motion of the Committee on Conduct of Attorneys,~~ issue a citation directing an attorney against whom disciplinary or disability proceedings are pending in this court or in any other jurisdiction to appear before a member of the Disciplinary Panel and show cause why that attorney should not be suspended during the pendency of such proceedings. After hearing, or if the respondent shall fail to appear as ordered, the Disciplinary Panel may enter an order suspending the attorney from practice

for a definite or indefinite period or may discharge the citation. The show cause order and a copy of the document initiating the disciplinary proceeding shall be served personally or by certified mail, return receipt requested, addressed to the attorney at his or her most current address on file with the clerk of this court.

RULE 83.6.7

ATTORNEYS WHO RESIGN FROM THE BAR DURING AN INVESTIGATION OF MISCONDUCT OR DISBARMENT ON CONSENT

(a) Any attorney admitted to practice before this court who shall be disbarred on consent or resign from the bar of this court or any other court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, shall promptly inform the clerk of this court of such disbarment on consent or resignation.

(b) Upon receipt of information from any source that an attorney practicing in this court has been disbarred on consent or has resigned from the bar of any court, the clerk shall report such information to the Disciplinary Panel.

RULE 83.6.8

REINSTATEMENT AFTER DISCIPLINE

(a) Petitions for Reinstatement.

(1) An attorney who has been disbarred may not apply for reinstatement within five (5) years of the effective date of the disbarment. An attorney who has been suspended may apply for reinstatement at the end of the period of suspension. Reinstatement is neither automatic nor a matter of right. However, an attorney suspended for three (3) months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three (3) months or disbarred may not resume practice until reinstated by the court.

(2) Petitions for reinstatement shall be accompanied by an advance cost deposit in an amount to be set from time to time by the court to cover anticipated costs of the reinstatement proceeding.

(3) No petition for reinstatement under this rule shall be filed within one (1) year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

(b) A petitioner seeking reinstatement shall have the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competence and learning in the law required for admission to practice law before this court and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice or subversive of the public interest.

(c) Petitions for reinstatement may be referred by the Disciplinary Panel to ~~the Committee on Conduct of Attorneys~~ **a hearing panel**. When so referred, the investigation shall be conducted by a ~~hearing panel appointed by the chairman of that committee~~ **the hearing panel**. The hearing panel, after review of the basic file and such investigation as it deems necessary, shall report its findings of fact with supporting documents and its recommendations to the Disciplinary Panel.

(d) The Disciplinary Panel, after review of the files and the report of the hearing panel shall, for the court, enter an order granting or denying reinstatement.

RULE 83.6.9

PROCEEDINGS WHERE AN ATTORNEY IS DECLARED TO BE MENTALLY INCOMPETENT OR IS ALLEGED TO BE INCAPACITATED

(a) Attorneys Declared Mentally Incompetent. Where an attorney who is a member of the bar of this court has been judicially declared incompetent or involuntarily committed to a mental hospital, the Disciplinary Panel, upon proper proof of the fact, shall enter an order suspending such attorney from the practice of law effective immediately and for an indefinite period until further order of the Disciplinary Panel. A copy of such order shall be served upon such attorney, his or her guardian, and the director of the mental hospital in such manner as the Disciplinary Panel may direct.

(b) Attorneys Alleged to be Incapacitated. Whenever ~~the Committee on Conduct of Attorneys~~ a hearing panel, through its chairman, shall petition the Disciplinary Panel to determine whether an attorney who is a member of the bar of this court is incapacitated from continuing the practice of law by reason of mental or physical infirmity or illness or use of drugs or intoxicants, the Disciplinary Panel may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Disciplinary Panel shall designate. Failure or refusal to submit to such examination shall be prima facie evidence of incapacity. If upon due consideration of the matter, the Disciplinary Panel concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order suspending or transferring him or her to inactive status until further order of the Disciplinary Panel.

The Disciplinary Panel may provide for such notice to the respondent attorney of proceedings in the matter as is deemed proper and advisable and may appoint an attorney to represent the respondent if he or she is without representation.

(c) Claim of Disability During Disciplinary Proceedings. If, during the course of a disciplinary proceeding, the respondent attorney contends that he or she is suffering from a disability by reason of mental or physical infirmity or illness or use of drugs or intoxicants which makes it impossible for the respondent adequately to defend himself or herself, the Disciplinary Panel thereupon shall enter an order immediately suspending the respondent from continuing to practice law until a determination is made of the respondent's capacity to continue to practice law.

(d) Application for Reinstatement after Infirmity.

(1) Any attorney suspended for incompetency, mental or physical illness or because of use of drugs or intoxicants may apply to the Disciplinary Panel for reinstatement once a year, or at such shorter intervals as the Disciplinary Panel may direct in the order of suspension. The application shall be granted by the Disciplinary Panel upon a showing by clear and convincing evidence that the attorney's disability has been removed and that he or she is fit to resume the practice of law. The Disciplinary Panel may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been remedied including a direction for an examination of the attorney by such qualified medical experts as the Disciplinary Panel shall designate. The Disciplinary Panel may direct that expenses of such an examination shall be paid by the applicant.

(2) When an attorney has been suspended because of a judicial declaration of incompetence or involuntary commitment to a mental hospital and has thereafter been judicially

declared to be competent, the Disciplinary Panel may dispense with further evidence and direct the reinstatement of the attorney upon such terms as are deemed proper and advisable.

(e) Evidentiary Hearing. If an evidentiary hearing is held to determine whether an attorney is incapacitated or to consider an attorney's application for reinstatement, the Disciplinary Panel may appoint Disciplinary Counsel to appear for the purpose of examining and cross-examining witnesses and offering proof pertinent to the issues. The burden of proof in proceedings to transfer to disability inactive status is on Disciplinary Counsel. The burden of proof in proceedings seeking reinstatement, readmission or transfer from disability inactive status is on the applicant.

(f) Waiver of Physician-Patient Privilege. The filing of an application for reinstatement by an attorney who has been suspended for disability shall constitute a waiver of any physician-patient privilege with respect to any treatment of the attorney during the period of his or her disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital by whom or in which the attorney has been examined or treated since suspension and shall furnish the Disciplinary Panel with written consent for such psychiatrists, psychologists, physicians or hospitals to divulge such information or records as may be requested by the medical experts designated by the Disciplinary Panel.

RULE 83.7

REVIEW OF ORDERS OF ADMINISTRATIVE AGENCIES, BOARDS, COMMISSIONS AND OFFICERS (INCLUDING SOCIAL SECURITY APPEALS)

(c) Filing of the record. In review proceedings, the agency shall file the record with the clerk of this court when it files its answer unless a different time is provided by the statute authorizing review. In enforcement proceedings the record need not be filed unless the respondent has filed an answer contesting enforcement of the order. If the record is required, the court shall fix the time for its filing. The record shall be filed conventionally, not electronically.

Subsections (a)-(b) and (d)-(e) of Rule 83.7 remain unchanged.

RULE CR49.1

SCOPE OF ELECTRONIC FILING

As authorized by Fed. R. Crim. P. 49(d) and Fed. R. Civ. P. 5(e), the court will accept for filing all documents submitted, signed, or verified by electronic means that comply with procedures established by the court.

All criminal cases ~~pending, filed on, or filed after May 20, 2003, shall be~~ are assigned to the Electronic Filing System unless otherwise ordered by the court. All petitions, motions, memoranda of law, or other pleadings and documents filed with the court ~~on or after May 20, 2003,~~ in connection with a case assigned to the Electronic Filing System ~~must~~ shall be filed electronically unless otherwise permitted in these rules or the administrative procedures guide or unless otherwise authorized by the ~~assigned judge~~ court. The filing of the charging documents, including the

complaint, information, indictment, and superseding *information or* indictment, *will shall* be accomplished as set forth in the administrative procedures guide which is authorized by D. Kan. Rule CR49.13.

~~For a~~ All criminal cases *that were* pending as of *on* May 12, 2003, it ~~will not be feasible to transfer the existing files to the court's Electronic Filing System retroactively. Therefore, those cases will have a two-part file that consists~~ *consisting* of: (1) a conventional paper file containing documents filed before May 12, 2003; and (2) an electronic file containing documents filed on or after May 12, 2003. ~~Parties shall not provide the clerk with electronic copies of documents that were filed in paper form prior to May 20, 2003. Rather, the clerk shall continue to retain all documents filed prior to May 20, 2003, in conventional paper format.~~

RULE CR49.2 ELIGIBILITY, REGISTRATION, PASSWORDS

Attorneys admitted to the bar of this court, including those admitted pro hac vice, may register as Filing Users of the court's Electronic Filing System. Registration is in a form prescribed by the clerk and requires the Filing User's name, address, telephone number, Internet e-mail address, and a declaration that the attorney is either admitted to the bar of this court or has been admitted pro hac vice.

Attorneys who are admitted pro hac vice and who register as Filing Users shall have access to the court's Electronic Filing System through PACER and shall receive the notices of electronic filing that are automatically generated by the court's Electronic Filing System. However, this court's rules require meaningful participation by local counsel and, to that end, require local counsel to sign all pleadings and other papers filed with the court. *See* D. Kan. Rule 83.5.4(c). Consistent with this rule, attorneys who are admitted pro hac vice may not file documents electronically.

A party to a pending criminal action who is not represented by an attorney may not register as a Filing User in the Electronic Filing System unless permitted to do so by the court. If so permitted, registration is in a form prescribed by the clerk and requires identification of the action as well as the name, address, telephone number, and Internet e-mail address of the party. If, during the course of the action, the party retains an attorney who appears on the party's behalf, the attorney must advise the clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

Registration as a Filing User constitutes consent to electronic service of all documents as provided in these rules in accordance with the Federal Rules of Civil Procedure.

Once registration is completed, the Filing User will receive notification of the user log-in and password. Filing Users agree to protect the security of their passwords and immediately notify the clerk if they learn that their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

RULE CR49.3
CONSEQUENCES OF ELECTRONIC FILING

Electronic transmission of a document to the Electronic Filing System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes of the Federal Rules of Criminal Procedure and the local rules of this court, and constitutes entry of the document on the docket kept by the clerk under Fed. R. Crim. P. 49 and 55.

Before filing a scanned document with the court, a Filing User must verify its legibility.

When a document has been filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted electronically, a document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the court.

Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight local time where the court is located in order to be considered timely filed that day.

RULE CR49.4
ENTRY OF COURT ~~ORDERS~~ ISSUED DOCUMENTS

All orders, decrees, judgments, and proceedings of the court will be filed in accordance with these rules which will constitute entry on the docket kept by the clerk under Fed. R. Crim. P. 49 and 55. All ~~signed orders~~ *such documents* will be filed electronically by the court or court personnel. Any ~~order~~ *such document* filed electronically without the original signature of a judge, *magistrate judge*, or clerk has the same force and effect as if the judge, *magistrate judge*, or clerk, respectively, had signed a paper copy of the order and it had been entered on the docket in a conventional manner.

Orders may be issued as “text-only” entries on the docket without an attached document. Such orders are official and binding.

The court may issue a warrant or summons electronically, but a warrant or summons may only be served in accordance with Fed.R.Crim.P 4(c).

A Filing User shall not submit a proposed order by electronic filing, either as an attachment to a corresponding motion or otherwise. Rather, proposed orders shall be submitted directly to the appropriate judge, *magistrate judge*, or clerk in the form and manner set forth in the administrative procedures guide.

RULE CR49.5
ATTACHMENTS AND EXHIBITS

Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless conventional filing is permitted by the court or the administrative procedures guide. Voluminous exhibits shall be filed as set forth in the administrative procedures guide.

A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or the complete document. Responding parties may timely file additional excerpts or the complete document that they believe are directly germane. The court may require parties to file additional excerpts or the complete document.

RULE CR49.6
SEALED DOCUMENTS

Until the Electronic Filing System has adequate confidentiality procedures for sealed documents, documents ordered to be placed under seal must be filed conventionally and not electronically unless specifically authorized by the court. A motion to file documents under seal may be filed electronically unless prohibited by law. The order of the court authorizing the filing of documents under seal may be filed electronically unless prohibited by law. A paper copy of the order must be attached to the documents to be filed under seal and be delivered to the clerk.

RULE CR49.7
RETENTION REQUIREMENTS

Documents that are electronically filed and require original signatures ~~other than that of the Filing User~~ *of non-Filing Users* must be maintained in paper form by the Filing User until 6 years after all time periods for appeals expire. On request of the court, the Filing User must provide original documents for review.

RULE CR49.8
SIGNATURES

The user log-in and password required to submit documents to the Electronic Filing System serve as the Filing User's signature on all electronic documents filed with the court. They also serve as a signature for purposes of Fed. R. Civ. P. 11, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court. Each document filed

electronically must, if possible, indicate that it has been electronically filed. Electronically filed documents must include a signature block in compliance with D. Kan. Rule 5.1(c) and must set forth the name, address, telephone number, facsimile number, e-mail address, and the attorney's state supreme court registration number or the equivalent of said number; attorneys admitted from the Western District of Missouri, by reciprocal admission, shall include their Kansas District Court registration number. In addition, the name of the Filing User under whose log-in and password the document is submitted must be preceded by an "s/" and typed in the space where the signature would otherwise appear.

No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

A document containing the signature of a defendant in a criminal case may at the court's option be filed either: (1) in paper form or (2) in a scanned format that contains an image of the defendant's signature. Documents containing signatures of other non-Filing Users shall be filed electronically either as a scanned image or with the signature represented by an "s/" and the name typed in the space where the signature would otherwise appear.

Documents requiring signatures of more than one party must be electronically filed by: (1) submitting a scanned document containing all necessary signatures; (2) representing the consent of the other parties on the document as permitted by the administrative procedure governing multiple signatures; (3) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three business days after filing; or (4) in any other manner approved by the court.

RULE CR49.9

SERVICE OF DOCUMENTS BY ELECTRONIC MEANS

The notice of electronic filing that is automatically generated by the court's Electronic Filing System constitutes service of the filed document on all parties who have consented to electronic service. Parties not deemed to have consented to electronic service are entitled to service of paper copies of the notice of electronic filing and the electronically filed pleading or other document. Service of such paper copies must be made according to the Federal Rules of Criminal Procedure and the local rules.

A certificate of service must be included with all documents filed electronically, indicating that service was accomplished through the Notice of Electronic Filing for parties and counsel who are Filing Users and indicating how service was accomplished on any party or counsel who is not a Filing User.

RULE CR49.10
NOTICE OF COURT ORDERS AND JUDGMENTS

Immediately upon the entry of an order or judgment in an action assigned to the Electronic Filing System, the clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed. R. Crim. P. 49(c). The clerk must give notice in paper form to a person who has not consented to electronic service in accordance with the Federal Rules of Criminal Procedure.

RULE CR49.11
TECHNICAL FAILURES

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

RULE CR49.12
PUBLIC ACCESS

A person may review at the clerk's office filings that have not been sealed by the court. A person may also access the Electronic Filing System at the court's Internet site, www.ksd.uscourts.gov, by obtaining a PACER log-in and password. A person who has PACER access may retrieve docket sheets and documents. Unless otherwise specifically permitted by the court, only a Filing User who is an attorney admitted to the bar of this court may file documents electronically. *See* D. Kan. Rule CR49.2.

RULE CR49.13
ADMINISTRATIVE PROCEDURES

In order to facilitate implementation of the foregoing rules, the clerk is authorized to develop, adopt, publish, and modify as necessary *Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means in Criminal Cases* ("administrative procedures guide"), which will include the procedures for registration of attorneys and distribution of passwords to permit electronic filing and notice of pleadings and other papers.