

UNITED STATES DISTRICT COURT
District of Kansas

Bench-Bar Committee Meeting

MINUTES OF APRIL 23, 2024, at 9:00 a.m.

Maple Hill, KS

IN ATTENDANCE:

HONORABLE ERIC F. MELGREN, CHIEF JUDGE
HONORABLE DANIEL D. CRABTREE, JUDGE, CHAIR
HONORABLE JOHN W. BROOMES, JUDGE
HONORABLE HOLLY L. TEETER, JUDGE
HONORABLE TERESA J. JAMES, MAGISTRATE JUDGE
HONORABLE ANGEL D. MITCHELL, MAGISTRATE JUDGE
HONORABLE RACHEL E. SCHWARTZ, MAGISTRATE JUDGE
HONORABLE DALE L. SOMERS, CHIEF BANKRUPTCY JUDGE (via video link)
SKYLER B. O'HARA, CLERK OF COURT
KATE E. BRUBACHER, U.S. ATTORNEY
THOMAS BARTEE, ASSISTANT FEDERAL PUBLIC DEFENDER
TIMOTHY M. O'BRIEN, CHAIR, KANSAS BENCH-BAR
ERIC W. BARTH, ESQ.
ANGELA D. GUPTA, ESQ.
TERELLE A. MOCK, ESQ.
RAZMI M. TAHIRKHELI, ESQ.
JENNIFER HILL, ESQ.
JENNIFER B. WIELAND, ESQ.
KATE MARPLES SIMPSON, ESQ. (via video link)
SARAH STEEN RUANE, ESQ
TERESA L. SHULDA, ESQ
KIM LEININGER, CHIEF DEPUTY CLERK

1) WELCOME AND INTRODUCTIONS

Judge Crabtree welcomed members and introduced new members Judge Holly Teeter, U.S. District Court Judge in Kansas City; Sarah Steen Ruane, with Wagstaff & Cartmell LLP in Kansas City; and Teresa L. Shulda, with Foulston Siefkin LLP in Wichita.

2) RULE 2 COMMITTEE UPDATE

Judge Schwartz shared that the Rule 2 Committee was established in 2022 with a group of practitioners from across the state to review and revise our local criminal rules. The Rule 2

Committee is composed of Judge Schwartz (chair), Judge Crabtree, Judge Mitchell, 10th Circuit Judge Rich Federico, AUSA Skip Jacobs, AUSA Aaron Smith, Chasity Schoonover, and criminal practitioners Dionne Scherff, Mark Thomason, Jim Pratt, Sylvia Penner, and Laquisha Ross.

Judge Schwartz referred members to the Summary of Proposed Changes to the Local Rules on page 6 of the agenda book. First, the committee reviewed each civil local rule to determine which ones apply in the criminal context and eliminate the ambiguity. Second, the committee agreed upon the elimination of rules deemed either duplicative of federal statutes or rules that are obsolete. Finally, the committee recommended the removal of the jury plan, Rule 38.1; the CJA plan, CR44.1; and the Speedy Trial Act, CR 50.1. These three rules are unique because modification requires 10th Circuit approval. Other district courts within the 10th Circuit do not include these in their local rules and treat them as stand-alone plans.

Rule 1.1 Scope and Modification of Rules; Definitions; Citation – To clarify the application of this rule, it was suggested to modify 1.1(a) to read “Unless otherwise stated, these rules govern the procedure in all proceedings before this court, except criminal proceedings.”

Rule 47.1 Communication with Jurors After Trial – The revisions to this rule addresses two issues. The first is that at the end of a trial it is not always a court order that allows for juror communication. Instead, it is the judge informing the lawyers what they can and can’t do with jurors. 47.1(a) now states “**Court Order or Permission Required**. The parties, their attorneys, or their representatives must not initiate contact, examine, or interview any juror, either orally or in writing, except: (1) by permission or order of the court in its discretion.” The second issue addresses juror-initiated contact in (c) and clarifies that when attorneys are contacted by a juror, “The restrictions set forth in subsection (b) continue to apply...”

Rule 72.1.2 Assignment of Matters to Magistrate Judges – Eliminates the language “including omnibus hearings” because this type of hearing is no longer relevant.

Rule 72.1.4 Objections; Appeals; Stay of Magistrate Judge’s Orders – Modified paragraph (e) **Application in Criminal Cases**, to clarify the time period that applies. The rule now states “In criminal cases, motions to appeal or otherwise seek review by a district judge of a magistrate judge’s order must be filed within 14 days of the magistrate judge’s order. The court may extend this deadline on a showing of good cause.”

Rule 79.3 Custody and Disposition of Trial Exhibits, Sealed Documents, and Filed Depositions – Remove language in paragraph (b) that is unnecessary language.

Rule CR1.1 Civil Rules that Apply in Criminal Proceedings – This is a new rule that clarifies the rules that govern the procedures in all criminal proceedings before the court. In some instances, the committee incorporated the entire rule and in other instances the Rule 2 Committee was very specific on which paragraphs are incorporated.

Rule CR1.2 Time – This is a new rule addressing the time for filing of responses and replies. It states that “Unless otherwise ordered by the court, a party opposing a motion must file a response within 14 days. Any reply must be filed within 7 days of the response.” After discussion about the time allotted to respond, it was decided to modify the language to “Unless otherwise ordered by the court, any response must be filed within 14 days.”

Rule CR1.3 Motions and Briefing in Criminal Cases – This rule is based upon the civil rule, but with language that works better for criminal cases. It clarifies that all motions, unless made during a hearing or at a trial, must be filed in writing with the clerk. The motion or opening brief filed in support of the motion must contain certain information. In paragraph (b) it is helpful to know if a motion is joint or unopposed, particularly for extension motions, so they can

be ruled upon immediately. They also included the supplemental authority language used in the civil rule. Tom Bartee shared that regarding paragraph (a)(3) “a concise statement of the facts, with each statement of fact supported by reference to the record,” they typically do not have the record when filing a motion. It was then suggested to modify the language to delete “with each statement of fact supported by reference to the record.”

Rule CR17.1 Subpoenas in Criminal Cases Involving Court-Appointed Counsel–

This new rule is only intended to deal with subpoenas of people, not documents and does not address Fed. R. Crim. P.17(c). This rule is modeled after similar rules that exists in district courts around the country dealing with a simplified process for the public defender or CJA counsel to get a subpoena. Currently the court receives a motion filed ex parte and a proposed order. Typically, our judges sign the order with very few, if any, changes. The intent of this rule is to allow the public defender or CJA counsel to go directly to the clerk’s office to get a subpoena that can be completed and served as they are now. Paragraph (b), regarding the service of a subpoena, says: “...the U.S. Marshall shall serve it in the same manner as in other criminal cases pursuant to Fed. R. Crim. P. 17(b).” Mr. Bartee stated that the FPD does not use the U.S. Marshal’s service to serve subpoenas and use their own investigators to serve them. The committee discussed if there were any issues in delegating this authority to the clerk’s office, and they concluded that the court is not required to review the subpoenas.

Rule CR32.1 Presentence Reports – This rule modification addresses the different processes and preferences throughout the district.

Rule CR44.2 Appearance in Criminal Cases – Modified the rule to clarify that “An attorney seeking pro hac vice admission for a criminal case shall follow D. Kan. Rule 83.5.4.”

Rule CR44.3 Withdrawal of Appearance – Clarifies that you cannot leave someone unrepresented after a withdrawal.

The Rule 2 Committee recommended the removal of CR49.1, CR49.3, CR49.4, and CR49.5. They proposed to delete all but one sentence in CR 49.2, **Eligibility, Registration, Passwords**.

Rule CR49.6 Sealed Documents – After reviewing this rule it became apparent that district judges throughout the district handle sealed documents differently and the committee could not come up with a single rule that fit all of the judges' preferences. The only addition made was paragraph (d) which allows the sealed process to go forward without having a separate motion. Chasity Schoonover was comfortable with this language from a filing perspective.

The Rule 2 Committee recommended the deletion of CR49.7, CR49.8, CR49.9, CR49.10, CR49.11, CR49.12, and CR49.13 because they are covered by the court's administrative procedures or are no longer relevant.

Rule CR53.1 Dissemination of Information – The Rule 2 Committee simplified the language in paragraph (d) to "All criminal proceedings shall be held in open court unless otherwise provided by law or ordered by the court." Giving the court greater flexibility to determine when it is appropriate to close a proceeding to the public.

Finally, **Rule CR 55.1 Verification of Receipt of Transcript** was removed because it is no longer necessary.

Judge Crabtree asked if there were any other issues to discuss regarding the proposed local rule modifications. Mr. Bartee expressed concern about **Rule CR49.6 Sealed Documents** and when sealed restrictions are actually lifted once the warrant is executed. Judge Crabtree asked Judge Schwartz to make a note of this issue, reach out to Chasity Schoonover, and

determine if the language must be modified before it goes to the board of judges for their consideration. The court subsequently confirmed that absent a court order to keep a warrant sealed, the clerk's office will unseal it upon return of an executed search warrant. If a warrant is returned unexecuted, it will remain sealed.

Judge Crabtree thanked Judge Schwartz and the Rule 2 Committee for the massive amount of work they performed to revise our local criminal rules.

3) APPROVAL OF SEPTEMBER 26, 2023, MINUTES

Judge Crabtree asked the committee if they noted any corrections or changes to the September 26, 2023, minutes. Angela Gupta moved to adopt the minutes as written, Terelle Mock seconded the motion, and the motion passed unanimously.

4) CHIEF JUDGE REPORT

Chief Judge Melgren reminded the committee that the last time he provided a report, he talked about the impact of the declining caseload and how it could impact future magistrate judgeships. Since the last meeting, the AO is no longer recommending our temporary district court judge position be automatically continued, but instead, they only recommended a five-year extension to provide time to see if caseloads will rebound. We are authorized for four bankruptcy judge positions in Kansas, but one position remains unfilled due to low caseloads.

The court has averaged a nine percent budget reduction for multiple years in a row. Declining budgets and declining workload have meant the clerk's office has reduced the number of staff by 6.5 positions. The court has moved away from providing one courtroom deputy per judge and we have combined positions where possible. This trend is expected to continue for the foreseeable future.

The District of Kansas United States Probation Office lost 30 authorized work units over the last several years. The court is also experiencing increased difficulty in recruiting and retaining IT staff because their earnings potential is greater in the private sector. Chief Judge Melgren noted a decline in law clerk applications which could be related to the fact that law firms are starting new attorneys at a significantly higher starting salary than starting salaries for new law clerks. All of these issues are concerning and there are not a lot of solutions. Skyler O'Hara and her staff are doing a phenomenal job of keeping things running amid tightening budgets and declining staff numbers.

5) LOCAL RULES

a. **Removal of D. Kan. Rules 38.1 and CR 44.1** – Ms. O'Hara shared that Judge Schwartz already discussed the removal of the Jury Plan and the Criminal Justice Act Plan from the local rules. A nationwide look at how other courts handle these revealed that most courts have stand-alone plans.

b. **D. Kan. Rule 38.1, Jury Pool Sources** – Judge Crabtree reported that at the court's annual meeting last fall, the board of judges voted to approve, as a pilot program, the inclusion of driver's license records as source information for filling our 2025 jury wheel. Once approved by the 10th Circuit, this rule change will be implemented, and the court will examine the impact of adding driver's licenses as a source list.

6) BENCH-BAR FUND UPDATE

Ms. O'Hara reported that the Bench-Bar fund is funded through our annual attorney registration fee process. At its annual fall meeting, the Bench-Bar committee recommends an annual budget for board of judges' approval. We anticipate remaining within the approved limits established in the approved budget. Bench-Bar funds cannot be used for any items for

which there is a congressional appropriation. Committee action is requested to approve a new annual expense category for the ongoing maintenance of the attorney wireless system in the amount of \$30,000. Jennifer Hill moved to approve \$30,000 for the attorney wireless system maintenance and Teresa Shulda seconded the motion. The committee voted unanimously to approve the motion.

7) MEDIA REQUEST TO BRING CELL PHONES IN COURTHOUSE

In November 2023, the court hosted a media luncheon for local members of the press to meet with the judges and discuss various issues. The journalists expressed concern with imposed limitations in bringing electronic devices into the courthouse and preventing the filing of timely news stories. The U.S. Marshals strongly recommend the prohibition of cell phones other than for attorneys with bar cards. Judge Melgren has a standing order with specific guidelines/restrictions for utilizing electronic devices during trials. It allows the press to bring in electronic devices and file news stories from the hall outside the courtroom, but prohibits the media from filing stories in the courtroom.

Judge Broomes is not in favor of allowing the media to bring electronic devices into the courthouse. Judge Teeter has allowed the media to bring in electronic devices and file stories from the hallway, but believes electronic devices should always be prohibited in the courtroom, mainly to protect the jurors and their anonymity.

Although possible solutions were discussed, it was decided that the policy should not be changed.

8) PROPOSED GUIDELINES FOR BENCH-BAR FUND REQUESTS FOLLOW-UP

Judge Crabtree reported that at our fall 2023 meeting there was discussion on developing guidelines for the appropriate use of Bench-Bar funding for bar association requests. The

Bench-Bar Committee recommended new guidelines and Judge Crabtree subsequently presented that to the board of judges. After discussing the issue, the judges decided to continue considering requests on a case-by-case basis without adopting specific guidelines.

9) FEDERAL BAR ASSOCIATION ANNUAL MEETING & CONFERENCE,
SEPTEMBER 5-7

As a sponsor of the 2024 FBA Annual Meeting and Convention in Kansas City, Missouri, we received several complimentary registrations as well as additional registrations at a reduced cost. The complimentary registrations and the reduced registrations will be offered to members of the Bench-Bar Committee.

10) KANSAS BAR ASSOCIATION BENCH-BAR COMMITTEE REPORT

Tim O'Brien reported that the KBA Bench-Bar committee is made up of a cross-section of Kansas lawyers and judges. They hold several Zoom meetings every year, and Kansas groups and organizations related to the KBA make presentations. They also receive a legislative update and advance issues related to the profession. Last year they were successful in lobbying for pay increases for Kansas public defenders. The committee is also working on a judicial retention education website for the public and have focused on appellate judge retention and assisting voters in making informed decisions on retention issues.

11) SELECTION OF NEW MEMBERS IN AUGUST

The appointments of Eric Barth, Angela Gupta, Terelle Mock, and Razmi Tahirkheli will expire on December 31, 2024. An announcement will go out to all bar members soliciting applications to fill those vacancies for the January 1, 2025, to December 31, 2027 term.

The meeting, having convened at 9:00 a.m., adjourned at 12:10 p.m.

Respectfully submitted,

s/Kim Leininger

Chief Deputy Clerk