

**Summary of Changes to the Local Rules of the United States District Court
for the District of Kansas
Effective January 4, 2023**

The United States District Court for the District of Kansas amended the below Rules of Practice and Procedures effective January 4, 2023. This is a summary of the changes. A redlined copy of the affected rules highlighting the changes is included.

LR 38.1 Random Selection of Grand and Petit Jurors – The proposed amendments were posted for public comment in August 2022. The amendments were approved by the 10th Circuit Judicial Council on November 29, 2022.

LR 83.7.1 Review of Orders of Administrative Agencies, Boards, Commissions, and Officers (Excluding Social Security Appeals Involving One Individual Pursuant to 42 U.S.C. § 405) – This is a mandated change conforming the local rules with the Supplemental Rules for Social Security Actions under 42 U.S.C. § 405(g).

LR 83.7.2 Social Security Appeals Involving One Individual Pursuant to 42 U.S.C. § 405 – This is a new local rule and a mandated change conforming the local rules with the Supplemental Rules for Social Security Actions under 42 U.S.C. § 405(g).

LR 83.7.3 Proceedings in Social Security Appeals After a “Sentence Six” Remand - This is a mandated change conforming the local rules with the Supplemental Rules for Social Security Actions under 42 U.S.C. § 405(g).

RULE 38.1

RANDOM SELECTION OF GRAND AND PETIT JURORS

The selection of grand and petit jurors will be as follows:

- (a) **Places for Holding Court and Designation of Counties.** The counties designated as constituting each jury division are as follows:
- (1) *Kansas City - Leavenworth Division.* Atchison, Doniphan, Douglas, Franklin, Johnson, Leavenworth, Miami, and Wyandotte.
 - ~~(2) *Wichita - Hutchinson Division.* Butler, Cowley, Harper, Harvey, Kingman, Marion, McPherson, Reno, Rice, Sedgwick, and Sumner.~~
 - ~~(3)(2) *Topeka Division.* Brown, Chase, Clay, Dickinson, Geary, Jackson, Jefferson, Lyon, Marshall, Morris, Nemaha, Osage, Pottawatomie, Riley, Shawnee, Wabaunsee, and Washington.~~
 - ~~(4)(3) *Wichita - Hutchinson Division.* Butler, Cowley, Harper, Harvey, Kingman, Marion, McPherson, Reno, Rice, Sedgwick, and Sumner.~~
 - (4) *Salina Division.* Cheyenne, Cloud, Decatur, Ellis, Ellsworth, Gove, Graham, Jewell, Lincoln, Logan, Mitchell, Norton, Osborne, Ottawa, Phillips, Rawlins, Republic, Rooks, Russell, Saline, Sherman, Sheridan, Smith, Thomas, Trego, and Wallace.
 - (5) *Dodge City Division.* Barber, Barton, Clark, Comanche, Edwards, Finney, Ford, Grant, Gray, Greeley, Hamilton, Haskell, Hodgeman, Kearney, Kiowa, Lane, Meade, Morton, Ness, Pawnee, Pratt, Rush, Scott, Seward, Stafford, Stanton, Stevens, and Wichita.
 - ~~(5)(6) *Fort Scott Division.* Allen, Anderson, Bourbon, Chautauqua, Cherokee, Coffey, Crawford, Elk, Greenwood, Labette, Linn, Montgomery, Neosho, Wilson, and Woodson.~~
 - ~~(6) *Salina Division.* Cheyenne, Cloud, Decatur, Ellis, Ellsworth, Gove, Graham, Jewell, Lincoln, Logan, Mitchell, Norton, Osborne, Ottawa, Phillips, Rawlins, Republic, Rooks, Russell, Saline, Sherman, Sheridan, Smith, Thomas, Trego, and Wallace.~~
- (b) **Applicability.** This rule, except as otherwise provided, applies separately to each division designated herein.
- (c) **Management of the Jury Selection Process.** Pursuant to 28 U.S.C. § 1863 (b)(1), the clerk is hereby authorized to manage the jury selection process in the District of Kansas. The clerk acts under the general supervision and control of the chief judge of the court.
- Pursuant to 28 U.S.C. § 1863(a), the court may authorize other persons to assist the clerk in the jury selection process.
- The clerk must keep one book for the entire district known as the “Jury Selection Journal.” In the book, the clerk must enter chronologically:
- (1) each order of the court pursuant to this rule; and
 - (2) a minute entry of each act the clerk performs under this rule.
- (d) **Source of Names.** The names of prospective grand and petit jurors must be selected at random from the official lists of registered voters in each of the counties comprising the divisions herein designated. The names selected must be assigned serial numbers by division as determined by the clerk. The clerk must maintain a record of the names and numbers assigned to each name.

(e) **Name Selection Procedures.** At the clerk's option, and after consultation with the court, the clerk may use a properly programmed electronic data processing system to make the following selections by a purely randomized process:

- (1) names from complete source list databases in electronic media for the master jury wheel;
- (2) names from the master wheel for the purpose of determining qualification for jury service; and
- (3) names from the qualified wheel for summoning persons to serve as grand or petit jurors.

Each county within the jury division must be substantially proportionally represented in the master jury wheel in accordance with 28 U.S.C. § 1863(b)(3). And the mathematical odds of any single person being picked from the source list, the master wheel, and the qualified wheel must be substantially equal.

(f) **Master Jury Wheel.** Each jury division must be provided with a master jury wheel into which the clerk must proportionately place the names of those selected from the voter registration lists under this rule.

The minimum number of names to be placed initially in each master jury wheel are as follows:

(1) *Kansas City - Leavenworth Division:* 7,500 names.

~~(2)~~ *Topeka Division:* 5,000 names.

(3) *Wichita - Hutchinson Division:* 7,000 names.

~~(3)~~ *Topeka Division:* 5,000 names.

(4) *Salina Division:* 1,000 names.

(5) *Dodge City Division:* 1,000 names.

~~(5)~~ *Fort Scott Division:* 1,000 names.

The chief judge may order additional names to be placed in the master jury wheel as necessary. The additional names must be selected as provided in subsection (e) of this rule.

The master jury wheel must be emptied and refilled every two years.

(g) **Drawing of Names from the Master Jury Wheel and Completion of Qualification Form.**

(1) *Initial Draw.*

(A) *In General.* From time to time, as the court directs, the clerk must draw at random from each divisional master jury wheel, the names or numbers of as many persons as may be required for jury service. The clerk may draw either manually or by use of a properly programmed data computer. Whenever a divisional master jury wheel is maintained on a data computer, the names to be drawn from the master jury wheel must be selected by using the random number formula, as the court directs.

(B) *Public Notice.* The clerk or jury commission must post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn.

(C) *Alphabetical List.* The clerk may, upon order of the court, prepare an alphabetical list of the names drawn from the master jury wheel.

Such list must not be disclosed to any person except upon court order, and except as required by 28 U.S.C. §§ 1867-1868.

(D) *Jury Qualification Form.* Upon drawing names or numbers from a divisional master jury wheel, the clerk must mail a jury qualification form [as defined in 28 U.S.C. § 1869(h)] to every person whose name or number is drawn, for each person to fill out and return — duly signed and sworn — to the clerk by mail or through the court’s internet site within 10 days. If it appears there is an omission, ambiguity, or error in a filled-out and returned qualification form, the clerk may return the form with instructions to:

- (i) make such additions and corrections as may be necessary; and
- (ii) return the form to the clerk within 10 days.

(2) *Supplementation for Undeliverable and Non-Responding Juror Qualification Forms.* For all juror qualification forms returned to the court as “undeliverable” or those to which no response has been received (after the clerk has sent a follow-up letter to the person who has not responded), the clerk — as soon as practicable — must issue the same number of new juror qualification forms to be mailed to addresses within the same zip code area to which the undeliverable or non-responding juror qualification forms had been sent. The clerk must draw these names or numbers from the Master Jury Wheel.

(3) *National Change of Address Database.* The clerk must submit the names on the Master Jury Wheel once a year to be updated and corrected through the national change-of-address system of the United States Postal Service.

(h) Qualified Jury Wheel.

(1) *In General.* The clerk must maintain a qualified jury wheel for each division of the court. Into each divisional qualified jury wheel, the clerk must place the names of all persons previously drawn from the divisional master jury wheels, in accordance with subsection (g) of this rule, who have been determined to be qualified as jurors and not exempt or excused pursuant to this rule.

(2) *Periodic Drawings.* From time to time, at the direction of any judge of this district, the clerk must draw at random as many names or numbers of persons as may be required for assignment to grand and petit jury panels. The clerk must draw from a divisional qualified jury wheel, either manually or by use of a properly programmed data computer. Whenever a divisional qualified jury wheel is maintained on the computer, the names to be drawn from said wheel must be selected by using the random number formula, as directed by the court. The clerk must prepare or cause to be prepared a separate alphabetical list of names of all persons so drawn and assigned to each grand and petit jury panel.

(A) All six divisions in the state will be included in creating petit jury panels. On a quarterly basis at each courthouse, as many numbers of

persons as may be required for assignment to a petit jury panel will be randomly drawn from the qualified jury wheel as follows:

(i) at Kansas City from the Kansas City – Leavenworth and Fort Scott Divisions;

(ii) at Topeka from the Topeka and Salina divisions; and

(iii) at Wichita from the Wichita – Hutchinson and Dodge City divisions.

(B) The clerk may also create petit jury panels from a single division or from a combination of any of the six divisions, where a trial is held in a location other than Kansas City, Wichita, or Topeka or to address other practicalities as may exist.

(3) *Public Notice.* The clerk or jury commission must post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn.

(4) *Summons.* When the court orders a grand or petit jury to be drawn, the clerk must issue a summons for the required number of jurors. Persons drawn for jury service may, in accordance with 28 U.S.C. § 1866(b), be served personally or by mail addressed to such persons at their usual residence or business address.

(5) *Disclosure of Names.*

(A) *Petit Jurors.* The names of petit jurors drawn from the qualified jury wheel may be disclosed to the parties, the public, or the media on the day following the drawing upon leave of the court and the request of any party, member of the public, or the media. But the court in which any of the prospective jurors concerned are expected to serve may, by special order, require that the clerk keep these names confidential where the interests of justice so require.

(B) *Grand Jurors.* The names of grand jurors drawn from the qualified jury wheel must not be maintained in any public record or otherwise disclosed to the public, except upon the order of the judge in charge of the grand jury on a showing that exceptional circumstances have created a demonstrated need for disclosure.

(6) *Assignment of Jurors to Panels.*

(A) *Petit Jury Panels and Panels to be Assigned to the Bankruptcy Court.* In assigning prospective jurors to petit jury panels or to panels to be assigned to the Bankruptcy Court, the clerk must place the names or numbers of available petit jurors drawn from the divisional qualified jury wheel, as provided in this rule, and who are not excused, in a jury wheel. The clerk must then draw such necessary names and assign them to particular panels for each jury case as the court directs.

(B) *Grand Jury Panels.* Separate grand jury panels as may be required for service at the places in the district where court is held must be drawn at random as ordered by the court, either manually or by use of a programmed data computer, or by a combination thereof, from the qualified jury wheels on a divisional basis as follows:

- (i) *At Kansas City, Leavenworth, and Fort Scott:* From the Kansas City - Leavenworth and Fort Scott jury wheels.
- (ii) *At Topeka and Salina:* From the Topeka and Salina jury wheels.
- (iii) *At Wichita, Hutchinson, and Dodge City:* From the Wichita – Hutchinson and Dodge City jury wheels.

The required number of names for each centralized grand jury panel must be taken at random from the qualified jury wheels in proportion as nearly as possible to the number of registered voters in each division every two years. For example, if the total number of registered voters in the Kansas City - Leavenworth and Fort Scott jury divisions was 150,000 and 90,000, respectively, and if 48 prospective jurors were to be summoned for grand jury service at Kansas City, Leavenworth, or Fort Scott, then 30 names should be selected at random from the Kansas City - Leavenworth qualified jury wheel and 18 names from Fort Scott's qualified wheel.

- (C) *Summons.* The clerk must issue summonses for the required number of jurors to be called to be served personally or by mail addressed to their usual residence or business address.

(i) Disqualification or Exemption from Jury Service. Pursuant to 28 U.S.C. § 1865(a), the chief judge or clerk of this court under the supervision of the court, or, in his or her absence, any other district court judge, shall determine whether a prospective grand or petit juror is unqualified for, or exempt, or to be excused from jury service. The judge or clerk will make the determination from information provided on the juror qualification form and other competent evidence. The clerk shall enter such determination in the space provided on the juror qualification form or in the juror records in the database from a divisional master jury wheel.

- (1) *Disqualification.* Pursuant to 28 U.S.C. § 1865(b), any person shall be determined to be qualified to serve on either grand or petit juries in the district court unless he or she:
 - (A) is not a citizen of the United States 18 years of age who has resided for a period of one year within the judicial district;
 - (B) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;
 - (C) is unable to speak the English language;
 - (D) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or
 - (E) has a charge pending against him for the commission of, or has been convicted in a state or federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored.
- (2) *Exemption.* Pursuant to 28 U.S.C. § 1863(b), the following persons are barred from jury service on the grounds that they are exempt:
 - (A) members in active service in the Armed Forces of the United States;

- (B) members of the fire or police departments of any State, the District of Columbia, or such territory or possession;
- (C) public officers in the executive, legislative, or judicial branches of the Government of the United States, or of any State, the District of Columbia, or such territory or possession, who are actively engaged in the performance of official duties.

(j) **Individual Excuse from Jury Service.** In addition to the members of groups and classes subject to excuse from jury service on request, as provided in subsection (i) of this rule, any person summoned for jury service may be excused by the court, or the clerk under the supervision of the court upon a showing of undue hardship or extreme inconvenience, or both, pursuant to 28 U.S.C. § 1866(c). The names of deferred persons are to be reinserted into the qualified jury wheel.

Whenever a person is excused for reason of undue hardship or extreme inconvenience, the clerk must note the reason for the excuse in the space provided on the jury qualification form or in the juror records in the database from a divisional master jury wheel.

(k) **Groups and Classes, Members of Which are Subject to Excuse on Request.** Pursuant to 28 U.S.C. § 1863(b)(5), and by the adoption of this rule, it is hereby found that jury service by the following groups of persons and occupational classes of persons would entail undue hardship or extreme inconvenience to the members thereof and that the excuse from jury service of the members thereof on request would not be inconsistent with 28 U.S.C. § 1861-1862:

- (1) Persons over 70 years of age.
- (2) Persons who have, within the past two years, served on a federal grand or petit jury.
- (3) Persons having active care and custody of a child or children under 10 years of age whose health and/or safety would be jeopardized by their absence for jury service; or a person who is essential to the care of aged or infirm persons.
- (4) Any person whose services are so essential to the operation of a business, commercial, or agricultural enterprise that said enterprise must close if such person were required to perform jury duty.
- (5) Volunteer safety personnel if they serve without compensation as firefighters or members of a rescue squad or ambulance crew for a “public agency.” “Public agency” for this purpose means the United States, any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, or other territory of the United States, “or any unit of local government, department, or instrumentality of any of the foregoing.”

(l) **Maintenance and Inspection of Records.**

- (1) *Disclosure Prior to Emptying and Refilling a Master Jury Wheel.* Pursuant to 28 U.S.C. § 1867(f), prior to the emptying and refilling of any master jury wheel, the contents of records and papers used by the clerk in connection with the juror selection process shall not be disclosed, except as provided elsewhere in this plan or upon written order of the court.

- (2) *Disclosure After Emptying and Refilling a Master Jury Wheel.* Pursuant to 28 U.S.C. § 1868, after any master jury wheel is emptied and refilled as provided in this rule, and after all persons selected to serve as jurors before the master wheel was emptied have completed such service, all of the records and papers compiled and maintained by the clerk before the master wheel was emptied shall be preserved in the custody of the clerk for 4 years or for such longer period as may be ordered by the court, and upon leave of the court, shall be available for public inspection at the office of the clerk of court during normal business hours for the purpose of determining the validity of the selection of any jury. No one may copy any document or remove any document from the premises, without leave of the court.

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NOTE: Rule 38.1 is a mandated rule.

As amended 3/17/18, 3/17/10, 3/17/09, 3/17/08, 3/17/06, 4/8/99, 2/28/97, 3/13/92.

REVIEW OF ADMINISTRATIVE PROCEEDINGS

RULE 83.7.1

REVIEW OF ORDERS OF ADMINISTRATIVE AGENCIES, BOARDS,
COMMISSIONS, AND OFFICERS

(EXCLUDING SOCIAL SECURITY APPEALS INVOLVING ONE INDIVIDUAL
PURSUANT TO 42 U.S.C. § 405)

~~(INCLUDING SOCIAL SECURITY APPEALS)~~

(a) **Review or Enforcement of an Agency Order-How Obtained.**

- (1) *Petition for review of agency order.* Review of an order of an administrative agency, board, commission, or officer must be obtained in the following manner:
 - (A) by filing a pleading with the clerk of the court;
 - (B) within the time prescribed by law;
 - (C) in the form indicated by the applicable statute;
 - (D) with a caption that names each party seeking review;
 - (E) naming the defendant or respondent designated in the applicable statute;
 - (F) identifying the order or part thereof to be reviewed; and
 - (G) containing a citation of the statute by which jurisdiction is claimed. If two or more persons are entitled to seek judicial review of the same order and their interests are such as to make joinder proper, they may file a joint pleading. As used in this rule, the term “agency” includes any federal agency, board, commission, or officer — including the Commissioner of Social Security under [Title 42](#) of the United States Code.
- (2) *Application for enforcement of order; cross-application for enforcement.* An application for enforcement of an order of an agency must contain a concise statement of the proceedings in which the order was entered, the facts upon which jurisdiction and venue are based, and the relief requested. In cases seeking review of an agency order, which the court has jurisdiction to enforce, the agency may file a cross-application for enforcement.
- (3) *Service of process.* Service of process must be in the manner provided by [Fed. R. Civ. P. 4](#), unless a different manner of service is prescribed by an applicable statute.

(b) **The record on review or enforcement.**

- (1) *Composition of the record.* Unless the applicable statute provides otherwise, the record on review in proceedings to review or enforce an agency order is comprised of:
 - (A) the order sought to be reviewed or enforced;
 - (B) the findings or report on which it is based; and
 - (C) the pleadings, evidence, and proceedings before the agency.
- (2) *Omissions from or misstatements in the record.* If anything material to any party is omitted from the record or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation, or

the court may at any time direct the omission or misstatement be corrected and, if necessary, a supplemental record be prepared and filed.

- (c) **Filing of the record.**
- (1) *Review Proceedings.* In review proceedings, the agency must file the record with the clerk of this court when it files its answer unless the statute authorizing review provides a different time.
 - (2) *Enforcement Proceedings.* 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 will fix the time for its filing.
- (d) **Filing and Service of Briefs.** The party seeking review must serve and file a brief conforming to the requirements of D. Kan. Rule 7.6 within 45 days after the date on which the record is filed. The responding party must serve and file a brief within 30 days after service of the brief of the party seeking review. The party seeking review may serve and file a reply brief within 14 days after service of the brief of the respondent. The court may extend or shorten the time for filing and serving briefs. The case is submitted when all briefs have been filed. The court will render a decision upon the briefs and the record, without oral argument, unless the court otherwise directs.
- (e) **Applicability of Other Rules.** The parties to any proceedings governed by this rule must give the same notice of the filing of pleadings, records, and other documents as is required by [Fed. R. Civ. P. 5](#). All other provisions of the Federal Rules of Civil Procedure and the rules of this court apply to such proceedings to the extent they are applicable. This rule controls over any conflicting local rule.

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As amended 3/04, 10/22/98.

RULE 83.7.2
SOCIAL SECURITY APPEALS INVOLVING ONE INDIVIDUAL
PURSUANT TO 42 U.S.C. § 405

- (a) **Review.** Review of Social Security Appeals involving one individual pursuant to 42 U.S.C. § 405(g) shall be in accordance with the Fed. R. Civ. P., Supplemental Rules for Social Security Actions.
- (1) The action shall commence with the filing of a complaint conforming to Supplemental Rule 2(b).
 - (2) Plaintiff need not serve a summons and complaint pursuant to Civil Rule 4. The court will notify the U. S. Attorney for the District of Kansas and the Social Security Administration's Office of General Counsel.
 - (3) The Commissioner will answer by filing a certified copy of the administrative record in accordance with Supplemental Rule 4.
- (b) **Filing and Service of Briefs.** The plaintiff must serve and file a brief within 30 days after the date on which the answer is filed or 30 days after entry of an order disposing of the last motion filed under Civil Rule 4(c), whichever is later. The Commissioner must serve and file a brief within 30 days after service of the plaintiff's brief. The plaintiff may file a reply brief and serve it on the Commissioner within 14 days after service of the Commissioner's brief.

- (1) The certified administrative record constitutes the facts to be considered in the court's review. Therefore, neither party shall submit a separate statement of facts. However, each assertion of fact in the parties' briefs must be supported by citation to the record. With the exception of a statement of facts, the parties' briefs must conform to the requirements of D. Kan. Rule 7.6.
- (2) The court may extend or shorten the time for filing and serving briefs. The case is submitted when all briefs have been filed. The court will render a decision upon the briefs and the record, without oral argument, unless the court otherwise directs.
- (c) **Applicability of Other Rules.** The parties to any proceedings governed by this rule must give the same notice of the filing of pleadings, records, and other documents as is required by Fed. R. Civ. P. 5. All other provisions of the Federal Rules of Civil Procedure and the rules of this court apply to such proceedings to the extent they are applicable. This rule controls over any conflicting local rule.

RULE 83.7.23

PROCEEDINGS IN SOCIAL SECURITY APPEALS AFTER A "SENTENCE SIX" REMAND

- (a) **Transcript of Proceeding.** 42 U.S.C. § 405(g) requires in "sentence six" remand cases where the Commissioner's decision is not fully favorable to the plaintiff, that the Commissioner file the transcript of the proceeding upon which his or her decision was based. At the time the transcript is filed, the United States Attorney's Office for the District of Kansas must contact the plaintiff to determine whether the plaintiff intends to further pursue the case.
- (b) **Where the Plaintiff Will Not Pursue the Case.** If the plaintiff does not intend to further pursue the case, a stipulation of dismissal pursuant to Fed. R. Civ. P. 41(a)(1) must be filed within 14 days of the date the transcript is filed.
- (c) **Where the Plaintiff Will Pursue the Case.** If the plaintiff intends to pursue the case following remand, the plaintiff must file an amended complaint within 14 days of the date the Commissioner files the transcript, thereby making clear that he or she intends to challenge the unfavorable decision of the Commissioner following remand. The Commissioner must then file an answer within 14 days of the date plaintiff's amended complaint is filed. Briefing shall continue from the filing of the answer in accordance with Local Rule 83.7.2(b). The case will then be set on a briefing schedule.
- ~~(d) **Where the Plaintiff Takes No Action.** If the plaintiff takes no action within 14 days of the date the Commissioner files the transcript, the court may schedule a conference to discuss the status of the case.~~

As amended 12/01/09. Adopted 03/17/08 (formerly D. Kan. S.O. 07-1).