IN THE SUPREME COURT OF THE STATE OF KANSAS

FILED
November 19, 2020
DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS

Administrative Order

2020-RL-115

Temporary Rule for Filing in a District Court by a Self-Represented Litigant

The attached new Temporary Rule for Filing in a District Court by a Self-Represented Litigant is hereby adopted, effective December 7, 2020.

Dated this 19th day of November 2020.

FOR THE COURT

MARLA LUCKERT
Chief Justice

Temporary Rule

FILING IN A DISTRICT COURT BY A SELF-REPRESENTED LITIGANT

(a) **Purpose.** The following temporary procedures are adopted to increase access to justice while also protecting the health and safety of court users, staff, and judicial officers during the COVID-19 pandemic. The goal of these procedures is to expand the options for a self-represented litigant to file a document in district court. A self-represented litigant may file a document by mail or fax in all district courts. Other filing options may be available depending on local resources.

(b) **Definitions.**

(1) "Clerk" means a clerk of the district court in any Kansas county.

(2) "Document" means any paper filing, including, but not limited to, a petition or the filings necessary to initiate a case.

(3) "Drop box" means a secure, locked container that is accessible to the public for purposes of document delivery and only used for district court business.

(4) "Sealed" means that access to a case or document is limited by statute, Supreme Court rule, or court order.

(5) "Self-represented litigant" means a person not represented by an attorney authorized to practice law before the court.

(c) **Drop Box.** Every district court must have a drop box available to self-represented litigants within 90 days of the date of this rule unless the chief judge receives an exemption from the Office of Judicial Administration. The drop box must be accessible to the public during hours when the clerk's office is closed to the public.

(d) **Filing.**

(1) **By Mail or Fax.** A self-represented litigant may file a document as follows:

(A) by mailing the document to the district court clerk’s office; or

(B) by faxing the document to the district court clerk's office.

(2) **By Drop Box or in Person.** A self-represented litigant may also file a document using either of the following additional methods if available in the county:

(A) by placing the document in a securely closed envelope and depositing it in a drop box; or

(B) by submitting the document in person at the district court clerk's office.

(3) **Small Claim.** Under this rule, a self-represented litigant may file a small claim, as defined in K.S.A. 61-2703, using any of the available methods in subsections (d)(1) and (d)(2), including by fax.

(e) **Filing Date.**

(1) **Mail.** When a self-represented litigant files a document by mail, the clerk's office will consider the document filed with the court on the date the clerk's office receives the document.

(2) **Fax.** When a self-represented litigant files a document by fax, the clerk's office will consider the document filed with the court as provided in Rule 119.

(3) **Drop Box.** When a self-represented litigant deposits a document in a drop box by 4:00 p.m. local time in the county where the document is to be filed, the clerk's office will consider the document filed with the court on that day. If the self-represented litigant deposits the document in the drop box after 4:00 p.m., on a Saturday or Sunday, or on a Supreme Court holiday, the clerk's office will consider the document filed with the court on the next day that is not a Saturday, Sunday, or Supreme Court holiday.

(4) **Clerk's Office Not Open.** If a clerk's office is closed by order of the chief judge of the judicial district on a day that is not a Saturday, Sunday, or a Supreme Court holiday, the clerk's office will consider the document filed with the court on the next day that the clerk's office is open. During the time a clerk's office is considered inaccessible, the requirements of K.S.A. 60-206 and amendments thereto will apply to compute any time period.

(f) **Payment of Fees**. Any docket fee, filing fee, or other fee required to file a document is due when the document is filed with the court.

(1) **Payment Method.** A self-represented litigant must pay any required fee according to the following provisions:

(A) when filing a document by mail or drop box, the self-represented litigant must pay by check or money order;

(B) when filing the document in person at the clerk's office, the self-represented litigant must pay by check, credit or debit card, money order, or cash; or

(C) when filing the document by fax, the self-represented litigant must pay by credit or debit card as provided in Rule 119. The Rule 119 Fax Transmission Sheet form is available at https://www.kansasjudicialcouncil.org/legal-forms/forms-use-under-supreme-court-rules/forms-use-under-rules-relating-district-courts-16. The page limit noted on the form does not apply.

(2) **Use of Credit or Debit Card.** When paying by credit or debit card, the self-represented litigant may use only the credit or debit card systems designated by the judicial administrator.

(3) **Rejected Credit or Debit Card.** If the company that issued the credit or debit card rejects the transaction, the clerk's office will not consider the document filed under K.S.A. 60-203 and amendments thereto or K.S.A. 60-2001 and amendments thereto.

(4) **Confidential Information.** Credit or debit card information is not subject to disclosure under the Kansas Open Records Act. The information is confidential, must be secured by the clerk until the clerk processes the transaction, must not be retained in the case file, and must be destroyed after the clerk processes the transaction.

(g) **Poverty Affidavit**. A self-represented litigant who cannot afford to pay a required fee may file a poverty affidavit if allowed for the case type.

(1) A poverty affidavit form for most civil actions, including small claims and evictions, is available at https://www.kansasjudicialcouncil.org/legal-forms/civil-actions/chapter-60/poverty-affidavit.

(2) A poverty affidavit form for a case filed under K.S.A. 60-1507 is available at https://www.kansasjudicialcouncil.org/legal-forms/forms-use-under-supreme-court-rules/forms-use-under-rules-relating-district-courts-9.

(h) **Service.** A self-represented litigant must serve a copy of any document on any other named party as required by applicable statutes and rules.

(i) **Filing Under Seal; Request to Seal Document.**

(1) If a self-represented litigant files a document under a seal order previously entered by the court, the self-represented litigant must certify that such an order exists.

(2) If at the time of filing a self-represented litigant believes that a document not covered by a seal order should be sealed, the self-represented litigant must file a motion to seal that includes a general description of the document. The self-represented litigant must certify that the motion complies with subsection (j) of this rule, which protects personally identifiable information.

(3) A self-represented litigant may file a motion to seal a document already in the case file. The motion must specify the document that is proposed to be sealed. When a motion to seal is filed, the identified document will be removed from public view until the court rules on the motion to seal. A court employee is not required to search for a document that is not described in detail in a motion to seal.

(j) **Protection of Personally Identifiable Information.**[1]

(1) **Obligation to Redact Personally Identifiable Information.** In all filings, the person signing the document is solely obligated to protect the confidentiality of personally identifiable information as identified in this rule by ensuring that the filing contains no personally identifiable information.[2] A clerk has no duty to review a document to ensure compliance with this rule.

[1] Subsection (j) on protection of personally identifiable information applies to information contained in a filing, not to information contained in an oral communication, whether made in a court proceeding or otherwise.

[2] If use of a person's initials is unwieldy, parties may consider using other options such as a first name with the first initial of the last name, a generic descriptor such as "child 1," or a pseudonym in lieu of a name.

(2) **Personally Identifiable Information.** The following is personally identifiable information:

(A) the name of a minor who is not a named party in a case and, if applicable, the name of a person whose identity could reveal the name of a minor who is not a named party in a case;

(B) the name of an alleged victim of a sex crime;

(C) the name of a petitioner in a protection from abuse case;

(D) the name of a petitioner in a protection from stalking, sexual assault, or human trafficking case;

(E) the name of a juror or venire member;

(F) a person's date of birth except for the year;

(G) any portion of the following:

(i) an email address except when required by statute or rule;

(ii) a computer username, password, or PIN; and

(iii) a DNA profile or other biometric information;

(H) the following numbers except for the last four digits:

(i) a Social Security number;

(ii) a financial account number, including a bank, credit card, and debit card account;

(iii) a taxpayer identification number (TIN);

(iv) an employee identification number;

(v) a driver's license or nondriver's identification number;

(vi) a passport number;

(vii) a brokerage account number;

(viii) an insurance policy account number;

(ix) a loan account number;

(x) a customer account number;

(xi) a patient or health care number;

(xii) a student identification number; and

(xiii) a vehicle identification number (VIN);

(I) any information identified as personally identifiable information by court order; and

(J) the physical address of an individual's residence.[3]

(3) **Exceptions.** The following is not personally identifiable information:

(A) an account number that identifies the property alleged to be the subject of a proceeding;

(B) the name of an emancipated minor;

(C) information used by the court for case maintenance purposes that is not accessible by the public;

(D) information a party's attorney or a self-represented litigant reasonably believes is necessary[4] or material to an issue before the court;

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[3] Subsection (j)(2)(J) includes "the physical address of an individual's residence" in the definition of personally identifiable information. However, if an exception in subsection (j)(3) applies, this information is no longer considered to be personally identifiable information. If a party is required by law to include the physical address of an individual's residence, then it may be provided under subsection (j)(3)(F). For example, if a document will be served by leaving a copy at a person's dwelling, see K.S.A. 60-205(b)(2)(B)(ii) or K.S.A. 61-3003(d), or by mailing the document to a person's last known address, see K.S.A. 60-205(b)(2)(C) or K.S.A. 61-3003(c), then providing the physical address is required by law to perfect service. In that situation, the physical address is needed and will not be considered personally identifiable information because it meets the exception of subsection (j)(3)(F).

[4]Under Subsection (j)(3)(D), "necessary" means information essential for the document to make sense or for the proper processing of the document or information requested on a Judicial Council form. Examples include information necessary to establish the court's personal or subject matter jurisdiction, to process a protective order, to serve a filed document on another party, or to issue and execute a subpoena.

(E) the first name, initials, or pseudonym of any person identified in subsections (j)(2)(A) to (j)(2)(E);

(F) any information required to be included by statute or rule; and

(G) any information in a transcript.

(4) **Administrative Information Required.** When a self-represented litigant files a new case, the self-represented litigant must submit a cover sheet that substantially complies with the form located on the judicial council website, https://www.kansasjudicialcouncil.org/legal-forms/case-filing-cover-sheets. The following rules apply.

(A) Personally identifiable information gathered for administrative purposes using a cover sheet:

(i) must not be retained in the case file;

(ii) is not subject to reproduction and disposition of court records under Rule 108; and

(iii) may be shredded or otherwise destroyed within a reasonable time after the case is entered electronically into the case management system.

(B) In an action for divorce, child custody, child support, or maintenance, the administrative information provided must include, to the extent known, the following information:

(i) the parties' Social Security numbers;

(ii) the parties' birthdates; and

(iii) the parties' child's full name or pseudonym, Social Security number, and birthdate.

(5) **Certification.** Each document a self-represented litigant submits to a court must be accompanied by a certification of the following information:

(A) the self-represented litigant has signed the document and provided the self-represented litigant's name, address, email address (if available), telephone number, and fax number (if available); and

(B) the document has been reviewed and is submitted under seal or complies with subsection (j).

A form to assist the self-represented litigant with this certification is available from the Office of Judicial Administration at https://www.kscourts.org/KSCourts/media/KsCourts/Public/Court%20Forms/SelfRepresentedLitigantFormOJA218.pdf.

(6) **Remedies and Sanctions.** Failure to comply with subsection (j) is grounds for sanctions against a self-represented litigant. Upon motion by a party or interested person or sua sponte, the court may order remedies for a violation of any requirements of subsection (j). Following notice and an opportunity to respond, the court may impose sanctions if such filing was not made in good faith.

(7) **Motions Not Restricted.** This rule does not restrict a self-represented litigant's right to request a protective order or to move to file a document under seal or to request the court seal a document.

(8) **Application.** This rule does not affect the application of constitutional provisions, statutes, or rules regarding confidential information or access to public information.

(k) **Clerk Processing.**

(1) **Document Review.** Upon receipt of a document filed by a self-represented litigant, a clerk is authorized to return the document only for the following reasons:

(A) the document is illegible;

(B) the document does not have the correct county designation, case number, or case caption; or

(C) the applicable fee has not been paid or no poverty affidavit is submitted with the document or already on file in the case.

(2) **Return of Document.** If a clerk determines that the document must be returned for any of the reasons listed in subsection (k)(1), the clerk must designate the reason for its return.

(3) **Approval of Document.** If the document is not rejected under subsection (k)(1), a clerk must approve the document for filing. The clerk may flag the document for further review as authorized by the standard operating procedures adopted by the judicial administrator.

(l) **Providing Assistance.** Each clerk's office must provide a contact phone number for a self-represented litigant to seek assistance from court staff under Rule 1402. The clerk's office must post the phone number on the court's website and at the courthouse entrance. Some required and permitted assistance under Rule 1402 may be limited due to COVID-19 operation restrictions.

(m) **Conflict.** This rule should be read in conjunction with other applicable rules and statutes. But this rule controls if any provision of a Supreme Court rule or district court rule conflicts with this rule.