

Douglas County

Family Law Guidelines

October 2012
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INTRODUCTION

The 2012 edition of the Douglas County Family Law Guidelines was prepared by the Family Law Guidelines Committee of the Douglas County Bar Association. These guidelines are intended to be used by attorneys and by parties in domestic relations cases in the Seventh Judicial District. These guidelines provide a uniform basis to evaluate issues and negotiate settlements.

While the guidelines are generally followed by the Court, they are not Court Rules and they are not binding. The guidelines may apply to a broad range of cases but may not be determinative of the outcome of a particular case. The guidelines are not a substitute for creative thinking and critical analysis of the facts, circumstance and issues.

The members of the committee who contributed to this edition of the guidelines were:

The Honorable Sally D. Pokorny, Chair
The Honorable Peggy C. Kittel
The Honorable B. Kay Huff
Andrew L. Bolton
David J. Brown
Jane M. Eldredge
Sherri E. Loveland
Jody M. Meyer
Margie M. Wakefield

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1.00 Practice Standards and Procedures.

The practice standards and procedures are based on Douglas County Court Rule 11 which states as follows:

A. Newly filed divorce and paternity actions.

1. Filing of Petition.

At the time a party files a divorce, legal separation, annulment or paternity action, the clerk will give the petitioner a date and time to appear for a status docket.

2. Status Docket.

a. At the status docket, the court will hear any divorce cases in which the parties have entered into an agreement concerning child support, parenting time, and division of property and debts, and any cases in which the respondent is in default, so long as the documents served with the divorce petition include a document that contains the following language:

Please take notice that a divorce hearing is scheduled to be held on the _____ day of _____, 20____, at _____:_____ .m., or as soon thereafter is convenient to the Court, before the Honorable _____, District Judge, Division _____, in the Judicial and Law Enforcement Center, 111 East 11th Street, Lawrence, Kansas, 66044.

If you do not file an answer within the time period specified in the summons or appear in court on the above date, a default judgment may be entered against you as to all matters over which the court has jurisdiction.

b. If the respondent has filed an answer or appears at the status docket and the parties state that the parties have not reached agreement on all issues, the court will set a status conference or pretrial hearing at a future date. The Court will determine the appropriate nature of the future hearing on a case by case basis.

3. Motions.

Parties wishing to set motions for hearing should contact the administrative assistant for the division to which the case has been assigned. Routine motions will be set for a proffer hearing on a date established by that division for proffer hearings. Motions requiring more than thirty minutes or requiring testimony of witnesses will receive a special setting.

4. Pretrial Conferences.

The parties to a divorce case which has been set for a contested hearing must set the case for a pretrial conference prior to the contested hearing. The parties shall exchange pretrial questionnaires five (5) days before the date of the pretrial conference. At the pretrial conference the Court will direct the parties to prepare a pretrial order that will govern the conduct of the trial. The parties should exchange proposed parenting plans and lists of witnesses and exhibits prior to the pretrial conference and should determine which exhibits can be admitted by stipulation at the pretrial conference. The pretrial order will replace the suggested findings of fact previously required by the Court.

5. Certificates of Divorce or Annulment.

Prior to presenting evidence at a final divorce or annulment hearing the petitioner, or the respondent, if the respondent is the only party that is going to present evidence, shall submit to the court a completed, typed certificate of divorce or annulment form or submit the same electronically. The clerk will not furnish certified or conformed copies of Journal Entries until the typed certificate of divorce or annulment form has been received by the court. The Certificate of Divorce or Annulment form can be found at: <http://www.kdheks.gov>

6. Paternity Cases.

Parties have an obligation to evaluate the facts in all paternity cases and determine whether the facts require a *Ross* hearing. If the parties determine that such a hearing is necessary, an order shall be prepared appointing a guardian *ad litem* for the child and set the matter for hearing.

7. Mandatory Approved Parenting Classes and Child Custody Mediation.

a. All parents in divorce, annulment, separate maintenance, post-divorce actions and post-paternity actions involving issues regarding minor children of the relationship shall attend an approved parenting class approved by the Douglas County District Court which may be found on the Douglas County website: <https://www.douglascountyks.org>

b. Each parent shall be responsible for prepayment of the fee for the class. At its discretion the Court may assess this expense to one or both parties as costs in the action.

c. Parties to a contested case involving issues of child custody, parenting schedules and/or parenting rights must attempt to settle the issues through mediation prior to setting the case for final hearing.

d. The court will not set a divorce, annulment, separate maintenance action or post paternity proceeding involving minor children of the

relationship for final hearing until the parents have complied with this rule. The Court may waive this requirement for good cause.

e. The Court may require the parties to attend an Approved Parenting Class or a similar program prior to hearing a motion for change of custody.

B. *Ex Parte* Orders

1. *Ex parte* Restraining Orders.

a. *Ex parte* orders restraining the disposition of property or contact between the parties shall restrain both parties equally.

b. A party filing an *ex parte* request for a restraining order that requires either party to leave the home should file a domestic relations affidavit and should include in the affidavit supporting the request the following information in addition to all other matters required by law:

- i. a paragraph stating whether either party has left the home;
- ii. a paragraph stating whether either party has alternative housing available (e.g. relative and friends), and the parties' financial ability to obtain alternative housing; and
- iii. a paragraph stating the health conditions of both parties.

2. *Ex Parte* Temporary Custody.

a. A party filing an *ex parte* request for temporary custody of a minor child should include in the affidavit supporting the request, in addition to all matters required by law, the following:

- i. a paragraph describing with specificity any special circumstances that would make temporary sole custody rather than temporary joint custody in the best interest of the child;
- ii. a statement as to which parent presently has residential custody of the child;
- iii. a paragraph stating whether either party has left the home, and if so, whether the child or children accompanied the party;
- iv. a paragraph stating which parent has furnished the majority of the personal care for the child or children; and
- v. a paragraph stating whether any child has special needs.

b. A party filing an *ex parte* request for temporary custody of a minor child should include a proposed temporary parenting plan. Please see Section 4.12 A.

3. Child Support and Maintenance Orders.

a. A party requesting a child support order, whether the request is for a temporary order or an order approving child support contained in a separation agreement, must submit with the proposed child support order a completed, typed Domestic Relations Affidavit and a typed, suggested Child Support Worksheet completed in accordance with the Kansas Child Support Guidelines.

b. A party requesting a maintenance order shall submit a completed, typed Domestic Relations Affidavit prepared pursuant to Supreme Court Rules.

c. The Domestic Relations Affidavit can be found at: <http://www.kansasjudicialcouncil.org>

4. Court Trustee Copy of Order.

Any attorney or party who obtains an *ex parte* order granting child support shall include an additional copy of the order, clearly marked “Court Trustee” together with a copy of the Child Support Worksheet and the Domestic Relations Affidavit required by Supreme Court Rules and Administrative Orders. The affidavit shall include the residences, business addresses, and properly redacted Social Security numbers for both parties.

C. Post Divorce Issues

1. Motions to enforce parenting time and motions to enforce or modify child support are assigned to the Pro Tem Division.

2. Cases that involve issues other than or in addition to motions to enforce parenting time and motions to enforce or modify child support will continue in the division to which the case was originally assigned.

1.01 Parties without Attorneys

Parties without attorneys (*pro se*) are encouraged to obtain attorneys or at least get a legal opinion to ensure their legal rights are protected and to create more efficient problem solving. *Pro se* parties are required to follow Kansas law and the Douglas County Family Law Guidelines. The Guidelines may be found on the internet at (Douglas County website) or a copy may be purchased from the Clerk of the District Court. The Court and its staff cannot give legal advice to any party. All parties are expected to timely file required pleadings and to timely appear in court at designated times. The Court has the discretion under the law to award attorney’s fees as justice and equity require. If a party unduly prolongs the proceedings or makes negotiations more difficult, it may be fair to assess attorney fees against a party to pay the attorney of the other party to equalize the

cost of the divorce and to offset additional costs caused by the *pro se*'s election not to hire an attorney. Do not call the Court to request advice on what to file or how to achieve a particular result. The Court cannot help you with that as the rules that apply to judges do not allow it.

The Kansas Supreme Court has approved packets of basic divorce forms for *pro se* parties. These forms can be accessed at: <http://www.kansasjudicialcouncil.org>

2.00 Approaches to Property Division.

Arriving at an equitable division of property and debt should be the first step in settlement of a divorce case. Property division should be an objective process and conducted separately from negotiations of maintenance, custody and child support.

2.01 Marital Property.

K.S.A. 23-2801 provides that all property of the parties becomes marital property upon filing for divorce, annulment or separate maintenance. As a practical matter it is often fair to segregate the assets into those acquired before the marriage and those acquired after marriage.

2.02 Division of Assets.

As a general rule, the net worth in all marital property should be divided equitably between the parties. Judges use the criteria in K.S.A. 23-2802(c).

A. Appreciated Value of Separate Property.

The entry value of property owned by either party prior to the marriage or acquired during the marriage by gift or inheritance that can be traced may be restored to that party, in addition to his/her equal share of marital assets. The entry value of gifted or inherited property may be restored to the party from whose family it originated.

Any appreciation in value of separate property during the marriage may be considered a marital asset and subject to division. The amount of appreciation may be the difference in the value on the date the property was received and value on date of valuation.

There should be no effect upon the presumption for equal division of property due to greater dollar earnings of one party or the other during the marriage. The actual record owner of a marital property or record obligee of a given liability may be irrelevant to the division of net worth.

B. Division of Property in Cash in Lieu of In Kind.

If the property is not to be equitably divided in kind, then a cash payment may be made at the time of divorce to effect an equitable distribution. If there is no immediate cash payment, the Court may order certain assets sold and the proceeds divided, or the Court may establish a set time for payment. Orders providing for payments in the future should consider the time value of money, and therefore should bear interest or the principal be reduced to present value.

C. Personal Property.

Household goods and personal items of an ordinary nature should be divided in kind. The Court expects that these items should be divided by agreement of the parties, understanding that both the needs of any child and the nonresidential parent for household appliances and furniture must be accommodated. If the parties cannot agree, the Court will see adequate provisions are made for the children, and may order either a division of the remainder of the household goods and personal property by lot, a sale with the proceeds divided evenly, or in any other manner.

D. Vehicle Valuation.

Vehicles of the parties should be valued at the Kelly Blue Book trade-in book value, adjusted for accessories, mileage and condition.

E. Personal Injury Recoveries.

Kansas law indicates that personal injury recoveries or workers' compensation for lost wages and temporary total disability payments for a period during the marriage are in the nature of income and are considered marital property. However, personal injury recoveries or workers' compensation recoveries for permanent disability, while subject to consideration for division, will usually be considered separate property.

F. Real Property and Business Valuation.

The parties are encouraged to agree on the value or to agree on one appraiser to value the real property and/or business. If the parties cannot agree on an appraiser, they should request the Court to appoint an appraiser and the cost of the appraisal should be considered a marital debt. The Court may consider the county appraiser's records on any parcel of real estate.

2.03 Debts.

Generally all debts of the parties at the time of filing are considered marital debts notwithstanding who incurred them. Generally debts acquired prior to marriage will be assigned to the person who incurred the debt. Generally student loans will be assigned to the person who acquired the loan.

A. Unsecured Debt.

When possible, joint unsecured debts should be paid from the parties' assets.

B. Secured Debt.

Usually, secured debts should be assumed and paid by the party receiving the asset that secures the debt. The party with the responsibility for paying the secured debt should hold the other party harmless from any liability and indemnify the other party for damages.

C. Debt Incurred After Filing.

It is presumed that debt incurred after the date of filing should be paid by the party incurring the debt. However, if such debt is considered a necessary living expense, it may be divided between the parties in proportions as the Court deems equitable. The parties will generally be expected to pay normal living expenses and payments from their regular incomes and not expend marital assets for living expenses in the separation/pre-divorce period.

2.04 Effect of Bankruptcy.

Counsel are cautioned about the risks and hazards of giving bankruptcy advice to their family law clients. Bankruptcy is now a complex area of law requiring substantial expertise. New attorney liability provisions under 11 U.S.C. 707(b)(4) require additional investigation, documentation and certification. Provisions to restrict and monitor the activities of so-called “debt relief agencies” have been enacted. Debt relief agents are required to make written disclosures to clients and advertise “We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.” The definition of debt relief agency is broad and may include attorneys giving consumers bankruptcy advice in a family law context. See 11 U.S.C. 526, 527 and 528. The filing of a bankruptcy case will stay the divorce proceedings.

2.05 Valuation Date.

The valuation date for the property that is subject to division is usually the date of filing of the petition.

A. Fluctuating Values.

If the property that is subject to division has fluctuating values, the parties should request the Court to establish a valuation date.

B. Contributions to Value.

If the parties have been separated for more than one year, the Court will consider each party's contributions to the increase or decrease in value of the asset from the time of separation to reach an equitable division.

C. Beginning Value.

The beginning value of property should be the earlier of the date the parties were married or the date they commenced living together and commingled their earnings and jointly acquired assets.

2.06 Valuing Businesses.

Businesses, the goodwill of businesses, corporations, partnerships, and other legal entities, may have a value and that value should be considered by the Court in the equitable division of marital assets.

2.07 Tax Refunds - Tax Liability.

Generally, the Court considers prepayments of taxes, *e.g.*, federal and state income tax withholding or estimated payments, marital assets and that the tax liability for income which the parties mutually enjoyed is a marital debt.

In the usual case, the Court will order that any tax refunds from the last year the parties were married should be shared equally notwithstanding the parties' respective earnings. Conversely, it will usually be the Court's decision that tax liability for the last year of marriage should be treated as a marital debt and paid from the parties' assets or treated as other marital debts.

2.08 Retirement, Pension, and Thrift Plans.

The simplest method of dealing with these assets is equal division through a Qualified Domestic Relations Order (QDRO) since it may avoid the necessity of valuing the particular plan in question. However, it may be necessary to value this type of asset so that the plan value can be offset against other assets to make a fair division. There are many different types of plans. The division may be complex. Parties are advised to consult an accountant or financial planner.

2.09 Preparation of ODROs and OMCSOs.

Absent an order of the Court or an agreement of the parties clearly expressed in a Separation and Property Settlement Agreement to the contrary, the party or counsel whose client will benefit by the division of a deferred tax asset will be responsible for drafting any Qualified Domestic Relations Order (QDRO) or similar order which is necessary to effectuate the division of such an asset. The "participant" or their counsel under a deferred tax plan shall provide to the "alternate payee's" counsel, prior to the submission of a separation and property settlement agreement to the Court, a copy of the plan, or a summary, along with any forms or guidelines available from the plan administrator, that would assist the "alternate payee's" counsel in the drafting of a QDRO or similar order. Such information shall include, at a minimum, the name and address of the plan administrator.

Absent an order of the Court or provision in a Separation and Property Settlement Agreement to the contrary, counsel for the party who will have residency for the children will be assumed to be responsible for the preparation of any Qualified Medical Child Support Order (QMCSO) when determined to be necessary to insure continuing medical insurance coverage for the parties' children. In the case of shared residency, the person with the health insurance policy will be assumed to be responsible for the preparation of any QMCSO. Upon a request by that counsel, the attorney for the party who is required to maintain the medical insurance for the children (or that party, if not represented by counsel), shall provide forthwith information showing the name and address of the plan administrator and the specific information identifying all insurance plans that will cover the parties' children.

Reasonable efforts should be made to submit the QDRO and/or QMCSO within thirty (30) days of the filing of the divorce decree.

2.10 Use of Expert Witnesses.

The Court will require the disclosure of expert witnesses at least thirty (30) days in advance of any hearing in which such expert will testify. In order to conserve the parties' assets, parties are encouraged to agree upon valuation experts and to stipulate to valuations of those experts.

3.00 Maintenance

Spousal support or maintenance provides for the future support of a divorced spouse. The old name for spousal support was alimony. All of the terms mean the same for the purposes of these guidelines.

Whether to award any maintenance, how much to award and for how long is discretionary with the Court. No presumption for or against granting maintenance exists. Permanent maintenance should be considered after making division of the parties' assets and allocation of the liabilities of the marriage, but before calculating child support.

K.S.A. 23-2902 provides that the Court may award maintenance in an amount the Court finds "fair, valid, just and equitable under all of the circumstances." How a court decides what is fair, just and equitable is a question of fact. The primary issue in the determination is based upon the financial needs of the payee and the ability to pay of the payor.

Kansas Courts have applied the following factors to determine if, how much, and how long maintenance is to be awarded:

- A. The age of the parties;
- B. The parties' present and prospective earning capabilities;
- C. The length of the marriage;
- D. The property owned by the parties;
- E. The parties' needs;
- F. The time, source, and manner of acquisition of property;
- G. Family ties and obligations; and
- H. The parties' overall financial situation.

3.01 Calculation of Amount of Spousal Maintenance.

Unless relevant factors such as those enumerated above cause an outcome that would not be "fair, valid, just and equitable," then the Douglas County maintenance formula should be calculated as follows:

The maintenance guideline is 17% of the difference between the parties' respective gross income or earning capacities. The definition of gross income is as defined by the Kansas Child Support Guidelines.

3.02 **Length of Spousal Maintenance.**

A. **The Length of Permanent Maintenance.**

The length of permanent maintenance shall be determined by the following formula: One-third of the total length of the marriage and/or cohabitation period in a marriage like relationship, to a **maximum** of 121 months.

EXAMPLE: 7 year marriage: 84 months divided by 3 = 28 months of maintenance.

B. **Credit for Temporary Maintenance Paid During the Divorce Proceeding.**

If temporary maintenance was paid after the parties' separation but before settlement and/or trial, the number of months the temporary payments were made may be subtracted from the total term of maintenance.

Example:	Total term of maintenance	28 months
	- <u>Temporary maintenance paid</u>	<u>12 months</u>
	= Months of permanent maintenance	16 months

3.03 **Termination of Spousal Maintenance.**

The parties should specify the period of time for which maintenance is to be paid as well as events which would cause the maintenance to be terminated earlier. Maintenance should generally terminate on the first occurrence of any of the following:

- A. The death of either party;
- B. The remarriage of the maintenance recipient;
- C. The cohabitation by the maintenance recipient with a non-relative adult in a marriage like relationship (as defined by Kansas case law); or
- D. The expiration of the term of maintenance.

Kansas Courts have applied the following, non-inclusive, factors, to determine cohabitation with a non-relative adult in a marriage like relationship:

- A. Shared expenses and liabilities;
- B. Shared parental duties;
- C. Shared living arrangements, with neither having another primary residence; and/or
- D. Shared financial accounts.

4.00 Custody, Residency and Parenting Time Guidelines.

4.01 General Considerations.

The mother and father remain parents to their child or children even though their marriage is legally terminated or, in fact, they were never married. It is presumptively in the best interests of a child to have a strong and healthy relationship with both parents. As parents, each has an affirmative obligation to ensure that the child has frequent, significant and meaningful contact with the other parent, unless the child would be harmed. Frequent contact with each parent includes physical residency, parenting time, correspondence, telephone conversations, e-mail and other contact. Each parent is expected to follow through with scheduled contact. Each parent shall supply the other with a current residential and work address, telephone numbers and e-mail addresses and shall advise the other of any changes at the earliest possible opportunity.

Many children suffer stress and maladjustment, not just from the divorce process, but from continuing conflict between the parents. In fact, research has consistently shown that the single most damaging effect on children comes from conflict between the parents; conflict that occurs both within the divorce or paternity process and that which continues even after the divorce or paternity action is complete. To minimize conflicts, the parents should have a parenting arrangement for mutual access consistent with the needs of their child and adjust their work and leisure schedules accordingly. Good co-parenting will require them to consider the child's interests as they determine such issues as where to live, work hours, vacations and even social relationships. Moreover, a parent who is unable to be affirmatively supportive of the other parent and who does not insulate the child from the parents' disagreements is likely to be unfit to have residential placement.

Negotiated settlements of custody, residency and parenting time are almost always in the child's interest compared with contested litigation, which is expensive, stressful and delays resolution of the case. A court decision cannot be as sensitive to the child's needs, priorities, strengths and traditions, as the parents' parenting plan can be. Counsel should advise clients of the advantages of an agreed residential arrangement before the parties enter mediation, counseling or other social service process.

4.02 Children's Rights.

The provisions within this and the following sections are intended to apply equally to divorces, separate maintenance actions and paternity actions.

- A. The right to a continuing relationship with both parents.
- B. The right to express and receive love and affection from both parents without fear of disapproval by the other parent.
- C. The right to continuing care and guidance from both parents.
- D. The right to a relaxed and secure relationship with both parents, free from abuse of any kind.

- E. The right to know and appreciate what is good in each parent without one degrading the other or undermining the relationship with the other.
- F. The right to regular and consistent contact with both parents and the right to know the reason for cancellation or alteration of the regular contact.
- G. The right to fully participate in school and extra curricular events and activities, regardless of which parent's scheduled time they may fall on and the right to have both parents attend such events and activities.
- H. Neither parent shall:
 - 1. Speak badly about the other parent or the other parent's friends or relatives;
 - 2. Argue in front of the child or on the telephone when the parent can be overheard;
 - 3. Talk to the child about the divorce, the paternity action or any conflicts or issues between the parents;
 - 4. Talk about the amount or payment of child support;
 - 5. Ask the child to keep secrets from the other parent, or spy for a parent when at the other parent's home;
 - 6. Ask the child to act as a messenger by delivering verbal or written messages to the other parent;
 - 7. Prevent the child from freely taking items such as clothes and toys back and forth between the two households; or
 - 8. Ask the child where he or she wants to live.

4.03 Forms of Custody and Residency Defined.

A. Legal Custody.

1. Sole Legal Custody.

Sole legal custody means that one parent determines all major issues regarding the child's life, *e.g.*, health, education, medical care and religion. The Court must make specific findings of fact upon which the order for sole legal custody is based. The award of sole legal custody to one parent does not deprive the other parent of either parenting time or access to information regarding the child unless the Court so orders, and states the reasons for that determination.

2. Joint Legal Custody.

Joint legal custody means both parents have equal rights and responsibilities concerning their minor children, and acknowledge that neither party has rights superior or inferior to the other's. In keeping with their joint, shared and equal responsibilities, the parents shall consult with one another upon issues and matters of importance including, but not limited to, day care providers, discipline, education, religious and/or spiritual training and education, summer camps, illnesses and operations (except emergencies), special tutoring, orthodontic needs, and other important matters pertaining to the health, welfare and general well-being of their child. Joint legal custody does not give either parent veto power over such decisions but he or she does have the right to advance notice, good faith consultation, and full input.

B. Residency.

1. Residency.

Residency merely indicates that one parent has the child in his or her care a majority of the time; under law this is anything more than equal or nearly equal parenting time.

A parent may be awarded residency while there is still an equal or nearly equal parenting time arrangement in place. In this instance, the parent awarded residency shall be responsible to incur and pay for the child's expenses, excepting non-covered medical expenses, and shall receive child support as calculated by Kansas Child Support Guidelines, subject to a parenting time adjustment.

2. Shared Residency.

Shared physical residency is a term of art, requiring both an equal or nearly equal sharing of parenting time and direct expenses of the child. Note that an equal or nearly equal parenting time arrangement does not constitute shared residency; a shared residency arrangement must include a specific plan for the sharing of the child's expenses, excluding housing, utilities, food and transportation. Further, shared residency requires a high degree of cooperation, communication and co-parenting to be in the best interests of a child. Accordingly, most shared residency orders are by agreement of the parties.

3. Divided Residency.

Each parent maintains the primary residence for one or more of their children. The Court will not normally order divided residency because of established public policy in favor of keeping siblings together.

4.04 Residency Determination Criteria.

A. Deciding Custody and Residency.

In deciding residency, the Court will consider the following factors in conjunction with those specifically set forth in K.S.A. 23-3203:

1. The existing parental bond between each parent and child;
2. The quality and quantities of caretaking made by each parent in the past and the quality and quantity of caretaking contribution that each parent is likely to make in the future;
3. Any evidence of harmful or negligent caretaking in the past;
4. The attitude and willingness of the parent to foster the child's relationship with the other parent;
5. The ability of each parent to provide for the needs of the child, including any special needs;
6. The amount of change involved and its possible effect on the child;
7. Presence of spousal abuse; and
8. Other factors affecting the best interests of the child.

B. Motions For Change of Custody or Residency.

All post judgment motions for change of custody or residency shall state with particularity the material change of circumstances upon which the movant relies to support his/her motion, and shall be verified by the moving party. See K.S.A. 23-3219.

The Court does not grant *ex parte* orders which change the existing living situations, except in those rare situations where there is corroborated evidence of a serious threat to the safety of the child.

4.05 Parenting Time Guidelines.

A. Parenting Time Defined.

Parenting time is the child's time to be with that parent. Generally the more time the child has with each parent, the better. Regardless of the form of legal custody or residency, both parents should have reasonable and liberal parenting time with the child, absent factors that make such parenting time contrary to the best interests of the child. Parenting time shall be set out in a permanent parenting plan in the final Decree of Divorce, Separate Maintenance or Paternity.

B. Parental Preference.

In the event a parent is unable to spend his or her scheduled parenting time with a child, or needs to leave the child with a third party for an extended period, the other parent shall first be notified and given the opportunity to spend that time with the child. Third parties would include other family members or a babysitter but would exclude regularly scheduled work related child care providers.

C. Flexibility.

Child development research concludes that children of divorce have unique needs which should be considered, as the parents and attorneys negotiate the issue of parenting time. A child's needs and ability to cope with the parents' situation changes as the child develops. Each child is different. To promote healthy child development, parents must be flexible in adapting the parenting time schedules to the child's changing needs. For instance, teenagers often have many scholastic and extracurricular activities and interests, such as jobs and sports, that parents should take into account as they develop parenting plans. Moreover, parents must be flexible with one another within the parameters of a parenting time schedule to insure that a child's scholastic and extracurricular activities and events are met.

D. Clothing.

The residential parent shall send an appropriate supply of clothing with the child. The nonresidential parent shall return the same clothing, clean if possible, with the child at the conclusion of the parenting time or by the next visit. A child shall be allowed to freely take clothes, personal items including toys and personal effects back and forth between the parents' homes. In instances where there is equal parenting time, the parties should refer to the Kansas Child Support Guidelines.

4.06 Minimum Parenting Time.

These guidelines are meant to apply to the majority of situations where the residential parent has been the primary caretaker and the nonresidential parent has established and maintained a continuous strong and loving relationship with the child but has not shared equally in the caretaking responsibilities for the child. They may not apply where the work schedules of one or both of the parents are not traditional 8:00 a.m. to 5:00 p.m. jobs. The guidelines are not intended to apply to situations in which there has been a history of domestic violence, child abuse, alcohol or drug abuse, or mental illness on the part of either a child or a parent.

As noted above, parents know their children and their needs better than anyone in the court system. Parents are expected to work together in order to assess their children's needs and desires, and to work together to support the other parent's relationship with the child. The parents are further expected to work together to arrive at a parenting time schedule that meets the child's needs, that maximizes the child's time with both parents, and that accommodates the child's activities and events. It is presumed by law that an agreement of the parents is in the best interests of their minor child(ren).

A. Minimum Weekly Parenting Time.

The following schedule will generally be followed by the Court for minimum weekly parenting time in structured parenting orders if the parents cannot agree to another schedule:

1. Alternate weekends, from Friday at 5:30 p.m. to Sunday at 5:30 p.m.

2. Mid-week visits: either each Wednesday from 5:30 p.m. to 8:00 p.m. and alternate Mondays following the off weekend, from 5:30 p.m. to 8:00 p.m.; or each Tuesday from 5:30 p.m. to 8:00 p.m. and alternate Thursdays immediately prior to the off weekend, from 5:30 p.m. to 8:00 p.m.

3. A midweek visit may be overnight so long as the parties are in geographic proximity.

B. Minimum Holiday Parenting Time.

Parents should be encouraged to maximize the contact between each parent and the child(ren) and to consider past family traditions. The following schedule will generally be followed by the Court for minimum holiday parenting time in structured parenting orders if the parents cannot agree to another schedule:

1. Easter Weekend - From Friday at 7:00 p.m. until Sunday at 7:00 p.m. with parent B during even-numbered years and parent A during odd-numbered years.

3. Spring Break - Reside with each parent during one-half of the spring break, with the transfer to occur on Wednesday evening at 7:00 p.m. The parent normally having the child during the first weekend of spring break should continue to have the child until the Wednesday transfer.

3. Mother's Day - From 9:00 a.m. until 7:00 p.m. with the child's mother.

4. Memorial Day - From Friday at 7:00 p.m. until Monday at 7:00 p.m. with parent A in even-numbered years and with parent B during odd-numbered years.

5. Father's Day - From 9:00 a.m. until 7:00 p.m. with the child's father.

6. Fourth of July - From 7:00 p.m. on July 3rd until 7:00 p.m. on July 5th with parent A during even-numbered years and with parent B during odd-numbered years.

7. Labor Day - From Friday at 7:00 p.m. until Monday at 7:00 p.m. with parent B during even-numbered years and with parent A during odd-numbered years.

8. Halloween - Halloween evening from 5:00 p.m. until the following morning at 9:00 a.m. or the commencement of school with parent A in even-numbered years and with parent B during odd-numbered years.

9. Thanksgiving - From Wednesday evening at 7:00 p.m. until Sunday evening at 7:00 p.m. with parent B during even-numbered years and with parent A during odd-numbered years.

10. Winter Break/Christmas/New Year's - The first half of the winter break as defined by the school district in which the child(ren) reside with parent B during even-numbered years and with parent A during odd-numbered years. The second half of

the winter break as defined by the school district in which the child(ren) reside with parent A during even-numbered years and with parent B during odd-numbered years.

11. Parents' Birthdays - The child shall spend part of the day with the respective parent on that parent's birthday.

12. Child's Birthday - The child shall spend the child's birthday with parent B in even-numbered years and with parent A in odd-numbered years. The parents shall arrange for the child to have time with the other parent on their birthday, if feasible, or the weekend before or after.

4.07 Miscellaneous Holiday Provisions.

A. Conflict Between Weekend and Holiday or Weekend and Birthday.

Where there is a conflict between a weekend and a holiday or a weekend and a birthday, the holiday or birthday schedule shall apply.

B. Conflict Between Birthday and Holiday.

Where there is a conflict between a holiday and a birthday, the holiday schedule shall apply. The parties shall, however, be flexible in allowing the birthday to be celebrated before or after the holiday period.

C. Weekend.

The schedule of weekend parenting time shall be determined without regard to whether the regular schedule has been preempted from time-to-time by one of the scheduled holidays. However, the parties should avoid having the child(ren) miss three consecutive weekends with the non-residential parent.

D. Other Religious Holidays.

If the parents follow other religious holidays, there should be a sharing of time with the child similar to those designed for Christian holidays.

4.08 Extended Summer Parenting Time.

Where extended summer parenting time is warranted, any summer schedule should account for the age of the child, the availability of the parent, the distance and the cost of transportation involved.

Where extended summer parenting time is warranted, the nonresidential parent shall assume responsibility for planning the summer schedule for the child taking into account the child's existing school, scout, sport or other activities. Efforts shall be made to accommodate each parent's vacation plans. The residential parent shall not make any commitments for the child during the extended parenting time without consulting the nonresidential parent. Where feasible, the residential parent shall exercise the same mid-week and weekend parenting time when the child is with the other parent, as the other parent had during the school year.

4.09 Vacation Periods.

Each parent should be able to have the child on an annual summer vacation of up to fourteen consecutive days. Each parent will notify the other parent by May 1st of their proposed vacation period. The vacation shall not be scheduled during the other parent's holiday time.

4.10 Miscellaneous Parenting Time Guidelines.

A. Notice of Missed Parenting Time.

Each parent shall advise the other as soon as possible if he or she cannot exercise assigned parenting time. If the event is known about in advance, the nonresidential parent should give the residential parent at least three (3) days advance notice. If an emergency arises, the parent shall give notice as soon as possible. If scheduled parenting time must be canceled, the parent who must cancel has the primary responsibility to find appropriate supervision for the child during the scheduled period if the other parent is unable or unwilling to provide care during that time. Both parents should work together to find appropriate supervision.

B. Mail and E-Mail Contact.

Parents and children generally shall have an unrestricted right to send cards, letters, packages, audio and video cassettes, and e-mail messages to each other. Neither parent should interfere with the other. A parent should provide a child with self-addressed stamped envelopes or appropriate access to a computer for the child's use in corresponding with the other parent.

C. Telephone Communication.

Telephone calls between parent and child should be permitted at reasonable hours and at the expense of the calling parent. The residential parent may call the child at reasonable hours, duration and frequency when the child is visiting the nonresidential parent. The child shall have the right, without restriction and without exception, to call either parent, at reasonable hours and frequencies, and at the cost of the parent called if it is a long distance call. During extended vacations the parent with whom the child is on vacation is only required to make the child available to telephone calls every five days. At all other times the parent the child is with shall not refuse to answer the phone, turn off the phone or put on a call blocker in order to deny the other parent telephone contact. If a parent uses an answering machine, messages left on the machine for the child shall be returned promptly. Parents shall agree on a specified time for calls so that the child will be available.

D. Privacy of Residence.

A parent may not enter the residence of the other, except by express invitation of the other parent, regardless of whether a parent retains a property interest in the residence. Unless otherwise agreed, the child shall be picked up and returned to the front entrance of the appropriate residence. The parent dropping the child off should not leave until

the child is safely inside. Parents should refrain from surprise visits to the other parent's home.

4.11 Transportation Responsibilities.

Except in the case of long-distance parenting, transportation shall be shared equally. Unless otherwise agreed, for parents living in the same city the nonresidential parent shall pick up the child at the times specified from the residential parent to initiate parenting time. The residential parent shall pick up the child for return home at the times specified. The parent with the child shall have the child ready to be picked up at the time scheduled. The other parent shall be prompt in picking up the child. The parents shall communicate as early as possible regarding any delay, change or emergencies.

4.12 Parenting Plans.

A. Temporary Parenting Plan.

1. Generally, the Court will enter a temporary parenting plan in any case in which temporary orders relating to child custody are authorized. The temporary parenting plans shall provide for the following:
 - a. Designation of the temporary legal custody of the child;
 - b. Designation of a temporary residence of the child;
 - c. Allocation of parental rights and responsibilities regarding the child's health, education, and welfare; and
 - d. A schedule for the child's time with each parent, when appropriate.
2. A parent seeking a temporary order, in which matters of child custody, residency or parenting time are included, shall file a proposed temporary parenting plan contemporaneously with any request for issuance of such temporary orders.
3. If the parent who has not filed a proposed temporary parenting plan disputes the allocation of parenting responsibilities, residency, parenting time or other matters, that parent shall file and serve a responsive proposed temporary parenting plan.
4. Either parent may move to have a proposed temporary parenting plan entered as a part of a temporary order. The parents may enter an agreed temporary parenting plan at any time as part of a temporary order.
5. A parent may move for amendment of a temporary parenting plan, and the Court may order amendment of the temporary parenting plan, if the amendment is in the best interest of the child.
6. If the proceeding is dismissed, any temporary parenting plan is vacated.

7. Parenting Plan forms can be found at: <http://www.kansasjudicialcouncil.org>

B. Permanent Parenting Plan.

1. Although any parenting plan is always subject to the continuing jurisdiction of the Court, a permanent parenting plan will generally be entered simultaneously with, or as a part of the decree.

2. A permanent parenting plan may consist of a general outline of how parental responsibilities and parenting time will be shared and may allow the parents to develop a more detailed agreement on an informal basis. However, a permanent parenting plan must set forth the following minimum provisions:

- a. Designation of the legal custodial relationship of the child;
- b. A schedule for the child's time with each parent, when appropriate; and
- c. A provision for a procedure by which disputes between the parents may be resolved without need for court intervention.

3. A detailed permanent parenting plan shall include those provisions required by subsection 2, and may include, but need not be limited to, provisions relating to:

- a. Residential schedule;
- b. Holiday, birthday and vacation planning;
- c. Weekends, including holidays and school in-service days preceding or following weekends;
- d. Allocation of parental rights and responsibilities regarding matters pertaining to the child's health, education and welfare;
- e. Sharing of and access to information regarding the child;
- f. Relocation of parents;
- g. Telephone and e-mail access;
- h. Transportation; and
- i. Methods of resolving disputes.

4. The Court shall develop a permanent parenting plan, which may include detailed provisions as the Court deems appropriate, when requested by either parent or the parents are unable to develop an agreed parenting plan.

4.13 Problem Solving and Dispute Resolution.

A. Disagreements Between Parents.

When disagreements occur regarding the child, both parents shall make every effort to resolve the dispute. If the disagreement cannot be resolved, parents shall enter into a dispute resolution process. The costs of the process shall be shared equally between the parents, unless otherwise ordered by the Court or prior agreement of the parties. Before either parent may file a motion for court intervention the parents must engage in a form of alternate dispute resolution.

B. Alternative Dispute Resolution.

The parties may agree on an appropriate form of alternative dispute resolution. It may be difficult to anticipate the future needs of the children and/or the parties, and to specify the appropriate process in advance.

4.14 Motions to Enforce Parenting Time.

A. A motion to enforce parenting time may be filed if an existing parenting plan is not being followed.

B. Information on how to file a motion to enforce parenting time can be found at: <https://www.douglascountyks.org>

4.15 Religious and Cultural Issues.

In keeping with a child's cultural and religious heritage, parents should cooperate with each other and respect the child's needs to be raised in each parent's respective faith, culture, and religious practices. Religious training should be left up to the parents. Because the First Amendment prohibits the Court from ordering anyone, including children, to any religious exercise, judges must remain neutral on choice of religion. When parents cannot agree, the Court may have to make a decision. Absent parental agreement, the Court will order that a child attend a public school, rather than a private or church-sponsored school, unless the Court finds that the child has special needs or there is an established history of attending a private school and it is not in the child's interests to change. Religious and cultural issues shall not be used to deprive the nonresidential parent of parenting time.

4.16 Child's Preference.

Absent other objective factors, a child's preference for a change of residency is often insufficient to persuade the Court. Evidence of coaching or alienation will be weighed against the parent engaged in these activities and appropriate sanctions may be ordered. If the child's preference is to be considered at all, it shall be at the Court's discretion.

4.17 Child's Testimony.

Generally a child will not be permitted to testify in a family law proceeding.

4.18 Moving.

A. Notice to Other Parent.

The parent intending to move must give proper **notice of not less than 30 days** as required by K.S.A. 23-3222 by restricted, return-receipt requested mail. A move may be considered a material change of circumstances, for which the Court may consider a change in primary residency.

B. Factors to be Considered.

Factors to be considered include, but are not limited to:

1. The effect of the move on the best interests of the child;
2. The effect of the move on any party having rights - parenting time, visitation;
3. The increased cost the move will impose on any party seeking to exercise rights;
4. Valid reasons for the proposed move;
5. Expense and impact of increased travel on the child and parent;
6. The child's attachment to the residential parent and the damage that may be caused by removing the child from the primary caretaker;
7. The child's relationship with the nonresidential parent and the frequency of contact in the current arrangement;
8. Effect of the move on the child's access to the nonresidential parent; and
9. Impact of changing schools, friends, and distance from relatives.

4.19 Long Distance Parenting.

Where there is significant geographical distance separating the parents, they should consider the following:

A. Weekly Telephone Contact or Teleconferencing.

A scheduled weekly telephone contact between the child and the absent parent shall be paid by the parent who moved. A child should have the right to call the nonresidential parent, collect, at any time. The parents may provide for SKYPE or the equivalent.

B. Nonresidential Parent Priority Weekends.

The nonresidential parent should have priority for those weekends when school vacation days, such as those for parent-teacher conferences, can afford a 3-4 day visitation period.

C. Costs of Transportation.

The Court may consider the reasons for the move, the costs of parenting time, the parents' financial circumstances, and the historical frequency of parenting time before apportioning the expenses of the long distance parenting.

4.20 End of Summer Motions to Change Residency.

Except in emergency situations, motions to change residency filed after July 15 will not be heard until after September 1. Last minute motions to change residency filed by nonresidential parents who have had the children for the summer will not be heard until after school starts. The children shall be returned home under the existing order for the fall semester of school, until further order of the Court.

4.21 Drug testing/alcohol testing.

Upon order of the Court, the parties may be required to submit to random drug or alcohol screens. Contested drug screens may be confirmed by additional testing, at a cost to the party requesting confirmation. A positive drug screen may result in, but not be limited to:

- A. Suspension of parenting time;
- B. Temporary change of residency and/or custody to the other parent or a third party with supervised parenting time;
- C. Further drug evaluation;
- D. Continuing random drug and/or alcohol screens; or
- E. Other orders of the Court.

5.00 Assessment of Attorney's Fees

Assessment of attorney's fees is at the discretion of the Court. Generally, each party should be responsible for the payment of his or her own attorney's fees.

5.01 Fees Imposed Due to Unreasonable Conduct.

If the litigation of the case has been unnecessarily extended or made unduly difficult by the unreasonable or frivolous conduct of either party or that party's counsel, the Court shall consider such conduct and may assess attorney's fees based on the same. The Court may assess all of the opposing party's attorney's fees or a portion thereof, based on the nature and extent of the unreasonable conduct at issue.

6.00 Parentage of a Child.

- A. **The issue of the parentage of a child may arise:**

1. When a mother seeks child support for a child born outside of marriage;
2. When the State seeks current or back child support for a child born outside of marriage;
3. In a divorce or post divorce action when the presumed father or mother seeks to verify or challenge the parentage of the child; or
4. When a man who was not married to the mother seeks a legal determination regarding his parentage of the child.

B. Presumption of Paternity.

There is a presumption of paternity when:

1. Parents are married at conception or birth of child;
2. Child is born within 300 days of termination of marriage;
3. Man is listed as father on child's birth certificate;
4. There is an order of support by a Court or Administrative Tribunal;
5. The man notoriously or in writing held himself out as the child's father;
6. Genetic test result above 97% probability;
7. After the birth of the child, the man and the mother marry or attempt to marry and
 - a. Man has acknowledged the child in writing;
 - b. Man consents to his name being placed on the birth certificate;
 - c. Man has promised in writing to pay child support; or
 - d. Man has been ordered by the Court or Administrative Tribunal to pay child support.

6.01 Who Can Bring An Action of Paternity.

An action of paternity may be brought by the child or any person on behalf of the child. An action may also be brought by the State of Kansas or its agencies.

6.02 Mandatory Parties to Paternity Action.

The mandatory parties include the child, all presumed or alleged fathers and the mother.

6.03 Procedure.

A. An action may be filed in any county:

1. Where the mother resides or is found;
2. Where the alleged or presumed father resides or is found; or
3. Where the child resides or is found.

B. A paternity action shall be brought within:

1. Three years after the child reaches the age of majority if it involves an alleged father;
2. Anytime if it involves a presumed father; or
3. The age of majority of the child if it is brought by the State.

6.04 Genetic Testing.

A. Genetic testing is allowed:

1. When an alleged father requests and no presumed father exists; or
2. By a court order after a best interest (*Ross*) hearing or at State's request regarding alleged fathers.

B. Private genetic testing.

Private genetic testing without prior Court approval is not binding on the Court. The presumption of paternity or orders determining paternity shall not be set aside based solely on such test results.

6.05 Best Interest (Ross) Hearing.

A best interest of the child or children hearing (*Ross* hearing) may be ordered by the Court anytime there is a presumed father whose paternity is challenged. The hearing before the District Court Judge shall determine if it is in the child's best interest to have the presumption of paternity set aside. The Court will consider the following:

1. If there is an established relationship between presumed father and the child;
2. If there are compelling medical needs of the child;
3. Physical, mental or emotional needs of the child;
4. The motives of who is challenging the paternity;

5. Are there relationships with other siblings;
6. Any harm to child; and
7. Parties' wishes.

6.06 Orders.

With the paternity finding, the Court will address the issues of child support, custody and parenting time using the Douglas County Guidelines and the Kansas Child Support Guidelines, and will assess any fees and costs.

The Journal Entry shall be prepared as directed by the Court to include the Child Support Worksheet, Mandatory Supplemental Orders, Custody and Parenting Time Order, Parenting Plan, Shared Expense Order and, if required, and the Kansas Payment Center Form.

7.00 Emergency Divorces.

7.01 General Policy.

Emergency divorces are generally disfavored.

7.02 Requests to Waive the 60 Day Waiting Period.

Motions or pleadings requesting a waiver of the 60 day waiting period should follow K.S.A. 23-2708 and include:

1. A statement of the precise nature of the emergency requiring a waiver of the 60 day waiting period; and
2. A statement detailing the substance of any evidentiary material demonstrating the alleged emergency circumstances, including the names of all witnesses as to the same.

7.03 Notice of Hearing.

Unless waived, the notice of a hearing on an emergency divorce shall be given to all parties not in default not less than seven days prior to the date of the hearing.

8.00 Court Ordered Referrals.

A. Custody, Residency and/or Parenting Time Assessment (K.S.A. 23-3210).

The case may be referred to a professional for investigation and evaluation of the personal circumstances of the children, the parents, and the home environment provided the child when there are serious disputes over the parenting ability or the environment. The assessment may include a recommendation to the Court on contested custody, residency and/or assessment issues.

B. Mediation.

1. Mediation is a confidential process in which a neutral third party assists the parties in resolving their disputes and/or in planning their agreements. Unlike a judge or an arbitrator, the mediator has no authority to impose a solution.
2. Court approved private mediators are available.
3. Mediation is also available through the Douglas County Domestic Mediation Program. Cost is assessed on a sliding scale. Mediators are assigned through the District Court Trustee's office. Information regarding this program may be found at: <https://www.douglascountyks.org>

C. Douglas County Visitation and Exchange Center (TFI Family Services).

Families referred to the Douglas County Visitation and Exchange Center (TFI Family Services) need a safe and neutral environment so that parental contact may be implemented or sustained. The mission of the program is to encourage positive parent-child contact. Therefore, two services are provided, supervised visitation (parenting time) and monitored exchanges. Supervised parenting time is direct supervision of the parent-child contact and communication at the TFI location. A monitored exchange is the direct supervision of the child(ren) as they are exchanged at staggered times between the residential parent and the parent exercising parenting time.

9.00 Court Appointed Representation for Children.

Guardian *Ad Litem*s and Attorneys. Either a guardian *ad litem* or an attorney may be appointed to represent the child's interest on motion of either party or on the Court's own motion. The fees of either the guardian *ad litem* or the attorney will be assessed against the parties as costs, or in case of indigent parties, the costs will be assessed to the County.

10.00 Protection from Abuse ("PEA") and Protection from Stalking ("PES") Cases.

10.01 General.

The Protection from Abuse Act is found at K.S.A. 60-3101 and following. The Protection from Stalking Act is found at K.S.A. 60-31a01 and following.

Many people who file a Petition or Counter-Petition for these causes of action do not have an attorney. A person represented by an attorney can rely on his/her attorney to know the law. However, anyone who appears as an unrepresented Plaintiff or Defendant is also responsible for knowing the law. The Judge cannot give legal advice because that would violate the Judge's duty to remain neutral. The bottom line is that if you represent yourself, you need to be prepared for court. At the very least, READ THE STATUTES.

10.02 Procedure.

These are very important actions. The paperwork must be complete and accurate before it is filed with the Clerk of the Court or the Judge.

BOTH ACTS REQUIRE THE PETITION TO BE VERIFIED. That means the Plaintiff must swear or affirm under penalty of perjury that the petition is complete and accurate. Occasionally, a person helps a party complete these forms. It is important to remember that non-lawyers cannot give legal advice. It is the party's responsibility to ensure that the paperwork is in proper form because it is the party who will be signing it under oath.

All pleadings that ask the Court to issue any order must be filed with the Clerk of the District Court before they are presented to the Judge for consideration. Therefore, the Petition or Counter Petition should be completed, verified, and filed before the Judge sees them. If the Court approves an order by signing it, the order will be filed immediately with the Clerk of the District Court and faxed to the Douglas County Sheriff's office.

The case initially will be set for a Temporary Orders Docket. Both parties must appear at this docket. The Judge will decide at that docket whether Temporary Orders should continue.

At the Temporary Orders Docket, the case will be settled, set for trial or dismissed. Both parties must appear at the trial. If the Plaintiff does not appear at trial, the case will be dismissed. If the Defendant does not appear at trial, the Petition will be considered uncontested.

10.03 Child Custody, Residency and Support Matters in PFA/PFS cases.

It is possible for the Court to address issues of custody, residency and child support in these actions, however these matters are more appropriately addressed in divorce or parentage act cases. If appropriate, the Court may issue orders intended to remain in effect only until a divorce or parentage action is filed. Actions for Prevention of Abuse or Stalking should NEVER be considered as a substitute for a divorce or parentage action.

10.04 Misuse of the Acts.

Occasionally, someone will file false or frivolous petitions or counter petitions pursuant to these Acts. If that happens, the Court has the authority to impose sanctions, including but not limited to, assessment of attorney fees.

10.05 Emergency Relief - Available only in PFA Cases (Not Stalking Cases).

If an Emergency Order is issued on a weekend or Court holiday for a Protection from Abuse case, the Plaintiff (or Counter Plaintiff) must get a Temporary Order the very next day Court is in session. This is very important because Emergency Orders automatically terminate at 5:00 p.m. on the first day when the Court resumes Court business.

10.06 Use the Forms.

The appropriate forms can be found in the Clerk of the Douglas County District Court office, the Douglas County Sheriff's office and online at <http://www.kansasjudicialcouncil.org>.

The whole procedure goes more smoothly if all persons who process these cases use forms with which they are familiar. This applies to Clerks, Judges, and law enforcement, to name a few.