

# Clerks Advisory Council

April 15, 2016

The Clerk's Advisory met at the Judicial Center on April 15, 2016. Attendance was as follows:

Judicial Department One	Connie Stithem
Judicial Department Two/Urban	Angie Callahan
Judicial Department Three	Janet Westbrook (phone)
Judicial Department Four	Janel Downey
Judicial Department Five	Bernie Lumbreras (car accident)
Judicial Department Six	Debra Schmidt (phone)
KADCCA President	Krisena Silva
KADCCA Treasurer	Amanda Truant (absent)
KADCCA Secretary	Lea Throckmorton (absent)
OJA Staff Attorney	Sarah Hoskinson (absent)
District Court Clerk Specialist	Benita Chaplin

BIDS forms -*If a defendant does not sign the application for appointed defense services form, can they be held liable to repay their attorney fees?* **Yes, as long as the court has ordered it. There is no requirement in statute that the defendant sign the application before being held liable. However, this is an avoidable circumstance, as a judge could decline to consider an incomplete application form. Note that clerks should not determine whether a defendant is legally liable for a given fee – if the defendant believes he or she is not liable, the defendant should challenge the judgment through the court system and a judge will decide.**

Worksheet for Marriage Registration- *Is the VS244 (11/14) the most current version of this form?* **Yes, this has been verified with KDHE.** How are clerks to handle a situation where there are two names that are questionable (Terry and Tracy) and only one party applies and picks up the license? Should they complete the paper form for KDHE and upload the data in Vital Stats Portal? SSM applicants require a paper process. **If they do not indicate same-sex marriage, you should assume the applicants are opposite sex couples and enter through the KS VRV Web. KDHE reports that developers are working on updating the system now. The developers hope to have upgrades in place by June 2016, most likely towards the end of the month.**

Color scanning appeals documents- *If my office is paperless and scans and shreds documents when filed, is it preferable to have a color scanner for exhibits (e.g. pictures)?* **Rule 108(e)(8) directs the handling and retention of exhibits. Exhibits should be handled as described in that rule. Being "paperless" does not mean all exhibits should be scanned and shredded, regardless of whether a court has access to color copiers. OJA advises against shredding any hard copy exhibits submitted to the clerk unless the destruction is authorized under Rule 108 or ordered by a judge. Additionally, mandatory efilng does**

not necessarily mean all exhibits can or will be efiled. AO 268(C)(6) states that "Every implementation of efiing must accommodate submission of nonelectronic documents or exhibits in special circumstances as defined by Supreme Court or local rule."

VS211s – *How are courts processing VS211s?* The application is provided to the party by the clerk, an appointment is scheduled with the judge, and the document is forwarded to KDHE.

Wills- *When a will is presented by the bank to the clerk how is it to be handled?* Under K.S.A. 59-621 a person having custody of a will must deliver it to the court after the testator's death. This would presumably include banks. What is the process if a person comes in and wants to open a will that was deposited with the court? Clerks should follow the rules in Supreme Court Order 96 SC 32. Under that order the will can only be delivered to the testator or upon the testator's written order witnessed by at least two subscribing witnesses. At the Clerks Advisory Council meeting, clerks reported that if the testator wants to open his or her own will, the testator is asked to show ID in order to receive the will. Some courts require that the testator provide the receipt given at the time the will was deposited. The clerk should document that the will was delivered to the testator or other appropriate party under 96 SC 32.

SB123 – CSO Kevin Murray asked that the following information be distributed to the CAC members: 1) When SB fees were first developed the fee was in fact \$300 and it was assessed by community corrections; collected by community corrections; and submitted to the Kansas Sentencing Commission by community corrections. 2) The law changed – in that the fee became two parts in that \$200 was for the assessment cost regardless if the defendant was assigned to community corrections (as the law changed that not all potentially SB eligible offenders were assigned to community corrections as it was dictated by the defendant's SSAI score and the LSI-R score); and the \$100 was for evaluation reimbursement for those offenders who were ordered to SB treatment (which by statute is to be supervised by community corrections. 3) Due to the eligibility criteria the new law created "SASSI and LSI-R Score" there are some offenders who will only be assessed the \$200 for the evaluation and some who will be assessed the entire \$300 (as they will be placed in mandatory treatment which there is the additional \$100 to be assessed). 4) The supervision entity (court services or community corrections) does not necessarily dictate whether the money should not be taken or not. Jesse Becker, MBA, Finance Director, Kansas Sentencing Commission, 785.296.0927 is a contact if you have questions about a particular SB fee.

*How are SB funds to be assessed in FullCourt when there are two options listed in the sentencing journal entry (SB 123 Assessment Fee \$200 and SB 123 Offender Reimbursement at least \$100), but one line item in FullCourt? They go in the same fee in FullCourt.*

Expungement Forms for Pro se litigants – *The Petition for Expungement forms show the defendant as the petitioner and the State as the defendant, can this be corrected to reflect the State as the petitioner?* This cannot be changed. The state is not petitioning for expungement – the defendant petitions for expungement. KSA 22-2410; 21-6614. It is not appropriate to list the state as the petitioner. The Expungement Instructions for Expungement of Conviction or Diversion form was supposed to have been modified to instruct the petitioner add a case number. Benita will follow up with Nancy Strouse.

Local Court Rules – *Who at OJA is responsible for submitting district court's local court rules to the webmaster for posting on the OJA Intranet?* Per Supreme Court Rule 105(c), local rules are effective upon filing with the Clerk of the Appellate Courts and posting on the Judicial Branch website. Local rules should be submitted to the appellate clerk's office. Once filed, the appellate clerk's office sends notice to IT for publication on OJA's website. SCR 105(b) states that local rules must be made accessible to the public and published on the Judicial Branch website, so publication on the intranet alone would be insufficient.

INK- *I sealed the ROA and the document in a criminal case. I then went to the tables and sealed the ROA code from appearing on the internet for AFFPCAR. Does the ROA appear on INK?* Mel Waters provided the following information: There are no images on INK. So checking the seal image box does nothing. (ROAs) Even though ROA's are on the INK site the seal ROA will NOT keep it from appearing on INK. The only way to keep ROA's off of INK is to not put them in the ROA or seal the case. (Cases) The only way to keep cases off of INK is to seal the case, or they are excluded in the table setup. The table setup is maintained by OJA so clerks should check with OJA FullCourt staff before making changes to that table. How often should clerks run INK, and what should they be looking for? Clerks should run INK at least once a week, but best practice is to run daily. If sensitive documents are files that cause a case to be sealed (i.e. expungements) then run INK so the case will be removed from the public site (this is if they don't run every day). As far as looking on the actual INK website, the only reason a clerk should check that is if someone calls. For example, an attorney calls and does not see a filing and the clerk knows that INK was run daily. If the clerk can't see the filing then they should call OJA because there is a problem with the process. The best practice to address this is make sure they get the conformation emails for INK every time they send records, this is critical.

Desk manuals – There was a discussion about a need for desk manuals. It is suggested that each clerk consider creating, OR having your deputies create an "ABC" desk manual for daily procedures (i.e. new cases, judgments, etc.). Manuals can be created by making screenshots with instructions while clerks are performing their daily tasks.