

Clerks Advisory Council

November 20, 2015

The Clerk's Advisory met at the Judicial Center on November 20, 2015. Attendance was as follows:

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

Adoptions – If the Secretary of Children and Family Services had been involved in an adoption, do we send a copy of the decree, report of adoption, genetic, medical, and social history of the child and parents to DCF? **K.S.A. 59-2135 lists the items that must be sent to DCF. The clerk must send a copy of the decree of adoption, a copy of the report of adoption required in K.S.A. 59-2119, and a copy of the information required in K.S.A. 59-2130.** Are the blue lined Report of Adoption forms still required? **No. There are fillable PDFs that may be used.**

Expungement Instruction Form – Nancy Strouse (Judicial Council) asked the CAC to review item #2 in the "Instructions for Expungement of Conviction or Diversion" form to see whether the language "except for the case number" needs to be removed. **The committee agreed that the case number of the expunged case needs to be provided in the petition. Therefore the CAC recommends that the language be changed to remove "except for the case number."** A related change may need to be made to item #5. **If the committee finds other portions of the instructions that should be modified, please send that information to Benita as soon as possible.**

Please note the following revised Judicial Council forms:

General Instructions for Those Seeking a Protection from Abuse Order (6/5/15):

http://www.kansasjudicialcouncil.org/PFA_GeneralInstructions2015.pdf

General Instructions for Those Seeking a Protection from Stalking Order (6/5/15):

http://www.kansasjudicialcouncil.org/PFS_GeneralInstructions2015.pdf

Guardian and Conservator Basic Instructions and Forms (6/15):

<http://www.kansasjudicialcouncil.org/GuardianConservatorTraining.shtm>

Wills on Deposit – What is the protocol for handling wills we have on deposit? What happens if someone from the family comes to retrieve it? **The clerk should refer to the instructions in Supreme Court Order 96 SC 32 (attached). That order says the will shall be delivered only to the testator or upon the testator's written order witnessed by at least two subscribing witnesses. The person seeking the will may need to hire an attorney for assistance.** If we are notified of the testator's death, the order requires the court to open the will publicly and give notice to the executor named in the will. Is there a form that we use to give notice? **No. Clerks may contact OJA for assistance with drafting a notice if desired.**

Notification/Return or Destruction of Exhibits – What is the procedure to notify parties regarding the return or destruction of exhibits? **Supreme Court Rule 108(e)(8) addresses withdrawal, disposal, or destruction of exhibits. CAC members reported handling exhibits in several ways: 1) wait until the appeal time has run and return exhibits to the attorney or party that filed the exhibit with the case, then make a list on the ROA, 2) post a notice in the clerk's office and local bar publication, then the judge does an order of destruction, 3) judge may order attorneys to keep the exhibits until the appeal time runs, or 4) judge does a blanket order for specific case types and after notice has been given exhibits destroyed.**

Criminal Summons – In criminal cases that have outstanding summonses should the case be automatically sealed until the summons is served? **A probable cause affidavit in support of criminal summons is confidential and must remain sealed under the terms described in K.S.A. 22-2302. While search and arrest warrants must remain sealed until executed per K.S.A. 21-5906, criminal summonses are not expressly made confidential in statute. Some chief judges choose to seal criminal summonses in the same manner as an arrest warrant. It is up to your chief judge whether you presumptively allow public access to the summons before it is served, but if you receive a KORA request for a criminal summons please consult with your chief judge and/or OJA for assistance. Members of the media have recently asserted that a criminal summons should always be treated as an open record.**

Surety Bond – When a criminal case has a surety bond posted and the case is completed, who is responsible for signing off on the surety company's form stating the company is discharged from liability? **K.S.A. 22-2808 states that "[w]hen the condition of the appearance bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release them from liability."** CAC members reported that they do not typically sign these forms. OJA advises against signing a bail bondman's form unless a judge instructs the clerk to do so. **As a side note, there are benefits to running the Surety Bond Report in FullCourt (e.g. discovering forfeitures). This is not a required report though.**

DMV Letters – Are clerks required to prepare DMV letters for individuals that state, "the clerk is unable to locate pending lawsuits" when the individual is seeking reinstatement of a driver's license? **No. This is**

optional. If a clerk decides to issue these letters the clerk should state that she is "unable to locate" a pending lawsuit, rather than "there are no cases filed."

Original marriage license – Are clerks required to mail the original marriage license to Vital Statistics? **K.S.A. 23-2511** states "[t]he judge or clerk. . .shall forward, not later than the third day of the following month, to the secretary of health and environment the license and certificate of marriage..." The "certificate of marriage" is the bottom part of the license that contains the officiant's signature. Clerks are also required under that statute to send a statement of the names of the parties and the name and address of the person who performed the ceremony. Vital Statistics informed OJA that the office no longer wishes to receive the original license, however KDHE has not obtained a statutory change. At present, the statute appears to require that the original license be submitted to KDHE.

Court Reporter Transcripts – How are courts handling records requests for court reporter transcripts? Once a transcript has been filed with the court it is a part of the record and is open under KORA. See **Supreme Court Rule 366, No. 10** ("No one shall be required to purchase a copy when requesting production of an original transcript, and access to the record shall be permitted by the district court under the Kansas Open Records Act and Supreme Court Rule 3.06. The 'official district court transcript' shall be a transcript produced by any Kansas Certified Court Reporter or person authorized by these rules to produce official transcripts.") In Lyon County the court reporter can e-file the transcript to the clerk. In Kiowa County the transcripts are sealed per local court rule. Is there a rule that requires the court reporter to file an electronic transcript? **Supreme Court Rule 3.03** requires the court reporter to file the transcript for a record on appeal with the district court. Although Rule 3.03 does not specify in what form the transcript must be filed, the Appellate Clerk's Office requires transcripts be sent electronically when records on appeal are submitted electronically. If local rules or orders indicate a transcript is not to be submitted electronically, the rule or order should be brought to the attention of the chief judge and OJA. Note that no rule expressly requires a transcript to be filed with the district court if an appeal is not sought.

Court of Appeals – Why is the Appellate Clerk's Office e-mailing orders for records to the district courts? If that office has mandated e-filing, why can't they e-file the documents with the district courts? **The Appellate Clerk's Office will begin faxing orders for records instead of e-mailing them. Once all district courts are on the e-filing system we will look into having the orders e-filed instead of faxed.**

Benita already requested that Judicial Council send her notice whenever forms are revised. Sarah and Benita will also monitor the Judicial Council and BIDS websites for revised forms when possible and notify the clerks when relevant forms are revised.