

# DCR 3.401

## (Domestic Relations Cases)

1. (a) Captions in Divorce Cases. The caption in divorce cases shall have the petitioner's and respondent's full name pursuant to K.S.A. 60-210. Filings will not be accepted if full names are not in the caption.

(b) Ex Parte Orders.

(1) In domestic cases, motions for ex parte orders pursuant to K.S.A. 60-1607a shall be presented upon, or in conformity with the application and order forms prescribed by the District Court. Forms approved by the Court shall be available through the Office of the Clerk of the Court [F 3.402]. Unless specifically waived by the Court, relief different from that provided for in the standard application and order forms, may be had only upon a verified motion which sets forth the reasons for requesting relief different than provided in the approved forms. All modified ex parte orders shall set forth the Court's findings which support the granting of the requested relief.

(2) General Order on Temporary Child Custody and Child Support

(a) Unless the Court finds a probability of abuse or neglect and necessity based upon corroborated sworn testimony, no ex parte orders of temporary child custody or child support shall be entered without a hearing.

(b) Until permitted to do so by a specific order of the Court, neither party shall remove minor children from the jurisdiction of the Court nor from the residence where the children usually reside at the time the action was filed.

(3) General Order on Temporary Maintenance

Unless the Court finds extreme circumstances and necessity, no order for temporary maintenance shall be issued by the Court until after a hearing.

(4) The Court shall establish a weekly docket to take up motions for temporary child custody, child support and maintenance or for modification of any temporary order. The moving party must provide at least 48 hours notice to the non-moving party.

(c) Supporting Documents Required. All motions for temporary child support shall be accompanied by an Affidavit according to Supreme Court Rule 139 and Child Support Worksheet according to Supreme Court Administrative Order 107.

(d) Modification of ex parte Orders. Requests to vacate or modify ex parte orders obtained under this rule shall be made by written motion and shall comply with Supreme Court Rule 139 and Administrative Order 107.

2. (a) Documents Required. In all domestic actions, counsel shall bring to the final hearing (1) a proposed form of divorce decree if the case is uncontested (2) a domestic relations affidavit (3) if children are involved, (A) a completed Child Support Worksheet required by Supreme Court

Administrative Order 107 and (B) evidence that the parents attended an educational program for divorcing parents required by this rule and (4) the State of Kansas Department of Health and Environment Vital Statistics form. The journal entry will not be filed by the Court until the documents are furnished.

(b) Hearings on Contested Cases - Documents Required. In all contested domestic cases the parties shall exchange, file and furnish to the trial judge, at least ten (10) days prior to hearing, a domestic relations affidavit, if children are involved a completed child support worksheet, and the parties' proposals for division of property, allocation of debt, and maintenance.

(c) Submission of Journal Entry - Contested Cases. Unless otherwise specifically ordered by the trial judge, counsel directed to prepare the decree in contested domestic cases shall submit their proposed order to the Court and opposing counsel within ten (10) days following the decision pursuant to Supreme Court Rule 170.

3. Real Estate Involved. All divorce decrees in which title to real estate is involved should have prominently displayed on the margin of the first page of the journal entry the notation in capital letters "REAL ESTATE INVOLVED" so that the Clerk of the District Court can have notice to comply with K.S.A. 58-2242(a). Further, counsel should file one additional copy of the journal entry for certification to the County Clerk pursuant to the statute.

4. Educational Sessions for Parents. Parents with minor children in all divorce actions filed after October 5, 1987, shall attend an educational program approved by the Court which deals with the impact of divorce on children within four (4) weeks after the action is filed or as directed by the trial judge. A party shall not be subject to this requirement if the Court finds that the party is indigent and that the fee will not be waived or reduced by the agency to permit attendance at such program. The requirement of this rule may be waived for good cause at any time by the trial judge.

5. Payment and Enforcement of Child Support. Pursuant to Rule 172 of the Kansas Supreme Court and the provisions of K.S.A. 23-492 *et. seq.*, all child support orders shall be enforced by the District Court Trustee's office or the contracting agent for IV-D cases.

(a) Payments for Child Support and Maintenance through Clerk of the District Court. All orders for payment of child support entered in this district after March 1, 1986 and all orders for payment of maintenance after November 1, 1997, shall provide that payments be made to the Clerk of the District Court.

(b) Mandatory Supplemental Orders. All orders for payment of child support, including modifications of existing support orders, entered in this district after March 1, 1986, shall contain the following as mandatory supplemental orders:

(1) "IT IS FURTHER ORDERED that all child support and maintenance payments shall be paid to the Clerk of the District Court. Any payments of child support not made in accordance with this provision shall be presumptively disallowed. Any payments made payable to the obligee may be endorsed and cashed by the Clerk of the District Court."

(2) "IT IS FURTHER ORDERED that the Office of SRS, or their contracting agent for IV cases, or the District Court Trustee for private cases shall monitor and enforce the payments of support ordered herein and may pursue on behalf of any child all civil remedies available to the obligee to enforce payments of child support."

(3) "IT IS FURTHER ORDERED that each party shall inform the Clerk of the District Court and SRS for IV-D cases, or the District Court Trustee for private cases in writing of any change of name, residence and employer including address within seven (7) days after such change."

(4) "IT IS FURTHER ORDERED that withholding of income to enforce this order of support shall take effect without further notice to K.S.A. 23-4, 107, and all amendments thereto."

(5) "IT IS FURTHER ORDERED that the amount of child support payable per month in this case is \$ \_\_\_\_\_, due on or before the \_\_\_\_\_ day of each month and \$ \_\_\_\_\_ on arrears each month. The payments in this case are to be paid monthly."

(6) "IT IS FURTHER ORDERED that the home addresses and telephone numbers, employment names, addresses, and telephone numbers, and social security numbers of each party shall be included each time an order is entered."

(c) Exemptions from this Rule. The District Judge assigned to domestic matters shall review for exemption determination all written motions from parties requesting exemption from this rule, and all journal entries submitted not in compliance with the mandatory supplement provisions of this rule pursuant to the following:

(1) It shall be the general rule that exemptions not be granted except for good cause shown pursuant to K.S.A. 23-4, 100, and all amendments thereto;

(2) Consideration may be given as exceptions to the general rule of non-exemption when a movant proves the following:

(A) The support order was made prior to March 1, 1986, has not been in arrears for more than one calendar month, and now is subject to the rule due to a post March 1, 1986, modification of the support order;

(B) The support order is being regularly paid by an irrevocable mandatory military allotment; or

(C) The support order has been satisfied by a posted security bond or endowed irrevocable trust.

(3) Exemptions granted shall be by written order.

(d) Filing. The Clerk of the District Court shall not accept for filing any order for child support which does not contain the mandatory supplemental orders.

(e) Record of Support Payments. The Clerk of the District Court, contracting agent for IV-D cases or Trustee for private cases shall maintain a record of all child support and maintenance payments in all cases subject to this rule. In cases where both maintenance and child support are collected, payments will be first applied to current child support then to current maintenance and any remaining amounts will be applied first to past due child support then to past due maintenance. In cases where only child support is collected, payments will be first applied to current child support then to past due child support. Any support payment not received on the due date set forth in the Order of Support will be considered overdue.

(f) Support Orders Converted to Monthly Awards. Due to the need to make optimum use of available computer data storage space, all support orders not issued as monthly amounts shall be converted to monthly amounts for record keeping purposes per the following conversion table and posted on the final due date of the month:

weekly amount times 4.333,

bi-weekly amount times 2.166, and

semi-monthly amount times 2.

(g) Temporary Support Orders. Trustee's office or contracting agent for IV-D cases shall not enforce temporary support orders in a case after the entry of the final divorce decree unless a judgment for temporary support is specifically awarded by the Court in the final divorce decree.

(h) Payment Disbursement. The Clerk of the Court, contracting agent for IV-D cases or Trustee is authorized to disburse all payments received pursuant to temporary or permanent support or maintenance orders to the party entitled to receive same without further order of the Court.

If the Clerk of the District Court receives any funds through an income withholding order that causes over-collection of support in the case, the Clerk of the District Court shall apply the excess amount to the current support obligation in the successive months following the over-collection. Upon satisfaction of all obligations of future support in such cases, the Clerk of the District Court shall refund the overage to the obligor within a reasonable time.

(i) Cost of Enforcement. The fee to be charged by the District Court Trustee shall be established by Court Order per K.S.A. 23-497, and all amendments thereto. The maximum fee to be charged on current payments of child support and or maintenance shall be \$25.00.

6. (a) Powers of District Court Trustee. The District Court Trustee in the Third Judicial District is empowered to pursue all civil remedies which are available to an obligee in establishing and enforcing payments of support, and may perform all other duties with full powers authorized by K.S.A. 23-496, and all amendments thereto.

(b) Trustee's Duty to Child. The District Court Trustee's obligation under this rule to enforce child support orders is on behalf of and in the interest of the minor child or children of the parties in each case. There is no attorney-client relationships or duty created between an obligee or obligor and the Office of District Court Trustee.

(c) Right to Private Counsel. Nothing in this rule shall be construed to prohibit the right of any party to employ private counsel, at their own expense, or to enforce payment or modify orders of child support. However, private counsel shall furnish the District Court Trustee with notice of all proceedings and copies of all motions, pleadings and orders obtained in every case which is monitored and enforced by the District Court Trustee.

7. Time Standards. The Administrative Judge of the District shall monitor all cases subject to the expedited judicial process in order to ensure that any action to establish, modify, or enforce court obligations is completed from time of filing to the time of disposition within the following time frames:

(1) 90% in 90 days.

(2) 98% in 180 days.

(3) 100% in 365 days.

8. (a) Expedited Judicial Process. Pursuant to K.S.A. 20-164 and Kansas Supreme Court Rule 172 entitled Expedited Judicial Process, there shall be appointed an Administrative Hearing Officer to hear all matters authorized by law, and specifically including parentage proceedings, post judgment motions and hearings relating to the establishment, modification, and enforcement of support orders, and post judgment motions to enforce visitation. The following procedures shall be applicable to matters assigned to the Administrative Hearing Officer:

(1) Motions to modify or establish post judgment child support obligations and motions to enforce visitation shall be scheduled on the Administrative Hearing Officer's docket by the Administrative Hearing Officer's staff, (233-8200 Ext. 4651) if filed by an attorney or by the Clerk of the District Court's office if filed by a pro se party. Counsel for the moving party shall mail hearing notice of the setting to opposing counsel and all parties concerned at their last known addresses or as required by statute. The Clerk of the District Court shall mail notice in pro se cases;

(2) Any post judgment motion to enforce visitation filed when there is a pending motion to modify child support before the Administrative Hearing Officer either pro se or with counsel shall be scheduled on the Administrative Hearing Officer's docket with the motion to modify child support. The Clerk of the District Court shall mail hearing notice of the pro se visitation motion to all parties concerned at their last known addresses or as required by statute;

(3) All motions and actions brought under the "Expedited Judicial Process" procedures shall be initially set for hearing before the Administrative Hearing Officer. Any motion may be transferred by the Administrative Hearing Officer to a District Judge or a matter may be removed from the Administrative Hearing Officer on order of a District Judge.

(b) Qualifications and Supervision. The hearing officer shall be an attorney admitted to the practice of law in the State of Kansas and shall be directly supervised by and serve at the pleasure of the Administrative Judge or a judge or judges designated by the Administrative Judge.

(c) Hearing Officer Powers. Matters cognizable by the hearing officer shall include motions to establish or modify child support, acceptance of voluntary acknowledgment of parentage, motions to stay or contest the issuance of an income withholding order, enforcement of visitation orders, the determination of the necessity for a contempt hearing, the monitoring of purging orders, issuing summons and subpoenas and such other matters as they may be within the purview of Rule 172.

(d) Preparation of Motions; Setting; Notice of Hearing. Upon the request of any party, the Clerk of the District Court, District Court Trustee or contracting agent for IV-D cases shall provide written forms approved by the Court for modification of child support or enforcement or modification of visitation. The Clerk of the District Court also shall cause such motion to be scheduled on the hearing officer's docket and shall mail hearing notices of the settings to all interested parties at their last known address or to the attorney of record or as otherwise required by statute.

(e) Accusations in Contempt. Contempt citations and Aids in Executions shall be heard at dockets as assigned by the Administrative Judge.

(f) Judicial Review. All orders issued by the hearing officer shall be subject to judicial review on the

written motion of any party filed within ten (10) days after the Administrative Hearing Officer's order is filed with the Clerk. If no motion is filed within ten (10) days objecting to the hearing officer's order, it shall be deemed a final order of the district court.

(g) Copies of Support Payment Records. SRS, the contracting agent for IV-D cases, or the District Court Trustee shall provide copies of child support payment records to attorneys or any party. Any party not subject to a cost of enforcement fee can be charged a fee for the copies.

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