

Rule 119**FAX FILING AND SERVICE BY FAX**

- (a) **Applicability.** This rule applies to all district court proceedings except a small claim as defined in K.S.A. 61-2703.
- (b) **Limitation on Use of Fax Filing.** A Kansas-licensed attorney is subject to the provisions of Rule 122 when filing any document with a district court.
- (c) **Definitions.** The following definitions apply in this rule, unless the context requires otherwise.
 - (1) “Document” includes a pleading, motion, or other paper and attached exhibits. “Document” does not include a pleading, motion, other paper, or exhibit if a statute requires the original to be filed with the court.
 - (2) “Fax filing” or “filing by fax” means transmitting a facsimile of an original document by electronic means to a court or fax filing agency for filing with the court. The term includes receipt of the transmission by the court or agency.
 - (3) “Fax filing agency” means an entity that receives documents by fax for processing and filing with the court.
 - (4) “Transmission record” means a document printed by a sending fax machine stating the telephone number of the receiving machine, the number of pages sent, and the transmission time, indicating no errors in transmission.
- (d) **Filing by Fax.** An unrepresented party may file a document by fax directly with a district court at the fax number designated by the clerk. The following rules apply.
 - (1) **Separate Transmission for Each Court Filing.** Each document filed by fax must be transmitted separately. The document may include attached exhibits.
 - (2) **Transmission Sheet Required.** A fax filing must be accompanied by a Fax Transmission Sheet on the judicial council form. The transmission sheet must be the first page(s) transmitted, followed by any special processing instructions. When the second page of the transmission sheet contains credit or debit card information, that page must not be retained in the case file or publicly disclosed.
 - (3) **Other Fax Content Requirements.** The following additional requirements apply to the content of a document filed by fax:
 - (A) the first page must include the words “By Fax”; and
 - (B) each page must be numbered and must include a short caption of the case and an abbreviated title of the document.

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- (4) **Retention of Fax Transmission Record and Original Document.**
- (A) **Transmission Record.** An unrepresented party filing by fax must retain a transmission record.
 - (B) **Original Document.** An unrepresented party that files or serves a document by fax must retain the original document during the pendency of the action and must produce it on request by the court or a party. If the unrepresented party fails to produce the document, the court may strike the fax filing and impose sanctions under K.S.A. 60-211.
- (5) **When a Fax Filing is Deemed Filed.** Subject to the provisions of paragraph (7)(C), a fax filing received by a court is deemed filed at the time printed by the court fax machine on the final page of the fax document received or at the time recorded on the court's electronic fax log.
- (6) **Motion Procedure When Fax Filing Fails.**
- (A) **Applicability.** A court, on motion of the sender, may order filing of a document nunc pro tunc if a fax filing is not filed with the court because of:
 - (i) an error—the occurrence of which was unknown to the sender—in the transmission of the document; or
 - (ii) the court's failure to process the fax filing on receipt.
 - (B) **Motion Requirement.** A motion under subparagraph (A) must be accompanied by:
 - (i) the transmission record;
 - (ii) a copy of the document transmitted; and
 - (iii) a Declaration of Transmission by Fax on the judicial council form.
- (7) **Payment of Fees.** The following rules govern the payment of fees associated with a document filed by fax.
- (A) Only a credit or debit card system designated by the judicial administrator may be used to pay a docket fee, filing fee, and any other fee or charge.
 - (B) When payment of a fee is required with a fax filing, the second page of the transmission sheet must include:
 - (i) the name of the credit or debit card system and the account number to which the fee is to be charged;
 - (ii) the signature of the cardholder authorizing the charge; and
 - (iii) the credit or debit card's expiration date.
 - (C) If a charge for a fee is rejected by the credit or debit card issuing company, the document is not deemed filed under K.S.A. 60-203 or 60-2001.

- (8) **Rules Applicable to a Court.** The following rules apply to a district court.
- (A) A court must have its fax machine available on a 24-hour basis.
 - (B) A court may impose limits, by order or local rule, on the number of fax filings by an unrepresented party.
- (e) **Service by Fax.**
- (1) **How Made.** Service by fax is made by transmitting a document to the attorney's or unrepresented party's designated fax number.
 - (2) **Fax Service by Court.** A court may serve a notice by fax if the notice may be served by mail.
 - (3) **Must Make Fax Machine Available.** An attorney or unrepresented party that has listed a fax number on a paper in compliance with Rule 111 must make the fax machine available for receipt of documents on a 24-hour basis.
 - (4) **When Fax Service Deemed Complete.** Service by fax is complete when the transmitting machine generates a transmission record indicating successful transmission of the entire document.
 - (5) **Certificate of Service by Fax.** A certificate of service by fax must include:
 - (A) the transmission date and time;
 - (B) the name and fax number of the person served;
 - (C) a statement that the document was transmitted by fax and the transmission was reported as complete and without error; and
 - (D) the signature of the attorney or person making the transmission.
- (f) **Fax Signature.** A fax signature has the same effect as an original signature.
- (g) **Fax Filing Agency.**
- (1) An unrepresented party may transmit a document, without a page limit, by fax to a fax filing agency for filing with a court. The fax filing agency acts as the filing party's agent, not as the court's agent.
 - (2) A fax filing agency is not required to accept a document for filing unless the sender has made appropriate arrangements for payment of any docket or other required fee before the document is transmitted to the agency.

[History: New rule effective January 1, 1993; Am. July 15, 1993; Am. effective September 8, 2006; Restyled rule and amended effective July

1, 2012; Am. (c) and (d) effective July 1, 2017; Am. effective June 25, 2018; Am. (d) effective March 16, 2020.]

Rule 120

DEATH PENALTY CASE—NOTICE TO APPELLATE COURT

If a county or district attorney files notice under K.S.A. 21-6617 that the attorney intends—on conviction of a defendant charged with capital murder—to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death, the clerk must forward a copy of the notice to the clerk of the appellate courts no later than 7 days after filing.

[**History:** New rule effective May 28, 1997; Am. effective July 1, 2010; Rule restyled effective July 1, 2012.]

Rule 121

PROCEDURE UNDER KANSAS STANDARD ASSET SEIZURE AND FORFEITURE ACT, K.S.A. 60-4101 et seq.

- (a) **Procedure for Filing.** When a forfeiture proceeding is commenced under K.S.A. 60-4109 by filing a notice of pending forfeiture, the notice must be filed with the district court having jurisdiction under K.S.A. 60-4103. The clerk must file stamp and assign a case number to the notice. No filing fee is required.
- (b) **Uncontested Forfeiture Proceeding.** If a forfeiture proceeding is uncontested, the court may order forfeiture under K.S.A. 60-4116 without additional notice.
- (c) **Contested Forfeiture Proceeding.** If a judicial forfeiture proceeding to resolve a proper claim is commenced after a notice of pending forfeiture, no additional notice of the judicial forfeiture proceeding is required.

[**History:** New rule effective September 6, 2000; Restyled rule effective July 1, 2012.]