

EIGHTH JUDICIAL DISTRICT OF KANSAS

LOCAL RULE 2011-01

FILED

OCT 5 2011

CAROL G. GREEN
CLERK OF APPELLATE COURTS

1. In the Eighth Judicial District Of Kansas, the Office of District Court Trustee, as provided for in K.S.A. 23-494, and amendments thereto, is reaffirmed as previously established by Local Rules 94-1, 2001-01, and 2004-01, for the district courts of Dickinson County, Geary County, Marion County, and, Morris County. All orders for payment of support entered in the district courts of the Eighth Judicial District, shall be assigned to the Office of the District Court Trustee for monitoring and enforcement unless a "good cause exemption" is granted by the Court relieving the Office of the District Court Trustee of the duty of enforcement of the order.

2. The District Court Trustee is authorized and empowered to perform all duties and exercise all powers provided for in K.S.A. 23-492 et seq, as amended, and Kansas Supreme Court Rules.

3. The District Court Trustee of the Eighth Judicial District has the following additional powers and duties.

(a) To enter into contracts with the Kansas IV-D Agency for support enforcement and the Kansas Attorney General for collection of debts owed to courts or restitution owed to victims and obligees.

(b) When the Court directs that an income withholding order shall immediately issue and the duty to enforce the support order is assigned to the Office of the District Court Trustee, the Trustee shall prepare income withholding orders for filing with the Court and issuance to income payers.

(c) To serve as hearing officer for matters of the enforcement of duties of support, restitution, court debt, and expedited process hearings. (SEE Page 10-- Administrative Hearing Officer)

(d) To act as prosecuting attorney in actions commenced pursuant to the Hague Convention and the Uniform Interstate Family Support Act

4. Except as is negotiated with the State IV-D Agency relative to support orders enforced pursuant to Part D of Title IV of the Social Security Act, the Office of the District Court Trustee, to defray the expenses of operation, is authorized to charge up to the amount of five percent (5%) of the funds collected from all obligations of support assigned for enforcement to the Office of the District Court Trustee, including orders issued which modify pre-existing support orders not previously assigned for enforcement, unless a written request for a "good cause exemption" from assignment to the Office of the District Court Trustee is submitted by a party and determined valid by a judge of the district court.

5. In determining whether to grant or deny a "good cause exemption" from the assignment of the duty of support enforcement to the Office of the District Court Trustee the presiding judge shall consider all relevant factors, including, but not limited to the following.

(a) The obligor's compliance or non compliance with any pre-existing support order, including any requirements to remit payment to the state distribution unit for collection and disbursement of support (a/k/a: Kansas Payment Center) or requirements to maintain direct payment records and remit direct reports as required by K.S.A. 2010 Supp. 60-1610 (a) (1) and Kansas Supreme Court Administrative Order #216 § IV (G) (1-5) [or such corresponding statute or order as may be entered replacing K.S.A. 2010 Supp. 60-1610 (a) (1) and Kansas Supreme Court Administrative Order #216 § IV (G) (1-5)].

(b) The existence of a viable guarantee of payment of support, including, but not limited to the following.

(i) A pre-existing income withholding order or order for immediate issuance of an income withholding order to be processed, monitored and when necessary modified and reissued by private counsel.

(ii) The filing of a bond or surety.

(iii) Any other form of guarantee of payment as may exist.

(c) The presiding judge's observation of the general demeanor and conduct of the parties.

(d) The degree of the obligor's or obligee's participation in establishment of the support obligation.

(e) The employment of private counsel to enforce the support or restitution obligation.

(f) Whether the support judgment to be enforced is a judgment for an attorney fee designated as support for the purpose of enhancing collection of the attorney fee.

(g) The failure of an obligor to maintain written evidence of support payments or failure to at least annually provide such evidence to the court and obligee when a direct payment agreement has been duly approved by the Court.

(h) Any other factor considered relevant by the presiding judge or hearing officer.

6. The presiding judge's decision to grant or deny a "good cause exemption" from assignment of support enforcement duties to the Office of the District Court Trustee shall be based upon the totality of the circumstances and no one factor shall be determinative as to the outcome of the claimant's request for a finding that an "good cause exemption" should be granted.

7. A party may submit a written request for a "good cause exemption" from the assignment of a restitution or court cost debt to the Office of the District Court Trustee for K.S.A 75-719 collection services. In reviewing the written request for "good cause exemption" the presiding judge shall make a determination on whether the claimant's request is a good cause claim based on all relevant factors. Any party submitting a written request for "good cause exemption" after the debt has been referred to the Office of the District Court Trustee must deliver a copy of the written request, and any notice of hearing, to the Office of the District Court Trustee within the time requirements of the code of civil procedure.

8. Unless otherwise ordered by the Court, when the Court grants a "good cause exemption" as contemplated above, it shall be the duty of the movant, or movant's counsel, to prepare a journal entry, or decree, which specifies a "good cause exemption" was granted and the reason the "good cause exemption" was granted.

9. If a "good cause exemption" is granted from support enforcement services, but later the obligee or obligor applies for the assistance of the Office of the District Court Trustee to enforce or modify the support order, the Trustee may decline to provide enforcement services until the "good cause exemption" is by the Court set aside.

Any order issued setting aside a previously granted "good cause exemption" may include a provision for assessment of an application fee equal in amount to the amount which would have been otherwise collected as the trustee's enforcement fee if the "good cause exemption" had not been granted.

10. If a support order is issued by the Court and the journal entry memorializing the proceeding is silent as to the assignment or non-assignment of the enforcement duty to the Office of the District Court Trustee, such a support order shall be by operation of this rule deemed assigned to the Office of the District Court Trustee for enforcement, and an enforcement fee shall be deducted from the collections received in the case.

11. Nothing herein shall be construed as a restriction on the power of a judge to decline to execute any proposed order which, in the judgment of the judge, fails to appropriately address assignment of enforcement duties to the Office of the Court Trustee or issues relative to immediate income withholding.

12. No motions for Nunc Pro Tunc orders to amend the language of support orders to seek inclusion of a "good cause exception" from assignment of enforcement duties to the Office of the Court Trustee shall be considered by the Court unless the Office of the District Court Trustee is provided written notice by movant of the date and time the motion is scheduled to be heard by the Court within the time requirements of the code of civil procedure.

13. The chief judge of the Eighth Judicial District shall determine the fee structure and the amount of the enforcement fee to be charged to defray the expenses of the Office of the District Court Trustee. Any judge may determine if a retroactive enforcement fee assessment will be made, and if so, the judge may determine the amount to be retroactively assessed.

14. To promote the effective administration of justice, the clerks of each of the district courts of the Eighth Judicial District, the Court Services Department and Eighth Judicial District Community Corrections shall cooperate and coordinate their functions with the Office of the District Court Trustee to such extent as is necessary to enforce duties of support and accomplish the improvement of the payment of restitution, fines and court costs.

Copies of all orders for support entered by the Court which become assigned to the Office of the Court Trustee by operation of this rule shall be transmitted electronically to the Office of the Court Trustee by the clerks immediately after the filing of the order, or copies of orders shall be obtained by the Office of the District Court Trustee from the FullCourt system after notification by the court clerk.

15. The County of Geary in the State of Kansas is designated as the fiscal and reporting agency for the Office of the District Court Trustee. All amounts to be charged and collected from support to defray the expenses of the Office of the District Court Trustee shall be withheld from support payments received by the Kansas Payment Center and shall be disbursed by the Kansas Payment Center to the court trustee operations fund established in Geary County, Kansas

16. All amounts charged as costs of collection to defray the expense of court trustee operations associated with activity performed pursuant to K.S.A.75-719 and amendments thereto, shall be withheld from the payment of restitution, fines, or other court costs paid through the offices of the district court trustee or clerks of the district courts. Amounts withheld as costs of collection shall be retained by the Office of the District Court Trustee and the balance disbursed to satisfy the court cost or restitution debt. Retained costs of collection shall be disbursed no less than annually to the court trustee operations fund.

17. Support orders issued by the Court prior to the dates of the establishment of the Office of the District Court Trustee in each of the district courts of the Eighth Judicial District may be enforced by the Office of the District Court Trustee at the request of any interested party, or by order of the Court; and, except as is negotiated with the State IV-D Agency, or Kansas Attorney General, the fee or fee structure determined by the chief judge shall be charged to defray the expense of operation of the Office of the District Court Trustee.

18. Any action undertaken by the Office of District Court Trustee to enforce or modify support orders or collect restitution, fines, or other court costs, is undertaken on behalf of the Court and in the interest of the public to insure that obligors meet their duty to the public and their dependents.

No attorney-client relationship is hereby created between any obligee, or any obligor, and the Office of the District Court Trustee, or the office's employees.

19. Nothing in this rule shall be construed as a prohibition of the right of any party to employ private counsel, at their own expense, to enforce payment or modify orders of support, or to collect restitution.

20. The filing of a withholding order or other pleading by the Office of the District Court Trustee shall be deemed to constitute a notice of the appearance of the Office of the Court Trustee in all support cases monitored and enforced by the Office of the District Court Trustee. In every support enforcement case which is monitored and enforced by the Office of the District Court Trustee, counsel shall furnish the Office of the Court Trustee notice of all post decree proceedings effecting support and serve the Office of the District Court Trustee copies of the motions, and pleadings.

21. Court clerk memo notations and register of actions entries on the court clerk's FullCourt case management system which indicate the referral to the Office of the District Court Trustee of a restitution, fine, court cost, or other "court debt," shall be deemed to constitute a notice of the appearance of the Office of the Court Trustee for K.S.A 75-719 collection services. Furthermore, in every case where the Office of the District Court Trustee has been assigned the duty to collect restitution, fines, or other court costs, counsel shall furnish the Office of the District Court Trustee notice of all

proceedings effecting the debt being collected and serve the Office of the District Court Trustee copies of the motions and pleadings.

22. Unless otherwise ordered by the Court, each order containing orders of child support or child support and spousal support which is hereafter entered in the Eighth Judicial District and assigned to the Office of the District Court Trustee for enforcement shall include provisions (a), (b), and (c) displayed below.

(a) IT IS FURTHER ORDERED that an income withholding order shall be issued immediately as required by K.S.A. 23-4,105 et. seq., as amended. The Office of the District Court Trustee shall immediately prepare the income withholding order, federal notice to withhold and answer forms for filing and service to the obligor's payer of income. Each party shall inform the Clerk of the District Court, in writing of any change of name, residence, and employer (with business address) within seven (7) days of a change.

(b) IT IS FURTHER ORDERED that until the commencement of withholding by a payer/employer the obligor shall pay all support payments required by the support order. All payments shall be payable to "Kansas Payment Center" and be remitted by the obligor to the Kansas Payment Center on or before the due date specified in the order.

(c) IT IS FURTHER ORDERED that all support payments shall be paid through the Kansas Payment Center, P.O. Box 758599, Topeka, KS 66675-8599 and a fee shall be deducted therefrom by the Kansas Payment Center to defray the expense of the operation of the Office of the District Court Trustee. All payments to the Kansas Payment Center shall include as identifying information the obligors; name as it appears on the caption of this case, social security number, and, the court case number, including the name of the county in which the order was entered.

23. All orders where only spousal support is ordered paid, and no immediate withholding order is entered, shall include the provision displayed below and the provisions displayed above in and subsection (b) and (c) of section 22.

IT IS FURTHER ORDERED that, unless the parties have agreed in writing to the earlier issuance of an income withholding order, all maintenance payments shall be subject to income withholding, but only if, (a) there is an arrearage in the payment of maintenance in an amount equal to or greater than the amount of maintenance payable for two months, (b) the obligee spouse or ex-spouse is not living with a child of the obligor for whom an order of support is also being enforced, and, (c) there has been compliance with K.S.A. 23-4,107(m), as amended. Each party shall inform the Clerk of the District Court, in writing of any change of name, residence, and employer (with business address) within seven (7) days of a change.

24. Compliance with K.S.A. 2010 Supp. 60-1610(a)(1) and Kansas Supreme Court Administrative Order 216 § IV(G) (1-5) shall be required to obtain the Courts approval to permit the payment of support by alternative agreement in a manner other than through the Kansas Payment Center. The obligor shall timely, and without request of the Court, comply with the annual reporting requirements imposed by K.S.A. 2010 Supp. 60-1610(a)(1) and Kansas Supreme Court Administrative Order 216§ IV(G)(1-5). Annual reports shall be filed each year no later than the anniversary date of the first payment due under the final order.

Because income withholding orders will not immediately be issued to an employer when the Court approves an order permitting the payment of support by alternative agreement in a manner other than through the Kansas Payment Center, the Court, to protect the best interests of children, may require the filing of a support performance bond prior to granting motions filed pursuant to this section, or impose such other conditions as the Court deems appropriate.

Failure to comply with the annual reporting requirements shall be deemed a revocation of the parties' alternative payment agreement and deemed a revocation of the Courts approval of the agreement. The District Court Trustee shall monitor obligors compliance with K.S.A. 2010 Supp. 60-1610(a)(1) and Kansas Supreme Court Administrative Order 216 § IV(G)(1-5).

The Office of the District Court Trustee is hereby directed to enter appearance and immediately begin enforcement in cases when annual reporting requirements are not timely complied with. Action undertaken by the Office of the District Court Trustee to compel compliance with K.S.A. 2010 Supp. 60-1610(a)(1) and Kansas Supreme Court

Administrative Order 216 § IV (G) (1-5) shall include, but not be limited to, immediate issuance of and income withholding order, arrearage determinations, and the inclusion of a properly apportioned enforcement fee with the support order.

The failure of an order to include the language required by K.S.A. 2010 Supp. 60-1610(a)(1) and Kansas Supreme Court Administrative Order 216 § IV (G) (1-5), or the failure of counsel to explain reporting requirements to the responsible party shall not constitute a defense to an action taken by the District Court Trustee to compel payment through the Kansas Payment Center.

25. All final orders of support shall display the residence address and business address of each party.

26. Any final support order providing for the support of a child, issued by a judge presiding in a Court of the Eighth Judicial District, which is silent as to whether an income withholding order shall issue immediately, and silent as to the existence of a written agreement among all interested parties providing for an alternative payment arrangement, shall be by this rule deemed to require immediate issuance of an income withholding order.

When any support order states the parties have entered into an alternative payment arrangement, but the arrangement is not described in writing, the obligor is charged with the responsibility of full compliance with K.S.A. 2010 Supp. 60-1610 (a)(1) and Kansas Supreme Court Administrative Order 215 § IV (G) (1-5), and is on notice of all of the requirements of this Local Rule.

If an alternative payment arrangement is not described in writing the obligor and obligee are required to immediately respond to an inquiry by the Office of the District Court Trustee seeking the terms of the alternative payment arrangement. The obligor or obligee shall provide the terms of the alternative payment arrangement in writing to the Office of the District Court Trustee. When such a District Court Trustee Office inquiry to the parties of an unwritten payment arrangement is not responded to in the manner required above the Office of the District Court Trustee shall enter appearance to obtain orders to compel payment through the Kansas Payment Center.

27. In addition to the appointment of the District Court Trustee, the chief judge shall determine the budget and necessary level of staffing of the Office of the Court Trustee, and shall appoint such deputy trustees and staff, including contracted staff, as are necessary to carry out the purpose of this rule and K.S.A 23-492 et seq, as amended.

K.S.A. 2003 Supp. 75-719(d) GUIDELINES FOR COMPROMISE OF COURT
DEBT AND RESTITUTION

28. The District Court Trustee is hereby authorized to waive any portion of the debt collection fee in compromise when such a waiver is determined by the District Court Trustee to be in the best interest of the collection program.

The District Court Trustee shall not waive or compromise any amount of court costs, fines, attorney fees or other charges assessed in district court cases without first obtaining the approval of the Court, except that, any bond that is referred to the District Court Trustee court debt collection program for enforcement and fully paid within ten (10) days of entry of judgment requiring payment, shall be hereby deemed a compromised debt, with the District Court Trustee Office to retain its collection fee therefrom, with the remainder of the funds delivered to the Clerk of the Court in full satisfaction of the Court's judgment for disbursement by the Court Clerk pursuant to statute.

Any bond that is referred for collection to the District Court Trustee court debt collection program which remains unpaid after ten (10) days of entry of judgment requiring payment shall have the District Court Trustee Office's collection fee assessed as cost of collection in addition to the original amount of the judgment as provided by K.S.A 2003 Supp. 75-719(f).

ADMINISTRATIVE HEARING OFFICER

29. As may be determined necessary by the chief judge, one or more administrative hearing officers may be appointed to accomplish the goal of the improvement of enforcement of duties of support, restitution, and court debt.

30. Any person appointed as administrative hearing officer shall be an attorney licensed by the Kansas Supreme Court.

31. Any person appointed administrative hearing officer shall be compensated by salary or by contract for services. The amount of compensation shall be determined by the chief judge. Regardless of the manner of compensation approved for an administrative hearing officer any person appointed administrative hearing officer shall serve at the pleasure of the chief judge.

32. Any person appointed administrative hearing officer shall be a deputy district court trustee. However, absent waiver in writing or on the record, from all parties of interest in a case, no deputy district court trustee acting as administrative hearing officer shall preside over any matter in which said person, or partner of said person, has previously participated in the case in the role of attorney.

33. After approval by the Eighth Judicial District's departmental justice, the chief judge may appoint an administrative hearing officer as a judge pro tem to preside over proceedings subject to this local rule and Supreme Court Rule number 172.

34. Subject to the approval of the chief judge, the district court administrator, in coordination with the four clerks of the court, shall make arrangements for facilities, equipment, and other logistical matters associated with administrative hearing officer operations.

35. Any administrative hearing officer appointed pursuant to this rule shall hear cases with support, restitution or court debt obligations that are: a) assigned to the district court trustee office for monitoring and enforcement, b) being enforced or established pursuant to Part D of title IV of the social security act, or, c) scheduled pursuant to supreme court rule 172 concerning expedited processes in domestic relations matters.

36. Any hearing conducted by an administrative hearing officer appointed pursuant to this rule shall be conducted in compliance with the code of civil procedure.

37. Journal entries memorializing case proceedings shall be presented to the administrative hearing officer for the hearing officer's signature of recommendation, or approval. An Administrative Hearing Officer's proposed order, when not presiding as judge pro tem, shall be presented for signature to the district judge of the division of the court assigned the case, or to such duty judge as may be appointed by administrative order to review proposed orders recommended by the administrative hearing officer.

38. Judicial review of the decision of an administrative hearing officer may be applied for by motion submitted to the judge of the division of the court assigned the case for which judicial review is sought. Motions for review by the assigned district judge shall be timely filed if the motion is filed with the clerk of the court within fourteen (14) days of the filing of the administrative hearing officer's decision by the clerk of the court.

The district judge will review the transcript, or recording, of the hearing, pleadings, stipulations, and admitted exhibits, and; applying an abuse of discretion standard, may affirm, reverse, or modify the order being reviewed.

39. Motions for judicial review shall be submitted in a form substantially conforming to "ATTACHMENT A" affixed to this rule. Unless the requirement of a transcript is waived by the Court, the motion shall be accompanied with a request for a typed transcript of the hearing and prepayment of the estimated cost of transcribing which shall be submitted in a form substantially conforming to "ATTACHMENT B" affixed to this rule. If a transcript or recording is not available the district judge will conduct a denovo proceeding. An order issued by the district judge granting a rehearing of issues decided by the hearing officer shall indicate the date, time, and place the rehearing will occur.

40. In the interest of judicial economy or the best interests of litigants an administrative hearing officer may determine that a matter in controversy should be heard by a district judge.

41. A district judge may bifurcate domestic relations proceedings by directing that a portion of a matter in controversy appropriate to be decided by an administrative

hearing officer be heard by the administrative hearing officer.

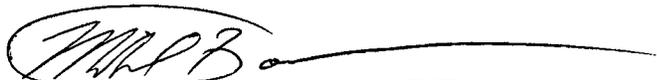
42. Relative to domestic relations cases that have not been assigned to the District Court Trustee Office for monitoring and enforcement, the scheduling of such a domestic relations case for hearing before the Administrative Hearing Officer shall be deemed an application for, and use of, District Court Trustee program services, thus, the case shall thereafter be assigned to the District Court Trustee Office for monitoring and enforcement with a fee thereafter to be deducted from collections on the case.

43. When a support order has been entered in a case commenced pursuant to the Kansas Code for the Care of Children the District Court Trustee, or a Deputy Trustee, is deemed to have the consent of the Court to review the records of the case to the extent required to facilitate the enforcement of the support order issued in the case.

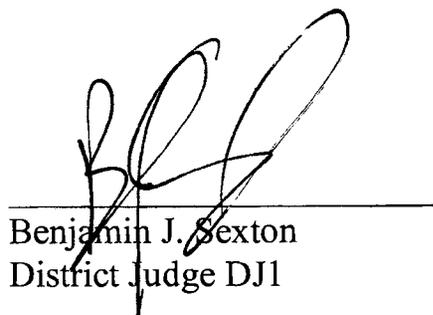
44. Effective immediately this rule shall supersede the prior version of this order.

IT IS SO ORDERED THIS 30th DAY OF August, 2011.

APPROVED BY:



Michael F. Powers DJ3
Chief Judge



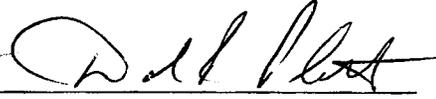
Benjamin J. Sexton
District Judge DJ1



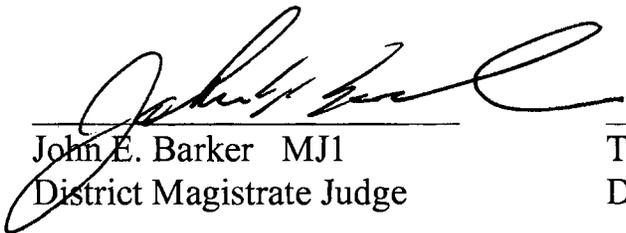
Maritza Segarra
District Judge DJ2



Steven Hornbaker DJ4
District Judge



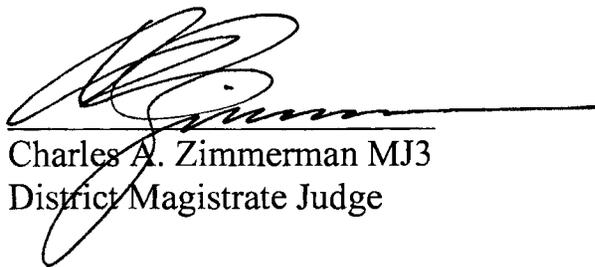
David R. Platt DJ5
District Judge



John E. Barker MJ1
District Magistrate Judge



Thomas H. Ball MJ2
District Magistrate Judge



Charles A. Zimmerman MJ3
District Magistrate Judge

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS
EIGHTH JUDICIAL DISTRICT

In the Matter of:

PETITIONER/PLAINTIFF

AND/V/S

CASE NO. _____

DEFENDANT/RESPONDENT

MOTION FOR JUDICIAL REVIEW

COMES NOW the _____, and for the following reason(s), moves the
Court for a judicial hearing relative to the Administrative Hearing Officer's Order, or
Recommended Order, filed on _____, 20__.

1. _____

2. _____

Submitted by:

Petitioner/Respondent/Attorney

Address

Telephone number

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS
EIGHTH JUDICIAL DISTRICT

In the Matter of:

_____ PETITIONER/PLAINTIFF

AND/V.S.

CASE NO. _____

_____ DEFENDANT/RESPONDENT

CERTIFICATE OF MAILING

I certify that a copy of the Motion for Judicial review, filed _____, 20__, was delivered on _____, 20__, to the following persons at the addresses displayed.

The method of delivery was:

Submitted by:

Petitioner/Respondent/Attorney

Address Zip

Telephone number

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS
EIGHTH JUDICIAL DISTRICT

In the Matter of:

PETITIONER/PLAINTIFF

AND/V.S.

CASE NO. _____

DEFENDANT/RESPONDENT

REQUEST FOR TRANSCRIPT

_____ hereby requests a typed transcript of the hearing before the Administrative Hearing Officer on the ____ day of _____, 20___. The record of the hearing is indexed as tape/CD # _____ from _____ to _____. Attached is a certified check or money order for the estimated cost of transcribing, which is \$ _____.

Requesting party:

Petitioner/Respondent/Attorney

Address

Telephone number