

# Shawnee County

# Family Law Guidelines

## 2013 Edition

### INTRODUCTION

The 2013 edition of the Shawnee County Family Law Guidelines was prepared by the Family Law Committee of the Topeka Bar Association. These guidelines are intended to be used by attorneys and by parties in domestic relations cases in the Third Judicial District. These guidelines provide a uniform basis to evaluate issues and negotiate settlements.

While the guidelines are generally followed by the court, they are not court rules and they are not binding. The guidelines may apply to a broad range of cases but may not be determinative of the outcome of a particular case. The guidelines are not a substitute for creative thinking and critical analysis of the facts, circumstances and issues.

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## **1.0 Practice Standards and Procedures.**

### **1.1 References and Identification of Documents.**

All correspondence with the court and opposing party or counsel shall include a reference to both the case caption and the case number.

All motions and orders should contain in their title a reference (brief description) to the nature of the contents of such motion or order.

All Child Support Worksheets and Domestic Relations Affidavits shall include the caption and indicate the party sponsoring the document, e.g., Petitioner's Child Support Worksheet; or, Respondent's Domestic Relations Affidavit and the date on which the document was prepared.

### **1.2 Recommended Order of Settlement in Domestic Cases.**

Parties should attempt resolution of domestic cases in the following order:

1. Property and debt division,
2. Maintenance,
3. Child Custody/Residency/Parenting Time
4. Child Support.

Issues relating to children should not be commingled with concerns over division of property and support.

### **1.3 Shawnee County Domestic Relations Affidavit and Supplemental Factual Statements.**

A Shawnee County Domestic Relations Affidavit (Appendix 1-1) should be filed with each petition and with each answer in all cases. Parties should endeavor to make all affidavits as complete as possible.

### **1.4 Parties without Attorneys**

Parties without attorneys (self-representive litigants as self-represented litigants) are encouraged to obtain attorneys or at least get a legal opinion to ensure their legal rights are protected and to create more efficient problem solving. Self-representive litigants parties are required to follow the Kansas law including the relevant court rules, and the Shawnee County Family Law Guidelines. The Guidelines may be found on the internet at <http://www.shawneecourt.org/forms/guidelines.pdf> or a copy may be purchased from the Clerk of the District Court. The Court and its staff cannot give legal advice to any party. All parties are expected to timely file required pleadings and to timely appear in court at designated times. The Court has the discretion under the law to award attorney's fees as justice and equity require. If a party unduly prolongs the proceedings or makes negotiations more difficult, it may be fair to assess attorney fees against a party to pay the attorney of the other party to equalize the cost of the divorce and to offset additional costs caused by the self-representive litigants election not to hire an attorney.

Do not call the Court or Clerks Office to request advice on what to file or how to achieve a particular result. The Court cannot help you with that as the rules that apply to judges do not allow it.

“INDIVIDUALS REPRESENTED BY AN ATTORNEY AND THOSE REPRESENTING THEMSELVES SHOULD NOT CALL THE COURT OR THE CLERKS OFFICE TO REQUEST ADVISE ON WHAT TO FILE OR HOW TO ACHIEVE A PARTICULAR RESULT. THE COURT CANNOT HELP WITH THESE MATTERS AS THE RULES THAT APPLY TO JUDGES DO NOT ALLOW IT.”

**NOTE: Court Staff Will Not:**

- Provide legal advice, including but not limited to:
  1. recommending a specific course of action;
  2. performing legal research for litigants;
  3. interpreting how the law would apply to a specific situation;
  4. predicting the outcome of a particular strategy or action; and
  5. computing deadlines specified by statute or court rules.
- Provide information kept confidential by statute or court rule
- Recommend or advise concerning rules of evidence, witnesses, objections, or rulings.
- Recommend any specific course of action, including but not limited to:
  1. whether to file a pleading;
  2. the specific content or phrasing for a pleading;
  3. the types of claims or arguments to assert in pleadings or objections to pleadings; and
- 4. whether to settle or appeal.

**1.5 Chamber Copies.**

A copy of all pleadings shall be provided to the division assigned to the case or to the Administrative Hearing Officer depending on the nature of the matter, with the hearing date written on the top right corner of the document.

**1.6 Checklist for Uncontested Divorce Hearings.**

Self-representive litigants shall complete the checklist found in Appendix 1-3 and present it to the Court along with the settlement agreement and/or proposed journal entry and parenting plan at uncontested hearings. All of the documents listed on the checklist are expected to be prepared in advance of the hearing so that they are available for the Court's inspection and filing with the decree. The Administrative Assistant of the judge conducting the hearing should be contacted to set the date of the uncontested hearing.

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 Guidelines and (B) evidence that the parents attended an educational program for divorcing parents required by local court rule and (4) the State of Kansas Department of Health and Environment Vital Statistics form.

The journal entry or divorce decree will not be filed by the Court until the required documents are furnished.

**1.7 Proposed Agreed Decrees.**

Proposed agreed orders and decrees may be submitted without appearance before the Court.

**K.S.A. 23-3001 requires the court to make provisions for the support and education of the minor children in any action under article 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto. Any agreed order which includes an agreement by the parties that neither will pay child support to the other or where the child support of both parents is set to zero will require an appearance before the Court unless the parties submit documentation and/or a child support worksheet which establishes that neither parent should pay child support.**



## **2.0 Motions, Dockets, Pretrials and Settings.**

### **2.1 Motion for Ex Parte Orders.**

Ex parte orders are considered to be an extraordinary remedy and can adversely impact the settlement process. They should be used only where they are necessary to protect children, assets or access to a house. When the parties have already separated, or counsel is aware the other party is represented by an attorney, ordinarily ex parte orders should not be requested. A motion for temporary orders may be handled on the court's temporary orders docket. Misrepresentation in obtaining an ex parte order may be a basis for awarding attorney's fees.

### **2.2 Motions for Temporary Orders.**

Motions for temporary orders (Appendix 2-1) or to modify ex parte orders will be set on a Temporary Orders Docket. Motions for temporary orders should be set directly with the division hearing the docket. The party filing the motion(s) shall have the responsibility for giving written notice of the docket setting to the opposing party. The Court will not send individual notices for matters set on the Temporary Orders Docket.

### **2.3 Procedure on Temporary or Ex Parte Motions.**

Except for good cause, ex parte restraining orders will only be entered upon forms prescribed by the Court (Appendix 2-3) which are available through the Clerk of the District Court. Special ex parte orders are required if the moving party desires to have either a law enforcement officers stand by while one of the parties is removing personal property from the marital residence. District Court Rule ("DCR") No. 3.401.

Requests for ex parte orders in domestic cases should be delivered to the Clerk of the District Court, accompanied by a completed Domestic Relations Coversheet (Appendix 2-1) advising the Clerk and Court of counsel's requests relative to ex parte orders. Counsel should mark with paper clips or stickers the pages where a judge's signature is requested. Originals of each document should be placed on the top of the copies of that document and paper clipped together for ease in filing.

### **2.4 Pretrial Procedures.**

**A. Requirements Before Pretrial Conference.** Before scheduling a Pretrial Conference, the Court will either review the case on a Status Docket or hold a telephone conference with counsel and/or the parties. Before the Status Docket setting, discovery should be completed, Domestic Relations Affidavits shall be filed and proposals for settlement should be exchanged. At the conclusion of a telephone conference, the Court may prepare, or request counsel to prepare, a memorandum that memorializes the conference.

**B. Pretrial Conferences.** The Court, on its own motion or the motion of either party, may conduct a Pretrial Conference before setting a prejudgment domestic case for trial, after discovery is completed, and after the case has been called on a Status Docket.

The purpose of the Pretrial Conference is to make a meaningful exchange of information and positions of the parties so that issues can be settled without a trial. The parties and counsel should be

personally present and prepared to settle as many issues as possible. The Court will encourage the parties to make admissions and stipulations on issues that are not disputed. Items such as the extent and valuation of assets or debts and the parties' incomes are factual disputes. Once these amounts are established by agreement or stipulation, how the assets or debts should be divided and the amount of maintenance or child support to be awarded are arguments, not factual disputes, and often can be settled at the Pretrial Conference or submitted to the Court for decision on an agreed stipulation, or factual statements. Failure to comply with the following procedures may result in the assessment of attorney's fees and rescheduling of the Pretrial Conference.

1. Documents. Unless otherwise ordered, parties shall exchange and furnish the Court with a current Child Support Worksheet, a Supplemental Factual Statement, and proposals (See Appendices 6-1 and 1-2) at least 72 hours before the scheduled Pretrial Conference or notify the Court and other party that previously filed documents remain current and will be relied upon. The exchange of documents must be actually delivered, not merely mailed, within the time limits. For Monday Pretrial Conferences, delivery should be made by 5:00 p.m. on the Wednesday before the Pretrial Conference. All discovery should be reasonably supplemented at pretrial. When preparing the Supplemental Factual Statement, annotations for any disputed issues, e.g., dates of valuation, or why valuations of certain properties are in dispute, should be provided.

2. Pretrial Conference Order. At the conclusion of the Pretrial Conference, the Court will either dictate the order on the record or have an order prepared. The original and two copies of the Pretrial Order shall be prepared, with the original to be placed in the court file and with a copy to be provided to each party. The cost of the transcription shall be assessed by the Court as costs of the case.

3. Effect of Pretrial Agreements and Admissions. Trials will be set only to hear evidence on disputed facts. Agreements, admissions, and stipulations entered into at a Pretrial Conference are binding at trial and contradicting evidence will not be admitted unless leave of the court is granted for good cause upon a showing of prejudice.

## **2.5 Status Docket.**

Cases that are approximately 90 days old are subject to being scheduled on a Status Docket. Prior to the Status Docket, discovery should be completed and written offers to settle the case should be exchanged. The purpose of the Status Docket is to identify all issues in dispute and establish an appropriate schedule for disposition of all disputed issues. Counsel and parties should be present at the Status Docket unless excused by the Court. At the Status Docket, the case will be scheduled for either a Pretrial Conference, the Trial Docket or a special trial setting or dismissed for non-appearance.

## **2.6 Motion Docket.**

The Clerk of the District Court shall set motions in domestic cases, except those specially set by the Court on request of the parties, on one of the Domestic Motion Dockets called by one of the district judges assigned to domestic matters. Generally, the motion will be set on the next available Motion Docket of the judge assigned to the case subject to changes due to holidays, the Court's schedule, and vacations.

The Clerk of the District Court will mail notice to the moving party of the docket date and time. Do not call the judge's office to obtain settings on the Motion Docket, as these are made by the Clerk. It is the responsibility of the moving party to give written notice of hearings on all motions to the opposing counsel of record or the adverse party. On motions pertaining to child support issues, notice shall also be given by the moving party to either DCF, or its contracting agent for IV-D cases, or the District Court Trustee for private cases.

**A. Appearance at Motion Docket - Continuance Policy.** If counsel and/or a party has a conflict with the docket settings due to other court appearances or commitments, they are expected to arrange coverage or to resolve the motion before the docket call. If a party wishes to dismiss the motion or advise the Court of an agreement disposing of the motion, he or she should advise the Court's staff prior to the docket call, preferably in writing so the motion will not be dismissed or ruled upon contrary to an agreement.

Counsel and parties are expected to appear at the Motion Docket unless the matter is settled or dismissed or request that the motion be ruled upon based on the written submissions of the parties before the docket call. If there are no appearances on motions called at the motion docket, the Court may dismiss the motion.

**B. Procedure at Motion Dockets.** The Court will only hear arguments and proffers of evidence at the Motion Docket. Witnesses should not be subpoenaed to the Motion Docket. Motions that will require extensive evidence, e.g., to change custody, should be discussed with the Court and opposing counsel by telephone conference so a determination can be made if a special setting is required or if a referral for conciliation or mediation should be considered.

## **2.7 Miscellaneous Motions.**

**A. Motions to Enforce.** Court orders, including divorce decrees and temporary orders, are not self-executing. The Sheriff's Department will not attach property, remove children, or in any way undertake execution on a general divorce decree. Parties seeking enforcement of parenting time, custody rights, recovery of property, etc., should file a Motion to Enforce, and obtain a specific order directing the Sheriff to execute on the orders.

A Motion to Enforce should be filed prior to filing an accusation in contempt unless the offending party has previously been before the court for failure to comply or the conduct is a flagrant disregard of the letter and spirit of the Court's order.

1. Prejudgment Enforcement Problems. Problems relating to custody, residency, parenting time and/or child support payments will be heard by the judge assigned to the case. Settings will be made by the Clerk of the District Court and placed on the next available Motion Docket.

2. Post Judgment. Post judgment problems relating to modification of child support in IV-D cases shall be heard by the Administrative Hearing Officer. (See Section 8)

Post judgment motions relating to issues such as delivery of personal property, execution of deeds and motor vehicle titles, and payment of debts assigned in the divorce, will be set on the Domestic Motion Docket and heard by the judge assigned to the case.

**B. Motions for Order to Show Cause -Contempt.** Post judgment contempt actions (Motions for an Order to Show Cause), other than those filed by DCF or its contracting agent for IV-D cases, or the

District Court Trustee for private cases, should be instituted only for repeated or serious violations of court orders. Parties should consider for financial matters the use of income withholding orders, garnishments, aids in execution, attachments, and orders to enforce. Parties should consider for child custody, residency and/or parenting time matters the use of mediation, conciliation or case management.

The complainant bears the burden of proof by clear and convincing evidence. The inability to comply with an order for reasons beyond the obligors control may not be contemptuous. Rarely is someone held in contempt unless they have previously been directly admonished by the Court.

**C. Motion for Change of Custody or Residency.** The Court does not grant ex parte orders which change the existing living situation, except in those rare situations where there is corroborated evidence of a serious threat to the safety of the child. The parties should not present proposed ex parte orders to the Court that change a child's living arrangements until the motion to change custody and a copy of the proposed order have been provided to the opposing party or counsel of record. The Court will shorten the time for hearing if necessary to accommodate urgent situations.

**D. Motions for Conciliation.** Before filing a Motion for Conciliation, the parties appearing as self-represented litigants or their counsel, if represented, counsel should confer and make a serious attempt to settle any custody, residency and/or parenting time dispute.

## **2.8 Motion/Order of Withdrawal of Counsel.**

Counsel should consider including a withdrawal of counsel request to be filed simultaneously with the Journal Entry of Divorce to avoid confusion regarding notice of a future child support enforcement proceeding, particularly those brought by DCF or its contracting agent for IV-D cases, or the District Court Trustee for private cases. Counsel remaining of record will have the responsibility of giving notice to the party of post-judgment proceedings before being permitted to withdraw.

Motions to withdraw must comply with Supreme Court Rule 117 and orders permitting withdrawal should reflect compliance with the rule and should not be submitted to the Court until the order is ready for signature.

## **2.9 Law Enforcement Stand By.**

If a proposed Journal Entry, Temporary Order or Decree of Divorce contains language requiring Law Enforcement to stand by, counsel is required to specifically point out said language of submission to the Court.

### **3.0 Property and Debt Division.**

Kansas law provides that all property owned by the parties at the time of filing is subject to division. The guidelines should provide a framework for making an equitable property division in the usual case.

#### **3.1 Approaches to Property Division.**

Arriving at an equitable division of property and debt should be the first step in settlement of a divorce case. Property division should be an objective process and be conducted separately from negotiations of maintenance, custody and child support. In those cases in which property division appears to overlap with child custody, e.g., the parties agree the children will remain in the marital residence, the parties can still arrive at the value of equity in the property and agree upon the amount that the party receiving the house must pay the other party or be credited within the settlement. Delaying property division until custody is resolved commingles the issues, affects the property division negotiations by making them subjective and usually prolongs final resolution of the case.

The first step in making a property division is to determine all of the assets owned by the parties. Kansas law provides that all property owned by the parties at the time of filing is subject to division. These guidelines make a distinction between marital property (Section 3.02) and separate property (Section 3.03). The guidelines, of course, are neither binding upon the court, nor intended to be applicable in cases with special circumstances.

#### **3.2 Marital Property.**

K.S.A. 23-201 provides that all property of the parties becomes marital property upon the filing for divorce, annulment or separate maintenance. As a practical matter it is often fair to segregate the assets into those acquired before the marriage and those acquired after marriage. The following property is *always* subject to division: 1) all property acquired during the marriage, including retirement benefits accumulated during the marriage and gifts from one spouse to the other; and 2) the appreciation, rents, profits, dividends, interest, and earnings of any property owned before marriage, as well as gifts or inheritance received during the marriage.

#### **3.3 Separate Property.**

##### **A. Definition.**

Separate property is defined as follows:

1. Property owned by a party prior to marriage;
2. Property received during the marriage by will or inheritance. It is the relationship of the donor(s) to the party in the marriage and not the designated donee or intent at the time of the gift that will determine the status of the property; and
3. Property received during the marriage by gift from someone other than the spouse or children of the parties. It is the relationship of the donor(s) to the party in the marriage and not the designated donee or intent at the time of the gift that will determine the status of the property.

## **B. Restoring Separate Property.**

As a general rule, separate property will not be divided, but restored to the party for or by whom it was acquired before consideration of the division of marital property. The separate property should be restored at its entry value. Entry value is the value of the particular separate asset at the time that the parties were married. However, the Court may determine the entry value of property at the time the parties commenced living together if the parties commingled their earnings, jointly acquired assets, and/or shared expenses prior to marriage consistent with the manner that marital expenses were shared.

## **C. Exempting Separate Assets by Tracing.**

When separate property is sold and the proceeds are used to purchase other property, or when separate property is traded for other property, the other property shall be considered separate to the extent of the entry value of the original separate property used as consideration for the purchase or trade.

If the proceeds from the sale of separate property were used for living expenses or for purposes other than the purchase of new property, the resolution of the matter will in part depend on whether there are existing marital assets that could be reasonably traced or identified as acquired from the separate asset. Assets dissipated during the marriage are generally disallowed as a factor in property division. The party that claims property is exempt by tracing of separate assets shall have the burden of proving the relationship between the separate property and the new property.

### **3.4 Division of Assets.**

As a general rule, the net worth in all marital property should be divided equally between the parties. Judges use the criteria in K.S.A. 23-2802 as amended:

1. Age of parties;
2. Duration of the marriage;
3. Property owned by the parties;
4. Present and future earning capacities;
5. Time, source and manner of acquisition of the property;
6. Family ties and obligations;
7. Allowance of maintenance, or lack thereof;
8. Dissipation of assets;
9. Tax consequences of the property division on the respective economic circumstances; and
10. Such other factors as the Court considers necessary to make an equitable division.

*There should be no effect upon the presumption for equal division of property due to greater dollar earnings of one party or the other during the marriage.*

### **A. Appreciated Value of Separate Property.**

The entry value of property owned by either party prior to the marriage or acquired during the marriage by gift or inheritance from a party's family member that remains in the marital estate or if the proceeds can be traced will usually be restored to that party, in addition to his/her equal share of marital assets. The entry value of gifted or inherited property will usually be restored to the party from whose family it originated.

Any appreciation in value of separate property during the marriage will be considered a marital asset and subject to division. The amount of appreciation will be the difference in the value on the date the property was received and value on date of valuation. The definition of separate property and theories of tracing described in Section 3.03 will be utilized in implementing and interpreting this section.

The actual record owner of a given asset or record obligee of a given liability is irrelevant to the division of net worth.

### **B. Division of Property in Cash in Lieu of In Kind.**

If the property is not to be equitably divided in kind, then a cash payment should be made at the time of divorce to effect an equitable distribution. If there is no immediate cash payment, the Court may order certain assets sold and the proceeds divided, or the Court may establish a set time for payment. Orders providing for payments in the future should consider the time value of money, and therefore should bear interest or the principal be reduced to present value. See Section 3.07.

### **C. Personal Property.**

Household goods and personal items of an ordinary nature should be divided in kind. The Court expects that these items should be divided by agreement of the parties, understanding that both the needs of any child and the nonresidential parent for household appliances and furniture must be accommodated. If the parties cannot agree, the Court will see adequate provisions are made for the children, and order either a division of the remainder of the household goods and personal property by lot, a sale with the proceeds divided evenly, or in any other manner.

### **D. Automobile Valuation.**

Automobiles of the parties should be valued at the NADA trade-in book value, adjusted for accessories, mileage and condition.

### **E. Personal Injury Recoveries.**

Kansas law indicates that personal injury recoveries or workers' compensation for lost wages and temporary total disability payments for a period during the marriage are in the nature of income and are considered marital property. However, personal injury recoveries or workers' compensation recoveries for permanent disability, while subject to consideration for division, will usually be considered separate property.

### **F. Real Property and Valuation.**

The parties are encouraged to agree on the value or to agree on one appraiser to value real property. If the parties cannot agree on an appraiser, they should request that the Court appoint an appraiser and the cost of the appraisal should be considered a marital debt. The Court will usually take judicial notice of the county appraiser's records on any parcel of real estate.

One-half of the reasonably anticipated costs to sell marital real property should be allowed as a deduction from the fair market value amount to be used in the property division if the property is not sold. In the usual case, the Court will use 4% as one-half of the reasonably anticipated cost of sale. This adjustment makes comparison of real estate equity with liquid assets more realistic. Ownership of real estate carries substantial opportunity costs which must be considered when making an equitable division of marital estate made up of several types of property.

When real property is owned at the time of the marriage, it may be desirable to determine its value on both the date of marriage and on the property division valuation date. If it is decided it is fair to return the realty to the person who had it prior to the marriage, the increase in value during the marriage should be equitably divided and the marital equity amount should be reduced by 4% for purpose of comparing it with liquid assets.

### **3.5 Debts.**

Generally all debts of the parties at the time of filing are considered marital debts notwithstanding who incurred them. The Court will consider extravagant spending near the date of separation and expenditure for necessities or to preserve marital assets made after separation in determining an equitable debt division.

#### **A. Unsecured Debt.**

When possible, unsecured debts should be paid from the parties' assets. If there are not sufficient assets to cover the parties' unsecured debts, the debts should be divided between the parties in proportion to their gross incomes, and adjusted for maintenance paid or received. Child support received or paid should not be included in the proration of income.

#### **B. Secured Debt.**

Usually, secured debts should be assumed and paid by the party receiving the asset that secures the debt. The party with the responsibility for paying the secured debt should hold the other party harmless from any liability.

#### **C. Debt Incurred After Filing.**

It is presumed that debt incurred after the date of filing should be paid by the party incurring the debt. However, if such debt is considered a necessary living expense, it may be divided between the parties in proportions as the Court deems equitable. One factor in this determination will be whether or not temporary maintenance was paid or received. The parties will generally be expected to pay normal living expenses and payments from their regular incomes and not expend marital assets for living expenses in the separation/pre-divorce period.

### **3.6 Effect of Bankruptcy.**



Counsel are cautioned about the risks and hazards of giving bankruptcy advice to their family law clients. Bankruptcy is now a complex area of law requiring substantial expertise. New attorney liability provisions under 11 U.S.C. 707(b)(4) require additional investigation, documentation and certification. Provisions to restrict and monitor the activities of so-called “debt relief agencies” have been enacted. Debt relief agents are required to make written disclosures to clients and advertise “We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.” The definition of debt relief agency is broad and may include attorneys giving consumers bankruptcy advice in a family law context. See 11 U.S.C. 526, 527, and 528. The filing of a bankruptcy case will stay the divorce proceedings.

### **3.7 Interest on Equity to be Paid at a Future Date.**

When equity is to be paid to one of the parties in the future, provisions should be made for interest on the amount of equity. Division should be settled keeping in mind the time value of money (its present value). Generally, the Court uses the current judgment rate or the amount being charged for equity loans (second mortgages) as the interest rate.

### **3.8 Valuation Date.**

The property that constitutes the marital estate is usually determined as of the date of filing.

**A. Fluctuating Values.** Counsel should request the Court to establish a valuation date.

**B. Contributions to Value.** If the parties have been separated for more than one year, the Court will consider each party's contributions to the increase or decrease in value of the asset from the time of separation to reach an equitable division.

**C. Beginning Value.** The beginning value of property should be the earlier of the date the parties were married or the date they commenced living together and commingled their earnings and jointly acquired assets.

### **3.9 Valuing a Small Business.**

#### **A. Non-Professional Business Entities.**

In the event a non-professional business entity such as a closely held corporation, small partnership interest or sole proprietorship is saleable as a going concern, such interests should be evaluated by a capitalization rate of the average of the past three to five years after-tax income. In general, the capitalization rate is the percentage return that an investor would expect to receive on his investment in the business. The riskier the business, the higher the rate. The appropriate capitalization rate may also be evaluated by examining the capitalization rate (the inverse of the price/earnings ratio) at which publicly-traded stocks in similar entities are currently being traded. The value produced by capitalizing the after-tax income should be multiplied by the percentage of ownership interest held if less than 100%. Other factors affecting the valuation include the trend of the business income over recent accounting periods, whether the ownership interest held is a minority interest, and the general nature of the business.

The income of a corporate business entity should be restated before capitalization to include in the after-tax income any excess salary taken by the owner and other personal benefits that a proposed

buyer would likely not view as a proper expense of the business. Conversely, the income of a non-corporate business entity (a partnership or sole proprietorship) should be restated before capitalization to exclude a reasonable amount as a salary for the owner since his salary has not been expressed as a business expense in determining the after-tax income of the business.

Most closely held business entities are in fact saleable as going concerns as opposed to being saleable only for their book or liquidated value, although small construction businesses and corporations essentially formed to hold real property or securities are examples of closely held entities which are not saleable as going concerns.

## **B. Professional Business Entities.**

Professional entities, whether corporations, partnerships or sole proprietorships, should be evaluated with reference to good will, but only to the extent that the good will is marketable for that particular profession. K.S.A. 23-201(b).

The valuation should also include other assets and liabilities of the business, including accounts receivable (properly discounted for bad debts and time of collection, and income tax reduced), equipment, supplies, and other tangible assets (properly depreciated and appreciated), and cash (income tax reduced).

In the case of accounts receivable, there is often a confusion between future income concepts (maintenance payments) and current property concepts (division of current net worth). Since accounts receivable are already earned (no future effort is required to produce the income), accounts receivable are current assets (as opposed to future income) and should be part of a division of net worth calculations. Maintenance calculations should not be affected (reduced) by the fact that the accounts receivable have been included as part of the division of net worth.

In the event there is a shareholders agreement that provides a reasonable formula for buy-out of the parties' interest in the corporation, that formula should be used. Check to see if there are any other deferred compensation rights provided by employment contracts or shareholder/partner agreements.

Since the value of a professional degree or license to practice professionally is not counted as an asset per se, the debts incurred in obtaining such degree or license should not be counted as liabilities.

### **3.10 Tax Refunds - Tax Liability.**

Generally, the Court considers prepayments of taxes, *e.g.*, federal and state income tax withholding or estimated payments, are marital assets and that the tax liability for income which the parties mutually enjoyed is a marital debt.

In the usual case, the Court will order that any tax refunds from the last year the parties were married should be shared equally notwithstanding the parties' respective earnings. Conversely, it will usually be the Court's decision that tax liability for the last year of marriage should be treated as a marital debt and paid from the parties' assets or treated as other marital debts. See Section 3.04.

### **3.11 Retirement, Pension, and Thrift Plans.**

The simplest method of dealing with these assets is equal division through a Qualified Domestic Relations Order (QDRO) since it may avoid the necessity of valuing the particular plan in question. However, it may be necessary to value this type of asset so that the plan value can be offset against other assets to make a fair division. If it is to be valued, then the following should be considered:

**A. Defined-Benefit Retirement Plans.** A "defined benefit plan" is one in which the amount of the contributions to the plan are determined ("defined") by the benefit desired upon retirement. Defined benefit retirement plans normally provide a benefit in the form of a life annuity or, in the case of married participants, a joint survivor annuity. These plans may also provide a pre-retirement survivor annuity for a surviving spouse of a vested participant who dies before normal retirement age. Defined benefit retirement plans may be valued by the following procedure:

1. The presently vested monthly (or other unit of time) benefit should be reduced by the amount of the federal and state income taxes which the recipient will likely have to pay.
2. The "after-taxes monthly benefit" amount should then be discounted over the life expectancy of the recipient from the date the recipient will become eligible to receive the retirement benefits through his or her actuarial life expectancy, to determine the "present value" of that stream of payments on the date of retirement.
3. The date-of-retirement present value of the monthly benefits should then be further discounted for the period of time between the valuation date and the date on which the recipient of the retirement will commence receiving the benefits, to determine the current "present value" of the stream of payments; and
4. The current "present value" of the benefits should be further discounted by the probability that the recipient will die before the age where his or her retirement benefits will commence.
5. If the retirement plan benefits were not totally accumulated during the marriage, then an "entry value" may be calculated using the vested monthly (or other unit of time) benefit which existed on the date of the parties' marriage or the date they commenced living together (whichever is earlier). To determine the "marital value," the current "present value" should then be reduced by the "entry value." An alternative valuation method which may, in some cases, be used would award to the spouse of the Plan participant a fractional interest in the monthly benefit equal to one-half of a fraction, the numerator of which is the number of years the parties were married while the Plan participant was employed by the employer paying the retirement benefits, and the denominator of which is the total number of years the Plan participant was a participant in the Plan.
6. The discount factor used in steps (2) and (3) should be equal to the present yield on United States Treasury notes or bonds that mature in the same number of years as the number of years between the valuation date and the date the Plan participant is first eligible to retire.

**B. Defined-Contribution Retirement Plans.** A "defined contribution plan" is one in which the amount of the benefits from the plan are determined ("defined") by the contributions made before retirement. Common varieties of the "defined contribution" plan include 401(k) plans, "Thrift" plans, Keogh or "HR10" plans, and I.R.A.'s. Note that a defined contribution plan does not have to offer an annuity option upon retirement. The plan may make a lump sum distribution the only benefit form. Defined contribution retirement plans can be valued by the following procedure:

1. If the plan offers only an annuity payout option: If the plan offers only an annuity option, the plan would be valued as if it were a "defined benefit" plan using the "present cash value" method.

2. If the plan also offers a lump sum payout option: if the defined contribution retirement plan has a lump sum payout option available upon retirement, the value of the plan is:

(a) the current total of the contributions (both company and employee) without any discount.

(b) reduced by the state and federal income taxes which will be applicable to the lump sum at the time it is distributed to the employee.

While there would be a 10% penalty for withdrawing the benefits prior to age 59½ (without rolling the benefits over into an IRA), the fair market value of the benefits should not usually be reduced by that 10% because it is highly unlikely that the owner of the benefits would elect a course of action which would create the penalty.

### **3.12 Preparation of ODROs and OMCSOs.**

Absent an order of the Court or an agreement of the parties clearly expressed in a Separation and Property Settlement Agreement to the contrary, the party or counsel whose client will benefit by the division of a deferred tax asset will be responsible for drafting any Qualified Domestic Relations Order (QDRO) or similar order which is necessary to effectuate the division of such an asset. The participant or their counsel under a deferred tax plan shall provide to the alternate payees' counsel, prior to the submission of a separation and property settlement agreement to the Court, a copy of the plan, or a summary, along with any forms or guidelines available from the plan administrator, that would assist the alternate payee counsel in the drafting of a QDRO or similar order. Such information shall include, at a minimum, the name and address of the plan administrator.

Absent an order of the Court or provision in a Separation and Property Settlement Agreement to the contrary, counsel for the party who will have residency for the children will be assumed to be responsible for the preparation of any Qualified Medical Child Support Order (QMCSO) which is determined to be necessary to insure continuing medical insurance coverage for the parties' children. Upon a request by that counsel, the attorney for the party who is required to maintain the medical insurance for the children (or that party, if not represented by counsel), shall provide forthwith information showing the name and address of the plan administrator and the specific information identifying all insurance plans that will cover the parties' children.

### **3.13 Use of Expert Witnesses.**

The Court will require the disclosure of expert witnesses at least thirty (30) days in advance of any hearing in which such expert will testify. In order to conserve the parties' assets, parties are encouraged to agree upon valuation experts and to stipulate to valuations of those experts.

## **4.0 Maintenance**

### **4.1 Temporary Maintenance**

Temporary maintenance orders are entered to provide for the parties' needs for several weeks during the pendency of the proceeding, and have a different purpose than the award of permanent maintenance. The guideline for permanent maintenance is not applicable to temporary maintenance.

The Court's approach to temporary maintenance is to allocate from the parties joint net incomes amounts for their rent or house payments, assign responsibility for payments to creditors, including auto, home, and life insurance, provide for child support to the residential parent, then equally divide the funds available. These calculations require use of the total net income of both parties and can be made on Worksheet T. (Appendix 4-1)

Health insurance should be provided, either as a deduction from gross income or assigned as a monthly payment. Usually, it is best to keep existing health insurance in place. If the cost of health insurance is paid through a payroll deduction, the payor's net income after the deduction should be used.

Frequently, due to the amount of debt and the increased expenses of dividing the household, there will not be sufficient funds to pay for separate shelter for each party and to pay all creditors. In those cases, payments on some debts must be delayed and/or the parties must temporarily arrange to live with friends or relatives. Absent a bona fide shelter expense, the court will attempt to allow a minimum of \$450 per month to each party for shelter.

When calculating temporary maintenance with the use of Worksheet T, the parents' total child support obligation entered on line 3 of Worksheet T shall be the amount as determined on line 7 of the Child Support Worksheet. However, when calculating the parents' total child support obligation on the Child Support Worksheet, no adjustment to the Domestic Gross Income shall be made for temporary maintenance paid or temporary maintenance received on lines C.3. and C.4. of the Child Support Worksheet, as the parties' income has already been equalized on Worksheet T. Additionally, no income should be imputed to a party in the preparation of a Worksheet T.

### **4.2 Permanent Maintenance**

Permanent maintenance should be considered after making division of the parties' assets and allocation of the liabilities of the marriage, but before calculating child support. There is no presumption that permanent maintenance should be awarded in any given case and whether it should be awarded is discretionary.

The Court should further consider the parties' respective incomes for calculation of permanent maintenance only after the effect of paying marital debts is considered and the income is adjusted accordingly. The Court should make its adjustments to gross income on a dollar for dollar basis.

Only after determining the financial ability of the payor and the financial need of the obligee (Pursuant to *IN RE: Marriage of Kuzanek*, 32 App 2d 389, 82 P.3d 528 (2004)), the primary factors to be considered in determining any award of maintenance are:

1. Ages of the parties.
2. Present and prospective earning capacities of the parties.
3. Property owned by the parties and the division of marital assets and debts made by the court.
4. Length of the marriage.
5. Parties' needs including physical or mental health.
6. Time, source and manner of acquisition of the property.
7. Family ties and obligations.
8. Parties' overall financial situation including obligations for child support.
9. Contribution or sacrifice by one party to aid other party's education or career.
10. Gross and extreme misconduct where the failure to penalize would itself be inequitable.

The guideline formulas contemplate that only a fraction of the income difference be awarded and that the maximum duration for maintenance (121 months) would be ordered when there has been at least a 29 year marriage. When persons are disabled or are on fixed incomes, these limitations may not be realistic. For example, when persons are drawing retirement pensions, the court will usually attempt to equalize the income for a duration of 121 months, providing that pension(s) are not treated as an asset of the marriage and divided as property prior to permanent maintenance considerations.

~~A. Original Maintenance—No Children.~~ **Updated March, 2019**

~~The maintenance guideline is 22% of the difference between the gross incomes (or earning capacities in the event the Court is satisfied that one of the parties could be earning more than he or she is, in fact, earning. A party should not be awarded for failure to find or seek employment during the pendency of the matter, and should have mitigated the difference between the incomes of the parties.) of the parties up to a difference of \$50,000 per year. Should there be a greater than \$50,000 difference per year in the earnings of the parties, then add 20% of the difference in excess of \$50,000.~~

~~The court may retain jurisdiction to extend or modify maintenance if deemed appropriate in the circumstances when an award of maintenance is made.~~

~~EXAMPLE: Husband earns \$90,000 per year and wife earns \$10,000 per year. The amount of the maintenance to be paid from husband to wife would be \$1,417 per month. (22% of the first \$50,000 difference is \$11,000 which, divided by 12, equals \$917.00, 20% of the balance of the difference, (\$30,000) is \$6,000 which, divided by 12, equals \$500. The sum of \$917.00 and \$500.00 is \$1,417 per month.)~~

**~~B. Adjustment to Original Maintenance When Child Support Is to be Ordered.~~**

~~When child support will be ordered, the guideline amount is 17% of the difference in gross incomes (or earning capacities if the Court is satisfied that one of the parties could be earning more than he or she is, in fact, earning) of the parties up to a difference of \$50,000 per year. If there is a greater than \$50,000 difference, then add 15% of the difference in excess of \$50,000.~~

~~EXAMPLE: If the parties in the above example had children, the maintenance amount would be \$1,083 per month. (17% of 50,000 = 8500.00 divided by 12 = 708; 15% of 30,000 = 4,500 divided by 12 = 375; 708 + 375 = \$1,083)~~

~~The decree should specify that the original maintenance award of \$1,417 is reduced and ordered to be \$1,083 per month, due to the amount of child support ordered. The amount of maintenance may be modified to the amount originally awarded if changes in child custody or child support amounts significantly alter the relative economic positions of the parties.~~

~~After calculating maintenance under this section, the amount ordered paid (and received) should be entered in section C of the Child Support Worksheet.~~

March 2019 update:

#### **A. Original Maintenance – No Children.**

For all divorces finalized on or after January 1, 2019, the maintenance guideline is 17% of the difference between the gross incomes of the parties, or earning capacities in the event the Court is satisfied that one of the parties could be earning more than he or she is, in fact, earning. A party should not be rewarded for failure to find or seek employment during the pendency of the matter, and should have mitigated the difference between the incomes of the parties.

For all modifications of pre-January 1, 2019, maintenance orders which modifications are effective on or after January 1, 2019, the maintenance guidelines applicable shall be as set forth in the 2013 Edition of the Shawnee County Family Law Guidelines, unless the modification expressly states that the taxability provisions of the 2017 Tax Cut and Jobs Act will apply to the maintenance after the modification and therefore the maintenance payments shall not be tax deductible after the modification.

The Court may retain jurisdiction to extend or modify maintenance if deemed appropriate in the circumstances when an aware of maintenance is made.

EXAMPLE: Husband earns \$100,000 per year and wife earns \$20,000 per year. The amount of the maintenance to be paid from husband to wife would be \$1,133 per month. (17% of the \$80,000 difference is \$13,600 divided by 12, equals \$1,133 per month.)

#### **B. Adjustment to Original Maintenance When Child Support is to be Ordered and Paid by the Party also Paying Maintenance.**

When child support will be ordered, the guideline amount is reduced to 13% of the difference in gross incomes (or earning capacities if the Court is satisfied that one of the parties could be earning more than he or she is, in fact earning) of the parties.

EXAMPLE: If the parties in the above example had children, the maintenance amount would be

\$867 per month (13% of the \$80,000 difference equals \$10,400 divided by 12, equals \$867).

The decree should specify that the original maintenance award of \$1,133 is reduced and ordered to be \$867 per month, due to the child support ordered. The amount of maintenance may be modified to the amount originally awarded (\$1,133 per month) if changes in the child custody or child support amounts significantly alter the relative economic positions of the parties.

After calculating maintenance under this section, the amount ordered paid (and received) should be entered at line C.3. of the Child Support Worksheet.

#### **4.3 Time for Payment of Maintenance.**

Maintenance should terminate upon the first happening of the following events: (i) death of either party, (ii) remarriage or co-habitation in a spouse-like setting of the maintenance recipient, the maintenance recipients residence with a non-relative adult in a marriage-like relationship for substantially consecutive periods of time in excess of thirty days, or (iii) the passage of x years (where x is equal to the lesser of [a] ten years, or [b] a number calculated by taking the number of years of the marriage and dividing the number of years of the marriage by 3.) In calculating the duration for permanent maintenance, the length of time should be rounded to the nearest month. *See in re Marriage of Wessling*, 12 Kan App.2d 428, 747 P.2d 187 (1987) for definition of cohabitation.

EXAMPLE 1: The parties have been married for seventeen years. The maximum length of maintenance would, accordingly, be calculated by dividing 17 by 3 which equals 5.66 years. Total duration of maintenance would be 5.7 years, or 5 years and 8 months.

In determining the length of the marriage, the duration should be calculated from the date of the marriage (or, if applicable, the date the parties began co-habiting and mutually acquiring a substantial amount of real or personal property prior to the marriage) to the date of the parties' separation.

In setting the maximum length of maintenance in the decree, the period that temporary support was paid (after the parties' separation but before the settlement or trial) should be subtracted from the total maintenance period.

EXAMPLE 2: The parties were married in April of 1986, but mutually had acquired \$2,000 worth of household furniture for a shared living arrangement in April of 1985. The parties separated in April of 1995, but did not settle their divorce case until January of 1996, (3/4 of a year after the separation). The length of the time of the parties' "marriage" for purposes of calculation of the duration of maintenance would be from April of 1985 (the date the parties commenced the mutual acquisition of property) until April of 1995 (the date the parties separated) and the total maintenance period would be reduced by the period of time that temporary maintenance was paid.



A calculation of the guideline length of maintenance for the ten year relationship is 3.33 years (3 years, four months). The parties have, however, been separated for 9 months during which time, husband has made temporary support payments to wife. The guideline length of maintenance for the decree would, therefore, be 31 months. The decree may reserve jurisdiction to extend maintenance if deemed appropriate in the circumstances at the time of the motion.

## **5.0 Custody, Residency and Parenting Time Guidelines.**

### **5.1 General Considerations.**

The mother and father remain parents to their child or children even though their marriage is legally terminated or, in fact, they were never married. It is presumptively in the best interests of a child to have a strong and healthy relationship with both parents. As parents, each has an affirmative obligation to ensure that the child has frequent, significant and meaningful contact with the other parent, unless the child would be harmed. Frequent contact with each parent includes physical residency, parenting time, correspondence, telephone conversations, email and other contact. Each parent is expected to follow through with scheduled contact. Each parent shall supply the other with a current residential and work address and telephone numbers, and shall advise the other of any changes at the earliest possible opportunity.

Many children suffer stress and maladjustment, not just from the divorce process, but from continuing conflict between the parents. In fact, research has consistently shown that the single most damaging effect on children comes from conflict between the parents; conflict that occurs both within the divorce or paternity process and that which continues even after the divorce or paternity action is complete. To minimize conflicts, the parents should have a parenting arrangement for mutual access consistent with the needs of their child and adjust their work and leisure schedules accordingly. Good co-parenting will require them to consider the child's interests as they determine such issues as where to live, work hours, vacations and even social relationships. Moreover, a parent who is unable to be affirmatively supportive of the other parent and insulate the child from the parents disagreements is likely unfit to have residential placement.

Negotiated settlements of custody, residency and parenting time are almost always in the child's interest compared with contested litigation, which is expensive, stressful and delays resolution of the case. A court decision cannot be as sensitive to the child's needs, priorities, strengths and traditions, as the parents' parenting plan can be. Counsel should advise clients of the advantages of an agreed residential arrangement before the parties enter conciliation, mediation, counseling or other social service process.

### **5.2 Children's Rights When Parents Divorce.**

The provisions within this and the following sections are intended to apply equally to both divorces and paternity actions.

1. The right to a continuing relationship with both parents.
2. The right to express and receive love and affection from both parents without fear of disapproval by the other parent.
3. The right to continuing care and guidance from both parents.
4. The right to a relaxed and secure relationship with both parents, free from abuse of any kind.
5. The right to know and appreciate what is good in each parent without one degrading the other or undermining the relationship with the other.

6. The right to regular and consistent contact with both parents and the right to know the reason for cancellation or alteration of the regular contact.
7. The right to fully participate in school and extracurricular events and activities, regardless of which parents scheduled time they may fall on and the right to have both parents attend such events and activities.
8. Neither parent shall:
  - a. Speak badly about the other parent or the other parents friends or relatives.
  - b. Argue in front of the child or on the telephone when the parent can be overheard.
  - c. Talk to the child about the divorce, the paternity action or any conflicts or issues between the parents.
  - d. Talk about the amount or payment of child support.
  - e. Ask the child to keep secrets from the other parent, or spy for a parent when at the other parents home.
  - f. Ask the child to act as a messenger by delivering verbal or written messages to the other parent.
  - g. Prevent the child from freely taking items such as clothes and toys back and forth between the two households.
  - h. Ask the child where he or she wants to live.

### **5.3 Forms of Custody and Residency Defined.**

#### **A. Legal Custody.**

1. Sole Legal Custody. Sole legal custody means that one parent determines all major issues regarding the child's life, *e.g.*, health, education, medical care and religion. The Court must make specific findings of fact upon which the order for sole legal custody is based. The award of sole legal custody to one parent does not deprive the other parent of either parenting time or access to information regarding the child unless the court so orders, and states the reasons for that determination.
2. Joint Legal Custody. Joint legal custody means both parents have equal rights and responsibilities concerning their minor children, and acknowledge that neither party has rights superior or inferior to the other's. In keeping with their joint, shared and equal responsibilities, the parents shall consult with one another upon issues and matters of importance including, but not limited to, day care providers, discipline, education, religious and/or spiritual training and education, summer camps, illnesses and operations (except emergencies), special tutoring, orthodontic needs, and other important matters pertaining to the health, welfare and general well-being of their child. Joint legal custody does not give the nonresidential parent veto power over such decisions but he or she does have the right to advance notice, good faith consultation, and full input.

## **B. Residency.**

1. Residency. The parent who has residency of the child will have the child in his or her care the majority of the time. This is a common type of residential arrangement often referred to as primary residency.

2. No Designated Residency. Kansas law does not require designation of one parent as the primary residential parent of the child. Instead, Kansas statute only requires the Court in issuing any final order pertaining to a child to determine the following:

(1) Designation of the legal custodial relationship of the child; (2) a schedule for the child's time with each parent, when appropriate; and (3) a provision for a procedure by which disputes between the parents may be resolved without need for court intervention. K.S.A. 23-3207

The Court's determination of a schedule for each parent's time with the child will be made on a case by case basis using the standard of the best interest of the child. The schedule for each parent's time with the child is referred to as parenting time. Therefore, whenever a parent is exercising his or her parenting time he or she has physical custody of the child during his or her parenting time.

3. Shared Residency. In a shared residency arrangement neither parent has primary residency of the child and each parent has an equal or near equal amount of time with their child. Because a shared residency arrangement requires a high degree of cooperation and ability between the parent to communicate and to co-parent well, this type of arrangement will usually not be ordered by the Court absent a well thought out plan for shared residency that both parents agree and the Court determines should promote the welfare and best interest of the child.

While the Court may also consider the ability of the parents to share expenses of the child as part of their overall ability to co-parent, there is a common misconception that shared residency automatically means no child support will be ordered. Whether child support is ordered in shared residency is based on a case by case determination and consideration of the factors as set forth in the Kansas Child Support Guidelines (KANSAS CHILD SUPPORT GUIDELINES, Pursuant to Kansas Supreme Court Administrative Order 261, Effective April 1, 2012; see also section 6.00 of these Guidelines). Therefore, it should not be assumed that by agreement to share residency or even to have a shared expense plan that there will be no child support ordered in the case.

4. Divided Residence. Each parent maintains the primary residence for one or more of their children. The Court will not normally order divided residency because of established public policy in favor of keeping siblings together.

### **5.4 Temporary Custody and Residency Criteria - DivorceWorks Seminar.**

The temporary custody and residency orders (Appendix 2-4) provide for joint legal custody for the minor child. Temporary residential placement will usually be with the parent who has in the past provided primary care for the child.

The Court's standard temporary custody orders provide for "reasonable parenting time" and require both parents to attend the DivorceWorks Seminar within 4 weeks from date of entry of the temporary custody order. Counsel should provide clients with the information at the first interview. Self-representative litigants shall pick up the information from the clerk's office. If only one

party has attended and the other refuses, the order may provide primary residency for the attending party. The Court will not hear motions for hearing that involve custody or parenting problems that are filed by a party who did not attend the seminar. Counsel shall file the certificates of completion with the Clerk of the District Court. Parties to paternity actions are also strongly recommend to attend and complete the seminar.

### **5.5 Residency Determination Criteria.**

**A. Deciding Custody and Residency.** In deciding residency, the Court will consider the following factors in conjunction with those specifically set forth in K.S.A. 23-3203:

1. The existing parental bond between each parent and child.
2. The quality and quantities of caretaking made by each parent in the past and the quality and quantity of caretaking contribution that each parent is likely to make in the future.
3. Any evidence of harmful or negligent caretaking in the past.
4. The attitude and willingness of the parent to foster the child's relationship with the other parent.
5. The ability of each parent to provide for the needs of the child, including any special needs.
6. The amount of change involved and its possible effect on the child.
7. Presence of spousal abuse.
8. Other factors affecting the best interests of the child.

**B. Motions For Change of Custody or Residency.** All post judgment motions for change of custody or residency shall state with particularity the material change of circumstances upon which the movant relies to support his/her motion, and shall be verified by the moving party. See K.S.A. 23-3219. See also Section 5.24.

The Court does not grant ex parte orders which change the existing living situations, except in those rare situations where there is corroborated evidence of a serious threat to the safety of the child. The parties should not present proposed ex parte orders to the Court that change a child's living arrangement until the motion to change custody and a copy of the proposed order have been served on both the opposing party and counsel of record. The Court will shorten the time for hearing if necessary to accommodate urgent situations.

### **5.6 Required Custody and/or Residency Mediation or Conciliation.**

Unless excused by the court, parties in contested custody and or residency actions must participate in two mediation or conciliation sessions before setting the case for hearing. See Section 5.16-A.

The movant will be excused from the requirements for mediation or conciliation where the motion alleges in good faith that:

- a. the movant has attempted in good faith to schedule mediation and/or conciliation sessions with an identified mediator or conciliator which have been rejected by the other party, or
- b. the movant has in good faith scheduled mediation or conciliation sessions with an identified mediator or conciliator and the other party has failed to attend or participate in the scheduled sessions, or
- c. the movant has attempted to discuss the requirement for mediation or conciliation with the other party who has refused to discuss the same, or
- d. the movant has been unable to contact the other party to discuss and/or schedule mediation or conciliation.

### **5.7 Parenting Time Guidelines.**

**A. Generally.** Parenting time is simply the time each parent spends with the child. Regardless of the form of legal custody or residency, both parents should have reasonable and liberal parenting time with the child, absent factors that make such parenting time contrary to the best interests of the child. Parenting time shall be set out in a permanent parenting plan (Section 5.15-B) in the final Decree of Divorce or Decree of paternity.

**B. Parental Preference.** It is the public policy of this county that as a general rule the more time the child has with each parent, the better. Parenting time, by definition, is the child's time to be with that parent. In the event a parent is unable to spend parenting time with a child, or needs to leave the child with a third party for an extended period, including other family members or a baby-sitter but excluding regularly scheduled work-related child care, the other parent shall first be notified and given the opportunity to spend that time with the child. Generally mediation or conciliation is required before the court will hear a motion in contested

custody or residency matters. See 5.06.

**C. Flexibility.** Child development research concludes that children of divorce have unique needs which should be considered, as the parents and attorneys negotiate the issue of parenting time. A child's needs and ability to cope with the parents' situation changes as the child develops. Each child is different. To promote healthy child development, parents must be flexible in adapting the parenting time schedules to the child's changing needs. For instance, teenagers often have many scholastic and extracurricular activities and interests, such as jobs and sports that parents should take into account as they develop parenting plans. Moreover, parents must be flexible with one another within the parameters of a parenting time schedule to insure that a child's scholastic and extracurricular activities and events are met.

**D. Clothing.** The residential parent shall send an appropriate supply of clothing with the child. The nonresidential parent shall return the same clothing, clean if possible, with the child at the conclusion of the parenting time or by the next visit. A child shall be allowed to freely take clothes, personal items including toys and personal effects back and forth between the parent's homes. If there is shared physical residency, both parents should have a supply of clothes *unless there has been a provision on the parties' child support worksheet to provide separate wardrobes.*

## **5.8 Standard Parenting Time.**

The following are needs and recommendations regarding parenting time for children, set out in age categories. These have been developed based upon the findings of experts who deal with children in various family situations.

These guidelines are meant to apply to the majority of situations where the residential parent has been the primary caretaker and the nonresidential parent has established and maintained a continuous strong and loving relationship with the child but has not shared equally in the caretaking responsibilities for the child. They may not apply where the work schedules of one or both of the parents are not traditional 8:00 a.m. to 5:00 p.m. jobs. The guidelines are not intended to apply to situations in which there has been a history of domestic violence, child abuse, alcohol or drug abuse, or mental illness on the part of either a child or a parent.

As noted above, parents know their children and their needs better than anyone in the court system. Parents are expected to work together in order to assess their children's needs and desires, and to work together to support the other parents' relationship with the child. The parents are further expected to work together to arrive at a parenting time schedule that meets the child's needs, that maximizes the child's time with both parents, and that accommodates the child's activities and events. It is presumed by law that an agreement of the parents is in the best interests of their minor child(ren). However, the following schedules will generally be followed by the Court in structuring parenting time if the parents cannot agree upon a schedule

### **Birth up to 2 ½ Years Old**

- Need security and stability of a primary household
- Primary residence should be with parent who has historically provided primary nurturing
- Bond with non-residential parent must be fostered
- Predictable routine with regularly scheduled visits
- Need for contact with non-residential parent three times each week
- An overnight stay each week with non-residential parent if not nursing and there is history of care and parenting by the non-residential parent.

#### **Standard Parenting time:**

- Tuesday and Thursday, 5:30p.m. to 7:30 p.m. and Saturday or Sunday 10:00 a.m. to 5:30 p.m.
- If overnight is appropriate, a 24 hour period each weekend such as Saturday Noon to Sunday Noon; Friday 5:30 p.m. to Saturday 5:30 p.m.

### **Age 2 ½ up to 5 Years Old**

- Need security and stability of a primary household
- Primary residence should be with parent who has historically provided primary nurturing.
- Bond with non-residential parent must be fostered and maintained
- Predictable routine with regularly scheduled visits
- No more than three days without seeing either parent

- An overnight stay with the non-residential parent each week, perhaps two if there is history of care and parenting by the non-residential parent

Standard Parenting time:

- Tuesday and Thursday, 5:30p.m. to 7:30 p.m. and a 24 hour period each weekend such as Saturday Noon to Sunday Noon; Friday 5:30 p.m. to Saturday 5:30 p.m.
- If second overnight is appropriate Tuesday may be extended overnight

**Age 5 up to 9 Years Old**

- Shared time or shared residency may be considered where criteria are met
- Both require a higher degree of cooperation, communication and co-parenting to be child-oriented
- Both parents shall support the child's growing extra-curricular activities and friendships
- Avoid more than five days without seeing either parent
- Midweek visit(s) recommended
- Overnights with non-residential parent, but not school nights

Standard Parenting time:

- Commence alternate weekends, from Friday 5:30 p.m. to Sunday 5:30 p.m.
- Mid-week visits: either each Wednesday from 5:30 p.m. to 8:00 p.m. and alternate Mondays following the off weekend, from 5:30 p.m. to 8:00 p.m.; or each Tuesday from 5:30 p.m. to 8:00 p.m. and alternate Thursdays immediately prior to the off weekend, from 5:30 p.m. to 8:00 p.m.
- In the summer, a midweek visit may be overnight

**Age 9 up to 13 Years Old**

- Shared time or shared residency may be considered where criteria are met
- Both parents shall support growing extra-curricular activities and friendships
- Avoid more than seven days without seeing either parent
- Relationship with same sex parent may become increasingly important
- Considering the age and maturity of the child, one midweek school night visit may be overnight

Standard Parenting time:

- Alternate weekends, from Friday 5:30 p.m. to Sunday 5:30 p.m.
- Mid-week visits: either each Wednesday from 5:30 p.m. to 8:00 p.m. and alternate Mondays following the off weekend, from 5:30 p.m. to 8:00 p.m.; or each Tuesday from 5:30 p.m. to 8:00 p.m. and alternate Thursdays immediately prior to the off weekend, from 5:30 p.m. to 8:00 p.m.



- In the summer, a midweek visit may be overnight

### **Age 13 up to 15 Years Old**

- Opinions and ideas of adolescents regarding parenting time are increasingly important
- Parenting plan and both parents shall actively support school, extra-curricular activities and friendships.

#### Standard Parenting time:

- Schedule same as 9 to 13 age group, with extensions and overnights based upon age, maturity and bedtime of child.

### **Age 15 up to 18 Years Old**

- The interests, friendships, activities, events and employment of children at this age are crucial to their development and well-being. As such, they shall be actively supported and encouraged by both parents.

#### Standard Parenting time:

- Parenting plan and schedule same as 9 to 13 age group, expressly subject to accommodating the child's school, work, extra-curricular activities and friendships.

## **5.9 Holiday Parenting Schedule - Structured Parenting Time Orders.**

**Parents should be encouraged to maximize the contact between each parent and the child(ren) and to consider past family traditions.** The following schedules will generally be followed by the Court for dividing holidays in structured parenting orders if the parents cannot agree to another schedule:

### **A. Birth to 2 ½ Years Old**

1. Easter Weekend - From Saturday at 7:00 p.m. until Sunday at 7:00 p.m. with parent B during even-numbered years and parent A during odd-numbered years.
2. Mother's Day - From 9:00 a.m. until 7:00 p.m. with the child's mother.
3. Memorial Day - From Saturday at 7:00 p.m. until Sunday at 7:00 p.m. with parent A in even-numbered years and with parent B during odd-numbered years.
4. Father's Day - From 9:00 a.m. until 7:00 p.m. with the child's father.
5. Fourth of July - From 10:00 a.m. on July 4th until 10:00 a.m. on July 5th with parent A during even-numbered years and with parent B during odd-numbered years.
6. Labor Day - From Saturday at 7:00 p.m. until Sunday at 7:00 p.m. with parent B during even-numbered years and with parent A during odd-numbered years.

7. Halloween - Halloween evening from 5:00 p.m. until 8:00 p.m. with parent A in even-numbered years and with parent B during odd-numbered years.

8. Thanksgiving - From Wednesday evening at 7:00 p.m. until Thursday evening at 7:00 p.m. with parent B during even-numbered years and with parent A during odd-numbered years. The parent who does not have the child on Thanksgiving Day shall have the child on the day following Thanksgiving or a weekend day.

9. Christmas Period - From noon on December 24th until noon on December 25th with parent A during even-numbered years and with parent B during odd-numbered years and from noon on December 25th until noon on December 26th with parent B during even-numbered years and with parent A during odd-numbered years.

10. New Years Eve and New Years Day - From 5:00 p.m. on December 31st until 5:00 p.m. on January 1st with Parent B in even-numbered years and with Parent A in odd-numbered years.

11. Parents' Birthdays - The child shall spend part of the day with the respective parent on that parent's birthday.

12. Child's Birthday - The child shall spend the child's birthday with parent B in even-numbered years and with parent A in odd-numbered years. The parents shall arrange for the child to have time with the other parent on their birthday, if feasible, or the weekend before or after.

#### **B. 2 ½ Years to School Age**

1. Easter Weekend - From Saturday at 9:00 a.m. until Sunday at 7:00 p.m. with parent B during even-numbered years and parent A during odd-numbered years.

2. Mother's Day - From 9:00 a.m. until 7:00 p.m. with the child's mother.

3. Memorial Day - From Saturday at 9:00 a.m. until Sunday at 7:00 p.m. with parent A in even-numbered years and with parent B during odd-numbered years.

4. Father's Day - From 9:00 a.m. until 7:00 p.m. with the child's father.

5. Fourth of July - From 9:00 a.m. on July 4th until 7:00 p.m. on July 5th with parent A during even-numbered years and with parent B during odd-numbered years.

6. Labor Day - From Saturday at 9:00 a.m. until Sunday at 7:00 p.m. with parent B during even-numbered years and with parent A during odd-numbered years.

7. Halloween - Halloween evening from 5:00 p.m. until 9:00 a.m. the following morning with parent A in even-numbered years and with parent B during odd-numbered years.

8. Thanksgiving - From Wednesday evening at 7:00 p.m. until Friday at 9:00 a.m. with parent B during even-numbered years and with parent A during odd-numbered years. The parent who does not have the child on Thanksgiving Day shall have the child on the day after or on a weekend day following Thanksgiving.

9. Christmas Period - From noon on December 24th until noon on December 25th with parent A during even-numbered years and with parent B during odd-numbered years and from noon on

December 25th until noon on December 26th with parent B during even-numbered years and with parent A during odd-numbered years.

10. New Year's Eve and New Year's Day - From 5:00 p.m. on December 31st until 5:00 p.m. on January 1st with Parent B in even-numbered years and with Parent A in odd-numbered years.

11. Parents' Birthdays - The child shall spend part of the day with the respective parent on that parent's birthday.

12. Child's Birthday - The child shall spend the child's birthday with parent B in even-numbered years and with parent A in odd-numbered years. The parents shall arrange for the child to have time with the other parent on their birthday, if feasible, or the weekend before or after.

### **C. School Aged Children**

1. Easter Weekend - From Friday at 7:00 p.m. until Sunday at 7:00 p.m. with parent B during even-numbered years and parent A during odd-numbered years.

2. Spring Break - Reside with each parent during one-half of the spring break, with the transfer to occur on Wednesday evening at 7:00 p.m. The parent normally having the child during the first weekend of spring break should continue to have the child until the Wednesday transfer. For long-distance parents, see Section 7.23-B.

3. Mother's Day - From 9:00 a.m. until 7:00 p.m. with the child's mother.

4. Memorial Day - From Friday at 7:00 p.m. until Monday at 7:00 p.m. with parent A in even-numbered years and with parent B during odd-numbered years.

6. Father's Day - From 9:00 a.m. until 7:00 p.m. with the child's father.

7. Fourth of July - From 7:00 p.m. on July 3rd until 7:00 p.m. on July 5th with parent A during even-numbered years and with parent B during odd-numbered years.

8. Labor Day - From Friday at 7:00 p.m. until Monday at 7:00 p.m. with parent B during even-numbered years and with parent A during odd-numbered years.

9. Halloween - Halloween evening from 5:00 p.m. until the following morning at 9:00 a.m. or the commencement of school with parent A in even-numbered years and with parent B during odd-numbered years.

10. Thanksgiving - >From Wednesday evening at 7:00 p.m. until Friday evening at 7:00 p.m. with parent B during even-numbered years and with parent A during odd-numbered years. The parent who does not have the child on Thanksgiving shall have the child on the weekend following Thanksgiving.

11. Pre-Christmas Period - From 7:00 p.m. the day school is dismissed for vacation until noon on Christmas day with parent B during even-numbered years and with parent A during odd-numbered years.

12. Christmas Period - From noon on December 25th until 7:00 p.m. on December 30th with parent A during even-numbered years and with parent B during odd-numbered years.

13. New Years Eve and New Years Day - From December 30th at 7:00 p.m. to 7:00 p.m. of the evening before school resumes with parent B in even-numbered years and with parent A in odd-numbered years.

14. Parents' Birthdays - The child shall spend part of the day with the respective parent on that parent's birthday.

15. Child's Birthday - The child shall spend the child's birthday with parent B in even-numbered years and with parent A in odd-numbered years. The parents shall arrange for the child to have time with the other parent on their birthday, if feasible, or the weekend before or after.

#### **D. Miscellaneous Holiday Provisions**

1. Conflict Between Weekend and Holiday or Weekend and Birthday - Where there is a conflict between a weekend and a holiday or a weekend and a birthday, the holiday or birthday schedule shall apply.

2. Conflict Between Birthday and Holiday - Where there is a conflict between a holiday and a birthday, the holiday schedule shall apply. The parties shall, however, be flexible in allowing the birthday to be celebrated before or after the holiday period.

3. Weekend - The schedule of weekend parenting time shall be determined without regard to whether the regular schedule has been preempted from time-to-time by one of the scheduled holidays. However, the parties should avoid having the child(ren) miss three consecutive weekends with the non-residential parent.

4. Other Religious Holidays - If the parents follow other religious holidays, there should be a sharing of time with the child similar to those designed for Christian holidays.

#### **5.10 Classification Conflicts.**

Where there is a conflict between age classifications due to one or more children falling within different age brackets for standard and holiday parenting time schedules, the parenting time schedules shall be rounded up to the older age bracket in order to give greater access to the non-residential parent. It is assumed that all children will be together with the non-residential parent for the scheduled parenting time.

#### **5.11 Extended Summer Parenting Time.**

Where the nonresidential parent has parenting time that is substantially consistent with the standard guideline schedules above, extended summer parenting time will not be awarded. Absent other factors, extended summer parenting time for the nonresidential parent shall be limited to **long distance parenting** arrangements and other situations in which a standard parenting time schedule is not feasible.

Where extended summer parenting time is warranted, any summer schedule should account for the age of the child, the distance and the cost of transportation involved: children ages 3 and up to 5 shall have summer visits of up to one week per month, with a minimum of two weeks separating each visit; children ages 5 and up to 9 shall have either three non-consecutive two week visits or two

non-consecutive three week visits; and children age 9 and up shall have the months of June and July with the nonresidential parent. See Section 5.23(C)

Extended summer periods shall not be combined with scheduled weekends and holidays in order to result in periods in excess of the durations set forth herein. Where extended summer parenting time is warranted, the nonresidential parent shall assume responsibility for planning the summer schedule for the child taking into account the child's existing school, scout, sport or other activities. Efforts shall be made to accommodate each parent's vacation plans. The residential parent shall not make any commitments for the child during the months of June and July without consulting the nonresidential parent.

Where feasible, the residential parent shall exercise the same mid-week and weekend parenting time when the child is with the other parent, as the other parent had during the school year.

### **5.12 Vacation Periods.**

Each parent shall be able to take the child on an annual vacation trip of up to seven days for children ages 3 and up to 5, and up to fourteen days thereafter, after at least 30 days advance consultation with the other parent regarding that parent's summer parenting time and plans, and the child's summer activities and events. The vacation trip shall not be scheduled during the school year, scheduled during the other parent's holiday time, or in conflict with the summer parenting time schedule, if any, absent an agreement of the parties unless otherwise agreed or permitted by the Court.

### **5.13 Miscellaneous Parenting Time Guidelines.**

**A. Notice of Missed Parenting Time.** Each parent shall advise the other as soon as possible if he or she cannot exercise assigned parenting time. If the event is known about in advance, the nonresidential parent should give the residential parent at least three (3) days advance notice. If an emergency arises, the parent shall give notice as soon as possible. If scheduled parenting time must be canceled, the parent who must cancel has the primary responsibility to find appropriate supervision for the child during the scheduled period if the other parent is unable or unwilling to provide care during that time. Both parents should work together to find appropriate supervision.

**B. Make up Parenting Time.** When a scheduled parenting time cannot occur due to events beyond either parent's control, such as illness, a mutually agreeable substituted date shall be arranged, as quickly as possible. Missed parenting time shall not be unreasonably accumulated.

**C. Mail and E-Mail Contact.** Parents and children generally shall have an unrestricted right to send cards, letters, packages, audio and video cassettes, and e-mail messages to each other. Neither parent should interfere with the other. A parent should provide a child with self-addressed stamped envelopes for the child's use in corresponding with that parent.

**D. Telephone Communication.** Telephone calls between parent and child should be liberally permitted at reasonable hours and at the expense of the calling parent. The residential parent may call the child at reasonable hours when the child is visiting the nonresidential parent. The child shall have the right, without restriction and without exception, to call either parent, at reasonable hours and frequencies, and at the cost of the parent called if it is a long distance call. During extended vacations the parent with whom the child is on vacation is only required to make the child available to telephone calls every five days. At all other times the parent the child is with shall not refuse to

answer the phone, turn off the phone or put on a call blocker in order to deny the other parent telephone contact. If a parent uses an answering machine, messages left on the machine for the child shall be returned promptly. Parents shall agree on a specified time for calls so that the child will be available.

**E. Privacy of Residence.** A parent may not enter the residence of the other, except by express invitation of the other parent, regardless of whether a parent retains a property interest in the residence. Unless otherwise agreed, the child shall be picked up and returned to the front entrance of the appropriate residence. The parent dropping the child off should not leave until the child is safely inside. Parents should refrain from surprise visits to the other parent's home.

#### **5.14 Transportation Responsibilities.**

Except in the case of long-distance parenting, transportation shall be shared equally. Unless otherwise agreed, for parents living in the same city the nonresidential parent shall pick up the child at the times specified from the residential parent to initiate parenting time. The residential parent shall pick up the child for return home at the times specified. The parent with the child shall have the child ready to be picked up at the time scheduled. The other parent shall be prompt in picking up the child. The parents shall communicate as early as possible regarding any delay, change or emergencies. For long-distance parenting, see Section 5.23-E.

#### **5.15 Parenting Plans.**

##### **A. Temporary Parenting Plan.**

1. Generally, the Court will enter a temporary parenting plan in any case in which temporary orders relating to child custody are authorized.

The temporary parenting plans shall provide for the following:

- (a) Designation of the temporary legal custody of the child;
  - (b) Designation of a temporary residence of the child;
  - (c) Allocation of parental rights and responsibilities regarding the child's health, education, and welfare;
  - (d) A schedule for the child's time with each parent, when appropriate.
2. A parent seeking a temporary order, in which matters of child custody, residency or parenting time are included, shall file a proposed temporary parenting plan contemporaneously with any request for issuance of such temporary orders.
3. If the parent who has not filed a proposed temporary parenting plan disputes the allocation of parenting responsibilities, residency, parenting time or other matters, that parent shall file and serve a responsive proposed temporary parenting plan.
4. Either parent may move to have a proposed temporary parenting plan entered as a part of a temporary order. The parents may enter an agreed temporary parenting plan at any time as part of a temporary order.

5. A parent may move for amendment of a temporary parenting plan, and the Court may order amendment to the temporary parenting plan, if the amendment is in the best interest of the child.

6. If the proceeding is dismissed, any temporary parenting plan is vacated.

7. A sample Proposed Parenting Plan is included as Appendix 2-2.

### **B. Permanent Parenting Plan.**

1. Although any parenting plan is always subject to the continuing jurisdiction of the court, a permanent parenting plan will generally be entered simultaneously with, or as a part of, the Decree dissolving the relationship or Journal Entry of Paternity.

2. A permanent parenting plan may consist of a general outline of how parental responsibilities and parenting time will be shared and may allow the parents to develop a more detailed agreement on an informal basis. However, a permanent parenting plan must set forth the following minimum provisions:

(a) Designation of the legal custodial relationship of the child;

(b) A schedule for the child's time with each parent, when appropriate; and

(c) A provision for a procedure by which disputes between the parents may be resolved without need for court intervention.

3. A detailed permanent parenting plan shall include those provisions required by subsection 2, and may include, but need not be limited to, provisions relating to:

(a) Residential schedule;

(b) Holiday, birthday and vacation planning;

(c) Weekends, including holidays and school in-service days preceding or following weekends;

(d) Allocation of parental rights and responsibilities regarding matters pertaining to the child's health, education and welfare;

(e) Sharing of and access to information regarding the child;

(f) Relocation of parents;

(g) Telephone access;

(h) Transportation; and

(i) Methods of resolving disputes.

4. The Court shall develop a permanent parenting plan, which may include detailed provisions as the Court deems appropriate, when requested by either parent or the parents are unable to develop a parenting plan.

### **5.16 Problem Solving and Dispute Resolution.**

A. When disagreements occur regarding the child, both parents shall make every effort to openly discuss options to resolve the disputes. If the disagreement cannot be resolved or if conflicts continue, parents shall enter into a dispute resolution process with the costs of the process shared equally between the parents, unless otherwise ordered by the Court, before either parent may file a motion or otherwise resort to court intervention. (See also Section 11)

B. The parties may agree on an appropriate form of post-decree dispute resolution. It may be difficult to anticipate the future needs of the children and/or the parties, and to specify the appropriate process in advance. Possible dispute resolution processes include, but are not limited to: mediation, conciliation, family therapy, co-parenting therapy, parenting classes, individual therapy, case management, and arbitration.

C. Absent an agreement to the contrary, the courts general policy will be to appoint a mediator or conciliator from a panel of Supreme Court approved domestic relations attorney-mediators or conciliators who shall:

(1) Meet with the parties;

(2) Identify the issues which are disputed;

(3) Reach an agreement if possible;

(4) In mediation, if an agreement is not reached, then the mediator shall identify and discuss with the parties the various resources, or processes, which are available. This would include discussion of the costs associated with any appropriate option and then assist the parties in selecting the most appropriate process.

(5) In conciliation, if an agreement is not reached, then the conciliator shall prepare a report to the court which shall include an identification of the issues, findings, and recommendations to the Court.

(6) Fees of the mediator or conciliator shall be divided equally between the parties unless otherwise ordered by the Court.

D. The Dispute Resolution component of any Permanent Parenting Plan may be satisfied by citation to Section 5.16 “Problem Solving and Dispute Resolution” of the Shawnee County Family Law Guidelines in any Separation Agreement, Decree, or other appropriate order.

### **5.17 Motions to Establish, Enforce or Modify Parenting Time.**

A. Parenting time is generally included in an initial Decree of Divorce or Journal Entry in paternity cases. If it was not adequately addressed in those documents, parties or counsel may file a motion to establish parenting time. A motion to enforce parenting time may be filed where an existing parenting plan is not being properly followed. A motion to modify parenting time may be filed when there is evidence of a material change in circumstances and a parent seeks to change the current parenting time arrangements in the best interests of the child. There is a filing fee for motions to establish or modify parenting time.



**B.** When private counsel files a parenting time motion they must send notice of the hearing to all parties concerned.

**C.** The Clerk of the District Courts office will furnish forms for motions to establish, enforce or modify parenting time to parties unrepresented by counsel. (See Appendices 8-4 through 8-6) Hearing dates for self-representive litigants motions will be set by the Clerk of the District Court on the next available docket. Notices of hearing will be sent by the Clerk to counsel of record and parties. Notices for self-representive litigants litigants will be sent to their last known addresses.

### **5.18 Special Circumstances.**

**A. Child Abuse.** When child abuse has been established and a continuing danger is shown to exist, the Court will generally cease all parenting time or allow it only under supervision, depending on the circumstances. Because allegations of child abuse can cause trauma to the child and damage relationships, the Court deals harshly with false allegations.

**B. Spousal Abuse.** Witnessing spousal abuse has long-term, emotionally detrimental effects on children. Furthermore, a person who loses control and acts impulsively with a spouse may be capable of doing so with children as well. Depending on the nature of the spousal abuse and when it occurred, the Court may require an abusive spouse to successfully complete appropriate counseling before commencement of unsupervised parenting time.

**C. Substance Abuse.** Alcohol or controlled substance abuse may result in a suspension or loss of parenting time or residential custody, or the imposition of supervised parenting time.

**D. Long Interruption of Contact.** In those situations where the nonresidential parent has voluntarily not had an ongoing relationship with the child for an extended period, parenting time shall commence gradually in order to give the child time to adjust to new environments and relationships.

**E. Kidnapping Threats.** When it has been established that a parent has kidnapped or hidden the child, or threatened to do so, physical residency or parenting time may be denied or supervised parenting time may be imposed.

**F. Denial or Interference with Parenting time.** Repeated unreasonable denial of or interference with parenting time may be considered a material change in circumstances which justifies a change in a prior order of custody, residency or parenting time.

**G. Failure to provide notice before moving.** The failure to provide timely notice of moving as required by law may be considered a material change in circumstances which justifies a change in a prior order of custody, residency or parenting time.

### **5.19 A Parent's New Relationship.**

Parents shall refrain from exposing a child to new relationships while the child is still adjusting to the trauma of the parents' separation and divorce.

The parents should understand that the court will expect them to be the ones communicating about the child and making decisions about the child. While third parties including significant others, boyfriends and girlfriends, fiancées, new husbands and wives, roommates and extended family members may be involved in the child's life, ultimately the parents together (unless the court ordered sole custody) are the decision makers. While others may be relied upon for advice and input, they have no legal role in the court case. Unless otherwise agreed to by the parties or ordered by the court, third parties should not be involved in exchanges involving the children or in interactions with the opposite parent.

#### **5.20 Religious and Cultural Issues.**

In keeping with a child's cultural and religious heritage, parents should cooperate with each other and respect the child's needs to be raised in each parent's respective faith, culture, and religious practices. Religious training should be left up to the parents. Because the First Amendment prohibits the Court from ordering anyone, including children, to any religious exercise, judges must remain neutral on choice of religion. When parents cannot agree, the Court may have to make a decision. Absent parental agreement, the Court will order that a child attend a public school, rather than a private or church-sponsored school, unless the Court finds that the child has special needs or there is an established history of attending a private school and it is not in the child's interests to change. Religious and cultural issues shall not be used to deprive the nonresidential parent of parenting time.

#### **5.21 Child's Preference Considered.**

An older child may express a preference as to the parent with whom the child wishes to reside, although the preference of a child is never determinative. The weight to be given to a child's preference will depend upon the child's age, maturity, intelligence and reasons the child can state for the preference.

Absent other objective factors, a child's preference to a change of residency is often insufficient to persuade the Court. If the Court is to give consideration to a child's preference on residency, the preference must be expressed clearly, be convincing and must have existed for some period of time. Evidence of coaching or alienation will be weighed against the parent engaged in these activities and appropriate sanctions may be ordered.

#### **5.22 Moving.**

Each parent shall consult with the other before committing to move. The best interest of the child is served by frequent contact with both parents. Good parenting may limit a parent's freedom of relocation during the minority of their child. The parent intending to move must give proper notice of *not less than 30 days* as required by K.S.A. 23-3222 by restricted, return-receipt requested mail. A move is normally considered a material change of circumstances, for which the Court may consider a change in primary residency.

Factors to be considered include, but are not limited, to:

1. The effect of the move on the best interests of the child.
2. The effect of the move on any party having rights - parenting time, visitation.
3. The increased cost the move will impose on any party seeking to exercise rights.

4. Valid reasons for the proposed move.
5. Expense and impact of increased travel on the child and parent.
6. The child's attachment to the residential parent and the damage that may be caused by removing the child from the primary caretaker.
7. The child's relationship with the nonresidential parent and the frequency of contact in the current arrangement.
8. Effect of the move on the child's access to the nonresidential parent.
9. Impact of changing schools, friends, and distance from relatives.

### **5.23 Long Distance Parenting.**

The Court holds the view that parents have a duty to the children to keep the amount of travel involved to a minimum whether it is local or long distance. Where there is significant geographical distance separating the parents, they should consider the following:

**A. Weekly Telephone Contact or Skyping.** A scheduled weekly telephone contact between the child and the absent parent shall be paid by the parent who moved. A child should have the right to call the nonresidential parent, collect, at any time. The parents can provide for videoconferencing.

**B. Nonresidential Parent Priority Weekends.** The nonresidential parent should have priority for those weekends when school vacation days, such as those for parent-teacher conferences, can afford a 3-4 day visitation period. Also, consideration will be given to permit the nonresidential parent to have more than half of holiday break time and all of spring break.

**C. Extended Summer Residency.** Summer residency shall be set with weeks added incrementally as the child matures. (See Section 5.11)

**D. Exchange of Information.** The parent with residency should send school records, school calendars, school photographs, activity schedules, report cards, standardized test results, etc. on a frequent basis to the other parent. The nonresidential parent shall have an equal obligation to independently obtain such information and records where feasible.

**E. Costs of Transportation.** The parent who moved from the jurisdiction will likely be charged the cost of transportation for long distance parenting time. The Court may consider the reasons for the move, the costs of parenting time, the parents' financial circumstances, and the historical frequency of parenting time before apportioning the expenses.

### **5.24 End of Summer Motions to Change Residency.**

Except in emergency situations, motions to change residency filed after July 15 will not be heard until after September 1. Last minute motions to change residency filed by nonresidential parents who have had the children for the summer will not be heard until after school starts. The children shall be returned home under the existing order for the fall semester of school, until further order of the Court.

### **5.25 Drug Screening.**

Upon order of the Court, the parties may be required to submit to random drug screens conducted by Court Services. Contested drug screens may be confirmed by additional testing, at a cost to the party requesting confirmation. A positive drug screen may result in, but not be limited to: (1) suspension of parenting time; (2) temporary change of residency and/or custody to the other parent or a third party with supervised parenting time; (3) further drug evaluation; and (4) continuing random UA screens by Court Services.

## **6.00 Child Support Guideline Clarifications.**

The Kansas Child Support Guidelines promulgated by the Kansas Supreme Court in Administrative Order No. 261 will be followed in Shawnee County District Court, with the following clarifications.

**K.S.A. 23-3001 requires the court to make provisions for the support and education of the minor children in any action under article 27 of chapter 23 of the Kansas Statutes Annotated, and amendments thereto. Any agreed order which includes an agreement by the parties that neither will pay child support to the other or where the child support of both parents is set to zero will require the parties to submit documentation and/or a child support worksheet which establishes that neither parent should pay child support.**

### **Calculating Support When Sharing Equal or Nearly Equal Time and Expenses**

#### **Sharing Equal or Nearly Equal Time and Expenses**

Use of this section is discretionary with the court. Parents who share the children's time equally or nearly equally may be eligible for one of the following: the Shared Expense Formula (see S.C. Administrative Order 261, Section III B.7.A. or the Equal Parenting Time formula S.C. Administrative Order 261, Section III B.7.b). Parents who share their children's time equally or nearly equally but do not want or are not able to agree to share direct expenses should consider using the Equal Parenting Time Formula (S.C. Administrative Order 261, Section III B.7.b).

#### **Shared Expense Formula**

Sharing expenses and using the Shared Expense Formula is an alternative method of paying expenses related to the children. Sharing expenses and using the Shared Expense Formula is complicated and requires parents to communicate and cooperate regularly. Sharing expenses and using the formula should only be attempted by parents who communicate well, who are highly cooperative co-parents, who have the ability and willingness to keep accurate records for the period of time necessary to raise their children, who will share the children's direct expenses in a timely manner, who have similar values and tastes, who have considered the current and future needs of their children carefully, and who are willing and able to resolve minor problems without the intervention of others.

**S.C. Administrative Order 261, Section III B.7.a Shared Expense Formula** shall not be ordered without the court having approved the following six requirements:

**S.C. Administrative Order 261, Section III B.7.a (1)(a) Equal parenting time.** A court must have made a determination that equal parenting time is in the best interests of the minor children. The children's time with each parent must be regular and equal or nearly equal rather than

equal based on a non-primary residency extended parenting time basis (i.e., summer visitation, holidays, etc.).

**S.C. Administrative Order 261, Section III B.7.a (1)(b) Agreed Detailed Plan.** The parties have executed a detailed written agreement to share the direct expenses of the children on an equal or nearly equal basis. Direct expenses include, but are not limited to, clothing and education expenses, but do not include food, transportation, housing, or utilities.

**S.C. Administrative Order 261, Section III B.7.a (1)(c) Unreimbursed Health Expenses-** Should continue to be shared in proportion to the parties' income. See worksheet LineD.2.

**S.C. Administrative Order 261, Section III B.7.a (1)(d) Direct expenses-** may be shared by dividing each expense or by offsetting expenses. Samples of different expense sharing plans are shown at Appendix X of the Kansas Child Support Guidelines. These are shown for illustration purposes only.

**S.C. Administrative Order 261, Section III B.7.a (1)(e) Worksheet.** The parties must present a child support worksheet using the shared expense formula.

**S.C. Administrative Order 261, Section III B.7.a (1)(f) Alternative dispute provision.** The parties' shared expense agreement must include an alternative dispute process for any disagreements the parents may have concerning the children's expenses.

**S.C. Administrative Order 261, Section III B.7.a (2) Sanctions.** Failure to share expenses pursuant to the expense sharing agreement or failure to abide by the time sharing agreement may result in termination of the use of the Shared Expense Formula or other appropriate Sanctions.

**S.C. Administrative Order 261, Section III B.7.a (3) Shared Expense Calculation.** The support is calculated using one worksheet. The amount of the lower adjusted subtotal (Line F.3) is subtracted from the higher adjusted subtotal and the difference is then multiplied by .50. The resulting amount is the child support the party having the higher obligation will pay to the party with the lower obligation. This amount is entered on Line F.4 of the child support worksheet for the parent with the higher adjusted subtotal on Line F.3.

**S.C. Administrative Order 261, Section III B.7.b Equal Parenting Time Formula**  
Applying the Equal Parenting Time Formula eliminates the need for parents to exchange receipts for the purpose of dividing their share of the direct expenses.

**The Equal Parenting Time Formula is discretionary with the court and may be used to set child support when the court determines that:**

- 1) A shared residential custody arrangement is in the best interest of the minor child,
- 2) The parents share the child's time equally or nearly equally, and
- 3) One or more of the following conditions apply:

- i.) the parties either do not agree to use the shared expense formula, or

ii.) applying the Shared Expense Formula would place the parent who would otherwise be designated to pay the direct expenses without sufficient funds to be responsible for all direct expenses, or

iii. applying the Shared Expense Formula is not in the best interests of the child for other reasons.

Appendix XI of the Kansas Child Support Guidelines provides a worksheet and an example.

*[Note: The Equal Parenting Time Formula replaces the Equal Parenting Time Adjustment (the 80/20 Rule) formerly found in Kansas Child Support Guidelines.]*

Unless otherwise ordered by the Court, if the Equal Parenting Time formula is used to set child support, the parent with the lower net child support obligation from Line F.6, (the parent receiving support), shall be responsible for all direct expenses.

**The Equal Parenting Time Formula calculation shall consist of three steps:**

**Step 1:** A child support worksheet shall be prepared. The amount of the lower adjusted subtotal on Line F.3 shall be subtracted from the higher adjusted subtotal on Line F.3. The resulting figure shall be divided by two and shall constitute the first portion.

Choose either Step 2.a. or 2.b. depending on whether the parents have a written agreement that they each provide clothing for the child in their own home.

**Step 2.a:** Absent a written agreement for each parent to provide the child's clothing in their own home, the Line D.3., child support obligation amount, will be multiplied by one of the following percentages:

- 13% if total combined monthly child support income on Line D.1. is equal to or less than \$4,690;
- 15% if total combined monthly child support income on Line D.1. is more than \$4,690 and less than \$8,125;
- 18% if total combined monthly child support income on Line D.1. is equal to or greater than \$8,125,

or;

**Step 2.b:** Parents have a written agreement to each provide clothing for the child in their own home, the Line D.3 child support obligation figure will be multiplied by one of the following percentages:

- 11% if total combined monthly child support income on Line D.1. is equal to or less than \$4,690;
- 13% if total combined monthly child support income on Line D.1. is more than \$4,690 and less than \$8,125;

- 16% if total combined monthly child support income on Line D.1. is equal to or greater than \$8,125,

or;

Choose either Step 3.a or 3.b. depending on which parent is designated to pay the direct expenses for the child.

**Step 3.a.** If the parent with the lower adjusted subtotal from Line F.3 of the child support worksheet (the parent receiving support) is responsible for paying all direct expenses of the child, the resulting figure from Step 1 shall be added to the resulting figure from either Step 2.a or Step 2.b. This result shall be the amount the higher income parent pays to the lower income parent before the child support enforcement fee is calculated. This amount is entered on Line F.4 of the child support worksheet. The Equal Parenting Time worksheet, or a worksheet in substantially the same form, shall be filed with the child support worksheet.

**Step 3.b.** If the parent with the higher adjusted subtotal from Line F.3 (the parent paying support) is responsible for purchasing paying all the direct expenses of the child, the resulting figure from either Step 2.a or Step 2.b shall be subtracted from the resulting figure from Step 1. This result, which shall not be less than zero, shall be the amount the higher income parent pays to the lower income parent before the child support enforcement fee is calculated. This amount is entered on Line F.4 of the child support worksheet. The Equal Parenting Time worksheet, or a worksheet in substantially the same form, shall be filed with the child support worksheet.

### **Parenting Time Adjustment (Line E.2)**

The court may allow a parenting time adjustment to a parent under the following subsections. The court may allow a parenting time adjustment in favor of the parent not having primary residency using either subsection IV.E.2.a or subsection IV.E.2.b but not both. The court may allow an Extended Parenting Time Adjustment pursuant to IV.E.2.c. The court may allow a Non-Exercise of Parenting Time adjustment to the parent having primary residency pursuant to IV.E.2.d.

The parenting time adjustment, like all other adjustments, is subject to the 10% rule pursuant to Section V.A. Because the adjustment is prospective and assumes that parenting time will occur, the court may consider the historical exercise or historical non-exercise of parenting time as a factor in denying, limiting, or granting an adjustment under this section. Adjustments under this section may be prorated over twelve months unless the parent having primary residency requests otherwise. If the Shared Expense Formula (Section III, General Instructions, subsection B.7) applies, no parenting time adjustment may be made under this section.

**IV.E.2.a. Actual Cost Adjustment:** The court may consider: 1) the fixed obligations of the parent having primary residency that are attributable to the child and any savings because of the time spent with the non-primary residency parent; and 2) the increased cost of additional parenting time to the parent having non-primary residency. The amount allowed should be entered on line E.2 of the child support worksheet.

**IV.E.2.b. Time Formula Adjustment:** The court may consider the amount of time that the parent spends with the child. If the child spends 35% or more of the child's time with the parent not having primary residency, the court shall determine whether an adjustment in child support is appropriate.



In calculating the parenting time adjustment, the child's time at school or in day care shall not be considered. To assist the court, the following table may be used to calculate the amount of parenting time adjustment. The adjustment percentage should be averaged if there is more than one child and if the percentages are not the same for each child. The Basic Child Support Obligation (line D.9) is then multiplied by the appropriate Parenting Time Adjustment Percentage using the following table. The Parenting Time Adjustment Percentage and the amount are entered on Line E.2.

Nonresidential Parent's Parenting Time	
% of Child's Time Adjustment	
35%-39%	-5%
40%-44%	-10%
45%-49%	-15%

**IV.E.2.c. Extended Parenting Time Adjustment:** In situations where a child spends fourteen (14) or more consecutive days with the parent not having primary residency, the support amount of the parent not having primary residency from Line F.5 (calculated without a Parenting Time adjustment) may be proportionately reduced by up to 50% of the monthly support from Line F.5. Brief parenting time with the parent having primary residency shall not be deemed to interrupt the consecutive nature of the time. The amount allowed should be entered on Line E.2.

**IV.E.2.d. Non-Exercise of Parenting Time Adjustment:** The court may make an adjustment based on the historical non-exercise of parenting time as set forth in the parenting plan. The amount allowed should be entered on line E.2 of the Child Support Worksheet.

## **6.1 Motions and Orders.**

**A. Motion to Modify Child Support.** The Motion to Modify Child Support (See Section 8) can be made whenever there is a material change in circumstances, usually an increase or decrease in the parties' incomes, a change in the child's age which puts him/her into the next child support worksheet bracket, a change in health insurance and/or daycare costs, or as otherwise described in the Kansas Child Support Guidelines. Failure to exchange financial information, including Mini Domestic Relations Affidavits, in a timely manner may result in the imposition of attorney's fees. The Court may make a modification of child support retroactive to a date at least thirty days after the date that the motion to modify child support was filed with the Clerk of the Court.

**B. Written Request for Financial Records.** If current financial information has not been previously exchanged, a written request should be sent to the opposing party or to opposing party's counsel who has not withdrawn. Current financial information includes a copy of the most recent pay check stub that shows the present wage and earnings to date, the W-2 and 1099 forms that show earnings for the preceding year, as well as current work-related child care costs and current costs for health, dental, vision and prescription insurance premiums that provide coverage for the child. The moving party should enclose the same financial information. If there is no counsel of record, the request should be sent by first class mail to the opposing party, and the Department of Children and Families (DCF) or its contracting agent for IV-D cases or the District Court Trustee for private cases. See Appendix 6-5.

**C. Subpoena Financial Records.** If there is no response to the written request for financial records within 14 days, the movant should file a Notice of Intent to Subpoena Business Records and cause a business records subpoena to be served, pursuant to K.S.A. 60-245a, upon the other party's employer to obtain current financial data and the W-2 form(s) for the preceding year. See Appendices 6-6 and 6-7.

**D. Prepare Child Support Worksheet and Proposed Order.** After receipt of current financial information, the moving party shall prepare a Child Support Worksheet and a proposed order modifying child support. Both documents should be sent to the opposing counsel or the opposing party with a cover letter requesting approval of the order. Any party seeking assessment of attorney's fees should send notice to the other party that failure to either approve the order or open good faith negotiations may necessitate a request for attorney fees if a hearing is required.

**E. Agreed Orders to Modify Support.** A Child Support Worksheet (Appendix 6-1), Mandatory Supplemental Orders (Appendix 6-2 or 6-3) and the Kansas Payment Center Form (Appendix 6-4) shall be attached to all Agreed Orders Modifying Support with necessary adjustments to show the amount ordered on line F.5 of the worksheet. This is important information in determining if a material change in circumstances has occurred when a subsequent modification is requested. A filing fee must accompany post decree motions to modify child support and agreed child support orders filed without motions.

**F. Temporary Child Support.** When calculating temporary child support using the Shawnee County Child Support Worksheet, no adjustment to Domestic Gross Income shall be made for temporary maintenance paid or temporary maintenance received on lines C.3 and C.4 of the Worksheet. See Section 4.01.

**G. Forms To be Attached To All Child Support Orders:**

1. Child Support Worksheet (See Appendix 6-1);
2. Mandatory Supplemental Orders (See Appendix 6-2 or 6-3);
3. Kansas Payment Center Form (See Appendix 6-4), unless there is an agreement for direct pay pursuant to K.S.A. 23-3103(j)(1) (See Appendix 6-3). This information should be included in the language of the order.
4. IRS Form 8332 if changes are made.
5. Shared Expenses form, if applicable (See Appendix 5-1).

**6.2 Self-representive litigants Procedure.**

**A. Child Support.** The Clerk of the District Court will furnish forms to parties. A completed Shawnee County Mini Domestic Relations Affidavit (See Appendix 8-3) together with supporting documents must be filed with the Clerk of the District Court with the Motion to Modify Child Support (See Appendix 8-2) or Motion to Establish Child Support (See Appendix 8-1). The Clerk of the District Court will then set the matter for hearing and mail a Notice of Hearing to the parties at their last known addresses. Except for good cause, only one self-representive litigants motion may be filed per year by any party.

**B. Uninsured Health Care Expenses.** The Clerk of the District Court will furnish forms to the parties for Motions to Enforce Payment of Uninsured Health Care Expenses (See Appendix 8-9). The Clerk of the District Court will then set the matter for hearing and will mail a Notice of Hearing to the parties at their last known addresses.

### **6.3 Income Sources.**

As a general rule, the calculations of child support obligations should include all sources of income. Child support calculations should include overtime and bonus income of the parents when such income sources were historically relied on by the family for support.

**A. Calculating Gross Income.** When calculating domestic gross income for a salaried person, the salary figure to be used is the current salary being paid. Income for the previous year should only be used when income fluctuates and it is necessary to approximate a current income figure. See Administrative Order No. 261.

**B. Parents' Income Greater Than Child Support Schedules.** Section III.B.3 of Administrative Order No. 261 provides a formula to calculate support when the total income is greater than the schedules. The use of this formula is discretionary. If the parties' combined earnings exceed the amounts shown on the child support schedules, the court encourages deposit of funds into trusts or joint signature accounts to accumulate funds to be used for the benefit of the child as the parties agree rather than large payments from one parent to the other. Examples of how these funds can be used are for college, purchase of automobiles, educational trips and other major expenses benefitting the child.

### **6.4 Level Child Support Payments.**

Child support covers a child's basic housing, food, clothing, and transportation. A regular periodic (monthly, weekly, bi-weekly or semi-monthly) child support obligation should be ordered as a general rule. Even with self-employed, sporadic or seasonal income, parents should pay a regular periodic child support obligation as it allows both parents to budget and it protects the best interests of the children with an enforceable, determinable judgment. Variable amounts of monthly child support should be avoided. A specific amount and due date should be set for all orders. (Prepayment of child support may be considered a gift). Any credits given for summer parenting time should be amortized over the entire year unless the parent having primary residency requests otherwise for summer credit. See Section 6.10.

### **6.5 Health Insurance and Uninsured Health Care Expenses.**

Every order for child support should also include provisions for the child's health insurance, whether provided by the parent or parents' household, and for proration of uninsured health care expenses based upon the parties' gross incomes after adding or subtracting maintenance. The order should state the fixed percentage to be paid by each parent. Uninsured health care expenses shall be shared pro rata as per line D.2 of the child support worksheet unless otherwise agreed and/or ordered.

Health care expenses include services rendered by licensed medical and osteopathic physicians, chiropractors, optometrists, podiatrists, dentists, mental health professionals and any services, prescription drugs, devices or therapy prescribed by them including orthodontia. Before incurring any uninsured health care expense that will render the other parent liable for more than \$250, the contracting parent should advise and consult with the other parent.

Within thirty (30) days after the insurance payment has been made, the parent contracting for medical services shall furnish to the other parent copies of statements that show the services rendered, the amount originally billed, the amount of insurance payment and the amount not covered by insurance. Any claims for reimbursement of uninsured health care expenses not submitted to the other parent within 6 months from the date the insurance payment was made will be presumptively disallowed. The reimbursement is due within thirty (30) days from the date the claims were presented unless otherwise agreed to by the parties.

Whenever possible, counsel are encouraged to prepare a qualified medical child support order (QMCSO) to ensure adequate health insurance coverage for minor children. QMCSOs are authorized by K.S.A. 23-3114(a), which states in part:

“Whether or not a medical child support order has previously been entered, the Court may enter a medical child support order requiring either parent to provide coverage under any health benefit plan available to the parent after consideration of the cost of coverage, including deductibles and co-payments, in relation to the overall financial circumstances.”

A QMCSO requires a group health insurance plan to provide medical coverage for the minor children of a parent who participates in the plan. A QMCSO can also require a group health insurance plan to provide coverage for the minor children, without any direction from the parent who participates in the plan. This is especially beneficial when the residential parent has no health insurance coverage, and the nonresidential parent refuses to cooperate in post-divorce matters involving medical and dental treatment for the minor children.

#### **6.6 Child Support Enforcement Fee.**

**A. Private Cases.** Private cases that are enforced by the District Court Trustee shall have a fee of 4.0%. The fee shall be shared by both parents. The amount shown on line F.3. of the Child Support Worksheet should be multiplied by 2.0%. This fee will be added on line F.4. to the total monthly support obligation. The monthly cap of \$40.00 or \$20.00 per parent will apply only to current support payments.

**B. IV-D Non-Public Assistance Cases.** IV-D Non-Public Assistance related cases that are enforced by the contracting agent of DCF may be assessed a 4.0% fee with no monthly cap. If this fee is assessed on the case, line F.3. of the Child Support Worksheet should be multiplied by 2.0%. This fee shall be collected by DCF.

**C. IV-D Public Assistance Cases.** IV-D Public Assistance cases which include food stamps, cash assistance, day care assistance or medical assistance shall pay no enforcement fee.

#### **6.7 Calculating Support When Divided Residency.**

Divided residency occurs when each parent has one or more children from the marriage primarily living in their household. When this occurs, a child support worksheet must be completed for each household. The child support schedule for the number of the parties' children in the household should be used to determine the basic child support obligation amount for that household. After determining each parent's obligation for the child or children living in the other parent's household, subtract the lower support obligation from the higher support obligation and attach both worksheets to the order. This is the amount of child support to be paid by the parent with the higher obligation. See Administrative Order No. 261.

## **6.8 Calculating Support When Shared Physical Residency.**

Before considering adjustment in child support for shared physical residency, the Court will examine the existing court order and determine if shared residency exists as defined in Guideline 5.03(B)2. A child support worksheet is prepared wherein the lower obligation is subtracted from the higher obligation and this number is then multiplied by 50% to arrive at the obligation to be paid. An adjustment for child support using the shared residency formula will only be addressed after the Court has reviewed the residency arrangement and is satisfied it is in the best interest of the child and has entered an order for shared residency along with a shared expense order. Cases where shared residency has not been ordered by the Court or shared residency cases that do not conform to the shared residency criteria as outlined in Guideline 5.03(B)2 will not be considered appropriate for a shared physical residency child support adjustment, but an adjustment using parenting time principles may be considered.

Equal time sharing does not relieve a parent from payment of child support unless there is also equal or nearly equal income and equal or nearly equal division of all expenses and responsibilities for caring for the children. See Administrative Order No. ~~180~~ ~~Section III.B.7~~ 261.

No adjustment for child support using the shared residency formula will be ordered unless the Court approves a plan for the paying and sharing of expenses by the parties. Failure to pay a party's respective share of the direct expenses may result in modification of child support or other sanctions.

## **6.9 Parenting Time Adjustment.**

The Court may allow a parenting time adjustment on child support for the nonresidential parent or for the residential parent. In determining whether an adjustment should be made, the Court shall consider:

1. The fixed obligations of the residential parent that is attributable to the child;
2. The amount of expense incurred by the nonresidential parent due to the increased parenting time;
3. The amount of time involved.

The Kansas Child Support Guidelines provide two separate formulas for calculating the Parenting Time Adjustment, as follows: (Note: Only one credit may be utilized at a time).

A. If the child spends 35% or more of the child's time with the nonresidential parent not including the child's time in school or day care. See Administrative Order 261.

B. When the child spends fourteen (14) or more consecutive days with the nonresidential parent (generally used for summer parenting time). See Administrative Order 261.

The Court will take into consideration the extent to which the nonresidential parent is contributing to the children's extracurricular activity expenses including, but not limited to, music lessons (including cost of instruments), sports (including entry fees, uniforms and equipment), camps, scouting, dance lessons (including travel and costumes), and school expenses including, but not limited to, books fees, yearbooks, senior pictures, junior/senior prom, and other similar expenses.

### **6.10 Credit for Summer Parenting Time.**

In the usual case, the Court will allow the nonresidential parent a credit of up to 50% of the monthly child support payment if the child spends fourteen (14) or more consecutive days with the nonresidential parent. In determining the amount of the adjustment, the Court will consider the actual costs to the nonresidential parent and the actual savings or benefit to the residential parent due to summer parenting time. Credit should be made on line 2, Section E of the Child Support Worksheet so that there will be level monthly payments of child support, and the credit is amortized over the year. See Administrative Order 261.

EXAMPLE: The nonresidential parent will have the children for two months in the summer. The Worksheet line 9 support is \$600 per month. A 50% credit would be \$300 per month X 2 months or \$600. (\$600 divided by 12 months = \$50). The nonresidential parent should receive \$50 per month credit on line 2, Section E of the Worksheet. The final child support order would be \$550 per month.

### **6.11 Income Tax Considerations.**

As a general rule, the parties should benefit equally from the dependency exemptions for their minor children. Absent some other arrangement, this can be accomplished by dividing the exemptions equally (each parent claims the same number of children each year or with three children, each parent would claim one child in each year and alternate the third), or alternating them from year to year. Before entry of a Decree of Divorce or Journal Entry of Paternity, if the nonresidential parent is to claim a dependent's exemption for a child, pursuant to either an order of the court or an agreement between the parties, the residential parent should execute IRS Form 8332. In the event the residential parent refuses to execute this form, an adjustment should be made on line E.3. of the Child Support Worksheet.

Parties should cooperate and maximize any potential tax savings that might be available if the exemptions for dependents are assigned creatively. For example, two income tax returns can be prepared for each party, one return with the exemptions and one without the exemptions. If it is determined one party will then receive a substantial refund, the parties could agree to divide the refund rather than alternate the years in which they will claim the exemptions. If the parties have greatly disparate incomes, they may each benefit if the party with the higher income claims all of the exemptions, and the other party receives one-half of the additional tax benefit in the form of a child support adjustment.

## **7.0 Assessment of Attorney's Fees**

### **7.1 General Policy.**

Generally, each party should be responsible for the payment of their own attorney's fees.

### **7.2 Presumption of Equal Fees for Each Party.**

Absent an obvious and demonstrated imbalance in the amount or nature of work performed by the parties' respective counsel, the attorney's fees will be presumed to be equal for each party.

### **7.3 Fees Imposed Due to Unreasonable Conduct.**

If the litigation of the case has been unnecessarily extended or made unduly difficult by the unreasonable conduct of either party or that party's counsel, the Court shall consider such conduct and may assess attorney's fees based on the same. The Court may assess all of the opposing party's attorney's fees or a portion thereof, based on the nature and extent of the unreasonable conduct at issue.

### **7.4 Presumptively Allowed Fees/Child Support Issues.**

If a party fails to respond to, or declines to agree with, a written request to approve a proposed order to modify child support made pursuant to Section 6.01(D), and the Court, after a hearing on the same, finds that the proposed order was based upon current, accurate income data and calculated in accordance with the Kansas Child Support Guidelines, as supplemented by these guidelines, he or she will be presumptively responsible for the moving party's attorney's fees in their entirety. Copies of the following should be presented to the Court at the hearing or within ten (10) days of the same:

- 1) a demand for payment of the fees incurred;
- 2) documents supporting the amount of fees incurred, including the time records of counsel, and
- 3) a proposed order.

### **7.5 Determining the Amount of Fees to be Assessed.**

If the Court determines that attorney's fees should be awarded, a request may be made of the Court to determine the reasonableness of the fees at issue. If such a request is made, the Court shall consider the following factors:

- 1) the documented time expended by counsel;
- 2) the novelty and difficulty of the issues involved in the matter;
- 3) any special skills or requisite learning necessary to properly perform the required legal services;
- 4) whether the case is of such a nature or magnitude that it would preclude counsel from accepting other employment;

- 5) the fee customarily charged in Shawnee County for similar legal services, including consideration of the attorney's overhead costs;
- 6) the value of the marital estate;
- 7) any unusual time limitations imposed by the circumstances of the case;
- 8) the nature and length of the attorney's professional relationship with the client;
- 9) the experience, reputation, and ability of the attorney performing the services; and
- 10) the efforts of counsel to minimize the costs and expenses in the case.

Generally, in assessing fees, the Court will not allow the simultaneous billing of attorneys within the same firm representing a single client. However, simultaneous billing will be permitted if the case requires the consultation of an attorney who specializes in a particular area such as taxation or pension.



## **8.0 Procedure Before the Administrative Hearing Officer.**

### **8.1 Administrative Hearing Officer's Jurisdiction.**

The Administrative Hearing Officer's jurisdiction is set forth in Supreme Court Rule No. 261 and also see DCR 3.401(8).

All IV-D post judgment proceedings involving modification and enforcement of child support fall within the jurisdiction of the Administrative Hearing Officer as do all IV-D paternity actions.

Residential placement, contempt, and Ross hearings must be set in the correct division before the District Court Judge.

The Plaintiff or movant shall be responsible for obtaining a hearing in a timely fashion and mailing a notice of hearing in all matters to be heard by a district court judge.

### **8.2 Adherence to Guidelines.**

The Administrative Hearing Officer will determine all IV-D motions to modify child support in accordance with the current Kansas Child Support Guidelines and the Shawnee County Family Law Guidelines.

### **8.3 Administrative Hearing Officer Procedure For Filing Motions.**

There is a filing fee for all IV-D motions to modify child support. The filing fee must accompany post decree motions and agreed orders filed without motions. Agreed orders on child support need to have a Child Support Worksheet (Appendix 6-1), Mandatory Supplemental Order (Appendices 6-2 and 6-3) and the Kansas Payment Center form (Appendix 6-4) attached.

Upon the filing of a Motion to Modify Support (Appendix 8-2), a Mini Domestic Relations Affidavit (Appendix 8-3) shall be filed by the moving party. The responding party shall file a Mini Domestic Relations Affidavit as soon as is practicable but no later than 5 days before the hearing. No hearing on the motion will be scheduled prior to the filing of the movant's DRA.

### **8.4 Obtaining A Hearing.**

Hearings before the Administrative Hearing Officer generally are expected to last about one-half hour. Any party anticipating a more lengthy hearing should advise the Administrative Hearing Officer's administrative assistant at the time the matter is set for a hearing.

All settings of hearings on matters filed by counsel shall be made by the Administrative Hearing Officer's administrative assistant. The telephone number is (785) 251-4651.

All self-representive litigants motions shall be set by the Clerk's Office on the next available docket. Any motion filed to enforce parenting time shall be set within 21 days.

### **8.5 Notice of Administrative Hearing Officer Hearings - Settlement Proposal.**

The moving party or counsel is expected to attempt to resolve all matters by making a specific offer of settlement or enter into good faith negotiations with opposing party or counsel prior to the scheduled hearing.

#### **8.6 Recording of Proceedings.**

A record is regularly taken in proceedings before the Administrative Hearing Officer. The record will consist of the Administrative Hearing Officer's findings, the order, the official record of the proceeding, and any exhibits admitted into evidence. If a party wishes to order a stenographic record of the proceedings before the Administrative Hearing Officer, arrangements should be made for a court reporter.

Requests for typed transcripts of the Administrative Hearing Officer hearing shall be made through the Clerk of the District Court along with prepayment of the estimated cost of transcribing. (Appendix 8-7) Payment in full of the actual cost must be made prior to the transcript being released.

#### **8.7 Judicial Review.**

Either party shall have fourteen (14) days from the filing of the Administrative Hearing Officer's Order to file a Motion for Judicial Review. A moving party or attorney shall send a copy of the Motion for Judicial Review to DCF, or its contracting agent for IV-D cases, or the District Court Trustee for private cases, to the Administrative Hearing Officer, and to the opposing party or party's attorney, and file the original Motion with the Clerk of the District Court. (Appendix 8-8)

A Motion for Judicial Review should be accompanied by a memorandum which sets forth the claimed error of the Administrative Hearing Officer. This memorandum is crucial because oral argument or re-hearing is denied, absent a statement showing good cause. A request for a typed transcript of the hearing and pre-payment of estimated cost of transcribing shall accompany the motion. Estimated costs can be found on the Notice of Judicial Review Procedure attached to the Administrative Hearing Officer's order. The process of requesting transcripts is currently being reviewed.

The district judge assigned to domestic matters will review the Administrative Hearing Officer's decision and may (1) affirm the decision by denying the appeal; (2) reverse the decision; (3) modify the decision; (4) grant oral argument; (5) grant a re-hearing; or (6) decide the issues based on the written summation. Evidence and issues not presented to the Administrative Hearing Officer will not be considered by the Court on judicial review.

The court will send notice to the parties of the district judge's decision or a hearing will be set on the Motion for Judicial Review.

## **9.00 Paternity.**

The issue of paternity per K.S.A. Chapter 23 may arise:

- a) When a mother seeks child support for a child born out of wedlock.
- b) When the State seeks current or back child support for a child born out of wedlock.
- c) In a divorce or post-divorce action when the presumed father or mother seeks to verify or challenge the paternity.
- d) When a man who was not married to the mother seeks a legal determination regarding his parentage of the child.

Counsel for the Petitioner shall be responsible for obtaining a hearing in a timely fashion and for mailing a notice of hearing to all mandatory parties.

## **9.1 Presumption.**

There is a presumption of paternity when:

- a) Parents are married at conception or birth of child.
- b) Child is born within 300 days of termination of marriage.
- c) Man is listed as father on child's birth certificate.
- d) There is an order of support by a Court or Administrative Tribunal.
- e) The man notoriously or in writing held himself out as the child's father.
- f) Genetic test result above 97% probability.
- g) After birth of child, man and mother marry or attempt to marry and
  - 1) Man has acknowledged the child in writing;
  - 2) Man consents to his name being placed on the birth certificate;
  - 3) Man has promised in writing to pay child support; or
  - 4) Man has been ordered by the Court or Administrative Tribunal to pay child support.

## **9.2 Who Can Bring An Action of Paternity.**

An action of paternity may be brought by the child or any person on behalf of the child.

An action may also be brought by the State of Kansas or its agencies.

## **9.3 Mandatory Parties to Paternity Action.**

The mandatory parties include the child, all presumed or alleged fathers and the mother.

#### **9.4 Procedure.**

An action can be filed in any county where mother, alleged or presumed father or child resides or is found.

A paternity action shall be brought within:

- 1) Three years after the child reaches majority if against alleged father.
- 2) If against presumed father the action can be brought at any time.
- 3) Age of majority if brought by the State.

Documents to be filed include Petition and Mini Domestic Relations Affidavit.

#### **9.5 When Genetic Testing Is Allowed.**

- a) Genetic testing is allowed when an alleged father requests and no presumed father exists.
- b) By a court order after a Best Interest (Ross) Hearing or at States request regarding alleged fathers.

**\*\*\*Note\*\*\***

Private genetic testing without prior court approval is not binding on the court, nor will presumption or orders automatically be set aside based on the test results.

#### **9.6 Best Interest (Ross) Hearing.**

A best interest hearing may be ordered by the court anytime there is a presumed father whose paternity is challenged. The hearing before the District Court Judge shall determine if it is in the child's best interest to have the presumption of paternity set aside. The court will consider the following :

- a) If there is an established relationship between presumed father and the child.
- b) If there are compelling medical needs of the child.
- c) Physical, mental or emotional needs of the child.
- d) The motives of who is challenging the paternity.
- e) Are there relationships with other siblings.
- f) Any harm to child.
- g) Parties' wishes.

#### **9.7 Orders.**

With the paternity finding, the Court will address the issues of child support, custody and parenting time using the Shawnee County Guidelines, and will assess any fees and costs.

The Journal Entry shall be prepared as directed by the Court to include the Child Support Worksheet, Mandatory Supplement Orders, Custody and Parenting Time Order, Parenting Plan, Shared Expense Order and, if required, the Kansas Payment Center Form.

Any contested issue dealing with custody and/or residential placement shall be heard by the District Court Judge.

## **10.0 Emergency Divorces.**

### **10.1 General Policy.**

Emergency divorces are generally disfavored.

### **10.2 Requests to Waive the 60 Day Waiting Period.**

Motions or pleadings requesting a waiver of the 60 day waiting period filed pursuant to K.S.A. 23-2708 shall include the following:

- 1) a statement of the precise nature of the emergency requiring a waiver of the 60 day waiting period; and
- 2) a statement detailing the substance of any evidentiary material demonstrating the alleged emergency circumstances, including the names of all witnesses as to the same.

### **10.3 Factors Court Will Consider.**

In deciding requests filed pursuant to K.S.A. 23-2708 the Court will consider the following non-exclusive list of factors:

- 1) the special adverse consequences, including economic consequences, of complying with the 60 day waiting period as compared to the adverse consequences generally suffered by all divorcing couples;
- 2) the length and/or frequency of separation of the parties during the previous 24 months, if any;
- 3) whether or not there are minor children and how they would be affected by the waiver of the 60 day waiting period;
- 4) the nature and duration of any marriage counseling or therapy process undertaken by the parties;
- 5) whether or not there is a threat of injury or obvious potential for abuse;
- 6) whether or not both parties have been represented by legal counsel;
- 7) the nature and extent of the marital estate and whether or not there is a separation and property settlement agreement; and
- 8) the steps taken to ensure full disclosure of the marital property and valuation of the same.

Generally, documentation from a counselor, a therapist or other mental health professional citing the stress and anxiety created by an impending divorce will not be considered a sufficient basis for the waiver of the 60 day waiting period absent other factors such as those listed above.

### **10.4 Time to Answer.**

Unless agreed to by the parties, a request filed pursuant to K.S.A. 23-2708 shall not be heard by the Court prior to the time permitted for the filing of an answer.

### **10.5 Notice of Hearing.**

Unless waived, notice of a hearing on a K.S.A. 23-2708 request shall be given to all parties not in default not less than seven days prior to the date of the hearing.

## **11.0 Domestic Social Services.**

### **11.1 Separation/Divorce Seminar for Parents.**

DCR 3.401 requires all parties having minor children to attend the Divorceworks Seminar (or an approved equivalent). This seminar consists of an educational session on the effects of divorce on children and co-parenting issues after the divorce. Counsel should advise clients in cases with minor children that they must attend this seminar within 4 weeks from the date on which the petition for divorce is filed. The Court may not approve a journal entry finalizing a divorce until the parties have attended this seminar, or may not grant relief in a post-divorce dispute to a party who has not attended the seminar. Counseling is usually not viewed as a substitute for the seminar.

### **11.2 Court Services.**

**A. Services Provided.** Services provided by the Third Judicial District Department of Court Services pursuant to K.S.A. 23-2707 and K.S.A. 23-3210 on domestic cases referred by the Court are set forth below. It has been voted and approved by the District Court judges that Court Services be allowed to charge a \$25.00 fee for conciliation and a \$150.00 annual fee for case management.

1. Conciliation. Court ordered conciliation is an attempt to resolve the parties' differences in an informal setting with the assistance of a neutral Court Services Officer and to persuade them to reach an agreement. Unlike mediation (see K.S.A. 23-3501), which is a confidential process, conciliation is an open process. The parties' agreement, or lack thereof, will be communicated to the court and counsel. This report will be prepared and contain an evaluation of the dispute and may include a recommendation. Court Services does not undertake to resolve issues concerning property or debt distribution. The attorney responsible for preparing the conciliation order should submit a copy of that order to Court Services. See Appendices 11-1 and 11-2 for the Motion and Order for Conciliation.

2. Home Studies. Court Services will only conduct home studies in a limited number of cases. Before issuing an order for a home study by Court Services, the Court will examine the necessity for the study and the financial resources of the parties. Whenever possible, the parties should retain the services of an independent professional to perform home studies and custody evaluations. While home studies are for the use of court and counsel only, a party may file a motion to see the home study report. Information derived from children's interviews will be submitted to the Court under a separate cover from the main body of the report, if Court Services believes that information derived from these interviews could be of an inflammatory nature or could place the child at risk. The Court may decide to disseminate this information to counsel by means other than furnishing a copy of the report to protect the child.

### **11.3 Court Ordered Referrals to Private Providers.**

The following services are provided by the private sector and may be ordered by the Court on its own motion or the motion of either party. The cost of these services will be assessed against the parties by court order. The Court will make all reports available to counsel. Reports are not to be given to the parties, except on approval of the Court.

#### **A. Counseling (K.S.A. 23-2710, as amended).**

The Court, on the motion of either party, may require the parties to participate in marriage counseling. The purpose of this court ordered counseling is to assist the parties in understanding their circumstances and minimizing the stress and trauma of the divorce proceeding. Although usually termed "marriage counseling," the purpose of this referral will not necessarily be to focus on reconciliation, unless so directed by the parties. The usual court order will compel both parties to attend at least three sessions with an approved therapist and up to six sessions if the therapist advises that:

1. The parties and/or their children will benefit from further counseling regarding the separation and the divorce process; or,
2. There are prospects for reconciliation.

#### **B. Family Counseling (K.S.A. 23-3510).**

The Court may at any time require the parties and any minor children to be interviewed and counseled to facilitate resolution of disputes over co-parenting during the separation and post divorce. The duration of family counseling is open-ended and would depend upon the circumstances and the professional opinion rendered.

#### **C. Custody, Residency and/or Parenting Time Assessment (K.S.A. 23-3210)**

1. The case will be referred to a professional for investigation and evaluation of the personal circumstances of the children, the parents, and the home environment provided the child when there are serious disputes over the parenting ability or the environment. The assessment may include a recommendation to the Court on contested custody, residency and/or assessment issues.
2. When there are allegations of child abuse, the Court will endeavor to obtain a stipulation of the parties to the appointment of a single expert to both evaluate and treat the alleged victim and to minimize the expense and intrusion upon the child. If this process is to be successful, counsel should contact the Court before making contact with a mental health professional in the community to avoid "poisoning the well" and limiting the Court's alternatives for a neutral referral.

#### **D. Mediation.**

Mediation is a confidential process in which a neutral third party assists the parties in resolving their disputes and/or in planning their agreements. Unlike a judge or an arbitrator, the mediator has no authority to impose a solution.

#### **E. Conciliation.**

Court ordered conciliation is an attempt to resolve the parties' differences in an informal setting with the assistance of a neutral conciliator and to persuade them to reach an agreement. Unlike mediation (see K.S.A. 23-3501), which is a confidential process, conciliation is an open process. The parties' agreement, or lack thereof, will be communicated to the court and counsel. This report will be prepared and contain an evaluation of the dispute and may include a recommendation. The attorney responsible for preparing the conciliation order should submit a copy of that order to the conciliator. (See Appendices 11-1 and 11-2 for the Motion and Order for Conciliation.)

#### **F. Special Master (K.S.A. 60-252, *et seq.*)**

1. A Special Master may be appointed by the Court to make recommendations for findings of fact and for disposition of the case. Unless the parties have stipulated, the Special Master recommendations will be subject to approval of the Court.
2. The Special Master should make a record sufficient to permit the Court to fully review the proposed findings and conclusions.
3. The Special Master will be paid by the parties, the fee to be apportioned by the Court.

### **G. Supervised Parenting Time Program**

Families referred to supervised parenting time program need a safe and neutral environment so that parental contact may be implemented or sustained. The mission of the program is to encourage positive parent-child contact. Therefore, two services are provided, supervised visitation (parenting time) and monitored exchanges. Supervised parenting time is direct supervision of the parent-child contact and communication at the designated location. A monitored exchange is the direct supervision of the child(ren) as they are exchanged at staggered times between the residential parent and the parent exercising parenting time.

Any party may petition the court to require that the exchange or transfer of the child for parenting time take place at a child exchange or visitation center.

**H. Case Management.** Case management is the process by which the Court refers a case to private case manager for supervision and management. Case management is specifically designed for chronic cases in which there has been repeated and protracted litigation. The family members can contact the case manager directly. Case management is not a confidential process and the Court and counsel may be furnished reports and recommendations prior to court hearings. The parties may not file motions without first putting the issue before the case manager. Recommendations of the case manager become orders of the court within ten (10) days if no written objection is filed.

(1) (A) Be currently licensed in Kansas as a licensed psychologist, licensed masters level psychologist, licensed clinical psychotherapist, licensed professional counselor, licensed clinical professional counselor, licensed marriage and family therapist, licensed clinical marriage and family therapist, licensed master social worker or licensed specialist social worker;

(B) be currently licensed to practice law in Kansas and have at least five years of experience in the field of domestic relations law or family law.

### **11.4 Court Appointed Representation for Children.**

**A. Guardian Ad Litem and Attorneys.** Either a guardian ad litem or an attorney may be appointed to represent the child's interest on motion of either party or on the Court's own motion. The fees of either the guardian ad litem or the attorney will be assessed against the parties as costs, or in case of indigent parties, the costs will be assessed to the County.

**B. Court Appointed Special Advocate (CASA).** A CASA may be appointed for a child if the Court determines that a CASA would be of assistance to the Court or benefit to the child of divorcing parents. CASA volunteers will be appointed pursuant to existing court guidelines.



## **12.0 Protection from Abuse (PFA) and Protection from Stalking (PFS) Cases.**

### **12.1 General.**

The Protection From Abuse Act is found at K.S.A. 60-3101 and following. The Protection from Stalking Act is found at K.S.A. 60-31a01 and following.

Many people who file a Petition or Counter-Petition for these causes of action do not have an attorney. A person represented by an attorney can rely on his/her attorney to know the law. However, anyone who appears as an unrepresented Plaintiff or Defendant is also responsible for knowing the law. The Judge cannot give legal advice because that would violate the Judges duty to remain neutral. The bottom line is that if you represent yourself, you need to be prepared for court. At the very least, READ THE STATUTES.

Unless an Emergency Order is issued, the case will initially be set for a PFA/PFS docket. Both parties must appear at this docket. At the PFA/PFS docket the case may be continued to a future date in which case the court may consider whether temporary orders should be extended or entered. Cases which are not continued will be settled, dismissed or heard and decided on the evidence presented. The parties should attend the PFA/PFS docket ready to try the case. If the Plaintiff does not appear at the PFA/PFS docket, the case will be dismissed. If the Defendant does not appear, the matter will be considered uncontested. The court can issue final orders effective for up to one year and the order can be renewed for additional time provided the Plaintiff files a timely motion requesting an extension.

### **12.2 Procedure.**

These are very important actions. Make sure the paperwork you file with the Clerk of the Court or the Judge is complete and accurate.

**BOTH ACTS REQUIRE THE PETITION TO BE VERIFIED.** That means the Plaintiff must swear or affirm under penalty of perjury that the petition is complete and accurate. Occasionally, a person helps a party complete these forms. It is important to remember that non-lawyers cannot give legal advice. It is the party's responsibility to ensure that the paperwork is in proper form because it is the party who will be signing it under oath.

All pleadings that ask the Court to issue any order should be filed with the Clerk of the District Court before they are presented to the Judge for consideration. Therefore, the Petition or Counter Petition should be completed, verified, and filed before the Judge sees them. If the Court approves an order by signing it, the order should be filed immediately with the Clerk of the District Court.

File-stamped copies of the Petition or Counter Petition should then be delivered immediately upon completion to a Judge.

**IF THERE IS AN EMERGENCY** and a party seeks **IMMEDIATE RELIEF**, the party seeking relief in the form of a Temporary Restraining Order, Temporary Custody Order, etc. should hand deliver the Petition or Counter Petition to a Judge and wait until that Judge is available to address it. That way, if the Judge has any questions, those questions can be asked immediately. Problems with the

Petition, in form or substance, can be addressed on the spot, without requiring the Plaintiff to be located. Appropriate orders can then be processed speedily.

A party cannot just drop file-stamped copies of pleadings off in a Judges chamber and expect that the Judge will assume there is an emergency. Every case is not an emergency. (Sometimes weeks or months have gone by since occurrence of the alleged incidents giving rise to the petition.) Further, if there is a problem with the pleading, the Judge cannot fix it for a party. That may mean the Judge cannot issue an order.

Unless an Emergency Order is issued, the case initially will be set for a Temporary Orders Docket, whether or not immediate orders are signed. Both parties must appear at this docket. The Judge will decide at that docket whether Temporary Orders should be issued or continued.

At the Temporary Orders Docket, the case will be settled, set for trial or dismissed. Both parties must appear at the trial. If the Plaintiff does not appear at trial, the case will be dismissed. If the Defendant does not appear at trial, the Petition will be considered uncontested. Final orders can be granted for up to one year and can be renewed for up to one more year.

### **12.3 Child Custody, Residency and Support Matters in PFA/PSA cases.**

It is possible for the Court to address issues of custody, residency and child support in these actions, however these matters are more appropriately addressed in divorce or paternity cases. Remember, Orders pursuant to the PSA and PFA may be granted for any time period. If appropriate, the Court may issue orders intended to remain in effect only until a divorce or paternity action is filed. Actions for Prevention of Abuse or Stalking should NEVER be considered as a substitute for a divorce or paternity action.

### **12.4 Misuse of the Acts.**

Occasionally, someone will file false or frivolous petitions or counter petitions pursuant to these Acts. If that happens, the Court has the authority to impose sanctions, including but not limited to, assessment of attorney fees.

### **12.5 Emergency Relief - Available only in PFA Cases (Not Stalking Cases).**

If an Emergency Order is issued on a weekend or court holiday for a Protection from Abuse case, the Plaintiff (or Counter Plaintiff) **must** get a Temporary Order the very next day Court is in session. This is very important because **Emergency Orders automatically terminate at 5:00 p.m. on the first day when the Court resumes Court business.**

### **12.6 Use the Forms.**

The appropriate forms can be found online at <http://www.kscourts.org/council/index.htm>. The whole procedure goes more smoothly if all persons who process these cases see forms with which they are familiar. This applies to Clerks, Judges, and law enforcement, to name a few.

## **TABLE OF APPENDICES**

- 1-1 Domestic Relations Affidavit
- 1-2 Supplemental Factual Statement
- 1-3 Uncontested Hearing Checklist
- 2-1 Motion for Temporary Orders
- 2-2 Proposed Parenting Plan
- 2-3 Temporary Restraining Orders
- 2-4 Temporary Child Custody and Support Orders
- 4-1 Worksheet T - Temporary Maintenance
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- 11-1 Motion for Conciliation
- 11-2 Order for Conciliation

IN DISTRICT COURT OF  
\_\_\_\_\_ COUNTY, KANSAS  
DIVISION \_\_\_\_\_

In the Matter of:

\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_ and \_\_\_\_\_) Case No.: \_\_\_D \_\_\_  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)

DOMESTIC RELATIONS AFFIDAVIT

DOMESTIC RELATIONS AFFIDAVIT OF \_\_\_\_\_  
(Full Name)

1. PETITIONER'S Residence \_\_\_\_\_  
(Complete Address)

PETITIONER'S Information \_\_\_\_\_  
Month/day/ Year of Birth Social Security Number Telephone #'s  
Education \_\_\_\_\_ Race \_\_\_\_\_

2. RESPONDENT'S Residence \_\_\_\_\_  
(Complete Address)

RESPONDENT'S Information \_\_\_\_\_  
Month /day/ Year of Birth Social Security Number Telephone #'s  
Education \_\_\_\_\_ Race \_\_\_\_\_

3. Wife's Maiden Name \_\_\_\_\_

4. Date of Marriage: \_\_\_\_\_ Place of Marriage \_\_\_\_\_

Date of Separation: \_\_\_\_\_

5. Number of Marriages: \_\_\_\_\_  
Petitioner Respondent

6. Number of children of this marriage or relationship: \_\_\_\_\_

7. Names, Social Security Numbers (last 4 digits only), the month and year of each child's birth, and ages of minor children of the relationship:

<u>Name</u>	<u>Social Security Number</u>	<u>Month/Year Birth</u>	<u>Age</u>	<u>Custodian</u>
_____	<u>XXX-XX-</u> _____	_____	_____	_____
_____	<u>XXX-XX-</u> _____	_____	_____	_____
_____	<u>XXX-XX-</u> _____	_____	_____	_____

8. Names, Social Security Numbers (last 4 digits only), and ages of minor children of previous relationships and facts as to custody and support payments paid or received, if any.

<u>Name</u> <u>Paid</u>	<u>Social</u> <u>Security Number</u>	<u>Age</u>	<u>Custodian</u>	<u>Support</u> <u>Paymentor Rec'd</u>
_____	<u>XXX-XX-</u> _____	_____	_____	\$ _____
_____	<u>XXX-XX-</u> _____	_____	_____	\$ _____
_____	<u>XXX-XX-</u> _____	_____	_____	\$ _____
_____	<u>XXX-XX-</u> _____	_____	_____	\$ _____

9. PETITIONER is employed by \_\_\_\_\_  
 \_\_\_\_\_  
 (Name and complete address of employer and telephone number)

RESPONDENT is employed by \_\_\_\_\_  
 \_\_\_\_\_  
 (Name and complete address of employer and telephone number)

With monthly income as follows:

A. Wage Earner	PETITIONER	RESPONDENT
1. Gross Income	\$ _____	\$ _____
2. Other Income	\$ _____	\$ _____
3. Subtotal Gross Income	\$ _____	\$ _____
4. Federal Withholding: (Claiming _____ exemptions)	\$ _____	\$ _____
5. Social Security Tax	\$ _____	\$ _____
6. Medicare Tax &/or OASDHI	\$ _____	\$ _____
7. Kansas Withholding	\$ _____	\$ _____
8. Subtotal Deductions	\$ _____	\$ _____
9. Net Income (Line A.3. minus Line A.8.)	\$ _____	\$ _____

B. Self-Employed	PETITIONER	RESPONDENT
1. Gross Income from Self-Employment	\$ _____	\$ _____
2. Other Income	\$ _____	\$ _____
3. Subtotal Gross Income	\$ _____	\$ _____
4. Reasonable Business Expenses (Itemize on attached exhibit)	\$ _____	\$ _____
5. Self-Employment Tax	\$ _____	\$ _____
6. Estimated Tax Payments (Claiming _____ exemptions)	\$ _____	\$ _____
7. Federal Income Withholding	\$ _____	\$ _____
8. Kansas Withholding	\$ _____	\$ _____
9. Subtotal Deductions	\$ _____	\$ _____
10. Net Income (Line B.3 minus Line B.9)	\$ _____	\$ _____

Pay period \_\_\_\_\_  
 \_\_\_\_\_  
 PETITIONER RESPONDENT

10. The liquid assets of the parties are:

Item	Amount	Joint or Individual (Specify)
A. Checking Accounts (Do not list account numbers):		
_____	\$ _____	_____
_____	\$ _____	_____
B. Savings Accounts (Do not list account numbers):		
_____	\$ _____	_____
_____	\$ _____	_____
C. Cash on Hand:		
Petitioner:	\$ _____	_____
Respondent:	\$ _____	_____
D. Other:		
_____	\$ _____	_____
_____	\$ _____	_____

11. The monthly expenses of each party are: (Please indicate with an asterisk \* all figures which are estimates rather than actual figures taken from records.)

<u>Living Expenses:</u>	<u>PETITIONER</u> (Actual or Estimated)	<u>RESPONDENT</u> (Actual or Estimated)
1. Rent (if applicable) * See below	\$	\$
2. Food	\$	\$
3. Utilities:		
Trash service	\$	\$
Newspaper	\$	\$
Telephone	\$	\$
Mobile Phone	\$	\$
Cable	\$	\$
Gas	\$	\$
Lights	\$	\$
Water	\$	\$
Internet	\$	\$
Other: _____	\$	\$
4. Insurance:		
Life	\$	\$
Health	\$	\$
Vehicle	\$	\$
House/Rental	\$	\$
Other _____	\$	\$
5. Medical and dental	\$	\$
6. Prescription drugs	\$	\$
7. Child care (work related)	\$	\$
8. Child care (non-work related)	\$	\$
9. Clothing	\$	\$
10. School expenses	\$	\$
11. Hair cuts and beauty	\$	\$
12. Car repair	\$	\$
13. Gas and oil	\$	\$
14. Personal property tax	\$	\$

Living Expenses:

PETITIONER  
(Actual or Estimated)

RESPONDENT  
(Actual or Estimated)

15. Miscellaneous (Specify)

_____	\$	\$
_____	\$	\$
_____	\$	\$
_____	\$	\$

16. Debt Payments (Specify)

_____	\$	\$
_____	\$	\$
_____	\$	\$
_____	\$	\$

TOTAL \$ \$

(\* Show house payments, mortgage payments, etc., in Section 10.B.)

**B.** Monthly payments to banks, loan companies or on credit accounts: (Indicate actual or estimated monetary amount in each column, use an asterisk for secured.) **DO NOT LIST ANY PAYMENTS INCLUDED IN PART 10.A ABOVE.**

Creditor's Name	When Incurred	Amount of Payment	Date of Last Payment	Balance of Account	Responsibility	
					Petitioner	Respondent
_____		\$ _____		\$ _____	\$ _____	
_____		\$ _____		\$ _____	\$ _____	
_____		\$ _____		\$ _____	\$ _____	
_____		\$ _____		\$ _____	\$ _____	
_____		\$ _____		\$ _____	\$ _____	
_____		\$ _____		\$ _____	\$ _____	
_____		\$ _____		\$ _____	\$ _____	

Subtotal of Payments \$ \_\_\_\_\_ \$ \_\_\_\_\_

Total \$ \_\_\_\_\_ \$ \_\_\_\_\_

C. Total Living Expenses:

	Petitioner (Actual or Estimated)	Respondent (Actual or Estimated)
1. Total funds available to Mother and Father (from Number 8 above)	\$ _____	\$ _____
2. Total funds needed (from Number 10.A & B above)	\$ _____	\$ _____
3. Net Balance	\$ _____	\$ _____
4. Projected Child Support	\$ _____	\$ _____

D. Payments or contributions received, or paid, for support of others. Specify source and amount.

Source	Petitioner	Respondent
_____ (+/-)	\$ _____	\$ _____
_____ (+/-)	\$ _____	\$ _____
_____ (+/-)	\$ _____	\$ _____
_____ (+/-)	\$ _____	\$ _____

12. How much does the party who provides health care pay for family coverage?

\$ \_\_\_\_\_ per \_\_\_\_\_.

How much does it cost the provider to furnish health insurance only on the provider?

\$ \_\_\_\_\_ per \_\_\_\_\_.

**FURNISH THE FOLLOWING INFORMATION, IF APPLICABLE.**

13. Income and financial resources of children.

Income / Resources	Amount
_____	\$ _____
_____	\$ _____

14. Child support adjustments requested.

	Yes / No	Mother	Father
Long Distance Parenting Time Costs	_____	\$ _____	\$ _____
Parenting Time Adjustments	_____	\$ _____	\$ _____
Income Tax Considerations	_____	\$ _____	\$ _____
Special Needs	_____	\$ _____	\$ _____
Support Beyond Age of Majority	_____	\$ _____	\$ _____
Overall Financial Condition	_____	\$ _____	\$ _____

15. All other personal property including retirement benefits (including but not limited to qualified plans such as profit-sharing, pension, IRA, 401(K), or other savings-type employee benefits, non-qualified plans, and deferred income plans), and ownership thereof (Joint or Individual), including policies of insurance, identified as to nature or description, ownership (Joint or Individual), and actual or estimated value.

Plan Name (Specify)	Amount	Joint or Individual
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____

**THE FOLLOWING NEED NOT BE FURNISHED IN POST JUDGMENT PROCEDURES.**

16. List real property identified as to description, ownership (Joint or Individual) and actual or estimated value.

Property Description	Ownership	Actual / Estimated Value
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____



17. List all personal property as to description ownership (Joint or Individual) and estimated value.

a. Stocks, Bonds, Mutual Funds,  
And Other Marketable Securities:

_____	_____	_____	\$ _____	_____
_____	_____	_____	\$ _____	_____

b. Money Owed to You:

_____	_____	_____	\$ _____	_____
_____	_____	_____	\$ _____	_____

c. Life Insurance:

**Cash Value**

_____	_____	_____	\$ _____	_____
_____	_____	_____	\$ _____	_____

d. Automobiles and Motorcycles:

Make/Model/VIN#

**Fair  
Market Value**

_____	_____	_____	\$ _____	_____
_____	_____	_____	\$ _____	_____
_____	_____	_____	\$ _____	_____

e. Miscellaneous Personal Property:

Itemize contents of the home furnishings:

ITEM: ESTIMATE COST/METHOD OF PAYMENT WHEN PURCHASED

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Itemize household appliances:

ITEM: ESTIMATE COST/METHOD OF PAYMENT WHEN PURCHASED

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Itemize lawn care/farm equipment:

ITEM: ESTIMATE COST/METHOD OF PAYMENT WHEN PURCHASED

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Boats, Trailers or Campers:  
ITEM:

ESTIMATE COST/METHOD OF PAYMENT    WHEN PURCHASED

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Hand or Power Tools:  
ITEM:

ESTIMATE COST/METHOD OF PAYMENT    WHEN PURCHASED

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Jewelry:  
ITEM:

ESTIMATE COST/METHOD OF PAYMENT    WHEN PURCHASED

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Guns:  
ITEM:

ESTIMATE COST/METHOD OF PAYMENT    WHEN PURCHASED

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Camera Equipment:  
ITEM:

ESTIMATE COST/METHOD OF PAYMENT    WHEN PURCHASED

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Antiques:  
ITEM:

ESTIMATE COST/METHOD OF PAYMENT    WHEN PURCHASED

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

f. Personal Injury or Worker's  
Comp. Claims:

\_\_\_\_\_ \$ \_\_\_\_\_

18. Identify the property, if any, acquired by each of the parties prior to marriage or acquired during marriage by a Will or Inheritance.

Property Description	Source of Ownership	Actual / Estimated Value

19. Daycare Provider Info: \_\_\_\_\_

20. List debt obligations, including Maintenance, not listed in Section 10.A or 10.B above, identified as to name or names of obligor or obligors and obligees, balance due and rate at which payable; and if secured, identify the encumbered property.

Debt Obligation	Obligor	Obligee	Due	Balance Payment Rate	Encumbered Property

21. List health insurance coverage and the right, pursuant to ERISA §§ 601-608, 29 U.S.C. §§ 1161-1168 (1986), to continued coverage by the spouse who is not a member of the covered employee group.

Health Insurance	COBRA Continuation		
	Yes	No	Unknown

**VERIFICATION**

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF SHAWNEE    )

I swear or affirm under penalty of perjury that this Affidavit and attached schedules are true and complete.

\_\_\_\_\_  
Petitioner/Respondent

**SUBSCRIBED AND SWORN TO** before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Appointment Expires:

*Admin. Order #216, Rev. 11/16/2009  
Effective date January 1, 2010*

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION \_\_\_\_\_

(Caption) Case No. \_\_\_\_\_

**PETITIONERS/RESPONDENTS**

**SUPPLEMENTAL FACTUAL STATEMENT**

1. Names, year of birth and last 4 digits of Social Security numbers of both parties:

A.

B.

2. Names, ages and birth year of the minor children of the marriage:

3. Names and ages of the minor children of previous marriages and facts as to custody and support payments:

4. Parents and Divorce Seminar completed:

5. Documents exchanged:

6. Date of marriage or relationship:

Date of separation:

7. Discovery:

8. Income of the parties:

A. Petitioner's gross monthly income:

B. Employer's name and address:

C. Respondent's gross monthly income:

D. Employer's name and address:

9. Date of valuation:

10. Assets:

A. Personalty:

i. Checking Accounts:

ii. Savings Accounts and Certificates of Deposit:

iii. Cash on Hand:

Petitioner:

Respondent:

iv. Employer Retirement/Savings/Pension Plans (401K, Pensions, Profit Sharing, etc.):

v. Stocks, Bonds, Mutual Funds, and Other Marketable Securities:

vi. Money Owed to You:

vii. Life Insurance: Cash Value

viii. Automobiles and Motorcycles:

Make/Model/VIN# Fair Market Value

ix. Miscellaneous Personal Property:

Boats, Trailers or Campers:

Hand or Power Tools:

Jewelry:

Guns:

Camera Equipment:

Antiques:

Personal Injury or Worker's Compensation Claims:

x. All other Assets not Included Above:

Total: \$\_\_\_\_\_

B. Real Estate:

11. Debts and obligations:

12. Non-marital assets:

13. Attorney's fees:

14. Tax returns/refunds/liabilities:

15. Maintenance:

16. Custody, Residency and Parenting Time:

17. Child support:

18. Witnesses (other than parties, include name, address and telephone number):

19. Documents to be exchanged:

Submitted by

---

Attorney for Petitioner/Respondent

**ADDENDUM TO PETITIONERS/RESPONDENTS**  
**SUPPLEMENTAL FACTUAL STATEMENT**

ASSET/DEBT TO TO

WIFE HUSBAND

1. Checking accounts

\$0 Description \$ 0 \$ 0

\$0 Description \$ 0 \$ 0

2. Savings accounts & CD's

\$0 Description \$ 0 \$ 0

\$0 Description \$ 0 \$ 0

3. Cash on hand

\$ 0 Wife \$ 0 \$ 0

\$ 0 Husband \$ 0 \$ 0

4. Retirement, pension plans, etc.

\$0 Description \$ 0 \$ 0

\$0 Description \$ 0 \$ 0

5. Equity in real estate

\$ 0 residence

\$ 0 real estate commission

\$ 0 1st mortgage

\$ 0 2nd mortgage

\$ 0 equity \$ 0 \$ 0

6. Stocks, bonds, mutual funds

\$0 Description \$ 0 \$ 0

\$0 Description \$ 0 \$ 0

7. Money owed to parties

\$0 Description \$ 0 \$ 0

8. Life ins. w/cash surrender value

\$0 Description \$ 0 \$ 0

9. Motor vehicles (less loan balances)

\$0 Description \$ 0 \$ 0

10. Boats, trailers, campers

\$0 Description \$ 0 \$ 0

11. Hand & power tools

\$0 Description \$ 0 \$ 0

12. Jewelry

\$0 Description \$ 0 \$ 0

13. Guns

\$0 Description \$ 0 \$ 0

14. Camera equipment

\$0 Description \$ 0 \$ 0

15. Antiques

\$0 Description \$ 0 \$ 0

16. Household goods & furnishings

\$0 Description \$ 0 \$ 0

17. All other assets not included above

\$0 Description \$ 0 \$ 0

18. All other debts not included above

\$0 Description \$ 0 \$ 0

\$0 Description \$ 0 \$ 0

\$0 Description \$ 0 \$ 0

\$ 0 **NET WORTH** \$ 0 \$ 0

\$ 0 **TO WIFE**

\$ 0 **TO HUSBAND**

\$ 0 **TOTAL**

**(Certificate of Service)**



In the District Court of Shawnee County, Kansas

Division \_\_\_\_\_

In the Matter of the Marriage of:     )

) Case No. \_\_\_\_\_

)

**UNCONTESTED HEARING CHECKLIST**

The following checklist should be completed in all cases and presented to the Court at the time of the hearing.

\_\_\_\_\_ 1. \_\_\_\_\_ Summons return; \_\_\_\_\_ Entry of Appearance; \_\_\_\_\_ Publication Affidavit.

\_\_\_\_\_ 2. Complete Domestic Relations Affidavit; \_\_\_\_\_ Petitioner; \_\_\_\_\_ Respondent.

\_\_\_\_\_ 3. Child Support Worksheet complete.

\_\_\_\_\_ 4. Court Costs Paid - Will be paid by \_\_\_\_\_ (date).

\_\_\_\_\_ 5. Attendance Certificates Parents in Divorce Seminar:

\_\_\_\_\_ Petitioner; \_\_\_\_\_ Respondent.

\_\_\_\_\_ 6. Mandatory Supplemental Orders for Child Support per Court Rule are included or attached to journal entry.

\_\_\_\_\_ 7. Kansas Payment Center Form.

\_\_\_\_\_ 8. Provisions for health insurance and uninsured health care expenses included in the child support orders.

\_\_\_\_\_ 9. Typed Vital Statistics Form.

\_\_\_\_\_ 10. \_\_\_\_\_ Settlement Agreement; \_\_\_\_\_ Agreed Decree; \_\_\_\_\_ Default Decree.

\_\_\_\_\_ 11. Personal Property items have all been delivered.

\_\_\_\_\_ 12. Other documents: IRS Form 8332; Titles; Deeds; IV-D application.

\_\_\_\_\_ 13. Parenting Plan.

I certify the indicated items are completed and in the court file, available at hearing to exhibit and discuss with the Court or are incorporated into the proposed Journal Entry approved by counsel.

\_\_\_\_\_

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION \_\_\_\_\_

IN THE MATTER OF THE MARRIAGE OF:

\_\_\_\_\_

and

Case No. \_\_\_\_\_

\_\_\_\_\_

**MOTION FOR TEMPORARY ORDERS**

1. The applicant is the **(PETITIONER) (RESPONDENT)** in this action and moves the Court to issue temporary orders as follows:

\_\_\_\_\_ (a) issue a restraining order with regard to disposition of the property of the parties and provide for the use, occupancy, management and control of that property and also restrain the parties from molesting or interfering with the privacy or rights of each other;

\_\_\_\_\_ (b) provide for temporary custody, residency and support of the parties' minor child(ren);

\_\_\_\_\_ (c) provide for temporary maintenance of the applicant during the pendency of the action pursuant to Worksheet T attached.

2. A Parenting Plan is attached to this motion.

3. A completed Child Support Worksheet and Domestic Relations Affidavit are attached to this motion.

4. The adverse party is not known to be represented by counsel. (Notice to counsel should be excused because \_\_\_\_\_.)

**5. These proposed orders do not change the existing residence or de facto custody of the minor child(ren).**

6. These orders are necessary to provide for the parties' financial circumstances and the interests of their minor child(ren) during the pendency of this action.

\_\_\_\_\_

Applicant

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 200 .

\_\_\_\_\_

Notary Public

My Appointment Expires: \_\_\_\_\_

Prepared and approved by:

\_\_\_\_\_

Attorney for Petitioner/Respondent

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION \_\_\_\_\_

(Caption)

Case No. \_\_\_\_\_

**PROPOSED PARENTING PLAN**

\* Designation of the temporary legal custody of the child: Joint/ Sole

\* Designation of a temporary residence for the child:

with Petitioner at (address): \_\_\_\_\_

with Respondent at (address): \_\_\_\_\_

\* Allocation of parental rights and responsibilities regarding matters pertaining to the child's health, education and welfare:

Joint/Sole: with Petitioner/with Respondent

Other:

\* A schedule for the child's time with each parent (when appropriate):

Unsupervised parenting time. Proposed schedule: \_\_\_\_\_.

Supervised parenting time. Proposed schedule: \_\_\_\_\_.

No parenting time unless ordered by the Court. Specific reason for request that no parenting time be allowed: \_\_\_\_\_.

Other. Explain: \_\_\_\_\_.

\_\_\_\_\_  
Petitioner/Respondent

Date: \_\_\_\_\_

Submitted by: \_\_\_\_\_

Attorney for Petitioner/Respondent

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS**  
**DIVISION \_\_\_\_\_**

**CASE NO. \_\_\_\_\_**

**TEMPORARY RESTRAINING ORDER**

On motion of (Petitioner/Respondent), the Court enters the following restraining orders pursuant to K.S.A. 23-2707. These are temporary orders and may be modified upon application by either party. The parties are entitled to obtain counsel and the opportunity to present their views and evidence at a modification hearing or trial. The entry of this temporary order is not an indication of the Court's final decision on any issue.

- \_\_\_\_\_ 1. (a). Temporary Possession of the parties' residence is awarded to (Petitioner) (Respondent). (Petitioner) (Respondent) has already obtained another temporary residence,  
**OR**
- \_\_\_\_\_ 1. (b). Temporary possession of the parties' residence is awarded to (Petitioner) (Respondent). (Petitioner) (Respondent) has family, friends, or financial resources available to obtain a temporary residence and/or it is in the best interests of the parties for a physical separation to occur and for (Petitioner) (Respondent) to arrange to live elsewhere. (Petitioner) (Respondent) shall forthwith remove clothing and personal items in a reasonable manner and shall arrange to live elsewhere, pending further order of the court. If the party to be removed is not at the residence when this order is served, he/she shall be allowed access as soon as practicable to obtain clothing and personal items necessary for use on a temporary basis.
- \_\_\_\_\_ 2. The parties shall share use of their automobile(s) or obtain a court hearing if suitable agreement cannot be reached.
- \_\_\_\_\_ 3. Each party is restrained from selling, encumbering, or disposing of any of the parties' property, or otherwise placing it beyond the control of the court, including withdrawing funds from checking or savings accounts, cashing certificates of deposit, except for usual and necessary living expenses and payment of already existing installment indebtedness. The parties will maintain all their insurance policies (life, health/medical, auto) in their present status. This order applies to all property owned by either party, whether held jointly or individually.
- \_\_\_\_\_ 4. (a). The parties are restrained from interfering with the privacy, or bothering or hindering the other at their place of residence, employment, or wherever they may be found. Consensual non-violent contact is permitted, however, use of threatening language in person or by telephone, and any violent verbal or physical action is a direct violation of this order. If the parties have children, this order permits the parties to have contact as necessary to facilitate parenting time.  
**OR**
- \_\_\_\_\_ 4. (b). Based upon facts alleged in the accompanying motion, the parties are ordered to have no contact with each other. If the parties have children, exchanges of the children shall be arranged so that there is no contact between the parties.

**This order is binding upon service by court order until vacated or modified by written agreement of the parties. If this court order was issued without appearance in Court, the court will hear a Motion to Vacate or Modify the Order within 15 days of the date on which a party requests a hearing.**

THE PARTIES ARE HEREBY PUT ON NOTICE THAT VIOLATIONS OF THIS ORDER MAY CONSTITUTE VIOLATION OF A PROTECTIVE ORDER AS PROVIDED IN K.S.A. 21-3843. ADDITIONALLY, VIOLATION OF THIS ORDER MAY CONSTITUTE ASSULT AS PROVIDED IN K.S.A. 21-3408, AND AMENDMENTS THERETO, BATTERTY AS PROVIDED IN K.S.A. 32-3412, AND AMENDMENTS THERETO, DOMESTIC BATTERY AS PROVIDED IN K.S.A. 21-3412A, AND AMENDMENTS THERETO, AND MAY RESULT IN PROSECUTION AND CONVICTION UNDER KANSAS CRIMINAL STATUES.

IF POSSESSION OF THE RESIDENCE IS GRANTED TO ONE OF THE PARTIES, VIOLATION OF THIS ORDER BY THE OTHER PARTY MAY CONSTITUTE CRIMINAL TRESPASS PURSUANT TO K.S.A. 21-3721, AND AMENDMENTS THERETO, AND MAY RESULT IN PROSECUTION AND CONVICTION UNDER KANSAS CRIMINAL STATUTES. VIOLATION OF THIS ORDER MAY ALSO BE PUNISHABLE AS A CONTEMPT OF THIS COURT.

THIS PROTECTION ORDER MAY SUBJECT THE OFFENDING PARTY TO FEDERAL FIREARMS RESTRICTIONS, AND VIOLATION OF THIS ORDER MAY SUGJECT THE OFFENDER TO PROSECUTION FOR SUCH FEDERAL CRIMES, INCLUDING, BUT NO LIMITED TO: FIREARMS POSSESSIONS; INTERSTATE TRAVEL TO COMMIT DOMESTIC VIOLENCE; INTERSTATE STALKING; AND INTERSTATE VIOLATION OF A DOMESTIC VIOLENCE ORDER.

**Entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_\_, Kansas.**

\_\_\_\_\_  
**District Court Judge**

**Prepared By:**

\_\_\_\_\_  
**Attorney for Petitioner/Respondent**

**Address:** \_\_\_\_\_

\_\_\_\_\_  
**Telephone:** \_\_\_\_\_

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION \_\_\_\_\_

(Caption) Case No. \_\_\_\_\_

**TEMPORARY CHILD CUSTODY AND SUPPORT ORDERS**

Upon the motion of the **(PETITIONER) (RESPONDENT)**, the Child Support Worksheet and Domestic Relations Affidavit attached, the Court enters the following orders pursuant to K.S.A. 23-2707. These are temporary orders and may be modified upon application by either party. Each party is entitled to obtain counsel and the opportunity to present their views and evidence at a modification hearing or trial. The entry of this temporary order is not an indication of the Court's final decision on any issue in dispute.

1. The parties are directed to attend both parts of the Divorceworks Seminar **within 4 weeks** from the date of this order. Arrangements for the seminar can be made by calling 271-2385.

2. The parties shall have joint custody of their minor child(ren). Due to the separation, until further order of the Court, temporary residence of the child(ren) shall be with the **(PETITIONER) (RESPONDENT)** subject to the right of reasonable parenting time by the other parent. Any restraining order entered in this case is construed to permit reasonable access of the non-residential parent to exercise parenting time. This order does not authorize a law enforcement officer to remove children from the custody of either natural parent without a hearing. The parties shall maintain their present health insurance until further order of the Court.

3. **(PETITIONER)(RESPONDENT)** shall pay temporary child support to the other parent in the amount of \$\_\_\_\_\_per month beginning on\_\_\_\_\_, 20\_\_\_\_, and temporary maintenance to the **(PETITIONER) (RESPONDENT)** in the amount of \$\_\_\_\_\_per month beginning on\_\_\_\_\_, 20 . When temporary maintenance is ordered, each party shall be ordered to pay the indebtedness attributed to each respective party on the Worksheet T adopted by the Court.

**IT IS ORDERED BY THE COURT** that all child support and maintenance payments shall be made payable to the order of the Kansas Payment Center. Each party shall inform the Clerk of the District Court, Kansas Payment Center, **AND** DCF for IV-D cases or the District Court Trustee for private cases, in writing of any change of name, residence or employer (with business address) within seven (7) days after such change.

**IT IS FURTHER ORDERED BY THE COURT** that unless the Court makes findings in conformity with K.S.A. 23-4,107(j) income withholding from the Obligor's income shall take effect 20 days after service of this order to enforce the order of support granted herein. A temporary order of support may also be subject to enforcement by garnishment. The party ordered to pay has five (5) days after service of this order to request a hearing to contest the issuance of garnishment orders.

This order is binding upon service until vacated or modified by court order. Willful violation of a temporary order may subject the offending party to sanctions for contempt of court.

**IT IS SO ORDERED** on this      day of\_\_\_\_\_, 20      , at Topeka, Kansas.

\_\_\_\_\_  
District Judge

\_\_\_\_\_  
Attorney for Petitioner/Respondent

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION \_\_\_\_\_

(Caption) Case No. \_\_\_\_\_

**WORKSHEET T - TEMPORARY MAINTENANCE**

Monthly payments to creditors (exclude house payments)

**Petitioner Respondent**

_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

1. Total Payments to creditors. \$ \_\_\_\_\_ + \$ \_\_\_\_\_ = \$ \_\_\_\_\_

2. Parties' shelter expense (total house payment or rent for each party) \$ \_\_\_\_\_ + \$ \_\_\_\_\_ = \$ \_\_\_\_\_

3. Parents' total child support obligation (line 7 Child Support Worksheet) \$ \_\_\_\_\_ + \$ \_\_\_\_\_ = \$ \_\_\_\_\_

4. Total Fixed Obligations \$ \_\_\_\_\_ + \$ \_\_\_\_\_ = \$ \_\_\_\_\_

5. Combined Net Income of parties \$ \_\_\_\_\_ + \$ \_\_\_\_\_ = \$ \_\_\_\_\_

6. Amount available for parties' variable expenses (line 5 total minus line 4) \$ \_\_\_\_\_

7. Allocation for variable expenses. (In usual case 50% to each.) \$ \_\_\_\_\_ \$ \_\_\_\_\_

8. Amount required to pay assigned obligations and variable expenses. (Line 4 + 7) \$ \_\_\_\_\_ \$ \_\_\_\_\_

9. Amount of maintenance (line 5 minus line 8) \$ \_\_\_\_\_ \$ \_\_\_\_\_

PREPARED AND APPROVED BY:

\_\_\_\_\_  
ATTORNEY FOR PETITIONER/RESPONDENT

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

Division \_\_\_\_\_

\_\_\_\_\_

Petitioner/Plaintiff,

and/vs.

Case No. \_\_\_\_\_

\_\_\_\_\_

Respondent/Defendant.

**SHARED EXPENSE ORDER**

The Court hereby adopts the following plan for sharing of direct expenses of the minor child(ren) which shall be in addition to the monetary child support as required by the shared residency arrangement.

1. Unless otherwise mutually agreed, the purchase of school clothing and shoes shall be done jointly by the Petitioner and the Respondent during the month of August. The parties agree that Petitioner shall be responsible for \_ % of the cost and Respondent shall be responsible for % of the cost, up to \$\_\_\_\_\_per parent.

2. Unless otherwise mutually agreed, the parties further agree that they will shop for the child(ren)'s summer clothes and shoes during April or May. Petitioner shall be responsible for % of the cost and Respondent shall be responsible for \_% of the cost, up to \$\_\_\_\_\_per parent.

3. The parties further agree that they are each free to buy additional clothing for the minor child(ren) at any time at their own expense.



4. The parties further agree to share the cost of school, enrollment, books, supplies yearbooks, senior pictures, haircuts, uniforms, musical instruments, driver's education and/or field trips with the Petitioner responsible for \_\_\_\_\_ % of the cost and Respondent responsible for \_\_\_\_\_ % of the cost.

5. School lunches shall be prepaid for each of the minor child(ren), with the Petitioner responsible for \_\_\_\_\_ % of the cost and Respondent responsible for \_\_\_\_\_ % of the cost.

6. The parties agree that the child(ren) may be involved in extracurricular activities with the consent of both parents. They further agree that the costs of such agreed activities including, but not limited to, travel expenses, equipment and apparel shall be shared with the Petitioner responsible for \_\_\_\_\_ % of the cost and Respondent responsible for \_\_\_\_\_ % of the cost. 7. The parties shall share the work-related day care or after school care of the child(ren), with the Petitioner responsible for \_\_\_\_\_ % of the cost and Respondent responsible for \_\_\_\_\_ % of the cost.

8. The parties shall each pay the following direct expenses of the child(ren), with the Petitioner responsible for \_\_\_\_\_ % of the cost and Respondent responsible for \_\_\_\_\_ % of the cost:

a. Any clothing needed for the child(ren)'s special event (which shall include, but not be limited to, formal dances, prom and graduation) so long as the expenditure for such clothing is reasonable and is discussed with the other party prior to the purchase; and

b. Any other expense relating to the transportation, education, health and/or fitness of the child(ren) as long as such expenditures are reasonable and discussed with the other party prior to the expenditure.

9. At the end of \_\_\_\_\_, or at any other time mutually agreed upon by the parties in writing, the parties shall present to each other their respective expenditures for direct expenses of the minor child(ren) in the form of receipts for purchases thereof and canceled checks or other form of

payment. After totaling the amount of expenditures of each party, the party with the lower amount of expenditures shall reimburse the other party one-half of the difference within \_\_\_\_\_ days. Failure of one party to submit any such direct expenses to the other party by use of this method for a period of \_\_\_\_\_ days following the expenditure shall extinguish any right of reimbursement from the nonparticipating party in such expense. Failure of either party to pay their respective share of the child(ren)'s direct expenses within \_\_\_\_\_ days may be considered a basis for sanctions or other appropriate relief.

10. Failure to pay a party's respective share of the direct expenses may result in modification of child support or other sanctions.

IT IS SO ORDERED.

Entered on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

\_\_\_\_\_  
District Court Judge/Administrative Hearing Officer

Agreed to and approved by:

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
Respondent

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION \_\_\_\_\_

(Caption) Case No. \_\_\_\_\_

**CHILD SUPPORT WORKSHEET OF:**

**A. INCOME COMPUTATION-WAGE EARNER MOTHER FATHER**

1. Domestic Gross Income (Insert on Line C.1. below)\* \_\_\_\_\_

**B. INCOME COMPUTATION-SELF-EMPLOYED**

1. Self-Employment Gross Income\* \_\_\_\_\_

2. Reasonable Business Expenses (-) \_\_\_\_\_

3. Domestic Gross Income (Insert on Line C.1. below) \_\_\_\_\_

**C. ADJUSTMENTS TO DOMESTIC GROSS INCOME**

1. Domestic Gross Income \_\_\_\_\_

2. Court-Ordered Child Support Paid (-) \_\_\_\_\_

3. Court-Ordered Maintenance Paid (-) \_\_\_\_\_

4. Court-Ordered Maintenance Received (+) \_\_\_\_\_

(Insert on Line D.1. below)

**D. COMPUTATION OF CHILD SUPPORT**

1. Child Support Income \_\_\_\_\_ + \_\_\_\_\_ = \_\_\_\_\_

2. Proportionate Shares of Combined Income

(Each parent's income divided by combined income) \_\_\_\_\_ % \_\_\_\_\_ %

3. Basic Child Support Obligation\*\*

(Using combined income from Line D.1., find amount for each child and enter total for all children)

Age of Children                      0-6                      7-15                      16-18

Number Per Age Category \_\_\_\_\_

Total Amount \_\_\_\_\_ = \_\_\_\_\_

\* Cost of Living Differential Adjustment? \_\_\_\_\_ Yes \_\_\_\_\_ No

\* Multiple Family Adjustment? \_\_\_\_\_ Yes \_\_\_\_\_ No

**MOTHER FATHER**

4. Health and Dental insurance Premium \_\_\_\_\_

5. Work-Related Child Care Costs \_\_\_\_\_

(Amount x % + [.25 x (Amt. x %)] \_\_\_\_\_

for child care credit = \_\_\_\_\_)

6. Parents' Total Child Support Obligation (Line D.3. plus Lines D.4. and D.5) \_\_\_\_\_

7. Parental Child Support Obligation \_\_\_\_\_

(Line D.2. times Line D.6. for each parent) \_\_\_\_\_

8. Adjustment for Insurance and Child Care \_\_\_\_\_

(Subtract for actual payment made for items \_\_\_\_\_

D.4. and D.5.)

9. Net Parental Child Support Obligation \_\_\_\_\_

(Obligation (Line D.7. minus Line D.8. \_\_\_\_\_

Insert on Line F.1. below)

**E. CHILD SUPPORT ADJUSTMENTS**

**APPLICABLE N/A CATEGORY AMOUNT ALLOWED**

**PARENT A PARENT B**

1. \_\_\_\_\_ Long Dist. Parenting Time Costs (+/-) \_\_\_\_\_ (+/-) \_\_\_\_\_

2. \_\_\_\_\_ Parenting Time Adjustment (+/-) \_\_\_\_\_ (+/-) \_\_\_\_\_

3. \_\_\_\_\_ Income Tax Considerations (+/-) \_\_\_\_\_ (+/-) \_\_\_\_\_

4. \_\_\_\_\_ Special Needs (+/-) \_\_\_\_\_ (+/-) \_\_\_\_\_

5. \_\_\_\_\_ Agreement Past Minority (+/-) \_\_\_\_\_ (+/-) \_\_\_\_\_

6. \_\_\_\_\_ Overall Financial Condition (+/-) \_\_\_\_\_ (+/-) \_\_\_\_\_

7. TOTAL (Insert on Line F.2. below) \_\_\_\_\_

**F. DEVIATION(S) FROM REBUTTABLE PRESUMPTION AMOUNT**

1. Net Parental Child Support Obligation (Line D.9 . \_\_\_\_\_  
from above) \_\_\_\_\_
2. Total Child Support Adjustments (+/-) \_\_\_\_\_ (+/-) \_\_\_\_\_  
(Line E.7 above)
3. Adjusted Child Support Obligation \_\_\_\_\_
4. Child Support Enforcement Fee + \_\_\_\_\_ + \_\_\_\_\_
5. \*Estimated amount of arrearage \_\_\_\_\_
6. Monthly support towards arrearage + \_\_\_\_\_ + \_\_\_\_\_
7. Total Monthly Support Due \_\_\_\_\_

\* As shown by the records of the collecting agency. Arrearage does not include interest.

Attorneys are expected to check the arrearage amount with DCF for IV-D cases, and the District Court Trustee for private cases, prior to submitting this worksheet.

\_\_\_\_\_  
District Court Judge/Administrative Hearing Officer

**PREPARED AND SUBMITTED BY:**

\_\_\_\_\_  
Attorney for Respondent/Petitioner

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION \_\_\_\_\_**

**IN THE MATTER OF THE MARRIAGE OF:**

\_\_\_\_\_,'

**And**

CASE NO.: \_\_\_\_\_

\_\_\_\_\_.

DATE: \_\_\_\_\_

**MANDATORY SUPPLEMENTAL ORDERS**

The following mandatory supplemental orders pertaining to enforcement of child support are incorporated in the foregoing order and are incorporated as a part thereof pursuant to Shawnee County District Court Rule **#3.401.5(b)**:

IT IS FURTHER ORDERED that all child support and maintenance payments be paid to the Kansas Payment Center, PO Box 758599, Topeka, Kansas 66675-8599 unless otherwise ordered by the 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 Kansas Payment Center.

IT IS FURTHER ORDERED that all new or modified non-IV-D support orders must be accompanied by a support order information sheet available in the office of the Clerk of the District Court.

IT IS FURTHER ORDERED that the office of DCF or their contracting agent for IV-D 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.

IT IS FURTHER ORDERED that each party shall inform the Clerk of the District Court and the other party in writing of any changes of name, residence and employer including business address within seven (7) days of such change.

IT IS FURTHER ORDERED that withholding of income to enforce this order of child support or modification shall take effect thereto without further notice pursuant to K.S.A. 23-4, 107, and any amendments thereto.

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

IT IS FURTHER ORDERED that the following information be provided each time an Order is entered:

**Petitioner Respondent**

Home Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

Home Address: \_\_\_\_\_ Home Address: \_\_\_\_\_

Employer Name: \_\_\_\_\_ Employer Name: \_\_\_\_\_

Business Phone: \_\_\_\_\_ Business Phone: \_\_\_\_\_

Soc. Sec. No.: (last 4 digits) \_\_\_\_\_ Soc. Sec. No.: (last 4 digits) \_\_\_\_\_

\_\_\_\_\_

Prepared and submitted by: Judge of the District Court/AHO

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION \_\_\_\_\_**

**IN THE MATTER OF THE MARRIAGE OF:**

\_\_\_\_\_,'

**And**

CASE NO.: \_\_\_\_\_

\_\_\_\_\_.

DATE: \_\_\_\_\_

**MANDATORY SUPPLEMENTAL ORDERS FOR DIRECT PAY CASES**

The following mandatory supplemental orders pertaining to enforcement of child support are incorporated in the foregoing order and are incorporated as a part thereof pursuant to Shawnee County District Court Rule **#3.401.5(b)**:

IT IS FURTHER ORDERED that all child support and maintenance payments shall be paid directly to the \_\_\_\_\_ by the \_\_\_\_\_. The written agreement of the parties to make direct child support payments is filed with this order, and the Court does find that good cause has been shown.

IT IS FURTHER ORDERED that the shall maintain a written record of all child support payments received and report the same to the Court and \_\_\_\_\_ on an annual basis.

IT IS FURTHER ORDERED that the annual accounting shall be filed with the Court no later than \_\_\_\_\_ each year.

IT IS FURTHER ORDERED that each party shall inform the Clerk of the District Court and the other party in writing of any changes of name, residence and employer including business address within seven (7) days of such change.

IT IS FURTHER ORDERED that withholding of income to enforce this order of support or modification shall not take effect at this time.

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

IT IS FURTHER ORDERED that the following information be provided each time an Order is entered:

**Petitioner Respondent**

Home Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

Home Address: \_\_\_\_\_ Home Address: \_\_\_\_\_

Employer Name: \_\_\_\_\_ Employer Name: \_\_\_\_\_

Business Phone: \_\_\_\_\_ Business Phone: \_\_\_\_\_

Soc. Sec. No.: (last 4 digits) \_\_\_\_\_ Soc. Sec. No.: (last 4 digits) \_\_\_\_\_

Prepared and Submitted by: Judge of the District Court/AHO



# KPC

## KANSAS PAYMENT CENTER CHILD SUPPORT ORDER INFORMATION SHEET

As per Supreme Court Administrative Order No. 168 (amended), all new or modified non-IVD support orders filed in the Kansas district courts must be accompanied by this child support order information sheet.

**Purpose:** Federal law requires Kansas to process child support through a single location in the state. To insure that processing of child support payments is not delayed, the Kansas Payment Center must have all information listed on the form below.

**Who submits this information sheet:** The payee's attorney shall submit a child support order information sheet with any new or modified non-IVD support orders filed with the Clerk of the District Court.

**Case Number:** You must give the full, accurate case number, or payments may be delayed. The case number may be copied from the child support order.

Date: \_\_\_\_\_ Trustee Fee: \_\_\_\_\_ Active or  Inactive  (Please check one)

Case Number: \_\_\_\_\_

Payer's Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Gender  Male  Female Social Security No. \_\_\_\_\_

\*If SSN or DOB is not known, give reason for unavailability: \_\_\_\_\_

\_\_\_\_\_

Address, City, State, Zip: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Phone Numbers: (Mark Primary):  home (\_\_\_\_) \_\_\_\_\_

Work (\_\_\_\_) \_\_\_\_\_

Cell (\_\_\_\_) \_\_\_\_\_

Payee's Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Gender  Male  Female Social Security No. \_\_\_\_\_

\*If SSN or DOB is not known, give reason for unavailability: \_\_\_\_\_

\_\_\_\_\_

Address, City, State, Zip: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Phone Numbers: (Mark Primary):  home (\_\_\_\_) \_\_\_\_\_

Work (\_\_\_\_) \_\_\_\_\_

Cell (\_\_\_\_) \_\_\_\_\_

<b>Debt Type:</b>	<b>Amount:</b>	<b>State Date:</b>	<b>Obligation Frequency:</b>
CS	_____	_____	Weekly
MN	_____	_____	Bi-Weekly
OT	_____	_____	Semi-Monthly
			Monthly

Child #1 Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Gender  Male  Female Social Security No. \_\_\_\_\_

Child #2 Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Gender  Male  Female Social Security No. \_\_\_\_\_

Child #3 Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Gender  Male  Female Social Security No. \_\_\_\_\_

Child #4 Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Gender  Male  Female Social Security No. \_\_\_\_\_

\*List additional children on a separate sheet.

Third Party Payee: \_\_\_\_\_

Provide the following if payee is an individual:

Gender  Male  Female Social Security No. \_\_\_\_\_

\*If SSN or DOB is not known, give reason for unavailability: \_\_\_\_\_

\*Absent extenuating circumstances as determined by the Kansas Payment Center, Payers' and Payees' Social Security Numbers and Dates of Birth must be provided on this form.

Form Completed By: \_\_\_\_\_

Revised date: 11/2010

Re: Doe v. Doe

Case No. \_\_\_\_\_

This is to advise that I represent \_\_\_\_\_

who is the child support (recipient)(payor) in this matter. The financial circumstances of the parties may have changed since the last court orders. Therefore, the existing child support orders may need to be modified to reflect the parties' present incomes and the current Kansas Child Support Guidelines.

Please provide me with the following information within fourteen (14) days of the date of this letter:

- (a) A copy of the most recent pay stub or record that shows (your/your client's) current salary or wage and annual earnings to date.
- (b) A copy of all W-2s and/or 1099 forms, or other evidence of income reflecting total income for last year.
- (c) Documentation of any work-related day care expenses that (you have/your client has) incurred to date this year.
- (d) Documentation of any health and dental insurance premium for the children that (you are/your client is) currently paying.

I am enclosing information that shows my client's current income and the W-2 statement(s) for last year.

In the event that you do not provide this information within fourteen (14) days from the date of this letter, I will issue a subpoena to (your client's) (your) employer to obtain it. If we must go to court to obtain the modification of the child support order, I will request the Court to order (you) (your client) to pay my fees pursuant to ~~Â§7.04~~ of the Shawnee County Family Law Guidelines.

Sincerely,

NOTE - For self-employed, the request should be for business records and tax returns.

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION \_\_\_\_

(Caption) Case No. \_\_\_\_\_

**NOTICE OF INTENT TO ISSUE BUSINESS RECORDS SUBPOENA**

COMES NOW \_\_\_\_\_ and gives notice to the Petitioner/Respondent that unless objection to the production of documents referenced in the Praecipe for Business Records Subpoena attached hereto is received within fourteen (14) days of the date of this Notice, the subpoena shall be served upon:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED this day of \_\_\_\_\_, 20\_\_.

Attorney for Petitioner/Respondent

(CERTIFICATE OF SERVICE)

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION \_\_\_\_\_

(Caption) Case No. \_\_\_\_\_

**PRAECIPE FOR BUSINESS RECORDS SUBPOENA**

THE CLERK OF SAID COURT WILL ISSUE A SUBPOENA FOR BUSINESS RECORDS IN THIS CASE TO THE FOLLOWING:

**NAME ADDRESS** (City and State only)

\_\_\_\_\_

On or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at 5 p.m. provide the following business records for \_\_\_\_\_, SSN (last 4 digits only) \_\_\_\_\_, the child support obligor:

(a) present salary and statement of total earnings to date;

(b) copy of W-2 form(s) issued for calendar year 20\_\_\_\_\_.

These records are to be delivered to the attorney who has requested the records, on or before the date and time stated.

\_\_\_\_\_

Attorneys for \_\_\_\_\_

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION \_\_\_\_\_

(Caption) Case No. \_\_\_\_\_

**MOTION TO ESTABLISH CHILD SUPPORT ORDER**

COMES NOW, the **Petitioner/Respondent**, and in support of this motion shows the Court:

1. The last court order, filed on \_\_\_\_\_ did not set child support because:

\_\_\_\_\_  
\_\_\_\_\_.

2. The following material change(s) of circumstance warrant(s) the establishment of a current child support order: \_\_\_\_\_

\_\_\_\_\_.

3. Submitted with this Motion is, a current Domestic Relations Affidavit and copies of my most recent pay stub(s) or other proof of income.

4. My gross income each month is \$\_\_\_\_\_ and the other parent's gross income each month is estimated to be \$\_\_\_\_\_.

5. The name, current address and telephone number of the other parent is **known** to be: **(If not known, do not complete)** \_\_\_\_\_

\_\_\_\_\_.

WHEREFORE, I pray that the Court establish a current child support order of \$\_\_\_\_\_ per month current support and \$\_\_\_\_\_ per month to be applied toward any arrearage in accordance with the Kansas Child Support Guidelines and for such further and other relief the Court deems just and equitable in the premises.

Respectfully submitted,

\_\_\_\_\_  
Petitioner/Respondent  
Address \_\_\_\_\_  
\_\_\_\_\_  
Phone \_\_\_\_\_

**CERTIFICATE OF SERVICE**

The below signed hereby certifies that on the day of, 20\_\_\_, **he/she** caused to be served a true and correct copy of the above and foregoing instrument in writing by causing the same to be deposited in the United States Mail, First Class, postage prepaid and addressed as follows:

**A Mini-Domestic Relations Affidavit must accompany all Motions To Establish Child Support. Financial information is not required if the request is for termination only.**

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION \_\_\_\_\_

(Caption) Case No. \_\_\_\_\_

**MOTION TO MODIFY CHILD SUPPORT ORDER**

COMES NOW, the **Petitioner/Respondent**, and in support of this motion shows the Court:

1. The last court order, filed on \_\_\_\_\_ sets the child support of the **Petitioner/Respondent** at \$ \_\_\_\_\_ per month for current support and \$ \_\_\_\_\_ per month to be applied toward any arrearage.

2. The following material change(s) of circumstance warrant(s) modification of the last child support order:

\_\_\_\_\_  
\_\_\_\_\_.

3. I am submitting with this Motion, a current Domestic Relations Affidavit and copies of my most recent pay stub(s) or other proof of income.

4. My gross income each month is \$ \_\_\_\_\_ and the other parent's gross income each month is estimated to be \$ \_\_\_\_\_.

5. The name, current address and telephone number of the other parent is **known** to be: **(If not known, do not complete)**

\_\_\_\_\_  
\_\_\_\_\_.



WHEREFORE, I pray that the Court modify the last child support order to \$\_\_\_\_\_per month current support and \$\_\_\_\_\_per month to be applied toward any arrearage in accordance with the Kansas Child Support Guidelines and for such further and other relief the Court deems just and equitable in the premises.

Respectfully submitted,

\_\_\_\_\_

Petitioner/Respondent

Address \_\_\_\_\_

\_\_\_\_\_

Phone \_\_\_\_\_

**CERTIFICATE OF SERVICE**

The below signed hereby certifies that on the day of, 20\_\_\_, he/she caused to be served a true and correct copy of the above and foregoing instrument in writing by causing the same to be deposited in the United States Mail, First Class, postage prepaid and addressed as follows:

**A Mini-Domestic Relations Affidavit must accompany all Motions To Modify Child Support. Financial information is not required if the request is for termination only.**





IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION \_\_\_\_\_

(Caption) Case No. \_\_\_\_\_

**MOTION TO ESTABLISH PARENTING TIME**

COMES NOW, the **Petitioner/Respondent**, and in support of this motion shows the Court:

1. The current order, filed on \_\_\_\_\_ does not grant the **Petitioner/ Respondent** parenting time.

2. Parenting time was last requested of the other parent on: \_\_\_\_\_.

3. Parenting time should be changed to comply with the attached Proposed Parenting Plan.

4. The name, current address and telephone number of the other parent is **known** to be: **(If not known, do not complete)** \_\_\_\_\_

\_\_\_\_\_.

WHEREFORE, the **Petitioner/Respondent** prays that the Court grant **his/her** Motion and for such further and other relief the Court deems just and equitable in the premises.

Respectfully submitted,

\_\_\_\_\_

Petitioner/Respondent

**Address** \_\_\_\_\_

\_\_\_\_\_

**Phone** \_\_\_\_\_

**VERIFICATION**

STATE OF KANSAS            )

) ss:

COUNTY OF SHAWNEE    )

\_\_\_\_\_, of lawful age, being first duly sworn on oath states:

I do solemnly swear that I am the movant in the above action; I have read the above pleading, know the contents thereof and the same is true and correct.

\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

Notary Public

My Appointment Expires:

\_\_\_\_\_

**CERTIFICATE OF SERVICE**

The below signed hereby certifies that on the day of, 20\_\_\_\_, **he/she** caused to be served a true and correct copy of the above and foregoing instrument in writing by causing the same to be deposited in the United States Mail, First Class, postage prepaid and addressed as follows:

(Attach Proposed Parenting Plan Here)

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION \_\_\_\_\_

(Caption) Case No. \_\_\_\_\_

**MOTION TO MODIFY PARENTING TIME**

COMES NOW, the **Petitioner/Respondent**, and in support of this motion shows the Court:

1. The current order, filed on \_\_\_\_\_ grants the **Petitioner/Respondent** parenting time as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

2. Parenting time was last requested of the other parent on: \_\_\_\_\_.

3. Parenting time should be changed to comply with the attached Parenting Time Plan.

4. The name, current address and telephone number of the other parent is **known** to be: **(If not known, do not complete)** \_\_\_\_\_

\_\_\_\_\_.

WHEREFORE, the **Petitioner/Respondent** prays that the Court grant **his/her** Motion and for such further and other relief the Court deems just and equitable in the premises

Respectfully submitted,

\_\_\_\_\_

**Petitioner/Respondent**

**Address** \_\_\_\_\_

\_\_\_\_\_

**Phone** \_\_\_\_\_

**VERIFICATION**

STATE OF KANSAS )

) ss:

COUNTY OF SHAWNEE )

\_\_\_\_\_, of lawful age, being first duly sworn on oath states:

I do solemnly swear that I am the movant in the above action; I have read the above pleading, know the contents thereof and the same is true and correct.

\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

Notary Public

My Appointment Expires:

\_\_\_\_\_

**CERTIFICATE OF SERVICE**

The below signed hereby certifies that on the day of\_, 20 , **he/she** caused to be served a true and correct copy of the above and foregoing instrument in writing by causing the same to be deposited in the United States Mail, First Class, postage prepaid and addressed as follows:

(Attach Proposed Parenting Plan Here)

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION \_\_\_\_\_

(Caption) Case No. \_\_\_\_\_

**MOTION TO ENFORCE PARENTING TIME**

COMES NOW, the **Petitioner/Respondent**, and in support of this motion shows the Court:

1. The current order, filed on \_\_\_\_\_ grants the **Petitioner/Respondent** parenting time as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

2. Parenting time was last requested of the other parent on: \_\_\_\_\_.

3. The order of Parenting time is not being followed because: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

4. The name, current address and telephone number of the other parent is **known** to be: **(If not known, do not complete)** \_\_\_\_\_

\_\_\_\_\_.

WHEREFORE, the **Petitioner/Respondent** prays that the Court grant **his/her** Motion and for such further and other relief the Court deems just and equitable in the premises.



Respectfully submitted,

\_\_\_\_\_

**Petitioner/Respondent**

**Address** \_\_\_\_\_

\_\_\_\_\_

**Phone** \_\_\_\_\_

**VERIFICATION**

STATE OF KANSAS )

) ss:

COUNTY OF SHAWNEE )

\_\_\_\_\_, of lawful age, being first duly sworn on oath states:

I do solemnly swear that I am the movant in the above action; I have read the above pleading, know the contents thereof and the same is true and correct.

\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Notary Public

My Appointment Expires:

\_\_\_\_\_

**CERTIFICATE OF SERVICE**

The below signed hereby certifies that on the day of, 20\_\_, **he/she** caused to be served a true and correct copy of the above and foregoing instrument in writing by causing the same to be deposited in the United States Mail, First Class, postage prepaid and addressed as follows:

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION \_\_\_\_\_

(Caption) Case No. \_\_\_\_\_

**REQUEST FOR TRANSCRIPT**

(Name of party) hereby requests a typed transcript of the hearing before the Administrative Hearing Officer/District Court Judge on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. The tape of the hearing is indexed as tape # \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_. Attached is a certified check or money order for the estimated cost of transcribing, which is \$\_\_\_\_\_.

\_\_\_\_\_

(Signature of Requesting Party)

\_\_\_\_\_

(Address of Requesting Party)

\_\_\_\_\_

(Telephone Number of Requesting Party)

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION \_\_\_\_

(Caption) Case No. \_\_\_\_\_

**MOTION FOR JUDICIAL REVIEW**

COMES NOW the \_\_\_\_\_ and moves the Court for a judicial hearing relative to the Administrative Hearing Officer/District Court Judge's recommended order filed \_\_\_\_\_, 20 \_\_\_\_, for the following reason(s);

1. \_\_\_\_\_  
\_\_\_\_\_ ; and

2. \_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_  
Petitioner/Respondent

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

**CERTIFICATE OF MAILING**

I certify that a copy of the Motion for Judicial Review, filed \_\_\_\_\_, \_\_\_\_\_, was mailed or delivered on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_ to the following:

\_\_\_\_\_  
Clerk of the District Court

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION \_\_\_\_\_

(Caption) Case No. \_\_\_\_\_

**MOTION FOR REIMBURSEMENT OF UNINSURED**

**HEALTH CARE EXPENSES**

COMES NOW, the **Petitioner/Respondent**, and in support of this motion shows the Court:

1. The Court's order of \_\_\_\_\_, 20 \_\_, states that the **Petitioner/ Respondent** shall be responsible for \_\_\_\_\_% of the total uninsured medical expenses, which includes any deductible, for the **child(ren)** of the parties.

2. I have not agreed to any treatment (except for emergencies) that makes the other parent responsible for more than \$250 without advising and consulting with the other parent before agreeing to the expense of treatment.

3. True and correct copies of the attached bills were sent to the other parent and **he/she** was requested to pay **his/her** percentage of them, but **he/she** has failed and refused to pay **his/her** percentage.

4. The name, current address and telephone number of the other parent is **known** to be: **(If not known, do not complete)** \_\_\_\_\_

\_\_\_\_\_.

WHEREFORE, the **Petitioner/Respondent** prays that the Court grant **his/her** Motion in the amount of \$\_\_\_\_\_, and for such further and other relief the Court deems just and equitable in the premises.

Respectfully submitted,

\_\_\_\_\_

Petitioner/Respondent

**Address** \_\_\_\_\_

\_\_\_\_\_

**Phone** \_\_\_\_\_

**CERTIFICATE OF SERVICE**

The below signed hereby certifies that on the day of, 20\_\_\_\_, **he/she** caused to be served a true and correct copy of the above and foregoing instrument in writing by causing the same to be deposited in the United States Mail, First Class, postage prepaid and addressed as follows:

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION \_\_\_\_\_

(Caption) Case No. \_\_\_\_\_

**MOTION FOR CONCILIATION**

Comes now, the (Petitioner) (Respondent) and moves the Court for an Order for Conciliation. In support of this motion, movant states:

1. That the parties have completed the DivorceWorks Seminar.
2. The parties are presently not able to resolve the custody, residency and parenting time issues involving their minor children,\_\_\_\_\_.
3. That conciliation by a Court Services Officer or private conciliator may be of assistance in resolving the disputed issues of custody, residency and parenting time.

Wherefore, movant prays that the Court enter an Order for Conciliation, requiring the parties to conciliate the disputed issues.

\_\_\_\_\_  
Attorney for \_\_\_\_\_

Petitioner's Address: \_\_\_\_\_

Telephone:\_\_\_\_\_

Respondent's Address:\_\_\_\_\_

Telephone: \_\_\_\_\_

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

DIVISION \_\_\_\_\_

(Heading) Case No. \_\_\_\_\_

**ORDER FOR CONCILIATION**

Now on this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, the above-captioned case comes before the Court. Petitioner appears by and through counsel, \_\_\_\_\_. Respondent appears by and through counsel, \_\_\_\_\_.

The Court having been advised that a dispute exists between the parties relative to custody, residency and parenting time of the minor child(ren) in this case, enters the following findings:

1. That it is in the best interests of the parties and their minor child(ren) that there be an amicable settlement of the custody, residency and parenting time issues; and

2. The Court finds that a (jointly-selected)(Court-appointed) conciliator shall meet with the parties to assist them in reaching agreements as to the issues identified below:

\_\_\_\_\_ Residential Placement

\_\_\_\_\_ Parental Access (parenting time)

\_\_\_\_\_ Decision Making (education, medical needs, spiritual training, etc.)

\_\_\_\_\_ Other: \_\_\_\_\_

3. That \_\_\_\_\_, phone # \_\_\_\_\_, should meet with in the parties and serve as conciliator pursuant to the Shawnee County Family Law Guidelines on the issues of parenting time, residency and custody and any other issues as set out above. If unable to accomplish an agreement, the Conciliator shall prepare a report to the Court stating whether or not an agreement has been reached and if not, the reasons for failure of conciliation. This report will contain an evaluation of those issues which bear on custody, residency and parenting time and may contain a recommendation for court resolution or for an order for counseling, mediation or other dispute resolution services.

4. The parties shall each pay their respective percent with petitioner being responsible for \_\_\_\_% and respondent being responsible for \_\_\_\_% of the Conciliator's fees and expenses.

**IT IS THEREFORE ORDERED** that the parties to this case confer with the Conciliator and participate in a conciliation process. The conciliation process may include (1) drug and/or alcohol testing through UA's and PBT's. (2) home and school contacts, (3) interviews with the children, (4) releases of information from agencies associated with the children, mental health agencies or treatment providers, drug and/or alcohol rehabilitation and treatment centers and (5) Field Supervision Team referral.

**IT IS FURTHER ORDERED** that if an agreement cannot be reached, the Conciliator shall provide the Court with a report as set forth above relative to the custody, residency and parenting time issues and recommendations to serve the best interests of the parties' minor child(ren).

**IT IS FURTHER ORDERED** that the parties shall meet with the Conciliator at such times, places and appointments which are set and to provide such information as the Conciliator requests.

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at Topeka, Kansas.

IT IS SO ORDERED.

\_\_\_\_\_

JUDGE

Counsel for Petitioner: \_\_\_\_\_

Petitioners Address: \_\_\_\_\_

Petitioner's Phone #s: Work \_\_\_\_\_

Home \_\_\_\_\_

Counsel for Respondent: \_\_\_\_\_

Respondent's Address: \_\_\_\_\_

Respondent's Phone #s: Work \_\_\_\_\_

Home \_\_\_\_\_