

Proposed Amendment to Supreme Court Rule 106: Court Records

The Kansas Supreme Court is accepting public comment on a proposed amendment to Rule 106: Court Records.

The amended rule would add subsection (e) regarding accessibility of child in need of care court records. The new subsection would make all records in a child in need of care case confidential and not publicly available, including the events index. This will allow the child's complete name to be used throughout the court record without disclosing it to the public.

If the proposed rule change is not adopted, full names of minors subject to child in need of care proceedings will not be protected in the case management system if they are used in the case caption.

New language is shown with underlining.

Comment may be made by email to publiccomments@kscourts.org until 5 p.m. Thursday, September 17. The subject line must read "Rule 106."

Rule 106

COURT RECORDS

- (a) **Court Files and Records.** Except as otherwise provided in subsection (b), court files and records must remain in the court's physical possession and control.
- (b) **Authorized Check Out.** An attorney or abstractor may check out a court file or record—subject to immediate return on request of the clerk of the district court—on the following conditions:
 - (1) the attorney or abstractor must sign a receipt;
 - (2) the file or record must not be taken outside the county unless authorized by the clerk or a court order; and
 - (3) the file or record must be returned in its original condition.
- (c) **Court Services Officer Files.** All court services officer files—including case notes—are confidential and are not subject to subpoena or other process. Unless otherwise ordered by the court, the records may be disclosed only to the court, a court employee assigned to the case, or a person legally entitled to receive the disclosure. Orders to produce drug and alcohol abuse patient records must comply with 42 C.F.R. Part 2.
- (d) **Marriage Licensing Documents.** Except for marriage records identified in subsection (d)(3) and K.S.A. 65-2422d(h), marriage licensing documents in the custody of a district court are confidential and are not subject to disclosure under the Kansas Open Records Act, K.S.A. 45-215 et seq.
 - (1) **Marriage licensing document defined.** A marriage licensing document refers to the following:

- (A) the confidential cover sheet for the uniform marriage license application prescribed by the judicial administrator;
 - (B) the uniform marriage license application prescribed by the judicial administrator;
 - (C) a document containing the personal and statistical information the Kansas Department of Health and Environment requires on forms issued under K.S.A. 23-2509; and
 - (D) the license for individuals to enter a marriage under K.S.A. 23-2505.
- (2) **When disclosure permitted.** Unless otherwise ordered by the court, marriage licensing documents may be disclosed only to the court, a court employee assigned to the case, the Kansas Department of Health and Environment, or a person to whom the marriage license was issued. A person making a request for his or her own marriage licensing documents must display government-issued photo identification, which is sufficient proof of identity for purposes of this subsection.
- (3) **Limited marriage license record.** District courts must make publicly available a limited marriage license record which contains only the uniform marriage license application prescribed by the judicial administrator. The uniform marriage license application must not include the following personal information:
- (A) an applicant's Social Security number;
 - (B) an applicant's date or city of birth;
 - (C) an applicant's mother's maiden name; or
 - (D) any information expressly designated as confidential on forms promulgated by the Kansas Department of Health and Environment under K.S.A. 23-2509.
- (4) **Existing marriage licensing documents.** Marriage licensing documents created before October 1, 2015, may be closed in whole or in part by redaction at the discretion of the chief judge of a judicial district or in accordance with an applicable exception to the Kansas Open Records Act. An applicant whose marriage licensing documents remain open may petition the court for closure of the documents, and any judge of the district court may rule on the petition for closure.
- (e) Accessibility of child in need of care court records.**
- (1) **Applicability.** This rule applies to all district court cases filed under the Revised Kansas Code for Care of Children, K.S.A. 38-2201 et seq.
- (2) **Definitions.**
- (A) "Court records" means all contents of a court case file, regardless of physical form, characteristics, or means of transmission, made or received by a district court, including original court records, documents, and filings; transcripts filed with the clerk; exhibits made part of the court record; and electronic recordings, such as videotapes, tape recordings, or stenographic tapes of other proceedings filed with the clerk.
 - (B) "Events index" means items listed in a chronological index of filings, actions, and events in a specific case, which may be identifying information of the parties and counsel; a brief description or summary of the filings, actions, and events; and other case information. The events index, also referred to as the register of actions, is a record created and maintained by the judicial branch only for administrative purposes that is not part of the court record.
 - (C) "Nonpublic court record" means any court record designated by statute, caselaw, Supreme Court rule, or court order as not accessible to the public.
- (3) **Accessibility.**
- (A) K.S.A. 38-2209 classifies certain records in a case filed under the Revised Kansas Code

- for Care of Children as constituting the official file or the social file. K.S.A. 38-2211 identifies persons and entities having access to the official and social files.
- (B) All court records in a case filed under the Revised Kansas Code for Care of Children must be designated as nonpublic court records.
- (C) The events index of a case filed under the Revised Kansas Code for Care of Children must not be accessible by the public.
- (4) **Breach.** A court employee who breaches the provisions of subsection (3) is subject to disciplinary action under the Kansas Court Personnel Rules, including termination of employment.