

IN THE SUPREME COURT OF THE STATE OF KANSAS

Administrative Order

2021-RL-160

Rules Relating to District Courts

FILED

October 25, 2021

**DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS**

The attached new Supreme Court Rule 104 is adopted, effective the date of this order.

Dated this 25th day of October 2021.

FOR THE COURT



MARLA LUCKERT
Chief Justice

Rule 104

CONTINUITY OF OPERATIONS PLAN

- (a) **Purpose.** This rule sets forth a district court’s responsibility to develop and maintain an all-hazards continuity of operations plan.
- (b) **Definitions.**
 - (1) **“Continuity incident”** means injury, illness, or death; damage to equipment, infrastructure, services, or property; and functional degradation to social, economic, or environmental aspects due to an environmental or a human-caused hazard.
 - (2) **“Continuity of operations (COOP)”** means an effort to ensure a court can continue to perform its essential functions in the event of a continuity incident.
 - (3) **“Hazard”** means an accident; natural disaster; space weather; domestic or foreign-sponsored terrorist attack; act of war; weapon of mass destruction; technological, chemical, biological, radiological, nuclear, or explosive event; and any other circumstance that might disrupt continuity of operations.
- (c) **Requirement.** A court must develop and maintain a COOP plan for each facility where judicial branch personnel work.
- (d) **Elements.** A court must address the following elements in each COOP plan.
 - (1) **Essential Functions.** Essential functions are critical activities that a court must continue to perform after a disruption of normal activities caused by a continuity incident. A court’s essential functions directly relate to accomplishing its mission as set forth in the United States Constitution, the Kansas Constitution, a statute, a rule, or another source. The following activities are examples of essential functions: issuing a writ of habeas corpus or mandamus, holding a juvenile detention hearing, and issuing a restraining order or search warrant.
 - (2) **Essential Supporting Activities.** A court’s essential supporting activities (ESA) support performance of essential functions but do not reach the threshold of essential functions. ESA are important facilitating activities that most courts perform; however, a court’s performance of ESA alone does not directly accomplish its mission. The following activities are

examples of ESA: security, human resources management, and information technology management.

- (3) **Delegation of Authority Planning.** A court's delegation of authority planning provides legal authorization for an individual to act on behalf of a key official for a specified purpose and to carry out specific duties. A delegation of authority will specify a particular function that the individual is authorized to perform and include any restriction of that authority. A delegation of authority should have sufficient breadth to ensure the court can perform its essential functions. The following are examples of duties that a court might delegate: purchasing, leave authorization, and execution of contractual agreements.
- (4) **Succession Planning.** A court's succession planning identifies a successor who will ensure there is no lapse in essential decision-making authority in the event an incumbent is unable or unavailable to fulfill essential duties. A court's order of succession should include accompanying authorities. An example of succession planning is replacing a member of the district court's leadership team, such as the chief judge, court administrator, chief clerk, or chief court services officer.
- (5) **Alternate Facility.** An alternate facility is a location other than the primary facility that a court will use to carry out essential functions and ESA in a continuity incident. An alternate facility refers not only to a physical location but also to teleworking, telecommuting, mobile-office concepts, and other nontraditional options.
- (6) **Continuity or Interoperable Communications Planning.** A court's continuity or interoperable communications planning provides the court the capability to perform essential functions and ESA in conjunction with other organizations in a continuity incident. A court might include specialized equipment or systems such as phones, radios, or mass notification systems in its continuity or interoperable communications planning.
- (7) **Vital Records and Databases Management Planning.** A court's vital records and databases management planning identifies documents, references, records, information systems, data management software, and equipment needed to support essential functions and ESA during a continuity incident. A court's planning should address the availability of all forms of vital records and databases.
- (8) **Human Capital Planning.** A court's human capital planning identifies the essential staff, COOP team members, and other special categories of

employees who are assigned response duties during a continuity incident and COOP activation.

- (9) **Test, Training, and Exercise Program.** A court's test, training, and exercise program describes measures to ensure that the court's COOP plan is capable of supporting the continued execution of its essential functions throughout the duration of a continuity incident.
 - (10) **Devolution Planning.** A court's devolution planning describes the court's ability to transfer statutory authority and responsibility for essential functions from its primary operating staff and facilities to other court or organization employees and facilities.
 - (11) **Reconstitution Planning.** A court's reconstitution planning describes the process by which surviving or replacement personnel resume normal court operations from the original or replacement primary operating facility.
 - (12) **Pandemic Planning.** A court's planning must ensure the court can continue to perform its essential functions in the event of a pandemic.
- (e) **COOP Manager.** A chief judge must appoint a judicial district COOP manager and submit that person's name to the Office of Judicial Administration (OJA) by November 1, 2021.
- (1) **Responsibility.** A judicial district COOP manager will be responsible for coordinating COOP planning for each facility where court personnel work.
 - (2) **Training.** OJA will provide or facilitate initial and ongoing COOP training. A judicial district COOP manager must attend COOP training as directed by OJA.
- (f) **Submittal; Timing.**
- (1) **Initial Plan.** A court must submit all initial COOP plans to OJA no later than December 1, 2022.
 - (2) **Annual Update.** A court must annually review and submit updated COOP plans to OJA no later than December 1 of each year beginning in 2023.
- (g) **Review and Approval.**
- (1) **Initial Plan.** OJA will review initial COOP plans for required elements and completeness by February 1, 2023.

- (2) **Annual Update.** OJA will review updated COOP plans annually by February 1.
 - (3) **Notice.** Once reviewed, OJA will provide each court a notice of approval status.
- (h) **COOP Planning Resources.** COOP planning systems, templates, and other resources are available from OJA at <https://www.kscourts.org>.