

**Ad Hoc Committee on Best Practices for Eviction Proceedings
Initial Report**

Prepared under
Supreme Court Administrative Order 2021-CM-154

For Consideration on April 20, 2022

Ad Hoc Committee on Best Practices in Eviction Proceedings

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Executive Summary

Eviction is rarely anyone's first choice, and with good reason. Housing stability benefits the tenant by providing a steady home, and it benefits the property owner by providing constant income and a consistent resident to monitor the owner's investment. But when an eviction petition is filed, everyone involved—property owners, tenants, and the courts—benefits from accurate, understandable, and fair eviction procedures.

This crucial need for housing stability was on full display during the COVID-19 pandemic. Homes became multipurpose spaces, serving as workplaces, schools, and dwellings. Thus, the risk posed by evictions from rental properties became all the more dire. In an effort to help people remain in their rented housing, the federal government provided billions of dollars in aid, to be administered by states. In Kansas alone, over \$300 million in emergency rental assistance funds are available for this purpose. And both the Kansas and federal governments prohibited evictions for unpaid rent.

When the last eviction moratorium expired in October 2021, the Kansas Supreme Court—motivated in part by news of national spikes in eviction filings—established the Supreme Court Ad Hoc Committee on Best Practices in Eviction Proceedings. Over the course of four months, the committee examined all aspects of Kansas eviction procedures and courtroom practices.

This report summarizes the committee's initial observations and recommendations. The report is divided into three parts.

Part 1 describes the Kansas eviction process and the number of evictions filed in Kansas, as well as the effect of the pandemic on eviction filings.

Part 2 discusses the challenges and barriers that cause parties to file evictions instead of taking advantage of Kansas emergency rental assistance funds or seeking other out-of-court solutions. It also identifies three opportunities to address these challenges.

Part 3 summarizes the committee's recommendations and proposed timeline for addressing these challenges over the next 18 months.

Committee's Charge and Methods

On October 18, 2021, Chief Justice Marla Luckert signed Supreme Court Administrative Order 2021-CM-154, which established the Ad Hoc Committee on Best Practices in Eviction Proceedings. The committee was broadly charged with studying all aspects of eviction proceedings, with the goal of "reducing court filings, expeditiously resolving pending cases, and enhancing housing stability." Order 2021-CM-154, at 1. To achieve this goal, appointed committee members represented all the populations related to the eviction process:

- District judges and district magistrate judges who routinely handle eviction proceedings, as well as court clerks who shepherd those dockets.
- Attorneys from Kansas Legal Services and the Washburn Law Clinic, who routinely represent tenants involved in eviction proceedings.
- Property managers and attorneys who routinely represent property owners in eviction cases.
- Community and nonprofit groups that provide housing assistance.
- The Kansas Housing Resources Corporation, which reviews applications for and distributes the emergency rental assistance funds made available in response to the COVID-19 pandemic.

The committee met most Tuesdays from late October through February. At its first meeting, the committee discussed its charge as well as pressing evictions issues, particularly with the recent end of the Center for Disease Control and Prevention's moratorium on evictions. At the end of the first meeting, committee members established four workgroups for the initial stages of its discussion, aiming to provide recommendations in the following areas:

- Immediate needs brought to light by the pandemic.
- Data identification and collection relating to eviction filings throughout the state.
- Education and outreach efforts.
- Long-term, structural improvements (through adopting Supreme Court rules, amending statutes, or effecting other systemic change).

The committee's weekly meetings were structured to allow a general discussion of any matters members had encountered relating to evictions, followed by a series of breakout sessions to allow the workgroups to develop their recommendations and time for the workgroups to discuss their progress with the whole committee.

In February, each workgroup submitted a written report to the committee's chairperson, detailing specific recommendations the members believed the Kansas Supreme Court should consider. These recommendations were collected and shared with all committee members for their consideration and comment. In late February, the committee met to discuss which recommendations they would present to the court in this initial report. The committee also prioritized these recommendations by placing them on a timeline.

On the whole, the members of the committee were able to agree on most recommendations in most areas. In fact, several committee members have commented throughout the process how refreshing it was that, despite different backgrounds and constituencies, the committee developed trust in one another and achieved common ground.

After all, everyone—property owners, tenants, the courts, and the community at large—benefits from access to accurate educational resources, alternatives to eviction when appropriate, and fair and consistent court procedures.

Part 1: The Kansas Eviction Process—in Law and in Practice

Before examining the current state of evictions in Kansas, it is helpful to consider a summary of Kansas eviction laws. Residential evictions in Kansas are primarily governed by three articles in the Kansas statutes:

- The Residential Landlord and Tenant Act (RLTA), found in Article 25 of Chapter 58, sets forth the substantive rights and responsibilities of property owners and tenants, including the circumstances when a property owner may evict a tenant from the housing unit.
- The procedures governing the physical eviction process—the action to remove the tenant from the housing unit and restore possession to the property owner—are included in Article 38 of Chapter 61.
- Any related claims for damages (such as actions for unpaid rent) are generally governed by the Code of Civil Procedure for Limited Actions, K.S.A. 61-2801 *et seq.*, unless the relief sought requires a Chapter 60 action.

As a starting point, the RLTA enumerates several legal duties of the property owner and the tenant. See K.S.A. 58-2553 (responsibilities of the property owner); K.S.A. 58-2555 (responsibilities of the tenant). For example, the property owner must provide a housing unit that complies with all material health and safety codes, must reasonably maintain any common areas, and must make sure that the housing unit is generally safe with adequate electricity, plumbing, sanitation, heat, ventilation, and water. See K.S.A. 58-2553(a). Similarly, the tenant must keep the premises that he or she occupies clean and safe, use the utilities reasonably, and carry on in such a way that neighbors and other tenants can peacefully conduct their lives. See K.S.A. 58-2555.

To enforce those duties, amend or cancel the rental agreement, or pursue relief in court, the RLTA requires the aggrieved person to provide written notice of the deficiency to the offending party, as well as some opportunity for the responsible person to cure the problem. The timeframe for that notice and curative period varies based on the type of dispute:

- **Tenant's 14-30 Day Notice to the Property Owner.**
 If the property owner has failed to materially comply with the rental agreement or K.S.A. 58-2553, the tenant can serve a "14-30 Notice" on the property owner. This notice identifies any breach and informs the property owner that the rental agreement will terminate in 30 days. If the breach is remedied within 14 days of the notice, the rental agreement continues. K.S.A. 58-2559(a)(1). The tenant can also recover damages, including return of the security deposit, or obtain injunctive relief to address the noncompliance. K.S.A. 58-2559(b), (c).
- **Tenant's 5-Day Notice to the Property Owner.**
 If the property owner fails to deliver possession of the housing unit to the tenant on the date promised, the rental obligation abates until possession transfers. If the tenant provides a written notice to the property owner of noncompliance, the tenant may terminate the rental agreement after 5 days and the property owner must return the security deposit. The tenant may also demand specific performance of the property owner and recover actual damages, with damages escalated for willful noncompliance or bad faith. See K.S.A. 58-2560.
- **Property Owner's 14-30 Day Notice to the Tenant.**
 If the tenant has failed to materially comply with the rental agreement or K.S.A. 58-2555, the property owner can serve a "14-30 Notice" on the tenant. This notice identifies any breach and informs the tenant that the rental agreement will terminate in 30 days if the deficiency is not cured. If the breach is remedied within 14 days of the notice, the rental agreement continues without further action. K.S.A. 58-2564(a).
- **Property Owner's 3-Day Notice to Tenant for Nonpayment of Rent.**
 If the tenant fails to pay rent when the rent is due, the property owner can provide a written notice of his or her intention to terminate the rental agreement in 3 days if the rent is not paid during that time. K.S.A. 58-2564(b).

As this report discusses in more detail later in this section, most residential evictions that are filed in Kansas are precipitated by this last circumstance—the

tenant's failure to pay the rent. K.S.A. 58-2568 permits property owners to file a petition for possession of the property, for rent, or for both, as well as a claim for damage to the property. As with any other case, the defendant tenant may file any counterclaims against the plaintiff property owner; the failure to timely raise any counterclaims constitutes a waiver of those claims. See K.S.A. 58-2561.

Petitions in eviction cases often include at least two categories of claims: claims for possession of the property (and removal of the tenant, previously called forcible detainer actions) and claims for unpaid rent and damages (generally breach-of-contract claims and other related requests). Different procedures govern each of these two categories.

Claims for Possession—the Eviction Itself

The procedures covering the eviction of the tenant from the property—and restoration of possession to the property owner—are found in K.S.A. 61-3801 *et seq.* Before a property owner may evict a tenant, the owner must provide notice of the intention to evict, served at least 3 days before any eviction petition is filed. (The 3 days are 3 natural days, including weekends and holidays.) As a practical matter, these notices are often combined with the Property Owner's 3-Day Notice described in the previous section. See K.S.A. 61-3803. But they are distinct requirements, and each must be satisfied.

Once this notice has been given and the three days have passed, the property owner may file the eviction petition. The petition must "describe the premises for which possession is sought and why the plaintiff is seeking possession." K.S.A. 61-3804. The statute does not require any other specific information (such as the rental agreement or the 3-Day Notice) to be included or attached. But the statute does clarify that the property owner may include in the petition a request for any rent due, or the owner "may bring a subsequent lawsuit for that amount." K.S.A. 61-3804.

Note: Though Kansas law generally requires plaintiffs to bring all their claims arising out of one transaction in one suit, K.S.A. 61-3802 specifically contemplates multiple cases being filed. That statute indicates that "[a] judgment in a lawsuit brought under K.S.A. 61-3801 through 61-3808 . . . shall not be a bar to any subsequent

lawsuit brought by either party for claims not included in such judgment." K.S.A. 61-3802. The committee discussed this section at some length. Some members did not feel it was fair to allow property owners to file claims for damages months or years after a tenant was removed from the property. Other members countered that the extent of a property owner's damages may not be known for some time and noted that Kansas statutes allow claims for breach of written leases to be brought within 5 years.

Once a property owner has filed an eviction petition, Kansas statutes contemplate an accelerated process to determine whether the tenant should be removed from the property.

- Once a petition is filed, a summons issues to the tenant, including the date at which the tenant must appear or file an answer. K.S.A. 61-3805 allows the district court some discretion in setting this date, but the statute states this deadline must be between 3 and 14 days after the issuance of the summons.
- Kansas law also allows a district court flexibility to determine how best to handle the answer date. K.S.A. 61-3806 requires a tenant to "appear in person or by counsel at the time and date set forth in the summons" or to file a written answer by that same date.

Note: The way this is carried out in practice differs from district to district, largely based on historical practice or the preference of the judge hearing the eviction docket. Some judicial districts, like Johnson County, require attorneys representing property owners to be present at the "answer docket" so they can meet with any tenants who appear. Other districts, like Douglas County, do not require an attorney to appear but rather note whether the tenants appear at the docket or otherwise file an answer.

- If the tenant appears and disputes the allegations in the petition relating to possess, K.S.A. 61-3807(a) requires that a "trial shall be conducted within 14 days after the appearance date stated in the summons." K.S.A. 61-3807(b) states the tenant may not be granted a continuance unless the tenant files

a bond that is both "approved by the court" and "conditioned for the payment of all damages and rent that may accrue is judgment is entered" against the tenant.

- If judgment is entered against the tenant for the possession of the property, the court issues a writ of restitution to remove the tenant. The writ "shall be executed within 14 days after the person named in the writ receives it." K.S.A. 61-3808(b).

As this timeline demonstrates, the entire eviction process from filing to transfer of possession—excluding any agreed-upon continuances—is designed to take no more than 6 weeks. Under current practice, the members of our committee agreed that property owners can waive this accelerated schedule by agreeing to a continuance of the eviction trial or otherwise agreeing to a stay of the proceedings while the parties pursue settlement options. Under K.S.A. 61-3807, the statutory deadlines cannot be stayed or otherwise continued solely on the tenant's request.

Eviction Filings in Kansas—Before and After the CDC Eviction Moratorium

As this report previously indicated, a combination of state and federal orders suspended residential evictions based on the nonpayment of rent in response to the COVID-19 pandemic. The Kansas Supreme Court issued its Administrative Orders suspending non-essential hearings in light of the COVID-19 pandemic in March 2020. Shortly thereafter, Governor Laura Kelly and the CDC ordered moratoria on residential evictions due to the nonpayment of rent.

The CDC's moratorium only applied to residential evictions for nonpayment of rent, not to residential evictions for other reasons, such as an expired lease term or violations of other lease terms. Congress codified the CDC's moratorium through legislation through January 31, 2021, but the governor's order and the CDC's moratorium lasted significantly longer—through May 28, 2021, and October 3, 2021.

From the outset, the committee understood that before it could make meaningful recommendations regarding best practices for evictions in the wake of the pandemic, it needed a baseline for comparison. The committee thus

reviewed and compared data from pre-pandemic eviction filings (Fiscal Years 2017, 2018, and 2019) with filings during the pandemic (Fiscal Year 2021) and new cases after October 3, 2021.

Note: The committee also gathered information relating to filings in Fiscal Year 2020. This information, however, was less helpful, as it included three quarters before and one quarter during the pandemic. Given the mixed nature of those 12 months, this report largely disregards the data collected for FY2020.

As this court is aware, Kansas judicial districts currently use three different case management systems—Full Court, Odyssey, and Justice Information Management System (JIMS). The Judicial Branch is in the process of converting all courts to the Odyssey system. The committee requested information from all three programs, but for obvious reasons all collected data came from Full Court and JIMS. The committee was able to obtain the statistics for the number of total limited action cases filed compared to the number of eviction cases filed, and to review the disposition of those eviction cases. In general, the case management systems were consistent in their treatment of default judgments and dismissals, but not for other dispositions. In other words, the systems did not uniformly capture information regarding whether a case was settled or tried.

Turning to the data collected, an average of 108,915 limited-action cases were filed each year for Fiscal Years 2017, 2018, and 2019. During the pandemic Fiscal Year 2021, there were 79,530 new limited actions, a 27% decline in filings.

Similarly, before the pandemic, there was an average of 14,560 eviction cases per year filed annually. During Fiscal Year 2021, there were 9,110 new eviction cases filed, or 5,450 fewer cases—a 37% decline.

Statewide limited actions filed, FY2017 – FY2021

FY2017	99,248
FY2018	114,457
FY2019	113,041
FY2020	90,863
FY2021	79,530

Statewide eviction cases filed, FY2017 – FY2021

FY2017	14,455
FY2018	14,555
FY2019	14,671
FY2020	12,347
FY2021	9,110

This is not surprising, given the combination of the eviction moratorium and the reduced filings overall during that period. Though none of the case management systems presently captures information relating to the reason for filing an eviction petition, the committee agreed that **most residential evictions—approximately 90%—are filed when the tenant fails to pay his or her rent.**

Since CDC’s moratorium expired on October 3, 2021, eviction filings have returned to pre-pandemic levels in most parts of the state. Before the pandemic, there were on average 280 new eviction cases filed each week. During Fiscal Year 2021, this weekly average dropped to about 175 new cases. And though there was an initial spike in filings immediately after the moratorium expired, the weekly filings leveled out over the next six weeks—averaging 277 cases per week.

Statewide eviction petitions filed by week

October 4, 2021	219
October 11, 2021	401
October 18, 2021	353
October 25, 2021	227
November 1, 2021	224
November 8, 2021	240

The committee also examined eviction dispositions within the same period. In the committee's experience, roughly half of eviction petitions result in a default judgment, as the tenants do not appear at the answer docket and do not file a written answer. The collected data is consistent with this anecdotal experience. Before the pandemic, there were about 14,560 eviction cases filed each year in Kansas and 7,303 default judgments. Another 25% of eviction petitions (an average of 3,568 cases per year) were dismissed due to some procedural default by the property owner—usually failure to provide the correct notice to the tenant. Thus, about 75% of eviction petitions are not decided on the merits.

Statewide eviction dispositions, FY2017 – FY2021

	FY2017	FY2018	FY2019	FY2020	FY2021
Default Judgment	7,242	7,395	7,273	5,600	3,872
Dismissed	3,567	3,707	3,430	2,881	2,300
Contested/Settled	2,651	2,512	2,477	1,907	1,179
Trial	150	150	97	144	191
Other	843	782	1,316	1,120	498

Most of the remaining 25% of the cases are resolved through settlement; very few cases are tried. It is not clear how trials are reported in the different case management systems. But in the committee’s experience, less than 10% of eviction cases are set on a trial docket (meaning, are scheduled for trial). Most of those cases result in either a default judgment (if the tenant does appear) or dismissal (if the property owner is absent). In many other cases, the parties reach a settlement. The committee members estimate that only about 1% of new eviction cases go to trial.

By contrast, during Fiscal Year 2021, there were 9,110 eviction petitions filed and 3,872 default judgments—or 43%—entered, a 7% decrease from pre-pandemic levels. The same percentage of cases (25%) resulted in dismissal. And about 2% of the cases were tried. Though it is impossible to know for certain, the committee believes that the decrease in default judgments and increase in trials during the pandemic was due to the eviction moratorium and the availability of the rental assistance funds (the KERA Program discussed in more detail in Part 2). During the pandemic, many eviction cases were being continued to allow property owners and tenants to work together to obtain the rental assistance funds. If the parties' efforts were successful, those cases would be dismissed.

The committee also compared the eviction filings between urban and rural judicial districts to see whether these trends were consistent across the state. The committee thus compared filings in the 7th Judicial District (Douglas County), the 10th Judicial District (Johnson County), the 18th Judicial District (Sedgwick County), and the 25th Judicial District (Finney, Greeley, Hamilton, Kearny, Scott, and Wichita Counties). A few interesting trends in this data are worthy of note.

Pre-pandemic eviction cases and dispositions

	Pre-Pandemic Average (Fiscal Years 2017-2019)			
	District 7	District 10	District 18	District 25
Eviction Petitions Filed	636	2320	5016	80
% Kansas Evictions	4%	16%	34%	.5%
Default Judgment	287	1029	2688	42
Dismissed	218	393	1311	10
Contested/Settled	122	671	995	25
Trial	0	211	14	1
Other	5	15	5	2

Pandemic eviction cases and dispositions

	Fiscal Year 2021			
	District 7	District 10	District 18	District 25
Eviction Petitions Filed				
Default Judgment	162	346	1786	38
Dismissed	111	101	1212	14
Contested/Settled	88	281	500	29
Trial	0	185	117	0
Other	1	4	7	0

New eviction petitions filed each week after end of CDC moratorium

Week starting	District 7	District 10	District 18	District 25
October 4, 2021	14	27	108	1
October 11, 2021	25	53	168	0
October 18, 2021	9	50	131	1
October 25, 2021	5	46	108	0
November 1, 2021	7	30	117	0
November 8, 2021	11	26	97	0

10th Judicial District (Johnson County)

The 10th Judicial District has a population of 609,863. Before the pandemic, Johnson County had an average of 2,320 eviction petitions filed each year—16% of all Kansas eviction cases. During Fiscal Year 2021, there were 937 new eviction cases—1,383 fewer cases, a 60% decline. This 60% decline in eviction filings far exceeded the 37% State average decline during the pandemic.

After the CDC moratorium expired, Johnson County eviction filings generally returned to pre-pandemic levels.

Before the pandemic, roughly 44% of Johnson County eviction petitions resulted in a default judgment, a little less than the statewide average of 50%. About 17% of cases were dismissed, under the statewide average of 25%. Thus, 61% of Johnson County cases—compared with 75% of cases statewide—resulted in default judgments or dismissals.

18th Judicial District (Sedgwick County)

The 18th Judicial District has a population of 523,824. Before the pandemic, Sedgwick County averaged 5,016 eviction filings annually, or 34% of the total eviction cases filed in Kansas—more than twice as many as were filed in Johnson County. During Fiscal Year 2021, there was a 27% decline in new eviction petitions. This 27% decline was less than the 37% State average and far less the 60% decline in Johnson County.

Unlike other areas of the state, eviction filings in Sedgwick County significantly increased after the CDC's moratorium expired on October 3, 2021. Before the pandemic, there were 96 new eviction cases filed every week in Sedgwick County. During the pandemic, that number dropped to 70. But after the moratorium expired, Sedgwick County averaged 121 cases each week—about a 25% increase over pre-pandemic eviction filings.

In Sedgwick County, about 54% of eviction petitions result in a default judgment, slightly higher than the State average of 50%. About 26% of eviction petitions are dismissed. So about 80% of evictions—compared to the statewide average of 75%—are resolved through some procedural default. And far fewer cases—less than 0.2% evictions filed—go

to trial. (During the pandemic, the number of trials increased dramatically, with 3% of Sedgwick County evictions being resolved through a trial.)

7th Judicial District (Douglas County)

The 7th Judicial District has a population of 118,785. Douglas County hears about 4% of Kansas eviction cases. During the pandemic, 35% fewer evictions were filed than in previous years—fairly consistent with the statewide decrease of 37%. After the CDC moratorium expired, Douglas County filings returned pre-pandemic levels.

In Douglas County, 45% of eviction petitions result in default judgments, slightly less than the statewide average of 50%. About 34% of eviction petitions are dismissed, significantly higher than the 25% average across the state. This means that 79% of petitions result in a default judgment or a dismissal—close to the 75% statewide average. Very few cases are reported as going to trial.

25th Judicial District (Finney, Greeley, Hamilton, Kearny, Scott, and Wichita Counties)

The 25th Judicial District has a total population of 53,558. This district hears about .5% of Kansas eviction cases. Interestingly, the 25th Judicial District saw no change in the annual number of eviction petitions filed before, during, or after the pandemic.

About 52.5% of eviction petitions in the 25th Judicial District result in a default judgment, while about 12.5% are dismissed—meaning about 65% are resolved on procedural defaults rather than on the merits. Almost no cases are tried.

With this background, the report now turns to the challenges and immediate opportunities for the committee identified within the eviction process.

Part 2: Challenges and Opportunities for Resolving Evictions out of Court

As the previous discussion indicated, about 75% of eviction petitions are resolved based on some procedural default by the tenant or property owner. Most notably, in about 50% of cases, the tenant does not appear at the answer docket or otherwise file an answer.

Practically speaking, several considerations might inform a tenant's decision not to contest the eviction. A tenant may decide that he or she is ready to leave the premises (for financial reasons or some other reason). A tenant may know he or she is unable to pay rent (though the tenant may or may not qualify for rental assistance). Or a tenant may feel overwhelmed by the situation or may not understand that he or she can contest the eviction.

In some cases, such as in the first example listed, a tenant's default is the result of a conscious decision. In others, it may be due to confusion or a lack of understanding. The same is true for the 25% of cases that result in dismissal; some of those cases are dismissed because the property owners consciously decide to no longer pursue the eviction, but others are rooted in ignorance of or misunderstanding about the eviction notices and procedures.

Regardless of the reason for the procedural default, Kansas eviction dockets are currently able to shoulder the high caseloads and short statutory timeframes because about 75% of the cases filed are never litigated beyond the petition. The committee questions the wisdom and equity of this judicial model, which relies, at least in part, on litigants' ignorance to stay afloat. Should litigants instead have access to accurate information about the eviction process so property owners and tenants can make informed decisions during an eviction? And should the Judicial Branch develop alternative channels for resolving evictions to allow courts to continue to function while parties are able to make better informed decisions?

The answer to these questions, in the committee's view, is **yes**. This section focuses on three opportunities to effect these goals during the next 18 months.

Opportunity 1—Kansas Emergency Rental Assistance Funds

Two federal laws enacted in 2021—the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 and the American Rescue Plan Act of 2021—provided significant federal funding to help tenants who were behind on rent due to the pandemic remain in their homes. These funds must be used to cover costs incurred between March 3, 2021, and December 31, 2024. The funds must be disbursed by December 31, 2026.

Governor Kelly designated the Kansas Housing Resource Center as the administrator of these emergency funds—called the Kansas Emergency Rental Assistance (KERA) program—in our state. To date, more than \$150 million has been disbursed under the KERA program. Tenants and property owners must jointly apply for KERA funding. To receive KERA funds, property owners must agree they will not pursue evict the tenant for nonpayment of rent. Up to 18 months of rental assistance may be available.

The Kansas Judicial Branch website includes general information about KERA funds, including a link to a YouTube video and links to information sheets published by the KHRC (one for property owners and one for tenants). But in the committee's experience, there remains widespread misunderstanding about how KERA works and confusion about what assistance may be available. For example, committee members observed anecdotally that tenants often believe that KERA funds are no longer available once an eviction petition is filed, but this is not true. Or property owners and their counsel have expressed the belief that the KERA application process is unwieldy and will not result in timely relief; in reality, however, KERA applications are expedited in several circumstances, including when an eviction petition is pending.

Judges across the state have taken varying approaches to KERA funds. Some judges will take the opportunity when an eviction case goes to trial to ask the parties whether they have considered applying for KERA funds. The attorney committee members found this approach to be helpful but agreed that the information should come earlier in the process—especially since so few eviction cases are tried. The committee members unanimously agreed that the sooner this information can be provided in the process, the more effective it will be.

One judge member of the committee questioned whether it was appropriate for a judge to provide KERA information or whether it crossed into the realm of legal advice. In general, the other members of the committee believed merely providing information about resources where tenants and property owners alike might learn about the KERA funds and process—similar to what already exists on the Judicial Branch website—was appropriate. This information could have a significant impact on eviction filings while those funds are available.

Opportunity 2—Kansas Eviction Forms and Other Educational Resources

Evictions proceedings almost always involve at least one self-represented litigant. Tenants who cannot afford rent also cannot afford an attorney, and they still may not qualify for assistance from Kansas Legal Services and other organizations. During the pandemic, it has become increasingly common for both the tenant and the property owner to appear without counsel. Given the relative complexity of the eviction procedure, it is no wonder that so few proceedings are resolved on their merits.

Faced with this challenge—on top of the societal disruption caused by evictions generally and the sheer number of eviction petitions filed—Kansas courts would benefit significantly from educational resources explaining the Kansas eviction process. The Kansas Judicial Branch is in a unique position to provide those resources.

The committee envisioned two types of resources the Judicial Branch could develop: (1) resources educating property owners, tenants, and the public about the eviction process and (2) accessible forms for each stage in the eviction proceedings to assist parties and the courts navigate the proceedings in accordance with Kansas law.

As to the first category of information, the Kansas Judicial Branch website maintains a page (<https://www.kscourts.org/Public/Eviction-resources>) entitled "Eviction Resources." Currently, that website includes a link to a YouTube video about KERA funds, two brochures about KERA, an eviction pamphlet published by the Kansas Bar Association, and various lawyer-referral resources. The page also

includes a link to the current eviction forms published by the Kansas Judicial Council. It does not include any information describing the eviction process.

In the committee's view, there is great potential here for growth—for education and outreach. Courts across the country have taken varied approaches to developing educational materials for evictions. After reviewing other jurisdictions' resources, the committee agreed that the Baltimore City District Court's informational video was particularly effective. This video, which can be viewed at https://www.publicjustice.org/en/legal_help/housing/, provides information for tenants and property owners relating to tenancies, rental agreements, and the eviction process. A similar resource could be incredibly effective in Kansas courts.

The committee also suggests encouraging bar associations and other interested groups to develop educational programs for high-school students to explain the landlord-tenant relationship and the rental process before the students sign their first lease.

Turning to forms, the Kansas Judicial Council currently maintains the following forms relating to eviction proceedings:

- Notice to Leave (different forms for In-Person and by Mail)
- Petition for Eviction
- Summons
- Answer to Petition for Eviction
- Journal Entry
- Writ of Restitution for Immediate Possession

The Judicial Council, in coordination with the Kansas Supreme Court's Access to Justice Committee, has conducted a plain-language revision of the petition and answer within the last two years. And the Access to Justice Committee is in the process of drafting two information sheets—one for property owners and one for tenants—to explain the information requested in the petition and answer.

These steps are important. But the committee overwhelmingly agrees that a more substantive revision of all these documents, handled by people more familiar with the eviction process, would be helpful. The same group of people could also make recommendations regarding several other forms that would be helpful throughout the proceedings.

Opportunity 3—Alternative Dispute Resolution

From the outset of the committee's discussion, committee members expressed an interest in exploring whether any of the Pre-Eviction Diversion Initiatives—which seek to resolve evictions before a petition is filed—that had been adopted in other parts of the country would be compatible with Kansas eviction practice. The committee recognized that alternative dispute resolution could be particularly effective in eviction proceedings, especially given the availability of KERA funds over the course of the next two years. As one committee member who manages rental properties observed, it is in everyone's best interest if a tenant continues to live in the property and a property owner continues to be paid under the lease.

At the same time, however, the Kansas statutes governing evictions provide several limitations on extrajudicial resolution of these cases. One of these limitations is rooted in the expedited nature of the eviction proceeding. Kansas law requires that trials for the possession of property in eviction cases be held within 14 days of the answer date. See K.S.A. 61-3807(a). The committee members agreed that this timing provision could be waived by the property owner, but likely not by the court. This means that any alternative dispute resolution program must be **voluntary**.

Another limitation is more practical. Kansas courts' first contact with an eviction occurs when the eviction petition is filed, which starts the expedited process. Pre-filing initiatives are thus unworkable.

Moreover, though many alternative dispute resolution programs in eviction cases across the country are phrased as "diversion" initiatives, the committee members questioned whether the Kansas eviction process lent itself to a true "diversion." Others suggested that a "diversion" program might lead to procedural complications, such as what would occur if a tenant later violated an

eviction diversion agreement. And several committee members who routinely represent property owners indicated that they believed a voluntary program that focused on dispute resolution, rather than "diversion," would have more buy-in from those litigants.

The committee members thus focused on voluntary templates for alternative eviction resolution through court-facilitated mediation, rather than true diversion. After reviewing and discussing several courts' approaches, the committee found that the program adopted by the Monroe County, Indiana, court was promising and could be compatible with Kansas eviction law.

The Monroe County program is a district-centered approach. A local judicial district employs an evictions facilitator who performs several functions. The facilitator is present at the answer docket to answer any questions property owners and tenants may have about the eviction process and provide information regarding the KERA application. The facilitator also is available to act as a mediator, should the litigants agree to attempt to resolve the case outside of court.

Inspired by this approach, the committee worked with the Office of Judicial Administration to assist in applying for a grant through the National Center for State Courts to establish a similar program in Sedgwick County. The committee felt that Sedgwick County—which handles one-third of all Kansas evictions—would provide the greatest opportunity for impact. The program and resources developed for Sedgwick County, which serves more diverse populations than other urban areas, could also serve as a toolkit across the state.

We now turn to the committee's recommendations for addressing each of these opportunities and the recommended timeline for implementation.

Part 3:
**Committee's Immediate Recommendations
and Proposed Timeline for Implementation**

**1. Recommendations Requiring Immediate Action
(0-6 months)**

- 1.1. **Continuing the Committee's Work.** The Ad Hoc Committee for Best Practices in Eviction Proceedings should continue its work, with replacement members appointed as needed, to oversee the implementation of these recommendations and provide expertise and stability throughout the process—at least for the next 18 months.

- 1.2. **Kansas Emergency Rental Assistance Information.** Kansas courts should uniformly provide information about KERA funds early in the eviction process.
 - 1.2.1. In all residential eviction case for nonpayment of rent, judges should remind the parties about the availability of rental assistance funds at the answer docket. This information can be provided via a bench card for judges who preside over eviction proceedings and can be updated by the Office of Judicial Administration as necessary. Judges should grant continuances if both parties are interested in pursuing rental assistance.

 - 1.2.2. In districts where the answer docket is not conducted as a traditional hearing, the same statement can be made in a handout for all tenants or property owners who appear.

 - 1.2.3. The summons for residential evictions for nonpayment of rent should contain the following statement in both English and Spanish, either in the summons itself or as an attachment to the summons:

"You may be able to have some of the rent you owe paid and stop your eviction. Find out more about available rental assistance programs in your area at <https://kshousingcorp.org/emergency-rental-assistance/>."

- 1.3. **Development of Voluntary Eviction Resolution Program.** The Kansas Supreme Court, through this committee and in association with the Office of Judicial Administration's Alternative Dispute Resolution director, should develop a model Voluntary Eviction Resolution Program that district courts may implement to provide an alternative to eviction.
 - 1.3.1. To maximize impact, a pilot program for dispute resolution should be developed for Sedgwick County, in accordance with the recent grant application to the Eviction Diversion Initiative by the National Center for State Courts. This committee should act as a resource as Sedgwick County works to implement a voluntary pilot program to resolve evictions outside of court.
 - 1.3.2. Based on the Sedgwick County model, the Judiciary should expand opportunities for resolving eviction cases before trial by establishing a Voluntary Eviction Resolution Program (VERP). The VERP would a court-employed facilitator who would be present at the answer docket to answer questions about the eviction process for tenants and property owners. The facilitator would also be equipped to conduct mediation to assist in resolving the eviction claims.

2. Recommendations Regarding Education, Outreach, and Data Collection (0-12 months)

2.1. **Creating Educational Reference Videos.** The Office of Judicial Administration, Kansas Supreme Court Access to Justice Committee, or other appropriate entity should coordinate the creation of a series of informational videos that would help unrepresented property owners and tenants understand their rights and obligations in a tenancy and explain the steps in the eviction process. These videos could be posted on court websites. The script for the videos should be created by a committee of legal professionals, including advocates for property owners and tenants alike. The videos should cover:

- Pre-tenancy and early-tenancy issues like initial walk-through;
- Issues that arise during tenancy like notices to property owners and tenants for non-compliance;
- Issues related to termination of a tenancy like providing notice to the property owner of the tenant's new address.

2.2. **Development of Bench Book.** The Office of Judicial Administration, Kansas Supreme Court Judicial Education Committee, or other appropriate entity should develop a desktop reference for judges (a bench book) to establish uniform baseline standards for eviction proceedings and to disseminate statewide best practices in eviction matters. The bench book should include the following:

2.2.1. A summary of Kansas landlord-tenant law for reference.

2.2.2. A decision-tree reflecting a model initial hearing for contested eviction proceedings covering the most common decisions a judge might make and their consequences.

2.2.3. A model script for initial eviction hearings to apprise the parties of their rights in the proceeding and their responsibilities to one another as well as the court.

- 2.2.4. A Lawful Alternative Resolutions Catalog detailing non-trial resolutions to common landlord-tenant issues.
 - 2.2.5. A model process for applying for and adjudicating motions for stays from Writs of Restitution.
 - 2.2.6. A supplement discussing and promoting best practices in establishing bonds in eviction matters and a model process for the posting of them with the clerk of the district court.
- 2.3. **Educating Young Adults Before They Sign a Lease.** The Kansas Supreme Court should encourage attorneys, bar associations, and nonprofit legal service providers to develop and present landlord-tenant seminars in high schools across Kansas.
- 2.4. **Odyssey.** The Office of Judicial Administration should work with the Odyssey developers to ensure the case management program captures meaningful data relating to evictions. This data might include:
- distinguishing cases by general eviction category (residential and commercial) and reason for filing (nonpayment of rent, other violations of the lease, expired leases, and return of property).
 - case disposition, to capture information about whether a case went to judgment after a trial, was settled, or had some other outcome.
 - zip codes of the rental properties in question, as there may be different socio-economic factors in different areas of a county or judicial district, to allow for more effective use of resources and outreach efforts.
 - whether parties opted to seek alternative resolution of the dispute and whether mediation was successful.

3. Recommendations Regarding Judicial Council Forms (6-18 months)

3.1. The Judicial Council, in collaboration with the Kansas Supreme Court Access to Justice Committee and attorneys who regularly represent clients in eviction proceedings, should amend the following existing forms:

3.1.1. **3-day notice to pay rent or quit**. This notice should be amended to specifically state that property owner reserves right to evict the tenant even if the owner accepts payment for a portion of rent owed. The form should also be amended to allow a property owner to inform a tenant of his or her right to cure any deficiencies to reduce unintentional procedural defaults by property owners.

3.1.2. **Summons**. The summons should be amended to incorporate clear instructions to the defendant tenant on how to update their address with the court. The summons should also include a copy of the Judicial Council's answer form (similar to current process in small claims and garnishment cases).

3.1.3. **Petition**. The petition should be amended to state how many days the tenant was given to cure any deficiency and when notice was served.

3.1.4. **Answer**. The answer should be amended to provide a reference to where tenants may find affirmative defenses or counterclaims available in an eviction proceeding.

3.1.5. **Journal entry**. The journal entry form should be amended to make clear whether property owner reserves right to pursue damages after he or she obtains possession of the premises.

- 3.2. The Judicial Council, in collaboration with the Kansas Supreme Court Access to Justice Committee and attorneys who regularly represent clients in eviction proceedings, should develop additional forms for eviction proceedings:
- 3.2.1. **14-30 day notice of landlord noncompliance**. A new form should be created so a tenant can indicate whether a property owner's breach is material noncompliance, noncompliance affecting health and safety, or both; allow a space for the tenant to describe the issue; and state the deadline for compliance.
 - 3.2.2. **14-30 day notice of tenant noncompliance**. A new form should be created so a property owner can indicate whether a tenant's breach is material noncompliance, noncompliance affecting health and safety, or both; allow a space for the property owner to describe the issue; and state the deadline for compliance.
 - 3.2.3. **Tenant notice of payment of rent under protest due to (1) landlord's failure to maintain and/or (2) destruction by fire &/or casualty**. A new form should be created so a tenant can explain any problems with the conditions of the property, damage to the unit, description of part of unit that is no longer usable, and why reduction of rent in requested amount is reasonable.
 - 3.2.4. **Accounting form**. A new form should be created that a property owner can use to explain security deposit withholding or return after a tenant vacates a unit.

4. Long-Term Structural Recommendations for Future Consideration (18+ months)

4.1. The Kansas Supreme Court should consider adopting a court rule (or rules) governing eviction procedures to achieve greater uniformity among the judicial districts. Such a rule might

- Require a property owner to attach a copy of the rental agreement (if in writing) and applicable notice to the petition.
- Require a property owner to submit a Landlord Case Information Statement that would capture pertinent information and would support case management and allow for an efficient, early review of the case by judges and court staff.
- Require a tenant to submit a Tenant Case Information Statement that would use plain language to capture key information, including the tenant's contact information.

4.2. The Kansas Supreme Court, in coordination with the Judicial Council, should consider recommending updates to Kansas statutes to clarify the law relating to evictions and modernize the process. Such amendments might include, among other clarifications:

- Requiring all petitions to affirmatively plead the jurisdictional basis of the petition and attach proof of compliance with key statutory mandates.
- Eliminating newspaper publication requirements for property owners who are disposing of abandoned property.
- Establishing a list of the tenant's and property owner's respective rights and responsibilities, and requiring property owners to include this information with every rental agreement.