BORDER WARS: AN INTRODUCTION TO THE SERIES

By Casey Tourtillott

The line separating Kansas from Missouri has long been a source of conflict. Whether it be the historic battles between the Jayhawkers and the Bushwhackers, or the once-annual NCAA showdowns between the University of Missouri Tigers and the University of Kansas Jayhawks, the rivalry runs deep.

Geographically, the Kansas City metropolitan area touches both states. And for attorneys practicing law in the greater Kansas City area, the state line still carries heavy significance. It matters whether a case is filed in Missouri or Kansas, in either federal court or state court. It matters a great deal. In the state arena, the laws of the states differ at varying levels. In the federal arena, practitioners face not only distinct district courts, but also different federal circuits: the Missouri federal courts lie in the Eighth Circuit while the Kansas federal court lies in the Tenth. Each court has in place its own policies, procedures, and rules.

Are these differences important? Absolutely. They are critical. Plaintiffs' counsel must recognize which state's law is more beneficial for their clients so that if they have a choice, they can file in the more favorable court. And defense counsel should recognize that unique defenses may be available in one state, but not in the other. All attorneys should be aware of filing rules and procedures, and how they must tailor their actions for each court.

For example, discovery disputes in the United States District Court for the Western District of Missouri are handled pursuant to the court's Local Rule 37.1. Under that Rule, practitioners must (1) confer or attempt to confer concerning the matter; (2) arrange for an immediate phone conference with the court and opposing counsel; and (3) only after these two actions have been taken may counsel file a written motion regarding the discovery request.[1] In contrast, less than ten minutes away, in the United States District Court for the District of Kansas, discovery disputes are handled pursuant to the District of Kansas's Local Rules 37.1 and 37.2. Under those Rules, parties have a duty to confer before filing a discovery motion.[2] But a motion to compel discovery must be filed within thirty days of the "default or service of the response, answer, or objection that was the subject of the motion," unless the court finds good cause for extending the filing time.[3] The objection is otherwise waived.[4] The resulting impact? Practitioners must be cognizant of these rules or risk waiving objections.

---

[1] W.D. MO. R. 37.1(a).
[2] *See generally* D. KAN. R. 37.2 ("The court will not entertain any motion to resolve a discovery dispute pursuant to Fed. R. Civ. P. 26 through 37 . . . unless the attorney for the moving party has conferred or has made reasonable effort to confer with opposing counsel concerning the matter in dispute prior to the filing of the motion.").
[3] D. KAN. R. 37.1(b).
[4] *Id.*

Another example is found in family law: common law marriage. Kansas recognizes common law marriage but Missouri does not.[5] These differences potentially impact decisions in contract law, probate, employee benefits, and a plethora of other areas.

Finally, one more example of an area in which practitioners must be wary is comparative fault law. Kansas applies the modified comparative fault concept. Under this rule, a plaintiff who is 49% or less responsible for damages can recover some amount.[6] But a plaintiff who contributed 50% or more to her damages is barred from recovery.[7] Missouri, on the other hand, uses pure comparative fault.[8] This means that a plaintiff may receive some compensation even if she was 99% at fault in an incident. These differences are critical in guiding the decisions that attorneys must make in prosecuting and defending tort claims.

This regular series of the online *UMKC Law Review* is designed to explore the differences between Kansas and Missouri law, in both state and federal court—in much more depth than sampled above. The articles published here will identify key differences in how courts across the state line handle legal and procedural issues. Scholars and practitioners alike will find value in these glimpses at differences in law and rules determined only by whether the case is filed on the eastern side of the metro area or the western side.

Many of these differences may never change. But maybe . . . just maybe . . . we can learn from one another. As we seek the "just, speedy, and inexpensive"[9] administration of justice, perhaps it is time to set aside our differences and, to the extent possible, adopt the versions of rules, procedures, and/or laws that best aid us in reaching those ideals.

---

[5] *See, e.g.*, Fleming v. Fleming, 559 P.2d 329, 330–31 (Kan. 1977) (identifying the elements for common law marriage in Kansas); Whitley v. Whitley, 778 S.W.2d 233, 238 (Mo. Ct. App. 1989) (specifying that Missouri has rejected common law marriage).

[6] *See generally* KAN. STAT. ANN. § 60-258a(a) ("The contributory negligence of a party in a civil action does not bar that party or its legal representative from recovering damages for negligence resulting in death, personal injury, property damage or economic loss, if that party's negligence was less than the causal negligence of the party or parties against whom a claim is made, but the award of damages to that party must be reduced in proportion to the amount of negligence attributed to that party."); Forsythe v. Coats Co., Inc., 639 P.2d 43, 44–45 (Kan. 1982).

[7] KAN. STAT. ANN. § 60-258a(a).

[8] Gustafson v. Benda, 661 S.W. 2d 11, 15–16 (Mo. 1983).

[9] FED. R. CIV. P. 1.