CHAPTER 5
Appellate Jurisdiction

I. CREATION OF THE KANSAS APPELLATE COURTS

§ 5.1 Constitutional and Statutory Authority

The Kansas Constitution provides that the judicial power of the state is vested in one court of justice, which consists of one Supreme Court with general administrative authority over all other courts, district courts, and "such other courts as are provided by law." Kan. Const. art. 3, § 1. K.S.A. 20-3001 provided for the creation of the Kansas Court of Appeals.

The Supreme Court has original jurisdiction in proceedings in quo warranto, mandamus, and habeas corpus, and "such appellate jurisdiction as may be provided by law." Kan. Const. art. 3, § 3. The Court of Appeals has "such jurisdiction over appeals in civil and criminal cases and from administrative bodies and officers of the state as may be prescribed by law." K.S.A. 20-3001. The Court of Appeals also has "such original jurisdiction as may be necessary to the complete determination of any cause on review." K.S.A. 20-3001.

"The right to appeal is entirely statutory, and the limits of appellate jurisdiction are imposed by the legislature." *State v. LaPointe*, 305 Kan. 938, Syl. ¶ 1, 390 P.3d 7 (2017). "K.S.A. 60-2101 provides the starting point for defining the jurisdiction of Kansas appellate courts in both civil and criminal cases.… As to criminal appeals, K.S.A. 60-2101(a) provides: 'Appeals from

the district court to the court of appeals in criminal cases shall be subject to the provisions of K.S.A. 22-3601 and 22-3602.'" *State v. LaPointe*, 305 Kan. at 942. "The Kansas Constitution gives to the district and appellate courts jurisdiction to hear appeals only as provided by law. The Kansas Constitution gives the legislature the power to grant, limit, and withdraw the appellate jurisdiction to be exercised by the courts." *State v. Lewis*, 27 Kan. App. 2d 134, Syl. ¶ 3, 998 P.2d 1141 (2000). See also *State v. Gill*, 287 Kan. 289, 293-94, 196 P.3d 369 (2008); *In re J.D.B.*, 259 Kan. 872, Syl. ¶ 1, 915 P.2d 69 (1996). Parties cannot create appellate jurisdiction. *See State v. McCarley*, 287 Kan. 167, 175, 195 P.3d 230 (2008); *State v. Asher*, 28 Kan. App. 2d 799, 800, 20 P.3d 1292 (2001). When a record discloses a lack of jurisdiction, the appellate court must dismiss the appeal. *State v. Gill*, 287 Kan. at 294; *In re J.D.B.*, 259 Kan. 872, Syl. ¶ 1.

II. APPELLATE JURISDICTION OF THE SUPREME COURT IN CRIMINAL CASES

§ 5.2 Direct Appeals to the Supreme Court

Any appeal permitted to be taken from a final judgment of the district court in a criminal case is taken to the Kansas Court of Appeals, except in those cases reviewable by law in the district court and those cases where direct appeal to the Kansas Supreme Court is required. K.S.A. 22-3601(a). Direct appeal to the Kansas Supreme Court is required in the following cases:

- In any case in which a state or federal statute has been held unconstitutional. K.S.A. 22-3601(b)(1).
- By all criminal defendants who have: (1) been convicted of a class A felony; or (2) been sentenced to a maximum sentence of life imprisonment, unless the maximum sentence was imposed under K.S.A. 21-6627 or K.S.A. 21-4643 prior to its repeal. K.S.A. 22-3601(b)(2) and (3).

- By some criminal defendants who have been convicted of an off-grid crime committed after June 30, 1993. K.S.A. 22-3601(b)(4). This statute does not apply to some off-grid crimes as set forth in § 5.3, *infra*.

  PRACTICE NOTE: A party that files a brief or other filing in the appellate courts of Kansas which contests or calls into doubt the validity of any Kansas statute or constitutional provision on the grounds that the law violates the state or federal constitution, or any provision of federal law, must serve the filing on the attorney general of Kansas accompanied by a notice of service under K.S.A. 75-764. Rule 11.01(a). This rule does not apply in an appellate proceeding in which the attorney general is the party disputing or defending the validity of the law at issue. Rule 11.01(e).

A conviction resulting in imposition of a death sentence is subject to automatic review by an appeal to the Kansas Supreme Court. *State v. Cheever*, 295 Kan. 229, 233, 284 P.3d 1007 (2012), *vacated and remanded on other grounds*, 571 U.S. 87 (2013); *State v. Hayes*, 258 Kan. 629, 638, 908 P.2d 597 (1995); K.S.A. 21-6619(a); K.S.A. 21-6629(c). The procedure to be followed on direct appeal following imposition of a death penalty is set out in Supreme Court Rule 10.02.

III. APPELLATE JURISDICTION OF THE COURT OF APPEALS IN CRIMINAL CASES

A. Appeals by the Defendant to the Court of Appeals

§ 5.3 Generally

All direct appeals from final judgments in criminal cases are taken to the Court of Appeals, except in those cases reviewable by law in the district court and where direct appeal to the Supreme Court is required. K.S.A. 22-3601(a). Since 2014, any appeal permitted to be taken from an order or final decision of a district magistrate judge who is regularly admitted to practice law in Kansas shall be taken directly to the Court of Appeals. K.S.A. 20-302b(c)(2)(B).

> **PRACTICE NOTE:** To find out whether a district magistrate judge is licensed to practice law in Kansas, check the online attorney directory at the Supreme Court's website: www.kscourts.org.

The Court of Appeals has jurisdiction over a limited number of off-grid crimes. K.S.A. 22-3601(b)(4). Under K.S.A. 22-3601(b)(4)(A) through (H), the off-grid crimes over which the Court of Appeals has jurisdiction are: Aggravated human trafficking, K.S.A. 21-5426(c)(3); rape, K.S.A. 21-5503(b)(2)(B); aggravated criminal sodomy, K.S.A. 21-5504(c)(2)(B)(ii); aggravated indecent liberties with a child, K.S.A. 21-5506(c)(2)(C)(ii); sexual exploitation of a child, K.S.A. 21-5510(b)(2)(B); aggravated internet trading in child pornography, K.S.A. 21-5514(c)(3); commercial sexual exploitation of a child, K.S.A. 21-6422(b)(2); or an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-5301, 21-5302 or 21-5303, of any such felony.

A defendant may appeal as a matter of right to the court having appellate jurisdiction "from any judgment against the defendant in the district court and upon appeal any decision of the district court or intermediate order made in the progress of the case may be reviewed." K.S.A. 22-3602(a). There are restrictions following

a guilty plea or a no contest plea. See K.S.A. 22-3602(a) and § 5.5, *infra*. However, "a criminal defendant has a nearly unlimited right of review." *State v. Boyd*, 268 Kan. 600, 605, 999 P.2d 265 (2000); see also *State v. Berreth*, 294 Kan. 98, Syl. ¶ 3, 273 P.3d 752 (2012). Jurisdiction over an appeal of a motion to correct an illegal sentence under K.S.A. 22-3504 lies with the appellate court that had jurisdiction to hear the original appeal. *State v. Thomas*, 239 Kan. 457, Syl. ¶ 2, 720 P.2d 1059 (1986).

> **PRACTICE NOTE:** The notice of appeal must specify the parties taking the appeal, designate the judgment or part of the judgment appealed from, and name the appellate court to which the appeal is taken. While the appealing party must cause the notice of appeal to be served on all other parties to the judgment, the party's failure to do so does not affect the validity of the appeal. K.S.A. 60-2103(b). The Supreme Court has adopted forms for a notice of appeal and docketing statement, which can be accessed at the website for the Kansas Judicial Council. See http://www.kansasjudicialcouncil.org/legal-forms. The notice of appeal must be in substantial compliance with the Judicial Council form. See Supreme Court Rule 2.01 (direct appeals to the Supreme Court); Supreme Court Rule 2.02 (direct appeals to the Court of Appeals).

§ 5.4 Following Final Judgment

"For crimes committed on or after July 1, 1993, the defendant shall have 14 days after the judgment of the district court to appeal." K.S.A. 22-3608(c). The time within which to file a notice of appeal starts when the sentence is pronounced from the bench. *State v. Moses*, 227 Kan. 400, Syl. ¶ 2, 607 P.2d 477 (1980). A criminal sentence is effective upon pronouncement from the bench; it does not derive its effectiveness from the filing of a journal entry. *Abasolo v. State*, 284 Kan. 299, Syl. ¶ 3,

160 P.3d 471 (2007). The journal entry "is thus a record of the sentence imposed; but the actual sentencing occurs when the defendant appears in open court and the judge orally states the terms of the sentence." *State v. Moses*, 227 Kan. at 402. This is true even under the sentencing guidelines. *State v. Scaife*, 286 Kan. 614, 626, 186 P.3d 755 (2008); *State v. Soto*, 23 Kan. App. 2d 154, Syl. ¶ 1, 928 P.2d 103 (1996).

Except as otherwise provided, a criminal defendant can appeal from any final district court judgment against the defendant and "upon appeal any decision of the district court or intermediate order made in the progress of the case may be reviewed." K.S.A. 22-3602(a). See also *State v. Walker*, 50 Kan. App. 2d 900, Syl. ¶ 1, 334 P.3d 901 (2014). Criminal defendants do not have the right to appeal intermediate pretrial orders. This avoids piecemeal prosecution of the crimes charged and prevents unnecessary delay in the judicial process. A defendant has the right to appeal such intermediate orders after a final judgment has been entered against him. *State v. Zimmerman*, 233 Kan. 151, 155, 660 P.2d 960 (1983); *State v. Donahue*, 25 Kan. App. 2d 480, Syl. ¶ 2, 967 P.2d 335 (1998) (an order disqualifying counsel from joint representation of several criminal defendants is not an appealable order; there has been no final judgment). Likewise, a defendant may not appeal from the court's decision to terminate pretrial diversion and reinstate criminal prosecution. *State v. Cameron*, 32 Kan. App. 2d 187, 81 P.3d 442 (2003).

Judgment has been rendered when there has been a conviction and sentence. "Kansas law defines a criminal judgment as consisting of a conviction *and* a sentence." *State v. Kleypas*, 305 Kan. 224, 242, 382 P.3d 373 (2016) (emphasis in original). To have a final judgment in a criminal case, the defendant must be convicted and sentenced, and no appeal may be taken until judgment is final. *State v. Hall*, 298 Kan. 978, 985-86, 319 P.3d 506 (2014) (until any applicable restitution amount is decided, a defendant's sentencing is not complete). A defendant's sentence is not final if the district court has ordered restitution but has not yet set the amount. "A sentencing hearing may be continued or bifurcated so that restitution is ordered at one setting and the amount decided at a later setting. In such instances, a district

judge should specifically order the continuance or bifurcation." *State v. Hall*, 298 Kan. 978, at Syl. ¶ 2. "Because restitution is part of a defendant's sentence, the amount of restitution must be determined and imposed in open court in the defendant's presence, unless the defendant voluntarily waives his or her presence.... [A]t the completion of the restitution hearing, the district court should notify the defendant of his or her appeal rights, including the deadline for filing the appeal." *State v. Hannebohn*, 48 Kan. App. 2d 921, Syl. ¶¶ 3-4, 301 P.3d 340 (2013).

> **PRACTICE NOTE:** The filing of a timely notice of appeal is jurisdictional, and any appeal not taken within the statutory deadline must be dismissed. A limited exception to this general rule is recognized in those cases where an indigent defendant either: (1) was not informed of the right to appeal, including the appeal filing deadline; (2) was not furnished an attorney to perfect an appeal; or (3) was furnished an attorney for that purpose who failed to perfect and complete an appeal. *State v. Patton*, 287 Kan. 200, Syl. ¶ 3, 195 P.3d 753 (2008); *State v. Ortiz*, 230 Kan. 733, 735-36, 640 P.2d 1255 (1982). If any of these narrow exceptional circumstances are met, a court must allow an appeal out of time. *State v. Phinney*, 280 Kan. 394, 401-02, 122 P.3d 356 (2005). See also *Kargus v. State*, 284 Kan. 908, 169 P.3d 307 (2007) (if defendant establishes ineffective assistance of counsel in failure to file petition for review in direct appeal, appropriate remedy is to allow filing of petition for review out of time).

K.S.A. 22-3430 gives authority to the trial court to commit a criminal defendant to a state mental institution in lieu of imprisonment. K.S.A. 22-3430(c) states, "The defendant may appeal from any order of commitment made pursuant to this section in the same manner and with like effect as if sentence to a jail, or to the custody of the secretary of corrections had been imposed." A defendant can appeal from an order of commitment under K.S.A. 22-3430; however, a trial court's refusal to commit

a defendant to a state mental institution in lieu of imprisonment is not reviewable on appeal. *State v. Lawson*, 25 Kan. App. 2d 138, 144, 959 P.2d 923 (1998).

There is no provision for an interlocutory appeal by a defendant in a criminal case. See *Donahue*, 25 Kan. App. 2d at 483. "There is no statutory procedure for a defendant to appeal a question of law after an acquittal of the crime charged." *State v. Mountjoy*, 257 Kan. 163, Syl. ¶ 4, 891 P.2d 376 (1995). The prosecution can, however, appeal on a question reserved following judgment. *State v. Hermes*, 229 Kan. 531, Syl. ¶ 4, 625 P.2d 1137 (1981). See § 5.9, *infra*.

> **PRACTICE NOTE:** Although a defendant cannot pursue an interlocutory appeal, in very limited circumstances defendants may be able to bring claims to an appellate court by way of original habeas action under K.S.A. 22-2710, which is part of the Uniform Criminal Extradition Act. *In re Mason*, 245 Kan. 111, Syl. ¶ 1, 775 P.2d 179 (1989) (defendant allowed to bring double jeopardy claim in original action with appellate court because the double jeopardy clause protects against going through second trial, not just being convicted at a second trial). See also Chapter 4, *supra*.

Defendants are allowed to appeal from judgments on post-conviction/post-appeal motions. See, *e.g.*, *State v. Guzman*, 279 Kan. 812, 112 P.3d 120 (2005) (appeal from denial of pro se motion for jail time credit).

§ 5.5 Following a Plea of Guilty or No Contest

Despite the general rule that a criminal defendant can appeal following judgment, no appeal can be taken from a judgment of conviction upon a plea of guilty or no contest, "except that jurisdictional or other grounds going to the legality of the proceedings may be raised by the defendant as provided in K.S.A. 60-1507 and amendments thereto." K.S.A. 22-3602(a).

See *State v. Edgar*, 281 Kan. 30, 39, 127 P.3d 986 (2006) (discussing a defendant's waiver of defects or irregularities in the proceedings upon entry of a voluntary plea of guilty).

K.S.A. 22-3602(a) does not, however, preclude a defendant who has pled guilty or no contest from taking a direct appeal from the district court's denial of a motion to withdraw the plea. "By permitting a defendant to seek withdrwal of a plea pursuant to K.S.A. 22-3210(d), the legislature implicitly permitted a defendant to appeal from such denial." *State v. Solomon*, 257 Kan. 212, Syl. ¶ 1, 891 P.2d 407 (1995) (following *State v. McDaniel*, 255 Kan. 756, Syl. ¶ 1, 877 P.2d 961 [1994]).

Following a plea, a defendant may challenge the sentence imposed under limited circumstances; for example, he or she may challenge the severity level of the crime upon which the sentence is based under K.S.A. 21-6820(e)(3) (formerly K.S.A. 21-4721[e][3]); *State v. Barnes*, 278 Kan. 121, 92 P.3d 578 (2004). See § 5.12, *infra*. Or a defendant may argue the sentence qualifies as "illegal" as that term is used in K.S.A. 22-3504. *State v. Harp*, 283 Kan. 740, 743, 156 P.3d 1268 (2007).

Any criminal defendant, including one who has pled guilty or no contest, may take a direct appeal from the district court's denial of a K.S.A. 22-3504 motion to correct an illegal sentence. K.S.A. 21-6820(a). "The court may correct an illegal sentence at any time while the defendant is serving such sentence." K.S.A. 22-3504(a). An "'illegal sentence' means a sentence: Imposed by a court without jurisdiction; that does not conform to the applicable statutory provision, either in character or punishment; or that is ambiguous with respect to the time and manner in which it is to be served at the time it is pronounced. A sentence is not an 'illegal sentence' because of a change in the law that occurs after the sentence is pronounced." K.S.A. 22-3504(c). However, "if a motion to correct an illegal sentence is filed while a direct appeal is pending, any change in the law that occurs during the pending direct appeal shall apply." K.S.A. 21-6820(i).

The prohibition against appeals taken by a defendant from a judgment of conviction based upon a plea does not apply to pleas accepted by a district magistrate judge who is not regularly

admitted to practice law in Kansas or by a municipal court judge. In those proceedings the case is appealed to the district court de novo. See *State v. Gillen*, 39 Kan. App. 2d 461, 467-69, 181 P.3d 564 (2008); K.S.A. 22-3609a (a defendant has the right to appeal from any judgment of a district magistrate judge who is not regularly admitted to practice law in Kansas); K.S.A. 22-3609 (a defendant has the right to appeal to the district court from any judgment of a municipal court that adjudges the defendant guilty of a violation of the ordinances of any municipality of Kansas or any findings of contempt). But see *State v. Legero*, 278 Kan. 109, Syl. ¶ 5, 91 P.3d 1216 (2004) (K.S.A. 2003 Supp. 22-3609a is construed and held not to authorize an appeal to the district court by a defendant from an order of a district magistrate judge revoking the defendant's probation).

> **PRACTICE NOTE:** "An agreement between parties that the right to appeal is not waived cannot invest an appellate court with jurisdiction when it is otherwise lacking." *State v. Asher*, 28 Kan. App. 2d 799, Syl. ¶ 1, 20 P.3d 1292 (2001). If the defendant would like to appeal a district court's adverse ruling on a pretrial motion as part of a plea negotiation (for example, the denial of a motion to suppress), he or she should proceed to a conviction based upon stipulated facts as opposed to entering a plea of guilty or no contest. In a case decided on stipulated facts, the appellate court has de novo review. *State v. Downey*, 27 Kan. App. 2d 350, 2 P.3d 191 (2000). However, the appellate court does not have de novo review from a judgment of conviction after a plea of guilty or no contest. K.S.A. 22-3602(a).

B. Appeals by the Prosecution

§ 5.6 Generally

"The State's right to appeal in a criminal case is strictly statutory, and the appellate court has jurisdiction to entertain a State's appeal only if it is taken within time limitations and in the manner prescribed by the applicable statutes." *State v. Snodgrass*, 267 Kan. 185, 196, 979 P.2d 664 (1999). "The right to an appeal by the State in a criminal proceeding is limited by statute." *State v. Bliss*, 28 Kan. App. 2d 591, Syl. ¶ 1, 18 P.3d 979 (2001). "The prosecution's ability to appeal a district court's ruling is substantially limited when compared to the defendant's right of appeal." *City of Liberal v. Witherspoon*, 28 Kan. App. 2d 649, Syl. ¶ 1, 20 P.3d 727 (2001).

The prosecution can appeal to the Court of Appeals from cases before a district judge or district magistrate judge who is regularly admitted to practice law in Kansas only in specific situations under K.S.A. 22-3602(b). These are set forth in § 5.7 through § 5.11, *infra*. The prosecution can appeal to the district court from cases before a district magistrate judge who is not regularly admitted to practice law in Kansas in the same situations under K.S.A. 22-3602(b) and from interlocutory orders listed in K.S.A. 22-3603. K.S.A. 22-3602(d).

The prosecution can also appeal a ruling on a motion to correct an illegal sentence under K.S.A. 22-3504. K.S.A. 21-6820(a) and K.S.A. 22-3602(f).

"Since there is no time limit delineated in K.S.A. 22-3602(b) for the prosecution to appeal, the time specified under the rules of civil procedure apply. Therefore, an appeal by the State must be taken within 30 days from the entry of final judgment as required by the rules of civil procedure. K.S.A. 60-2103." *State v. Freeman*, 236 Kan. 274, 277, 689 P.2d 885 (1984); K.S.A. 22-3606.

PRACTICE NOTE: As a general rule, if the practitioner believes there are multiple bases for the appeal, all grounds should be stated. "Grounds for jurisdiction not identified in a notice of appeal may not be considered by the court." *State v. Woodling*, 264 Kan. 684, Syl. ¶ 2, 957 P.2d 398 (1998). In *State v. Berreth*, 294 Kan. 98, 115-16, 273 P.3d 752 (2012), the court concluded the State was unable to expand on the statutory basis for jurisdiction asserted in its notice of appeal in the Court of Appeals. Since grounds for jurisdiction not identified in a notice of appeal may not be considered by the appellate court, the State should allege each applicable alternative means of bringing a direct appeal set forth in K.S.A. 22-3602(b).

§ 5.7 From an Order Dismissing a Complaint, Information or Indictment: K.S.A. 22-3602(b)(1)

"The State may appeal from an order dismissing a complaint pursuant to K.S.A. 22-3602(b)(1)." *State v. Hernandez*, 40 Kan. App. 2d 525, 527, 193 P.3d 915 (2008). The right to take a direct appeal under this statutory provision is generally the right to appeal from a pretrial order dismissing a complaint, information or indictment. The right to take this appeal belongs to the public prosecutor, not the complaining witness, *State ex rel. Rome v. Fountain*, 234 Kan. 943, Syl ¶ 2, 678 P.2d 146 (1984), nor an attorney hired to assist the public prosecutor under K.S.A. 19-717. *State v. Berg*, 236 Kan. 562, Syl. ¶ 2, 694 P.2d 427 (1985).

"A judgment of acquittal entered by the trial court on a motion filed by the defendant at the close of the State's evidence is final and not appealable by the State, except in those special circumstances when the question reserved by the State is of statewide interest and is vital to a correct and uniform administration of the criminal law." *State v. Wilson*, 261 Kan. 924,

Syl. ¶ 2, 933 P.2d 696 (1997). "While K.S.A. 22-3602(b)(1) grants the State the right to appeal an order dismissing a complaint, information, or indictment, the State does not have the right to appeal a judgment of acquittal because appellate review of the decision after acquittal would constitute double jeopardy." *State v. Roberts*, 293 Kan. 29, Syl. ¶ 3, 259 P.3d 691 (2011).

In determining whether a prosecution ended in an acquittal or dismissal, the trial court's characterization of its action does not control. *City of Wichita v. Bannon*, 42 Kan. App. 2d 196, 199, 209 P.3d 207 (2009). Jeopardy attaches only when a jury is impaneled and sworn or when the judge begins to receive evidence in a bench trial. The State may appeal an order of dismissal entered before jeopardy has attached. *State v. Roberts*, 293 Kan. 29, at Syl. ¶¶ 5-7. Where there has been an erroneous acquittal of a criminal charge, a reinstatement of that charge violates the Fifth Amendment prohibition against double jeopardy if such reinstatement results in further proceedings of some sort devoted to the resolution of factual issues going to the elements of the offense charged. *Evans v. Michigan*, 568 U.S. 313, 133 S. Ct. 1069, 185 L. Ed. 2d 124 (2013); *Lowe v. State*, 242 Kan. 64, 744 P.2d 856 (1987).

There is no requirement that the prosecutor refile a dismissed complaint before appealing from an order dismissing a complaint, *State v. Zimmerman & Schmidt*, 233 Kan. 151, Syl. ¶ 1, 660 P.2d 960 (1983); however, all counts in a complaint, information, or indictment must be dismissed or otherwise disposed of before an appeal from an order dismissing a complaint, information, or indictment is properly before the appellate court. *State v. Freeman*, 234 Kan. 278, 282, 670 P.2d 1365 (1983). "There is no statutory authority for the State to appeal from the dismissal in a criminal case of some of the counts of a multiple-count complaint, information, or indictment while the case remains pending before the district court on all or a portion of the remaining counts which have not been dismissed and which have not been finally resolved." *State v. Nelson*, 263 Kan. 115, Syl. ¶ 3, 946 P.2d 1355 (1997). But see *McPherson v. State*, 38 Kan. App. 2d 276, 287-88, 163 P.3d 1257 (2007) (State's remedies upon dismissal of a complaint not limited only to appeal or the refiling of charges.

K.S.A. 22-3602[d] does not foreclose the State from exercising other posttrial procedural motions).

For a discussion of appeals following the dismissal of a grand jury indictment and the law of the case rule, see *State v. Finical*, 254 Kan. 529, 867 P.2d 322 (1994). The State can appeal the dismissal of an indictment as insufficiently charging a crime. K.S.A. 22-3602(b)(1). See *State v. Wright*, 259 Kan. 117, 911 P.2d 166 (1996).

> **PRACTICE NOTE:** A notice of appeal indicating the State was appealing from "the decision of the District Court" on a specified date was deemed sufficient to cover the court's dismissal of the case immediately after suppressing evidence. See K.S.A. 22-3603 and § 5.11, *infra*, regarding interlocutory appeals following suppression of evidence. "For all practical purposes, the district court's decision to dismiss and its decision to grant defendants' suppression motions were one and the same. Thus the State's citation of the statute authorizing an appeal from the dismissals was sufficient to preserve its right to challenge the basis of the dismissal decisions, *i.e.*, the suppression of the evidence…." *State v. Huff*, 278 Kan. 214, 218-19, 92 P.3d 604 (2004).

§ 5.8 From an Order Arresting Judgment: K.S.A. 22-3602(b)(2)

An order arresting judgment can be entered if a complaint, information, or indictment does not charge a crime or if the court was without jurisdiction of the crime charged. *State v. Unruh*, 259 Kan. 822, Syl. ¶ 2, 915 P.2d 744 (1996); K.S.A. 22-3502. See also *State v. Sims*, 254 Kan. 1, Syl. ¶ 3, 862 P.2d 359 (1993). K.S.A. 22-3503 allows the district court to arrest judgment on its own motion. If a complaint, information or indictment did charge a crime and the court had jurisdiction over the crime charged, there can be no order arresting judgment from which the State can appeal regardless of the State's characterization of the trial court's order. See *Unruh*, 259 Kan. at 824-25.

§ 5.9 Upon a Question Reserved by the Prosecution: K.S.A. 22-3602(b)(3)

"Although the State is not permitted to appeal from a judgment of acquittal, the State may appeal on a question reserved." *State v. Walker*, 260 Kan. 803, 806, 926 P.2d 218 (1996). An appeal by the State on a question reserved must be taken after judgment has been entered, *State v. Hermes*, 229 Kan. 531, Syl. ¶ 4, 625 P.2d 1137 (1981), and such an appeal will not be entertained merely to demonstrate whether error was committed by the trial court. *State v. Tremble*, 279 Kan. 391, Syl. ¶ 1, 109 P.3d 1188 (2005); *State v. Craig*, 254 Kan. 575, 576, 867 P.2d 1013 (1994). An appeal on a question reserved presupposes that the underlying criminal case has concluded but that an answer to a question of statewide importance is necessary for disposition of future cases. Accordingly, an appellate court's answer to a question reserved has no effect on the criminal defendant in the underlying case. *State v. Jaben*, 294 Kan. 607, Syl. ¶ 2, 277 P.3d 417 (2012); *State v. Berreth*, 294 Kan. 98, 121-23, 273 P.3d 752 (2012). See also *State v. Skolaut*, 286 Kan. 219, 225, 182 P.3d 1231 (2008). The decision on an appeal from a question reserved has no effect on a criminal defendant who has been acquitted. *State v. Gustin*, 212 Kan. 475, 479, 510 P.2d 1290 (1973).

The State may appeal "as a matter of right ... upon a question reserved by the prosecution." K.S.A. 22-3602(b)(3). The appellate courts have added an additional requirement to the plain language of this statute. "To be considered on appeal, questions reserved by the State in a criminal prosecution must be of statewide interest important to the correct and uniform administration of criminal law and the interpretation of statutes." *State v. Berreth*, 294 Kan. 98, Syl. ¶ 11. "The purpose of permitting the State to appeal a question reserved is to allow the prosecution to obtain review of an adverse legal ruling on an issue of statewide interest important to the correct and uniform administration of the criminal law which otherwise would not be subject to appellate review." *State v. Mountjoy*,

257 Kan. 163, Syl. ¶ 3, 891 P.2d 376 (1995). "Appellate courts will not accept appeal of questions reserved when their resolution will not provide helpful precedent. So if a question reserved is no longer of statewide importance because the court has already addressed it in a prior case, an appeal on the question should be dismissed." *State v. Berreth*, 294 Kan. 98, Syl. ¶ 12. There is no statutory authority for answering a defendant's inquiries in a State's appeal upon a question reserved. *Mountjoy*, 257 Kan. 163, Syl. ¶ 5.

New issues and previously uninterpreted statutes are appropriate subjects for appeal on questions reserved. See *State v. Adee*, 241 Kan. 825, 827, 740 P.2d 611 (1987). The appellate courts "uniformly [decline] to entertain questions reserved in which the resolution of the question would not provide helpful precedent." *Tremble*, 279 Kan. 391, Syl. ¶ 1. For instance, an order granting probation to a particular defendant is not a question of statewide importance that can be appealed as a question reserved. See *State v. Ruff*, 252 Kan. 625, 630, 847 P.2d 1258 (1993). The sufficiency of the State's evidence in a particular case is not an issue of statewide importance. *State v. Wilson*, 261 Kan. 924, 933 P.2d 696 (1997). The question of whether a plea agreement may be deemed ambiguous if it is silent as to some issue, condition, or fact known to both sides is not an issue of statewide importance because it is fact specific and of limited precedential value. *State v. Woodling*, 264 Kan. 684, 688, 957 P.2d 398 (1998).

Appellate courts have found a variety of areas of the criminal law to be a matter of statewide importance. See, *e.g.*, *State v. Jaben*, 294 Kan. 607, 277 P.3d 417 (2012) (interpreting the prospective application of amendments to the expungement statute); *State v. Stallings*, 284 Kan. 741, 742, 163 P.3d 1232 (2007) (whether a defendant has a right to allocution before the jury during the death penalty phase of a capital murder trial); *State v. Murry*, 271 Kan. 223, 21 P.3d 528 (2001) (decision suppressing evidence of a blood sample taken from the defendant prior to his arrest); *State v. Golston*, 269 Kan. 345, 346, 7 P.3d 1132 (2000) (whether a trial judge can release a prisoner without processing the release through the Department of Corrections);

State v. Chastain, 265 Kan. 16, 22, 960 P.2d 756 (1998) (whether the trial court erred in refusing to admit evidence of horizontal gaze nystagmus testing); *State v. Roderick*, 259 Kan. 107, 109, 911 P.2d 159 (1996) (interpretation of Kansas sentencing guidelines provisions); *City of Overland Park v. Cunningham*, 253 Kan. 765, 766, 861 P.2d 1316 (1993) (whether an objection for "lack of foundation" is sufficient when a request for a more specific objection is made); *State v. Toler*, 41 Kan. App. 2d 896, 899-900, 206 P.3d 548 (2009) (whether a person may be found guilty of criminal possession of a firearm on school property even when school is not in session given the number of school districts in Kansas and the legislature's intent to regulate the presence of firearms on school property); *State v. Moffit*, 38 Kan. App. 2d 414, 166 P.3d 435 (2007) (question of whether statute, which provides that any person who engages in the unlawful manufacturing or attempting to unlawfully manufacture any controlled substance "shall not be subject to statutory provisions for suspended sentence, community work service, or probation," prohibits a sentencing court from granting probation to a defendant convicted of conspiracy to unlawfully manufacture methamphetamine); *State v. Johnson*, 32 Kan. App. 2d 619, 86 P.3d 551 (2004) (whether it was misconduct for any attorney, prosecutor or defense, to call witnesses "liars" when such statements were not supported by evidence); and *State v. Kralik*, 32 Kan. App. 2d 182, 80 P.3d 1175 (2003) (construing ambiguous language relating to prior DUI convictions in a journal entry of judgment).

All that is necessary for the State to reserve a question for appeal is to make a proper objection or exception at the time a judgment is entered by the district court, laying the same foundation for appeal that a defendant is required to lay. *State v. Tremble*, 279 Kan. 391, 393–94, 109 P.3d 1188 (2005). "In so doing, the State must lodge proper and timely objections, advise the trial court of the basis for the objections, and properly perfect the appeal." *State v. G.W.A.*, 258 Kan. 703, Syl. ¶ 2, 906 P.2d 657 (1995). See also *State v. Hurla*, 274 Kan. 725, 727-28, 56 P.3d 252 (2002); *City of Overland Park v. Cunningham*, 253 Kan. 765, Syl. ¶ 2, 861 P.2d 1316 (1993). No more is required

from the State than from a defendant to preserve an issue for appellate review. *State v. Pottoroff*, 32 Kan. App. 2d 1161, Syl. ¶ 2, 96 P.3d 280 (2004). "Although the better practice to preserve a question for appeal is for the State to object or take exception *after* the court's ruling, an argument presented by the State *prior* to the ruling may be adequate to preserve the question for jurisdictional purposes." *Pottoroff*, 32 Kan. App. 2d 1161, Syl. ¶ 3. In the absence of any timely, proper objection or exception, the issue is not properly before the appellate court. See also *State v. Berreth*, 294 Kan. 98, 113-15, 273 P.3d 752 (2012) (discussion of sufficiency of State's notice of appeal to trigger appellate jurisdiction over a question reserved); *State v. Huff*, 278 Kan. 214, 217-19, 92 P.3d 604 (2004) (same).

§ 5.10 Upon an Order Granting a New Trial in Any Case Involving an Off-Grid Crime: K.S.A. 22-3602(b)(4)

The prosecution may appeal an order granting a new trial in any case involving an off-grid crime. K.S.A. 22-3602(b)(4). This statute also permits an appeal from an order granting a new trial for class A or B felonies prior to July 1993.

§ 5.11 Interlocutory Appeals: K.S.A. 22-3603

When a judge of the district court makes a pre-trial "order quashing a warrant or a search warrant, suppressing evidence or suppressing a confession or admission an appeal may be taken by the prosecution ... if notice of appeal is filed within 14 days after entry of the order." K.S.A. 22-3603. All interlocutory appeals in criminal cases must be taken to the Court of Appeals. K.S.A. 22-3601(a). The only interlocutory appeals that are permitted in criminal cases are set out in K.S.A. 22-3603. Under this statute, the prosecution can appeal from a pretrial order quashing a warrant, quashing a search warrant, suppressing evidence, or suppressing a confession or admission. See *State v. Unruh*, 263 Kan. 185, Syl. ¶ 5, 946 P.2d 1369 (1997). A criminal defendant has no right to take an interlocutory appeal. See *State v. Donahue*, 25 Kan. App. 2d 480, 483, 967 P.2d 335 (1998).

A threshold requirement of an appeal from a pretrial order suppressing evidence is that the order appealed from substantially impairs the State's ability to prosecute the case. *State v. Newman*, 235 Kan. 29, 35, 680 P.2d 257 (1984); *State v. Nuessen*, 23 Kan. App. 2d 456, Syl. ¶ 1, 933 P.2d 155 (1997). Suppression rulings which seriously impede but do not technically foreclose prosecution can be appealed under K.S.A. 22-3603. *State v. Bliss*, 28 Kan. App. 2d 591, 594, 18 P.3d 979 (2001). The prosecutor should be prepared to make a showing, on order of the appellate court, that the district court's pretrial order appealed from substantially impairs the State's ability to prosecute the case or when appellate jurisdiction is challenged by the defendant-appellee. *State v. Sales*, 290 Kan. 130, Syl. ¶ 5, 224 P.3d 546 (2010); *Newman*, 235 Kan. at 35. There is, however, no similar threshold requirement in an appeal from a pretrial order suppressing a confession or admission. *State v. Mooney*, 10 Kan. App. 2d 477, 479, 702 P.2d 328, (1985). In dicta, the *Mooney* court also indicated there was no such threshold requirement in an appeal from a pretrial order quashing a warrant or search warrant. *Mooney*, 10 Kan. App. 2d at 479.

> **PRACTICE NOTE:** If the State does not prevail on an interlocutory appeal, and the suppression of evidence is affirmed, it cannot dismiss the case and refile the charges so that it can relitigate the motion to suppress and raise additional exceptions to the search warrant requirement. See *State v. Parry*, 305 Kan. 1189, 1196–98, 390 P.3d 879 (2017) (invoking the law of the case doctrine to uphold suppression of evidence; second prosecution amounted to a successive stage in the same criminal prosecution, in which the State had already litigated—and lost—the suppression issue). The State should raise all of its arguments in its response to the motion to suppress.

The State cannot appeal the denial of a motion to revoke diversion as an interlocutory appeal under K.S.A. 22-3603. There is no mechanism for the State to appeal from an order

denying revocation of a diversion agreement or probation. *State v. McDaniels*, 237 Kan. 767, 772, 703 P.2d 789 (1985). This does not mean, however, that the State can never question an order denying revocation of a diversion agreement. In *McDaniels*, the court stated, "Until the legislature chooses to create a right in the State to appeal from a pretrial order denying the State's request to revoke diversion, the State may not appeal prior to the completion of the diversion and the dismissal of the case by the district court." *McDaniels*, 237 Kan. at 772. The State may, however, "appeal after the dismissal, and if the appeal is sustained, the defendant may be tried." *McDaniels*, 237 Kan. at 771.

Further proceedings in the trial court will be stayed pending determination of the interlocutory appeal. K.S.A. 22-3603. The time during which an interlocutory appeal is pending "shall not be counted for the purpose of determining whether a defendant is entitled to discharge" under the speedy trial statute, K.S.A. 22-3402. K.S.A. 22-3604(2). The general rule is that a defendant shall not be held in jail nor subject to an appearance bond during the pendency of an appeal by the prosecution. K.S.A. 22-3604(1). The exception to this general rule is that a defendant charged with an off-grid felony, a nondrug severity level 1 through 5 felony or a drug severity level 1 through 4 felony crime "shall not be released from jail or the conditions of such person's appearance bond during the pendency of an appeal by the prosecution." K.S.A. 22-3604(3). This rule also applies to a defendant charged with a class A, B or C felony prior to the enactment of the Kansas Sentencing Guidelines Act in 1993.

> **PRACTICE NOTE:** Supreme Court Rule 4.02 governs the docketing and appellate procedure of interlocutory appeals, which are typically expedited. When an appeal is expedited, the appellant's brief will be due 30 days following the completion of all necessary transcripts. The appellee's brief will be due within 30 days of the filing of the appellant's brief. In the absence of a showing of exceptional circumstances, no further extensions of time for filing briefs will be granted.

C. Sentencing Guidelines Appeals

§ 5.12 Appeals Under the Kansas Sentencing Guidelines Act

On July 1, 1993, the Kansas Sentencing Guidelines Act went into effect for crimes committed on or after that date. The appeal rights of both the prosecution and defendant from sentences imposed pursuant to the Act are set by statute. See K.S.A. 22-3602(f); K.S.A. 21-6820 (formerly K.S.A. 21-4721); *State v. Ware*, 262 Kan. 180, Syl. ¶ 1, 938 P.2d 197 (1997).

For any felony committed on or after July 1, 1993, there is generally no appellate review of a sentence within the presumptive sentence range for the crime. K.S.A. 21-6820(c) (formerly K.S.A. 21-4721[c]). But see *State v. Barnes*, 278 Kan. 121, 92 P.3d 578 (2004) (defendant was entitled to remand for resentencing under *McAdam* rule; where she had been convicted under statutes containing identical elements but providing different penalties, defendant could only be sentenced to lesser penalty); *State v. Hodgden*, 29 Kan. App. 2d 36, 38, 25 P.3d 138 (2001) (appellate court may review claim that sentencing court erred in either including or excluding a prior conviction or juvenile adjudication in a defendant's criminal history); and *State v. Cisneros*, 42 Kan. App. 2d 376, 212 P.3d 246 (2009) (statute limiting appellate review of presumptive sentence did not serve as jurisdictional bar to defendant's appeal from order revoking defendant's probation and imposing original presumptive term of imprisonment based on incorrect finding that trial court lacked authority to impose a sentence shorter than the original sentence). An appellate court does not have jurisdiction to consider a challenge to a presumptive sentence, even if that sentence is to the highest term in a presumptive sentencing grid block. *State v. Schad*, 41 Kan. App. 2d 805, Syl. ¶ 12, 206 P.3d 22 (2009).

"The filing and denial of a motion requesting departure by either the defendant or the State has no effect on the rule that a sentence within the presumptive sentence grid block is not subject to review on appeal." *State v. Graham*, 27 Kan. App. 2d 603, Syl. ¶ 6, 6 P.3d 928 (2000).

An appellate court's jurisdiction to consider an appeal challenging a sentence imposed pursuant to the Kansas Sentencing Guidelines Act is limited to the grounds set out in K.S.A. 21-4721(a) and (e) (currently K.S.A. 21-6820 [a] and [e]), and illegal sentences. *State v. McCallum*, 21 Kan. App. 2d 40, Syl. ¶ 4, 895 P.2d 1258 (1995). K.S.A. 21-6820(a) (formerly K.S.A. 21-4721[a]) states that a departure sentence is subject to appeal by the defendant or the prosecution. Accord *State v. Sampsel*, 268 Kan. 264, Syl. ¶ 3, 497 P.2d 664 (2000). "Only if the sentence imposed is inconsistent with the duration and disposition of the appropriate grid block can there be a departure." *State v. McCallum*, 21 Kan. App. 2d at 7. See also K.S.A. 21-6803(f) (defining "departure"); K.S.A. 21-6803(g) (defining "dispositional departure"); and K.S.A. 21-6803(i) (defining "durational departure"). By statute, a guideline sentence may be deemed not to be a departure and thus not subject to appeal. See, *e.g.*, K.S.A. 21-6604(f).

"In an appeal from a departure sentence, an appellate court must determine pursuant to [K.S.A. 21-6820(d)] whether the sentencing court's findings of fact and reasons justifying departure (1) are supported by substantial competent evidence and (2) constitute substantial and compelling reasons for departure as a matter of law. The applicable standard of review is keyed to the language of the statute: [K.S.A. 21-6820(d)(1)] requires an evidentiary test −are the facts stated by the sentencing court in justification of departure supported by the record? [K.S.A. 21-6820(d)(2)] requires a law test −are the reasons stated on the record for departure adequate to justify a sentence outside the presumptive sentence?" *State v. Richardson*, 20 Kan. App. 2d 932, Syl. ¶ 1, 901 P.2d 1 (1995).

K.S.A. 21-6820(e)(1) gives the appellate courts jurisdiction to consider another issue in departure sentence appeals. It states, "In any appeal from a judgment of conviction, the appellate court may review a claim that: (1) a sentence that departs from the presumptive sentence resulted from partiality, prejudice, oppression or corrupt motive."

K.S.A. 21-6818(b)(1) (formerly K.S.A. 21-4719[b][1]) is interpreted to give appellate courts the authority to review the extent of a departure sentence. *State v. Spencer*, 291 Kan. 796, 807, 248 P.3d 256 (2011). Scope of review is limited to an abuse of discretion standard. *Spencer,* 291 Kan. at 807. The same standard applies to appellate review of the extent of an upward departure sentence. *State v. Tiffany*, 267 Kan. 495, 506-07, 986 P.2d 1064 (1999). Whether a particular mitigating factor constitutes a substantial and compelling reason for departure is also reviewed for an abuse of discretion. *State v. Bird*, 298 Kan. 393, 398, 312 P.3d 1265 (2013).

K.S.A. 21-6820(e)(2) and (3) (formerly K.S.A. 21-4721[e][2] and [3]) allow for appellate review of whether the sentencing court erred in either including or excluding recognition of a prior criminal conviction or juvenile adjudication for criminal history scoring purposes and whether the sentencing court erred in ranking the crime severity level of the current crime or in determining the appropriate classification of a prior conviction or juvenile adjudication for criminal history purposes. In *State v. Barnes*, 278 Kan. 121, 124, 92 P.3d 578 (2004), the Court held that it could consider a claim under K.S.A. 21-4721(e)(3) even though the sentence imposed resulted from a plea agreement. See also *State v. Dickey*, 301 Kan. 1018, 350 P.3d 1054 (2015) (defendant may challenge classification of prior convictions and resulting criminal history score for first time on appeal). Apparently, both the State and the defendant can appeal these issues. See *State v. Hodgden*, 29 Kan. App. 2d 36, 25 P.3d 138 (2001) (State appealed district court's amendment of defendant's criminal history and court entertained appeal even though defendant had been given presumptive sentence).

It has been held that when a criminal defendant challenges a presumptive sentence on the ground that the running of multiple sentences consecutively constitutes an abuse of discretion, no ground for appeal authorized by K.S.A. 21-4721(a) or (e) (now K.S.A. 21-6820[a] and [e]) is asserted; therefore, there is no appellate jurisdiction to consider the issue. *State v. Ware*, 262 Kan. 180, Syl. ¶ 4, 938 P.2d 197 (1997); *State v. McCallum*, 21 Kan. App. 2d 40, Syl. ¶ 7, 895 P.2d 1258 (1995). See also *State v.*

Flores, 268 Kan. 657, Syl. ¶ 2, 999 P.2d 919 (2000) (a consecutive sentence is not a departure sentence). However, a life sentence for an off-grid crime is not a presumptive sentence. When a defendant is convicted of both an off-grid crime and an on-grid crime, and the district court orders consecutive sentences, the result is not entirely a "presumptive sentence," and the defendant can challenge the district court's decision to impose consecutive sentences in a multiple conviction case involving both off-grid and on-grid crimes. *State v. Ross*, 295 Kan. 1126, Syl. ¶ 12, 289 P.3d 76 (2012).

Regardless of whether a notice of appeal has been filed, the sentencing court retains jurisdiction to correct an illegal sentence or clerical error pursuant to K.S.A. 22-3504. K.S.A. 21-6820(i).

IV. APPELLATE JURISDICTION IN JUVENILE OFFENDER CASES

§ 5.13 Appeals by the Juvenile Offender

Appeals by a juvenile offender are taken to the appellate court having jurisdiction over the criminal charge. See K.S.A. 38-2380; *State v. Kunellis*, 276 Kan. 461, 78 P.3d 776 (2003) (convicted, in part, of felony murder; appeal including prosecution as an adult to Supreme Court); *In re B.M.B.*, 264 Kan. 417, 955 P.2d 1302 (1998) (appeal from adjudication of rape; case transferred from Court of Appeals to Supreme Court); *State v. Hartpence*, 30 Kan. App. 2d 486, 42 P.3d 1197 (2002) (juvenile pleaded to aggravated indecent liberties with a child; appeal including prosecution as adult to Court of Appeals).

Appeals from a district magistrate judge who is not regularly admitted to practice law in Kansas must be to a district judge. K.S.A. 38-2382(a). Appeals from a district judge, or a district magistrate judge who is regularly admitted to practice law in Kansas, shall be to the Court of Appeals. K.S.A. 38-2382(b).

PRACTICE NOTE: To find out whether a district magistrate judge is licensed to practice law in Kansas, check the online attorney directory at the Supreme Court's website: www.kscourts.org

A juvenile offender can appeal from:

- An order of adjudication as a juvenile offender, sentencing, or both. K.S.A. 38-2380(b);
- An order authorizing prosecution as an adult, if the juvenile offender did not consent to the order. K.S.A. 38-2380(a)(1). The juvenile raises the issue on appeal from his or her criminal conviction. A juvenile can also appeal an order authorizing prosecution as an adult following a plea of guilty or nolo contendere if the juvenile did not consent to the order. K.S.A. 38-2380(a)(1). See *State v. Ransom*, 268 Kan. 653, Syl. ¶ 1, 999 P.2d 272 (2000) (interpreting prior, similarly worded statute); and
- A departure sentence, although the sentence review is limited. See K.S.A. 38-2380(b)(3). See also § 5.15, *infra*.

In any appeal, an appellate court may review a claim that:

- An imposed departure sentence resulted from partiality, prejudice, oppression, or corrupt motive. K.S.A. 38-2380(b)(4)(A).
- The sentencing court erred in either including or excluding recognition of prior convictions or adjudications. K.S.A. 38-2380(b)(4)(B).
- The sentencing court erred in ranking the crime severity level or in scoring criminal history. K.S.A. 38-2380(b)(4)(C).

PRACTICE NOTE: Appeals under the Revised Kansas Juvenile Justice Code "shall have priority over other cases except those having statutory priority." K.S.A. 38-2380(c). This means that

such appeals will be expedited. When an appeal is expedited, the appellant's brief will be due 30 days following the completion of all necessary transcripts. The appellee's brief will be due within 30 days of the filing of the appellant's brief. In the absence of a showing of exceptional circumstances, no further extensions of time for filing briefs will be granted.

§ 5.14 Appeals by the Prosecution

Appeals by the prosecution are taken to the Court of Appeals. See K.S.A. 22-3602(b) (appeals by prosecution from order dismissing complaint, information or indictment and on question reserved go to the Court of Appeals); *In re J.D.J.*, 266 Kan. 211, 967 P.2d 751 (1998) (appeal from order denying prosecution as adult filed with Court of Appeals and transferred to Supreme Court under K.S.A. 20-3018[c]).

The Revised Kansas Juvenile Justice Code, K.S.A. 38-2301 *et seq.*, only permits a juvenile to appeal an order authorizing prosecution of the juvenile as an adult, an order of adjudication, or a sentencing order. *In re D.M.-T.*, 292 Kan. 31, Syl. ¶ 4, 249 P.3d 418 (2011). Under the Revised Kansas Juvenile Justice Code, the prosecution can appeal:

- From an order dismissing proceedings when jeopardy has not attached. K.S.A. 38-2381(a)(1);
- From an order denying authorization to prosecute a juvenile as an adult. K.S.A. 38-2381(a)(2);
- From an order quashing a warrant or search warrant. K.S.A. 38-2381(a)(3);
- From an order suppressing evidence or suppressing a confession or admission. K.S.A. 38-2381(a)(4); and
- Upon a question reserved by the prosecution. K.S.A. 38-2381(a)(5).

An appeal upon a question reserved must be taken by the prosecution within 14 days after the juvenile has been adjudged to be a juvenile offender. All other appeals by the prosecution must be taken within 14 days of the entry of the order being appealed. K.S.A. 38-2381(b). An appellate court hears a question reserved by the State only to address a matter of statewide importance, not merely to show that the district court was wrong in a particular case. The appellate court's ruling on a question reserved does not have any effect on the juvenile offender in that case. *State v. Pearce*, 51 Kan. App. 2d 116, Syl. ¶ 1, 342 P. 3d 963 (2015).

The Revised Kansas Juvenile Justice Code does not permit an appeal of the denial of a post-appeal motion that collaterally attacked the procedure employed to adjudicate the juvenile. *In re D.M.-T.*, 292 Kan. 31, Syl. ¶ 4.

§ 5.15 Sentencing Guideline Appeals - Juvenile

In any appeal of a departure sentence, sentence review is limited to whether the sentencing court's findings of fact and reasons justifying the departure are supported by the evidence in the record and constitute "substantial and compelling reasons for departure." K.S.A. 38-2380(b)(3)(A) and (B). In addition, the appellate court may review a claim that the departure sentence was the result of partiality, prejudice or corrupt motive or that the sentencing court erred in including or excluding recognition of prior adjudications in determining criminal history or erred in ranking the crime severity level of the current crime or in determining the appropriate classification of a prior adjudication. K.S.A. 38-2380(b)(4)(A) and (B).

An appellate court may not review a presumptive sentence or a sentence resulting from an agreement between the State and the juvenile that the sentencing court approves on the record. K.S.A. 38-2380(b)(2)(A) and (B). But see *State v. Duncan*, 291 Kan. 467, 470-71, 243 P.3d 338 (2010) (criminal sentences resulting from plea agreement can be appealed if illegal).

The Juvenile Justice Code does not authorize appeals from district court orders revoking probation or from presumptive sentences. *In re C.D.A.-C.*, 51 Kan. App. 2d 1007, Syl. ¶¶ 5-6, 360 P.3d 443 (2015). K.S.A. 38-2368(a) gives the district court the authority to revoke a juvenile's probation and enter a new sentence. "If the new sentence is within the presumptive sentencing range, an appellate court does not have jurisdiction to hear an appeal from the new sentence." *In re C.D.A.-C.*, 51 Kan. App. 2d 1007, Syl. ¶ 7.

PRACTICE NOTE: For a review of amendments to the Kansas Juvenile Justice Code since 1984, see *In re L.M.*, 286 Kan. 460, 186 P.3d 164 (2008) (holding that juveniles have a constitutional right to a jury trial under the Sixth and Fourteenth Amendments because the Code has become more akin to adult criminal prosecution).

V. APPELLATE JURISDICTION IN CIVIL CASES

§ 5.16 Supreme Court

Direct appeal to the Supreme Court is required by law in the following cases. The following list is not intended to be all inclusive; therefore, the statutes should be consulted prior to taking an appeal.

- Appeals from final judgments of the district court in a civil action in which a statute of this state or of the United States has been held unconstitutional. K.S.A. 60-2101(b). This statute specifically requires the order appealed from to be a "final judgment." See *Flores Rentals v. Flores*, 283 Kan. 476, 481, 153 P.3d 523 (2007); *Plains Petroleum Co. v. First Nat. Bank of Lamar*, 274 Kan. 74, 81, 49 P.3d 432 (2002); *State ex rel. Board of Healing Arts v. Beyrle*, 262 Kan. 507, Syl. ¶ 1, 941 P.2d 371 (1997);

- Appeals from preliminary or final decisions finding a statute unconstitutional under Article 6 of the Kansas Constitution under K.S.A. 72-64b03. K.S.A. 60-2102(b)(1);
- Appeals from final decisions in any actions challenging the constitutionality of or arising out of any provision of the Kansas Expanded Lottery Act, or arising out of any lottery gaming facility or racetrack gaming facility management contract entered into under the Kansas Expanded Lottery Act. K.S.A. 60-2102(b)(2);
- Appeals from final orders under the provisions of the Eminent Domain Procedure Act. K.S.A. 26-504;
- Appeals from any action of the Kansas Corporation Commission under the Kansas Natural Gas Pricing Act. K.S.A. 55-1410;
- Appeals arising from the Mental Health Technician's Licensure Act. K.S.A. 65-4211(b);
- Appeals from any action of the Kansas Corporation Commission regarding site preparation or construction of electric generation facilities. K.S.A. 66-1,164;
- Appeals permitted by statute in election contests. K.S.A. 25-1450;
- Appeals from orders granting or denying an original organization license by the Kansas Racing Commission. K.S.A. 74-8813(v);
- Appeals from orders granting or denying an original facility owner license or facility manager license by the Kansas Racing Commission. K.S.A. 74-8815(n);
- Appeals from orders in the district court by a person or taxpayer aggrieved by airport zoning regulations. K.S.A. 3-709;
- Appeals from judgment or order regarding petitions for drainage. K.S.A. 24-702(f);
- Appeals from any action of the secretary of human resources concerning the regulation of labor and

industry are subject to review and enforcement by the Supreme Court in accordance with the Kansas Judicial Review Act. K.S.A. 44-612.

§ 5.17 Court of Appeals

The Court of Appeals has jurisdiction to hear all appeals from district courts in civil proceedings, except in those cases reviewable by law in the district court and in those cases where direct appeal must be taken to the Supreme Court as required by law. K.S.A. 60-2101(a). In addition, the Court of Appeals has jurisdiction to hear appeals from administrative decisions where a statute specifically authorizes appeals directly to the Court of Appeals. K.S.A. 60-2101(a). See, *e.g.*, K.S.A. 74-2426(c)(4) (appeals from final orders of the Court of Tax Appeals unless the taxpayer elects to file a petition for review in the district court); K.S.A. 66-118a(b) (orders of the Kansas Corporation Commission arising from a rate hearing requested by a public utility or requested by the State Corporation Commission when a public utility is a necessary party); K.S.A. 65-3008a (permits issued by the Secretary of Health and Environment with regard to air quality under the Kansas Air Quality Control Act, effective April 13, 2006); K.S.A. 44-556(a) (decisions of the Workers Compensation Board entered on or after October 1, 1993).

Court of Appeals jurisdiction includes appeals from all K.S.A. 60-1507 proceedings, regardless of the severity of the underlying criminal offense. *State v. Thomas*, 239 Kan. 457, 459, 720 P.2d 1059 (1986).

Appeals from actions of the district court in proceedings under the Code of Civil Procedure for Limited Actions are taken to the Court of Appeals. K.S.A. 61-3902(b).

VI. APPEALABLE ORDERS IN CIVIL CASES

§ 5.18 Final Orders

Under K.S.A. 60-2102(a)(4), a final decision in a civil proceeding can be appealed. In an appeal from a final order, any act or ruling from the beginning of the proceeding is reviewable. However, under K.S.A. 60- 2103(h), an appellee must file a cross-appeal before he or she can present adverse rulings for review. *In re Tax Appeal of Fleet*, 293 Kan. 768, 775, 272 P.3d 583 (2012); *McCracken v. Kohl*, 286 Kan. 1114, 1120, 191 P.3d 313 (2008); *Chavez v. Markham*, 19 Kan. App. 2d 702, Syl. ¶ 4, 875 P.2d 997 (1994), *aff'd* 256 Kan. 859, 889 P.2d 122 (1995). See also *Butler County Water Dist. No. 8 v. Yates*, 275 Kan. 291, 299, 64 P.3d 357 (2003); *In re T.A.*, 30 Kan. App. 2d 30, 35, 38 P.3d 140 (2001).

A "final decision" is a decision "'which finally decides and disposes of the entire merits of the controversy, and reserves no further questions or directions for the future or further action of the court.'" *Kansas Medical Mut. Ins. Co. v. Svaty*, 291 Kan. 597, 610, 244 P.3d 642 (2010) (quoting *Gulf Ins. Co. v. Bovee*, 217 Kan. 586, 587, 538 P.2d 724 [1975]). See also *Flores Rentals v. Flores*, 283 Kan. 476, 481-82, 153 P.3d 523 (2007); *Investcorp v. Simpson Investment Co.*, 277 Kan. 445, Syl. ¶ 3, 85 P.3d 1140 (2003); *Plains Petroleum Co. v. First National Bank of Lamar*, 274 Kan. 74, 82, 49 P.3d 432 (2002); *State ex rel. Board of Healing Arts v. Beyrle*, 262 Kan. 507, Syl. ¶ 2, 941 P.2d 371 (1997); *Honeycutt v. City of Wichita*, 251 Kan. 451, Syl. ¶ 1, 836 P.2d 1128 (1992). A final decision is one that determines all of the issues in the case, not just part of the issues. *Henderson v. Hassur*, 1 Kan. App. 2d 103, Syl. ¶ 2, 562 P.2d 108 (1977). See also *Winters v. GNB Battery Technologies*, 23 Kan. App. 2d 92, 95, 927 P.2d 512 (1996).

In recent years, the Kansas Supreme Court has made clear that the time to appeal begins to run immediately upon entry of judgment, subject only to an exception where the appellant shows good cause for not learning of the entry of judgment as set out in K.S.A. 60-2103(a). In *Board of Sedgwick County Comm'rs v.*

City of Park City, 293 Kan. 107, 120, 260 P.3d 387 (2011), the Kansas Supreme Court rejected any exception to the Kansas rule requiring a notice of appeal to be filed within 30 days of entry of judgment and expressly rejected the "unique circumstances" doctrine that it previously applied where an appellant may have been led to believe, erroneously, that the judgment so entered was not "final." The court expressly overruled its prior decisions applying the "unique circumstances" exception to a jurisdictional deadline. 293 Kan. at 120. See also *Woods v. Unified Gov't of Wyandotte County/KCK*, 294 Kan. 292, 298, 275 P.3d 467 (2012).

In a number of cases, the appellate courts have examined whether various rulings are final, appealable orders. The following list, which is certainly not all inclusive, is for the purpose of direction only. The specifics of the cases cited should be considered in determining their applicability to any given situation:

- Collateral Order Doctrine

  An order conclusively determining a disputed question that resolves an important issue completely separate from the merits of the action and that will be effectively unreviewable on appeal from a final judgment is reviewable as a final decision under the collateral order doctrine. *In re T.S.W.*, 294 Kan. 423, 434-35, 276 P.3d 133 (2012); *Skahan v. Powell*, 8 Kan. App. 2d 204, 653 P.2d 1192 (1982). The Kansas Supreme Court has emphasized "the limited availability of the collateral order doctrine" in its decisions in recent years. See *Kansas Medical Mut. Ins. Co. v. Svaty*, 291 Kan. 597, 616, 244 P.3d 642 (2010); *Harsch v. Miller*, 288 Kan. 280, 200 P.3d 467 (2009); *Flores Rentals v. Flores*, 283 Kan. 476, 491, 153 P.3d 523 (2007). However, the court recently found application of this doctrine proper in the unique factual circumstances presented by an appeal by the Cherokee Nation from an order granting a petition to deviate from the adoptive placement preferences set forth in the Indian Child Welfare Act. *In re T.S.W.*, 294 Kan. 423, 432-35, 276 P.3d 133 (2012). Nevertheless, the *T.S.W.* court emphasized it will continue to apply this narrow

doctrine sparingly to a small class of collateral rulings. 294 Kan. at 434.

Two years earlier, in *Svaty*, the Kansas Supreme Court rejected application of the doctrine to a collateral discovery ruling challenged by a non-party. 291 Kan. at 616. In so holding, it found guidance in the United States Supreme Court's recent decision in *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 130 S. Ct. 599, 605, 175 L. Ed. 2d 458 (2009), where the Court rejected application of the doctrine to an order concluding that the defendant had waived its attorney-client privilege in another suit. The *Svaty* court noted that it generally has followed the United States Supreme Court's application of the collateral order doctrine and held the doctrine did not apply even though the appellant was not a party to the litigation below because it could seek a remedy through mandamus. 291 Kan. at 616.

- Discovery and Other Pretrial Motions

The denial of a motion to intervene is a final, appealable order. *State ex rel. Stephan v. Kansas Dept. of Revenue*, 253 Kan. 412, Syl. ¶ 1, 415, 856 P.2d 151 (1993); *In re S.C.*, 32 Kan. App. 2d 514, 516, 85 P.3d 224 (2004); *In re Marriage of Osborne*, 21 Kan. App. 2d 374, Syl. ¶ 1, 901 P.2d 12 (1995).

As a general rule, discovery orders and sanctions for violations concerning parties to the proceedings are not final, appealable orders. *Reed v. Hess*, 239 Kan. 46, Syl. ¶ 3, 716 P.2d 555 (1986). This is true even where the appellant was not a party to the proceedings below, at least if the district court did not impose sanctions or a penalty on appellant. *Kansas Medical Mut. Ins. Co. v. Svaty*, 291 Kan. 597, 616, 244 P.3d 642 (2010).

- Dispositive Motions

An order denying a motion to dismiss is not a final, appealable order. *Donaldson v. State Highway Commission*, 189 Kan. 483, Syl. ¶ 2, 485, 370 P.2d 83 (1962).

The denial of a motion for summary judgment is not usually a final, appealable decision. *NEA-Topeka v. U.S.D. No.*

501, 260 Kan. 838, 843, 925 P.2d 835 (1996). "Typically, a party can only appeal from a summary judgment if the trial court has granted the opposing party's summary judgment motion." *NEA-Topeka*, 260 Kan. at 843. An order granting partial summary judgment to one of several defendants is not a final, appealable order. *Vallejo v. BNSF Railway Company*, 46 Kan. App. 2d 498, 503-04, 263 P.3d 208 (2011); *Fredricks v. Foltz*, 221 Kan. 28, 31, 557 P.2d 1252 (1976).

Trial court's order granting a motion for voluntary dismissal without prejudice is not a final order and, as such, an appellate court is without jurisdiction to consider an appeal of that order. *Bain v. Artzer*, 271 Kan. 578, Syl. ¶ 2, 25 P.3d 136 (2001). See also *Arnold v. Hewitt*, 32 Kan. App. 2d 500, 85 P.3d 220 (2004) (partial summary judgment was not an appealable "final decision" despite the plaintiff's voluntary dismissal of the remaining claim).

- Judgment

An order vacating a default judgment is not a final, appealable order. *Bates & Son Construction Co. v. Berry*, 217 Kan. 322, Syl. ¶ 1, 537 P.2d 189 (1975).

Generally, a declaratory judgment has the effect of a final order and would normally be appealable. However, if the judgment does not resolve all of the issues, there is no final, appealable decision. *AMCO Ins. Co. v. Beck*, 258 Kan. 726, 728, 907 P.2d 137 (1995).

"A party is bound by a judgment entered on stipulation or consent and may not appeal from a judgment in which he or she has acquiesced." *In re Care and Treatment of Saathoff*, 272 Kan. 219, 220, 32 P.3d 1173 (2001). An exception exists "when the party attacks the judgment because of lack of consent or because the judgment deviates from the stipulation or when the party's attorney had no authority to settle the case and did so without the agreement and consent of his client." *Reimer v. Davis*, 224 Kan. 225, Syl. ¶ 2, 580 P.2d 81 (1978).

- Post-trial Motions

An order granting a new trial is not a final, appealable order. *Oertel v. Phillips*, 197 Kan. 113, 116-17, 415 P.2d 223 (1966). *See also NEA-Topeka v. U.S.D. No. 501*, 260 Kan. at 843. An appellate court has no authority to create an exception to statutory jurisdictional requirements to allow an appeal from an order setting aside a final judgment in a civil case. *Wiechman v. Huddleston*, 304 Kan. 80, 370 P.3d 1194, 1195 (2016) (overruling common-law "jurisdictional exception" created by *Brown v. Fitzpatrick*, 224 Kan. 636, 585 P.2d 987 [1978]).

- Post-Judgment

An order overruling a motion to quash an order of garnishment is not a final, appealable order. *Gulf Ins. Co. v. Bovee*, 217 Kan. 586, Syl. ¶ 2, 538 P.2d 724 (1975). But see K.S.A. 61-3901(c), which authorizes an appeal from any order overruling a motion to discharge a garnishment under Chapter 61.

An order amending a sheriff's return of service on an execution after satisfaction of a judgment in the action is a final, appealable order. *Transport Clearing House, Inc. v. Rostock*, 202 Kan. 72, Syl. ¶ 2, 447 P.2d 1 (1968).

- Foreclosure/Redemption

"An order extending a statutory redemption period is a final, appealable order." *Federal Savings & Loan Ins. Corp. v. Treaster*, 13 Kan. App. 2d 305, Syl. ¶ 1, 770 P.2d 481 (1989). See also *L.P.P. Mortgage, Ltd. v. Hayse*, 32 Kan. App. 2d 579, 87 P.3d 976 (2004).

A judgment of mortgage foreclosure is a final, appealable order if it determines the rights of the parties, the amounts to be paid, and the priority of the claims. *Stauth v. Brown*, 241 Kan. 1, Syl. ¶ 1, 734 P.2d 1063 (1987). See also *L.P.P. Mortgage, Ltd.*, 32 Kan. App. 2d at 583-84.

An order of sale issued in a mortgage foreclosure action is not a final, appealable order; however, an order confirming a sheriff's sale is a final, appealable order. See *Valley State Bank v. Geiger*, 12 Kan. App. 2d 485, 748 P.2d 905 (1988).

- Miscellaneous

In the absence of exceptional circumstances, remand orders are not appealable. *Holton Transport, Inc. v. Kansas Corporation Comm'n*, 10 Kan. App. 2d 12, Syl. ¶ 1, 690 P.2d 399 (1984). See also *Neal v. Hy-Vee*, Inc., 277 Kan. 1, 18, 81 P.3d 425 (2003); *NEA-Topeka*, 260 Kan. at 843; *Williams v. General Elec. Co.*, 27 Kan. App. 2d 792, 793, 9 P.3d 1267 (1999). In *Holton Transport*, the court held that absent exceptional circumstances, an order remanding a proceeding to the Kansas Corporation Commission for further findings is not a final, appealable order. *Holton Transport, Inc.*, 10 Kan. App. 2d at 13.

The denial of a motion to arbitrate is a final, appealable order. If, however, the court grants a motion to compel arbitration, the parties must submit to arbitration and challenge the arbitrator's decision before there is a final, appealable order. *NEA-Topeka*, 260 Kan. at 842-43.

Once there is a decision on the merits of an action, there is a final appealable order. Resolution of a motion or request for attorney fees is unnecessary before there is a final, appealable order. *Snodgrass v. State Farm Mut. Auto. Ins. Co.*, 246 Kan. 371, Syl. ¶ 1, 789 P.2d 211 (1990). However, if the trial court enters an order granting fees without determining the amount it has awarded, the notice of appeal from that judgment is premature and will lie dormant until the trial court determines the actual amount of the fee award. *Ohlmeier v. Jones*, 51 Kan. App. 2d 1014, Syl. ¶ 1, 360 P.3d 447 (2015). Sanctions under K.S.A. 60-211 must be determined, however, before a judgment is final for appeal purposes. *Smith v. Russell*, 274 Kan. 1076, 1081, 58 P.3d 698 (2002).

There is no statutory right to appeal from the denial of a motion to terminate parental rights. *In re T.S.*, 308 Kan. 306, 312, 419 P.3d 1159 (2018).

Trial court's order determining that ERISA did not preempt state regulation of stop-loss insurance policy for self-funded employee benefit plans but that state Insurance Commissioner

lacked statutory authority to regulate such insurance was a final order for purposes of appeal even though subsequent legislative amendment would alter ruling. *American Trust Administrators, Inc. v. Sebelius*, 267 Kan. 480, 981 P.2d 248 (1999).

PRACTICE NOTE: If there is any possibility that a final judgment has been entered, counsel should carefully comply with the 30-day deadline from entry of judgment set forth in K.S.A. 60-2103(a) and the deadlines that follow until it is clear that the time to appeal has not commenced. That course is far safer than the alternative that there will be no appellate jurisdiction after the 30 days have expired. This is true in part because Rule 2.03 provides that "advance filing shall have the same effect for purposes of the appeal as if the notice of appeal had been filed simultaneously with the actual entry of judgment, provided it complies with K.S.A. 60-2103(b)." Rule 2.03 has been extended to hold that "'if a judgment is entered disposing of all claims against one of multiple parties, and a premature notice of appeal has been filed and has not been dismissed, then a final judgment disposing of all claims and all parties validates the premature notice of appeal concerning the matters from which the appellant appealed.'" *Newcastle Homes v. Thye*, 44 Kan. App. 2d 774, 797, 241 P.3d 988 (2010) (quoting *Honeycutt v. City of Wichita*, 251 Kan. 451, 462, 836 P.2d 1128 [1992]). The Court of Appeals held jurisdiction proper in *Newcastle Homes* because the appellant had timely filed a second notice of appeal within 30 days of the entry of final judgment even though the district court had dismissed a premature notice of appeal for failure to file a docketing statement. 44 Kan. App. 2d at 797.

§ 5.19 Interlocutory Orders that are Appealable as a Matter of Right

In some instances, an appeal from a decision of a district court (except for a district magistrate judge who is not regularly admitted to practice law in Kansas) may be taken as a matter of right to the Court of Appeals even though the order appealed from is interlocutory in nature; *i.e.*, the entire controversy is not ended as a result of the order. Those orders are set out in K.S.A. 60-2102(a)(1)-(3) and include:

- An order that discharges, vacates, or modifies a provisional remedy;
- An order that grants, continues, modifies, refuses, or dissolves an injunction, or an order that grants or refuses relief in the form of mandamus, quo warranto, or habeas corpus; and
- An order that appoints a receiver or refuses to wind up a receivership or to take steps to accomplish the purposes thereof, such as directing sales or other disposal of property, or an order involving the tax or revenue laws, the title to real estate, the constitution of this state or the constitution, laws or treaties of the United States.

Other statutes may also authorize interlocutory appeals. See, *e.g.*, K.S.A. 60-1305 (order refusing to appoint a receiver).

Appeals under K.S.A. 60-2102(a) are taken to the Court of Appeals, except where a direct appeal to the Supreme Court is required by law. K.S.A. 60-2102(a)(4). Even though an order may seemingly fall within one of these categories, the order itself must possess some semblance of finality before the appeal will be allowed. For instance, in *Valley State Bank v. Geiger*, 12 Kan. App. 2d 485, 748 P.2d 905 (1988), the court held that an order of sale issued in a mortgage foreclosure action is not an appealable order under K.S.A. 60-2102(a)(3) because it has no semblance of being a final determination of the title to real estate. On the other hand, in *Smith v. Williams*, 3 Kan. App. 2d 205, 592 P.2d 129 (1979), the court found that an order establishing boundary

lines and quieting title did have the requisite semblance of finality even though other claims remained to be resolved.

Similarly, "K.S.A. 60-2102 does not provide for an appeal when a restraining order is granted." *U.S.D. No. 503 v. McKinney*, 236 Kan. 224, 228, 689 P.2d 860 (1984). This is so because restraining orders are usually in effect for only a brief period pending issuance of a temporary injunction. 236 Kan. at 228.

§ 5.20 Interlocutory Orders that are Appealable in the Court's Discretion

K.S.A. 60-2102(c) and Supreme Court Rule 4.01 provide that some interlocutory orders may be appealed in the discretion of the Court of Appeals. Under the statute and court rule, a district judge or a district magistrate judge who is regularly admitted to practice law in Kansas, issuing an order that is not otherwise appealable, may make written findings that the judge is of the opinion the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. See *Duarte v. DeBruce Grain, Inc.*, 276 Kan. 598, 599, 78 P.3d 428 (2003); *Cypress Media Inc. v. City of Overland Park*, 268 Kan. 407, 413-14, 997 P.2d 681 (2000).

If these findings are made, the Court of Appeals may, in its discretion, permit an appeal to be taken from the order if proper application for permission to take an appeal is made to the Court of Appeals, under Rule 4.01. See *Flores Rentals v. Flores*, 283 Kan. 476, 481, 153 P.3d 523 (2007); *State ex rel. Board of Healing Arts v. Beyrle*, 262 Kan. 507, 508-09, 941 P.2d 371 (1997). The application must be served within 14 days after filing of the order. K.S.A. 60-2102(c); Rule 4.01.

> **PRACTICE NOTE:** Application to take a civil interlocutory appeal must be made to the Court of Appeals even though some, or all, of the issues lie within Supreme Court jurisdiction, *e.g.*, a statute has been declared unconstitutional. If

permission to appeal is granted, the case will later be transferred to the Supreme Court.

The required findings are the first step. The district judge must make the findings required by the statute in the order from which the appeal is to be taken. *Anderson v. Beech Aircraft Corp.*, 237 Kan. 336, 337-38, 699 P.2d 1023 (1985). If, however, the order does not contain the findings required by the statute, the order can be amended to include the requisite findings, provided a motion to amend is filed and served within 14 days of the filing of the original order. In that case, the application for permission to take an appeal may be served within 14 days after filing of the amended order. Rule 4.01.

Rule 4.01 sets out what an application for permission to take an interlocutory appeal must contain. Further, the rule provides that an adverse party may respond to the application within the time limit set out in the rule. Finally, the rule sets out what procedure must be followed if permission to appeal is granted, *e.g.*, when the appeal is deemed docketed.

PRACTICE NOTE: Few applications to take civil interlocutory appeals are granted. Counsel should carefully consider whether their case meets the three statutory requirements: controlling question of law, substantial ground for difference of opinion, and material advancement of termination of litigation. If so, the application should be thorough with particular attention paid to the "substantial ground for difference of opinion." Citation to authority is critical, but foreign jurisdictions cannot be cited to establish a difference of opinion if the question of law has been answered in Kansas.

An order of a district court granting or denying class action certification under K.S.A. 60-223 may be appealed, in the discretion of the Court of Appeals, if application is made to the court within 14 days after entry of the order. K.S.A. 60-223(f); Rule 4.01A. The proceedings in the district court are not stayed by an appeal unless requested and so ordered by the district court or the Court of Appeals. K.S.A. 60-223(f).

§ 5.21 K.S.A. 60-254(b) – Entry of Final Judgment as to One or More but Fewer than All Claims or Parties

When there is more than one claim for relief in an action or when multiple parties are involved, the court can direct entry of final judgment as to one or more but fewer than all of the claims or parties if the court expressly determines there is no just reason for delay. K.S.A. 60-254(b). The Supreme Court has endorsed the following test for determining whether multiple claims exist: "'"'The ultimate determination of multiplicity of claims must rest in every case on whether the underlying factual bases for recovery state a number of different claims which could have been separately enforced.' [Citation omitted]."'" *Gillespie v. Seymour*, 263 Kan. 650, 654-55, 952 P.2d 1313 (1998). Different theories involving separate facts do not necessarily involve distinct claims.

The 254(b) findings must affirmatively appear in the record, preferably using the statutory language. *City of Salina v. Star B., Inc.*, 241 Kan. 692, Syl. ¶ 1, 739 P.2d 933 (1987). See also *State ex rel. Board of Healing Arts v. Beyrle*, 262 Kan. 507, 510, 941 P.2d 371 (1977). The appellate court will not assume the court made these findings simply because it used the word "judgment." *Crockett v. Medicalodges, Inc.*, 247 Kan. 433, 434, 799 P.2d 1022 (1990). Mere reference to K.S.A. 60-254(b) is insufficient. *Star B., Inc.*, 241 Kan. at 694-96.

After some uncertainty, the Kansas Supreme Court recently held that a trial court may enter an order granting the required 254(b) certification of an earlier otherwise non-final decision, and the "filing date of the district court order or journal entry memorializing that certification starts the 30-day appeal clock, and a timely notice of appeal endows the appellate court with jurisdiction to determine the merits." *Ullery v. Othick*, 304 Kan. 405, 414, 372 P.3d 1135 (2016); see also *Jenkins v. Chicago Pacific Corp.*, 306 Kan. 1305, 1308-09, 403 P.3d 1213 (2017) (recognizing prematurity of notice of appeal filed from order later certified under 254[b] is cured by trial court certification before appellate court dismisses appeal).

When appropriate findings are made, there is a final appealable order, subject to appellate review of the legal propriety of those findings. *Patterson v. Missouri Valley Steel, Inc.*, 229 Kan. 481, Syl. ¶ 1, 625 P.2d 483 (1981); *Pioneer Operations Co. v. Brandeberry*, 14 Kan. App. 2d 289, Syl. ¶ 2, 789 P.2d 1182 (1990).

"'"Even if a section 254(b) certificate is issued, it is not binding on appeal; the trial court cannot thereby make an order final and therefore appealable, if it is not in fact final."' [Citation omitted.]" *Plains Petroleum Co. v. First Nat. Bank of Lamar*, 274 Kan. 74, 83, 49 P.3d 432 (2002), quoting *Gillespie*, 263 Kan. at 655. A trial court cannot split a single claim. See *Henderson v. Hassur*, 1 Kan. App. 2d 103, 562 P.2d 108 (1977). However, "'the discretionary judgment of the district court should be given substantial deference, for that court is 'the one most likely to be familiar with the case and with any justifiable reasons for delay.' [Citation omitted.] The reviewing court should disturb the trial court's assessment of the equities only if it can say that the judge's conclusion was clearly unreasonable.'" *St. Paul Surplus Lines Ins. Co. v. International Playtex, Inc.*, 245 Kan. 258, 276, 777 P.2d 1259 (1989), quoting *Curtiss-Wright Corp. v. General Electric Co.*, 446 U.S. 1, 10, 100 S. Ct. 1460, 64 L. Ed. 2d 1 (1980).

Once a 254(b) certificate has been issued and final judgment has been entered, the time for appeal starts to run. *Pioneer Operations Co.*, 14 Kan. App. 2d at 293. If a timely appeal is not taken, the judgment that is the subject of the certificate cannot later be reviewed as an intermediate ruling when appeal from the final judgment disposing of the entire case is taken under K.S.A. 60-2102(a)(4). *Pioneer Operations Co.*, 14 Kan. App. 2d at 293. However, a party can attack the propriety of a 254(b) certificate in an appeal that finally disposes of all claims, *Pioneer Operations Co.*, 14 Kan. App. 2d at 292, and if the appellate court finds the district court erred in issuing the certificate, the rulings that were the subject of the 254(b) certificate can be considered in an appeal from the final judgment. *Pioneer Operations Co.*, 14 Kan. App. 2d at 297.

§ 5.22 Probate Proceedings

Under K.S.A. 59-2401(a), an appeal from a district magistrate judge to a district judge may be taken no later than 30 days from the date of entry of any of the following orders, judgments, or decrees in any case involving a decedent's estate:

- An order admitting or refusing to admit a will to probate;
- An order finding or refusing to find that there is a valid consent to a will;
- An order appointing, refusing to appoint, removing or refusing to remove a fiduciary other than a special administrator;
- An order setting apart or refusing to set apart a homestead or other property, or making or refusing to make an allowance of exempt property to the spouse and minor children;
- An order determining, refusing to determine, transferring or refusing to transfer venue;
- An order allowing or disallowing a demand, in whole or in part, when the amount in controversy exceeds $5,000;
- An order authorizing, refusing to authorize, confirming or refusing to confirm the sale, lease or mortgage of real estate;
- An order directing or refusing to direct a conveyance or lease of real estate under contract;
- Judgments for waste;
- An order directing or refusing to direct the payment of a legacy or distributive share;
- An order allowing or refusing to allow an account of a fiduciary or any part thereof;
- A judgment or decree of partial or final distribution;

- An order compelling or refusing to compel a legatee or distributee to refund;
- An order compelling or refusing to compel payments or contributions of property required to satisfy the elective share of a surviving spouse under K.S.A. 59-6a201 *et seq.*, and amendments thereto;
- An order directing or refusing to direct an allowance for the expenses of administration;
- An order vacating or refusing to vacate a previous appealable order, judgment, decree or decision;
- A decree determining or refusing to determine the heirs, devisees and legatees;
- An order adjudging a person in contempt under K.S.A. 59-6a201 *et seq.*, and amendments thereto;
- An order finding or refusing to find that there is a valid settlement agreement;
- An order granting or denying final discharge of a fiduciary; and
- Any other final order, decision or judgment in a proceeding involving a decedent's estate.

PRACTICE NOTE: K.S.A. 59-2402a sets forth circumstances under which an interested party can request the transfer of a petition from a district magistrate judge to a district judge for hearing.

Any appeal from a district judge to an appellate court in a case involving a decedent's estate is to be taken in the manner provided by chapter 60 of the Kansas Statutes Annotated for other civil cases. K.S.A. 59-2401(b). See § 5.18 through § 5.21, *supra*. An appeal as of right from a probate order deemed final in this context must be taken within 30 days to preserve any claim of error. *In re Estate of Butler*, 301 Kan. 385, 394. 343 P.3d 85 (2015) (father's failure to appeal from allocation order waived his right to claim error with respect to his rights in his son's estate). The order appealed from continues in force unless modified by temporary orders entered by the appellate court and

is not stayed by a supersedeas bond filed under K.S.A. 60-2103. K.S.A. 59-2401(c). However, the court from which the appeal is taken may require a party, other than the State of Kansas or any subdivision thereof or any city or county in this state, to file a bond of sufficient sum or surety "to ensure that the appeal will be prosecuted without unnecessary delay" and to ensure payment of all judgments, damages or costs. K.S.A. 59-2401(d).

K.S.A. 59-2401a allows an interested party to appeal from a district magistrate judge who is not regularly admitted to practice law in Kansas to a district judge no later than 14 days from any final order, judgment or decree entered in any proceeding under:

- The Kansas Adoption and Relinquishment Act (K.S.A. 59-2111 *et seq.*);
- The Care and Treatment Act for Mentally Ill Persons (K.S.A. 59-2945 *et seq.*);
- The Care and Treatment Act for Persons With an Alcohol or Substance Abuse Problem (K.S.A. 59-29b45 *et seq.*); and
- The Act for Obtaining a Guardian or Conservator, or Both (K.S.A. 59-3050 *et seq.*). K.S.A. 59-2401a(b).

An interested party may appeal from a decision of a district judge or a district magistrate judge who is regularly admitted to practice law in Kansas to an appellate court under article 21 of chapter 60 of the Kansas Statutes Annotated. K.S.A. 59-2401a(b); *In re Guardianship of Sokol*, 40 Kan. App. 57, 61-62, 189 P.3d 526 (2008). With the addition of the Sexually Violent Predator Act (K.S.A. 59-29a01 *et seq.*), the acts are the same as those for appeal under K.S.A. 59-2401a(a) above.

The interested parties who may appeal under K.S.A. 59-2401a include the following:

- The parent in a proceeding under the Kansas Adoption and Relinquishment Act (K.S.A. 59-2111 *et seq.*);
- The patient under the Care and Treatment Act for Mentally Ill Persons (K.S.A. 59-2945 *et seq.*);
- The patient under the Care and Treatment Act for Persons With an Alcohol or Substance Abuse Problem (K.S.A. 59-29b45 *et seq.*);
- The person adjudicated a sexually violent predator under the Sexually Violent Predator Act (K.S.A. 59-29a01 *et seq.*);
- The ward or conservatee under the Act for Obtaining a Guardian or Conservator, or Both (K.S.A. 59-3050 *et seq.*).
- The parent of a minor person adjudicated a ward or conservatee under the Act for Obtaining a Guardian or Conservator, or Both (K.S.A. 59-3050 *et seq.*);
- The petitioner in the case on appeal; and
- Any other person granted interested party status by the court from which the appeal is being taken. K.S.A. 59-2401a(e).

As in decedent's estate cases, the order appealed from continues in force unless modified by temporary orders entered by the appellate court and is not stayed by a supersedeas bond filed under K.S.A. 60-2103. K.S.A. 59-2401a(c). Also, the court from which the appeal is taken may require a party, other than the State of Kansas or any subdivision thereof or any city or county in this state, to file a bond of sufficient sum or surety "to ensure that the appeal will be prosecuted without unnecessary delay" and to ensure payment of all judgments, damages or costs. K.S.A. 59-2401a(d).

§ 5.23 Juvenile Proceedings

Under the Revised Kansas Code for Care of Children, an appeal can be taken by any party or interested party from any order of temporary custody, adjudication, disposition, finding of unfitness or termination of parental rights. K.S.A. 38-2273(a). An appeal must be taken within thirty days of the date the order was filed. See *In re D.I.G.*, 34 Kan. App. 2d 34, 36, 114 P.3d 173 (2005). K.S.A. 38-2202(v) defines a party as "the state, the petitioner, the child, any parent of the child, and an Indian child's tribe intervening pursuant to the Indian child welfare act." K.S.A. 38-2202(m) defines an interested party as "the grandparent of the child, a person with whom the child has been living for a significant period of time when the child in need of care petition is filed, and any person made an interested party by the court under K.S.A. 38-2241 and amendments thereto, or Indian tribe seeking to intervene that is not a party."

VII. TRANSFER OF CASES BETWEEN THE APPELLATE COURTS

§ 5.24 General

In both criminal and civil appellate proceedings, cases can be transferred from the Court of Appeals to the Supreme Court as provided in K.S.A. 20-3016 and 20-3017. See K.S.A. 22-3602(e); K.S.A. 60-2101(b). See also K.S.A. 20-3018 for other transfers.

§ 5.25 Upon Motion of a Party

Within 30 days after notice of appeal has been served on the appellee, any party to the appeal can file a motion with the clerk of the appellate courts requesting that a case pending in the Court of Appeals be transferred to the Supreme Court for final determination. K.S.A. 20-3017; Rule 8.02. The motion should

be captioned in the Supreme Court even though the action is pending in the Court of Appeals. See § 12.27, *infra.*

> **PRACTICE NOTE:** If a party misses the 30-day filing deadline, it may still be advisable to file the motion to call the Supreme Court's attention to the case. The motion of the party may be denied as untimely filed, but the court can then transfer the case on its own motion.

The motion must set forth the nature of the case, demonstrate that the case is within the Supreme Court's jurisdiction, and establish one or more of the grounds for transfer found in K.S.A. 20-3016(a). Such grounds include: an issue or issues are not within the jurisdiction of the Court of Appeals (citation must be made to controlling constitutional, statutory, or case authority); the subject matter of the case has significant public interest; the legal questions raised have major public significance; or, the Court of Appeals caseload requires a transfer for the expeditious administration of justice (the motion must contain sufficient data concerning the state of the docket to demonstrate this point). K.S.A. 20-3016(a); Rule 8.02.

> **PRACTICE NOTE:** The caseload of the Court of Appeals is not usually persuasive unless combined with another ground.

The opposing party may respond within 7 days of service of the motion. Rule 5.01. The motion will be considered by the Supreme Court and granted or denied in that court's discretion. A party's failure to file a motion to transfer is deemed a waiver of objection to Court of Appeals jurisdiction. K.S.A. 20-3017.

§ 5.26 Upon Motion of the Supreme Court

If a case within the jurisdiction of the Court of Appeals is erroneously docketed in the Supreme Court, the Supreme Court will transfer the case to the Court of Appeals. K.S.A. 20-3018(a). Likewise, if a case within the jurisdiction of the Supreme Court is erroneously docketed in the Court of Appeals, the Supreme

Court will transfer the case to the Supreme Court. K.S.A. 20-3018(a). In addition, any case within the jurisdiction of the Court of Appeals and properly docketed with that court can, at any time, be transferred to the Supreme Court for final determination on the Supreme Court's own motion. K.S.A. 20-3018(c).

> **PRACTICE NOTE:** Transfer on the Supreme Court's own motion usually indicates the subject matter or legal questions are of public interest or legal significance.

§ 5.27 Upon Motion of the Court of Appeals

Prior to final determination of any case before it, the Court of Appeals can request that a case be transferred to the Supreme Court by certifying the case is "within the jurisdiction of the Supreme Court" and the Court of Appeals has made one or more of the following findings: (1) one or more issues in the case are not within the jurisdiction of the Court of Appeals; (2) the subject matter of the case has significant public interest; (3) the case involves legal questions of major public significance; or (4) the caseload of the Court of Appeals is such that the expeditious administration of justice requires the transfer. K.S.A. 20-3016(a). The request will be considered by the Supreme Court and granted or denied in the court's discretion. K.S.A. 20-3016(b).

§ 5.28 Appeal of Right from Court of Appeals to Supreme Court

In both criminal and civil appellate proceedings, a party can appeal from the Court of Appeals to the Supreme Court as a matter of right in any case in which a question under the constitution of either the United States or the State of Kansas arises for the first time as a result of the Court of Appeals decision. K.S.A. 22-3602(e); K.S.A. 60-2101(b). See § 7.47, *infra*.

§ 5.29 Petitions for Review by Supreme Court of Court of Appeals Decisions

In both criminal and civil appellate proceedings, a party can petition the Supreme Court to review any decision of the Court of Appeals as provided in K.S.A. 20-3018(b). K.S.A. 22-3602(e); K.S.A. 60-2101(b). See § 7.48, *infra*. "'[D]ecision' means any formal or memorandum opinion, order, or involuntary dismissal under [Supreme Court] Rule 5.05." Rule 8.03(a).

A petition for review must be filed and served within 30 days after the date of the Court of Appeals decision. K.S.A. 20-3018(b); Rule 8.03(b)(1). This is a jurisdictional requirement. Rule 8.03(b)(1). Time limits for filing cross-petitions, conditional cross-petitions, responses and replies, as well as content and form requirements, are set out in Rule 8.03.

There is no requirement that a motion for rehearing by the Court of Appeals be filed before a petition for review is filed. K.S.A. 20-3018(b). Nor does the filing of a petition for review preclude filing a motion for rehearing or modification in the Court of Appeals. Rule 8.03(b)(2). If a motion for rehearing or modification is filed, the Supreme Court will not take action on the petition for review until the Court of Appeals has made a final determination of all motions for rehearing or modification. Rule 8.03(b)(2).

> **PRACTICE NOTE:** A petition for review must be filed and served within 30 days after the date of the Court of Appeals decision even if a motion for rehearing or modification is filed in the Court of Appeals. A motion for rehearing or modification does not toll the time to file a petition for review. Note that the 3-day mailing rule does not apply to petitions for review or motions for rehearing or modification. The 30 days is counted from the date the decision is filed.

In cases where review is not granted as a matter of right, whether to grant a petition for review is a decision committed to the discretion of the Supreme Court. Rule 8.03(g)(2). Non-controlling, non-exclusive factors considered by the Supreme

Court include: (1) the importance of the question presented; (2) the existence of a conflict between the decision sought to be reviewed and prior decisions of the Supreme Court or another panel of the Court of Appeals; (3) the need for exercising the Supreme Court's supervisory authority; and (4) the final or interlocutory character of the judgment, order, or ruling sought to be reviewed. K.S.A. 20-3018(b).

> **PRACTICE NOTE:** The Supreme Court website lists an additional consideration for deciding whether to grant a petition for review: "The original Court of Appeals decision demonstrates the need for update, clarification, or synthesis of case law." See www.kscourts.org/Cases-and-Opinions/Petitions-for-Review/default.asp.

VIII. MULTI-LEVEL APPEALS

§ 5.30 General

In some instances, appeals involve multiple levels of review. Some examples are identified below. Reference should be made to the above discussion concerning appealable orders.

§ 5.31 Appeals from Decisions of Non-Law-Trained District Magistrate Judges in Criminal Cases

A defendant has the right to appeal any judgment of a district magistrate judge who is not regularly admitted to practice law in Kansas to a district judge. K.S.A. 22-3609a(1). A notice of appeal must be filed with the clerk of the district court within 14 days after the date the sentence is imposed. K.S.A. 22-3609a(2). Before a defendant can appeal a criminal judgment of a magistrate judge to a district judge for a trial de novo under 22-3609a, there must be both a conviction of guilt and a sentence imposed by the magistrate judge. *State v. Remlinger*, 266 Kan.

103, 107, 968 P.2d 671 (1998). A defendant who wishes to seek further review can appeal in accordance with the rules governing appeals from the district court to the appellate courts.

A defendant may appeal a conviction before a district magistrate judge even if the conviction was based upon a guilty plea. *State v. Gillen*, 39 Kan. App. 2d 461, 181 P.3d 564 (2008). K.S.A. 22-3609a has been held not to authorize an appeal to the district court by a defendant from an order of a district magistrate judge revoking the defendant's probation. *State v. Legero*, 278 Kan. 109, Syl. ¶ 5, 91 P.3d 1216 (2004).

The prosecution can appeal the following decisions of a district magistrate judge who is not regularly admitted to practice law in Kansas to a district judge: (1) an order dismissing a complaint, information, or indictment (see *State v. Kleen*, 257 Kan. 911, 896 P.2d 376 [1995]); (2) an order arresting judgment; (3) upon a question reserved; (4) upon an order granting a new trial in any case involving a class A or B felony or, for crimes committed on or after July 1, 1993, any case involving an off-grid crime; and (5) pretrial orders quashing a warrant or search warrant, suppressing evidence, or suppressing a confession or admission. K.S.A. 22-3602(d); K.S.A. 22-3603. Again, further review by the appellate courts is possible.

For appeals from orders of a district magistrate judge to a district judge in juvenile offender proceedings, see K.S.A. 38-2382. However, an appeal of a magistrate judge's decision to prosecute a juvenile as an adult is properly filed with the appellate courts, not the district court, after a conviction. *State v. Hartpence*, 30 Kan. App. 2d 486, 494, 42 P.3d 1197 (2002).

§ 5.32 Appeals from Decisions of Non-Law-Trained District Magistrate Judges in Civil Cases

In a civil action, an appeal can be taken from an order or final decision of a district magistrate judge who is not regularly admitted to practice law in Kansas to a district judge. A notice of appeal must be filed with the clerk of the district court within 14 days after entry of the order or decision. K.S.A. 60-2103a(a). Failure

to file a timely appeal deprives the district court of jurisdiction. See *Explorer, Inc. v. Duranotic Door, Inc.*, No. 104,560, 2011 WL 5833351, *3 (Kan. App. 2011) (unpublished opinion).

In limited actions, an appeal can be taken from "orders, rulings, decisions or judgments" of a district magistrate judge who is not regularly admitted to practice law in Kansas to a district judge. K.S.A. 61-3902(a). A notice of appeal must be filed with the clerk of the district court within 14 days after entry of the order or decision except that notice of appeal by the defendant from that portion of a judgment in a forcible detainer action granting restitution of the premises must be filed within 7 days after entry of judgment. See K.S.A. 61-3902(a).

Under the Revised Kansas Code for Care of Children, appeals can be taken from an order entered by a district magistrate judge who is not regularly admitted to practice law in Kansas to a district judge in accordance with K.S.A. 38-2273(b).

In all three instances, further review by the appellate courts is permissible in accordance with the rules governing appeals from the district court to the appellate courts.

For appeals from a district magistrate judge to a district judge in probate proceedings, see § 5.22, *supra*.

§ 5.33 Appeals from Municipal Court to District Court in Criminal Cases

A defendant found guilty of violating a municipal ordinance can appeal the judgment to the district court in the county where the municipality is located. K.S.A. 22-3609(a); K.S.A. 12-4601(a). An appealable judgment requires both conviction and sentence. *State v. Remlinger*, 266 Kan. 103, 106, 968 P.2d 671 (1998); *City of Halstead v. Mayfield*, 19 Kan. App. 2d 186, 865 P.2d 222 (1993). A municipal court's judgment is effective when announced. *Paletta v. City of Topeka*, 20 Kan. App. 2d 859, 860, 893 P.2d 280 (1995); *City of Lenexa v. Higgins*, 16 Kan. App. 2d 499, Syl. ¶ 1, 825 P.2d 1152 (1992).

A defendant in a municipal court proceeding has no right to appeal to the district court a decision of the municipal court revoking his probation. *City of Wichita v. Patterson*, 22 Kan. App. 2d 557, Syl. ¶ 3, 919 P.2d 1047 (1996). See also *State v. Legero*, 278 Kan. 109, 112, 91 P.3d 1216 (2004). "A defendant in municipal court may only appeal a judgment of that court which adjudges him or her guilty of a violation of a municipal ordinance." *Patterson*, 22 Kan. App. 2d 557, Syl. ¶ 2. Additionally, an appeal under K.S.A. 22-3609 conditionally vacates a municipal court conviction, and if the appeal is not dismissed by the defendant, and is dismissed without prejudice, or is heard de novo by the district court, then the municipal court convictions are vacated. *City of Salina v. Amador*, 279 Kan. 266, Syl. ¶ 5, 106 P.3d 1139 (2005).

The procedural requirements for appeals from municipal court to the district court are set out in K.S.A. 22-3609. The municipal judge may require an appeal bond. K.S.A. 12-4602. While notice of appeal must be filed within 14 days of the date the sentence is imposed, K.S.A. 22-3609(b), the filing of a K.S.A. 12-4602 appeal bond within that time frame is not a jurisdictional requirement in perfecting an appeal from a municipal court conviction. See *City of Newton v. Kirkley*, 28 Kan. App. 2d 144, 146, 12 P.3d 908 (2000) (interpreting an earlier version of K.S.A. 22-3609).

The city can appeal to the district court "upon questions of law." K.S.A. 12-4601(b). See also *City of Wichita v. Maddox*, 271 Kan. 445, 449, 24 P.3d 71 (2001). The "question must be one which calls for an answer which will aid in the correct and uniform administration of the criminal law, and the question will not be entertained on appeal merely to demonstrate errors of a trial court." *City of Overland Park v. Travis*, 253 Kan. 149, Syl. ¶ 4, 853 P.2d 47 (1993).

§ 5.34 Appeals from Municipal Court to District Court in Civil Cases

Under K.S.A. 60-2101(d), a "judgment rendered or final order made by a political or taxing subdivision, or any agency thereof, exercising judicial or quasi-judicial functions may be reversed, vacated or modified by the district court on appeal." See *Kansas Board of Education v. Marsh*, 274 Kan. 245, 255, 50 P.3d 9 (2002). The appeal is taken in the county where the order was entered. For procedural requirements, see K.S.A. 60-2101(d).

§ 5.35 Appeals from Decisions in Small Claims Court

An appeal may be taken from any judgment under the Small Claims Procedure Act. Judgments under the Small Claims Procedure Act are first appealed to a district judge other than the one who entered the disputed order for a trial de novo. K.S.A. 61-2709(a). A notice of appeal must be filed with the clerk of the district court within 14 days after entry of judgment. K.S.A. 61-2709(a). Further appeal may be taken as from any other decision of the district court. K.S.A. 61-2709(b). Procedural requirements are identified in K.S.A. 61-2709.

§ 5.36 Certified Questions

Under the Uniform Certification of Questions of Law Act, K.S.A. 60-3201 *et seq.*, the Kansas Supreme Court can answer questions of law certified to it by the United States Supreme Court, a United States Court of Appeals, a United States District Court, or the highest appellate court, or the intermediate appellate court of any other state when requested, if in any proceeding before the certifying court there is involved a question of law of this state that may be determinative of the cause pending in the certifying court and it appears to the certifying court there is no controlling precedent in the decisions of the Kansas Supreme Court or the Kansas Court of Appeals. K.S.A. 60-3201.

The courts mentioned above may seek an answer to a question of law on their own motion or upon motion of a party to the cause. K.S.A. 60-3202. The certification order must set forth the question to be answered and a statement of all facts relevant to the question certified that fully shows the nature of the controversy in which the question arose. K.S.A. 60-3203. "If either party to a certified question from a federal court wants to add facts to those the certifying federal court furnishes [the Supreme Court], any changes must be made in the federal court. The same rule applies to evidentiary rulings made by the federal court." *Ortega v. IBP*, 255 Kan. 513, Syl. ¶ 1, 874 P.2d 1188 (1994). The Supreme Court can obtain portions of the record from the certifying court if necessary. K.S.A. 60-3204. Under K.S.A. 60-3201, "certified questions may present only questions of law…." *Superior Boiler Works, Inc. v. Kimball*, 292 Kan. 885, 890, 259 P.3d 676 (2011) (citing *Koplin v. Rosel Well Perforators, Inc.*, 241 Kan. 206, 207, 734 P.2d 1177 [1987]).

Briefs addressing the question and arguments on the briefs are considered by the Supreme Court. K.S.A. 60-3206. A written opinion is issued. K.S.A. 60-3207.

> **PRACTICE NOTE:** Upon receipt of the certification order, the Kansas Supreme Court first determines whether it will answer the certified questions presented by granting or denying the certifying court's order. If granted, the Kansas Supreme Court sets a briefing schedule, allowing 30 days per side for briefing. That schedule is subject to motions for extension of time by the parties, unless the order setting the briefing schedule provides otherwise.

Likewise, the Kansas Supreme Court or the Kansas Court of Appeals can, *sua sponte* or upon motion of a party, order certification of questions of law to the highest court of any state under the same circumstances. K.S.A. 60-3208.