Final Redline Copy
May 3, 2012

SUPREME COURT RULES

RELATING TO SUPREME COURT, COURT OF APPEALS, AND APPELLATE PRACTICE

Rules 1.01 – 10.02

Restyled Rules

♦Redline & Comments♦

GENERAL AND ADMINISTRATIVE

Rule 1.01

~~PREFATORY RULE~~
PREFATORY RULE

(a) ~~RULES ADOPTED.~~ **Rules Adopted.** The following Rules of the Supreme Court numbered 1.01 through ~~9.01~~ 10.02 are ~~hereby adopted~~ effective ~~January 10, 1977~~ _____, 20__.

(b) ~~REPEAL OF FORMER RULES.~~ **Repeal of Former Rules.** ~~All rules of t~~The Supreme Court rules relating to appellate practice~~, numbers~~ numbered 1.01 through ~~18~~ 10.02~~, which are~~ that were in effect immediately prior to the effective date of these rules are ~~hereby~~ repealed as of ~~January 10, 1977, except that they shall continue to govern any appeal in which the notice of appeal was filed prior to that date, unless the parties stipulate that these rules or some portion of them shall apply and such stipulation is approved by the appellate court~~ _____,20__.

(c) ~~STATUTORY REFERENCES.~~ **Statutory References.** In these rules, ~~whenever there is~~ a reference to ~~a section of~~ a statute ~~by number it shall be deemed to be a reference to the Kansas Statutes Annotated or Supplement or~~ includes any subsequent amendment ~~thereto unless a different~~ to the statute ~~is indicated~~.

(d) **Judicial Council Forms.** Judicial council forms referenced in these rules may be found at the judicial council's website: http://www.kansasjudicialcouncil.org.

~~(d)~~(e) ~~THE CLERK.~~ **The Clerk.** The clerk of the Supreme Court is clerk of the Court of Appeals and is referred to in these rules as "the clerk of the appellate courts."

~~(e)~~(f) ~~APPLICABILITY.~~ **Applicability.** ~~All rules relating to appellate practice shall be applicable~~ Unless otherwise indicated, the rules numbered 1.01 through 10.02 apply to both civil and criminal appeals~~,~~ and govern procedure in both the Court of Appeals and the Supreme Court~~, unless otherwise indicated~~.

COMMENT

The language of Rule 1.01 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

In new subsection (d), the Supreme Court Rules Advisory Committee recommends that all forms be consolidated on the judicial council's website to make them easily accessible and to facilitate updates.

Rule 1.02

~~CHIEF JUDGE OF THE COURT OF APPEALS~~
CHIEF JUDGE OF THE COURT OF APPEALS

(a) **Designation.** The Supreme Court will designate a chief judge of the Court of Appeals.

(b) **Chief Judge's Administrative Powers.** The ~~C~~chief ~~J~~judge of the Court of Appeals ~~shall have~~ has the following administrative powers:

~~(a)~~(1) ~~T~~to designate and number hearing panels, assign judges to ~~such~~ the panels, and designate the presiding judge of each panel of which the ~~C~~chief ~~J~~judge is not a member~~.~~;

~~(b)~~(2) ~~T~~to assign cases for hearing and determination to ~~the various~~ panels ~~for hearing and determination.~~ designated under paragraph (1);

~~(c)~~(3) ~~T~~to designate the ~~times~~ time and ~~places~~ place for the hearing of ~~all~~ each ~~cases~~ case ~~— pending before the court. Hearings may be held~~ at any place within the state as provided in K.S.A. 20-3013~~. In determining~~ — taking into ~~where any case is to be heard due~~ consideration ~~shall be given to~~ where ~~it~~ the case arose and ~~to~~ the relative convenience and expense of the parties, court, and counsel~~.~~;

~~(d)~~(4) ~~T~~to designate a judge to conduct a prehearing conference ~~whenever~~ when the court ~~shall have~~ has ordered one to be held before a single judge under Rule 1.04~~.~~;

~~(e)~~(5) ~~T~~to establish~~,~~ — after consultation with the other members of the court~~,~~ — internal operating procedures for the orderly handling of the court's business and the fair distribution of work among its members~~.~~; and

~~(f)~~(6) ~~T~~to perform ~~such~~ any other necessary administrative ~~duties~~ duty ~~as may be required and which are~~ not otherwise provided for by ~~law~~ statute or ~~by~~ supreme court rule.

COMMENT

The language of Rule 1.02 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

New subsection (a) specifies how the chief judge is selected. See K.S.A. 20-3011.

Rule 1.03

~~JUDICIAL ADMINISTRATION~~
JUDICIAL ADMINISTRATION

~~(a) JUDICIAL ADMINISTRATOR: QUALIFICATIONS, TENURE. The Judicial Administrator shall have a broad knowledge of judicial administration and substantial prior experience in an administrative capacity.~~

~~(b) PRACTICE OF LAW PROHIBITED. The Judicial Administrator shall not engage in the practice of law, apart from duties as Judicial Administrator, while serving in such capacity.~~

~~(c)~~(a) ~~DUTIES OF JUDICIAL ADMINISTRATOR.~~ **Judicial Administrator's Duties.** The ~~J~~judicial ~~A~~administrator ~~shall be~~ is responsible to the Supreme Court and ~~shall~~ must implement the Court's policies ~~of the court with respect to~~ governing the operation and administration of the district and appellate courts under the supervision of the ~~C~~chief ~~J~~justice. The ~~J~~judicial ~~A~~administrator ~~shall~~ must:

(1) ~~E~~examine the state of the district courts' dockets ~~of the district courts, and determine the need for assistance by any such court~~ and report ~~the same~~ to the Supreme Court~~;~~ if the judicial administrator determines that a district court needs assistance;

(2) ~~C~~collect and compile statistics on all ~~causes~~ cases filed in each district and appellate court ~~of this state~~ and annually submit to the Supreme Court a ~~complete and~~ detailed report on the state of the ~~dockets of the~~ courts' dockets;

(3) ~~Conduct such periodic surveys, as may be required, of the judicial business of the courts of this state and~~ determine periodically for the district and appellate courts the number of pending cases ~~pending in said courts~~, the number disposed of since the previous report, and ~~such~~ any additional information about the courts' judicial business the judicial administrator or the Supreme Court ~~as may be deemed~~ deems necessary.

(4) ~~M~~make recommendations to the departmental justices ~~relating to the~~ about inter-district judicial assignments ~~of judges from one district court to another~~ and assist the ~~departmental~~ justices in making ~~such~~ the assignments;

(5) ~~S~~supervise and examine the administrative methods and systems ~~employed~~ used in the ~~offices of the~~ district courts, including the offices of the clerks and other officers, and make recommendations to the Supreme Court for ~~the improvement of administration of said courts~~ administrative improvements;

(6) ~~A~~assist the Supreme Court in the management of the ~~fiscal affairs of the~~ judicial ~~department~~ branch's fiscal affairs, including federal grants;

(7) ~~C~~coordinate ~~the~~ judicial and nonjudicial personnel orientation and education ~~of judges and court personnel~~; and

(8) ~~P~~perform ~~such~~ any ~~duties~~ duty ~~as may be~~ required by statute or assigned ~~to the Judicial Administrator~~ by the Supreme Court.

~~(d)~~(b) ~~DUTIES OF COURT CLERKS.~~ **Court Clerk's Duties.** ~~All~~ The clerks of the district and appellate courts ~~shall~~ must promptly:

(1) make required reports to the ~~J~~judicial ~~A~~administrator; and

(2) furnish ~~the~~ information requested by the ~~J~~judicial ~~A~~administrator or a departmental justice on ~~such~~ forms furnished by the ~~J~~judicial ~~A~~administrator and approved by the Supreme Court.

~~(e)~~(c) ~~JUDICIAL DEPARTMENTS.~~ **Judicial Departments.** Pursuant to K.S.A. 20-318~~,~~ *et seq.*, ~~as amended,~~ the State of Kansas is ~~hereby~~ divided into the following six judicial departments:

(1) Judicial Department No. 1 - ~~which shall be comprised of the~~ Twelfth, Fifteenth, Seventeenth, Twenty-third, and Twenty-eighth judicial districts ~~of the State of Kansas~~;

(2) Judicial Department No. 2 - ~~which shall be comprised of the~~ Second, Third, Eighth, and Twenty-first judicial districts ~~of the State of Kansas~~;

(3) Judicial Department No. 3 - ~~which shall be comprised of the~~ First, Fourth, Seventh, Twenty-second, and Twenty-ninth judicial districts ~~of the State of Kansas~~;

(4) Judicial Department No. 4 - ~~which shall be comprised of the~~ Sixth, Tenth, Eleventh, Fourteenth, and Thirty-first judicial districts ~~of the State of Kansas~~;

(5) Judicial Department No. 5 - ~~which shall be comprised of the~~ Fifth, Ninth, Thirteenth, Eighteenth, Nineteenth, and Thirtieth judicial districts ~~of the State of Kansas~~; and

(6) Judicial Department No. 6 - ~~which shall be comprised of the~~ Sixteenth, Twentieth, Twenty-fourth, Twenty-fifth, Twenty-sixth, and Twenty-seventh judicial districts ~~of the State of Kansas~~.

~~(f)~~(d) ~~DEPARTMENTAL JUSTICE.~~ **Inter-district Assignment for Specific Case.** A departmental justice may ~~within that justice's department~~ assign ~~any~~ a ~~district judge, or district magistrate~~ judge~~,~~ of the district court within that justice's department to hear or try

~~any cause~~ a case in ~~other~~ another district ~~courts~~ court within the department and may request the ~~assistance~~ assignment of ~~any~~ a judge of the district court from another department~~, if such is available~~ to ~~aid in the trying of~~ hear or try ~~any~~ a case ~~within the department~~.

~~(g)~~(e) ~~REQUEST FOR ASSISTANCE.~~ **Inter-district Request for Assistance.** The chief judge of a judicial district may request the ~~assistance~~ assignment of a judge of the district court from another judicial district by filing ~~such~~ the request with the ~~J~~judicial ~~A~~administrator, who ~~shall~~ must promptly refer ~~such~~ the request — with the ~~J~~judicial ~~A~~administrator's recommendation ~~thereon to~~ on the request — to the appropriate departmental justice for consideration.

~~(h) DUTY OF REGULAR JUDGE. When a judge has been assigned to another judicial district, it shall be the duty of the chief judge to refer cases to the assigned judge for disposition, giving preference to cases which are at issue and cannot be tried because of accumulation of business, and to arrange courtroom accommodations for such assigned judge, all subject to supervision of the Judicial Administrator.~~

~~(i)~~(f) ~~RETIRED JUSTICES OR JUDGES.~~ **Retired Justice or Judge.** A departmental justice may recommend to the chief justice the assignment of a ~~Any~~ retired justice of the Supreme Court, judge of the ~~c~~Court of ~~a~~Appeals, or district judge ~~may be designated and assigned~~ to perform ~~such~~ judicial duties in a district court in the department to the extent ~~as that justice or judge~~ the retiree is willing to ~~undertake~~ serve. ~~Designation for such service in any judicial district shall be recommended by the departmental justice of such district and the assignment made by the Chief Justice.~~ The departmental justice of a judicial district makes the recommendation to designate the retiree for service in the district. The chief justice may make the assignment.

(g) **Duty of Chief Judge of District Receiving Judicial Assistance.** A chief judge of a judicial district who requests and receives assistance from a judge of the district court from another district or from a retired justice or judge must — subject to the judicial administrator's supervision:

(1) refer cases to the assigned judge, giving preference to cases that are at issue and cannot be tried because of accumulation of business;

(2) arrange courtroom accommodations for the assigned judge; and

(3) designate a court employee to serve as contact for the assigned judge.

COMMENT

The language of Rule 1.03 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

Former subsections (a) and (b) were deleted because the content appears in K.S.A. 20-318, and the information is important only to the judicial administrator.

New subsection (g)(3) was added to improve communication with an assigned judge.

Rule 1.04

~~PREHEARING CONFERENCE~~
PREHEARING CONFERENCE

On motion ~~of any party~~ or on its own, ~~motion~~ an appellate court may direct the ~~attorneys for the~~ parties' attorneys to appear before the court or ~~a judge or justice thereof~~ its designee for a prehearing conference to consider ~~the~~ simplification of the issues and ~~such~~ other matters ~~as~~ that may aid in the disposition of the proceeding ~~by the court~~. The court ~~or judge or justice shall make~~ must issue an order ~~which~~ that recites the ~~agreements made by the parties as to any of the~~ matters considered and ~~which~~ limits the issues to those not disposed of by admissions or ~~agreements~~ agreement ~~of counsel, and such~~. The order ~~when entered~~ controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

COMMENT

The language of Rule 1.04 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

The rule clarifies that an appellate court may designate a judge to conduct a prehearing conference for the court.

Rule 1.05

~~FORM AND SERVICE OF PAPERS GENERALLY~~
FORM AND SERVICE OF PAPERS GENERALLY

(a) **Paper Size, Type, and Statutory Requirements.** ~~Except as~~ Unless the court permits otherwise~~, specifically required by these rules or permitted by the court, all~~ every ~~petitions~~ petition, ~~briefs~~ brief, ~~motions~~ motion, ~~applications~~ application, or other ~~papers~~ paper ~~sought to be brought to the attention of~~ filed with the clerk of the appellate courts ~~shall~~ must be in black ~~typed~~ type or print on an ~~standard size (~~8½ x 11"~~)~~ ~~sheets~~ sheet, with one-inch margins. All filings ~~shall comply with, and be~~ are subject to~~, the conditions of~~ K.S.A. 60-205, ~~K.S.A. 60-206 (a) and (d), K.S.A.~~ 60-210, and ~~K.S.A.~~ 60-211.

(b) **Filing.** ~~All~~ Every ~~petitions~~ petition, ~~briefs~~ brief, ~~motions~~ motion, ~~applications~~ application, or other ~~papers~~ paper filed with the clerk of the appellate courts ~~shall~~ must include the name, address, ~~and~~ telephone number, fax number, and e-mail address of the person filing ~~the same~~ it. ~~If such~~ A ~~papers~~ paper ~~are~~ filed by ~~counsel, they shall also~~ an attorney must include ~~the counsel's~~ attorney's Kansas ~~attorney~~ registration number and ~~an indication~~ indicate ~~of~~ the ~~party litigant whom counsel represents~~ party represented. If multiple attorneys appear on behalf of the same party, one ~~shall~~ must be designated lead ~~counsel~~ attorney for purposes of subsequent filings and notices.

(c) **Service.** Service is subject to K.S.A. 60-205. Parties, by written agreement, may effect service by electronic means.

~~(c)~~(d) **Time Computation.** ~~The computation of time in the appellate courts shall follow K.S.A. 60-206(a) and (d).~~ In the appellate courts, time is computed under K.S.A. 60-206(a) and (d).

~~(d)~~(e) **Clerk's Duties.** The clerk of the appellate courts ~~shall~~ must keep a separate file for each ~~cause~~ case in which all ~~such~~ filed documents ~~shall~~ must be preserved. The clerk ~~shall endorse~~ must record ~~on each paper filed~~ the date ~~of the filing, and shall~~ on which each document is filed and must maintain an appearance docket comparable to~~, and for the same general purpose of those required of~~ that a ~~clerks~~ clerk of the district court maintains under K.S.A. 60-2601.

COMMENT

The language of Rule 1.05 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

A fax number and e-mail address are now required. K.S.A. 60-205(b)(2)(E) now authorizes service by fax, and K.S.A. 60-211 was recently amended to require an e-mail address.

K.S.A. 60-205 permits service by electronic means if allowed by Supreme Court rule. New subsection (c) allows service by electronic means if the parties have a written agreement to do so.

Rule 1.06

~~REMOVAL OF DOCUMENTS FROM FILES~~
REMOVAL OF DOCUMENT FROM FILE

No document ~~belonging to~~ in the files of the appellate courts ~~shall~~ may be taken from the office or custody of the clerk of the appellate courts ~~except by permission of~~ unless authorized by the clerk.

COMMENT

The language of Rule 1.06 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 1.07

~~NEWS MEDIA RECORDINGS~~
NEWS MEDIA RECORDINGS

[**History:** Repealed effective September 1, 1988; see new Rule 1001.]

Rule 1.08

~~FACSIMILE FILINGS~~
FAX FILING

(a) **10-Page Limit.** ~~Routine~~ A ~~motions~~ motion, ~~pleadings~~ pleading, or ~~correspondence~~ other document ~~which do~~ that does not require a filing fee will be accepted for filing by ~~facsimile transmission~~ fax if the document, together with any supporting documentation, does not exceed ~~ten (~~10~~)~~ pages. Briefs and petitions for review may not be filed by fax. The ~~cover~~ fax transmission sheet required by subsection (c) and the certificate of service ~~is~~ are not included in the 10-page limitation.

(b) **No Page Limit Using Fax Filing Agency.** A party or an attorney may transmit a ~~documents~~ document by fax to a fax filing agency, without page limitation, for filing with ~~the~~ an appellate ~~courts~~ court.

(c) **Fax Transmission Sheet.** ~~Each~~ A document transmitted by ~~facsimile~~ fax must include a ~~cover~~ fax transmission sheet ~~in the following format:~~ on the judicial council form.

~~FACSIMILE TRANSMISSION SHEET~~

~~DATE: _____~~

~~TO: Clerk of the Appellate Courts~~
~~FAX Number: (____) _____ - _____~~

~~FROM: Attorney or Party Without Attorney (Name and Address)~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~

~~Kansas Attorney Registration Number: _____~~
~~Telephone Number: (____) _____ - _____~~
~~FAX Number: (____ _ _____ - _____~~
~~Attorney for (Name): _____~~

~~RE: Appellate Case Number: _____~~
~~Caption: _____~~
~~vs~~
~~_____~~
~~_____~~
~~Name of the Document Being Transmitted:~~
~~_____~~
~~Number of facsimile pages excluding this cover page:~~
~~_____~~

~~OTHER INSTRUCTIONS:~~
~~_____~~

(d) **Copies.** Only one copy of ~~the pleadings or other papers~~ a document ~~shall~~ must be transmitted~~;~~. ~~the~~ The ~~C~~clerk of the ~~A~~appellate ~~C~~courts will provide any additional copies required by these rules.

(e) **When a Fax Filing is Deemed Filed.** ~~Facsimile filings received in the Appellate Clerk's Office before 5:00 p.m. of a regular workday shall be deemed filed as of that day. Filings received after 5:00 p.m. shall be filed as if received on the next regular Court workday. Time of receipt will be the time printed by the Court's facsimile machine on the final page of the facsimile received document.~~ A fax filing received by the court is deemed filed at the time recorded on the court's electronic fax log.

(f) **Fax Signature.** ~~Pleadings or other papers filed by facsimile transmission shall have the same effect as any other document filed with the Court.~~ A ~~facsimile~~ fax signature ~~shall have~~ has the same effect as an original signature.

(g) **Certificate of Service.** ~~The~~ A certificate of service for a fax filing ~~shall~~ must state the date of service and the ~~facsimile~~ fax ~~telephone~~ numbers of both the sender and ~~the receiver~~ any party served by fax.

COMMENT

The language of Rule 1.08 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

Subsection (a) clarifies that briefs and petitions for review may not be filed by fax and that the certificate of service is not included in the 10-page limit.

Subsection (e) has been amended, consistent with Rule 119(c)(7), to accept filings 24 hours a day. Reference to the time recorded on the court's electronic fax log is consistent with current e-fax technology.

The Fax Transmission Sheet, formerly incorporated into the rule, will be moved to the judicial council website.

RULE 1.09

~~ENTRY OF APPEARANCE/WITHDRAWAL OF ATTORNEY~~
ENTRY OF APPEARANCE/WITHDRAWAL OF ATTORNEY

(a) ~~ENTRY OF APPEARANCE.~~ **Entry of Appearance.** ~~Any~~ An attorney who enters an appeal~~/action~~ or action after the case has been docketed must file with the clerk of the appellate courts an entry of appearance and proof of service on ~~opposing counsel~~ all parties.

(b) ~~WITHDRAWAL OF ATTORNEY. Any attorney who has appeared of record in an appellate proceeding may withdraw but only after the attorney serves a motion for withdrawal on the client and on opposing counsel, files a copy of the motion and proof of service thereof with the clerk of the appellate courts, and a justice or judge of the appellate courts enters an order approving the withdrawal.~~ **Withdrawal of Attorney When Client Will be Left Without Counsel.** When withdrawal of an attorney who has appeared of record in an appellate proceeding will leave the client without counsel, the attorney may withdraw only when:

(1) the attorney has served a motion for withdrawal on the client — and on all parties — that:

(A) states the reasons for the withdrawal, unless doing so would violate an applicable standard of professional conduct;

(B) provides evidence that the withdrawing attorney provided the client:

(i) an admonition that the client is personally responsible for complying with all orders of the court and time limitations established by the rules of procedure or by court order; and

(ii) notice of the date of any pending hearing, conference, or deadline; and

(C) provides the court with a current mailing address and telephone number for the client, if known;

(2) the attorney has filed the motion with the clerk of the appellate courts under Rule 5.01; and

(3) a justice or judge of the appellate courts issues an order approving the withdrawal.

(c) **Withdrawal of Attorney When Client Continues to Be Represented by Other Counsel of Record.** When the client will continue to be represented by other counsel of record, an attorney may withdraw without a court order by filing a notice of withdrawal of appearance with the clerk of the appellate courts. The notice must:

(1) identify the attorney of record admitted to practice law in Kansas who will continue to represent the client; and

(2) be served on the client and all parties.

(d) **Withdrawal of Attorney When Client Will Be Represented by Substituted Counsel.** An attorney may withdraw without court order upon simultaneous substitution of counsel admitted to practice law in Kansas by:

(1) filing a notice of withdrawal of counsel and entry of appearance of substituted counsel signed by both the attorney withdrawing and the attorney to be substituted as counsel; and

(2) serving the notice on the client and all parties.

(e) **Withdrawal of Attorney When Client is Represented by Appointed Counsel.** When an appointed attorney seeks to withdraw from a case:

(1) the attorney must file a motion with the clerk of the appellate courts under Rule 5.01, stating the reasons for withdrawal, if the attorney may ethically do so;

(2) the attorney must serve the motion for withdrawal on the client and all other parties;

(3) if a judge or justice of the appellate courts issues an order approving the withdrawal, the case must be remanded to the appropriate district court for appointment of new appellate counsel unless substitute counsel has already entered an appearance. The district court must appoint new counsel within 30 days.

COMMENT

The language of Rule 1.09 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

The rule has been significantly expanded, based on United States District Court of Kansas local rule 83.5.5.

Rule 1.10

~~ADMISSION *PRO HAC VICE* OF OUT-OF-STATE ATTORNEY BEFORE THE KANSAS APPELLATE COURTS~~
ADMISSION *PRO HAC VICE* OF OUT-OF-STATE ATTORNEY BEFORE THE KANSAS APPELLATE COURTS

(a) **Eligibility for Admission *Pro Hac Vice*.** ~~Any~~ An attorney not admitted to ~~the~~ practice ~~of~~ law in Kansas may be admitted on motion to practice law in a Kansas appellate court — for a particular case only — if the attorney:

(1) ~~but who~~ is regularly engaged in ~~the practice~~ practicing ~~of~~ law in another state, ~~territory of the~~ United States territory, or the District of Columbia~~,~~; ~~and who~~

(2) is in good standing ~~pursuant to~~ under the rules of the highest appellate court in that jurisdiction~~,~~; and

(3) ~~may on motion be admitted to practice law in the appellate courts of this state for the purposes of a particular case only, upon showing~~ shows ~~that he or she has associated an~~ association with an attorney of record in the case who:

(A) is regularly engaged in ~~the practice of~~ practicing law in Kansas; and

(B) ~~who~~ is in good standing under ~~all of the applicable rules of~~ the Kansas Supreme Court rules.

(b) **Kansas Attorney's Duties.** The Kansas attorney of record under subsection (a) ~~shall~~ must:

(1) be actively engaged in the ~~conduct of the~~ case;

(2) ~~shall~~ sign all pleadings, documents, and briefs; and

(3) ~~shall~~ be present at a prehearing conference or oral argument, if scheduled.

(c) **Service.** Service of a paper in a case ~~may be had upon~~ on the ~~associated~~ Kansas attorney of record under subsection (a) ~~in all matters connected with the case with~~ has the same effect as if personally ~~made~~ served on the ~~out-of-state~~ attorney ~~within this state~~ admitted *pro hac vice*.

~~(b)~~(d) ***Pro Hac Vice* Motion.** A separate motion for admission *pro hac vice* must be filed for each case.

(1) **Requirements.** ~~A~~ The motion must be:

(A) filed by the Kansas attorney of record~~,~~;

(B) accompanied by the out-of-state attorney's verified application, ~~shall be in writing and~~ complying with subsection (e);

(C) ~~shall be~~ filed with the clerk of the appellate courts ~~at the time of~~ when the case is ~~docketing~~ docketed or, if the motion relates to briefing or oral argument, not later than 15 days before the brief due date or oral argument date~~.~~; and

(D) ~~The motion and verified application shall be~~ served on all ~~counsel of record~~ parties and on the out-of-state attorney's client.

(2) **Denial of Motion.** If the court denies the motion, it must state reasons for the denial.

~~(c)~~(e) **Verified Application.**

(1) **Contents.** ~~The~~ An out-of-state attorney's verified application for admission *pro hac vice* ~~shall~~ must include:

~~(1)~~(A) a statement identifying the party or parties represented;

~~(2)~~(B) the name, business address, telephone number, fax number, e-mail address, and Kansas attorney registration number of ~~local counsel~~ the Kansas attorney of record;

~~(3)~~(C) the applicant's residence address, and business address, ~~and business~~ telephone number, fax number, and e-mail address;

~~(4)~~(D) the bar(s) to which the applicant is admitted, the date(s) of admission, and the applicable attorney registration number(s);

~~(5)~~(E) a statement that the applicant is a member in good standing of each bar;

~~(6)~~(F) a statement that the applicant has not been the subject of prior public discipline, including ~~but not limited to~~ suspension or disbarment, in any jurisdiction;

~~(7)~~(G) a statement that the applicant is not currently the subject of a disciplinary action or investigation in any jurisdiction or, if the applicant is currently the subject of a disciplinary action or investigation, the application ~~shall~~ must

provide a detailed description of the nature and status of the action or investigation ~~as well as~~ and the address of the disciplinary authority in charge; and

~~(8)~~(H) if applicable, the case name, case number, and the court in which the applicant has been granted permission to appear *pro hac vice* in Kansas within the preceding 12 months.

(2) **Obligation to Report Changes.** The applicant has a continuing obligation to notify the clerk of the appellate courts if a change occurs in any of the information provided in the application.

~~(d)~~(f) **Fee.** A non-refundable fee of $100, payable to the clerk of the appellate courts, ~~shall~~ must accompany ~~the~~ a motion ~~and verified application in each case~~ for admission *pro hac vice* in each case. ~~An attorney employed by a governmental agency~~ An attorney representing the government or ~~an attorney who represents~~ an indigent party may move ~~for waiver of the fee~~ — for good cause — ~~shown~~ for waiver of the fee.

~~(e)~~(g) **Consent to Disciplinary Jurisdiction.** By applying for admission *pro hac vice* under this rule, ~~Any~~ an out-of-state attorney ~~admitted pursuant to this rule shall be subject~~ consents to the ~~order~~ exercise of~~, and amenable to~~ disciplinary ~~action~~ jurisdiction by~~,~~ the Kansas appellate courts ~~of this state~~.

~~(f) A separate motion shall be filed for each case, and the motion may be granted or denied in the discretion of the appellate court. If the motion is denied, reasons shall be stated.~~

~~(g)~~(h) **Appearance *Pro Se*.** ~~Nothing in this~~ This rule ~~shall be construed to~~ does not prohibit ~~any~~ a party from appearing ~~personally~~ before ~~the~~ an appellate ~~courts~~ court on ~~his or her~~ the party's own behalf.

COMMENT

The language of Rule 1.10 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (b)(3) clarifies that the Kansas attorney must attend a prehearing conference.

New subsection (e)(1)(B) and (C) adds references to fax number and e-mail address. K.S.A. 60-205(b)(2)(E) now authorizes service by fax, and K.S.A. 60-211 was recently amended to require an e-mail address.

INITIATION AND DOCKETING OF APPEAL

Rule 2.01

~~FORM OF NOTICE OF APPEAL, SUPREME COURT~~
FORM OF NOTICE OF APPEAL, SUPREME COURT

When an appeal ~~is permitted~~ directly to the Supreme Court is permitted, the notice of appeal ~~shall~~ must be filed in the district court, ~~shall~~ be under the caption of the district court case, ~~in the district court~~ and be in ~~substantially~~ substantial compliance with the ~~following~~ judicial council form~~:~~.

~~NOTICE OF APPEAL~~

~~Notice is hereby given that (specify the party or parties taking the appeal) appeal(s) from (designate the judgment or part thereof appealed from) to the Supreme Court of the State of Kansas.~~

~~The appeal hereby taken is directly to the Supreme Court on the ground that (state ground on which direct appeal is considered to be permitted, including citation of statutory authority).~~

~~Appellant or Attorney for Appellant(s)~~
~~Address~~
~~Telephone Number~~

~~(Add certificate of service on all parties in accordance with K.S.A. 60-205.)~~

COMMENT

The language of Rule 2.01 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

The form will be removed from the rule and placed on the judicial council website.

Rule 2.02

~~FORM OF NOTICE OF APPEAL, COURT OF APPEALS~~
FORM OF NOTICE OF APPEAL, COURT OF APPEALS

In ~~all~~ a ~~cases~~ case in which a direct appeal to the Supreme Court is not permitted, the notice of appeal ~~shall~~ must be filed in the district court, ~~shall~~ be under the caption of the district court case~~, in the district court~~ and be in ~~substantially the following~~ substantial compliance with the judicial council form~~:~~.

~~NOTICE OF APPEAL~~

~~Notice is hereby given that (specify the party or parties taking the appeal) appeal(s) from (designate the judgment or part thereof appealed from) to the Court of Appeals of the State of Kansas.~~

~~Appellant or Attorney for Appellant(s)~~
~~Address~~
~~Telephone Number~~

~~(Add certificate of service on all parties in accordance with K.S.A. 60-205.)~~

COMMENT

The language of Rule 2.02 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

The form will be removed from the rule and placed on the judicial council website.

Rule 2.03

~~PREMATURE NOTICE OF APPEAL~~
PREMATURE NOTICE OF APPEAL

~~A notice of appeal filed subsequent to an announcement by the judge of the district court on a judgment to be entered, but prior to the actual entry of judgment as provided in K.S.A. 60-258, shall be effective as notice of appeal under K.S.A. 60-2103 if it identifies the judgment or part thereof from which the appeal is taken with sufficient certainty to inform all parties of the rulings to be reviewed on appeal. Such 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).~~

(a) **When a Premature Notice of Appeal is Effective.** A notice of appeal that complies with K.S.A. 60-2103(b) — filed after a judge of the district court announces a judgment to be entered, but before the actual entry of judgment — is effective as notice of appeal under K.S.A. 60-2103 if it identifies the judgment or part of the judgment from which the appeal is taken with sufficient certainty to inform all parties of the rulings to be reviewed on appeal.

(b) **Timing of a Notice of Appeal Challenging Certain Posttrial Motions.** A party intending to challenge an order disposing of any of the following motions, or a judgment's alteration or amendment upon such a motion, must file a notice of appeal — in compliance with these rules — not later than 30 days after the entry of the order disposing of the last such remaining motion:

(1) for judgment under K.S.A. 60-250(b);

(2) to amend or make additional factual findings under K.S.A. 60-252(b), whether or not granting the motion would alter the judgment;

(3) to alter or amend the judgment under K.S.A. 60-259;

(4) for a new trial under K.S.A. 60-259; or

(5) for relief under K.S.A. 60-260 if the motion is filed not later than 28 days after the judgment is entered.

COMMENT

The language of Rule 2.03 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (b) reflects case law in Kansas that formerly was not covered by Rule 2.03. The rule now makes clear that, if a party wants to appeal an issue related to a posttrial motion in addition to other issues in the case, a notice of appeal is required after the posttrial motion is resolved. Federal Rule of Appellate Procedure 4(a)(4)(B)(ii) contains a similar provision.

Rule 2.04

~~DOCKETING ON APPEAL~~
DOCKETING AN APPEAL

(a) **Timing; Required Documents.**

(1) **Appellant.** ~~Within~~ Not later than 21 days after ~~the filing of the~~ a notice of appeal~~,~~ is filed in a district court, the appellant ~~or a cross-appellant shall~~ must complete or obtain and file with the clerk of the appellate courts~~, along with~~:

(A) the original and one copy of the docketing statement required by Rule 2.041~~:~~;

~~(a)~~(B) a file-stamped certified copy of the notice of appeal;

~~(b)~~(C) a file-stamped certified copy of the ~~final order or decision appealed from (~~journal entry, judgment form, or ~~trial court's memorandum opinion if different from journal entry or judgment form)~~ other appealable order or decision;

~~(c)~~(D) a file-stamped certified copy of any ~~post-trial~~ posttrial motion and any ruling ~~thereon~~ on the motion;

~~(d)~~(E) a file-stamped certified copy of any certification ~~pursuant to~~ under K.S.A. 60-254(b); ~~and~~

~~(e)~~(F) a copy of any request for transcript under Rule 3.03, a statement that no transcript will be requested, or a certificate of completion if a transcript has been requested and completed~~.~~; and

(G) if applicable, any document required under subsections (b) and (c).

~~Items (a) through (d) are to be file-stamped copies certified by the clerk of the district court.~~

(2) **Cross-Appellant.** Not later than 21 days after a notice of cross-appeal is filed in a district court, the cross-appellant must complete or obtain and file with the clerk of the appellate courts:

(A) the original and one copy of the docketing statement required by Rule 2.041;

(B) a file-stamped certified copy of the notice of cross-appeal; and

(C) a copy of any request for transcript by the cross-appellant, a statement that no transcript will be requested, or a certificate of completion if a transcript has been requested and completed.

(b) **Prior Appeal to the District Court from Decision of Municipal, District Magistrate, or Pro Tem Judge.** If ~~the~~ an appeal ~~has been~~ previously was taken ~~from a decision of a municipal judge or a district magistrate judge~~ to the district court, file-stamped certified copies of the municipal, ~~or~~ district magistrate, or pro tem judge's order and the notice of appeal to district court must ~~also be included~~ accompany the documents filed under subsection (a).

(c) **Appeal from Decision of Administrative Tribunal.** If ~~the~~ an appeal originates from ~~a decision of~~ an administrative tribunal's~~,~~ decision, ~~the appellant or cross-appellant shall also file with the clerk of the appellate courts file-stamped~~ certified copies of the agency decision, any ~~motions~~ motion for rehearing and the ~~rulings thereon~~ ruling on the motion, and the petition for judicial review must accompany the documents filed under subsection (a).

(d) **Docket Fee.**

(1) **Generally.** In addition to filing the documents required under subsections (a), (b), and (c), ~~The~~ an appellant ~~shall also~~ must pay at the time of docketing — unless payment is excused or delayed under this subsection — a docket fee ~~in the sum~~ of $125.~~00, unless the docket fee is excused or payment thereof delayed as herein provided~~ in addition to any applicable surcharge. The docket fee is nonrefundable and is the only cost assessed by the clerk's office for an appeal.

(2) **Indigent Appellant.** The docket fee ~~shall be~~ is excused when:

~~(a)~~(A) ~~The appellant has previously been determined to be indigent by~~ the district court previously determined the appellant to be indigent, and the appellant's attorney ~~for appellant~~ certifies to the clerk of the appellate courts that the appellant remains indigent~~,~~; or

~~(b)~~(B) ~~The~~ the district judge ~~shall certify~~ certifies that:

~~(1)~~(i) ~~That~~ the judge believes the appellant is indigent~~.~~; and

~~(2)~~(ii) ~~That~~ in the interest of the ~~party's~~ appellant's right of appeal, an appeal should be docketed *in forma pauperis.*

~~(c)~~(3) **Government Entities.** ~~In accordance with~~ Under K.S.A. 60-2005, the ~~S~~state of Kansas and its agencies and all cities and counties in this state are exempted in ~~any~~ a civil action from paying the docket fee ~~provided for in this rule~~ required in paragraph

(1). If, on final determination of the case, the costs are assessed against the state, a state agency, or ~~any~~ a city or county in this state, the costs ~~shall~~ must include the amount of the docket fee.

(e) **Clerk's Notice of Docketing.**

(1) **Required Notice.** ~~Upon~~ On filing of the documents required ~~by~~ under this rule and the payment or excuse for nonpayment of the ~~docketing~~ docket fee, the clerk of the appellate courts ~~shall~~ must:

(A) notify all parties that the appeal has been docketed; and

(B) ~~shall inform them as to~~ include in the notification the appellate number assigned ~~thereto~~ to the appeal.

(2) **Parties Entitled to Notice.** ~~Parties designated to receive notice shall include~~ The notice required by paragraph (1) must be served on the attorney or party who ~~signs~~ signed the docketing statement and those on whom the docketing statement ~~is~~ was served.

(3) **Others Desiring Notice.** ~~Others who wish to receive notices~~ A party not listed in paragraph (2) must file ~~a separate~~ an entry of appearance to receive notices.

~~The docketing fee shall be nonrefundable and shall be the only costs assessed for the clerk's office for each appeal.~~

COMMENT

The language of Rule 2.04 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

Subsection (a)(1)(c) recognizes that some appealable orders are not final orders.

New subsection (a)(2) requires fewer documents from a cross-appellant because scanned documents filed by the appellant are readily available to court staff.

Subsection (b) adds a pro tem judge's order to those which may have been appealed to the district court.

Subsection (d)(1) acknowledges the surcharge which is applicable to the appellate docket fee.

Rule 2.041

~~DOCKETING STATEMENT~~
DOCKETING STATEMENT

~~(a) In all appeals, the appellant or cross-appellant shall file with the clerk of the appellate courts an original and one copy of a docketing statement within 21 days after the filing of the notice of appeal or cross-appeal in the district court. A copy of the docketing statement shall be served on all other parties to the appeal. Within 15 days after service of the docketing statement, the appellee or cross-appellee may file an original and one copy of an answer to the docketing statement but only if the statement of facts or issues in the docketing statement is insufficient to provide the court a fair summary of the facts and issues on appeal. The contents of the docketing statement or answer thereto shall not be grounds for a motion for relief by any party.~~

~~(b) The docketing statement shall be in one of the following forms, as applicable:~~

~~**Example 1:**~~

~~**IN THE (SUPREME COURT) (COURT OF APPEALS) OF THE STATE OF KANSAS**~~

~~Case Caption:~~

~~County Appealed From:~~ _____
~~District Court Case No(s):~~ _____
~~Proceeding Under Chapter:~~ _____
~~Party Filing Appeal:~~ _____
~~Party or Parties Who Will Appear as Appellees:~~ _____
_____

~~**DOCKETING STATEMENT-CIVIL**~~

~~The docketing statement is used by the court to determine jurisdiction and to make calendar assignments pursuant to Rules 7.01(c) and 7.02(f). This is not a brief and should not contain argument or procedural motions.~~

~~1.~~ ~~Civil Classification: From the list of civil topic sub-types listed below, choose the **one** which best describes the **primary** issue in this appeal.~~
_____

~~2.~~ ~~Proceedings in the District Court:~~

~~a.~~ ~~Trial Judge from whose decision this appeal is taken:~~ _____

~~b.~~ ~~List any other judge who has signed orders or conducted hearings in this matter:~~ _____

~~c.~~ ~~Was this case disposed of in the district court by:~~

~~_____ Jury trial~~
~~_____ Bench trial~~
~~_____ Summary Judgment~~
~~_____ Dismissal~~

d. Length of trial, measured in days (if applicable): _____

e. State the name of each court reporter and/or transcriptionist who has reported or transcribed any or all of the record for the case on appeal. (This is not a substitute for a request for transcript served on the individual reporter or transcriptionist pursuant to Rule 3.03.) _____

f. State the legal name of all entities who are NOT listed in the case caption (including corporations, associations, parent, subsidiary, or affiliate business entities) who are parties or who have a direct involvement in the case on appeal: _____

g. State the name, address, and telephone number of every attorney who has represented a party in district court if that attorney's name does NOT appear on the certificate of service attached to this docketing statement. Clearly identify each party represented.

3. Jurisdiction:

a. Date journal entry or judgment form filed: _____

b. Is the order appealed from a final order, *i.e.*, does it dispose of the action as to all claims by all parties? _____

c. If the order is not a final disposition as to all claims by all parties, did the district court direct the entry of judgment in accordance with K.S.A. 60-254(b)? _____

If applicable, date K.S.A. 60-254(b) certificate filed: _____

d. Date any post-trial motion filed: _____

e. Date disposition of any post-trial motion filed: _____

f. Date notice of appeal filed in district court: _____

g. Other relevant dates necessary to establish this court's jurisdiction to hear the appeal, *i.e.*, decisions of administrative agencies or municipal courts and appeals therefrom:

h. Statutory authority for appeal: _____

i. Are there any proceedings in any other court or administrative agency, state or federal, which might impact this case or this court having jurisdiction (yes or no)? _____
If "yes," identify the court or agency where the related proceeding is pending. List these case captions and the case or docket numbers.

_____
_____
_____

4. Constitutional Challenges to Statutes or Ordinances:
Was any statute or ordinance found to be unconstitutional by the trial court (yes or no)? _____
If "yes," what statute or ordinance? _____

5. Related Cases/Prior Appeals:

a. Is there any case now pending or about to be filed in the Kansas Appellate Courts which:

(1) Arises from substantially the same case or controversy as this appeal (yes or no)? _____
If "yes," give case caption and docket number.

_____

(2) Involves an issue that is substantially the same, similar or related to an issue in this appeal (yes or no)? _____
If "yes," give case caption and docket number.

_____

b. Has there been any prior appeal involving this case or controversy (yes or no)? _____
If "yes," give case caption and docket number.

_____

6. Brief statement (less than one page), without argument, of the material facts. This is not intended to be a substitute for the factual statement which that will appear in the brief.

7. Concise statement of the issues proposed to be raised. You will not be bound by this statement but should include issues now contemplated. Avoid general statements such as "the judgment is not supported by the law."

Attorney's Signature

_____

Attorney's Name (typed or printed)
Kansas Attorney Registration Number
Address
Telephone Number

FAX Number
Name of the Party Represented
Date: _____
ATTACH PROOF OF SERVICE
(List all parties served, including name, address, and who they represent.)

CIVIL TOPIC SUB-TYPES: Select the **one** sub-type which best describes this appeal. See Question 1 above.

Administrative–KS Corporation Commission
Administrative–Licensing
Administrative–Public Utility Rate Case
Administrative–Taxation
Administrative–Workers Compensation
Administrative–Other
Certified Question
Children–Adoption
Children–CINC
Children–Termination of Parental Rights
Conservators/Conservatorships
Constitutional Law
Contracts
Creditors and Debtors
Damages–Personal Injury
Damages–Property
Damages–Punitive
Divorce
Election Contest
Eminent Domain
Employment
Governmental Immunity
Habeas—appeal from district court
Insurance
Jurisdiction
Juvenile Offenders Code
K.S.A. 60-1507
Libel and Slander
Mandamus—appeal from district court
Negligence
Oil and Gas
Personal Property
Probate
Procedure
Quo Warranto—appeal from district court
Real Property
Statutory Interpretation or Construction
Teacher Employment/Due Process
Torts (specify sub-type)
Wrongful Death
Zoning
Other (please specify): _____

Example 2:

IN THE (SUPREME COURT) (COURT OF APPEALS) OF THE STATE OF KANSAS

Case Caption

County Appealed From: _____
District Court Case No(s): _____
Party Filing Cross-Appeal: _____
Party or Parties Who Will Appear as Cross-Appellees: _____

DOCKETING STATEMENT - CIVIL - CROSS-APPEAL

The docketing statement is used by the court to make calendar assignments pursuant to Rules 7.01(c) and 7.02(f). This is not a brief and should not contain argument or procedural motions.

1. Date notice of cross-appeal filed in district court: _____
2. Brief statement (less than one page), without argument, of the facts material to the cross-appeal. This is not intended to be a substitute for the factual statement which will appear in the brief.
3. Concise statement of the issues proposed to be raised. You will not be bound by this statement, but should include issues now contemplated. Avoid general statements such as "the judgment is not supported by the law."

Attorney's Signature
_____
Attorney's Name (typed or printed)
Kansas Attorney Registration Number
Address
Telephone Number
FAX Number
Name of the Party Represented
Date: _____
ATTACH PROOF OF SERVICE
(List all parties served, including name, address, and who they represent.)

Example 3:

IN THE (SUPREME COURT) (COURT OF APPEALS) OF THE STATE OF KANSAS

Case Caption

County Appealed From: _____
District Court Case No(s): _____
Party Filing Appeal: _____

DOCKETING STATEMENT - CRIMINAL

The docketing statement is used by the court to determine jurisdiction and to make calendar assignments pursuant to Rules 7.01(c) and 7.02(f). This is not a brief and should not contain argument or procedural motions.

1. Criminal Classification:
   a. Conviction of (offense[s], statute[s], and classification[s] of crime[s]):
      _____
   b. Date of offense(s) committed: _____
2. Proceedings in the District Court:
   a. Trial Judge from whose decision this appeal is taken: _____

b. List any other judge who has signed orders or conducted hearings in this matter: _____

c. Was this case disposed of in the district court by:

_____ Jury trial
_____ Bench trial
_____ Plea
_____ Dismissal

d. Length of trial, measured in days (if applicable): _____

e. State the name of each court reporter and/or transcriptionist who has reported or transcribed any or all of the record for the case on appeal. (This is not a substitute for a request for transcript served on the individual reporter or transcriptionist pursuant to Rule 3.03.) _____

f. State the name, address, and telephone number of any attorney who has represented a party in district court if that attorney's name does NOT appear on the certificate of service attached to this docketing statement. Clearly identify each party represented.

3. Jurisdiction:

a. Date sentence was pronounced from the bench: _____

b. Date notice of appeal filed in district court: _____

c. Custodial status:

(1) Is the defendant subject to appeal bond or incarcerated? _____

(2) Earliest possible release date, if incarcerated: _____
If sentencing is challenged on appeal, it is the State's obligation to notify the appellate clerk in writing of any change in the custodial status of the defendant during the pendency of the appeal. See Rule 2.042.

d. Statutory authority for appeal: _____

e. Are there any co-defendants (yes or no): _____
If "yes," what are their names?

_____

f. Are there any proceedings in any other court or administrative agency, state or federal, which might impact this case or this court having jurisdiction (yes or no)? _____

If "yes," identify the court or agency where the related proceeding is pending. List the case captions and the case or docket numbers.

_____
_____
_____
_____

4. Constitutional Challenges to Statutes or Ordinances:
Was any statute or ordinance found to be unconstitutional by the trial court (yes or no)? _____
If "yes," what statute or ordinance? _____

5. Related Cases/Prior Appeals:

a. Is there any case now pending or about to be filed in the Kansas Appellate Courts which:

(1) Arises from substantially the same case or controversy as this appeal (yes or no)? _____
If "yes," give case caption and docket number.

_____
_____

(2) Involves an issue that is substantially the same, similar or related to an issue in this appeal (yes or no)? _____
If "yes," give case caption and docket number.

_____
_____

b. Has there been any prior appeal involving this case or controversy (yes or no)? _____
If "yes," give case caption and docket number.

_____
_____

6. Brief statement (less than one page), without argument, of the material facts. This is not intended to be a substitute for the factual statement which will appear in the brief.

7. Concise statement of the issues proposed to be raised. You will not be bound by this statement, but should include issues now contemplated. Avoid general statements such as "the judgment is not supported by the law."

Attorney's Signature

_____
_____

Attorney's Name (typed or printed)
Kansas Attorney Registration Number
Address
Telephone Number
FAX Number
Name of the Party Represented
Date: _____
ATTACH PROOF OF SERVICE
(List all parties served, including name, address, and who they represent.)

~~(c) Any answer to the docketing statement shall be in the following form:~~

~~**Example 4:**~~

~~**IN THE (SUPREME COURT) (COURT OF APPEALS) OF THE STATE OF KANSAS**~~

~~Case Caption~~ ~~Appellate Court No.:~~_____

~~**DOCKETING STATEMENT - ANSWER**~~

~~The docketing statement is used by the court to determine jurisdiction and to make calendar assignments pursuant to Rules 7.01(c) and 7.02(f). The docketing statement and answer are not briefs. The answer to the docketing statement should consist only of a concise statement of additional facts or clarification of issues which the appellee or cross-appellee feels are necessary to provide the court a fair picture of the case. If the statement of facts and issues in the docketing statement is sufficient, there is no need to file an answer. THE ANSWER SHOULD NOT CONTAIN ARGUMENT OR PROCEDURAL MOTIONS.~~

~~1. Brief statement (less than one page), without argument, of any material facts not set forth in the docketing statement. This is not intended to be a substitute for the factual statement which will appear in the brief.~~

~~2. Concise statement of clarification of any issues set forth in the docketing statement.~~

~~Attorney's Signature~~

~~Attorney's Name (typed or printed)~~
~~Kansas Attorney Registration Number~~
~~Address~~
~~Telephone Number~~
~~FAX Number~~
~~Name of the Party Represented~~
~~Date:~~
~~ATTACH PROOF OF SERVICE~~
~~(List all parties served, including name, address, and who they represent.)~~

(a) **Time to File.** Not later than 21 days after a notice of appeal or cross-appeal is filed in a district court, the appellant or cross-appellant must file with the clerk of the appellate courts an original and one copy of a docketing statement, along with other documents required under Rule 2.04.

(b) **Service.** A copy of the docketing statement must be served on all other parties to the appeal or cross-appeal.

(c) **Answer to Docketing Statement.** If the statement of facts or issues in a docketing statement is insufficient to provide the court a fair summary of the facts and issues on appeal, an appellee or cross-appellee may file — not later than 15 days after service of the docketing statement — an original and one copy of an answer to the docketing statement.

(d) **No Grounds for Relief.** No party may file a motion based on the contents of a docketing statement or an answer to a docketing statement.

(e) **Form.** A docketing statement and an answer to a docketing statement must be on the applicable judicial council form.

COMMENT

The language of Rule 2.041 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

Forms will be moved to the judicial council website.

A fax number and e-mail address are now required on the forms. K.S.A. 60-205(b)(2)(E) now authorizes service by fax, and K.S.A. 60-211 was recently amended to require an e-mail address.

Rule 2.042

~~CUSTODIAL STATUS OF DEFENDANT IN SENTENCING APPEALS~~
CUSTODIAL STATUS OF DEFENDANT IN SENTENCING APPEAL

When ~~sentencing is challenged in a criminal appeal~~ a criminal appeal challenges sentencing, appellant's ~~counsel~~ attorney must include on the docketing statement information ~~regarding~~ about defendant's custodial status. After the appeal is docketed, ~~it is~~ the ~~State's~~ State is ~~obligation~~ obligated to ~~notify~~ serve notice on the clerk of the appellate ~~clerk~~ courts ~~in writing~~ of any change in the ~~custodial status of the~~ defendant's custodial status ~~during the pendency of~~ while the appeal is pending.

COMMENT

The language of Rule 2.042 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 2.05

~~MULTIPLE APPEALS~~
MULTIPLE APPEALS

(a) **When Multiple Appeals Must Be Docketed Together.** When more than one appeal is taken to an appellate court from ~~the~~ judgments or orders ~~*entered at or about the same time*~~ entered at or about the same time ~~in the same case~~ in ~~the~~ a district court case, or from ~~the same~~ a consolidation of ~~actions in the~~ district court cases, ~~all such~~ the appeals ~~shall~~ must be docketed together and only one docket fee ~~shall be~~ is required. Thereafter, ~~the caption of the case in the appellate court, and~~ the record, ~~to be prepared and~~ briefs ~~to be filed in accordance with these rules, shall be prepared~~, and oral ~~arguments~~ argument ~~shall~~ must ~~be conducted,~~ proceed as ~~a~~ consolidated ~~proceeding,~~ unless the court orders a separation ~~thereof~~ of the appeals.

(b) **Separate Appeal Required After Docketing.** ~~Any~~ An appeal from a judgment or order entered in the district court after an appeal in the same case is docketed in an appellate court ~~in the same case shall~~ must be docketed as a separate appeal, subject to consolidation under Rule 2.06 ~~if appropriate and if the first appeal is still pending~~.

COMMENT

The language of Rule 2.05 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 2.06

~~CONSOLIDATION OF APPEALS~~
CONSOLIDATION OF APPEALS

(a) **When Consolidation is Permitted.** ~~Two or more appeals in separate cases~~ Separate appeals may be consolidated ~~into one appellate proceeding if~~ when:

(1) one or more common issues ~~common to the appeals~~ are so nearly identical that a decision in one appeal would ~~appear to~~ be dispositive of all the appeals~~,~~; or

(2) the interest of justice ~~would be~~ otherwise would be served by consolidation.

(b) **Motion to Consolidate.** An appellate court may ~~make an~~ order ~~of~~ consolidation:

(1) on ~~the motion of any~~ a party's motion under Rule 5.01~~,~~; or

(2) on ~~a notice by the court on~~ its own ~~motion~~ after notice to the parties to show cause why ~~such~~ the appeals should not be consolidated.

(c) **Docket Number of Consolidated Appeals.** ~~If the~~ When a court ~~then~~ orders consolidation, all ~~further~~ subsequent proceedings ~~shall~~ will be conducted under the ~~earliest~~ lowest docket number.

(d) **Briefing and Oral Argument.** ~~Any~~ A party in a consolidated appeal may file a separate brief and be separately heard ~~upon~~ on oral argument.

(e) **Stay in Lieu of Consolidation.** In lieu of ~~ordering a~~ consolidation, an appellate court may issue an order staying ~~all~~ proceedings in an appeal ~~to be stayed to await the determination of issues in a pending appeal apparently dispositive of both appeals~~ until common issues in a separately pending appeal are determined.

COMMENT

The language of Rule 2.06 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

RECORD ON APPEAL

Rule 3.01

~~CONTENT OF RECORD~~
CONTENT OF RECORD

(a) ~~THE ENTIRE RECORD.~~ **Entire Record.** The entire record ~~shall~~ consists of:

(1) all ~~the~~ original papers and exhibits filed in the district court~~,~~;

(2) the court reporter's notes and transcripts of all proceedings~~,~~;

(3) any other court authorized record of the proceedings, ~~(~~including an electronic ~~recordings),~~ recording; and

(4) the entries on the appearance docket in the district court clerk's office ~~of the clerk of the district court~~.

(b) ~~THE RECORD ON APPEAL.~~ **Record on Appeal.**

(1) The record on appeal consists of ~~T~~that portion of the entire record which is ~~to be filed with the clerk of the appellate courts shall be determined and prepared for filing in accordance with these rules, but the~~ required by these rules or requested by a party.

(2) An appellate court may, on its own, order ~~any or all~~ that additional parts of the entire record ~~to~~ be filed.

COMMENT

The language of Rule 3.01 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 3.02

~~PREPARATION OF RECORD ON APPEAL FOR FILING~~
PREPARATION OF RECORD ON APPEAL FOR FILING

(a) **Timing.** ~~It shall be the duty of the clerk of the district court within~~ Not later than ~~fourteen (14)~~ days after notice from the clerk of the appellate courts that ~~the~~ an appeal has been docketed, the clerk of the district court must ~~to~~ compile the record on appeal in one or more convenient volumes ~~the following:~~.

(b) **Volume; Requirements.** The following rules apply to a volume contained in a record on appeal:

(1) a "volume" may be a file, folder, or other binder into which papers are securely fastened;

(2) each page in a volume must be conveniently viewable and separately numbered;

(3) each volume must be numbered and display on its face the volume number and the case caption; and

(4) to the extent possible, the papers within a volume — and, if applicable, the volumes within a record on appeal — must be arranged in chronological order by filing date.

~~(a)~~(c) **Contents of Record on Appeal.** The record on appeal consists of the following:

(1) ~~In a civil case: a~~ A certified copy of the appearance docket and the following original documents:

(A) In a civil case:

(i) the petition or, if amended, the amended petition;

(ii) the answer or, if amended, the amended answer;

(iii) any reply or, if amended, the amended reply;

(iv) the pretrial order(s);

(v) the opinion, findings, and conclusions of the ~~trial~~ district court;

(vi) the jury verdict, if any;

(vii) the judgment; and

(viii) the notice of appeal.

~~If a petition, answer, or reply has been amended, the amended document shall be included in lieu of the original.~~

~~(2)~~(B) In a criminal case: ~~a certified copy of the appearance docket and the following original documents:~~

(i) the complaint, indictment, or information, and any amendment ~~thereto~~ to the original;

(ii) any written plea;

(iii) the jury verdict ~~of the jury~~, if any;

(iv) the journal entry of judgment; ~~and~~

(v) the notice of appeal~~.~~; and

~~(3)~~(vi) ~~In criminal cases, upon the~~ on filing of a ~~written~~ request by trial or appellate counsel, the ~~clerk of the district court shall also include in the record the~~ presentence report, any report ~~that may have been~~ received from the ~~Topeka correctional facility (for crimes committed prior to July 1, 1993)~~ appropriate reception and diagnostic facility of the Kansas Department of Corrections, any report from the state security hospital, and all other diagnostic reports. ~~All such reports shall be collected by~~ If the inclusion of reports is requested under this paragraph, the clerk must ~~and included~~ include the specified reports in ~~one~~ a separate volume of the record on appeal. ~~which shall~~ The separate volume must be kept sealed except when being used by appellate counsel or the courts.

~~(4) Insofar as convenient, all such documents shall appear in the chronological order of their filing.~~

~~(b)~~(2) All reporters' transcripts of proceedings before the district court ~~as~~ which are ~~then~~ available at the time the clerk of the district court compiles the record on appeal.

~~(c) Any other document which is a part of the entire record, upon the duly served written request of a party. Each such document shall be specified with particularity, and a request for remaining portions of the entire record without such particularization shall not be sufficient. If any such~~

~~document is an exhibit which was offered or admitted into evidence and is in the custody of the court reporter, a copy of the request shall also be served on the reporter, who shall forthwith deliver such exhibit to the clerk for inclusion in the prepared record.~~

~~Additions to the record on appeal may be made in one of the following ways:~~

~~If the record on appeal has not been transmitted to the clerk of the appellate courts, the party requesting the addition shall serve the clerk of the district court with a written request for the addition. The clerk of the district court shall add the requested documents to the record on appeal. No court order is required.~~

~~If the record on appeal has been transmitted to the clerk of the appellate courts, the party requesting the addition shall file a motion with the proper appellate court. Additions to the record on appeal shall be made only upon an order of the clerk of the appellate courts or a justice or judge thereof.~~

~~Within the meaning of this rule, a "volume" may consist of any type of file, folder, or other binder into which documents may be securely fastened and be capable of convenient examination. Each volume shall be numbered on its face together with the caption of the case, and the pages in each volume shall be separately numbered.~~

~~In addition, the clerk of the district court shall prepare and include in the prepared record a table of contents showing the volume and page number of each document contained therein. A copy of the table of contents shall be furnished to each party.~~

(3) Any other paper or exhibit that is added to the record on appeal under subsection (d).

(4) The clerk of the district court must prepare and include in the record on appeal a table of contents showing the volume and page number of each paper or exhibit contained in the record. A copy of the table of contents must be furnished to each party.

(d) **Addition to Record on Appeal.** A party may request adding to the record on appeal any part of the entire record under Rule 3.01(a). The following rules apply:

(1) **Addition Must Be Specified With Particularity.** A request under this subsection must specify the addition with particularity. A request for remaining portions of the entire record without particularization is not sufficient.

(2) **If Record on Appeal Has Not Been Transmitted.** If the record on appeal has not been transmitted to the clerk of the appellate courts, the following rules apply:

(A) The party requesting the addition must serve the request on the clerk of the district court and — if the requested addition is an exhibit that was offered or admitted into evidence and is in a court reporter's custody — on the reporter, who promptly must deliver the exhibit to the clerk of the district court for inclusion in the record on appeal.

(B) The clerk must add the requested addition to the record on appeal. No court order is required.

(3) **If Record on Appeal Has Been Transmitted.** If the record on appeal has been transmitted to the clerk of the appellate courts, the party requesting the addition must file a motion in the proper appellate court. An addition to the record on appeal may be made only on an order of the clerk of the appellate courts or an appellate justice or judge. If a requested addition is an exhibit that was offered or admitted into evidence and is in a court reporter's custody, a copy of the order granting the motion must be served on the reporter, who promptly must deliver the exhibit to the clerk of the district court for inclusion in the record on appeal.

COMMENT

The language of Rule 3.02 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 3.03

~~TRANSCRIPTS IN RECORD ON APPEAL~~
TRANSCRIPT IN RECORD ON APPEAL

(a) ~~REQUESTING TRANSCRIPTS; DUTY OF APPELLANT; STIPULATION.~~ **Requesting Transcript; Appellant's Duty; Stipulation.** When ~~an appeal is taken in a case in which~~ the appellant considers a hearing transcript ~~of any hearing~~ necessary to properly present the appeal, ~~it shall be the duty of~~ the appellant ~~to~~ must request ~~a~~ the transcript ~~of such hearing within~~ not later than ~~twenty-one (~~21~~)~~ days after ~~of the~~ filing ~~of~~ the notice of appeal in the district court. ~~Such~~ The request ~~shall~~ must be clearly designated "for appeal purposes." Unless all affected parties stipulate ~~as to~~ that specific portions ~~which~~ are not required for ~~the~~ purposes of the appeal, the request ~~shall~~ must be for a complete transcript of ~~any such~~ the hearing~~, except for the jury voir dire, opening statements, and closing arguments of counsel, which shall not be transcribed unless specifically requested~~. Counsel for the parties ~~shall~~ must make a good faith effort to ~~so~~ stipulate to avoid unnecessary expenses. The appellate court may consider ~~A~~ an unreasonable refusal to stipulate ~~may be considered by the appellate court in~~ when apportioning the cost of the transcript under Rule 7.07~~(c)~~(d). Jury voir dire, opening statements, and closing arguments of counsel will not be transcribed unless specifically requested.

(b) **No Court Order Required for Transcript Request.** Notwithstanding K.S.A. 22-4505(b), 22-4506(b), and 22-4509, ~~no~~ a district court order ~~shall be~~ is not required ~~before requesting~~ to request a ~~transcripts~~ transcript from ~~the~~ a court reporter.

~~(b)~~(c) ~~TRANSCRIPTS REQUESTED BY APPELLEE.~~ **Transcript Requested by Appellee.** ~~Within~~ Not later than ~~fourteen (~~14~~)~~ days after service of appellant's request under subsection (a), the appellee may request a transcript of the jury voir dire, opening statements, closing arguments, or any other hearing not requested by appellant, but the appellee ~~shall be~~ is responsible for payment for ~~such~~ the additional transcript, including advance payment, in the same manner as the appellant is responsible for the main transcript.

~~(c)~~(d) ~~FILING AND SERVICE.~~ **Filing and Service.** The original of ~~any~~ a transcript request ~~shall~~ must be filed in the district court~~. Any request shall be~~ and served on the reporter and all parties. At the time ~~of docketing~~ the appeal is docketed under Rule 2.04, the appellant ~~shall~~ must file with the clerk of the appellate courts a copy of the initial transcript request ~~in accordance with Rule 2.04~~ and ~~a copy of~~ any stipulation for less than a complete transcript of ~~any~~ a hearing. ~~Any~~ An additional transcript ~~requests~~ request ~~shall~~ must be ~~filed and~~ served and filed in ~~a similar~~ the same manner.

~~(d)~~(e) ~~TIME SCHEDULE FOR TRANSCRIPTS; CERTIFICATE OF COMPLETION.~~ **Time Schedule for Transcripts; Certificate of Completion.** ~~The~~ A transcript ~~shall~~ must be completed ~~within~~ not later than ~~forty (~~40~~)~~ days after service of ~~the~~ a request unless the court

reporter applies for and receives an extension of time under Rule 5.02. ~~Upon completion of any such transcript the~~ The court reporter ~~shall~~ must file the ~~same~~ completed transcript with the clerk of the district court and ~~shall~~ must ~~mail~~ serve ~~to~~ on the clerk of the appellate courts and ~~to~~ each party a certificate of completion ~~showing the date of the filing of the same~~. ~~The~~ A certificate of completion ~~shall~~ must identify the ~~date of~~ hearing date, ~~and~~ the type of hearing transcribed~~.~~, and the date the transcript was filed. The transcript and the certificate of completion ~~as well as the certificate filed with the transcript shall~~ must include the court reporter's Supreme Court certified court reporter registration number ~~assigned by the Supreme Court~~.

~~(e)~~(f) ~~ADVANCE PAYMENT.~~ **Advance Payment.** ~~If demanded by the court reporter, the~~ An appellant, other than the state or a state agency or subdivision, ~~shall~~ must advance the payment of the estimated cost of ~~any~~ a requested transcript ~~requested, except that such advance payment shall be waived unless a written estimate of the amount thereof and a demand for payment of the same is~~ if the court reporter ~~served~~ serves on the appellant ~~—~~ ~~within~~ not later than ~~fourteen (~~14~~)~~ days ~~of~~ after receipt of ~~the order for the transcript~~ a request for a transcript — the estimated cost and demand for advance payment. ~~The~~ A reporter who properly serves a demand for advance payment under this subsection ~~will~~ is not ~~be~~ required to begin the transcript until the reporter receives payment of the estimated cost ~~has been received by the reporter~~. ~~No advance payment shall be required if the transcript is to be paid for by the state or any agency or subdivision thereof~~. Failure to make ~~such~~ advance payment ~~within~~ not later than ~~fourteen (~~14~~)~~ days after service of ~~the~~ a demand under this subsection ~~for the same shall be~~ is ground for dismissal of the appeal by ~~order of~~ the appellate court.

COMMENT

The language of Rule 3.03 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 3.04

~~UNAVAILABILITY OF TRANSCRIPT~~
UNAVAILABILITY OF TRANSCRIPT OR EXHIBIT

(a) **Transcript.** ~~In~~ If the ~~event no official~~ transcript of ~~the evidence or proceedings at~~ a hearing or trial ~~can be made and no other official record~~ is ~~available~~ unavailable, a party to an appeal may prepare a statement of the evidence or proceedings from the best available means, including ~~his~~ the party's own recollection, for use instead of a transcript. ~~Within fourteen (14) days after the filing of the notice of appeal, the~~ The statement ~~shall~~ must be served on ~~the adverse~~ all parties, who may serve an ~~objections~~ objection or proposed ~~amendments~~ amendment ~~thereto within~~ not later than ~~fourteen (~~14~~)~~ days after being served. ~~Thereupon, the~~ The statement ~~with~~ and any ~~objections~~ objection or proposed ~~amendments~~ amendment ~~shall~~ then must be submitted to the ~~judge of the~~ district court for settlement and approval~~,~~. ~~and as~~ As settled and approved, the statement ~~shall~~ must be included ~~in the record on appeal~~ by the clerk of the district court in the record on appeal.

(b) **Exhibit.** If an exhibit offered, admitted, or excluded in a hearing or trial is unavailable, a party to an appeal may prepare a photocopy or any facsimile that accurately duplicates the original exhibit. The substitute exhibit must be served on all parties, who may serve an objection or proposed amendment not later than 14 days after being served. The substitute exhibit and any objection or proposed amendment then must be submitted to the district court for settlement and approval. As settled and approved, the substitute exhibit must be included by the clerk of the district court in the record on appeal.

COMMENT

The language of Rule 3.04 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

In subsection (a), the initial 14-day time limit from notice of appeal in which to file a statement has been deleted. The unavailability of a transcript is not usually discovered that early in the appeal process.

Subsection (b) expands the rule to include unavailable exhibits.

Rule 3.05

~~APPEAL ON AGREED STATEMENT~~
APPEAL ON AGREED STATEMENT

~~When the questions presented by an appeal can be determined without an examination of the evidence and proceedings in the district court~~ In place of the record on appeal as defined in Rule 3.01, the parties may prepare~~, and~~ sign, and submit to the district court not later than 21 days after filing the notice of appeal a statement of the case showing how the ~~questions~~ issues presented by the appeal arose and were decided in the district court. ~~and~~ The statement must ~~setting~~ set forth only those facts asserted and proven or sought to be proven ~~which~~ that are essential to ~~a decision of the questions by~~ the appellate court's resolution of the issues. The statement ~~shall~~ must include a copy of the judgment appealed from, a copy of the notice of appeal with its filing date, and a concise statement of the issues raised. ~~The statement shall be submitted to the judge of the district court and if approved as conforming to the truth and as including all matters necessary to fully present the questions raised by the appeal,~~ If the statement is truthful, it — together with any additions that the district court may consider necessary to a full presentation of the issues on appeal — must be approved by the district court. ~~it~~ The statement ~~shall~~ then must be filed with the clerk of the district court ~~within twenty (20) days after filing the notice of appeal,~~ and ~~shall~~ constitutes the record on appeal in lieu of the record ~~provided for~~ specified in Rule 3.02.

COMMENT

The language of Rule 3.05 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

The 20-day period has been changed to 21 days, consistent with time frames in the Code of Civil Procedure.

The Supreme Court Rules Advisory Committee recommends that the time limit be placed on submission to the district court rather than to the clerk of the district court. The parties have no control over how long the judge has the agreed statement under consideration.

Rule 3.06

~~ACCESS TO PREPARED RECORD~~
ACCESS TO RECORD ON APPEAL

Each volume of the ~~prepared~~ record on appeal ~~shall~~ must be available to the parties to the appeal during the ~~periods of~~ time allotted for the preparation of their respective briefs. During ~~such~~ these times~~,~~ ~~any~~ an attorney who is a member of the Kansas bar ~~of this state who~~ and is counsel of record ~~shall be permitted to~~ may — unless removal is restricted by the court for good cause — remove the record from the clerk's office~~,~~ but ~~shall be~~ is responsible to the court ~~for its prompt~~ to return the record in its original condition ~~to the office of the clerk~~ upon completion of the brief.

COMMENT

The language of Rule 3.06 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

The rule has been amended to allow the court to restrict removal of the record for good cause.

Rule 3.07

~~TRANSMISSION OF PREPARED RECORD~~
TRANSMISSION OF RECORD ON APPEAL

(a) **Request for Transmission; Time.** ~~Upon~~ On expiration of the time ~~permitted under Rule 6.01~~ for ~~the~~ filing ~~of~~ briefs permitted under Rule 6.01~~,~~ or ~~as such~~ any granted extensions of that time ~~may have been extended~~, the clerk of the appellate courts may ~~notify~~ request that the clerk of the district court ~~to~~ transmit the record on appeal prepared in ~~accordance~~ compliance with Rules 3.02, 3.04, or 3.05 to the clerk of the appellate courts. The clerk of the district court ~~shall~~ must forward ~~such~~ the record ~~within~~ not later than ~~seven (7)~~ days after ~~the~~ receipt of ~~such direction~~ the clerk of the appellate court's request.

(b) **Documents of Unusual Bulk or Weight; Physical Exhibits Other Than Documents.** Documents of unusual bulk or weight and physical exhibits other than documents ~~shall~~ need not be transmitted ~~by the clerk~~ unless ~~the clerk is directed to do so by~~ a party requests that the clerk of the district court transmit them. A party must make advance arrangements with the clerk of the district court for ~~the~~ their transportation ~~of exhibits of unusual bulk or weight~~ and for the cost of ~~such transportation~~ transporting them.

COMMENT

The language of Rule 3.07 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 3.08

~~COPY OF RECORD ON APPEAL~~
COPY OF RECORD ON APPEAL

Before a record on appeal is transmitted to the clerk of the appellate courts, ~~any~~ a party to the action in the district court may file a ~~written~~ request with the clerk of the district court that all or ~~some~~ part of the record be duplicated and that ~~such~~ the duplicate be retained in the office of the clerk of the district court. ~~Upon ascertaining the cost of such duplication and the~~ On payment ~~thereof in advance by the party making the request~~ by the requesting party of the amount the clerk of the district court specifies as the cost of duplication, the clerk ~~shall~~ must ~~effect such duplication~~ duplicate the requested documents ~~and transmit~~ before transmitting to the clerk of the appellate courts the original record on appeal as required ~~by~~ under Rule 3.07.

COMMENT

The language of Rule 3.08 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 3.09

~~PREPARATION OF RECORD FOR SUPREME COURT OF THE UNITED STATES~~
PREPARATION OF RECORD FOR UNITED STATES SUPREME COURT

(a) **Request for Record.** When ~~an appeal is taken to~~ the United States Supreme Court ~~of the United States, or~~ grants a petition for ~~a~~ writ of certiorari ~~is filed in such court~~ concerning a decision of a Kansas appellate court, ~~a request for record shall be filed in duplicate with~~ the clerk of the ~~Kansas~~ appellate courts ~~not less than thirty (30) days prior to the date the record must be filed with the federal court. The request for record shall specify in numbered sequence the documents and exhibits to be certified to the federal court.~~ will certify and transmit the record on appeal to the United States Supreme Court on request of the clerk of the United States Supreme Court.

(b) **If Record in District Court.** When the ~~necessary~~ record on appeal, or any part thereof, has been returned to the district court, the clerk of the ~~Kansas~~ appellate courts ~~shall~~ must request the clerk of the district court to transmit promptly to the clerk of the ~~Kansas~~ appellate courts ~~certified true copies of any required documents. If exhibits are to be part of the record, the original exhibits shall be transmitted to the clerk of the Kansas appellate courts~~ the record on appeal.

COMMENT

The language of Rule 3.09 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

The rule has been amended to reflect current procedure.

New subsection (a) clarifies that the record is not sent to the United States Supreme Court until that court requests it.

New subsection (b) clarifies that the record on appeal may need to be retrieved from the district court.

INTERLOCUTORY APPEALS

Rule 4.01

~~INTERLOCUTORY APPEALS IN CIVIL CASES~~
INTERLOCUTORY APPEAL IN CIVIL CASE UNDER K.S.A. 60-2102(c)

~~When an appeal is sought under the provisions of K.S.A. 60-2102(c) an application for permission to take such an appeal shall be served within fourteen (14) days after the filing of the order from which an appeal is sought to be taken. The order may be amended to include the findings required by K.S.A. 60-2102(c) provided a motion to amend is served and filed within fourteen (14) days of the filing of the order, and the application for permission to take an appeal may be served within fourteen (14) days after filing of the amended order. An original and three (3) copies of the application shall be filed with the clerk of the appellate courts in addition to the docket fee required by Rule 2.04. The application shall be docketed as a regular appeal to the court of appeals.~~

~~The application shall:~~

~~(a) state the relevant facts, including the nature and a brief history of the proceedings in the district court with all the important dates, and~~

~~(b) have annexed thereto a certified copy of the order from which the appeal is sought to be taken and in which the judge of the district court makes the findings required by K.S.A. 60-2102(c), and~~

~~(c) state briefly the controlling question of law which the order is believed to involve, the ground for the difference of opinion with respect thereto which is believed to be substantial, and the basis for belief that an immediate appeal may materially advance the ultimate termination of the litigation.~~

~~Any adverse party may within seven (7) days after service thereof serve a response thereto. The application and response shall be submitted without oral argument. If permission to appeal is granted, the notice of appeal shall be filed in the district court within the time fixed by K.S.A. 60-2103, for taking an appeal or within fourteen (14) days after permission to appeal is granted, whichever is later. Within fourteen (14) days after such filing, a certified copy of the notice of appeal, a copy of any request for transcript or statement that no transcript will be requested, and an original and one copy of the docketing statement required by Rule 2.041 shall be filed with the clerk of the appellate courts. The appeal shall thereupon be deemed docketed. In such case no additional docket fee shall be charged and the record on appeal shall be filed under the same docket number.~~

(a) **Application; Filing and Service.** Not later than 14 days after an order is entered from which an appeal is sought under K.S.A. 60-2102(c), an application for permission to take the appeal must be:

(1) filed with the clerk of the appellate courts along with 3 copies and the required docket fee; and

(2) served on all attorneys of record and unrepresented parties.

(b) **Amended Order; Timing.** An order may be amended to include the findings required by K.S.A. 60-2102(c) if a motion to amend is served and filed not later than 14 days after the order is filed. If an order is amended under this subsection, an application for permission to take an appeal must be served and filed not later than 14 days after the amended order is entered.

(c) **Docketing of Application.** An application under this rule will be docketed as a regular appeal to the Court of Appeals.

(d) **Application; Contents.** An application under this rule must:

(1) state the relevant facts, including:

(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

(D) the nature of the district court proceedings; and

(E) a brief history of the proceedings, including all important dates;

(2) state briefly:

(A) the controlling question of law involved;

(B) the substantial ground for difference of opinion about the controlling question of law; and

(C) the basis for belief that an immediate appeal may materially advance the ultimate termination of the litigation;

(3) include as an attachment a file-stamped certified copy of the order — which must contain the findings required under K.S.A. 60-2102(c) — from which the appeal is sought to be taken; and

(4) if an order has been amended under subsection (b), include as attachments file-stamped certified copies of the motion to amend and the amended order.

(e) **Response.** A party may serve and file a response to an application under this rule not later than 7 days after being served with the application. The application and response will be submitted without oral argument.

(f) **Notice of Appeal Not Required.** A notice of appeal need not be filed. The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(g) **Docketing the Appeal.** If permission to appeal is granted, no additional docket fee will be charged, and the record on appeal will be filed under the docket number assigned to the application. The appeal is deemed docketed when — not later than 21 days after the order granting permission to appeal is entered — the following are filed with the clerk of the appellate courts:

(1) a copy of a request for transcript filed under Rule 3.03, a written statement that no transcript will be requested, or a certificate of completion of the transcript; and

(2) an original and one copy of the docketing statement required by Rule 2.041.

COMMENT

The language of Rule 4.01 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

The title of the rule has been narrowed to reflect only the discretionary interlocutory appeal covered by the rule.

Under new subsection (f), the date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time. Federal Rule of Appellate Procedure 5(d)(2) contains a similar provision.

Rule 4.01A

INTERLOCUTORY APPEAL IN CIVIL CASE UNDER K.S.A. 60-223(f)

(a) **Application; Filing and Service.** Not later than 14 days after an order is entered from which an appeal is sought under K.S.A. 60-223(f), an application for permission to take the appeal must be:

(1) filed with the clerk of the appellate courts along with 3 copies and the required docket fee; and

(2) served on all other parties to the district court action.

(b) **Docketing of Application.** An application under this rule will be docketed as a regular appeal to the Court of Appeals.

(c) **Application; Contents.** An application under this rule must:

(1) state the relevant facts, including:

(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

(D) the reasons why the appeal should be allowed;

(E) the nature of the district court proceedings; and

(F) a brief history of the proceedings, including all important dates;

(2) include as an attachment a file-stamped certified copy of the order from which the appeal is sought to be taken.

(d) **Response.** A party may serve and file a response to an application under this rule not later than 7 days after being served with the application. The application and response will be submitted without oral argument.

(e) **Notice of Appeal Not Required.** A notice of appeal need not be filed. The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(f) **Docketing the Appeal.** If permission to appeal is granted, no additional docket fee will be charged, and the record on appeal will be filed under the docket number assigned to the application. The appeal is deemed docketed when — not later than 21 days after the order granting permission to appeal is entered — the following are filed with the clerk of the appellate courts:

(1) a copy of a request for transcript filed under Rule 3.03, a written statement that no transcript will be requested, or a certificate of completion of the transcript; and

(2) an original and one copy of the docketing statement required by Rule 2.041.

COMMENT

The Supreme Court Rules Advisory Committee recommends adoption of a new rule covering interlocutory appeals of class certification orders.

Rule 4.02

~~INTERLOCUTORY APPEALS BY THE PROSECUTION~~
INTERLOCUTORY APPEAL BY PROSECUTION

(a) **Notice of Appeal.** When an appeal is taken to the Court of Appeals under ~~the provisions of~~ K.S.A. 22-3601(a) and ~~K.S.A.~~ 22-3603, the notice of appeal ~~shall~~ must be filed with the clerk of the district court ~~within~~ not later than ~~fourteen (~~14~~)~~ days after ~~the~~ entry of the order from which the appeal is taken. A copy of the notice of appeal ~~shall~~ must be served ~~upon~~ on defense counsel or ~~upon~~ on the defendant, if ~~the defendant has no counsel~~ unrepresented.

(b) **Docketing the Appeal.** ~~Within~~ Not later than ~~twenty-one (~~21~~)~~ days after the ~~filing of the~~ notice of appeal is filed, the prosecution ~~shall~~ must ~~forward~~ file ~~to~~ with the clerk of the appellate courts the documents listed in paragraphs (1) through (4)~~:~~. The appeal will be docketed on filing of:

(1~~.~~) ~~A~~ a file-stamped certified copy of the notice of appeal~~.~~;

(2~~.~~) ~~An~~ an original and one copy of the docketing statement required by Rule 2.041~~.~~;

(3~~.~~) ~~A~~ a file-stamped certified copy of the order appealed from~~,~~ — or, if the order is not in writing, a transcript of the court's announcement of its order~~,~~ — together with any written opinion or memorandum of the ~~trial~~ district court relating ~~thereto.~~ to the order; and

(4~~.~~) ~~A~~ a copy of a request for transcript filed ~~pursuant to~~ under Rule 3.03, ~~or~~ a written statement indicating no transcript is necessary, or a certificate of completion of the transcript.

~~The appeal shall thereupon be deemed docketed.~~

~~(b)~~(c) **Record on Appeal.** The clerk of the district court must prepare the record on appeal under Rule 3.02. The record on appeal ~~shall~~ consists of the following documents: ~~and such other portions of the record as may be required by the appellate court:~~

(1) a copy of:

~~1.~~(A) ~~A copy of~~ the warrant, search warrant, confession, or other written evidence quashed or suppressed~~, and a description of any physical evidence or a summary of any oral admission or testimony suppressed.~~; or

(B) a description — approved by the district court — of any physical evidence or a summary of any oral admission or testimony suppressed;

(2.) ~~Copies~~ a copy of any ~~affidavits~~ affidavit and the transcript of any testimony ~~which~~ that:

(A) provided the basis for the issuance of a warrant or search warrant ~~which has been~~ that was quashed; or

(B) ~~which~~ served as the basis for the seizure of evidence ~~which has been~~ that was suppressed.;

(3.) ~~I~~if testimony was taken on the motion to quash or suppress, a copy of the transcript, or — if the parties agree — ~~in lieu thereof, by agreement,~~ a narrative statement of the testimony.; and

(4) any other portion of the record required by the appellate court.

~~The clerk of the district court shall prepare the record pursuant to Rule 3.02.~~

~~(c)~~(d) **Briefing Schedule.** The prosecution must serve and file its brief ~~Within~~ not later than ~~thirty (~~30~~)~~ days after ~~service~~ being served ~~of~~ with the certificate of ~~filing~~ completion of the transcript ~~in accordance with~~ under Rule 3.03~~, the prosecution shall serve and file its brief~~ or not later than 40 days after docketing if no transcript is requested. The defense must serve and file its brief ~~Within~~ not later than ~~thirty (~~30~~)~~ days after ~~service~~ being served ~~of~~ with the prosecution's brief~~, the defense may serve and file its brief~~.

~~(d)~~(e) **Stay of District Court Proceedings.** Further proceedings in the district court ~~shall be~~ are stayed pending determination of the appeal.

~~(e)~~(f) **Post-mandate Action by District Court.** ~~Upon~~ After receipt of the mandate, ~~and~~ on the ~~motion of the~~ prosecution's motion, the ~~trial~~ district court ~~shall~~ must issue:

(1) ~~either~~ an order for the defendant to appear; or

(2) an alias warrant for the defendant's arrest.

COMMENT

The language of Rule 4.02 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (c)(1)(B) requires that the district court approve any description or summary added to the record on appeal.

MOTIONS

Rule 5.01

~~APPELLATE COURT MOTIONS~~
APPELLATE COURT MOTION

~~(a) Every application to an appellate court, unless made during a hearing, shall be by written motion stating with particularity the grounds therefor and the relief or order sought. The motion shall be filed with the clerk of the appellate courts and shall be accompanied by eight (8) legible copies if filed in the Supreme Court and by three (3) legible copies if filed in the Court of Appeals. Any other party may, within seven (7) days after service of a motion, serve and file a response thereto with a like number of copies. Extensions of time up to twenty (20) days may be granted by the clerk of the appellate courts or the court without waiting for a response. Oral arguments on motions will not be permitted unless ordered by the court.~~

~~(b) Parties who are represented by counsel shall only be allowed to file motions on their own behalf to remove counsel or to file supplemental briefing. Such motions shall be served on their counsel and all other parties involved in the appeal. This subsection shall not preclude the filing of any motions by parties appearing *pro se*.~~

(a) **Generally.** Unless made during a hearing, an application to an appellate court must be by written motion and must state with particularity the ground for the motion and the relief or order sought. Each motion may contain only a single subject.

(b) **Filing Requirements.** A motion must be:

(1) filed with the clerk of the appellate courts; and

(2) accompanied by 8 copies if filed in the Supreme Court or 3 copies if filed in the Court of Appeals.

(c) **Response to a Motion.** A party may serve and file a response — accompanied by the number of copies specified in subsection (b)(2) — not later than 7 days after being served with a motion.

(d) **Extension of Time.** The clerk of the appellate courts or the court may grant an extension of time not exceeding 20 days without waiting for a response.

(e) **Oral Argument.** Oral argument on a motion will be permitted only by court order.

(f) **Motion by Represented Party.** A party represented by counsel may file a motion on the party's own behalf only to remove counsel or to file a supplemental brief. A motion filed

under this subsection must be served on the party's counsel and all other parties to the appeal. This subsection does not apply to a party appearing *pro se*.

COMMENT

The language of Rule 5.01 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (a) requires that motions be limited to a single subject. A portion of the request may be overlooked if requests are combined in a single motion, and the internal processing may vary, depending on the request.

Rule 5.02

~~EXTENSIONS OF TIME~~
EXTENSION OF TIME

~~An application for an extension of time for the performance of any act required by any person by these rules shall be addressed only to the clerk of the appellate courts. No extension will be granted except on stated grounds reasonably indicating the necessity therefor. Consent of adverse parties to an application will be considered but will not be controlling. A copy of any application under this rule shall be served on all parties.~~

(a) **Motion for Extension of Time.** A party that may or must perform an act required under these rules within a specified time may file with the clerk of the appellate courts a motion for an extension of time. The motion must be served on all parties and must state:

(1) the present due date;

(2) the number of extensions previously requested;

(3) the amount of additional time needed; and

(4) the reason for the request.

(b) **Adverse Party's Consent.** An adverse party's consent to an extension of time will be considered, but is not controlling.

(c) **Motion Filed After Time Expired.** A motion for an extension of time filed after the time to act has expired must state the reasons constituting excusable neglect.

COMMENT

The language of Rule 5.02 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (a) specifies the required contents of a motion for extension of time.

New subsection (c) requires a statement of reasons constituting excusable neglect if the motion is filed out of time.

Rule 5.03

~~CLERK'S AUTHORITY ON MOTIONS~~
CLERK'S AUTHORITY ON MOTION

(a) **Clerk's Authority to Rule on Motion.** Unless a motion is opposed, ~~The~~ the clerk of the appellate courts may rule on ~~any of the following~~ a ~~motions~~ motion ~~unless the motion is opposed~~:

~~(a)~~(1) ~~Motions~~ for extension of time~~.~~;

~~(b)~~(2) ~~Motions~~ to ~~make corrections~~ correct ~~in~~ a ~~briefs.~~ brief;

~~(c)~~(3) ~~Motions~~ to substitute a ~~parties~~ party~~.~~; or

~~(d)~~(4) ~~Motions~~ to withdraw a ~~briefs~~ brief ~~for making~~ to make corrections.

(b) **Clerk's Order.** ~~Such orders shall be entered and shown on the docket by the clerk.~~ The clerk of the appellate courts must enter on the appearance docket an order issued under this rule.

COMMENT

The language of Rule 5.03 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 5.04

~~VOLUNTARY DISMISSALS~~
VOLUNTARY DISMISSAL

~~Prior to filing of an opinion, an appellant may dismiss an appeal by stipulation or by filing and serving a notice of dismissal with the clerk of the appellate courts. A dismissal of the appeal of one party shall not affect an appeal taken by any other party. Unless a dismissal is by agreement of the parties, the court may on motion and reasonable notice assess against the appellant those costs and expenses incurred by the appellee to the date of the dismissal that would have been assessed against the appellant if the case had not been dismissed and there had been an affirmance of the judgment or order.~~

(a) **Voluntary Dismissal; When Allowed; Effect.** Before an opinion is filed, an appellant may dismiss an appeal by stipulation or by filing with the clerk of the appellate courts and serving on all parties a notice of dismissal. A dismissal of one party's appeal does not affect any other party's appeal.

(b) **Assessment of Costs and Expenses.** Unless the parties agree to a dismissal by stipulation, the court on motion and reasonable notice may assess against the appellant the costs and expenses incurred by the appellee before the dismissal date that would have been assessed against the appellant if the case had not been dismissed and the judgment or order had been affirmed.

COMMENT

The language of Rule 5.04 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 5.05

~~INVOLUNTARY DISMISSALS~~
INVOLUNTARY DISMISSAL

~~On the motion of a party with at least fourteen (14) days notice to the appellant, or on an appellate court's own motion by the issuance to the appellant of a notice to show cause within not less than fourteen (14) days why an appeal should not be dismissed, the appellate court may dismiss an appeal on account of a substantial failure to comply with the rules of the court, or for any other reason which by law requires dismissal. If dismissal is dependent on an issue of fact the appellate court may remand the case to the district court with direction to make findings of fact. In any case of a dismissal under this rule the court may assess costs and expenses in the same manner as under Rule 5.04 and Rule 7.07.~~

(a) **Involuntary Dismissal.** An appellate court may dismiss an appeal due to a substantial failure to comply with these rules or for any other reason requiring dismissal by law:

(1) on motion of a party with at least 14 days' notice to the appellant; or

(2) on the court's own by issuing to the appellant a notice to show cause not later than 14 days after the notice why the appeal should not be dismissed.

(b) **Remand for Fact Finding.** If dismissal depends on an issue of fact, the appellate court may remand the case to the district court with direction to make findings of fact.

(c) **Costs and Expenses.** When an appeal is dismissed under this rule, the court on motion and reasonable notice may assess against the appellant the costs and expenses incurred by the appellee before the dismissal date that would have been assessed against the appellant if the case had not been dismissed and the judgment or order had been affirmed.

COMMENT

The language of Rule 5.05 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 5.051

~~DISMISSAL OF APPEALS BY DISTRICT COURT~~
DISMISSAL OF APPEAL BY DISTRICT COURT

~~The district court shall have jurisdiction to dismiss an appeal where the appellant has filed the notice of appeal in the district court but has failed to docket the appeal with the clerk of the appellate courts. Failure to docket the appeal in compliance with Rule 2.04 shall be presumed to be an abandonment of the appeal and the district court may enter an order dismissing the appeal. The order of dismissal shall be final unless the appeal is reinstated by the appellate court having jurisdiction of the appeal for good cause shown on application of the appellant made within thirty (30) days after the order of dismissal was entered by the district court. An application for reinstatement of an appeal shall be made in accordance with Rule 5.01 and Rule 2.04 and shall be accompanied by a docket fee unless excused under Rule 2.04.~~

(a) **District Court's Jurisdiction to Dismiss an Appeal.** When an appellant has filed a notice of appeal in the district court, but has failed to docket the appeal in compliance with Rule 2.04, the appeal is presumed abandoned and the district court may enter an order dismissing the appeal.

(b) **Finality of Order of Dismissal.** A district court's order of dismissal pursuant to subsection (a) is final unless:

(1) the appellant, not later than 30 days after entry of the order:

(A) files with the clerk of the appellate courts in compliance with Rule 5.01 an application for reinstatement showing good cause for reinstatement; and

(B) submits all documents and pays the docket fee required by Rule 2.04, unless payment is excused; and

(2) the appellate court having jurisdiction of the appeal reinstates it for good cause shown.

COMMENT

The language of Rule 5.051 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 5.06

~~RELEASE AFTER CONVICTION~~
RELEASE AFTER CONVICTION

~~An application by the defendant to the appellate court having jurisdiction of the appeal for release after conviction pursuant to K.S.A. 22-2804(2) or K.S.A. 21-4721(b) shall state the disposition made by the district court of the application, the nature of the offense and sentence imposed, the amount of any appearance bonds previously required in the case, the defendant's family ties, employment, financial resources, the length of the defendant's residence in the community, any record of prior convictions, and the defendant's record of appearance at court proceedings, including failure to appear. The application shall also be accompanied by the order of the trial court setting forth the reason for its action.~~

(a) **Generally.** An application for release after conviction, under K.S.A. 22-2804(2) or 21-4721(b), may be made to the appellate court having jurisdiction of the appeal.

(b) **Application; Requirements.** The application must:

(1) state the district court's disposition of the application;

(2) state the nature of the offense and sentence imposed;

(3) state the amount of any appearance bond previously required in the case;

(4) state the defendant's family ties, employment, and financial resources; the length of the defendant's residence in the community; and any record of defendant's prior convictions;

(5) state the defendant's record of appearance at court proceedings, including failure to appear; and

(6) include as an attachment a copy of the district court's order stating the reason for its action.

(c) **Conditions.** If release is granted, the order must state any conditions imposed by the appellate court or may remand to the district court to establish conditions for the release.

COMMENT

The language of Rule 5.06 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (c) requires the appellate court to state any conditions imposed if release is granted, or the court may remand to the district court to establish conditions for release.

BRIEFS

Rule 6.01

~~TIME SCHEDULE FOR BRIEFS~~
TIME SCHEDULE FOR BRIEFS

(a) **Serving and Filing.** ~~All~~ A ~~briefs~~ brief ~~shall~~ must be served ~~upon~~ on ~~opposing counsel,~~ all other parties and ~~thereafter~~ then filed with the clerk of the appellate courts~~, according to the following schedule:~~ not later than the time stated in subsection (b).

(b) **Brief Filing Schedule.**

~~(a)~~(1) ~~*Appellant's Brief*~~ **Appellant's Brief.**

(A) If a reporter's transcript was not ordered or if ~~the~~ all transcripts ~~was~~ ordered ~~and has been completed~~ were filed with the clerk of the district court ~~prior to~~ before docketing, an appellant must file a brief ~~within~~ not later than ~~forty (~~40~~)~~ days after the date of docketing.

(B) If a transcript was ordered, but was not filed before docketing, an appellant must file a brief ~~within~~ not later than ~~thirty (~~30~~)~~ days after service of the certificate of filing of the transcript ~~in accordance with~~ under Rule 3.03.

(C) If a record on appeal includes ~~the~~ a statement of proceedings ~~made pursuant to~~ under Rule 3.04~~,~~ or ~~the~~ an agreed statement ~~pursuant to~~ under Rule 3.05, an appellant must file a brief ~~within~~ not later than ~~thirty (~~30~~)~~ days after the ~~filing thereof~~ statement is filed with the clerk of the district court.

~~(b)~~(2) ~~*Appellee's Brief (and Cross-Appellant's Brief)* Within thirty (30) days after service of the appellant's brief.~~ **Appellee or Appellee/Cross-Appellant's Brief.** An appellee or appellee/cross-appellant must file a brief not later than 30 days after the appellant's brief is served.

~~(c)~~(3) ~~*Cross-Appellee's Brief* Within twenty (20) days after service of the cross-appellant's brief.~~ **Cross-Appellee's Brief.** A cross-appellee must file a brief not later than 21 days after the cross-appellant's brief is served.

~~(d)~~(4) ~~*Appellee/Cross-Appellee's Brief* Within twenty (20) days after service of the appellee/cross-appellant's brief.~~ **Appellee/Cross-Appellee's Brief.** An appellee/cross-appellee must file a brief not later than 21 days after the appellee/cross-appellant's brief is served.

~~(e)~~(5) ~~*Reply Brief*~~ **Reply Brief.** A reply brief must be filed ~~Within~~ not later than ~~fifteen (15)~~ 14 days after service of the brief to which the reply is made.

COMMENT

The language of Rule 6.01 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

Time limits in new subsections (b)(3) and (4) were changed from 20 days to 21 days, consistent with time frames in the Code of Civil Procedure.

The time limit in new subsection (b)(5) was changed from 15 days to 14 days, consistent with time frames in the Code of Civil Procedure.

Rule 6.02

~~CONTENT OF APPELLANT'S BRIEF~~
CONTENT OF APPELLANT'S BRIEF

(a) **Required Contents.** ~~The~~ An appellant's brief ~~shall~~ must contain the following:

(1) A table of contents that includes:

~~(a)~~(A) ~~A table of contents of the entire brief, with~~ page references to each division and subdivision in the brief, including each issue presented; and

(B) the authorities relied ~~upon~~ on in support of each issue.

~~(b)~~(2) A brief statement of the nature of the case~~,~~ — *e.g.*, whether it is a personal injury suit, injunction, quiet title, etc.~~,~~ — and a brief statement of the nature of the judgment or order from which the appeal was taken.

~~(c)~~(3) A brief statement, without elaboration, of the issues to be decided ~~on~~ in the appeal.

~~(d)~~(4) ~~A factual statement of the case, *i.e.*, a~~ A concise but complete statement, without argument, of ~~all~~ the facts ~~of the case~~ that are material to ~~the determination~~ determining ~~of~~ the ~~question or questions~~ issues ~~presented for appellate decision~~ to be decided in the appeal. The facts ~~stated therein~~ included in the statement ~~shall~~ must be keyed to the record on appeal by volume and page number ~~so as to make verification reasonably convenient~~. ~~Any material~~ The court may presume that a factual statement made without ~~such~~ a reference to volume and page number ~~may be presumed to be without~~ has no support in the record on appeal.

~~(e)~~(5) The arguments and authorities relied ~~upon~~ on, ~~subdivided as to the separate~~ separated by ~~issues~~ issue ~~in the appeal~~ if there is more than one. Each issue ~~shall~~ must begin with citation to the appropriate standard of appellate review and a pinpoint reference to the ~~specific~~ location in the record on appeal where the issue was raised and ruled ~~upon~~ on. If ~~not~~ the issue was not raised below, ~~explain~~ there must be an explanation why the issue is properly before the court.

~~(f)~~(b) **Optional Appendix.** At the option of the appellant, an appellant's brief may contain an appendix — without comment — consisting of limited extracts from the record on appeal~~,~~ ~~which extracts~~ which the appellant considers to be of critical importance to the issues ~~in the appeal~~ to be decided. ~~Such an~~ The appendix is ~~merely~~ for the court's convenience and is not ~~to be considered as~~ a substitute for the record itself. When ~~such~~ an appendix is included, the statement of the case and the brief may make references to it, but ~~such~~ the references ~~shall be~~

are supplementary ~~—~~ ~~to the references required to the volume and pages of the record itself~~ and not in lieu ~~thereof~~ of ~~—~~ the required references to the volume and page number of the record itself.

COMMENT

The language of Rule 6.02 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 6.03

~~CONTENT OF APPELLEE'S BRIEF~~
CONTENT OF APPELLEE'S BRIEF

(a) **Required Contents.** ~~The~~ An appellee's brief ~~shall~~ must contain the following:

(1) A table of contents that includes:

~~(a)~~(A) ~~A table of contents of the entire brief, with~~ page references to each division and subdivision in the brief, including each issue presented; and

(B) the authorities relied ~~upon~~ on ~~applicable to~~ in support of each issue.

~~(b)~~(2) A statement either concurring in the appellant's statement of the issues involved or stating the issues the appellee considers necessary to disposition of the appeal.

~~(c)~~(3) A ~~factual~~ statement ~~of the case~~, without argument, of the facts or a statement acknowledging the correctness of the appellant's statement of the ~~case,~~ facts or adding corrections and supplemental statements to the extent necessary ~~to the appeal~~. The statement ~~shall~~ must be supported by references to the record in the same manner as ~~is~~ required of the appellant under Rule 6.02.

~~(d)~~(4) The arguments and authorities relied ~~upon~~ on, ~~subdivided as to the separate~~ separated by ~~issues~~ issue ~~in the appeal~~ if there is more than one. Each issue ~~shall~~ must begin with citation to the appropriate standard of appellate review; appellee ~~shall~~ must either concur in appellant's citation to the standard of appellate review or ~~offer~~ cite additional authority.

~~(e) At the option of the appellee and without comment, an appendix containing extracts of critical portions of the record for the same purpose and subject to the same limitations as are prescribed for the appellant's appendix under Rule 6.02.~~

~~(f)~~(5) If the appellee is also a cross-appellant ~~(or a cross-appellee)~~, a separate section for the cross-appeal with content comparable to that of an appellant under Rule 6.02, except without duplication of statements, arguments, or authorities already contained in the appellee's brief. To avoid ~~such~~ duplication, references may be made to the appropriate portions of the appellee's brief.

(b) **Optional Appendix.** At the option of the appellee, an appellee's brief may contain an appendix containing limited extracts from the record on appeal for the same purpose and subject to the same limitations prescribed for the appellant's appendix under Rule 6.02.

COMMENT

The language of Rule 6.03 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 6.04

~~CONTENT OF CROSS-APPELLEE'S BRIEF~~
CONTENT OF CROSS-APPELLEE'S BRIEF

The content of a cross-appellee's brief ~~shall~~ must be comparable to that of an appellee, but without duplication of statements, arguments, or authorities already contained in the appellant's or cross-appellant's brief. To avoid ~~such~~ duplication, references may be made to the appropriate portions of the ~~appellant's~~ opposing brief.

COMMENT

The language of Rule 6.04 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 6.05

~~REPLY BRIEF~~
REPLY BRIEF

A reply brief ~~shall~~ may not be submitted unless made necessary by new material contained in the appellee's or cross-appellee's brief. A reply brief ~~shall~~ must ~~make~~ include a specific reference to the new material being rebutted and ~~under no circumstances shall it duplicate or~~ may not include, except by reference, ~~any~~ a ~~statements~~ statement, ~~arguments~~ argument, or ~~authorities~~ authority already ~~made~~ included in a preceding ~~briefs~~ brief. ~~A cross-appellee shall, if~~ If a reply brief is permissible, a cross-appellee must combine the ~~same~~ reply brief with the cross-appellee's brief as a separate section.

COMMENT

The language of Rule 6.05 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 6.06

~~BRIEF OF *AMICUS CURIAE*~~
BRIEF OF *AMICUS CURIAE*

~~A brief of an *amicus curiae* may be filed only after an order of the appellate court granting an application which has been served upon all counsel of record. A brief of an *amicus curiae* shall be filed not less than 30 days prior to oral argument; any party may respond to an *amicus* brief within 20 days. An *amicus curiae* is not entitled to be heard on oral argument of the appeal.~~

(a) **When Permitted.** A brief of an *amicus curiae* may be filed when:

(1) an application to file the brief is served on all parties and filed with the clerk of the appellate courts; and

(2) the appellate court enters an order granting the application.

(b) **Filing and Service of *Amicus* Brief.** A brief of an *amicus curiae* must be:

(1) filed not later than 30 days before oral argument; and

(2) served on all parties.

(c) **Reply to *Amicus* Brief.** Any party may respond to a brief of an *amicus curiae* not later than 21 days after the brief is filed.

(d) **Oral Argument.** An *amicus curiae* is not entitled to oral argument.

COMMENT

The language of Rule 6.06 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 6.07

~~FORMAT FOR BRIEFS~~
FORMAT FOR BRIEFS

~~(a) TYPE, MARGINS, FOOTNOTES, REPRODUCTION. All briefs shall be typographically set, typewritten, or printed by a computer or word processor letter quality printer so that the text is a clear black image on white bond paper measuring 8 1/2 inches by 11 inches. Text shall be printed in a conventional style typeface no smaller than 12 point with no more than 12 characters per inch. If typewritten, the type shall be no smaller than pica (10 characters per inch). Text, excluding pagination, shall not exceed 6 inches by 9 inches. The left margin shall be no less than 1 1/2 inches and the top, bottom and right margins shall be no less than 1 inch. Footnotes should be avoided, but if absolutely necessary every footnote shall commence on the same page as the text to which it relates. All text shall be double-spaced except block quotations which may be single-spaced.~~

~~Any method of reproduction of the original which results in uniform, permanent, clearcut, black text on opaque, unglazed, white paper of good grade may be used.~~

~~(b) COVER. The cover of the brief of the appellant shall be yellow; that of the appellee, appellee/cross-appellant, or appellee/cross-appellee, blue; that of a cross-appellee, yellow; that of an intervenor or *amicus curiae*, green; and that of any reply brief, grey. The outside of the front cover shall conspicuously display each of the following:~~

~~*First:*~~
~~The abbreviation for number, "No.," followed by the appellate court docket number.~~
~~*Second:*~~
~~The words "IN THE COURT OF APPEALS OF THE STATE OF KANSAS," or "IN THE SUPREME COURT OF THE STATE OF KANSAS" dependent on the court in which the matter is then pending.~~
~~*Third:*~~
~~The caption of the case as it appeared in the district court except that a party shall not only be identified as a plaintiff or defendant but also as an appellant or appellee.~~
~~*Fourth:*~~
~~The title of the document, *e.g.*, "Brief of Appellant" or "Brief of Appellee," etc.~~
~~*Fifth:*~~
~~The words "Appeal from the District Court of _____ County, Honorable _____, Judge, District Court Case No._____"~~
~~*Sixth:*~~
~~The name and address of one lawyer for the party on whose behalf the brief is submitted. If there are several parties separately represented and joining in the brief, a lawyer for each shall be shown. A lawyer may be shown as being of a named firm. Additional lawyers joining in the brief are not to be shown on the cover but may be added at the conclusion of the brief. The name of each lawyer shall be followed by that lawyer's Kansas attorney registration number.~~

~~*Seventh:*~~

~~When additional time for oral argument is requested in the Supreme Court pursuant to Rule 7.01(e) or in the Court of Appeals pursuant to Rule 7.02(e), the words "oral argument:" shall be printed on the lower right portion of the front of the brief cover, followed by the desired amount of time.~~

~~(c) BINDING, LENGTH OF BRIEFS. If a brief is in excess of fifteen (15) pages, not less than ten (10) of the required sixteen (16) copies shall be assembled with full length spiral binders on the left side. The remaining copies may be fastened together by conventional methods. Except as the court may specially authorize, the length of briefs (exclusive of cover, table of contents, appendix, and certificate of service) shall not exceed the following:~~

~~Brief of an Appellant--50 pages~~
~~Brief of an Appellee--50 pages~~
~~Brief of an Appellee and Cross-Appellant--60 pages~~
~~Brief of an Appellee and Cross-Appellee--60 pages~~
~~Brief of a Cross-Appellee--25 pages~~
~~Reply Brief--15 pages~~
~~Brief of an *Amicus Curiae*--15 pages~~

~~Any motion to exceed page limitations must be submitted prior to submission of the brief and shall include a specific total page request. Such motions may be ruled upon without waiting for a response from any other party.~~

~~(d) ABBREVIATED BRIEFS. Upon order of the appellate court hearing the matter, the content and format of briefs submitted may be abbreviated.~~

~~(e) CERTIFICATE OF SERVICE. The certificate of service shall be included as the last page of any brief.~~

~~(f) Any brief which is not in substantial conformity with the provisions of this rule will not be accepted for filing.~~

~~(g) Permissive filing on interactive compact disk, read-only memory (CD-ROM).~~

~~(1) The submission of briefs by parties and amici curiae on a single interactive compact disk, read-only memory (CD-ROM) (e-brief), in addition to the requisite number of printed briefs filed and served in accordance with this rule, is allowed and encouraged.~~

~~(2) An e-brief must comply with the current technical specifications available from the Appellate Clerk's Office or posted at www.kscourts.org.~~

~~(3) An e-brief must be identical in content and format (including page numbering) to the printed version, except that each may also provide electronic links (hyperlinks) to the complete text of any authorities cited therein and to any document or other material constituting the record on appeal.~~

~~(4) An e-brief must be accompanied by a statement that verifies the absence of computer viruses and describes the software used to ensure that the e-brief is virus-free.~~

~~(5) No fewer than 5 disks must be filed, with proof of service of at least one disk on each other party to the appeal.~~

~~(6) An e-brief, if filed, must accompany printed copies of the brief.~~

(a) **Paper; Text; Margins; Footnotes; Reproduction.**

(1) **Paper.** A brief must be in black type or print on 8½" by 11" white bond paper.

(2) **Text.** Text must be printed in a conventional style font not smaller than 12 point with no more than 12 characters per inch. Text, excluding pagination, must not exceed 6 inches by 9 inches. All text must be double-spaced except block quotations and footnotes which may be single-spaced.

(3) **Margins.** The left margin must be not less than 1½ inches and the top, bottom, and right margins must be not less than 1 inch.

(4) **Footnotes.** Footnotes should be avoided, but, if footnotes are absolutely necessary, every footnote must commence on the same page as the text to which it relates.

(5) **Reproduction.** A brief may be reproduced by any process that yields a clear black image on white paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(b) **Brief Cover; Color and Content.**

(1) The color of the brief cover must be as follows:

(A) appellant — yellow;

(B) appellee, appellee/cross-appellant, or appellee/cross-appellee — blue;

(C) cross-appellee or cross-appellee/reply — yellow;

(D) intervenor or *amicus curiae* — green; and

(E) reply — grey.

(2) The cover of a brief must contain the following:

(A) the appellate court docket number;

(B) the words "IN THE COURT OF APPEALS OF THE STATE OF KANSAS" or "IN THE SUPREME COURT OF THE STATE OF KANSAS," whichever is appropriate;

(C) the caption of the case as it appeared in the district court, except that a party must be identified not only as a plaintiff or defendant but also as an appellant or appellee;

(D) the title of the document, *e.g.*, "Brief of Appellant" or "Brief of Appellee," etc.;

(E) the words "Appeal from the District Court of _____ County, Honorable _____, Judge, District Court Case No. _____.";

(F) the name, address, telephone number, fax number, e-mail address, and attorney registration number of one attorney for each party on whose behalf the brief is submitted. An attorney may be shown as being of a named firm. Additional attorneys joining in the brief must not be shown on the cover but may be added at the conclusion of the brief; and

(G) when additional time for oral argument is requested in the Supreme Court under Rule 7.01(e) or in the Court of Appeals under Rule 7.02(f), the words "oral argument:" must be printed on the lower right portion of the brief cover, followed by the desired amount of time.

(c) **Binding.** If a brief exceeds 15 pages, at least 10 of the required 16 copies must be assembled with full length spiral binders on the left side. The remaining copies may be fastened together by staples or brads.

(d) **Page Limitation.** Unless the court orders otherwise, the length of briefs — excluding the cover, table of contents, appendix, and certificate of service — may not exceed the following:

(1) Brief of an Appellant — 50 pages;

(2) Brief of an Appellee — 50 pages;

(3) Brief of an Appellee and Cross-Appellant — 60 pages;

(4) Brief of an Appellee and Cross-Appellee — 60 pages;

(5) Brief of a Cross-Appellee — 25 pages;

(6) Reply Brief — 15 pages; and

(7) Brief of an *Amicus Curiae* — 15 pages.

(e) **Motion to Exceed Page Limitation.** A motion to exceed a page limitation in subsection (d) must be submitted prior to submission of the brief and must include a specific total page request. The court may rule on the motion without waiting for a response from any other party.

(f) **Abbreviated Briefs.** The appellate court hearing a matter may order briefs to be abbreviated in content or format.

(g) **Acceptance for Filing.** A brief that does not conform substantially with the provisions of this rule will not be accepted for filing.

(h) **Permissive Filing of E-brief on CD-ROM.**

(1) Parties and *amici curiae* may and are encouraged to submit briefs on a CD-ROM disk (an e-brief) in addition to submitting the requisite number of printed briefs required by Rule 6.09.

(2) an e-brief must comply with the current technical specifications available from the clerk of the appellate courts or posted at www.kscourts.org.

(3) An e-brief must be identical in content and format — including page numbering — to the printed version, except that an e-brief also may provide electronic links (hyperlinks) to the complete text of any authority cited in the brief and to any document or other material included in the record on appeal.

(4) An e-brief must be accompanied by a statement that verifies the absence of computer viruses and describes the software used to ensure that the e-brief is virus-free.

(5) If an e-brief is filed under this subsection, not fewer than 5 CD-ROM disks of the brief must be filed, with proof of service of at least one disk on each party to the appeal.

(6) An e-brief, if filed, must accompany printed copies of the brief.

COMMENT

The language of Rule 6.07 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (a)(5) specifically provides that only one side of the paper may be used.

Rule 6.08

~~REFERENCES WITHIN BRIEFS~~
REFERENCE WITHIN BRIEF

~~In the body of a brief, unless~~ Unless the context particularly requires a distinction between parties as appellant or appellee, ~~they~~ parties ~~should~~ normally should be referred to in the body of a brief by their status in the district court, *e.g.*, plaintiff, defendant, etc., or by name. ~~References to~~ Citation of a court ~~cases~~ decision ~~shall~~ must be by the official ~~citations~~ citation followed by any generally recognized reporter system citation~~s~~.

COMMENT

The language of Rule 6.08 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 6.09

~~SERVICE OF BRIEFS AND ADDITIONAL AUTHORITY~~
SERVICE OF BRIEF AND ADDITIONAL AUTHORITY

~~(a) Every brief shall be supplied in two (2) copies to all adverse counsel united in interest. Sixteen (16) copies of the brief, which includes proof of service on adverse counsel, shall be simultaneously filed with the clerk of the appellate courts.~~

~~(b) When significant relevant authorities not previously cited to the court come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, the party shall promptly advise the court, by letter, setting forth the citations. There must be a reference either to the page(s) of the brief intended to be supplemented or to a point argued orally to which the citations pertain. A brief statement may be made concerning application of the citations.~~

~~The letter shall be served on all adverse counsel united in interest as set out in subsection (a). The letter, with proof of service, shall be filed with the clerk of the appellate courts and shall be accompanied by sixteen (16) copies. Any response must be made promptly and must be similarly limited.~~

(a) **Service and Filing.**

(1) **Service; Number of Copies.** 2 copies of every brief must be served on all adverse parties united in interest.

(2) **Certificate of Service.** A certificate of service must be included as the last page of a brief.

(3) **Filing; Number of Copies.** 16 copies of the brief must be filed — simultaneously with service — with the clerk of the appellate courts.

(b) **Additional Authority.**

(1) **Notifying the Court by Letter.**

(A) **Before Oral Argument.** Not later than 14 days before oral argument, a party may advise the court, by letter, of citation to persuasive and controlling authority that has come to the party's attention after the party's last brief was filed. If a persuasive or controlling authority is published less than 14 days before oral argument, a party promptly may advise the court, by letter, of the citation.

(B) **After Oral Argument.** After oral argument, but before decision, a party may advise the court, by letter, of citation to controlling authority that was published after the date of oral argument.

(C) **Contents of Letter to Court.** The letter must contain a reference either to the page(s) of the brief intended to be supplemented or to a point argued orally to which the citation pertains. A brief statement may be made concerning application of the citation, but the body of a letter submitted under this subsection may not exceed 350 words.

(2) **Service and Filing.** A copy of the letter must be served on all adverse parties united in interest. The letter, with proof of service, must be filed with the clerk of the appellate courts and be accompanied by 16 copies.

(3) **Response.** A response, if any, must be:

(A) filed with the clerk of the appellate courts not later than 7 days after service of the letter;

(B) limited to the reference, brief statement, and number of words allowed under paragraph (1)(C); and

(C) served on all adverse parties united in interest.

COMMENT

The language of Rule 6.09 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsections (b)(1) and (3) impose conditions and limitations on the submission of additional authority and response to that authority.

Rule 6.10

~~BRIEFS IN CRIMINAL AND POST CONVICTION CASES~~
BRIEF IN CRIMINAL OR POSTCONVICTION CASE

In ~~all~~ a criminal ~~matters~~ matter ~~and~~ or a ~~post conviction~~ postconviction ~~proceedings~~ case~~,~~:

(a) a ~~copies~~ copy of ~~all~~ each ~~briefs~~ brief ~~shall~~ must be served on the Attorney General of ~~this state~~ Kansas~~.~~; and

(b) ~~No~~ no brief ~~shall~~ may be filed by or on behalf of the State of Kansas or any officer or agent ~~thereof~~ of the State ~~without~~ unless the approval of the Attorney General or a member of the Attorney General's staff is endorsed ~~thereon~~ on the brief.

COMMENT

The language of Rule 6.10 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

ORAL ~~ARGUMENTS~~ ARGUMENT, ~~DECISIONS~~ DECISION, AND REHEARING

Rule 7.01

~~HEARINGS IN THE SUPREME COURT~~ HEARING IN THE SUPREME COURT

(a) ~~SESSIONS. Sessions of the Supreme Court for the hearing of cases will be from time to time on such dates as shall be fixed by the order of the court.~~ **Sessions.** The Supreme Court hears cases on dates fixed by court order.

(b) ~~ASSIGNMENT OF CASES.~~ **Assignment of Cases.** Cases ~~will be~~ are assigned for hearing as nearly as practicable in the order ~~in which they were~~ docketed except cases entitled by law to preferential setting. ~~Other cases may be advanced by the~~ The court on motion may advance other cases as justice or the public interest may require.

(c) ~~SUMMARY CALENDAR--GENERAL CALENDAR.~~ **Summary Calendar — General Calendar.**

(1) ~~*Screening Procedures.*~~ **Screening Procedures.** ~~All~~ A ~~cases~~ case ~~docketed in the court may be~~ is subjected to screening procedures after ~~the~~ an appeal is docketed in the court. When screening procedures have been completed, ~~on a case~~ the ~~C~~chief ~~J~~justice ~~shall~~ will assign ~~it~~ the case to the summary calendar or the general calendar.

(2) ~~*Basis for Determining Summary Calendar Cases.*~~ **Basis for Determining Summary Calendar Cases.** ~~Those~~ A ~~cases~~ case ~~which~~ that fails to present ~~any~~ a new ~~questions~~ question of law and in which oral argument is deemed neither helpful to the court nor essential to a fair hearing of the ~~case on~~ appeal may be placed on the summary calendar ~~for later assignment~~. All other cases ~~shall~~ must be placed on the general calendar ~~for later assignment~~. ~~Separate calendars shall be maintained by the clerk for this purpose.~~ The clerk of the appellate courts must maintain separate calendars for this purpose.

(3) ~~*Notice of Calendaring.*~~ **Notice of Calendaring.** The clerk of the appellate courts ~~shall~~ must notify the parties when a case has been placed on the summary calendar.

(4) ~~*Argument in Summary Calendar Cases.*~~ **Argument in Summary Calendar Cases.** When a case is placed on the summary calendar, it ~~shall be~~ is deemed submitted to the court without oral argument unless a party's motion ~~by one of the parties~~ for oral argument is granted. ~~Such a~~ The motion ~~shall~~ must be served on all parties, ~~and~~ filed with the clerk of the appellate courts ~~within~~ not later than ~~fifteen (15)~~ 14 days after ~~notice of calendaring has been mailed by~~ the clerk mails notice of calendaring, and

~~shall set forth~~ state the ~~reasons~~ reason why ~~it is thought that~~ oral argument would be helpful to the court. If a motion for oral argument is granted, oral argument will be limited to ~~fifteen (~~15~~)~~ minutes on each side unless sufficient reason is given to grant ~~twenty (~~20~~)~~, ~~twenty-five (~~25~~),~~ or ~~thirty (~~30~~)~~ minutes.

(d) ~~DOCKETS.~~ **Dockets; Notice of Hearing or Submission.** Not less than ~~thirty (~~30~~)~~ days before each sitting of the court, the clerk of the appellate courts ~~shall~~ must prepare and mail to all ~~attorneys of record~~ parties in ~~causes~~ cases assigned for hearing during ~~such~~ that sitting a docket showing the ~~date~~ place and time ~~on~~ at which the cases from the general and summary ~~calendars~~ calendar will be argued and heard. The docket will contain a list of cases from the summary calendar submitted for decision without oral argument. The daily docket will be called in open court at the commencement of each day's session. Failure of a party to be represented at the call of the day's docket ~~shall~~ constitutes a waiver of oral argument by ~~such~~ the party.

~~(e) ARGUMENTS. Unless more time is ordered, oral argument will be limited to fifteen (15) minutes each for the appellant and the appellee. Either the appellant or the appellee may request twenty (20), twenty-five (25), or thirty (30) minutes at the time the appellant's or appellee's brief is filed by printing "oral argument:" on the lower right portion of the front of the brief cover, followed by the desired amount of time. If oral argument is scheduled, the court will designate on the oral argument calendar the amount of time granted. The appellant and the appellee will be granted the same amount of time. The appellant may reserve a portion of that time for rebuttal by making an oral request at the time of hearing.~~

~~The court on its own motion during the hearing may extend the time for oral argument for either party. If on either side of a case there are several parties who are not united in interest in the issues of the appeal and who are separately represented, the court on motion will allot time for the separate arguments. If multiple parties are united in interest in the issues on appeal, they shall divide the allotted time among themselves by mutual agreement. Any party who does not have a brief on file will not be permitted an oral argument.~~

(e) **Argument.**

(1) **Generally.** If oral argument is scheduled, the court will designate on the oral argument calendar the amount of time granted. Unless more time is ordered, oral argument is limited to 15 minutes each for the appellant and the appellee. The appellant and the appellee will be granted the same amount of time. A party that does not have a brief on file will not be permitted oral argument.

(2) **Requesting More Time.** The appellant or the appellee may request 20, 25, or 30 minutes for argument by printing "oral argument:" on the lower right portion of the front cover of the party's initial brief, followed by the desired amount of time.

(3) **Reserving Rebuttal Time.** The appellant may reserve for rebuttal a portion of the time granted by making an oral request at the time of the hearing.

(4) **Court May Extend Time.** The court on its own during the hearing may extend the time for oral argument.

(5) **Multiple Parties.** If on either side of a case there are multiple parties that are not united in interest in the issues of the appeal and are separately represented, the court on motion will allot time for the separate arguments. If multiple parties are united in interest in the issues on appeal, they must divide the allotted time among themselves by mutual agreement.

COMMENT

The language of Rule 7.01 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

The time limit in subsection (c)(4) was changed from 15 days to 14 days, consistent with time frames in the Code of Civil Procedure.

Rule 7.02

~~HEARINGS IN THE COURT OF APPEALS~~
HEARING IN THE COURT OF APPEALS

~~(a) HEARING PANELS. Hearings in the Court of Appeals shall be before the judges of the court, sitting *en banc*, or in hearing panels designated by the Chief Judge of the court. Hearings shall be before panels of the court unless a majority of the judges of the Court of Appeals shall order that an appeal or other proceeding be heard or reheard by the Court of Appeals *en banc*.~~

~~Except in exigent circumstances, oral argument shall be heard by the full panel to which the case has been assigned. The Chief Judge may change the composition of any panel at any time prior to oral argument. Whenever any member of the panel is not present at the oral argument of a case, the case shall be deemed submitted to that member on the record and briefs. If a member of the panel is unable for any reason to participate after the case is submitted for decision, the Chief Judge shall appoint a substitute judge and the case shall be deemed submitted to the new member on the record and briefs.~~

(a) **Hearing Panels.**

(1) **Generally.** The chief judge of the Court of Appeals must designate panels of judges of the court to conduct hearings. An appeal or other proceeding will be before a panel of the Court of Appeals unless a majority of the judges order the appeal or other proceeding be heard or reheard *en banc*.

(2) **Assigned Judge's Participation At and After Oral Argument.** Except in exigent circumstances, oral argument will be heard by the full panel to which the case has been assigned. The chief judge may change the composition of a panel at any time before oral argument. When a member of a panel is not present at the oral argument, the case is deemed submitted to that member on the record and briefs. If a member of a panel is unable to participate after the case is submitted for decision, the chief judge must appoint a substitute judge and the case is deemed submitted to the new member on the record and briefs.

(b) ~~SUGGESTION FOR HEARING OR REHEARING *EN BANC*.~~ **Suggestion for Hearing or Rehearing *En Banc*.** A party may suggest the appropriateness of a hearing or rehearing *en banc*. A suggestion for hearing *en banc* ~~shall~~ must be filed ~~within~~ not later than the time prescribed for filing appellee's brief. A suggestion for rehearing *en banc* ~~shall~~ must be filed ~~within~~ not later than the time prescribed for filing a motion for rehearing.

~~(c) SESSIONS. (1) Hearings before the court sitting *en banc* shall be in Topeka, Kansas, unless otherwise ordered by the Chief Judge.~~

~~(2) Hearings before panels of the court may be held in any county within the state as provided in Rule 1.02.~~

~~(3) To assist the court in determining the place of hearing, any party may suggest in writing a desired place of hearing. Such suggestion should be filed not later than the time for filing appellee's brief.~~

(c) **Summary Calendar — General Calendar.**

(1) **Screening Procedures.** A case is subjected to screening procedures after an appeal is docketed in the court. When screening procedures have been completed, the chief judge will assign the case to the summary calendar or the general calendar.

(2) **Basis for Determining Summary Calendar Cases.** A case that fails to present a new question of law and in which oral argument is deemed neither helpful to the court nor essential to a fair hearing of the appeal may be placed on the summary calendar. All other cases must be placed on the general calendar. The clerk of the appellate courts must maintain separate calendars for this purpose.

(3) **Notice of Calendaring.** The clerk of the appellate courts must notify the parties when a case has been placed on the summary calendar.

(4) **Argument in Summary Calendar Cases.** When a case is placed on the summary calendar, it is deemed submitted to the court without oral argument unless a party's motion for oral argument is granted. The motion must be served on all parties, be filed with the clerk of the appellate courts not later than 14 days after the clerk mails notice of calendaring, and state the reason why oral argument would be helpful to the court. If a motion for oral argument is granted, oral argument will be limited to 15 minutes on each side unless sufficient reason is given to grant 20, 25, or 30 minutes.

(d) **Sessions; Location of Hearings.**

(1) A hearing before the court sitting *en banc* will be in Topeka, Kansas, unless otherwise ordered by the chief judge.

(2) A hearing before a panel of the court may be held in any county in the state as provided in K.S.A. 20-3013.

(3) To assist the court in determining the place of hearing, a party may suggest in writing a desired place of hearing. The suggestion must be filed not later than the time for filing appellee's brief.

~~(d)~~(e) ~~NOTICE OF HEARING.~~ **Dockets; Notice of Hearing or Submission.** Not less than ~~thirty (30)~~ days before each sitting of the court, the clerk of the appellate courts ~~shall~~ must ~~notify~~ prepare and mail to ~~the~~ all attorneys ~~in each~~ of record in cases assigned for hearing during

that sitting a docket ~~of the~~ showing the place and time at which ~~the~~ cases from the general and summary calendar will be argued and heard. The docket will contain a list of cases from the summary calendar submitted for decision without oral argument.

~~(e) ARGUMENTS. Unless more time is ordered, oral argument will be limited to fifteen (15) minutes each for the appellant and the appellee. Either the appellant or the appellee may request twenty (20), twenty-five (25), or thirty (30) minutes at the time the appellant's or appellee's brief is filed by printing "oral argument:" on the lower right portion of the front of the brief cover, followed by the desired amount of time. If oral argument is scheduled, the court will designate on the oral argument calendar the amount of time granted. The appellant and the appellee will be granted the same amount of time. The appellant may reserve a portion of that time for rebuttal by making an oral request at the time of hearing.~~

~~The court on its own motion during the hearing may extend the time for oral argument for either party. If on either side of a case there are multiple parties who are not united in interest in the issues of the appeal and who are separately represented, the court on motion will allot time for separate arguments. If multiple parties are united in interest in the issues on appeal, they shall divide the allotted time among themselves by mutual agreement. Any party who does not have a brief on file will not be permitted an oral argument.~~

(f) **Argument.**

(1) **Generally.** If oral argument is scheduled, the court will designate on the oral argument calendar the amount of time granted. Unless more time is ordered, oral argument is limited to 15 minutes each for the appellant and the appellee. The appellant and the appellee will be granted the same amount of time. A party that does not have a brief on file will not be permitted oral argument.

(2) **Requesting More Time.** The appellant or the appellee may request 20, 25, or 30 minutes for argument by printing "oral argument:" on the lower right portion of the front cover of the party's initial brief, followed by the desired amount of time.

(3) **Reserving Rebuttal Time.** The appellant may reserve for rebuttal a portion of the time granted by making an oral request at the time of hearing.

(4) **Court May Extend Time.** The court on its own during the hearing may extend the time for oral argument for either party.

(5) **Multiple Parties.** If on either side of a case there are multiple parties that are not united in interest in the issues of the appeal and are separately represented, the court on motion will allot time for the separate arguments. If multiple parties are united in interest in the issues on appeal, they must divide the allotted time among themselves by mutual agreement.

~~(f) SUMMARY CALENDAR--GENERAL CALENDAR. The clerk shall maintain a summary calendar and a general calendar.~~

~~(1) *Screening Procedures.* All cases docketed in the court shall be subjected to screening procedures after the appeal is docketed. When screening procedures have been completed on a case, the Chief Judge shall assign it to the summary calendar or the general calendar.~~

~~(2) *Basis for Determining Summary Calendar Cases.* Those cases which fail to present any new questions of law and in which oral argument is deemed neither helpful to the court nor essential to a fair hearing of the case on appeal may be placed on the summary calendar. All other cases shall be placed on the general calendar.~~

~~(3) *Notice of Calendaring.* The clerk shall notify the parties when a case has been placed on the summary calendar.~~

~~(4) *Argument in Summary Calendar Cases.* When a case is placed on the summary calendar it shall be deemed submitted to the court without oral argument unless a motion by one of the parties for oral argument is granted. Such a motion shall be served on all parties and filed with the clerk within fifteen (15) days after notice of calendaring has been mailed by the clerk and shall set forth the reasons why it is thought that oral argument would be helpful to the court. If a motion for oral argument is granted, oral argument will be limited to fifteen (15) minutes on each side unless sufficient reason is given to grant twenty (20), twenty-five (25), or thirty (30) minutes.~~

COMMENT

The language of Rule 7.02 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 7.03

~~DECISIONS OF THE APPELLATE COURTS~~
DECISION OF APPELLATE COURT

(a) **Decision.** A ~~Decisions~~ decision of ~~the~~ an appellate ~~courts~~ court will be announced by the filing of the ~~opinions~~ opinion with the clerk of the appellate courts ~~at any time decisions are ready~~. On the date of filing, the clerk of the appellate courts will send one copy of the decision to the ~~attorney~~ counsel of record for each party or to the party if the party has appeared in the appellate court but has no counsel of record and, in an appealed ~~cases~~ case, one copy to the judge of the district court from which the appeal was taken. A certified copy of the opinion will be mailed to the clerk of the district court when the mandate issues.

(b) **Mandate.** A mandate must be mailed to the clerk of the district court, accompanied by a certified copy of the opinion.

(1) **Issuance and Effective Date.**

(A) **When Issued.** An appellate court's mandate will issue 7 days after:

(i) the time to file a petition for review or motion for rehearing or modification expires;

(ii) entry of an order denying a timely petition for review or motion for rehearing or modification; or

(iii) any other event that finally disposes of the case on appeal.

(B) **Court May Modify Time.** The court may shorten or extend the time for issuing a mandate.

(C) **Effective Date.** A mandate is effective when issued.

(2) **Staying the Mandate.** The timely filing of a petition for review or a motion for rehearing or modification stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

COMMENT

The language of Rule 7.03 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (b) states practices followed in the office of the clerk of the appellate courts which were not part of the former rule.

RULE 7.04

~~OPINIONS OF THE APPELLATE COURTS~~
OPINION OF APPELLATE COURT

(a) **Memorandum or Formal Opinion – Governed by K.S.A. 60-2106.** An ~~Opinions~~ opinion of ~~the~~ an appellate ~~courts~~ court, whether signed or *per curiam*, ~~shall~~ will be a memorandum ~~opinions~~ opinion or formal ~~opinions~~ opinion ~~according to the requirements of~~ as provided in K.S.A. 60-2106. Disposition by memorandum, without a published formal opinion, does not mean the case is considered unimportant. It means the case does not involve a new point of law or is otherwise considered as having no value as precedent.

~~(b) Opinions shall be published in the official reports only when they satisfy the standards set out in this rule. Disposition by memorandum, without a formal published opinion, does not mean that the case is considered unimportant. It does mean that no new points of law making the decision of value as precedent are believed to be involved.~~

(b) **Determining Whether Opinion Will Be Memorandum or Formal.** An opinion ~~shall~~ will be prepared in memorandum form unless it~~:~~ meets the requirements in paragraphs (1) and (2).

(1) **Substantive Requirement.** To be published as a formal opinion, the opinion must:

~~(1)~~(A) ~~Establishes~~ establish a new rule of law or ~~alters~~ alter or ~~modifies~~ modify an existing rule;

~~(2)~~(B) ~~Involves~~ involve a legal issue of continuing public interest;

~~(3)~~(C) ~~Criticizes~~ criticize or ~~explains~~ explain existing law;

~~(4)~~(D) ~~Applies~~ apply an established rule of law to a factual situation significantly different from that in published opinions of the courts of this state;

~~(5)~~(E) ~~Resolves~~ resolve an apparent conflict of authority; or

~~(6)~~(F) ~~Constitutes~~ constitute a significant and ~~non-duplicative~~ nonduplicative contribution to legal literature:

(i) by a historical review of law; or

(ii) by describing legislative history.

(2) **Procedural Requirement.** A formal opinion will be written and published in the official reports only if the majority of the justices or judges participating in the decision finds that one of the standards set out in paragraph (1) is satisfied. The court or panel that decides the case must make a tentative decision whether or not a formal opinion is required before or at the time the case is conferenced.

~~A memorandum opinion shall not be published unless there is a separate concurring or dissenting opinion in the case, and the author of such separate opinion requests that it be published; or unless it is ordered to be published by the Supreme Court.~~

(c) **Concurring or Dissenting Opinion.** A concurring or dissenting opinion will be published only if the majority opinion is published.

(d) **Memorandum Opinion Publication.** A memorandum opinion will be published only if:

(1) there is a separate concurring or dissenting opinion in the case, and the author of the separate opinion requests that it be published; or

(2) the Supreme Court orders publication.

~~(c)~~(e) **Motion Requesting Publication.** A party or other interested person ~~who~~ that believes ~~that~~ an opinion of either the Supreme Court or Court of Appeals that is not designated by the court for publication meets the ~~standards~~ requirement for publication ~~established by this rule~~ in subsection (b)(1) or otherwise has substantial precedential value may file a motion in the Supreme Court asking that it be published. The motion ~~shall~~ must:

(1) state the grounds for ~~such~~ the belief~~,~~ that the opinion should be published;

(2) ~~shall~~ be accompanied by a copy of the opinion~~,~~; and

(3) ~~shall~~ comply with ~~Supreme Court~~ Rule 5.01, including service on all parties to the appeal.

~~(d)~~(f) **Opinion Modified on Rehearing.** ~~Regardless of the foregoing, no~~ An opinion that is superseded by an opinion on rehearing ~~shall~~ will not be published. An opinion that is modified on rehearing ~~shall~~ will be published as modified if it otherwise meets the standards of this rule.

~~(e) A formal opinion shall be written and published only if the majority of the justices or judges participating in the decision find that one of the standards set out in this rule is satisfied. The court or panel which decides the case shall make a tentative decision whether or not a formal opinion is required before or at the time the writing assignment is made. Concurring and dissenting opinions shall be published only if the majority opinion is published.~~

(g) **Unpublished Memorandum Opinion.**

~~(f)~~(1) ~~All~~ A memorandum ~~opinions~~ opinion, unless ~~otherwise~~ required by subsection (d) to be published, ~~shall~~ must be marked: "Not Designated for Publication."

(2) An ~~U~~unpublished memorandum ~~opinions~~ opinion ~~of any court or agency~~:

~~(i)~~(A) ~~are~~ is not binding ~~precedents~~ precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel~~.~~;

~~(ii)~~(B) ~~are~~ is not favored for citation~~. But unpublished memorandum opinions~~ and may be cited ~~if they~~ only if the opinion:

(i) ~~have~~ has persuasive value with respect to a material issue not addressed in a published opinion of a Kansas appellate court; and

(ii) ~~they~~ would assist the court in ~~its~~ disposition~~.~~ of the issue; and

~~(iii)~~(C) must be attached to any document, pleading, or brief that cites ~~them~~ the opinion.

COMMENT

The language of Rule 7.04 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

New subsection (g)(2) removes reference to unpublished memorandum opinions "of any court or agency" because these rules govern Kansas appellate opinions.

Rule 7.041

~~SUMMARY DISPOSITION~~
SUMMARY DISPOSITION

(a) **On the Court's Initiative.** In ~~any~~ a case in which it appears that a ~~prior~~ controlling appellate decision is dispositive of the appeal, the court may summarily affirm or reverse, citing in its order of summary disposition this rule and the controlling decision. ~~Such an~~ The order may be entered on the court's ~~own motion~~ initiative after ~~fourteen (~~14~~)~~ days' notice to the parties, citing the decision deemed controlling and providing an opportunity to show cause why ~~such an~~ the order should not be filed.

(b) **On a Party's Motion.** ~~At any time during~~ During the pendency of ~~the~~ an appeal, ~~any~~ a party may move for summary disposition, citing ~~the prior~~ a controlling appellate decision that is dispositive of the appeal. The motion ~~shall~~ must be served on ~~opposing counsel~~ all parties, who may respond ~~within~~ not later than ~~fourteen (~~14~~)~~ days after the motion is served. ~~Thereafter,~~ On expiration of the time to respond, the court may enter an order summarily affirming or reversing, or denying the motion.

COMMENT

The language of Rule 7.041 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

RULE ~~7.041a~~ 7.041A

~~SUMMARY DISPOSITION OF SENTENCING APPEALS~~
SUMMARY DISPOSITION OF SENTENCING APPEAL

(a) **Motion for Summary Disposition.** Pursuant to K.S.A. ~~21-4721(g)~~ 21-6820(g) and (h), ~~any~~ a party may move for summary disposition of a sentencing appeal when no substantial question is presented by the appeal. ~~Any~~ A ~~facts~~ fact stated ~~therein~~ in the motion ~~shall~~ must be keyed to the record on appeal ~~so as~~ to make verification reasonably convenient. The motion ~~shall~~ must be served on opposing counsel, who may respond ~~within~~ not later than ~~fourteen (~~14~~)~~ days after the motion is served.

(b) **Review Solely on Record Unless Briefing is Ordered.** If the appellate court grants ~~the~~ a motion for summary disposition, review ~~shall~~ will be made solely ~~upon~~ on the record that was before the sentencing court. Written briefs ~~shall~~ will not be ~~required~~ permitted unless ordered by the appellate court.

(c) **No Oral Argument.** ~~Any~~ A sentencing appeal scheduled for summary disposition under this rule ~~shall~~ will be ~~handled in an~~ expedited ~~manner~~ without oral argument.

(d) **Disposition.** The court may summarily affirm or reverse, citing this rule, or may affirm or reverse by issuing a written opinion.

COMMENT

The language of Rule 7.041A has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 7.042

~~AFFIRMANCE BY SUMMARY OPINION~~
AFFIRMANCE BY SUMMARY OPINION

(a) **Generally.** The court may affirm by summary opinion a case in which the requirements of subsection (b) are satisfied.

(b) **Requirements for Affirmance by Summary Opinion.** ~~In any~~ A case ~~in which~~ may be affirmed by summary opinion if the court determines after argument or submission on the briefs that no reversible error of law appears and: ~~either~~

~~(a)~~(1) the appeal is frivolous;

~~(b)~~(2) the appeal is without merit;

~~(c)~~(3) the findings of fact of the ~~trial~~ district court, the findings of fact of the administrative tribunal, or the verdict of the jury is supported by substantial competent evidence;

~~(d)~~(4) the findings of fact of the ~~trial~~ district court, the findings of fact of the administrative tribunal, or the verdict of the jury is supported by clear and convincing evidence;

~~(e)~~(5) the opinion or findings of fact and conclusions of law of the ~~trial~~ district court or administrative tribunal adequately explain the decision; or

~~(f)~~(6) the ~~trial~~ district court or administrative tribunal did not abuse its discretion~~;~~. ~~the court may affirm by an opinion citing this rule and indicating which one or more of the above criteria it has determined to be applicable. The opinion will be in the following form: "Affirmed under Rule 7.042 [(a) (b) (c) (d) (e) and/or (f)]."~~

(c) **Form of Opinion.** An opinion issued under this rule must cite the rule and indicate one or more factors under subsection (b) the court has determined are applicable. The opinion must be in the following form: "Affirmed under Rule 7.042(b) [(1) (2) (3) (4) (5) and/or (6)]."

COMMENT

The language of Rule 7.042 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 7.043

~~REFERENCES TO CERTAIN PARTIES~~
REFERENCE TO CERTAIN PERSONS

(a) **Generally.** This rule establishes guidelines for identifying certain persons ~~To~~ to avoid unnecessary trauma and unwarranted stigma from publicity inherent in an appellate proceeding and to maintain statutory requirements of confidentiality~~:~~.

~~(a) In any case in the appellate courts under the code for care of children, the juvenile offenders code, or involving the adoption of a child, the caption of the case shall refer to the child by initials only;~~

~~(b) In the above-referenced cases, all motions, briefs, opinions, and orders of the appellate court shall refer to a child in need of care, a juvenile offender, or a party to an adoption proceeding by initials only or by given name and last initial. To the extent that the identity of a party subject to the protection of this rule could be revealed by reference to another party, e.g. the mother or father of a child, that party should also be identified by initials or by familial relationship.~~

(b) **Child.** In a case in an appellate court under the code for care of children or the juvenile justice code or involving the adoption of a child:

(1) the caption of the case must refer to the child by initials only;

(2) a motion, brief, or opinion or order of the appellate court must refer to a child in need of care, a juvenile offender, or a party to an adoption proceeding by initials only or by given name and last initial; and

(3) if the identity of a child protected by this rule could be revealed by reference to another person, e.g. the mother or father of the child, that person also should be identified by initials or by familial relationship.

(c) **Victim of Sex Crime.** In ~~any~~ a case in ~~the~~ an appellate ~~courts~~ court, ~~all~~ a ~~motions~~ motion, ~~briefs~~ brief, or ~~opinions,~~ opinion ~~and~~ or ~~orders~~ order of the appellate court ~~shall~~ must refer to a victim of a sex crime by initials only or by given name and last initial.

(d) **Juror or Venire Member.** ~~All~~ A ~~motions~~ motion, ~~briefs,~~ brief, or ~~opinions,~~ opinion ~~and~~ or ~~orders~~ order of the appellate court ~~shall~~ must refer to a juror or member of the venire by initials only, by juror number, or by given name and last initial.

COMMENT

The language of Rule 7.043 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 7.05

~~REHEARING OR MODIFICATION IN COURT OF APPEALS~~
REHEARING OR MODIFICATION IN COURT OF APPEALS

(a) **Motion for Rehearing or Modification.** A motion for rehearing or modification in a case decided by the Court of Appeals may be served and filed ~~within~~ not later than ~~fourteen (~~14~~)~~ days ~~of~~ after the decision is filed. A copy of the ~~C~~court's opinion ~~shall~~ must be attached to the motion.

(b) **Effect of Motion.** A motion for rehearing or modification stays ~~The~~ the issuance of the mandate ~~shall be stayed~~ pending ~~the~~ determination of the issues raised by ~~such a~~ the motion. ~~If a rehearing is granted, such order suspends the effect of the original decision until the matter is decided on rehearing.~~ A motion for rehearing or modification is not a prerequisite for review~~, nor shall such a motion~~ and does not extend the time for ~~the~~ filing ~~of~~ a petition for review by the Supreme Court.

~~(b)~~(c) **If Motion for Rehearing is Granted.** ~~If no motion for rehearing is filed, or a motion for rehearing is denied, and no motion for review is pending under Rule 8.03 and the time for filing the same has expired, the clerk of the appellate courts shall, unless the court otherwise orders, issue a mandate on the decision of the Court of Appeals to the district court together with a copy of the opinion.~~ If a motion for rehearing is granted, the order suspends the effect of the original decision until the matter is decided on rehearing.

COMMENT

The language of Rule 7.05 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 7.06

~~REHEARING OR MODIFICATION IN SUPREME COURT~~
REHEARING OR MODIFICATION IN SUPREME COURT

(a) **Motion for Rehearing or Modification.** A motion for rehearing or modification in a case decided by the Supreme Court may be served and filed ~~within~~ not later than ~~twenty (20)~~ 21 days ~~of~~ after the ~~date of the~~ decision is filed. A copy of the ~~C~~court's opinion ~~shall~~ must be attached to the motion.

(b) **Effect of Motion.** A motion for rehearing or modification stays ~~T~~the issuance of the mandate ~~shall be stayed~~ pending ~~the~~ determination of the issues raised by ~~such a~~ the motion.

(c) **If Motion for Rehearing is Granted.** If a motion for rehearing is granted, ~~such~~ the order suspends the effect of the original decision until the matter is decided on rehearing.

~~(b) If no motion for rehearing is filed or upon denial of a motion for rehearing, the clerk of the appellate courts shall, unless the court otherwise orders, issue a mandate on the decision of the Supreme Court to the district court together with a copy of the opinion.~~

COMMENT

The language of Rule 7.06 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

Former subsection (b) has been deleted because issuance of the mandate is now covered in Rule 7.03.

Rule 7.07

~~APPELLATE COSTS AND FEES AND ATTORNEY FEES~~
APPELLATE COSTS AND FEES AND ATTORNEY FEES

(a) ~~GENERAL.~~ **Generally.**

(1) **Fees and Expenses Separately Assessed When Applicable.** In ~~any~~ an appellate case there ~~shall~~ will be separately assessed, when applicable, all fees for service of process, witness fees, reporter's fees, ~~allowance for~~ fees and expenses of a master or commissioner appointed by the appellate court, and any other proper fees and expenses.

(2) **Court Approval or Statutory Authority Required.** ~~All such fees~~ An appellate court must approve fees and expenses assessed under this rule ~~shall be approved by an appellate court~~ unless specifically fixed by statute.

(3) **Appellate Court May Require Advance Deposit.** ~~When any such fees and expenses are to be anticipated in a case, the~~ An appellate court may require ~~the~~ a ~~parties to the proceeding~~ party to make a ~~deposits~~ deposit in advance to secure the ~~same~~ payment of anticipated fees and expenses under this rule.

(4) **Fees and Expenses May Be Apportioned.** ~~In disposing of any case before it, an~~ An appellate court may apportion and assess ~~any~~ a part of the original docket fee, the expenses for transcripts, and any additional fees and expenses allowed in the case, against ~~any~~ one or more of the parties ~~in such manner~~ as justice may require.

(5) **Recovery of Docket and Transcript Fees on Reversal of District Court.** When a decision of the district court is reversed, the mandate will direct that appellant recover the original docket fee and expenses for transcripts, if any.

(b) ~~ATTORNEY FEES.~~ **Attorney Fees.**

(1) **Generally.** An ~~A~~appellate ~~courts~~ court may award attorney fees for services on appeal in ~~any~~ a case in which the ~~trial~~ district court had authority to award attorney fees.

~~Any subsection (b) motion for attorney fees on appeal shall be made pursuant to Rule 5.01. An affidavit shall be attached to the motion specifying: (1) the nature and extent of the services rendered; (2) the time expended on the appeal; and (3) the factors considered in determining the reasonableness of the fee. (See KRPC 1.5 Fees.)~~

(2) **Motion for Attorney Fees.** ~~The~~ A motion for attorney fees on appeal must be made under Rule 5.01 and ~~shall~~ be filed ~~with the clerk of the appellate courts~~ ~~no~~ not later than ~~fifteen (15)~~ 14 days after oral argument. If oral argument is waived, the motion ~~shall~~ must be filed ~~no~~ not later than ~~fifteen (15)~~ 14 days after ~~either~~ the day ~~of~~ argument is ~~waiver~~ waived or the date of the letter assigning the case to a non-argument calendar, whichever is later. An affidavit must be attached to the motion specifying:

(A) the nature and extent of the services rendered;

(B) the time expended on the appeal; and

(C) the factors considered in determining the reasonableness of the fee. (See KRPC 1.5 Fees.)

(c) ~~FRIVOLOUS APPEALS.~~ **Frivolous Appeal.** If ~~the~~ an appellate court finds that an appeal has been taken frivolously, or only for the ~~purposes~~ purpose of harassment or delay, it may assess against ~~an~~ the appellant or appellant's counsel, or both, the cost of reproduction of the appellee's brief and a reasonable attorney fee for the appellee's counsel. A motion for attorney fees under this subsection ~~shall be filed in the manner set forth in~~ must comply with subsection (b)(2). If the motion is granted, ~~T~~the mandate ~~shall~~ ~~then~~ must include a statement of ~~any such~~ the assessment, and execution may issue ~~thereon~~ on the assessment as for any other judgment, or in an original case the clerk of the appellate courts may ~~cause~~ issue an execution ~~to issue~~.

(d) ~~UNNECESSARY TRANSCRIPTS.~~ **Unnecessary Transcript.** ~~On~~ An appellate court — on its own ~~motion,~~ or on the motion of an aggrieved party filed not later than ~~fourteen (~~14~~)~~ days after an assessment of costs ~~hereunder, the appellate court~~ under this rule — may assess against a party or ~~his~~ the party's counsel, or both, all or ~~any~~ part of the cost of the trial transcript ~~which~~ that the court finds ~~to have been~~ was prepared as the result of ~~any~~ an unreasonable refusal to stipulate ~~pursuant to a written request and in accordance with~~ under Rule 3.03 to the preparation of less than a complete transcript of the proceedings in the district court.

COMMENT

The language of Rule 7.07 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

The time limit in subsection (b)(2) was changed from 15 days to 14 days, consistent with time frames in the Code of Civil Procedure.

TRANSFER TO AND REVIEW BY SUPREME COURT

Rule 8.01

~~TRANSFER TO SUPREME COURT ON CERTIFICATE~~
TRANSFER TO SUPREME COURT ON CERTIFICATE

(a) **Court of Appeals May Request Transfer.** ~~Whenever the~~ The Court of Appeals ~~shall~~ may request that an undetermined case pending before it be transferred to the Supreme Court for final determination~~,~~.

(b) **Form and Content of Request.** ~~such~~ A request for transfer under this rule ~~shall~~ must be by certificate of the ~~C~~chief ~~J~~judge of the Court of Appeals, filed with the clerk of the appellate courts~~,~~ and accompanied by ~~eight (~~8~~)~~ copies. The certificate ~~shall~~ must:

(1) ~~set forth~~ state the nature of the case~~,~~;

(2) ~~shall~~ demonstrate that ~~such~~ the case is within the jurisdiction of the Supreme Court~~,~~; and

(3) ~~shall~~ show the existence of one or more of the grounds for transfer specified in K.S.A. 20-3016(a)~~. As may be appropriate, such certificate shall specify~~ by specifying:

~~(a)~~(A) ~~Which~~ the issue or issues ~~are~~ not within the jurisdiction of the Court of Appeals, with citation to controlling constitutional, statutory, or case authority;

~~(b)~~(B) ~~The~~ the subject matter of the case ~~which~~ that has significant public interest; ~~or~~

~~(c)~~(C) ~~The~~ the particular legal ~~questions~~ question raised ~~which~~ that ~~have~~ has major public significance~~.~~; or

(D) ~~If the request is made under K.S.A. 20-3016(a)(4), the certificate shall contain~~ sufficient data concerning the state of the docket of the Court of Appeals and of the Supreme Court to demonstrate that the expeditious administration of justice requires ~~such~~ the transfer.

COMMENT

The language of Rule 8.01 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 8.02

~~TRANSFER TO SUPREME COURT ON MOTION~~
TRANSFER TO SUPREME COURT ON MOTION

(a) **Party May Request Transfer.** ~~Whenever a~~ A party ~~shall~~ may request~~, pursuant to~~ under K.S.A. 20-3017~~,~~ that an undetermined case pending in the Court of Appeals be transferred to the Supreme Court for final determination~~,~~.

(b) **Timing and Content of Motion.** ~~such request shall be by~~ A motion for transfer must be filed with the clerk of the appellate courts, accompanied by ~~eight (~~8~~)~~ copies, ~~within~~ not later than ~~thirty (~~30~~)~~ days after service of the notice of appeal. The motion ~~shall~~ must:

(1) ~~set forth~~ state the nature of the case~~,~~;

(2) ~~shall~~ demonstrate that ~~such~~ the case is within the jurisdiction of the Supreme Court~~,~~; and

(3) ~~shall~~ show the existence of one or more of the grounds for transfer specified in K.S.A. 20-3016(a)~~. As may be appropriate, such motion shall specify~~ by specifying:

~~(a)~~(A) ~~Which~~ the issue or issues ~~are~~ not within the jurisdiction of the Court of Appeals, with citation to controlling constitutional, statutory, or case authority;

~~(b)~~(B) ~~The~~ the subject matter of the case ~~which~~ that has significant public interest; ~~or~~

~~(c)~~(C) ~~The~~ the particular legal ~~questions~~ question raised ~~which~~ that ~~have~~ has major public significance~~.~~; or

(D) ~~If the request is made under K.S.A. 20-3016(a)(4), the motion shall contain~~ sufficient data concerning the state of the docket of the Court of Appeals and of the Supreme Court to demonstrate that the expeditious administration of justice requires ~~such~~ the transfer.

COMMENT

The language of Rule 8.02 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 8.03

~~SUPREME COURT REVIEW OF COURT OF APPEALS DECISION~~
SUPREME COURT REVIEW OF COURT OF APPEALS DECISION

(a) ~~PETITION.~~ **Petition.** ~~Any~~ A party aggrieved by a decision of the Court of Appeals may petition the Supreme Court for discretionary review under K.S.A. 20-3018. ~~For the purpose of~~ In this rule, "decision" means any formal or memorandum opinion, order, or involuntary dismissal ~~pursuant to~~ under Rule 5.05.

~~(1) *Time for Filing*. The petition shall be filed with the Clerk of the Appellate Courts within thirty (30) days after the date of the decision of the Court of Appeals. The thirty-day period for filing a petition for review is jurisdictional.~~

~~(2) *Filing; Service*. The petitioner shall file the original and nine (9) copies of the petition with the Clerk of the Appellate Courts. In addition, within thirty (30) days after the date of the decision of the Court of Appeals, one copy shall be served on all parties who have appeared in the Court of Appeals.~~

(1) **Filing and Service.** Not later than 30 days after the date of the decision of the Court of Appeals, the petitioner must file the original and 9 copies of the petition with the clerk of the appellate courts and serve a copy on each party that has appeared in the Court of Appeals. The 30-day period for filing a petition for review is jurisdictional.

~~(3)~~(2) ~~*Effect of Motion for Rehearing or Modification.*~~ **Effect of Motion for Rehearing or Modification.** The filing of a petition for review ~~under this rule~~ does not preclude the filing of a timely motion for rehearing or modification under Rule 7.05. If a timely motion for rehearing or modification is filed, the Court of Appeals ~~shall~~ retains jurisdiction over the case and ~~shall~~ will proceed ~~in accordance with~~ under Rule 7.05. ~~No action will be taken by the Supreme Court~~ The Supreme Court will take no action on a petition for review until the Court of Appeals has made a final determination of all motions for rehearing and modification ~~pursuant to~~ under Rule 7.05.

~~(4)~~(3) ~~*Form.*~~ **Form of Petition.** A petition for review ~~shall~~ must be in the form of a brief, ~~conforming~~ complying ~~to~~ with the applicable provisions of Rule 6.07. The cover of the petition ~~shall~~ must be white, and the petition ~~shall~~ may not exceed ~~fifteen (~~15~~)~~ pages in length, exclusive of the cover, table of contents, appendix, and certificate of service.

~~(5)~~(4) ~~*Contents.*~~ **Content of Petition.** The petition ~~shall~~ must contain concise statements of the following, in the order indicated:

~~(a)~~(A) A prayer for review, clearly stating the nature of the relief sought.

~~(b)~~(B) The ~~D~~date of the decision of the Court of Appeals.

~~(c)~~(C) A ~~S~~statement of the issues decided by the Court of Appeals of which review is sought. The court will not consider ~~I~~issues not presented ~~in the petition,~~ or fairly included ~~therein,~~ in the petition ~~will not be considered by the court~~. The court, however, may~~, however, at its option,~~ address a plain error not presented. In a civil case, the petitioner ~~shall~~ also must list, separately and without argument, ~~those~~ additional issues decided by the district court ~~that~~ which were presented to, but not decided by, the Court of Appeals, which the petitioner wishes to have determined if review is granted. In a criminal case, the Supreme Court will not review a conviction reversed by the Court of Appeals unless the ~~prosecuting jurisdiction~~ prosecution preserves the issue by filing a petition or cross-petition for review.

~~(d)~~(D) A short statement of relevant facts. Facts correctly stated in the opinion of the Court of Appeals need not be restated.

~~(e)~~(E) A short argument, including appropriate ~~authorities~~ authority, stating why review is warranted.

~~(f)~~(F) An appendix containing a copy of the opinion of the Court of Appeals. The appendix also ~~shall~~ must include copies of opinions, findings of fact, conclusions of law, orders, judgments, or decrees issued by the district court or administrative agency ~~from which review was taken to the Court of Appeals~~, if relevant to the issues presented for review.

(b) ~~CROSS-PETITION.~~ **Cross-Petition.** A respondent may file a cross-petition for review.

~~(1) *Time for Filing; Form; Contents.* Within fourteen (14) days from the date a petition for review is filed, a respondent may file and serve a cross-petition for review. A cross-petition shall be in the same form, length, and have the same contents, in the same order, as the petition.~~

~~(2) *Filing; Service.* The cross-petitioner shall file the original and nine (9) copies of the cross-petition with the Clerk of the Appellate Courts. In addition, one copy shall be served on all parties who have appeared in the Court of Appeals.~~

(1) **Filing and Service.** Not later than 14 days after the date a petition for review is filed, the respondent must file the original and 9 copies of a cross-petition for review with the clerk of the appellate courts and serve a copy on all parties that have appeared in the Court of Appeals.

(2) **Form and Content of Cross-Petition.** A cross-petition must be in the same form, length, and have the same contents, in the same order, as the petition.

(c) ~~RESPONSE.~~ **Response.** A party opposing a petition or cross-petition for review may file a response.

(1) ~~*Time for Filing; Service.*~~ **Filing and Service.** ~~Any party wishing to oppose the petition or cross-petition may file a response within fourteen (14) days from the date the petition or cross-petition is filed. The original and nine copies shall be filed with the Clerk of the Appellate Courts. In addition, one copy shall be served on all parties who have appeared in the Court of Appeals.~~ Not later than 14 days after the petition or cross-petition for review is filed, the party must file the original and 9 copies of a response to the petition or cross-petition with the clerk of the appellate courts and serve a copy on all parties that have appeared in the Court of Appeals.

(2) ~~*Form.*~~ **Form of Response.** ~~The~~ A response ~~shall~~ must comply with Rule 6.07 and ~~shall~~ may not exceed ~~fifteen (~~15~~)~~ pages, exclusive of the cover, table of contents, appendix, and certificate of service. The cover of the response ~~shall~~ must be white.

(3) ~~*Contents.*~~ **Content of Response.** ~~The~~ A response ~~shall~~ must be confined to argument ~~in~~ that ~~reply~~ replies to issues presented in the petition or cross-petition for review~~,~~ or ~~to argument that~~ provides alternative grounds for ~~affirmance of~~ affirming the decision of the Court of Appeals, provided those grounds were raised and briefed in the Court of Appeals. In a civil case, the response also may present for review adverse rulings or decisions of the district court that should be considered by the Supreme Court in the event of a new trial, provided that the respondent raised ~~such~~ the issues in the Court of Appeals.

(4) ~~*Effect of Failure to File Response.*~~ **Effect of Failure to File Response.** Failure to file a response ~~shall~~ is not ~~be~~ an admission that the petition should be granted.

(d) ~~REPLY.~~ **Reply.** ~~The~~ A reply ~~should be addressed~~ is permitted to an ~~arguments~~ argument raised in ~~the~~ a response ~~that~~ which ~~are~~ is not covered sufficiently in the petition or cross-petition. ~~The~~ A reply must be filed not later than 14 days after service of the response and may not exceed ~~ten (~~10~~)~~ pages in length, exclusive of the cover, table of contents, appendix, and certificate of service. ~~The court need not delay decision pending the filing of a reply.~~

(e) ~~DISCRETION IN GRANTING REVIEW.~~ **Discretion In Granting Review.**

(1) ~~*Review as a Matter of Right.*~~ **Review as a Matter of Right.** ~~As provided by~~ Pursuant to K.S.A. 60-2101(b) and ~~K.S.A.~~ 22-3602(d), ~~any~~ a party may ~~appeal~~ petition as a matter of right from a final decision of the Court of Appeals in ~~any~~ a

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 decision of the Court of Appeals.

(2) ~~*Discretionary Review.*~~ **Discretionary Review.** In ~~all other~~ a ~~cases~~ case other than one described in paragraph (1), review by petition is not a matter of right, but of judicial discretion. ~~All~~ A ~~petitions~~ petition for review will be considered ~~en banc~~ by all justices, and the vote of three justices ~~shall be~~ is required to grant ~~any~~ the petition ~~for review~~.

(3) ~~*Purpose of Petition.*~~ **Purpose of Petition.** The purpose of ~~the~~ a petition for review, cross-petition, response, and reply is to ~~set forth~~ state the ~~reasons~~ reason why the Supreme Court should grant or deny review of the decision of the Court of Appeals. Generally, the only documents considered by the Supreme Court will be the petition for review, cross-petition, response, and reply. The record on appeal and ~~B~~briefs filed in the Court of Appeals~~, briefs filed~~ or in support of a petition for rehearing or modification~~, and the record on appeal~~ generally will not be considered in acting on a petition or cross-petition for review.

(f) ~~ORDER DENYING REVIEW; EFFECT.~~ **Order Denying Review; Effect.** If the Supreme Court denies review, the ~~Clerk~~ clerk of the appellate courts ~~shall~~ must ~~so~~ notify the parties of the denial. The decision of the Court of Appeals ~~shall be~~ is final as of the date of the decision denying review, and the ~~mandate shall be issued by the Clerk forthwith~~ clerk must issue the mandate promptly. ~~The~~ A denial of a petition for review ~~of a Court of Appeals' decision~~ imports no opinion on the merits of the case. The denial of a petition for review is not subject to a motion for reconsideration by the Supreme Court.

(g) ~~ORDER GRANTING REVIEW; SUBSEQUENT PROCEDURE.~~ **Order Granting Review; Subsequent Procedure.**

(1) ~~*Issues Subject to Review.*~~ **Issues Subject to Review.** ~~The~~ An order granting review may limit the ~~questions~~ issues on review. If review is not limited, the issues before the Supreme Court include all issues properly before the Court of Appeals ~~that~~ which the petition for review or cross-petition allege were decided erroneously by the Court of Appeals. In civil cases, the Supreme Court may, but need not, consider other issues that were presented to the Court of Appeals and that the parties have preserved for review.

(2) ~~*Briefs; Record.*~~ **Briefs; Record.** Unless the Supreme Court otherwise orders, the issues to be reviewed ~~shall~~ will be considered on the basis of the record and briefs previously filed with the Court of Appeals. ~~Within~~ Not later than ~~fourteen (~~14~~)~~ days ~~of~~ after the date of the order granting review, the parties ~~shall~~ must file with the ~~C~~clerk of the ~~A~~appellate ~~C~~courts ~~ten (~~10~~)~~ additional copies of the briefs originally filed with the Court of Appeals.

(3) ~~*Supplemental Briefs.*~~ **Supplemental Briefs.** ~~Within~~ Not later than ~~thirty (~~30~~)~~ days after the date of the order granting review, ~~any~~ a party may file a supplemental brief. ~~Any~~ An opposing party may file a brief in response to a supplemental brief ~~within~~ not later than ~~thirty (~~30~~)~~ days ~~from~~ after the date the supplemental brief is filed. Except by order of the Supreme Court, a supplemental brief ~~shall~~ may not exceed one-half the number of pages permitted for original briefs ~~as prescribed by~~ under Rule 6.07.

(4) ~~*Oral Argument.*~~ **Oral Argument.** Unless otherwise ordered by the Supreme Court, the party whose petition for review was granted will argue first and may reserve time for rebuttal.

(h) ~~OTHER DISPOSITIONS.~~ **Other Dispositions.**

(1) ~~*Review Improvidently Granted.*~~ **Review Improvidently Granted.** If the Supreme Court determines that review was improvidently granted, ~~a *per curiam* opinion~~ it may ~~be issued~~ issue an order stating that the petition for review was improvidently granted and that the Court of Appeals' opinion or disposition of the case is ~~approved~~ final.

(2) **Voluntary Dismissal.** Before an opinion on review is filed, a party that has filed a petition for review may dismiss the petition by stipulation or by filing with the clerk of the appellate courts and serving on all parties a notice of dismissal. A dismissal of one party's petition does not affect any other party's petition or cross-petition.

~~(2)~~(3) ~~*Remand for Reconsideration.*~~ **Remand for Reconsideration.** When review ~~has been~~ is granted, the Supreme Court may remand the appeal to the Court of Appeals, district court, or agency for reconsideration of issues in light of authority identified in the Supreme Court's order or may dispose of the issues as it deems appropriate.

~~(3)~~(4) ~~*Issues Not Decided by Court of Appeals.*~~ **Issues Not Decided by Court of Appeals.** In a civil case, if issues decided by the district court were presented to, but not decided by, the Court of Appeals and review ~~has been preserved as to those issues~~ of those issues was preserved, the Supreme Court may consider and decide ~~such~~ the issues, ~~may~~ remand the appeal to the Court of Appeals for decision of ~~such~~ the issues, or ~~may make such other disposition with respect to such~~ dispose of the issues as it deems appropriate.

~~(4)~~(5) ~~*Moot Questions.*~~ **Moot Questions.** If a case becomes moot after a petition for review has been granted, the Supreme Court may dismiss the appeal or, in a civil case, ~~at the discretion of the Court, may~~ review the decision of the district court.

(i) ~~EFFECT OF COURT OF APPEALS' DECISION PENDING REVIEW.~~ **Effect of Court of Appeals Decision Pending Review.** The timely filing of a petition for review ~~shall~~ stays the issuance of the mandate of the Court of Appeals. Pending the determination of the Supreme

Court on the petition for review ~~or~~ and during the time in which ~~to file~~ a petition for review may be filed, the opinion of the Court of Appeals is not binding on the parties~~,~~ or on the district courts. ~~Any~~ An interested person ~~who~~ that wishes to cite a Court of Appeals opinion for persuasive authority before the mandate has issued ~~shall~~ must note in the citation that the case is not final and may be subject to review or rehearing. If a petition for review is granted, the decision or opinion of the Court of Appeals has no force or effect, and the mandate ~~shall~~ will not issue until disposition of the appeal on review. If a petition for review is granted in part, a combined mandate ~~shall~~ will issue when appellate review is concluded, unless otherwise specifically directed by the Supreme Court. If review is refused, the decision of the Court of Appeals ~~shall be~~ is final as of the date of the refusal, and ~~the mandate of~~ the clerk of the appellate courts promptly must issue the mandate of the Court of Appeals ~~shall be issued by the Clerk forthwith~~.

COMMENT

The language of Rule 8.03 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

Under subsection (h)(1), if review was improvidently granted, the Supreme Court Rules Advisory Committee recommends that the matter be disposed of by order rather than opinion.

Also under subsection (h)(1), the Committee recommends that the Court of Appeals opinion be "final" rather than "approved" to avoid giving the disposition more weight than would occur when review is denied under subsection (f).

Subsection (h)(2) establishes the procedure for voluntary dismissal of a petition for review.

Subsection (h)(3) expands the Supreme Court's alternatives on remand.

ORIGINAL ACTIONS

Rule 9.01

~~ORIGINAL ACTIONS~~
ORIGINAL ACTION

~~(a) CASES OF CONCURRENT JURISDICTION. Original jurisdiction of an appellate court will not ordinarily be exercised if adequate relief appears to be available in a district court. If relief is available in the district court, the petition shall state, in addition to all other necessary allegations, the reasons why the action is brought in the appellate court instead of in the district court. In the event the appellate court finds that adequate relief is available in the district court, it may dismiss the action or order it transferred to the appropriate district court.~~

~~(b) PETITION: SERVICE AND FILING. An original and eight (8) legible copies of petitions in original actions shall be filed with the clerk of the appellate courts with proof of service on all respondents or their counsel of record. Where the relief sought is an order in mandamus against a judge involving pending litigation before such judge, the judge and all parties to the pending litigation shall be deemed respondents. The petition shall contain a statement of the facts necessary to an understanding of the issues presented and a statement of the relief sought. It shall be accompanied by a short memorandum of points and authorities, and such documentary evidence as is available and necessary to support the facts alleged. The plaintiff in an original action shall pay a docketing fee of $125.00. Upon receipt of the prescribed docket fee or an affidavit of indigency the clerk shall docket the petition and submit it to the court. No docket fee shall be charged to file a petition for writ of habeas corpus.~~

(a) **Petition; Service and Filing.** The petitioner in an original action must file the original and 8 copies of a petition with the clerk of the appellate courts, with proof of service on all respondents or their counsel of record. When the relief sought is an order in mandamus against a judge involving pending litigation before that judge, the judge and all parties to the pending litigation are deemed respondents. The petition must contain a statement of the facts necessary to understand the issues presented and a statement of the relief sought. The petition must be accompanied by a short memorandum of points and authorities and available documentary evidence necessary to support the facts alleged. The petitioner must pay a docket fee of $125 and any applicable surcharge. On receipt of the prescribed docket fee or an affidavit of indigency, the clerk of the appellate courts must docket the petition and submit it to the court. No docket fee will be charged to file a petition for writ of habeas corpus.

(b) **Concurrent Jurisdiction.** An appellate court ordinarily will not exercise original jurisdiction if adequate relief appears to be available in a district court. If relief is available in the district court, a petition must state — in addition to all other necessary allegations — the reason why the action is brought in the appellate court instead of in the district court. If

the appellate court finds that adequate relief is available in the district court, it may dismiss the action or order it transferred to the appropriate district court. A dismissal under this subsection is not an adjudication on the merits.

(c) ~~*EX PARTE* DISPOSITION; ORDER DIRECTING RESPONSE.~~ **Court Action on Petition.** ~~If the court is of the opinion that the relief should not be granted, it will deny the petition. If the right to the relief sought is clear and it is apparent that no valid defense to the petition can be offered, the relief sought may be granted *ex parte*. A dismissal under paragraph (a) of this rule because adequate relief appears to be available in the district court is not an adjudication on the merits. If the petition is not granted or denied *ex parte*, the court will order that the respondent(s) either show cause why the relief should not be granted or file an answer to the petition within the time fixed by the order. The order shall be served by the clerk on all named respondents by mail or as otherwise directed by the court. Two or more respondents may respond jointly. A judge named as respondent in a mandamus action who does not desire to appear in the proceeding may so advise the clerk and all parties by letter, but the petition shall not thereby be taken as admitted. Any response may be accompanied by such additional documentary evidence as the respondent deems necessary for the court's understanding of the case.~~

(1) **Denial.** If the court determines that relief should not be granted, it will deny the petition.

(2) ***Ex Parte* Disposition.** If the right to relief is clear and it is apparent that no valid defense to the petition can be offered, relief may be granted *ex parte*.

(3) **Order Directing Response.** If the petition is not granted or denied *ex parte*, the court will order that the respondent(s) either show cause why relief should not be granted or file an answer to the petition within the time fixed by the order. The following rules apply:

(A) The order must be served by the clerk of the appellate courts on all named respondents by mail or as otherwise directed by the court.

(B) Two or more respondents may respond jointly.

(C) A judge named as respondent in a mandamus action who decides not to appear in the proceeding may so advise the clerk and all parties by letter, but the petition will not thereby be taken as admitted.

(D) A response may be accompanied by additional documentary evidence necessary for the court's understanding of the case.

(d) ~~THE RECORD.~~ **The Record.** The petition, response, and ~~any~~ accompanying documents ~~accompanying either shall~~ constitute the record. If ~~it appears that~~ there are disputed questions of material fact which can ~~only~~ be resolved only by oral testimony, the court may refer the matter to a judge of the district court or ~~to~~ a commissioner ~~for the purpose of~~ to ~~taking~~ take ~~such~~ the testimony and ~~making~~ make a report ~~containing recommended~~ recommending findings of fact. ~~Such~~ The commissioner's report and the transcript of the testimony ~~shall~~ must be filed with the clerk of the appellate courts and will become part of the record.

(e) ~~FURTHER PROCEEDINGS.~~ **Further Proceedings.** If the petition, response, and record clearly indicate the appropriate disposition, the court will enter an order without further briefs or argument. Otherwise the court ~~will normally~~ may order a prehearing conference under Rule 1.04~~,~~. ~~and in any event~~ The court will enter an order fixing dates for the filing of briefs. The proceeding ~~will~~ thereafter will be governed by the rules relating to appellate procedure.

COMMENT

The language of Rule 9.01 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

Rule 9.02

~~UTILITY RATE CASES~~
UTILITY RATE CASE

(a) **Filing; Docket Fee.** When an application for judicial review of an order of the state corporation commission is filed in the Court of Appeals, ~~such~~ the filing ~~shall be~~ is treated, for the purpose of further proceedings, in the same manner as the docketing of an appeal from the district court, and the rules relating to appellate practice ~~shall~~ apply. ~~An~~ The original and ~~five (~~5~~)~~ copies of ~~the~~ an application for judicial review ~~shall~~ must be filed with the clerk of the appellate courts, ~~in addition to~~ accompanied by the docket fee and any applicable surcharge ~~required by~~ under Rule 2.04.

(b) **Record; Briefing Schedule.** Unless otherwise ordered by the court:

~~(a)~~(1) The ~~record shall be transmitted by the commission to the court forthwith~~ commission must transmit promptly the record to the clerk of the appellate courts.

~~(b)~~(2) An ~~A~~applicant's brief ~~shall~~ must be filed ~~within~~ not later than ~~twenty (20)~~ 21 days after the application for review is filed.

~~(c)~~(3) A respondent's brief ~~shall~~ must be filed ~~within~~ not later than ~~twenty (20)~~ 21 days after service of applicant's brief.

~~(d)~~(4) ~~Any~~ A reply brief ~~shall~~ must be filed not ~~less~~ later than ~~seven (~~7~~)~~ days before the date set for hearing.

~~Notwithstanding the provisions of Rule 7.02(d), the clerk shall give the attorneys not less than fifteen (15) days' notice of the time and place of hearing.~~

(c) **Notice of Hearing.** Rule 7.02(e) does not apply. The clerk of the appellate courts must give the attorneys not less than 14 days' notice of the time and place of hearing.

(d) **Extension of Time Requires Waiver in Certain Cases.** In a ~~cases~~ case ~~where~~ in which a public utility claims the rates allowed by the commission are inadequate, ~~no~~ a motion for extension of time to file the utility's brief ~~shall~~ will not be considered unless it includes or is accompanied by a waiver of the ~~one hundred twenty (120) day~~ 120-day time limit imposed by K.S.A. 66-118g(b). So that respondent may have an equal amount of time to file its brief, ~~such~~ the waiver ~~shall~~ must be ~~to the extent of~~ for at least twice the additional time requested by the utility.

(e) **Prehearing Conference.** ~~If a prehearing conference is desired, a~~ A motion that requests a prehearing conference ~~to that effect shall~~ must be filed ~~within~~ not later than ~~seven (7)~~ days after the filing of the application for judicial review. A motion for a prehearing conference filed later ~~shall~~ will be considered only ~~upon~~ on good cause ~~shown~~.

COMMENT

The language of Rule 9.02 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

Time limits in subsection (b)(2) and (3) were changed from 20 days to 21 days, consistent with time frames in the Code of Civil Procedure.

Rule 9.03

~~TAX APPEAL CASES~~
TAX APPEAL CASE

(a) **Petition.** When an appeal is taken from the court of tax appeals to the Court of Appeals ~~pursuant to~~ under K.S.A. 74-2426, the appellant ~~shall~~ must file with the clerk of the appellate courts a petition for judicial review in compliance with K.S.A. 77-614 ~~with the clerk of the appellate courts~~. The petition for judicial review ~~shall~~ must be:

(1) accompanied by certified copies of the order of the court of tax appeals, the petition for reconsideration, and the court of tax appeals~~'~~ order on the petition for reconsideration~~.~~;

(2) ~~The petition for judicial review shall be~~ accompanied by the docket fee, any applicable surcharge, and the docketing statement required by Rule 2.04~~.~~; and

(3) ~~A copy of the petition for judicial review shall be~~ served ~~as provided in~~ in compliance with K.S.A. 77-613 through ~~K.S.A.~~ 77-615 ~~and amendments thereto~~.

(b) **Statutory Bond.** When ~~the~~ an appeal under K.S.A. 74-2426 relates to excise, income, or ~~inheritance~~ estate taxes — and the appellant is not ~~by anyone other than~~ the director of taxation~~,~~ — the statutory bond required by K.S.A. 74-2426(d) ~~shall~~ must accompany the petition for judicial review and be filed with the clerk of the appellate courts. Unless ~~otherwise requested~~ a bond for a lesser amount is requested, the bond ~~shall~~ must be in the amount of 125% of the tax assessed and ~~shall~~ must be approved by the clerk. ~~If a bond in a lesser amount is requested, the appellant shall submit a motion pursuant to Rule 5.01 with the petition for judicial review in lieu of the bond.~~ Appellant may request a bond in a lesser amount by filing with the petition for judicial review a motion under Rule 5.01 in lieu of the bond. The appropriate bond ~~shall thereafter~~ then must be filed ~~within~~ not later than 14 days ~~of the~~ after entry of the order granting or denying the motion.

(c) **Record and Transcript Requests.** ~~Within 14 days of the filing of the petition for judicial review, the appellant shall request in writing that the court of tax appeals certify the record of the proceedings and, if a hearing was held before the court, that a transcript of the hearing be prepared. The transcript shall be ordered and prepared and advance payment made in accordance with Rule 3.03. The appellant shall file copies of the requests for transcript and certification of the record with the clerk of the appellate courts and serve copies upon all other parties at the time the requests are filed with the court of tax appeals. Upon completion of the transcript, the court of tax appeals shall forthwith transmit the record and transcript to the clerk of the appellate courts and send notice of such transmission with a copy of the table of contents of the record to the parties. The brief of the appellant shall be due thirty (30) days from the date the record is transmitted to the appellate courts.~~ Not later than 14 days after the filing of a petition for judicial review under subsection (a), the appellant must:

(1) request in writing that the court of tax appeals certify the record of the proceedings;

(2) if a hearing before the court was recorded, request a transcript; and

(3) file copies of the requests for transcript and certification of the record with the clerk of the appellate courts and serve copies on all other parties at the time the requests are filed with the court of tax appeals.

(d) **Transcript Preparation; Advance Payment.** The transcript must be prepared and advance payment made under Rule 3.03.

(e) **Transmission.** On completion of the transcript, if any, the court of tax appeals promptly must transmit the record to the clerk of the appellate courts and send notice of the transmission — with a copy of the table of contents of the record — to the parties.

(f) **Appellant's Brief.** The brief of the appellant must be filed not later than 30 days after the date the record is transmitted to the appellate courts.

~~(d)~~(g) **Rules Relating to Appellate Practice Apply.** ~~The briefs of the parties and all other proceedings and matters shall be governed by the rules relating to appellate practice.~~ The rules relating to appellate practice govern all other proceedings and matters in an appeal under K.S.A. 74-2426 not provided for in this rule.

COMMENT

The language of Rule 9.03 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

Subsection (b) has been amended to remove "inheritance taxes" and substitute "estate taxes," consistent with K.S.A. 74-2426.

RULE 9.04

~~WORKERS COMPENSATION CASES~~
WORKERS COMPENSATION CASE

(a) **Petition.** When an appeal is taken from the ~~W~~workers ~~C~~compensation ~~B~~board to the Court of Appeals under K.S.A. 44-556 ~~and amendments thereto~~, the appellant ~~shall~~ must file with the clerk of the appellate courts a petition for judicial review in compliance with K.S.A. 77-614 ~~with the clerk of the appellate courts~~. The petition for judicial review ~~shall~~ must be:

(1) accompanied by certified copies of the decision(s) of the administrative law judge, the request for ~~W~~workers ~~C~~compensation ~~B~~board review, and the order of the ~~W~~workers ~~C~~compensation ~~B~~board~~.~~;

(2) ~~The petition for judicial review shall be~~ accompanied by the docket fee, any applicable surcharge, and the docketing statement required by ~~Supreme Court~~ Rule 2.04~~.~~; and

(3) ~~A copy of the petition for judicial review shall be~~ served ~~as provided~~ in compliance with K.S.A. 77-613 through ~~K.S.A.~~ 77-615 ~~and amendments thereto~~.

(b) **Cross-appeal.** If ~~any~~ a ~~other~~ party seeks to ~~file a~~ cross-appeal ~~as provided by~~ under K.S.A. 44-556 ~~and amendments thereto~~, ~~that~~ the party ~~shall~~ must file a cross-petition for review ~~which~~ that complies with K.S.A. 77-614.

~~(b)~~(c) **Record and Transcript Requests.** ~~Within fourteen (14) days of the filing of the petition for judicial review, the appellant shall request in writing to the Director to certify the record of the proceedings. If a record was made of any hearing before the Board, a transcript shall be ordered by the appellant also within fourteen (14) days of filing of the petition for judicial review. The transcript shall otherwise be prepared and advance payment made in accordance with Supreme Court Rule 3.03. The appellant shall file copies of the request(s) for transcript and certification of the record with the clerk of the appellate courts and serve copies upon all other parties at the time the request(s) are filed with the Director. Upon completion of the transcript of the Board hearing, if any, the Director shall forthwith transmit the record to the clerk of the appellate courts and send notice of such transmission with a copy of the table of contents of the record to the parties. The brief of the appellant shall be due thirty (30) days from the date the record is transmitted to the appellate courts.~~ Not later than 14 days after the filing of a petition for judicial review under subsection (a), the appellant must:

(1) request in writing that the director certify the record of the proceedings;

(2) if a hearing before the board was recorded, request a transcript; and

(3) file copies of the requests for transcript and certification of the record with the clerk of the appellate courts and serve copies on all other parties at the time the requests are filed with the director.

(d) **Transcript Preparation; Advance Payment.** The transcript must be prepared and advance payment made under Rule 3.03.

(e) **Transmission.** On completion of the transcript, if any, the director promptly must transmit the record to the clerk of the appellate courts and send notice of the transmission — with a copy of the table of contents of the record — to the parties.

(f) **Appellant's Brief.** The brief of the appellant must be filed not later than 30 days after the date the record is transmitted to the appellate courts.

~~(c)~~(g) **Rules Relating to Appellate Practice Apply.** ~~All other procedures and matters not provided for in this order shall be governed by the Supreme Court rules relating to appellate practice and applicable statutes.~~ The rules relating to appellate practice govern all other proceedings and matters in an appeal under K.S.A. 44-556 not provided for in this rule.

COMMENT

The language of Rule 9.04 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules. These changes are intended to be stylistic only.

EXPEDITED APPEALS

Rule 10.01

~~EXPEDITED APPEAL BY UNEMANCIPATED MINOR FOR WAIVER OF PARENTAL NOTICE REQUIREMENT~~
EXPEDITED APPEAL FOR WAIVER OF PARENTAL CONSENT REQUIREMENT

(a) **Docketing; Briefing; Oral Argument.** ~~Upon~~ On ~~receiving~~ receipt ~~the~~ of a notice of appeal ~~and the~~ from a district judge's decision ~~as provided by~~ under Rule 173 of the ~~R~~rules ~~R~~relating to ~~D~~district ~~C~~courts, together with a certified copy of the district judge's opinion, the clerk of the appellate courts ~~shall~~ must docket the appeal in the Court of Appeals. No docketing statement ~~shall be~~ is required. Counsel for the minor ~~shall~~ must file the appellant's brief ~~within~~ not later than ~~seven (~~7~~)~~ days ~~of~~ after the date the appeal is docketed. No *amicus curiae* briefs will be accepted. Unless otherwise ordered by the Court of Appeals, no oral argument ~~shall~~ will be held.

(b) **Expedited Decision.** The Court of Appeals ~~shall~~ must expedite the determination of ~~any such~~ an appeal under this rule to the extent necessary to protect the rights of the minor. The decision of the Court of Appeals ~~shall~~ must be filed ~~no~~ not later than ~~fourteen (~~14~~)~~ days after the appeal is docketed.

(c) **Protection of Minor's Anonymity.** In ~~all~~ an appellate ~~proceedings~~ proceeding under this rule, the minor's anonymity ~~of the minor shall~~ must be protected. ~~All~~ A ~~motions~~ motion, ~~briefs~~ brief, or ~~opinions,~~ opinion ~~and~~ or ~~orders~~ order of the appellate court ~~shall~~ must refer to the minor as "Jane Doe."

(d) **Decision of the Court of Appeals.**

~~(c)~~(1) **Decision Not Subject to Reconsideration or Modification.** The decision of the Court of Appeals under this rule ~~shall~~ is not ~~be~~ subject to reconsideration or modification by the Court of Appeals.

(2) **If District Court Decision is Affirmed.** If the Court of Appeals affirms the decision of the district judge, the appellant may petition for discretionary review by the Supreme Court ~~pursuant to~~ under Rule 8.03. If ~~any such~~ a petition for review is not granted within ~~fourteen (~~14~~)~~ days after the petition is ~~filing~~ filed, the petition ~~shall be~~ is deemed denied. If ~~the appellant's~~ a petition for review is granted, the Supreme Court will review the matter on the record submitted to the Court of Appeals and will file its opinion ~~within~~ not later than ~~fifteen (15)~~ 14 days ~~from~~ after the date the petition is granted.

(3) **If District Court Decision is Reversed.** If the Court of Appeals reverses the decision of the district judge, the Court of Appeals' decision ~~shall~~ is not ~~be~~ subject to discretionary review by the Supreme Court, and the clerk of the appellate courts ~~shall~~ must ~~immediately~~ issue the mandate immediately.

~~(d)~~(e) **Computation of Time.** K.S.A. 60-206(a) ~~shall~~ governs ~~in~~ the ~~computing~~ computation ~~any~~ of a period of time prescribed by this rule.

COMMENT

The language of Rule 10.01 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

The word "notice" in the title was changed to "consent" to conform to amendments to K.S.A. 65-6705.

The time limit in subsection (d)(2) was changed from 15 days to 14 days, consistent with time frames in the Code of Civil Procedure.

RULE 10.02

~~DIRECT APPEALS IN DEATH PENALTY CASES~~
DIRECT APPEAL IN DEATH PENALTY CASE

(a) ~~General –~~ **Generally.** When a notice of appeal is filed in a criminal case in which a sentence of death has been imposed, the rules relating to appellate practice ~~shall~~ will govern ~~except where~~ unless otherwise provided by this rule.

(b) ~~Automatic Stay~~ **Automatic Stay.** ~~Upon the filing of a notice of appeal~~ When a notice of appeal is filed, the execution of a death sentence ~~shall be~~ is stayed until the appellate proceedings are concluded.

(c) ~~Preparation of Record on Appeal--Within thirty (30) days after notice from the clerk of the appellate courts that the appeal has been docketed, the clerk of the district court shall compile the record on appeal.~~ **Preparation of Record on Appeal.** The clerk of the district court must compile the record on appeal not later than 30 days after notice from the clerk of the appellate courts that the appeal has been docketed.

(d) ~~Transcripts~~ **Transcript.** A transcript ~~shall~~ must be prepared of all proceedings that have been reported by a court reporter or ~~which have~~ otherwise ~~been~~ recorded. ~~The~~ A transcript ~~shall~~ must be completed ~~within~~ not later than ~~ninety (90)~~ 120 days after service of ~~the~~ a request for transcript. ~~Extensions of time will not be granted, except for exceptional circumstances.~~

(e) ~~Time Schedule for Briefs~~ **Time Schedule for Briefs.** ~~The~~ An appellant's brief ~~shall~~ must be ~~due~~ filed ~~within~~ not later than ~~ninety (90)~~ 120 days after service of the certificate of filing of the transcript ~~in accordance with~~ under Rule 3.03. ~~The~~ An appellee's brief ~~shall~~ must be ~~due~~ filed ~~within~~ not later than ~~ninety (90)~~ 120 days after service of the appellant's brief. A reply brief, if any, ~~shall~~ must be ~~due~~ filed ~~within~~ not later than ~~forty-five (45)~~ 60 days after service of the brief to which the reply is made. ~~Extensions of time will not be granted, except for exceptional circumstances.~~

(f) ~~Length of Briefs~~ **Page Limitations.** The length of briefs ~~(exclusive of~~ — excluding the cover, table of contents, appendix, and certificate of service~~) shall~~ — may not exceed the following:

(1) Brief of Appellant — 100 pages;

(2) Brief of Appellee — 100 pages; and

(3) Reply Brief — 30 pages.

(g) ~~Oral Argument~~ **Oral Argument.** Oral ~~arguments~~ argument ~~will be~~ is limited to ~~thirty (30)~~ 60 minutes each for the appellant and the appellee.

(h) ~~Stay of Mandate~~ **Stay of Mandate.** Issuance of ~~the~~ a mandate in a capital ~~cases~~ case ~~which~~ that affirms a death sentence ~~shall be~~ is automatically stayed until the time for filing a petition for writ of certiorari in the United States Supreme Court has expired or, in a case in which a petition for writ of certiorari has been filed, until the clerk of the appellate courts is notified by the United States Supreme Court that the petition has been denied or, if the petition is granted, until the conclusion of proceedings in the United States Supreme Court.

COMMENT

The language of Rule 10.02 has been amended as part of the general restyling of the Rules Relating to Supreme Court, Court of Appeals, and Appellate Practice to make it more easily understood and to make style and terminology consistent throughout the Rules.

References to "exceptional circumstances" in subsections (d) and (e) have been removed, not to grant greater leniency, but rather to reaffirm that the rules relating to appellate practice generally apply to an extension for time in a death penalty case.

Time limitations in subsections (d), (e), and (g) have been increased to reflect experience with death penalty cases.

Subsection (h) was amended to address the circumstance when the United States Supreme Court grants a petition for writ of certiorari.