

IN THE SUPREME COURT OF THE STATE OF KANSAS

FILED

DEC 19 2016

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

ORDER

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

The attached Supreme Court Rules 1.05, 1.08, 2.04, 2.041, 3.02, 3.03, 3.06, 4.01, 4.01A, 4.02, 5.01, 5.02, 6.07, 6.09, 7.01, 7.02, 7.03, 8.01, 8.02, 8.03, and 9.02 are hereby amended, effective the date of this order.

The attached Supreme Court Rules 1.11, 1.12, 1.13, and 1.14 are hereby adopted, effective the date of this order.

BY ORDER OF THE COURT this 19th day of December, 2016.

FOR THE COURT



Lawton R. Nuss
Chief Justice

Attachments

Rule 1.05

FORM AND SERVICE OF PAPERS FILING GENERALLY

- (a) **Paper Size, Type, and Statutory Requirements.** Unless the court permits otherwise, every petition, brief, motion, application, or other paper filed with the clerk of the appellate courts must be in black type or print on an 8½" x 11" sheet, with one-inch margins. All filings are subject to K.S.A. 60-205, 60-210, and 60-211.
- (b) **Filing.** Every petition, brief, motion, application, or other paper filed with the clerk of the appellate courts must include the name, address, telephone number, fax number, and e-mail address of the person filing it. A paper filed by an attorney must include the attorney's Kansas registration number and indicate the party represented. If multiple attorneys appear on behalf of the same party, one must be designated lead 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.~~ **Paper Copies.** No paper copies of electronically filed documents are required from Kansas licensed attorneys who are active and in good standing.
- (d) **Time Computation.** In the appellate courts, time is computed under K.S.A. 60-206(a) and (d).
- (e) **Clerk's Duties.** The clerk of the appellate courts must keep a separate file for each case in which all filed documents must be preserved. The clerk must record the date on which each document is filed and must maintain an appearance docket comparable to that a clerk of the district court maintains under K.S.A. 60-2601.
- (f) **Electronic Format.** Documents filed electronically must be submitted in an Adobe portable document format (PDF) or another format later specified by the Supreme Court.
- (g) **Document Size.** An electronically filed document must not exceed 10 MB. For a document that exceeds this size restriction, an attorney should contact the office of the clerk of the appellate courts for assistance.
- (h) **Date and Effect of Electronic Filing.** An electronically filed document is deemed filed on the date and time reflected in the file stamp on the document. Electronically filed documents received on a Supreme Court holiday or after 12:00 a.m. Saturday through 11:59 p.m. Sunday will be deemed filed on the next business day that is not a Saturday, Sunday, or Supreme Court holiday.

Rule 1.08**FAX FILING**

- (a) **Limitation on Use of Fax Filing.** An attorney subject to mandatory electronic filing under Supreme Court Rule 1.14 cannot utilize fax filing.
- (b) **10-Page Limit.** A motion, pleading, or other document that does not require a filing fee will be accepted for filing by fax if the document, together with any supporting documentation, does not exceed 10 pages. Briefs and petitions for review may not be filed by fax. The fax transmission sheet required by subsection (d) and the certificate of service are not included in the 10-page limitation.
- (c) **No Page Limit Using Fax Filing Agency.** A party or an attorney may transmit a document by fax to a fax filing agency, without page limitation, for filing with an appellate court.
- (d) **Fax Transmission Sheet.** A document transmitted by fax must include a fax transmission sheet on the judicial council form.
- (e) **Copies.** Only one copy of a document must be transmitted. The clerk of the appellate courts will provide any additional copies required by these rules.
- (f) **When a Fax Filing is Deemed Filed.** A fax filing received by the court is deemed filed at the time recorded on the court's electronic fax log.
- (g) **Fax Signature.** A fax signature has the same effect as an original signature.
- (h) **Certificate of Service.** A certificate of service for a fax filing must state the date of service and the fax numbers of both the sender and any party served by fax.

Rule 1.11

SERVICE OF PAPERS GENERALLY

- (a) **Service.** Service is subject to K.S.A. 60-205.
- (b) **Service by Electronic Means.** A party agrees to service by electronic means under K.S.A. 60-205(b)(2)(F) when an attorney who is a registered electronic filing user enters an appearance on behalf of the party.
- (1) After a document has been approved by the clerk of the appellate courts, the electronic filing system generates a "Notice of Electronic Filing" available to registered case participants who have enrolled in the electronic filing system.
- (2) Transmission of the "Notice of Electronic Filing" to a registered attorney appearing as a case participant on behalf of a party is an acceptable form of service by electronic means.
- (c) **Certificate of Service.** When service is required, a certificate of service must be included as the last page of the document filed with the appellate courts. The certificate of service must include the manner in which service was made, must comply with the signature requirements as set forth in Supreme Court Rule 1.12, and must comply with subsection (d)(2) when applicable.
- (d) **Date of Service.** The following provisions apply to the date of service:
- (1) if service is obtained by the transmission of the "Notice of Electronic Filing" under subsection (b)(2), the date of service is the date reflected in the file stamp on the document; or
- (2) if service is obtained in a manner other than transmission of the "Notice of Electronic Filing," the certificate of service must also state the date on which service was made.

Rule 1.12**SIGNATURES****(a) Signature Requirements.**

- (1) **Electronic Signature.** Filings must include a signature block with the name of the filing user under whose ID and password the document is submitted along with "/s/[Name of Filing User]" typed in the space where the signature would otherwise appear and the other information required by K.S.A. 60-211 and Supreme Court Rule 111.
- (2) **Written Signature.** A filing user may also satisfy the signature requirement by scanning a document containing the filing user's written signature.
- (3) **Noncompliance.** A filing that does not comply with this provision will be deemed in violation of K.S.A. 60-211 and Supreme Court Rule 111. The document may be rejected via electronic notice or may be ordered stricken from the record.

(b) Signatures of Multiple Parties. Documents requiring signatures of more than one party may be filed electronically:

- (1) by submitting a scanned document containing all necessary written signatures,
- (2) by representing the consent of the other parties on the document, or
- (3) in any other manner approved by the court.

(c) Signature of the Clerk of the Appellate Courts. Records and judicial proceedings requiring the attestation of the clerk of the appellate courts may be authenticated by the clerk by using an electronic signature in lieu of the clerk's manual signature, and such electronic signature shall have the same legal effect as a manual signature.**(d) Verified Affidavit or Waiver.** A verified affidavit or waiver that is required to be signed by a person who is not counsel of record must be submitted by written signature as described in subsection (a)(2). The electronic signature described in subsection (a)(1) will not comply.

Rule 1.13

**NOTARIAL ACTS, ELECTRONIC NOTARIZATION, AND UNSWORN
DECLARATIONS**

- (a) **Notarial Act.** Documents subject to a notarial act may be scanned and electronically filed if the notarial act meets the requirements of the uniform law on notarial acts as set forth in K.S.A. 53-501 *et seq.*

- (b) **Electronic Notarization.** Electronic notarization may be used for electronically filed documents if the electronic notarization meets requirements adopted by the Kansas Secretary of State under K.S.A. 16-1611 and K.A.R. 7-43-1 *et seq.*

- (c) **Unsworn Declarations.** Documents subject to unsworn declarations may be electronically filed if the declaration meets the requirements of K.S.A. 53-601.

Rule 1.14**ELECTRONIC FILING IN THE APPELLATE COURTS OF KANSAS**

- (a) **Mandated Electronic Filing.** The following applies to the electronic filing system in the Kansas Supreme Court and Kansas Court of Appeals (appellate courts):
- (1) All Kansas licensed attorneys in good standing must electronically file any document submitted to the appellate courts.
 - (2) Only a Kansas licensed attorney in good standing is allowed to use the appellate courts' electronic filing system.
- (b) **Unavailability of the Electronic Filing System.** The unavailability of the electronic filing system does not constitute a basis for an extension of time in which to file any matter with the court and does not affect any applicable statute of limitations or other statutory deadlines, except as provided by law. The provisions of K.S.A. 60-206 shall apply if the appellate clerk's office is inaccessible due to unavailability of the electronic filing system.
- (c) **Pro Se Litigants.** Pro se litigants, except for Kansas licensed attorneys in good standing who are appearing pro se, cannot electronically file documents in the appellate courts' electronic filing system. Due to the transition of the appellate courts to electronic records, a party appearing pro se must file an original and one copy of any document filed with the appellate courts.

Rule 2.04

DOCKETING AN APPEAL

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

- (1) **Appellant.** Not later than 21 days after a notice of appeal is filed in a district court, the 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 appeal;
 - (C) a file-stamped certified copy of the journal entry, judgment form, or other appealable order or decision;
 - (D) a file-stamped certified copy of any posttrial motion and any ruling on the motion;
 - (E) a file-stamped certified copy of any certification under K.S.A. 60-254(b);
 - (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).
- (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.
- (3) **Required Sequence.** To electronically docket an appeal, an attorney must upload the required documents in the order listed under subsection (a)(1) or (a)(2) and file the required documents in a single submission in the appellate courts' electronic filing system.

- (b) **Prior Appeal to the District Court From Decision of Municipal, District Magistrate, or Pro Tem Judge.** If an appeal previously was taken to the district court, file-stamped certified copies of the municipal, district magistrate, or pro tem judge's order and the notice of appeal to district court must accompany the documents filed under subsection (a).
- (c) **Appeal From Decision of Administrative Tribunal.** If an appeal originates from an administrative tribunal's decision, certified copies of the agency decision, any motion for rehearing and the 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), an appellant must pay at the time of docketing — unless payment is excused or delayed under this subsection — a docket fee of \$145 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 is excused when:
- (A) the district court previously determined the appellant to be indigent, and the appellant's attorney certifies to the clerk of the appellate courts that the appellant remains indigent;
- (B) the district judge certifies that:
- (i) the judge believes the appellant is indigent; and
- (ii) in the interest of the appellant's right of appeal, an appeal should be docketed *in forma pauperis*; or
- (C) a poverty affidavit has been filed in lieu of a fee.
- (3) **Government Entities.** The state of Kansas and its agencies and all cities and counties in this state are exempted in a civil action from paying the docket fee required in paragraph (1). If, on final determination of a civil case, the costs are assessed against the state, a state agency, or a city or county in this state, the costs must include the amount of the docket fee.
- (e) **Clerk's Notice of Docketing.**
- (1) **Required Notice.** On filing of the documents required under this rule and the payment or excuse for nonpayment of the docket fee, the clerk of the appellate courts must:

- (A) notify all parties that the appeal has been docketed; and
 - (B) include in the notification the appellate number assigned to the appeal.
- (2) **Parties Entitled to Notice.** The notice required by paragraph (1) must be served on the attorney or party who signed the docketing statement and those on whom the docketing statement was served.
- (3) **Others Desiring Notice.** A party not listed in paragraph (2) must file an entry of appearance to receive notices.

Rule 2.041**DOCKETING STATEMENT**

- (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.

Rule 3.02**PREPARATION OF RECORD ON APPEAL FOR FILING**

- (a) **Timing.** Not later than 14 days after notice from the clerk of the appellate courts that an appeal has been docketed, the clerk of the district court must compile the record on appeal in one or more convenient volumes.
- (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; and
 - (5) in cases consolidated for appeal, the record on appeal should be prepared as if it were one case, using separate, continuous, nonrepeating volume numbers.
- (c) **Contents of Record on Appeal.** The record on appeal consists of the following:
- (1) 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 district court;
 - (vi) the jury verdict, if any;
 - (vii) the judgment; and

(viii) the notice of appeal.

(B) In a criminal case:

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

(ii) any written plea;

(iii) the jury verdict, if any;

(iv) the journal entry of judgment;

(v) the notice of appeal; and

(vi) on filing of a request by trial or appellate counsel, the presentence report, any report received from the appropriate reception and diagnostic facility of the Kansas Department of Corrections, any report from the state security hospital, and all other diagnostic reports. If the inclusion of reports is requested under this paragraph, the clerk must include the specified reports in a separate volume of the record on appeal. The separate volume must be kept sealed except when being used by appellate counsel or the courts.

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

(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) **Nondocumentary Evidence.** Nondocumentary evidence or exhibits shall not be added to the record on appeal.

~~(2)~~(3) **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)~~(4) **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.

Rule 3.03**TRANSCRIPT IN RECORD ON APPEAL**

- (a) **Requesting Transcript; Appellant's Duty; Stipulation.** When the appellant considers a hearing transcript necessary to properly present the appeal, the appellant must request the transcript not later than 21 days after filing the notice of appeal in the district court. The request must be clearly designated "for appeal purposes." Unless all affected parties stipulate that specific portions are not required for purposes of the appeal, the request must be for a complete transcript of the hearing. Counsel for the parties must make a good faith effort to stipulate to avoid unnecessary expenses. The appellate court may consider an unreasonable refusal to stipulate when apportioning the cost of the transcript under Rule 7.07(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, a district court order is not required to request a transcript from a court reporter.
- (c) **Transcript Requested by Appellee.** Not later than 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 is responsible for payment for the additional transcript, including advance payment, in the same manner as the appellant is responsible for the main transcript.
- (d) **Filing and Service of Transcript Request.** The original of a transcript request must be filed in the district court and served on the reporter and all parties. At the time the appeal is docketed under Rule 2.04, the appellant must file with the clerk of the appellate courts a copy of the initial transcript request and any stipulation for less than a complete transcript of a hearing. An additional transcript request must be served and filed in the same manner.
- (e) **Time Schedule for Transcripts; Certificate of Completion.** A transcript must be completed not later than 40 days after service of a request unless the court reporter applies for and receives an extension of time under Rule 5.02. The court reporter must file the completed transcript with the clerk of the district court and must serve on the clerk of the appellate courts and each party a certificate of completion. A certificate of completion must identify the hearing date, the type of hearing transcribed, and the date the transcript was filed. The transcript and the certificate of completion must include the court reporter's Supreme Court certified court reporter registration number.
- (f) **Advance Payment.** An appellant, other than the state or a state agency or subdivision, must advance the payment of the estimated cost of a requested transcript if the court reporter serves on the appellant — not later than 14 days after receipt of a request for a transcript — the estimated cost and demand for advance payment. A reporter who properly serves a demand for advance payment under this subsection is not required to begin the transcript until the reporter receives payment of the estimated cost. Failure to make

advance payment not later than 14 days after service of a demand under this subsection is ground for dismissal of the appeal by the appellate court.

- (g) **Electronically Filed Transcripts.** When filing a transcript electronically, a certified shorthand reporter must use an assigned username and password to access the appellate courts' electronic filing system.
- (h) **Seal.** If a transcript is being filed electronically, an electronic signature by a certified shorthand reporter acts as a seal required by K.S.A. 20-913.

Rule 3.06**ACCESS TO RECORD ON APPEAL**

- (a) **Access to Paper Records.** Each volume of the record on appeal must be available to the parties to the appeal during the time allotted for the preparation of their respective briefs. During these times, an attorney who is a member of the Kansas bar and is counsel of record may—unless removal is restricted by the court for good cause—remove the record from the clerk's office but is responsible to the court to return the record in its original condition upon completion of the brief.
- (b) **Access to Electronic Records.** A record on appeal prepared in electronic format must be made available to the parties in electronic format.

Rule 4.01**INTERLOCUTORY APPEAL IN CIVIL CASE UNDER K.S.A. 60-2102(c)**

- (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.

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.

Rule 4.02**INTERLOCUTORY APPEAL BY PROSECUTION**

- (a) **Notice of Appeal.** When an appeal is taken to the Court of Appeals under K.S.A. 22-3601(a) and 22-3603, the notice of appeal must be filed with the clerk of the district court not later than 14 days after entry of the order from which the appeal is taken. A copy of the notice of appeal must be served on defense counsel or on the defendant, if unrepresented.
- (b) **Docketing the Appeal.** Not later than 21 days after the notice of appeal is filed, the prosecution must file 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 file-stamped certified copy of the notice of appeal;
 - (2) ~~an original and one copy of the docketing statement required by Rule 2.041;~~
 - (3) 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 district court relating to the order; and
 - (4) a copy of a request for transcript filed under Rule 3.03, a written statement indicating no transcript is necessary, or a certificate of completion of the transcript.
- (c) **Record on Appeal.** The clerk of the district court must prepare the record on appeal under Rule 3.02. The record on appeal consists of the following documents:
- (1) a copy of:
 - (A) the warrant, search warrant, confession, or other written evidence quashed or 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) a copy of any affidavit and the transcript of any testimony that:
 - (A) provided the basis for the issuance of a warrant or search warrant that was quashed; or
 - (B) served as the basis for the seizure of evidence that was suppressed;
 - (3) if testimony was taken on the motion to quash or suppress, a copy of the transcript, or — if the parties agree — a narrative statement of the testimony; and
 - (4) any other portion of the record required by the appellate court.

- (d) **Briefing Schedule.** The prosecution must serve and file its brief not later than 30 days after being served with the certificate of completion of the transcript under Rule 3.03 or not later than 40 days after docketing if no transcript is requested. The defense must serve and file its brief not later than 30 days after being served with the prosecution's brief.
- (e) **Stay of District Court Proceedings.** Further proceedings in the district court are stayed pending determination of the appeal.
- (f) **Post-mandate Action by District Court.** After receipt of the mandate, on the prosecution's motion, the district court must issue:
 - (1) an order for the defendant to appear; or
 - (2) an alias warrant for the defendant's arrest.

Rule 5.01

APPELLATE COURT MOTION

- (a) **Generally.** Unless made during a hearing, an application to an appellate court must be by written motion filed with the clerk of the appellate courts and must state with particularity the ground for the motion and the relief or order sought. Each motion ~~may~~ must contain only a single subject.
- ~~(1)~~ Except when docketing an appeal, an attorney may not file multiple pleadings in a single transmission within the appellate court's electronic filing system.
- ~~(2)~~ Due to the transition of the appellate courts to electronic records, a party appearing pro se must file an original and one copy of any motion filed with the appellate courts.
- ~~(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.
- ~~(e)(b)~~ **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)(c)~~ **Oral Argument.** Oral argument on a motion will be permitted only by court order.
- ~~(f)(d)~~ **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.~~ pro se.

Rule 5.02**EXTENSION OF TIME**

- (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.
- (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.

Rule 6.07

FORMAT FOR BRIEFS

(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)~~(1) **Text.** Text must be printed in a conventional style font not smaller than 12 point with no more than 12 characters per inch. The suggested size and fonts include 13 point in Times New Roman, Book Antigua, Century Schoolbook, and Palatino Linotype. Text, excluding pagination, must not exceed 6½ 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)~~(2) **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)~~(3) **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 cover of any brief must be white. 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 in the following form: [two-digit year in which the case was docketed]-[six-digit assigned case number without a comma]-["A" for Court of Appeals or "S" for Supreme Court] (Example: 16-999999-A);

- (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.~~

~~(c)~~ **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)~~(d) **Motion to Exceed Page Limitation.** A motion to exceed a page limitation in subsection ~~(d)~~(c) 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)~~(e) **Abbreviated Briefs.** The appellate court hearing a matter may order briefs to be abbreviated in content or format.

~~(g)~~(f) **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.

Rule 6.09

SERVICE OF BRIEF AND ADDITIONAL AUTHORITY

(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 total copies of the brief must be filed simultaneously with service with the clerk of the appellate courts.~~

(b) ~~Additional Authority.~~

(1)(a) ~~Notifying the Court by Notification Letter; Timing.~~

~~(A)(1) **Before Oral Argument or Before the First Day of the Docket on Which a No-Argument Case is Set.** Not later than 14 days before oral argument or 14 days before the first day of the docket on which a no-argument case is set, a party may advise the court, by letter, of citation to persuasive or 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 or filed less than 14 days before oral argument or less than 14 days before the first day of the docket on which a no-argument case is set, a party promptly may advise the court, by letter, of the citation.~~

~~(B)(2) **After Oral Argument or After the First Day of the Docket on Which a No-Argument Case was Set.** After oral argument or after the first day of the docket on which a no-argument case was set, but before decision, a party may advise the court, by letter, of citation to persuasive or controlling authority that was published or filed after the date of oral argument or after the first day of the docket on which a no-argument case was set.~~

~~(C)(3) **After Petition for Review Is Filed.** After a petition for review is filed but before the petition has been ruled on, a party may advise the court, by letter, of citation to persuasive or controlling authority that was published or filed after the petition for review was filed. If a petition for review is granted, a party may notify the court of additional authority under subparagraphs ~~(A)(1)~~ and ~~(B)(2)~~.~~

~~(D)(b) **Contents of Notification 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 must not exceed 350 words. The letter may not be split into multiple filings to avoid the word limitation.

~~(2)~~(c) **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)~~(d) **Response.** A response, if any, must be:

~~(A)~~(1) filed with the clerk of the appellate courts not later than 7 days after service of the letter;

~~(B)~~(2) limited to the reference, brief statement, and number of words allowed under paragraph ~~(1)~~(c)~~(b)~~; and

~~(C)~~(3) served on all adverse parties united in interest.

Rule 7.01**HEARING IN THE SUPREME COURT**

- (a) **Sessions.** The Supreme Court hears cases on dates fixed by court order.
- (b) **Assignment of Cases.** Cases are assigned for hearing as nearly as practicable in the order docketed except cases entitled by law to preferential setting. The court on motion may advance other cases as justice or the public interest may require.
- (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 justice 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, 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) **Dockets; Notice of Hearing or Submission.** Not less than 30 days before each sitting of the court, the clerk of the appellate courts must prepare and ~~mail~~ submit to all parties in cases assigned for hearing during that sitting a docket 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. 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 constitutes a waiver of oral argument by the party.

(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 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.

Rule 7.02**HEARING IN THE COURT OF APPEALS****(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*.** A party may suggest the appropriateness of a hearing or rehearing *en banc*. A suggestion for hearing *en banc* must be filed not later than the time prescribed for filing appellee's brief. A suggestion for rehearing *en banc* must be filed not later than the time prescribed for filing a motion for rehearing.

(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.

(e) **Dockets; Notice of Hearing or Submission.** Not less than 30 days before each sitting of the court, the clerk of the appellate courts must prepare and ~~mail~~ submit to all attorneys of record in cases assigned for hearing during that sitting a docket showing the place and time at which 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.

(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.

Rule 7.03**DECISION OF APPELLATE COURT**

- (a) **Decision.** A decision of an appellate court will be announced by the filing of the opinion with the clerk of the appellate courts. The opinion will be electronically filed. On the date of filing, the clerk of the appellate courts will send one copy of the decision to the 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 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 the 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.

Rule 8.01**TRANSFER TO SUPREME COURT ON CERTIFICATE**

- (a) **Court of Appeals May Request Transfer.** The Court of Appeals may request that an undetermined case pending before it be transferred to the Supreme Court for final determination.
- (b) **Form and Content of Request.** A request for transfer under this rule must be by certificate of the chief judge of the Court of Appeals, and filed with the clerk of the appellate courts and accompanied by 8 copies. The certificate must:
- (1) state the nature of the case;
 - (2) demonstrate that the case is within the jurisdiction of the Supreme Court; and
 - (3) show the existence of one or more of the grounds for transfer specified in K.S.A. 20-3016(a) by specifying:
 - (A) the issue or issues not within the jurisdiction of the Court of Appeals, with citation to controlling constitutional, statutory, or case authority;
 - (B) the subject matter of the case that has significant public interest;
 - (C) the particular legal question raised that has major public significance; or
 - (D) 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 the transfer.

Rule 8.02**TRANSFER TO SUPREME COURT ON MOTION**

- (a) **Party May Request Transfer.** A party may request 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.** A motion for transfer must be filed with the clerk of the appellate courts, ~~accompanied by 8 copies,~~ not later than 30 days after service of the notice of appeal. The motion must:
- (1) state the nature of the case;
 - (2) demonstrate that the case is within the jurisdiction of the Supreme Court; and
 - (3) show the existence of one or more of the grounds for transfer specified in K.S.A. 20-3016(a) by specifying:
 - (A) the issue or issues not within the jurisdiction of the Court of Appeals, with citation to controlling constitutional, statutory, or case authority;
 - (B) the subject matter of the case that has significant public interest;
 - (C) the particular legal question raised that has major public significance; or
 - (D) 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 the transfer.

Rule 8.03**SUPREME COURT REVIEW OF COURT OF APPEALS DECISION**

- (a) **Petition.** 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. In this rule, "decision" means any formal or memorandum opinion, order, or involuntary dismissal under Rule 5.05.
- (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.
 - (2) **Effect of Motion for Rehearing or Modification.** The filing of a petition for review 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 retains jurisdiction over the case and will proceed under Rule 7.05. 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 under Rule 7.05.
 - (3) **Form of Petition.** A petition for review must be in the form of a brief, complying with the applicable provisions of Rule 6.07. The cover of the petition must be white, and the petition may not exceed 15 pages in length, exclusive of the cover, table of contents, appendix, and certificate of service.
 - (4) **Content of Petition.** The petition must contain concise statements of the following, in the order indicated:
 - (A) A prayer for review, clearly stating the nature of the relief sought.
 - (B) The date of the decision of the Court of Appeals.
 - (C) A statement of the issues decided by the Court of Appeals of which review is sought. The court will not consider issues not presented or fairly included in the petition. The court, however, may address a plain error not presented. In a civil case, the petitioner also must list, separately and without argument, additional issues decided by the district court 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 prosecution preserves the issue by filing a petition or cross-petition for review.

- (D) A short statement of relevant facts. Facts correctly stated in the opinion of the Court of Appeals need not be restated.
 - (E) A short argument, including appropriate authority, stating why review is warranted.
 - (F) An appendix containing a copy of the opinion of the Court of Appeals. The appendix also must include copies of opinions, findings of fact, conclusions of law, orders, judgments, or decrees issued by the district court or administrative agency, if relevant to the issues presented for review.
- (b) **Cross-Petition.** A respondent may file a cross-petition for review.
- (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.** A party opposing a petition or cross-petition for review may file a response.
- (1) **Filing and Service.** 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 of Response.** A response must comply with Rule 6.07 and may not exceed 15 pages, exclusive of the cover, table of contents, appendix, and certificate of service. The cover of the response must be white.
 - (3) **Content of Response.** A response must be confined to argument that replies to issues presented in the petition or cross-petition for review or provides alternative grounds for 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 the issues in the Court of Appeals.
 - (4) **Effect of Failure to File Response.** Failure to file a response is not an admission that the petition should be granted.
- (d) **Reply.** A reply is permitted to an argument raised in a response which is not covered sufficiently in the petition or cross-petition. A reply must be filed not later than 14 days

after the response is filed and may not exceed 10 pages in length, exclusive of the cover, table of contents, appendix, and certificate of service.

- (e) **Additional Authority.** A party may advise the court of additional authority under Rule 6.09(b).
- (f) **Discretion in Granting Review.**
 - (1) **Review as a Matter of Right.** Pursuant to K.S.A. 60-2101(b) and 22-3602(e), a party may petition as a matter of right from a final decision of the Court of Appeals in 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.** In a case other than one described in paragraph (1), review by petition is not a matter of right, but of judicial discretion. The vote of three justices is required to grant the petition.
 - (3) **Purpose of Petition.** The purpose of a petition for review, cross-petition, response, and reply is to state the 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 briefs filed in the Court of Appeals or in support of a petition for rehearing or modification generally will not be considered in acting on a petition or cross-petition for review.
- (g) **Order Denying Review; Effect.** If the Supreme Court denies review, the clerk of the appellate courts must notify the parties of the denial. The decision of the Court of Appeals is final as of the date of the decision denying review, and the clerk must issue the mandate under Rule 7.03(b). A denial of a petition for review 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.
- (h) **Order Granting Review; Subsequent Procedure.**
 - (1) **Issues Subject to Review.** An order granting review may limit the issues on review. If review is not limited, the issues before the Supreme Court include all issues properly before the Court of Appeals 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.** Unless the Supreme Court otherwise orders, the issues to be reviewed will be considered on the basis of the record and briefs previously filed with the Court of Appeals. Not later than 14 days after the date of the order granting

review, the parties must file with the clerk of the appellate courts ~~10 additional~~ copies a copy of the paper briefs, if any, originally filed with the Court of Appeals.

- (3) **Supplemental Briefs.** Not later than 30 days after the date of the order granting review, a party may file a supplemental brief. An opposing party may file a brief in response to a supplemental brief not later than 30 days after the date the supplemental brief is filed. Except by order of the Supreme Court, a supplemental brief may not exceed one-half the number of pages permitted for original briefs under Rule 6.07.
- (4) **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.

(i) **Other Dispositions.**

- (1) **Review Improvidently Granted.** If the Supreme Court determines that review was improvidently granted, it may 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 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.
- (3) **Remand for Reconsideration.** When review 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.
- (4) **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 of those issues was preserved, the Supreme Court may consider and decide the issues, remand the appeal to the Court of Appeals for decision of the issues, or dispose of the issues as it deems appropriate.
- (5) **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, review the decision of the district court.

- (j) **Effect of Court of Appeals Decision Pending Review.** The timely filing of a petition for review stays the issuance of the mandate of the Court of Appeals. Pending the determination of the Supreme Court on the petition for review and during the time in which 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. An interested person that wishes to cite a Court of

Appeals opinion for persuasive authority before the mandate has issued 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 will not issue until disposition of the appeal on review. If a petition for review is granted in part, a combined mandate 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 is final as of the date of the refusal, and the clerk of the appellate courts must issue the mandate of the Court of Appeals.

Rule 9.02**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, the filing 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 apply. ~~The original and 5 copies of an application for judicial review must be filed with the clerk of the appellate courts, accompanied by the docket fee and any applicable surcharge under Rule 2.04.~~
- (b) **Record; Briefing Schedule.** Unless otherwise ordered by the court:
- (1) The commission must transmit promptly the record to the clerk of the appellate courts.
 - (2) An applicant's brief must be filed not later than 21 days after the application for review is filed.
 - (3) A respondent's brief must be filed not later than 21 days after service of applicant's brief.
 - (4) A reply brief must be filed not later than 7 days before the date set for 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 case in which a public utility claims the rates allowed by the commission are inadequate, a motion for extension of time to file the utility's brief will not be considered unless it includes or is accompanied by a waiver of the 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, the waiver must be for at least twice the additional time requested by the utility.
- (e) **Prehearing Conference.** A motion that requests a prehearing conference must be filed not later than 7 days after the filing of the application for judicial review. A motion for a prehearing conference filed later will be considered only on good cause.