

IN THE SUPREME COURT OF THE STATE OF KANSAS

ORDER

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

FILED

Supreme Court Rule 8.03 is hereby amended, effective July 1, 2018.

JUN 28 2018

Rule 8.03

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

SUPREME COURT REVIEW OF COURT OF APPEALS DECISION

(a) **Generally. 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) **Purpose of Petition for Review.** The purpose of a petition for review, cross-petition, conditional 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 decision.

(2) **Documents Considered.** Generally, the only documents considered by the Supreme Court will be the petition for review and any cross-petition, conditional cross-petition, response, and reply. ~~The record on appeal and briefs filed in the court of Appeals or in support of a motion for rehearing or modification generally will not be considered in ruling on a petition for review, cross-petition, or conditional cross-petition.~~

(b) **Petition for Review.**

(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 petition for review 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 and cannot be extended.

(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.

- (A) 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.
- (B) If the petitioner seeks review of a modified Court of Appeals decision, the petitioner must file an amended petition for review no later than 30 days after the date of the modified decision.
- (i) A party opposing the amended petition for review may file a cross-petition, conditional cross-petition, or response under subsections (c) and (d).
- (ii) The petitioner may file a reply under subsection (e).
- (3) **Format of Petition for Review.** ~~A~~ The format of 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 for review may not exceed 15 pages in length, exclusive of the cover, table of contents, appendix, and certificate of service.
- (4) **Expedited Petition for Review.** The Supreme Court will expedite petitions for review filed in cases the Court of Appeals expedited by a court order or statute. Petitions for review filed in these expedited cases must be titled "Expedited Petition for Review." The court may expedite other petitions for review on motion by a party or on its own.
- (5) **Summary Petition for Review.** When a petitioner concedes that controlling caselaw is dispositive of all issues raised in the appeal or that no substantial question is presented by the appeal, a petitioner may file a summary petition for review under Rule 8.03A. If controlling caselaw is dispositive of only one issue in a multiple-issue petition for review, cross-petition, or conditional cross petition, a petitioner may not file a summary petition for review under Rule 8.03A. But the petitioner may cite Rule 8.03A in its petition for review and request summary disposition of that issue. The argument on that issue must comply with Rule 8.03A(b)(4)(E).
- (46) **Content of Petition for Review.** ~~The~~ A petition for review, cross-petition, or conditional cross-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 and why review is warranted.
- (B) The date of the ~~decision of the~~ Court of Appeals decision.
- (C) A statement of the issues the petitioner wishes to be decided by the Supreme Court.~~decided by the Court of Appeals of which review is sought.~~ The statement of the issues should not merely be identical to the statement of the issues contained in the brief to the Court of Appeals; rather, it must be tailored to address why review is warranted.
- (i) The Supreme Ceourt will not consider issues not raised before the Court of Appeals or issues not presented or fairly included in the petition for review, cross-petition, or conditional cross-petition. The court, however, may address a plain error not presented.
- (ii) If the petitioner wishes to have the Supreme Court determine issues that were presented to the district court and the Court of Appeals but not decided by the Court of Appeals, the petitioner must also present those issues. 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.
- (iii) 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 for review or cross-petition.
- (D) A short statement of relevant facts. Facts correctly stated in the ~~opinion of the~~ Court of Appeals decision need not be restated.
- (E) A short argument, including appropriate authority, stating for each issue why review is warranted. Reasons for review may include, but are not limited to, the following:
- (i) The presence of an issue of public importance, consequence, or attention.
- (ii) The presence of an issue of first impression.

- (iii) The need for an update, clarification, or synthesis of caselaw.
- (iv) The existence of a conflict between the Court of Appeals decision and Supreme Court precedent or other Court of Appeals decisions.
- (v) A persuasive dissenting opinion.
- (vi) The decision reaches an incorrect result.
- (vii) The presence of an issue likely to recur that is in need of immediate resolution by the court.

Failure to include an argument showing how the Court of Appeals erred or why review is warranted may result in the denial of a petition for review.

- (F) An appendix containing a copy of the ~~opinion of the~~ Court of Appeals decision. The appendix also ~~must~~ should 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.

(cb) **Cross-Petition and Conditional Cross-Petition.** A respondent may file a cross-petition or conditional cross petition. ~~for review.~~

- (1) **Filing and Service.** Not later than 3014 days after the date a petition for review is filed, the respondent must file the cross-petition ~~for review~~ or conditional 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) **Format and Content of Cross-Petition and Conditional Cross-Petition.** A cross-petition and conditional cross-petition must be in the same format; adhere to the same length restriction; and have the same contents, in the same order, as ~~the~~ a petition for review.
- (3) **Purpose of Cross-Petition.** The purpose of a cross-petition is to seek review of specific holdings the Court of Appeals decided adversely to the cross-petitioner.

- (A) If the Court of Appeals assumes an outcome on an issue without deciding it, the cross-petitioner must raise that issue to preserve it for review.

(B) If the Court of Appeals does not decide an issue properly presented to it, the cross-petitioner must raise that issue to preserve it for review.

(C) The cross-petition also may present for review adverse rulings or decisions of the district court that should be considered by the Supreme Court in the event it orders a new trial, provided the cross-petitioner raised the issues in the Court of Appeals.

(4) **Purpose of Conditional Cross-Petition.** The purpose of a conditional cross-petition is to preserve specific claims or issues for review only if the court grants the petition for review.

(A) If the Court of Appeals assumes an outcome on an issue without deciding it, the conditional cross-petitioner must raise that issue to preserve it for review.

(B) If the Court of Appeals does not decide an issue properly presented to it, the conditional cross-petitioner must raise that issue to preserve it for review.

(C) The conditional cross-petition also may present for review adverse rulings or decisions of the district court that should be considered by the Supreme Court in the event it orders a new trial, provided the conditional cross-petitioner raised the issues in the Court of Appeals.

(de) **Response.** A party opposing a petition for review, ~~or cross-petition for review,~~ or conditional cross-petition may file a response.

(1) **Filing and Service.** Not later than 14 ~~30~~ days after the petition for review, ~~or cross-petition for review,~~ or conditional cross-petition is filed, the party must file the response to the petition for review, ~~or cross-petition,~~ or conditional 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) **Format of Response.** The format of a ~~A~~-response must comply with the applicable provisions of Rule 6.07~~(a)~~. The response ~~and~~ may not exceed 15 pages in length, exclusive of any the cover, table of contents, appendix, and the 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 for review, ~~or cross-petition for review,~~ or conditional cross-petition. The response may also ~~or~~ provides alternative grounds for affirming the ~~decision of the~~ Court of Appeals

~~decision, provided if 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 for review, cross-petition, or conditional cross-petition should be granted.
- (ed) **Reply.** A reply is permitted to an argument raised in a response that ~~which~~ is not covered sufficiently in the petition for review, or cross-petition, or conditional 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 any ~~the~~ cover, table of contents, appendix, and the certificate of service.
- (fe) **Additional Authority.** Under Rule 6.09, ~~A~~ a party may advise the court of additional authority ~~under Rule 6.09.~~
- (gf) **Discretion in Granting Review.**
- (1) **Review as a Matter of Right.** ~~Under 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~~ decision.
- (2) **Discretionary Review.** In a case other than one described in paragraph (1), review by petition is ~~not~~ a matter of judicial discretion, not a matter of right, but of judicial discretion. The vote of three justices is required to grant the petition for review.
- ~~(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.~~
- (hg) **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~~ decision 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.

(ih) **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 ~~that which~~ the petition for review, ~~or cross-petition, or conditional cross-petition~~ allege were decided erroneously by the Court of Appeals ~~or warrant review for other reasons~~. ~~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.** Unless the Supreme Court otherwise orders, the ~~case issues to be reviewed~~ will be considered on the basis of the record ~~before the Court of Appeals, and the petition for review, and any cross-petition, conditional cross-petition, response, or reply.~~ The court will also consider the 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 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.
 - (A) 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.
 - (B) A party may file a reply brief no later than 14 days after the date a response to a supplemental brief is filed.
 - (C) Except by order of the Supreme Court, a supplemental brief, response, or reply under this subsection 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.

(j) **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 decision opinion or disposition of the case is final.
- (2) **Voluntary Dismissal before Ruling on Petition for Review.** Before the Supreme Court grants or denies a petition for review, an opinion on review is filed, a party that has filed a petition for review may dismiss the petition for review 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 for review does not affect any other party's petition for review or cross-petition. A conditional cross-petition will automatically be dismissed if a petition for review is dismissed.
- (3) **Voluntary Dismissal after Petition for Review Granted.** Before the Supreme Court files an opinion, a party that has filed a petition for review may dismiss the petition for review 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 for review does not affect any other party's petition for review or cross-petition. A conditional cross-petition will automatically be dismissed if a petition for review is dismissed.
- (43) **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.
- (54) **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.
- (65) **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.~~

(kj) **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.

- (1) Pending ~~the determination~~ of the Supreme Court's determination 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 decision is not binding on the parties or on the district courts. An interested person that wishes to cite a Court of Appeals decision ~~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.
- (2) If a petition for review is granted, ~~the decision or opinion~~ of the Court of Appeals decision has no force or effect, and the mandate will not issue until disposition of the appeal on review.
- (3) 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.
- (4) If a petition for review is ~~denied~~ refused, ~~the decision~~ of the Court of Appeals decision is final as of the date of the denial ~~refusal~~, and the clerk of the appellate courts must issue the mandate of the Court of Appeals.

BY ORDER OF THE COURT this 27 day of June 2018.

FOR THE COURT:



LAWTON R. NUSS
Chief Justice