2010 SC 62

IN THE SUPREME COURT OF THE STATE OF KANSAS

FILED

ORDER

JUN 28 2010

CAROL G. GREEN
CLERK OF APPELLATE COURTS

The attached amendments to Supreme Court Rules relating to Supreme Court, Court of Appeals, and Appellate Practice; Rules Relating to District Courts; Rules Relating to Discipline of Attorneys; and Rules Relating to Judicial Conduct are hereby adopted, effective July 1, 2010.

BY ORDER OF THE COURT this 28th day of June, 2010.

LAWTON R. NUSS
For ROBERT E. DAVIS, Chief Justice

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

Rule 3.02

PREPARATION OF RECORD ON APPEAL FOR FILING

It shall be the duty of the clerk of the district court within ~~ten (10)~~ fourteen (14) days after notice from the clerk of the appellate courts that the appeal has been docketed to compile in one or more convenient volumes the following:

(a) (1) In a civil case: a certified copy of the appearance docket and the following original documents: the petition; the answer; any reply; the pretrial order(s); the opinion, findings and conclusions of the trial court; the jury verdict, if any; the judgment; and 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) In a criminal case: a certified copy of the appearance docket and the following original documents: the complaint, indictment, or information and any amendment thereto; any written plea; the verdict of the jury, if any; the journal entry of judgment; and the notice of appeal.

(3) In criminal cases, upon the 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), any report from the state security hospital, and all other diagnostic reports. All such reports shall be collected by the clerk and included in one separate volume of the record which shall 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) All reporter's transcripts of proceedings before the district court as are then available.

(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.

Rule 3.03

TRANSCRIPTS IN RECORD ON APPEAL

(a) REQUESTING TRANSCRIPTS; DUTY OF APPELLANT; STIPULATION. When an appeal is taken in a case in which the appellant considers a transcript of any hearing necessary to properly present the appeal, it shall be the duty of the appellant to request a transcript of such hearing within twenty-one (21) days of the filing of the notice of appeal in the district court. Such request shall be clearly designated "for appeal purposes." Unless all affected parties stipulate as to specific portions which are not required for the purposes of the appeal, the request shall be for a complete transcript of any such 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 make a good faith effort to so stipulate to avoid unnecessary expenses. A refusal to stipulate may be considered by the appellate court in apportioning the cost of the transcript under Rule 7.07(c).

Notwithstanding K.S.A. 22-4505(b), 22-4506(b), and 22-4509, no district court order shall be required before requesting transcripts from the court reporter.

(b) TRANSCRIPTS REQUESTED BY APPELLEE. Within ~~ten (10)~~ fourteen (14) days after service of appellant's request the appellee may request a transcript of the voir dire, opening statements, closing arguments, or any other hearing not requested by appellant, but the appellee shall be responsible for payment for such additional transcript, including advance payment, in the same manner as the appellant is responsible for the main transcript.

(c) FILING AND SERVICE. The original of any transcript request shall be filed in the district court. Any request shall be served on the reporter and all parties. At the time of docketing the appeal, the appellant shall 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 hearing. Any additional transcript requests shall be filed and served in a similar manner.

(d) TIME SCHEDULE FOR TRANSCRIPTS; CERTIFICATE OF COMPLETION. The transcript shall be completed within forty (40) days after service of the request unless the court reporter applies for and receives an extension of time under Rule 5.02. Upon completion of any such transcript the court reporter shall file the same with the clerk of the district court and shall mail to the clerk of the appellate courts and to each party a certificate showing the date of the filing of the same. The certificate of completion shall identify the date of hearing and the type of hearing transcribed. The certificate of completion as well as the certificate filed with the transcript shall include the court reporter's certified court reporter registration number assigned by the Supreme Court.

(e) ADVANCE PAYMENT. If demanded by the court reporter, the appellant shall advance the payment of the estimated cost of any 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 served on the appellant within ~~ten (10)~~ fourteen (14) days of receipt of the order for the transcript. The reporter will not be required to begin the transcript until 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 ~~ten (10)~~ fourteen (14) days after service of the demand for the same shall be ground for dismissal of the appeal by order of the appellate court.

Rule 3.04

UNAVAILABILITY OF TRANSCRIPT

In 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, a party to an appeal may prepare a statement of the evidence or proceedings from the best available means, including his own recollection, for use instead of a transcript. Within ~~ten (10)~~ fourteen (14) days after the filing of the notice of appeal, the statement shall be served on the adverse parties who may serve objections or propose amendments thereto within ~~ten (10)~~ fourteen (14) days. Thereupon, the statement with objections or proposed amendments shall be submitted to the judge of the district court for settlement and approval, and as settled and approved shall be included in the record on appeal by the clerk of the district court.

Rule 3.07

TRANSMISSION OF PREPARED RECORD

Upon expiration of the time permitted under Rule 6.01 for the filing of briefs, or as such time may have been extended, the clerk of the appellate courts may notify the clerk of the district court to transmit the record prepared in accordance with Rules 3.02, 3.04, or 3.05 to the clerk of the appellate courts. The clerk of the district court shall forward such record within ~~five (5)~~ seven (7) days after the receipt of such direction. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless the clerk is directed to do so by a party. A party must make advance arrangements with the clerk for the transportation of exhibits of unusual bulk or weight and for the cost of such transportation.

Rule 4.01

INTERLOCUTORY APPEALS IN CIVIL CASES

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 ~~ten (10)~~ 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 ~~ten (10)~~ fourteen (14) days of the filing of the order, and the application for permission to take an appeal may be served within ~~ten (10)~~ 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 ~~five (5)~~ 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 ~~ten (10)~~ fourteen (14) days after permission to appeal is granted, whichever is later. Within ~~ten (10)~~ 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.

Rule 4.02

INTERLOCUTORY APPEALS BY THE PROSECUTION

(a) When an appeal is taken to the Court of Appeals under the provision of K.S.A. 22-3601(a) and K.S.A. 22-3603, the notice of appeal shall be filed with the clerk of the district court within ~~ten (10)~~ fourteen (14) days after the entry of the order from which the appeal is taken. A copy of the notice of appeal shall be served upon defense counsel or upon defendant if the defendant has no counsel. Within twenty-one (21) days after the filing of the notice of appeal the prosecution shall forward to the clerk of the appellate courts:

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 trial court relating thereto.

4. A request for transcript filed pursuant to Rule 3.03 or a written statement indicating no transcript is necessary.

The appeal shall thereupon be deemed docketed.

(b) The record on appeal shall consist of the following documents and such other portion of the record as may be required by the appellate court:

1. 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.

2. Copies of any affidavits and the transcript of any testimony which provided the basis for the issuance of a warrant or search warrant which has been quashed or which served as the basis for the seizure of evidence which has been suppressed.

3. If testimony was taken on the motion to quash or suppress, a copy of the transcript, or in lieu thereof, by agreement, a narrative statement of the testimony.

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

(c) Within thirty (30) days after service of the certificate of filing of the transcript in accordance with Rule 3.03, the prosecution shall serve and file its brief. Within thirty (30) days after service of the prosecution's brief, the defense may serve and file its brief.

(d) Further proceedings in the district court shall be stayed pending determination of the appeal.

(e) Upon receipt of the mandate and on motion of the prosecution, the trial court shall issue either an order for the defendant to appear or an alias warrant for the defendant's arrest.

Rule 5.01

APPELLATE COURT MOTIONS

(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 ~~five (5)~~ 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.

Rule 5.05

INVOLUNTARY DISMISSALS

On the motion of a party with at least ~~ten (10)~~ 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 ~~ten (10)~~ 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.

Rule 7.041

SUMMARY DISPOSITION

In any 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 order may be entered on the court's own motion after ~~ten (10)~~ fourteen (14) days' notice to the parties, citing the decision deemed controlling and providing an opportunity to show cause why such an order should not be filed.

At any time during the pendency of the appeal, any party may move for summary disposition, citing the prior controlling decision. The motion shall be served on opposing counsel who may respond within ~~ten (10)~~ fourteen (14) days. Thereafter, the court may enter an order summarily affirming or reversing, or denying the motion.

Rule 7.041a

SUMMARY DISPOSITION OF SENTENCING APPEALS

(a) Pursuant to K.S.A. 21-4721(g) and (h), any party may move for summary disposition of a sentencing appeal when no substantial question is presented by the appeal. Any facts stated therein shall be keyed to the record on appeal so as to make verification reasonably convenient. The motion shall be served on opposing counsel, who may respond within ~~ten (10)~~ fourteen (14) days.

(b) If the appellate court grants the motion for summary disposition, review shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required unless ordered by the appellate court.

(c) Any sentencing appeal scheduled for summary disposition under this rule shall be handled in an expedited manner without oral argument. The court may summarily affirm or reverse, citing this rule, or may affirm or reverse by issuing a written opinion.

Rule 7.05

REHEARING OR MODIFICATION IN COURT OF APPEALS

(a) A motion for rehearing or modification in a case decided by the Court of Appeals may be served and filed within ~~ten (10)~~ fourteen (14) days of the decision. A copy of the Court's opinion shall be attached to the motion. The issuance of the mandate shall be stayed pending the determination of the issues raised by such a 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 extend the time for the filing of a petition for review by the Supreme Court.

(b) 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.

Rule 7.07

APPELLATE COSTS AND FEES AND ATTORNEY FEES

(a) GENERAL. In any case there shall 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. All such fees and expenses shall be approved by an appellate court unless specifically fixed by statute. When any such fees and expenses are to be anticipated in a case, the appellate court may require the parties to the proceeding to make deposits in advance to secure the same.

In disposing of any case before it, an appellate court may apportion and assess any 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. 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. Appellate courts may award attorney fees for services on appeal in any case in which the trial 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.)

The motion shall be filed with the clerk of the appellate courts no later than fifteen (15) days after oral argument. If oral argument is waived, the motion shall be filed no later than fifteen (15) days after either the day of argument waiver or the date of the letter assigning the case to a non-argument calendar, whichever is later.

(c) FRIVOLOUS APPEALS. If the appellate court finds that an appeal has been taken frivolously, or only for purposes of harassment or delay, it may assess against an 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 shall be filed in the manner set forth in subsection (b). The mandate shall then include a statement of any such assessment, and execution may issue thereon as for any other judgment, or in an original case the clerk of the appellate courts may cause an execution to issue.

(d) UNNECESSARY TRANSCRIPTS. On its own motion, or on the motion of an aggrieved party filed not later than ~~ten (10)~~ fourteen (14) days after an assessment of costs hereunder, the appellate court may assess against a party or his counsel, or both, all or any part of the cost of the trial transcript which the court finds to have been prepared as the result of any unreasonable refusal to stipulate pursuant to a written request and in accordance with Rule 3.03 to the preparation of less than a complete transcript of the proceedings in the district court.

Rule 8.03

SUPREME COURT REVIEW OF COURT OF APPEALS DECISION

(a) PETITION. Any party aggrieved by a decision of the Court of Appeals may petition the Supreme Court for discretionary review. For the purpose of this rule, "decision" means any formal or memorandum opinion, order, or involuntary dismissal pursuant to 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 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.

(3) 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 retain jurisdiction over the case and shall proceed in accordance with Rule 7.05. No action will be taken by the Supreme Court on a petition for review until the Court of Appeals has made a final determination of all motions for rehearing and modification pursuant to Rule 7.05.

(4) Form. A petition for review shall be in the form of a brief, conforming to the applicable provisions of Rule 6.07. The cover of the petition shall be white, and the petition shall not exceed fifteen (15) pages in length, exclusive of the appendix.

(5) Contents. The petition shall contain concise statements of the following, in the order indicated:

(a) A prayer for review, clearly stating the nature of the relief sought.

(b) Date of the decision of the Court of Appeals.

(c) Statement of the issues decided by the Court of Appeals of which review is sought. Issues not presented in the petition, or fairly included therein, will not be considered by the court. The court may, however, at its option, address a plain

error not presented. In a civil case, the petitioner shall also list, separately and without argument, those additional issues decided by the district court that 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 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 authorities, stating why review is warranted.

(f) An appendix containing a copy of the opinion of the Court of Appeals. The appendix also shall 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.

(1) Time for Filing; Form; Contents. Within ~~ten (10)~~ 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.

(c) RESPONSE.

(1) Time for Filing; Service. Any party wishing to oppose the petition or cross-petition may file a response within ~~ten (10)~~ 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.

(2) Form. The response shall comply with Rule 6.07 and shall not exceed fifteen (15) pages, exclusive of the appendix. The cover of the response shall be white.

(3) Contents. The response shall be confined to argument in reply to issues presented in the petition or cross-petition for review, or to argument that provides alternative grounds for affirmance of 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 issues in the Court of Appeals.

(4) Effect of Failure to File Response. Failure to file a response shall not be an admission that the petition should be granted.

(d) REPLY. The reply should be addressed to arguments raised in the response that are not covered sufficiently in the petition or cross-petition. The reply may not exceed ten (10) pages in length. The court need not delay decision pending the filing of a reply.

(e) DISCRETION IN GRANTING REVIEW.

(1) Review as a Matter of Right. As provided by K.S.A. 60-2101(b) and K.S.A. 22-3602(d), any party may appeal as a matter of right from a final decision of the Court of Appeals in any case in which a question under the Constitution of either the United States or the State of Kansas arises for the first time as a result of the decision of the Court of Appeals.

(2) Discretionary Review. In all other cases, review by petition is not a matter of right, but of judicial discretion. All petitions for review will be considered en banc and the vote of three justices shall be required to grant any petition for review.

(3) Purpose of Petition. The purpose of the petition for review, cross-petition, response, and reply is to set forth the reasons 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. Briefs filed in the Court of Appeals, briefs filed 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. If the Supreme Court denies review, the Clerk shall so notify the parties. The decision of the Court of Appeals shall be final as of the date of the decision denying review, and the mandate shall be issued by the Clerk forthwith. The 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.

(1) Issues Subject to Review. The order granting review may limit the questions on review. If review is not limited, the issues before the Supreme Court include all issues properly before the Court of Appeals that 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 shall be considered on the basis of the record and briefs previously filed with the Court of Appeals. Within ~~ten (10)~~ fourteen (14) days of the date of the order granting review, the parties shall file with the Clerk of Appellate Courts ten (10) additional copies of the briefs originally filed with the Court of Appeals.

(3) Supplemental Briefs. Within thirty (30) days after the date of the order granting review, any party may file a supplemental brief. Any opposing party may file a brief in response to a supplemental brief within thirty (30) days from the date the supplemental brief is filed. Except by order of the Supreme Court, a supplemental brief shall not exceed one-half the number of pages permitted for original briefs as prescribed by Rule 6.07.

(4) Oral Argument. The order of argument in the Supreme Court shall be the same as in the Court of Appeals.

(h) OTHER DISPOSITIONS.

(1) Review Improvidently Granted. If the Supreme Court determines that review was improvidently granted, a per curiam opinion may be issued stating that the petition for review was improvidently granted and that the Court of Appeals' opinion or disposition of the case is approved.

(2) Remand for Reconsideration. When review has been granted, the Supreme Court may remand the appeal to the Court of Appeals for reconsideration in light of authority identified in the Supreme Court's order.

(3) 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, the Supreme Court may consider and decide such issues, may remand the appeal to the Court of Appeals for decision of such issues, or may make such other disposition with respect to such issues as it deems appropriate.

(4) 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. The timely filing of a petition for review shall stay the issuance of the mandate of the Court of Appeals. Pending the determination of the Supreme Court on the petition for review or during the time in which to file a petition for review, the opinion of the Court of Appeals is not binding on the parties, or on the district courts. Any interested person who wishes to cite a Court of Appeals opinion for persuasive authority before the mandate has issued shall 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 not issue. If a petition for review is granted in part, a combined mandate shall 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 final as of the date of the refusal, and the mandate of the Court of Appeals shall be issued by the Clerk forthwith.

Rule 9.02

UTILITY RATE CASES

When an application for judicial review of an order of the state corporation commission is filed in the Court of Appeals, such filing shall be 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 original and five (5) copies of the application shall be filed in addition to the docket fee required by Rule 2.04.

Unless otherwise ordered by the court:

(a) The record shall be transmitted by the commission to the court forthwith.

(b) Applicant's brief shall be filed within twenty (20) days after the application for review is filed.

(c) A respondent's brief shall be filed within twenty (20) days after service of applicant's brief.

(d) Any reply brief shall be filed not less than ~~five (5)~~ 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.

In cases where a public utility claims the rates allowed by the commission are inadequate, no motion for extension of time to file the utility's brief shall be considered unless it includes or is accompanied by a waiver of the one hundred twenty (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 waiver shall be to the extent of at least twice the additional time requested by the utility.

If a prehearing conference is desired, a motion to that effect shall be filed within ~~five (5)~~ seven (7) days after the filing of the application for judicial review. A motion for a prehearing conference filed later shall be considered only upon good cause shown.

Rule 9.03

TAX APPEAL CASES

(a) When an appeal is taken from the court of tax appeals to the Court of Appeals pursuant to K.S.A. 74-2426, the appellant shall file 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 be accompanied by certified copies of the order of the court of tax appeals, the petition for reconsideration, and the court of tax appeal's order on the petition for reconsideration. The petition for judicial review shall be accompanied by the docket fee and docketing statement required by Rule 2.04. A copy of the petition for judicial review shall be served as provided in K.S.A. 77-613 through K.S.A. 77-615 and amendments thereto.

(b) When the appeal relates to excise, income or inheritance taxes by anyone other than the director of taxation, the statutory bond required by K.S.A. 74-2426(d) shall accompany the petition for judicial review and be filed with the clerk of the appellate courts. Unless otherwise requested, the bond shall be in the amount of 125% of the tax assessed and shall 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. The appropriate bond shall thereafter be filed within ~~10~~ 14 days of the entry of the order granting or denying the motion.

(c) Within ~~10~~ 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.

(d) The briefs of the parties and all other proceedings and matters shall be governed by the rules relating to appellate practice.

Rule 9.04

WORKERS COMPENSATION CASES

(a) When an appeal is taken from the Workers Compensation Board to the Court of Appeals under K.S.A. 44-556 and amendments thereto, the appellant shall file 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 be accompanied by certified copies of the decision(s) of the administrative law judge, the request for Workers Compensation Board review, and the order of the Workers Compensation Board. The petition for judicial review shall be accompanied by the docket fee and docketing statement required by Supreme Court Rule 2.04. A copy of the petition for judicial review shall be served as provided in K.S.A. 77-613 through 77-615 and amendments thereto. If any other party seeks to file a cross-appeal as provided by K.S.A. 44-556 and amendments thereto, that party shall file a cross-petition for review which complies with K.S.A. 77-614.

(b) Within ~~ten (10)~~ 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 ~~ten (10)~~ 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.

(c) 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.

Rule 10.01

EXPEDITED APPEAL BY UNEMANCIPATED MINOR FOR WAIVER OF PARENTAL NOTICE REQUIREMENT

(a) Upon receiving the notice of appeal and the district judge's decision as provided by Rule 173 of the Rules Relating to District Courts, the clerk of the appellate courts shall docket the appeal in the Court of Appeals. No docketing statement shall be required. Counsel for the minor shall file the appellant's brief within ~~five (5)~~ seven (7) days of 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 be held.

(b) The Court of Appeals shall expedite the determination of any such appeal to the extent necessary to protect the rights of the minor. The decision of the Court of Appeals shall be filed no later than ~~ten (10)~~ fourteen (14) days after the appeal is docketed. In all appellate proceedings, the anonymity of the minor shall be protected. All motions, briefs, opinions, and orders of the appellate court shall refer to the minor as "Jane Doe."

(c) The decision of the Court of Appeals shall not be subject to reconsideration or modification by the Court of Appeals.

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 Rule 8.03. If any such petition is not granted within ~~ten (10)~~ fourteen (14) days after filing, the petition shall be deemed denied. If the appellant's 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 fifteen (15) days from the date the petition is granted.

If the Court of Appeals reverses the decision of the district judge, the Court of Appeals' decision shall not be subject to discretionary review by the Supreme Court, and the clerk of the appellate courts shall immediately issue the mandate.

(d) K.S.A. 60-206(a) shall govern in computing any period of time prescribed by this rule.

Rule 113

CLERK'S EXTENSION

In cases filed pursuant to Chapter 60 of the Kansas Statutes Annotated, the initial time to plead to any petition, as the time is stated on the summons served upon the party, may be extended once by the clerk of the court for a period of not to exceed ~~ten (10)~~ fourteen (14) additional days. The party seeking the extension shall prepare the order for the clerk's signature, and copies thereof shall be served upon counsel for all adverse parties in accordance with K.S.A. 60-205. All other extensions of time to plead shall be by order of the judge.

Rule 118

PLEADING OF UNLIQUIDATED DAMAGES

(a) In any action in which a pleading contains a demand for money damages as provided in K.S.A. 60-208(a) and amendments thereto, the party against whom relief is sought may serve on the party seeking relief a written request of the actual amount of monetary damages being sought in the action. Within ~~ten (10)~~ fourteen (14) days following service of the request, the party seeking relief shall serve the adversary with a written statement of the total amount of monetary damages being sought in the action and at the same time shall cause a copy of the written statement to be filed in the action. The amount recited in the written statement may be amended downward at any time prior to the action being submitted to the trier of facts for determination. The amount recited in the written statement may be amended upward if the judge hearing a motion to amend the amount recited in the written statement is satisfied the reasons recited in the motion justify the amendment.

(b) Written statements filed pursuant to subsection (a) shall not be admitted in evidence at jury trial or referred to in the presence of the jury. The final amount claimed may be disclosed to the jury, but earlier amounts claimed, and whether the claim has been amended, shall not be referred to in the presence of the jury.

(c) If the judge, upon the judge's or a party's motion finds the amount of damages sought, as recited in the last written statement filed under (a) above, was frivolously chosen by the party filing same, the judge shall apportion the costs as justice requires.

(d) Before any default judgment is taken in any action contemplated by this rule, the party seeking relief must notify the party against whom relief is sought of the amount of money for which judgment will be taken. Said notice shall be given by certified mail, return receipt requested, or as the court may order, at least ~~ten (10)~~ fourteen (14) days prior to the date judgment is sought. Proof of service shall be filed and submitted to the court.

Rule 120

DEATH PENALTY CASES - NOTICE TO APPELLATE COURTS

If a criminal defendant is charged with capital murder and the county or district attorney files written notice pursuant to K.S.A. 21-4624 that such attorney intends, upon conviction of the defendant, to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death, the clerk of the district court shall forward a copy of that written notice to the clerk of the appellate courts within ~~five (5)~~ seven (7) days after filing.

Rule 133

MEMORANDA AND ARGUMENTS ON MOTIONS

(a) Forms of motions. Every motion made in writing which seeks a ruling on some part of the merits of the action (e.g., lack of jurisdiction, motion for summary judgment) as distinguished from a motion regulatory only of the procedure of the action (e.g., motion to limit discovery, motion to substitute successor party) shall be accompanied by a short memorandum setting forth (a) any reasons for the motion not fully stated in the motion itself, and (b) the citation, without extended elaboration, of any authorities which it is necessary for the judge to consider in ruling upon the motion.

(b) Response. An adverse party may at his or her option serve and file a similar memorandum in opposition to the motion within the time prescribed by local rule.

(c) Oral argument. If the motion also contains a request for oral argument, or if within ~~five~~ seven (7) days of the service of the motion an adverse party serves and files a request for oral argument, no ruling shall be made on the motion without opportunity being given to counsel to present such arguments. In the absence of any request by either party for oral argument in accordance with this Rule, the judge may set the matter for hearing or rule upon the motion forthwith and communicate the ruling to the parties. (For requirements applicable to motions for summary judgment, see Rule 141.) Notwithstanding a timely request for oral argument the court may deny such request by stating in the ruling or by separate communication that oral argument would not materially aid the court.

Rule 140

FINAL PRETRIAL CONFERENCE PROCEDURE

(a) The final pretrial conference contemplated by K.S.A. 60-216 shall be held before a judge with court participation throughout. The final pretrial conference shall be held at least ~~two (2) weeks~~ fourteen (14) days prior to trial.

(b) The final pretrial conference is predicated upon discovery being completed and the parties being prepared to complete the procedural steps recited herein. If additional witnesses or evidence is discovered after the final pretrial conference, the discovering party shall immediately make this known to all parties and the court in writing.

(c) Parties may be present at the final pretrial conference and shall be present when ordered by the court.

(d) The final pretrial conference will be conducted by an attorney who will participate in the trial of the case.

(e) The court shall prepare the pretrial order or designate counsel to do so.

(f) Should counsel object to the pretrial order, counsel shall state his or her objections in writing and forward the objections and the pretrial order to the court within ~~ten (10)~~ fourteen (14) days.

(g) The final pretrial conference will be conducted substantially in conformity with the following procedural steps:

(1) Plaintiff will state concisely his factual contentions and the theory of his action.

(2) Defendant will state concisely his factual contentions and the theories of his defenses and claims for relief.

(3) The court will rule upon any proposed amendments.

(4) Court and counsel will confer as to matters not disputed and request will be made for admissions and stipulations.

(5) Names and addresses of witnesses who will be called will be submitted in writing and counsel will be prepared to state the essence of their testimony.

(6) All exhibits which parties intend to use at the trial shall be known to the court and opposing counsel and may be marked for identification and admitted into evidence.

(7) The court may rule on any motions for dismissal, judgment on the pleadings, or summary judgment.

(8) Counsel will state if a jury is requested, if a jury of less than twelve (12) will be accepted, and time required for trial.

(9) A guardian ad litem will be appointed if advisable.

(10) Limitations upon the number of expert and cumulative witnesses for each side will be considered and ruled upon.

(11) The issues of fact will be stated by the court.

(12) The questions of law will be stated and the court will rule thereon.

(13) Questions of evidence will be stated and the court will rule thereon.

(14) Problems relative to jury instructions will be stated and the court will rule thereon.

(15) The position of parties relative to settlement shall be considered and the possibility of settlement explored.

(16) If the court authorizes the filing of briefs the time of filing shall be specified.

(17) Any procedures that may aid in the disposition of the case will be determined, including submission on special verdict or general verdict and interrogatories, consolidated or split trials, reference to a master, less than twelve (12) jurors and less than unanimous verdict.

(h) In a condemnation case, the following additional matters shall be considered and determined:

(1) Date of the taking.

(2) Any inconsistencies between the appraisers' report and the description of the taking stated in the petition.

(3) Legal description and size of the original tract before the taking.

(4) Legal description and size of the original tract taken.

(5) Size of the tract or parcel remaining after the taking.

(6) The nature of the taking, whether a fee simple interest or an easement, and any limitations on the taking established in the condemnation petition and/or appraisers' reports.

(7) Access rights taken.

(8) Any other factors to be considered in ascertaining compensation, *i.e.*, K.S.A. 26-513(d).

(9) Positions of the parties regarding highest and best use.

(10) Requests for other admissions and stipulations.

(11) Exhibits, plats, or demonstrative evidence to be introduced.

(12) Views of the premises.

(13) Witness - appraisers. For each witness who will testify as to the value or damage, each party shall state the witness' valuation of the entire property or interest immediately before the taking and, where appropriate, the valuation of that portion of the tract or interest remaining immediately after the taking.

(14) Any special instructions needed.

(15) In the case of temporary takings, the duration of the taking.

(16) Any motions in limine not previously ruled upon.

Rule 142

MEDICAL AND PROFESSIONAL MALPRACTICE SCREENING PANELS - PROCEDURE, COMPENSATION, AND EXPENSES

The court may convene a medical or professional malpractice screening panel either before or after the filing of a petition in the district court as provided by K.S.A. 65-4901 et seq. or K.S.A. 60-3501 et seq.

(a) Definitions–As used in this rule:

(1) Plaintiff shall include both the party who has filed a petition as well as a claimant who has not formalized a dispute by the filing of a petition.

(2) Defendant shall include both a party who is a defendant as the result of the filing of a petition as well as a health care provider or professional licensee against whom a claim is made before the filing of a petition.

(3) Notification shall be in writing and served pursuant to K.S.A. 60-205. Notice need only be served on counsel, if employed, rather than both a party and his or her counsel.

(4) Filing of any documents except x-rays with a chairperson shall include an original plus three copies for the other members of the panel.

(5) District judge includes chief judges where applicable.

(6) Parties include both plaintiff and defendant as hereinbefore defined. If either or both parties employ counsel, then party or parties includes counsel.

(7) Commencement of a screening panel occurs on the date when the district judge notifies the parties that a screening panel shall be convened.

(b) Authorization–The plaintiff who files a request for a screening panel prior to the filing of a petition shall furnish to all health care providers or professional licensees who have provided services or treatment to the plaintiff in connection with the claim, an authorization releasing records to the screening panel or parties. Such authorization shall not be a waiver for any other purpose.

(c) Compensation and Expenses.

Compensation and expenses of medical malpractice screening panel members shall be as provided in K.S.A. 65-4907, and any amendments thereto. Compensation and expenses of

professional malpractice screening panels shall be as provided in K.S.A. 60-3508, and any amendments thereto.

(d) Time for Request, Notice, Organization, and Conduct of Meetings.

(1) Whether or not a petition has been filed, any party may request a screening panel by signing a request for a panel. A request for a screening panel shall not be made later than 60 days after defendants are served with process. The party shall file the request with the district judge. The judge shall then notify all parties. Where a petition has been filed and the judge pursuant to K.S.A. 65-4901 determines without a request that a screening panel shall be convened, the judge shall notify the parties. In either instance the notice shall include the name of the attorney selected as chairperson and the need to select the other members within ~~ten (10)~~ fourteen (14) days thereafter. The judge may enter an order partially or completely staying discovery pending the report of the screening panel.

(2) A health care provider or professional licensee may not serve on the screening panel where such health care provider or professional licensee has knowledge of any material facts in the case or a relationship with any of the parties which would affect the panel member's impartial consideration of the case. A health care provider or professional licensee must have expertise in the subject matter of the claim. Parties shall not discuss material facts of the case with any panel members. A panel member shall not discuss the facts of the case outside the regular meetings of the screening panel, or permit others to discuss the facts with him or her. A panel member shall report immediately to the chairperson any attempts by anyone to discuss the facts of the case with the panel member. A panel member shall sign a statement indicating recognition of the duty to consider the case impartially. The statement shall be provided to panel members by the chairperson and shall be in substantially the following form:

Statement of Panel Member

I understand and agree to abide by the following principles:

I have no knowledge of material facts of the case, or relationships with any of the parties, which might affect my impartial consideration of the case.

I have had no contacts with any party concerning the facts of the case other than contacts disclosed to the chairperson of the panel.

I will not discuss the facts of the case outside the regular meetings of the panel and will report immediately to the chairperson any attempts by anyone to discuss the facts of the case with me.

_____

(Signature of Panel Member)

The statement shall be accompanied by a copy of this rule, the relevant statutes concerning screening panels and a letter from the chairperson briefly explaining or describing the following:

(a) parties involved;

(b) composition of the panel;

(c) basic procedure of the panel;

(d) general issues for panel determination;

(e) requirements relating to impartial consideration by the panel; and

(f) compensation of panel members.

(3) The chairperson of the screening panel, as soon as practicable shall convene the screening panel at a time and place to be agreed upon by the panel members and shall notify the parties of the date of the panel meeting.

(4) Within thirty (30) days after the judge notifies the parties that a screening panel shall be convened, the plaintiff shall file with the chairperson all medical records, medical care facility records, x-rays, test results, treatises, documents, tangible evidence, and written contentions upon which the plaintiff or claimant relies. A copy thereof shall be provided to the other party except x-rays the original of which shall be made available to all parties by the chairperson. [See (a) (4) of this rule for number of copies.]

(5) Within thirty (30) days after plaintiff's filing, the defendant shall in like manner provide the chairperson and the plaintiff a copy of all medical records, medical care facility records, x-rays, test results, treatises, documents, tangible evidence, and written contentions not theretofore provided. [See (a) (4) of this rule for number of copies.]

(6) In a claim involving multiple plaintiffs or multiple defendants where the parties cannot agree on a three-member panel or enlarged panel, the district judge shall convene one or more screening panels as the judge shall determine to be necessary and may select the same chairperson for all of said panels and may suggest or require that all of such panels meet separately or jointly.

(7) The contention of the parties shall contain a statement of the issues of fact and law; a brief statement of the facts in support of and in opposition to the claim; and a brief statement of the law that is applicable with citation of authority in support thereof. Contentions shall not contain a statement of facts not included in the material filed with the chairperson.

(8) Oral testimony and the presence of the parties shall not be permitted. The screening panel shall determine if the material provided by the parties is adequate from which a decision can be made on the issue of whether there was a departure from the standard practice of the health care provider or professional licensee and whether a causal relationship existed between the damages claimed by the plaintiff and such departure, if any. If the screening panel determines that further information or legal authority is required, the screening panel at the discretion of the chairperson shall notify the parties of the additional material required and may submit written questions to the parties the answers to which need not be verified under oath. The requested additional material shall be limited to the issues of fact as contained in the contentions. Such additional material and answers shall be filed with the chairperson within ~~ten (10)~~ fourteen (14) days after receipt of the written questions by mailing a copy of such answers to all parties and the chairperson.

(9) The chairperson's duties shall be to conduct such meetings as may be necessary to arrive at the facts. The chairperson shall advise the other members of the screening panel of the applicable rules of law and such rules shall be recorded in the opinion handed down by the screening panel. The screening panel then shall review all of the material and decide the facts and from those facts determine whether there was a departure from the standard practice of the health care provider specialty or profession involved. If a departure is found, there shall be further determination of whether a causal relationship existed between the damages claimed by the plaintiff and any such departure. Such findings must be based on reasonable probability but need not be to a scientific certainty.

(10) The screening panel shall prepare a written opinion of its findings. Any materials considered by the panel that were not provided by the parties shall be itemized in the panel's report. The opinion shall be supported by corroborating references to published literature and other relevant documents and shall:

A. state the standard of practice of the health care provider specialty or profession involved under the facts of the claim;

B. state whether there was a departure from the standard practice of the health care provider specialty or profession involved and the facts in support of a finding of departure, if any is found;

C. if a departure is found, state whether a causal relationship exists between the claimed injury sustained by the plaintiff and such departure. If a causal relationship is found, state the facts in support of such causal relationship; or

D. if the screening panel is unable to make a finding of either no departure or no causal relationship or both, so state giving the reasons therefor.

Rule 166

MATTERS TAKEN UNDER ADVISEMENT

All civil matters taken under advisement by a district judge shall be decided with dispatch. If, however, the matter is not decided within ninety (90) days after final submission, within ~~five (5)~~ seven (7) days thereafter the judge shall file with the Judicial Administrator a written report setting forth the title and the number of the case, the nature of the matter taken under advisement, and the reasons why a judgment, ruling or decision has not been entered. The Judicial Administrator may require supplemental reports until final disposition of the matter taken under advisement and shall furnish copies of all reports, upon their receipt, to the appropriate Departmental Justice. (Adopted pursuant to K.S.A. 60-252b.)

When a court is called upon to rule on a motion, the elapsed time between final submission of the motion and the ruling thereon shall not exceed thirty (30) days, except that the ruling time on a motion for summary judgment shall not exceed sixty (60) days. If the ruling on a motion is not entered within the required time, all of the reporting requirements of the preceding paragraph shall apply, with the initial report being filed within ~~five (5)~~ seven (7) days after the ruling was to have been entered as required by this paragraph.

Rule 167

USE OF JUROR QUESTIONNAIRE

The district courts may provide for the use of a juror questionnaire. The juror questionnaire is not a public record under the Kansas Open Records Act. The juror questionnaire may be substantially in the following form:

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

You have been selected to serve as a juror in the District Court of [Name]_____ County. Pursuant to Kansas statute, you are required to answer the questions on this form and return it in the enclosed addressed, stamped envelope within the next ~~five~~ seven days. The jury questionnaire is not a public record and is only made available to court personnel and the attorneys and parties to the case being tried. Your cooperation and willingness to serve as a juror is appreciated.

Americans with Disabilities Act Notice

It is Judicial Branch policy to comply with the Americans with Disabilities Act. If you have questions or concerns about jury service or if you are a person with a disability needing a reasonable accommodation to serve on a jury, please contact the court clerk promptly after receiving the summons. The clerk may be contacted in person or by mail at: [address]; by email at _____; by telephone at (XXX) XXX-XXXX; or via the Kansas Relay Center at (XXX) XXX-XXXX.

Judge _____, Division I

Judge _____, Division II

(Insert names of judges of judicial district)

JUROR QUESTIONNAIRE

1. Name _____ Age ____

First Second (or initial) Last

2. Home Address: _____

Residence Phone No. _____ Business Phone No. _____

3. Years of Residence: In Kansas _____ In this County _____
Is your home address in [this or name of] County? Yes_____ No_____

4. Former Residence _____

5. Marital Status: (Married, Single, Divorced or Widowed)_____
A. Number and ages of any children _____

_____

6. If married, name and occupation of husband or wife _____

_____

7. Your Occupation _____
A. If not self-employed, name of employer _____

_____

8. If you are not now employed, give your last occupation and employer: _____

_____

9. Have you ever served on a jury? Yes ___ No___
Have you served as a juror in this county within the last year? (Answer "Yes" if you were selected as a juror or were summoned and appeared, even if not selected. Yes___ No___

10. Have you or any members of your immediate family been a party to any civil or criminal lawsuit? Yes ___ No ___

A. If so, what type of lawsuit was it? _____

B. When and where did it occur? _____

_____

C. Who in your family was involved in this lawsuit? _____

_____

11. Have you been convicted or pleaded guilty or nolo contendre ("no contest"), to a felony within the last ten years? Yes ___ No ___

A. If so, state when and where this conviction or plea took place: _____

_____

12. Has any court ever found you to be incompetent or incapacitated? Yes ___ No ___

A. If your answer to this question is yes, state where and when this took place. _____
_____

B. If restored, give the date. _____
_____

13. Do you drive an automobile? Yes ___ No ___

A. If your answer is "no", is transportation available for you to get to court? Yes ___ No ___

14. Are you currently a breastfeeding mother? Yes ___ No ___
If yes, please state the approximate date you anticipate breastfeeding will be discontinued:

_____

15. Are you related to or a close friend of any law enforcement officer? Yes ___ No ___

16. Please state the extent of your education and vocational training: _____
_____

I affirm that the answers I have given to the above questions are true and correct.

Signature _____

Rule 170

JOURNAL ENTRIES AND ORDERS

(a) In all cases where the judge directs that the judgment be settled by journal entry pursuant to K.S.A. 60-258, it shall be prepared in accordance with the directions of the judge. Counsel preparing the journal entry shall, within ~~ten (10)~~ fourteen (14) days, unless another time is specifically directed by the judge, serve copies thereof on all other counsel involved. At the time of service, counsel preparing the journal entry shall file with the court a notice stating the date the proposed journal entry was served, attaching a copy of the proposed journal entry. Counsel upon whom a proposed journal entry is served shall, within ~~ten (10)~~ fourteen (14) days after service is made, serve on the counsel preparing said journal entry any objections in writing. At the expiration of the time for serving objections, counsel preparing said journal entry shall submit the original, together with any objections received, to the judge for approval. If counsel cannot agree as to the form of the journal entry, the judge shall settle the journal entry after such hearing, if any, as the Court deems appropriate and necessary.

(b) If a party is not represented by counsel, service on the party will comply with this rule.

(c) Orders or other documents containing rulings of the judge other than judgments shall be prepared in accordance with the directions of the judge.

(d) Every order, journal entry or judgment that changes the ownership or title to real estate shall contain on the margin of the first page the notation "TITLE TO REAL ESTATE INVOLVED."

Rule 172

EXPEDITED JUDICIAL PROCESS

(a) The chief judge in each district shall provide for an expedited judicial process which will increase effectiveness in support, visitation, and parentage proceedings by appointing one or more judges or court trustees to preside as hearing officers at summary hearings relating to the establishment, modification, or enforcement of support (pursuant to the Kansas Parentage Act, K.S.A. 38-1110 et seq.; the Uniform Interstate Family Support Act, K.S.A. 23-9,101 et seq.; K.S.A. 39-718b; K.S.A. 39-755; K.S.A. 60-1610; K.S.A. 38-1542; K.S.A. 38-1543; K.S.A. 38-1563; and the Income Withholding Act, K.S.A. 23-4,105 et seq.,) and enforcement of parent visitation rights.

(b) The hearing officer is authorized to:

(1) Take testimony and prepare written findings of fact and conclusions of law which shall constitute the summary record.

(2) Evaluate evidence and decide the most expeditious manner either to establish or to enforce court orders.

(3) Accept voluntary acknowledgment of support liability and stipulated agreements setting the amount of support to be paid.

(4) Accept voluntary acknowledgment of parentage.

(5) Enter orders, including default orders, as necessary; orders proposed by court shall be approved by a judge before the order is issued.

(c) District judges, district magistrate judges, and court trustees shall be considered qualified to serve as hearing officers at expedited judicial process hearings.

(d) If an obligor desires to contest an order of income withholding, the hearing officer shall set a hearing to permit the obligor to assert any affirmative defenses authorized by K.S.A. 23-4,110, and within 45 days of notice of delinquency to the obligor shall provide a decision on whether to withhold income.

(e) Any support or maintenance order entered after the effective date of this rule shall specify the payment period, e.g., monthly, weekly, and the date by which the first payment shall be made.

(f) Chief judges shall monitor cases subject to expedited judicial process in order to ensure that any action to modify or enforce support obligations is completed from time of filing to time of disposition within the following time frames:

(1) 90% in 90 days.

(2) 98% in 180 days.

(3) 100% in 365 days.

(g) Chief judges shall monitor cases subject to expedited judicial process in order to ensure that any action to establish parentage or support obligations is completed from time of filing to time of disposition within the following time frames:

(1) 75% in 270 days.

(2) 85% in 365 days.

(3) 90% in 455 days.

(h) Decisions of district magistrate judges or court trustees appointed pursuant to this rule shall be subject to review by a district judge on the motion of any party filed within ~~10~~ 14 days after the order was entered.

Rule 173

EXPEDITED PETITION BY UNEMANCIPATED MINOR FOR WAIVER OF PARENTAL NOTICE REQUIREMENT

(a) The chief judge in each district shall provide for an expedited judicial process for petitions filed pursuant to K.S.A. 65-6705. Any such petition shall be immediately assigned to a district judge for consideration, hearing, and decision.

(b) The chief judge shall maintain a confidential list of attorneys who are willing to assist or represent a minor in a proceeding to waive the notice requirement of K.S.A. 65-6705. Upon notification that a minor desires assistance in preparing and filing a petition for waiver of the notice requirement, or upon filing of a petition for waiver of the notice requirement, the judge shall appoint counsel from such list to assist or represent the minor at no cost to the minor.

(c) The judge shall ensure that all proceedings related to the petition for waiver of the notice requirement shall be recorded. As required by subsection (c) of K.S.A. 65-6705, a confidential record shall be maintained of the evidence in the proceeding, and the court shall protect the anonymity of the minor. The case shall be captioned "In the Matter of the Petition of Jane Doe for Waiver of Notice." Any court employee who breaches the confidentiality of a minor seeking a waiver under K.S.A. 65-6705 is subject to disciplinary action, including termination of employment, pursuant to the Kansas Court Personnel Rules.

(d) The Office of Judicial Administration shall prepare and distribute forms that may be used by the district courts to implement this rule. Forms for waiver of the notice requirement shall be available in each district court clerks's office upon request.

(e) The district court shall hold a hearing and file its written decision and order setting forth the specific findings of fact and conclusions of law within 48 hours of the filing of the petition in district court, excluding Saturdays and Sundays. Upon failure to file the order within such period the petition shall be deemed granted, and the court shall forthwith issue an order to that effect. If the minor files a notice of appeal from an order denying the petition for waiver, the district court judge shall immediately order preparation of a confidential transcript of the proceedings at no cost to the minor. A copy of the notice of appeal and a copy of the district judge's decision shall be filed by the appellant with the clerk of the appellate courts immediately upon filing the notice of appeal in district court. The transcript shall be filed with the clerk of the district court within three (3) days of the filing of the notice of appeal in district court.

(f) The clerk of the district court, within ~~five (5)~~ seven (7) days of the filing of the notice of appeal, shall compile and transmit to the clerk of the appellate courts, insofar as possible in the chronological order of their filing:

(1) the following original documents:

(a) the petition for waiver of the notice requirement;

(b) the written opinion, findings, and conclusions of the district judge;

(c) the notice of appeal;

(2) the transcripts of the proceedings before the district court; and

(3) any other document or exhibit which is part of the record.

(g) Except as otherwise specifically provided by section (e) of this rule, K.S.A. 60-206(a) shall govern in computing any prescribed period of time.

Rule 187

TAXATION OF COSTS BY THE CLERK

(a) Procedure for Taxation. In any case pursuant to Chapter 60 or 61 where the journal entry does not state an amount for costs and a party wishes to have the clerk tax costs pursuant to K.S.A. 6-2002, the party entitled to recover costs may file and serve a bill of costs within 30 days (1) after the expiration of time allowed for appeal of a final judgment or decree, or (2) after receipt by the clerk of an order terminating the action on appeal. The bill of costs shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council. A party may object to the bill of costs by filing and serving an objection within ~~ten (10)~~ fourteen (14) days of service of the bill. If an objection is filed, both the bill of costs and the objection shall be referred to the judge for disposition after such hearing, if any, as the judge deems appropriate. If no timely objection to the bill of costs is filed, the clerk may proceed to tax costs according to the bill. The clerk's action may be reviewed by the court if a motion to retax the costs is filed within ~~ten (10)~~ fourteen (14) days after taxation by the clerk.

(b) Items Allowable as Costs. The items allowable as costs shall be those specified in K.S.A. 60-2003, unless otherwise ordered by the court.

(c) To Whom Payable. Unless otherwise ordered by the court, all costs taxed are payable directly to the party entitled thereto and not to the clerk.

(d) Notwithstanding any other provision of this rule or Rule 186, court costs, including the docket fee, shall be assessed and collected by the judgment creditor in those cases where payment of court costs is excused under K.S.A. 28-110 and K.S.A. 60-2005. Unless otherwise required by law and except as otherwise directed by the court, moneys received by the judgment creditor shall be credited first to court costs, including the docket fee, then to the principal and interest to satisfy the judgment. Court costs, including the docket fee, shall have priority and shall be paid to the clerk from the first moneys collected regardless of whether the judgment creditor recovers the total amount of principal and interest ordered or files notice that judgment has been satisfied as set out in subsection (f) of Rule 186. Upon collection of costs, the judgment creditor shall pay the same to the clerk and, if applicable, shall file notice with the clerk that the judgment has been satisfied as set out in subsection (f) of Rule 186.

OTHER MISCELLANEOUS RULES

RULES RELATING TO DISCIPLINE OF ATTORNEYS

Rule 203

TYPES OF DISCIPLINE

(a) Misconduct shall be grounds for:

(1) Disbarment by the Supreme Court; or

(2) Suspension by the Supreme Court; or

(3) Censure by the Supreme Court which may or may not be published in the Kansas Reports as ordered by the Court; or(4) Informal admonition by the Kansas Board for Discipline of Attorneys or the Disciplinary Administrator; or(5) Any other form of discipline or conditions separate from or connected to any type of discipline stated above, whether or not recommended by a hearing panel, which the Supreme Court deems appropriate.

(b) Temporary Suspension by the Supreme Court. The Supreme Court may, on its own motion or on motion of the Kansas Board for Discipline of Attorneys or the Disciplinary Administrator, issue a citation directing an attorney against whom disciplinary proceedings are pending or anticipated to appear before the Court and show cause why said attorney's license to practice law should not be suspended during the pendency of such proceedings and, after hearing, the Court may enter an order of suspension for a definite or indefinite period or may discharge the order to show cause.

(c) Automatic temporary suspension of attorneys convicted of a felony crime.

(1) Duty of attorney to report. An attorney who has been charged with a felony crime (as hereinafter defined) in Kansas or with an equivalent offense in any federal court of the United States or the District of Columbia or in any other state, territory, commonwealth, or possession of the United States shall promptly inform the Disciplinary Administrator in writing of the charge. The attorney shall thereafter promptly inform the Disciplinary Administrator of the disposition of the matter.

(2) Duty of judicial administrator or clerk of court. The judicial administrator or clerk of any court in this state in which an attorney is convicted of a felony crime shall within ~~10~~ 14 days after the conviction transmit a certified copy of the judgment of conviction to the Disciplinary Administrator.

(3) Duty of Disciplinary Administrator. Upon receipt of a judgment of felony conviction, the Disciplinary Administrator shall institute appropriate disciplinary proceedings and file the certificate of conviction with the Supreme Court and mail a copy of the same to the attorney.

(4) Automatic temporary suspension. Upon the filing with the Supreme Court of the certificate of conviction showing that any attorney licensed to practice law in Kansas has been found guilty, whether sentenced or not, in any federal court of the United States or the District of Columbia or of any state, territory, commonwealth, or possession of the United States of a felony crime as hereinafter defined, the Court shall enter an order immediately and temporarily suspending that attorney from the practice of law until final disposition of the disciplinary proceeding commenced upon such conviction, whether the conviction resulted from a plea of guilty, no contest, or nolo contendere, or from a verdict after trial or otherwise, and regardless of the pendency of any appeal. A copy of the order of suspension shall immediately be served upon the attorney, who then must timely comply with Rule 218. Nothing herein shall be construed to preclude an application by the Disciplinary Administrator for a temporary suspension otherwise allowable by Supreme Court rule of any attorney convicted of any other crime.

(5) Felony crime. The term 'felony' shall include any crime designated a felony in Kansas or the United States or the District of Columbia or any state, territory, commonwealth, or possession of the United States; or any criminal offense of the United States or the District of Columbia or of any state, territory, commonwealth, or possession of the United States which if committed in Kansas would constitute a felony under Kansas laws.

(6) Vacating automatic temporary suspension order. An attorney suspended under the provisions of paragraph (c)(4) may apply to the Supreme Court, on notice to the Disciplinary Administrator, for reinstatement immediately upon the filing of a certificate demonstrating that the underlying conviction of a felony crime has been reversed or vacated, or upon good cause shown, the Supreme Court may upon application of the attorney with notice to the Disciplinary Administrator or upon its own motion set aside such suspension when it appears consistent with the maintenance of the integrity and honor of the profession, the protection of the public, and the interest of justice. Such order of reinstatement will not terminate any disciplinary proceeding then pending against the attorney.

(7) Disciplinary proceedings. Any disciplinary proceeding arising out of a conviction for a felony crime shall proceed as any other matter under the Supreme Court's disciplinary rules.

(d) The Attorney Diversion Program is an alternative to traditional disciplinary procedures, and participation in it is a matter of privilege, not of right. The purpose of the program is to protect the public by improving the professional competency of, and providing

educational, remedial, and rehabilitative programs for, the members of the bar of Kansas. As a general rule, participants in the program will have had no prior imposition of discipline. The attorney (Respondent), the Complainant and future clients will benefit from assistance provided to an attorney in the diversion process.

(1) DOCKETED COMPLAINTS

(i) Notification. The Respondent shall be notified of the Attorney Diversion Program at the time a complaint is docketed for investigation. At any time during the disciplinary process until the Disciplinary Administrator submits the Rule 204 report to the Review Committee (see [iii] below), the Respondent may submit to the Disciplinary Administrator's office a request to have the complaint referred to the Attorney Diversion Program. A suggested diversion plan shall be submitted by the Respondent.

(ii) Investigation. All Ethics and Grievance Committee members and investigators must be informed of the Attorney Diversion Program. If the Respondent, during the course of the investigation, makes a request to have the matter referred to the Attorney Diversion Program, the investigator should include a recommendation for or against diversion. In arriving at a recommendation, the investigator should consider all factors and circumstances involved in the complaint, as well as those relevant to the suitability of the Respondent for the diversion program.

The factors to be considered in making the recommendation include the nature of the violation, the duty violated, whether harm resulted to a client, Respondent's self-reporting the misconduct and taking remedial action, and any mitigating or aggravating circumstances. The critical consideration is whether the diversion process can reasonably be expected to cure, treat, educate, or alter the Respondent's behavior so as to minimize the risk of similar future misconduct. An additional consideration is the Complainant's concern that the complaint is being fairly handled and resolved. The Respondent will be disqualified from diversion if the conduct complained of involved self-dealing, dishonesty, or a breach of fiduciary duty. Absent unusual circumstances, the Respondent will be disqualified from the Attorney Diversion Program if the Respondent has been disciplined or previously participated in a diversion program.

(iii) Review by the Disciplinary Administrator. Upon receipt of the investigation report, the Disciplinary Administrator shall review the file and conduct any additional inquiry deemed necessary. In the report to the Review Committee of the Kansas Board for Discipline of Attorneys required by Supreme Court Rule 204, the Disciplinary Administrator shall include a recommendation for or

against diversion. Each recommendation for diversion shall outline the precise components deemed appropriate. All Rule 204 Reports recommending diversion shall be scheduled for discussion at a meeting of the Review Committee.

(iv) Consideration by the Review Committee. Review Committee members shall review all materials forwarded by the Disciplinary Administrator and the Respondent when considering the suitability of the complaint and the Respondent for eligibility under the Attorney Diversion Program. The Review Committee shall also consider the likely effectiveness of the proposed plan in resolving the situation to the Complainant's satisfaction and in preventing similar misconduct by the Respondent in the future. The Review Committee may make a referral to the Attorney Diversion Program or take any action permitted under Supreme Court Rule 210(c).

A Review Committee referral to the diversion program is equivalent to a finding under Supreme Court Rule 210(c) that there is probable cause to believe that the Respondent has violated the Kansas Rules of Professional Conduct, Rule 226. That finding will remain confidential despite Rule 222(d) if the diversion is completed successfully.

(2) REFERRAL TO THE ATTORNEY DIVERSION PROGRAM

(i) Effect of Entering into Diversion Agreement. By entering into a diversion agreement, the Respondent stipulates to the factual allegations and rule violations contained in the Rule 204 report or to factual allegations and rule violations that can be mutually agreed upon by the Disciplinary Administrator and the Respondent.

(ii) Fees. Each Respondent entering the Attorney Diversion Program shall pay an initial fee of $250. During the period of diversion, the Respondent shall also pay a fee of $50 per month. All such fees are payable to the Disciplinary Fee Fund established by Supreme Court Rule 208(h). The Office of the Disciplinary Administrator may consider and grant a hardship deferral of these fees upon the Respondent's application.

(iii) Creating the Diversion Agreement. Within 2 weeks of a final decision referring a complaint to the Attorney Diversion Program, the Disciplinary Administrator's office will schedule a meeting with the Respondent, counsel for the Respondent, and, if designated by the Disciplinary Administrator, a representative of statewide or local bar association committees.

The statewide or local bar association committees, from which representatives

may be designated for creating and implementing an agreement, shall include (a) fee dispute resolution; (b) lawyer assistance; (c) mediation of minor disputes; (d) law office management; (e) continuing legal education; and (f) mentoring.

Those attending the initial diversion meeting will discuss and negotiate an agreement between the Respondent and the Disciplinary Administrator's office designed to address the problem or problems identified in the Rule 204 report. Where appropriate, specific tasks and deadlines concerning the diversion shall be assigned. The Complainant's position should be carefully considered, but the formation of a diversion agreement is not contingent on the Complainant's approval.

(iv) Final Diversion Agreement. The Disciplinary Administrator's office shall prepare the final written diversion agreement. The agreement shall be signed by the Respondent, Respondent's counsel, and a representative of the Disciplinary Administrator's office.

If no satisfactory agreement can be reached, traditional formal disciplinary procedures shall resume. The Respondent's decision not to participate in the diversion program or failure to reach a satisfactory diversion agreement shall not be considered as an aggravating factor in the resulting formal disciplinary proceeding.

(v) Implementing and Monitoring the Agreement. During the term of the agreement, on a periodic basis, the Respondent shall report progress to the Disciplinary Administrator's office or to one or more members of a local bar or statewide bar association committee designated by the Disciplinary Administrator in the agreement. The designated committee member(s) shall monitor and supervise the progress of the Respondent and shall immediately report noncompliance or other problems or suggestions to the Disciplinary Administrator's office. Failure to complete the diversion agreement in a timely and diligent manner will result in the Respondent's termination from the Attorney Diversion Program and the return of the complaint to the traditional formal disciplinary process.

The committee members designated in the diversion agreement (or otherwise) to supervise an attorney in the Attorney Diversion Program may submit their diversion-related expenses to the Disciplinary Administrator's office for reimbursement.

(vi) Completion of the Attorney Diversion Program. Successful completion of the diversion agreement shall be reported back to the Review Committee by the Disciplinary Administrator and will result in the dismissal of the complaint. Information regarding a successfully completed diversion agreement will remain confidential and not available to the public. However, the information may be considered in any future disciplinary matters involving the Respondent by the Disciplinary Administrator's office as prior discipline.

(vii) Failure to Complete the Attorney Diversion Program. If the Respondent fails to complete the agreed tasks in a timely manner at any point in the diversion process, he or she may be terminated from the program. If such a termination occurs, traditional formal disciplinary procedures will resume. When the complaint is returned to the formal disciplinary process, the Respondent's termination from the Attorney Diversion Program may be cited as an additional aggravating factor in recommending discipline and as a violation of Supreme Court Rule 207 and KRPC 8.1.

(3) MISCELLANEOUS MATTERS

(i) Keeping Statistical Information on the Diversion Program. The Disciplinary Administrator's office shall maintain annual statistical records of the numbers of complaints assigned to the Attorney Diversion Program, including the final dispositions, the number of diversion agreements reached, the number of complaints returned to the traditional disciplinary process, and the success or failure of Respondents in completing their diversion agreements. An attempt should be made to monitor the recidivism rate for attorneys who successfully complete the program.

(ii) Confidentiality. Pursuant to Supreme Court Rule 207 and KRPC 8.3, but subject to Rule 206, any prior or subsequent violations of the Kansas Rules of Professional Conduct, Rule 226, that were not identified in the original written complaint but are revealed during the diversion process shall be reported for review to the Disciplinary Administrator.

(iii) Complainant Participation. Although the Complainant does not have any right to insist that the formal disciplinary process be followed and cannot veto a diversion, at any time he or she may provide additional information regarding the complaint or the diversion process. The Complainant shall be advised whether the Respondent successfully completed the Attorney Diversion Program.

Rule 211

FORMAL HEARINGS

(a) Hearings shall be conducted by a panel of three attorneys, at least two of whom shall be members of the Board. Hearings may be held at any place in the state. The chairman of the Board shall designate the members of the panel, the presiding officer thereof, and the matters to be heard by the panel. The presiding officer shall be a member of the Board.

(b) Formal disciplinary proceedings shall be instituted by the Disciplinary Administrator by filing a formal complaint with the secretary of the Board. The complaint shall be sufficiently clear and specific to inform the respondent of the alleged misconduct. A copy of the complaint shall be served upon the respondent. The respondent shall serve an answer upon the Disciplinary Administrator within twenty days after the service of the complaint unless such time is extended by the Disciplinary Administrator or the hearing panel.

(c) At any time after the Review Committee has ordered prosecution of formal charges before a hearing panel, pursuant to Supreme Court Rule 210(c), the Disciplinary Administrator shall schedule the matter for hearing.

(d) The Disciplinary Administrator shall serve a notice of hearing upon the respondent, respondent's counsel, and the complaining parties. The notice shall state that the respondent is entitled to be represented by counsel, to cross-examine witnesses, and to present evidence. The notice shall also state the date and place of the hearing and shall be served at least fifteen days in advance of the hearing date. The hearing shall be governed by the Rules of Evidence as set forth in the Code of Civil Procedure. (K.S.A. 60-401 et seq.)

(e) All witnesses shall be sworn and all proceedings and testimony shall be recorded, either by stenographic means or by electronic recording.

(f) At the conclusion of a hearing held by a panel, a report shall be made setting forth findings and recommendations, which report shall be signed by a majority of the panel and submitted to the Disciplinary Administrator for appropriate distribution. To warrant a finding of misconduct the charges must be established by clear and convincing evidence. In recommending discipline the hearing panel may take into consideration the prior record, if any, of the respondent. Mitigating or aggravating circumstances which affect the nature or degree of discipline to be imposed or recommended in a matter shall be fully set forth in the panel report.

A unanimous panel report shall be deemed a final hearing report and shall be filed, served, and acted upon as hereinafter provided.

If the panel cannot agree unanimously on either the findings of fact, or the recommended discipline to be imposed, or both, the majority shall prepare and file a majority report. The

minority member shall file a minority report. Thereupon the majority and minority reports shall be considered final reports, and both such reports, if either recommends discipline by the Supreme Court, shall be submitted to the Supreme Court for consideration and disposition pursuant to Rule 212.

A copy of the final hearing report shall be mailed or delivered by the Disciplinary Administrator to the respondent and to counsel of record.

If the final hearing report does not recommend discipline, and the Disciplinary Administrator does not appeal therefrom, the report shall be filed with the secretary of the Board and with the Disciplinary Administrator.

If the final hearing report or reports do not recommend discipline, or if the complaint is dismissed by the panel or if the panel recommends discipline other than as set forth in Rule 203(a)(1), (2), (3), or (5) an appeal may be taken by the Disciplinary Administrator to the Supreme Court for final disposition. The appellate procedure shall be as provided in Rule 212(b).

If the final hearing report recommends discipline as prescribed by Rule 203(a) (1), (2), (3), or (5) or if the Disciplinary Administrator appeals from other action taken as set forth in the preceding paragraph, the report, findings, and recommendations of the panel together with the complaint, answer, and transcript, if any, shall be filed with the Clerk of the Appellate Courts and the matter shall proceed as provided by Rule 212.

(g) Requirements of Probation

(1) If the Respondent intends to request that the Respondent be placed on probation for violating the Kansas Rules of Professional Conduct or the Kansas Supreme Court Rules, the Respondent shall provide each member of the Hearing Panel and the Disciplinary Administrator with a workable, substantial, and detailed plan of probation at least ~~ten~~ fourteen days prior to the hearing on the Formal Complaint. The plan of probation must contain adequate safeguards that will protect the public and ensure the Respondent's full compliance with the disciplinary rules and orders of the Supreme Court.

(2) If the Respondent provides each member of the Hearing Panel and the Disciplinary Administrator with a plan of probation, the Respondent shall immediately and prior to the hearing on the Formal Complaint put the plan of probation into effect by complying with each of the terms and conditions of the probation plan.

(3) The Hearing Panel shall not recommend that the Respondent be placed on probation unless:

(i) the Respondent develops a workable, substantial, and detailed plan of probation and provides a copy of the proposed plan of probation to the Disciplinary Administrator and each member of the Hearing Panel at least ~~ten~~ fourteen days prior to the hearing on the Formal Complaint;

(ii) the Respondent puts the proposed plan of probation into effect prior to the hearing on the Formal Complaint by complying with each of the terms and conditions of the probation plan;

(iii) the misconduct can be corrected by probation; and

(iv) placing the Respondent on probation is in the best interests of the legal profession and the citizens of the State of Kansas.

(4) If the Hearing Panel recommends that the Respondent be placed on probation, then the Hearing Panel should include specific conditions of probation in the Final Hearing Report.

(5) Prior to the oral argument before the Supreme Court pursuant to Kan. Sup. Ct. R. 212, the Respondent shall provide an affidavit to the Disciplinary Administrator and the Clerk of the Appellate Courts that states that the Respondent is in compliance with the terms and conditions of the proposed probation plan.

(6) If a Respondent is placed on probation by the Supreme Court, the Respondent shall comply with each condition contained in the Supreme Court's opinion.

(7) If the Respondent complies with each condition contained in the opinion throughout the period of probation, at the end of the period of probation, the Respondent shall file a motion to be discharged from probation. Along with the motion, the Respondent shall file an affidavit stating that he has complied with each condition of probation. Finally, the Respondent shall obtain an affidavit from the Supervising Attorney stating that the Respondent has complied with each condition contained in the opinion throughout the period of probation. After the Respondent files a motion to be discharged and supporting affidavits, the Disciplinary Administrator shall have twenty days to respond to the motion. Thereafter, the Supreme Court shall rule on the Respondent's motion without oral argument.

(8) Unless and until the Supreme Court discharges the Respondent from probation, the Respondent shall remain on probation, subject to each condition of probation, regardless of whether the time period set by the Supreme Court, in its opinion, has expired.

(9) In the event the Respondent fails to comply with one or more probation conditions, the Respondent shall immediately inform the Supervising Attorney and provide the Disciplinary Administrator with an affidavit setting forth each failure. The Supervising Attorney shall immediately provide the Disciplinary Administrator with an affidavit setting forth each violation of one or more conditions of probation. After receiving an affidavit from the Respondent and/or the Supervising Attorney stating that the Respondent has failed to comply with one or more probation conditions or upon receiving other credible evidence that the Respondent has violated one or more probation conditions, the Disciplinary Administrator may file a motion to revoke probation with the Supreme Court and the Chairman of the Kansas Board for Discipline of Attorneys. The filing of such a motion shall automatically suspend the running of probation time and continue the supervision until the motion is resolved.

(10) Thereafter, the Chairman of the Kansas Board for Discipline of Attorneys shall immediately appoint one Board Member of the Kansas Board for Discipline of Attorneys to conduct an expedited hearing or consolidate with a pending matter to determine whether the Respondent has failed to comply with one or more probation conditions.

(11) At the hearing on the motion to revoke probation, the Disciplinary Administrator shall have the burden to establish that the Respondent failed to comply with one or more conditions of probation by a preponderance of the evidence. The Respondent shall have the opportunity to have counsel of his choosing, to cross-examine the witnesses presented by the Disciplinary Administrator, and to present witnesses in his own behalf. At the conclusion of the hearing, the Board Member shall issue an expedited written report addressing whether the Respondent failed to comply with one or more conditions of probation. The report of the Board Member shall immediately be filed with the Supreme Court.

(12) After the report of the Board Member is filed with the Supreme Court, the Respondent may file a response with the Supreme Court to the Board Member's report within twenty days. Regardless of whether the Respondent files a response to the Board Member's report, thereafter, the Disciplinary Administrator shall have ~~ten~~ fourteen additional days to file a reply. After the Disciplinary Administrator's reply is received or after the time for filing the same has passed, the Supreme Court shall set a time for oral argument, unless waived by the Respondent and the Disciplinary Administrator. The Clerk of the Appellate Courts shall notify the Respondent and the Disciplinary Administrator by certified mail of the time and place of the argument.

Rule 212

PROCEEDINGS BEFORE THE SUPREME COURT

(a) All disciplinary and reinstatement proceedings filed with the Board or in the Kansas Supreme Court shall be styled:

In the Matter of

No. _____

_____

Respondent or Petitioner(as the case may be).

(b) Cases for hearing before the Supreme Court shall be filed with the Clerk of the Appellate Courts and shall contain a copy of the formal complaint and respondent's answer, together with fifteen copies of the panel's report and fifteen copies of the recommendation of the Disciplinary Administrator, if any. Thereupon, the matter shall be docketed by the Clerk. The complaint, answer, report, findings, and recommendation of the hearing panel, recommendation of the Disciplinary Administrator, if any, and the transcript, if any, and all other evidence admitted before the panel shall constitute the record in the case.

(c) Upon docketing of said case the Clerk of the Appellate Courts shall mail a copy of the report to the respondent and, if represented, to his or her attorney, and shall issue a citation directing the respondent to file with the Clerk either (1) a statement that respondent does not wish to file exceptions to the report, findings, and recommendation, or (2) respondent's exceptions to the report. Any part of the hearing report not specifically excepted to shall be deemed admitted. If respondent's address is unknown and a copy of said report and citation cannot be served upon said respondent, the matter shall stand submitted on the merits upon the filing of a certificate by the Clerk disclosing such facts.

(d) If the respondent fails to file exceptions to the report within twenty days of the mailing thereof the findings of fact in the report shall be deemed to be admitted and the Supreme Court shall fix a time and place for the imposition of discipline and the Clerk of the Appellate Courts shall notify the respondent by registered or certified mail of such time and place. The respondent shall appear in person and may be accompanied by counsel and may make a statement with respect to the discipline to be imposed.

(e) If the respondent files exceptions the following steps shall be taken:

(1) The Clerk of the Appellate Courts shall immediately cause a transcript of the record of the proceedings before the panel to be prepared and filed and a copy to be served upon respondent. Such transcript shall be a part of the record and both the Disciplinary Administrator and respondent may refer thereto in their

respective briefs, setting forth with particularity the pages of the transcript where the material referred to may be found.

(2) The respondent shall have thirty days from service of the transcript to file a brief.

(3) Upon the filing of respondent's brief, the Disciplinary Administrator or special prosecutor shall have thirty days in which to file a brief, and respondent shall have ~~ten~~ fourteen days after filing of the brief of the Disciplinary Administrator or the special prosecutor to file a reply brief. The briefs shall be of such number and form and be served in such manner as is provided by the rules relating to appeals in civil actions.

(4) If, after thirty days from the service of the transcript, respondent fails to file a brief, respondent will be deemed to have conceded that the findings of fact made by the hearing panel are supported by the evidence.

(5) The matter shall be set for arguments as in civil appeals.

(f) The recommendation of the panel or the Disciplinary Administrator as to sanctions to be imposed shall be advisory only and shall not prevent the Court from imposing sanctions greater or lesser than those recommended by the panel or the Disciplinary Administrator.

(g) In all cases where the Supreme Court has ordered discipline by suspension or disbarment from the practice of law, such discipline shall become effective immediately upon the filing of the order or opinion with the Clerk of the Appellate Courts, unless otherwise ordered by the Court. The Respondent shall have twenty days from the filing of such order or opinion to file a motion for rehearing or modification, or any other proper pleading. The filing of such motion or other pleading shall not stay or affect the order of suspension or disbarment of the respondent to practice law unless and until the Court rules otherwise.

Rule 216A

COMPLIANCE EXAMINATIONS BY THE DISCIPLINARY ADMINISTRATOR

(a) The Disciplinary Administrator or the Disciplinary Administrator's representative authorized in writing by the Disciplinary Administrator shall have the power to perform compliance examinations of any Rule 226 trust account. All references in this rule to Disciplinary Administrator also refer to a representative authorized in writing.

(b) If a lawyer or law firm refuses to produce trust account records upon request of the Disciplinary Administrator, a compliance examination of a lawyer's or law firm's trust accounts conducted under this rule may be commenced by the issuance of an investigative subpoena to compel the production of records relating to a lawyer's or law firm's trust accounts. The subpoena shall contain a certification that it was issued in compliance with this rule. If a subpoena is required, it should be served at least ~~ten (10) business~~ fourteen (14) days before commencement of the compliance examination.

(c) With respect to each compliance examination conducted under this rule, the examiner shall:

(1) determine whether the lawyer's or law firm's records and accounts are being maintained in accordance with applicable Supreme Court rules and

(2) employ sampling techniques to examine "selected accounts," unless discrepancies are found which indicate a need for a more detailed examination. "Selected accounts" may include money, securities and other trust assets held by the lawyer or law firm; safe deposit boxes and similar devices; deposit records; canceled checks or their equivalent; and any other records which pertain to trust account transactions affecting the lawyer's or law firm's practice of law.

(d) The examiner shall prepare a written report containing the examiner's findings, a copy of which shall be provided to the examined lawyer or law firm.

(e) In the event the compliance examination reports deficiencies in the lawyer's or law firm's records or procedures, the lawyer or law firm shall within ~~ten (10) business~~ fourteen (14) days after receipt of the report, provide evidence that the alleged deficiencies either are incorrect or have been corrected. If corrective action requires additional time, the lawyer or law firm shall apply for an extension of time to a date certain in which to correct the deficiencies cited in the compliance examination report.

(f) All records produced for the compliance examination conducted under this rule shall remain confidential, and their contents shall not be disclosed in violation of the lawyer-client privilege.

(g) Records produced for a compliance examination conducted under this rule may be disclosed to:

(1) the Disciplinary Administrator or to a court to the extent disclosure is necessary for the purposes of completing the compliance examination;

(2) the Disciplinary Administrator for the purposes of disciplinary proceedings; or

(3) any other person, including a law enforcement agency, with the permission of the Supreme Court.

(h) A lawyer or law firm shall cooperate in the examination conducted under this rule and shall answer all questions pertaining thereto. A lawyer's or law firm's failure to cooperate in an examination conducted under this rule shall constitute professional misconduct.

RULES RELATING TO JUDICIAL CONDUCT

Rule 606

DISQUALIFICATION/RECUSAL

(a) A judge who is a member of the commission or of the Supreme Court shall be disqualified from participation as a member in any proceedings involving his or her own discipline, suspension, removal or compulsory retirement.

(b) A judge who is the subject of a complaint may file a written motion to disqualify a member of a panel, stating with particularity the grounds for disqualification. If formal proceedings have been commenced, a motion to disqualify must be filed no later than twenty days after mailing of the formal complaint. The panel member may, within ~~ten~~ fourteen days after a motion to disqualify is filed, file a response thereto. A motion to disqualify shall be determined by majority vote of the panel if the member does not voluntarily recuse. The panel member whose disqualification is requested shall not be eligible to vote on the motion for his or her disqualification. Any member of the commission or of a panel may voluntarily recuse at any time.

Rule 623

PROCEEDINGS BEFORE THE SUPREME COURT

(a) All proceedings filed in the Supreme Court under this rule shall be conducted in the name of the State of Kansas by the examiner, or by special counsel appointed by the court.

(b) Fifteen copies of the hearing panel's findings of fact, conclusions of law, and recommendations, shall be filed with the clerk of the Supreme Court; thereupon, the matter shall be docketed by the clerk as:

IN THE SUPREME COURT OF THE STATE OF KANSAS

In re _____,
(Judge's name)

No._____
Original Proceeding Relating to
Judicial Conduct

_____
(Judge's judicial title)

(c) Upon docketing of the case the clerk shall mail a copy of the findings of fact, conclusions of law, and recommendations to the respondent, and shall issue a citation directing the respondent to file with the clerk either (1) a statement that respondent does not wish to file exceptions to the findings of fact, conclusions of law, and recommendations, (2) a statement that respondent does not wish to file exceptions to the findings of fact and conclusions of law but reserves the right to address the Supreme Court with respect to disposition of the case, or (3) respondent's exceptions thereto. If respondent's address is unknown and a copy of the findings of fact, conclusions of law, recommendations, and citation cannot be served upon him or her, the matter shall stand submitted on the merits upon the filing of a certificate by the clerk disclosing such facts.

(d) If the respondent fails to file exceptions within twenty days after receipt thereof or the respondent files a statement that respondent does not wish to file exceptions, the Supreme Court shall fix a time and place for the imposition of discipline and the clerk shall notify the respondent by certified mail return receipt requested of such time and place. A hearing panel's findings of fact and conclusions of law shall be conclusive and may not be challenged by respondent unless exceptions have been timely filed. The respondent shall appear in person and may be accompanied by counsel and may make a statement with respect to the disposition of the case. Thereafter, the court shall impose such discipline or make such other disposition as may be deemed proper and just.

(e) If the respondent files exceptions the following steps shall be taken:

(1) The clerk shall immediately cause a transcript of the record of the proceedings before a hearing panel to be prepared and filed and a copy to be served upon respondent. Such transcript shall be part of the record and both the State and respondent may refer thereto in their respective briefs, setting forth with particularity the pages of the transcript where the material referred to may be found. The clerk shall also file as a part of the record the formal complaint, the answer (if any), any depositions which were before a hearing panel, the exhibits, and such other documents as the court may direct.

(2) The respondent shall have thirty days from service of the transcript to file a brief.

(3) Upon the filing of respondent's brief, the examiner shall have thirty days in which to file his or her brief, and respondent shall have ~~ten~~ fourteen days after filing of the brief of the examiner to file a reply brief. The briefs shall be of such number and form and be served in such manner as is provided by the rules relating to appeals in civil actions.

(4) If after thirty days from the service of the transcript upon respondent, respondent fails to file a brief, respondent will be deemed to have conceded that the findings of fact made by the hearing panel are supported by the evidence.

(5) The matter shall be set for hearing and heard on the merits.

(f) The court may refer the matter back to a hearing panel for such further proceedings as the court may direct, reject the recommendations, dismiss the proceedings, order discipline or compulsory retirement, or make such other disposition as justice may require. If the respondent is a Supreme Court justice, the discipline imposed shall be subject to the provisions of Article 3, Section 15, of the Constitution of the State of Kansas governing the removal and retirement of justices of the Supreme Court.

(g) The rules of appellate procedure shall apply to proceedings in the Supreme Court for review of a recommendation of a hearing panel, except where express provision is made to the contrary or where the application of a particular rule would be clearly impracticable, inappropriate, or inconsistent.