

Rule 4.02

INTERLOCUTORY APPEAL BY PROSECUTION

- (a) **Notice of Appeal.** When an appeal is taken to the Court of Appeals under K.S.A. 22-3601(a) and 22-3603, the notice of appeal must be filed with the clerk of the district court no later than 14 days after entry of the order from which the appeal is taken. A copy of the notice of appeal must be served on defense counsel or on the defendant, if unrepresented.
- (b) **Docketing the Appeal.** No later than 21 days after the notice of appeal is filed, the prosecution must file with the clerk of the appellate courts the documents listed in paragraphs (1) through (4). The appeal will be docketed on filing of:
 - (1) a file-stamped certified copy of the notice of appeal;
 - (2) the docketing statement required by Rule 2.041;
 - (3) a file-stamped certified copy of the order appealed from—or, if the order is not in writing, a transcript of the court’s announcement of its order—together with any written opinion or memorandum of the district court relating to the order; and
 - (4) a copy of a request for transcript filed under Rule 3.03, a written statement indicating no transcript is necessary, or a certificate of completion of the transcript.
- (c) **Record on Appeal.** The clerk of the district court must prepare the record on appeal under Rule 3.02. The record on appeal consists of the following documents:
 - (1) a copy of:
 - (A) the warrant, search warrant, confession, or other written evidence quashed or suppressed; or
 - (B) a description—approved by the district court—of any physical evidence or a summary of any oral admission or testimony suppressed;
 - (2) a copy of any affidavit and the transcript of any testimony that:
 - (A) provided the basis for the issuance of a warrant or search warrant that was quashed; or
 - (B) served as the basis for the seizure of evidence that was suppressed;
 - (3) if testimony was taken on the motion to quash or suppress, a copy of the transcript, or—if the parties agree—a narrative statement of the testimony; and
 - (4) any other portion of the record required by the appellate court.
- (d) **Briefing Schedule.** The prosecution must serve and file its brief no later than 30 days after being served with the certificate of completion of the transcript under Rule 3.03 or no later than 40 days after

docketing if no transcript is requested. The defense must serve and file its brief no later than 30 days after being served with the prosecution's brief.

- (e) **Stay of District Court Proceedings.** Further proceedings in the district court are stayed pending determination of the appeal.
- (f) **Post-Mandate Action by District Court.** After receipt of the mandate, on the prosecution's motion, the district court must issue:
 - (1) an order for the defendant to appear; or
 - (2) an alias warrant for the defendant's arrest.

[**History:** Am. (a) effective July 1, 1982; Am. effective February 8, 1994; Am. (b) effective November 6, 2000; Am. (c) effective September 6, 2005; Am. (a) effective March 21, 2008; Am. (a) effective July 1, 2010; Restyled rule and amended effective July 1, 2012; Am. (b) effective December 19, 2016.]