

PREFACE

The Kansas Judicial Council gratefully acknowledges the Kansas Bar Association's generous donation of its rights to the *Kansas Appellate Practice Handbook*, Third Edition, in order to make this Fourth Edition available online at no cost to members of the bar and the public.

The authors and editors of this edition of the handbook owe a professional debt to those who authored the first edition of the handbook in 1978 and issued a revision in 1984. Members of the original KBA Kansas Appellate Practice Handbook Writing Committee included Hon. J. Richard Foth and Robert J. Roth, Co-Chairs, Hon. Bob Abbott, Lewis C. Carter, Professor Robert C. Casad, Professor James Concannon, Jerry G. Elliott, Don Patterson, Fred N. Six, and Hon. Jerome Harman, Editor. The 1984 revision was prepared by Hon. J. Richard Foth, Hon. Bob Abbott, and Carol Gilliam Green.

The Second Edition in 1994 and the Third Edition in 1998 were edited by Hon. Bob Abbott and Carol Gilliam Green. Other contributing authors and editors to those editions were Alan F. Alderson, Hon. J. Patrick Brazil, Debra Sue Byrd Peterson, Hon. Jerry G. Elliott, Randall E. Fisher, Brian J. Moline, Robert W. Parnacott, Robert L. Phelps II, Joan K. Rowland, Robert C. Rowland, Martha M. Snyder, and Cheryl L. Whelan.

This Fourth Edition has been prepared under the direction of the Judicial Council Appellate Procedure Advisory Committee, chaired by Hon. Jerry G. Elliott. Authors and editors included Janet L. Arndt, Hon. Jerry G. Elliott, Teri E. Canfield-Eye, Hon. Nancy L. Caplinger, Richard L. Cram, Nicholas S. Daily, James M. Gannon, Carol Gilliam Green, Randall L. Hodgkinson, Clinton L. Hurt, Gayle B. Larkin, Hon. Marla J. Luckert, Patricia E. McComas, Hon. Kevin P. Moriarty, Steven J. Obermeier, Debra Sue Byrd Peterson, Nancy J. Strouse, Michelle M. Watson, and Tonia Owens Whitener.

Special mention needs to be made about two people. We most likely would not have seen the Second and Third Editions of the *Appellate Practice*

Handbook without the steady hand and long hours invested by Carol Gilliam Green. Her energy was a lifeline. And with this Fourth Edition, we pay special tribute to Carol and to Nancy J. Strouse for the unbelievable time and effort spent in editing this edition.

This handbook represents a collective view of current appellate practices and procedures which are subject to change. The Kansas Appellate Courts have not endorsed, nor are they bound by, statements in this handbook.

Statutory references throughout are to the latest version of the *Kansas Statutes Annotated* unless otherwise specifically indicated. Rules refer to the Kansas Supreme Court Rules, published annually in the *Kansas Court Rules Annotated*.

Hon. Jerry G. Elliott, *Chair*
Kansas Judicial Council
Appellate Procedure Advisory
Committee

Addendum:

The 2009 update of the *Kansas Appellate Practice Handbook*, Fourth Edition, was prepared by Hon. Nancy L. Caplinger, Martha J. Coffman, Hon. Jerry G. Elliott, James M. Gannon, Carol Gilliam Green, Chelsey G. Langland, Gayle B. Larkin, Kimberly D. Long, Christy R. Molzen, Steven J. Obermeier, Jonathan M. Paretsky, and Carrie A. Wortman.

The 2010 supplement was prepared by Christy R. Molzen and Carol Gilliam Green.

TABLE OF CONTENTS

Chapter 1 HISTORY OF THE APPELLATE COURTS

Chapter 2 PERSONNEL OF THE APPELLATE COURTS

§ 2.1	The Supreme Court	2-1
§ 2.2	The Court of Appeals	2-2
§ 2.3	Clerk of the Appellate Courts	2-2
§ 2.4	Appellate Reporter	2-2
§ 2.5	Judicial Administrator	2-3
§ 2.6	Law Librarian	2-3
§ 2.7	Disciplinary Administrator	2-4

Chapter 3 INTERNAL OPERATING PROCEDURES

I. SUPREME COURT

§ 3.1	Prehearing	3-1
§ 3.2	Decision	3-2
§ 3.3	Opinions	3-2
§ 3.4	Motions and Original Actions	3-3
§ 3.5	Petitions for Review	3-3
§ 3.6	Disqualification	3-3

II. COURT OF APPEALS

§ 3.7	Prehearing	3-4
§ 3.8	Decision	3-5
§ 3.9	Opinions	3-6
§ 3.10	Motions	3-6
§ 3.11	Disqualification	3-7

III. CONFIDENTIALITY

§ 3.12	Confidentiality in the Appellate Courts	3-7
--------	---	-----

Chapter 4
ORIGINAL ACTIONS IN THE APPELLATE COURTS

§ 4.1	Exercise of Concurrent Jurisdiction	4-1
§ 4.2	Procedure upon Filing an Original Action.....	4-1
§ 4.3	Docket Fees.....	4-2
§ 4.4	Disposition.....	4-2
§ 4.5	The Record.....	4-3
§ 4.6	Quo Warranto.....	4-4
§ 4.7	Mandamus	4-4
§ 4.8	Habeas Corpus	4-5

Chapter 5
APPELLATE JURISDICTION

I.	CREATION OF THE KANSAS APPELLATE COURTS	
§ 5.1	Constitutional and Statutory Authority.....	5-1
II.	APPELLATE JURISDICTION OF THE SUPREME COURT IN CRIMINAL CASES	
§ 5.2	Direct Appeals.....	5-2
III.	APPELLATE JURISDICTION OF THE COURT OF APPEALS IN CRIMINAL CASES	
A.	Appeals by the Defendant	
§ 5.3	Generally	5-3
§ 5.4	Following Judgment	5-3
§ 5.5	Following Pleas	5-5
B.	Appeals by the Prosecution	
§ 5.6	Generally	5-5
§ 5.7	From an Order Dismissing a Complaint, Information or Indictment: K.S.A. 22-3602(b)(1).....	5-6
§ 5.8	From an Order Arresting Judgment: K.S.A. 22-3602(b)(2).....	5-7
§ 5.9	Upon a Question Reserved by the Prosecution: K.S.A. 22-3602(b)(3)	5-8
§ 5.10	Upon an Order Granting a New Trial in Any Case Involving an A or B Felony or, for Crimes Committed on or after July 1, 1993, Any Case Involving an Off-Grid Crime: K.S.A. 22-3602(b)(4)	5-10

§ 5.11	Interlocutory Appeals: K.S.A. 22-3603	5-10
C.	Sentencing Guidelines Appeals	
§ 5.12	Appeals Under the Kansas Sentencing Guidelines Act.....	5-11
IV. APPELLATE JURISDICTION IN JUVENILE OFFENDER CASES		
§ 5.13	Appeals by the Juvenile Offender	5-14
§ 5.14	Appeals by the Prosecution.....	5-15
§ 5.15	Sentencing Guidelines Appeals - Juvenile.....	5-15
V. APPELLATE JURISDICTION IN CIVIL CASES		
§ 5.16	Supreme Court	5-16
§ 5.17	Court of Appeals	5-17
VI. APPEALABLE ORDERS IN CIVIL CASES		
§ 5.18	Final Orders	5-18
§ 5.19	Interlocutory Orders that are Appealable as a Matter of Right	5-23
§ 5.20	Interlocutory Orders that are Appealable in the Court's Discretion	5-24
§ 5.21	K.S.A. 60-254(b) – Entry of Final Judgment as to One or More but Fewer than all Claims or Parties.....	5-25
§ 5.22	Probate Proceedings.....	5-27
§ 5.23	Juvenile Proceedings.....	5-30
VII. TRANSFER OF CASES BETWEEN THE APPELLATE COURTS		
§ 5.24	General	5-31
§ 5.25	Upon Motion of a Party.....	5-31
§ 5.26	Upon Motion of the Supreme Court	5-32
§ 5.27	Upon Motion of the Court of Appeals.....	5-32
§ 5.28	Appeal of Right from Court of Appeals to Supreme Court.....	5-33
§ 5.29	Petitions for Review by Supreme Court of Court of Appeals Decisions	5-33
VIII. MULTI-LEVEL APPEALS		
§ 5.30	General	5-34
§ 5.31	Appeals from Decisions of District Magistrate Judges in Criminal Cases.....	5-34
§ 5.32	Appeals from Decisions of District Magistrate Judges in Civil Cases.....	5-35
§ 5.33	Appeals from Municipal Court to District Court in Criminal Cases.....	5-36
§ 5.34	Appeals from Municipal Court to District Court in Civil Cases.....	5-37

§ 5.35	Appeals from Decisions in Small Claims Court.....	5-37
§ 5.36	Certified Questions	5-37

Chapter 6
JUDICIAL REVIEW OF AGENCY DECISIONS

§ 6.1	Introduction.....	6-1
§ 6.2	Scope of KJRA	6-2
§ 6.3	Persons Entitled to Review	6-3
§ 6.4	Standing.....	6-3
§ 6.5	Exhaustion of Remedies.....	6-3
§ 6.6	Primary Jurisdiction	6-5
§ 6.7	Initiating Review — Where to File	6-5
§ 6.8	Timely Filing.....	6-6
§ 6.9	Pleading Requirements of Petition for Judicial Review	6-8
§ 6.10	Service of Petition for Judicial Review.....	6-9
§ 6.11	Stays and Other Remedies	6-10
§ 6.12	Preserving Issues for Review Under KJRA	6-10
§ 6.13	The Agency Record	6-11
§ 6.14	Scope of Review.....	6-12
§ 6.15	Remedies.....	6-16
§ 6.16	Appeals Outside KJRA	6-17
§ 6.17	Workers Compensation Cases.....	6-18
§ 6.18	Checklist for Review of Agency Action.....	6-19

Chapter 7
APPELLATE PROCEDURE

I. NOTICE OF APPEAL

§ 7.1	Generally	7-1
§ 7.2	Chapter 60 Appeals.....	7-1
§ 7.3	Chapter 61 Appeals.....	7-5
§ 7.4	Juvenile Appeals	7-5
§ 7.5	Probate Appeals	7-6
§ 7.6	Mortgage Foreclosure Appeals	7-6
§ 7.7	Criminal Appeals.....	7-7
§ 7.8	Cross-Appeals.....	7-9

II.	FILING OR SERVICE OF PAPERS: TIME COMPUTATIONS	
§ 7.9	Generally	7-9
III.	STAYS PENDING APPEAL	
§ 7.10	Generally.....	7-11
§ 7.11	Chapter 60 Appeals.....	7-11
§ 7.12	Chapter 61 Appeals.....	7-12
§ 7.13	Juvenile Appeals	7-12
§ 7.14	Probate Appeals	7-12
§ 7.15	Criminal Appeals.....	7-12
IV.	DOCKETING THE APPEAL	
§ 7.16	Generally.....	7-14
§ 7.17	Parental Notice Waiver Requirements — Rule 10.01	7-17
V.	APPEARANCE AND WITHDRAWAL	
§ 7.18	Appearance.....	7-18
§ 7.19	Withdrawal	7-19
VI.	RECORD ON APPEAL	
§ 7.20	Record of Proceedings Before the Trial Court	7-19
§ 7.21	Transcript of Proceedings	7-20
§ 7.22	Filing of Transcripts	7-21
§ 7.23	Unavailability of Transcripts	7-21
§ 7.24	Appeal on Agreed Statement	7-22
§ 7.25	District Court Clerk’s Preparation of the Record on Appeal	7-22
§ 7.26	Request for Additions to the Record on Appeal.....	7-23
§ 7.27	Transmission of the Record on Appeal	7-24
VII.	CONSOLIDATION OF APPEALS	
§ 7.28	Generally.....	7-25
VIII.	MOTIONS	
§ 7.29	Generally.....	7-26
§ 7.30	Motion for Additional Time.....	7-27
§ 7.31	Motion to Make Corrections in Briefs.....	7-28
§ 7.32	Motion to Withdraw Briefs to Make Corrections.....	7-28
§ 7.33	Motion to Substitute Parties.....	7-28
§ 7.34	Voluntary Dismissal.....	7-28
§ 7.35	Involuntary Dismissal.....	7-29

§ 7.36	Motion for Permission to File <i>Amicus</i> Brief	7-29
IX. HEARING PLACE AND DATE		
§ 7.37	Suggestion of Place for Hearing or for Hearing <i>En Banc</i>	7-30
§ 7.38	Notice of Hearing Date.....	7-30
X. ORAL ARGUMENTS		
§ 7.39	Supreme Court	7-31
§ 7.40	Court of Appeals	7-32
XI. APPELLATE COURT DECISIONS AND POST-DECISION PROCEDURE		
§ 7.41	Decisions of the Appellate Courts.....	7-32
§ 7.42	Motion for Rehearing or Modification	7-34
§ 7.43	Supreme Court.....	7-34
§ 7.44	Court of Appeals	7-34
§ 7.45	Appeal of Right from Court of Appeals	7-35
§ 7.46	Petition for Review	7-35
XII. COSTS AND ATTORNEY FEES		
§ 7.47	Costs.....	7-37
§ 7.48	Attorney Fees.....	7-38
XIII. MANDATE		
§ 7.49	Generally.....	7-39
§ 7.50	Supreme Court	7-39
§ 7.51	Court of Appeals	7-39
§ 7.52	Stays After Decision	7-40

Chapter 8
STANDARDS AND SCOPE OF APPELLATE REVIEW

I. INTRODUCTION		
§ 8.1	Preliminary Matters.....	8-1
§ 8.2	Standard of Review – Definition	8-1
§ 8.3	Requirements for Appellate Briefs	8-1
§ 8.4	Issues Must be Preserved for Appeal	8-2
§ 8.5	Determining the Appropriate Standard of Review	8-2
§ 8.6	Practical Considerations.....	8-3

II. DISCUSSION AND EXAMPLES

§ 8.7	Discretionary Issues.....	8-4
§ 8.8	Factual Issues When Appellant Did Not Have Burden of Proof	8-5
§ 8.9	Substantial Competent Evidence.....	8-5
§ 8.10	Sufficiency of the Evidence	8-6
§ 8.11	Factual Issues When Appellant Had Burden of Proof	8-7
§ 8.12	Factual Evidence Undisputed or Based Solely upon Documents.....	8-8
§ 8.13	Legal Issues	8-8

III. PARTICULAR TOPICS OR AREAS OF LAW

§ 8.14	Administrative Actions – State Agencies.....	8-9
§ 8.15	Administrative Actions – Non-state Agencies	8-10
§ 8.16	Cumulative Error	8-10
§ 8.17	Ineffective Assistance of Counsel.....	8-11
§ 8.18	Jury Instructions.....	8-11
§ 8.19	Motions to Dismiss – Civil.....	8-12
§ 8.20	Motions to Dismiss – Criminal.....	8-12
§ 8.21	Prosecutorial Misconduct	8-13
§ 8.22	Summary Judgment.....	8-13
§ 8.23	Termination of Parental Rights	8-14

IV. NO APPELLATE REVIEW

§ 8.24	Acquiescence.....	8-14
§ 8.25	Invited Error.....	8-15
§ 8.26	Moot Issues	8-15
§ 8.27	Correct Ruling for Erroneous Reason.....	8-15
§ 8.28	Abandoned Points.....	8-15
§ 8.29	Failure to Designate a Record.....	8-15
§ 8.30	Summary.....	8-16

Chapter 9 BRIEF WRITING

§ 9.1	Time Schedule for Briefs–Rule 6.01.....	9-1
§ 9.2	Content of Appellant’s Brief–Rule 6.02.....	9-2
§ 9.3	Contents of Appellee’s Brief (And of Cross-Appellant’s Brief Where Appropriate)–Rule 6.03.....	9-3
§ 9.4	Contents of Cross-Appellee’s Brief–Rule 6.04.....	9-4
§ 9.5	Reply Briefs–Rule 6.05	9-5
§ 9.6	Briefs of <i>Amicus Curiae</i> –Rule 6.06	9-5

§ 9.7	Format for Briefs—Rule 6.07.....	9-5
§ 9.8	References Within Briefs—Rule 6.08.....	9-7
§ 9.9	Service of Briefs and Additional Authority—Rule 6.09	9-7
§ 9.10	Briefs in Criminal and Post-Conviction Cases—Rule 6.10.....	9-8
§ 9.11	Some Tips for Effective Brief Writing	9-8
§ 9.12	Bibliography	9-13

Chapter 10
ORAL ARGUMENT

§ 10.1	Introduction	10-1
§ 10.2	Preparation	10-1
§ 10.3	Format of Hearings in the Supreme Court	10-3
§ 10.4	Format of Hearings Before the Court of Appeals.....	10-3
§ 10.5	Introductory Phase of Argument.....	10-4
§ 10.6	Body of Argument.....	10-5
§ 10.7	Delivery and Style.....	10-6
§ 10.8	Conclusion.....	10-7
§ 10.9	Rebuttal.....	10-8
§ 10.10	Final Thoughts	10-8

Chapter 11
DISCIPLINARY PROCEEDINGS

I. ATTORNEY DISCIPLINE

§ 11.1	History	11-1
§ 11.2	Jurisdiction	11-1
§ 11.3	Kansas Disciplinary Administrator	11-1
§ 11.4	Kansas Board for Discipline of Attorneys	11-2
§ 11.5	Complaints	11-2
§ 11.6	Disciplinary Investigations – Duties of the Bar and Judiciary.....	11-3
§ 11.7	Disciplinary Procedure.....	11-5
§ 11.8	Temporary Suspension.....	11-6
§ 11.9	Attorney Diversion Program.....	11-6
§ 11.10	Informal Admonition.....	11-7
§ 11.11	Formal Hearing and Procedural Rules of the Kansas Board for Discipline of Attorneys.....	11-8
§ 11.12	Probation.....	11-10
§ 11.13	ABA Standards for Imposing Lawyer Sanctions.....	11-10

§ 11.14	Disabled Attorneys	11-13
§ 11.15	Proceedings Before the Supreme Court.....	11-14
§ 11.16	Scope of Review and Standard of Review	11-15
§ 11.17	Oral Argument	11-16
§ 11.18	Supreme Court Opinions.....	11-17
§ 11.19	Additional Procedural Rules.....	11-18
§ 11.20	Voluntary Surrender of License to Practice Law.....	11-18
§ 11.21	Reinstatement	11-19
§ 11.22	Lawyers' Fund for Client Protection	11-20

II. JUDICIAL DISCIPLINE

§ 11.23	History	11-21
§ 11.24	Jurisdiction/Governing Rules	11-21
§ 11.25	Staff.....	11-21
§ 11.26	Initiating a Complaint.....	11-22
§ 11.27	Commission Review and Investigation.....	11-23
§ 11.28	Disposition of Docketed Complaints	11-24
§ 11.29	Confidentiality	11-25
§ 11.30	Formal Proceedings.....	11-25

Chapter 12 FORMS

§ 12.1	Application for Permission to Take a Civil Interlocutory Appeal.....	12-1
§ 12.2	Tax Appeal Pursuant to K.S.A. 74-2426 and Rule 9.03	12-5
§ 12.3	Petition for Judicial Review—Workers Compensation Cases.....	12-9
§ 12.4	Request for Certification of Record —Workers Compensation Cases	12-13
§ 12.5	Notice of Appeal—Supreme Court	12-15
§ 12.6	Notice of Appeal—Court of Appeals.....	12-17
§ 12.7	Notice of Cross-Appeal.....	12-19
§ 12.8	Facsimile Transmission Cover Sheet.....	12-21
§ 12.9	Motion for Release After Conviction	12-23
§ 12.10	Docketing Statement—Civil.....	12-25
§ 12.11	Docketing Statement—Civil Cross-Appeal	12-31
§ 12.12	Docketing Statement—Criminal	12-33
§ 12.13	Docketing Statement—Answer	12-37
§ 12.14	Motion for Permission to Docket Out of Time.....	12-39
§ 12.15	Admission <i>Pro Hac Vice</i> of Out-of-State Attorney: Kansas Attorney's Motion.....	12-41

§ 12.16	Admission <i>Pro Hac Vice</i> of Out-of-State Attorney: Out-of-State Attorney’s Verified Application.....	12-43
§ 12.17	Entry of Appearance.....	12-47
§ 12.18	Motion to Withdraw as Counsel.....	12-49
§ 12.19	Request for Transcript.....	12-51
§ 12.20	Request for Additions to the Record on Appeal.....	12-53
§ 12.21	Motion to Consolidate	12-55
§ 12.22	Motion to Transfer to Supreme Court	12-57
§ 12.23	Motion for Extension of Time to File Brief	12-59
§ 12.24	Motion to File Brief Out of Time Instantly.....	12-61
§ 12.25	Motion to Exceed Page Limitations.....	12-63
§ 12.26	Motion to Make Corrections in Brief	12-65
§ 12.27	Motion to Withdraw Brief to Make Corrections.....	12-67
§ 12.28	Motion to Substitute Parties.....	12-69
§ 12.29	Notice of Voluntary Dismissal	12-71
§ 12.30	Motion for Involuntary Dismissal.....	12-73
§ 12.31	Motion for Permission to File <i>Amicus</i> Brief	12-75
§ 12.32	Suggestion for Place of Hearing	12-77
§ 12.33	Motion for Rehearing or Modification —Court of Appeals.....	12-79
§ 12.34	Motion for Attorney Fees and Costs	12-81
§ 12.35	Brief Cover	12-91
§ 12.36	Brief—Table of Contents.....	12-93
§ 12.37	Complaint Form: Attorney Discipline.....	12-95
§ 12.38	Surrender Letter—Voluntary Surrender of License to Practice Law	12-99
§ 12.39	Complaint Form: Judicial Discipline.....	12-101

Appendix A JUSTICES AND JUDGES OF THE APPELLATE COURTS A-1

Appendix B TIMETABLE FOR STEPS IN AN APPEAL..... B-1

INDEXES

General	I-1
Authorities.....	I-21
Cases	I-23
Rules.....	I-31
Statutes.....	I-33