

Additional Civil Appeals: Kansas

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A Q&A guide to appealing from an intermediate appellate court to the court of last resort in Kansas. This Q&A addresses starting an appeal (as of right or by permission), obtaining a stay pending appeal, completing preliminary requirements (like mediation), submitting a factual record or appendix, briefing the appeal and arguing the appeal. Answers can be compared across a number of jurisdictions (see [Additional Civil Appeals: State Q&A Tool](#)).

OVERVIEW OF STATE APPEALS

1. What types of rulings, if any, can a party appeal as of right?

In Kansas, a party may petition the Supreme Court as a matter of right to review a final decision of the Court of Appeals in a case in which a question under the federal or Kansas constitution arises for the first time (K.S.A. 60-2101(b); Kan. Sup. Ct. R. 8.03(f)(1)).

2. What types of rulings can a party appeal by permission (for example, anything not appealable as of right, final judgments)?

A party aggrieved by a decision of the Court of Appeals may petition the Supreme Court for review. These reviews are a matter of judicial discretion. (K.S.A. 20-3018(b); Kan. Sup. Ct. R. 8.03(f)(2).) The Supreme Court considers the following factors when determining whether to grant review:

- The general importance of the question presented.
- Whether there is a conflict between the decision being appealed and another Supreme Court decision, or a decision from another panel of the Court of Appeals.

- The need for exercising the Supreme Court's supervisory authority.
- The final or interlocutory character of the judgment, order, or ruling being appealed.

(K.S.A. 20-3018(b).)

3. Are there any restrictions on the types of issues the court of last resort can consider (for example, only constitutional questions, only questions of law)?

The Supreme Court of Kansas may consider all questions of law. Questions of fact are not subject to appellate review. The Supreme Court may determine whether a fact is supported by substantial competent evidence, but this determination is a question of law. (K.S.A. 60-2101(b); *Mudd v. Neosho Mem'l Reg'l Med. Ctr.*, 62 P.3d 236, 241 (Kan. 2003).)

The Supreme Court also may answer questions of law certified to it by:

- The US Supreme Court.
- A US Court of Appeals.
- A US District Court.
- The highest appellate court of any other state.
- The intermediate appellate court of any other state.

(K.S.A. 60-3201.)

4. Can the court of last resort consider the entire case (subject to any restrictions in Question 3) or is it limited to particular matters (for example, questions on which certiorari was granted)?

Assuming the issues are properly presented and preserved, the Supreme Court of Kansas considers issues presented and included in the petition. The court also may address a plain error not presented. (Kan. Sup. Ct. R. 8.03(a)(4)(C).)

STARTING AN APPEAL

5. When must a party start an appeal?

A party aggrieved by a decision of the Court of Appeals must petition the Supreme Court for review within 30 days after the date of the decision (K.S.A. 20-3018(b); Kan. Sup. Ct. R. 8.03(a)(1)).

Within 14 days after a petition for review is filed, a respondent may file a cross-petition for review (Kan. Sup. Ct. R. 8.03(b)(1)).

6. How, if at all, can a party extend the time to start an appeal?

The deadline for filing a petition for review cannot be extended (Kan. Sup. Ct. R. 8.03(a)(1)).

A motion for rehearing or modification in the Court of Appeals does not extend the time for filing a petition for review by the Supreme Court (Kan. Sup. Ct. R. 7.05(b)).

7. How does a party start an appeal as of right (for example, notice of appeal, petition)?

A party starts an appeal as of right by, within 30 days of the decision to be reviewed, both:

- Filing the petition for review with the appellate court clerk.
- Serving a copy of the petition on each party that appeared in the Court of Appeals.

(Kan. Sup. Ct. R. 8.03(a)(1).)

The petition for review must be in the form of a brief and comply with Rule 6.07 of the Rules of the Supreme Court of Kansas. The petition's cover must be white, and the petition cannot exceed 15 pages, exclusive of the cover, table of contents, appendix, and certificate of service. (Kan. Sup. Ct. R. 8.03(a)(3).)

The petition must contain concise statements of the following, in the order indicated:

- A prayer for review, clearly stating the nature of the relief sought.
- The date of the Court of Appeals' decision.
- A statement of the issues decided by the Court of Appeals that are being appealed, which may include additional issues decided by the district court that were presented to but not decided by the Court of Appeals, and that the petitioner wishes to have reviewed.
- A short statement of relevant facts, though facts correctly stated in the opinion of the Court of Appeals need not be restated.
- A short argument, including appropriate authority, stating why review is warranted.
- An appendix containing a copy of the Court of Appeals' opinion and any opinions, findings of fact, conclusions of law, orders, judgments, or decrees issued by the district court, if relevant to the issues presented for review.

(Kan. Sup. Ct. R. 8.03(a)(4).)

Within 14 days after a party files the petition or cross-petition, a party opposing a petition or cross-petition for review may file a response (Kan. Sup. Ct. R. 8.03(c)(1)). The opposing party must file the response with the appellate court clerk. The response must comply with Rule 6.07 of the Rules of the Supreme Court of Kansas. The response's cover must be white, and the response must not exceed 15 pages exclusive of the cover, table of contents, appendix, and certificate of service. (Kan. Sup. Ct. R. 8.03(c).) The response:

- Must address only issues presented in the petition or cross-petition for review or provide alternative grounds for affirming the decision of the Court of Appeals, if those grounds were raised and briefed in the Court of Appeals.
- May present adverse rulings or decisions of the district court that should be considered by the Supreme Court in the event of a new trial, so long as the respondent raised the issues in the Court of Appeals.

(Kan. Sup. Ct. R. 8.03(c)(3).)

Within 14 days after the response is filed, a party may file a reply to an argument raised in a response that is not covered sufficiently in the petition or cross-petition. The reply cannot exceed ten pages, excluding the cover, table of contents, appendix, and certificate of service. (Kan. Sup. Ct. R. 8.03(d).)

8. How does a party start an appeal by permission (for example, motion to the court of last resort, motion to the intermediate appellate court)?

A party petitioning the Supreme Court for discretionary review must follow the same procedure as a party appealing as of right (Kan. Sup. Ct. R. 8.03(f)(2); see Question 7).

STAYS PENDING APPEAL

9. How, if at all, can a party stay the lower courts' rulings pending appeal (for example, posting a bond, making a motion, automatically by appealing)?

The timely filing of a petition for review stays the issuance of the Court of Appeals' mandate. The Court of Appeals' opinion is not binding on the parties or the district court during the period when a party may file a petition for review and while the Supreme Court's determination on the petition for review is pending. (Kan. Sup. Ct. R. 8.03(j).)

PRELIMINARY MATTERS

10. What, if any, preliminary matters are required before the parties brief the appeal (for example, filing informational forms, participating in mediation or settlement conferences)?

The parties do not need to complete any preliminary matters before briefing the appeal, but they must wait for the Supreme Court's entry of an order granting the petition before briefing the merits (Kan. Sup. Ct. R. 8.03(h)(2)).

COURT SUBMISSIONS

11. What factual materials are submitted to the court (for example, the trial court record, excerpts of the record, an appendix)? When and by whom?

A petition for review must include an appendix containing a copy of the opinion of the Court of Appeals. The appendix also must include copies of opinions, findings of fact, conclusions of law, orders,

judgments, or decrees issued by the district court, if relevant to the issues presented for review. (Kan. Sup. Ct. R. 8.03(a)(4)(F).)

Unless the Supreme Court orders otherwise, the issues are considered on the basis of the record previously filed with the Court of Appeals (Kan. Sup. Ct. R. 8.03(h)(2)).

12. What briefs are filed and when? Does this change when there is a cross-appeal?

FILING BRIEFS

Within 14 days after the Supreme Court grants review, each party must file a copy of the paper briefs, if any, originally filed with the appellate court clerk (Kan. Sup. Ct. R. 8.03(h)(2)).

Within 30 days after the Supreme Court grants review, each party may file a supplemental brief. An opposing party may file a brief in response to a supplemental brief no later than 30 days after the date the supplemental brief is filed. (Kan. Sup. Ct. R. 8.03(h)(3).)

BRIEFING AFTER CROSS-APPEAL

Within 14 days after the Supreme Court grants review, each party must file a copy of the paper briefs, if any, originally filed with the appellate court clerk (Kan. Sup. Ct. R. 8.03(h)(2)).

Within 30 days after the Supreme Court grants review, each party may file a supplemental brief. An opposing party may file a brief in response to a supplemental brief no later than 30 days after the date the supplemental brief is filed. (Kan. Sup. Ct. R. 8.03(h)(3).)

For more information on cross-petitions, see Question 7.

13. How, if at all, can a party extend the time to file a brief (for example, stipulation, so-ordered stipulation, motion)?

A party may file a motion for an extension of time with the appellate court clerk (Kan. Sup. Ct. R. 5.02(a)). The motion must be served on all parties and must state:

- The present due date.
- The number of extensions previously requested.
- The amount of additional time needed.
- The reason for the request.
- If the motion is filed after the time to act has expired, the reasons constituting excusable neglect.

(Kan. Sup. Ct. R. 5.02(a), (c).)

The appellate court may, for good cause, extend the time to file a brief:

- With or without motion or notice, if the court acts or if a request is made before the original time or its extension expires.
- On motion made after the time has expired, if the party failed to act because of excusable neglect.

(K.S.A. 60-206(b).)

The court considers an adverse party's consent to an extension of time, but the adverse party's consent is not controlling (Kan. Sup. Ct. R. 5.02(b)). The clerk or the court may grant an extension of time

not exceeding 20 days without waiting for a response (Kan. Sup. Ct. R. 5.02(d)).

14. Are there word or page limits for briefs? If so, please indicate:

- The word or page limit for each type of brief (for example, appellant's brief, appellee's brief, reply brief).
- How, if at all, a party can obtain permission to exceed the usual limit (for example, stipulation, so-ordered stipulation, motion).

WORD OR PAGE LIMITS

Supplemental briefs and responses to supplemental briefs may not exceed half the number of pages permitted under Rule 6.07(c) of the Rules of the Supreme Court of Kansas (Kan. Sup. Ct. R. 8.03(h)(3)).

Supplemental-brief page limits exclude the cover, table of contents, appendix, and certificate of service (Kan. Sup. Ct. R. 8.03(a)(3)).

OVERSIZED BRIEFS

A party must submit a motion to exceed the page limitations in Rule 6.07(c) of the Rules of the Supreme Court of Kansas before submitting the brief. The motion must include a specific total page request. The court may rule on the motion without waiting for a response from any other party. (Kan. Sup. Ct. R. 6.07(d).)

ABBREVIATED BRIEFS

The appellate court hearing a matter may order briefs to be abbreviated in content or format (Kan. Sup. Ct. R. 6.07(e)).

ORAL ARGUMENTS

15. Is oral argument available? If so, please indicate:

- Any restrictions on what types of cases may be argued.
- Whether the parties can request oral argument or submission on the papers.
- How much time each party or side typically receives for argument.

TYPES OF CASES THAT MAY BE ARGUED

Oral argument is available unless both:

- The case fails to present a new question of law.
- Oral argument is not deemed helpful to the court or essential to a fair hearing of the appeal.

(Kan. Sup. Ct. R. 7.01(c)(2).)

If oral argument is not allowed, the court sends notice to counsel of record that it will render judgment on the briefs (Kan. Sup. Ct. R. 7.01(c)(3)). If oral argument is denied, a party can move for oral argument. The motion must:

- Be served on all parties.
- Be filed with the appellate court clerk within 14 days after receiving notice that judgment will be rendered on the briefs.
- State why oral argument will be helpful to the court.

(Kan. Sup. Ct. R. 7.01(c)(4).)

In a case in which it appears that a controlling appellate decision is dispositive of the appeal, the court may summarily affirm or reverse. The court may enter the order after 14 days' notice to the parties, citing the decision deemed controlling and providing an opportunity to show cause why the order should not be filed. (Kan. Sup. Ct. R. 7.041(a).)

A party that does not have a brief on file is not permitted oral argument (Kan. Sup. Ct. R. 7.01(e)(1)).

PARTY INVOLVEMENT IN DECISION

An appellant or appellee may request 20, 25, or 30 minutes for argument by printing "oral argument" on the lower right portion of the front cover of the party's initial brief, followed by the desired amount of time (Kan. Sup. Ct. R. 7.01(e)(2)).

When an appeal is pending, a party may move for summary disposition, citing a controlling appellate decision that is dispositive of the appeal. The motion must be served on all parties, who may respond within 14 days after the motion is served. When the time to respond expires, the court may enter an order summarily affirming or reversing or denying the motion. (Kan. Sup. Ct. R. 7.041(b).)

LENGTH OF ORAL ARGUMENTS

When a case is argued before the Supreme Court:

- The court designates the amount of time granted on the oral argument calendar.

- Unless more time is ordered, oral argument is limited to 15 minutes each for the appellant and the appellee.
- The appellant and the appellee are granted the same amount of time.

(Kan. Sup. Ct. R. 7.01(e)(1).)

Oral argument granted on motion is limited to 15 minutes on each side unless sufficient reason is given to grant 20, 25, or 30 minutes (Kan. Sup. Ct. R. 7.01(c)(4)).

Unless otherwise ordered by the Supreme Court, the party whose petition for review was granted argues first and may reserve time for rebuttal (Kan. Sup. Ct. R. 8.03(h)(4)).

An appellant may reserve a portion of the time granted for rebuttal by making an oral request at the hearing (Kan. Sup. Ct. R. 7.01(e)(3)).

During the hearing, the court may extend the time for oral argument (Kan. Sup. Ct. R. 7.01(e)(4)).

If on either side of a case there are multiple parties that are not united in interest in the issues of the appeal and are separately represented, the court on motion will allot time for the separate arguments. If multiple parties are united in interest in the issues on appeal, they must divide the allotted time among themselves by agreement. (Kan. Sup. Ct. R. 7.01(e)(5).)

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