

IN THE SUPREME COURT OF THE STATE OF KANSAS

AUG 28 2014

ORDER

HEATHER L. SMITH
CLERK OF APPELLATE COURTS

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

Supreme Court Rule 8.03 is hereby amended, effective as of the date of this order.

Rule 8.03

SUPREME COURT REVIEW OF COURT OF APPEALS DECISION

- (a) **Petition.** A party aggrieved by a decision of the Court of Appeals may petition the Supreme Court for discretionary review under K.S.A. 20-3018. In this rule, "decision" means any formal or memorandum opinion, order, or involuntary dismissal under Rule 5.05.
- (1) **Filing and Service.** Not later than 30 days after the date of the decision of the Court of Appeals, the petitioner must file the original and 9 copies of the petition with the clerk of the appellate courts and serve a copy on each party that has appeared in the Court of Appeals. The 30-day period for filing a petition for review is jurisdictional.
 - (2) **Effect of Motion for Rehearing or Modification.** The filing of a petition for review does not preclude the filing of a timely motion for rehearing or modification under Rule 7.05. If a timely motion for rehearing or modification is filed, the Court of Appeals retains jurisdiction over the case and will proceed under Rule 7.05. The Supreme Court will take no action on a petition for review until the Court of Appeals has made a final determination of all motions for rehearing and modification under Rule 7.05.
 - (3) **Form of Petition.** A petition for review must be in the form of a brief, complying with the applicable provisions of Rule 6.07. The cover of the petition must be white, and the petition may not exceed 15 pages in length, exclusive of the cover, table of contents, appendix, and certificate of service.

- (4) **Content of Petition.** The petition must contain concise statements of the following, in the order indicated:
- (A) A prayer for review, clearly stating the nature of the relief sought.
 - (B) The date of the decision of the Court of Appeals.
 - (C) A statement of the issues decided by the Court of Appeals of which review is sought. The court will not consider issues not presented or fairly included in the petition. The court, however, may address a plain error not presented. In a civil case, the petitioner also must list, separately and without argument, additional issues decided by the district court which were presented to, but not decided by, the Court of Appeals, which the petitioner wishes to have determined if review is granted. In a criminal case, the Supreme Court will not review a conviction reversed by the Court of Appeals unless the prosecution preserves the issue by filing a petition 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 authority, stating why review is warranted.
 - (F) 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 or administrative agency, if relevant to the issues presented for review.
- (b) **Cross-Petition.** A respondent may file a cross-petition for review.
- (1) **Filing and Service.** Not later than 14 days after the date a petition for review is filed, the respondent must file the original and 9 copies of a cross-petition for review with the clerk of the appellate courts and serve a copy on all parties that have appeared in the Court of Appeals.
 - (2) **Form and Content of Cross-Petition.** A cross-petition must be in the same form, length, and have the same contents, in the same order, as the petition.
- (c) **Response.** A party opposing a petition or cross-petition for review may file a response.

- (1) **Filing and Service.** Not later than 14 days after the petition or cross-petition for review is filed, the party must file the original and 9 copies of a response to the petition or cross-petition with the clerk of the appellate courts and serve a copy on all parties that have appeared in the Court of Appeals.
 - (2) **Form of Response.** A response must comply with Rule 6.07 and may not exceed 15 pages, exclusive of the cover, table of contents, appendix, and certificate of service. The cover of the response must be white.
 - (3) **Content of Response.** A response must be confined to argument that replies to issues presented in the petition or cross-petition for review or provides alternative grounds for affirming 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 the issues in the Court of Appeals.
 - (4) **Effect of Failure to File Response.** Failure to file a response is not an admission that the petition should be granted.
- (d) **Reply.** A reply is permitted to an argument raised in a response which is not covered sufficiently in the petition or cross-petition. A reply must be filed not later than 14 days after service of the response and may not exceed 10 pages in length, exclusive of the cover, table of contents, appendix, and certificate of service.
- (e) **Additional Authority.** A party may advise the court of additional authority under Rule 6.09(b).
- ~~(e)~~(f) **Discretion in Granting Review.**
- (1) **Review as a Matter of Right.** Pursuant to K.S.A. 60-2101(b) and 22-3602(d), a party may petition as a matter of right from a final decision of the Court of Appeals in a case in which a question under the Constitution of either the United States or the State of Kansas arises for the first time as a result of the decision of the Court of Appeals.
 - (2) **Discretionary Review.** In a case other than one described in paragraph (1), review by petition is not a matter of right, but of judicial discretion. A petition for review will be considered by all justices, and the vote of three justices is required to grant the petition.

(3) **Purpose of Petition.** The purpose of a petition for review, cross-petition, response, and reply is to state the reason why the Supreme Court should grant or deny review of the decision of the Court of Appeals. Generally, the only documents considered by the Supreme Court will be the petition for review, cross-petition, response, and reply. The record on appeal and briefs filed in the Court of Appeals or in support of a petition for rehearing or modification generally will not be considered in acting on a petition or cross-petition for review.

~~(f)~~(g) **Order Denying Review; Effect.** If the Supreme Court denies review, the clerk of the appellate courts must notify the parties of the denial. The decision of the Court of Appeals is final as of the date of the decision denying review, and the clerk must issue the mandate promptly. A denial of a petition for review imports no opinion on the merits of the case. The denial of a petition for review is not subject to a motion for reconsideration by the Supreme Court.

~~(g)~~(h) **Order Granting Review; Subsequent Procedure.**

(1) **Issues Subject to Review.** An order granting review may limit the issues on review. If review is not limited, the issues before the Supreme Court include all issues properly before the Court of Appeals which 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 will be considered on the basis of the record and briefs previously filed with the Court of Appeals. Not later than 14 days after the date of the order granting review, the parties must file with the clerk of the appellate courts 10 additional copies of the briefs originally filed with the Court of Appeals.

(3) **Supplemental Briefs.** Not later than 30 days after the date of the order granting review, a party may file a supplemental brief. An opposing party may file a brief in response to a supplemental brief not later than 30 days after the date the supplemental brief is filed. Except by order of the Supreme Court, a supplemental brief may not exceed one-half the number of pages permitted for original briefs under Rule 6.07.

- (4) **Oral Argument.** Unless otherwise ordered by the Supreme Court, the party whose petition for review was granted will argue first and may reserve time for rebuttal.

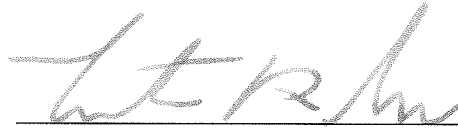
~~(h)~~(i) **Other Dispositions.**

- (1) **Review Improvidently Granted.** If the Supreme Court determines that review was improvidently granted, it may issue an order stating that the petition for review was improvidently granted and that the Court of Appeals opinion or disposition of the case is final.
- (2) **Voluntary Dismissal.** Before an opinion on review is filed, a party that has filed a petition for review may dismiss the petition by stipulation or by filing with the clerk of the appellate courts and serving on all parties a notice of dismissal. A dismissal of one party's petition does not affect any other party's petition or cross-petition.
- (3) **Remand for Reconsideration.** When review is granted, the Supreme Court may remand the appeal to the Court of Appeals, district court, or agency for reconsideration of issues in light of authority identified in the Supreme Court's order or may dispose of the issues as it deems appropriate.
- (4) **Issues Not Decided by Court of Appeals.** In a civil case, if issues decided by the district court were presented to, but not decided by, the Court of Appeals and review of those issues was preserved, the Supreme Court may consider and decide the issues, remand the appeal to the Court of Appeals for decision of the issues, or dispose of the issues as it deems appropriate.
- (5) **Moot Questions.** If a case becomes moot after a petition for review has been granted, the Supreme Court may dismiss the appeal or, in a civil case, review the decision of the district court.

~~(h)~~(j) **Effect of Court of Appeals Decision Pending Review.** The timely filing of a petition for review stays the issuance of the mandate of the Court of Appeals. Pending the determination of the Supreme Court on the petition for review and during the time in which a petition for review may be filed, the opinion of the Court of Appeals is not binding on the parties or on the district courts. An interested person that wishes to cite a Court of Appeals opinion for persuasive authority before the mandate has issued must note in the citation that the case is not final and may be subject to review or rehearing. If a petition for review is granted, the decision or opinion of the Court of Appeals has no force or effect, and the mandate will not issue until disposition of the appeal on review. If a petition for review is granted in part, a combined mandate will issue when appellate review

is concluded, unless otherwise specifically directed by the Supreme Court. If review is refused, the decision of the Court of Appeals is final as of the date of the refusal, and the clerk of the appellate courts promptly must issue the mandate of the Court of Appeals.

BY ORDER OF THE COURT this 28th day of August, 2014.

A handwritten signature in cursive script, appearing to read 'L. R. Nuss', written over a horizontal line.

Lawton R. Nuss
Chief Justice