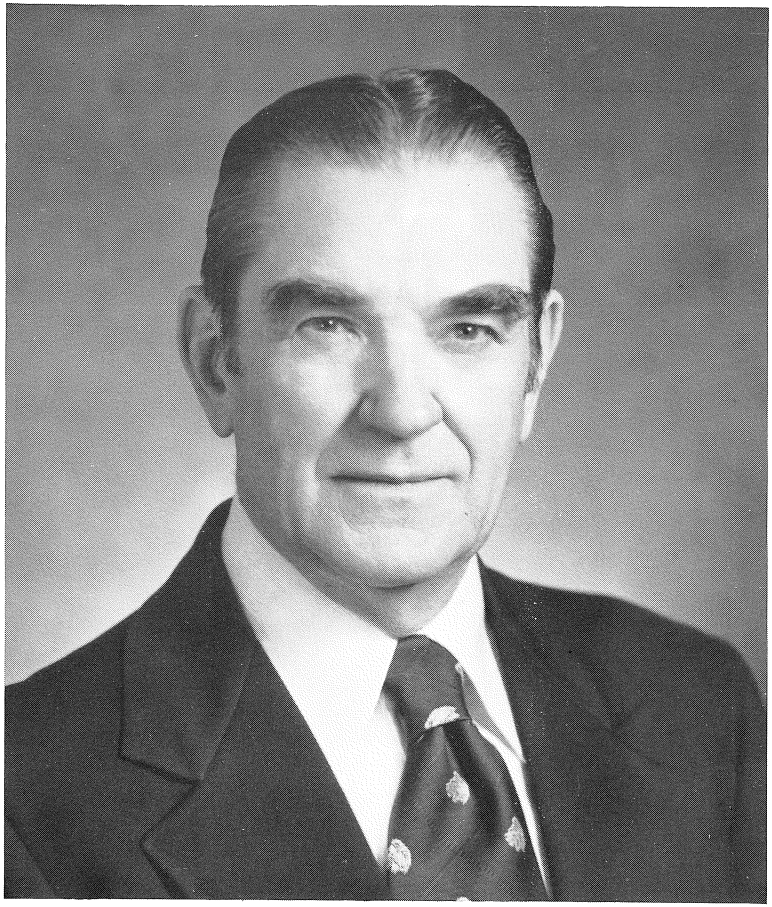
Kansas Judicial Council Bulletin

NOVEMBER, 1976 SPECIAL BULLETIN



EMMET A. BLAES

Of the Wichita, Kansas, Bar

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FOREWORD

The Kansas Judicial Council has sponsored an advisory committee, under the chairmanship of Hon. Frederick Woleslagel, to draft "Rules Relating to District Courts," which were published December, 1975 and the Supreme Court heard objections from both judges and attorneys before making revisions and amendments. The rules adopted by the Supreme Court on July 28, 1976 will become effective January 10, 1977 and are printed in this special issue of the *Kansas Judicial Council Bulletin*. (See also Vol. 220 of the Kansas Reports, Advance Sheet No. 2.) Statutes in which changes are made pursuant to the authority vested in the Kansas Supreme Court by the provisions of K. S. A. 60-2607 are set forth in this bulletin prior to the rules.

On July 9, 1976 the Supreme Court approved "Rules Relating to Supreme Court, Court of Appeals and Appellate Practice." Those rules are set forth in this bulletin and will become effective January 10, 1977. To inform members of the bench and bar regarding these rules Emmet A. Blaes of the Wichita, Kansas Bar has prepared a timely article entitled "Appellate Procedure—New Again!" This article merits the close attention of every practicing attorney in Kansas. Mr. Blase was a member of the Judicial Council Advisory Committee which was instrumental in drafting the Kansas Code of Civil Procedure; he was the reporter for the committee which drafted the "Rules Relating to Appellate Practice" under our new Code of Civil Procedure, which became effective January 1, 1964, and was most recently a member of the Judicial Council Civil Code Advisory Committee which drafted the "Rules Relating to Supreme Court, Court of Appeals and Appellate Practice."

ALFRED G. SCHROEDER, *Chairman*,
The Kansas Judicial Council.

Emmet A. Blaes was born April 18, 1907, on a farm near Cherryvale, Kansas, the youngest of eleven children of Mr. and Mrs. Mathias Blaes, both now deceased. He was married October 3, 1933, to the former Anna R. Kranda of Omaha, Nebraska. They have three children:

Charles E. Blaes, Mobile, Alabama
Robert E. Blaes, Jacksonville, Florida,
Elizabeth Ann Blaes, now Mrs. Carl Buss,
Wichita, Kansas.

The Blaes presently make their home at 1818 West 18th, Wichita, Kansas.

Elementary education at St. Francis Xavier Parochial School at Cherryvale, Kansas. High School education at Conception College and Academy, Conception, Missouri. Pre-legal education at Kansas State Teachers College, Pittsburg, Kansas. Law School at Creighton University, Omaha, Nebraska, graduating with a J. D. degree in June 1931.

Admitted to the practice of law in 1931 in both Nebraska and Kansas, and subsequently in the Federal Courts, including the Supreme Court of the

United States. Commenced practice of the law as an associate in the then firm of Jochems and Sargent, Wichita, Kansas, on November 1, 1931. Admitted as a partner in the firm on January 1, 1936, at which time the firm name was changed to its present name, JOCHEMS, SARGENT AND BLAES. Became senior partner of the firm in February 1960, at the death of the then senior partner, the late W. D. Jochems, former associate justice of the Supreme Court of Kansas. Firm presently consists of fourteen active attorneys. He is a member of the American, Kansas and Wichita Bar Associations, and served on the Advisory Committee to the Judicial Council of Kansas in the work of revising the Kansas Code of Civil Procedure, which was enacted into law in the 1963 Session of the Legislature. He was also draftsman for the same committee when it was commissioned to prepare the Rules promulgated by the Supreme Court January 1, 1964. Lecturer at numerous legal seminars and author of various articles in *Journal of Kansas Bar Association* and *Kansas Judicial Council Bulletin*. Since 1972 a member of the House of Delegates of the American Bar Association.

Business and Civic Activities:

Member of the Board of Directors of
Union National Bank of Wichita, Wichita, Kansas,
Metropolitan Development Company, Inc., Wichita, Kansas,
Resthaven Gardens of Memory, Inc. and
Resthaven Mortuary, Inc., Wichita, Kansas,
and others.

Former President of Wichita Urban League,
Former Member of Board of Directors of Wichita Chamber of Commerce,
Member of National Citizens Committee for Cmmunity Relations under Civil Rights Act of 1964,
Former Chairman of Wichita Community Welfare Council.

Member of Wichita Country Club and Wichita Club.

Fraternal and Religious Activities:

Member of Knights of Columbus,
Member of Delta Theta Phi and Phi Kappa Theta,
Former State Deputy of Knights of Columbus,
Former President of National Council of Catholic Men,
Honored by the late Pope Pius XII with Knighthood in the Order of St. Gregory,
Recipient of Benemerenti Medal,
Recipient of Sacred Heart College, Wichita, Kansas, Catholic Action Medal,
Recipient of Honorary Scroll for Catholic Action from Conception College, Conception, Missouri,
Past President of Catholic Action Committee of Diocese of Wichita, Wichita, Kansas, which later became the Wichita Diocesan Council of Catholic Men, and its first president,
Member of the Board of Governors of Benedictine College, Atchison, Kansas,
Member of the Board of Governors of Kansas Catholic Conference,
Member of Board of Directors of Diocese of Wichita.

Appellate Procedure—New Again!

Introduction

So you are going to take an appeal. Or, more fortunately for you, it is your opponent who is faced with that prospect. Either way, it is important that you realize that come January 10, 1977, the Rules of Appellate Procedure will be substantially changed.

No doubt we will again be hearing from all but the most recent graduates the complaint: "They've repealed all the law I ever knew. When will there be an end to all the new codes, rules, etc.?" The purpose of this article is to partially answer that question and also to alert the members of the Bar to the major practical effects of the changes ahead. Thus, it is not intended that this be a primer on appellate procedure but rather a foretaste of what will be different from the present rules adopted for the most part in 1964.

It will be helpful in understanding the need for, and the rationale of, the present changes to point up some general explanatory considerations.

First and most obvious was the adoption by the 1975 Legislature of Chapter 178 of its Session Laws, being the act to create the new Court of Appeals and to effect various amendments to existing statutes dealing with appellate procedure (hereinafter referred to as the "Act"). To understand much of what will be said in this article it is important that the reader will have at least skimmed through the Act, and it would be better to lay the present paper aside until after such preliminary study has been accomplished.

Secondly, in promulgating the new rules the Supreme Court is responding to the clarion demand of the Kansas Judicial Study Advisory Committee, commonly known as the Arn Committee, for a reduction in the cost of legal procedures and for a simplification and acceleration of the steps involved from the filing of an action to the final determination of every controversy.

To achieve the foregoing objectives, as will be apparent from an examination of the new rules, the Supreme Court determined that several basic departures from the old rules were necessary. One was that the Court should be intimately involved and in control of the procedural steps from the filing of the notice of appeal instead of after preparation of the record and the filing of briefs, as heretofore done. A further consideration in this connection was the necessity for current statistical data on the pendency of appeals, an impossibility heretofore because of the lapse of time from the taking of an appeal until its docketing with the Clerk of the Supreme Court. Probably the most revolutionary change is the discontinuance of the printed record on appeal and, in substitution therefor the processing of the appeal on the original files, transcripts, and exhibits from the district court. The acceleration of the time allotted for the steps of appeal, together with other resulting changes, will become apparent as we trace the progress of a typical appeal and how it will differ from the past.

Attached hereto as an appendix is a schedule of the steps of appeal which it may be helpful to follow simultaneously with the reader's study of the balance hereof.

Notice of Appeal

The form of a notice of appeal and the filing thereof remains simple and relatively foolproof. It continues to be filed with the clerk of the district court. The only substantial change to be noted is the designation of the appeal as being taken to either the Court of Appeals or to the Supreme Court and, if the latter, specifying in the notice the grounds upon which the appellant considers that he has a right to a direct appeal to the Supreme Court (Rules 2.01 and 2.02, Act § 27) (K. S. A. 60-2101 [Carman]). Since under the statute only a limited number of appeals may be taken directly to the Supreme Court, the great bulk of all appeals will be to the Court of Appeals.

Both the statute and rules make it virtually impossible to commit a fatal error. Jurisdiction attaches even if the notice of appeal specifies the wrong court (Act § 18) (K. S. A. 1975 Supp. 20-308). Even the existing provision for saving an appeal prematurely taken, *i. e.*, before judgment has been effectively entered, is preserved (Rule 2.03). Presumably this was almost a superfluous precaution inasmuch as Rule 2.04 requires the appellant to obtain a certified copy of the notice of appeal and a certified copy of the final order or decision appealed from and forward *both* to the Clerk of the Appellate Courts, together with the docketing fee, within three (3) days after the filing of the notice of appeal. It is difficult to see under that requirement how it would be possible to commit the blunder of "appealing" a nonexistent judgment or order. It illustrates, however, the solicitude of the Court to prevent the failure of jurisdiction through inadvertence or the failure of an appellant to comprehend his own case.

For some unexplained reason the legislature repealed the provision for a minimum amount of $500.00 in controversy in order to lodge an appeal (Act § 28 [a] [4] (K. S. A. 60-2102 [a] [4] [Carman]). Hopefully this will not result in the appellate courts being clogged with harassing and miniscule appeals.

Transcript

No longer will it be possible for a defeated litigant to have an appeal pending without cost to him for a substantial period of time while he attempts to pressure the victorious party into some kind of a settlement. As pointed out above, within three (3) days he is required to pay the docket fee of $35.00 to the Clerk of the Appellate Courts unless he can qualify for an appeal *in forma pauperis* under the requirements of Rule 2.04. Furthermore, in the absence of a stipulation to the contrary, within ten (10) days he is required to order a *complete* transcript of any evidentiary hearing, and the court reporter will have the power to demand advance payment of the estimated cost of the transcript (Rule 3.03). The ordering of the transcript, the reporter's demand for the estimated cost, any stipulation for less than a complete transcript, and the notice of the subsequent completion and filing of the transcript must all be evidenced by filings with the clerk of the district court and also with the Clerk of the Appellate Courts. These procedures reflect the desire of the Court to acquire more direct control over the progress of the appeal. The Court reporter is given forty (40) days to complete the transcript unless he, *i. e.*, the reporter, applies to the Clerk of the Appellate Courts for an extension of time!

Record on Appeal

And now we come to what will undoubtedly be to the Bar and especially to the clerks of the district courts the most novel and far reaching of all of the changes. Gone, probably forever, is the concept of a printed record on appeal put together by the joint and cooperative action of competing counsel. It is no tribute to the Bar that the present rule for a single record of the essential evidence necessary to an appeal simply resulted in bickering and frustration for both counsel and court. Add also the desire of the Court to achieve economy of time and of expense in eliminating the cost of printing the record, and you come up with the requirements of the new rules for the processing of the appeal on the original pleadings, evidence, and exhibits from the district court.

Hopefully, the Court's objectives will be satisfactorily accomplished. The price for this progress will be whatever disadvantage there is in not having a copy of the record available for each member of the Court with the resultant danger that not every judge sitting on a case will find the time and opportunity to actually examine the record. Perhaps this criticism will be unnecessary in the light of the provision for an optional appendix, which will be described later in this article.

At the outset, it is important to get the distinction beween the "entire record" and the "prepared record," both as described in Rule 3.01. Every pleading, every transcript of a hearing, and every exhibit on file in the district court is a part of the entire record and may be relied upon by counsel and by the appellate judges. This does not mean that they all go automatically to the Clerk of the Appellate Courts, it being only the prepared record that is transmitted, and this is where the burden falls upon the clerk of the district courts.

Within ten (10) days after the filing of the notice of appeal, the clerk of the district court will put together the prepared record in accordance with Rule 3.02. It will consist of those documents, transcripts, exhibits, etc., prescribed by the rule and any others which a party requires to be added. The clerk will put them together in convenient files, folders, or other binders which will be indexed as "volumes" and each volume will have its own paging. The obvious purpose is to enable an appellate judge to find support in the record for the statements made in briefs and in arguments.

As prescribed by Rule 3.06 the parties shall have access to the prepared record during the time for preparation of their respective briefs. It is important to note that the record as thus put together by the clerk within ten days after the filing of a notice of appeal may not yet be complete. Transcripts may still have to be written, but this will not delay the clerk's duty to put the record together to the extent that it is then available. Additions may be made by the preparation of further volumes at any time prior to the transmission of the prepared record to the Clerk of the Appellate Courts, which cannot occur until all briefing time has expired (Rule 3.02).

Again, it is to be noted that while the prepared record should include everything necessary to consideration of the appeal, any part of the district court's file not included in the prepared record is still a part of the entire record and may be relied upon if necessary to a determination of the issues on appeal. In this regard, however, it is to be noted that the rules do not prescribe that a party may as of right have additional portions of the entire record transmitted

to the Clerk of the Appellate Courts *after* the transmitted record has been completed. Rule 3.01 does provide that the appellate court may order any or all additional parts of the entire record to be filed. Presumably, this means that a party wishing such additional parts will be required to file a motion with some explanation as to the nature and importance of the additional parts of the record.

Briefs

With only two major and several minor exceptions, the requirements for briefs are not radically different from the practice of the last few years.

The first major exception is one of impact rather than procedure, but it is of transcending importance to any person involved in an appeal. It has to do with the factual statement of the case as required by Rule 6.02(d) as to an appellant and Rule 6.03(c) as to an appellee. The rule requires a statement "of all the facts of the case material to the determination of the question or questions presented for appellate decision . . . keyed to the record on appeal so as to make verification reasonably convenient." The next sentence delivers the punch! *"Any material statement made without such a reference may be presumed to be without support in the record."*

This requirement is partly attributable to the absence of a printed record in the hands of each appellate judge. It is not naive to assume that in many instances the statement of the case will be primarily relied upon by an appellate judge studying the issues, and he is apt to consult the single original record only for clarification and for specific details. Accordingly, the practitioner must prepare the statement of the case with great thoroughness and accuracy, having in mind at all times that any statement made without the required key to the original record may be presumed by the appellate judge without further inquiry on his part to be without support in the record and consequently ignored!

This requirement will also have the effect of curbing the overstatement, the flambouyant distortion, the baseless conjecture, and the wishful conclusion. Probably few things would be more damaging to the advccate's position than to include in the statement of the case something which the keyed reference does not reasonably support. Only worse will be the statement without any keyed reference which then by virtue of the Rule the appellate judge may safely presume to be completely unsupported.

Appendix

The other major innovation with reference to briefing is the provision appearing in Rule 6.02 (f) as to an appellant and Rule 6.03 (e) as to an appellee which provides for an optional appendix as a part of the brief. It is intended to offset in part the disadvantage of not having a printed record for each of the appellate judges. The purpose is to make immediately accessible to the reader of the brief a particularly critical portion of the record so that it will be unnecessary to run down the original record itself. Examples might be the inclusion *without comment* of the contolling paragraph of a contract, or the specific wording of a trial court's instructions to the jury, or the specific wording of a party's statement alleged to be an admission against interest, etc. It must be kept in mind that the appendix is *not* the record on appeal and is no substitute for the requirements pertaining to the factual statement of the case as discussed above.

It is to be hoped that this option will be used prudently and sparingly.

Under no circumstances should it be degraded into presenting a complete or nearly complete record of the case. While the cost of the appendix is unrecoverably upon the party using the option, the objective of economy in prosecuting an appeal would soon be lost if the practice of an elongated appendix became prevalent.

Miscellaneous

A few less critical requirements with reference to briefs should be noted.

Rule 6.07 specifically requires that the cover of a brief shall designate the parties as they appeared in the district court, *i. e.*, as paintiff or defendant, as well as appellant, appellee, cross appellant, etc. Along this same line, Rule 6.08 provides that in the body of the briefs the parties should be referred to by their status in the district court. That is, again, by designation as plaintiff or defendant or otherwise by name. It is hoped to eliminate the frustration of the reader of the brief in having to backtrack as he reads to keep clear the status of the parties as the litigation developed below.

The Sixth requirement in the format for briefs under Rule 6.07 is of substantial importance to the Clerk of the Appellate Courts. The cover of the briefs should contain the name and address of only *one* lawyer for the party or parties he represents. The appearance of his name has the effect of designating him as being authorized to receive notices or to be served with matters pertaining to the appeal. This does not limit the number of names of lawyers that may be added at the conclusion of the brief, but only at the conclusion. These requirements will remedy the unfortunate and unintended practice that has crept into the rules heretofore when many briefs were filed showing on the cover names of lawyers for both appellant and appellee. While such designation was a requirement for the printed record on appeal, it was neither required nor authorized with reference to the briefs, and it resulted in considerable confusion in the office of the Clerk of the Supreme Court.

Consistently with the Supreme Court's objective of maintaining a more effective direction of the functioning of the courts of the state, many matters which have heretofore been disposed of at the district court level must now be addressed to the appellate level. For instance, once an appeal is docketed requests for extensions of time shall be addressed to the Clerk of the Appellate Courts (Rule 5.02). The former rule that a district court judge could enter an order finding that an appeal had been abandoned is now replaced by Rule 5.04 which transfers that function to an appellate court.

The few instances in which a district court judge will continue to have any responsibility once a notice of appeal has been filed include the following: a determination that a party may appeal *in forma pauperis* under Rule 2.04, the approval of a statement of the evidence in those instances in which a transcript is not available under Rule 3.04, the approval of an appeal on an agreed statement under Rule 3.05, and the necessary findings preliminary to an application under Rule 4.01 for an interlocutory appeal.

Apparently, every other conceivable order of any kind is to be made at the appellate level either by an appellate court or by the Clerk alone in the few instances specified in Rule 5.03.

Rule 7.07 contains some drastic sanctions. The taking of a frivolous appeal, or one for purposes of harassment or delay, may result in the assessment of the cost of reproduction of the appellee's brief and also a reasonable attorney's fee for the appellee's counsel. The same is true of an unreasonable refusal

to stipulate, after a written request, that less than a complete trial transcript should be prepared for the appeal. These sanctions may be imposed against the party, his counsel, or both. Obviously a resulting consideration is the obligation of an attorney to alert a recalcitrant client to the danger of such an imposition in those instances in which an over zealous client suggests or urges an improper course of action.

One completely novel procedure is contained in Rule 1.04 which provides for a prehearing conference in appellate cases either on the motion of a party or on the appellate court's own motion. It would seem that the Rule would have minimal application except in those instances in which for some reason the projected time for the processing of an appeal appears to have failed. If an appeal moves in substantial conformity to the schedule set forth in the appendix to this article, it does not appear that there could be any frequent justification for the inconvenience and expense of a prehearing conference.

Of course, completely new to the Rules are those matters which are made necessary by the creation of the Court of Appeals and the resulting rehearing, modification, transfer to the Supreme Court, or Supreme Court review of Court of Appeals decisions. They are to be found in Rules 7.05, 7.06, 8.01, 8.02 and 8.03. Since there is no past practice to which to compare them and no experience with them to be discussed, there appears to be no purpose in reviewing them in this article. The Rules are specific and hopefully as complete as the framers could make them. The reader's reference directly to them is a must. Likewise, it should again be pointed out that neither the reading of these Rules nor this article nor anything said about them herein can serve as a substitute for an examination of Chapter 178, 1975 Sessions Laws, the Act creating the Court of Appeals, particularly Sections 16 (K. S. A. 1975 Supp. 20-3016; 17 (K. S. A. 1975 Supp. 20-3017); 18 (K. S. A. 1975 Supp. 20-3018); 19 (K. S. A. 1976 Supp. 20-101); 24 (K. S. A. 1976 Supp. 20-3605); 27 (K. S. A. 60-2101 [Carman]); 28 (K. S. A. 60-2102 [Carman]), and 29 (K. S. A. 60-2103 [Carman]).

Conclusion

There is probably much more that could be said about the new rules. Nothing has been written herein about the procedure in criminal cases nor about the provisions governing the administration of the appellate courts. The effort has been only to alert the Bar to changes to be anticipated in civil appeals.

Obviously, not everything contained in the rules will be to every lawyer's taste. As in all things, the proof of the pudding will be in the eating. One thing is certain. Even though considerable innovation was resorted to, the rules represent a good faith and prodigious effort to carry out the recommendations of the Arn Committee by the Supreme Court under the farsighted leadership of Chief Justice Harold R. Fatzer, the Judicial Council chaired by Justice Alfred G. Schroeder, and the Civil Code Advisory Committee ably presided over by another Russell, Kansas, luminary, Marvin E. Thompson.

There is solid basis for hope that the public will recognize and duly appreciate the efforts of both the Bench and the Bar to improve the efficiency of our system of justice and to advance the delivery of legal service to the greatest number and for the greatest good.

EMMET A. BLAES.

Illustrative Steps for Preparation of Record and Briefs on Appeal

Time	*Step*
1. See K. S. A. 60-2103 (*a*) and Rule 2.03. On K. S. A. Chapter 61 Appeals see 1976 Session Laws, Chapter 258, section 37 (K. S. A. 61-2102 [Carman]).	Notice of Appeal.
2. Within THREE DAYS of filing Notice of Appeal. See Rule 2.04.	Appellant forwards to Clerk of Appellate Courts certified copies of said Notice and of Judgment from which appeal is taken and pays docket fee of $35.00.
3. Within TEN DAYS of filing Notice of Appeal. See Rule 3.03.	Clerk of District Court compiles Record on Appeal to the extent then available. Appellant orders transcript (unless otherwise stipulated) and files copy of order for transcript with Clerk of Appellate Courts.
4. Within FORTY DAYS after service of order for transcript on court reporter, unless court reporter granted extension of time by Clerk of Appellate Courts. See Rule 3.03.	If transcript was ordered, court reporter completes same, files it with clerk of district court and certifies filing to Clerk of Appellates Courts and to all parties.
5. Within FORTY DAYS after filing Notice of Appeal unless Step 4 intervened, in which event within THIRTY DAYS after transcript filed. See Rule 6.01.	Appellant's Brief served on opposing counsel and thereafter filed with Clerk of Appellate Courts.
6. Within THIRTY DAYS after service of Appellant's Brief. See Rule 6.01.	Appellee's Brief, (also Cross Appellant's Brief, if any) served and thereafter filed.
7. Within TWENTY DAYS after service of Cross-Appellant's Brief, if any. See Rule 6.01.	Cross Appellee's Brief served and thereafter filed.
8. Within FIFTEEN DAYS after service of any brief to which a Reply is addressed. See Rule 6.01.	Reply Brief served and thereafter filed.
9. At any time before the expiration of all time for service of briefs. See Rule 3.02.	Additions to the Prepared Record on Appeal, as originally prepared by the clerk of the district court under Step 3 above, may be made by any party by written request to the clerk of the district court.

10. Within FIVE DAYS of request from Clerk of Appellate Courts to the clerk of the district court. See Rule 3.07.	Clerk of district court forwards Prepared Record on Appeal to Clerk of Appellate Courts.
11. Not less than THIRTY DAYS prior to hearing. See Rule 7.02 (*d*).	Clerk of Appellate Courts notifies parties as to time and place of hearing.
12. Rule 7.02 (*e*).	Oral Arguments.

ORDER AMENDING AND SUPPLEMENTING CERTAIN PROVISIONS OF THE CODE OF CIVIL PROCEDURE

Pursuant to the authority vested in the Kansas Supreme Court by the provisions of K. S. A. 60-2607, the following provisions of chapter 60, Kansas Statutes Annotated, are hereby amended and supplemented as follows:

STATUTES IN WHICH CHANGES MADE

60-205. Service and filing of pleadings and other papers. The method of service and filing of pleadings and other papers as provided in this section shall constitute sufficient service and filing in all civil actions and special proceedings, but they shall be alternative to, and not in restriction of different methods specifically provided by law.

(*a*) *When required.* Except as otherwise provided in this chapter, every order required by its terms to be served, every pleading subsequent to the original petition unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in article 3 of this chapter.

(*b*) *How made.* Whenever under this article service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this subsection (*b*) means: Handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(*c*) *Numerous defendants.* In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that services of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(*d*) *Filing.* Interrogatories need not be filed until answered. All other papers filed after the petition and required to be served upon a party, shall be filed with the court either before service or within a reasonable time thereafter.

(*e*) *Filing with the court defined.* The filing of pleadings and other papers

with the court as required by this article shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

60-211. Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the action may proceed as though the pleading has not been served. For a willful violation of this section an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

60-245. Subpoena. (*a*) *For attendance of witnesses; form; issuance.* Every subpoena shall be issued by the clerk under the seal of the court or by a judge, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, bearing the seal of the court and his signature or facsimile signature, but otherwise in blank, to a party requesting it, who shall fill it in before service.

(*b*) *For production of documentary evidence.* A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable or oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(*c*) *Service.* A subpoena may be served by the sheriff, by his deputy, or by any other person who is not a party and is not less than eighteen (18) years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for one day's attendance and the mileage allowed by law. When the subpoena is not served by the sheriff, or by his deputy, proof of service shall be shown by affidavit.

(*d*) *Subpoena or notice for taking depositions; place of examination.* (1) Proof of service of a notice to take a deposition as provided in section 60-230 (*b*) and 60-231 (*a*) constitutes sufficient authorization for the issuance of subpoenas for the person named or described therein. In addition to those mentioned in subsection (*a*) of this section a subpoena for taking depositions may be issued by the officer before whom the deposition is to be taken or by the clerk of the district court where the deposition is to be taken or if the deposition is to be taken outside the state by an officer authorized by the law of such state to issue such subpoena. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute of contain matters within the scope of the examination permitted by section 60-226 (*b*), but in that event the subpoena will be subject to the provisions of section 60-226 (*c*) and subsection (*b*) of this section. In lieu of the procedure outlined in section 60-230 when a party gives notice of the taking of the deposition of another party the notice of taking the deposition and the contents of the notice will be as compelling upon the party as a subpoena.

A party or person to whom the subpoena is directed may, within ten (10) days after the service thereof or on or before the time specified in the sub-

poena for compliance if such time is less than ten (10) days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) A resident of this state shall not be required to attend an examination at a place which is not within fifty (50) miles of either the place of his residence, or of the place of his employment, or of the place of his principal business. A nonresident shall not be required to attend an examination at a place which is more than fifty (50) miles from the place where he is served with the subpoena: *Provided, however,* A party or employee of a party, whether a resident or nonresident of the state may be required by order of the court to attend an examination at any place designated by the court.

(3) A person confined in prison may be required to be produced for examination by deposition only in the county where he is imprisoned.

(*e*) *Subpoena for a hearing or trial.* Subpoenas for attendance at a hearing or trial shall be issued at the request of any party. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the state.

(*f*) *Contempt.* Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court in which the action is pending or in the county in which the deposition is to be taken. Punishment for such contempt shall be in accordance with section 20-1204 and acts amendatory thereof or supplemental thereto.

60-247. Jurors. (*a*) In all civil trials, upon the request of a party, the court shall cause enough jurors to be called, examined, and passed for cause before any peremptory challenges are required, so that there will remain sufficient jurors, after the number of peremptory challenges allowed by law for the case on trial shall have been exhausted, to enable the court to cause twelve (12) or sufficient jurors to be sworn to try the case.

(*b*) *Voir dire examination of jurors.* Prospective jurors shall be examined under oath as to their qualifications to sit as jurors. The court shall permit the parties or their attorneys to conduct an examination of prospective jurors.

(*c*) *Challenges.* In civil cases, each party shall be entitled to three (3) peremptory challenges, except as provided in subsection (*h*) of section 60-248, as amended, pertaining to alternate jurors. Multiple defendants or multiple plaintiffs shall be considered as a single party for purpose of making challenges except that if the judge finds there is a good faith controversy existing between multiple plaintiffs or multiple defendants, the court in its discretion and in the interest of justice, may allow any of the parties, single or multiple, additional peremptory challenges and permit them to be exercised separately or jointly.

All challenges for cause, whether to the array or panel or to individual prospective jurors, shall be determined by the court. Peremptory challenges shall be exercised in a manner which will not communicate to the challenged prospective juror the identity of the challenging party or attorney.

(*d*) *Oath of jurors.* The jurors shall be sworn to try the case conscientiously and return a verdict according to the law and the evidence.

60-248. Jury trial procedure. (*a*) *Stipulation as to number.* The parties may stipulate that the jury shall consist of any number less than twelve (12) or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

(*b*) *View of property or place.* Whenever in the opinion of the court it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person or persons appointed by the court for that purpose. While the jury is thus absent no person other than the person so appointed shall speak to any juror on any subject connected

with the trial. A view permitted hereunder shall not be considered by the court in determining any questions of the sufficiency or insufficiency of evidence admitted in an action.

(*c*) *Case submitted, action and conduct of jury.* When the case is finally submitted to the jury, it shall retire for deliberation. The jurors must be kept together in some convenient place under charge of an officer until they agree upon a verdict, or be discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night, and at their meals. The officer having them under his charge shall not allow any communications to be made to them, or make any himself except to ask them if they are agreed upon their verdict, unless by order of the court; and he shall not before the verdict is rendered communicate to any person the state of their deliberations, or the verdict agreed upon.

(*d*) *Separation of jury, admonition of court.* If the jurors are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or allow themselves to be addressed by any other person on any subject of the trial, and that it is their duty to keep an open mind and not to express an opinion thereon until the case is finally submitted to them, and that such admonition shall apply to every separation of the jurors.

(*e*) *Jury may request information after retiring.* If after the jury has retired for deliberation, it desires further information as to any part of the law or evidence pertaining to the case, it may communicate its request through the bailiff to the court in such manner as directed by the court, following which the court, after notice to counsel for the parties, may consider and make such provision for a response to the request of the jury as the court finds to be required under the circumstances.

(*f*) *Discharge of jury, when.* The jury may be discharged by the court on account of the sickness of a juror, or other necessity to be found by the court or by consent of both parties, or after it has been kept together until it satisfactorily appears that there is no probability of the jurors reaching a verdict.

(*g*) *Form of verdict; correction.* The verdict shall be written, signed by the foreman, and read by the clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagrees, the jury must be sent out again; but if no disagreement be expressed, and no party requires the jurors to be polled individually, the verdict is complete, and the jury discharged from the case. If, however, the verdict be defective in form only, the same may, with the assent of the jury, before they are discharged, be corrected by the court.

(*h*) *Alternate jurors.* Immediately after the jury is empaneled and sworn, the trial judge may empanel one or more alternate or additional jurors whenever, in his discretion, he believes it advisable to have alternate jurors available to replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable to perform their duties. Alternate jurors shall be selected in the same manner, have the same qualifications, and be subject to the same examination and challenges, and take the same oath and have the same functions, powers and privileges as the regular jurors. Each party shall be entitled to one (1) peremptory challenge to such alternate jurors. Such alternate jurors shall be seated near the other jurors, with equal power and facilities for seeing and hearing the proceedings in the case, and they must attend at all times upon the trial of the cause in company with the other jurors. They shall obey the orders of and be bound by the admonition of the court upon each adjournment, but if the regular jurors are ordered to be kept in custody during the trial of the cause, such alternate jurors also shall be kept in confinement with the other jurors. Upon final submission of the case to the jury, the alternate jurors may be discharged or they may be retained separately and not discharged until the final decision of the jury. If the alternate jurors are not discharged on final submission of the case and if any regular juror is discharged prior to the jury reaching a decision the court may draw the name of an alternate juror who shall replace the discharged juror and be subject to the same rules and regulations as though he had been selected as one of the original jurors.

60-252. Findings by the court. (*a*) *Effect.* In all actions tried upon the facts without a jury or with an advisory jury or upon entering summary judgment or involuntary dismissal, the judge shall find, and either orally or in writing state, the controlling facts. Judgment shall be entered pursuant to section 60-258. In granting or refusing interlocutory injunctions, except in divorce cases, the judge shall set forth the findings. Requests for findings are not necessary. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the judge adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and reasons for the decisions appear therein.

(*b*) *Amendment.* Upon motion of a party made not later than ten (10) days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to section 60-259. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

60-258. Entry of Judgment. Entry of judgments shall be subject to the provisions of section 60-254 (*b*). No judgment shall be effective unless and until a journal entry or judgment form is signed by the trial judge and filed with the clerk of the court. Where a judgment form is used it shall be substantially as follows:

_____, Plaintiff,

vs. No. _____

_____, Defendant.

JUDGMENT FORM

On this _____ day of _____, 19_____, judgment is entered as follows:

(Include here the judgment entered)

_____

_____

_____

_____

Judge

When judgment is entered by judgment form the clerk shall serve a copy of the judgment form on all attorneys of record within three days. Service may be made personally or by mail. Failure of service of a copy of the judgment form shall not affect the validity of the judgment.

60-312. Proof of Service. Proof of service shall be made as follows:

(*a*) *Personal service.* (1) Every officer to whom summons or other process shall be delivered for service within or without the state, shall make return thereof in writing stating the time, place and manner of service of such writ, and shall sign his name to such return.

(2) If service of such process is, by order of the court, directed to and delivered to a person, other than an officer, for service, such person shall make affidavit as to the time, place and manner of his service thereof.

(*b*) *Service by mail.* Service by mail shall be proven by a certificate of the clerk that he has mailed a copy of the summons and of the petition as required by law and by the return restricted mail receipt which shall be filed in the particular action.

(*c*) *Publication service.* Service by publication shall be proven by an affidavit showing the dates upon which and the newspaper in which the notice of publication was published. A copy of the notice shall be attached to the

affidavit which shall be filed in the cause. When mailing of copies of the publication notice is required in accordance with section 60-307 (*f*), the proof of such mailing shall be by affidavit of the person who mailed such copies and such affidavit shall be filed with the clerk of the court in which the action has been filed. If such mailing was by restricted mail, the return receipt shall be made a part of the affidavit and filed therewith.

(*d*) *Time for return.* The officer or other person receiving a summons or other process shall make a return of service promptly and in any event within ten (10) days after the service is effected. If the process cannot be served it shall be returned to the court within thirty (30) days after the date of issue with a statement of the reason for the failure to serve the same, except the time for service thereof may be extended up to ninety (90) days from the date of issue by order of the court or judge of the court to which it is returnable. Immediately upon receipt of the return upon any summons or other process by the clerk of the court issuing the same, such clerk shall mail a copy of such return to the attorney for the party requesting the issuance of such summons or other process, or, if such party has no attorney, then to the requesting party himself.

K. S. A. 1976 Supp. (Laws 1976, chapter 257, section 2)

60-2601a. Computer information storage and retrieval system. In any county which has a computer information storage and retrieval system for the use of the clerk of the district court of such county, the records and information required to be maintained in the dockets and journals under the provisions of section 60-2601 (*b*) (1), (2), (3), and (4) may, upon order of the administrative judge of such court, be maintained in such computer information storage and retrieval system. The clerk of the district court of such county shall be charged with the responsibility of making such records and information maintained in such computer information storage and retrieval system accessible to the public during normal working hours.

DONE BY ORDER OF THE COURT this 28th day of July, 1976, to become effective when filed with the clerk of this court and published in the supreme court reports.

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

Approved by Supreme Court

July 9, 1976

Appellate Rules Effective January 10, 1977.

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

Rules Relating to Supreme Court, Court of Appeals and Appellate Practice

I. GENERAL AND ADMINISTRATIVE

Rule No. 1.01

PREFATORY RULE

(*a*) RULES ADOPTED. The following Rules of the Supreme Court numbered 1.01 through 9.01 are hereby adopted effective January 10, 1977.

(*b*) REPEAL OF FORMER RULES. All rules of the Supreme Court relating to appellate practice, numbers 1 through 18, which are in effect immediately prior to the effective date of these rules are hereby repealed as of January 10, 1977, except that they shall continue to govern any appeal in which the notice of appeal was filed prior to that date, unless the parties stipulate that these rules or some portion of them shall apply and such stipulation is approved by the appellate court.

(*c*) STATUTORY REFERENCES. In these rules, whenever there is a reference to a section of a statute by number it shall be deemed to be a reference to the Kansas Statutes Annotated or Supplement or amendment thereto unless a different statute is indicated.

(*d*) THE CLERK. The clerk of the Supreme Court is clerk of the Court of Appeals and is referred to in these rules as "the clerk of the appellate courts."

(*e*) APPLICABILITY. All rules relating to appellate practice shall be applicable to both civil and criminal appeals, and govern procedure in both the Court of Appeals and the Supreme Court, unless otherwise indicated.

Rule No. 1.02

CHIEF JUDGE OF THE COURT OF APPEALS

The Chief Judge of the Court of Appeals shall have the following administrative powers:

(*a*) To designate and number hearing panels, assign judges to such panels, and designate the presiding judge of each panel of which he is not a member.

(*b*) To assign cases to the various panels for hearing and determination.

(*c*) To designate the times and places for the hearing of all cases pending before the court. Hearings may be held at any place within the state as provided in Sec. 20-3013. In determining where any case is to be heard due consideration shall be given to where it arose and to the relative convenience and expense of the parties, court and counsel.

(*d*) To designate a judge to conduct a prehearing conference whenever the court shall have ordered one to be held before a single judge under Rule 1.04.

(*e*) To establish, after consultation with the other members of the court, internal operating procedures for the orderly handling of the court's business and the fair distribution of work among its members.

(*f*) To perform such other administrative duties as may be required and which are not otherwise provided for by law or by rule.

Rule No. 1.03

JUDICIAL ADMINISTRATION

(*a*) JUDICIAL ADMINISTRATOR: QUALIFICATIONS, TENURE. The Judicial Administrator, appointed by virtue of Sec. 20-318, *et seq.*, and amendments thereto, shall be an attorney duly licensed to practice law in the state of Kansas and shall serve at the will of the justices of the Supreme Court. Any

person appointed as Judicial Administrator shall have a broad knowledge of judicial administration and substantial prior experience in an administrative capacity.

(*b*) PRACTICE OF LAW PROHIBITED. The Judicial Administrator shall not engage in the practice of law, apart from his or her duties as Judicial Administrator, while serving in such capacity.

(*c*) DUTIES OF JUDICIAL ADMINISTRATOR. The Judicial Administrator shall be responsible to the Supreme Court and shall implement the policies of the court with respect to the operation and administration of the courts under the supervision of the Chief Justice. The Judicial Administrator shall:

(1) Examine the state of the dockets of the district courts, and determine the need for assistance by any such court and report the same to the Supreme Court;

(2) Collect and compile statistics on all causes filed in each court of this state and annually submit to the Chief Justice a complete and detailed report on the state of the dockets of the courts;

(3) Conduct such periodic surveys, as may be required, of the judicial business of the courts of this state and determine the number of cases pending in said courts, the number disposed of since the previous report, and such additional information as may be deemed necessary;

(4) Make recommendations to the departmental justices relating to the assignment of judges from one district court to another and assist the departmental justices in making such assignments;

(5) Supervise and examine the administrative methods and systems employed in the offices of the district courts, including the offices of the clerks and other officers, and make recommendations to the Supreme Court for the improvement of administration of said courts;

(6) Assist the Supreme Court in the management of the fiscal affairs of the judicial department, including federal grants;

(7) Coordinate the orientation and education of judges and court personnel;

(8) Perform such duties as may be required by statute or assigned to him or her by the Supreme Court.

(*d*) COOPERATION WITH JUDICIAL COUNCIL. The Judicial Administrator shall cooperate with the Judicial Council in the collection and compilation of statistical reports of the business transacted in the courts.

(*e*) DUTIES OF COURT CLERKS. All clerks of the courts shall promptly make reports to the Judicial Administrator and furnish the information requested by him or a departmental justice on such forms furnished by the Judicial Administrator and approved by the Supreme Court.

(*f*) JUDICIAL DEPARTMENTS. Pursuant to Sec. 20-318, *et seq.*, as amended, the State of Kansas is hereby divided into the following six judicial departments:

Judicial Department No. 1 which shall be comprised of the Twelfth, Fifteenth, Seventeenth, Twenty-third, and Twenty-eighth judicial districts of the State of Kansas;

Judicial Department No. 2 which shall be comprised of the Second, Third, Eighth, and Twenty-first judicial districts of the State of Kansas;

Judicial Department No. 3 which shall be comprised of the First, Fourth, Seventh, Twenty-second, and Twenty-ninth judicial districts of the State of Kansas;

Judicial Department No. 4 which shall be comprised of the Sixth, Tenth, Eleventh, and Fourteenth judicial districts of the State of Kansas;

Judicial Department No. 5 which shall be comprised of the Fifth, Ninth, Thirteenth, Eighteenth, and Nineteenth judicial districts of the State of Kansas;

Judicial Department No. 6 which shall be comprised of the Sixteenth, Twentieth, Twenty-fourth, Twenty-fifth, Twenty-sixth, and Twenty-seventh judicial districts of the State of Kansas.

(*g*) DEPARTMENTAL JUSTICE. A departmental justice may within his department assign any district judge, associate district judge, or district magistrate judge, to hear or try any cause in other district courts within his department

and may request the assistance of any judge from another department, if such is available, to aid in the trying of any case within his department.

(*h*) REQUEST FOR ASSISTANCE. The administrative judge of a judicial district may request the assistance of a judge from another judicial district by filing such request with the Judicial Administrator who shall promptly refer such request with his recommendation thereon to the appropriate departmental justice for his consideration.

(*i*) DUTY OF REGULAR JUDGE. When a judge has been assigned to another judicial district, it shall be the duty of the administrative judge to refer cases to the assigned judge for disposition, giving preference to cases which are at issue and cannot be tried because of accumulation of business, and to arrange courtroom accommodations for such assigned judge, all subject to supervision of the Judicial Administrator.

(*j*) RETIRED JUSTICES OR JUDGES. Any retired justice, judge of the court of appeals, district judge or associate district judge may be designated and assigned to perform such judicial duties in any district as he is willing to undertake. Designation and assignment for such service in any judicial district shall be made by the departmental justice of such district.

Rule No. 1.04

PREHEARING CONFERENCE

On motion of any party or on its own motion an appellate court may direct the attorneys for the parties to appear before the court or a judge or justice thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the court. The court or judge or justice shall make an order which recites the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

Rule No. 1.05

FORM AND SERVICE OF PAPERS GENERALLY

Except as otherwise specifically required by these rules, all petitions, briefs, motions, applications, or other papers sought to be brought to the attention of the court shall comply with, and be subject to the conditions of Sec. 60-205, Sec. 60-206 (*a*) and (*e*), Sec. 60-210, and Sec. 60-211. The clerk shall keep a separate file for each cause in which all such documents shall be preserved. He shall endorse on each paper filed the date of the filing, and he shall maintain an appearance docket comparable to, and for the same general purpose of, those required of clerks of the district court under Sec. 60-2601.

Rule No. 1.06

REMOVAL OF DOCUMENTS FROM FILES

No document belonging to the files of the appellate courts shall be taken from the office or custody of the clerk of the appellate courts except by permission of the clerk.

II. INITIATION AND DOCKETING OF APPEAL

Rule No. 2.01

FORM OF NOTICE OF APPEAL, SUPREME COURT

When an appeal is permitted directly to the Supreme Court, the notice of appeal shall be filed in the district court, shall be under the caption of the case in the district court and in substantially the following form:

NOTICE OF APPEAL

Notice is hereby given that (specify the party or parties taking the appeal) appeal(s) from (designate the judgment or part thereof appealed from) to the Supreme Court of the State of Kansas.

The appeal hereby taken is directly to the Supreme Court on the ground that (state ground on which direct appeal is considered to be permitted, including citation of statutory authority).

Appellant or Attorney for
Appellant(s)
Address
Telephone Number

(Add certificate of service on all parties in accordance with Sec. 60-205.)

Rule No. 2.02

FORM OF NOTICE OF APPEAL, COURT OF APPEALS

In all cases in which a direct appeal to the Supreme Court is not permitted, the notice of appeal shall be filed in the district court, shall be under the caption of the case in the district court and in substantially the following form:

NOTICE OF APPEAL

Notice is hereby given that (specify the party or parties taking the appeal) appeal(s) from (designate the judgment or part thereof appealed from) to the Court of Appeals of the State of Kansas.

Appellant or Attorney for
Appellant(s)
Address
Telephone Number

(Add certificate of service on all parties in accordance with Sec. 60-205.)

Rule No. 2.03

PREMATURE NOTICE OF APPEAL

A notice of appeal filed subsequent to an announcement by the judge of the district court on a judgment to be entered, but prior to the actual entry of judgment as provided in Sec. 60-258, shall be effective as notice of appeal under Sec. 60-2103, if it identifies the judgment or part thereof from which the appeal is taken with sufficient certainty to inform all parties of the rulings to be reviewed on appeal. Such advance filing shall have the same effect for purposes of the appeal as if the notice of appeal had been filed simultaneously with the actual entry of judgment, provided it complies with Sec. 60-2103 (*b*).

Rule No. 2.04

DOCKETING ON APPEAL

Within three (3) days after the filing of the notice of appeal, the appellant or a cross-appellant shall obtain a copy thereof and a copy of the final order or decision appealed from, both certified by the clerk of the district court, and forward both to the clerk of the appellate courts. The appellant shall also forward a remittance for a docketing fee in the sum of $35.00, unless the docket fee is excused, or payment thereof delayed as herein provided.

The docket fee shall be excused when:

(*a*) The appellant has previously been determined to be indigent by the district court, and the attorney for appellant certifies to the clerk of the appellate courts that the appellant remains indigent, or

(*b*) The district judge shall certify:

(1) That he believes the appellant is indigent.

(2) That in the interest of the party's right of appeal an appeal should be docketed *in forma pauperis*.

(*c*) The State of Kansas and agencies of the State of Kansas shall have thirty (30) days after docketing within which to obtain and deliver a state warrant to the clerk of the appellate courts in payment of the docketing fee.

Upon filing of the copies of the notice of appeal and of the order or decision appealed from, and the payment or excuse for nonpayment of the docketing fee, the clerk of the appellate courts shall notify all parties that the appeal has been docketed and shall inform them as to the appellate number assigned thereto.

The docketing fee shall be nonrefundable and shall be the only costs assessed for the clerk's office for each appeal.

Rule No. 2.05

MULTIPLE APPEALS

When more than one appeal is taken to an appellate court from the judgments or orders in the same case in the district court, or from the same consolidation of actions in the district court, all such appeals shall be docketed together and only one docket fee shall be required. Thereafter the caption of the case in the appellate court, and the record to be prepared and briefs to be filed in accordance with these rules, shall be prepared, and oral arguments shall be conducted, as a consolidated proceeding, unless the court orders a separation thereof.

Rule No. 2.06

CONSOLIDATION OF APPEALS

Two or more appeals in separate cases may be consolidated into one appellate proceeding if one or more issues common to the appeals are so nearly identical that a decision in one appeal would appear to be dispositive of all the appeals, or the interest of justice would be otherwise served by consolidation. An appellate court may make an order of consolidation on the motion of any party under Rule No. 5.01, or on a notice by the court on its own motion to show cause why such appeals should not be consolidated. If the court then orders consolidation all further proceedings shall be conducted under the earliest docket number. Any party may file a separate brief and be separately heard upon oral argument. In lieu of ordering a consolidation an appellate court may order all proceedings in an appeal to be stayed to await the determination of issues in a pending appeal apparently dispositive of both appeals.

III. RECORD ON APPEAL

Rule No. 3.01

CONTENT OF RECORD

(*a*) THE ENTIRE RECORD. The entire record shall consist of all the original papers and exhibits filed in the district court, the court reporter's notes and transcripts of all proceedings, other court authorized record of the proceedings (including electronic recordings), and the entries on the appearance docket in the office of the clerk of the district court.

(*b*) THE RECORD ON APPEAL. That portion of the entire record which is to be filed with the clerk of the appellate courts shall be determined and prepared for filing in accordance with these rules, but the appellate court may order any or all additional parts of the entire record to be filed.

Rule No. 3.02

PREPARATION OF RECORD ON APPEAL FOR FILING

It shall be the duty of the clerk of the district court within ten (10) days after the filing of a notice of appeal 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) Insofar as convenient all such documents shall appear in the chronological order of their filing.

(*b*) All documentary exhibits which were offered or admitted into evidence and which are capable of being put into volumes.

(*c*) All reporter's transcripts of proceedings before the district court as are then available.

(*d*) 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.

At any time prior to the transmission of the prepared record to the clerk of the appellate courts, additions thereto shall be made by the clerk upon the duly served written request of a party. Thereafter, additions 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 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 No. 3.03

TRANSCRIPTS IN RECORD ON APPEAL

When an appeal is taken in a case in which any evidentiary hearing was held, it shall be the duty of the appellant to order a transcript of such hearing within ten (10) days of the filing of the notice of appeal. The order shall be served on the reporter and all parties and shall be for a complete transcript of any such hearing, unless there be obtained a stipulation of all affected parties specifying portions which are not required for the purposes of the appeal. A copy of the order to the court reporter and a copy of any such stipulation for less than a complete transcript shall be promptly filed with the clerk of the appellate courts. The transcript shall be completed within forty (40) days after service of the order 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.

If demanded by the court reporter, the appellant shall advance the payment of the estimated cost of any transcript ordered, 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 three (3) days of receipt of the order for the transcript. 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) days after service of the demand for the same shall be ground for dismissal of the appeal by order of the appellate court.

Rule No. 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) 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) 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 No. 3.05

APPEAL ON AGREED STATEMENT

When the questions presented by an appeal can be determined without an examination of the evidence and proceedings in the district court, the parties may prepare and sign a statement of the case showing how the questions arose and were decided in the district court and setting forth only those facts which are essential to a decision of the questions by the appellate court. The statement shall include a copy of the judgment appealed from, a copy of the notice of appeal with its filing date, and a concise statement of the issues raised. The statement shall be submitted to the judge of the district court and if approved as conforming to the truth and as including all matters necessary to fully present the questions raised by the appeal, it shall be filed with the clerk of the district court and shall constitute the record on appeal in lieu of the record provided for in Rule No. 3.02.

Rule No. 3.06

ACCESS TO PREPARED RECORD

Each volume of the prepared record on appeal shall be available to the parties to the appeal during the periods of time allotted for the preparation of their respective briefs. During such times any member of the bar of this state who is counsel of record shall be permitted to remove the record from the clerk's office, but shall be responsible to the court for its prompt return to the office of the clerk.

Rule No. 3.07

TRANSMISSION OF PREPARED RECORD

Upon expiration of the time permitted under Rule No. 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 No. 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) 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 he 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 No. 3.08

COPY OF RECORD ON APPEAL

Before a record on appeal is transmitted to the clerk of the appellate courts, any party to the action in the district court may file a written request with the clerk of the district court that all or some part of the record be duplicated and

that such duplicate be retained in the office of the clerk of the district court. Upon ascertaining the cost of such duplication and the payment thereof in advance by the party making the request, the clerk shall effect such duplication and transmit the original record as required by Rule No. 3.07.

Rule No. 3.09

PREPARATION OF RECORD FOR SUPREME COURT OF THE UNITED STATES

When an appeal is taken to the Supreme Court of the United States, or a petition for a writ of certiorari is filed in such court concerning a decision of a Kansas appellate court, a request for record shall be filed in duplicate with the clerk of the Kansas appellate courts not less than thirty (30) days prior to the date the record must be filed with the federal court. The request for record shall specify in numbered sequence the documents and exhibits to be certified to the federal court.

When the necessary record, or any part thereof, has been returned to the district court, the clerk of the Kansas appellate courts shall request the clerk of the district court to transmit promptly to the clerk of the Kansas appellate courts certified true copies of any required documents. If exhibits are to be part of the record, the original exhibits shall be transmitted to the clerk of the Kansas appellate courts.

IV. INTERLOCUTORY APPEALS

Rule No. 4.01

INTERLOCUTORY APPEALS IN CIVIL CASES

When an appeal is sought under the provisions of Sec. 60-2102 (*b*) an application for permission to take such an appeal shall be served within ten (10) days after the entry of the order from which an appeal is sought to be taken. The application shall be filed with the clerk of the appellate courts and 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 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 Sec. 60-2102 (*b*), 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) 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 Sec. 60-2103, for taking an appeal or within ten (10) days after permission to appeal is granted, whichever is later. In such case no additional docket fee shall be charged, and the record on appeal shall be filed under the same docket number.

Rule No. 4.02

INTERLOCUTORY APPEALS BY THE PROSECUTION

(*a*) When an appeal is taken to the court of appeals under the provisions of Sec. 22-3601 (*a*) and Sec. 22-3603, the notice of appeal shall be filed with the clerk of the district court within ten (10) 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 on defendant if he has no counsel. Within three (3)

days after the filing of the notice of appeal the prosecution shall forward a certified copy of the notice of appeal to the clerk of the appellate courts.

(*b*) Within thirty (30) days after filing, the prosecution shall file with the clerk of the appellate courts:

1. A 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.
2. 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.
3. 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.
4. 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.
5. A certificate of the prosecutor as to the accuracy of the record and of service upon the defendant's counsel, or upon the defendant if he has no counsel.

The above documents, and such other portions of the record as may be required by the appellate court, shall constitute the record on appeal. The responsibility of furnishing the record shall be upon the prosecution and not upon the clerk of the district court.

(*c*) Within thirty (30) days after the filing of the notice of appeal the prosecution shall serve its brief. Within twenty (20) days thereafter the defense may serve its brief.

(*d*) Upon the filing of the notice of appeal the trial judge shall forthwith order the defendant released from custody in the case or if the defendant has given an appearance bond in the case an order shall issue discharging the defendant and any sureties from further liability on the bond.

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

(*f*) 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 his arrest.

V. MOTIONS

Rule No. 5.01

APPELLATE COURT MOTIONS

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. Any other party may, within five (5) days after service of a motion, serve and file a response thereto with a like number of copies. Oral arguments on motions will not be permitted unless ordered by the court.

Rule No. 5.02

EXTENSIONS OF TIME

An application for an extension of time for the performance of any act required by any person by these rules shall be addressed only to the clerk of the appellate courts. No extension will be granted except on stated grounds reasonably indicating the necessity therefor. Consent of adverse parties to an application will be considered but will not be controlling. A copy of any application under this rule shall be served on all parties.

Rule No. 5.03

CLERK'S AUTHORITY ON MOTIONS

The clerk of the appellate courts may rule on any of the following motions unless the motion is opposed:

(*a*) Motions for extension of time.
(*b*) Motions to make corrections in briefs.
(*c*) Motions to substitute parties.
(*d*) Motions to withdraw briefs for making corrections.

Such orders shall be entered and shown on the docket by the clerk.

Rule No. 5.04

VOLUNTARY DISMISSALS

An appellant may at any time dismiss an appeal by stipulation or by filing and serving a notice of dismissal with the clerk of the appellate courts. A dismissal of the appeal of one party shall not affect an appeal taken by any other party. Unless a dismissal is by agreement of the parties, the court may on motion and reasonable notice assess against the appellant those costs and expenses incurred by the appellee to the date of the dismissal that would have been assessed against the appellant if the case had not been dismissed and there had been an affirmance of the judgment or order.

Rule No. 5.05

INVOLUNTARY DISMISSALS

On the motion of a party with at least ten (10) 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) 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 No. 5.04 and Rule No. 7.07.

Rule No. 5.06

RELEASE AFTER CONVICTION

An application by the defendant to the appellate court having jurisdiction of the appeal for release after conviction pursuant to Sec. 22-2804 (2) shall be docketed in accordance with Rule No. 2.04, state the disposition made by the district court of the application, the nature of the offense and sentence imposed, the amount of any appearance bonds previously required in the case, the defendant's family ties, employment, financial resources, the length of his residence in the community, any record of prior convictions, and his record of appearance at court proceedings, including failure to appear. The application shall also be accompanied by the order of the trial court setting forth the reason for its action.

VI. BRIEFS

Rule No. 6.01

TIME SCHEDULE FOR BRIEFS

All briefs shall be served upon opposing counsel, and thereafter filed with the clerk of the appellate courts, according to the following schedule:

(*a*) *Appellant's Brief*

If a reporter's transcript was not ordered, within forty (40) days after the filing of the notice of appeal.

If a transcript was ordered, within thirty (30) days after service of the certificate of filing of the transcript in accordance with Rule No. 3.03.

If a record on appeal includes the statement of proceedings made pursuant to Rule No. 3.04, or the agreed statement pursuant to Rule No. 3.05, within thirty (30) days after the filing thereof with the clerk of the district court.

(*b*) *Appellee's Brief (and Cross-Appellant's Brief)*
Within thirty (30) days after service of the appellant's brief.

(*c*) *Cross-Appellee's Brief*
Within twenty (20) days after service of the cross-appellant's brief.

(*d*) *Reply Brief*
Within fifteen (15) days after service of the brief to which the reply is made.

Rule No. 6.02

CONTENT OF APPELLANT'S BRIEF

The appellant's brief shall contain the following:

(*a*) A table of contents of the entire brief, with page references to each division and subdivision including each issue presented and the authorities relied upon in support of each.

(*b*) A brief statement of the nature of the case, *e. g.*, whether a personal injury suit, injunction, quiet title, etc., and a brief statement of the nature of the judgment or order from which the appeal was taken.

(*c*) A brief statement, without elaboration, of the issues to be decided on the appeal.

(*d*) A factual statement of the case, *i. e.*, a concise but complete statement, without argument, of all the facts of the case material to the determination of the question or questions presented for appellate decision. The facts stated therein shall be keyed to the record on appeal so as to make verification reasonably convenient. Any material statement made without such a reference may be presumed to be without support in the record.

(*e*) The arguments and authorities relied upon, subdivided as to the separate issues in the appeal if more than one.

(*f*) At the option of the appellant, an appendix consisting of limited extracts from the record on appeal, which extracts the appellant considers to be of critical importance to the issues in the appeal. Such an appendix is merely for the court's convenience and is not to be considered as a substitute for the record itself. When such an appendix is included, the statement of the case and the brief may make references to it, but such references shall be supplementary to the references required to the volume and pages of the record itself and not in lieu thereof.

Rule No. 6.03

CONTENT OF APPELLEE'S BRIEF

The appellee's brief shall contain the following:

(*a*) A table of contents of the entire brief, with page references to each division and subdivision including each issue presented and the authorities relied upon applicable to each.

(*b*) A statement either concurring in the appellant's statement of the issues involved or stating the issues the appellee considers necessary to disposition of the appeal.

(*c*) A factual statement of the case, without argument, or a statement acknowledging the correctness of the appellant's statement of the case, or adding corrections and supplemental statements to the extent necessary to the appeal. The statement shall be supported by references to the record in the same manner as is required of the appellant under Rule No. 6.02.

(*d*) The arguments and authorities relied upon, subdivided as to the separate issues in the appeal if more than one.

(*e*) At the option of the appellee and without comment, an appendix containing extracts of critical portions of the record for the same purpose and subject to the same limitations as are prescribed for the appellant's appendix under Rule No. 6.02.

(*f*) If the appellee is also a cross-appellant, a separate section for the cross-appeal with content comparable to that of an appellant under Rule No. 6.02 except without duplication of statements, arguments, or authorities already contained in the appellee's brief. To avoid such duplication, references may be made to the appropriate portions of the appellee's brief.

Rule No. 6.04

CONTENT OF CROSS-APPELLEE'S BRIEF

The content of a cross-appellee's brief shall be comparable to that of an appellee, but without duplication of statements, arguments, or authorities already contained in the appellant's brief. To avoid such duplication, references may be made to the appropriate portions of the appellant's brief.

Rule No. 6.05

REPLY BRIEF

A reply brief shall not be submitted unless made necessary by new material contained in the appellee's or cross-appellee's brief. A reply brief shall make specific reference to the new material being rebutted and under no circumstances shall it duplicate or include, except by reference, any statements, arguments, or authorities already made in preceding briefs. A cross-appellee shall, if a reply brief is permissible, combine the same with the cross-appellee's brief as a separate section.

Rule No. 6.06

BRIEF OF AMICUS CURIAE

A brief of an *amicus curiae* may be filed only after an order of the appellate court granting an application which has been served upon all counsel of record. An *amicus curiae* is not entitled to be heard on oral argument of the appeal.

Rule No. 6.07

FORMAT FOR BRIEFS

All briefs shall be reproduced on pages 8½ inches by 11 inches and the paper shall be white and of good grade without gloss. Typed matter on the page, excluding pagination, shall not exceed 6½ inches by 9½ inches. Any method of reproduction which results in uniform, permanent and clearcut copy may be used at the option of the party. If ordinary typographical methods are used, the type shall be of conventional style. The basic material shall not be less than 12 point type set on a 16 point slug. Quotations, subparagraphs, tabulations, or other subsidiary material shall be not less than 12 point type, but may be set on a 12 point slug. Any footnote shall commence on the same page as the text to which it relates. If standard typing is reproduced, either by offset duplicating or by office copying machines, the material within the same paragraph may be single spaced, but both paragraphs and subparagraphs shall be separated from each other by a double space. The type shall never be smaller than pica.

The cover of the brief of the appellant shall be yellow; that of the appellee, blue; that of an intervenor or *amicus curiae*, green; and that of any reply brief, grey. The outside of the front cover shall conspicuously display each of the following:

First:
The abbreviation for number, "No.," followed by the appellate court docket number.

Second:
The words "IN THE COURT OF APPEALS OF THE STATE OF KANSAS," or "IN THE SUPREME COURT OF THE STATE OF KANSAS" dependent on the court in which the matter is then pending.

Third:
The caption of the case as it appeared in the district court except that a party shall not only be identified as a plaintiff or defendant but also as an appellant or appellee.

Fourth:
The title of the document, *e. g.*, "Brief of Appellant" or "Brief of Appellee," etc.

Fifth:
The words "Appeal from the District Court of _____ County, Honorable _____, Judge. District Court Case No. _____."

Sixth:
The name and address of one lawyer for the party on whose behalf the brief is submitted, such lawyer being thereby designated to receive notices or to be served with other matters pertaining to the appeal. If there are several parties separately represented and joining in the brief, a lawyer for each shall be shown. A lawyer may be shown as being of a named firm. Additional lawyers joining in the brief are not to be shown on the cover but may be added at the conclusion of the brief.

If a brief is in excess of fifteen (15) pages, not less than ten (10) of the required twenty (20) copies shall be assembled with full length spiral binders on the left side. The remaining copies may be fastened together by conventional methods. Except as the court may specially authorize, the length of briefs, exclusive of cover and of the appendix, shall not exceed the following:

Brief of an Appellant—50 pages
Brief of an Appellee—50 pages
Brief of an Appellee and Cross-Appellant—60 pages
Brief of a Cross-Appellee—25 pages
Reply Brief—15 pages
Brief of an *Amicus Curiae*—15 pages

Any brief which is not in substantial conformity with the provisions of this rule will not be accepted for filing.

Rule No. 6.08

REFERENCES WITHIN BRIEFS

In the body of a brief, unless the context particularly requires a distinction between parties as appellant or appellee, they should normally be referred to by their status in the district court, *e. g.*, plaintiff, defendant, etc., or by name. References to court cases shall be by the official citations followed by any generally recognized reporter system citations.

Rule No. 6.09

SERVICE OF BRIEFS

Every brief shall be supplied in five (5) copies to all adverse counsel united in interest. Proof of service and twenty (20) copies of the brief shall be simultaneously filed with the clerk of the appellate courts.

Rule No. 6.10

BRIEFS IN CRIMINAL AND POST CONVICTION CASES

In all criminal matters and post conviction proceedings, copies of all briefs shall be served on the Attorney General of this state. No brief shall be filed by or on behalf of the State of Kansas or any officer or agent thereof without the approval of the Attorney General or a member of his staff endorsed thereon.

VII. ORAL ARGUMENTS, DECISIONS AND REHEARING

Rule No. 7.01

HEARINGS IN THE SUPREME COURT

(*a*) SESSIONS. Sessions of the Supreme Court for the hearing of cases will be from time to time on such dates as shall be fixed by the order of the court. Each daily session will commence at 9:30 A. M.

(*b*) ASSIGNMENT OF CASES. Cases will be assigned for hearing as nearly as practicable in the order in which they were docketed except cases entitled by law to preferential setting. Other cases may be advanced by the court on motion as justice or the public interest may require.

(*c*) SUMMARY CALENDAR—GENERAL CALENDAR. (1) *Screening Procedures.* All cases docketed in the court, except original cases and interlocutory appeals under Sec. 60-2102 (*b*) and Sec. 22-3603, may be subjected to screening procedures after the appellee's brief has been filed, or the time limited for filing appellee's brief has expired. When screening procedures have been completed on a case it shall be placed on a general calendar or on a summary calendar as hereinafter determined.

(2) *Basis for Determining Summary Calendar Cases.* Those cases which fail to present any new question of law and in which oral argument is deemed neither helpful to the court nor essential to a fair hearing of the case on appeal may be placed on the summary calendar for later assignment. All other cases shall be placed on the general calendar for later assignment. Separate calendars shall be maintained by the clerk for this purpose.

(3) *Screening Panels.* The Chief Justice may designate one or more screening panels each composed of three members of the court for the purpose of examining the cases filed to determine the proper calendar on which each case shall be placed. It shall require the unanimous judgment of a screening panel to place any case on the summary calendar.

(4) *Notice of Calendaring.* The clerk shall notify the parties when a case has been placed on the summary calendar. When a case is placed on the summary calendar it shall be deemed submitted to the court without oral argument unless a written request by one of the parties for oral argument is served on all parties and filed with the clerk within ten (10) days after notice of calendaring has been mailed by the clerk.

(5) *Limited Argument.* When a written request for oral argument is served and filed in a case on the summary calendar, oral arguments will be permitted but limited to fifteen (15) minutes on each side.

(*d*) DOCKETS. Not less than thirty (30) days before each sitting of the court, the clerk shall prepare and mail to all attorneys of record in causes assigned for hearing during such sitting a docket showing the date on which the cases from the general and summary calendars will be argued and heard. The daily docket will be called in open court at the commencement of each day's session. Failure of a party to be represented at the call of the day's docket shall constitute a waiver of oral argument by such party.

(*e*) ARGUMENTS. Oral arguments in cases on the general calendar will be limited to thirty (30) minutes each for the appellant and the appellee unless extended time is granted by the court. If on either side of a case there are several parties who are not united in interest in the issues of the appeal and who are separately represented, motions for separate arguments may be made at the

call of the day's docket at which time the court will allot time for the separate arguments. Any party who does not have a brief on file will not be permitted an oral argument. An attorney at law in good standing in another jurisdiction may have the privilege of making oral argument if an oral request is made at the call of the day's docket by an attorney authorized to practice law and duly registered in this state and appearing of record in the case.

Rule No. 7.02

HEARINGS IN THE COURT OF APPEALS

(*a*) HEARING PANELS. Hearings in the Court of Appeals shall be before the judges of the court, sitting *en banc*, or in hearing panels designated by the Chief Judge of the court. Hearings shall be before panels of the court unless a majority of the judges of the Court of Appeals shall order that an appeal or other proceeding be heard or reheard by the Court of Appeals *en banc*.

(*b*) SUGGESTION FOR HEARING OR REHEARING EN BANC. A party may suggest the appropriateness of a hearing or rehearing *en banc*. A suggestion for hearing *en banc* shall be filed within the time prescribed for filing appellee's brief. A suggestion for rehearing *en banc* shall be filed within the time prescribed for filing a motion for rehearing.

(*c*) SESSIONS. (1) Hearings before the court sitting *en banc* shall be in Topeka, Kansas, unless otherwise ordered by the Chief Judge.

(2) Hearings before panels of the court may be held in any county within the state as provided in Rule No. 1.02.

(3) To assist the court in determining the place of hearing, any party may suggest in writing a desired place of hearing. Such suggestion should be filed not later than the time for filing appellee's brief.

(*d*) NOTICE OF HEARING. Not less than thirty (30) days before each sitting of the court, the clerk shall notify the attorneys in each case assigned for hearing of the place and time at which the case will be heard.

(*e*) ARGUMENTS. Oral argument will be limited to thirty (30) minutes each for the appellant and the appellee unless extended time is granted by the court. If on either side of a case there are multiple parties who are not united in interest in the issues of the appeal and who are separately represented, the court on motion will allot time for separate arguments. Any party who does not have a brief on file will not be permitted an oral argument. An attorney at law in good standing in another jurisdiction may have the privilege of making oral argument if an oral request is made at the call of the case by an attorney authorized to practice law and duly registered in this state and appearing of record in the case.

Rule No. 7.03

DECISIONS OF THE APPELLATE COURTS

Decisions of the appellate courts will be announced by the filing of the opinions with the clerk of the appellate courts at any time decisions are ready. On the date of filing, the clerk of the appellate courts will send one copy of the decision to the attorney of record for each party, and in appealed cases one copy to the judge of the district court from which the appeal was taken.

Rule No. 7.04

OPINIONS OF THE APPELLATE COURTS

Opinions of the appellate courts, whether signed or per curiam, shall be memorandum opinions or formal opinions according to the requirements of Sec. 60-2106.

Opinions shall be published in the official reports only when they satisfy the standards set out in this rule. Disposition by memorandum, without a formal published opinion, does not mean that the case is considered unimportant. It does mean that no new points of law making the decision of value as precedent are believed to be involved.

An opinion shall be prepared in memorandum form unless it:
(*a*) Establishes a new rule of law or alters or modifies an existing rule;
(*b*) Involves a legal issue of continuing public interest;
(*c*) Criticizes or explains existing law;
(*d*) Applies an established rule of law to a factual situation significantly different from that in published opinions of the courts of this state;
(*e*) Resolves an apparent conflict of authority; or
(*f*) Constitutes a significant and non-duplicative contribution to legal literature:
(1) by a historical review of law; or
(2) by describing legislative history.

A memorandum opinion shall not be published unless there is a separate concurring or dissenting opinion in the case, and the author of such separate opinion requests that it be reported; or unless it is ordered to be published by the Supreme Court.

Regardless of the foregoing, no opinion superseded by an opinion on rehearing shall be published. An opinion that is modified on rehearing shall be published as modified if it otherwise meets the standards of this rule.

A formal opinion shall be written and published only if the majority of the justices or judges participating in the decision find that one of the standards set out in this rule is satisfied. The court or panel which decides the case shall make a tentative decision whether or not a formal opinion is required before or at the time the writing assignment is made. Concurring and dissenting opinions shall be published only if the majority opinion is published.

All memorandum opinions, unless otherwise required to be published, shall be marked: "Not Designated for Publication." Since unpublished opinions are deemed to be without value as precedent and are not uniformly available to all parties, opinions so marked shall not be cited as precedent by any court or in any brief or other material presented to any court, except to support a claim of *res judicata,* collateral estoppel, or law of the case.

Rule No. 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 within ten (10) days of the decision. 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 No. 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 No. 7.06

REHEARING OR MODIFICATION IN SUPREME COURT

(*a*) A motion for rehearing or modification in a case decided by the Supreme Court may be served within twenty (20) days of the date of the decision. 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.

(*b*) If no motion for rehearing is filed or upon denial of a motion for rehearing, the clerk of the appellate courts shall, unless the court otherwise orders, issue a mandate on the decision of the Supreme Court to the district court together with a copy of the opinion.

Rule No. 7.07

COSTS AND 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 the 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.

(*b*) FRIVOLOUS APPEALS. If the court finds that an appeal has been taken frivolously, or only for purposes of harassment or delay, it may assess against an appellant or his counsel, or both, the cost of reproduction of the appellee's brief and a reasonable attorney's fee for the appellee's counsel. 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.

(*c*) UNNECESSARY TRANSCRIPTS. On its own motion, or on the motion of an aggrieved party filed not later than ten (10) 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 No. 3.03, to the preparation of less than a complete transcript of the proceedings in the district court.

VIII. TRANSFER TO AND REVIEW BY SUPREME COURT

Rule No. 8.01

TRANSFER TO SUPREME COURT ON CERTIFICATE

Whenever the Court of Appeals shall request that an undetermined case pending before it be transferred to the Supreme Court for final determination, such request shall be by certificate of the Chief Judge of the Court of Appeals filed with the clerk of the appellate courts, accompanied by eight (8) copies. The certificate shall set forth the nature of the case, shall demonstrate that such case is within the jurisdiction of the Supreme Court, and shall show the existence of one or more of the grounds for transfer specified in Sec. 20-3016 (*a*). As may be appropriate, such certificate shall specify:

(*a*) Which issue or issues are not within the jurisdiction of the Court of Appeals with citation to controlling constitutional, statutory or case authority;

(*b*) The subject matter of the case which has significant public interest; or

(*c*) The particular legal questions raised which have major public significance.

If the request is made under Sec. 20-3016 (*a*) (4), the certificate shall contain sufficient data concerning the state of the docket of the Court of Appeals and of the Supreme Court to demonstrate that the expeditious administration of justice requires such transfer.

Rule No. 8.02

TRANSFER TO SUPREME COURT ON MOTION

Whenever a party shall request, pursuant to Sec. 20-3017, that an undetermined case pending in the Court of Appeals be transferred to the Supreme Court for final determination, such request shall be by motion filed with the clerk of the appellate courts, accompanied by eight (8) copies, within twenty (20)

days after service of the notice of appeal. The motion shall set forth the nature of the case, shall demonstrate that such case is within the jurisdiction of the Supreme Court, and shall show the existence of one or more of the grounds for transfer specified in Sec. 20-3016 (*a*). As may be appropriate, such motion shall specify:

(*a*) Which issue or issues are not within the jurisdiction of the Court of Appeals with citation to controlling constitutional, statutory or case authority;
(*b*) The subject matter of the case which has significant public interest; or
(*c*) The particular legal questions raised which have major public significance.

If the request is made under Sec. 20-3016 (*a*) (4), the motion shall contain sufficient data concerning the state of the docket of the Court of Appeals and of the Supreme Court to demonstrate that the expeditious administration of justice requires such transfer.

Rule No. 8.03

SUPREME COURT REVIEW OF COURT OF APPEALS DECISION

(*a*) A petition to the Supreme Court for review of a Court of Appeals decision shall be prepared in conformity with Rule No. 6.07. The petition shall be served within thirty (30) days after the decision of the Court of Appeals and the original, together with eight (8) additional copies, shall be filed with the clerk of the appellate courts.

The petition shall contain in the following order:

(1) A prayer for review;
(2) Date of the decision of the Court of Appeals;
(3) Statement of the issues in the appeal upon which the review is sought;
(4) A short statement of relevant facts. Facts correctly stated in the opinion of the Court of Appeals shall not be restated;
(5) A short argument including appropriate authorities stating why review is warranted;
(6) A copy of the opinion of the Court of Appeals.

The adverse party need not respond, but may do so within ten (10) days. The Supreme Court will either grant or deny the review.

(*b*) Whenever a review of a decision of the Court of Appeals has been granted by the Supreme Court, the case shall be heard on the record and briefs previously filed with the Court of Appeals. Any party may supplement his original brief with additional support for his contentions within thirty (30) days after the order granting the review. Thereafter any opposing party shall have thirty (30) days to respond. Except by order of the court a supplemental brief shall not exceed one-half the length permitted for original briefs as prescribed by Rule No. 6.07. The timely service of a petition for review shall stay the issuance of the mandate of the Court of Appeals. If review is refused, the decision of the Court of Appeals shall be final as of the date of refusal and the mandate of the Court of Appeals shall be issued by the clerk forthwith.

IX. ORIGINAL ACTIONS

Rule No. 9.01

ORIGINAL ACTIONS

(*a*) CASES OF CONCURRENT JURISDICTION. Original jurisdiction of the Supreme Court will not ordinarily be exercised if adequate relief appears to be available in a district court. If relief is available in the district court, the petition shall state, in addition to all other necessary allegations, the reasons why the action is brought in the Supreme Court instead of in the district court. In the event the Supreme Court finds that adequate relief is available in the district court, it may dismiss the action or order it transferred to the appropriate district court.

(*b*) PETITION; SERVICE AND FILING. Petitions in original actions shall be filed with the clerk of the appellate courts with proof of service, personal or by restricted mail, on all respondents or their counsel of record. Where the relief sought is an order in mandamus against a judge involving pending litigation before such judge, the judge and all parties to the pending litigation shall be deemed respondents. The petition shall contain a statement of the facts necessary to an understanding of the issues presented and a statement of the relief sought. It shall be accompanied by a short memorandum of points and authorities, and such documentary evidence as is available and necessary to support the facts alleged. The plaintiff in an original action shall pay a docketing fee of $35.00. Upon receipt of the prescribed docket fee or an affidavit of indigency the clerk shall docket the petition and submit it to the court.

(*c*) EX PARTE DISPOSITION; ORDER DIRECTING RESPONSE. If the court is of the opinion that the relief should not be granted, it will deny the petition. If the right to the relief sought is clear and it is apparent that no valid defense to the petition can be offered, the relief sought may be granted *ex parte*. A dismissal under paragraph (*a*) of this rule because adequate relief appears to be available in the district court is not an adjudication on the merits. If the petition is not granted or denied *ex parte*, the court will order that the respondent(s) either show cause why the relief should not be granted or file an answer to the petition within the time fixed by the order. The order shall be served by the clerk on all named respondents by mail or as otherwise directed by the court. Two or more respondents may respond jointly. A judge named as respondent in a mandamus action who does not desire to appear in the proceeding may so advise the clerk and all parties by letter, but the petition shall not thereby be taken as admitted. Any response may be accompanied by such additional documentary evidence as the respondent deems necessary for the court's understanding of the case.

(*d*) THE RECORD. The petition, response, and any documents accompanying either shall constitute the record. If it appears that there are disputed questions of material fact which can only be resolved by oral testimony, the court may refer the matter to a judge of the district court or to a commissioner for the purpose of taking such testimony and making a report containing recommended findings of fact. Such report and the transcript of the testimony shall be filed with the clerk of the appellate courts and become part of the record.

(*e*) FURTHER PROCEEDINGS. If the petition, response, and record clearly indicate the appropriate disposition the court will enter an order without further briefs or argument. Otherwise the court will normally order a prehearing conference under Rule No. 1.04, and in any event will enter an order fixing dates for the filing of briefs. The proceeding will thereafter be governed by the rules relating to appellate procedure.

Rules Relating to District Courts

APPROVED BY SUPREME COURT

July 28, 1976

RULES RELATING TO DISTRICT
COURTS EFFECTIVE
JANUARY 10, 1977.

INDEX TO RULES RELATING TO DISTRICT COURTS

General and Administrative:

Commencement of Actions, Pleadings and Related Matters:

Motions, Discovery, Pretrial Procedures and Related Matters:

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Rules Relating to District Courts

PREFATORY RULE

(*a*) *Rules Adopted.* The following rules of the Supreme Court numbered 101 through 184 are hereby adopted July 28, 1976, effective January 10, 1977.

(*b*) *Repeal of Former Rules.* All rules of the Supreme Court relating to the district courts numbered 1 through 126 which are in effect immediately prior to the effective date of these rules are hereby repealed as of January 10, 1977.

(*c*) *Statutory References.* In these rules, wherever there is a reference to a section of a statute by number, it shall be deemed to be a reference to the Kansas Statutes Annotated or Supplement or amendment thereto unless a different statute is indicated.

Rule No. 101

TERMS OF COURT. The terms of court in each county of the judicial districts of the state of Kansas shall commence in each year as follows:

(*a*) FIRST JUDICIAL DISTRICT

(1) *Atchison County:*
2nd Monday in January
2nd Monday in April
2nd Monday in September

(2) *Leavenworth County:*
1st Monday in February
1st Monday in May
1st Monday in October

(*b*) SECOND JUDICIAL DISTRICT

(1) *Jackson County:*
2nd Monday in January
1st Monday in May
1st Monday in October

(2) *Jefferson County:*
1st Monday in March
1st Monday in June
1st Monday in November

(3) *Pottawatomie County:*
1st Monday in April
2nd Monday in September
1st Monday in December

(4) *Wabaunsee County:*
1st Monday in February
3rd Monday in May
3rd Monday in October

(*c*) THIRD JUDICIAL DISTRICT

(1) *Shawnee County:*
2nd Monday in January
1st Monday in April
1st Tuesday in September

(*d*) FOURTH JUDICIAL DISTRICT

(1) *Allen County:*
3rd Monday in January
3rd Monday in May
3rd Monday in October

(2) *Anderson County:*
1st Friday in February
1st Friday in May
1st Friday in October

(3) *Coffey County:*
2nd Monday in January
2nd Monday in April
2nd Monday in September

(4) *Franklin County:*
2nd Friday in January
2nd Friday in April
2nd Friday in September

(5) *Osage County:*
2nd Tuesday in March
2nd Tuesday in June
2nd Tuesday in November

(6) *Woodson County:*
3rd Tuesday in February
3rd Tuesday in May
3rd Tuesday in October

(*e*) FIFTH JUDICIAL DISTRICT

(1) *Chase County:*
1st Tuesday in March
1st Tuesday in June
1st Tuesday in November

(2) *Lyon County:*
1st Tuesday in February
1st Tuesday in May
1st Tuesday in October

(*f*) SIXTH JUDICIAL DISTRICT

(1) *Bourbon County:*
1st Monday in January
2nd Monday in May
2nd Monday in September

(2) *Linn County:*
1st Monday in April
2nd Monday in July
1st Monday in December

(3) *Miami County:*
1st Monday in February
1st Monday in June
1st Monday in October

(*g*) SEVENTH JUDICIAL DISTRICT

(1) *Douglas County:*
1st Monday in February
1st Monday in May
1st Monday in November

(*h*) EIGHTH JUDICIAL DISTRICT

(1) *Dickinson County:*
1st Monday in January
1st Friday in May
2nd Monday in September

(2) *Geary County:*
1st Monday in March
1st Monday in June
2nd Monday in November

(3) *Marion County:*
1st Monday in February
1st Monday in May
1st Monday in October

(4) *Morris County:*
1st Monday in April
1st Friday in June
1st Monday in December

(*i*) NINTH JUDICIAL DISTRICT

(1) *Harvey County:*
2nd Monday in February
2nd Monday in May
2nd Monday in November

(2) *McPherson County:*
2nd Monday in January
1st Monday in April
1st Monday in October

(*j*) TENTH JUDICIAL DISTRICT

(1) *Johnson County:*
1st Monday in January
1st Monday in May
1st Tuesday in September

(*k*) ELEVENTH JUDICIAL DISTRICT

(1) *Cherokee County:* (Columbus)
1st Monday in January
1st Monday in May
1st Monday in October

Cherokee County: (Galena)
1st Monday in March
1st Monday in September
2nd Wednesday in November

(2) *Crawford County:* (Girard)
2nd Monday in January
1st Monday in April
1st Monday in October

Crawford County: (Pittsburg)
3rd Monday in February
2nd Monday in May
3rd Monday in November

(3) *Labette County:* (Oswego)
1st Tuesday in February
2nd Tuesday in April
1st Tuesday in October

Labette County: (Parsons)
1st Tuesday in March
1st Tuesday in May
1st Tuesday in November

(4) *Neosho County:* (Erie)
2nd Tuesday in March
2nd Wednesday in October

Neosho County: (Chanute)
2nd Wednesday in March
2nd Tuesday in October

(5) *Wilson County:*
1st Tuesday in January
1st Tuesday in April
1st Tuesday in September

(*l*) TWELFTH JUDICIAL DISTRICT

(1) *Cloud County:*
1st Monday in January
1st Tuesday in September

(2) *Jewell County:*
1st Monday in April
3rd Monday in October

(3) *Lincoln County:*
1st Monday in February
3rd Monday in November

(4) *Mitchell County:*
1st Monday in March
1st Monday in November

(5) *Republic County:*
1st Monday in May
1st Monday in October

(6) *Washington County:*
1st Monday in June
3rd Monday in September

(*m*) THIRTEENTH JUDICIAL DISTRICT

(1) *Butler County:*
1st Monday in March
2nd Monday in June
2nd Monday in November

(2) *Chautauqua County:*
1st Monday in April
1st Tuesday after 1st Monday in September
1st Monday in December

(3) *Elk County:*
2nd Monday in January
1st Monday in May
3rd Monday in September

(4) *Greenwood County:*
3rd Monday in January
3rd Monday in May
2nd Monday in October

(*n*) FOURTEENTH JUDICIAL DISTRICT

(1) *Montgomery County:* (Independence)
1st Monday in February
2nd Monday in September

Montgomery County: (Coffeyville)
1st Monday in April
1st Monday in December

(*o*) FIFTEENTH JUDICIAL DISTRICT

(1) *Graham County:*
1st Monday in February
2nd Monday in May
3rd Monday in September

(2) *Rooks County:*
2nd Monday in January
1st Monday in May
1st Tuesday after 1st Monday in September

(3) *Sheridan County:*
4th Monday in February
3rd Monday in May
1st Monday in October

(4) *Sherman County:*
1st Monday in April
2nd Monday in June
3rd Monday in November

(5) *Thomas County:*
3rd Monday in March
4th Monday in May
1st Monday in November

(*p*) SIXTEENTH JUDICIAL DISTRICT

(1) *Clark County:*
3rd Monday in February
4th Monday in September

(2) *Comanche County:*
3rd Monday in May
1st Monday in December

(3) *Ford County:*
3rd Monday in January
3rd Monday in April
2nd Monday in September

(4) *Gray County:*
1st Monday in April
2nd Monday in November

(5) *Kiowa County:*
1st Monday in May
2nd Monday in October

(6) *Meade County:*
3rd Monday in March
4th Monday in October

(*q*) SEVENTEENTH JUDICIAL DISTRICT

(1) *Cheyenne County:*
1st Monday in January
1st Monday in June

(2) *Decatur County:*
2nd Monday in February
1st Monday in October

(3) *Norton County:*
3rd Monday in March
3rd Monday in October

(4) *Osborne County:*
1st Monday in May
1st Monday in December

(5) *Phillips County:*
1st Monday in April
1st Monday in November

(6) *Rawlins County:*
1st Monday in February
2nd Monday in September

(7) *Smith County:*
3rd Monday in April
3rd Monday in November

(*r*) EIGHTEENTH JUDICIAL DISTRICT

(1) *Sedgwick County:*
3rd Monday in January
1st Monday in April
3rd Monday in September

(*s*) NINETEENTH JUDICIAL DISTRICT

(1) *Barber County:*
2nd Monday in February
2nd Monday in May
2nd Monday in October

(2) *Cowley County:*
2nd Monday in January
2nd Monday in March
1st Monday in June
1st Monday in October

(3) *Harper County:*
1st Monday in February
1st Monday in May
1st Monday in November

(4) *Kingman County:*
4th Monday in January
4th Monday in April
4th Monday in September

(5) *Pratt County:*
3rd Monday in January
3rd Monday in April
3rd Monday in October

(6) *Sumner County:*
2nd Tuesday in January
2nd Tuesday in May
1st Tuesday after 2nd Monday in September

(*t*) TWENTIETH JUDICIAL DISTRICT

(1) *Barton County:*
1st Tuesday in March
1st Tuesday in June
1st Monday in November

(2) *Ellsworth County:*
4th Tuesday in January
4th Tuesday in April
4th Tuesday in October

(3) *Rice County:*
1st Tuesday in January
1st Tuesday in April
1st Tuesday in September

(4) *Russell County:*
4th Monday in January
4th Wednesday in May
4th Wednesday in October

(5) *Stafford County:*
1st Tuesday in February
1st Tuesday in May
1st Tuesday in October

(*u*) TWENTY-FIRST JUDICIAL DISTRICT

(1) *Clay County:*
1st Monday in March
1st Monday in June
1st Monday in November

(2) *Riley County:*
1st Monday in February
1st Monday in May
1st Monday in October

(*v*) TWENTY-SECOND JUDICIAL DISTRICT

(1) *Brown County:*
1st Monday in January
1st Monday in May
1st Tuesday after 1st Monday in September

(2) *Doniphan County:*
1st Monday in February
3rd Monday in May
1st Monday in October

(3) *Marshall County:*
1st Monday in March
1st Monday in June
1st Monday in November

(4) *Nemaha County:*
1st Monday in April
3rd Monday in June
1st Monday in December

(*w*) TWENTY-THIRD JUDICIAL DISTRICT

(1) *Ellis County:*
1st Monday in February
1st Monday in October

(2) *Gove County:*
3rd Monday in March
3rd Monday in November

(3) *Logan County:*
1st Monday in January
1st Tuesday after 1st Monday in September

(4) *Trego County:*
1st Monday in March
1st Monday in November

(5) *Wallace County:*
3rd Monday in January
3rd Monday in September

(*x*) TWENTY-FOURTH JUDICIAL DISTRICT

(1) *Edwards County:*
1st Tuesday in March
2nd Wednesday in September

(2) *Hodgeman County:*
1st Tuesday in March
2nd Wednesday in September

(3) *Lane County:*
1st Wednesday in March
2nd Thursday in September

(4) *Ness County:*
1st Wednesday in March
2nd Thursday in September

(5) *Pawnee County:*
1st Monday in March
1st Tuesday in September

(6) *Rush County:*
1st Monday in March
1st Tuesday in September

(*y*) TWENTY-FIFTH JUDICIAL DISTRICT

(1) *Finney County:*
2nd Monday in January
2nd Monday in May
3rd Monday in September

(2) *Greeley County:*
1st Monday in March
3rd Monday in December

(3) *Hamilton County:*
4th Monday in February
3rd Monday in October

(4) *Kearny County:*
2nd Monday in March
2nd Monday in November

(5) *Scott County:*
3rd Monday in April
3rd Monday in October

(6) *Wichita County:*
2nd Monday in April
2nd Monday in December

(*z*) TWENTY-SIXTH JUDICIAL DISTRICT

(1) *Grant County:*
2nd Monday in April
2nd Monday in December

(2) *Haskell County:*
2nd Monday in March
2nd Monday in November

(3) *Morton County:*
2nd Monday in February
2nd Monday in September

(4) *Seward County:*
2nd Monday in January
3rd Monday in April
2nd Monday in October

(5) *Stanton County:*
3rd Monday in February
3rd Monday in September

(6) *Stevens County:*
3rd Monday in March
3rd Monday in October

(*aa*) TWENTY-SEVENTH JUDICIAL DISTRICT

(1) *Reno County:*
1st Monday in January
1st Monday in April
4th Monday in September

(*bb*) TWENTY-EIGHTH JUDICIAL DISTRICT

(1) *Ottawa County:*
2nd Tuesday in January
2nd Tuesday in April
4th Tuesday in October

(2) *Saline County:*
2nd Tuesday in March
2nd Tuesday in September
1st Tuesday in December

(*cc*) TWENTY-NINTH JUDICIAL DISTRICT

(1) *Wyandotte County:*
1st Monday in March
1st Monday in June
2nd Monday in September
1st Monday in December

Rule No. 102

TERMS OF COURT—HOLIDAYS. Whenever the commencement date for any term of court prescribed by Rule 101 shall be a legal holiday, such term of court shall commence on the day following such legal holiday.

Rule No. 103

REQUIRED DAYS OF COURT. In every Judicial district a judge shall be present on at least one day a month in the court, in each county, to transact the business of the court. A designation of these days of court shall be made at the beginning of each calendar year, and a copy thereof shall be filed with the Supreme Court and with the clerk of each district court in the district.

Rule No. 104

DOCKET CALLS. A court may hold a call of pending cases to determine case status and to set matters or cases for hearing, pretrial or trial. The call may be scheduled at the opening of a term or otherwise as determined by the court. If a court schedules a call, seven (7) days notice of the call shall be given to counsel of record or to pro se parties. In lieu of personal appearance at the call, a counsel or party may advise the court in writing, with copies to other counsel or parties, prior to the date of the call as to case status and submit requests for the scheduling of hearings, pretrials and trials.

Rule No. 105

LOCAL RULES. The judge or judges of each judicial district may make rules that are found necessary for the administration of the affairs of the district court, and of all courts of limited jurisdiction in the district, to the extent they are not inconsistent with the applicable statutes and rules promulgated by the Supreme Court.

District courts will not reproduce Supreme Court Rules in publishing their local rules. Local rules promulgated by the district courts shall be clear and concise and shall be effective upon filing with the Clerk of the Supreme Court.

Rule No. 106

CUSTODY OF COURT RECORDS. No file or record of the court shall be permitted to be outside of the physical possession and control of the clerk or judge except on the signed receipt of an attorney or of an abstracter whose place of business is within the county, and subject to being returned immediately upon request. No file or record shall be taken outside of the county of the clerk's office except with the knowledge and consent of the clerk or by order of the judge.

Rule No. 107

DUTIES OF ADMINISTRATIVE JUDGE. In every judicial district the Supreme Court shall designate an administrative judge who shall have general control over the assignment of cases within said district under supervision of the Supreme Court. Assignment of cases shall be designed to distribute as equally as is reasonably possible the judicial work of the district. The administrative judge of each district shall be responsible for and have general supervisory authority over the clerical and administrative functions of the court.

At least once a month in single-county districts and at least once every three months in multiple-county districts the administrative judge shall call a meeting of all judges within the district for the purpose of reviewing the state of the dockets within the district and to discuss such other business as may affect the efficient operation of the court. Within guidelines established by the Supreme Court, by the judges of the judicial district, or by statute, the administrative judge shall have the following responsibilities:

(*a*) *Personnel Matters.* The administrative judge shall have supervision over recruitment, removal, compensation, and training of nonjudicial employees of the court. He shall prepare and submit to the judges for approval rules and regulations governing personnel matters to ensure that employees are recruited, selected, promoted, disciplined, removed, and retired appropriately.

(*b*) *Trial Court Case Assignment.* Cases shall be assigned under the supervision of the administrative judge. Under his supervision, the business of the court shall be apportioned among the trial judges as equally as possible and he shall reassign cases as necessity requires. He shall provide for the assignment of cases to any special division established in the court. A judge to whom a case is assigned shall accept that case unless he is disqualified or the interests of justice require that the case not be heard by that judge.

(*c*) *Judge Assignments.* The administrative judge, with the approval of the other judges, shall provide for the assignment and reassignment of judges to any specialized division of the court. The administrative judge shall prepare an orderly plan for vacations. The plan shall be approved by the judges of the court and shall be consistent with statewide guidelines.

(*d*) *Information Compilation.* The administrative judge shall have responsibility for development and coordination of statistical and management information.

(*e*) *Fiscal Matters.* The administrative judge shall supervise the fiscal affairs of the court.

(*f*) *Committees.* The administrative judge may appoint standing and special committees necessary for the proper performance of the duties of the court.

(*g*) *Liaison and Public Relations.* The administrative judge shall represent the court in business, administrative or public relations matters. When appropriate, he shall meet with (or designate other judges to meet with) committees of the bench, bar, and news media to review problems and promote understanding.

(*h*) *Improvement in the Functioning of the Court.* The administrative judge shall evaluate the effectiveness of the court in administering justice and recommend changes.

Rule No. 111

FORMS OF PLEADINGS. All pleadings, briefs, and other papers prepared by attorneys or litigants for filing in the courts shall, unless the judge specifically permits otherwise, be typed with black ink on one side only of legal cap sheets and shall include the name, address, and telephone number of the attorney filing them. Typing shall be double-spaced except that single spacing may be used for subparagraphs, legal descriptions of real estate, itemizations, quotations, and similar subsidiary portions of the instrument.

Rule No. 112

DUTY TO PROVIDE ADDRESSES FOR SERVICE. In all instances in which the Code of Civil Procedure requires that the secretary of state, the commissioner of insurance, a clerk of court, or other public officer serve by mail, any summons, notice or other document on a named party, either a natural person or corporation, at the instance and request of another party, the latter party shall provide the officer with the name and address of the party to be served. If service is required to be by restricted mail, the necessary postal charge shall also be advanced by the party seeking service. If the address of a party to be served currently appears on a registry or other record required by law to be kept in the office of the officer, that address shall be used by the officer and none need be supplied by the party seeking to effect the service. Upon failure of the officer to locate the name and address from his registry he shall notify the party or his counsel within ten (10) days.

Rule No. 113

CLERK'S EXTENSION. 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) 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 No. 114

SURETIES ON BONDS. Whenever any bond is permitted or required to be taken by a clerk or sheriff in accordance with the provisions of Chapter 60 without being approved by the court, it shall be sufficient if the surety thereon is a surety company currently admitted to do business in the State of Kansas. No corporation other than a surety company may be accepted as a surety unless so ordered and approved by the judge. Whenever a natural person is accepted and approved as a surety by a clerk or sheriff, the surety shall be required to attach to the bond a sworn financial statement which reasonably identifies the assets relied upon to qualify him as surety and the total amount of any liabilities, contingent or otherwise, which may affect his qualifications as a surety. No attorney or the attorney's spouse may act as a surety on a bond in any case in which the attorney is counsel. The principal on any bond may at his option, in lieu of providing a surety, deposit with the clerk of the district court cash money in the full amount of the bond. The deposit shall be retained by the clerk until the bond is fully discharged and released or the court orders the disposition of the deposit.

Rule No. 115

ENTRIES OF APPEARANCE. In all actions in which a party shall enter his appearance solely by personally signing an instrument designed for that purpose, and no attorney subsequently appears of record to represent him, such entry of appearance shall be held to be ineffective to constitute service under K. S. A. 60-203 unless the signature of the party has been acknowledged before an officer authorized by law to take acknowledgments.

Rule No. 116

ADMISSION OF ATTORNEY FROM ANOTHER STATE. Any regularly admitted practicing attorney in the courts of record of another state or territory, having professional business in the courts or before any board, department, commission or other administrative tribunal or agency of this state, may on motion be admitted to practice for the purpose of said business only, in any of said courts, tribunals or agencies, upon it being made to appear that he has associated and personally appearing with him in the action, hearing or proceeding an attorney who is a resident of and duly and regularly admitted to practice in the courts of record of this state. The associated attorney must maintain an office for the practice of law in this state and be currently registered with the Kansas Supreme Court in accordance with Supreme Court Rule No. 209. Service may be had upon the associated attorney in all matters connected with said action, hearing or proceeding, with the same effect as if personally made on the foreign attorney, within this state, and the foreign attorney shall thereupon be and become subject to the order of, and amenable to disciplinary action by the courts, agencies or tribunals of this state. No court, agency or tribunal shall entertain any action, matter, hearing or proceeding while the same is begun, carried on or maintained in violation of the provisions of this rule. Nothing in this rule shall be construed to prohibit any party from appearing personally before any of said courts, tribunals or agencies on his own behalf.

Rule No. 117

WITHDRAWAL OF ATTORNEY. An attorney who has appeared of record in any proceeding may withdraw; but he shall be relieved of his duties to the court, his client, and opposing counsel only when he has served a motion for withdrawal on the client and on opposing counsel, filed a copy of the motion and proof of the service thereof with the clerk, and the judge has entered an order approving the withdrawal. No such order shall be required if another attorney authorized to practice law in this state is appearing of record to represent the client.

Rule No. 118

PLEADING OF UNLIQUIDATED DAMAGES. (*a*) In any action in which a pleading contains a demand for money damages "in excess of ten thousand dollars ($10,000)" as provided in K. S. A. 1976 Supp. 60-208 (*a*), if the party against whom relief is sought serves a written request of the actual amount of monetary damages being sought in the action on the party seeking relief, the party seeking relief shall within ten (10) days following service of the request serve his adversary with a written statement of the total amount of monetary damages being sought in the action and at the same time 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*) In any action in which the party seeking relief demands an unliquidated amount of money as all or part of the relief he seeks and which action is to be tried to a jury in the district court, the parties and attorneys may state in voir dire and in arguments their valuation of an item of claimed damage. They shall not mention any amount as being the award demanded in the written statement.

(*c*) The costs of the action contemplated by this rule shall be allowed to the party in whose favor judgment is rendered as per K. S. A. 1976 Supp. 60-2002 (*a*), unless the judge, upon his or a party's motion, finds the amount of damages sought, as recited in the last written statement filed under (*b*) above, was frivolously chosen by the party filing same, in which event, 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) days prior to the date judgment is sought. Proof of service shall be filed and submitted to the court.

Rule No. 131

NOTICE OF HEARINGS AND TRIAL SETTINGS. (*a*) If any party seeks the hearing of any motion on a required day of court and it is not a motion which may be heard *ex parte*, or if the judge sets a hearing on this day of court, notice of the hearing shall be given to all parties affected either by the party, or by the clerk at the direction of the judge, not less than seven (7) days prior to the date of hearing.

(*b*) Matters set for hearing or trial on other days shall be at the discretion of the judge and with not less than seven (7) days notice to the parties affected. If the matter is urgent, notice shall be given as is reasonable and possible under the circumstances.

(*c*) The clerk of the court shall maintain a docket or list of pending motions for the information of the court to facilitate hearing motions.

(*d*) Nothing in this rule shall be construed to prevent the parties, acting through their respective counsel, from agreeing on a date for a hearing on a motion or trial of the action on its merits provided counsel first receives the approval of the date from the judge to whom the action is assigned.

Rule No. 132

DEFAULT JUDGMENTS AND EX PARTE MATTERS. Cases involving default judgments, *ex parte* applications and formal matters not requiring a hearing, may be presented on any court day, or at such other times as may be determined by the court.

Counsel shall be present personally to present such cases, unless excused by the judge.

(Note: See K. S. A. 60-254 (*c*) and 60-255.)

Rule No. 133

MEMORANDA AND ARGUMENTS ON 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 in 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. If the motion also contains a request for oral argument, or if within five 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 either event, an adverse party may at his option serve and file a similar memorandum in opposition to the motion. 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.

Rule No. 134

NOTICE OF RULINGS. Whenever a judge shall make a ruling on a motion or application of any kind and there are parties affected who have appeared in the action but who are not then present, either in person or by their attorneys, the judge shall cause written notice of such ruling to be mailed to the parties or attorneys forthwith.

The provisions for notice above set forth may be modified by the court upon motion, or on its own initiative in any action in which there are unusually large numbers of parties.

Rule No. 135

LIMITATIONS ON INTERROGATORIES IN DAMAGE ACTIONS. (*a*) *Interrogatories; Form.* The party propounding interrogatories shall first set forth each question in clear and concise language, leaving an appropriate space for the answer. The original and two copies shall be served on the adverse counsel, or the opposing party if not represented by counsel, with copies to all other counsel. In the event an answer is too lengthy to place in the space provided, it shall be attached as an appendix and clearly identified by number. The original with its answers shall be filed with the clerk and copies served on all counsel of record.

(*b*) In all damage actions the number of interrogatories shall be limited to thirty (30) interrogatories counting subparagraphs unless the court authorizes additional interrogatories upon motion or at the discovery conference.

Rule No. 136

DISCOVERY CONFERENCE. To expedite processing and disposition of litigation, minimize expense and conserve time, the court in any action shall conduct a discovery conference with counsel, upon request of a party, or on the court's own motion. The request must be called to the attention of the judge

but may be endorsed on any pleading or made by motion. The discovery conference shall be scheduled by the court as soon as possible.

If a discovery conference is requested in a damage action, no depositions, other than of the parties, shall be taken until after the discovery conference is held, except by agreement of the parties or order of the court.

At the discovery conference, the issues shall be identified and the possibilities of stipulations and settlement explored. There shall be an exchange of information on the issues of the case and appropriate discovery procedures determined and ordered.

Rule No. 137

WRITTEN COMMUNICATIONS WITH COURT. In the absence of a specific directive by the court, the original of a brief or memorandum shall be filed with the clerk of the court in the county where the matter is pending. Other communications with the judge shall be mailed or delivered to the judge handling the matter at his chambers in the county of his residence. In the event that the court is part of a multi-county judicial district, a copy of each brief or memorandum shall be forwarded or delivered to the judge handling the matter at his chambers. In all instances where briefs or memoranda are related to a matter being submitted to the judge for ruling or decision, counsel shall notify the judge when the filings with the clerk are completed. Copies of briefs, memoranda or communications shall be forwarded to other counsel of record. This rule does not supersede the requirement of any specific statute or specific rule as to the filing of documents; and pleadings in cases shall be filed with the clerk of the district court in the county where the litigation is pending.

Rule No. 138

OPENING OF DEPOSITIONS. Depositions in pending cases which have been filed in the office of the clerk may be opened by a judge or any attorney of record in the case.

Rule No. 139

APPLICATIONS FOR SUPPORT ORDERS IN DOMESTIC RELATIONS CASES. (*a*) Applications for *ex parte* orders which include requests for temporary support shall include a statement of facts under oath in substantially the following form and shall consist of actual or estimated figures in all blanks unless the reason for omission is covered by a separate statement indicating the reason affiant cannot supply the information indicated.

(*b*) A copy of the *ex parte* order and of the supporting affidavit shall be served promptly on the individual to whom it is addressed.

(*c*) All support payments of child support or alimony, either temporary or permanent, shall be made to the clerk of the district court unless otherwise ordered by the court, or covered by local rule.

(*d*) No *ex parte* order for support will be issued without this required affidavit.

(*e*) Any defendant challenging a support order of the court or facts contained in plaintiff's affidavit shall file a similar affidavit at the time of filing his answer or motion for modification.

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

_____ Plaintiff
(wife) (husband)

vs. No. _____

_____ Defendant
(wife) (husband)

AFFIDAVIT FOR USE IN CONNECTION WITH SUPPORT ORDERS

1. Wife's name _____
First Middle Last
_____
Maiden

2. _____ 3. _____
Date of birth Social Security No.

4. Husband's name _____
First Middle Last

5. _____ 6. _____
Date of birth Social Security No.

7. Date of marriage _____ 8. Number of marriages
Wife Husband

9. No. of children of marriage _____

10. Names, ages, date of birth, sex of minor children of this marriage living at home.

_____ _____
_____ _____

11. Names, ages, date of birth, sex of minor children of previous marriages (state if living at home).

_____ _____
_____ _____

12. Best interest of minor children of this marriage would be served if their custody were with _____.

13. Wife is employed at _____ with income as follows:

(a) Gross wages ..... $_____ (attach supporting documents if available, check stubs, tax returns or other documents attached hereto).

(b) Take home pay ..... $_____

(c) Other income ..... $_____

(d) Party paid _____ _____ _____
weekly bi-weekly monthly

(e) Number of exemptions claimed _____

14. Husband is employed at _____ with income as follows:

(a) Gross wages ..... $_____ (attach supporting documents if available).

(b) Take home pay ..... $_____

(c) Other income ..... $_____

(d) Party paid _____ _____ _____
weekly bi-weekly monthly

(e) Number of exemptions claimed _____

15. The liquid assets of the parties available for support are:

Item	Amount	Joint or Individual (specify)
(a) Checking accounts:		
_____	$_____	_____
_____	$_____	_____
(b) Savings accounts:		
_____	$_____	_____
_____	$_____	_____
(c) Cash		
(plaintiff)_____	$_____	_____
(defendant)_____	$_____	_____
(d) Other		
_____	$_____	_____
_____	$_____	_____

16. The necessary (weekly) (monthly) expenses of each party are: (Please indicate with an asterisk all figures which are estimates rather than actual figures taken from records or personal knowledge).

Item	Plaintiff (actual or estimated)	Defendant (actual or estimated)
(a) House payment, rent or mortgage	$_____	$_____
(b) Food	$_____	$_____
(c) Utilities:		
Trash service	$_____	$_____
Newspaper	$_____	$_____
Telephone	$_____	$_____
Gas	$_____	$_____
Water	$_____	$_____
Lights	$_____	$_____
Other	$_____	$_____
(d) Insurance:		
Life	$_____	$_____
Health	$_____	$_____
Car	$_____	$_____
House	$_____	$_____
Other	$_____	$_____
(e) Medical	$_____	$_____
(f) Dental	$_____	$_____
(g) Child care (babysitting)	$_____	$_____
(h) Clothing	$_____	$_____
(i) Gas and oil	$_____	$_____
(j) School expenses	$_____	$_____
(k) Hair cuts & beauty	$_____	$_____
(l) Car repair	$_____	$_____
(m) Miscellaneous (specify)		
_____	$_____	$_____
_____	$_____	$_____
_____	$_____	$_____
TOTAL LIVING EXPENSE	$_____	$_____

18. A. Total funds available to (wife) (husband) (from No. 13 & 14) $_____ per month
B. Total needed (from 16 & 18) $_____ per month
C. Total requested court allowance $_____ per month
D. Date of requested starting payment _____

19. Monthly payments to banks, loan companies or on credit accounts: Indicate actual or estimate (use asterisk for secured).

Creditor	Pay't	Balance	Date of Last payment	Who should be responsible husband or wife
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

_____ (plaintiff)

_____ (defendant)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 1976.

_____ Notary Public

My commission expires:

_____

Rule No. 140

PRETRIAL CONFERENCE PROCEDURE. (*a*) The pretrial conference contemplated by K. S. A. 60-216 shall be held before a judge with court participation throughout. The pretrial conference shall be held at least two (2) weeks prior to trial.

(*b*) The pretrial conference is predicted 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 pretrial conference, the discovery party shall immediately make this known to all parties and the court in writing.

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

(*d*) The 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, he shall state his objections in writing and forward his objections and the pretrial order to the court within ten (10) days.

(*g*) The 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 will rule on any motions for dismissal, judgments on 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.

Rule No. 141

SUMMARY JUDGMENTS. No motion for summary judgment shall be heard or deemed finally submitted for decision until:

(*a*) The moving party has filed with the court and served on opposing counsel a memorandum or brief setting forth concisely in separately numbered paragraphs the uncontroverted contentions of fact relied upon by said movant (with precise references to pages, lines and/or paragraphs of transcripts, depo-

sitions, interrogatories, admissions, affidavits, exhibits, or other supporting documents contained in the court file and otherwise included in the record); and

(*b*) Any party opposing said motion has filed and served on the moving party within twenty-one (21) days thereafter, unless the time is extended by court order, a memorandum or brief setting forth in separately numbered paragraphs (corresponding to the numbered paragraphs of movant's memorandum or brief) a statement whether each factual contention of movant is controverted, and if controverted, a concise summary of conflicting testimony or evidence, and any additional genuine issues of material fact which preclude summary judgment (with precise references as required in paragraph [*a*], *supra*).

Provided, however, That said motion may be deemed submitted by order of the court upon expiration of twenty-one (21) days, or expiration of the court ordered extended period, after filing and service on opposing counsel of the brief or memorandum of moving party notwithstanding the failure of the opposing party to comply with paragraph (*b*), *supra.* In such case the opposing party shall be deemed to have admitted the uncontroverted contentions of fact set forth in the memorandum or brief of moving party.

Rule No. 161

COURTROOM DECORUM. The conduct and demeanor of attorneys when present during any court proceeding shall reflect respect for the dignity and authority of the court, and the proceedings shall be maintained as an objective search for the applicable facts and the correct principles of law. An attorney must always stand when addressed by the judge or when speaking to the judge. Unless the judge specifically prescribes otherwise, an attorney must stand when interrogating a witness and should refrain from moving about except as may be necessary for the presentation of exhibits or other assistance to the court. Except as the judge may specifically permit otherwise, only one attorney may examine or cross-examine a witness on behalf of all parties united in interest. Neither photographic nor electronic recording shall be allowed except as permitted by Rule No. 601, Canon 3, of the Code of Judicial Conduct.

Rule No. 162

CONFLICT IN TRIAL SETTINGS IN DISTRICT COURT. Whenever a lawyer has a conflict in trial settings and the involved district judges cannot resolve the conflict, the matter shall be referred to the departmental justice. In event the district courts are in different judicial departments, the matter shall be referred to both departmental justices.

Rule No. 163

INEFFECTIVE STIPULATIONS. A court is not required to give effect to stipulations between counsel, or oral admissions of counsel, which are not reduced to writing and signed by the counsel to be charged therewith, or which are not made a part of the record.

Rule No. 164

REQUIRED FACTUAL STATEMENTS IN DIVORCE CASES. (*a*) In divorce cases, a written inventory and fact sheet or sheets shall be prepared by counsel and furnished to the court at or prior to the trial. The inventory and fact sheet shall include:

(1) Names, dates of birth and Social Security numbers of both parties.
(2) Names and ages of minor children of the marriage.
(3) Names and ages of minor children of previous marriages and facts as to custody and support payments.
(4) Current income, if any, of each of the parties. If the income consists of wages and salary, state the gross amount, the amount and nature of deductions and the net per month.

(5) Cash and assets equivalent to cash of the parties, and ownership (joint or individual).
(6) Other personal property, including policies of insurance, identified as to nature or description, ownership (joint or individual) and actual or estimated value.
(7) Real property identified as to description, ownership (joint or individual) and actual or estimated value.
(8) Identification of property, if any, acquired by each of the parties prior to marriage or acquired during marriage by a will or inheritance.
(9) Debt obligations, including alimony, identified as to name or names of obligor or obligors and obligees, balance due and rate at which payable; and, if secured, identify the encumbered property.

(*b*) In contested divorce cases, the statements shall be exchanged by counsel before trial.

Rule No. 165

REASONS FOR DECISIONS. In all contested matters submitted to a judge without a jury including motions for summary judgment, the judge shall state the controlling facts required by K. S. A. 60-252, and the legal principles controlling the decision. If evidence was admitted over proper objections, and in his reasons for the decision the judge does not state that such evidence, specifying the same with particularity, was not considered, then it shall be presumed in all subsequent proceedings that the evidence was considered by the judge and did enter into his decision.

Rule No. 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) days thereafter the judge shall file with the Judicial Administrator a written report setting forth the title and 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.)

Rule No. 167

USE OF JUROR QUESTIONNAIRE. The district courts may by local rule provide for the use of a juror questionnaire. 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 your county. Please carefully read and answer the questions on this form and return it in the enclosed addressed, stamped envelope within the next two days. Your cooperation and willingness to serve as a juror is appreciated.

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 _____
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 _____
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 ever been convicted of the commission of a felony? Yes _____ No _____
    A. If so, state when and where this conviction took place. _____
12. If you believe you have a physical disability which would prevent you from serving as a juror, please state what it is. _____
13. 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. _____
14. Do you drive an automobile? Yes _____ No _____
    A. If your answer is "no", is transportation available for you to get to court? Yes _____ No _____
15. Are you related to or a close friend of any law enforcement officer? Yes _____ No _____
16. Please show the extent of your formal education.
    (Circle highest grade completed)
    Elementary School: 1 2 3 4 5 6 7 8 High School: 9 10 11 12
    College: 1 2 3 4 5 6 7 8
17. Have you any vocational or professional training? Yes _____ No _____
    A. If so, please state what kind and to what extent: _____

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

_____
Signature

Rule No. 168

CLOSING ARGUMENTS TO JURY. In the final portion of his argument to the jury, counsel for plaintiff should not be permitted to use more than one-half the aggregate time allotted for plaintiff's argument nor more than the time used in the opening argument. Plaintiff's counsel shall not be permitted to argue general issues not discussed in the opening portion of plaintiff's argument unless it be rebuttal. If, after plaintiff has made an argument, defendant waives argument, then no further argument shall be permitted.

Rule No. 169

POSTTRIAL COMMUNICATIONS WITH JURORS. Upon completion of the jury trial and before discharge of the jury, the court shall give the substance of the following instruction:

> You have now completed your duties as jurors in this case and are discharged with the thanks of the court. The question may arise whether you may discuss this case with the lawyers who presented it to you. For your guidance the court instructs you that whether you talk to anyone is entirely your own decision. It is proper for the attorneys to discuss the case with you and you may talk with them, but you need not. If you talk to them you may tell them as much or as little as you like about your deliberations or the facts that influenced your decision. If an attorney persists in discussing the case over your objections, or becomes critical of your service either before or after any discussion has begun, please report it to me.

(Note: See Supreme Court Rule No. 231 DR 7-108 [D].)

Rule No. 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) days, unless another time is specifically directed by the judge, serve copies thereof on all other counsel involved who shall, within ten (10) 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 a hearing.

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

Rule No. 181

POSTTRIAL CALLING OF JURORS. Jurors shall not be called for hearings on posttrial motions without an order of the court after motion and hearing held to determine whether all or any of the jurors should be called. If jurors are called, informal means other than subpoena should be utilized if possible.

Rule No. 182

WITHDRAWAL AND DISPOSITION OF EXHIBITS. Except as otherwise provided by law, exhibits introduced in an action may be withdrawn at any time by court order. Counsel withdrawing an exhibit shall have it available for trial or appeal. Exhibits not withdrawn within six (6) months after final determination (including expiration of time for appeal) may be destroyed or otherwise disposed of as the court directs after notice to counsel.

Rule No. 183

PROCEDURE UNDER K. S. A. 60-1507

(*a*) NATURE OF REMEDY. Section 60-1507 is intended to provide in a sentencing court a remedy exactly commensurate with that which had previously been available by habeas corpus in district courts in whose jurisdiction the prisoner was confined. A motion challenging the validity of a sentence is an independent civil action which should be separately docketed, and the procedure before the trial court and on appeal to the Supreme Court is governed by the Rules of Civil Procedure insofar as applicable. No cost deposit shall be required. When the motion is received and filed by the clerk, he shall forthwith deliver a copy thereof to the county attorney and make an entry of such fact in the appearance docket.

(*b*) EXCLUSIVENESS OF REMEDY. The remedy afforded by section 60-1507 dealing with motions to vacate, set aside or correct sentences is exclusive, if adequate and effective, and a prisoner cannot maintain habeas corpus proceedings before or after a motion for relief under the section.

(*c*) WHEN REMEDY MAY BE INVOKED. (1) The provisions of section 60-1507 may be invoked only by one in custody claiming the right to be released, (2) a motion to vacate, set aside or correct a sentence cannot be maintained while an appeal from the conviction and sentence is pending or during the time within which an appeal may be perfected, (3) a proceeding under section 60-1507 cannot ordinarily be used as a substitute for direct appeal involving mere trial errors or as a substitute for a second appeal. Mere trial errors are to be corrected by direct appeal, but trial errors affecting constitutional rights may be raised even though the error could have been raised on appeal, provided there were exceptional circumstances excusing the failure to appeal.

(*d*) SUCCESSIVE MOTIONS. The sentencing court shall not entertain a second or successive motion for relief on behalf of the same prisoner, where (1) the same ground presented in the subsequent application was determined adversely to the applicant on the prior application, (2) the prior determination was on the merits, and (3) the ends of justice would not be served by reaching the merits of the subsequent application.

(*e*) SUFFICIENCY OF MOTION. A motion to vacate a sentence must be submitted on a form substantially in compliance with the form appended hereto which shall be furnished by the court.

(*f*) HEARING. Unless the motion and the files and records of the case conclusively show that the movant is entitled to no relief, the court shall notify the county attorney and grant a prompt hearing. "Prompt" means as soon as reasonably possible considering other urgent business of the court. All proceedings on the motion shall be recorded by the official court reporter.

(*g*) BURDEN OF PROOF. The movant has the burden of establishing his grounds for relief by a preponderance of the evidence.

(*h*) PRESENCE OF PRISONER. The prisoner should be produced at the hearing on a motion attacking a sentence where there are substantial issues of fact as to events in which he participated. The sentencing court has discretion to ascertain whether the claim is substantial before granting a full evidentiary hearing and requiring the prisoner to be present.

(*i*) RIGHT TO COUNSEL. If a motion presents substantial questions of law or triable issues of fact the court shall appoint counsel to assist the movant if he is an indigent person.

(*j*) JUDGMENT. The court shall make findings of fact and conclusions of law on all issues presented.

(*k*) APPEAL. An appeal may be taken to the Supreme Court from the order entered on the motion as in a civil case.

(*l*) _____ COSTS. If the court finds that a movant desiring to appeal is an indigent person it shall authorize an appeal in forma pauperis and furnish him without cost such portions of the transcript of such proceeding as are necessary for appellate review.

(*m*) _____ ATTORNEY. If a movant desires to appeal and contends he is without means to employ counsel to perfect the appeal, the district court shall, if satisfied that the movant is an indigent person, appoint competent counsel to conduct such appeal. If for good cause shown appointed counsel is permitted to withdraw while the case is pending in either the district court or the supreme court, the district court shall appoint new counsel in his stead.

APPENDIX

IN THE DISTRICT COURT OF _____ COUNTY, STATE OF KANSAS

PERSONS IN CUSTODY

_____
Full name of Movant

_____
Prison Number

vs.

STATE OF KANSAS, *Respondent.*

Case No. _____
(To be supplied by the Clerk of the District Court)

INSTRUCTIONS—READ CAREFULLY

In order for this motion to receive consideration by the District Court, it shall be in writing (legibly handwritten or typewritten), signed by the petitioner and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, petitioner may finish his answer to a particular question on the reverse side of the page or on an additional blank page. Petitioner shall make it clear to which question any such continued answer refers.

Since every motion must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Petitioners should therefore exercise care to assure that all answers are true and correct.

If the motion is taken *in forma pauperis,* it shall include an affidavit (attached at the back of the form) setting forth information which establishes that petitioner will be unable to pay costs of the proceedings. When the motion is completed, *the original and one copy* shall be mailed to the Clerk of the District Court from which he was sentenced.

MOTION

1. Place of detention _____
2. Name and location of court which imposed sentence _____

3. The case number and the offense or offenses for which sentence was imposed:
   (*a*) _____
   (*b*) _____
   (*c*) _____
4. The date upon which sentence was imposed and the terms of the sentence:
   (*a*) _____
   (*b*) _____
   (*c*) _____
5. Check whether a finding of guilty was made after a plea:
   (*a*) of guilty _____; or
   (*b*) of not guilty _____.
6. If you were found guilty after a plea of not guilty, check whether that finding was made by
   (*a*) a jury _____; or
   (*b*) a judge without a jury _____.

7. Did you appeal from the judgment of conviction or the imposition of sentence? _____

8. If you answered "yes" to (7), list

(*a*) the name of each court to which you appealed:

i. _____

ii. _____

(*b*) the result in each such court to which you appealed and the date of such result:

i. _____

ii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(*a*) _____

(*b*) _____

(*c*) _____

10. State concisely all the grounds on which you base your allegation that you are being held in custody unlawfully:

(*a*) _____

(*b*) _____

(*c*) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10), and the names and addresses of the witnesses or other evidence upon which you intend to rely to prove such facts:

(*a*) _____

(*b*) _____

(*c*) _____

12. Prior to this motion have you filed with respect to this conviction:

(*a*) any petitions in state or federal courts for habeas corpus? _____

(*b*) any petitions in the United States Supreme Court for certiorari other than petitions, already specified in (8)? _____

(*c*) any other petitions, motions or applications in this or any other court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application

(*a*) the specific nature thereof:

i. _____

ii. _____

iii. _____

(*b*) the name and location of the court in which each was filed:

i. _____

ii. _____

iii. _____

(*c*) the disposition thereof and the date of such disposition:
i. _____
ii. _____
iii. _____
(*d*) if known, citations of any written opinions or orders entered pursuant to each such disposition:
i. _____
ii. _____
iii. _____
iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other court, *state or federal,* in any petition, motion or application which you have filed?_____

15. If you answered "yes" to (14), identify
(*a*) which grounds have been previously presented:
i. _____
ii. _____
iii. _____
(*b*) the proceedings in which each ground was raised:
i. _____
ii. _____
iii. _____

16. If any ground set forth in (10) has not previously been presented to any court, *state or federal,* set forth the ground and state concisely the reasons why such ground has not previously been presented:
(*a*) _____
_____
_____
(*b*) _____
_____
_____
(*c*) _____
_____
_____

17. Were you represented by an attorney at any time during the course of
(*a*) your preliminary hearing?_____
(*b*) your arraignment and plea?_____
(*c*) your trial, if any?_____
(*d*) your sentencing?_____
(*e*) your appeal, if any, from the judgment of conviction or the imposition of sentence?_____
(*f*) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?_____

18. If you answered "yes" to one or more parts of (17), list
(*a*) the name and address of each attorney who represented you:
i. _____
_____
ii. _____
_____
iii. _____
_____
(*b*) the proceedings at which each such attorney represented you:
i. _____
ii. _____
iii. _____
(*c*) was said attorney
i. appointed by the court?_____; or
ii. of your own choosing?_____.

19. If your motion is based upon the trial court's refusing you counsel, attach the transcript of the proceedings which supports your allegation.

20. If your motion is based upon the failure of counsel to adequately represent you, state concisely and in detail what counsel failed to do in representing your interests:

(*a*) _____

_____

_____

(*b*) _____

_____

_____

21. Are you now serving a sentence from any other court that you have not challenged? _____

22. If you are seeking leave to proceed *in forma pauperis*, have you completed the sworn affidavit setting forth the required information (see instructions, page 1 of this form)? _____

_____

Signature of Petitioner

STATE OF _____ }
COUNTY OF _____ } SS.

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing petition; that I know the contents thereof; and that the matters and allegations therein set forth are true.

_____

Signature of Affiant

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19____.

_____

Notary Public

My commission expires:

_____
(month) (day) (year)

FORMA PAUPERIS AFFIDAVIT

(See instructions page 1 of this form)

_____

_____

_____

_____

_____

Signature of Petitioner

STATE OF _____ }
COUNTY OF _____ } SS.

I, _____, being first duly sworn upon my oath, depose and say that I have subscribed to the foregoing affidavit; that I know the contents thereof; and that the matters therein set forth are true.

_____

Signature of Affiant

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19____.

_____

Notary Public

My commission expires:

_____
(month) (day) (year)

Rule No. 184.

ANNULMENT OF CONVICTION AND EXPUNGEMENT OF RECORD PROCEDURE. The court may permit a defendant to withdraw his plea of guilty or the court may set aside the verdict of guilty as provided by K. S. A. 21-4616 as amended or may permit a defendant to have his record expunged as provided by K. S. A. 21-4617 as amended.

The following procedure will be adhered to on either application for relief:

Defendant shall file a written motion in the criminal case and make service of the motion upon the prosecution in accordance with K. S. A. 60-205.

The motion shall be presented to the sentencing court and the court may request the probation officer to make an investigation and report to the court within thirty (30) days, with copies furnished to the prosecution and the defendant.

The motion will be set for hearing by the court upon notice to the parties.

The order granting relief will be filed with the criminal case and the clerk shall be authorized to make the necessary notation in the criminal docket book that said conviction has been annulled or the record expunged by order of the court.

The clerk will furnish a certified copy of the order annulling the conviction or expunging the record to the Federal Bureau of Investigation, the Kansas Bureau of Investigation, the Secretary of Corrections, and any local law enforcement agencies who may have a record of conviction.

Change in Address of Recipient

The KANSAS JUDICIAL COUNCIL BULLETIN is published at least once each year and is mailed without charge to lawyers, courts, public officials, libraries and other persons who are interested in the work of the Judicial Council.

In order to save unnecessary printing and mailing expenses the mailing list for the KANSAS JUDICIAL COUNCIL BULLETIN is continually being revised.

Persons receiving the KANSAS JUDICIAL COUNCIL BULLETIN, other than lawyers registered with the Supreme Court under Rule 209, should advise the Judicial Council promptly if they have changed their address, and should provide the Judicial Council with both their previous address and their new address.

Lawyers registered under Supreme Court Rule 209 need not inform the Judicial Council of a change in address, but need only comply with subsection (c) of Supreme Court Rule 209. The Clerk of the Supreme Court will then furnish the change in address to the Judicial Council.

Address all correspondence to KANSAS JUDICIAL COUNCIL, 1105 Merchants Bank Building, Topeka, Kansas 66612.

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TOPEKA, KANSAS 66612

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U. S. POSTAGE
PAID
Topeka, Kansas
Permit No. 421

PRINTED IN THE KANSAS STATE PRINTING PLANT
1976
36-6373
286-P