

**PROPOSED AMENDMENTS TO THE APPEALS STATUTES  
IN THE PROBATE CODE**

GENERAL COMMENT

The proposed amendments were drafted in response to issues raised by Committee members regarding appeals in cases under Chapter 59 of the Kansas Statutes Annotated. One issue is that certain appellants, like proposed wards or conservatees, are not in a position to get a bond and perfect an appeal. Another issue raised is that stays pending appeal are not appropriate in certain cases, such as a guardianship in which the proposed ward needs personal protection or where care and treatment is required.

The Committee discussed various ways of addressing these concerns, debating whether to propose a minor “patch” or a more thorough revision. Important to these discussions was the unanimous agreement that, as currently written, the applicability of K.S.A. 59-2401 is unclear. The statute originally dealt with appeals from probate court to district court. That language was amended in 1976 following court unification in Kansas. As it stands now, it is not clear whether the statutory language applies to appeals from magistrate to district court, district court to appellate court, or both. See *Matter of Estate of Winslow*, 21 Kan.App.2d 691, 906 P.2d 182 (1995). The Committee discussed how this lack of clarity has led to the application of K.S.A. 59-2407 to appeals from district court, when such appeals should be governed by K.S.A. 60-2101 *et seq.* See *In the Matter of the Adoption of Baby Boy N*, 19 Kan.App.2d 574, 874 P.2d 680 (1994).

In determining the structure of the proposed amendments, the Committee reviewed how appeals are handled in other chapters of the Kansas Statutes Annotated. The Committee specifically looked at Chapter 38 and incorporated some of that chapter’s direct method of separately handling

appeals from magistrate judges to district court and clearly stating that appeals from district court are governed by Article 21 of Chapter 60 of the Kansas Statutes Annotated. The Committee also separated cases involving a decedent's estate from other cases arising under other articles of Chapter 59.

The Committee's suggested amendments to K.S.A. 59-2401 through 59-2409, with comments, follow. Statutes to which no changes are proposed are also included to present a complete picture of how the sections work together to clarify the appellate process in Chapter 59 cases.

**PROPOSED AMENDMENTS**

1 **59-2401. Appealable orders - decedent's estates, when; bond.** (a) An appeal **from a district**  
2 **magistrate judge to a district judge** may be taken ~~within~~ **no later than** 30 days from the date of  
3 entry of any of the following orders, judgments, ~~or~~ decrees ~~and decisions~~ **in any case involving a**  
4 **decedent's estate:**

- 5 (1) An order admitting or refusing to admit a will to probate.
- 6 (2) **An order finding or refusing to find that there is a valid consent to a will.**
- 7 ~~(2)(3)~~ (3) An order appointing, refusing to appoint, removing or refusing to remove a  
8 fiduciary other than a special administrator.
- 9 ~~(3)(4)~~ (4) An order setting apart or refusing to set apart a homestead or other property, or  
10 making or refusing to make an allowance of exempt property to the spouse and  
11 minor children.
- 12 ~~(4)(5)~~ (5) An order determining, refusing to determine, transferring or refusing to transfer  
13 venue.
- 14 ~~(5)(6)~~ (6) An order allowing or disallowing a demand, in whole or in part, when the amount  
15 in controversy exceeds ~~\$500~~ **\$5,000**.
- 16 ~~(6)(7)~~ (7) An order authorizing, refusing to authorize, confirming or refusing to confirm the  
17 sale, lease or mortgage of real estate.
- 18 (8) An order directing or refusing to direct a conveyance or lease of real estate under  
19 contract.
- 20 ~~(7)(9)~~ (9) Judgments for waste.
- 21 ~~(9)(10)~~ (10) An order directing or refusing to direct the payment of a legacy or distributive  
22 share.



1 ~~(b) Notwithstanding the provisions of K.S.A. 60-2103 and amendments thereto relating to bonds,~~  
2 ~~the appellant, other than the state or municipality or a fiduciary appealing on behalf of the~~  
3 ~~estate, shall file in the court from which the appeal is taken a bond in such sum and with such~~  
4 ~~sureties as may be fixed and approved by the court, conditioned that the appellant will~~  
5 ~~without unnecessary delay prosecute the appeal and pay all sums, damages and costs that may~~  
6 ~~be adjudged against the appellant.~~

7 ~~(c) Except as otherwise provided in this section, appeals taken pursuant to this section shall be~~  
8 ~~taken in the manner provided by chapter 60 of the Kansas Statutes Annotated for other civil~~  
9 ~~cases.~~

10 **(b) An appeal from the district court to an appellate court taken pursuant to this section**  
11 **shall be taken in the manner provided by chapter 60 of the Kansas Statutes Annotated**  
12 **for other civil cases.**

13 **(c) Pending the determination of an appeal pursuant to section (a) or (b), any order**  
14 **appealed from shall continue in force unless modified by temporary orders entered by**  
15 **the court hearing the appeal. The supersedeas bond provided for in K.S.A. 60-2103**  
16 **shall not stay proceedings under an appeal from the district court to an appellate court.**

17 **(d) In an appeal taken pursuant to section (a) or (b), the court from which the appeal is**  
18 **taken may require an appropriate party, other than the State of Kansas, any subdivision**  
19 **thereof, and all cities and counties in this state, to file a bond in such sum and with such**  
20 **sureties as may be fixed and approved by the court to ensure that the appeal will be**  
21 **prosecuted without unnecessary delay and to ensure the payment of all judgments and**  
22 **any sums, damages and costs that may be adjudged against that party.**

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**Comment**

**The proposed changes to the statute’s title and subsection (a) achieve two objectives. The new language makes it clear that this particular section applies only to appeals from a magistrate judge to a district judge and only to cases involving decedent’s estates. The dollar amount in subsection (6) was raised from \$500 to \$5,000 on the rationale that K.S.A. 59-2237(c), which has also been increased over the years (from \$200 to \$1,500 in 1987 and then to \$5,000 in 2000), allows payment by an executor or administrator of amounts up to \$5,000 without a hearing. Payments made pursuant to K.S.A. 59-2237(c) are part of the final accounting and are reviewable by the court and interested parties at that time. The court’s approval of a final accounting would be appealable pursuant to subsections (11), (12) or (21) of K.S.A. 59-2401 as amended above.**

**Deleted subsection (b) dealt with the requirement of appeal bonds, which is now covered in new subsection (d) below. Deleted subsection (c), which dealt with the applicability of chapter 60, has been modified and now appears as subsection (b), which clarifies that chapter 60 governs all appeals from district court to an appellate court.**

**New subsection (c) leaves orders in place pending appeals, although if warranted, the court has discretion to modify the situation by issuing temporary orders. The Committee believes this allows the court to ensure that no party loses necessary protections when an appeal is filed.**

**New subsection (d) replaces the language relating to bonds of former subsection (b) and now includes judgments within the bonding provisions.**

1 **59-2401a. Appealable orders - other cases under Chapter 59, when; bond. (a) An appeal by**  
2 **an interested party from a district magistrate judge to a district judge may be taken no later**  
3 **than 10 days from any final order, judgment or decree entered in any proceeding pursuant to:**

4 (1) **the Kansas adoption and relinquishment act (K.S.A. 59-2111 et seq. and**  
5 **amendments thereto);**

6 (2) **the care and treatment act for mentally ill persons (K.S.A. 59-2945 et seq. and**  
7 **amendments thereto);**

8 (3) **the care and treatment act for persons with an alcohol or substance abuse**  
9 **problem (K.S.A. 59-29b45 et seq. and amendments thereto); or**

10 (4) **the act for obtaining a guardian or conservator, or both (K.S.A. 59-3050 et seq.**  
11 **and amendments thereto).**

12 **The appeal shall be heard within 30 days from the date the notice of appeal is filed. If no**  
13 **record was made of the proceedings, the trial shall be de novo. If a record was made of the**  
14 **proceedings, the district judge may conduct the appeal on the record or hold a trial de novo.**

15 (b) **An appeal by an interested party from the district court to an appellate court shall be**  
16 **taken pursuant to article 21 of chapter 60 of the Kansas Statutes Annotated from any final**  
17 **order judgment or decree entered in any proceeding pursuant to:**

18 (1) **the Kansas adoption and relinquishment act (K.S.A. 59-2111 et seq. and**  
19 **amendments thereto);**

20 (2) **the care and treatment act for mentally ill persons (K.S.A. 59-2945 et seq. and**  
21 **amendments thereto);**

22 (3) **the sexually violent predator act (K.S.A. 59-29a01 et seq. and amendments**  
23 **thereto);**

1           **(4) the care and treatment act for persons with an alcohol or substance abuse**  
2           **problem (K.S.A. 59-29b45 et seq. and amendments thereto); or**

3           **(5) the act for obtaining a guardian or conservator, or both (K.S.A. 59-3050 et seq.**  
4           **and amendments thereto).**

5           **Except for cases otherwise specifically provided for by law, appeals under this section shall**  
6           **have priority over all others.**

7           **(c) Pending the determination of an appeal pursuant to section (a) or (b), any order**  
8           **appealed from shall continue in force unless modified by temporary orders entered by**  
9           **the court hearing the appeal. The supersedeas bond provided for in K.S.A. 60-2103**  
10           **shall not stay proceedings under an appeal from the district court to an appellate court.**

11           **(d) In an appeal taken pursuant to section (a) or (b), the court from which the appeal is**  
12           **taken may require an appropriate party, other than the State of Kansas, any subdivision**  
13           **thereof, and all cities and counties in this state, to file a bond in such sum and with such**  
14           **sureties as may be fixed and approved by the court to ensure that the appeal will be**  
15           **prosecuted without unnecessary delay and to ensure the payment of all judgments and**  
16           **any sums, damages and costs that may be adjudged against that party.**

17           **(e) As used in sections (a) and (b), “interested party” is defined as follows:**

18           **(1) the parent in a proceeding pursuant to the Kansas adoption and relinquishment**  
19           **act (K.S.A. 59-2111 et seq. and amendments thereto);**

20           **(2) the patient under the care and treatment act for mentally ill persons (K.S.A. 59-**  
21           **2945 et seq. and amendments thereto);**

22           **(3) the patient under the care and treatment act for persons with an alcohol or**  
23           **substance abuse problem (K.S.A. 59-29b45 et seq. and amendments thereto);**







1 When a request for such transfer is filed less than three days prior to the commencement of the  
2 hearing, the court shall assess the costs occasioned by the subpoena and attendance of witnesses  
3 against the party seeking the transfer. Such request may be included in any petition, answer or other  
4 pleading, or may be filed as a separate petition, and shall include an allegation that a bona fide  
5 controversy exists and that the transfer is not sought for the purpose of vexation or delay. Notice of  
6 such request shall be given as ordered by the court.

7 **Comment**

8 **As in K.S.A. 59-2401(a)(6) above, the dollar amount in**  
9 **subsection (3) was raised from \$500 to \$5,000 on the rationale that**  
10 **K.S.A. 59-2237(c), which has also been raised over the years (from**  
11 **\$200 to \$1,500 in 1987 and then to \$5,000 in 2000), allows**  
12 **payment by an executor or administrator of amounts up to \$5,000**  
13 **without a hearing.**

14 **59-2402b. Same; assignment of case or specific issue.** Upon the filing of such request the chief  
15 judge may assign the case in its entirety to a district judge or only for a determination of the specific  
16 issues raised. If the chief judge assigns only for determination of specific issues, the case may be  
17 reassigned to the district magistrate judge. The determination of issues shall be as on appeal as  
18 provided in K.S.A. 59-2408 and amendments thereto.

19 **Comment**

20 **No changes to this section are suggested.**

21 **59-2402c. Repealed 1977.**

22 **59-2402d. Transfer of trust estates from district magistrate judge.** When a trust estate is created

1 by a will admitted to probate by order of any district magistrate judge of this state, any beneficiary  
2 or the trustee of such trust estate may at any time file a petition requesting the transfer of such trust  
3 estate to the chief judge for assignment to a district judge. Notice shall be given as ordered by the  
4 court, if notice is found by the court to be necessary. Upon the filing of such request, the district  
5 magistrate judge shall transfer the file in the estate, or so much thereof as may be necessary for a  
6 proper administration of the trust estate, to the chief judge.

7 Appeals from judgments and orders of a district judge made pursuant to this section may be taken  
8 as appeals in other civil cases.

9 **Comment**

10 **No changes to this section are suggested.**

11 **59-2403. Venue.** An appeal taken from any order, judgment, decree or decision (other than one  
12 determining or refusing to determine venue or changing or refusing to change venue) made by a  
13 district magistrate judge before a change of venue shall be taken to a district judge of the county to  
14 which the change was made.

15 **Comments**

16 **No changes to this section are suggested.**

17 **59-2404. Appeals from district magistrate judges; appeal not abridged by failure to defend.**

18 The right of appeal from any order, judgment, decree or decision of a district magistrate judge in an  
19 action pursuant to this chapter shall not be denied nor abridged for failure of the party appealing to  
20 present his or her defenses to or to appear before the district magistrate judge.

21 **Comment**

22 **No changes to this section are suggested.**

23 **59-2405. Repealed 1977.**

1 **59-2406. Repealed 1977.**

2 **59-2407.** ~~Effect of appeal. An appeal from an order admitting a will to probate shall not suspend the~~  
3 ~~operation of the order until the appeal is determined, but no distribution to heirs, devisees, or legatees~~  
4 ~~shall be made pending the appeal. In all other cases the appeal shall suspend the operation of the~~  
5 ~~order, judgment, decree, or decision appealed from until the appeal is determined or the judge hearing~~  
6 ~~such appeal shall otherwise order.~~

7 **Comment**

8 **This entire subsection was deleted as it is no**  
9 **longer necessary due to the provisions in proposed K.S.A. 59-**  
10 **2401(c).**

11 **59-2408. Appeal from a district magistrate judge; trial on appeal; pleadings; issues; evidence.**

12 **Except as provided for in K.S.A. 59-2401a,** ~~W~~ whenever an appeal has been taken from an order,  
13 judgment, decree or decision of a district magistrate judge, the district judge to which the appeal is  
14 assigned by the chief judge, without unnecessary delay, shall proceed to hear and determine all issues  
15 in the matter de novo and shall allow and may require pleadings to be filed or amended. The right to  
16 file new pleadings shall not be abridged or restricted by the pleadings filed, or by failure to file  
17 pleadings, in the proceedings before the district magistrate judge; nor shall the trial or the issues to  
18 be considered by the district judge be abridged or restricted by any failure to appear or by the  
19 evidence introduced, or the absence or insufficiency thereof, in the proceedings before the district  
20 magistrate judge.

21 **Comment**

22 **The restrictive phrase was added to the beginning**  
23 **of this subsection to allow the judge to have the discretion to**  
24 **try the case on the record as provided in proposed K.S.A. 59-**  
25 **2401a(a).**

1 ~~All appeals from a district magistrate judge other than those from the allowance or disallowance of~~  
2 ~~a demand, adjudging or refusing to adjudge a person an incapacitated person, and the granting, or~~  
3 ~~refusing to grant, of an order for care or treatment, shall be tried by the court without a jury, but the~~  
4 ~~court may call a jury in an advisory capacity or in a proper case may refer the matter or part thereof~~  
5 ~~to a referee.~~

6 **Comment**

7 **The Committee determined that this provision is not**  
8 **necessary. Jury trial rights are established within each code,**  
9 **and the provision regarding advisory juries and referees is not**  
10 **consistent with modern practice and can safely be omitted.**  
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12 **59-2409. Remanding appealed case to district magistrate judge.** Upon determination of an  
13 appeal from an order, judgment, decree or decision of a district magistrate judge, the judge  
14 determining such appeal may remand the case to the district magistrate judge, who shall proceed in  
15 accordance therewith.

16 **Comment**

17 **No changes to this section are suggested.**