

PROPOSED LEGISLATION AND COMMENT

20-3017. Motion to transfer case from court of appeals to supreme court; rules of supreme court; allegations required; disposition of case by supreme court; failure to file motion deemed waiver of objection to jurisdiction of court of appeals. Within ~~twenty (20)~~ 30 days after the date the notice of appeal has been served on the appellee in any case appealed to the court of appeals, any party to such case may file a motion with the clerk of the court of appeals, requesting that such case be transferred to the supreme court for review and final determination by such court. Such motion shall be made in the manner and form prescribed by rules of the supreme court, and it shall allege the existence of one (1) or more of the conditions described in subsection (a) of K.S.A. 20-3016. The clerk of the court of appeals promptly shall submit any motion made pursuant to this section to the supreme court. The supreme court shall consider such motion and may accept the case for review and final determination or may decline jurisdiction and order that the case be determined by the court of appeals. A party's failure to file a motion in accordance with this section shall be deemed a waiver of any objection by such party to the jurisdiction of the court of appeals.

Comment

The 20-day time period for filing a motion to transfer was enacted when the docketing period was 10 days. Now that the docketing period has been expanded to 20 days, the time to file a motion to transfer must be expanded as well.

38-2305. (a) Venue for proceedings in any case involving a juvenile shall be in any county where any act of the alleged offense was committed.

(b) Except as provided in subsection (c), venue for sentencing proceedings shall be in the county of the juvenile offender's residence or, if the juvenile offender is not a resident of this state, in the county where the adjudication occurred. When the sentencing hearing is to be held in a county other than where the adjudication occurred, upon adjudication, the judge shall contact the sentencing court and advise the judge of the transfer. The adjudicating court shall send immediately to the sentencing court a facsimile of the complaint, the adjudication journal entry or judge's minutes, if available, and any recommendations in regard to sentencing. Such documents shall be sent for purposes of notification and shall not constitute original court documents. The adjudicating court shall also send to the sentencing court a complete copy of the official and social files in the case by mail within seven ~~working~~ days of the adjudication.

(c) If the juvenile offender is adjudicated in a county other than the county of the juvenile offender's residence, the sentencing hearing may be held in the county in which the adjudication was made if the adjudicating judge, upon motion by any person authorized to appeal, finds that it is in the interest of justice.

Comment

When the Committee proposed the changes that were contained in 2010 HB 2656, it intended to change the time period in subsection (b) from “5 working days” to “seven days.” The word “working” was not deleted as intended.

60-203. (a) **Time of commencement.** A civil action is commenced at the time of:

(1) Filing a petition with the court, if service of process is obtained or the first publication is made for service by publication within 90 days after the petition is filed, except that the court may extend that time an additional 30 days upon a showing of good cause by the plaintiff; or

(2) service of process or first publication, if service of process or first publication is not made within the time specified by paragraph (1).

(b) **Curing invalid service.** If service of process or first publication purports to have been made but is later adjudicated to have been invalid due to an irregularity in form or procedure or a defect in making service, the action is considered to have been commenced at the applicable time under subsection (a) if valid service is obtained or first publication is made within 90 days after that adjudication, except that the court may extend that time an additional 30 days upon a showing of good cause by the plaintiff.

(c) **Entry of appearance.** The filing of an entry of appearance has the same effect as service. Written contact with the court by a defendant, or an attorney for the defendant invoking protection for the defendant under the servicemembers civil relief act (50 U.S.C. 501 et seq.), and amendments thereto, is not an entry of appearance.

(d) **Electronic filing.** As used in this section, filing a petition with the court includes receipt by the court of a petition by electronic means complying with supreme court rules.

Comment

The amendments in 2010 HB 2656 included adding subsection captions or modifying existing captions. The new subsection captions for K.S.A. 60-203 were inadvertently omitted.

60-206.

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(d) **Additional time after certain kinds of service by mail.** When a party may or must act within a specified time after service and service is ~~by mail~~ made under K.S.A. 60-205(b)(2)(C), (D), (E), or (F), three days are added after the period would otherwise expire under subsection (a).

Comment

This amendment to subsection (d) is to strictly conform the statute to the corresponding federal rule and to clarify that the three-day mail rule applies to service by fax and electronic means.

60-209.

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(b) **Fraud or mistake; conditions of the mind.** In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge and other conditions of a person's mind may be alleged generally.

Comment

This amendment is to correct a typographical error in the caption of subsection (b).

60-211. (a) Signature. Every pleading, written motion and other paper must be signed by at least one attorney of record in the attorney's name, or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number and fax number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

Comment

"Fax number" has been added because fax service is authorized under K.S.A. 60-205.

60-214. Third-party practice.

(a) **When defending party may bring in a third-party.**

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Comment

This amendment is to correct a typographical error in the caption of subsection (a). As used here, "third party" should not be hyphenated.

60-226.

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(f) Signing of disclosures and discovery requests, responses and objections.

Comment

This amendment to subsection (f) is to strictly conform the caption to the federal rule.

60-235.

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(c) ~~Report~~ Reports of other examinations.

Comment

This amendment is to correct a typographical error in the caption of subsection (c).

60-249.

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(b) General verdict with answers to written questions.

(1) In general. The court may on written request, submit to the jury forms for a general verdict, together with written questions on one or more issues of fact that the jury must decide. The court must give the instructions and explanations necessary to enable the jury to render a general verdict and answer the questions in writing, and must direct the jury to do both.

(2) Verdict and answers consistent. When the general verdict and the answers are consistent, the court must approve an appropriate judgment on the verdict and answers.

(3) ~~Answer~~ Answers inconsistent with the verdict. When the answers are consistent with each other, but one or more is inconsistent with the general verdict, the court may:

(A) Approve an appropriate judgment according to the answers, notwithstanding the general verdict;

(B) direct the jury to further consider its answers and verdict; or

(C) order a new trial.

Comment

This amendment to subsection (b)(3) is to strictly conform the caption to the federal rule.

60-260.

- (a) **Corrections based on clerical mistakes; oversight oversights and omissions.**

Comment

This amendment to subsection (a) is to strictly conform the caption to the federal rule.

60-270.

(a) **Retention of original discovery documents.** A party or attorney possessing original deposition transcripts, original responses to interrogatories, original requests for admissions, original requests for production or other original matters produced during discovery must retain those documents until the case is closed.

(b) **Destruction or disposition of original discovery documents.** Except as provided in subsection (c), when the case has been closed the party or attorney possessing the original documents specified in subsection (a) may destroy or dispose of them.

(c) **Original discovery documents subject to order, rule, statute or agreement.** Original discovery documents subject to or covered by a protective order, court rule, statute or written agreement of the parties must be retained, returned, destroyed or disposed of in accordance with the terms of the order, rule, statute or agreement.

(d) **Definition of “closed.”** As used in this section, “closed” means when an order terminating the action or proceeding has been filed and all appeals have been terminated, the time for appeal has expired or when the judgment is either satisfied or barred under K.S.A. 60-2403, and amendments thereto.

Comment

K.S.A. 60-270 is amended to add subsection headings consistent with the other statutes in the code of civil procedure.

60-310.

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- (b) **Actions Action against defendant not served.**

Comment

This amendment is to correct a typographical error in the caption of subsection (b).

60-460. Hearsay evidence excluded; exceptions. Evidence of a statement which is made other than by a witness while testifying at the hearing, offered to prove the truth of the matter stated, is hearsay evidence and inadmissible except:

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(m) **Business entries and the like.** Writings offered as memoranda or records of acts, conditions or events to prove the facts stated therein, if the judge finds that (1) they were made in the regular course of a business at or about the time of the act, condition or event recorded and (2) the sources of information from which made and the method and circumstances of their preparation were such as to indicate their trustworthiness.

If the procedure specified by subsection (b) of K.S.A. 60-245a for providing business records has been complied with and no party has required the personal attendance of a custodian of the records or the production of the original records, the affidavit or declaration of the custodian shall be prima facie evidence that the records satisfy the requirements of this subsection.

Comment

K.S.A. 60-245a has been changed to allow an affidavit or a declaration.

60-2003. Items allowable as costs. Items which may be included in the taxation of costs are:

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(6) The postage fees incurred pursuant to K.S.A. 60-303 ~~or subsection (e) of K.S.A. 60-308,~~ and amendments thereto.

Comment

This amendment removes a reference to a subsection in K.S.A. 60-308 dealing with service by return receipt delivery that has been deleted.

65-4902. Notice to parties of convening of panel and appointment; joint selection of health care provider or selection by judge. The district judge or, if the district court has more than one division, the chief judge of such court shall notify the parties to the action that a screening panel has been convened. The plaintiff or claimant and the defendant or respondent shall each designate a health care provider licensed in the same profession as the defendant or respondent within ~~20~~ 21 days of such party's receipt of notice of the convening of the screening panel. The parties shall jointly designate a health care provider licensed in the same profession as the defendant or respondent within days after the individual designations have been made. If the parties are unable to jointly select a health care provider within such ~~10~~ 14 days, the judge of the district court or, if the district court has more than one division, the chief judge of such court shall select such health care provider.

Comment

The time periods in K.S.A. 60-3503, which is part of an act establishing a procedure for professional malpractice screening panels, were changed from 10 to 14 and 20 to 21 days. K.S.A. 65-4902 is the corresponding statute in the act providing for medical malpractice screening panels, and these time periods should be changed accordingly.