

Rule 9.01

ORIGINAL ACTION

- (a) **Petition.**
- (1) **Service and Filing.** The petitioner in an original action must file the petition with the clerk of the appellate courts, with proof of service on all respondents or their counsel of record. When the relief sought is an order in mandamus against a judge involving pending litigation before that judge, the judge and all parties to the pending litigation are deemed respondents. The petition must contain a statement of the facts necessary to understand the issues presented and a statement of the relief sought. The petition must be accompanied by a short memorandum of points and authorities and available documentary evidence necessary to support the facts alleged.
 - (2) **Docket Fee and Poverty Affidavit.** The petitioner must pay a docket fee of \$145 and any applicable surcharge or file a poverty affidavit under K.S.A. 60-2001(b). On receipt of the prescribed docket fee or a poverty affidavit, the clerk of the appellate courts must docket the petition and submit it to the court. If the petitioner is an inmate, the clerk will assess the initial \$3 filing fee. A poverty affidavit applies only to the amount that must be paid to file the action and does not prevent the court from later assessing the remainder of the docket fee or other fees and costs against the movant. No docket fee will be charged to file a petition for writ of habeas corpus.
- (b) **Concurrent Jurisdiction.** An appellate court ordinarily will not exercise original jurisdiction if adequate relief appears to be available in a district court. If relief is available in the district court, a petition must state—in addition to all other necessary allegations—the reason why the action is brought in the appellate court instead of in the district court. If the appellate 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. A dismissal under this subsection is not an adjudication on the merits.
- (c) **Court Action on Petition.**
- (1) **Denial.** If the court determines that relief should not be granted, it will deny the petition.
 - (2) **Ex Parte Disposition.** If the right to relief is clear and it is apparent that no valid defense to the petition can be offered, relief may be granted ex parte.
 - (3) **Order Directing Response.** If the petition is not granted or denied ex parte, the court will order that the respondent(s) either

show cause why relief should not be granted or file a response to the petition within the time fixed by the order. The following rules apply:

- (A) the order must be served by the clerk of the appellate courts on all named respondents by mail or as otherwise directed by the court;
 - (B) two or more respondents may jointly respond to an order to show cause or to a petition;
 - (C) a judge named as respondent in a mandamus action who decides not to appear in the proceeding may so advise the clerk and all parties by letter, but the petition will not thereby be taken as admitted; and
 - (D) a response to an order to show cause or to a petition may be accompanied by additional documentary evidence necessary for the court's understanding of the case.
- (d) **The Record.** The petition, response to an order to show cause or to a petition, and accompanying documents constitute the record. If there are disputed questions of material fact that can be resolved only by oral testimony, the court may refer the matter to a judge of the district court or a commissioner to take the testimony and make a report recommending findings of fact. The commissioner's report and the transcript of the testimony must be filed with the clerk of the appellate courts and will become part of the record.
- (e) **Further Proceedings.** If the petition, response to an order to show cause or to a petition, and record clearly indicate the appropriate disposition, the court will enter an order without further briefs or argument. Otherwise, the court may order a prehearing conference under Rule 1.04. The court will enter an order designating dates for the filing of briefs. The proceeding thereafter will be governed by the rules relating to appellate procedure.

[History: Am. effective March 6, 1978; Am. (b) effective September 1, 1982; Am. effective February 8, 1994; Am. effective July 1, 2000; Restyled rule effective July 1, 2012; Am. (a) effective February 9, 2015; Am. (c) effective September 1, 2015; Am. effective November 18, 2016.]