

## Rule 7.04

### OPINION OF APPELLATE COURT

- (a) **Memorandum or Formal Opinion—Governed by K.S.A. 60-2106.** An opinion of an appellate court, whether signed or per curiam, will be a memorandum opinion or formal opinion as provided in K.S.A. 60-2106. Disposition by memorandum, without a published formal opinion, does not mean the case is considered unimportant. It means the case does not involve a new point of law or is otherwise considered as having no value as precedent.
- (b) **Determining Whether Opinion Will Be Memorandum or Formal.** An opinion will be prepared in memorandum form unless it meets the requirements in paragraphs (1) and (2).
  - (1) **Substantive Requirement.** To be published as a formal opinion, the opinion must:
    - (A) establish a new rule of law or alter or modify an existing rule;
    - (B) involve a legal issue of continuing public interest;
    - (C) criticize or explain existing law;
    - (D) apply an established rule of law to a factual situation significantly different from that in published opinions of the courts of this state;
    - (E) resolve an apparent conflict of authority; or
    - (F) constitute a significant and nonduplicative contribution to legal literature:
      - (i) by a historical review of law; or
      - (ii) by describing legislative history.
  - (2) **Procedural Requirement.** A formal opinion will be written and published in the official reports only if the majority of the justices or judges participating in the decision finds that one of the standards set out in paragraph (1) is satisfied. The court or panel that decides the case must make a tentative decision whether or not a formal opinion is required before or at the time the case is conferenced.
- (c) **Concurring or Dissenting Opinion.** A concurring or dissenting opinion will be published only if the majority opinion is published.
- (d) **Memorandum Opinion Publication.** A memorandum opinion will be published only if:
  - (1) there is a separate concurring or dissenting opinion in the case, and the author of the separate opinion requests that it be published; or
  - (2) the Supreme Court orders publication.

- (e) **Motion Requesting Publication.** A party or other interested person that believes an opinion of either the Supreme Court or Court of Appeals that is not designated by the court for publication meets the requirement for publication in subsection (b)(1) or otherwise has substantial precedential value may file a motion in the Supreme Court asking that it be published. The motion must:
- (1) state the grounds for the belief that the opinion should be published;
  - (2) be accompanied by a copy of the opinion; and
  - (3) comply with Rule 5.01, including service on all parties to the appeal.
- (f) **Opinion Modified on Rehearing.** An opinion that is superseded by an opinion on rehearing will not be published. An opinion that is modified on rehearing will be published as modified if it otherwise meets the standards of this rule.
- (g) **Unpublished Memorandum Opinion.**
- (1) A memorandum opinion, unless required by subsection (d) to be published, must be marked: “Not Designated for Publication.”
  - (2) An unpublished memorandum opinion:
    - (A) is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel;
    - (B) is not favored for citation and may be cited only if the opinion:
      - (i) has persuasive value with respect to a material issue not addressed in a published opinion of a Kansas appellate court; and
      - (ii) would assist the court in disposition of the issue; and
    - (C) must be attached to any document, pleading, or brief that cites the opinion.

[**History:** Am. effective May 30, 1980; Am. effective February 7, 2003; Am. (c) effective June 24, 2004; Restyled rule and amended effective July 1, 2012.]