

Legal Research Tips

Presented by: Abby Schieber, Director of Special Projects for the Kansas Court of Appeals

Qualifications?

- Graduated from KU Law in December 2003 (but I'm technically L'04—what up summer starters who graduate in December!?!?)
- Westlaw Student Rep all 3 years.
 - Got yearly WL training in places such as Detroit, MI and KC, MO.
 - Paid mostly in WL points.
 - Got a DVD player, CD player alarm clock, and espresso machine with those points.
 - If that doesn't scream early '00s I don't know what does.
- HEADS UP: My current job has unlimited WL account. I will show you some Westlaw pointers, which should work for other search engines, and I will show you some other things I think are helpful as well.

Employment

- April '04-April '05: US District Court District of KS
- August '05-Current: Kansas COA Research Attorney
 - Year 1: Central Research Staff
 - Year 2: Clerk for Judge Malone
 - Year 3-6: RA3 Central Research Staff
 - Year 7-14: RA3 Judge Bruns
 - Year 15-17: Associate Counsel/Director of Special Projects

TIPS FROM THE BENCH

Real pointers from Kansas Court of Appeals judges

Tips for Briefs: Choosing Authority

•If you find the perfect case, think about how to use it. For instance, a federal district court case reflects one judge's opinion and is not persuasive in the same way as a circuit opinion would be. But a district court opinion might provide a good argument for your case or provide legal authority for you to consider.

Tips for Briefs: Slow Down and Use Caution

- Review Published Opinions Weekly (<https://www.kscourts.org/Cases-Opinions/Opinions>)
- If you have an appeal pending, you should be reading all published Kansas Supreme Court and Court of Appeals opinions that are released to see if any of them impact your case.
 - Do this regardless of whether your case is argued.
 - If your brief is in, this might prompt a 6.09 letter Supreme Court Rule 6.09 (2022 Kan. S. Ct. R. at 40).

Before Oral Argument

- ✓ Cite check any key cases to see if there have been any newer decision affecting them.
- ✓ Double check for new case law, statutes, or regulations that might have been released since you filed your briefs.
- ✓ Check for pending legislation or regulations that might impact the decision.
- ✓ While not binding, these changes could be informative.

Watch Oral Arguments Online

- Both the Kansas Court of Appeals (<https://www.kscourts.org/About-the-Courts/Court-of-Appeals/Oral-Argument-Livestream>) and the Kansas Supreme Court (<https://www.kscourts.org/About-the-Courts/Supreme-Court/Oral-Argument-Livestream>) have archived videos from oral arguments.
- Watch arguments in cases that are similar to yours
- Watch arguments that include the panel members in front of which you will argue
- You can quickly see what works and what does not work

Some Helpful Places to Look when starting an Appellate Case

Kansas Judicial Branch website (kscourts.org)

- Supreme Court Rule Book
- Appellate Procedure Outline
- Judicial Council Website
- Kansas Appellate Practice Handbook

Kansas Sentencing Commission Website

- Sentencing Commission Desk Reference Manual

Rules of the Kansas Supreme Court

- Contain lots of practical information
- Available on kscourts.org
- Searchable two ways
- #1 on the Rules & Orders page
- #2 click to get to PDF
- When in doubt, check the rule book

Appellate Procedure Outline

- <https://www.kscourts.org/KSCourts/media/KsCourts/Appellate%20Clerk/Appellate-Procedure-Outline.pdf>

Judicial Council Website

- <https://www.kansasjudicialcouncil.org/>
- Forms
- PIK instructions
- Pattern instructions are available online for free to attorneys with an active Kansas license
- Appellate Practice Handbook (<https://www.kansasjudicialcouncil.org/publications/kansas-appellate-practice-handbook>)

Kansas Sentencing Commission Website

- Lots of helpful links and information (<https://sentencing.ks.gov/>)
- Sentencing Desk Reference Manual (<https://sentencing.ks.gov/document-center/desk-reference-manuals>)
 - Probably answers every question you could ever have about criminal sentencing.

Supreme Court Law Library

- Kansas Supreme Court library website (<https://www.kscourts.org/About-the-Courts/Law-Library>)
- It contains everything you could possibly want to know about databases and publications that you can access through the library.

- The librarians are very helpful and willing to answer any questions you might have.

Talking to Others

- Many times talking about an issue will help you narrow the focus of your research
- Call an attorney whose work you admire
 - They will be flattered and would probably be happy to offer you advice
- Law Professors
 - Remember in law school when they said they'd help you out? Take them up on it!

Online Searches

- Again, I have an unlimited WL account, so I can't give you tips on how to save time and money running a search.
- But I know you can **call the 1-800 number** for your search engine and ask one of their research assistants to help you narrow your search and they will give you search tips to focus your searching.

Statutes: Using the amendment history

- Scroll to the bottom of the statute on Westlaw or on the KS Legislature website to see the history of amendments that have been made and determine if changes have been made before or after the timeframe of your case.

Boolean Searches (or terms and connectors)

- If you learn just a few Boolean searches, it will help you quickly get results
- Especially if you search for the same type of thing regularly

My Favorite Boolean Searches

- !
 - Use at the end of a word to find all derivatives of that word.

Search: appe!

- results will include **appeal** as well as **appellate**

Search: ineffectiv!

- results will include **ineffective** as well as **ineffectiveness**
- /s
 - search terms will be within the same sentence

Search: ineffect! /s counsel

- results will include “ineffective assistance of counsel” as well as “..argued counsel was ineffective.”
- /number (i.e. /3 or /8)

Search: motion /3 suppress!

 - will give you results with two words w/in that number of words of each other

- /p

Search: manifest /p unjust!

 - if you need to broaden your search, this will give you results if the two words are within the same paragraph rather than the same sentence

- ""
 - Use quote marks if you want to find an exact term rather than cases that mention both words

Search: “manifest injustice”

- te(term)
 - Use this for searching the text of statutes

Search: te(appel!)

Search: te(restitution)

 - Limits results to ones where the search term appears in the text of the statute
 - Will not show results where the term is in the descriptions underneath (notes of decisions)

- ci(name)

Search: ci(appendi)

Search: ci(robinson)

 - Limits results to ones where the search term appears in the citation

- Use this if you are looking for a particular case and you can remember a party name but nothing else.
- **ju(name)**
 - Use this if you want to find opinions written by a specific judge
 - Note that it only works if the judge lists themselves as the “author.” Will not find cases where the judge was on the panel and the opinion is issued “per curiam.”

Search: ju(bruns)

Search: ju(luckert)

- **dn(appellate court docket number)**
 - Stands for "docket number"
 - Find an appellate case using the appellate case number
 - This is why it is important to include the appellate case number in your citation to any unpublished case

Search: dn(123456)

Search: dn(122333)

- **If you can't remember these, you can always do “advance search”**

Filtering

- After you have your search results, narrow them by using the various filters on the filtering tab.

Citations

- Make sure your citations are accurate. You did all the work; now you want us to read the cases, so make sure we can find them.
- We generally use your citations as a jumping off point, so if we can't find the case you're citing, we have to go it alone.
- Unpublished opinions—make sure you cite more than just the Lexis or Westlaw citation.
- Know that the P.3d cite for unpublished opinions is not helpful.
- At the very least, use the appellate court case number—we can use dn(case number) to find the opinion that way.

Proofreading

- Might sound silly, but if you're trying to put your best effort forward, use grammar research tools such as the "editor" in Word.
- Many times I use a good old Google search to help me with a grammar rule (i.e. affect/effect, that/which, etc.
- Redbook
- Bluebook—I will not hold it against someone if they don't cite things perfectly as long as they include the information I need to find a citation or they explain why and what they are relying on.
- Passive voice—shows lack of research into the record. You might not know who the actor is because you haven't combed through the record enough. Sometimes, though, it's just not there and passive voice is necessary.

RECORD CITES

- This is what we use. It's not a requirement, but if you want your record cites to look like ours, here's what we use:
- (R. IV, 33.)
- Volume number in roman numerals
- Page number in regular numerals
- This is for facts as discussed in Rule 6.02(a)(4)

Rule 6.02

- Most appellate attorneys seem to do this now, but just go ahead and re-read Rule 6.02 (appellant) or 6.03 (appellee) each time you write a brief.
- It reminds you what the requirements are.