No. 130503

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

Molly Ellis
v
Kim McNeese et al

APPELLANT MOLLY ELLIS BRIEF

Appeal from the District Court of Lyon County
Judge W. Lee Fowler
District Court Case 2022-CV-00007

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Oral Argument Requested

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NATURE OF THE CASE

This is a post-remand appeal from an attorney-fee award and sanctions judgment entered after Molly Ellis prevailed on her Kansas Preservation of Religious Freedom Act claim. In the first appeal, this Court reversed summary judgment against Molly, holding that her claim arose from Flint Hills Technical College's own conduct—its refusal to provide an alternative clinical path and its threat of failing grades if Molly complied with her religious beliefs. The panel rejected defendants' ripeness theory, confirmed Molly could sue Flint Hills directly, and awarded her $18,200 in appellate fees, finding she prevailed, that $400/hour was reasonable, and that KPRFA enforcement parallels civil-rights litigation where fees are essential to meaningful relief. On remand, the district court granted summary judgment to Molly and adopted the factual findings in both the majority and concurrence: Flint Hills accepted Molly into its program, was responsible for providing required clinical experience, denied her accommodation request, imposed zeros for missed clinicals, placed her at risk of failing, and the injunction preserved her ability to graduate.

This appeal does not revisit the merits. It challenges what occurred after Molly prevailed: (1) the district court's legally and factually flawed calculation of her statutory KPRFA fee award, and (2) its 50% sanction reduction of that award. First, the fee calculation conflicts with the *Ellis* panel ruling, the law of the case, KRPC 1.5, and the lodestar method. The lower court began with 379 hours at $400/hour, deducted 61.3 hours in broad categories, imposed a 20% global reduction, denied a multiplier, labeled the case "simple," compared KPRFA enforcement to BIDS rates,

and treated the post-graduation litigation as "almost four years" of fee litigation. But the case remained merits litigation throughout: defendants won summary judgment, Molly appealed, this Court reversed, and remand proceedings followed. The fee order rests on premises contrary to the mandate and the court's own remand findings. Second, the lower court imposed a 50% sanction by cutting Molly's statutory fee recovery from $101,640 to $50,820. It did not sanction counsel, did not find Molly signed, directed, or caused any alleged defect, and did not calculate defendants' reasonable expenses. Instead, it used Molly's statutory entitlement as the sanctions fund—punishing the prevailing claimant, benefiting the KPRFA violators, and doing so without the findings required by K.S.A. 60-211 or *Wood v. Groh*.

The appeal therefore presents two questions: whether the fee award must be vacated for legal error, factual error, inadequate findings, duplicative reductions, and improper factors; and whether the 50% sanction must be reversed because K.S.A. 60-211 does not authorize taking half of Molly's statutory KPRFA recovery to punish alleged attorney conduct.

Issues in This Case

1. **Attorney-Fee Calculation**. Whether the district court abused its discretion and committed legal error in calculating Molly's KPRFA attorney-fee award by disregarding the controlling premises established in *Ellis*, undervaluing Molly's success on the merits, denying any multiplier without meaningful application of KRPC 1.5, relying on an irrelevant BIDS-rate comparison, deducting 61.3 hours without entry-specific findings or common-core analysis, and imposing an additional

unexplained 20% global reduction after already removing the allegedly objectionable time.

2. **Law of the Case / Mandate**. Whether the fee award conflicts with the law of the case where the Ellis panel held that the district court had misunderstood the KPRFA claim, recognized the novelty and difficulty of KPRFA enforcement, awarded appellate fees under KPRFA, and the district court on remand expressly adopted the factual summaries in both the *Ellis* majority and Judge Arnold-Burger's concurrence.

3. **Results Obtained and Civil-Rights Enforcement.** Whether the district court erred by treating Molly's success as limited or fee-driven when Molly obtained meaningful KPRFA relief: a preliminary injunction preserving her program status and ability to graduate on time, reversal of an adverse summary-judgment ruling, remand, and final judgment on her KPRFA claim.

4. **Contingency, Delay, and Litigation Risk**. Whether the district court erred by acknowledging but effectively disregarding contingency risk, years of nonpayment, emergency injunctive litigation, an adverse summary judgment, appellate reversal, remand proceedings, and final KPRFA success when denying any multiplier or upward adjustment.

5. **Reviewability of Hour Reductions.** Whether the district court's 61.3-hour deduction must be vacated because the court grouped materially different categories—administrative time, unsuccessful or unrelated work, journal-entry work,

sanctions-related work, garnishment work, and vague entries—without identifying the billing entries, dates, descriptions, or legal basis for each reduction.

6. **Duplicative 20% Reduction.** Whether the district court abused its discretion by imposing an additional 20% global reduction after already deducting 61.3 hours, without explaining what unreasonable, excessive, vague, unrelated, or duplicative time remained in the reduced lodestar.

7. **Improper Subsidiary Grounds**. Whether the fee award must be vacated because the district court relied on improper or underexplained grounds, including settlement criticism, vague-entry concerns, administrative-time deductions, journal-entry work, sanctions-defense work, garnishment/enforcement work, and supposed unsuccessful or unrelated work even though Molly had segregated and excluded KCPA time.

8. **Sanction Target and Statutory Authority.** Whether the district court erred by reducing Molly's statutory KPRFA fee recovery by 50% as a sanction for alleged attorney conduct, without finding that Molly was responsible for the conduct and without imposing the sanction against the attorney or law firm allegedly responsible.

9. **Causal Expenses and Proportionality**. Whether the sanction violates K.S.A. 60-211 because the district court did not calculate defendants' reasonable expenses incurred because of any offending filing, did not apply the *Wood* factors, did

not consider ability to pay or lesser sanctions, and selected a 50% reduction of Molly's fee recovery rather than a sanction tied to actual harm or deterrence.

10. **Citation Defects and Journal-Entry Sequence.** Whether the sanction rests on factual and legal overstatement where the October 20 opposition contained citation defects but did not mislead the district court into adopting a false rule of law, Anderson did not establish a pattern of sanctionable misconduct, and the January 29 proposed-journal-entry sequence was not part of the sanctions motion, was not preceded by notice, and did not falsely represent defense approval.

11. **Garnishment of Appellate Fee Award**

Statement of Facts

The facts before remand are set forth in *Ellis v. McNeese,* 559 P.3d 1237 (Table), 2024 WL 4878593 (Kan. App. 2024) (unpublished), and in the Court of Appeals mandate filed in the district court. Vol. 11, pp. 18–45. In that appeal, this Court reversed the summary judgment entered against Molly Ellis on her KPRFA claim, held that the district court had misunderstood the nature of that claim, awarded Ellis appellate attorney fees under KPRFA, and remanded for further proceedings on the KPRFA claim.

On remand, Molly filed a brief on the mandate and then moved for partial summary judgment on liability. Vol. 11, pp. 5–13, 46–89. Defendants opposed and also filed a second summary-judgment motion, arguing that Flint Hills was not responsible for McNeese's alleged conduct and that Flint Hills would have granted Molly a COVID-19 vaccine exemption. Vol. 11, pp. 100–134, 156–195. Molly opposed

defendants' motion and replied in support of her own motion. Vol. 11, pp. 138–155, 196–208. Defendants also moved to strike portions of Molly's reply materials; Molly opposed that request. Vol. 11, pp. 209–217. Defendants then filed additional summary-judgment reply materials. Vol. 11, pp. 218–247. The district court granted summary judgment to Molly on the KPRFA claim. The journal entry on summary judgment appears at Vol. 11, pp. 254–258. In that entry, the district court expressly adopted and incorporated the factual summaries contained in both the Ellis majority opinion and Judge Arnold-Burger's concurrence. Vol. 11, pp. 254–258. Defendants then filed a motion to alter or amend the judgment. Vol. 12, pp. 1–205. Molly opposed that motion. Vol. 12, pp. 206–220. Defendants replied. Vol. 12, pp. 224–239. The district court denied the motion to alter or amend by memorandum order. Vol. 12, pp. 240–242. Defendants then filed a sanctions motion under K.S.A. 60-211 directed at Molly's opposition to the motion to alter or amend. Vol. 12, pp. 221–223. Molly opposed the sanctions motion. Vol. 12, pp. 243–245. Defendants later filed additional sanctions materials, including a reply, a motion to seal or redact and for sanctions, and supplements to the sanctions request. Vol. 13, pp. 80–114, 126–129, 174–196; Vol. 14, pp. 64–73. Molly moved for attorney fees under KPRFA. Vol. 12, pp. 246–296. The district court issued an initial memorandum order concerning the fee request. Vol. 12, pp. 299–300. Defendants opposed the fee request. Vol. 13, pp. 45–79; Vol. 15, pp. 2–38. Molly later sought supplemental fee relief. Vol. 14, pp. 25–34. Defendants opposed the supplemental request. Vol. 14, pp. 76–83. After this Court awarded Molly appellate attorney fees, Molly pursued garnishment and enforcement

proceedings. Requests for orders of garnishment and related orders appear in Vol. 13, pp. 130–156. Defendants moved to quash the garnishments and sought sanctions. Vol. 13, pp. 157–165. Molly opposed that motion, and defendants replied. Vol. 13, pp. 166–173. Additional garnishment and disbursement proceedings followed. Vol. 13, pp. 272–282; Vol. 14, pp. 46–63, 74–75, 87–90, 94–97, 113–116. The relevant proposed order, Rule 170 certificate, objections, motion practice, and final journal-entry materials appear at Vol. 13, pp. 200–243, 283–342, and Vol. 14, pp. 117–121. The transcript of the January 29, 2026 status conference appears at Vol. 16, pp. 1–32. Defendants also sought appellate relief to stay enforcement of the appellate fee award. The Court of Appeals rejected the premise that the appellate fee award remained nonfinal, ruling that the $18,200 appellate fee award was final and enforceable. Vol. 14, pp. 74–75 — Supplement to Opposition to Motion to Quash. (Appellate Case No. 130,130, Order dated Feb. 17, 2026). The district court conducted a motions hearing on February 27, 2026. Vol. 17, pp. 1–25. The lower court conducted a hearing on the attorney fees on March 24, 2026. Vol. 19. Final Judgment was entered April 22, 2026. Vol. 19. Notice of appeal was filed April 23, 2026.

Jurisdictional Statement

This Court has jurisdiction under K.S.A. 60-2101 constituting a final judgment.

Argument

Standard of Review

Whether the district court complied with this Court's mandate and the law of the case presents a legal question subject to unlimited review. *See Cohen v. Battaglia,*

296 Kan. 542, 545, 293 P.3d 752 (2013). On remand, a district court must proceed in accordance with the appellate mandate and the law of the case. *State v. Soto*, 310 Kan. 242, 252–53, 445 P.3d 1161 (2019). The district court must implement both the letter and the spirit of the mandate, considering the appellate opinion and the circumstances it addressed. An award of attorney fees is generally reviewed for abuse of discretion. *Johnson v. Westhoff Sand Co.,* 281 Kan. 930, 940–41, 135 P.3d 1127 (2006). But discretion is abused when the district court commits legal error, relies on factual error, or reaches a result no reasonable person would adopt. Thus, to the extent the fee award rests on the interpretation of KPRFA, KRPC 1.5, the lodestar method, the Ellis mandate, or the legal availability of particular fee factors, review is effectively unlimited because those are legal questions. To the extent the court selected the amount of fees, the question is whether that selection was a reasonable exercise of discretion under the correct legal framework. A sanctions order under K.S.A. 60-211 is also generally reviewed for abuse of discretion. *Wood v. Groh*, 269 Kan. 420, 429, 7 P.3d 1163 (2000). But that discretion is bounded by the statute. Whether the district court sanctioned the proper person, used a sanction authorized by K.S.A. 60-211, made the findings required to support an expense-shifting or deterrent sanction, and complied with due process are legal questions subject to unlimited review. See *Wood* at 430–31. A sua sponte sanctions order must also comply with due process. Whether the procedure afforded constitutionally adequate notice and an opportunity to be heard is a question of law subject to unlimited review. Thus, although the amount or choice of a sanctions remedy may ordinarily be reviewed for

abuse of discretion, the threshold questions here—notice, statutory authority, sanction target, causal-expense findings, and due-process compliance—are reviewed as legal errors.

Garnishment of Appellate Fee Award

On November 22, 2024, the Kansas Court of Appeals awarded Molly $18,200 in appellate attorney fees under Supreme Court Rule 7.07(b), and the record later recited the total appellate judgment as $18,345, consisting of $18,200 in attorney fees and $145 in docketing fees. Vol. 11, pp. 37–42; Vol. 12, p. 247 n.1; Vol. 14, p. 95. The mandate issued May 15, 2025, and commanded execution of the Court of Appeals judgment according to law. Vol. 11, p. 18. The district court then issued a non-earnings garnishment order directed to Community National Bank & Trust. Vol. 13, pp. 277–279; Vol. 14, p. 95. CNB filed its Garnishee's Answer confirming that it held $22,039.29 belonging to judgment debtor Flint Hills Technical College. Vol. 14, pp. 2–4; Vol. 14, p. 96.

Instead of ordering CNB to disburse the funds to Molly, the district court ordered CNB to pay the $22,039.29 to the Clerk of the Lyon County District Court, where the funds would be held as a supersedeas bond pending further order or appellate proceedings. Vol. 14, pp. 95–97. Defendants' theory was that the Court of Appeals' attorney-fee award was not an executable judgment, that the mandate did not itself authorize garnishment, and that further district-court action was required before execution could issue. Vol. 13, pp. 157–162; Vol. 14, pp. 46–58; Vol. 14, pp. 99–103; Vol. 17, pp. 4–5. They also sought appellate relief to stay enforcement. Vol. 14,

pp. 113–116. The Court of Appeals rejected that theory on February 17, 2026, holding that the $18,200 fees were awarded for work on Molly's appeal in Case No. 126,900, that any remedy had to come through reconsideration or review, that both avenues had been denied, that "[t]hose fees are now final," and that "the district court lacks jurisdiction to undo this final decision." Vol. 14, p. 75. The panel stated this:

> Appellants' motion to stay enforcement of the $18,200 attorney fee award is denied. We note the reply and response. The fees at issue were awarded for time spent on Ms. Ellis' appeal in case 126,900. If Appellants were aggrieved by that decision, any remedy must have come from either a successful motion to reconsider or a successful petition for review to the Kansas Supreme Court. Appellants sought relief through both avenues, but the motion and petition were denied. Those fees are now final, and the district court lacks jurisdiction to undo this final decision. We note Appellee's update on current garnishment proceedings.

Defendants/Appellants and the district court ignored this ruling. Vol. 14, p. 75. Those fees are now final, and the district court not only lacked jurisdiction to undo this final decision but also erred in its analysis that a different panel could undo that final decision. The district court's order of disbursement was error and the case should be reversed and remanded with instructions to the district court to issue an order of disbursement of the funds payable to Molly Ellis.

Overview of Attorney Fee Award Under KPRFA

The Lower Court's Fee Award Cannot Be Reconciled With This Court's Prior Ruling In *Ellis*

In granting summary judgment in favor of the appellant Molly Ellis, the lower court expressly adopted the findings made in In *Ellis v. McNeese*, No. 126,900, 2024 WL 4878593 (Kan. App. Nov. 22, 2024) (unpublished) (attached): "In addition, the Court expressly adopts and incorporates by reference the factual summaries

contained in both the majority opinion and the concurring opinion of Judge Arnold-Burger in Ellis v. Flint Hills Technical College, 66 Kan. App. 2d 1 (2024).” .

In *Ellis*, that court did not treat this case as a routine fee dispute or as a simple post-graduation quarrel over money. It reversed the district court's summary-judgment ruling on Molly Ellis's KPRFA claim, held that the district court had misunderstood the nature of the claim, granted Molly's appellate attorney fees under KPRFA, and left open entitlement to other relief including attorney fees on remand. The panel held that Molly's KPRFA claim was not based on Newman's vaccine policy alone, but on Flint Hills' own response to that policy—its refusal to provide an alternative clinical path and its threat to impose failing grades when Molly could not attend Newman without violating her religious beliefs.

The panel's fee ruling is equally important. The panel held that the court of appeals had authority to award Molly appellate fees because KPRFA authorized fees and she had prevailed on appeal by obtaining reversal of the summary judgment entered against her KPRFA claim. The panel then applied the lodestar method and KRPC 1.5, found her counsel's $400 hourly rate reasonable, found 45.5 appellate hours reasonable, and awarded the requested $18,200 appellate fee. The panel also expressly recognized the novelty and difficulty of KPRFA litigation, noting the limited published Kansas caselaw on the Act. It further recognized that KPRFA claims are comparable to other civil-rights claims, where the relief often is nonmonetary and where fee awards are necessary to make statutory enforcement possible.

That ruling supplied the controlling context for remand. The district court was not free to recast the case as "not complex," to treat the years after Molly's graduation as "almost four years" of attorney-fee litigation, or to minimize the significance of the KPRFA result. The appellate panel had already held that the district court's summary judgment was wrong, that Molly succeeded on appeal, that KPRFA supported an appellate fee award, and that the case involved novel and difficult civil-rights enforcement work. A district-court fee award that materially discounts those premises conflicts with the appellate ruling's logic and the mandate's controlling effect.

The lower court's adoption of the panel's determinations was not gratuitous. It was required. *See State v. Soto,* 310 Kan. 242, 252, 445 P.3d 1161 (2019). It is "axiomatic that on remand for further proceedings after a decision by an appellate court, the trial court must proceed in accordance with the mandate and the law of the case as established on appeal." *Id.* at 253. Lower courts "must implement both the letter and spirit of the mandate" accounting for the appellate court's opinion and its circumstances. *Id.* The panel's holdings and factual premises adopted on remand were central to the fee award. The *Ellis* panel held that the district court and defendants had misunderstood the KPRFA claim. Molly's claim was "not based on Newman's policy but on Flint Hills' reaction to it"—Flint Hills' refusal to provide an alternative clinical path and its threat to impose failing grades when Molly could not attend Newman without violating her religious beliefs. The panel further held that

defendants' ripeness argument rested on a "false narrative," and that Molly was not required to sue Newman instead of Flint Hills.

Judge Arnold-Burger's *Ellis* concurrence, which the district court expressly adopted, stated the point even more directly. Flint Hills accepted Molly into its nursing program, agreed to provide the instruction and clinical experience necessary to become a practical nurse, denied her religious exemption request, gave her zeros for missed clinicals, and placed her at risk of failing the program. The concurrence explained that the preliminary injunction preserved Molly's status, that the court made clear "this was a Flint Hills issue," and that Newman was not a party.

Those adopted findings frame and control the fee analysis. The district court could not later characterize the same case as merely "not complex" or as "almost four years" of attorney-fee litigation after Molly graduated. The litigation after graduation included an adverse summary-judgment ruling, an appeal, reversal by the court of appeals, remand, renewed merits proceedings, and final summary judgment for Molly on the KPRFA violation. The case remained merits litigation until liability was adjudicated. Treating it as a prolonged fee dispute contradicts both the *Ellis* mandate and the district court's own remand Journal Entry adopting the panel's factual account.

That fee determination error is not insulated by abuse-of-discretion review. A fee award is reviewed for abuse of discretion, but discretion is abused when the district court commits legal error, relies on factual error, or reaches an unreasonable result. Here, the lower court's fee reductions rested on premises that the *Ellis* ruling

and the remand Journal Entry foreclosed: that the case was simple, that the post-graduation litigation was merely about fees, and that Molly's statutory success did not warrant full civil-rights fee treatment. A discretionary fee ruling cannot stand when its premise conflicts with the law of the case.

That law-of-the-case error infected the entire fee calculation: the denial of a multiplier, the 61.3-hour deduction, the second 20% global reduction, and the court's "simple case/no windfall" rationale. Each rested on a diminished view of the case that the Ellis panel had already rejected and that the district court itself had adopted on remand.

The conflict is most evident in the district court's description of the case after Molly graduated. After graduation, the case was not merely about fees. The district court entered summary judgment against Molly; Molly appealed; this Court reversed; the case returned for adjudication of the KPRFA claim; and Molly ultimately obtained another merits ruling beyond the injunction ruling under KPRFA. The lower court's "fee litigation" framing therefore ignores the underlying summary judgment ruling entitling Molly to the KPRFA's "appropriate relief" in the first instance. It also erases the very appellate merits litigation that produced the *Ellis* decision and fee award. The litigation remained merits litigation until liability was finally adjudicated, not merely a dispute over attorney fees.

The same inconsistency infects the court's complexity analysis. The *Ellis* panel treated the KPRFA appeal as significant enough to justify fees, recognized the scarcity of Kansas KPRFA authority, and linked KPRFA fee awards to the

enforcement function of civil-rights litigation. The district court's later *simple-case-no-windfall* rationale moves in the opposite direction. It discounts emergency injunctive work, summary judgment, appeal, reversal, remand, renewed merits proceedings, and final KPRFA success. That is not a discretionary weighing of the same record; it is a fee analysis built on a materially different understanding of the case than the one this Court already adopted.

The error also matters to the multiplier. The district court apparently denied any multiplier because the panel in *Ellis* and the federal Gilmore case awarded $400/hour without applying one. But the panel in Ellis did not hold that no multiplier could be awarded in this case. It held that $400/hour was reasonable for the appellate work on the record before the panel. It also treated contingency, novelty, difficulty, civil-rights enforcement, and result obtained as fee-supporting factors. Using Ellis as a ceiling rather than as a recognition of the case's difficulty reverses the force of the decision. The relevant question on remand was not whether the prior panel itself applied a multiplier to a discrete appellate-fee motion. The question was whether the full district-court record—years of contingent representation, emergency relief, reversal, remand, and final KPRFA success—justified enhancement under the lodestar/KRPC 1.5 framework.

The district court's stacked reductions create the same problem. The lower court first deducted 61.3 hours, including broad categories for administrative work, "unsuccessful or unrelated" work, journal-entry work, sanctions-related work, and garnishment proceedings. It then imposed another 20% global reduction without

identifying what unreasonable time remained after the first cut. The same generalized concerns appear to have been used twice—once as categorical reductions and again as a global percentage cut. That approach is especially hard to reconcile with *Ellis* because the prior panel had already held that the case involved compensable KPRFA appellate work, that the hourly rate was reasonable, and that KPRFA fees serve the same enforcement function as civil-rights fee awards.

In short, the district court's fee order did not simply exercise discretion within the remand. It recalibrated the case around premises the appellate panel had already rejected or materially undermined: that the claim was weak, that the litigation after graduation was essentially fee-driven, that the case was not meaningfully complex, and that Molly's KPRFA success did not warrant robust statutory-fee treatment. *Ellis* held otherwise. The panel recognized a viable KPRFA claim, appellate success, compensable KPRFA fee authority, a reasonable $400 hourly rate, novelty and difficulty, contingency, and the civil-rights enforcement function of KPRFA fee awards. A remand fee order inconsistent with those premises should be vacated and remanded for a calculation that begins where *Ellis* left off—not from the district court's earlier misunderstanding of the case.

I The Lower Court Undervalued Molly's Success On The Merits And The Excellent Results Obtained

The fee order failed to properly account for the central KRPC 1.5 factor of "the amount involved and the results obtained." *Ellis* at *10. This was not a case where the plaintiff obtained only technical, nominal, or incidental relief. Molly obtained the relief necessary to preserve the practical value of her KPRFA claim: the preliminary

injunction stopped the failing grades, preserved her program status, allowed time for the religious-accommodation dispute to be resolved, and enabled her to graduate on time with the rest of her class. The *Ellis* panel expressly recognized that the preliminary injunction required Flint Hills to record "incomplete" grades rather than failing grades for missed clinicals, and that Molly later began clinical coursework after Flint Hills provided a religious exemption and graduated in June 2022. Then Molly prevailed on appeal providing her with an avenue to obtain a ruling on the merits. A merits ruling would then provide Molly with the "appropriate relief" of remedies including what was otherwise a declaratory judgment that defendants violated the KPRFA, then relief in an award of attorney fees.

That relief was meaningful even if the damages component was limited. In statutory civil-rights litigation, the relevant measure of success is not confined to money damages. *See Snider v. American Family Mut. Ins.* Co., 297 Kan. 157, 298 P.3d 1120, 1131 (2013). The "most critical factor" in determining a reasonable fee is the degree of success obtained, and where a plaintiff obtains excellent results, counsel should ordinarily recover a fully compensatory fee. *Hensley v. Eckerhart,* 461 U.S. 424, 431 (1983). Molly obtained excellent results and precisely the form of relief KPRFA was designed to secure: protection against a government burden on religious exercise before the burden permanently altered her education. The fact that the injunction helped avoid larger damages does not make the litigation less successful; it shows the litigation worked.

The result obtained also included final merits success. After the preliminary injunction, defendants obtained summary judgment; Molly appealed; the Court of Appeals reversed; the case returned to the district court; and Molly ultimately obtained judgment on her KPRFA claim. The *Ellis* panel held that her KPRFA claim was directed at Flint Hills' conduct—not Newman's policy alone—and that the district court had misunderstood the claim when it entered summary judgment. That appellate ruling was not an abstract procedural victory. It corrected the legal framework, restored the KPRFA claim, and led to the remand merits ruling.

The district court's *simple-case-no-windfall* rationale discounts those results. It treats the absence of large money damages as though it diminished the statutory success. But the *Ellis* panel rejected that kind of narrow valuation when it awarded appellate fees. It recognized that KPRFA claims are comparable to other civil-rights claims, where the relief often is nonmonetary and where fee awards are necessary to make enforcement possible.

> KPRFA claims are no different from other civil rights claims where the client's recoverable damages are often not monetary or even monetarily measured. If this court does not compensate attorneys who successfully protect their clients' civil rights when the law provides us the authority to do so, attorneys will not take on such cases because they will not be able to afford to do so. It is unfair to burden civil rights attorneys with the cost of such enforcement especially when those victories reverberate throughout society.

Ellis at *11. That principle applies with even greater force to the district-court fee request: the injunction preserved Molly's education, the appeal reversed an erroneous judgment, and the remand produced KPRFA liability. Those results support a full or near-full lodestar, not a categorical discount and then a second global reduction.

II The Court Failed To Give Meaningful Weight To Contingency, Delay, And Litigation Risk

The fee order gave inadequate weight to KRPC 1.5(a)(8), which expressly requires consideration of "whether the fee is fixed or contingent." Kansas law permits a court to consider contingency as part of the reasonableness analysis, although no single factor is controlling. The error here is not merely that the court denied a 2.0 multiplier. The error is that the court acknowledged contingency and then effectively gave it no operative weight. This case carried substantial risk from the outset. Molly was a nursing student seeking emergency relief against a public educational institution and its nursing director under a relatively undeveloped Kansas religious-freedom statute. She needed immediate litigation to prevent failing grades and preserve her ability to complete the program. The legal theory was later vindicated by the Ellis panel but only after the district court had granted summary judgment against her on ripeness and wrong-party grounds. The *Ellis* panel held that those grounds misunderstood the nature of the KPRFA claim, explaining that the claim was based on Flint Hills' reaction to Newman's policy and Flint Hills' refusal to provide an alternative path for Molly to complete her clinical coursework.

That history is the opposite of a low-risk hourly matter. Molly's counsel carried the case through emergency injunction practice, an adverse summary-judgment ruling, an appeal, reversal, remand, renewed merits proceedings, and final KPRFA success. During that period, counsel bore the risk of nonpayment while litigating against institutional defendants represented by retained defense counsel. The client's claim was primarily injunctive and statutory; the expected monetary recovery was

not the economic engine of the case. As the *Ellis* panel recognized, KPRFA litigation resembles civil-rights litigation because the client's relief is often nonmonetary or difficult to value, and fee shifting is what makes enforcement possible.

That point matters to the multiplier analysis. The district court apparently reasoned that because Molly's appellate fee award and *Gilmore* used a $400 hourly rate without a multiplier, no multiplier was warranted here. But that does not apply the contingency factor to this record. The *Ellis* panel determined the reasonableness of a discrete appellate-fee request after Molly prevailed on appeal; it did not hold that the full district-court litigation carried no contingency risk or that a multiplier could never be justified. Using *Ellis* as a ceiling rather than as confirmation that KPRFA enforcement is compensable civil-rights work reverses the logic of the decision.

At minimum, the district court was required to explain why years of contingent risk, delay in payment, emergency injunctive work, an intervening adverse judgment, appeal, reversal, and final KPRFA success did not justify any enhancement. A bare comparison to cases where no multiplier was awarded is not a substitute for applying KRPC 1.5(a)(8). The proper question was whether this record justified an upward adjustment after the lodestar calculation, not whether some other fee award on a different record stopped at the hourly rate.

III The Fee Award Cannot Stand Because The District Court Did Not Provide A Reasoned, Reviewable Path From The Lodestar Evidence To The Final Amount

K.S.A. 60-5303(b) authorizes "appropriate relief," including "costs and attorney fees determined by the court." Attorney fees are not collateral. They are substantive relief under the KPRFA every bit as much as the other forms of injunctive and

monetary damages. The lower court did not analyze the fee request in the framework determined by the Ellis panel and further did not do so a legally proper and reviewable method.

The Kansas Supreme Court has adopted the eight factors in Rule 1.5(a) of the Kansas Rules of Professional Conduct (2022 Kan. S. Ct. R. at 333), bearing on an ethically "reasonable" attorney fee, as a guide for determining contractual or statutory fee awards. *Johnson v. Westhoff Sand Co.,* 281 Kan. 930, 940-41, 135 P.3d 1127 (2006). This Court is considered an expert on attorney fees and can modify the lower court's determination on fees. *See Johnson*, 281 Kan. at 940 (judges considered to be experts on attorney fees and may draw on that expertise in making an award). The KRPC 1.5 factors include time and labor, novelty and difficulty, customary fee, amount involved and result obtained, time limitations, counsel's experience and ability, and whether the fee is fixed or contingent. See *Ellis*. A court may not treat any single factor as controlling, but it must actually analyze the relevant factors. A contingent-fee agreement may be considered as one factor, though not as the sole factor, in determining a reasonable fee. *Id.*

The lodestar method requires a reasonable hourly rate multiplied by the reasonable number of hours. *See Hensley at* 433 (outlining lodestar method). As the *Ellis* panel recognized, Judge Teeter in *Gilmore v. Beveridge*, No. 2:22-CV-02032-HLT, 2024 WL 1461813 (D. Kan. 2024) applied that method, recognized $400/hour as reasonable in comparable school-board civil-rights litigation, and then considered whether any adjustment was warranted after calculating the lodestar. When a

reduction is based on partial success, the court must consider whether successful and unsuccessful claims were related and whether the plaintiff's level of success justifies the hours reasonably expended. *See Ellis*; *see also Citizens Utility Ratepayer Bd. v. Kansas Corporation Comm'n,* 47 Kan. App. 2d 1112, 1126-27, 284 P.3d 348 (2012) (upholding attorney fee award in utility rate case based on lodestar and KRPC 1.5[a]); *Hatfield v. Wal-Mart Stores, Inc.,* 14 Kan. App. 2d 193, 199, 786 P.3d 618 (1990) (statutory award of reasonable attorney fee for collecting delinquent medical benefits due workers compensation claimant to begin with computation based on reasonable hours multiplied by reasonable hourly rate). Unrelated unsuccessful claims may be excluded, but related claims arising from a common core may not be mechanically severed merely because every contention did not prevail.

The district court did not follow that path. It began with 379 hours at $400/hour, deducted 61.3 hours, treated 317.7 hours as remaining, imposed a further 20% reduction, and denied any multiplier. But the district court did not tie those reductions to a disciplined entry-by-entry or category-by-category analysis. The 61.3-hour deduction was adopted from broad categories: 2.9 administrative hours, 36.1 hours for "unsuccessful or unrelated claims and journal entry dispute," and 22.3 hours for sanctions-related documents and garnishment proceedings. The order did not identify the entries, dates, descriptions, or amounts within those categories. That matters because the grouped categories are legally different. "Unsuccessful" work is not the same as "unrelated" work. Unsuccessful work may remain compensable where it arose from the same facts, evidence, legal theory, or remedial objective as

the successful KPRFA claim. *Hensley* forbids a mechanical reduction simply because a plaintiff did not prevail on every contention; the district court must analyze relatedness and degree of success. The court's combined 36.1-hour category prevented that analysis because it collapsed unsuccessful claims, unrelated claims, and journal-entry work into one number.

> **NOTE**: In the billing submitted to the lower court, the Appellant provided the Consumer Protection claim billing as segregated and not requested in the fee request. The plaintiff did not have any other claims other than the KPRFA claim and it is unknown what the lower court is referring to in *unsuccessful* or *unrelated* claims.

The same problem infects the 22.3-hour deduction. The district court grouped sanctions-related work and garnishment proceedings together without separating legitimate defense of the fee award, necessary post judgment enforcement, and any time the court believed was excessive or noncompensable. Collection work on a final appellate fee judgment is not self-evidently unrelated or excessive; if defendants did not pay a final fee judgment, enforcement work was caused by defendants' nonpayment, not by plaintiff's overbilling. The order did not explain why that work was noncompensable.

The lower court then compounded the problem by imposing a second 20% global reduction after already deducting 61.3 hours. It is true that *Gilmore* applied a 15% reduction after calculating the lodestar, but Judge Teeter did so in a case involving a four-day jury trial and expressly balanced the plaintiff's merits success against billing and litigation-focus concerns. Here, by contrast, the district court first

removed specific categories of hours and then applied a broader 20% reduction without identifying what unreasonable time remained after the first deduction. This is a stacked-reduction problem: the same generalized concerns appear to have been used once as categorical hour cuts and again as a percentage reduction.

The fee calculation should be vacated because the order does not permit meaningful appellate review. A remand instruction should require the district court to identify the challenged entries, separate unrelated from related unsuccessful work, apply the common-core analysis, explain any post judgment or sanctions-related exclusions, and avoid duplicative global reductions.

IV The Court Legally Erred By Denying Any Multiplier And By Relying On Irrelevant BIDS-Rate Comparisons Rather Than The KRPC 1.5 Factors

The lower court also erred in its treatment of enhancement. The district court acknowledged the contingent nature of the representation but rejected the requested 2.0 multiplier because neither *Ellis's* prior appellate fee award nor *Gilmore* applied a multiplier. That reasoning does not answer the governing question. The absence of a multiplier in other cases proves only that those records did not justify one. It does not establish that a multiplier is unavailable here, nor does it substitute for the KRPC 1.5 analysis the court was required to perform. The order failed to meaningfully address: contingency risk, years of nonpayment, emergency injunctive work, appellate reversal, remand, and final KPRFA success. Kansas law requires consideration of the contingent nature of the fee as one relevant KRPC 1.5 factor. The *Ellis* panel and *Johnson* rejected the view that a court is forbidden from considering a contingent-fee arrangement in a statutory fee award; it held that such an

agreement may be considered, though not treated as controlling. The district court did the opposite of what those decisions require. It did not treat contingency risk as a factor to be weighed; it effectively neutralized the factor because two other fee awards did not include a multiplier.

The lower court's use of a BIDS comparison suffers from a different legal defect. Although determining $400.00 an hour was a reasonable market rate, the lower court essentially repudiated that determination when it made a global $50,000 reasonable fee determination by comparing KPRFA civil-rights enforcement to the $120/hour rate paid to appointed criminal-defense counsel through BIDS. That rate is not a market rate, not a KPRFA factor, not a KRPC 1.5 factor, and not a contingency civil-rights benchmark. KRPC 1.5 asks for the fee customarily charged in the locality for similar legal services, not a legislatively constrained indigent-defense compensation rate for a different category of representation.

The error is amplified by the district court's description of the case as "not complex" and by its statement that, after Molly graduated, the case was "almost four years" of attorney-fee litigation. That description is materially wrong: after graduation, defendants still obtained summary judgment, Molly obtained appellate reversal, the case returned for merits adjudication, and summary judgment was ultimately entered for Molly on the KPRFA violation. Part of the substantive relief was an award of attorney fees. That was not merely "fee litigation"; it was continued merits litigation over liability under a state religious-freedom statute.

The multiplier denial should therefore be vacated. At minimum, remand should require the district court to apply KRPC 1.5 to this record, not to the absence of multipliers in other cases, and to disregard the BIDS comparison as an improper benchmark.

V The Additional 20% Reduction Was An Unexplained Second Penalty Imposed After The Court Had Already Removed The Allegedly Objectionable Time

The 20% reduction is independently reversible. After deducting 61.3 hours for what the lower court characterized as administrative work, unsuccessful or unrelated work, journal-entry work, sanctions-related work, garnishment work, and vague entries, the lower court imposed a further 20% cut on the remaining lodestar. But the order did not identify what defect remained in the reduced lodestar. Once the district court removed the challenged categories, it had to explain why the remaining hours were still excessive, duplicative, unrelated, vague, or unreasonable. It did not.

Gilmore does not justify the stacked reduction. *Gilmore* calculated the lodestar, deducted 30.4 hours, and then applied a 15% reduction after explaining why the plaintiff's overall litigation approach and degree of success warranted a modest downward adjustment. It did not authorize a court to subtract broad categories of time and then impose a larger global reduction using the same generalized "simple case" or "no windfall" rationale. Nor does *Hensley* allow a court to avoid the related-claims inquiry by labeling the case simple after the prevailing plaintiff obtained meaningful statutory relief. The arithmetic confirms the lack of rigor. The district court's stated calculation appears internally inconsistent: 379 hours minus 61.3 hours equals 317.7 hours; 317.7 hours at $400 equals $127,080; and an 80% award equals

$101,664, not $101,640. A later 50% reduction from $101,664 would be $50,832, not $50,820. The dollar discrepancy is small, but it matters because the lower court used mechanical percentages to make a major reduction while failing to calculate the base correctly.

The Court of Appeals can decide the precise amount by holding the current order does not supply a reviewable explanation for the categorical cuts, the second 20% reduction, or the final calculation.

VI Settlement Cannot Be A Factor As The Lower Court Utilized

The lower court erred to the extent it reduced the fee award based on dissatisfaction with Ellis's settlement posture. Settlement conduct is not an independent KRPC 1.5 factor, and the court identified no specific hours caused by any alleged failure to settle. A prevailing KPRFA plaintiff may not be penalized for continuing to litigate a statutory civil-rights claim to judgment, particularly where the Court of Appeals had already reversed the adverse summary-judgment ruling and recognized the fee-enforcement function of KPRFA. Without a finding that particular hours were unnecessary because of objectively unreasonable settlement conduct, settlement criticism cannot support either a categorical deduction or a global percentage cut.

VII Vague Entry Determination

Nor did the lower court make findings sufficient to support any reduction for "vague" billing entries. If vagueness supported the 61.3-hour deduction, the order had to identify the entries and the hours removed. If vagueness supported the later 20%

reduction, the order had to explain why vagueness remained after the categorical deductions. Without that explanation, this Court cannot determine whether the same entries were counted twice or whether any vagueness actually affected the remaining lodestar.

VIII Administrative-Time Deduction

Even the 2.9-hour administrative deduction illustrates the same problem. The issue is not whether purely clerical time may ever be excluded. It may. The issue is that the order did not identify the entries, dates, descriptions, or basis for treating the work as clerical rather than compensable litigation support performed by a solo lawyer without staff.

IX Journal-Entry Work

The lower court also could not treat "journal-entry" work as categorically noncompensable without explaining why the work was unnecessary or unrelated. Work required to ensure that the judgment accurately reflected the merits ruling and preserved the relief obtained is ordinarily part of securing the judgment. If the court believed some journal-entry work was excessive or caused by counsel's conduct, it had to identify the entries and explain the causal connection.

X Sanctions Defense Work

The same is true of sanctions-related work. Time spent defending against a sanctions request is not automatically outside the fee case. At minimum, the district court had to distinguish work caused by alleged sanctionable conduct from work

reasonably necessary to defend Molly's statutory fee claim and protect the judgment. A blanket reduction for "sanctions-related documents" does not permit that review.

XI Garnishment/Enforcement Work

The KPRFA provides for "appropriate relief" which does not exclude enforcement work. Enforcement time is especially different from unrelated merits time because it was caused by nonpayment of an existing appellate fee judgment, not by pursuit of a failed claim.

XII Unsuccessful Unrelated Work

The lower court's "unsuccessful or unrelated" category is problematic because Molly had already segregated and excluded time devoted to the KCPA claim. After that segregation, the fee request concerned KPRFA work. The order does not identify what remaining work was supposedly "unrelated" to KPRFA or what "unsuccessful" claim remained to support the 36.1-hour deduction. The absence of that finding matters because unsuccessful work that shares a common core of facts with the successful KPRFA claim is not mechanically excludable.

Conclusion On The Fee Calculation

The fee award should be vacated. The district court had discretion to determine a reasonable KPRFA fee, but it did not have discretion to disregard the controlling premises established in *Ellis*, the law of the case, and its own remand Journal Entry adopting the Ellis majority and concurrence. The court's fee ruling rests on a diminished view of the litigation that the Court of Appeals had already rejected: that the case was simple, that the post-graduation litigation was essentially a fee dispute,

and that Molly's KPRFA success did not warrant full civil-rights fee treatment. That was legal error and factual error, not discretionary judgment.

The order also fails as a lodestar determination. The lower court deducted 61.3 hours in broad categories without identifying the entries, dates, descriptions, or specific legal basis for the reductions; grouped materially different categories such as unsuccessful work, unrelated work, journal-entry work, sanctions-related work, and garnishment work; failed to apply a common-core analysis; and then imposed an additional 20% global reduction without explaining what unreasonable time remained after the categorical deductions. The result is not a reviewable fee calculation. It is a sequence of reductions untethered to entry-specific findings.

Nor can the multiplier denial or BIDS comparison be reconciled with KRPC 1.5, *Johnson*, or *Ellis*. The district court acknowledged contingency but gave it no meaningful weight, despite years of nonpayment, emergency injunction work, an adverse summary judgment, appeal, reversal, remand, and final KPRFA success. It then relied on a BIDS-rate comparison that is not a market-rate comparator, not a KPRFA factor, and not a measure of contingency civil-rights enforcement.

The same defects appear in the subsidiary grounds. Settlement criticism, vague-entry concerns, administrative-time deductions, journal-entry work, sanctions-defense work, garnishment/enforcement work, and supposed unsuccessful or unrelated work were either improper considerations or inadequately explained. None supplies a sufficient basis for the categorical reductions or the later global cut.

A Court of Appeals panel can determine the precise fee amount in the first instance. Or it can remand on this issue. It should vacate the fee calculation and remand with directions requiring the district court to begin from the controlling premises established in *Ellis*, identify any challenged billing entries with specificity, apply a common-core analysis, avoid duplicative reductions, disregard improper factors, and conduct a nonduplicative lodestar/KRPC 1.5 analysis consistent with KPRFA's civil-rights enforcement purpose.

The Sanction

Molly Ellis Is The Appellant – Not Her Attorney

This is Molly Ellis's appeal, her statutory recovery, and her money. The lower court's 50% deduction of her merit award cannot be justified by pretending the fee award belonged only to counsel. This is Molly Ellis's appeal from a judgment reducing her statutory KPRFA recovery. The district court did not impose a personal sanction against her attorney. It did not enter judgment against that attorney. It did not order the attorney to pay the defendants anything. It reduced Molly's relief in an attorney fee award to one half. That matters because the fee award was part of Molly's statutory remedy. KPRFA authorizes relief to the person whose religious exercise was burdened, including "costs and attorney fees determined by the court." K.S.A. 60-5303(b)(6). Attorney-fee statutes ordinarily award fees to the winning litigant, not directly to the attorney. The Supreme Court has recognized that fee awards under prevailing-party statutes are payable to the litigant, even though the award may compensate counsel under the client's fee agreement.

Nor can Molly be treated as sanctionable merely because she was the client. There was no finding that Molly participated in any of the conduct the lower court targeted. The district court did not find that Molly signed, filed, directed, knew of, ratified, or personally caused any citation defect or journal entry.

That distinction is dispositive under K.S.A. 60-211. The statute permits sanctions against the attorney, law firm, or party that violated the rule or is responsible for the violation. It does not authorize punishment of a represented client merely because her lawyer filed the paper. And if the sanction is payable to the opposing party, it must be tied to reasonable expenses incurred because of the offending filing. K.S.A. 60-211(c). The district court did neither. It did not sanction attorney Baker personally. It did not identify Molly as responsible. It did not calculate defendants' causal expenses. It simply took half of Molly's substantive KPRFA fee recovery.

> NOTE: "Courts have generally declined to impose sanctions on represented parties." *Rentz v. Dynasty Apparel Indus., Inc.,* 556 F.3d 389, 398 (6th Cir.2009), citing 5A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1336.2 (3d ed. 2004) ("Imposing a sanction on the client has met with disfavor"). In the rare instances where courts have found it appropriate to sanction a client rather than an attorney, the client has been directly responsible for the unnecessary burden imposed on the court and the opposing party. *See Independent Fire Ins. Co. v. Lea,* 979 F.2d 377, 379 (5th Cir.1992) (The "represented party against which sanctions are levied must be a party who had some direct personal involvement in the management of the litigation and/or the decisions that

resulted in the actions which the court finds improper under Rule 11").

Because the district court did not calculate Defendants' reasonable expenses, the $50,820 reduction can only be understood as a deterrent or punitive sanction. That makes the missing findings dispositive. *Wood v. Groh* required the court to consider the effect of the conduct on the litigation in time or expense, the responsible person's legal training, the financial resources of the responsible person, the amount needed to deter that person from repetition, and the amount needed for general deterrence. The order did not make those findings. It did not identify Molly as responsible. It did not evaluate the financial resources of the person supposedly responsible. It did not consider whether nonmonetary sanctions, referral, correction, admonition, or a smaller counsel-directed sanction would suffice. And it did not explain why deterrence required taking half of Molly Ellis's statutory KPRFA fee recovery. A deterrent sanction cannot be selected by choosing a percentage of the prevailing claimant's statutory remedy. It must be tied to the responsible actor, the harm, and the minimum amount necessary to deter.

The practical effect was to transfer $50,820 from the prevailing KPRFA claimant to the defendants who violated her religious-freedom rights. That was not an expense award. It was not a counsel-payable sanction. It was not a sanction against a responsible party. It was a forfeiture of Molly's statutory recovery based on alleged attorney conduct. K.S.A. 60-211 does not authorize that mechanism.

The District Court Used Molly's KPRFA Recovery As A Sanctions Fund

K.S.A. 60-211(c) does not authorize sanctions against a client merely because she is the represented party. The statute permits sanctions against the attorney, law firm, or party that violated subsection (b) or is responsible for the violation. But subsection (b) places the certification obligation on the attorney or an unrepresented party who presents the paper. Molly did not sign, file, submit, or later advocate the October 20 opposition as an unrepresented party. Nor did the court find that she directed, knew of, ratified, or was otherwise responsible for any citation defect or journal-entry issue. Being the client is not enough.

Because the order identified only counsel's conduct, any punitive or deterrent sanction had to be directed at counsel or the law firm, or else tied to reasonable expenses caused by the offending paper. The court did neither. It reduced Molly's KPRFA recovery, thereby punishing a prevailing statutory claimant whom the court never found responsible for the alleged violation. Even assuming the district court's characterization of counsel's conduct were correct, it would not follow that Molly Ellis could be made the victim of the sanction..

The district court did not calculate a compensatory sanction. The lower court imposed a punitive or deterrent sanction by selecting 50% of Molly's fee award as the penalty for what it described as counsel's perceived breach of the "bond of trust." That distinction is dispositive. If the sanction was compensatory, K.S.A. 60-211(c) required proof and findings of reasonable expenses incurred because of the offending paper. If it was punitive or deterrent, the sanction should have been directed to the attorney

or law firm responsible—not extracted from Molly's statutory KPRFA recovery and handed to the defendants as a windfall.

The district court's "breach of trust" rationale confirms the problem. "Breach of trust" is not a K.S.A. 60-211 standard. The statute targets filings made to harass, delay, or needlessly increase costs; unwarranted legal contentions; unsupported factual contentions; and improper factual denials. K.S.A. 60-211(b). It then authorizes sanctions against the attorney, law firm, or party responsible and permits expenses incurred because of the offending paper. K.S.A. 60-211(c). The court instead invoked a disciplinary concept—breach of the bond of trust owed by officers of the court—and used that concept to reduce Molly's KPRFA recovery. That reasoning may explain why the court referred the matter to disciplinary authorities, but it does not authorize confiscating half of a prevailing claimant's statutory fee award.

The district court did not identify any sanctionable act by Molly Ellis. And it did not award Defendants quantified expenses caused by the October 20 opposition. Instead, the court reduced Molly's statutory remedy of KPRFA attorney-fee recovery by 50% to punish counsel's alleged misconduct. That is not a sanction structure K.S.A. 60-211 authorizes. K.S.A. 60-211(c) permits an "appropriate sanction" against the "attorney, law firm or party" that violated the statute or is responsible for the violation. It further provides that a sanction may include payment to the opposing party of "reasonable expenses, including attorney's fees, incurred because of the filing of the pleading, motion or other paper." KPRFA, by contrast, authorizes relief to the

person whose religious exercise was burdened, including "costs and attorney fees determined by the court." Those are different statutes serving different functions.

The order collapsed them. The court first calculated Molly's fee award at $101,640. It then stated that "it is appropriate to strike 50% of that fee as sanction for Plaintiff's falsifications of citations and misrepresentations noted above," and awarded Molly only $50,820. Judgment Filed, p. 11. The court's stated reason was counsel's breach of trust as an officer of the court, not any finding that Molly herself committed sanctionable conduct. Judgment Filed, pp. 11–12.

That matters. Molly's substantive fee award was hers. It was not merely her attorney's compensation. It was part of the statutory relief available to Molly because Defendants violated KPRFA. The prior appellate decision recognized that, in addition to declaratory and injunctive relief, Molly sought attorney fees under KPRFA and that her district-court fee claim could be addressed on remand along with her other KPRFA relief. Vol. 11, pp. 35–36. Plaintiff's fee motion likewise sought fees as KPRFA relief for litigation that allowed Molly to remain in school, complete her degree, reverse summary judgment, and obtain a final KPRFA ruling. Vol. 12, pp. 246–248. Using that recovery as a penalty punishes the prevailing claimant. It takes a statutory remedy created for the person whose religious exercise was burdened and reduces it because of alleged attorney conduct. The order does not identify Molly as a sanctionable actor. It does not find that she directed, knew of, ratified, or benefited from any citation defect. It does not explain why the sanction should be borne by the client rather than addressed through tools aimed at counsel, such as a counsel-

payable sanction, an expense award limited to Defendants' causal costs, a reprimand, or referral to disciplinary authorities.

The causal-expense problem independently confirms the error. If the lower court intended an expense-shifting sanction, K.S.A. 60-211(c) required a calculation of reasonable expenses incurred because of the offending paper. And what expenses could there have been? On this record it is unknown. The order contains no defense billing records, no hourly rates, no time entries, no causal calculation, and no finding that Defendants incurred anything close to $50,820 because of the October 20 opposition. The $50,820 figure is simply half of Molly's already-reduced fee award. Judgment Filed, p. 11. That is not expense compensation. It is a forfeiture of Molly's recovery.

The due-process problem follows from the same structure. If the district court intended to sanction Molly by reducing her KPRFA remedy, it had to identify Molly as a sanction target and give notice that her statutory recovery—not counsel personally, and not defense expenses caused by a filing—would be reduced as punishment. The sanctions motion targeted counsel's filing conduct. The order punished Molly's recovery. That shift matters because Molly had a distinct statutory interest in the KPRFA relief the court had determined was otherwise reasonable.

The result also creates a perverse incentive. Defendants violated KPRFA, yet the sanction transferred half of the fee remedy away from the prevailing claimant and left the violators with the benefit of the reduction. That is not deterrence

calibrated to a filing violation. It is a windfall to the losing civil-rights defendants at the expense of the person the statute was designed to protect.

The order therefore fails at the threshold. Even assuming some sanctionable citation or journal-entry conduct, the district court still had to choose a sanction authorized by K.S.A. 60-211 and proportionate to expenses or deterrence. It could not convert Molly's KPRFA attorney-fee recovery into a sanctions fund for counsel's alleged misconduct.

The October 20 Opposition Contained Citation Defects, Not False Statements Of Law Or Fact

The October 20 opposition undoubtedly contained citation problems. The sanctions order treated the October 20 opposition as though it was a fabricated-authority brief. That characterization does not fit the record. The sanctioned filing was a 15-page opposition to Defendants' 205-page motion to alter or amend judgment, which included transcript excerpts and exhibits. Vol. 12, pp. 1–205; Vol. 12, pp. 206–220. The scale matters. The opposition was primarily a response to Defendants' factual, record, and remand arguments, not a brief built on invented law. For whatever deficiencies it contained, it did not implicate the statutory harms K.S.A. 60-211 targets: it was not filed to harass, cause unnecessary delay, or needlessly increase litigation costs; it did not assert a claim, defense, or legal contention outside the realm of existing law or nonfrivolous argument; it did not present factual contentions lacking evidentiary support; and it did not deny facts contrary to the evidence. Nor did the court identify any reasonable expenses incurred "because of" the opposition remotely approaching $50,820. K.S.A. 60-211(b)–(c).

In context, the opposition contained correct statements of law and fact along with numerous correct citations. It cited the *Ellis* decision for the central propositions that Molly sued the proper parties, that her claim was ripe, that the case concerned Flint Hills' response to Newman's policy rather than Newman's policy alone, that Defendants offered no alternative, and that Molly was not required to test Newman's resolve before her KPRFA claim ripened. Vol. 12, pp. 206–10, 214–18. Those were the controlling remand points and were not fabricated. The opposition also cited the transcript excerpts Defendants themselves relied on. It cited Ex. 2, Tr. 36:11–24 for the Student Performance Concern Form testimony and Ex. 2, Tr. 36:25–37:18 for the warning and attendance-policy testimony. Vol. 12, pp. 211–12. Those were not invented record citations. They corresponded to the transcript material Defendants placed in their own motion. Vol. 12, pp. 5–7.

The statutory citations were likewise real and relevant. The opposition cited K.S.A. 60-259(f), K.S.A. 2023 Supp. 60-5302(a), and K.S.A. 2023 Supp. 60-5303(a)(1)–(2). Vol. 12, pp. 207, 214, 217. Those statutes governed the motion-to-alter standard and the KPRFA burden and strict-scrutiny framework. They were not false authorities. Appellant counsel does not defend the citation defects. Some were glaring. But glaring citation defects are not the same thing as false statements of law or fact. A citation can be wrong, miscited, or non-verifiable while the proposition attached to it remains correct. The sanctions order blurred that distinction. Sanctions analysis must turn on materiality, prejudice, causation, and proportionality—not on treating every citation defect as intentional deception.

That distinction is especially important because the order's two most prominent examples were not fabricated cases. The order states that counsel falsely cited "State v. Baker, 290 Kan. 842, 235 P.3d 424 (2010)" and "Gannon v. State, 298 Kan. 110 310 P.3d 1196 (2014)." But *State v. Becker*, 290 Kan. 842, 235 P.3d 424 (2010), is a Kansas Supreme Court case, and *Gannon v. State*, 298 Kan. 1107, 319 P.3d 1196 (2014), is also a Kansas Supreme Court case. Defendants themselves acknowledged *Becker* and *Gannon* were "real Kansas cases," while arguing that they did not support the propositions for which they were cited. Vol. 12, p. 231. That distinction is central to proportionality. A real case cited for the wrong proposition is a citation error; it is not a non-existent authority.

The remaining challenged citations should be treated with the same precision. Defendants identified several Kansas citations they contended were non-existent or non-verifiable. Vol. 12, p. 231. Appellant does not ask the Court to treat those citations as correct. The narrower point is that the propositions attached to them were unremarkable and ordinary legal propositions, not fabricated law: a motion to alter is not a vehicle to relitigate; remand and law-of-the-case principles constrain the district court; appellate mandates must be obeyed; apparent authority may arise from conduct and position; and ratification may be shown by conduct. The sanctions order did not find those propositions false. It found citation defects and treated them as if they were intentional legal deception.

The sanction response made this point directly. It contended that every statement of Kansas law in the opposition was substantively correct, that the citation

irregularities were technical and clerical, that Defendants suffered no prejudice because they understood the arguments and filed a detailed reply, and that there were no misrepresentations of law or fact in the opposition. Vol. 12, pp. 243–45. The sanctions order did not identify any false factual assertion in the opposition that affected the ruling. Nor did it identify any false rule of law the court adopted because of a defective citation.

The most important practical fact is that the district court did not rely on any defective citation to reach a false legal result. The lower court denied Defendants' motion to alter or amend. Vol. 12, pp. 240–42. The district court did so on the same controlling premise Plaintiff's opposition advanced: the remand required the district court to determine whether Defendants' own actions substantially burdened Molly's religious exercise, and the lower court's September 3 ruling had addressed that appellate directive. Vol. 12, p. 241. The lower court further found that requiring Molly to retain counsel and file litigation to protect her KPRFA rights itself constituted a substantial burden. Vol. 12, p. 242. Whatever the citation defects, they did not mislead the lower court into granting relief it otherwise would not have granted. The court denied the motion on the merits and reaffirmed the KPRFA burden theory.

That is where *Anderson* and the W*ood v. Groh,* 269 Kan. 420, 7 P.3d 1163 (2000) factors matter. In *Anderson v. Aldrich,* another Kansas district court addressed the same category of citation-related concern, acknowledged GAI use, described the mistakes as "rather glaring," but found them "not misleading." The Anderson court also stated that unsupported legal statements were "unprofessional"

but "not misstatements of relevant legal principles," and imposed no sanction. Anderson Order, p. 4. That was the proper analytical line: citation defects may warrant correction, criticism, or caution, but they do not automatically establish false statements of law or fact.

The "not misleading" point goes directly to the *Wood* factors. It undermines willfulness because a glaring but non-misleading citation defect is consistent with negligence or poor checking, not intentional deception. It undermines whole-pleading infection because the problem was confined to a limited citation cluster, not the opposition's record facts, statutes, transcript citations, or Ellis-remand theory. It undermines intent to injure because the propositions were ordinary and independently supportable. And it undermines litigation-effect and expense because the court did not adopt a false rule of law, Defendants understood and answered the arguments, and the motion to alter was denied on the merits.

To the extent the lower court relied on *Anderson* as a pattern aggravator, Anderson cuts the other way. It does not show another sanction, another finding of intentional deception, or another finding that defective citations misled a court. It shows that another Kansas district court reviewed similar citation concerns, found them glaring but not misleading, recognized that the relevant legal principles were not misstated, and imposed no sanction. That record does not support escalating this case into a 50% reduction of Molly's KPRFA fee award.

At most, the citation problems were glaring but not misleading. They did not transform the October 20 opposition into a fabricated-authority brief. They did not

establish intentional legal deception. They did not cause the district court to adopt a false rule of law or enter an erroneous ruling. And they could not justify converting Molly's statutory KPRFA fee award into a sanctions fund through a 50% reduction.

Anderson v. Aldrich

The lower court cited *Anderson v. Aldrich*, Douglas County District Court Case No. DG-2025-CV-000429, as evidence that the citation conduct in this case was not isolated. The district court order states: "this is not the only time Plaintiff's counsel has submitted false citations to a district court." That single sentence does significant work in the order. It converts what might otherwise be treated as an isolated lapse into a pattern, and it is that pattern characterization that drives the 50% sanction rather than a lesser response. The premise is false.

The Anderson record is now before this Court. It does not show a pattern of sanctionable conduct. It shows the opposite. The Anderson court — Judge James R. McCabria of the Seventh Judicial District — reviewed a citations category of conduct and declined to impose any sanction. His written order, filed March 13, 2026, addressed a motion for sanctions targeting citation errors in Plaintiff's pleadings, including erroneous citations to cases and statutes. Judge McCabria acknowledged the errors directly. He described them as "glaring" but "not misleading." "The Court might hope for more but the Court generally agrees that - in the context of the entire circumstances - the mistakes are rather glaring and not misleading." The judge imposed nothing — no monetary sanction, no fee reduction, no formal finding of a violation, no referral to the disciplinary board. He left the matter "under

consideration" as a watch going forward, conditioned on whether future pleadings gave cause for additional concern. The lower court's order converted a non-sanction into a pattern-establishing aggravator.

Anderson was not a sanctions order against counsel. It was the opposite. Judge James R. McCabria considered a motion for sanctions and to strike a surreply, with counsel appearing and argument heard. The court acknowledged the citation-related problems directly. It stated that GAI is "a wild-card in the legal landscape"; that counsel did not deny using GAI; and that the response took a "no harm, no foul" approach. But the court then concluded that, "in the context of the entire circumstances," the mistakes were "rather glaring and not misleading." It further stated that the uncited legal statements were "unprofessional" but "not misstatements of relevant legal principles," and acknowledged counsel's health explanation as a circumstance that "may have affected the care and attention he gave the matter."

Beyond the outcome, the *Anderson* record resolves two factual premises that the Ellis order treated as open and troubling. First, regarding AI use: the Ellis order says the court suspects counsel used generative AI but received no admission, and the order's tone treats this non-admission as a form of evasion. The Anderson order states plainly that "Plaintiff's counsel does not deny the use of GAI in creating the pleadings at issue." That disclosure was evaluated, weighed, and found insufficient to warrant any sanction. Treating the absence of a parallel admission in Ellis as an

aggravating factor — when the disclosure had already been made in Anderson — is both factually inaccurate and procedurally unfair.

Second, regarding the health episode: counsel's opposition to sanctions in *Anderson* states that the citation errors occurred while he was recovering from a life-threatening staph blood infection requiring hospitalization and extended recovery. Judge McCabria acknowledged this explanation and credited it as a factor potentially affecting the care given to the matter. The *Ellis* order contains no reference to any health-related explanation. The order's silence on it is an unexplained omission.

The use of Anderson in the Ellis sanctions order thus fails on multiple independent grounds. Factually, the *Anderson* order does not support the proposition for which it was cited. And substantively, the effect of citing *Anderson* as a pattern-establishing aggravator was to justify a 50% sanction against Molly rather than a lesser response — without the support of a record that could bear that weight. *Anderson v. Aldrich* does not establish a pattern of sanctionable misconduct by Plaintiff's counsel. It establishes that another Kansas district court reviewed the same category of conduct, in the same time period, with full knowledge of AI use and a documented health explanation, and declined to impose any sanction at all.

Factually, *Anderson* does not say what the lower court used it to say. It does not establish another sanction, another willful violation, or another finding of intentional fabrication. Substantively, Anderson points in the opposite direction: another Kansas district judge reviewed similar citation-related concerns, considered GAI and medical context, found the mistakes glaring but not misleading, and imposed

no sanction. A sanctions order based on improper citations must itself accurately use the authority it invokes. *Anderson* does not establish a pattern of sanctionable misconduct. It establishes that another Kansas district court chose caution, not punishment. Using Anderson as an aggravating basis for a $50,820 sanction was error.

The January 29 Journal-Entry Sequence Did Not Involve A False Representation Of Defense Approval

The district court sua sponte issued a sanction for the submission of a proposed journal entry. It was not the subject of appellees' sanction motion. The lower court provided no notice of its sua sponte inclusion of a journal entry. *See United Nat. Ins. v. R&D Latex Corp*., 242 F.3d 1102, 1115-16 (9th Cir. 2001) (explaining that sua sponte sanctions under Rule 11 should "ordinarily be imposed only in situations that are akin to a contempt of court"); *Kyros L. P.C. v. World Wrestling Ent., Inc.*, 78 F.4th 532, 543 (2d Cir. 2023) ("When a court initiates Rule 11 sanctions sua sponte and the opportunity to correct or withdraw the challenged submission is unavailable, the court must make a finding of bad faith on the part of the attorney before imposing the sanctions"). The lower court provided no opportunity for any explanation and made no such findings.

Then the district court treated the January 29 journal-entry episode as a Rule 170 violation and an aggravating factor for sanctions. That was error on multiple levels. By its own terms, Supreme Court Rule 170 applies only when "the court directs a party to prepare an order." No such direction was given here. Plaintiff preserved that objection promptly and repeatedly, stating that "[t]he Court did not assign any

attorney to draft journal entry pursuant to Rule 170" and later that the court "did not direct any attorney to journalize or do so pursuant to Rule 170." Vol. 13, pp. 209, 287, 328. Rule 170 therefore could not supply the misconduct premise Defendants asserted.

The record instead reflects a disputed proposed-order exchange. Defendants initiated it. At 2:12 p.m. on January 29, 2026, defense counsel filed a certificate attaching Defendants' proposed journal entry. Vol. 13, p. 203. That proposal improperly listed Plaintiff's counsel under the "Submitted by" heading—despite Plaintiff having no role in drafting, authorizing, or submitting it—and included only a blank signature line. Vol. 13, p. 208. Plaintiff's counsel responded promptly with a competing proposal. At 2:51 p.m., Plaintiff's counsel emailed defense counsel: "The Court did not assign any attorney to draft journal entry pursuant to Rule 170. Nevertheless, I have attached proposed Journal Entry that reflects the orders of the Court today. If you have any objections let me know." Vol. 13, p. 287. That email did not represent agreement; it expressly invited objections.

Plaintiff uploaded a proposed entry around the same time using E-Flex's "Proposed Order" category. Defendants later acknowledged the timing. Vol. 13, pp. 211–13. Judge Fowler signed Plaintiff's proposed entry at 3:41 p.m. that same day. Vol. 13, pp. 200–02. The signed order contained no language stating it was "agreed," "stipulated," "approved by agreement," or "submitted jointly." Vol. 13, p. 201.

The signature page likewise did not represent defense approval. It contained blank form lines for both counsel. The defense block stated "Approved by," followed by a blank "By:/s/" signature line above Mr. Bullins's typed name and contact information. Vol. 13, p. 202. That was merely a placeholder. Kansas Supreme Court Rule 1.12(a) treats an electronic signature as "/s/[Name of Filing User]" typed in the signature space. For multi-signature documents, Rule 1.12 permits scanned written signatures, an express representation of consent on the document, or another court-approved method. A blank "/s/" line satisfies none of these requirements.

The next morning, January 30, Plaintiff filed formal objections to Defendants' proposed journal entry. Those objections reiterated that no Rule 170 direction had been given, that Defendants' version falsely listed Plaintiff's counsel as the submitter, and that Plaintiff had not drafted, authorized, or submitted it. Vol. 13, pp. 209–10. Judge Fowler's sanctions order materially misstated this sequence. It asserted that Plaintiff "filed objections to the proposed journal entry and then proceeded to file a journal entry prepared by Plaintiff's counsel representing that it had been approved by defense counsel." That chronology is backwards. Plaintiff emailed and uploaded his proposed entry on January 29; the court signed it at 3:41 p.m. the same day; and Plaintiff filed objections to Defendants' version the next morning. Vol. 13, pp. 200–02, 209–10, 287.

At most, this was an administrative dispute over how competing proposed journal entries were handled in E-Flex during an unresolved proposed-order exchange not involving Rule 170. Defendants themselves later described the filing as

"Plaintiff's proposed version." The document on its face disclosed the lack of defense approval through the blank signature block and the complete absence of any consent language. Filing under the "Proposed Order" category in E-Flex is consistent with submitting a draft for judicial review; it is not, without more, a representation that the order is stipulated or finally agreed. This episode therefore does not support a finding that Plaintiff's counsel made a false representation of defense approval under KRPC 3.3. It cannot legitimately serve as an aggravating factor for the 50% reduction in Molly's KPRFA attorney-fee award.

Conclusion

The sanction should be vacated. Even assuming the district court could criticize the October 20 opposition or the January 29 proposed-journal-entry sequence, the sanction imposed here was not one K.S.A. 60-211 authorized. The court did not enter a sanction against counsel or the law firm. It did not identify Molly Ellis as a responsible actor. It did not find that she signed, filed, directed, knew of, ratified, or caused any citation defect or proposed-order issue. And it did not calculate any reasonable defense expenses incurred because of the allegedly offending opposition paper. Instead, the lower court reduced Molly's KPRFA fee recovery by 50%, transferring $50,820 away from the prevailing statutory claimant and leaving the defendants with the benefit of the reduction. That structure punished the client for alleged attorney conduct without the findings K.S.A. 60-211 requires.

The sanction also rests on factual and legal overstatement. The October 20 opposition contained citation defects but the order treated those defects as though the filing was a fabricated-authority brief that misled the court. The record does not support that characterization. The opposition correctly invoked the controlling *Ellis* remand principles, relied on real transcript material, cited governing KPRFA

statutes, and opposed a motion to alter that the district court denied on the merits. The order did not identify a false factual assertion that changed the ruling, a false legal proposition the court adopted, or causal defense expenses approaching $50,820.

The *Anderson* and journal-entry grounds do not cure the defect. *Anderson* did not establish a pattern of sanctionable misconduct; it showed that another Kansas district court reviewed similar citation issues, found them glaring but not misleading, and imposed no sanction. The January 29 journal-entry sequence was not part of the sanctions motion, was not preceded by Rule 11-style notice or an opportunity to respond, and was materially misstated in the sanction order. The signed proposed order contained no agreed, stipulated, or approved-as-to-form language, and the blank defense signature block did not constitute a representation of defense approval.

The cumulative problem is therefore not merely that the sanction was severe. It is that the court selected the wrong sanction target, used the wrong sanction mechanism, omitted the causal-expense findings, failed to make the findings required for deterrence, and relied on aggravating premises the record does not support. A prevailing KPRFA plaintiff's statutory fee recovery cannot be converted into a sanctions fund for alleged attorney misconduct.

The Court of Appeals should reverse the 50% reduction and direct restoration of the deducted amount to Molly's fee award. At minimum, the sanction should be vacated and remanded with instructions that any further sanction proceedings must identify the specific offending paper, the responsible actor, the statutory basis for liability, any causal expenses, the *Wood* factors, ability to pay, and the least severe sanction adequate to deter—without reducing Molly's statutory KPRFA recovery absent findings that Molly herself was responsible.

Request for Oral Argument

/s/Linus L. Baker

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Appellant

Certificate of Service Pursuant to Rule 1.11

Service is made here by notice of electronic filing pursuant to Rule 1.11 to the individuals below and on the dates reflected in the file stamp hereupon as having been filed with the Clerk of The Appellate Court.

Jeffrey A. Bullins, KS 18340 10851 Mastin St., Suite 1000 Overland Park, Kansas 66210 (913) 342-2500 (913) 342-0603 fax Email: jbullins@slln.com	/s/Linus L. Baker Linus L. Baker for the appellant

Appendix

Garnishment Disbursement Order. A-1

District Court Memorandum. A-5

Ellis v. McNeese, No. 126,900, 2024 WL 4878593
(Kan. App. Nov. 22, 2024). A-17

Anderson v Aldrich Memorandum. A-29

ELECTRONICALLY FILED
2026 Mar 13 PM 1:18
CLERK OF THE LYON COUNTY DISTRICT COURT
CASE NUMBER: 2022-CV-000007
PII COMPLIANT

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Court:	Lyon County District Court
Case Number:	2022-CV-000007
Case Title:	Molly Ellis vs. Kim McNeese, et al.
Type:	ORD: Order (Generic) Orders on Disbursment and Garnishment

SO ORDERED,

/s/ Honorable W. Lee Fowler, District Court Judge

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IN THE DISTRICT COURT OF LYON COUNTY, KANSAS

Molly Ellis Creditor vs. Kim McNeese et al Debtor	Case No. 2022-CV-000007

JOURNAL ENTRY

THIS MATTER coming before the Court on Defendants' Second Motion to Quash Orders of Garnishment and Amend Court Ruling of January 29, 2026, and Plaintiff's Motion for Disbursement of Garnished Funds, and the Court having reviewed the motions, the Garnishee's Answer filed by Community National Bank & Trust on February 17, 2026, and the record in this case, and being duly advised in the premises, THE COURT FINDS AND ORDERS AS FOLLOWS:

1. On November 22, 2024, the Kansas Court of Appeals entered judgment in favor of Plaintiff Molly Ellis and against Defendants Kim McNeese and Flint Hills Technical College in the principal amount of $18,345.00, consisting of $18,200.00 in attorney fees under Supreme Court Rule 7.07(b) and $145.00 in docketing fees under Supreme Court Rule 7.07(a)(4) and (a)(5).
2. The mandate issued on May 15, 2025
3. Thereafter, this Court issued a non-earnings Order of Garnishment directed to Community National Bank & Trust, 701 Merchant Street, Emporia, Kansas 66801.

4. Community National Bank & Trust filed its Garnishee's Answer on February 17, 2026, confirming that it is holding funds belonging to Judgment Debtor Flint Hills Technical College in the amount of $22,039.29, that no portion of said funds is claimed to be exempt, restricted, or otherwise not subject to garnishment, and that said funds have been retained pursuant to the Order of Garnishment.
5. The funds held by Community National Bank & Trust are sufficient to satisfy the full judgment balance plus accrued interest.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

6. Defendants' Second Motion to Quash Orders of Garnishment and Amend Court Ruling of January 29, 2026 is denied to the extent the Court declines to quash the garnishment and instead orders that the funds held pursuant to the garnishment be paid into the Clerk of the District Court as set forth herein.
7. Community National Bank & Trust is hereby directed and ordered to disburse from the funds currently held pursuant to the Order of Garnishment the sum of $22,039.29, payable by check as follows:

Pay to: **Clerk of the Court Lyon County Kansas**

Mail or deliver to:

Clerk of the Court
430 Commercial Street
Emporia, Kansas 66801

8. The funds disbursed to the Clerk of the Court as set forth above shall be held by the Clerk as a supersedeas bond pending further order of this Court or the

resolution of any appellate proceedings and shall not be disbursed to any party except upon further order of this Court.

9. The payment of said funds into the Clerk's office is intended to preserve Defendants' appellate rights and shall not constitute a waiver of any appellate rights.

10. Community National Bank & Trust is released from any further obligation under the Order of Garnishment upon its compliance with payment to the Clerk of $22,039.29.

11. Defendants shall disclose Defendants' witnesses, if any, for the March 24, 2026 hearing by March 14, 2026.

IT IS SO ORDERED.

Dated this _____ day of _____, 2026.

Submitted by:

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CLERK OF THE LYON COUNTY DISTRICT COURT
CASE NUMBER: 2022-CV-000007
PII COMPLIANT

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Court:	Lyon County District Court
Case Number:	2022-CV-000007
Case Title:	Molly Ellis vs. Kim McNeese, et al.
Type:	ORD: Order Originated by Judge Memorandum Decision (Plaintiff's Claim for Attorney fees)

SO ORDERED,

/s/ Honorable W. Lee Fowler, District Court Judge

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IN THE DISTRICT COURT OF LYON COUNTY, KANSAS
CIVIL COURT DEPARTMENT

MOLLY ELLIS Plaintiff, vs. KIM McNEESE, and FLINT HILLS TECHNICAL COLLEGE Defendants.	)	Case No. LY-2022-CV-000007 Division

MEMORANDUM DECISION

This case has been submitted to this Court for a decision on the Plaintiff's claim for attorney's fees after prevailing on her claims against the Defendants for violating the Kansas Preservation of Religious Freedom Act. K.S.A 60-5301 et. Seq. (KPRFA).

FACTS OF THE CASE

Molly Ellis enrolled as a student in Flint Hills' Practical Nursing program in August 2021. When Ellis was admitted, she told Flint Hills of her objections to receiving vaccinations on the grounds that they violated her personal religious beliefs. At that time, she asked Flint Hills to grant her a religious waiver for all vaccinations. As part of her coursework for the spring 2022 semester, Flint Hills assigned Ellis to complete a clinical rotation at Newman Regional Health. Ellis was scheduled to begin that rotation on February 7, 2022. On January 19, 2022, Newman implemented a policy requiring Flint Hills students like Ellis, among others, to be vaccinated against COVID-19. On January 25, 2022, McNeese informed Ellis and other nursing students of Newman's policy, telling them they must comply or they would be unable to successfully complete the clinical requirements for the nursing program. Flint Hills told its nursing students if they were not vaccinated, they had the option to withdraw from the program but offered no other

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accommodation. Until this point, Ellis received exemptions for all necessary vaccinations in order to conduct her coursework at any facility. That same day, Ellis requested information to allow her to seek a religious exemption from Newman's policy. McNeese told her Newman was not accepting any exemptions from Flint Hills students. To complete her clinical coursework, Ellis asked to switch to another medical facility, which was accepting religious exemptions to the COVID-19 vaccination. McNeese told Ellis she could not switch because that facility could not provide an equivalent clinical experience. McNeese also told Ellis she would receive a zero for each day that she missed her clinical rotation at Newman. On February 2, 2022, Ellis sued Flint Hills and McNeese (Defendants) under KPRFA, alleging they substantially burdened the exercise of her religion. Ellis sought injunctive relief enjoining Defendants from enforcing Flint Hills' clinical partners' vaccination policies against Flint Hills' nursing students and requiring Defendants to make a suitable religious accommodation to Ellis that would allow her to satisfy Defendants' clinical component of the nursing coursework so that she could complete that coursework as scheduled. She also sought declaratory relief, actual damages, costs, and attorney fees. On February 25, 2022, this Court partially granted Ellis' motion for a preliminary injunction, ordering Defendants to revise Ellis' academic record at Flint Hills "to record 'incomplete' rather than failing grades for all past or future in person clinicals scheduled" for Ellis at Newman or another one of Flint Hills' clinical partners, Emporia Presbyterian Manor. On March 11, 2022, Newman notified Flint Hills that it had amended its COVID-19 vaccination policy. Newman would now accept unvaccinated students into its facility if Flint Hills provided those students with a religious or medical exemption from receiving the COVID-19 vaccine. Ellis began her clinical coursework at Newman on March 21, 2022, after Flint Hills provided

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Ellis a religious exemption. Ellis graduated from Flint Hills in June 2022 with the rest of her class.

The relief provided by this Court in the form of the preliminary injunction allowed the Plaintiff to graduate on time, but it did not constitute a final ruling on whether there had been a violation of the KPRFA. That finding was necessary to resolve the attorney's fees claim at the trial court level. Initially, this Court granted summary judgment in favor of the Defendants based upon this Court's finding that the actions of Newman requiring the vaccination were not within the control of the Defendants. Subsequently, the Court of Appeals reversed this Court's summary judgment ruling and remanded this case for the court to determine whether the Defendants' actions substantially burdened Ellis' religious exercise. *Ellis v. McNeese, et.al.,* 559 P. 3d 1237.

Pursuant to the guidance provided by the appellate court, further proceedings were conducted in the district court which resulted in summary judgment being granted to the Plaintiff on her claim that the Defendants violated her rights under the KPRFA.

ANALYSIS OF THE CLAIM FOR ATTORNEY FEES

The KPRFA allows for a plaintiff to recover attorney fees when they prevail in such an action. Although granting of fees is not mandatory under the statute, it is appropriate because failure to consider such an award would result in plaintiff's being unable to take advantage of the rights given to them under this law.

The Plaintiff has filed a claim totaling $303,200.00. This amount includes the original application for fees plus a supplemental claim filed prior to the hearing held to present evidence on the reasonableness of the claim. That amount does not include the award of attorney's fees

assessed by the Court of Appeals. This Court has excluded those fees as a separate judgment and this Court has allowed the Plaintiff to institute collection proceedings to enforce that judgment.

The total claim by Plaintiff is based upon a claim of 379 hours of legal work performed at the rate of $800 per hour. The rate of $800 per hour is based upon Plaintiff's counsel's rate of $400 per hour with a lodestar adjustment multiplier of 2.0.

The steps for the analysis of an attorney's fee request were addressed in the appellate decision previously entered in this case, as set forth below (*Ellis v. McNeese, et. al. supra.*)

"Determining the reasonableness of a fee request generally starts with a two-part inquiry—assessing both the reasonableness of the attorney's hourly rate and the reasonableness of the time spent representing the client's interests. See *Hatfield v. Wal-Mart Stores, Inc.*, 14 Kan. App. 2d 193, 199, 786 P.2d 618 (1990). Courts have traditionally described this inquiry as a " 'lodestar calculation.' " *Doan Family Corp. v. Arnberger*, 62 Kan. App. 2d 769, 785, 522 P.3d 364 (2022); see also *Citizens Utility Ratepayer Bd. v. Kansas Corporation Comm'n*, 47 Kan. App. 2d 1112, 1125-27, 284 P.3d 348 (2012) (discussing and applying the lodestar method). The lodestar calculation may be adjusted upward or downward based on the factors set forth in KRPC 1.5(a), which include:

" '(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
" '(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
" '(3) the fee customarily charged in the locality for similar legal services;
" '(4) the amount involved and the results obtained;
" '(5) the time limitations imposed by the client or by the circumstances;
" '(6) the nature and length of the professional relationship with the client;
" '(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
" '(8) whether the fee is fixed or contingent.' " *Johnson*, 281 Kan. at 940-41.

First the Court must establish a reasonable hourly rate based upon the above factors. The Plaintiff's fee agreement with her counsel set forth the expectation of counsel that he will receive compensation at the rate of $400 per hour and further acknowledged that it was a contingency fee agreement. Plaintiff's counsel now claims he is entitled to a multiplier of 2.0 under the lodestar

analysis under both the appellate decision in this case and *Gilmore v. Beveridge*, No. 2:22-CV-02032-HLT, 2024 WL 1461813. However, neither of those cases applied a multiplier to the fees awarded. Both of those cases awarded fees at the rate of $400 per hour.

In addition, both the hourly rate and the time claimed were not challenged by the defendants in this case at the appellate level. The opinion clearly shows that the defendants challenged the right to fees prior to a final ruling on the merits and they chose not to challenge the rate or time spent on the case at that time. The defendants now challenge the fee claim at the district court level. The determination of allowable fees before the district court is a matter for this court to determine, subject only to a claim of abuse of discretion.

The defendants presented unrebutted evidence that the prevailing hourly rate for experienced attorneys in the Fifth Judicial District is $300 per hour for retained cases. However, that testimony was for retained cases and did not reflect the risk assumed by the contingency fee arrangement in this case.

This Court has one final observation to make regarding a reasonable hourly rate to be applied in this case. KPRFA is a legislative enactment designed to provide state law relief for individuals who claim their religious freedom rights under the First Amendment to the U.S. Constitution have been violated. That same legislature has consistently funded the Board of Indigent Defendants (BIDS) at a level which allows attorneys defending their client's rights under the Fourth, Fifth, and Sixth Amendments to the U.S. Constitution at the rate of $120 per hour. Those rights are no less important than rights guaranteed by the First Amendment.

Fortunately for the Plaintiff, the definition of a reasonable hourly rate is left to this Court and not the legislature.

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Based upon the foregoing discussion, this Court finds that the appropriate hourly rate to be used to calculate the attorney fee award is $400 per hour.

The next step is to determine the reasonableness of the hours spent on the case and what adjustments should be made, if any.

Although this case is unique, it is not a complex case. In fact, the defendant Flint Hills Technical College had previously recognized the plaintiff's religious right by giving her a vaccine waiver prior to the covid vaccine requirement in this case. This litigation centered around the defendants' response to Newman's initial decision not to allow unvaccinated students on its campus.

The Plaintiff has filed a claim for attorney fees in the amount of $151,600.00 plus the 2.0 multiplier. That claim is based upon 331.3 hours in the original claim and 47.7 hours in the supplemental claim. The Defendants argue that those fees are excessive, inadequately documented, legally unsupported, and include time spent on unsuccessful and unrelated claims.

The Defendants presented the testimony of Paul Dean, an experienced attorney who regularly practices law in the Fifth Judicial District, and who operates as a solo practice. In addition to the testimony previously noted regarding the prevailing rate for attorney fees, Dean provided testimony regarding his analysis of the billing submissions of Plaintiff's counsel is this case. Dean identified areas for which charges are being claimed that are not appropriate because they were related to unsuccessful or unrelated claims, were addressing sanction issues, were vague, or administrative or clerical. This Court finds the testimony to be credible and relevant to the issue before this court.

Dean noted that Plaintiff's counsel is a solo practitioner with no support staff. He noted that absent an agreement with a client, activities of the support staff including scheduling, etc., are

normally assumed by the attorney as part of the agreed hourly rate. In this claim, Baker billed $400 per hour even for time spent setting up scheduling with court staff. His exhibit showed a claim for 2.9 hours for those tasks. In addition, Dean identified 36.1 hours spent on unsuccessful or unrelated claims and a journal entry dispute created by Baker. Dean also identified 22.3 hours claimed related to documents that are the subject of the sanctions request filed by the Defendants or the post judgment garnishment proceedings to collect the judgment entered by the appellate court.

Dean further noted a significant number of entries which he claimed to be vague so there was not enough information to correctly evaluate those entries.

Early on in this case, this court directed that a settlement conference take place. The evidence shows that Plaintiff refused to meaningfully engage in that process. Molly Ellis graduated with her class in June 2022. Since that time, for almost four years, this case has been about attorney fees. The Plaintiff is entitled to recover her reasonable attorney fees, but that should not be interpreted to mean unlimited or excessive fees.

The Court is deducting 61.3 hours from the claim pursuant to the concerns identified in the Dean testimony. At this point that leaves the total number of hours to be compensated at 317.7. But this court's analysis does not stop at this point. The Plaintiff has repeatedly cited the case of *Gilmore v. Beveridge, et. al., supra*, in support of his claim for fees. In that case the court held a reasonable fee should reflect the Plaintiff's success in the case, but it should not create an attorney windfall. Nor should it incentivize an overly complicated approach to straightforward litigation. The Court then applied a 15% reduction to the lodestar. That case involved a four-day jury trial. This case is even simpler; the only evidentiary hearings were the initial injunction hearing and the

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evidentiary hearing on the fee claim. This Court finds the appropriate lodestar reduction shall be 20%. This finding reduces Plaintiff's attorney fee request to $101,640.00.

SANCTION ORDER

However, there remains the issue of sanctions requested by the Defendants for their claim that the Plaintiff's counsel filed pleadings with fabricated citations as set forth in their Motion for Sanctions filed on October 27, 2025. By Memorandum Order filed by this Court on November 12, 2025, that matter is now before the Court for determination.

On October 20, 2025, Plaintiff's counsel filed a document entitled Opposition to Defendants Motion to Alter Judgment. Within that pleading the Plaintiff's counsel falsely cited two cases, *State v. Baker,* 290 Kan. 842, 235 P.3d 424 (2010) and *Gannon v. State*, 298 Kan. 110 310 P.3d 1196 (2014) for propositions of legal authority that are inconsistent with the case cited. In addition, there were no fewer than six false citations to non-existent Kansas case law. When confronted by these misrepresentations and facing a Motion for Sanctions, Plaintiff's counsel did not deny the allegations or explain how he came up with the false citations, he simply responded that the legal propositions contained in his pleadings were accurate and that his "citation irregularities were technical and clerical…". Citations to non-existent cases can never be considered technical or clerical errors. They are not formatting or citation errors. They are unprofessional and sanctionable. This Court suspects that Plaintiff's counsel used a generative artificial intelligence program as an aid in drafting his pleading, but no such admission was forthcoming from counsel. Counsel's response to the claim for sanctions is simply the proposition of "no harm, no foul". In addition, this is not the only time Plaintiff's counsel has submitted false

citations to a district court. See *Anderson v. Aldrich*, Douglas County District Court Case No. DG-2025-CV-429, Memorandum Opinion dated March 13, 2026.

Kansas District Court judges must rely on the veracity of citations presented to the court by counsel. The timeline for making decisions at the district court level is measured in minutes, hours, or days. We do not have law clerks to review pleadings for citation errors or misrepresentations. We must rely on attorneys to act professionally in preparing and filing pleadings to be considered by the Court. Plaintiff's actions have failed in that regard. In addition, those actions appear to violate Rule 3.3 of the Code of Professional Responsibility. (The actual adjudication of such a violations a matter for determination by the Kansas Board for Discipline of Attorneys.)

In addition, this Court held a status or pretrial conference in this case on January 29, 2026, for the purpose of preparing for the trial of the attorney fees claim. Defense counsel prepared a proposed journal entry for that hearing which did include the recitation of orders made by the court on pending garnishment proceedings. On January 30, 2026, Plaintiff's counsel filed objections to the proposed journal entry and then proceeded to file a journal entry prepared by Plaintiff's counsel representing that it had been approved by defense counsel. Plaintiff's counsel did not have the consent to file said journal entry. The factual scenario is set forth in the Defendant's Motion for Relief from Order filed on January 30, 2026. It is incorporated herein by reference. Not only was the presentation of the proposed journal entry a violation of Rule 170 as it applies to the filing of journal entries, Plaintiff's counsel's action appears to be an additional violation of Rule 3.3 of the Code of Professional Responsibility by representing opposing counsel's approval when it had not been obtained. The Court vacated the offending journal entry by Memorandum Decision on

February 2, 2026. On March 12, 2026, the Court approved and filed the journal entry for said hearing.

District court judges need to rely on counsels' representations on approvals for journal entries submitted in the e-file system. Often that approval is designated by a /S/ symbol on the signature line. It is not unusual to receive 20 or 30 documents per day for review and approval. In fact, some dockets in this district can result in filings more than 100 on any given day. Many of these documents come in days after the hearing. Strict compliance with Rule 170 is mandatory and not an option.

The question now before the Court is what should be the appropriate sanction for the violations noted above. Plaintiff's counsel initially did a good job representing his client and got the relief she needed to finish school and graduate on time. Granted, the change in the Newman policy, which Plaintiff's counsel was not involved in, aided the process, but his client was on the precipice of being discharged from her educational program at the time of the injunction hearing. After that point, this case became all about attorneys' fees. This fact was even mentioned in the Court of Appeals decision. Certainly, the Defendant's vigorous defense added to the attorney fee claim.

As previously noted, this Court's calculation of the attorney fee award was initially set at $101,640.00. However, this Court is of the opinion that it is appropriate to strike 50% of that fee as a sanction for Plaintiff's falsifications of citations and misrepresentations noted above. The Plaintiff is awarded the sum of $50,820.00 for her attorney fees incurred herein. Judgment shall be entered in favor of Plaintiff for that amount.

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Although this sanction may seem substantial to some, Plaintiff's counsel breached the bond of trust that the Court imposes on attorneys in their professional capacity as officers of the court.

The order entered in this case was done with great deliberation. Courts reviewing this order for abuse of discretion should keep in mind the nature of trial court proceedings and the reasons identified by this court on why the breach of trust for actions of Plaintiff's counsel are so serious.

In addition, the fees finally allowed are still approximately 20% greater than those paid by BIDS pursuant to funding provided by the legislature for defending individuals right under the Fourth, Fifth, and Sixth amendments to the U. S. Constitution.

The Court further finds that the Clerk of the District Court is directed to provide a copy of this Memorandum Order to the Kansas Board of Profession Responsibility for their consideration.

.IT IS SO ORDERED.

THIS ORDER IS EFFECTIVE AS OF THE DATE AND TIME SHOWN ON THE ELECTRONIC FILE-STAMP.

HONORABLE W. LEE FOWLER
DISTRICT JUDGE

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559 P.3d 1237 (Table)
Unpublished Disposition
This decision without published opinion is referenced in the Pacific Reporter. See Kan. Sup. Ct. Rules, Rule 7.04.
NOT DESIGNATED FOR PUBLICATION
Court of Appeals of Kansas.

Molly ELLIS, Appellant,
v.
Kim MCNEESE and Flint Hills Technical College, Appellees.

No. 126,900
|
Oral Argument Held September 17, 2024.
|
Opinion Filed November 22, 2024.

Appeal from Lyon District Court; W. Lee Fowler, judge.

Attorneys and Law Firms

Linus L. Baker, of Stilwell, for appellant.

Jeffrey A. Bullins, Lawrence J. Logback, and Kemper A. Bogle, of Simpson, Logback, Lynch, Norris, P.A., of Overland Park, for appellees.
Before Arnold-Burger, C.J., Gardner and Cline, JJ.

MEMORANDUM OPINION

Cline, J.:

**1 Molly Ellis was a nursing student at Flint Hills Technical College located in Emporia, Kansas. She sued Flint Hills and its Director of Nursing, Kim McNeese, under the Kansas Preservation of Religious Freedom Act, K.S.A. 2023 Supp. 60-5301 et seq. (KPRFA), after she was denied a religious exemption from receiving the COVID-19 vaccine. She appeals the district court's summary judgment order which dismissed her KPRFA claim because the court found she sued the wrong party and her claim was not ripe. She also appeals the court's intermediate order dismissing her claim under the Kansas Consumer Protection Act, K.S.A. 50-623 et seq. (KCPA), against Flint Hills.

After a careful review of the record, we affirm the district court's decision on Ellis' motion to add or reinstate her KCPA claim, and we reverse the district court's summary judgment decision on her KPRFA claim. We find we have no jurisdiction over the dismissal of Ellis' KCPA claim because Ellis did not seek leave to file an interlocutory appeal of the intermediate order dismissing her KCPA claim without prejudice nor did she appeal the final order issued by the district court denying her motion to add or reinstate her KCPA claim with prejudice. Last, we grant Ellis' Rule 7.07(b) motion for attorney fees on appeal under KPRFA but leave open whether Ellis is entitled to her attorney fees in proceedings before the district court.

Factual and Procedural Background

Ellis enrolled as a student in Flint Hills' Practical Nursing program in August 2021. When Ellis was admitted, she told Flint Hills of her objections to receiving vaccinations on the grounds that they violated her personal religious beliefs. At that time, she asked Flint Hills to grant her a religious waiver for all vaccinations.

As part of her coursework for the spring 2022 semester, Flint Hills assigned Ellis to complete a clinical rotation at Newman Regional Health, a hospital in Emporia. Ellis was scheduled to begin that rotation on February 7, 2022. On January 19, 2022, Newman implemented a policy requiring Flint Hills students like Ellis, among others, to be vaccinated against COVID-19. On January 25, 2022, McNeese informed Ellis and other nursing students of Newman's policy, telling them they must comply or they would be unable to successfully complete the clinical requirements for the nursing program. Flint Hills told its nursing students if they were not vaccinated, they had the option to withdraw from the program but offered no other accommodation. Until this point, Ellis had either obtained all necessary vaccinations or received exemptions for all necessary vaccinations in order to conduct her coursework at any facility.

That same day, Ellis requested information to allow her to seek a religious exemption from Newman's policy. McNeese

told her Newman was not accepting any exemptions from Flint Hills students. To complete her clinical coursework, Ellis asked to switch to another medical facility, which was accepting religious exemptions to the COVID-19 vaccination. McNeese told Ellis she could not switch because that facility could not provide an equivalent clinical experience. McNeese also told Ellis she would receive a zero for each day that she missed of her clinical rotation at Newman.

**2 On February 2, 2022, Ellis sued Flint Hills and McNeese (Defendants) under KPRFA, alleging they substantially burdened the exercise of her religion. Ellis sought injunctive relief enjoining Defendants from enforcing Flint Hills' clinical partners' vaccination policies against Flint Hills' nursing students and requiring Defendants to make a suitable religious accommodation to Ellis that would allow her to satisfy Defendants' clinical component of the nursing coursework and complete that coursework as scheduled (that is, graduate on time). She also sought declaratory relief, actual damages, costs, and attorney fees.

On February 25, 2022, the district court partially granted Ellis' motion for a preliminary injunction, ordering Defendants to revise Ellis' academic record at Flint Hills "to record 'incomplete' rather than failing grades for all past or future in person clinicals scheduled" for Ellis at Newman or another one of Flint Hills' clinical partners, Emporia Presbyterian Manor.

On March 11, 2022, Newman notified Flint Hills that it had amended its COVID-19 vaccination policy. Newman would now accept unvaccinated students into its facility if Flint Hills provided those students with a religious or medical exemption from receiving the COVID-19 vaccine.

Ellis began her clinical coursework at Newman on March 21, 2022, after Flint Hills provided Ellis a religious exemption. Ellis graduated from Flint Hills in June 2022 with the rest of her class.

In June 2022, Ellis moved to amend her petition to assert a claim under the KCPA against Flint Hills. She alleged Flint Hills willfully failed to state or concealed, suppressed, or omitted material facts to Ellis such as failing to tell Ellis that Flint Hills intended to discriminate against Ellis' religious beliefs when she enrolled in its nursing program and would permit its contracting facilities to do so. Ellis also alleged Flint Hills made misleading statements that it would provide Ellis with adequate clinical experience.

After the district court granted Ellis' motion to add the KCPA claim, Defendants successfully moved to dismiss it based on their contention that KCPA claims fall under the Kansas Tort Claims Act, K.S.A. 75-6101 et seq. (KTCA). Defendants argued Ellis' claim should be dismissed for lack of subject matter jurisdiction because Ellis had not filed a written notice of claim under K.S.A. 12-105b before filing suit. Under K.S.A. 12-105b(d)(1), no person can sue a municipality or its employee unless the claim has been denied or deemed denied by the municipality. K.S.A. 12-105b(d)(1) provides the claim is deemed denied if the municipality does not approve the claim within 120 days.

On December 19, 2022, the district court agreed with Defendants and dismissed Ellis' claim without prejudice. That same day, Ellis provided the Flint Hills Board with a K.S.A. 12-105b notice. Since Ellis filed notice on December 19, 2022, Defendants had until April 18, 2023, to respond.

Defendants moved for summary judgment on April 13, 2023, arguing Ellis sued the wrong party in interest, the case was not ripe, and Ellis' claim was moot. Two days later, Ellis moved to amend to add or reinstate her KCPA claim since she had provided Defendants notice of her claim under K.S.A. 12-105b. Defendants opposed Ellis' motion, in part because Ellis filed it three days before the end of K.S.A. 12-105b(d)(1)'s designated time frame. Defendants also maintained Ellis' motion should be denied for bad faith and futility.

The district court granted Defendants' summary judgment motion and denied Ellis' motion to amend at the conclusion of the hearing. The court held Ellis sued the wrong party because it found Newman was the party who took the action "which caused this particular event." It also found Ellis' claim was not ripe because she did not request a religious exemption from Newman. The court made no ruling on whether Ellis' claim was moot. And it denied Ellis' motion to add or reinstate because it found there were insufficient grounds to allow for her KCPA claim under the facts. It later entered a memorandum decision which referred the parties to its oral pronouncement of its findings at the hearing. Ellis moved to

alter or amend the court's decision, which was summarily denied.

**3 Ellis appeals the summary judgment decision but not the decision denying her motion to add or reinstate her KCPA claim on the basis of bad faith and futility. Instead, she appeals the dismissal of her KCPA claim for failure to provide notice of the claim under the KTCA. After oral argument, she filed a motion for attorney fees on appeal under Supreme Court Rule 7.07(b) (2024 Kan. S. Ct. R. at 52).

Review of Ellis' Appellate Challenges

I. *Ellis' Kansas Preservation of Religious Freedom Act claim*

A. *Standard of review*

We review a district court's decision to grant or deny a summary judgment motion de novo, since we are in the same position as the district court to analyze the parties' summary judgment filings. *First Security Bank v. Buehne*, 314 Kan. 507, 510, 501 P.3d 362 (2021).

B. *Kansas Preservation of Religious Freedom Act*

Ellis claims that Flint Hills and McNeese burdened her right to religious freedom under KPRFA. Under KPRFA, the:

> "(a) Government shall not substantially burden a person's civil right to exercise of religion even if the burden results from a rule of general applicability, unless such government demonstrates, by clear and convincing evidence, that application of the burden to the person:
>
> (1) Is in furtherance of a compelling governmental interest; and
>
> (2) is the least restrictive means of furthering that compelling governmental interest." K.S.A. 2023 Supp. 60-5303(a).

KPRFA defines " '[b]urden' " as "any government action that directly or indirectly constrains, inhibits, curtails or denies the exercise of religion by any person or compels any action contrary to a person's exercise of religion ...." K.S.A. 2023 Supp. 60-5302(a). Defendants do not dispute that they fall within KPRFA's definition of " '[g]overnment.' " See K.S.A. 2023 Supp. 60-5302(e).

Ellis claimed Defendants substantially burdened her exercise of religion by requiring her to adhere to Newman's mandatory COVID-19 vaccination policy and giving her failing grades because she did not attend the clinical rotation that Flint Hills scheduled at Newman. Ellis contends that, but for her lawsuit and the district court's injunction ruling, she would have been expelled from Flint Hills.

C. *The district court erred in dismissing Ellis' KPRFA claim because she did not sue Newman instead of Defendants.*

The district court found Newman was the governmental actor who burdened Ellis' religious exercise by enacting a mandatory COVID-19 requirement for Flint Hills nursing students. In making this ruling, it adopted Defendants' contention that Newman was the party responsible for burdening Ellis' religious exercise because Flint Hills "did not create the policy in question or control its implementation; and had no ability to mandate a revision of the hospital's policy, or demand that the hospital provide [Ellis] a religious exemption." The problem with this determination is Defendants and the district court misunderstood the basis of Ellis' claim.

Ellis' KPRFA claim was not based on Newman's policy but on Flint Hills' reaction to it. That is, when faced with a refusal to accept one of its students, Ellis alleged that Flint Hills offered her no alternatives to satisfy her coursework and receive the benefits she paid Flint Hills to provide. Ellis argues Defendants are effectively using Newman's policy as a red herring to distract from their responsibilities for her predicament.

**4 Defendants characterize Ellis' KPRFA claim as a "fundamental misunderstanding of the government action at issue in this case." They maintain that Ellis' claimed injuries—"inability to attend her clinical coursework, and any failing grades that would have resulted from that lack of attendance"—are solely derived from Newman's action in implementing its COVID-19 vaccination policy. But it is

Defendants—and the district court—who fundamentally misunderstand Ellis' KPRFA claim.

In her petition, Ellis alleged Flint Hills refused to assign Ellis to another facility who would recognize her religious objection to the COVID-19 vaccine. As she notes, it was Defendants—not Newman—who required that she complete her clinical rotation at Newman and gave her failing grades when they knew the only reason she did not complete that rotation was her religious belief to not get the COVID-19 vaccine. Ellis sought to enjoin enforcement of Flint Hills' policy of requiring its nursing students (like Ellis) to satisfy the vaccination policies of Flint Hills' assigned clinical partners (like Newman). And she also asked the district court to order Defendants to make "a suitable religious accommodation that will allow [Ellis] to satisfy the [D]efendants' clinical components of the nursing coursework so that [Ellis] may complete her academic programs as scheduled in 2022 and beyond." Both claims are directed at Defendants' actions, not Newman's.

Ellis compares her claim to one that a party would make against a general contractor. As she points out, she contracted with Flint Hills (the general contractor), who, in turn, contracted with Newman (the subcontractor) to partially satisfy Flint Hills' obligations to Ellis. As Ellis notes, the general contractor is still liable for its contractual obligations to the party even if the subcontractor "renege[s]" on its deal with the general contractor. Flint Hills makes no contention that it was not obligated to provide Ellis with a place or method to complete the practical portion of her coursework. And the district court made no findings on the respective obligations between Ellis and Flint Hills regarding the practical nursing program.

Ellis likens her case to the situation presented in *Thoms v. Maricopa County Community College District*, No. CV-21-01781-PHX-SPL, 2021 WL 5162538 (D. Ariz. 2021) (unpublished opinion). While Defendants correctly point out that we are not bound by decisions from other courts in other jurisdictions, we do find *Thoms* helpful in illustrating how the district court and Defendants misperceived Ellis' claim.

In *Thoms*, two Maricopa College nursing students (the plaintiffs) were to complete a rotation at Mayo Clinic as part of their assigned coursework. Like Newman, Mayo Clinic required students to show proof of COVID-19 vaccination and did not permit religious exemptions. The plaintiffs had sincere religious objections to receiving a COVID-19 vaccination. 2021 WL 5162538, at *1. Right before they served notice of their lawsuit, Maricopa College made them "a final accommodation offer." 2021 WL 5162538, at *3. It stated that "it encouraged Plaintiffs to complete the academic components of their courses this fall, and that it would allow Plaintiffs to withdraw from their clinicals without penalty, receiving an 'Incomplete' on their transcript." 2021 WL 5162538, at *3.

The plaintiffs filed a complaint alleging: "(1) violation of the Free Exercise Clause of the First Amendment through 42 U.S.C. § 1983; and (2) violation of Arizona's Free Exercise of Religion Act." 2021 WL 5162538, at *3. Arizona's Act has substantially similar language to KPRFA. See 2021 WL 5162538, at *5; see also Arizona Rev. Stat. Ann. § 41-1493.01(B)-(C) (providing "government shall not substantially burden a person's exercise of religion" but also providing the same legal excuse KPRFA provides for such burden; that is, if government demonstrates that application of the burden to the person is both [1] "[i]n furtherance of a compelling governmental interest" and [2] "[t]he least restrictive means of furthering that compelling governmental interest"). The *Thoms* court ultimately entered a preliminary injunction: (1) enjoining Maricopa College "from enforcing against Plaintiffs its requirements that nursing students satisfy the vaccination policies of their assigned clinical partners and that nursing students must complete their assigned in-person clinical rotations in order to complete their academic programs" and (2) ordering defendant "make available to Plaintiffs a suitable accommodation that will allow Plaintiffs to satisfy the clinical components of their coursework and complete their academic programs as scheduled in December 2021." 2021 WL 5162538, at *13.

****5** Ellis contends "Maricopa College, like Flint Hills aiming the finger at Newman, similarly pointed to the Mayo Clinic as the motivating culprit." And, as Ellis notes, the *Thoms* court rejected this argument. The Arizona federal district court acknowledged that, like Flint Hills, the sole reason why the plaintiffs could not complete their clinical requirements was that Maricopa College would not allow them to do so without receiving a COVID-19 vaccination, based on its assigned clinical partner's policies. While the *Thoms* court described

the link between Maricopa College's policy and the burden on the plaintiffs' religious beliefs as "somewhat attenuated," it noted "a burden need not be directly imposed in order to be substantial." 2021 WL 5162538, at *6. The *Thoms* court found that Maricopa College's policy (of requiring its students to abide by the policies of their assigned clinical partners), when applied to the plaintiffs, was "likely to substantially burden Plaintiffs' right to freely exercise their sincere religious beliefs in violation of [Arizona's Free Exercise of Religion Act] and the First Amendment, to cause Plaintiffs irreparable harm, and to go against the public interest." 2021 WL 5162538, at *13.

Ellis made the same claim against Defendants, yet the district court only considered whether Newman's policy impacted Ellis—it did not consider whether Flint Hills' policy of requiring Ellis to comply with Newman's policy *also* substantially burdened Ellis' exercise of her religious beliefs.

Defendants attempt to distinguish the facts of *Thoms*. They state that Maricopa County Community College "provided alternative accommodations to students requesting accommodations from the 'most stringent clinical partner policy' for non-religious reasons, including allowing them to participate in online activities and simulations pursuant to their waiver from the Board of Nursing." Defendants also note the *Thoms* court granted the plaintiffs' motion for a preliminary injunction because Maricopa College issued case-by-case exemptions to its policy for secular reasons but not for religious reasons. Defendants are only partially correct.

The nursing students in *Thoms* raised claims under the First Amendment to the United States Constitution and Arizona's Free Exercise of Religion Act. The *Thoms* court separately analyzed the two claims and found the plaintiffs were likely to succeed on the merits of both. 2021 WL 5162538, at *8, 11. Yet Defendants conflate the *Thoms* court's independent analysis of the two claims.

The district court also made a passing reference to *Thoms,* distinguishing it because Maricopa College had been doing alternative programming to in-person clinicals for two years because of COVID-19 even before Mayo Clinic adopted its vaccine policy. But this difference is immaterial to the district court's analysis of Ellis' claim and Defendants' summary judgment motion because the *Thoms* court found those alternative programs did not alleviate the substantial burden Maricopa College's policy placed (although perhaps indirectly) on the plaintiffs' exercise of their religion. 2021 WL 5162538, at *6. And Flint Hills did not argue in its summary judgment motion that it had offered Ellis alternative programming which would alleviate the substantial burden on her religious beliefs, like Maricopa College argued.

As with Arizona's Act, under KPRFA, Flint Hills could excuse the burden Ellis alleges it placed on the exercise of her religion if it demonstrated, by clear and convincing evidence, that burden was "in furtherance of a compelling governmental interest" and was "the least restrictive means of furthering that compelling governmental interest." K.S.A. 2023 Supp. 60-5303(a)(1)-(a)(2). But Defendants did not make this argument in their summary judgment motion. Nor could we decide it on appeal without the necessary legal or factual record.

The district court succumbed to the false dichotomy Defendants presented when it found Ellis had to sue Newman. Just because Ellis could have asserted a claim against Newman for its policy does not mean she could not also assert a claim against Defendants for theirs. And since the record was not developed in the district court regarding Ellis' KPRFA claim against Defendants, we cannot address that claim here. Defendants made no arguments in their summary judgment motion (or on appeal) as to whether Flint Hills' actions in response to or in application of Newman's policy substantially burdened Ellis' religious exercise, nor did the district court make any findings on this claim. For these reasons, we find the district court erred when it granted Defendants summary judgment on Ellis' KPRFA claim because she did not sue Newman.

D. *The district court incorrectly determined Ellis' KPRFA claim is unripe, because Defendants unequivocally informed Ellis that she needed to receive the COVID-19 vaccine or she would receive failing grades.*

**6 Judicial power is limited "to actual cases and controversies." *State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 898, 179 P.3d 366 (2008). A claim is ripe when "no additional facts need to arise or be developed in the record ...." *Solomon v. State*, 303 Kan. 512, 522, 364 P.3d 536 (2015). "To be ripe, issues must have taken shape and be concrete rather than hypothetical or abstract." *KNEA v. State*, 305 Kan. 739, Syl. ¶ 3, 387 P.3d 795 (2017).

Defendants contend Ellis' claim is unripe because she never submitted a religious exemption application for the COVID-19 vaccine to Newman. They allege Flint Hills instructed "Ellis that she needed to request a religious exemption directly from the hospital." They contend that Ellis' "refusal to seek a religious accommodation from the hospital makes her claim purely speculative in nature, and is fatal to her cause of action" because "we can never know whether the hospital would have refused her a religious accommodation and chosen to enforce its Covid-19 vaccination requirement policy against her despite her religious beliefs." The district court agreed with Defendants' argument and found Ellis' KPRFA claim unripe.

The problem with Defendants' argument is it is based on a false narrative. Defendants cite no location in the record where Flint Hills directed Ellis to apply for a religious exemption from Newman nor does the record show Newman was even accepting such applications.

At most, the record shows that Flint Hills told Ellis: "If you are able to get a written accommodation from Newman Regional Health, we will be supportive of that, but we do not have the authority to grant that accommodation." But Defendants do not cite this comment in support of their statement. Defendants also ignore their own repeated statements to Ellis that Newman was not accepting exemptions and Newman's own letter stating they were not accepting them. Although Defendants now claim Ellis' application "would have been fairly considered on its merits," Ellis was never told Newman established an application process for COVID-19 vaccine exemptions or that Newman would even consider her exemption. She was simply told that if she managed to get a written accommodation from Newman *then* Defendants would support that.

Whether Ellis could obtain a religious exemption from Newman was not a contingency which legitimately prevented Ellis' claim against Defendants from ripening. See *Baker v. Hayden*, 313 Kan. 667, 672, 490 P.3d 1164 (2021) (A ripe claim must have "taken fixed and final shape rather than remaining nebulous and contingent."). Ellis was persistently told by multiple people at Flint Hills that she could not receive an exemption and Flint Hills sent her a letter from Newman which unequivocally stated: Newman "is only able to accept students within your program who are vaccinated against COVID-19 and who can provide proof of vaccination." The letter unambiguously informed Flint Hills, and by implication Ellis, that she could only participate in her clinic coursework if she was vaccinated.

Defendants unfairly criticize Ellis for not seeking an exemption from Newman when McNeese's and Newman's statements discouraged her from doing that very thing. And they unfairly elevate the requirements for a claim to ripen by suggesting the only solution to Ellis' predicament was for her to test Newman's resolve in enforcing its stated mandatory policy. Any failure by Ellis to essentially "double check" with Newman to see if Newman *may* give her a written accommodation does not render her KPRFA claim unripe.

****7** It is also wrong for Defendants to argue Ellis' claim is unripe because "she never actually received bad grades." Again, Defendants fail to appreciate or acknowledge the full context of this case. McNeese told Ellis that if she did not comply with Newman's vaccination requirements, "you will not be able to attend and your grade will result in a zero for the day, and subsequent days without the vaccination." And at the preliminary injunction hearing, the district court stated, "The issue today is simply to stop the Fs and get incompletes, which allows [Ellis] time to work through this without—you know, to stop any further damage." Last, the district court ordered Defendants to revise Ellis' academic record to reflect incomplete grades rather than failing grades for all past or future in-person clinicals scheduled at Newman or Presbyterian Manor. Ellis is correct that Defendants have presented no factual support for their contention that, absent Ellis' action in filing the lawsuit and obtaining the injunction, she would have been able to successfully complete Flint Hills' nursing program.

Defendants identify no material facts that need to be developed to determine Ellis' KPRFA claim that their actions—not Newman's—substantially burdened her religious exercise. The district court's analysis was flawed when it found Ellis' KPRFA claim unripe.

E. *We need not address Defendants' arguments that Ellis' KPRFA claim is moot.*

Besides claiming Ellis sued the wrong party and her KPRFA claim is unripe, Defendants argue the claim is moot. They

believe "[t]here is no relief that could be provided by the" district court to Ellis because she graduated from Flint Hills without delay. But the district court did not make any findings that Ellis' KPRFA claim was moot. In fact, the court acknowledged at the summary judgment hearing that it had entered an injunction in Ellis' favor which prohibited Defendants from flunking Ellis or dismissing her from the program based on her religious beliefs, instead requiring them to give Ellis incomplete grades and giving the parties a chance to try to resolve matters.

While we can determine this issue on appeal, since we review summary judgment decisions de novo, we decline to do so. Because we are reversing the district court's decision granting summary judgment on Ellis' KPRFA claim we believe it would not be prudent to decide this issue at this juncture and on this record. Therefore, this issue remains open for the district court to consider on remand.

F. *We reverse the district court's summary judgment decision.*

Defendants failed to present the necessary facts and legal arguments to establish they were entitled to judgment as a matter of law on Ellis' KPRFA claim against them. For these reasons, we find summary judgment was improvidently granted. We reverse that decision and remand the claim for further proceedings to address whether Defendants' actions substantially burdened Ellis' religious exercise. Since Defendants made no arguments addressing their actions towards Ellis in response to Newman's policy, we offer no opinion on that claim. We also offer no opinion on whether Ellis is entitled to her attorney fees under KPRFA for succeeding in obtaining a temporary injunction since that matter is not before us.

II. *Ellis' Kansas Consumer Protection Act claim*

Earlier in the case, the district court dismissed Ellis' KCPA claim without prejudice on the grounds that KCPA claims are covered by the KTCA, and Ellis had not provided pre-suit notice of the claim as required by K.S.A. 12-105b. When Ellis moved to reassert this claim after she provided notice, Defendants opposed her efforts on the basis of bad faith and futility. They also noted Ellis filed her motion prematurely since the statutory deadline for Defendants to respond to Ellis' notice of claim had not yet run.

Ellis' motion to amend to add or reinstate her KCPA claim was heard at the same time as Defendants' motion for summary judgment. The district court denied the motion to amend because "based upon the facts of the case and the stipulated facts ... there's not sufficient grounds to allow the continuation of the claim for adding a claim for a Consumer Protection Act Violation ...."

****8** Ellis claims she is appealing the district court's dismissal of her KCPA claim instead of its denial of her motion to amend to add that claim. The problem with this position is the dismissal order was an interlocutory or intermediate decision while the denial of the motion to add or reinstate was a final one. And since Ellis did not seek (or receive) permission to take an interlocutory appeal from the dismissal of her KCPA claim, we have no jurisdiction over that decision.

We do not have discretionary power to entertain appeals from all district court orders; our jurisdiction is defined by statute. And in civil cases, our appellate jurisdiction generally extends only to final decisions which dispose of the entire action. *Goldman v. University of Kansas*, 52 Kan. App. 2d 222, 228, 365 P.3d 435 (2015); see K.S.A. 60-2012(a)(4). The dismissal of Ellis' KCPA claim is not included in the list of statutory categories allowing for an appeal as a matter of right in K.S.A. 60-2012(a)(1)-(3) nor does it qualify as a "final decision" under (a)(4). In that context, a final decision is "one which finally decides and disposes of the entire merits of the controversy and reserves no further questions or directions for the future or further action of the court." *State ex rel. Board of Healing Arts v. Beyrle*, 262 Kan. 507, Syl. ¶ 2, 941 P.2d 371 (1997).

The district court's decision to grant Defendants' summary judgment motion and deny Ellis' motion to add or reinstate qualifies as a final decision, but its decision to dismiss Ellis' KCPA claim without prejudice did not. Parties cannot cherry-pick which decisions they wish to appeal, selecting the ones which best suit their legal strategy or position. Instead, our Legislature limited civil appeals to certain circumstances as part of its desire to reduce the chances of piecemeal appeals. *Kansas Medical Mut. Ins. Co. v. Svaty*, 291 Kan. 597, 610, 244 P.3d 642 (2010).

Ellis does not address the district court's decision to deny her motion to add or reinstate her KCPA claim, nor does she mention its holding that her KCPA claim should not be allowed on the basis of futility. We therefore find Ellis has waived any objection to the court's final decision on her KCPA claim because issues not adequately addressed in briefing are treated as waived or abandoned. *State v. Gallegos*, 313 Kan. 262, 277, 485 P.3d 622 (2021). For these reasons, we affirm the court's decision to deny Ellis' motion to add or reinstate her KCPA claim. That said, this decision should not be construed, by implication or otherwise, to support the district court's opinion that the KTCA applies to KCPA claims.

Ellis' Motion for Attorney Fees on Appeal

In addition to declaratory and injunctive relief, Ellis also sought attorney fees under KPRFA in her petition. The district court did not have an opportunity to review her attorney fee claim—in total or for Ellis' pursuit of a temporary injunction—since it granted Defendants' motion for summary judgment. For this reason, we find Ellis' claim under KPRFA for attorney fees in the district court is not ripe for our review. Since we are reversing that summary judgment decision, this claim can be addressed by the district court along with her claim for other relief under KPRFA. See *Johnson v. Board of Directors of Forest Lakes Master Assn.*, 61 Kan. App. 2d 386, 406, 503 P.3d 1038 (2021) (finding Kansas law allows a plaintiff to move for attorney fees postjudgment).

Ellis also filed a motion for attorney fees under Rule 7.07 for services on appeal. Defendants do not dispute the amount of fees Ellis seeks but, instead, attack this court's authority to award them. Defendants argue we cannot award Ellis' fees on appeal because she did not succeed before the district court, and she did not file a motion for attorney fees in that court. They also contend we should not award Ellis fees on appeal because they generally disagree with arguments Ellis made on appeal.

I. *This court has authority to award Ellis attorney fees on appeal.*

****9** To begin, we do not find Defendants' disagreement with Ellis' arguments on appeal to be a persuasive or sufficient reason to deny Ellis' requests for attorney fees on appeal. For one, Defendants contend Ellis misrepresented the factual record on appeal in an attempt to create a factual dispute sufficient to reverse the district court's summary judgment decision. But we do not read Ellis' briefs that way. Ellis does not dispute the facts Defendants set forth in their motion for summary judgment—she disputes findings by the district court which were not supported by those facts as well as the court's legal conclusions about her KPRFA claim.

Next, Defendants unfairly accuse Ellis of failing to preserve her attorney fee claim because she did not request fees from the district court. But the fees Ellis is seeking from us were incurred in prosecuting her appeal, not for prosecuting her claim for a temporary injunction or any other claim before the district court. We offer no opinion on whether Ellis is entitled to an award of attorney fees for her efforts in the district court and leave that decision to that court on remand. We only answer the limited question of whether Ellis is entitled to her fees for prosecuting this appeal.

Finally, although Ellis did not succeed on her KCPA claim, we have authority to award her attorney fees under KPRFA because Ellis has persuaded us to reverse the district court's summary judgment decision on that claim. Defendants do not dispute that a court may grant attorney fees under KPRFA. See K.S.A. 2023 Supp. 60-5303(b). And an appellate court may apportion appellate fees and expenses as justice requires and award attorney fees when "*the district court had authority to award attorney fees.*" (Emphasis added.) Supreme Court Rule 7.07(a)(4), (b)(1) (2024 Kan. S. Ct. R. at 52). Since the district court has authority to award Ellis attorney fees on her KPRFA claim on remand, we have authority to award her fees on appeal. And while the language of KPRFA does not require a finding that a party "prevailed" before that party can be awarded attorney fees under KPRFA, we do find that to the extent Ellis persuaded us to reverse the district court's summary judgment decision on her KPRFA claim, she has prevailed on appeal. See *Snider v. American Family Mut. Ins. Co.*, 297 Kan. 157, 166, 298 P.3d 1120 (2013).

While we do not know whether Ellis will ultimately prevail on her KPRFA claim in the district court, we cannot remand her request for attorney fees on appeal since our Supreme Court mandated in *Evans v. Provident Life & Accident Ins. Co.*, 249 Kan. 248, 265, 815 P.2d 550 (1991), that "[c]ivil

appellate attorney fee awards are to be determined by the appellate court hearing the appeal. Motions for attorney fees incurred before the Court of Appeals should be determined by the Court of Appeals." In analyzing Rule 7.07, our Supreme Court has said:

> "In an appellate setting, the Rule 7.07(b) time limit for filing a motion for attorney fees allows the appellate court to contemplate the request and, if appropriate, determine the reasonable amount of the fee while the matter is fresh in the minds of the judges or justices and to perhaps address the motion in the appellate court's opinion. The orderly administration of justice would not be advanced if an appellate court is asked to revisit a published case to consider a request for appellate attorney fees. Nor would it be advanced by requiring a district judge, who would not have read the appellate briefs, heard the oral argument, or fully considered the appeal, to take those steps as necessary to be fully informed regarding the reasonableness of a request for appellate attorney fees, only to potentially have that determination reviewed on appeal, at least in those cases where the appeal determines which party prevails in the action." *Snider*, 297 Kan. at 167 (citing *Olsen v. Olsen*, 7 Kan. App. 2d 472, 475-76, 643 P.2d 1153 [1982]).

****10** And since appellate courts are considered experts in the realm of appellate attorney fees and have broad discretion to assess the reasonableness of the fees requested, we can assess Ellis' request for fees on appeal. See *Johnson v. Westhoff Sand Co.*, 281 Kan. 930, 940-41, 135 P.3d 1127 (2006).

II. *We find Ellis' attorney fees to be reasonable under both the lodestar analysis and in applying the factors in KRPC 1.5.*

When a party requests attorney fees on appeal, courts are charged with determining whether the fees sought are "reasonable." See *Johnson*, 281 Kan. at 940-41. A party requesting attorney fees must file a motion and attach an affidavit explaining the nature and extent of the services, as well as the time spent on the appeal, and applying the eight factors contained in KRPC 1.5 (2024 Kan. S. Ct. R. at 330). Supreme Court Rule 7.07(b)(2) (2024 Kan. S. Ct. R. at 52). Ellis complied with these requirements in her motion for attorney fees on appeal.

Determining the reasonableness of a fee request generally starts with a two-part inquiry—assessing both the reasonableness of the attorney's hourly rate and the reasonableness of the time spent representing the client's interests. See *Hatfield v. Wal-Mart Stores, Inc.*, 14 Kan. App. 2d 193, 199, 786 P.2d 618 (1990). Courts have traditionally described this inquiry as a " 'lodestar calculation.' " *Doan Family Corp. v. Arnberger*, 62 Kan. App. 2d 769, 785, 522 P.3d 364 (2022); see also *Citizens Utility Ratepayer Bd. v. Kansas Corporation Comm'n*, 47 Kan. App. 2d 1112, 1125-27, 284 P.3d 348 (2012) (discussing and applying the lodestar method). The lodestar calculation may be adjusted upward or downward based on the factors set forth in KRPC 1.5(a), which include:

> " '(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> " '(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> " '(3) the fee customarily charged in the locality for similar legal services;
>
> " '(4) the amount involved and the results obtained;
>
> " '(5) the time limitations imposed by the client or by the circumstances;
>
> " '(6) the nature and length of the professional relationship with the client;
>
> " '(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> " '(8) whether the fee is fixed or contingent.' " *Johnson*, 281 Kan. at 940-41.

A. *Reasonable hourly rate*

Both the lodestar analysis and KRPC 1.5(a)(3) require us to consider whether the hourly rate Ellis' counsel (Baker) charged was reasonable. Defendants make no argument on this point, so we presume they agree that Baker's hourly rate of $400 is reasonable. And we note the hourly rate is in line with this court's knowledge of rates charged in the locality

where Baker practices, based on other fee requests we have seen.

We also find Baker's hourly rate of $400 to be reasonable based on his credentials and the contingency-fee nature of his representation. See KRPC 1.5(a)(8) (directing that we consider whether the fee is fixed or contingent). And we note the similar finding made by Judge Teeter on this issue in *Gilmore v. Beveridge*, No. 2:22-CV-02032-HLT, 2024 WL 1461813, at *2 (D. Kan. 2024) (unpublished opinion), which Ellis referenced in her motion.

B. *Reasonable number of hours*

**11 We next look at the hours Baker spent prosecuting this appeal to determine whether they were reasonable. We note Defendants do not argue the 45.5 hours Baker claims to have spent on Ellis' appeal was an unreasonable amount of time, nor do we find it unreasonable after examining the detailed billing records Baker submitted.

C. *Application of KRPC 1.5(a) factors*

Defendants do not address the effect of the KRPC 1.5(a) factors on Ellis' fee request, other than to make a generic statement that the factors "do not warrant the award Ellis seeks." We therefore find Defendants have waived any argument on this issue for their failure to brief it. See *Gallegos*, 313 Kan. at 277. At any rate, we find application of these factors generally supports Ellis' request and the lodestar calculation of the amount to be awarded.

To begin, KRPC 1.5(a) directs us to look at "the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly." KRPC 1.5(a)(1) (2024 Kan. S. Ct. R. at 330). Given the novelty and difficulty of the legal and factual issues involved in pursuing a KPRFA case—especially given that we have little published caselaw on the Act—we agree with Ellis that this factor supports awarding her requested fees on appeal. And as noted above, we also find the time expended in prosecuting this appeal was reasonable.

Ellis also persuasively argues the impact taking this case had on Baker's law practice supports her fee request. KRPC 1.5(a)(2) (2024 Kan. S. Ct. R. at 330) requires us to consider "the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer." Baker states he is a solo practitioner with no staff, who could not perform work for other clients or on other cases while doing so.

Next, we consider the amount involved and the results obtained as well as the fact that Baker took this case on a contingency basis. See KRPC 1.5(a)(4), (a)(8). KPRFA claims are no different from other civil rights claims where the client's recoverable damages are often not monetary or even monetarily measured. If this court does not compensate attorneys who successfully protect their clients' civil rights when the law provides us the authority to do so, attorneys will not take on such cases because they will not be able to afford to do so. It is unfair to burden civil rights attorneys with the cost of such enforcement especially when those victories reverberate throughout society. Similarly, if we do not award fees for succeeding in overturning erroneous district court decisions on appeal, we undercut the purpose of the Legislature's inclusion of attorney fees in the type of relief that can be awarded under KPRFA. Therefore we find this factor also supports Ellis' request for fees on appeal.

As for the remaining factors, we have already determined the hourly rate of $400 was reasonable for the locality where Baker practices and considering his legal experience and abilities. See KRPC 1.5(a)(3), (a)(7). We find the factor regarding "the nature and length of the professional relationship with the client" to be neutral because Baker states he had no relationship with Ellis before this matter. See KRPC 1.5(a)(6) (2024 Kan. S. Ct. R. at 330). And we find the last factor—"the time limitations imposed by the client or by the circumstances"—does not support any adjustment to the lodestar calculation because Ellis does not address how this factor impacts her fee request on appeal. See KRPC 1.5(a)(5) (2024 Kan. S. Ct. R. at 330). Instead, she addresses the time constraints imposed by her need to seek a preliminary injunction before the district court. Since we are not addressing whether Ellis is entitled to attorney fees for the district court proceedings, this factor does not impact our decision.

**12 To conclude, we find both the lodestar calculation and application of the KRPC 1.5(a) factors generally support Ellis'

request for attorney fees on appeal. We therefore award Ellis her requested fees for prosecuting this appeal in the amount of $18,200 under Rule 7.07(b). Since we are reversing the district court's summary judgment decision on Ellis' KPRFA claim, we also award Ellis her docketing fee of $145 under Rule 7.07(a)(4), (a)(5).

Conclusion

For the reasons stated above, we affirm the district court's decision on Ellis' motion to add or reinstate a KCPA claim, and we reverse the district court's summary judgment decision on her KPRFA claim. We also grant Ellis' request for attorney fees and costs on appeal and remand the case for further proceedings on her KPRFA claim.

***1238** Affirmed in part, reversed in part, and remanded with directions.

Arnold-Burger, C.J., concurring:
As the parties conceded at oral argument, at this juncture, this case is about attorney fees.

The stripped-down facts are as follows:

When the Flint Hills Technical College accepted Molly Ellis into its practical nursing program, it agreed to provide her the necessary instruction to allow her to become a practical nurse. The Board of Nursing requires that approved nursing programs provide a clinical experience for its students. See K.A.R. 60-2-104. The program must have "adequate clinical and educational facilities to meet student learning outcomes." K.A.R. 60-1-102(f). In compliance with this requirement, the Flint Hills program requires completion of a clinical experience. It has contracted with several entities to provide those services: Newman Regional Health, Emporia Presbyterian Manor, Holiday Resort, and Stormont Vail Health.

When Ellis began the program, she made no secret of her personal religious beliefs regarding vaccinations and their use of fetal tissue. Flint Hills recognized those beliefs and gave her at least a de facto waiver from their vaccination requirement to allow her to continue in the program. When the COVID-19 pandemic began, the major entity providing clinical opportunities was Newman Regional Health Center. At the beginning of the pandemic it stopped allowing any nursing students to complete clinicals there unless they were vaccinated against the COVID-19 virus. Ellis sought a religious exemption from her nursing program, Flint Hills, and was denied. She was told that if she did not get vaccinated, she would not be able to complete her clinical assignments. When she failed to get vaccinated, she was given zeros for each clinical assignment missed. Three zeros would result in a failure and thus an inability to complete the program.

Within a couple days of being provided this information, and before Ellis had her third zero for missed clinicals, Ellis filed this action for enforcement of her rights under the Kansas Preservation of Religious Freedom Act (KPRFA), K.S.A. 60-5301 et seq., seeking injunctive and declaratory relief and attorney fees. The court granted the preliminary injunction and ordered Flint Hills to enter her grade as an incomplete to give the parties a chance to enter settlement negotiations. The court specifically stated that it was not requiring that the clinical facilities participate in the negotiations and made it clear this was a Flint Hills issue, and Newman was not a party to the case. Shortly thereafter, Flint Hills changed its policy to allow for religious exemptions and Ellis completed her clinicals.

****13** Well over a year later, the district court granted summary judgment to Flint Hills on the grounds that the issue was not ripe because Ellis did not request a religious exemption from Newman, and Ellis sued the wrong party—she should have sued Newman. Today we find that the district court's summary judgment order was in error, and we reverse it and return it to the district court to make a determination on the merits—whether Flint Hills substantially burdened Ellis' religious exercise contrary to KPRFA and whether her success on the temporary injunction request is sufficient to order that she be reimbursed her attorney fees.

But after argument in this case, Ellis requested appellate attorney fees. I agree with the majority that she is entitled to attorney fees on appeal under these facts. Flint Hills contends that because Ellis has not prevailed in the district court and her claims are unviable and untruthful, appellate fees are barred. In other words, because summary judgment was properly granted by the district court, she is not entitled to attorney fees.

Flint Hills fails to take into account her entitlement to attorney fees if she prevails on appeal. She has now prevailed on appeal. And Flint Hills presents absolutely no caselaw to support its position that she is barred from an award of appellate attorney fees. Failure to support a point with pertinent authority or failure to show why a point is sound despite a lack of supporting authority or in the face of contrary authority is like failing to brief the issue. *In re Adoption of T.M.M.H.*, 307 Kan. 902, 912, 416 P.3d 999 (2018).

I part ways with my colleagues only insofar as I do not think it is necessary or advisable for us to go through a lodestar and KRPC analysis and declare $400 per hour and over $18,000 in appellate attorney fees reasonable, when the majority concedes there is no dispute regarding the amount of attorney fees. Flint Hills does not object to the amount of the fees, only whether we have the authority to assess them. We do. Moreover, I do not find Mr. Baker's billing records as clear as the majority. For example, he does not distinguish between the time he spent on the portions of this appeal that were successful and those that were not (KCPA claim), which makes it impossible for me to conclude the reasonableness of the fees for the sole issue upon which he prevails. But we do not need to do that, because Flint Hills presents no challenge to the amount. I would find the failure to object to the amount of the fee to be dispositive as to the amount. Accordingly, I do not join in the reasonableness finding by the majority, although I do concur that the attorney fee award requested should be awarded.

All Citations

559 P.3d 1237 (Table), 2024 WL 4878593

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CLERK OF THE DOUGLAS COUNTY DISTRICT COURT
CASE NUMBER: DG-2025-CV-000429
PII COMPLIANT

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
SEVENTH JUDICIAL DISTRICT

Emily Anderson	)	
	)	Case No. DG-2025-CV-000429
V	)	Division 4
	)	
Dr. Scarlett Aldrich, M.D.	)	

Memorandum Decision

NOW on this 18th day of February, 2026, this matter is before the Court on the following pending motions:

1) Defendant Scarlett Aldrich's ("Aldrich") Motion to Dismiss (filed 11/10/25);
   -Opposition filed 11/11/25 – Reply filed 11/18/25 – Surreply 11/18/25
2) Defendant Aldrich's Motion for Sanctions and to Strike Surreply (filed 11/21/25);
   -Opposition filed 12/15/25
3) Defendant's Motion to Strike Affidavit in Support of Motion to Dismiss (filed 11/23/25);
   -Opposition filed 12/01/25
4) Plaintiff's Request for Documents (filed 12/18/25);
   -Response filed 12/18/25
5) Plaintiff's Motion to Compel filed 12/18/25;
   -Response in Opposition filed 01/02/2026

The parties appeared by counsel via Zoom. Plaintiff appeared by counsel Linus Baker. Defendant appeared by counsel David Tyrrell.

WHEREUPON, having heard the arguments and statements of counsel, the Court took the various matters under advisement and indicated a written decision would be forthcoming. In the event the case survived the Motion to Dismiss, a case management conference was scheduled for 1:30 p.m. on March 25, 2026.

Having considered the issues, the Court rules as follows:

Defendant's Motion to Dismiss
And
Defendant's Motion to Strike Affidavit

Motions to dismiss are controlled by what is pled in the Petition and any documents attached in support. Rogers v. Wells Fargo Bank, NA, 551 P.3d 142, 151 (Kan.App. 2024).

"While a trial court considering a motion to dismiss must accept the factual allegations contained in the petition as true, it is not required to treat the legal conclusions contained within the petition as also being true." Duckworth v. City of Kansas City, 243 Kan. 386, Syl. ¶ 2, 758 P.2d 201 (1988). *See also* Williams v. C-U-Out Bail Bonds, *LLC*, 310 Kan. 775, 785, 450 P.3d 330 (2019) ("we agree with the panel that a pleading's bare legal conclusions need not be credited absolutely in the same way that the plaintiffs' factual allegations must be when a judge rules on a motion to dismiss").

When a petition references a document, the court may fairly consider the entirety of an undisputed authentic version of the document whether Plaintiff included it as an exhibit or not. See Rodina v. Castaneda, 60 Kan.App.2d 384, 387 (2021)(citing K.S.A. 60-409 to permit judicial notice of a journal entry in determining a motion to dismiss).

Only where a petition fails to include allegations of a factual nature to support the necessary elements of a cause of action should a motion to dismiss be granted. If the allegations are found within the body of the pleading, resolution of those factual issues will default to the plaintiff's description of what occurred and any reasonable inferences therefrom. Blevins v. Board of Douglas County Comm'rs, 251 Kan. 374, 381 (1992).

Here, Plaintiff's Petition plainly states a cause of action against Dr. Scarlett Aldrich for medical negligence. Defendant's Motion to Dismiss makes "notable" additions to Plaintiff's Petition - that "Defendant is an employee of Lawrence Memorial Hospital ("LMH") which is a municipal entity." Defendant's Motion, Page 1. In support of this claim, Defendant submits the affidavit of Daniel Cupps, which purports to establish that Dr. Aldrich was working as an employee of Lawrence Memorial Hospital at the time she performed the surgery alleged in Ms. Anderson's Petition and that LMH is an entity subject to the KTCA. With this addition to Plaintiff's Petition, Defendant seeks dismissal based on Plaintiff's failure to comply with the protocols mandated by the Kansas Tort Claims Act, specifically K.S.A. 12-105b(d).

The standard for a Motion to Dismiss limits this Court to the contents of the Petition, or undisputed documents referenced in the Petition. The Motion to Strike is denied. There is no need to strike the affidavit. It simply cannot be considered by the Court in ruling on the Motion to Dismiss.

The Plaintiff further asserts that the Petition fails to state a claim because the prayer for relief does not conform to K.S.A. 60-208(a). That civil procedure statute is unequivocal. If a claim is anticipated to exceed $75,000, the prayer for relief "must state only that the amount sought as damages is in excess of $75,000." If less than $75,000, a specific amount "must" be specified. Plaintiff's Petition does not meet this requirement. Plaintiff glibly responds that "this is notice pleading" and that the claim is in excess of $75,000.

Dismissal for procedural irregularities is not favored. K.S.A. 60-102 provides that the Code of Civil Procedure should be "liberally construed, administered and employed by the

court and the parties to secure the just, speedy and inexpensive determination of every action and proceeding." And, yet, the requirements of K.S.A. 60-208 are specific and clear. Further, Chapter 60 and Chapter 61 have differing jurisdictional specifications. The Petition does not conform to the Code of Civil Procedure. If Plaintiff does not file an Amended Petition that conforms to the requirements on or before March 23, 2026, the Motion to Dismiss will be granted. If such an Amended Petition is on file by that date, the Motion is Denied.

Plaintiff's Request for Documents
And
Motion to Compel

Plaintiff submitted a 34 page Request for Documents that includes 129 separate requests. Defendant made general objections and specific objections to each request. No privilege log was presented. See K.S.A. 60-226(b)(7)(A). Plaintiff asserts that redacted documents were produced without permission for redaction. Many of Defendants objections are "overly broad and unduly burdensome, seeks irrelevant information that does not relate to the claim or defense of the party seeking discovery."

Very broadly summarized, many of the Requests attempt to address the employment status of Dr. Aldrich, albeit with a level of detail that seems to invite the objection of overly burdensome (and redundant). Categorically, the Requests touch on the nature of Dr. Aldrich's employment agreement with LMH and whether she has additional/outside employment; tax and financial records – both personal and in the form of business entity; payroll records; ownership interests; billing records – both personal and in the form of business entity and insurance claims related to the claimed negligence.

Many of the responses include the assertion that Dr. Aldrich is not the custodian of the record and that seems well-placed when the documents pertain to entities that are not parties to this lawsuit. To the extent that Dr. Aldrich is able to stand on the non-custodian objection (and does not otherwise possess documents responsive to the request), the Court has no immediate concern with those objections.

Dr. Aldrich has put her employment status at issue. Discovery into that topic is well within bounds. The scope and nature of the discovery needs careful review. However, before the Court delves into the details, the Court believes it is appropriate – now that the Motion to Dismiss has been addressed – to give counsel the opportunity to confer about how to proceed on these issues. This is especially true in light of the provisional granting of the Motion to Dismiss if Plaintiff has not filed an Amended Petition by the deadline of March 23, 2026. For that reason, the Court declines to further consider the Motion to Compel until counsel have reviewed and conferred.

Motion for Sanction

First and foremost, the Court appreciates the intent and fidelity to high standards for the professional obligations of counsel in litigation that underlies this Motion. Generative Artificial Intelligence (GAI) is a wild-card in the legal landscape, the subject of numerous articles and a growing number of cases. It is a tool susceptible of both abuse and great potential.

Plaintiff's counsel does not deny the use of GAI in creating the pleadings at issue. Plaintiff's counsel's response appears to take the "no harm, no foul" approach to defending any shortcomings of the manner in which any erroneous citations to cases or statutes exist in his pleading. The Court might hope for more but the Court generally agrees that – in the context of the entire circumstances – the mistakes are rather glaring and not misleading. The citations to federal rules of civil procedure are embarrassing. The legal statements without supporting citation is unprofessional but the statements are not misstatements of relevant legal principles. Finally, Plaintiff's counsel asserts he was recovering from a recent health episode and this may have affected the care and attention he gave the matter.

The Court believes the better part of discretion at this juncture is to leave this matter under consideration. If future pleadings suggest that there is a basis for future concerns, then the Court can address it in a global manner.

Conclusion

The findings and conclusions above are hereby made the Order of the Court. Assuming an amended petition is timely filed that conforms to the requirements of Kansas law, counsel should confer regarding the discovery disputes and, if resolution isn't achieved within a reasonable time, the matter should be brought back to the Court's attention for further hearing.

IT IS SO ORDERED.

James R. McCabria
District Court Judge

Court:	Lyon County District Court
Case Number:	2022-CV-000007
Case Title:	Molly Ellis vs. Kim McNeese, et al.
Type:	ORD: Disposition agreed journal entry on summary judgment

SO ORDERED,

/s/ Honorable W. Lee Fowler, District Court Judge

IN THE DISTRICT COURT OF LYON COUNTY, KANSAS

Molly Ellis Plaintiff vs. Kim McNeese, individually and Flint Hills Technical College Defendants	Case No. 2022-CV-000007

JOURNAL ENTRY

On September 3, 2025, the matter comes on the plaintiff's and the defendants' motions for summary judgment filed after remand of this matter from the Kansas Court of Appeals. The plaintiff appears through counsel Linus L. Baker. Defendants Flint Hills Technical College and Kim McNeese appear through counsel Jeffrey A. Bullins. Upon consideration of the law, the file, the motions, and arguments of counsel the Court rules:

The plaintiff's motion for summary judgment is granted and the defendants' motion for summary judgment is denied.

The Court finds the plaintiff's statement of uncontroverted facts 1-3, 6, 8-11, 23, 24, 31, 32, 36, 37, and 45 to be uncontroverted. The Court finds the defendants' statement of uncontroverted facts 1-7, 9-13, 16, 19, 20, 24-27, 29-42, 44-55, and 57-73 to be uncontroverted.

In addition, the Court expressly adopts and incorporates by reference the factual summaries contained in both the majority opinion and the concurring opinion of Judge Arnold-Burger in *Ellis v. Flint Hills Technical College*, 66 Kan. App. 2d 1 (2024).

The Court's assessment of the question remanded back to the Court was to determine whether defendants' actions substantially burdened Ellis' religious exercise. And to that question the Court answers yes.

Ms. Ellis had sincere religious beliefs about vaccinations and the defendant McNeese, who is an employee of Flint Hills, had apparent authority to make decisions and was responsible for receiving and processing requests for exemptions. McNeese took the position that Ms. Ellis' position in the nursing program was very tenuous if she did not get a COVID vaccine and conveyed that to Ms. Ellis.

Ms. Ellis had sincere religious beliefs about vaccinations. Court finds McNeese had apparent authority and was responsible for receiving/processing exemption requests; her statements/ultimatum drove the burden. McNeese unequivocally took the position that, unless Ms. Ellis received the COVID-19 vaccine, she could not complete the nursing program.

Ms. Ellis was given an ultimatum by Ms. McNeese that if Ms. Ellis had three misses, that she would have three F's, and would be removed from the nursing program. It was Ms. McNeese's testimony at the hearing that she was going to dismiss Ms. Ellis from the nursing program.

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McNeese gave Ms. Ellis a direct ultimatum that three clinical absences would result in three failing grades and her removal from the program. The Court finds that this ultimatum meant that Ms. Ellis either had to change her religious beliefs or be flunked out.

The plaintiff had to file this case because she had been told by defendant McNeese that three clinical absences would result in Ms. Ellis' removal from the program. From the date of this action, the defendants told her, actually forced her, to file this case if she were to stay in the program.

Ms. Ellis was effectively told by Ms. McNeese that she had to change her religious beliefs or be flunked out of the nursing program. McNeese's above referenced statements were made with apparent authority and compelled Ms. Ellis to file this case.

The plaintiff's burden has been satisfied. The material facts are sufficient to find that there was a substantial burden placed upon Ms. Ellis' exercise of religion by defendants. This element of the Kansas Preservation of Religious Freedom Act was met. The Court is aware of no other facts that need to be presented at a trial in this case. The Court does not find any of the defenses offered by the defendants, including standing, to have been established. The KPRFA provides for an award of attorney fees and the Court will entertain the plaintiff's motion for attorney fees in this matter. The KPRFA provides for an award of attorney fees. The Court retains jurisdiction to determine the amount of attorney fees and costs upon proper motion

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by Plaintiff. Plaintiff may file such motion with all the time plaintiff wants and will then give Defendants time to respond.

HONORABLE W. LEE FOWLER
DISTRICT JUDGE

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