

[CAPTION]

PETITION ON A PROMISSORY NOTE

Plaintiff (Name) states the following claim for relief against the defendant, (Name):

1. On or about (date) defendant executed and delivered to plaintiff a promissory note (containing the following words: [recite the note verbatim]) (a copy of which is attached as Exhibit A).

2. Defendant is in default on the note.

3. Defendant owes to plaintiff the amount of \$ _____ with interest on the note.

Wherefore, plaintiff demands judgment against defendant in the amount of \$ _____, together with interest, costs of this action, and other appropriate relief.

(Signature of Attorney)
(Name), Attorney for (name of plaintiff)
Bar Registration Number
Address
Telephone number
[Facsimile number]
[Email address]

Authority

K.S.A. 60-208; K.S.A. 60-209(h); K.S.A. 60-210

Notes on Use

Petitions are comprised of two basic elements: (1) a short, plain statement describing the relief sought and; (2) a demand for the appropriate relief sought. In cases of monetary relief, demands in an amount of \$75,000 or less are to be specific as to the amounts demanded. The same is true for petitions in contract, regardless of the amount demanded. In all other cases, a demand over \$75,000.00 may be made generally. K.S.A. 60-203(a). A party against whom relief is sought may also obtain a written statement of specific monetary damages pursuant to Supreme Court Rule 118. Pleadings should be written in short and plain terms. K.S.A. 60-208 (a) (1). Each assertion of a pleading should be simple, concise and direct. There are no technical forms of pleadings or motion required. K.S.A. 60-208 (e). Assertions of claim or defense should be made in numbered paragraphs, limiting the contents of each, as far as possible, to a statement of a single set of circumstances. A paragraph can be referred to by number in all succeeding paragraphs. Each claim based on a separate transaction or occurrence and each defense other than denials should be stated as separate count or defense. K.S.A. 60-210 (b) Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or motion. A copy of written instrument that is an exhibit to a pleading is a part of that pleading for all purposes. K.S.A. 60-210(c)

Comment

Under K.S.A. 60-208 petitions are to be liberally interpreted with an emphasis on substance rather than form. *Montoy v. State*, 275 Kan. 145, 62 P.3d 228 (2003). As such, it is not required that a petition cite the specific legal theory of relief sought so long as it contains enough information to apprise the responding party of the facts that support relief. *Dutoit v. Board of Johnson County Comm'rs*, 233 Kan. 995, 667 P.2d 879 (1983). To allow for the opportunity to shift theories as the facts develop, petitions that allege contradictory or alternative statements are acceptable. *Weaver v. Frazee*, 219 Kan. 42, 547 P.2d 1005 (1976); *Oller v. Kincheloe's, Inc.*, 235 Kan. 440, 681 P.2d 630 (1984). Courts are under a duty to deny a motion to dismiss if an examination of the petition supports a claim for relief on any possible theory. *Monroe v. Darr*, 214 Kan. 426, 520 P.2d 1197 (1974).

Certain situations or causes of action require petitions to contain specific requirements:

- The circumstances supporting fraud and mistake must be pled with particularity. K.S.A. 60-209(b).
- Time and place allegations are material and must be cited. K.S.A. 60-209(f).
- Claims for special damages (*i.e.* medical costs, lost earnings, future earning capacity, etc.) excepting exemplary or punitive damages over \$75,000.00 which may be pled generally. K.S.A. 60-209(g).
- Suits over written instruments must either attach a copy as an exhibit or recite the document at length in the petition. K.S.A. 60-209(h).

Normally, a petition need not be sworn to or verified; an attorney's signature is sufficient; however, the following actions do require verification:

- derivative action shareholder suits; K.S.A.60-223a
- perpetuation of testimony; K.S.A.60-227
- temporary injunction; K.S.A.60-905
- abatement of common nuisance; K.S.A.60-908
- vacating or modifying injunction order; K.S.A.60-910
- replevin; K.S.A.60-1005
- foreclosure of security interest (if no affidavit); K.S.A.60-1006
- habeus corpus; K.S.A.60-1502
- divorce and maintenance; K.S.A.60-1604
- enforcement of foreign judgments; K.S.A.60-3003
- protection from abuse; K.S.A. 60-3104
- protection from stalking; K.S.A.60-31a04
- filing amendment to plead to claim punitive damages; K.S.A.60-3703