

[CAPTION]

REQUEST FOR SERVICE

The Clerk of the Court will issue a summons and petition for _____ (name) _____, (address) _____. Plaintiff requests service of process as follows:

- _____ a. [Personal Service through the office of the Sheriff other than by return receipt delivery.]
- _____ b. [Service by Process Server authorized or appointed by the provisions of K.S.A. 60-303]
- _____ c. [Service by return receipt delivery by the undersigned party or party's attorney.]
- _____ d. [Service by return receipt delivery by the Sheriff.]
- _____ e. [Other instructions: _____]

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

SUMMONS

To the above-named Defendant:

You are hereby notified that an action has been commenced against you in this court. You are required to file with the court your answer to the pleading served upon you within (20) (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the petition. Your answer must be filed with the court at the following

address: _____.

You are required to serve a copy of your answer upon plaintiff's attorney, or the plaintiff if plaintiff has no attorney, at the following address :

_____ (Attorney's name) (Plaintiff's name)

_____ (Attorney's address) (Plaintiff's address)

Any related claim which you may have against the plaintiff must be stated as a counterclaim in your answer. If you fail to do so you will thereafter be barred from making such claim in any other action.

Date _____

Clerk of the District Court.

Clerk's Seal

By _____
Deputy

Authority

K.S.A. 60-302 and 60-213a.

Notes on Use

The summons shall be signed by the clerk, dated the day it is issued, and be under the seal of the court. K.S.A. 60-302.

The time within which an Answer or other responsive pleading is to be filed by a party served with process is:

- 20 days for a defendant served in-state, K.S.A. 60-212;
- 30 days for a defendant served out-of-state K.S.A. 60-308;

unless otherwise provided by law. The times within which a responsive pleading must be filed are exclusive of the date of service of process.

The sheriff of the county in which the action is filed shall serve any process by any method authorized by K.S.A. 60-303, or as otherwise provided by law, unless a party, either personally or through an attorney, elects to undertake responsibility for service and so notifies the clerk.

The sheriff shall endorse upon every summons, order of arrest, or for the delivery of property, or of attachment, injunction execution or order of sale, the day and hour it was received by him or her. The sheriff shall execute every summons, order or other process and return the same as required by law. K.S.A. 60-2602.

Methods of service of process within this state are described in K.S.A. 60-303. Methods of service of process outside the state are described in K.S.A. 60-308. Persons to be served are set forth in K.S.A. 60-304.

Methods of service described in K.S.A. 60-303 are service by return receipt delivery [KSA 60-

303(c)], and personal and residence service [K.S.A. 60-303(d)]. Service by publication is authorized by K.S.A. 60-307.

An acknowledgment of service on the summons is equivalent to service. The voluntary appearance by a defendant is equivalent to service as of the date of appearance. K.S.A. 60-303(e).

K.S.A. 60-308 provides that service of process may be made upon any party outside the state. If service of process is made upon a person domiciled in this state or upon a person who has submitted to the jurisdiction of the courts of this state, it shall have the force and effect of service of process within this state; otherwise it shall have the force and effect of service by publication.

Service of process outside the state shall be made (A) in the same manner as service within this state, by any officer authorized to make service of process in this state or in the state where the defendant is served or (B) by service by return receipt delivery. No order of a court is required.

Pursuant to K.S.A. 60-203 a civil action is commenced at the time a petition is filed with the clerk of the court if service of process is obtained or the first publication is made for service by publication within 90 days after the petition is filed, except that the court may extend that time an additional 30 days upon a showing of good cause by the plaintiff. If service of process or first publication is not made within the 90 day time period, or within the 30-day extension of time for service, the action is deemed commenced as of the date of service of process or first publication.

Comment

A summons is the means by which the defendant is afforded the opportunity to appear before and be heard by the court. It gives the court jurisdiction to proceed. The methods of serving process, set forth in K.S.A. 60-301 *et seq.*, constitute sufficient process. Different methods which are specifically provided for by law are also permissible. Actual knowledge of the pendency and the nature of an action is not a substitute for service. Notice or knowledge must come from service of process, or there must be a valid waiver. The following cases are representative of issues related to the sufficiency of service.

“The fact that a party has actual knowledge of the pendency and the nature of an action against him or her is not a substitute for service. Notice or knowledge must come from process of service, or there must be a valid waiver. Jurisdiction over the person of the defendant may be acquired only by issuance and service of process in the method prescribed by statute or by voluntary appearance. *Haley v. Hershberger*, 207 Kan. 459, 463, 485 P.2d 1321 (1971).” *State Bd. of Regents, University of Kansas Medical Center v. Skinner*, 267 Kan. 808, 812, 987 P.2d 1096 (1999).

In *Grimmett v. Burke*, 21 Kan.App.2d 638, 906 P.2d 156 (1995), rev. denied 259 Kan. 927 (1996), the Court of Appeals addressed the issue of an attempt to serve a party by leaving a copy of the summons and petition at an address not occupied by the party being served and then by mailing the same to that address. The Court engaged in a lengthy discussion of Kansas statutes and case law concerning defective service of process before holding that the plaintiff’s attempt to serve defendant did not “substantially comply” with the statutes defining personal service in this state. The Court further held “It must be shown that an attempted service of process, later adjudicated invalid, gave a party actual, personal notice that he or she had been sued before it can be held that service was ‘purported’ to have been made on such party as that term is used in K.S.A. 60-203(b) . . . Other factors to be considered in determining whether service was ‘purported’ to have been made are: (1) The service determined invalid must have appeared to have been regular and valid as shown on the return of service; (2) the party who alleges it “purported” to have served the other party must have believed, in good faith, that the original service was valid; and (3) the party seeking application of K.S.A. 60-203(b) did not know the other party was contesting service until it was too late to obtain valid service.”

K.S.A. 60-203(b) allows a lawsuit to be saved if “service of process or first publication purports to have been made but is later adjudicated to have been invalid due to any irregularity in form or procedure or any defect in making service . . . if valid service is obtained or first publication is made within 90 days after that adjudication.”

A plaintiff’s attempt to serve a defendant by sending the summons and petition by certified mail to defendant’s business failed where the mailing was signed for by defendant’s secretary. The court noted that plaintiff had not attempted mailing to defendant’s residence and there was no evidence that defendant’s secretary was an authorized agent for receiving service of process. *McIntyre v. Rumsey*, No. 90,200, unpublished opinion filed December 19, 2003.

For a case where the Court held that the relation back provision of K.S.A. 60-203(a) applies to an amended petition, see *Bird v. Kansas Dept. Of Transportation*, 23 Kan.App.2d 164, 928 P.2d 915 (1996).