

RETURN ON SERVICE OF SUMMONS

I hereby certify that I served a copy of this summons and a copy of the petition (and _____ insert any other documents served _____) on _____ (name of defendant) _____ in the following manner:

- _____(1) **Personal Service** - on the _____ day of _____, 2____, b y _____ delivering or offering to deliver such documents to the above-named person;
- _____(2) **Residence Service** - on the _____ day of _____, 2____, b y _____ leaving such documents at the dwelling house or usual place of abode of the above-named person, with some person of suitable age and discretion residing therein;
- _____(3) **Residence Service** - on the _____ day of _____, 2____, b y _____ leaving such documents at the dwelling house or usual place of abode of the above-named person and mailing to that person by first-class mail a notice that such documents have been left at such house or place of abode;
- _____(4) **Return Receipt Delivery** - by causing to be delivered on the _____ day of _____, 2____, such documents by return receipt delivery to the above-named person at the following address: _____ with delivery being made by the following person or entity: _____. Attached hereto is a copy of the return receipt evidencing such delivery.
- _____(5) **Return Receipt Delivery Refused** - by mailing on the _____ day of _____, 2____, such documents by first-class, postage prepaid, to the above-named person at the following address: _____.
- _____(6) **No Service**. The above-named person was not served for the following reason(s): _____

Summons is true and correct.

Executed on _____, 2____.

(Signature of Person serving process)

Subscribed and sworn to before me this _____ day of _____, 2____.

(Signature of person
authorized to administer oaths)

Authority

K.S.A. 60-303, 60-308, 21-3805, and 60-312.

Notes on Use

An officer or other person receiving a summons or other process shall make a return of service promptly and in any event within 10 days after the service is effected. If the process cannot be served it shall be returned to the court within 30 days after the date of issue with a statement of the reason for the failure to serve the same, except the time for service thereof may be extended up to 90 days from the date of issue by order of the court or judge of the court to which it is returnable. Immediately upon receipt of the return of any summons or other process by the clerk of the court issuing the same, such clerk shall mail a copy of such return to the attorney for the party requesting the issuance of such summons or other process or, if such party has no attorney, then to the requesting party's self. K.S.A. 60-312(d).

K.S.A. 60-303 provides for service of process by return receipt delivery which shall include service effected by certified mail, priority mail, commercial courier service, overnight delivery service, or other reliable personal delivery service to the party addressed, in each instance evidenced by a written or electronic receipt showing to whom delivered, date of delivery, address where delivered, and person or entity effecting delivery. K.S.A. 60-303(c)(1).

After service and return of the return receipt, the sheriff, party or party's attorney shall execute a return on service stating the nature of the process, to whom delivered, the date of delivery, the address where delivered and the person or entity effecting delivery. The original return of service shall be filed with the clerk, along with a copy of the return receipt evidencing such delivery. K.S.A. 60-303(c)(4).

If the sealed envelope is returned with an endorsement showing refusal to accept delivery, the sheriff, party or the party's attorney may send a copy of the process and petition or other document by first-class mail addressed to the party to be served, or may elect other methods of service. If mailed, service shall be considered obtained three days after the mailing by first-class mail, postage prepaid, which shall be evidenced by a certificate of service filed with the clerk. If the unopened envelope sent first-class mail is returned as undelivered for any reason, the sheriff, party or party's attorney shall file an amended certificate of service with the clerk indicating nondelivery, and service by such mailing shall not be considered obtained. Mere failure to claim return receipt delivery is not refusal of service within the meaning of this subsection. K.S.A. 60-303(c)(5).

Proof of personal and residence service shall be made as follows:

(1) Every officer to whom summons or other process shall be delivered for service within or without the state, shall make a statement subject to penalty of perjury as provided in K.S.A. 21-3805 and amendments thereto as to the time, place and manner of service of such writ. K.S.A. 60-312(a)(1).

(2) If service of such process is directed to and delivered to a person, other than an officer, for service, such person shall make affidavit as to the time, place and manner of such person's service thereof. K.S.A. 60-312 (a)(2).

Where service is made outside the state, an affidavit or any other competent proofs of the server shall be

filed stating the time, manner and place of service. The court may consider the affidavit or any other competent proofs in determining whether service has been properly made. K.S.A. 60-308(a)(2).

The court may allow amendment of a return of process. At any time in his or her discretion and upon such terms as he or she deems just, the judge may allow any process, return or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued. K.S.A. 60-313.

Comment

Technical defects in the return of process will not defeat service absent a showing that the defect prejudiced the party served. In *Cook V. Freeman*, 16 Kan.App.2d 555, 825 P.2d 1185 (1992), a process server failed to file a return until long after the statutory time for filing. The return indicated that defendant was served "during the week of September 25". Despite the extensive delay in filing and the less than specific date of service, the Court held that the defendant failed to show any prejudice and the defects did not, therefore, defeat the service.