

Proposed Amendments to Kansas Code of Civil Procedure
Judicial Council Civil Code Advisory Committee Comments

December 4, 2009

Introduction

The Kansas Code of Civil Procedure, effective January 1, 1964, was originally proposed by a Judicial Council Advisory Committee. The Kansas Code was patterned after the Federal Rules of Civil Procedure, and the Advisory Committee noted at the time the many benefits of conformity with the Federal Rules. One of the benefits is uniformity of practice in the state and federal courts in Kansas. In addition, interpretation and analysis of the federal rules are available to assist in construing the corresponding Kansas provisions.

The Judicial Council Civil Code Advisory Committee has completed a two-year review of the Kansas Code of Civil Procedure, comparing the Kansas provisions with the corresponding federal rules. Prior to this review, the most recent comprehensive review of the Kansas Code of Civil Procedure was in the mid-1990's. The current review was prompted by a number of recent changes to the Federal Rules of Civil Procedure. The comprehensive Federal Style Project, effective December 1, 2007, involved amendments to virtually every civil rule. The goal of the Federal Style Project was to clarify and simplify the rules so that they would be easier to use and understand, without making substantive changes. Also effective on that date were the "Style-Substance" amendments, which involved minor technical changes to a small group of rules. Another group of amendments will become effective December 1, 2009, including the Time-Computation project that revises the way time is computed under the federal rules. In addition, the Civil Code Advisory Committee reviewed other federal rules amendments that Kansas has not adopted, including those that had taken effect since the last comprehensive review. The review was limited to Articles 1-3 of Chapter 60.

The Committee concluded that some amendments to the federal rules that had not yet been incorporated into the Kansas Code were inapplicable to practice in state courts or were inconsistent with established Kansas practice reflecting strong state policies. In most instances, however, the Committee concluded that amendments to the federal rules were compatible with Kansas practice and policies.

The Civil Code Advisory Committee previously reviewed a group of federal rules amendments dealing with the issue of e-discovery that went into effect on December 1, 2006, and recommended corresponding changes to the Kansas Code of Civil Procedure. That legislation was introduced and passed in the 2008 legislative session.

The Comment section following each statute below generally refers to the restyling revisions that are recommended 1) to incorporate Federal Style Revision amendments in Kansas Code provisions modeled after the Federal Rules, and 2) to restyle Kansas Code provisions that have no federal counterpart using similar style guidelines. The Restyling Objectives below and the Comments regarding revisions patterned after federal rules amendments have been borrowed from the Federal Advisory Committee Notes and adapted for the Kansas Code.

Restyling Objectives

Some of the primary restyling objectives are summarized below. More detailed comments from the Federal Advisory Committee on the Federal Style Project as well as the other federal rules amendment packages can be found at: <http://www.uscourts.gov/rules/>.

The restyled Kansas Code reduces the use of inconsistent terms that say the same thing in different ways. Because different words are presumed to have different meanings, such inconsistencies can result in confusion. The restyled rules reduce inconsistencies by using the same words to express the same meaning. For example, consistent expression is achieved without affecting meaning by the changes from “upon motion or on its own initiative” in K.S.A. 60-205(c) and variations in many other statutes to “on motion or on its own.” Some variations of expression have been carried forward when the context made that appropriate. As an example, “stipulate,” “agree,” and “consent” appear throughout the Kansas Code, and “written” qualifies these words in some places but not others. The number of variations has been reduced, but at times the former words were carried forward. None of the changes, when made, alters the statute’s meaning.

The restyled Kansas Code minimizes the use of inherently ambiguous words. For example, the word “shall” can mean “must,” “may,” or something else, depending on context. “Kansas courts have read ‘shall’ to mean ‘may’ where the context requires.” *State v. Porting*, 29 Kan. App. 2d 869, 892 P.2d 915 (1995) (citing *Paul v. City of Manhattan*, 212 Kan. 381, 385, 511 P.2d 244 (1973)). The potential for confusion is exacerbated by the fact that “shall” is no longer generally used in spoken or clearly written English. The restyled Kansas Code replaces “shall” with “must,” “may,” or “should,” depending on which one the context and established interpretation make correct in each section.

The restyled rules minimize the use of redundant “intensifiers.” These are expressions that attempt to add emphasis, but instead state the obvious and create negative implications for other rules. “The court in its discretion may” becomes “the court may”; “unless the order expressly directs otherwise” becomes “unless the court orders otherwise.” The absence of intensifiers in the restyled Kansas Code does not change the substantive meaning. For example, the absence of the word “reasonable” to describe the notice of a motion for an order to compel discovery in K.S.A. 60-237(a)(1) does not mean that “unreasonable” notice is permitted.

The restyled Kansas Code also removes words and concepts that are outdated or redundant. The reference to “at law or in equity” in K.S.A. 60-201(b) has become redundant with the merger of law and equity. Outdated words and concepts include the reference to “demurrers, pleas, and exceptions” in K.S.A. 60-207(c) and references to “averments” in K.S.A. 60-208, 60-209, 60-210, and 60-255.

The restyled Kansas Code removes a number of redundant cross-references. For example, K.S.A. 60-208(b) states that a general denial is subject to the obligations of K.S.A. 60-211, but all pleadings are subject to K.S.A. 60-211. Removing such cross-references does not defeat application of the formerly cross-referenced statute.

Proposed Amendments

1 **60-101. Title.** This act ~~shall~~ may be ~~known~~ cited as the code of civil procedure.

2 **COMMENT**

3 The language of K.S.A. 60-101 has been amended as part of the general restyling of the
4 Kansas Code to make it more easily understood and to make style and terminology
5 consistent throughout the Code. The change in this section is intended to be stylistic only.

6 **60-102. Construction.** The provisions of this act ~~shall~~ must be liberally construed and administered
7 to secure the just, speedy, and inexpensive determination of every action ~~or~~ and proceeding.

8 **COMMENT**

9 The language of K.S.A. 60-102 has been amended as part of the general restyling of the
10 Kansas Code to make it more easily understood and to make style and terminology
11 consistent throughout the Code. These changes are intended to be stylistic only.

12 **60-103. Restricted mail defined.** The term "restricted mail" as used in this chapter means mail, sent
13 postage or other delivery fees prepaid, that is endorsed which carries on its face the endorsements
14 "return receipt requested showing address where delivered" and "deliver to addressee only" and for
15 which the appropriate fees have been paid upon mailing for the processing of mail so endorsed in
16 accordance with the pursuant to applicable postal regulations so that the sender will receive a return
17 receipt notification with the date and address of delivery, and, if the addressee is a natural person,
18 only the addressee or an authorized agent will receive the mail of the postal department, except that
19 mail on which the addressee is not a natural person or persons the endorsement "deliver to addressee
20 only" may be omitted.

21 **COMMENT**

22 The language of K.S.A. 60-103 has been amended as part of the general restyling of the
23 Kansas Code to make it more easily understood and to make style and terminology
24 consistent throughout the Code.

1 **COMMENT**

2 The language of K.S.A. 60-201 has been amended as part of the general restyling of the
3 Kansas Code to make it more easily understood and to make style and terminology
4 consistent throughout the Code.

5 Since cases are no longer classified as being at law or in equity, there is no need to carry
6 forward the phrases that initially accomplished the merger.

7 The former reference to proceedings in the supreme court has been deleted. Appellate
8 procedure has changed significantly since the Code was enacted and is now governed by
9 Supreme Court Rules.

10 The former reference to "suits of a civil nature" is changed to the more modern "civil
11 actions and proceedings."

12 The reference to K.S.A. 60-265 is deleted because K.S.A. 60-265 is not an exception to
13 this section.

14 **60-202. One form of action.** There ~~shall be but~~ is one form of action ~~to be known as~~ "the civil
15 action," in which the party complaining shall be designated "plaintiff" and the adverse party
16 "defendant."

17 **COMMENT**

18 The language of K.S.A. 60-202 has been amended as part of the general restyling of the
19 Kansas Code to make it more easily understood and to make style and terminology
20 consistent throughout the Code.

21 The Committee determined that the designation of parties, carried forward from G.S.
22 1949 60-201, is unnecessary.

23 **60-203. Commencement of Commencing an action.**

24 (a) *Time of commencement.* A civil action is commenced at the time of:

- 25 (1) filing a petition with ~~the clerk of~~ the court, if service of process is obtained or the first
26 publication is made for service by publication within 90 days after the petition is filed,
27 except that the court may extend that time an additional 30 days upon a showing of good
28 cause by the plaintiff; or

1 (2) service of process or first publication, if service of process or first publication is not
2 made within the time specified by ~~provision~~ subdivision (1).

3 (b) *Curing invalid service.* If service of process or first publication purports to have been made
4 but is later adjudicated to have been invalid due to ~~any an~~ irregularity in form or procedure or ~~any~~
5 ~~a~~ defect in making service, the action ~~shall nevertheless be deemed~~ is considered to have been
6 commenced at the applicable time under subsection (a) if valid service is obtained or first
7 publication is made within 90 days after that adjudication, except that the court may extend that time
8 an additional 30 days upon a showing of good cause by the plaintiff.

9 (c) *Entry of appearance.* The filing of an entry of appearance ~~shall have~~ has the same effect as
10 service. Written contact with the court by a defendant, or an attorney for a ~~the~~ defendant, invoking
11 evoking the protection for ~~such the~~ defendant under the servicemembers civil relief act ~~shall~~ (50
12 USC 501 et seq.), and amendments thereto, is not be deemed an entry of appearance ~~by the court.~~

13 (d) *Telefacsimile Electronic filing.* As used in this section, filing a petition with the ~~clerk of the~~
14 court ~~shall~~ includes receipt by the ~~clerk~~ court of a petition by ~~telefacsimile communication~~ electronic
15 means complying with supreme court rules.

16 COMMENT

17 The language of K.S.A. 60-203 has been amended as part of the general restyling of the
18 Kansas Code to make it more easily understood and to make style and terminology
19 consistent throughout the Code. These changes are intended to be stylistic only.

20 No substantive change to current rules regarding telefacsimile filing is intended by
21 substituting the words “electronic means.” The use of the broader term will accommodate
22 future expansion of electronic filing methods pursuant to supreme court rule.

23 K.S.A. 60-203 differs substantially from Federal Rule 3.

24 **60-204. Process, generally.** The methods of serving process as set ~~forth out~~ in article 3 of this
25 chapter ~~shall~~ constitute sufficient service of process in all civil actions and ~~special~~ proceedings, but
26 ~~they shall be alternative~~ are alternatives to; and do not restrict ~~in restriction of~~ different methods
27 specifically provided by law. Substantial compliance with ~~In~~ any method of serving process;
28 ~~substantial compliance therewith shall effect~~ effects valid service of process if the court finds that,
29 notwithstanding some irregularity or omission, the party served was made aware that an action or
30 proceeding was pending in a specified court in which his or her person, status or property were
31 subject to being affected ~~that might affect the party or the party’s status or property.~~

32 COMMENT

1 The language of K.S.A. 60-204 has been amended as part of the general restyling of the
2 Kansas Code to make it more easily understood and to make style and terminology
3 consistent throughout the Code. These changes are intended to be stylistic only.

4 K.S.A. 60-204 does not conform to Federal Rule 4, which contains the federal service
5 provisions. Service provisions in the Kansas Code are found in Article 3.

6 **60-205. Service Serving and filing of pleadings and other papers.** ~~The method of service and~~
7 ~~filing of pleadings and other papers as provided in this section shall constitute sufficient service and~~
8 ~~filing in all civil actions and special proceedings but they shall be alternative to, and not in~~
9 ~~restriction of, different methods specifically provided by law.~~

10 (a) **Service: When required.**

11 (1) **In general.** Except as otherwise provided in this chapter, each of the following papers
12 shall must be served upon each on every of the parties party:

13 (A) Every order required by its terms to be served an order stating that service is
14 required;

15 (B) every pleading subsequent to a pleading filed after the original petition, unless
16 the court orders otherwise orders under subsection (c) because of there are
17 numerous defendants;

18 (C) every paper relating to disclosure of expert testimony or a discovery paper
19 required to be served upon on a party, unless the court orders otherwise orders;

20 (D) a every written motion, other than except one which that may be heard *ex parte*;
21 and

22 (E) a every written notice, appearance, demand, or offer of judgment, designation of
23 record on appeal and or any similar paper.

24 (2) **If a party fails to appear.** No service need be made is required on a parties party who is
25 in default for failure failing to appear, except that pleadings asserting But a pleading that
26 asserts a new or additional claims claim for relief against them such a party shall must
27 be served upon them on that party in the manner provided for service of summons in
28 article 3 of chapter 60.

29 (b) **Service: How made.**

30 (1) Whenever under this article service is required or permitted to be made upon **Serving an**

1 attorney. If a party is represented by an attorney, the service under this section shall must
2 be made upon on the attorney unless the court orders service upon on the party is ordered
3 by the court.

4 (2) Service in general. A paper is served under this section Service upon the attorney or
5 upon a party shall be made by:

6 (A) handing it to the person;

7 (B) leaving it:

8 (i) at the person's office with a clerk or other person in charge or, if no one is in
9 charge, in a conspicuous place in the office; or

10 (ii) if the person has no office or the office is closed, at the person's dwelling or usual
11 place of abode with someone of suitable age and discretion who resides there;

12 (C) mailing it to the person's last known address - in which event service is complete
13 upon mailing;

14 (D) leaving it with the court clerk if the person has no known address;

15 (E) sending it by telefacsimile communication - in which event service is complete
16 upon receipt of a confirmation generated by the transmitting machine; or

17 (F) serving it by electronic means when authorized by supreme court rule or a local
18 rule.

19 ~~(1) Delivering a copy to the attorney or a party; (2) mailing it to the attorney or a party at the last~~
20 ~~known address; (3) if no address is known, by leaving it with the clerk of the court; or (4) sending~~
21 ~~or transmitting to such attorney a copy by telefacsimile communication. For the purposes of this~~
22 ~~subsection, "Delivery of a copy" means: Handing it to the attorney or to the party; leaving it at the~~
23 ~~attorney's or party's office with the person in charge thereof or, if there is no one in charge, leaving~~
24 ~~it in a conspicuous place therein; or, if the attorney's or party's office is closed or the person to be~~
25 ~~served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode~~
26 ~~with some person of suitable age and discretion then residing therein. Service by mail is complete~~
27 ~~upon mailing. Service by telefacsimile communication is complete upon receipt of a confirmation~~
28 ~~generated by the transmitting machine.~~

29 (c) Serving numerous defendants.

30 (1) In general. In any If an action in which there are involves an unusually large numbers
31 number of defendants, the court may, upon on motion or of on its own initiative, may

1 order that:

2 (A) ~~services of the defendants' pleadings of the defendants and replies thereto to~~
3 ~~them~~ need not be ~~served on other made as between the~~ defendants;

4 (B) ~~and that any cross-claim crossclaim, counterclaim, or matter constituting an~~
5 ~~avoidance, or affirmative defense contained therein shall be deemed to be in~~
6 ~~those pleadings and replies to them will be treated as~~ denied or avoided by all
7 other parties; and

8 (C) ~~that the filing of any such pleading and service thereof upon~~ servicing it on the
9 plaintiff constitutes ~~due~~ notice of ~~it the pleading to the~~ all parties.

10 (2) Notifying parties. A copy of every such order shall must be served upon on the parties
11 ~~in such manner and form~~ as the court directs.

12 (d) *Filing.*

13 (1) ~~Interrogatories, depositions other than those taken under K.S.A. 60-227 and amendments~~
14 ~~thereto, disclosures of expert testimony under K.S.A. 60-226 and amendments thereto and discovery~~
15 ~~requests or responses under K.S.A. 60-234 or 60-236, and amendments thereto, shall not be filed~~
16 ~~except on order of the court or until used in a trial or hearing, at which time the documents shall be~~
17 ~~filed.~~

18 (2) ~~A party serving discovery requests or responses under K.S.A. 60-233, 60-234 or 60-236, and~~
19 ~~amendments thereto, or disclosures of expert testimony under K.S.A. 60-226 and amendments~~
20 ~~thereto, shall file with the court a certificate stating what document was served, when and upon~~
21 ~~whom.~~

22 (3) ~~All other papers filed after the petition and required to be served upon a party, shall be filed~~
23 ~~with the court either before service or within a reasonable time thereafter.~~

24 (1) Required filings; certificate of service. Any paper after the petition that is required to
25 be served — together with a certificate of service — must be filed within a reasonable
26 time after service. Only a certificate of service must be filed for expert disclosures under
27 K.S.A. 60-226, and amendments thereto, and the following discovery requests and
28 responses, which must not be filed until they are used in the proceeding or the court
29 orders filing:

30 (A) depositions other than those taken under K.S.A. 60-227, and amendments
31 thereto;

32 (B) interrogatories;

1 (C) requests for documents or tangible things or to permit entry onto land; and

2 (D) requests for admission.

3 (2) **How filing is made — in general.** A paper is filed by delivering it:

4 (A) to the clerk; or

5 (B) to a judge who agrees to accept it for filing, and who must then note the filing
6 date on the paper and promptly send it to the clerk.

7 (3) **Electronic filing, signing, or verification.** In accordance with K.S.A. 60-271, and
8 amendments thereto, and supreme court rules, pleadings and other papers may be filed,
9 signed, or verified by electronic means.

10 ~~(e) **Filing with the court defined.** The filing of pleadings and other papers with the court as required~~
11 ~~by this article shall be made by filing them with the clerk of the court. In accordance with K.S.A.~~
12 ~~60-271 and amendments thereto and supreme court rules, pleadings and other papers may be filed~~
13 ~~by telefacsimile communication. The judge may permit the papers to be filed with the judge, in~~
14 ~~which event the judge shall note thereon the filing date and forthwith transmit them to the office of~~
15 ~~the clerk.~~

16 ~~(e) **Section not exclusive.** The methods of serving and filing pleadings and other papers provided~~
17 ~~in this section constitute sufficient service and filing but they are alternatives to and do not restrict~~
18 ~~different methods specifically provided by law.~~

19 COMMENT

20 The language of K.S.A. 60-205 has been amended as part of the general restyling of the
21 Kansas Code to make it more easily understood and to make style and terminology
22 consistent throughout the Code.

23 K.S.A. 60-205(a)(1)(E) omits the former reference to a designation of record on appeal.
24 Pursuant to a Supreme Court Rule change in 1977, the appellant no longer is required to
25 designate the content of the record. Supreme Court Rule 1.05 specifies that K.S.A. 60-205
26 applies to appeals, and no reference to the record on appeal is necessary in this section.

27 K.S.A. 60-205 was amended to conform more closely with Federal Rule 5, but there are
28 still differences. Rule 5 has been amended to allow electronic service (2001) and electronic
29 filing (2006). Many state court judicial districts do not yet have the technological capability
30 to accept e-filings and the only electronic method currently authorized by supreme court rule
31 is telefacsimile service and filing. New subsection (b)(2)(F) allows service by any electronic
32 means authorized by supreme court rule or a local rule, and “telefacsimile” filing in
33 subsection (d)(3) has been changed to “electronic” filing. These amendments are not

1 intended to be substantive changes to current service and filing methods. Rather, replacing
2 the narrow “telefacsimile” with the broader “electronic” is intended to accommodate future
3 expansion of electronic communication methods authorized by supreme court rule.

4 Subsection (d) was amended to conform to a 2001 amendment to Rule 5(d) that added
5 a requirement for certificates of service. The substance of former subsection (d)(2), which
6 requires filing only a certificate when service of certain discovery requests or responses, or
7 disclosures of expert testimony has occurred, is unique to Kansas and has been retained.
8 Responses to interrogatories no longer must be filed with the court.

9 The first sentence of the former statute, stating that the methods of service and filing
10 provided in the section are not exclusive methods, is unique to Kansas and has been retained
11 as new subsection (e).

12 **60-206. ~~Time, computation and extension~~ Computing and extending time; time for motion**
13 **~~papers.~~ The following provisions shall govern the computation and extension of time:**

14 (a) ~~*Computation; legal holiday defined*~~ *Computing time.* ~~The following provisions apply in~~
15 ~~in computing any time period of time prescribed or allowed by specified in this chapter, by the in~~
16 ~~any local rules of any district court, by rule or court order of court, or by in any applicable statute;~~
17 ~~or administrative rule or regulation that does not specify a method of computing time.~~

18 ~~the day of the act, event, or default from which the designated period of time begins to run shall not~~
19 ~~be included. The last day of the period so computed is to be included, unless it is a Saturday,~~
20 ~~Sunday, a legal holiday, or a day on which the court is not accessible, in which event the period runs~~
21 ~~until the end of the next day which is not a Saturday, a Sunday, a legal holiday or a day on which~~
22 ~~the court is not accessible. When the period of time prescribed or allowed is less than 11 days,~~
23 ~~intermediate Saturdays, Sundays, legal holidays and days on which the court is not accessible shall~~
24 ~~be excluded in the computation. A half holiday shall be considered as other days and not as a~~
25 ~~holiday. "Legal holiday" includes any day designated as a holiday by the congress of the United~~
26 ~~States, or by the legislature of this state, or observed as a holiday by order of the supreme court.~~
27 ~~When an act is to be performed within any prescribed time under any law of this state, or any rule~~
28 ~~or regulation lawfully promulgated thereunder, and the method for computing such time is not~~
29 ~~otherwise specifically provided, the method prescribed herein shall apply.~~

30 (1) *Period stated in days or a longer unit.* ~~When the period is stated in days or a longer unit~~
31 ~~of time:~~

32 (A) exclude the day of the event that triggers the period;

33 (B) count every day, including intermediate Saturdays, Sundays, and legal holidays;
34 and

1 (C) include the last day of the period, but if the last day is a Saturday, Sunday, or
2 legal holiday, the period continues to run until the end of the next day that is not
3 a Saturday, Sunday, or legal holiday.

4 (2) ***Period stated in hours.*** When the period is stated in hours:

5 (A) begin counting immediately on the occurrence of the event that triggers the
6 period;

7 (B) count every hour, including hours during intermediate Saturdays, Sundays, and
8 legal holidays; and

9 (C) if the period would end on a Saturday, Sunday, or legal holiday, the period
10 continues to run until the same time on the next day that is not a Saturday,
11 Sunday, or legal holiday.

12 (3) ***Inaccessibility of the clerk's office.*** Unless the court orders otherwise, if the clerk's
13 office is inaccessible:

14 (A) on the last day for filing under subsection (a)(1), then the time for filing is
15 extended to the first accessible day that is not a Saturday, Sunday, or legal
16 holiday; or

17 (B) during the last hour for filing under subsection (a)(2), then the time for filing is
18 extended to the same time on the first accessible day that is not a Saturday,
19 Sunday, or legal holiday.

20 (4) ***"Last day" defined.*** Unless a different time is set by a statute, local rule, or court order,
21 the last day ends:

22 (A) for electronic or telefacsimile filing, at midnight in the court's time zone; and

23 (B) for filing by other means, when the clerk's office is scheduled to close.

24 (5) ***"Next day" defined.*** The "next day" is determined by continuing to count forward when
25 the period is measured after an event and backward when measured before an event.

26 (6) ***"Legal holiday" defined.*** "Legal holiday" means any day declared a holiday by the
27 President, the Congress of the United States, or the legislature of this state, or any day
28 observed as a holiday by order of the Kansas Supreme Court. A half holiday is
29 considered as other days and not as a holiday.

30 (b) ***Enlargement***~~*Extending time.*~~

31 (1) ***In general:*** When an act may or must be ~~When by this chapter or by a notice given~~
32 ~~thereunder or by order of court an act is required or allowed to be~~ done ~~at or~~ within a

1 specified time, the judge court may, for good cause, extend the time; shown may at any
2 time in the judge's discretion (1)

3 (A) with or without motion or notice order the period enlarged if the court acts, or if
4 a request therefor is made, before the expiration of the period originally
5 prescribed or as extended by a previous order original time or its extension
6 expires; or

7 (2)(B) upon on motion made after the expiration of the specified period permit the act to be
8 done where the failure to act was the result time has expired if the party failed to act
9 because of excusable neglect.

10 (2) **Exceptions.** A court must ; but it may not extend the time for taking any action to act
11 under subsection (b) of K.S.A. 60-250(b), subsection (b) of K.S.A. 60-252(b),
12 subsections (b), (c) and (f) of K.S.A. 60-259(b), (e) and (f), and subsection (b) of K.S.A.
13 60-260(b), and amendments thereto, except to the extent and under the conditions stated
14 in them.

15 (c) **For motions=Motions, notices of hearing, and affidavits or declarations.**

16 (1) **In general.** A written motion, other than one which may be heard *ex parte*, and notice
17 of the hearing thereof shall must be served not later than five at least 7 days before the
18 time specified for the hearing, unless a different period is fixed by these rules or by order
19 of the judge: with the following exceptions:

20 (A) Such an order may for cause shown be made on when the motion may be heard
21 *ex parte*; application

22 (B) when these rules set a different time; or

23 (C) when a court order — which a party may, for good cause, apply for *ex parte* —
24 sets a different time.

25 (2) **Supporting affidavit or declaration.** When a motion is supported by affidavit, the
26 affidavit shall Any affidavit or a declaration pursuant to K.S.A. 53-601, and amendments
27 thereto, supporting a motion must be served with the motion, ; and except Except as
28 otherwise provided in subsection (d) of K.S.A. 60-259(d), and amendments thereto,
29 provides otherwise, any opposing affidavits may affidavit or declaration must be served
30 not later than at least one day before the hearing, unless the court permits them to be
31 served at the time of hearing service at another time.

32 (d) **Additional time after service by mail.** Whenever When a party may or must has the right
33 or is required to do some act or take some proceedings within a specified time period after the
34 service of a notice or other paper upon such party and the notice or paper is served upon such party
35 and service is by mail, three days shall be are added after to the prescribed period would otherwise
36 expire under subsection (a).

1 **COMMENT**

2 The language of K.S.A. 60-206 has been amended as part of the general restyling of the
3 Kansas Code to make it more easily understood and to make style and terminology
4 consistent throughout the Code.

5 **Subsection (a).** Subsection (a) has been amended to simplify and clarify the provisions
6 that describe how deadlines are computed. Subsection (a) governs the computation of any
7 time period specified in chapter 60, in any local rule or court order, or in any statute or
8 administrative rule or regulation that does not specify a method of computing time.

9 The time-computation provisions of subsection (a) apply only when a time period must
10 be computed. They do not apply when a fixed time to act is set. If, for example, the date for
11 filing is “no later than November 2, 2009,” subsection (a) does not govern. But if a filing
12 is required to be made “within 10 days” or “within 72 hours,” subsection (a) describes how
13 that deadline is computed.

14 **Subsection (a)(1).** New subsection (a)(1) addresses the computation of time periods that
15 are stated in days. It also applies to time periods that are stated in weeks, months, or years.
16 See, e.g., K.S.A. 60-260(c)(1). Subsection (a)(1)(B)’s directive to “count every day” is
17 relevant only if the period is stated in days (not weeks, months or years).

18 Under former subsection (a), a period of 11 days or more was computed differently than
19 a period of less than 11 days. Intermediate Saturdays, Sundays, and legal holidays were
20 included in computing the longer periods, but excluded in computing the shorter periods.
21 Former subsection (a) thus made computing deadlines unnecessarily complicated and led to
22 counterintuitive results. For example, a 10-day period and a 14-day period that started on
23 the same day usually ended on the same day — and the 10-day period not infrequently ended
24 later than the 14-day period. See *Miltimore Sales, Inc. v. Int’l Rectifier, Inc.*, 412 F.3d 685,
25 686 (6th Cir. 2005).

26 Under new subsection (a)(1), all deadlines stated in days (no matter the length) are
27 computed in the same way. The day of the event that triggers the deadline is not counted.
28 All other days — including intermediate Saturdays, Sundays, and legal holidays — are
29 counted, with only one exception: If the period ends on a Saturday, Sunday, or legal
30 holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal
31 holiday. An illustration is provided below in the discussion of subsection (a)(5). Subsection
32 (a)(3) addresses filing deadlines that expire on a day when the clerk’s office is inaccessible.

33 Where subsection (a) formerly referred to the “act, event, or default” that triggers the
34 deadline, new subsection (a) refers simply to the “event” that triggers the deadline; this
35 change in terminology is adopted for brevity and simplicity, and is not intended to change
36 meaning.

1 Periods previously expressed as less than 11 days will be shortened as a practical matter
2 by the decision to count intermediate Saturdays, Sundays, and legal holidays in computing
3 all periods. Many of those periods have been lengthened to compensate for the change. See,
4 *e.g.*, K.S.A. 60-214(a)(1).

5 Most of the 10-day periods were adjusted to meet the change in computation method by
6 setting 14 days as the new period. A 14-day period corresponds to the most frequent result
7 of a 10-day period under the former computation method — two Saturdays and two Sundays
8 were excluded, giving 14 days in all. A 14-day period has an additional advantage. The
9 final day falls on the same day of the week as the event that triggered the period — the 14th
10 day after a Monday, for example, is a Monday. This advantage of using week-long periods
11 led to adopting 7-day periods to replace some of the periods set at less than 10 days, and
12 21-day periods to replace 20-day periods. Thirty-day and longer periods, however, were
13 generally retained without change.

14 **Subsection (a)(2).** New subsection (a)(2) addresses the computation of time periods that
15 are stated in hours. No such deadline currently appears in the Kansas Code of Civil
16 Procedure. But some statutes contain deadlines stated in hours, as do some court orders
17 issued in expedited proceedings.

18 Under subsection (a)(2), a deadline stated in hours starts to run immediately on the
19 occurrence of the event that triggers the deadline. The deadline generally ends when the
20 time expires. If, however, the time period expires at a specific time (say, 2:17 p.m.) on a
21 Saturday, Sunday, or legal holiday, then the deadline is extended to the same time (2:17
22 p.m.) on the next day that is not a Saturday, Sunday, or legal holiday. Periods stated in hours
23 are not to be “rounded up” to the next whole hour. Subsection (a)(3) addresses situations
24 when the clerk’s office is inaccessible during the last hour before a filing deadline expires.

25 Subsection (a)(2)(B) directs that every hour be counted. Thus, for example, a 72-hour
26 period that commences at 10:23 a.m. on Friday, October 30, 2009, will run until 9:23 a.m.
27 on Monday, November 2; the discrepancy in start and end times in this example results from
28 the intervening shift from daylight saving time to standard time.

29 **Subsection (a)(3).** The former subsection (a) did not contain a provision dealing with
30 inaccessibility of the courthouse due to weather conditions or other reasons, which was
31 added to Federal Rule 6(a) in 1985. This provision is now incorporated in new subsection
32 (a)(3), although as in the revised Federal Rule 6, there is no reference to “weather.”
33 Inaccessibility can occur for reasons unrelated to weather. The statute does not attempt to
34 define inaccessibility.

35 When determining the last day of a filing period stated in days or a longer unit of time,
36 a day on which the clerk’s office is not accessible because of the weather or another reason
37 is treated like a Saturday, Sunday, or legal holiday. When determining the end of a filing
38 period stated in hours, if the clerk’s office is inaccessible during the last hour of the filing

1 period computed under subsection (a)(2) then the period is extended to the same time on the
2 next day that is not a weekend, holiday, or day when the clerk’s office is inaccessible.

3 Subsection (a)(3)’s extensions apply “[u]nless the court orders otherwise.” In some
4 circumstances, the court might not wish a period of inaccessibility to trigger a full 24-hour
5 extension; in those instances, the court can specify a briefer extension.

6 **Subsection (a)(4).** New subsection (a)(4) defines the end of the last day of a period for
7 purposes of subsection (a)(1). Subsection (a)(4) does not apply in computing periods stated
8 in hours under subsection (a)(2), and does not apply if a different time is set by a statute,
9 local rule, or order in the case. A local rule may, for example, address the problems that
10 might arise if a single district has clerk’s offices in different time zones, or provide that
11 papers filed in a drop box after the normal hours of the clerk’s office are filed as of the day
12 that is date-stamped on the papers by a device in the drop box.

13 **Subsection (a)(5).** New subsection (a)(5) defines the “next” day for purposes of
14 subsections (a)(1)(C) and (a)(2)(C). The Kansas Code of Civil Procedure contains both
15 forward-looking time periods and backward-looking time periods. A forward-looking time
16 period requires something to be done within a period of time after an event. See, *e.g.*, K.S.A.
17 60-259(b) (motion for new trial “must be filed no later than 28 days after the entry of
18 judgment”). A backward-looking time period requires something to be done within a period
19 of time before an event. See, *e.g.*, K.S.A. 60-226(e)(2) (parties must disclose any additions
20 or changes to expert witness information “at least 30 days before trial, unless the court orders
21 otherwise”). In determining what is the “next” day for purposes of subsections (a)(1)(C) and
22 (a)(2)(C), one should continue counting in the same direction — that is, forward when
23 computing a forward-looking period and backward when computing a backward-looking
24 period. If, for example, a filing is due within 30 days after an event, and the thirtieth day
25 falls on Saturday, September 5, 2009, then the filing is due on Tuesday, September 8, 2009
26 (Monday, September 7, is Labor Day). But if a filing is due 21 days before an event, and the
27 twenty-first day falls on Saturday, September 5, then the filing is due on Friday, September
28 4. If the clerk’s office is inaccessible on September 4, then subsection (a)(3) extends the
29 filing deadline forward to the next accessible day that is not a Saturday, Sunday, or legal
30 holiday — no later than Tuesday, September 8.

31 **Subsection (a)(6).** New subsection (a)(6) defines “legal holiday” for purposes of the
32 Kansas Code of Civil Procedure, including the time-computation provisions of subsection
33 (a). New subsection (a)(6) adds to the definition of “legal holiday” days that are declared
34 a holiday by the President. The definition of “legal holiday” in subsection (a)(6) differs from
35 that in Federal Rule(a)(6).

36 **Subsection (c).** The time set in the former statute at 5 days has been revised to 7 days
37 conforming this section to Supreme Court Rule 131. The one-day time period was not
38 changed. This varies from Federal Rule 6, in which the time for serving a motion and notice
39 of hearing was changed from 5 days to 14 days prior to the hearing and the time for filing
40 opposing affidavits was changed from one day to 7 days. The Committee determined that

1 state practice has proceedings and motion dockets, such as in domestic matters, where the
2 extended time frame in Federal Rule 6 should not be followed.

3 A formal affidavit is no longer required. K.S.A. 53-601 allows a written unsworn
4 declaration, certificate, verification, or statement subscribed in proper form as true under
5 penalty of perjury to substitute for an affidavit.

6 **60-207. Pleadings allowed, ~~forms~~ form of motions and ~~petitions~~ other papers.**

7 (a) *Pleadings*. ~~There shall be a~~ Only these pleadings are allowed:

8 (1) ~~a~~ petition that complies with subsection (c);

9 (2) ~~and~~ an answer to a petition;

10 (3) ~~a reply~~ an answer to a counterclaim ~~denominated~~ designated as ~~such~~ a counterclaim;

11 (4) an answer to a ~~crossclaim~~ cross-claim, if the answer contains a cross-claim;

12 (5) a third-party petition, if a person who was not an original party is summoned under the
13 provision of K.S.A. 60-214; and

14 (6) an answer to a third-party answer, if a third-party petition; and is served.

15 (7) No other pleading shall be allowed, except that if the court may orders one, a reply to an
16 answer or a third-party answer.

17 ~~Any petition filed in the district court pursuant to chapter 60 of the Kansas Statutes~~
18 ~~Annotated shall designate, immediately below the names of the parties in the caption, that such~~
19 ~~petition is filed pursuant to chapter 60 of the Kansas Statutes Annotated. Any such designation~~
20 ~~shall be sufficient if labeled "Petition Pursuant to K.S.A. Chapter 60" immediately below the~~
21 ~~caption.~~

22 (b) *Motions and other papers*.

23 (1) *In general*. ~~An application to the court or judge~~ A request for an a court order shall must
24 be made by motion, which, unless made during a hearing or trial, shall be made The
25 motion must:

26 (A) be in writing; unless made during a hearing or trial;

27 (B) shall state with particularity the grounds therefor, for seeking the order; and

1 There is no counterpart of subsection (d) in the federal rules.

2 **60-208. General rules of pleadings.**

3 (a) ~~Claims~~ ***Claim for relief.*** A pleading ~~which sets forth that states~~ a claim for relief, ~~whether~~
4 ~~an original claim, counterclaim, cross-claim, or third-party claim, shall~~ **must** contain:

5 (1) ~~A~~ **a** short and plain statement of the claim showing that the pleader is entitled to relief;
6 and

7 (2) a demand for ~~judgment for~~ the relief ~~sought, which may include relief in the alternative~~
8 ~~or different types of relief, to which the pleader deems such pleader's self entitled. Every~~
9 ~~Except in contract actions, every~~ pleading demanding relief for ~~money~~ damages ~~in~~
10 ~~money~~ in excess of \$75,000, without demanding ~~any~~ **a** specific amount of money, ~~shall~~
11 ~~set forth~~ **must state** only that the amount sought as damages is in excess of \$75,000;
12 ~~except in actions sounding in contract. Every pleading demanding relief for~~ ~~money~~
13 ~~damages in money~~ in an amount of \$75,000 or less ~~shall~~ **must** specify the amount ~~of such~~
14 ~~sought as damages sought to be recovered. Relief in the alternative or of several different~~
15 ~~types may be demanded.~~

16 (b) ***Defenses; form of admissions and denials.***

17 (1) ***In general.*** In responding to a pleading, ~~A~~ **a** party ~~shall~~ **must**:

18 (A) state in short and plain terms ~~such party's~~ **its** defenses to each claim asserted
19 ~~against it;~~ and

20 (B) ~~shall~~ admit or deny the ~~averments upon which the adverse party relies~~ ~~allegations~~
21 ~~asserted against it by an opposing party. If the party is without knowledge or~~
22 ~~information sufficient to form a belief as to the truth of an averment, the party~~
23 ~~shall so state and this has the effect of a denial.~~

24 (2) ***Denials — responding to the substance.*** ~~Denials shall~~ **A denial must** fairly ~~meet~~
25 ~~respond to~~ the substance of the ~~averments denied~~ ~~allegation.~~

26 (3) ***General and specific denials.*** ~~When a pleader intends in good faith to deny only a part~~
27 ~~or a qualification of an averment, the pleader shall specify so much of it as is true and~~
28 ~~material and shall deny only the remainder. Unless the pleader intends in good faith to~~
29 ~~controvert all the averments of the preceding pleading, the pleader may make denials as~~
30 ~~specific denials of designated averments or paragraphs, or the pleader may generally~~
31 ~~deny all the averments except such designated averments or paragraphs as the pleader~~
32 ~~expressly admits; but when the pleader does so intend to controvert all averments, the~~
33 ~~pleader may do so by general denial, subject to the obligations set forth in K.S.A. 60-~~
34 ~~211, and amendments thereto. A party that intends in good faith to deny all the~~

1 allegations of a pleading — including the jurisdictional grounds — may do so by a
2 general denial. A party that does not intend to deny all the allegations must either
3 specifically deny designated allegations or generally deny all except those specifically
4 admitted.

5 (4) **Denying part of an allegation.** A party that intends in good faith to deny only part of an
6 allegation must admit the part that is true and deny the rest.

7 (5) **Lacking knowledge or information.** A party that lacks knowledge or information
8 sufficient to form a belief about the truth of an allegation must so state, and the statement
9 has the effect of a denial.

10 (6) **Effect of failing to deny.** An allegation — other than one relating to the amount of
11 damages — is admitted if a responsive pleading is required and the allegation is not
12 denied. If a responsive pleading is not required, an allegation is considered denied or
13 avoided.

14 (c) **Affirmative defenses.**

15 (1) **In general.** In pleading responding to a preceding pleading, a party shall ~~shall~~ ~~must~~ set forth
16 affirmatively ~~state any avoidance or affirmative defense, including:~~

17 (A) accord and satisfaction;

18 (B) arbitration and award;

19 (C) assumption of risk;

20 (D) contributory negligence; or comparative fault;

21 (E) discharge in bankruptcy;

22 (F) duress;

23 (G) estoppel;

24 (H) failure of consideration;

25 (I) fraud, illegality;

26 (J) injury by fellow servant;

27 (K) laches;

28 (L) license;

29 (M) payment;

1 prohibiting an allegation of a specific amount of damages when damages exceeding \$75,000
2 are sought. The general statement that is required allows the defendant to know if the
3 amount in controversy required for federal diversity jurisdiction has been met.

4 The former subsection (b) and (e) cross-references to K.S.A. 60-211 are deleted as
5 redundant. K.S.A. 60-211 applies by its own terms. The force and application of K.S.A. 60-
6 211 are not diminished by the deletion.

7 Former subsection (b) required a pleader denying part of an averment to “specify so
8 much of it as is true and material and * * * deny only the remainder.” “[A]nd material” is
9 deleted to avoid the implication that it is proper to deny something that the pleader believes
10 to be true but not material.

11 Deletion of former subsection (e)(2)'s “whether based on legal or on equitable grounds”
12 reflects the parallel deletions in K.S.A. 60-201 and elsewhere. Merger is now successfully
13 accomplished.

14 **60-209. Pleading special matters.**

15 (a) *Capacity or authority to sue; legal existence.*

16 (1) *In general.* A pleading need not allege: ~~It is not necessary to aver the~~

17 (A) a party's capacity of a party to sue or be sued;

18 (B) a party's or the authority of a party to sue or be sued in a representative capacity;
19 or

20 (C) the legal existence of an organized association of persons that is made a party.

21 (2) *Raising those issues.* ~~When a party desires to raise an issue as to the legal existence of~~
22 ~~any party or the capacity of any party to sue or be sued or the authority of any party to~~
23 ~~sue or be sued in a representative capacity, the party raising the issue shall~~ To raise any
24 of those issues, a party must do so by a specific negative averment denial, which shall
25 must state any include such supporting particulars as facts that are peculiarly within the
26 pleader's party's knowledge.

27 (b) *Fraud, or mistake, conditions of the mind.* ~~In all averments of alleging~~ fraud or mistake,
28 a party must state with particularity the circumstances constituting fraud or mistake ~~shall be stated~~
29 with particularity. Malice, intent, knowledge, and other conditions of a person's mind ~~of a person~~
30 may be ~~averred~~ alleged generally.

31 (c) *Conditions precedent.* ~~In pleading the performance or occurrence of~~ conditions precedent,
32 it is sufficient suffices to aver allege generally that all conditions precedent have occurred or have

1 been performed or have occurred. A denial of performance or occurrence shall be made specifically
2 and But when denying that a condition precedent has occurred or been performed, a party must do
3 so with particularity.

4 (d) **Official document or act.** In pleading an official document or official act, it is sufficient
5 suffices to aver allege that the document was legally issued or the act legally done in compliance
6 with law.

7 (e) **Judgment.** In pleading a judgment or decision of a domestic or foreign court, a judicial or
8 quasi-judicial tribunal, or of a board or officer, it is sufficient suffices to aver plead the judgment
9 or decision without setting forth matter showing jurisdiction to render it.

10 (f) **Time and place.** For the purpose of testing the sufficiency of a pleading, averments An
11 allegation of time and or place are is material and shall be considered like all other averments of
12 material matter when testing the sufficiency of a pleading.

13 (g) **Special damages.** When items If an item of special damage are is claimed, their nature shall
14 it must be specifically stated. In actions where If the court allows an amended petition pursuant to
15 K.S.A. 60-3703, and amendments thereto, to include a claim for exemplary or punitive damages are
16 recoverable, the amended petition shall not state a dollar amount for damages sought to be recovered
17 but shall must state only whether the amount sought as of damages sought to be recovered is in
18 excess of or is not in excess of \$75,000.

19 (h) **Pleading written instrument.** Whenever a A claim, defense, or counterclaim is founded upon
20 on a written instrument, the same may be pleaded by:

21 (1) reasonably identifying the same written instrument and stating the its substance; thereof
22 or it may be recited

23 (2) reciting the contents of the written instrument at length in the pleading; or

24 (3) attaching a copy may be attached to the pleading as an exhibit.

25 (i) **Tender of money.** When a tender of money is made in any a pleading, it shall not be
26 necessary to deposit the money in court when the pleading is filed, but it shall be sufficient if the
27 money is deposited in the court at the trial the money need not be deposited in court prior to trial,
28 unless the court orders otherwise ordered by the court.

29 (j) **Libel and slander.** In an action for libel or slander, it shall not be necessary to state in the
30 petition any extrinsic facts for the purpose of showing the application to the plaintiff of the
31 defamatory matter out of which the claim arose, but it shall be sufficient suffices to state allege
32 generally that the same defamatory matter was published or spoken concerning the plaintiff; and
33 if such that allegation be is not controverted denied in the answer, it shall need not be necessary to
34 prove proved it on the at trial; in other cases it shall be necessary. The defendant's answer may, in

1 ~~such defendant's answer,~~ allege both the truth of the matter charged as defamatory and any
2 mitigating circumstances ~~admissible in evidence to that~~ reduce the amount of damages, ~~and whether~~
3 Whether the defendant proves ~~the justification or not,~~ the defendant may ~~give in~~ introduce
4 of any mitigating circumstances.

5 COMMENT

6 The language of K.S.A. 60-209 has been amended as part of the general restyling of the
7 Kansas Code to make it more easily understood and to make style and terminology
8 consistent throughout the Code. These changes are intended to be stylistic only.

9 There are no counterparts in the federal rules of subsections (h), (i), and (j), or of the
10 provision in subsection (g) dealing with exemplary or punitive damages. Federal Rule 9(h)
11 deals with admiralty and maritime claims and is not appropriate for the Kansas Code.

12 **60-210. Form of pleadings.**

13 (a) *Caption; names of parties.* Every pleading ~~shall contain~~ must have a caption ~~setting forth~~
14 ~~the name of the court~~ with the court's name, ~~the a~~ title of the action, ~~the a~~ file number, and a
15 designation as in K.S.A. 60-207(a). ~~In the petition the~~ The title of the ~~action shall include the names~~
16 ~~of petition must name~~ all the parties; ~~but in the title of~~ other pleadings, ~~it is sufficient to state the~~
17 ~~name of~~ after naming the first party on each side, ~~with an appropriate indication of~~ may refer
18 generally to other parties.

19 (b) *Paragraphs; separate statements.* ~~All averments of claim or defense shall be made~~ A party
20 must state its claims or defenses in numbered paragraphs, ~~the contents of each of which shall be~~
21 limited as far as practicable to a ~~statement of a single set of circumstances,~~ and a paragraph A later
22 pleading may be referred to refer by number to a paragraph in an earlier pleading. ~~in all succeeding~~
23 ~~pleadings.~~ Each If doing so would promote clarity, each claim founded ~~upon on~~ a separate
24 transaction or occurrence — and each defense other than ~~denials~~ a denial — ~~shall~~ must be stated in
25 a separate count or defense.

26 (c) *Adoption by reference; exhibits.* ~~Statements~~ A statement in a pleading may be adopted by
27 reference ~~in a different part of~~ elsewhere in the same pleading or in ~~another~~ any other pleading or
28 ~~in any~~ motion. A copy of ~~any~~ a written instrument ~~which that~~ is an exhibit to a pleading is a part
29 ~~thereof~~ of the pleading for all purposes.

30 (d) *Change of name.* If the name of a party changes after an action has been commenced ~~the~~
31 ~~name of any party thereto changes,~~ either before or after judgment, by reason of marriage, divorce,
32 adoption, a change of name proceeding, amendment of articles of incorporation, the assumption of
33 an alias, or otherwise, or if an action is mistakenly commenced against a party by a former name no
34 longer ~~in use~~ used by the party, any party in interest may cause ~~such that~~ fact to be noted of record
35 ~~in the action by the filing therein of~~ a certified copy of a marriage record, decree of divorce,
36 amended articles of incorporation, or order of adoption or change of name, or an affidavit or a

1 ~~declaration pursuant to K.S.A. 53-601, and amendments thereto,~~ by an informed person ~~setting forth~~
2 ~~any such fact. Thereafter, the~~ The use of the name as changed shall also must be used in the
3 alternative in all subsequent proceedings in ~~such the~~ action.

4 COMMENT

5 The language of K.S.A. 60-210 has been amended as part of the general restyling of the
6 Kansas Code to make it more easily understood and to make style and terminology
7 consistent throughout the Code. These changes are intended to be stylistic only.

8 The is no counterpart of subsection (d) in the federal rules. A formal affidavit is no
9 longer required. K.S.A. 53-601 allows a written unsworn declaration, certificate,
10 verification, or statement subscribed in proper form as true under penalty of perjury to
11 substitute for an affidavit.

12 **60-211. Signing of pleadings, motions, and other papers; representations to the court;** 13 **sanctions.**

14 (a) Signature. Every pleading, written motion, and other paper ~~provided for by this article of~~
15 ~~a party represented by an attorney shall must~~ be signed by at least one attorney of record in the
16 attorney's ~~individual name; — or by a party personally if the party is unrepresented, and~~ The paper
17 must state the attorney's signer's address, e-mail address, and telephone number shall be stated. A
18 pleading, motion or other paper provided for by this article of a party who is not represented by an
19 attorney shall be signed by the party and shall state the party's address. Except when otherwise
20 specifically provided by Unless a rule or statute specifically states otherwise, a pleading pleadings
21 need not be verified or accompanied by an affidavit or a declaration pursuant to K.S.A. 53-601, and
22 amendments thereto. The court must strike an unsigned paper unless the omission is promptly
23 corrected after being called to the attorney's or party's attention.

24 (b) Representations to the court. By presenting to the court a pleading, written motion, or other
25 paper — whether by signing, filing, submitting, or later advocating it — an attorney or
26 unrepresented party certifies ~~The signature of a person constitutes a certificate by the person that the~~
27 ~~person has read the pleading, motion or other paper and~~ that to the best of the person's knowledge,
28 information, and belief, formed after an inquiry reasonable under the circumstances:

29 (1) ~~It it~~ is not being presented for any improper purpose, such as to harass, ~~or to~~ cause
30 unnecessary delay, or ~~needless needlessly~~ increase ~~in~~ the cost of litigation;

31 (2) the claims, defenses, and other legal contentions ~~therein~~ are warranted by existing law
32 or by a nonfrivolous argument for ~~the extension extending, modification modifying,~~ or
33 ~~reversal of reversing~~ existing law or ~~for the establishment of~~ establishing new law;

34 (3) the ~~allegations and other~~ factual contentions have evidentiary support or, if specifically
35 so identified, ~~are will~~ likely to have evidentiary support after a reasonable opportunity
36 for further investigation or discovery; and

1 (4) the denials of factual contentions are warranted on the evidence or, if specifically so
2 identified, are reasonably based on belief or a lack of information ~~or belief~~.

3 (c) ***Sanctions***. ~~If a pleading, motion or other paper provided for by this article is not signed it~~
4 ~~shall be stricken unless it is signed promptly after the omission is called to the attention of the~~
5 ~~pleader or movant. If a pleading, motion, or other paper provided for by this article is signed in~~
6 ~~violation of this section, If, after notice and a reasonable opportunity to respond, the court, upon~~
7 ~~motion or upon its own initiative upon notice and after opportunity to be heard, determines that~~
8 ~~subsection (b) has been violated, the court shall may impose an appropriate sanction upon the person~~
9 ~~who signed it or a represented party, or both, an appropriate sanction on any attorney, law firm, or~~
10 ~~party that violated the statute or is responsible for a violation committed by its partner, associate,~~
11 ~~or employee. The sanction which may include an order to pay to the other party or parties the~~
12 ~~amount of the reasonable expenses, including attorney's fees, incurred because of the filing of the~~
13 ~~pleading, motion, or other paper, including reasonable attorney fees. A motion for sanctions under~~
14 ~~this section may be served and filed at any time during the pendency of the action but must be filed~~
15 ~~not later than 10 14 days after the entry of judgment.~~

16 (d) ***Inapplicability to discovery***. Subsections (a) through (c) do not apply to disclosures and
17 discovery requests, responses, objections, and motions that are subject to K.S.A. 60-226 through 60-
18 237, and amendments thereto.

19 (e) ***Applicability to the state***. The state of Kansas, ~~or any including an agency thereof, and all~~
20 ~~or political subdivisions subdivision thereof, is of the state shall be subject to the provisions of this~~
21 ~~section in the same manner as any other party.~~

22 (f) ***Monetary sanctions against inmate***. If the court imposes monetary sanctions on an inmate
23 in the custody of the secretary of corrections, the secretary is hereby authorized to disburse any
24 money in the inmate's account to pay ~~such the~~ sanctions.

25 COMMENT

26 The language of K.S.A. 60-211 has been amended as part of the general restyling of the
27 Kansas Code to make it more easily understood and to make style and terminology
28 consistent throughout the Code.

29 The addition of an e-mail address in subsection (a) was incorporated from the federal
30 "Style-Substance" amendments. Providing an e-mail address is useful, but does not in and
31 of itself signify consent to filing or service by e-mail. A formal affidavit is no longer
32 required. K.S.A. 53-601 allows a written unsworn declaration, certificate, verification, or
33 statement subscribed in proper form as true under penalty of perjury to substitute for an
34 affidavit.

35 Subsection (c) is significantly different from Federal Rule 11(c), which was amended in
36 1993 to add a "safe harbor" provision under which a motion for sanctions may not be filed
37 until 21 days after being served, giving the alleged violator time to correct the violation. The
38 Civil Code Advisory Committee has in the past advised against the adoption of the 1993

1 federal amendment and continues to believe that the “safe harbor” provision will promote
2 reckless and harassing pleadings since any penalty can be avoided. The Committee also
3 rejected the federal amendment that provides for monetary sanctions to be paid to the court,
4 as this would decrease the incentive for affected parties to pursue violations.

5 The time set in the former statute at 10 has been revised to 14 days. See the Comment
6 to K.S.A. 60-206.

7 **60-212. Defenses and objections: when and how presented; motion for judgment on the**
8 **pleadings; consolidating motions; waiving defenses; pretrial hearing.**

9 (a) **When defenses and objections presented***Time to serve a responsive pleading.*

10 (1) **In general.** Unless otherwise provided by law, the time for serving a responsive
11 pleading is as follows:

12 (A) A defendant ~~shall~~ **must** serve ~~such defendant's~~ **an** answer:

13 (i) within ~~20~~ **21** days after ~~the service of~~ **being served with** the summons and
14 petition; ~~upon such defendant,~~ **or**

15 (ii) **within the time fixed in the notice when** ~~except where~~ service **is** by publication,
16 ~~is had the defendant shall serve such defendant's answer within the time fixed in~~
17 ~~the notice,~~ which ~~shall~~ **must** not be less than 41 days from the time the notice is
18 first published.

19 (B) A party ~~served with a pleading stating a cross-claim against such party shall~~
20 ~~serve an answer thereto~~ **must serve an answer to a counterclaim or crossclaim**
21 ~~within 20~~ **21** days after ~~the service upon such party~~ **being served with the**
22 ~~pleading that states the counterclaim or crossclaim.~~

23 (C) ~~The plaintiff shall serve such plaintiff's reply to a counterclaim in the answer~~ **A**
24 ~~party must serve a reply to an answer~~ **within 20** **21** days after ~~service of being~~
25 ~~served with an the answer or, if a reply is ordered by the court, within 20 days~~
26 ~~after service of the order to reply,~~ unless the order ~~otherwise directs~~ **specifies a**
27 ~~different time.~~

28 (2) **Effect of a motion.** Unless the court sets a different time, serving ~~The service of a~~
29 ~~motion~~ **permitted** under this section alters these periods ~~of time~~ as follows, ~~unless a~~
30 ~~different time is fixed by order of the court:~~

31 (A) **If** ~~if~~ the court denies the motion or postpones its disposition until ~~the trial on the~~
32 ~~merits,~~ the responsive pleading ~~shall~~ **must** be served within ~~10~~ **14** days after

1 notice of the court's action; or

2 (B) if the court grants a motion for a more definite statement, the responsive pleading
3 shall must be served within ~~10~~ 14 days after ~~the service of~~ the more definite
4 statement is served.

5 (b) ***How presented to present defenses.*** Every defense, ~~in law or fact,~~ to a claim for relief in any
6 pleading, ~~whether a claim, counterclaim, cross-claim, or third-party claim,~~ shall must be asserted
7 in the responsive pleading ~~thereto if one is required,~~ ~~except that the following defenses may at the~~
8 ~~option of the pleader be made~~ But a party may assert the following defenses by motion:

9 (1) ~~Lack~~ lack of subject-matter jurisdiction ~~over the subject matter;~~

10 (2) lack of personal jurisdiction ~~over the person;~~

11 (3) improper venue;

12 (4) ~~insufficiency of~~ insufficient process;

13 (5) ~~insufficiency of~~ insufficient service of process;

14 (6) failure to state a claim upon which relief can be granted; and;

15 (7) failure to join a party under K.S.A. 60-219, and amendments thereto.

16 A motion ~~making~~ asserting any of these defenses shall must be made before pleading if a further
17 responsive pleading is permitted allowed. ~~No defense or objection is waived by being joined with~~
18 ~~one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth~~
19 ~~out a claim for relief to which the adverse party is not required to serve that does not require a~~
20 ~~responsive pleading, he an opposing party may assert at the trial any defense in law or fact to that~~
21 ~~claim for relief. No defense or objection is waived by joining it with one or more other defenses or~~
22 ~~objections in a responsive pleading or in a motion. If, on a motion asserting the defense provided~~
23 ~~in subsection (6) to dismiss for failure of the pleading to state a claim upon which relief can be~~
24 ~~granted, matters outside the pleading are presented to and not excluded by the court, the motion shall~~
25 ~~be treated as one for summary judgment and disposed of as provided in K.S.A. 60-256 and~~
26 ~~amendments thereto, and all parties shall be given reasonable opportunity to present all material~~
27 ~~made pertinent to such a motion by K.S.A. 60-256 and amendments thereto.~~

28 (c) ***Motion for judgment on the pleadings.*** After the pleadings are closed ~~—~~ but within such
29 time as early enough not to delay ~~the~~ trial; ~~—~~ any a party may move for judgment on the pleadings.

30 (d) ***Result of presenting matters outside the pleadings.*** If, on a motion under subsection (b)(6)
31 or (c) for judgment on the pleadings, matters outside the pleadings are presented to and not excluded

1 by the court, the motion ~~shall~~ must be treated as one for summary judgment ~~and disposed of as~~
2 ~~provided in~~ under K.S.A. 60-256, and amendments thereto, ~~and all~~ All parties ~~shall~~ must be given
3 a reasonable opportunity to present all the material ~~made~~ that is pertinent to ~~such a~~ the motion.

4 (d) ***Preliminary hearings.*** ~~The defenses specifically enumerated in subsection (1) through (7)~~
5 ~~of subsection (b), whether made in a pleading or by motion, and the motion for judgment mentioned~~
6 ~~in subsection (c) shall be heard and determined before trial on application of any party, unless the~~
7 ~~judge orders that the hearing and determination thereof be deferred until the trial.~~

8 (e) ***Motion for a more definite statement.*** ~~A party may move for a more definite statement of~~
9 ~~if a pleading to which a responsive pleading is permitted~~ allowed but which is so vague or
10 ambiguous that ~~a~~ the party cannot reasonably ~~be required to frame a responsive pleading,~~ prepare
11 a response. ~~such party may move for a more definite statement~~ The motion must be made before
12 interposing filing a such party's responsive pleadings. ~~The motion shall~~ and must point out the
13 defects complained of and the details desired. ~~If the court orders a more definite statement and the~~
14 ~~order~~ motion is granted and the order of the judge is not obeyed within ~~10~~ 14 days after notice of
15 the order or within ~~such time as the court may fix~~ the time the court sets, the ~~judge~~ court may strike
16 the pleading to which the motion was directed or ~~make such order as the judge deems just~~ or issue
17 any other appropriate order.

18 (f) ***Motion to strike.*** ~~Upon motion made by a party before responding to a pleading or, if no~~
19 ~~responsive pleading is permitted by this article, upon motion made by a party within 20 days after~~
20 ~~the service of the pleading upon such party or upon the court's own initiative at any time, the judge~~
21 ~~may order stricken from any~~ The court may strike from a pleading any an insufficient defense or any
22 redundant, immaterial, impertinent, or scandalous matter. The court may act:

23 (1) on its own; or

24 (2) on motion made by a party either before responding to the pleading or, if a response is
25 not allowed, within 21 days after being served with the pleading.

26 (g) ***Consolidation of defenses in motion. Joining motions.***

27 (1) ***Right to join.*** ~~A party who makes a motion under this section may~~ join be joined with
28 it any other motions ~~herein provided for and then available to him~~ allowed under this
29 section.

30 (2) ***Limitation on further motions.*** ~~Except as provided in subsection (h)(2) or (3), if a party~~
31 ~~that makes a motion under this section but omits therefrom any defense or objection then~~
32 ~~available to such party which this section permits to be raised by motion, such party shall~~
33 ~~must not thereafter make a~~ another motion under this section raising a ~~based on the~~
34 ~~defense or objection so omitted, except a motion as provided in subsection (h)(2) on any~~
35 ~~of the grounds there stated~~ that was available to the party but omitted from its earlier
36 motion.

37 (h) ***Waiver or preservation of*** Waiving and preserving certain defenses.

1 (1) ***When some are waived.*** A party waives any defense listed in subsection (b)(2)-(5) by:
2 A defense of lack of jurisdiction over the person, improper venue, insufficiency of
3 process, or insufficiency of service of process is waived

4 (A) ~~if omitted~~ omitting it from a motion in the circumstances described in subsection
5 (g)(2); or

6 (B) failing to either:

7 (i) ~~if it is neither made~~ make it by motion under this section; ~~or~~

8 (ii) ~~nor included~~ include it in a responsive pleading or in an amendment ~~thereof~~
9 permitted ~~allowed by subsection (a) of K.S.A. 60-215(a)(1), and amendments~~
10 thereto, ~~to be made~~ as a matter of course.

11 (2) ***When to raise others.*** A defense of failure ~~Failure~~ to state a claim upon which relief can
12 be granted, ~~a defense of failure~~ to join a party ~~person required by~~ under K.S.A. 60-
13 219(b), and amendments thereto, ~~and an objection of failure~~ or to state a legal defense
14 to a claim may be made raised:

15 (A) in any pleading ~~permitted~~ allowed or ordered under ~~subsection (a) of K.S.A. 60-~~
16 ~~207(a), and amendments thereto,~~ or;

17 (B) by a motion for judgment on the pleadings, under subsection (c); or

18 (C) at the trial ~~on the merits.~~

19 (3) ***Lack of subject-matter jurisdiction.*** ~~Whenever it appears by suggestion of the parties~~
20 ~~or otherwise that the court~~ If the court determines at any time that it lacks subject-matter
21 ~~jurisdiction of the subject matter,~~ the court ~~shall~~ must dismiss the action.

22 (i) ***Hearing before trial.*** If a party so moves, any defense listed in subsection (b)(1)-(7) —
23 whether made in a pleading or by motion — and a motion under subsection (c), must be heard and
24 decided before trial unless the court orders a deferral until trial.

25 (j) ***Answer for minor or incapacitated person.*** The guardian or conservator of a minor or
26 incapacitated person, or the attorney for a person in prison ~~shall deny~~ must in the answer deny all
27 the material allegations in the petition prejudicial to ~~such~~ the defendant.

28 COMMENT

29 The language of K.S.A. 60-212 has been amended as part of the general restyling of the
30 Kansas Code to make it more easily understood and to make style and terminology
31 consistent throughout the Code.

32 Former subsection (a) referred to an order that postpones disposition of a motion “until

1 the trial on the merits.” Subsection (a)(2)(A) now refers to postponing disposition “until
2 trial.” The new expression avoids the ambiguity that inheres in “trial on the merits,” which
3 may become confusing when there is a separate trial of a single issue or another event
4 different from a single all-encompassing trial.

5 Former subsection (d) is now restyled subsection (i).

6 The times set in the former statute at 10 or 20 days have been revised to 14 or 21 days.
7 See the Comment to K.S.A. 60-206.

8 **60-213. Counterclaims and crossclaims.**

9 (a) *Compulsory counterclaims.*

10 (1) ***In general.*** A pleading ~~shall~~ must state as a counterclaim any claim ~~which that~~ — at the
11 time of ~~-serving the pleading~~ its service — the pleader has against ~~any an~~ opposing party;
12 if the claim:

13 (A) it arises out of the transaction or occurrence that is the subject matter of the
14 opposing party's claim; and

15 (B) does not require ~~for its adjudication the presence of third parties of~~ adding
16 another party over whom the court cannot acquire jurisdiction;

17 (2) ***Exceptions.*** ~~but the~~ The pleader need not state the claim if:

18 (1A) at the time when the action was commenced, the claim was the subject of another
19 pending action; or

20 (2B) the opposing party ~~brought suit upon such party's~~ sued on its claim by
21 attachment or other process ~~by which the court that~~ did not acquire establish
22 personal jurisdiction ~~to render a personal judgment~~ over the pleader on that
23 claim, and the pleader ~~is not stating~~ does not assert any ~~other~~ counterclaim under
24 this section.

25 (b) ***Permissive counterclaims.*** A pleading may state as a counterclaim any claim against an
26 opposing party any claim ~~not arising out of the transaction or occurrence that is the subject matter~~
27 ~~of the opposing party's claim~~ not compulsory.

28 (c) ***Counterclaim exceeding opposing claim Relief sought in a counterclaim.*** A counterclaim
29 ~~may or may~~ need not diminish or defeat the recovery sought by the opposing party. It may claim
30 request relief exceeding that exceeds in amount or different differs in kind from ~~that the relief~~ sought
31 ~~in the pleading of~~ by the opposing party.

1 (d) *Effect of death or limitations.* ~~When cross-demands have existed between persons under~~
2 ~~such circumstances that, if one had brought an action against the other, a counterclaim or cross-claim~~
3 ~~could have been set up, neither can be deprived of the benefit thereof by the assignment or death of~~
4 ~~the other or by reason of the statute of limitations if arising out of the contract or transaction set forth~~
5 ~~in the petition as the foundation of plaintiff's claim or connected with the subject of the action; but~~
6 ~~the two demands must be deemed compensated so far as they equal each other~~ If a party's claim
7 arises out of the contract or transaction that is the basis of an opposing party's claim or is connected
8 with the subject of the action and it could have been asserted as a counterclaim or a crossclaim
9 against a person if the person had asserted a claim against the party previously, the party's claim is
10 not extinguished by (i) an assignment by the person, (ii) the death of the person, or (iii) the
11 expiration of the statute of limitations. However, the party's claim may be asserted in these
12 circumstances only to the extent that it does not exceed the amount awarded to the opposing party.

13 (e) *Counterclaim maturing or acquired after pleading.* The court may permit a party to file a
14 supplemental pleading asserting a counterclaim that ~~A claim which either matured or was acquired~~
15 ~~by the pleader party after serving the an earlier pleading may, with the permission of the court, be~~
16 ~~presented as a counterclaim by supplemental pleading.~~

17 (f) ~~*Omitted counterclaim.* When a pleader fails to set up a counterclaim through oversight,~~
18 ~~inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set~~
19 ~~up the counterclaim by amendment.~~

20 (g f) *Compulsory ~~cross-claim~~ crossclaim against ~~co-party~~ a coparty.* ~~In an action involving~~
21 ~~When a claim is governed by K.S.A. 60-258a, and amendments thereto, a party shall must state as~~
22 ~~a ~~cross-claim~~ crossclaim any claim that party has against any ~~co-party~~ arising coparty if the claim~~
23 ~~arises out of the transaction or occurrence that is the subject matter of the claim governed by K.S.A.~~
24 ~~60-258a, and amendments thereto.~~

25 (h g) *Permissive ~~cross-claim~~ crossclaim against ~~co-party~~ a coparty.* ~~A pleading may state as~~
26 ~~a ~~cross-claim~~ crossclaim any claim by one party against a ~~co-party~~ arising coparty if the claim arises~~
27 ~~out of the transaction or occurrence that is the subject matter either of the original action or of a~~
28 ~~counterclaim, therein or if the claim relating relates to any property that is the subject matter of the~~
29 ~~original action. Such The ~~cross-claim~~ crossclaim may include a claim that the party against whom~~
30 ~~it is asserted coparty is or may be liable to the ~~cross-claimant~~ crossclaimant for all or part of a claim~~
31 ~~asserted in the action against the ~~cross-claimant~~ crossclaimant.~~

32 (i h) *Joinder ~~Joining~~ of additional parties.* ~~K.S.A. 60-219 and 60-220, and amendments thereto,~~
33 ~~govern the addition of a person as a party Persons other than those made parties to the original action~~
34 ~~may be made parties to a counterclaim or ~~cross-claim~~ crossclaim in accordance with the provisions~~
35 ~~of K.S.A. 60-219 and 60-220, and amendments thereto.~~

36 (j i) *Separate trials; separate judgments.* ~~If the court orders separate trials as provided in under~~
37 ~~K.S.A. 60-242(b), and amendments thereto, it may enter judgment on a counterclaim or ~~cross-claim~~~~
38 ~~crossclaim may be rendered in accordance with the terms of under K.S.A. 60-254(b), and~~

1 amendments thereto, when ~~the judge it~~ has jurisdiction ~~so to do so~~, even if the ~~claims of the~~
2 opposing party's ~~claims~~ have been dismissed or otherwise ~~disposed of~~ resolved.

3 ~~(k j)~~ ***Appealed and removed actions.*** When an action is filed in the district court pursuant to the
4 code of civil procedure for limited actions Chapter 61 and such action is transferred as provided in
5 K.S.A. 61-2910, and amendments thereto, or ~~such an~~ action is heard by a district magistrate judge
6 and is appealed ~~and a trial de novo will be held before a district judge~~, any counterclaim or
7 crossclaim made compulsory by subsection (a) or (f) ~~shall must~~ be stated as in an amendment to the
8 amended pleading within ~~20~~ 21 days after such filing service of the order of transfer or notice of
9 appeal, or such other time as the court ~~shall allow~~ allows. Other counterclaims and ~~cross-claims~~
10 crossclaims ~~shall be~~ are permitted as in an original action in the district court pursuant to provided
11 in this chapter.

12 COMMENT

13 The language of K.S.A. 60-213 has been amended as part of the general restyling of the
14 Kansas Code to make it more easily understood and to make style and terminology
15 consistent throughout the Code.

16 The meaning of former subsection (b) is better expressed by deleting “not arising out of
17 the transaction or occurrence that is the subject matter of the opposing party's claim.” Both
18 as a matter of intended meaning and current practice, a party may state as a permissive
19 counterclaim a claim that does grow out of the same transaction or occurrence as an
20 opposing party's claim even though one of the exceptions in subsection (a) means the claim
21 is not a compulsory counterclaim.

22 Subsection (d) has no counterpart in Federal Rule 13. Subsection (f) is unique to Kansas
23 and applies only in comparative fault cases.

24 Former subsection (f) has been deleted pursuant to an amendment contained in the
25 “Time-Computation” project. Subsection 13(f) was largely redundant and potentially
26 misleading. An amendment to add a counterclaim will be governed by K.S.A. 60-215.
27 K.S.A. 60-215(a) permits some amendments to be made as a matter of course or with the
28 opposing party's written consent. When the court's leave is required, the reasons described
29 in former subsection (f) for permitting amendment of a pleading to add an omitted
30 counterclaim sound different from the general amendment standard in K.S.A. 60-215(a)(2),
31 but seem to be administered — as they should be — according to the same standard directing
32 that leave should be freely given when justice so requires. The independent existence of
33 subsection (f) could, however, create some uncertainty as to the availability of relation back
34 of the amendment under K.S.A. 60-215(c). See 6 C. Wright, A. Miller & M. Kane, Federal
35 Practice & Procedure: Civil 2d, § 1430 (1990). Deletion of subsection (f) ensures that
36 relation back is governed by the tests that apply to all other pleading amendments.

37 There is no counterpart in the federal rules of former subsection (k), which is now
38 revised subsection (j), dealing with appealed and transferred actions. The time set in former

1 subsection (k) at 20 days has been revised in new subsection (j) to 21 days. See the
2 Comment to K.S.A. 60-206.

3 **60-214. Third-party practice.**

4 (a) *When defendant defending party may bring in a third party.*

5 (1) *Timing of the summons and complaint.* ~~At any time after commencement of the action~~
6 a A defending party may, as a third-party plaintiff, ~~may cause~~ serve a summons and
7 petition to be served upon a person not a party to the action on a nonparty who is or may
8 be liable to ~~the third-party plaintiff~~ it for all or part of the plaintiff's claim against ~~the~~
9 ~~third-party plaintiff~~ it. ~~The third-party plaintiff need not obtain leave to make the service~~
10 if the third-party plaintiff files the third-party petition not later than 10 days after serving
11 the original answer. ~~Otherwise~~ But the third-party plaintiff must, by obtain leave on
12 motion, upon notice to all parties to the action obtain the court's leave if it files the third-
13 party complaint more than 14 days after serving its original answer.

14 (2) *Third-party defendant's claims and defenses.* The person served with the summons and
15 third-party petition, ~~hereinafter called~~ — the "third-party defendant";:

16 (A) shall make must assert any defenses to against the third-party plaintiff's claim as
17 provided in under K.S.A. 60-212, and amendments thereto;

18 (B) and must assert any counterclaims against the third-party plaintiff under K.S.A.
19 60-213(a), and amendments thereto, or any crossclaim against another third-party
20 defendant under K.S.A. 60-213(f), and amendments thereto, and may assert any
21 counterclaim against the third-party plaintiff under K.S.A. 60-213(b), and
22 amendments thereto, or any cross-claims crossclaims against other another third-
23 party ~~defendants~~ as provided in defendant under K.S.A. 60-213(g), and
24 amendments thereto;

25 (C) ~~The third-party defendant~~ may assert against the plaintiff any defenses ~~which~~ that
26 the third-party plaintiff has to the plaintiff's claim; and

27 (D) ~~The third-party defendant~~ may also assert against the plaintiff any claim against
28 the plaintiff arising out of the transaction or occurrence that is the subject matter
29 of the plaintiff's claim against the third-party plaintiff.

30 (3) *Plaintiff's claims against a third-party defendant.* The plaintiff may assert any claim
31 against the third-party defendant any claim arising out of the transaction or occurrence
32 that is the subject matter of the plaintiff's claim against the third-party plaintiff, ~~and the~~
33 The third-party defendant ~~thereupon shall~~ must then assert any defense ~~defenses~~ as
34 provided in under K.S.A. 60-212, and amendments thereto, and any counterclaims

1 counterclaim under K.S.A. 60-213(a), and amendments thereto, or crossclaim under
2 K.S.A. 60-213(f), and amendments thereto, and may assert any counterclaim under
3 K.S.A. 60-213(b), and amendments thereto, or any crossclaim ~~cross-claims as provided~~
4 ~~in~~ under K.S.A. 60-213(g), and amendments thereto.

5 (4) ***Motion to strike, sever, or try separately.*** Any party may move to strike the third-party
6 claim, ~~or for its severance or separate trial~~ to sever it, or to try it separately.

7 (5) ***Third-party defendant's claim against a nonparty.*** A third-party defendant may
8 proceed under this section against ~~any person not a party to the action~~ a nonparty who
9 is or may be liable to the third-party defendant for all or part of ~~the~~ any claim ~~made in~~
10 ~~the action~~ against the third-party defendant ~~it~~.

11 (b) ***When a plaintiff may bring in a third party.*** When a ~~counterclaim claim~~ is asserted against
12 a plaintiff, the plaintiff may ~~cause bring in~~ a third party to be brought in under circumstances which
13 ~~under this section would entitle~~ if this section would allow a defendant to do so.

14 COMMENT

15 The language of K.S.A. 60-214 has been amended as part of the general restyling of the
16 Kansas Code to make it more easily understood and to make style and terminology
17 consistent throughout the Code.

18 Former K.S.A. 60-214 twice refers to counterclaims under K.S.A. 60-213. In each case,
19 the operation of K.S.A. 60-213(a) depends on the state of the action at the time the pleading
20 is filed. If plaintiff and third-party defendant have become opposing parties because one has
21 made a claim for relief against the other, K.S.A. 60-213(a) requires assertion of any
22 counterclaim that grows out of the transaction or occurrence that is the subject matter of that
23 claim. K.S.A. 60-214(a)(2)(B) and (a)(3) reflect the distinction between compulsory and
24 permissive counterclaims.

25 The change of “counterclaim” to “claim” in subsection (b) was incorporated from the
26 federal “Style-Substance” amendments. A plaintiff should be on equal footing with the
27 defendant in making third-party claims, whether the claim against the plaintiff is asserted as
28 a counterclaim or as another form of claim. The limit imposed by the former reference to
29 “counterclaim” is deleted.

30 The times set in the former statute at 10 days has been revised to 14 days. See the
31 Comment to K.S.A. 60-206.

32 There is no counterpart in the Kansas Code of Federal Rule 14(c), which deals with
33 admiralty and maritime claims.

1 **60-215. Amended and supplemental pleadings.**

2 (a) ***Amendments before trial.***

3 (1) ***Amending as a matter of course.*** A party may amend ~~the party's~~ its pleading once as
4 a matter of course within:

5 (A) at any time before a responsive pleading is served 21 days after serving it; or;

6 (B) if the pleading is one to which ~~no~~ a responsive pleading is ~~permitted~~ required,
7 and the action has not been placed upon the trial calendar, the party may so
8 amend it at any time within ~~20~~ 21 days after it is served service of a responsive
9 pleading or 21 days after service of a motion under K.S.A. 60-212(b), (e), or (f),
10 and amendments thereto, whichever is earlier.

11 (2) ***Other amendments.*** In all other cases, ~~Otherwise~~ a party may amend ~~the party's~~ its
12 pleading only ~~by leave of court or by~~ with the opposing party's written consent ~~of the~~
13 adverse party, or the court's leave. The court should freely give leave and leave shall
14 be freely given when justice so requires.

15 (3) ***Time to respond.*** Unless the court orders otherwise, any required A party shall plead in
16 response to an amended pleading must be made within the time remaining for response
17 to respond to the original pleading or within ~~20~~ 21 days after service of the amended
18 pleading, whichever is later period may be the longer, unless the court otherwise orders.

19 (b) ***Amendments to conform to the evidence during and after trial.***

20 (1) ***Based on an objection at trial.*** When issues not raised by the pleadings are tried by
21 express or implied consent of the parties, they shall be treated in all respects as if they
22 had been raised in the pleadings. Such amendment of the pleadings as may be necessary
23 to cause them to conform to the evidence and to raise these issues may be made at any
24 time, even after judgment, but failure so to amend does not affect the result of the trial
25 of these issues. If, at trial, a party objects that evidence is objected to at the trial on the
26 ground that it is not within the issues ~~made by~~ raised in the pleadings, the court may
27 allow ~~permit~~ the pleadings to be amended, and shall do so freely when the presentation
28 of the merits of the action will be subserved thereby The court should freely permit an
29 amendment when doing so will aid in presenting the merits and the objecting party fails
30 to satisfy the court that the ~~admission of such~~ evidence would prejudice ~~the party in~~
31 maintaining the ~~that~~ party's action or defense ~~upon~~ on the merits. The court may grant
32 a continuance to enable the objecting party to meet ~~such~~ the evidence.

33 (2) ***For issues tried by consent.*** When an issue not raised by the pleadings is tried by the
34 parties' express or implied consent, it must be treated in all respects as if raised in the
35 pleadings. A party may move — at any time, even after judgment — to amend the
36 pleadings to conform them to the evidence and to raise an unpleaded issue. But failure
37 to amend does not affect the result of the trial of that issue.

1 (c) **Relation back of amendments.** An amendment ~~of to~~ a pleading relates back to the date of
2 the original pleading when:

3 (1) ~~the law that provides the applicable statute of limitations allows relation back;~~

4 (2) ~~the amendment asserts a~~ The claim or defense ~~asserted in the amended pleading~~
5 ~~that~~ arose out of the conduct, transaction, or occurrence set ~~forth out —~~ or
6 attempted to be set ~~forth out —~~ in the original pleading; or

7 (23) the amendment changes the party or the naming of the party against whom a
8 claim is asserted, ~~if the foregoing provision (1) subdivision (2) is satisfied and~~
9 ~~if~~, within the period provided by law for commencing the action against the
10 party, including the period for service of process under K.S.A. 60-203, and
11 amendments thereto, the party to be brought in by amendment:

12 (A) ~~Has~~ received such notice of the ~~institution of the action that the party~~
13 ~~would it will~~ not be prejudiced in ~~maintaining a defense~~ ~~defending~~ on the
14 merits; and

15 (B) knew or should have known that ~~the action would have been brought~~
16 ~~against it~~, but for a mistake concerning the ~~proper party's~~ identity of the
17 ~~proper party, the action would have been brought against the party.~~

18 (d) **Supplemental pleadings.** ~~Upon~~ ~~On~~ motion of a party the court may, ~~upon~~ ~~and~~ reasonable
19 notice, ~~the court may, and upon such~~ ~~on just~~ terms ~~as are just~~, permit ~~the~~ a party to serve a
20 supplemental pleading setting ~~forth~~ transactions or occurrences or events which have ~~out~~ any
21 ~~transaction, occurrence, or event that~~ happened ~~since~~ after the date of the pleading ~~sought~~ to be
22 supplemented. ~~Permission may be granted~~ The court may permit supplementation even though the
23 original pleading is defective in ~~its statement of~~ stating a claim for relief or defense. ~~If the judge~~
24 ~~deems it advisable~~ The court may order that the ~~adverse~~ opposing party plead to the supplemental
25 pleading, ~~the judge shall so order, specifying the time therefor~~ within a specified time.

26 COMMENT

27 The language of K.S.A. 60-215 has been amended as part of the general restyling of the
28 Kansas Code to make it more easily understood and to make style and terminology
29 consistent throughout the Code.

30 Subsection (a) is amended to incorporate changes made to Rule 15 in the federal Time-
31 Computation project. The times set in the former section at 20 days have been revised to 21
32 days. See the Comment to K.S.A. 60-206.

33 Also, subsection (a)(1) is amended to make three changes in the time allowed to make
34 one amendment as a matter of course.

35 Former subsection (a) addressed amendment of a pleading to which a responsive

1 pleading is required by distinguishing between the means used to challenge the pleading.
2 Serving a responsive pleading terminated the right to amend. Serving a motion attacking the
3 pleading did not terminate the right to amend, because a motion is not a “pleading” as
4 defined in K.S.A. 60-207. The right to amend survived beyond decision of the motion unless
5 the decision expressly cut off the right to amend.

6 The distinction drawn in former subsection (a) is changed in two ways. First, the right
7 to amend once as a matter of course terminates 21 days after service of a motion under
8 K.S.A. 60-212(b), (e), or (f). This provision will force the pleader to consider carefully and
9 promptly the wisdom of amending to meet the arguments in the motion. A responsive
10 amendment may avoid the need to decide the motion or reduce the number of issues to be
11 decided, and will expedite determination of issues that otherwise might be raised seriatim.
12 It also should advance other pretrial proceedings.

13 Second, the right to amend once as a matter of course is no longer terminated by service
14 of a responsive pleading. The responsive pleading may point out issues that the original
15 pleader had not considered and persuade the pleader that amendment is wise. Just as
16 amendment was permitted by former subsection (a) in response to a motion, so the amended
17 section permits one amendment as a matter of course in response to a responsive pleading.
18 The right is subject to the same 21-day limit as the right to amend in response to a motion.

19 The 21-day periods to amend once as a matter of course after service of a responsive
20 pleading or after service of a designated motion are not cumulative. If a responsive pleading
21 is served after one of the designated motions is served, for example, there is no new 21-day
22 period.

23 Finally, amended subsection (a)(1) omits the provision that cuts off the right if the action
24 is on the trial calendar. K.S.A. 60-240 no longer refers to a trial calendar, and many courts
25 have abandoned formal trial calendars. It is more effective to rely on scheduling orders or
26 other pretrial directions to establish time limits for amendment in the few situations that
27 otherwise might allow one amendment as a matter of course at a time that would disrupt trial
28 preparations. Leave to amend still can be sought under subsection (a)(2), or at and after trial
29 under subsection (b).

30 Abrogation of K.S.A. 60-213(f) establishes K.S.A. 60-215 as the sole section governing
31 amendment of a pleading to add a counterclaim.

32 Former subsection (c)(2)(A) called for notice of the “institution” of the action. New
33 subsection (c)(1)(C)(i) omits the reference to “institution” as potentially confusing. What
34 counts is that the party to be brought in have notice of the existence of the action, whether
35 or not the notice includes details as to its “institution.”

36 **60-216. Pretrial conferences; case management conference.**

1 (a) ~~Pretrial conferences; objectives~~ Purposes of a pretrial conference. In any action, the court
2 shall ~~must~~ on the request of either any party, or may ~~in its discretion~~ without ~~such a~~ request, ~~direct~~
3 ~~order~~ the attorneys for the parties ~~and any unrepresented parties~~ to appear ~~before it~~ for a conference
4 ~~one or more pretrial~~ conferences ~~before trial~~ to expedite processing and disposition of the litigation,
5 minimize expense, and conserve time.

6 (b) Case management conference. In any action, the court shall ~~must~~ on the request of ~~either~~
7 ~~any~~ party, or may ~~in its discretion~~ without ~~such a~~ request, conduct a case management conference
8 with ~~counsel~~ attorneys and any unrepresented parties. The ~~court must schedule the~~ conference shall
9 ~~be scheduled by the court~~ as soon as possible. ~~The conference must and shall~~ be conducted within
10 45 days of ~~after~~ the filing of an answer. ~~However, in the discretion of unless~~ the court, ~~extends~~ the
11 time for the conference may be ~~extended or reduced~~ to meet the needs of the ~~individual~~ case.

12 (1) At any a case management conference ~~under this subsection consideration shall be given,~~
13 ~~and the court, the court must consider and shall~~ take appropriate action, ~~with respect to~~
14 ~~on the following matters:~~

15 ~~(1)(A)~~ Identifying ~~identifying~~ the issues and exploring the possibilities of stipulations
16 and settlement;

17 ~~(2)(B)~~ determining whether the action is suitable for alternative dispute resolution;

18 ~~(3)(C)~~ exchanging information on the issues ~~of the case~~, including key documents and
19 witness identification;

20 ~~(4)(D)~~ establishing a plan and schedule for discovery, including setting ~~limitations~~
21 limits on discovery, if any, designating the time and place of discovery,
22 restricting discovery to certain designated witnesses, or requiring statements be
23 taken in writing or by use of electronic recording rather than by stenographic
24 transcription;

25 ~~(5)(E)~~ determining ~~any~~ issues relating to disclosure or discovery of electronically stored
26 information, including the form or forms in which it should be produced;

27 ~~(6)(F)~~ determining ~~any~~ issues relating to claims of privilege or of protection as trial-
28 preparation material, including; ~~—~~ if the parties agree on a procedure to assert
29 such claims after production; ~~—~~ whether to ask the court to include their
30 agreement in an order;

31 ~~(7)(G)~~ requiring completion of discovery within a definite number of days after the
32 conference has been conducted;

33 ~~(8)(H)~~ setting deadlines for filing motions, joining parties, and amendments to the
34 pleadings;

1 (9)(I) setting the date or dates for conferences before trial, a final pretrial conference,
2 and trial; and

3 (10)(J) such other matters as are necessary for the proper management of the action.

4 (2) If a case management conference is held, ~~except as provided in subsection (a)(2)(B) of~~
5 ~~K.S.A. 60-230 and amendments thereto,~~ no depositions, other than of the parties ~~to the~~
6 ~~action, shall~~ may be taken until after the conference is held, except by agreement of the
7 parties, ~~by or~~ order of the court, ~~or as provided in K.S.A. 60-230(a)(2)(B), and~~
8 ~~amendments thereto.~~ If the case management conference is not held within 45 days ~~of~~
9 ~~after~~ the filing of an answer, the restrictions of this paragraph ~~shall~~ no longer apply.

10 (3) If discovery cannot be completed within the ~~period of~~ time originally prescribed by the
11 court, the party not able to complete discovery ~~shall~~ may file a motion ~~prior to the~~
12 ~~expiration of the original period~~ for additional time to complete discovery. ~~Such~~ The
13 ~~motion shall~~ must be filed ~~prior to the expiration of the original period,~~ contain a
14 discovery plan, and ~~shall set forth~~ state the reason why discovery cannot be completed
15 within the original period. If additional time is allowed, the court ~~shall~~ must grant only
16 that amount of time reasonably necessary to complete discovery.

17 (c) **Subjects Attendance and matters for consideration at a pretrial conferences conference.**
18 ~~At any pretrial conference consideration may be given, and the court may take appropriate action,~~
19 ~~with respect to:~~

20 (1) ~~The simplification of the issues;~~

21 (2) ~~the determination of issues of law which may eliminate or affect the trial of issues of fact;~~

22 (3) ~~the necessity or desirability of amendments to the pleadings;~~

23 (4) ~~the possibility of obtaining admissions of fact and of documents which will avoid unnecessary~~
24 ~~proof;~~

25 (5) ~~the limitation of the number of expert witnesses;~~

26 (6) ~~the advisability of a preliminary reference of issues to a master; and~~

27 (7) ~~such other matters as may aid in the disposition of the action.~~

28 (1) **Attendance.** ~~A represented party must authorize at~~ At least one of the its attorneys for
29 each party participating in any conference before trial shall have authority to enter into
30 to make stipulations and ~~to make~~ admissions regarding about all matters that ~~the~~
31 ~~participants may reasonably anticipate may be discussed~~ can be reasonably anticipated
32 for discussion at a pretrial conference. If appropriate, the court may require that a party
33 or its representative be present or reasonably available by ~~telephone~~ other means in order

1 to consider possible settlement of the dispute. ~~In the discretion of the~~ The court, any
2 may allow a pretrial conference may to be held by a telephone conference call or other
3 means.

4 (2) **Matters for consideration.** At any pretrial conference, the court may consider and take
5 appropriate action on the following matters:

6 (A) simplifying the issues;

7 (B) determining the issues of law that may eliminate or affect the trial of issues of
8 fact;

9 (C) amending the pleadings if necessary or desirable;

10 (D) obtaining admissions and stipulations about facts and documents to avoid
11 unnecessary proof;

12 (E) limiting the number of expert witnesses;

13 (F) referring issues to a master; and

14 (G) such other matters as may aid in the disposition of the action, including
15 alternative dispute resolution.

16 ~~(d) **Final pretrial conference.** In any action, the court shall on the request of either party, or may~~
17 ~~in its discretion without such request, conduct a final pretrial conference in accordance with~~
18 ~~procedures established by rule of the supreme court.~~

19 ~~(e) (d) **Pretrial orders.** After any conference held under this section, an order shall be entered the~~
20 ~~court should issue an order reciting the action taken. This order shall control controls the subsequent~~
21 ~~course of the action unless modified by a subsequent order the court modifies it. The order following~~
22 ~~a final pretrial conference shall be modified only by agreement of the parties, or by the court to~~
23 ~~prevent manifest injustice.~~

24 (e) **Final pretrial conference and orders.** In any action, the court must on the request of any
25 party, or may without a request, conduct a final pretrial conference in accordance with procedures
26 established by rule of the supreme court. The court may modify the order issued after a final pretrial
27 conference only to prevent manifest injustice.

28 ~~(f) If a party or party's attorney fails to obey a pretrial order, if no appearance is made on behalf~~
29 ~~of a party at a pretrial conference, if a party or party's attorney is substantially unprepared to~~
30 ~~participate in the conference or if a party or party's attorney fails to participate in good faith, the~~
31 ~~judge, upon motion or the judge's own initiative and after opportunity to be heard, may make such~~
32 ~~orders with regard thereto as are just, and among others any of the orders provided in subsections~~
33 ~~(b)(2)(B), (C) and (D) of K.S.A. 60-237 and amendments thereto. In lieu of or in addition to any~~

1 other sanction, the judge shall require the party or the party's attorney, or both, to pay the reasonable
2 expenses incurred because of any noncompliance with this section, including attorney fees, unless
3 the judge finds that the noncompliance was substantially justified or that other circumstances make
4 an award of expenses unjust.

5 **(f) Sanctions.**

6 **(1) In general.** On motion or on its own, and after opportunity to be heard, the court may
7 issue any just orders, including those authorized by K.S.A. 60-237(b)(2)(B), (C), and
8 (D), and amendments thereto, if a party or its attorney:

9 **(A)** fails to appear at a case management or other pretrial conference;

10 **(B)** is substantially unprepared to participate — or does not participate in good faith
11 — in the conference; or

12 **(C)** fails to obey a scheduling or other pretrial order.

13 **(2) Imposing fees and costs.** Instead of or in addition to any other sanction, the court must
14 order the party, its attorney, or both to pay the reasonable expenses — including
15 attorney's fees — incurred because of any noncompliance with this section, unless the
16 noncompliance was substantially justified or other circumstances make an award of
17 expenses unjust.

18 **COMMENT**

19 The language of K.S.A. 60-216 has been amended as part of the general restyling of the
20 Kansas Code to make it more easily understood and to make style and terminology
21 consistent throughout the Code. These changes are intended to be stylistic only.

22 K.S.A. 60-216 is slightly different from Federal Rule 16. The differences are mainly in
23 terminology as similar issues are handled in Kansas case management conferences that are
24 covered under the Federal Rules in pretrial conferences.

25 In subsection (c)(1), “or other means” was added. When a party or its representative is
26 not present, it is enough to be reasonably available by any suitable means, whether telephone
27 or other communication device.

28 **60-217. Parties; capacity.**

29 **(a) *Real party in interest.***

30 **(1) Designation in general.** Every An action shall must be prosecuted in the name of the
31 real party in interest; but, The following may sue in their own names without joining the
32 person for whose benefit the action is brought:

- 1 (A) an executor;
- 2 (B) an administrator;
- 3 (C) a guardian;
- 4 (D) a conservator;
- 5 (E) a bailee;
- 6 (F) a trustee of an express trust;
- 7 (G) a receiver;
- 8 (H) a party with whom or in whose name a contract has been made for ~~the benefit of~~
9 ~~another, or~~ another's benefit; and
- 10 (I) a party authorized by statute ~~may sue in the party's own name without joining the~~
11 ~~party for whose benefit the action is brought.~~

12 (2) ***Action in the name of the state of Kansas for another's use or benefit.*** When a statute
13 so provides, an action for another's the use or benefit of another ~~must~~ shall be brought
14 in the name of the state of Kansas. ~~No action shall be dismissed on the ground that it is~~
15 ~~not prosecuted in the name of the real party in interest until a reasonable time has been~~
16 ~~allowed after objection for ratification of commencement of the action by, or joinder or~~
17 ~~substitution of, the real party in interest; and such ratification, joinder or substitution~~
18 ~~shall have the same effect as if the action had been commenced in the name of the real~~
19 ~~party in interest.~~

20 (3) ***Joinder of the real party in interest.*** The court may not dismiss an action for failure to
21 prosecute in the name of the real party in interest until, after an objection, a reasonable
22 time has been allowed for the real party in interest to ratify, join, or be substituted into
23 the action. After ratification, joinder, or substitution, the action proceeds as if it had been
24 originally commenced by the real party in interest.

25 (b) ***Claim accruing under law of another state.*** ~~Whenever a cause of action~~ A claim for relief
26 ~~that~~ has accrued under ~~or by virtue of~~ the laws of ~~any other~~ another state or territory, ~~such cause of~~
27 ~~action~~ may be sued upon ~~in any of the courts of this state~~ by the person or persons ~~who are~~
28 authorized to bring and maintain an action ~~thereon~~ on the claim in the state or territory where the
29 ~~same~~ it arose. When the law of the state or territory where a ~~cause of action~~ claim for relief for death
30 arose authorizes ~~said~~ the action to be prosecuted by an administrator or executor, then ~~said~~ the action
31 may also be maintained ~~in any of the courts of this state~~ by an administrator or executor appointed
32 under the laws of ~~the~~ this state of Kansas.

33 (c) ***Minor or incapacitated persons person.***

1 (1) **With a representative.** The following representatives may sue or defend on behalf of a
2 minor or an incapacitated person: Whenever a minor or incapacitated person has a
3 representative, such as

4 (A) a general guardian;

5 (B) a committee;

6 (C) a conservator; or

7 (D) a ~~other~~ like fiduciary; ~~the representative may sue or defend on behalf of the~~
8 minor or incapacitated person.

9 (2) **Without a representative.** If a ~~A~~ minor or an incapacitated person who does not have a

10 duly appointed representative ~~the minor or incapacitated person may sue by the minor~~
11 ~~or incapacitated person's~~ a next friend or by a guardian ad litem. The court ~~shall~~ must
12 appoint a guardian ad litem ~~for a minor or incapacitated person not otherwise represented~~
13 ~~in an action or shall make such other order as it deems proper for the protection of the~~
14 ~~minor or incapacitated person~~ — or issue another appropriate order — to protect a minor
15 or incapacitated person who is unrepresented in an action.

16 (d) **Public officer's title and name.** A public officer who sues or is sued in an official capacity
17 may be designated by official title rather than by name, but the court may order that the officer's
18 name be added.

19 COMMENT

20 The language of K.S.A. 60-217 has been amended as part of the general restyling of the
21 Kansas Code to make it more easily understood and to make style and terminology
22 consistent throughout the Code.

23 “A bailee” was added to the illustrative list of real parties in interest in subsection (a)(1).
24 This amendment was made to Federal Rule 17 in 1966, primarily to preserve the admiralty
25 practice whereby the owner or master of a vessel sues, as bailee, for damage to the cargo,
26 the vessel, or both. However, as noted in the federal Advisory Committee Note, there is no
27 reason to limit the provision to maritime situations. The owner of a warehouse in which
28 household furniture is stored is equally entitled to sue on behalf of the numerous owners of
29 the furniture stored.

30 Subsection (b) has no counterpart in Federal Rule 17.

31 New subsection (d) conforms to the federal rule. This provision was added as Federal
32 Rule 25(d)(2) in 1961, but had not been incorporated in the Kansas Code. It was moved
33 from Rule 25 to Rule 17 because it deals with designation of a public officer, not
34 substitution.

1 **60-218. Joinder of claims and remedies.**

2 (a) ***Joinder of claims In general.*** A party asserting a claim to relief as an original claim,
3 counterclaim, ~~cross-claim~~ crossclaim, or third-party claim; may join, ~~either~~ as independent or as
4 ~~alternate~~ alternative claims, as many claims, ~~legal or equitable~~, as ~~he~~ it has against an opposing
5 party.

6 (b) ***Joinder of remedies contingent claims.*** Whenever a claim is one heretofore cognizable only
7 after another claim has been prosecuted to a conclusion, the two claims may be joined in a single
8 action; but the court shall grant relief in that action only in accordance with the relative substantive
9 rights of the parties. A party may join two claims even though one of them is contingent on the
10 disposition of the other; but the court may grant relief only in accordance with the parties' relative
11 substantive rights. In particular, ~~but not exclusively~~, a plaintiff may state a claim for money and a
12 claim to ~~have~~ set aside a conveyance that is fraudulent as to ~~him~~ that plaintiff, without first ~~having~~
13 ~~obtained~~ obtaining a judgment establishing the claim for the money; a plaintiff may state in ~~his~~ the
14 original claim ~~against the defendant and also in either the original or an amended petition or in an~~
15 ~~answer or a reply, a claim for having to have any release, composition, settlement, or discharge of~~
16 the original claim set aside as fraudulent or ~~otherwise~~ wrongfully procured.

17 **COMMENT**

18 The language of K.S.A. 60-218 has been amended as part of the general restyling of the
19 Kansas Code to make it more easily understood and to make style and terminology
20 consistent throughout the Code. These changes are intended to be stylistic only.

21 Modification of the obscure former reference to a claim “heretofore cognizable only after
22 another claim has been prosecuted to a conclusion” avoids any uncertainty whether
23 subsection (b)'s meaning is fixed by retrospective inquiry from some particular date.

24 **60-219. Joinder of persons needed for just adjudication. Required joinder of parties.**

25 (a) ***Persons required to be joined if feasible.***

26 (1) ***Required party.*** Whenever a “contingently necessary” person, as hereinafter defined, A
27 person who is subject to service of process, ~~he shall be joined as a party in the action.~~
28 must be joined as a party if:

29 (A) in that person's absence, the court cannot accord complete relief among existing
30 parties; or

31 (B) that person claims an interest relating to the subject of the action and is so
32 situated that disposing of the action in the person's absence may:

33 (i) as a practical matter impair or impede the person's ability to protect the

1 interest; or

2 (ii) leave an existing party subject to a substantial risk of incurring double,
3 multiple, or otherwise inconsistent obligations because of the interest.

4 (2) ***Joinder by court order.*** ~~If he a person~~ has not been so joined ~~as required~~, the court shall
5 must order that he the person be made a party. ~~If he should join as a plaintiff but refuses~~
6 ~~to do so~~, A person who refuses to join as a plaintiff ~~he~~ may be made either a defendant
7 or, in a proper case, an involuntary plaintiff.

8 (3) ***Venue.*** ~~If the a~~ joined party objects to venue and ~~his the~~ joinder would ~~render the make~~
9 ~~venue of the action~~ improper, ~~he shall be dismissed from the action~~ the court must
10 dismiss that party.

11 ~~A person is contingently necessary if (1) complete relief cannot be accorded in his absence~~
12 ~~among those already parties, or (2) he claims an interest relating to the property or transaction which~~
13 ~~is the subject of the action and he is so situated that the disposition of the action in his absence may~~
14 ~~(i) as a practical matter substantially impair or impede his ability to protect that interest or (ii) leave~~
15 ~~any of the persons already parties subject to a substantial risk of incurring double, multiple, or~~
16 ~~otherwise inconsistent obligations by reason of his claimed interest.~~

17 (b) ***Determination by court whenever When joinder is not feasible.*** If a contingently necessary
18 person who is required to be joined if feasible cannot be made a party joined, the court shall must
19 determine whether, in equity and good conscience, the action ~~ought to~~ should proceed among the
20 existing parties ~~before it or ought to~~ should be dismissed. The factors ~~to be considered by the court~~
21 for the court to consider include:

22 (1) ~~First, to what the extent to which~~ a judgment rendered in the person's absence ~~of the~~
23 ~~contingently necessary person might be prejudicial to him or those already parties~~
24 prejudice that person or the existing parties;

25 (2) ~~second~~, the extent to which, ~~by~~ any prejudice could be lessened or avoided by:

26 (A) protective provisions in the judgment;

27 (B) by the shaping of the relief; or

28 (C) other measures, ~~the prejudice can be lessened or avoided;~~

29 (3) ~~third~~, whether a judgment rendered in the person's absence ~~of the contingently necessary~~
30 person would be adequate; and

31 (4) ~~fourth~~, whether the plaintiff would have an adequate remedy if the action were dismissed
32 for nonjoinder.

33 (c) ***Pleading the reasons for nonjoinder.*** ~~A pleading~~ When asserting a claim for relief, a party
34 must shall state:

1 (1) the names name, if known to the pleader, of contingently necessary persons who are not
2 joined; any person who is required to be joined if feasible but is not joined; and

3 (2) the reasons why they are not joined for not joining that person.

4 (d) **Exception of for class actions.** This section is subject to the provisions of K.S.A. 60-223,
5 and amendments thereto.

6 COMMENT

7 The language of K.S.A. 60-219 has been amended as part of the general restyling of the
8 Kansas Code to make it more easily understood and to make style and terminology
9 consistent throughout the Code.

10 The language of K.S.A. 60-219 is now in conformity with Federal Rule 19 and no longer
11 uses the term “contingently necessary” to describe persons to be joined if feasible.

12 60-220. Permissive joinder of parties.

13 (a) **Permissive joinder Persons who may join or be joined.**

14 (1) **Plaintiffs.** All persons Persons may join in one action as plaintiffs if:

15 (A) they assert any right to relief jointly, severally, or in the alternative in respect of
16 with respect to or arising out of the same transaction, occurrence, or series of
17 transactions or occurrences; and

18 (B) if any question of law or fact common to all these persons plaintiffs will arise in
19 the action.

20 (2) **Defendants.** All persons Persons may be joined in one action as defendants if:

21 (A) any right to relief there is asserted against them jointly, severally, or in the
22 alternative; any right to relief in respect of with respect to or arising out of the
23 same transaction, occurrence, or series of transactions or occurrences; and

24 (B) if any question of law or fact common to all these persons defendants will arise
25 in the action.

26 (3) **Extent of relief.** Neither A a plaintiff or nor a defendant need not be interested in
27 obtaining or defending against all the relief demanded. Judgment may be given for The
28 court may grant judgment to one or more of the plaintiffs according to their respective
29 rights to relief, and against one or more defendants according to their respective
30 liabilities.

1 (b) ~~*Separate trials Protective measures.*~~ The court may ~~make such issue orders as will prevent~~
2 ~~— including an order for separate trials — to protect a party from being embarrassed, delayed, or~~
3 ~~put to against embarrassment, delay, expense by the inclusion of a party, or other prejudice that~~
4 ~~arises from including a person against whom he the party asserts no claim and who asserts no claim~~
5 ~~against him; the party and may order separate trials or make other orders to prevent delay or~~
6 ~~prejudice.~~

7 **COMMENT**

8 The language of K.S.A. 60-220 has been amended as part of the general restyling of the
9 Kansas Code to make it more easily understood and to make style and terminology
10 consistent throughout the Code. These changes are intended to be stylistic only.

11 **60-221. Misjoinder ~~not ground for dismissal and nonjoinder of parties.~~** Misjoinder of parties
12 is not a ground for ~~dismissal of dismissing~~ an action. ~~Parties may be dropped or added by order of~~
13 ~~the court on motion of any party or of its own initiative at any stage of the action and on such terms~~
14 ~~as are just~~ On motion or on its own, the court may at any time, on just terms, add or drop a party.
15 The court may also sever any ~~Any~~ claim against a party ~~may be severed and proceeded with~~
16 ~~separately.~~

17 **COMMENT**

18 The language of K.S.A. 60-221 has been amended as part of the general restyling of the
19 Kansas Code to make it more easily understood and to make style and terminology
20 consistent throughout the Code. These changes are intended to be stylistic only.

21 **60-222. Interpleader.**

22 (a) ~~*Persons required to interplead*~~ Grounds.

23 (1) *By a plaintiff.* Persons ~~having with~~ claims ~~against the plaintiff that may expose a~~
24 plaintiff to double or multiple liability may be joined as defendants and required to
25 interplead ~~when their claims are such that the plaintiff is or may be exposed to double~~
26 ~~or multiple liability. It is not ground for objection to the joinder that Joinder for~~
27 interpleader is proper even though:

28 (A) the claims of the several claimants, or the titles on which their claims depend,
29 ~~lack do not have~~ a common origin or are ~~not identical but are~~ adverse to and
30 independent ~~of one another; rather than identical; or~~

1 (B) ~~that the plaintiff avers that he or she is not liable~~ denies liability in whole or in
2 part to any or all of the claimants.

3 (2) By a defendant. A defendant exposed to similar liability may ~~obtain such~~ seek
4 ~~interpleader by way of cross-claim~~ through a crossclaim or counterclaim.

5 (b) Disclaimer by defendant Disclaiming interpleader.

6 (1) ~~In any action upon contract or for the recovery of personal property, the defendant A~~
7 ~~party's answer~~ may answer plead that:

8 (A) ~~some third party~~ another person, without collusion with ~~him or her~~ the party, has
9 ~~or makes a claim or has made a claim~~ to the subject of the action, money or
10 ~~property in the party's possession; and~~

11 (B) ~~that he or she~~ the party is ready to pay or dispose of the ~~same~~ money or property
12 ~~as the court may direct; orders.~~

13 (2) ~~the~~ The court or judge may make issue an order for the safekeeping, ~~or for including~~
14 ~~the~~ payment or deposit in court; or the delivery to a custodian, of the ~~subject of the action~~
15 ~~to such persons as it may direct, and money or property.~~ The court may make issue an
16 ~~order requiring such third party~~ the person to appear ~~in a reasonable~~ at a specific time
17 ~~and maintain~~ assert or relinquish ~~his or her~~ a claim against the ~~defendant~~ money or
18 ~~property.~~ A copy of the order must be served on the person in the manner provided for
19 ~~service of summons in article 3 of chapter 60.~~

20 (3) ~~If such third party, the person~~ fails to appear at the specified time after being served with
21 ~~a copy of the order by the sheriff, or such other person as the court or judge may direct,~~
22 ~~fail to appear,~~ the court may declare him or her barred of all ~~bar any~~ claim by the person
23 ~~in respect to the subject of the action against the defendant therein to the money or~~
24 ~~property.~~ If such third party appear the person appears and asserts a claim against the
25 ~~money or property,~~ he or she shall be allowed to make himself or herself defendant in
26 ~~the action, in lieu of the original defendant, who shall be discharged from all liability to~~
27 ~~either of the other parties in respect to the subject of the action, upon his or her~~
28 ~~compliance with the order of the court or judge for the payment, deposit or delivery~~
29 ~~thereof~~ the court must discharge the party from all liability with respect to the money or
30 ~~property upon the party's deposit or delivery of the money or property as ordered by the~~
31 ~~court. The court must realign the remaining parties as their interests appear.~~

32 (c) Application. The provisions of this section supplement and do not in any way limit the
33 ~~joinder of parties permitted in K.S.A. 60-220, and amendments thereto.~~

34 **COMMENT**

1 The language of K.S.A. 60-222 has been amended as part of the general restyling of the
2 Kansas Code to make it more easily understood and to make style and terminology
3 consistent throughout the Code. These changes are intended to be stylistic only.

4 Subsection (b) is no longer restricted to “personal” property and applies to any claim for
5 money, whether or not an action on contract. There is no counterpart of subsection (b) in
6 the Federal Rules.

7 **60-223. Class Actions.**

8 (a) ~~Prerequisites to a class action.~~ One or more members of a class may sue or be sued as
9 representative parties on behalf of all members only if:

- 10 (1) the class is so numerous that joinder of all members is impracticable;
11 (2) there are questions of law or fact common to the class;
12 (3) the claims or defenses of the representative parties are typical of the claims or defenses
13 of the class; and
14 (4) the representative parties will fairly and adequately protect the interests of the class.

15 (b) ~~Class actions maintainable~~ Types of class actions. ~~An action may be maintained as a class~~
16 ~~action~~ A class action may be maintained if the prerequisites of ~~subdivision~~ subsection (a) are
17 satisfied; and ~~in addition~~ if:

- 18 (1) ~~The prosecution of~~ prosecuting separate actions by or against individual class members
19 ~~of the class~~ would create a risk of:
20 (A) inconsistent or varying adjudications with respect to individual class members
21 ~~of the class which~~ that would establish incompatible standards of conduct for the
22 party opposing the class; or
23 (B) adjudications with respect to individual class members ~~of the class which would~~
24 that, as a practical matter, would be dispositive of the interests of the other
25 members not parties to the individual adjudications or would substantially impair
26 or impede their ability to protect their interests;
27 (2) the party opposing the class has acted or refused to act on grounds ~~generally applicable~~
28 that apply generally to the class, ~~thereby making appropriate so that~~ final injunctive relief
29 or corresponding declaratory relief ~~with respect to~~ is appropriate respecting the class as
30 a whole; or
31 (3) the court finds that the questions of law or fact common to the class members ~~of the class~~

1 predominate over any questions affecting only individual members, and that a class
2 action is superior to other available methods for ~~the fair and efficient adjudication of~~
3 fairly and efficiently adjudicating the controversy. The matters pertinent to ~~the~~ these
4 findings include:

- 5 (A) ~~The interest of members of the class~~ members' interests in individually
6 controlling the prosecution or defense of separate actions;
- 7 (B) the extent and nature of any litigation concerning the controversy already
8 commenced begun by or against class members ~~of the class~~;
- 9 (C) the desirability or undesirability of concentrating the litigation of the claims in
10 the particular forum; and
- 11 (D) the likely difficulties ~~likely to be encountered in the management of~~ in managing
12 a class action.

13 (c) ~~Determination by order whether class action to be maintained~~ Certification order; notice
14 to class members; judgment; actions conducted partially as class actions issues classes;
15 subclasses.

16 (1) Certification order.

- 17 (A) Time to issue. ~~As soon as practicable after the commencement of an action~~
18 ~~brought as a class action~~ At an early practicable time after a person sues or is
19 sued as a class representative, the court shall must determine by order whether
20 it is to be maintained to certify the action as a class action.
- 21 (B) Defining the class; appointing class counsel. An order that certifies a class
22 action must define the class and the class claims, issues, or defenses, and must
23 appoint class counsel under subsection (g).
- 24 (C) Altering or amending the order. An order under this subdivision that grants or
25 denies class certification may be conditional, and may be altered or amended
26 before the decision on the merits final judgment.

27 (2) Notice.

- 28 (A) For (b)(1) or (b)(2) classes. For any class certified under subsection (b)(1) or
29 (b)(2), the court may direct appropriate notice to the class.
- 30 (B) For (b)(3) classes. ~~In any class action maintained~~ For any class certified
31 under subsection (b)(3), the court shall must direct to the class members of the class the
32 best notice that is practicable under the circumstances, including individual
33 notice to all members who can be identified through reasonable effort. The notice
34 shall must advise each member that clearly and concisely state in plain, easily
35 understood language:

- 1 (i) the nature of the action;
- 2 (ii) the definition of the class certified;
- 3 (iii) the class claims, issues, or defenses;
- 4 (iv) that a class member may enter an appearance through an attorney if the
5 member so desires;
- 6 (A v) ~~The that the court will exclude from the class any the member from the class~~
7 ~~if the member so who requests exclusion by a specified date;~~
- 8 (Bvi) ~~the judgment, whether favorable or not, will include all members who do not~~
9 ~~request time and manner for requesting exclusion; and~~
- 10 (Evii) ~~any member who does not request exclusion, if the member desires, may~~
11 ~~enter an appearance through counsel the binding effect of a class judgment~~
12 ~~on members under subsection (c)(3).~~
- 13 (3) ***Judgment.*** Whether or not favorable to the class, the judgment in a class action must:
- 14 (A) ~~The judgment in an action maintained as a class action under subsection (b)(1)~~
15 ~~or (b)(2), whether or not favorable to the class, shall include and describe those~~
16 ~~whom the court finds to be class members of the class; and~~
- 17 (B) ~~The judgment in an action maintained as a class action under subsection (b)(3),~~
18 ~~whether or not favorable to the class, shall include and specify or describe those~~
19 ~~to whom the notice provided in subsection (c)(2) was directed, and who have not~~
20 ~~requested exclusion, and whom the court finds to be class members of the class.~~
- 21 (4) ***Particular issues.*** When appropriate, (A) an action may be brought or maintained as a
22 class action with respect to particular issues, or
- 23 (B)(5) ***Subclasses.*** When appropriate, a class may be divided into subclasses and that are each
24 subclass treated as a class, and the provisions of this section shall then be construed and
25 applied accordingly under this section.
- 26 (d) ***Orders in conduct of actions*** Conducting the action.
- 27 (1) ***In general.*** In the conduct of actions to which this section applies conducting an action
28 under this section, the court may make appropriate issue orders that:
- 29 (A) ~~determining determine~~ determine the course of proceedings or ~~prescribing prescribe~~
30 measures to prevent undue repetition or complication in the presentation of
31 presenting evidence or argument;

1 (2B) ~~requiring, for the protection of the members of the class or otherwise for the fair~~
2 ~~conduct of the action, that notice be given in such manner as the court may direct~~
3 ~~require — to protect class members and fairly conduct the action — giving~~
4 ~~appropriate notice to some or all of the class members of;~~

5 (i) any step in the action;

6 (ii) ~~or of~~ the proposed extent of the judgment; or

7 (iii) ~~of the members'~~ opportunity ~~of members~~ to signify whether they consider the
8 representation fair and adequate, to intervene and present claims or defenses,
9 or to otherwise ~~to~~ come into the action;

10 (3C) ~~imposing~~ impose conditions on the representative parties or on intervenors;

11 (4D) ~~requiring~~ require that the pleadings be amended to eliminate ~~therefrom~~
12 allegations ~~as to~~ about representation of absent persons; and that the action
13 proceed accordingly; or

14 (5E) ~~dealing~~ deal with similar procedural matters.

15 (2) ~~**Combining and amending orders.** The orders~~ An order under subsection (d)(1) may
16 be altered or amended from time to time and may be combined with an order under
17 K.S.A. 60-216, and amendments thereto and may be altered or amended as may be
18 desirable from time to time.

19 (e) ~~**Dismissal**~~ **Settlement, voluntary dismissal, or compromise.** ~~A class action shall not be~~
20 ~~dismissed or compromised with out the approval of the court, and notice of the proposed dismissal~~
21 ~~or compromise shall be given to all members of the class in such manner as the court directs. The~~
22 ~~claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised~~
23 ~~only with the court's approval. The following procedures apply to a proposed settlement, voluntary~~
24 ~~dismissal, or compromise:~~

25 (1) The court must direct notice in a reasonable manner to all class members who would be
26 bound by the proposal.

27 (2) If the proposal would bind class members, the court may approve it only after a hearing
28 and on finding that it is fair, reasonable, and adequate.

29 (3) The parties seeking approval must file a statement identifying any agreement made in
30 connection with the proposal.

31 (4) If the class action was previously certified under subsection (b)(3), the court may refuse
32 to approve a settlement unless it affords a new opportunity to request exclusion to
33 individual class members who had an earlier opportunity to request exclusion but did not
34 do so.

1 (5) Any class member may object to the proposal if it requires court approval under this
2 subsection (e); the objection may be withdrawn only with the court’s approval.

3 (f) **Appeals.** The court of appeals may ~~in its discretion~~ permit an appeal from an order ~~of a~~
4 ~~district court~~ granting or denying class action certification under this section if application is made
5 to the court within ~~10~~ 14 days after ~~entry of~~ the order is entered. An appeal does not stay
6 proceedings in the district court unless the district judge or the court of appeals so orders.

7 (g) **Class counsel.**

8 (1) **Appointing class counsel.** Unless a statute provides otherwise, a court that certifies a
9 class must appoint class counsel. In appointing class counsel, the court:

10 (A) must consider:

11 (i) the work counsel has done in identifying or investigating potential claims in the
12 action;

13 (ii) counsel’s experience in handling class actions, other complex litigation, and the
14 types of claims asserted in the action;

15 (iii) counsel’s knowledge of the applicable law; and

16 (iv) the resources that counsel will commit to representing the class;

17 (B) may consider any other matter pertinent to counsel’s ability to fairly and
18 adequately represent the interests of the class;

19 (C) may order potential class counsel to provide information on any subject pertinent
20 to the appointment and to propose terms for attorney’s fees and nontaxable costs;

21 (D) may include in the appointing order provisions about the award of attorney’s fees
22 or nontaxable costs under subsection (h); and

23 (E) may make further orders in connection with the appointment.

24 (2) **Standard for appointing class counsel.** When one applicant seeks appointment as class
25 counsel, the court may appoint that applicant only if the applicant is adequate under
26 subsections (g)(1) and (g)(4). If more than one adequate applicant seeks appointment,
27 the court must appoint the applicant best able to represent the interests of the class.

28 (3) **Interim counsel.** The court may designate interim counsel to act on behalf of a putative
29 class before determining whether to certify the action as a class action.

30 (4) **Duty of class counsel.** Class counsel must fairly and adequately represent the interests
31 of the class.

1 (h) *Attorney’s fees and nontaxable costs.* In a certified class action, the court may award
2 reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’
3 agreement. The following procedures apply:

4 (1) A claim for an award must be made by motion, subject to the provisions of this
5 subsection (h), at a time the court sets. Notice of the motion must be served on all
6 parties and, for motions by class counsel, directed to class members in a reasonable
7 manner.

8 (2) A class member, or a party from whom payment is sought, may object to the motion.

9 (3) The court may hold a hearing and must find the facts and state its legal conclusions
10 under K.S.A. 60-252(a), and amendments thereto.

11 (4) The court may refer issues related to the amount of the award to a special master as
12 provided in K.S.A. 60-253, and amendments thereto.

13 **COMMENT**

14 The language of K.S.A. 60-223 has been amended as part of the general restyling of the
15 Kansas Code to make it more easily understood and to make style and terminology
16 consistent throughout the Code.

17 Amended subsection (d)(2) carries forward the provisions of former subsection (d) that
18 recognize two separate propositions. First, a K.S.A. 60-223(d) order may be combined with
19 a pretrial order under K.S.A. 60-216. Second, the standard for amending the subsection (d)
20 order continues to be the more open-ended standard for amending K.S.A. 60-223(d) orders,
21 not the more exacting standard for amending K.S.A. 60-216 orders.

22 As part of the general restyling, intensifiers that provide emphasis but add no meaning
23 are consistently deleted. Amended subsection (f) omits as redundant the explicit reference
24 to court of appeals discretion in deciding whether to permit an interlocutory appeal. The
25 omission does not in any way limit the unfettered discretion established by the original
26 provision.

27 The time set in the former statute at 10 days has been revised to 14 days. See the
28 Comment to K.S.A. 60-206.

29 In addition, K.S.A. 60-223 was amended to conform to 2003 amendments to Federal
30 Rule 23. Subsections (c) and (e) are significantly changed, and subsections (g) and (h) are
31 new. More detailed comments, with which the Civil Code Advisory Committee concurs, can
32 be found in the Advisory Committee Notes to the 2003 amendments.

33 **Subsection (c).** Subsection (c)(1)(A) is changed to require that the determination
34 whether to certify a class be made “at an early practicable time.” There are many valid

1 reasons that may justify deferring the initial certification decision.

2 The provision that a class certification “may be conditional” is deleted in new subsection
3 (c)(1)(C). A court that is not satisfied that the requirements of K.S.A. 60-223 have been met
4 should refuse certification until they have been met. The provision that permits alteration
5 or amendment of an order granting or denying class certification is amended to set the cut-
6 off point at final judgment rather than “the decision on the merits.”

7 The notice provisions in subsection (c)(2) have been amended to call attention to the
8 court’s authority – already established in part by former subsection (d)(2) – to direct notice
9 of certification to a subsection (b)(1) or (b)(2) class. The former subsection (c)(2) expressly
10 required notice only in actions certified under subsection (b)(3). New subsection (c)(2)(B)
11 requires that notice be provided in plain, easily understood language.

12 **Subsection (e).** Subsection (e) is amended to strengthen the process of reviewing
13 proposed class-action settlements. Although settlement may be a desirable means of
14 resolving a class-action, court review and approval are essential to assure adequate
15 representation of class members who have not participated in shaping the settlement.

16 Revised subsection (e) resolves the ambiguity in the former reference to dismissal or
17 compromise of “a class action.” The new subsection requires court approval only if the
18 claims, issues, or defenses of a certified class are resolved by a settlement, voluntary
19 dismissal, or compromise.

20 New subsection (e)(1) carries forth the notice requirement of former subsection (e) only
21 when the settlement binds the class through claim or issue preclusion; notice is not required
22 when the settlement binds only the individual class representatives. New subsection (e)(2)
23 mandates a hearing as part of the process of approving settlements, voluntary dismissal, or
24 compromise that would bind members of a class. This subsection also states the standard
25 for approving such a binding settlement – it must be fair, reasonable, and adequate – and
26 requires that the court make findings supporting its conclusion.

27 New subsection (e)(2) requires parties seeking approval of a settlement, voluntary
28 dismissal, or compromise to file a statement identifying any agreement made in connection
29 with the settlement. This provision does not change the basic requirement that the parties
30 disclose all terms of the settlement or compromise that the court must approve under
31 subsection (e). It aims instead at related undertakings that, although seemingly separate,
32 may have influenced the terms of the settlement by trading away possible advantages for the
33 class in return for advantages for others. Doubts should be resolved in favor of
34 identification.

35 New subsection (e)(4) authorizes the court to refuse to approve a settlement unless the
36 settlement affords class members a new opportunity to request exclusion from a class
37 certified under subsection (b)(3) after settlement terms are known.

38 New subsection (e)(5) confirms the right of class members to object to a proposed
39 settlement, voluntary dismissal, or compromise and requires court approval for withdrawal
40 of the objections.

1 **Subsection (g).** Subsection (g) is new. It was added to Federal Rule 23 in 2003. This
2 subsection recognizes the importance of class counsel, states the obligation to represent the
3 interests of the class, and provides a framework for selection of class counsel. The
4 procedure and standards for appointment vary depending on whether there are multiple
5 applicants to be class counsel. The new subsection also provides a method by which the
6 court may make directions at the outset about the potential fee award to class counsel in the
7 event the action is successful.

8 **Subsection (h).** Subsection (h) is new. It was added to Federal Rule 23 in 2003. This
9 subsection provides a format for awards of attorney fees and nontaxable costs in connection
10 with a class action. The subsection does not create new grounds for an award of attorney
11 fees or nontaxable costs. Instead, it applies when such awards are authorized by law or by
12 agreement of the parties.

13 **60-223a. Derivative actions by shareholders.**

14 (a) Prerequisites. This section applies when one or more shareholders or members of a
15 corporation or an unincorporated association bring a derivative action to enforce a right that the
16 corporation or association may properly assert but has failed to enforce. The derivative action may
17 not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests
18 of shareholders or members who are similarly situated in enforcing the right of the corporation or
19 association. ~~In a derivative action brought by one or more shareholders or members to enforce a~~
20 ~~right of a corporation or of an unincorporated association, the corporation or association having~~
21 ~~failed to enforce a right which may properly be asserted by it,~~

22 (b) Pleading requirements. ~~The~~ the petition ~~shall~~ must be verified and ~~shall allege~~ must:

23 (1) allege that the plaintiff was a shareholder or member at the time of the transaction ~~of~~
24 ~~which he complains~~ complained of, or that ~~his~~ the plaintiff's share or membership
25 ~~thereafter~~ later devolved on ~~him~~ it by operation of law;~~; and~~

26 (2) allege that the action is not a collusive one to confer jurisdiction ~~on a court of the state~~
27 ~~of Kansas that it~~ the court would ~~not~~ otherwise ~~have~~; ~~lack~~; ~~and~~ ~~The petition shall also~~

28 (3) state allege with particularity:

29 (A) ~~the efforts, if any, effort~~ made by the plaintiff to obtain the desired action ~~he~~
30 ~~desires~~ from the directors or comparable authority and, if necessary ~~under the~~
31 ~~applicable law~~, from the shareholders or members;~~; and~~

32 (B) the reasons for ~~his failure to obtain the action or for not making the effort~~ not
33 obtaining the action or not making the effort.

34 ~~The derivative action may be maintained only if the court is satisfied that the plaintiff will~~
35 ~~adequately represent the interest of the corporation or association.~~

36 (c) Conducting the action. In ~~the conduct of the~~ conducting an action under this section, the

1 court may ~~make issue any~~ appropriate orders corresponding with those described in K.S.A. 60-
2 223(d), and amendments thereto.

3 ~~(d) *Settlement, dismissal, and compromise.* The~~ A derivative action may be settled, voluntarily
4 dismissed, or compromised only with the court's approval, ~~of the court upon notice~~ Notice of a
5 proposed settlement, voluntary dismissal, or compromise must be given to shareholders or members
6 in ~~such~~ the manner as that the court ~~may direct~~ orders.

7 COMMENT

8 The language of K.S.A. 60-223a has been amended as part of the general restyling of the
9 Kansas Code to make it more easily understood and to make style and terminology
10 consistent throughout the Code. These changes are intended to be stylistic only.

11 Subsection (c) has no counterpart in the federal rule.

12 **60-223b. *Actions relating to unincorporated associations.*** ~~An~~ This section applies to an action
13 brought by or against the members of an unincorporated association as a class by naming certain
14 members as representative parties. The action may be maintained only if it appears ~~the court is~~
15 satisfied that ~~those~~ the representative parties will fairly and adequately protect the interests of the
16 association and its members. In ~~the conduct of~~ conducting the action, the court may issue any
17 appropriate orders corresponding with those in K.S.A. 60-223(d), and amendments thereto, and the
18 procedure for settlement, voluntary dismissal, or compromise ~~of the action shall~~ must correspond
19 with ~~that provided~~ the procedure in K.S.A. 60-223(e), and amendments thereto.

20 COMMENT

21 The language of K.S.A. 60-223b has been amended as part of the general restyling of the
22 Kansas Code to make it more easily understood and to make style and terminology
23 consistent throughout the Code. These changes are intended to be stylistic only.

24 **60-224. Intervention.**

25 (a) ***Intervention of right.*** ~~Upon timely application anyone shall be permitted to intervene in an~~
26 action On timely motion, the court must permit anyone to intervene who:

27 (1) ~~When a statute confers~~ is given an unconditional right to intervene by a statute; or

28 (2) ~~when the applicant~~ claims an interest relating to the property or transaction which that
29 is the subject of the action, and ~~he~~ is so situated that ~~the disposition~~ disposing of the
30 action may as a practical matter substantially impair or impede ~~his~~ the movant's ability
31 to protect ~~that its~~ interest, unless ~~the applicant's interest is adequately represented by~~
32 existing parties adequately represent that interest.

33 (b) ***Permissive intervention.***

1 (1) *In general.* Upon timely application anyone may be permitted to intervene in an action
2 On timely motion, the court may permit anyone to intervene who:

3 (A) ~~(1) When a statute confers~~ is given a conditional right to intervene by a statute;
4 or

5 (B) ~~(2) when an applicant's~~ has a claim or defense and that shares with the main
6 action ~~have~~ a common question of law or fact ~~in common~~.

7 (2) *By a government officer or agency.*

8 (A) On timely motion, the court may permit a governmental officer or agency to
9 intervene if a party's claim or defense is based on:

10 (i) a statute or executive order administered by the officer or agency; or

11 (ii) any regulation, order, requirement, or agreement issued or made under the statute
12 or executive order.

13 (B) When the validity of an ordinance, regulation, statute, or constitutional provision
14 of this state or a governmental subdivision of this state is drawn in question in
15 any action to which the state or governmental subdivision or an officer, agency,
16 or employee thereof is not a party, the court may notify the chief legal officer of
17 the state or its subdivision, and permit intervention on proper application.

18 (3) *Delay or prejudice.* In exercising its discretion, the court ~~shall~~ must consider whether the
19 intervention will unduly delay or prejudice the adjudication of the ~~rights of the~~ original
20 ~~parties~~ parties' rights.

21 (c) *Motion to intervene and practice in intervention* Notice and pleading required. ~~(1)~~ A
22 person desiring to intervene ~~shall serve~~ a motion to intervene must be served on upon the parties as
23 provided in K.S.A. 60-205, and amendments thereto. The motion ~~shall~~ must state the grounds
24 ~~therefor, for intervention~~ and ~~shall~~ be accompanied by a pleading setting forth that sets out the claim
25 or defense for which intervention is sought.

26 ~~(2) When the validity of a statute, regulation or constitutional provision of this state, or an~~
27 ~~ordinance or regulation of a governmental subdivision thereof affecting the public interest,~~
28 ~~is drawn in question in any action to which the state or governmental subdivision or an~~
29 ~~officer, agency or employee thereof is not a party, the court may in its discretion notify the~~
30 ~~chief legal officer of the state or subdivision thereof affected, and permit intervention on~~
31 ~~proper application.~~

32 COMMENT

33 The language of K.S.A. 60-224 has been amended as part of the general restyling of the
34 Kansas Code to make it more easily understood and to make style and terminology
35 consistent throughout the Code.

1 K.S.A. 60-224 has been rearranged to be in closer conformity to Federal Rule 24. The
2 Committee determined that a provision in Federal Rule 24(b)(2)(A) providing for permissive
3 intervention by a government officer or agency should be incorporated into the Kansas Code.

4 The federal counterpart of former subsection (c)(2) was moved to new Federal Rule 5.1
5 in 2006. Federal Rule 5.1 implements a specific federal statute, 28 U.S.C. § 2043, and there
6 is no need for a counterpart in the Kansas Code. Former subsection (c)(2) has been moved
7 to new subsection (b)(2)(B) because it deals with permissive intervention, not notice and
8 pleading.

9 Former subsection (c)(1) stated that the same procedure is followed when a state statute
10 gives a right to intervene. This statement is deleted because it added nothing.

11 **60-225. Substitution of parties.**

12 (a) *Death of party.*

13 (1) ~~Where *Substitution if the claim is not extinguished.* If a party dies and the claim is not~~
14 ~~thereby extinguished, the court shall must on motion order substitution of the proper~~
15 ~~parties party. The A motion for substitution may be made by any party or by the~~
16 ~~successors or representatives of the deceased party or by any party and, together with the~~
17 ~~notice of the hearing, shall be served on the parties as provided in K.S.A. 60-205, and~~
18 ~~upon persons not parties in the manner provided for the service of a summons decedent's~~
19 ~~successor or representative. Unless If the motion for substitution is not made within a~~
20 ~~reasonable time after the death is suggested upon the record by service of a statement of~~
21 ~~the fact of noting the death as provided herein for the service of the motion, the action~~
22 ~~by or against the decedent shall must be dismissed as to the deceased party.~~

23 (2) ~~Where *right survives only to or against surviving party* *Continuation among the*~~
24 ~~*remaining parties.* In the event of the death of one or more of the plaintiffs or of one or~~
25 ~~more of the defendants in an action in which the right sought to be enforced survives~~
26 ~~only to the surviving plaintiffs or only against the surviving defendants After a party's~~
27 ~~death, if the right sought to be enforced survives only to or against the remaining parties,~~
28 ~~the action does not abate, but proceeds in favor of or against the remaining parties. The~~
29 ~~death shall be suggested upon should be noted on the record and the action shall proceed~~
30 ~~in favor of or against the surviving parties.~~

31 (3) *Service.* ~~A motion to substitute, together with a notice of hearing, must be served on the~~
32 ~~parties as provided in K.S.A. 60-205, and amendments thereto, and on nonparties in the~~
33 ~~manner provided for the service of a summons. A statement noting death must be served~~
34 ~~in the same manner.~~

35 (b) *Incapacity.* ~~If a party becomes an incapacitated person, the court may, upon on motion~~
36 ~~served as provided in subsection (a) of this section, may allow permit the action to be continued by~~
37 ~~or against his or her the party's representative as provided in K.S.A. 60-217(c), and amendments~~

1 thereto. The motion must be served as provided in subsection (a)(3) of this section.

2 (c) *Transfer of interest.* ~~In case of any transfer of interest~~ If an interest is transferred, the action
3 may be continued by or against the original party; unless the court, ~~upon~~ on motion, ~~directs orders~~
4 ~~the person to whom the interest is transferred transferee~~ to be substituted in the action or joined with
5 the original party. ~~Service of the~~ The motion shall be made must be served as provided in subsection
6 (a)(3) of this section.

7 (d) *Public officers; death or separation from office.* ~~When any~~ An action does not abate when
8 a public officer who is a party in an official capacity to an action as such and during its pendency
9 dies, resigns, or otherwise ceases to hold office while the action is pending. ~~, the action may be~~
10 ~~continued and maintained by or against his or her successor upon motion for substitution. Before~~
11 ~~a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall~~
12 ~~be given reasonable notice of the application therefor and an opportunity to object. If no successor~~
13 ~~is otherwise appointed or elected, the court in which the action is pending may appoint a successor~~
14 ~~for the prosecution or defense of the action. The officer's successor is automatically substituted as~~
15 ~~a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting~~
16 ~~the parties' substantial rights must be disregarded. The court may order substitution at any time, but~~
17 ~~the absence of such an order does not affect the substitution.~~

18 (e) *Continued representation by attorney.* ~~An attorney representing~~ If a party who dies or
19 becomes an incapacitated person, or a public officer who dies or is separated from his or her office,
20 in any action, may, in order to protect rights and avoid time limitations, that party's attorney may
21 continue such the representation in the name of the original party until there has been a substitution
22 has been made therefor.

23 COMMENT

24 The language of K.S.A. 60-225 has been amended as part of the general restyling of the
25 Kansas Code to make it more easily understood and to make style and terminology
26 consistent throughout the Code.

27 Previously, a motion for substitution with respect to a public officer was required. The
28 Committee determined to conform with the federal rule and make the substitution automatic.

29 There is no counterpart of subsection (e) in the federal rules. The provision for a public
30 officer was deleted from this subsection because substitution is now automatic under
31 subsection (d).

32 **60-226. General provisions governing discovery.**

33 (a) *Discovery methods.* Parties may obtain discovery by one or more of the following methods:
34 ~~Depositions upon~~ depositions on oral examination or written questions; written interrogatories;
35 production of documents or things or permission to enter ~~upon~~ onto land or other property under

1 K.S.A. 60-234, ~~subsection (a)(1)(C) of K.S.A. 60-245(a)(1)(A)(iii), or 60-245a,~~ and amendments
2 thereto, ~~for inspection and other purposes;~~ physical and mental examinations; and requests for
3 admission.

4 (b) ***Scope of discovery Discovery scope and limits.***

5 (1) ***Scope in general.*** Unless otherwise limited by ~~order of the court order~~ in accordance
6 with these rules, the scope of discovery is as follows: ~~(1) In general:~~ Parties may obtain
7 discovery regarding any ~~nonprivileged matter, not privileged, which~~ that is relevant to
8 the subject matter involved in the ~~pending~~ action, whether it relates to ~~the~~ any party's
9 claim or defense ~~— of the party seeking discovery or to the claim or defense of any other~~
10 ~~party,~~ including the existence, description, nature, custody, condition, and location of
11 any ~~books,~~ documents or other tangible things and the identity and location of persons
12 ~~having knowledge who know~~ of any discoverable matter. ~~It is not ground for objection~~
13 ~~that the~~ Relevant information sought will ~~need not be inadmissible~~ admissible at the trial
14 if the ~~information sought~~ discovery appears reasonably calculated to lead to the
15 discovery of admissible evidence. ~~Except as permitted under subsection (b)(4), a party~~
16 ~~shall not require a deponent to produce, or submit for inspection, any writing prepared~~
17 ~~by, or under the supervision of, an attorney in preparation for trial.~~

18 (2) ***Limitations on frequency and extent.***

19 (A) ~~The frequency or extent of use of the discovery methods otherwise permitted~~
20 ~~under the rules of civil procedure shall be limited by the court only~~ On motion
21 or on its own, the court may limit the frequency or extent of discovery methods
22 otherwise allowed by the rules of civil procedure and must do so if it determines
23 that:

24 (i) ~~The~~ the discovery sought is unreasonably cumulative or duplicative, or can
25 be obtained is obtainable from some other source that is more convenient,
26 less burdensome, or less expensive;

27 (ii) the party seeking discovery has had ample opportunity by discovery in the
28 action to obtain the information sought by discovery in the action; or

29 (iii) the burden or expense of the proposed discovery outweighs its likely benefit,
30 ~~taking into account~~ considering the needs of the case, the amount in
31 controversy, the parties' resources, the importance of the issues at stake in the
32 litigation action, and the importance of the proposed discovery in resolving
33 the issues. ~~The court may act upon its own initiative after reasonable notice~~
34 ~~or pursuant to a motion under subsection (c):~~

35 (B) A party need not provide discovery of electronically stored information from
36 sources that the party identifies as not reasonably accessible because of undue
37 burden or cost. On motion to compel discovery or for a protective order, the
38 party from whom discovery is sought must show that the information is not

1 reasonably accessible because of undue burden or cost. If that showing is made,
2 the court may nonetheless order discovery from such sources if the requesting
3 party shows good cause, considering the limitations of subsection (b)(2)(A). The
4 court may specify conditions for the discovery.

5 (3) **Insurance agreements.** A party may obtain discovery of the existence and contents of
6 any insurance agreement under which ~~any person carrying on an insurance business an~~
7 ~~insurance business~~ may be liable to satisfy part or all of a possible judgment ~~which may~~
8 ~~be entered~~ in the action or to indemnify or reimburse for payments made to satisfy the
9 judgment. Information concerning the insurance agreement is not by reason of disclosure
10 admissible in evidence at trial. For purposes of this paragraph, an application for
11 insurance ~~shall not be treated as~~ is not a part of an insurance agreement.

12 (4) **Trial preparation: Materials.** ~~Subject to the provisions of subsection (b)(5), a party may~~
13 ~~obtain discovery of documents and tangible things otherwise discoverable under~~
14 ~~subsection (b)(1) and prepared in anticipation of litigation or for trial by or for another~~
15 ~~party or by or for that other party's representative, including such other party's attorney,~~
16 ~~consultant, surety, indemnitor, insurer or agent, only upon a showing that the party~~
17 ~~seeking discovery has substantial need of the materials in the preparation of such party's~~
18 ~~case and that such party is unable without undue hardship to obtain the substantial~~
19 ~~equivalent of the materials by other means. In ordering discovery of such materials when~~
20 ~~the required showing has been made, the court shall protect against disclosure of the~~
21 ~~mental impression, conclusions, opinions or legal theories of an attorney or other~~
22 ~~representative of a party concerning the litigation.~~

23 A party may obtain without the required showing a statement concerning the action or its
24 subject matter previously made by that party. Upon request, a person not a party may obtain
25 without the required showing a statement concerning the action or its subject matter previously
26 made by that person. If the request is refused, the person may move for a court order. The
27 provisions of K.S.A. 60-237 and amendments thereto apply to the award of expenses incurred
28 in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a
29 written statement signed or otherwise adopted or approved by the person making it, or (B) a
30 stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a
31 substantially verbatim recital of an oral statement by the person making it and
32 contemporaneously recorded.

33 (A) **Documents and tangible things.** Ordinarily, a party may not discover documents
34 and tangible things that are prepared in anticipation of litigation or for trial by or
35 for another party or its representative (including the other party's attorney,
36 consultant, surety, indemnitor, insurer, or agent). But, subject to subsection
37 (b)(5), those materials may be discovered if:

38 (i) they are otherwise discoverable under subdivision (1); and

39 (ii) the party shows that it has substantial need for the materials to prepare its
40 case and cannot, without undue hardship, obtain their substantial equivalent

1 by other means.

2 (B) **Protection against disclosure.** If the court orders discovery of those materials,
3 it must protect against disclosure of the mental impressions, conclusions,
4 opinions, or legal theories of a party's attorney or other representative concerning
5 the litigation.

6 (C) **Previous statement.** Any party or other person may, on request and without the
7 required showing, obtain the person's own previous statement about the action
8 or its subject matter. If the request is refused, the person may move for a court
9 order, and K.S.A. 60-237, and amendments thereto, applies to the award of
10 expenses. A previous statement is either:

11 (i) a written statement that the person has signed or otherwise adopted or
12 approved; or

13 (ii) a contemporaneous stenographic, mechanical, electrical, or other recording
14 — or a transcription of it — that recites substantially verbatim the person's
15 oral statement.

16 (5) ***Trial preparation: Experts.***

17 (A) **Expert who may testify.** A party may depose any person who has been identified
18 as an expert whose opinions may be presented at trial. If a disclosure from the
19 expert is required under subsection (b)(6), the deposition ~~shall not~~ may be
20 conducted ~~until~~ only after the disclosure is provided.

21 (B) **Expert employed only for trial preparation.** A party, through Ordinarily, a party
22 may not, by interrogatories or by deposition, may discover facts known or
23 opinions held by an expert who has been retained or specially employed by
24 another party in anticipation of litigation or ~~preparation to prepare~~ for trial and
25 who is not expected to be called as a witness at trial; ~~But a party may do so~~
26 only;

27 (i) as provided in K.S.A. 60-235(b), and amendments thereto; or

28 (ii) upon a ~~on~~ showing of exceptional circumstances under which it is
29 impracticable for the party ~~seeking discovery~~ to obtain facts or opinions on
30 the same subject by other means.

31 (C) **Payment.** Unless manifest injustice would result, (i) the court ~~shall~~ must require
32 that the party seeking discovery;

33 (i) pay the expert a reasonable fee for time spent in responding to discovery
34 under this subsection (b)(5)(A) or (B); and

1 (ii) ~~with respect to for~~ discovery ~~obtained~~ under subsection (b)(5)(B), ~~the court~~
2 shall require, the party seeking discovery to also pay the other party a fair
3 portion of the fees and expenses it reasonably incurred ~~by the latter party in~~
4 obtaining ~~facts and opinions from the expert~~ the expert's facts and opinions.

5 (6) *Disclosure of expert testimony.*

6 (A) ***In general.*** A party ~~shall~~ must disclose to other parties the identity of any ~~person~~
7 ~~who may be used~~ witness it may use at trial to present expert testimony.

8 (B) ***Required disclosures.*** ~~Except as~~ Unless otherwise stipulated or ~~directed~~ ordered
9 by the court, ~~this disclosure, with respect to a~~ if the witness (i) ~~whose sole~~
10 ~~connection with the case is that the witness~~ is retained or specially employed to
11 provide expert testimony in the case; or (ii) one whose duties as ~~an~~ the party's
12 employee ~~of the party~~ regularly involve giving expert testimony, ~~shall~~ the
13 disclosure must state:

14 (i) the subject matter on which the expert is expected to testify;

15 (ii) the substance of the facts and opinions to which the expert is expected to
16 testify; and

17 (iii) a summary of the grounds for each opinion.

18 (C) ***Time to disclose expert testimony.*** ~~These disclosures shall be made~~ A party must
19 make these disclosures at the times and in the sequence ~~directed by the court that~~
20 the court orders. ~~In the absence of other directions from the court or stipulation~~
21 by the parties Absent a stipulation or court order, the disclosures ~~shall~~ must be
22 made:

23 (i) at least 90 days before the ~~trial~~ date set for trial or ~~the date for~~ the case ~~is~~ to
24 be ready for trial; or

25 (ii) if the evidence is intended solely to contradict or rebut evidence on the same
26 subject matter identified by another party under paragraph subsection
27 (b)(6)(B), within 30 days after the ~~disclosure made by the other party~~ party's
28 disclosure.

29 (D) ***Supplementing the disclosure.*** The ~~party shall~~ parties must supplement these
30 disclosures when required under subsection (e)(1).

31 (E) ~~Unless otherwise ordered by the court, all disclosures under this subsection shall~~
32 ~~be made in writing, signed and served. Such disclosures shall be filed with the~~

1 court in accordance with subsection (d) of K.S.A. 60-205 and amendments
2 thereto.

3 (E) **Form of disclosures.** Unless otherwise ordered by the court, all disclosures under
4 this subsection must be:

5 (i) in writing, signed, and served; and

6 (ii) filed with the court in accordance with K.S.A. 60-205(d), and amendments
7 thereto.

8 (7) **Claims of Claiming privilege or protection of protecting trial-preparation materials.**

9 (A) **Information withheld.** When a party withholds information otherwise
10 discoverable by claiming that the information is privileged or subject to
11 protection as trial-preparation material, the party ~~shall~~ must:

12 (i) ~~make the claim~~ expressly make the claim; and

13 (ii) ~~shall~~ describe the nature of the documents, communications, or things not
14 produced or disclosed ~~— and do so~~ in a manner that, without revealing
15 information itself privileged or protected, will enable other parties to assess
16 the ~~applicability of the privilege or protection~~ claim.

17 (B) **Information produced.** If information is produced in discovery ~~that~~ is subject to
18 a claim of privilege or of protection as trial-preparation material, the party
19 making the claim may notify any party that received the information of the claim
20 and the basis for it. After being notified, a party must promptly return, sequester,
21 or destroy the specified information and any copies it has; ~~and may~~ must not use
22 or disclose the information until the claim is resolved; ~~must take reasonable~~
23 ~~steps to retrieve the information if the party disclosed it before being notified;~~
24 ~~and~~ A receiving party may promptly present the information to the court under
25 seal for a determination of the claim. ~~If the receiving party disclosed the~~
26 ~~information before being notified, it must take reasonable steps to retrieve it.~~ The
27 producing party must preserve the information until the claim is resolved.

28 (c) **Protective orders.**

29 (1) **In general.** ~~Upon motion by a~~ A party or ~~by the~~ any person from whom discovery is
30 sought, ~~and for good cause shown,~~ may move for a protective order in the court ~~in which~~
31 where the action is pending ~~— or alternatively,~~ as an alternative on matters relating to
32 a deposition, in the district court in the district where the deposition ~~is to~~ will be taken.
33 The motion must include a certification that the movant has in good faith conferred or
34 attempted to confer with other affected parties in an effort to resolve the dispute without

1 court action and must describe the steps taken by all attorneys or unrepresented parties
2 to resolve the issues in dispute. The court may, for good cause, issue an order may make
3 any order which justice requires to protect a party or person from annoyance,
4 embarrassment, oppression, or undue burden or expense, including one or more of the
5 following:

6 ~~(1) That the discovery not be had;~~

7 (A) forbidding the disclosure or discovery;

8 ~~(2) that the discovery may be had only on specified terms and conditions, including a~~
9 ~~designation of the time or place;~~

10 (B) specifying terms, including time and place, for the disclosure or discovery;

11 ~~(3) that the discovery may be had only by a method of discovery other than that selected by~~
12 ~~the party seeking discovery;~~

13 (C) prescribing a discovery method other than the one selected by the party seeking
14 discovery;

15 ~~(4) that certain matters not be inquired into, or that the scope of the discovery be limited to~~
16 ~~certain matters;~~

17 (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or
18 discovery to certain matters;

19 ~~(5) that discovery be conducted with no one present except persons designated by the court;~~

20 (E) designating the persons who may be present while the discovery is conducted;

21 ~~(6) that a deposition after being sealed be opened only by order of the court;~~

22 (F) requiring that a deposition be sealed and opened only on court order;

23 ~~(7) that a trade secret or other confidential research, development, or commercial~~
24 ~~information not be disclosed or be disclosed only in a designated way;~~

25 (G) requiring that a trade secret or other confidential research, development, or
26 commercial information not be revealed or be revealed only in a specified way;
27 and

28 ~~(8) that the parties simultaneously file specified documents or information enclosed in sealed~~
29 ~~envelopes to be opened as directed by the court;~~

30 (H) requiring that the parties simultaneously file specified documents or information

1 in sealed envelopes, to be opened as the court orders.

2 (2) **Ordering discovery.** If the a motion for a protective order is wholly or partly denied in
3 whole or in part, the court may, on such just terms and conditions as are just, may, order
4 that any party or person provide or permit discovery.

5 (3) **Awarding expenses.** The provisions of K.S.A. 60-237, and amendments thereto, apply
6 to the award of expenses incurred in relation to the motion.

7 (d) **Sequence and timing of discovery.** Unless, the court upon on motion, the court orders
8 otherwise for the parties' and witnesses' convenience of parties and witnesses and in the interests
9 of justice, orders otherwise,;

10 (1) methods of discovery may be used in any sequence; and

11 (2) the fact that a party is conducting discovery, whether by deposition or otherwise, shall
12 not operate to delay any other party's discovery discovery by one party does not require
13 any other party to delay its discovery.

14 (e) **Supplementation of Supplementing disclosures and responses.**

15 (1) **In general.** A party who has made a disclosure under subsection (b)(6) — or who has
16 responded to a request for discovery an interrogatory, request for production, or request
17 for admission — is under a duty to must supplement or correct the party's its disclosure
18 or response to include information thereafter acquired if ordered by the court or in the
19 following circumstances:

20 (1)(A) A party is under a duty to supplement at appropriate intervals its disclosures
21 under subsection (b)(6) in a timely manner if the party learns that in some
22 material respect the information disclosed the disclosure or response is
23 incomplete or incorrect, and if the additional or corrective information has not
24 otherwise been made known to the other parties during the discovery process or
25 in writing; or

26 (B) as ordered by the court.

27 (2) **Expert Witness.** With respect to For testimony of an expert under to whom the
28 disclosure requirement in subsection (b)(6) applies, the party's duty to supplement
29 extends both to information contained included in the disclosure and to information
30 provided through a given during the expert's deposition of the expert, and any Any
31 additions or other changes to this information shall must be disclosed at least 30 days
32 before trial, unless otherwise directed by the court orders otherwise.

33 (2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for
34 production or request for admission if the party learns that the response is in some material
35 respect incomplete or incorrect and if the additional or corrective information has not

1 otherwise been made known to the other parties during the discovery process or in writing.

2 (f) *Signing of disclosures, and discovery requests, responses, and objections.*

3 (1) *Signature required; effect of signature.* Every disclosure under subsection (b)(6) and
4 every request for discovery request, or response, or objection to discovery made by a
5 party represented by an attorney shall must be signed by at least one attorney of record
6 in such the attorney's individual own name — or by the party personally, if
7 unrepresented — and must state the signor's address, e-mail address, and telephone
8 number. , whose address shall be stated. A party who is not represented by an attorney
9 shall sign the request, response or objection and state such party's address. The signature
10 of the attorney or party constitutes a certification that the attorney or party has read the
11 request, response or objection and that to the best of such attorney's or party's
12 knowledge, information and belief formed after reasonable inquiry it is: By signing, an
13 attorney or party certifies that to the best of the person's knowledge, information, and
14 belief formed after a reasonable inquiry:

15 (A) with respect to a disclosure, it is complete and correct as of the time it is made;
16 and

17 (B) with respect to a discovery request, response, or objection, it is:

18 (A)(i) Consistent consistent with the rules of civil procedure and warranted by
19 existing law or good faith by a nonfrivolous argument for the extension,
20 modification or reversal of extending, modifying, or reversing existing
21 law, or for establishing new law;

22 (B)(ii) not interposed for any improper purpose, such as to harass or to, cause
23 unnecessary delay, or needless needlessly increase in the cost of
24 litigation; and

25 (C)(iii) not neither unreasonable or nor unduly burdensome or expensive, given
26 considering the needs of the case, the prior discovery already had in the
27 case, the amount in controversy, and the importance of the issues at stake
28 in the litigation action.

29 If a request, response or objection is not signed, it shall be stricken unless it is signed promptly after
30 the omission is called to the attention of the party or person making the request, response or
31 objection and a party shall not be obligated to take any action with respect to it until it is signed.

32 (2) Every disclosure made under subsection (b)(6) shall be signed by at least one
33 attorney of record in the attorney's individual name whose address shall be stated. An
34 unrepresented party shall sign the disclosure and state the party's address. The
35 signature of the attorney or party constitutes a certification that to the best of the
36 signer's knowledge, information and belief, formed after a reasonable inquiry, the
37 disclosure is complete and correct as of the time it is made. *Failure to sign.* Other

1 parties have no duty to act on an unsigned disclosure, request, response, or objection
2 until it is signed, and the court must strike it unless a signature is promptly supplied
3 after the omission is called to the attorney's or party's attention.

- 4 (3) If, without substantial justification, a certification is made in violation of this section,
5 the court, upon motion or upon its own initiative, shall impose upon the person who
6 made the certification or the party on whose behalf the disclosure, request, response
7 or objection is made, or both, an appropriate sanction, which may include an order
8 to pay the amount of reasonable expenses incurred because of the violation,
9 including reasonable attorney fees. *Sanction for improper certification.* If a
10 certification violates this section without substantial justification, the court, on
11 motion or on its own, must impose an appropriate sanction on the signer, the party
12 on whose behalf the signer was acting, or both. The sanction may include an order
13 to pay the reasonable expenses, including attorney's fees, caused by the violation.

14 COMMENT

15 The language of K.S.A. 60-226 has been amended as part of the general restyling of the
16 Kansas Code to make it more easily understood and to make style and terminology
17 consistent throughout the Code. These changes are intended to be stylistic only.

18 K.S.A. 60-226 is substantially similar to Federal Rule 26. The primary differences are
19 that the Kansas Code does not mandate the initial disclosures found in Federal Rule 26(a)(1),
20 and the discovery conference provisions in Federal Rule 26(f) are not incorporated into a
21 counterpart subsection of K.S.A. 60-226. Federal Rule 26 and K.S.A. 60-226 are also
22 organized a bit differently.

23 Former subsection (b) began with a general statement of the scope of discovery that
24 appeared to function as a preface to each of the seven numbered paragraphs that followed.
25 This preface has been shifted to the text of subsection (b)(1) because it does not accurately
26 reflect the limits embodied in subsections (b)(2) through (b)(5), and because subsections
27 (b)(6) and (b)(7) do not address the scope of discovery.

28 The reference to discovery of “books” in former subsection (b)(1) was deleted to achieve
29 consistent expression throughout the discovery rules. Books remain a proper subject of
30 discovery. The last sentence of former subsection (b)(1) was deleted as redundant.

31 Subsection (b)(2) has been amended to be more substantively similar to the federal rule.
32 The previous section allowed the court to limit frequency or extent only if the court made
33 one of the findings in (i), (ii), or (iii). Now, the court has no stated limit on its ability to limit
34 frequency or extent and must do so if it makes one of the three findings.

35 The federal counterpart to subsection (b)(3) was moved to Federal Rule 26(a)(1)(A)(iv)
36 in 1993, when the mandatory initial disclosure provisions were adopted.

37 Amended subsection (b)(4)(C) states that a party may obtain a copy of the party's own
38 previous statement “on request.” Former subsection (b)(4) expressly made the request
39 procedure available to a nonparty witness, but did not describe the procedure to be used by

1 a party. This apparent gap is closed by adopting the request procedure, which ensures that
2 a party need not invoke K.S.A. 60-234 to obtain a copy of the party's own statement.

3 Subsection (b)(5)(A) was amended to delete the phrase “from the expert.” The
4 disclosure required under subsection (b)(6) is required from the party, not the expert.

5 Subsection (c) was amended to add a certification requirement as is found in Federal
6 Rule 26(c)(1). The language is now consistent with the certification requirement set out in
7 the sanctions rule, K.S.A. 60-237(a)(1) and 60-237(d)(1)(B).

8 Subsection (e) stated the duty to supplement or correct a disclosure or discovery response
9 “to include information thereafter acquired.” This apparent limit is not reflected in practice;
10 parties recognize the duty to supplement or correct by providing information that was not
11 originally provided although it was available at the time of the initial disclosure or response.
12 These words are deleted to reflect the actual meaning of the present provision.

13 Former subsection (e) used different phrases to describe the time to supplement or
14 correct a disclosure or discovery response. Disclosures were to be supplemented “at
15 appropriate intervals.” A prior discovery response must be “seasonably * * * amend[ed].”
16 The fine distinction between these phrases has not been observed in practice. Amended
17 subsection (e)(1)(A) uses the same phrase for disclosures and discovery responses. The party
18 must supplement or correct “in a timely manner.”

19 Former subsection (f)(2) did not call for striking an unsigned disclosure. The omission
20 was an obvious drafting oversight. Amended subsection (f)(2) includes disclosures in the list
21 of matters that the court must strike unless a signature is provided “promptly * * * after
22 being called to the attorney's or party's attention.”

23 Former subsection (f)(1)(A) referred to a “good faith” argument to extend existing law.
24 Amended subsection (f)(1)(B)(i) changes this reference to a “nonfrivolous” argument to
25 achieve consistency with K.S.A. 60-211(b)(2). K.S.A. 60-211(b)(2) recognizes that it is
26 legitimate to argue for establishing new law. An argument to establish new law is equally
27 legitimate in conducting discovery, and this is now reflected in amended subsection
28 (f)(1)(B)(i).

29 A requirement for adding the signer's e-mail address and telephone number was added
30 to subsection (f)(1). As with the K.S.A. 60-211 signature on a pleading, written motion, or
31 other paper, disclosure and discovery signatures should include not only a postal address but
32 also a telephone number and electronic-mail address. A signer who lacks one or more of
33 those addresses need not supply a nonexistent item.

34 **60-227. Perpetuation of Depositions to perpetuate testimony.**

1 (a) Deposition before ~~Before~~ an action is filed.

2 (1) Petition. A person who ~~desires~~ wants to perpetuate ~~his or her own~~ testimony ~~or that of~~
3 ~~another person regarding about~~ any matter ~~that may be~~ cognizable in ~~any a~~ Kansas state
4 ~~court of the state~~ may file a verified petition ~~to in~~ the district court in the county ~~of the~~
5 ~~residence of where~~ any expected adverse party resides; but if the subject matter of the
6 expected action or proceeding is the validity of a will, the petition ~~shall~~ must be filed in
7 the district court ~~of in~~ the county ~~in which of the testator resides~~ testator's residence. The
8 petition must ask for an order authorizing the petitioner to depose the named persons in
9 order to perpetuate their testimony. The petition must be titled in the petitioner's name
10 and must (1) Petition. The petition shall be entitled in the name of the petitioner and shall
11 show:

12 (H)(A) that the petitioner or the petitioner's personal representatives, heirs, beneficiaries,
13 successors or assigns may be parties to an action or proceeding cognizable in a
14 Kansas state court but ~~are~~ cannot presently ~~unable to bring it or defend it, cause~~
15 it to be brought;

16 (H)(B) the subject matter of the expected action or proceeding and ~~his or her the~~
17 petitioner's interest, therein and a copy of any written instrument if the validity
18 or construction of ~~which a document~~ may be called in question or ~~which if the~~
19 document is connected with the deposition's subject matter ~~of the deposition, a~~
20 copy of the document must be attached to the petition;

21 (H)(C) the facts ~~which that~~ the petitioner ~~desires~~ wants to establish by the proposed
22 testimony and ~~his or her the~~ reasons ~~for desiring~~ to perpetuate it;:

23 (H)(D) the names or a description of the persons whom the petitioner expects will to be
24 adverse parties and their addresses, so far as known; and

25 (V)(E) ~~the names and addresses of the persons to be examined and the name, address,~~
26 and expected substance of the testimony ~~which the petitioner expects to elicit~~
27 from each, and shall ask for an order authorizing the petitioner to take the
28 depositions of the persons to be examined named in the petition, for the purpose
29 of perpetuating their testimony of each deponent.

30 (2) Notice and service. At least 21 days before the hearing date, the ~~The~~ petitioner ~~shall~~
31 thereafter must serve each expected adverse party with a notice upon each person named
32 in copy of the petition as an and a notice stating the time and place of the hearing
33 expected adverse party, together with a copy of the petition, stating that the petitioner
34 will apply to the court, at a time and place named therein, for the order described in the
35 petition. The notice shall must be served either within or without inside or outside the
36 state ~~within the time and in the manner for personal service of summons, or by restricted~~
37 mail, or by any other manner method the court orders that affords ~~affording~~ actual notice
38 as directed by order of the judge. The judge upon Upon application and showing of
39 extraordinary circumstances, the court may prescribe order a hearing on shorter notice.

40 (3) Order and examination. If satisfied that the petition is not for the purpose of discovery,

1 ~~and that its allowance perpetuating the testimony~~ may prevent ~~future delay or a failure~~
2 ~~or delay~~ of justice, and that the petitioner is unable to bring the contemplated action or
3 cause it to be brought, the court ~~shall~~ must issue an order ~~the testimony perpetuated,~~
4 ~~designating the deponents, that designates or describes the persons whose depositions~~
5 ~~may be taken, specifies~~ the subject matter of ~~their examination~~ the examinations, states
6 when, where, and before whom ~~their deposition shall~~ the depositions will be taken, and
7 states ~~whether the depositions will be taken~~ orally or ~~upon by~~ written interrogatories. The
8 depositions may then be taken under the rules of civil procedure, and the court may issue
9 orders like those authorized by K.S.A. 60-234 and 60-235, and amendments thereto. A
10 reference in these rules to the court where an action is pending means, for purposes of
11 this section, the court where the petition for the deposition was filed.

12 (4) Use of Using the deposition. Subject to the same limitations and objections as though
13 the deponent were testifying at the trial in person, a deposition ~~taken in accordance with~~
14 ~~this section to perpetuate testimony~~ may be used as evidence in any later-filed action
15 ~~subsequently brought in any court, where~~ when the deposition is that of a party to the
16 action; or ~~where~~ when the issue is such that an interested party in the proceedings in
17 which the deposition was taken had the right and opportunity for cross-examination with
18 an interest and motive similar to that which the adverse party has in the action in which
19 the deposition is offered. ~~But, except where~~ Except for the deposition is that of a party
20 to the action ~~and that~~ is offered against the party, the deposition may not be used as
21 evidence unless the deponent is unavailable as a witness at the trial.

22 (b) Pending appeal. (1) In general. The court where a judgment has been rendered may, if ~~ff~~
23 an appeal has been taken ~~from a judgment or before the taking of an appeal if the time therefor has~~
24 ~~not expired, the court in which the judgment was rendered may allow the taking of the depositions~~
25 ~~of or may still be taken, permit a party to depose~~ witnesses to perpetuate their testimony for use in
26 the event of further proceedings in that court.

27 (2) Motion. ~~In such case the~~ The party who ~~desires~~ wants to perpetuate ~~the~~ testimony may
28 ~~make a motion~~ move for leave to take the depositions, ~~upon~~ on the same notice and
29 service ~~thereof~~ as if the action ~~was~~ were pending in ~~that~~ the district court. The motion
30 ~~shall~~ must show:

31 (1) (A) ~~the names and addresses of persons to be examined and the~~ name, address, and
32 expected substance of the testimony ~~which he or she expects to elicit from each of~~
33 each deponent; and

34 (2) (B) ~~the~~ the reasons for perpetuating ~~their~~ the testimony.

35 (3) Court order. If the court finds that ~~the perpetuation of~~ perpetuating the testimony is
36 ~~proper to avoid~~ may prevent a failure or delay of justice, ~~it~~ the court may ~~make an order~~
37 ~~allowing~~ permit the depositions to be taken and may ~~make~~ issue orders ~~of the character~~
38 ~~provided for~~ like those authorized by K.S.A. 60-234 and 60-235, and ~~amendments~~
39 ~~thereto, thereupon the~~ The depositions may be taken and used ~~in the same manner and~~
40 ~~under the same conditions as are prescribed in this section for depositions~~ as any other

1 deposition taken in actions a pending in the district court district-court action.

2 (c) **Filing.** Depositions taken under this section shall must be filed with the court in which the
3 petition is filed or the motion is made.

4 (d) **Perpetuation by an action.** This section does not limit the power of a court a court's power
5 to entertain an action to perpetuate testimony.

6 (e) **Impeachment.** No provision of this This section is intended to does not limit the use of any
7 deposition for the purpose of impeachment of to impeach the deponent when he or she the deponent
8 is a witness in any an action.

9 (f) **Reciprocity.** A deposition taken under a similar procedure of another jurisdiction is
10 admissible in an action in this state to the same extent as a deposition taken under this act section.

11 COMMENT

12 The language of K.S.A. 60-227 has been amended as part of the general restyling of the
13 Kansas Code to make it more easily understood and to make style and terminology
14 consistent throughout the Code.

15 A time limit has been added to subsection (a)(2) in conformity with Federal Rule
16 27(a)(2). The petition and notice of hearing must be served at least 21 days before the
17 hearing date. The former subsection provided only that the “petitioner shall thereafter serve”
18 the notice and petition.

19 K.S.A. 60-227 has always differed from Federal Rule 27. The Judicial Council Advisory
20 Committee that drafted the original provision combined the prior Kansas Code provision,
21 Federal Rule 27, and the Uniform Perpetuation of Testimony Act of the National Conference
22 of Commissioners on Uniform State Laws. There is no counterpart of subsections (c), (e),
23 or (f) in the federal rules.

24 **60-228. Persons before whom depositions may be taken.**

25 (a) ***Within the United States.***

26 (1) ***Inside this state.*** Depositions may be taken in this state must be taken before any an
27 officer or person authorized to administer oaths by the laws of this state.

28 (2) ***Outside this state.*** Without the Outside this state but within the United States; or within
29 a territory or insular possession subject to the dominion of the United States jurisdiction,
30 depositions shall a deposition must be taken before:

31 (A) an officer authorized to administer oaths by the laws of law in the place where the

1 of examination ~~is held;~~ or

2 (B) ~~before a person appointed by the court in which where the action is pending. A~~
3 ~~person so appointed has power to administer oaths and take testimony.~~

4 (3) ***Granting of commission.*** ~~Any A court of record of this state, or any judge thereof,~~
5 ~~before whom in which an action or proceeding is pending, is authorized to may grant a~~
6 ~~commission to one or more persons to take depositions within or without the inside or~~
7 ~~outside this state. The clerk may issue the commission may be issued by the clerk to a~~
8 ~~person or persons therein named, under the seal of the court granting the same.~~

9 (b) ***In a foreign countries country.***

10 (1) ***In general.*** ~~Depositions A deposition~~ may be taken in a foreign country:

11 ~~(1) Pursuant to any~~

12 (A) ~~under an~~ applicable treaty or convention;

13 ~~(2) pursuant to~~

14 (B) ~~under~~ a letter of request, whether or not captioned a ~~letter rogatory "letter rogatory";~~

15 ~~(3) (C) on notice, before a person authorized to administer oaths either by federal law or by~~
16 ~~the law in the place where the of examination is held, either by the law of the United~~
17 ~~States or the law of that place; or~~

18 ~~(4) (D) before a person appointed by commission. A person appointed by commission has~~
19 ~~power by virtue of the appointment commissioned by the court to administer oaths~~
20 ~~any necessary oath and take testimony.~~

21 (2) ***Issuing a letter of request or a commission.*** ~~A commission or letter of request, a~~
22 ~~commission, or both may shall be issued;~~

23 (A) ~~on application and notice, and on appropriate terms and directions that are just after~~
24 ~~an application and notice of it; and appropriate.~~

25 (B) ~~It is not requisite to the issuance of a commission or a letter of request without a~~
26 ~~showing that the taking of the deposition in any other matter another manner is~~
27 ~~impracticable or inconvenient; and both a commission and letter of request may be~~
28 ~~issued in proper cases.~~

29 (3) ***Form of a request, notice, or commission.*** ~~A notice or commission may designate the~~
30 ~~person before whom the deposition is to be taken either by name or descriptive title. A~~
31 ~~letter of request may be addressed "To the Appropriate Judicial Authority in (here name~~
32 ~~the country)."~~ When a letter of request or any other device is used ~~pursuant to an~~

1 applicable according to a treaty or convention, it shall must be captioned in the form
2 prescribed by that treaty or convention. A letter of request may be addressed "To the
3 Appropriate Authority in [name the country]." A deposition notice or a commission must
4 designate by name or descriptive title the person before whom the deposition is to be
5 taken.

6 (4) *Letter of request—Admitting evidence.* Evidence obtained in response to a letter of
7 request shall need not be excluded on the ground that it is not in the form of questions
8 and answers or merely because it is not a verbatim transcript, of the testimony because
9 the testimony was not taken under oath, or because of any similar departure from the
10 requirements for depositions taken within this state.

11 (c) *Disqualification.* No A deposition shall must not be taken before a person who is: (1) A any
12 party's relative, employee, or attorney or counsel of any of the parties; (2) a relative or employee
13 of such attorney or counsel who is related to or employed by any party's attorney; (3) or who
14 is financially interested in the action; or (4) not certified as a certified shorthand reporter by the
15 Kansas supreme court.

16 ~~(d) *Depositions for use in foreign jurisdictions.* Whenever the deposition of any person is to be~~
17 ~~taken in this state pursuant to the laws of another state or of the United States or of another country~~
18 ~~for use in proceedings there, the district court in the county where the deponent resides or is~~
19 ~~employed or transacts his or her business in person may, upon ex parte petition, make an order~~
20 ~~directing issuance of subpoena as provided in K.S.A. 60-245, and amendments thereto, in aid of the~~
21 ~~taking of the deposition, and may make any order in accordance with subsection (d) of K.S.A. 60-~~
22 ~~230, subsection (a) of K.S.A. 60-237 or subsection (b)(1) of K.S.A. 60-237(b)(1), and amendments~~
23 ~~thereto.~~

24 COMMENT

25 The language of K.S.A. 60-228 has been amended as part of the general restyling of the
26 Kansas Code to make it more easily understood and to make style and terminology
27 consistent throughout the Code.

28 In subsection (a)(1), "may" has been changed to "must." The Committee determined it
29 better to use the imperative as in the federal rule. The requirement can still be overruled by
30 stipulation under K.S.A. 60-229.

31 Subsection (d), which had no counterpart in the federal rules, has been deleted. A new
32 section dealing with depositions for use in foreign jurisdictions has been added as K.S.A. 60-
33 228a.

34 **60-228a. Depositions for use in foreign jurisdictions.**

35 (a) *Citation of section.* This section may be cited as the Uniform Interstate Depositions and
36 Discovery Act.

1 (b) **Definitions.** In this section:

2 (1) “Foreign jurisdiction” means a state other than this state, or a foreign country.

3 (2) “Foreign subpoena” means a subpoena issued under authority of a court of record of a
4 foreign jurisdiction.

5 (3) “Person” means an individual, corporation, business trust, estate, trust, partnership,
6 limited liability company, association, joint venture, public corporation, government or
7 governmental subdivision, agency or instrumentality, or any other legal or commercial
8 entity.

9 (4) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
10 United States Virgin Islands, a federally recognized Indian tribe, or any territory or
11 insular possession subject to the jurisdiction of the United States.

12 (5) “Subpoena” means a document, however denominated, issued under authority of a court
13 of record requiring a person to:

14 (A) attend and give testimony at a deposition;

15 (B) produce and permit inspection and copying of designated books, documents,
16 records, electronically stored information, or tangible things in the possession,
17 custody, or control of the person; or

18 (C) permit inspection of premises under the control of the person.

19 (c) **Issuance of subpoena.**

20 (1) To request issuance of a subpoena under this section, a party must submit a foreign
21 subpoena to a clerk of court in the county in which discovery is sought to be conducted
22 in this state. A request for the issuance of a subpoena in this state under this act does not
23 constitute an appearance in the courts of this state.

24 (2) When a party submits a foreign subpoena to a clerk of court in this state, the clerk, in
25 accordance with that court’s procedure, must promptly issue a subpoena for service on
26 the person to which the foreign subpoena is directed.

27 (3) A subpoena under subsection (c)(2) must:

28 (A) incorporate the terms used in the foreign subpoena; and

29 (B) contain or be accompanied by the names, addresses, and telephone numbers of all
30 counsel of record in the proceeding to which the subpoena relates and of any party

1 not represented by counsel.

2 (d) *Service of subpoena.* A subpoena issued by a clerk of court under subsection (c) must be
3 served in compliance with K.S.A. 60-303, and amendments thereto.

4 (e) *Deposition, production, and inspection.* K.S.A. 60-245 and 60-245a, and amendments
5 thereto, apply to subpoenas issued under subsection (c).

6 (f) *Application to court.* An application to the court for a protective order or to enforce, quash,
7 or modify a subpoena issued by a clerk of court under subsection (c) must comply with the rules or
8 statutes of this state and be submitted to the court in the county in which discovery is to be
9 conducted.

10 (g) *Uniformity of application and construction.* In applying and construing this uniform act,
11 consideration must be given to the need to promote uniformity of the law with respect to its subject
12 matter among states that enact it.

13 (h) *Application to pending actions.* This section applies to requests for discovery in cases
14 pending on the effective date of this section.

15 COMMENT

16 This section is new and replaces former K.S.A. 60-228(d). The section follows the
17 Uniform Interstate Depositions and Discovery Act. There is no counterpart in the federal
18 rules.

19 The Uniform Law Commission Drafting Committee identified ten issues that a state law
20 should address in adopting procedures for taking depositions for actions that are pending in
21 other states. That committee discussed the approach to these issues in the Uniform Foreign
22 Depositions Act (UFDA) and the Uniform Interstate and International Procedure Act
23 (UIIPA).

24 **a. In what kind of proceeding may depositions be taken?**

25 Many states restrict depositions to those that will be used in the “courts” or “judicial
26 proceedings” of the other state. Some states allow depositions for any “proceeding.” The
27 UFDA and UIIPA take a similar approach.

28 **b. Who may seek depositions?**

29 A few states limit discovery to only the parties in the action or proceeding. Other states
30 simply use the term “party” without any further qualifier, which may be interpreted broadly
31 to include any interested party. Still other states expressly allow any person who would have
32 the power to take a deposition in the trial state to take a deposition in the discovery state. The
33 UIIPA allows any “interested party” to seek discovery. The UFDA does not state who may

1 seek discovery.

2 **c. What matters can be covered in a subpoena?**

3 The UFDA expressly applies only to the “testimony” of witnesses. The UIIPA expressly
4 applies to “testimony or documents or other things.” Several states follow the UIIPA
5 approach, while others seem to limit production to documents but not physical things, and
6 still others are silent on the subject, although some of those states recognize that the power
7 to produce documents is implicit. Rule 45 of the FRCP is more explicit, and provides that
8 a subpoena may be issued to a witness “to attend and give testimony or to produce and
9 permit inspection and copying of designated books, documents or tangible things in the
10 possession, custody or control of that person, or to permit inspection of premises...”

11 **d. What is the procedure for obtaining a deposition subpoena?**

12 Under the UFDA, a party must file the same notice of deposition that would be used in
13 the trial state and then serve the witness with a subpoena under the law of the trial state. If
14 a motion to compel is necessary, it must be filed in the discovery state (the deponent’s home
15 court). Other states require that a notice of deposition be shown to a clerk or judge in the
16 discovery state, after which a subpoena will automatically issue. Still other states require
17 a letter rogatory requesting the trial state to issue a subpoena. Under the UIIPA, either an
18 application or letter rogatory is required. About 20 states require an attorney in the
19 discovery state to file a miscellaneous action to establish jurisdiction over the witness so that
20 the witness can then be subpoenaed.

21 **e. What is the procedure for serving a deposition subpoena?**

22 The UFDA provides that the witness “may be compelled to appear and testify in the same
23 manner and by the same process and proceeding as may be employed for the purpose of
24 taking testimony in proceedings pending in this state.” The UIIPA provides that methods
25 of service includes service “in the manner prescribed by the law of the place in which the
26 service is made for service in that place in an action in any of its courts of general
27 jurisdiction.” State rules usually follow the procedure of the UFDA and UIIPA.

28 **f. Which jurisdiction has power to enforce or quash a subpoena?**

29 Most states give the discovery state power to issue, refuse to issue, or quash a subpoena.

30 **g. Where can the deponent be deposed?**

31 Some states limit the place where a deposition can be taken to the discovery state, and
32 some limit it to the deponent’s home county. The UFDA and UIIPA are silent on this issue.

33 **h. What witness fees are required?**

34 A few states require the payment of witness fees. While most states are silent on the

1 issue, it is probably assumed that the witness fee rules generally existing in the discovery
2 state apply. These usually include fees and mileage, and are usually required to be paid at
3 the time the witness testifies.

4 **i. Which jurisdiction's discovery procedure applies?**

5 A significant issue is whether the trial state's or discovery state's discovery procedure
6 controls, and on what issues. The general Restatement rule is that the forum state's (the
7 discovery state's) procedure applies. The UIIPA, as well as many states, provides that the
8 discovery state can use the procedure of either the trial or discovery state, with a
9 presumption for the procedure of the discovery state. Some states reverse this presumption,
10 while others are unclear, and still others are silent on the issue.

11 Another significant issue is whether the trial state's or discovery state's courts can issue
12 protective orders. Both states have interests: the trial state's courts have an interest in
13 protecting witnesses and litigants from improper practices, and the discovery state's courts
14 have an obvious interest in protecting its residents from unreasonable and overly
15 burdensome discovery requests. Most states expressly or implicitly allow the discovery
16 state's courts to issue protective orders.

17 **j. Which jurisdiction's evidence law applies?**

18 Evidentiary disputes usually center on relevance and privilege issues. Most states
19 indicate that the discovery state should rule on all relevance issues. Other states indicate that
20 relevance issues should be resolved before a subpoena issues, which would necessarily mean
21 that such issues be decided by the trial state. If the discovery state makes such
22 determinations, it is unclear which state's evidence law should apply (if there is a difference).

23 Perhaps the most difficult issues are whether the trial state or discovery state should
24 determine issues of privilege, and which state's privilege law will apply. Here both
25 jurisdictions have important interests: the trial state has an interest in obtaining all
26 information relevant to the lawsuit consistent with its laws, while the discovery state has an
27 interest in protecting its residents from intrusive foreign laws. The Restatement (Second)
28 Conflict of Laws provides that the state which has the "most significant relationship" to the
29 communication at issue applies its laws. The issue is further compounded by the general
30 rule that once the privilege is waived, it is generally waived. If the deponent does not object
31 at the deposition and testifies about privileged communications, the privilege will usually
32 be waived.

33 **Uniform Law Commission Drafting Committee Comments**

34 A uniform act needs to set forth a procedure that can be easily and efficiently followed,

1 that has a minimum of judicial oversight and intervention, that is cost-effective for the
2 litigants, and is fair to the deponents. And it should be patterned after Rule 45 of the FRCP,
3 which appears to be universally admired by civil litigators for its simplicity and efficiency.

4 The Drafting Committee believes that the proposed uniform act meets these
5 requirements, should be supported by the various constituencies that have an interest in how
6 interstate discovery is conducted in state courts, and should be adopted by most of the states.
7 The act is simple and efficient: it establishes a simple clerical procedure under which a trial
8 state subpoena can be used to issue a discovery state subpoena. The act has minimal judicial
9 oversight: it eliminates the need for obtaining a commission, letters rogatory, filing a
10 miscellaneous action, or other preliminary steps before obtaining a subpoena in the discovery
11 state. The act is cost effective: it eliminates the need to obtain local counsel in the discovery
12 state to obtain an enforceable subpoena. And the act is fair to deponents: it provides that
13 motions brought to enforce, quash, or modify a subpoena, or for protective orders, shall be
14 brought in the discovery state and will be governed by the discovery state's laws.

15 **Comment to subsection (b).**

16 This Act is limited to discovery in state courts, the District of Columbia, Puerto Rico, the
17 United States Virgin Islands, and the territories of the United States. The committee decided
18 not to extend this Act to include foreign countries including the Canadian provinces. The
19 committee felt that international litigation is sufficiently different and is governed by
20 different principles, so that discovery issues in that arena should be governed by a separate
21 act.

22 The term "Subpoena" includes a subpoena duces tecum. The description of a subpoena
23 in the Act is based on the language of Rule 45 of the FRCP.

24 The term "Subpoena" does not include a subpoena for the inspection of a person
25 (subsection (3)(C) is limited to inspection of premises). Medical examinations in a personal
26 injury case, for example, are separately controlled by state discovery rules (the
27 corresponding federal rule is Rule 35 of the FRCP). Since the plaintiff is already subject to
28 the jurisdiction of the trial state, a subpoena is never necessary.

29 **Comment to subsection (c).**

30 The term "Court of Record" was chosen to exclude non-court of record proceedings from
31 the ambit of the Act. The committee concluded that extending the Act to such proceedings
32 as arbitrations would be a significant expansion that might generate resistance to the Act. A
33 "Court of Record" includes anyone who is authorized to issue a subpoena under the laws of
34 that state, which usually includes an attorney of record for a party in the proceeding.

35 The term "Presented" to a clerk of court includes delivering to or filing. Presenting a
36 subpoena to the clerk of court in the discovery state, so that a subpoena is then issued in the
37 name of the discovery state, is the necessary act that invokes the jurisdiction of the discovery
38 state, which in turn makes the newly issued subpoena both enforceable and challengeable

1 in the discovery state.

2 The committee envisions the standard procedure under this section will become as
3 follows, using as an example a case filed in Kansas (the trial state) where the witness to be
4 deposed lives in Florida (the discovery state): A lawyer of record for a party in the action
5 pending in Kansas will issue a subpoena in Kansas (the same way lawyers in Kansas
6 routinely issue subpoenas in pending actions). That lawyer will then check with the clerk's
7 office, in the Florida county or district in which the witness to be deposed lives, to obtain a
8 copy of its subpoena form (the clerk's office will usually have a Web page explaining its
9 forms and procedures). The lawyer will then prepare a Florida subpoena so that it has the
10 same terms as the Kansas subpoena. The lawyer will then hire a process server (or local
11 counsel) in Florida, who will take the completed and executed Kansas subpoena and the
12 completed but not yet executed Florida subpoena to the clerk's office in Florida. In addition,
13 the lawyer might prepare a short transmittal letter to accompany the Kansas subpoena,
14 advising the clerk that the Florida subpoena is being sought pursuant to Florida statute ____
15 (citing the appropriate statute or rule and quoting Sec. 3). The clerk of court, upon being
16 given the Kansas subpoena, will then issue the identical Florida subpoena ("issue" includes
17 signing, stamping, and assigning a case or docket number). The process server (or other
18 agent of the party) will pay any necessary filing fees, and then serve the Florida subpoena
19 on the deponent in accordance with Florida law (which includes any applicable local rules).

20 The advantages of this process are readily apparent. The act of the clerk of court is
21 ministerial, yet is sufficient to invoke the jurisdiction of the discovery state over the
22 deponent. The only documents that need to be presented to the clerk of court in the
23 discovery state are the subpoena issued in the trial state and the draft subpoena of the
24 discovery state. There is no need to hire local counsel to have the subpoena issued in the
25 discovery state, and there is no need to present the matter to a judge in the discovery state
26 before the subpoena can be issued. In effect, the clerk of court in the discovery state simply
27 reissues the subpoena of the trial state, and the new subpoena is then served on the deponent
28 in accordance with the laws of the discovery state. The process is simple and efficient, costs
29 are kept to a minimum, and local counsel and judicial participation are unnecessary to have
30 the subpoena issued and served in the discovery state.

31 This Act will not change or repeal the law in those states that still require a commission
32 or letters rogatory to take a deposition in a foreign jurisdiction. The Act does, however,
33 repeal the law in those discovery states that still require a commission or letter rogatory from
34 a trial state before a deposition can be taken in those states. It is the hope of the Conference
35 that this Act will encourage states that still require the use of commissions or letters rogatory
36 to repeal those laws.

37 The Act requires that, when the subpoena is served, it contain or be accompanied by the
38 names, addresses, and telephone numbers of all counsel of record and of any party not
39 represented by counsel. The committee believes that this requirement imposes no significant
40 burden on the lawyer issuing the subpoena, given that the lawyer already has the obligation
41 to send a notice of deposition to every counsel of record and any unrepresented parties. The

1 benefits in the discovery state, by contrast, are significant. This requirement makes it easy
2 for the deponent (or, as will frequently be the case, the deponent’s lawyer) to learn the names
3 of and contact the other lawyers in the case. This requirement can easily be met, since the
4 subpoena will contain or be accompanied by the names, addresses, and telephone numbers
5 of all counsel of record and of any party not represented by counsel (which is the same
6 information that will ordinarily be contained on a notice of deposition and proof of service).

7 **Comment to subsection (e).**

8 The Act requires that the discovery permitted by this section must comply with the laws
9 of the discovery state. The discovery state has a significant interest in these cases in
10 protecting its residents who become non-party witnesses in an action pending in a foreign
11 jurisdiction from any unreasonable or unduly burdensome discovery request. Therefore, the
12 committee believes that the discovery procedure must be the same as it would be if the case
13 had originally been filed in the discovery state.

14 The committee believes that the fee, if any, for issuing a subpoena should be sufficient
15 to cover only the actual transaction costs, or should be the same as the fee for local
16 deposition subpoenas.

17 **Comment to subsection (f).**

18 The act requires that any application to the court for a protective order, or to enforce,
19 quash, or modify a subpoena, or for any other dispute relating to discovery under this Act,
20 must comply with the law of the discovery state. Those laws include the discovery state’s
21 procedural, evidentiary, and conflict of laws rules. Again, the discovery state has a
22 significant interest in protecting its residents who become non-party witnesses in an action
23 pending in a foreign jurisdiction from any unreasonable or unduly burdensome discovery
24 requests, and this is easily accomplished by requiring that any discovery motions must be
25 decided under the laws of the discovery state. This protects the deponent by requiring that
26 all applications to the court that directly affect the deponent must be made in the discovery
27 state.

28 The term “modify” a subpoena means to alter the terms of a subpoena, such as the date,
29 time, or location of a deposition.

30 Evidentiary issues that may arise, such as objections based on grounds such as relevance
31 or privilege, are best decided in the discovery state under the laws of the discovery state
32 (including its conflict of laws principles).

33 Nothing in this act limits any party from applying for appropriate relief in the trial state.
34 Applications to the court that affect only the parties to the action can be made in the trial
35 state. For example, any party can apply for an order in the trial state to bar the deposition
36 of the out-of-state deponent on grounds of relevance, and that motion would be made and
37 ruled on before the deposition subpoena is ever presented to the clerk of court in the
38 discovery state.

1 If a party makes or responds to an application to enforce, quash, or modify a subpoena
2 in the discovery state, the lawyer making or responding to the application must comply with
3 the discovery state’s rules governing lawyers appearing in its courts. This act does not
4 change existing state rules governing out-of-state lawyers appearing in its courts. (See
5 Model Rules of Professional Conduct 5.5 and Kansas statutes or rules governing the
6 unauthorized practice of law.)

7 **60-229. Stipulations regarding about discovery procedure.** Unless the court orders otherwise,
8 the parties may by written stipulation stipulate that:

9 ~~(1) provide that depositions~~ (a) a deposition may be taken before any person, at any time or
10 place, upon on any notice, and in any the manner ~~and when so taken specified — in which event it~~
11 may be used ~~like other depositions, in the same way as any other deposition;~~ and

12 ~~(2) modify the procedures provided by these rules for other methods of discovery, except that~~
13 ~~stipulations extending the time provided in K.S.A. 60-233, 60-234 and 60-236 for responses to~~
14 ~~discovery may be made only with the approval of the court~~ (b) other procedures governing or
15 limiting discovery be modified — but a stipulation extending the time for any form of discovery
16 must have court approval if it would interfere with the time set for completing discovery, for hearing
17 a motion, or for trial.

18 COMMENT

19 The language of K.S.A. 60-229 has been amended as part of the general restyling of the
20 Kansas Code to make it more easily understood and to make style and terminology
21 consistent throughout the Code. These changes are intended to be stylistic only.

22 **60-230. Depositions upon by oral examination; when leave required; general requirements;**
23 **examination.**

24 (a) ~~When depositions a deposition may be taken; when leave required.~~

25 (1) ***Without leave.*** A party may, by oral questions, depose take the testimony of any person,
26 including a party, by deposition upon oral examination without leave of court except as
27 provided in paragraph subsection (a)(2). The deponent’s attendance of witnesses may be
28 compelled by subpoena as provided in under K.S.A. 60-245, and amendments thereto.

29 (2) ***With leave.*** A party must obtain leave of court, which shall be granted and the court must
30 grant leave to the extent consistent with the principles stated in subsection (b)(2) of
31 K.S.A. 60-226(b)(2), and amendments thereto; if the person to be examined is confined
32 in prison or if, without written stipulation of the parties:

33 (A) if the parties have not stipulated to the deposition and:

34 (i) The person to be examined already the deponent has already been deposed

1 in the case; or

2 ~~(B) a(ii) the party seeks to take a the deposition of a nonparty before the time~~
3 ~~specified in subsection (b) of K.S.A. 60-216(b), and amendments thereto,~~
4 ~~unless the party certifies in the notice contains a certification, with supporting~~
5 ~~facts, that the person to be examined deponent is expected to leave Kansas~~
6 ~~and be unavailable for examination in Kansas unless deposed before after~~
7 ~~that time.; or~~

8 ~~(C) the plaintiff seeks to take a deposition of a party, or a deposition of a nonparty in an~~
9 ~~action in which a case management conference has not been scheduled under subsection~~
10 ~~(b) of K.S.A. 60-216 and amendments thereto, prior to the expiration of 30 days after~~
11 ~~service of the summons and petition upon any defendant or service made under K.S.A.~~
12 ~~60-301 et seq., and amendments thereto, unless: (i) a defendant has served a notice of~~
13 ~~taking deposition or otherwise sought discovery or (ii) the notice contains a certification,~~
14 ~~with supporting facts, that the person to be examined is expected to leave Kansas and be~~
15 ~~unavailable for examination in Kansas unless deposed before expiration of the 30-day~~
16 ~~period.~~

17 ~~(B) if the deponent is confined in prison.~~

18 ~~(b) Notice of examination; general the deposition; other formal requirements; nonstenographic~~
19 ~~recording; production of documents and things; deposition of organization.~~

20 ~~(1) Notice in general. A party desiring to take the deposition of any person upon oral~~
21 ~~examination shall who wants to depose a person by oral questions must give reasonable~~
22 ~~written notice in writing to every other party to the action. The notice shall must state the~~
23 ~~time and place for taking of the deposition and, if known, the deponent's name and~~
24 ~~address of each person to be examined, if known, and, if. If the name is not known,~~
25 ~~unknown, the notice must provide a general description sufficient to identify the person~~
26 ~~or the particular class or group to which the person belongs.~~

27 ~~(2) Producing documents. If a subpoena duces tecum is to be served on the person to be~~
28 ~~examined, a designation of deponent, the materials to be produced as set forth in the~~
29 ~~subpoena shall be attached to or included in the notice designated for production, as set~~
30 ~~out in the subpoena, must be listed in the notice or in an attachment. The notice to a party~~
31 ~~deponent may be accompanied by a request under K.S.A. 60-234, and amendments~~
32 ~~thereto, to produce documents and tangible things at the deposition.~~

33 ~~(2) (3) Method of recording.~~

34 ~~(A) Method stated in a stipulation or order. The parties may stipulate in writing or the~~
35 ~~court may upon motion order that the testimony at a deposition be recorded by other~~
36 ~~than stenographic means. The stipulation or order shall designate the person before~~
37 ~~whom the deposition shall be taken, the manner of recording, preserving and filing~~

1 the deposition, and may include other provisions to assure that the recorded
2 testimony will be accurate and trustworthy. A party may arrange to have a
3 stenographic transcription record made at the party's own expense. Any objections
4 under subsection (c), any changes made by the witness, the signature identifying the
5 deposition as the signature of the witness or the statement of the officer that is
6 required by subsection (e) if the witness does not sign and the certification of the
7 officer required by subsection (f) shall be set forth in writing to accompany a
8 deposition recorded by nonstenographic means.

9 (B) **Additional method.** With prior notice to the deponent and other parties, any party
10 may record on videotape, or a comparable medium, any deposition that is to be
11 recorded stenographically. That party bears the expense of the additional record or
12 transcript unless the court orders otherwise.

13 (4) **By remote means.** The parties may stipulate — or the court may on motion order — that
14 a deposition be taken by telephone or other remote means. For the purpose of this
15 section and K.S.A. 60-226(c), K.S.A. 60-228(a), K.S.A. 60-237(a)(1) and (b)(1), and
16 K.S.A. 60-245(a)(2), and amendments thereto, the deposition takes place where the
17 deponent answers the questions.

18 ~~(3)~~ (5) **Officer's duties.**

19 (A) **Before the deposition.** Unless the parties stipulate otherwise agreed by the parties,
20 a deposition shall must be conducted before an officer appointed or designated
21 under K.S.A. 60-228, and amendments thereto, and shall. The officer must begin the
22 deposition with a an on-the-record statement on the record by the officer that
23 includes:

24 ~~(A)~~ The (i) the officer's name and business address;

25 ~~(B)~~ (ii) the date, time, and place of the deposition;

26 ~~(C)~~ the name of (iii) the deponent's name;

27 ~~(D)~~ (iv) the officer's administration of the oath or affirmation to the deponent; and

28 ~~(E)~~ an identification (v) the identity of all persons present.

29 (B) **Conducting the deposition; avoiding distortion.** If the deposition is recorded other
30 than stenographically nonstenographically, the officer shall must repeat the items
31 (A) through (C) in subsection (b)(5)(A)(i)-(iii) at the beginning of each unit of
32 recorded tape or other the recording medium. The deponent's and attorneys'
33 appearance or demeanor of deponents or attorneys shall must not be distorted
34 through camera or sound-recording recording techniques.

35 (C) **After the deposition.** At the end of the a deposition, the officer shall must state on

1 the record that the deposition is complete and ~~shall~~ must set ~~forth~~ out any
2 stipulations made by ~~counsel concerning the~~ the attorneys about custody of the
3 transcript or recording and of the exhibits, or ~~concerning about any~~ other pertinent
4 matters.

5 (4) The notice to a party deponent may be accompanied by a request made in compliance with
6 K.S.A. 60-234 and amendments thereto for the production of documents and tangible things at the
7 taking of the deposition. The procedure of K.S.A. 60-234 and amendments thereto shall apply to the
8 request.

9 (5) ~~(6)~~ Notice or subpoena directed to an organization. In its notice or subpoena, a ~~A~~ party
10 may ~~in the notice and in a subpoena~~ name as the deponent a public or private
11 corporation, or a partnership, ~~an~~ association ~~or, a~~ governmental agency, ~~or other entity~~
12 and must describe and designate with reasonable particularity the matters ~~on which~~ for
13 examination is requested. The named organization ~~shall~~ must then designate one or more
14 officers, directors, ~~or~~ managing agents, ~~or designate~~ other persons who consent to testify
15 on its behalf; and ~~it~~ may set forth, ~~for each person designated,~~ out the matters on which
16 the person designated will testify. A subpoena ~~shall~~ must advise a nonparty organization
17 of its duty to make ~~such a~~ this designation. The persons designated ~~persons shall~~ must
18 testify ~~as to matters about information~~ known or reasonably available to the organization.
19 This subsection does not preclude ~~taking~~ a deposition by any other procedure ~~authorized~~
20 in allowed by these rules.

21 (6) The parties may stipulate in writing or the court may upon motion order that a deposition be
22 taken by telephone or other remote electronic means. For the purposes of this section and subsection
23 (c) of K.S.A. 60-226, subsection (a) of K.S.A. 60-228, subsection (a)(1) of K.S.A. 60-237,
24 subsection (b)(1) of K.S.A. 60-237 and subsection (a)(2) of K.S.A. 60-245 and amendments thereto,
25 a deposition taken by telephone or other remote electronic means is taken in the district and at the
26 place where the deponent answers questions.

27 (c) Examination and cross-examination; record of the examination; oath; objections; written
28 questions.

29 (1) Examination and cross-examination. ~~Examination~~ The examination and cross-
30 examination of witnesses may ~~a deponent~~ proceed as ~~permitted they would~~ at the trial
31 under the provisions of K.S.A. 60-243, and amendments thereto. ~~The officer before~~
32 ~~whom the deposition is to be taken shall put the witness on~~ After putting the deponent
33 under oath or affirmation, and shall personally, or by some one acting under the direction
34 ~~and in the presence of the officer,~~ must record the testimony of the witness by the
35 method designated under subsection(b)(3)(A). The testimony must be recorded by the
36 officer personally or by a person acting in the presence and under the direction of the
37 officer. The testimony shall be taken stenographically or recorded by any other means
38 ordered in accordance with subsection (b)(2). If requested by one of the parties, the
39 testimony ~~shall~~ must be transcribed. The ~~judge~~ court may order the cost of transcription
40 paid by one or some of, or apportioned among, the parties.

41 (2) Objections. ~~All objections made~~ An objection at the time of the examination ~~whether~~

1 to evidence, to a party's conduct, to the officer's qualifications of the officer taking the
2 deposition, to the manner of taking it the deposition, to the evidence presented, to the
3 conduct of any party or to any other aspect of the proceedings shall deposition—must be
4 noted by the officer upon on the record, of the deposition; but the examination shall
5 proceed, with still proceeds; the testimony being is taken subject to the objections any
6 objection. An objection must be stated concisely in a nonargumentative and
7 nonsuggestive manner. A person may instruct a deponent not to answer only when
8 necessary to preserve a privilege, to enforce a limitation ordered by the court, or to
9 present a motion under subsection (d)(3).

10 (3) **Participating through written questions.** ~~In lieu~~ Instead of participating in the oral
11 examination, parties a party may serve written questions in a sealed envelope on the
12 party taking noticing the deposition, who must deliver them and the party shall transmit
13 the questions to the officer who shall propound such. The officer must ask the deponent
14 those questions to the witness and record the answers verbatim.

15 (d) **Motion to terminate or limit examination.**

16 (1) **Grounds.** At any time during the taking of the a deposition, on motion of a party or of
17 the deponent or a party may move to terminate or limit it on the ground that it and upon
18 a showing that the examination is being conducted in bad faith or in such a manner as
19 that unreasonably to annoy, embarrass or oppress annoys, embarrasses, or oppresses the
20 deponent or party. The motion may be filed in the court, the judge in the district where
21 the action is pending or where the deposition is being taken. If the objecting deponent
22 or party so demands, the deposition must be suspended for the time necessary to obtain
23 an order.

24 (2) **Order.** The court may order the officer conducting the examination to cease forthwith
25 from taking that the deposition be terminated or may limit the its scope and manner of
26 the taking of the deposition as provided in subsection (c) of K.S.A. 60-226(c), and
27 amendments thereto. If the order made terminates the examination, it shall terminated,
28 the deposition may be resumed only upon the by order of the judge court where the
29 action is pending. Upon demand of the objecting party or deponent the taking of the
30 deposition shall be suspended for the time necessary to make a motion for an order.

31 (3) **Award of expenses.** The provisions of subsection (a) of K.S.A. 60-237(a), and
32 amendments thereto, apply applies to the award of expenses incurred in relation to the
33 motion.

34 (e) **Review by the witness; changes; signing.**

35 (1) **Review; statement of changes.** Unless waived by the deponent and by the parties, the
36 deponent shall have must be allowed 30 days after being notified by the officer that the
37 transcript or recording is available in which;

1 (A) to review the transcript or recording; and;

2 (B) if there are changes in form or substance, to sign a statement reciting such listing
3 the changes and the reasons given by the deponent for making such changes them.

4 (2) ***Changes indicated in the officer's certificate.*** The officer shall indicate ~~must note~~ in the
5 certificate prescribed by subsection (f)(1) whether the deposition was reviewed and, if
6 so, ~~shall append~~ **must attach** any changes ~~made by the deponent~~ **makes** during the 30-day
7 period allowed.

8 (f) ***Certification and delivery; exhibits; copies of the transcript or recording; or filing by***
9 ***officer; notice of delivery or filing; copies; exhibits; retention of original.***

10 (1) ***Certification and delivery.*** The officer shall ~~must~~ **must** certify ~~in writing~~ that the witness was
11 duly sworn by the officer and that the deposition is a true record of the testimony given
12 by the witness accurately records the witness's testimony. ~~This~~ The certificate ~~shall be~~
13 ~~in writing and~~ **must** accompany the record of the deposition. Unless ~~the court orders~~
14 otherwise ~~ordered by the court~~, the officer shall ~~securely~~ **must** seal the deposition in an
15 envelope or package ~~indorsed with bearing~~ the title of the action and marked "~~deposition~~
16 ~~of (here insert name of witness)~~" and shall "~~Deposition of [witness's name]~~" and ~~must~~
17 promptly ~~deliver the deposition~~ ~~send it to the party taking the deposition~~ ~~attorney who~~
18 ~~arranged for the transcript or recording.~~ The attorney ~~must, who shall~~ store the
19 ~~deposition~~ ~~it~~ under conditions that will protect the ~~deposition~~ ~~it~~ against loss, destruction,
20 tampering or deterioration. ~~If so ordered by the court, the officer shall promptly file the~~
21 ~~deposition with the court in which the action is pending or send it by first-class mail to~~
22 ~~the clerk for filing.~~ The officer shall serve notice of the delivery or filing of the
23 deposition on all parties.

24 (2) ***Documents and tangible things.***

25 (A) ***Originals and copies.*** Documents and ~~tangible~~ things produced for inspection
26 during the examination of the witness, upon the request of a party, shall ~~a deposition~~
27 ~~must, on a party's request,~~ be marked for identification and ~~annexed~~ ~~attached~~ to the
28 deposition. ~~Any party may inspect and copy them. But if the person who produced~~
29 ~~them wants to keep the originals, and may be inspected and copied by any party,~~
30 ~~except that if the person producing the materials desires to retain them the person~~
31 ~~may;~~

32 (A) (i) offer copies to be marked ~~for identification and annexed,~~ ~~attached~~ to the
33 deposition, ~~and to serve then used~~ as originals — ~~after giving,~~ if the person affords
34 to all parties ~~an a fair~~ opportunity to verify the copies by ~~comparison~~ ~~comparing~~
35 ~~them~~ with the originals; or

36 (B) (ii) offer the originals to be marked for identification, after giving to each party
37 ~~an give all parties a fair~~ opportunity to inspect and copy ~~them,~~ ~~the originals~~ after

1 they are marked — in which event the materials originals may then be used in the
2 same manner as if annexed attached to and returned with the deposition.

3 (B) **Order regarding the originals.** Any party may move for an order that the original
4 be annexed originals be attached to the deposition pending final disposition of the
5 case.

6 (2)(3) **Copies of the transcript or recording.** Unless otherwise stipulated or ordered by the
7 court or agreed by the parties, the officer shall must retain the stenographic notes of any
8 a deposition taken stenographically or a copy of the recording of any a deposition taken
9 by another method. Upon payment of When paid reasonable charges therefore, the
10 officer shall must furnish a copy of the transcript or other recording of the deposition to
11 any party or to the deponent.

12 (3)(4) **Notice of delivery or filing.** The court may order the officer to file the deposition
13 promptly with the court. The officer must serve notice of the sending or filing of the
14 deposition on all parties.

15 (5) **Retention of original.** Except when filed with the court, the original of a deposition shall
16 must be retained by the party to whom it is delivered sent and made available for
17 appropriate use by any party.

18 (g) **Failure to attend a deposition or to serve a subpoena; expenses; persons attending.** (1) If
19 the party giving the notice of the taking of a deposition fails to attend and proceed therewith and
20 another party A party who, expecting a deposition to be taken, attends in person or by an attorney
21 pursuant to the notice, the court may order the party giving the notice to pay to such other party the
22 may recover reasonable expenses incurred by that party and attorney in so for attending, including
23 reasonable attorney attorney's fees, if the noticing party failed to:

24 (1) attend and proceed with the deposition; or

25 (2) If the party giving the notice of the taking of a deposition of a witness fails to serve a
26 subpoena upon the witness and because of such failure the witness does not attend, and
27 if another party attends in person or by attorney because the party expects the deposition
28 of that witness to be taken, the court may order the party giving the notice to pay the fees
29 of the party and the party's attorney in attending the taking of the deposition on a
30 nonparty deponent, who consequently did not attend.

31 (h) **Persons to be present attending deposition.** Unless otherwise stipulated or ordered by the
32 judge court, or stipulated by counsel, no person shall be present while may attend a deposition is
33 being taken except:

34 (1) the officer before whom it the deposition is being taken;

35 (2) the reporter, stenographer, or person recording the deposition;

36 (3) the parties to the action;

1 ~~(4) the parties' attorneys and the attorneys' their respective counsel and~~ paralegals or legal
2 assistants ~~of such counsel~~; and

3 ~~(5)~~ the deponent.

4 COMMENT

5 The language of K.S.A. 60-230 has been amended as part of the general restyling of the
6 Kansas Code to make it more easily understood and to make style and terminology
7 consistent throughout the Code.

8 In new subsection (b)(6), which was formerly (b)(5), "other entity" is added to the list
9 of organizations that may be named as deponent. The purpose is to ensure that the
10 deposition process can be used to reach information known or reasonably available to an
11 organization no matter what abstract fictive concept is used to describe the organization.
12 Nothing is gained by wrangling over the place to fit into current rule language such entities
13 as limited liability companies, limited partnerships, business trusts, more exotic common-law
14 creations, or forms developed in other countries.

15 Although there are some differences, K.S.A. 60-230 is similar to Federal Rule 30. The
16 provision in subsection (c) that the court may order the cost of transcription to be paid by
17 one or some of, or apportioned among, the parties has no counterpart in the federal rule. It
18 was suggested by the federal Advisory Committee in 1955, but was not adopted. The
19 Kansas Judicial Council Advisory Committee deliberately chose to include the provision in
20 the Kansas Code. There is no counterpart in the Kansas Code of Federal Rule 30(d)(1) and
21 (2), which state a time limit for depositions and provide for imposing sanctions on any
22 person who "impedes, delays, or frustrates the fair examination of the deponent." There is
23 no counterpart in the federal rules of K.S.A. 60-230(h) regarding the persons who may attend
24 a deposition.

25 **60-231. Depositions upon by written questions.**

26 (a) ~~Serving questions; notice~~ When a deposition may be taken.

27 (1) Without leave. A party may, by written questions, ~~depose~~ ~~take the testimony of~~ any
28 person, including a party, ~~by deposition upon written questions~~ without leave of court
29 except as provided in ~~paragraph (2)~~ subsection (a)(2). The ~~deponent's~~ attendance ~~of~~
30 ~~witnesses~~ may be compelled by the use of subpoena ~~as provided in~~ under K.S.A. 60-245,
31 and amendments thereto.

32 (2) With leave. A party must obtain leave of court, ~~which shall be granted~~ ~~and the court must~~
33 grant leave to the extent consistent with ~~the principles stated in subsection (b)(2) of~~
34 K.S.A. 60-226(b)(2), and amendments thereto; ~~if the person to be examined is confined~~

1 ~~in prison or if, without the written stipulation of the parties:~~

2 (A) ~~if the parties have not stipulated to the deposition and:~~

3 (i) ~~the deponent~~ ~~The person to be examined~~ has already been deposed in the case;
4 or

5 (ii) ~~(B) a~~ ~~the~~ party seeks to take a ~~the~~ deposition ~~of a nonparty~~ before the time
6 specified in ~~subsection (b) of K.S.A. 60-216(b),~~ and amendments thereto; ~~or~~

7 (B) ~~if the deponent is confined in prison.~~

8 (3) ~~**Service; required notice.**~~ A party ~~desiring to take a deposition upon~~ who wants to depose
9 a person by written questions ~~shall~~ ~~must~~ serve them ~~upon on~~ every other party, with a
10 notice stating, ~~if known,~~ (A) the ~~deponent's~~ name and address, ~~of the person who is to~~
11 ~~answer them, if known,~~ and, ~~if~~ ~~If~~ the name is ~~not known~~ ~~unknown,~~ the notice ~~must~~
12 ~~provide~~ a general description sufficient to identify the person or the particular class or
13 group to which the person belongs, ~~and (B) The notice must also state~~ the name or
14 descriptive title and ~~the~~ address of the officer before whom the deposition ~~is to~~ ~~will~~ be
15 taken.

16 (4) ~~**Questions directed to an organization.**~~ A ~~deposition upon~~ written questions ~~may be~~
17 ~~taken of a~~ public or private corporation, ~~or a~~ partnership, ~~an~~ association, ~~or a~~
18 governmental agency, ~~or other entity may be deposed by written questions~~ in accordance
19 with ~~the provisions of subsection (b) of K.S.A. 60-230(b)(6),~~ and amendments thereto.

20 (5) ~~**Questions from other parties.**~~ (4) ~~Within~~ Any questions to the deponent from other
21 parties ~~must be served on all parties as follows: cross-questions, within 14 days after~~
22 ~~being served with the notice and written direct questions; are served, a party may serve~~
23 ~~cross-questions upon all other parties. Within redirect questions, within 14 days after~~
24 ~~being served with cross-questions; a party may serve redirect questions upon all other~~
25 ~~parties. Within 14 days after being served with redirect questions, a party may serve and~~
26 ~~recross-questions, within 14 days after being served with redirect questions upon all~~
27 ~~other parties. The court may, for good cause, shown extend enlarge or shorten these~~
28 ~~times the time.~~

29 (b) ~~**Officer to take responses and prepare record Delivery to the officer; officer's duties.**~~ The
30 party who noticed the deposition ~~must deliver~~ A copy of the notice and copies of all questions served
31 ~~shall be delivered by the party taking the depositions to the officer designated in the notice; a copy~~
32 ~~of all the questions served and of the notice. The officer must promptly~~ who shall proceed promptly,
33 in the manner provided by ~~subsections (c), (e) and (f) of~~ in K.S.A. 60-230(c), (e), and (f), and
34 amendments thereto, to:

35 (1) take the ~~deponent's~~ testimony ~~of the witness~~ in response to the questions;

36 (2) to prepare; ~~and~~ certify ~~and either deliver or file or mail~~ the deposition; and

1 (B) it is used to the extent it would be admissible under the rules of evidence if the
2 deponent were present and testifying; and

3 (C) the use is allowed by subsection (a)(2)-(8).

4 (2) ***Impeachment and other uses.*** Any party may use a deposition to contradict or impeach
5 the testimony given by the deponent as a witness, or for any other purpose allowed by
6 the rules of evidence. (1) Any deposition may be used by any party for the purpose of
7 contradicting or impeaching the testimony of deponent as a witness.

8 (3) ***Deposition of party, agent, or designee.*** An adverse party may use for any purpose the
9 (2) The deposition of a party or of any one anyone who, when deposed, at the time of
10 taking the deposition was an the party's officer, director, managing agent, or a person
11 designated designee under K.S.A. 60-230(b)(6) or 60-231(a)(4), and amendments
12 thereto, to testify on behalf of a public or private corporation, partnership or association
13 or governmental agency which is a party may be used by an adverse party for any
14 purpose.

15 (4) ***Unavailable witness.*** A party may use for any purpose the (3) The deposition of a
16 witness, whether or not a party, may be used by any party for any purpose if the court
17 finds that:

18 (A) The that the witness is dead;

19 (B) that the witness is at a greater distance more than 100 miles from the place of
20 hearing or trial or hearing, or is out of the outside this state of Kansas, unless it
21 appears that the witness' absence of the witness was procured by the party
22 offering the deposition;

23 (C) that the witness is unable to cannot attend or testify because of age, illness,
24 infirmity, or imprisonment;

25 (D) that the party offering the deposition has been unable to could not procure the
26 witness' attendance of the witness by subpoena; or

27 (E) upon application on motion and notice, such that exceptional circumstances exist
28 as to make it desirable; ___ in the interest of justice and with due regard to the
29 importance of live presenting the testimony of witnesses orally in open court; ___
30 to allow permit the deposition to be used.

31 (5) ***Limitations on use.*** A deposition taken without leave of court pursuant to a notice under
32 subsection (a)(2)(B) or (a)(2)(C)(ii) of K.S.A. 60-230(a)(2)(A)(ii), and amendments
33 thereto, shall must not be used against a party who demonstrates shows that, when served
34 with the notice, the party was unable through the exercise of diligence to obtain counsel
35 it could not, despite diligent efforts, obtain an attorney to represent such party it at the
36 taking of the deposition.

1 ~~(4)~~(6) **Using part of a deposition.** If a party offers in evidence only part of a deposition is
2 offered in evidence by a party, an adverse party may require the party offeror to
3 introduce any other part which ought parts that in fairness to should be considered with
4 the part introduced, and any party may itself introduce any other parts.

5 (7) **Substituting a party.** Substitution of parties pursuant to Substituting a party under K.S.A.
6 60-225, and amendments thereto, does not affect the right to use depositions a deposition
7 previously taken;

8 (8) **Deposition taken in an earlier action.** A deposition lawfully taken and, if required, filed
9 when an action has been brought in any federal- or state-court court of the United States
10 or of any state and another action may be used in a later action involving the same
11 subject matter is afterward brought between the same parties, or their representatives or
12 successors in interest, all depositions lawfully taken in the former action may be used in
13 the latter to the same extent as if originally taken therefor in the later action. A
14 deposition previously taken may also be used as allowed by the rules of evidence.

15 (b) **Objections to admissibility.** Subject to the provisions of subsection (b) of K.S.A. 60-228(b),
16 and amendments thereto, and subsection ~~(e)~~(d)(3), an objection may be made at the a hearing or trial
17 or hearing to receiving in evidence to the admission of any deposition testimony or part thereof for
18 any reason which would require the exclusion of the evidence that would be inadmissible if the
19 witness were then present and testifying.

20 (c) **Form of presentation.** Except as otherwise directed by Unless the court orders otherwise,
21 a party offering deposition testimony under this section may offer it in stenographic or
22 nonstenographic form, but, if in nonstenographic form, the party shall also must provide the court
23 and opposing parties with a transcript of the entire deposition from which the offered portions
24 offered were taken, but may provide the court with the testimony in nontranscript form as well. On
25 request of any party in a case tried before a jury party's request, deposition testimony offered in a
26 jury trial for any purpose other than for impeachment purposes shall must be presented in
27 nonstenographic nontranscript form, if available, unless the court for good cause orders otherwise.

28 (d) **Effect of taking or using depositions.** A party does not make a person the party's own witness
29 for any purpose by taking the person's deposition. The introduction in evidence of the deposition or
30 any part thereof for any purpose other than that of contradicting or impeaching the deponent makes
31 the deponent the witness of the party introducing the deposition but this shall not apply to the use
32 by an adverse party of a deposition under subsection (a)(2). At the trial or hearing any party may
33 rebut any relevant evidence contained in a deposition whether introduced by the party or by any
34 other party.

35 (e d) **Effect of errors and irregularities in depositions Waiver of objections.**

36 (1) **As to To the notice.** All errors and irregularities An objection to an error or irregularity
37 in the a deposition notice for taking a deposition are is waived unless written objection
38 is promptly served in writing upon on the party giving the notice.

1 (2) ~~As to disqualification of officer~~ To the officer's qualification. ~~Objection to taking a~~
2 deposition because of An objection based on disqualification of the officer before whom
3 it a deposition is to be taken is waived ~~unless~~ if not made;

4 (A) before the ~~taking of the~~ deposition begins; or

5 (B) ~~as soon thereafter as the~~ promptly after the basis for disqualification becomes
6 known or, with reasonable diligence, ~~could be discovered with reasonable~~
7 diligence have been known.

8 (3) ~~As to~~ To the taking of the deposition.

9 (A) Objection to competence, relevance, or materiality. ~~Objections~~ An objection to
10 the competency of a witness a deponent's competence — or to the competency
11 competence, relevancy relevance, or materiality of testimony — are is not
12 waived by a failure to make them the objection before or during the taking of the
13 deposition, unless the ground of the objection is one which for it might have been
14 obviated or removed if presented corrected at that time.

15 (B) Objection to an error or irregularity. ~~Errors and irregularities occurring at the~~
16 An objection to an error or irregularity at an oral examination is waived if:

17 (i) it relates to in the manner of taking the deposition, in the form of the
18 questions a question or answers answer, in the oath or affirmation, or in the
19 a party's conduct of parties, and errors of any kind which or other matters
20 that might be obviated, removed or cured if promptly presented, are waived
21 unless seasonable objection thereto have been corrected at that time; and

22 (ii) it is not timely made at the taking of during the deposition.

23 (C) Objection to a written question. ~~Objections~~ An objection to the form of a written
24 questions submitted question under K.S.A. 60-231, and amendments thereto, are
25 is waived ~~unless~~ if not served in writing upon on the party propounding them
26 submitting the question within the time allowed for serving the succeeding cross
27 or other responsive questions or, if the question is a recross-question, and within
28 five 7 days after service of the last questions authorized being served with it.

29 (4) ~~As to completion~~ To completing and return of returning the deposition. ~~Errors and~~
30 ~~irregularities in the manner in which the testimony is transcribed or the deposition is~~ An
31 objection to how the officer transcribed the testimony — or prepared, signed, certified,
32 sealed, ~~indorsed~~ endorsed, transmitted sent, filed, delivered or otherwise dealt with the
33 deposition — by the officer under K.S.A. 60-230 or 60-231, and amendments thereto,
34 are is waived unless a motion to suppress the deposition or some part thereof is made
35 with reasonable promptness promptly after such defect is, the error or irregularity
36 becomes known or, with due reasonable diligence, might could have been, ascertained
37 known.

1 **COMMENT**

2 The language of K.S.A. 60-232 has been amended as part of the general restyling of the
3 Kansas Code to make it more easily understood and to make style and terminology
4 consistent throughout the Code.

5 Former subsection (a) applied “[a]t the trial or upon the hearing of a motion or an
6 interlocutory proceeding.” The amended section describes the same events as “a hearing or
7 trial.”

8 Former subsection (a)(1) provided that depositions could be used for impeachment
9 purposes. Because K.S.A. 60-460 allows deposition testimony to be used in many
10 circumstances as substantive evidence, the former language was too narrow. New
11 subsection (a)(2) allows the use of a deposition for impeachment “or for any other purpose
12 allowed by the rules of evidence.” New subsection (a)(8) makes clear that depositions taken
13 in an earlier action can also be used “as allowed by the rules of evidence.”

14 There is no counterpart in the Kansas code of Federal Rule 32(a)(5)(A), regarding
15 depositions taken on short notice.

16 The federal counterpart to former subsection (d) was deleted in 1972. The Advisory
17 Committee Note to that amendment states: “The concept of ‘making a person one’s own
18 witness’ appears to have had significance principally in two respects: impeachment and
19 waiver of incompetency. Neither retains any vitality under the Rules of Evidence.” Under
20 the Kansas Rules of Evidence, impeaching one’s own witness is allowed under K.S.A. 60-
21 420, and there is no Dead Man’s statute that might require consideration of waiver arising
22 from calling incompetent party-witnesses. Former subsection (d) is deleted because it is
23 unnecessary in light of the Kansas Rules of Evidence.

24 The time set in the former statute at 5 days has been revised to 7 days. See the Comment
25 to K.S.A. 60-206.

26 **60-233. Interrogatories to parties.**

27 (a) **In general.**

28 **(1) Availability; procedures for use timing.** Any A party may serve upon any other party
29 written interrogatories to be answered by the party served or, if the party served is a
30 public or private corporation or a partnership, association or governmental agency, by
31 any officer or agent, who shall furnish such information as is available to the party.
32 Interrogatories, without leave of court, may be served upon on the plaintiff after
33 commencement of the action and upon on any other party with or after service of process
34 upon on that party.

35 **(2) Scope.** An interrogatory may relate to any matter that may be inquired into under K.S.A.

1 60-226(b), and amendments thereto. An interrogatory is not objectionable merely
2 because it asks for an opinion or contention that relates to fact or the application of law
3 to fact, but the court may order that the interrogatory need not be answered until
4 designated discovery is complete, or until a pretrial conference or some other time.

5 (b) *Answers and objections.*

6 (1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is
7 objected to, in which event the objecting party shall state the reasons for objection and shall
8 answer to the extent the interrogatory is not objectionable.

9 (2) The answers are to be signed by the person making the answers, and the objections signed
10 by the attorney making the objections.

11 (3) The party upon whom the interrogatories have been served shall serve a copy of the answers,
12 and objections if any, within 30 days after the service of the interrogatories, except that a
13 defendant may serve answers or objections within 45 days after service of process upon that
14 defendant. The court may allow a shorter or longer time.

15 (4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground
16 not stated in a timely objection is waived unless the party's failure to object is excused by the
17 court for good cause shown.

18 (5) The party submitting the interrogatories may move for an order under subsection (a) of
19 K.S.A. 60-237 and amendments thereto with respect to any objection to or other failure to
20 answer an interrogatory.

21 (1) ***Responding party.*** The interrogatories must be answered:

22 (A) by the party to whom they are directed; or

23 (B) if that party is a public or private corporation, a partnership, an association, a
24 governmental agency, or other entity, by any officer or agent, who must furnish
25 the information available to the party.

26 (2) ***Time to respond.*** The responding party must serve its answers and any objections within
27 30 days after being served with the interrogatories, except that a defendant may serve
28 answers or objections within 45 days after being served with process. A shorter or longer
29 time may be stipulated to under K.S.A. 60-229, and amendments thereto, or be ordered
30 by the court.

31 (3) ***Answering each interrogatory.*** Each interrogatory must, to the extent it is not objected
32 to, be answered separately and fully in writing under oath.

33 (4) ***Objections.*** The grounds for objecting to an interrogatory must be stated with specificity.
34 Any ground not stated in a timely objection is waived unless the court, for good cause,
35 excuses the failure.

1 (5) Signature. The person who makes the answers must sign them, and the attorney who
2 objects must sign any objections.

3 (c) Scope, use at trial Use. Interrogatories may relate to any matters which can be inquired into
4 under subsection (b) of K.S.A. 60-226 and amendments thereto and the answers An answer to an
5 interrogatory may be used to the extent permitted allowed by the rules of evidence.

6 An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the
7 interrogatory involves an opinion or contention that relates to fact or the application of law to fact,
8 but the court may order that such an interrogatory need not be answered until after designated
9 discovery has been completed or until a pretrial conference or other later time.

10 (d) Option to produce business records. ~~Where~~ If the answer to an interrogatory may be derived
11 or ascertained from the ~~determined by examining, auditing, compiling, abstracting, or summarizing~~
12 a party's business records; (including electronically stored information), of the party upon whom
13 the interrogatory has been served or from an examination, audit or inspection of such business
14 records, or from a compilation, abstract or summary based thereon; and if the burden of deriving or
15 ascertaining the answer is will be substantially the same for the either party, -serving the
16 interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the
17 records from which the answer may be derived or ascertained and to afford to the party serving the
18 interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies,
19 compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the
20 interrogating party to locate and to identify, as readily as can the party served, the records from
21 which the answer may be ascertained; the responding party may answer by:

22 (1) specifying the records that must be reviewed, in sufficient detail to enable the
23 interrogating party to locate and identify them as readily as the responding party could;
24 and

25 (2) giving the interrogating party a reasonable opportunity to examine and audit the records
26 and to make copies, compilations, abstracts, or summaries.

27 COMMENT

28 The language of K.S.A. 60-233 has been amended as part of the general restyling of the
29 Kansas Code to make it more easily understood and to make style and terminology
30 consistent throughout the Code. These changes are intended to be stylistic only.

31 K.S.A. 60-233 generally follows Federal Rule 33, but there are some minor differences.
32 Federal Rule 33(a) states a limit for the number of interrogatories, but provides for leave to
33 serve additional interrogatories to the extent consistent with Rule 26(b). Supreme Court
34 Rule 135 governs these issues in Kansas. There is also a minor difference in the time to
35 respond to interrogatories as Federal Rule 33 provides for 30 days, but the Kansas Code
36 allows a defendant 45 days after being served with process.

37 In new subsection (b)(1)(B), "other entity" is added to the list of organizations that must

1 respond to interrogatories. See the Comment to K.S.A. 60-230.

2 Former subsection(b)(5) was a redundant reminder of K.S.A. 60-237(a) procedure and
3 is omitted as no longer useful.

4 Former subsection (c) stated that an interrogatory “is not necessarily objectionable
5 merely because an answer * * * involves an opinion or contention * * *.” “[I]s not
6 necessarily” seemed to imply that the interrogatory might be objectionable merely for this
7 reason. This implication has been ignored in practice. Opinion and contention interrogatories
8 are used routinely. Amended subsection (a)(2) embodies the current meaning of K.S.A. 60-
9 233 by omitting “necessarily.”

10 **60-234. Production of Producing documents, electronically stored information, and tangible**
11 **things, and entry upon or entering onto land, for inspection and other purposes.**

12 (a) ***Scope In general.*** Any A party may serve on any other party a request within the scope of
13 K.S.A. 60-226(b), and amendments thereto:

14 (1) to produce and permit the requesting party making the request, or someone acting on the
15 party's behalf, its representative to inspect, copy, test, or sample the following items in
16 the responding party's possession, custody, or control:

17 (A) any designated documents or electronically stored information (including
18 writings, drawings, graphs, charts, photographs, sound recordings, images, and
19 other data or data compilations stored in any medium from which information
20 can be obtained, translated, either directly or, if necessary, after translation by the
21 respondent responding party into a reasonably usable form); or

22 (B) to inspect, copy, test or sample any designated tangible things or which constitute
23 or contain matters within the scope of subsection (b) of K.S.A. 60-226 and
24 amendments thereto and which are in the possession, custody or control of the
25 party upon whom the request is served; or

26 (2) to permit entry upon onto designated land or other property in the possession possessed
27 or control of controlled by the responding party, so that the requesting party may inspect,
28 measure, survey, photograph, test, or sample upon whom the request is served for the
29 purpose of inspection and measuring, surveying, photographing, testing or sampling the
30 property or any designated object or operation on it thereon, within the scope of
31 subsection (b) of K.S.A. 60-226 and amendments thereto.

32 (b) ***Procedure.*** The request, without leave of court, may be served upon on the plaintiff after
33 commencement of the action and upon on any other party with or after service of process upon on
34 that party.

1 (1) Contents of the request. The request:

- 2 (A) shall set forth the items to be inspected either by individual item or by category,
3 and must describe each item and category with reasonable particularity; each
4 item or category of items to be inspected;
- 5 (B) ~~The request shall~~ must specify a reasonable time, place, and manner ~~of making~~
6 for the inspection and for performing the related acts; and
- 7 (C) ~~The request~~ may specify the form or forms in which electronically stored
8 information is to be produced.

9 (2) Responses and objections.

- 10 (A) ***Time to respond.*** ~~The party upon to~~ whom the request is served shall serve a
11 written response directed must respond in writing within 30 days after ~~the service~~
12 of the request being served, except that a defendant may serve a response within
13 45 days after ~~service of being served with~~ process upon that defendant. ~~The court~~
14 may allow a A shorter or longer time may be stipulated to under K.S.A. 60-229,
15 and amendments thereto, or be ordered by the court.
- 16 (B) ***Responding to each item.*** ~~The response shall state, with respect to~~ For each item
17 or category, the response must either state that inspection and related activities
18 will be permitted as requested ~~unless the request is objected to, including or state~~
19 an objection to the requested form or forms (*sic*) producing electronically stored
20 information, stating request, including the reasons for objection.
- 21 (C) ***Objections.*** ~~If An~~ objection is made to part of an item or category, a request must
22 specify the part shall be specified and permit inspection permitted of the
23 remaining parts rest.
- 24 (D) ***Responding to a request for production of electronically stored information.***
25 ~~If The response may state an objection is made to the a requested form or forms~~
26 for producing electronically stored information; If the responding party objects
27 to a requested form — or if no form was specified in the request; — the
28 responding party must state the form or forms the party it intends to use. The
29 party submitting the request may move for an order under subsection (a) of
30 K.S.A. 60-237 and amendments thereto with respect to any objection to or other
31 failure to respond to the request or any part thereof, or any failure to permit
32 inspection as requested.
- 33 (E) ***Producing the documents or electronically stored information.*** Unless the
34 parties otherwise stipulated or ordered by agree, or the court, otherwise orders
35 these procedures apply to producing documents or electronically stored
36 information:

1 (1) (i) A party who produces documents for inspection shall must produce them
2 documents as they are kept in the usual course of business or shall must
3 organize and label them to correspond to the categories in the request;

4 (2) (ii) ~~if~~ If a request does not specify the a form or forms for producing
5 electronically stored information, a responding party must produce the
6 information it in a form or forms in which it is ordinarily maintained or in a
7 form or forms that are reasonably usable form or forms; and

8 (3) (iii) a A party need not produce the same electronically stored information in
9 more than one form.

10 (c) Persons not parties Nonparties. A person not a party to the action As provided in K.S.A. 60-
11 245 and 60-245a, and amendments thereto, a nonparty may be compelled to produce documents,
12 electronically stored information, and tangible things or to submit to permit an inspection as
13 provided in K.S.A. 60-245 and 60-245a and amendments thereto.

14 COMMENT

15 The language of K.S.A. 60-234 has been amended as part of the general restyling of the
16 Kansas Code to make it more easily understood and to make style and terminology
17 consistent throughout the Code. These changes are intended to be stylistic only.

18 K.S.A. 60-234 generally follows Federal Rule 34 with minor differences regarding the
19 timing of service and time to respond. There is no counterpart in Federal Rule 34 to the
20 reference to electronically stored information in subsection (c) regarding nonparties, but
21 electronically stored information may be obtained by subpoena under Rule 45.

22 The redundant reminder of K.S.A. 60-237(a) procedure in the second paragraph of
23 former subsection (b) is omitted as no longer useful.

24 **60-235. Physical and mental examination of persons examinations.**

25 (a) ***Order for an examination.***

26 (1) ***In general.*** ~~When the~~ The court where the action is pending may order a party whose
27 mental or physical condition; — including the blood group; — of a party, or of a person
28 in the custody or under the legal control of a party, is in controversy, the court in which
29 the action is pending may order the party to submit to a physical or mental examination
30 by a suitably licensed or certified examiner, or The court has the same authority to order
31 a party to produce for examination the a person in the party's who is in its custody or
32 under its legal control.

33 (2) ***Motion and notice; contents of the order.*** The order;

- 1 (A) may be made only on motion for good cause ~~shown~~ and ~~upon~~ on notice to ~~all~~
2 ~~parties and~~ the person to be examined; ~~and to all parties and~~
- 3 (B) ~~shall~~ must specify the time, place, manner, conditions, and scope of the
4 examination, ~~and as well as~~ the person or persons ~~by whom it is to be made~~ who
5 will perform it; ~~and~~
- 6 (C) must direct the ~~The~~ moving party ~~shall~~ to advance the expenses ~~which~~ that will
7 necessarily be incurred by the party or person to be examined.

8 (b) ***Report of examiner Examiner's report.***

9 (1) ***Request by the party or person examined.*** If requested by the party against whom an
10 order is made under subsection (a) or by the person examined, the party causing ~~The~~
11 ~~party who moved for the examination to be made~~ shall must, on request, deliver to the
12 party or person making the request requester a copy of ~~a detailed written~~ the examiner's
13 report of the examiner, together with like reports of all earlier examinations of the same
14 condition. The request may be made by the party against whom the examination order
15 was issued or by the person examined.

16 (2) ***Contents.*** ~~setting out the~~ The examiner's report must be in writing and must set out in
17 detail the examiner's findings, including results of all tests made, diagnoses, and
18 conclusions, and the results of any tests ~~together with like reports of all earlier~~
19 examinations of the same condition.

20 (2) (3) ***Scope.*** This subsection (b) applies also to an examination ~~examinations~~ made by the
21 parties' agreement ~~of the parties,~~ unless the agreement expressly provides states
22 otherwise. This subsection does not preclude obtaining an examiner's discovery of a
23 report of an examiner or the taking of a deposition of the deposing an examiner in
24 accordance with the provisions of any under other rule law.

25 (c) ***Reports of other examinations.*** Any party ~~shall be entitled upon~~ may request ~~— and is~~
26 entitled to receive ~~—~~ from a another party ~~a report like reports~~ of any examination, previously or
27 ~~thereafter made, all earlier or later examinations of the same~~ condition, in controversy, except that
28 the party shall not be required to provide such a report if the examination is of a person not a party
29 and the party is unable to obtain a report thereof. But those reports need not be delivered by the
30 party with custody or control of the person examined if the party shows that it could not obtain them.
31 Reports required to be provided under this subsection shall must contain the same information as
32 specified for reports under in subsection (b)(2).

33 (d) ***Order requiring delivery of Failure to deliver a report.*** The court on motion may make an
34 order — on just terms — ~~against that~~ a party requiring delivery of deliver a report of an examination
35 under subsection (b) or (c) ~~on such terms as are just.~~ If ~~an examiner fails or refuses to make or~~
36 ~~deliver such a~~ the report is not provided, the court may exclude the examiner's testimony ~~if offered~~
37 at the trial.

1 COMMENT

2 The language of K.S.A. 60-235 has been amended as part of the general restyling of the
3 Kansas Code to make it more easily understood and to make style and terminology
4 consistent throughout the Code. These changes are intended to be stylistic only.

5 Although organized differently, K.S.A. 60-235 is similar to Federal Rule 35. The two
6 primary differences are that there is no counterpart in the federal rule of subsection
7 (a)(2)(C)’s provision regarding expenses, and the Kansas Code has no counterpart of the
8 waiver provision found in Rule 35(b)(4). The federal rule provides that by requesting or
9 obtaining a copy of the report, or by deposing the examiner, “the party examined waives any
10 privilege” the party may have. Kansas has declined to adopt this language to avoid the
11 implication that the reports would be privileged without the waiver provision. The privilege
12 ordinarily is already waived in Kansas under K.S.A. 60-427.

13 **60-236. Requests for admission.**

14 (a) ***Request for admission Availability, scope and procedure.***

15 (1) ***Availability and scope.*** A party may serve ~~upon~~ on the plaintiff after commencement of
16 the action and on any other party with or after service of process on that party a written
17 request ~~for the admission to admit~~, for purposes of the pending action only, ~~of the truth~~
18 of any matters within the scope of K.S.A. 60-226, and amendments thereto, ~~set forth in~~
19 ~~the request that relate~~ relating to:

20 (A) ~~statements or opinions of fact or of facts~~, the application of law to fact, or
21 opinions about either; and

22 (B) ~~including~~ the genuineness of any described documents ~~described in the request.~~

23 (2) ***Form; copy of a document.*** Each matter must be separately stated. A request to admit
24 the genuineness of a document must be accompanied by a copy of the document unless
25 it is, or has been, ~~Copies of documents shall be served with the request unless they have~~
26 ~~been or are~~ otherwise furnished or made available for inspection and copying.

27 (3) ***Time to respond; effect of not responding.*** ~~The request, without leave of the judge, may~~
28 ~~be served upon the plaintiff after commencement of the action and upon any other party~~
29 ~~with or after service of process upon that party. Each matter of which an admission is~~
30 ~~requested shall be separately set forth. A matter is admitted unless, within 30 days after~~
31 ~~being served~~ service of the request, ~~or within such shorter or longer time as the court~~
32 ~~may allow~~, the party to whom the request is directed serves ~~upon~~ on the requesting party
33 requesting the admission a written answer or objection addressed to the matter; and
34 signed by the party or ~~by such party’s~~ its attorney, ~~but, unless the court shortens the time,~~
35 ~~except that~~ a defendant ~~shall not be required to~~ may serve answers or objections ~~before~~
36 ~~the expiration of~~ within 45 days after ~~service of~~ being served with process ~~upon the~~

1 defendant. A shorter or longer time may be stipulated to under K.S.A. 60-229, and
2 amendments thereto, or be ordered by the court.

3 (4) **Answer.** ~~If objection is made, the reasons therefor shall be stated. If a matter is not~~
4 ~~admitted, the~~ The answer shall ~~must~~ specifically deny the matter ~~it~~ or set forth ~~state~~ in
5 detail the reasons why the answering party cannot truthfully admit or deny the matter ~~it~~.
6 A denial shall ~~must~~ fairly ~~meet~~ respond to the substance of the requested admission;
7 matter; and when good faith requires that a party qualify such party's ~~an~~ answer or deny
8 only a part of the a matter, of which an admission is requested, such party shall specify
9 so much of it as is true the answer must specify the part admitted and qualify or deny the
10 remainder rest. ~~An~~ The answering party may ~~not give~~ assert lack of knowledge or
11 information or knowledge as a reason for failure ~~failing~~ to admit or deny unless such
12 only if the party states that such party ~~it~~ has made reasonable inquiry and that the
13 information known ~~it knows~~ or can readily obtainable by such party obtain is insufficient
14 to enable such party ~~it~~ to admit or deny.

15 (5) **Objections.** The grounds for objecting to a request must be stated. A party who considers
16 that a matter of which an admission has been requested ~~must not object solely on the~~
17 ~~ground that the request presents a genuine issue for trial may not, on that ground alone,~~
18 object to the request; such party, subject to the provisions of subsection (c) of K.S.A. 60-
19 237, and amendments thereto, may deny the matter or set forth reasons why such party
20 cannot admit or deny it.

21 (6) **Motion regarding the sufficiency of an answer or objection.** The requesting party who
22 has requested the admissions may move to determine the sufficiency of the answers ~~an~~
23 ~~answer or objections~~ objection. Unless the judge determines that court finds an objection
24 is justified, the judge shall ~~it must~~ order that an answer be served. If the judge determines
25 On finding that an answer does not comply with the requirements of this rule this
26 section, the judge court may order either that the matter is admitted or that an amended
27 answer be served. The judge, in lieu of these orders, may determine that final disposition
28 of the request be made at court may defer its final decision until a pretrial conference or
29 at a designated specified time prior to before trial. The provisions of subsection (a) of
30 K.S.A. 60-237(a)(5), and amendments thereto, apply ~~applies~~ to the ~~an~~ award of expenses
31 incurred in relation to the motion.

32 (b) **Effect of an admission; withdrawing or amending it.** Any ~~A~~ matter admitted under this rule
33 section is conclusively established unless the judge court, on motion, permits ~~withdrawal or~~
34 ~~amendment~~ of the admission to be withdrawn or amended. Subject to the provisions of K.S.A. 60-
35 216(e), and amendments thereto, governing amendment of a pretrial order, the judge court may
36 permit withdrawal or amendment when ~~if it would promote~~ the presentation of the merits of the
37 action will be subserved thereby and the party who obtained the admission fails to satisfy the judge
38 that withdrawal or amendment will and if the court is not persuaded that it would prejudice such the
39 requesting party in maintaining or defending the such party's action or defense on the merits. Any
40 An admission made by a party under this rule section is for the purpose of the pending action only
41 and is not an admission by such party for any other purpose nor may it ~~and cannot~~ be used against
42 such the party in any other proceeding.

1 COMMENT

2 The language of K.S.A. 60-236 has been amended as part of the general restyling of the
3 Kansas Code to make it more easily understood and to make style and terminology
4 consistent throughout the Code. These changes are intended to be stylistic only.

5 K.S.A. 60-236 generally follows Federal Rule 36 with minor differences regarding the
6 timing of service and time to respond.

7 The final sentence of the first paragraph of former subsection (a) was omitted as a
8 redundant cross-reference to the discovery moratorium provisions of K.S.A. 60-237(c).

9 **60-237. Failure to allow cooperate in discovery; sanctions.**

10 (a) *Motion for an order compelling disclosure or discovery.*

11 (1) *In general.* ~~A party, upon reasonable~~ On notice to other parties and all affected persons
12 ~~affected thereby, a party may apply~~ move for an order compelling disclosure or
13 ~~discovery, as follows: The motion must include a certification that the movant has in~~
14 ~~good faith conferred or attempted to confer with the person or party failing to make~~
15 ~~disclosure or discovery in an effort to obtain it without court action and must describe~~
16 ~~the steps taken by all attorneys or unrepresented parties to resolve the issues in dispute.~~

17 (2) *Appropriate court.* ~~An application~~ A motion for an order to a party may must be made
18 ~~to in the court in which where~~ the action is pending, ~~or, on matters relating to a~~
19 ~~deposition, to the judge in the district where the deposition is being taken. An application~~
20 ~~A motion~~ for an order to a ~~deponent who is not a party shall~~ nonparty must be made to
21 ~~the judge~~ in the district where the ~~deposition is being~~ discovery is or will be taken.

22 (3) *Motion Specific motions.*

23 (A) *To compel disclosure.* If a party fails to make a disclosure required by ~~subsection~~
24 ~~(b)(6) of K.S.A. 60-226(b)(6), and amendments thereto, any other party may~~
25 ~~move to compel disclosure and for appropriate sanctions. The motion shall~~
26 ~~include a certification that the movant has in good faith conferred or attempted~~
27 ~~to confer with the party not making the disclosure in an effort to secure the~~
28 ~~disclosure without court action and shall describe the steps taken by all counsel~~
29 ~~or unrepresented parties to resolve the issues in dispute.~~

30 (B) *To compel a discovery response.* A party seeking discovery may move for an
31 order compelling an answer, designation, production, or inspection. This motion
32 may be made if:

33 (i) If a deponent fails to answer a question ~~propounded or submitted~~ asked under
34 K.S.A. 60-230 or 60-231, and amendments thereto, or;

1 (ii) a corporation or other entity fails to make a designation under ~~subsection (b)~~
2 ~~of K.S.A. 60-230(b)(6) or subsection (a) of K.S.A. 60-231(a)(4), and~~
3 ~~amendments thereto, or;~~

4 (iii) a party fails to answer an interrogatory submitted under K.S.A. 60-233, and
5 ~~amendments thereto, or if~~

6 (iv) a party, in response to a request for inspection submitted under K.S.A. 60-
7 234, ~~and amendments thereto~~ fails to respond that inspection will be
8 permitted ~~— or fails to permit inspection —~~ as requested ~~under K.S.A. 60-~~
9 ~~234, and amendments thereto, or fails to permit inspection as requested, the~~
10 ~~discovering party may move for an order compelling an answer, or a~~
11 ~~designation, or an order compelling inspection in accordance with the~~
12 ~~request. The motion shall include a certification that the movant has in good~~
13 ~~faith conferred or attempted to confer with the person or party failing to make~~
14 ~~the discovery in an effort to secure the information or material without court~~
15 ~~action and shall describe the steps taken by all counsel or unrepresented~~
16 ~~parties to resolve the issues in dispute.~~

17 (C) ***Related to a deposition.*** When taking a ~~an oral~~ deposition ~~on oral~~ examination,
18 the proponent of the ~~party asking a~~ question may complete or adjourn the
19 examination before ~~applying~~ ~~moving~~ for an order.

20 (34) ***Evasive or incomplete disclosure, answer, or response.*** For purposes of this ~~subdivision~~
21 ~~subsection,~~ an evasive or incomplete disclosure, answer, or response ~~is to~~ must be treated
22 as a failure to disclose, answer, or respond.

23 (45) ***Expenses and sanctions Payment of expenses; protective orders.***

24 (A) ***If the motion is granted (or disclosure or discovery is provided after filing).*** If
25 ~~the motion is granted, the court must, and if the disclosure or requested discovery~~
26 ~~is provided after the motion is filed but before the court rules on~~ occurs before
27 ~~the motion is granted, the court may, after affording giving~~ an opportunity to be
28 heard, ~~may~~ require the party or deponent whose conduct necessitated the motion,
29 ~~or the party or attorney advising such that~~ conduct, or both ~~of them~~ to pay ~~to the~~
30 ~~moving party the~~ movant's reasonable expenses incurred in making the motion,
31 including ~~attorney~~ attorney's fees. ~~Expenses shall not be awarded under this~~
32 ~~subparagraph~~ But the court must not order this payment if:

33 (i) ~~the court finds that the motion was the movant~~ filed ~~without the movant's first~~
34 ~~making a~~ the motion before attempting in good faith ~~effort~~ to obtain the
35 disclosure or discovery ~~without court action, or that the;~~

36 (ii) the opposing party's nondisclosure, response, or objection was substantially
37 justified; ~~or~~

1 (iii) ~~that~~ other circumstances make an award of expenses unjust.

2 (B) ~~If the motion is granted, the court shall, after affording an opportunity to be~~
3 ~~heard, require the party or deponent whose conduct necessitated the motion, or~~
4 ~~the party or attorney advising such conduct or both of them to pay to the moving~~
5 ~~party the reasonable expenses incurred in making the motion, including attorney~~
6 ~~fees, unless the court finds that the motion was filed without the movant's first~~
7 ~~making a good faith effort to obtain the disclosure or discovery without court~~
8 ~~action, or that the opposing party's nondisclosure, response or objection was~~
9 ~~substantially justified or that other circumstances make an award of expenses~~
10 ~~unjust.~~

11 (C) ~~***If the motion is denied.***~~ If the motion is denied, the court may ~~enter issue~~ any
12 protective order authorized under ~~subsection (c) of~~ K.S.A. 60-226(c), and
13 amendments thereto, and ~~shall~~ **must**, after ~~affording~~ **giving** an opportunity to be
14 heard, require the ~~moving party~~ **movant**, or the attorney filing the motion, or both
15 ~~of them~~ to pay to the party or deponent who opposed the motion ~~the its~~
16 reasonable expenses incurred in opposing the motion, including ~~attorney~~
17 ~~attorney's fees, unless~~ **But the court finds that the making of must not order this**
18 **payment if** the motion was substantially justified or ~~that~~ other circumstances
19 make an award of expenses unjust.

20 (D) ~~***If the motion is granted in part and denied in part.***~~ If the motion is granted in
21 part and denied in part, the court may ~~enter issue~~ any protective order authorized
22 under ~~subsection (c) of~~ K.S.A. 60-226(c), and amendments thereto, and, may,
23 after ~~affording~~ **giving** an opportunity to be heard, apportion the reasonable
24 expenses incurred in relation to ~~for~~ the motion among the parties and persons in
25 a just manner.

26 (b) ***Failure to comply with a court order.***

27 (1) ***Sanctions by judge in the district where the deposition is taken.*** If ~~the court in the~~
28 ~~district where the discovery is taken orders~~ a deponent ~~fails~~ to be sworn or to answer a
29 question ~~and the deponent fails to obey after being directed to do so by the judge in the~~
30 ~~district in which the deposition is being taken, the failure may be considered a~~ **treated as**
31 contempt of ~~that~~ court.

32 (2) ***Sanctions by court in the district where the which action is pending.***

33 (A) ***For not obeying a discovery order.*** If a party or ~~an a party's~~ officer, director, or
34 managing agent of a party ~~—~~ or a ~~person~~ **witness** designated under ~~subsection (b)~~
35 ~~of~~ K.S.A. 60-230(b)(6) or ~~subsection (a) of~~ K.S.A. 60-231(a)(4), and amendments
36 thereto ~~—~~ to testify on behalf of a party fails to obey an order to provide or permit
37 discovery, including an order ~~made~~ under ~~subdivision~~ **subsection (a) of this section**
38 or under K.S.A. 60-235, and amendments thereto, the ~~judge before whom~~ **court**

1 where the action is pending may ~~make such issue further just orders, in regard to the~~
2 ~~failure as are just, and among others~~ They may include the following:

3 (A i) ~~An order directing that the matters regarding which embraced in the order~~
4 ~~was made or any other designated facts shall be taken to be as established for~~
5 ~~the purposes of the action, as the prevailing party claims in accordance with~~
6 ~~the claim of the party obtaining the order;~~

7 (B ii) ~~An order refusing to allow prohibiting the disobedient party to support or~~
8 ~~oppose from supporting or opposing designated claims or defenses, or~~
9 ~~prohibiting such disobedient party from introducing designated matters in~~
10 ~~evidence;~~

11 (C iii) ~~An order striking out pleadings or parts thereof, or in whole or in part;~~

12 (iv) ~~staying further proceedings until the order is obeyed, or ;~~

13 (v) ~~dismissing the action or proceeding or any in whole or in part; thereof, or~~

14 (vi) ~~rendering a default judgment by default against the disobedient party; or~~

15 (D vii) ~~In lieu of any of the foregoing orders or in addition thereto, an order treating~~
16 ~~as a contempt of court the failure to obey any orders order except an order to~~
17 ~~submit to a physical or mental examination;~~

18 (E B) ***For not producing a person for examination.*** ~~Where If a party has failed fails to~~
19 ~~comply with an order under subsection (a) of K.S.A. 60-235(a), and amendments~~
20 ~~thereto, requiring such party it to produce another person for examination, the court~~
21 ~~may issue any of the such orders as are listed in paragraphs (A), (B) and (C) of this~~
22 ~~subsection subdivision (2)(A)(i)-(vi), unless the disobedient party failing to comply~~
23 ~~shows that such party is unable to it cannot produce such the other person for~~
24 ~~examination.~~

25 (C) ***Payment of expenses.*** ~~In lieu of any of the foregoing orders~~ Instead of or in
26 addition thereto to the orders above, the judge shall require court must order the
27 disobedient party, failing to obey the order or the attorney advising such that party,
28 or both to pay the reasonable expenses, including attorney attorney's fees, caused
29 by the failure, unless the judge finds that the failure was substantially justified or
30 that other circumstances make an award of expenses unjust.

31 (c) ***Failure to disclose; false or misleading disclosure; refusal, to supplement an earlier***
32 ***response, or to admit.***

1 (1) **Failure to disclose or supplement.** ~~A~~ If a party that without substantial justification fails
2 to disclose provide information or identify a witness as required by subsection (b)(6) or
3 (e)(1) of K.S.A. 60-226(b)(6) or 60-226(e), and amendments thereto, shall not, unless
4 such failure is harmless, be permitted the party is not allowed to use that information or
5 witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was
6 substantially justified or is harmless as evidence at trial, at a hearing, or on a motion any
7 witness or information not so disclosed. In addition to or ~~in lieu~~ instead of this sanction,
8 the court, on motion and after affording giving an opportunity to be heard, may impose
9 other appropriate sanctions. In addition to :

10 (A) may order requiring payment of the reasonable expenses, including attorney
11 attorney's fees, caused by the failure, these sanctions may include any of the actions
12 authorized under subparagraphs (A), (B) and (C) of subsection (b)(2) and may
13 include;

14 (B) may inform informing the jury of the party's failure ~~to make the disclosure. ;~~ and

15 (C) may impose other appropriate sanctions, including any of the orders listed in
16 subsection (b)(2)(A)(i)-(vi).

17 (2) **Failure to admit.** If a party fails to admit the genuineness of any documents or the truth
18 of any matter, as what is requested under K.S.A. 60-236, and amendments thereto, and
19 if the requesting party requesting the admissions thereafter later proves the genuineness
20 of the document to be genuine or the truth of the matter true, such the requesting party
21 may apply to the judge for an order requiring move that the other party who failed to
22 admit to pay such party the reasonable expenses incurred in making such proof,
23 including reasonable attorney's fees, incurred in making that proof. The judge shall make
24 the court must so order unless; the judge finds that

25 (A) the request was held objectionable under to subsection (a) of K.S.A. 60-236(a), and
26 amendments thereto; or

27 (B) the admission sought was of no substantial importance, ~~or ;~~

28 (C) the party failing to admit had a reasonable ground to believe that ~~he~~ it might prevail
29 on the matter; ~~or~~

30 (D) there was other good reason for the failure to admit.

31 (d) **Party's Failure of party failure to attend at its own deposition, or serve answers to**
32 **interrogatories, or respond to a request for inspection.**

33 (1) **In general.**

34 (A) **Motion; grounds for sanctions.** The court where the action is pending may, on
35 motion, order sanctions if:

1 (i) If a party or ~~an~~ a party's officer, director, or managing agent of a party ~~—~~ or
2 a person designated under ~~subsection (b) of K.S.A. 60-230(b)(6) or~~
3 ~~subsection (a) of K.S.A. 60-231(a)(4), and amendments thereto — to testify~~
4 ~~on behalf of a party fails (1) to appear before the officer who is to take his~~
5 ~~deposition, after being served with a proper notice, to appear for that person's~~
6 ~~deposition; or~~

7 (2 ii) ~~to serve answers or objections to a party, after being properly served with~~
8 ~~interrogatories submitted under K.S.A. 60-233, and amendments thereto,~~
9 ~~after proper service of the interrogatories, or (3) to serve a written response~~
10 ~~to or a request for inspection submitted under K.S.A. 60-234, and~~
11 ~~amendments thereto, after proper service of the request, the court in which~~
12 ~~the action is pending on motion may make such orders in regard to the failure~~
13 ~~as are just, and among others it may take any action authorized under~~
14 ~~paragraphs (A), (B) and (C) of subsection (b)(2) of this section fails to serve~~
15 ~~its answers, objections, or written response.~~

16 (B) **Certification.** Any ~~A~~ motion specifying a failure under clause (2) or (3) of this
17 ~~subsection shall for sanctions for failing to answer or respond must include a~~
18 ~~certification that the movant has in good faith conferred or attempted to confer with~~
19 ~~the party failing to answer or respond act in an effort to obtain such the answer or~~
20 ~~response without court action and must describe the steps taken by all attorneys or~~
21 ~~unrepresented parties to resolve the issues in dispute. In lieu of any order or in~~
22 ~~addition thereto, the judge shall require the party failing to act or the attorney~~
23 ~~advising such party or both to pay the reasonable expenses, including attorney fees,~~
24 ~~caused by the failure, unless the judge finds that the failure was substantially~~
25 ~~justified or that other circumstances make an award of expenses unjust.~~

26 (2) **Unacceptable excuse for failing to act.** The ~~A~~ failure ~~to act~~ described in ~~subdivision~~
27 ~~(1)(A) this subsection may is not be excused on the ground that the discovery sought is~~
28 ~~was objectionable, unless the party failing to act has a pending motion for a protective~~
29 ~~order as provided by subsection (c) of under K.S.A. 60-226(c), and amendments thereto.~~

30 (3) **Types of sanctions.** Sanctions may include any of the orders listed in subsection
31 ~~(b)(2)(A)(i)-(vi). Instead of or in addition to these sanctions, the court must require the~~
32 ~~party failing to act, the attorney advising that party, or both to pay the reasonable~~
33 ~~expenses, including attorney's fees, caused by the failure, unless the failure was~~
34 ~~substantially justified or other circumstances make an award of expenses unjust.~~

35 (e) **Failure to provide electronically Electronically stored information.** Absent exceptional
36 circumstances, a court may not impose sanctions ~~under this article~~ on a party for failing to
37 provide electronically stored information lost as a result of the routine, good-faith operation of
38 an electronic information system.

39 COMMENT

1 The language of K.S.A. 60-237 has been amended as part of the general restyling of the
2 Kansas Code to make it more easily understood and to make style and terminology
3 consistent throughout the Code.

4 K.S.A. 60-237 generally follows Federal Rule 37, but differs in three respects. First, the
5 language in subsection (a) borrows from local federal district court rule 37.2 and requires
6 that the motion describe the steps taken to resolve the issues in dispute. Second, unlike Rule
7 37(a), sanctions are not mandatory under subsection (a) if the requested material is provided
8 before the court rules on the motion. Finally, there is no counterpart in the Kansas Code of
9 Federal Rule 37(f) regarding sanctions for failing to participate in framing a discovery plan.

10 The language of revised subsection (a)(2) has been amended to conform to the federal
11 rule. A motion to compel discovery by a party must now be filed in the court where the
12 action is pending, even for matters relating to depositions. This is a change to Kansas law,
13 but the Committee determined it was appropriate to adopt this 1993 amendment to Rule 37.

14 Like Rule 37(a)(1), K.S.A. 60-237(a)(1) requires a certification that the movant has in
15 good faith attempted to resolve the dispute prior to filing a motion for an order to compel
16 discovery. Kansas intentionally added a unique requirement, borrowed from a local district
17 rule, that the certification also describe the steps taken to resolve the issues in dispute. The
18 additional requirement to describe the steps has been added to subsection (d)(1)(B) for
19 consistency.

20 **60-238. ~~Jury trial of right~~ Right to a jury trial; demand.**

21 (a) ***Right preserved.*** The right of trial by jury as declared by section 5 of the bill of rights in the
22 Kansas constitution, ~~and~~ ~~— or as given provided~~ by a state statute ~~— of the state shall be is~~
23 preserved to the parties inviolate.

24 (b) ***Demand.*** ~~Any party may demand a trial by jury of~~ On any issue triable of right by a jury, a
25 party may demand a jury trial by:

26 (1) ~~Serving upon~~ servicing the other parties with a written demand therefor in writing ~~—~~
27 which may be included in a pleading — at any time after the commencement of the
28 action and not ~~no~~ later than 10 14 days after the service of the last pleading directed to
29 such the issue is served; and

30 (2) filing the demand ~~as required by~~ in accordance with K.S.A. 60-205, and amendments
31 thereto. ~~Such demand may be indorsed upon a pleading of the party.~~

32 (c) ~~Same; specification of~~ ***Specifying issues.*** In the its demand, a party may specify the issues
33 which the party that it wishes so to have tried by a jury; otherwise, the party shall be deemed it is

1 ~~considered~~ to have demanded ~~trial by a jury trial for on~~ all the issues so triable. If the party has
2 demanded ~~a jury trial by jury for on~~ only some ~~of the~~ issues, any other party ~~may —~~ within ~~10~~ 14
3 days after ~~service of being served with~~ the demand or such lesser ~~within a shorter time as ordered~~
4 ~~by the court may order; —~~ may serve a demand for ~~a jury trial by jury of on~~ any other or all ~~of the~~
5 ~~factual~~ issues ~~of fact in the action~~ triable by jury.

6 (d) ~~Waiver; withdrawal.~~ The failure of a party to serve and file a demand as required by this
7 section constitutes a waiver by the party of trial by jury but ~~A party waives a jury trial unless its~~
8 ~~demand is properly served and filed, but the court may set aside a waiver of a jury trial may be set~~
9 ~~aside by the judge in the interest of justice or when the waiver inadvertently results without serious~~
10 ~~negligence of the party. A proper demand for trial by jury made as herein provided may not be~~
11 ~~withdrawn without the consent of only if the parties consent.~~

12 COMMENT

13 The language of K.S.A. 60-238 has been amended as part of the general restyling of the
14 Kansas Code to make it more easily understood and to make style and terminology
15 consistent throughout the Code. These changes are intended to be stylistic only.

16 There is no counterpart in the federal rule of the language in subsection (d) that allows
17 the court to set aside waiver of a jury trial.

18 The time set in the former statute at 10 days has been revised to 14 days. See the
19 Comment to K.S.A. 60-206.

20 60-239. Trial by jury or by the court.

21 (a) ~~By jury When a demand is made.~~ When ~~a jury trial by jury~~ has been demanded ~~as provided~~
22 ~~in under K.S.A. 60-238, and amendments thereto,~~ the action ~~shall~~ must be designated ~~upon on~~ the
23 docket as a jury action. The trial ~~of on~~ all issues so demanded ~~shall~~ must be by jury; unless:

24 (1) the parties or their attorneys ~~of record, by written file a~~ stipulation ~~to a nonjury trial filed~~
25 ~~with the court or by an oral stipulation made in open court and entered in or so stipulate~~
26 ~~on the record; , consent to trial by the court sitting without a jury or~~

27 (2) the court, ~~on upon~~ motion or ~~of on~~ its own ~~initiative,~~ finds that ~~on some or all of those~~
28 ~~issues there is a no right of to a jury trial by jury of some or all of those issues does not~~
29 ~~exist under the constitution or statutes.~~

30 (b) ~~By the court When no demand is made.~~ Issues ~~on which a jury trial is not properly~~
31 ~~demand for trial as provided in K.S.A. 60-238 shall are to be tried by the court; but,~~
32 ~~notwithstanding the failure of a party to demand a jury in an action in which such demand might~~
33 ~~have been made of right, But the court in its discretion may, on motion,~~ order a jury trial by jury of
34 ~~on any or all issues~~ issue for which a jury might have been demanded.

1 (c) *Advisory jury; jury and trial by consent.* In all actions an action not triable of right by a jury,
2 the court, upon on motion or of on its own initiative;

3 (1) may try any issue with an advisory jury; or ~~(except in actions against the state when a~~
4 ~~statute of the state provides for trial without a jury)~~

5 (2) the court may, with the parties' consent of all parties, may order a trial with try any issue
6 by a jury whose verdict shall have has the same effect as if a jury trial by jury had been
7 a matter of right, unless the action is against the state and a state statute provides for a
8 nonjury trial.

9 COMMENT

10 The language of K.S.A. 60-239 has been amended as part of the general restyling of the
11 Kansas Code to make it more easily understood and to make style and terminology
12 consistent throughout the Code. These changes are intended to be stylistic only.

13 60-240. Assignment of Scheduling cases for trial; continuances.

14 (a) Assignment of Scheduling cases for trial. ~~The Each district courts shall court must~~ provide
15 by rule for the placing of actions upon the trial calendar (1) scheduling trials, ~~without request of the~~
16 ~~parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as~~
17 ~~the judge deems expedient. Precedence shall be given~~ The court must give priority to actions entitled
18 ~~thereto to priority by law any statute of the state.~~

19 (b) Continuances. ~~The For good cause, the court may for good cause shown~~ continue an action
20 at any stage of the proceedings ~~upon such on just terms as may be just.~~ When a continuance is
21 granted ~~on account of due to~~ the absence of evidence, it ~~shall is to~~ be at the cost of the party ~~making~~
22 ~~requesting the application continuance,~~ unless the court ~~orders otherwise orders.~~

23 (c) Motion for continuance based on absence of material witness, document, thing, or other
24 evidence; affidavit or declaration.

25 (1) Affidavit or declaration in support of motions. The court need not entertain ~~any a~~
26 a motion for a continuance based on the absence of a material witness, document,
27 thing, or other evidence unless supported by an affidavit or a declaration pursuant to
28 K.S.A. 53-601, and amendments thereto.

29 (A) An affidavit or declaration in support of a motion for a continuance based on the
30 absence of a material witness must which shall state;

31 (i) the name of the witness, and, if known, the ~~witness's witness'~~ residence;

1 (ii) ~~a statement~~ the substance of the ~~witness's~~ witness' expected testimony and
2 the basis ~~of such~~ for the expectation;

3 (iii) ~~a statement~~ that the affiant or declarant believes ~~it~~ the statements in the
4 affidavit or declaration to be true; and

5 (iv) the efforts ~~which~~ that have been made to procure the ~~witness's~~ witness'
6 attendance or deposition.

7 (B) An affidavit or declaration in support of a motion for a continuance based on the
8 absence of a material document, thing, or other evidence must contain similar
9 statements, with appropriate modifications.

10 (2) Objections. ~~The A~~ party objecting to ~~the a~~ continuance ~~shall~~ may not be allowed to
11 contradict the statement of ~~what~~ the substance of the absent ~~witness is~~ witness' expected
12 to testify testimony or the substance of the absent document, thing, or other evidence,
13 but may disprove contradict any other statement in ~~such~~ the affidavit or declaration.

14 (3) Granting or denying the motion. ~~Such motion may, in the discretion of the court, be~~
15 ~~denied~~ The court may deny the motion if the adverse party ~~will admit~~ admits that the
16 absent witness would, if present, testify as stated in the affidavit or declaration, and ~~will~~
17 ~~agree~~ agrees that the ~~same shall~~ affidavit or declaration be received ~~and considered~~ as
18 evidence at the trial and considered as though the witness were present and so testified.
19 ~~The same rule shall apply, with necessary changes, when the motion is grounded on the~~
20 ~~want of any material document, thing or other evidence. In all cases, the grant~~ The
21 granting or denial of a continuance shall be is discretionary in all cases, regardless
22 whether the foregoing of compliance with the provisions have been complied with or not
23 in this subsection.

24 COMMENT

25 The language of K.S.A. 60-240 has been amended as part of the general restyling of the
26 Kansas Code to make it more easily understood and to make style and terminology
27 consistent throughout the Code. These changes are intended to be stylistic only.

28 Subsection (a) was amended to delete the specific directives regarding local rules. The
29 best method for scheduling trials depends on local conditions. It is useful to ensure that each
30 district adopts an explicit rule for scheduling trials. It is not useful to limit or dictate the
31 provisions of local rules.

32 Subsections (b) and (c) are unique to Kansas. A formal affidavit is no longer required.
33 K.S.A. 53-601 allows a written unsworn declaration, certificate, verification, or statement
34 subscribed in proper form as true under penalty of perjury to substitute for an affidavit.

35 60-241. Dismissal of actions.

1 (a) *Voluntary dismissal; effect thereof.*

2 (1) *By the plaintiff; by stipulation.*

3 (A) Without a court order. Subject to the provisions of subsection (c) of K.S.A. 60-
4 223(e), 60-223a, and 60-223b, and amendments thereto, and of any applicable state
5 statute of the state, the plaintiff may dismiss an action ~~may be dismissed by the~~
6 plaintiff without a court order of court (i) by filing:

7 (i) a notice of dismissal at any time before ~~service by the adverse~~ the opposing
8 party serves of either an answer or ~~of~~ a motion for summary judgment;
9 ~~whichever first occurs~~; or

10 (ii) ~~by filing~~ a stipulation of dismissal signed by all parties who have appeared
11 ~~in the action. Where~~ When the dismissal is by stipulation, the clerk of the
12 court ~~shall~~ must enter an order of dismissal as a matter of course.

13 (B) Effect. Unless ~~otherwise stated in the notice of dismissal or stipulation states~~
14 ~~otherwise~~, the dismissal is without prejudice, ~~except that a notice of dismissal~~
15 ~~operates as an adjudication upon the merits when filed by a plaintiff who has once~~
16 But if the plaintiff previously dismissed in any court of the United States or of any
17 state an federal- or state-court action based on or including the same claim, a notice
18 of dismissal operates as an adjudication on the merits.

19 (2) *By court order of court; effect.* Except as provided in paragraph (1) of this subsection
20 (a)(1), an action ~~shall not may~~ be dismissed at the plaintiff's instance save upon request
21 only by court order, of the judge and upon such on terms and conditions as the judge
22 ~~deems that the court considers proper. If a defendant has pleaded a counterclaim has~~
23 ~~been pleaded by a defendant prior to the service upon the defendant of before being~~
24 ~~served with~~ the plaintiff's motion to dismiss, the action ~~shall not may~~ be dismissed
25 ~~against over~~ the defendant's objection unless only if the counterclaim can remain pending
26 for independent adjudication by the court. Unless the order states otherwise specified in
27 ~~the order~~, a dismissal under this paragraph is without prejudice.

28 (b) *Involuntary dismissal; effect thereof; notice.*

29 (1) ~~For failure of~~ If the plaintiff fails to prosecute or to comply with ~~these sections this~~
30 chapter or any a court order of court, a defendant may move for dismissal of an to
31 dismiss the action or of any claim against ~~the defendant it~~. Unless the court in its
32 dismissal order for dismissal states otherwise specifies, a dismissal under this paragraph
33 and any dismissal not provided for in under this section, ~~other than a dismissal~~ except
34 one for lack of jurisdiction, for improper venue, or for failure to join a party under
35 K.S.A. 60-219, and amendments thereto; — operates as an adjudication upon on the
36 merits.

37 (2) ~~The judge may on the judge's~~ On its own motion, the court may dismiss cause a case to

1 be dismissed without prejudice for lack of prosecution, but only after directing the clerk
2 to notify notice to counsel of record, not less than ~~10~~ 14 days ~~in advance of such~~ prior
3 to the intended dismissal, that an order of dismissal will be entered unless cause ~~be~~ is
4 shown for not doing so.

5 (c) ~~Dismissal of Dismissing a counterclaim, cross-claim crossclaim, or third-party claim.~~ The
6 provisions of this section apply ~~This section applies to the~~ a dismissal of any counterclaim, ~~cross-~~
7 ~~claim crossclaim,~~ or third-party claim. A claimant's voluntary dismissal ~~by the claimant alone~~
8 pursuant to paragraph (1) of ~~under~~ subsection (a)(1)(A)(i) ~~shall~~ must be made:

9 (1) before a responsive pleading is served; or;

10 (2) if there is ~~none~~ no responsive pleading, before ~~the introduction of~~ evidence is introduced
11 at a hearing or the trial or hearing.

12 (d) *Costs of a previously dismissed action.* If a plaintiff who ~~has once~~ previously dismissed an
13 action in any court ~~commences~~ files an action based ~~upon~~ on or including the same claim against
14 the same defendant, the court:

15 (1) may ~~make such~~ order for the payment of the plaintiff to pay all or part of the costs of ~~the~~
16 that previous action; ~~previously dismissed as it deems proper~~ and

17 (2) may stay the proceedings ~~in the action~~ until the plaintiff has complied ~~with the order.~~

18 COMMENT

19 The language of K.S.A. 60-241 has been amended as part of the general restyling of the
20 Kansas Code to make it more easily understood and to make style and terminology
21 consistent throughout the Code. These changes are intended to be stylistic only.

22 When K.S.A. 60-223 was amended in 1969, K.S.A. 60-223a and 60-223b were separated
23 from K.S.A. 60-223. K.S.A. 60-241(a)(1) was amended to correct the cross-reference to
24 what had become K.S.A. 60-223(e), but K.S.A. 60-223a and 60-223b were inadvertently
25 overlooked. K.S.A. 60-223a and 60-223b are now added to the list of exceptions in K.S.A.
26 60-241(a)(1)(A). This change does not affect established meaning. K.S.A. 60-223b explicitly
27 incorporates K.S.A. 60-223(e), and thus was already absorbed directly into the exceptions
28 in K.S.A. 60-241(a)(1). K.S.A. 60-223a requires court approval of a compromise or
29 dismissal in language parallel to K.S.A. 60-223(e) and thus supersedes the apparent right to
30 dismiss by notice of dismissal.

31 There is no counterpart of subsection (b)(2) in the federal rule.

32 The time set in the former statute at 10 days has been revised to 14 days. See the
33 Comment to K.S.A. 60-206.

1 **60-242. Multicounty and multidistrict litigation; consolidation; separate trials.**

2 (a) *Consolidation.* ~~When~~ If actions involving a common question of law or fact are pending
3 before the court in the same or different counties in the judicial district, the judge court may:

4 (1) ~~order a joint~~ join for hearing or trial ~~of any or all of the matters in~~ at issue in the actions;

5 (2) ~~may order all~~ consolidate the actions ~~consolidated; and may or~~

6 (3) ~~make such~~ issue any other orders ~~concerning proceedings therein as may tend to avoid~~
7 unnecessary ~~costs~~ cost or delay.

8 (b) *Separate trials.* ~~In furtherance of~~ For convenience, to avoid prejudice, ~~or when separate trials~~
9 ~~will be conducive to expedition and economy~~ to expedite and economize, the judge court may order
10 a separate trial in the county where the action is pending, or a different county in the judicial district,
11 ~~of any claim, cross-claim, counterclaim, third-party claim or any separate issue, or any number of~~
12 ~~one or more separate issues, claims, cross-claims~~ crossclaims, counterclaims, ~~or third-party claims,~~
13 ~~or issues, always preserving inviolate the right of trial by jury~~ When ordering a separate trial, the
14 court must preserve any right to a jury trial.

15 (c) *Multidistrict litigation.*

16 (1) When civil actions arising out of the same transaction or occurrence or series of
17 transactions or occurrences are pending in different judicial districts, the supreme court,
18 ~~upon~~ on request of a party or of any court in which one of the actions is pending and
19 upon finding that a transfer and consolidation will promote the just and efficient conduct
20 of the actions, may order transfer of the pending actions to one of the counties in which
21 an action is pending. The actions may be consolidated for discovery, pretrial proceedings
22 and possible trial. The supreme court ~~shall assign~~ must designate a judge to hear the
23 consolidated actions ~~to a judge designated by the supreme court.~~ Actions filed
24 subsequent to the order may be consolidated as provided ~~herein~~ in this section.

25 (2) The assigned judge ~~shall have the power to~~ may conduct all pretrial and discovery
26 proceedings, issue pretrial and discovery orders ~~therein, determine~~ decide questions of
27 law ~~submitted to the court~~ including motions for summary judgment and, when the
28 assigned judge conducts a trial, allocate expenses of the trial among counties.

29 (3) ~~In the assigned judge's discretion, the~~ The assigned judge may conduct a joint trial of any
30 or all of the consolidated actions, but all parties to the actions jointly tried must consent
31 to joint trial. ~~Trials by jury~~ Jury trials may be conducted in any county ~~which that~~
32 have had venue of any of the consolidated actions, subject to a change of venue under
33 K.S.A. 60-609, and amendments thereto. If the assigned judge ~~determines~~ decides not
34 to conduct the trial of any ~~one~~ of the consolidated actions or if ~~any~~ a party to any of the
35 consolidated actions does not consent to joint trial, the assigned judge ~~shall~~ must return

1 that action, and the record in that action, to the district court from which it originated.
2 The assigned judge ~~shall~~ must notify the supreme court ~~of the return of that~~ the action
3 has been returned.

4 COMMENT

5 The language of K.S.A. 60-242 has been amended as part of the general restyling of the
6 Kansas Code to make it more easily understood and to make style and terminology
7 consistent throughout the Code. These changes are intended to be stylistic only.

8 There is no counterpart of subsection (c) in Federal Rule 42.

9 **60-243. Evidence Taking testimony; evidence.**

10 (a) *Form and admissibility.* ~~In all trials the testimony of witnesses shall~~ At trial, the witness'
11 testimony must be taken ~~orally~~ in open court, unless otherwise provided by ~~this article~~ law. ~~All~~
12 ~~evidence shall be admitted which is admissible under specific statutes or article 4 of this chapter.~~
13 ~~The competency of a witness to testify shall be determined in like manner~~ For good cause in
14 compelling circumstances and with appropriate safeguards, the court may permit testimony in open
15 court by contemporaneous transmission from a different location.

16 (b) *Scope of examination and cross-examination.* A party may ~~interrogate~~ examine any
17 unwilling or hostile witness by leading questions. A party may call an adverse party or an officer,
18 director, or managing agent of a public or private corporation, ~~or of a partnership,~~ or an association
19 ~~which that~~ is an adverse party, ~~and may examine the~~ interrogate such witness by leading questions,
20 and may contradict ~~such witness~~ and impeach ~~such the~~ witness ~~in all respects~~ as if ~~such the~~ witness
21 had been called by the adverse party, ~~and the~~ The witness thus called may be contradicted and
22 impeached by ~~or on behalf of the adverse party also, and but~~ may be cross-examined ~~by the adverse~~
23 party only upon on the subject matter of ~~such the~~ witness' direct examination ~~in chief.~~

24 (c) *Record of excluded evidence.* ~~In an action tried by a jury trial,~~ if an objection to a question
25 ~~propounded~~ to a witness is sustained ~~by the court,~~ the examining attorney may make a specific offer
26 of what the examining attorney expects to prove by the ~~witness'~~ witness' answer ~~of the witness.~~ The offer
27 ~~shall must~~ be made out of the ~~jury's~~ jury's hearing ~~of the jury.~~ The court may add ~~such other or any~~ further
28 statement ~~as that~~ clearly shows the character of the evidence, the form in which it was offered, the
29 objection made, and the ruling ~~thereon on the objection.~~ In nonjury trials ~~actions tried without a jury~~
30 the same procedure may be followed, except that the court upon request ~~shall must~~ take and report
31 the evidence in full; unless it clearly appears that the evidence is not admissible ~~on any ground or~~
32 ~~that the witness~~ is privileged.

33 (d) *Evidence on a motion motions.* When a motion ~~is based~~ relies on facts ~~not appearing of~~
34 outside the record, the court may hear the matter on affidavits or on declarations pursuant to K.S.A.

1 53-601, and amendments thereto, ~~presented by the respective parties, but the court may direct that~~
2 ~~the matter be heard or may hear it~~ wholly or partly on oral testimony or on depositions.

3 (e) ~~Interpreters~~Interpreter. In accordance with K.S.A. 75-4351 through 75-4355d₂ and
4 amendments thereto, the court may appoint an interpreter of its ~~own selection choosing; and fix the~~
5 ~~interpreter's reasonable compensation. The compensation shall to be paid out of from~~ funds provided
6 by law or, subject to the limitations in K.S.A. 75-4352 and 75-4355b₂ and amendments thereto, by
7 one or more ~~of the parties; as the court may direct, and may be taxed ultimately and tax the~~
8 ~~compensation~~ as costs, ~~in the discretion of the court.~~

9 COMMENT

10 The language of K.S.A. 60-243 has been amended as part of the general restyling of the
11 Kansas Code to make it more easily understood and to make style and terminology
12 consistent throughout the Code.

13 The Committee determined that subsection (a) should be amended to more closely
14 conform to the federal rule. Admissibility and competency to testify are governed by article
15 4, and the last two sentences of former subsection (a) are unnecessary.

16 There are no counterparts of subsections (b) and (c) in Federal Rule 43.

17 A formal affidavit is no longer required. K.S.A. 53-601 allows a written unsworn
18 declaration, certificate, verification, or statement subscribed in proper form as true under
19 penalty of perjury to substitute for an affidavit.

20 **60-244. Proof of records.** ~~Authentication and admissibility of official~~ Official records and other
21 documents ~~shall be evidenced are governed by in the manner provided in~~ article 4 of this chapter.

22 COMMENT

23 The language of K.S.A. 60-244 has been amended as part of the general restyling of the
24 Kansas Code to make it more easily understood and to make style and terminology
25 consistent throughout the Code. These changes are intended to be stylistic only.

26 Federal Rule 44 sets out the method of proving official records which, in Kansas, is
27 governed by the Kansas Rules of Evidence. K.S.A. 60-244 was inserted as a placeholder,
28 and merely provides a reference to article 4 for the substance of proving records and other
29 documents.

30 **60-245. Subpoenas.**

31 (a) ~~Form; issuance~~ In general.

1 (1) ~~Every subpoena shall:~~ ***Form and contents.***

2 (A) ***Requirements — In general.*** Every subpoena must:

3 (i) ~~State~~ state the ~~name of the~~ court from which it ~~is~~ issued;

4 (ii) ~~state~~ state the title of the action, the ~~name of the~~ court in which it is pending, and the
5 file number of the action;

6 (iii) ~~command each person to whom it is directed to do the following at a specified~~
7 time and place: attend and give testimony testify; or to produce and permit
8 inspection and copying of designated books, documents, electronically stored
9 information, or tangible things in the that person's possession, custody, or
10 control; of that person; or to permit the inspection of premises, at a time and
11 place specified in the subpoena; and

12 (iv) ~~set forth out~~ the text of subsections (c) and (d) ~~of this section.~~

13 (B) ***Command to attend a deposition — notice of the recording method.*** A subpoena
14 commanding attendance at a deposition must state the method for recording the
15 testimony.

16 (C) ***Combining or separating a command to produce or to permit inspection;***
17 ***specifying the form for electronically stored information.*** A command to produce
18 evidence documents, electronically stored information, or tangible things or to
19 permit the inspection, copying, testing or sampling of premises may be joined with
20 a command to appear at trial or hearing or at deposition included in a subpoena
21 commanding attendance at a deposition, hearing, or trial, or may be issued
22 separately set out in a separate subpoena. A subpoena may specify the form or
23 forms in which electronically stored information is to be produced. Subpoena and
24 production of records of a business which that is not a party shall may be in
25 accordance with K.S.A. 60-245a, and amendments thereto.

26 (D) ***Command to produce; included obligations.*** A command in a subpoena to
27 produce documents, electronically stored information, or tangible things requires
28 the responding party to permit inspection, copying, testing, or sampling of the
29 materials.

30 (2) ***Issued from which court.*** A subpoena must issue as follows:

31 (A) commanding for attendance at a trial or hearing or trial, shall issue from the district
32 court in which where the hearing or trial is to be held;

33 (B) A subpoena for attendance at a deposition, shall issue from the district court in
34 which the action is pending or from the officer before whom the deposition is to
35 be taken, or, if the deposition is to be taken outside the this state, from an officer
36 authorized by the law of the other state to issue the subpoena; and

1 (C) ~~for production or inspection, if separate from a subpoena commanding the a~~
2 ~~person's attendance of a person, a subpoena for production, inspection, copying,~~
3 ~~testing or sampling shall issue~~ from the district court in which the action is
4 pending, or, if the production, inspection, copying, testing, or sampling is to be
5 made outside ~~the this~~ state, from an officer authorized by the law of the other state
6 to issue the subpoena.

7 (3) ***Issued by whom.*** Every subpoena issued by the court ~~shall must~~ be issued by the clerk
8 under the seal of the court or by a judge. ~~Upon request of a party, the The~~ clerk ~~shall~~
9 ~~must~~ issue a blank subpoena, signed but otherwise in blank, to a party who requests it.
10 The blank subpoena ~~shall must~~ bear the seal of the court, ~~the title and file number of the~~
11 ~~action and the clerk's signature or a facsimile of the clerk's signature.~~ The party to whom
12 a blank subpoena is issued ~~shall must~~ fill it in before service.

13 (b) ***Service.*** Service of a subpoena ~~upon a person named therein~~ may be made anywhere within
14 ~~the this~~ state, ~~shall must~~ be made in accordance with K.S.A. 60-303, and amendments thereto, and
15 ~~shall must~~, if the subpoena requires a person's attendance ~~is commanded~~, be accompanied by the fees
16 for one day's attendance and the mileage allowed by law. ~~When sought If,~~ independently of a
17 deposition, ~~prior notice of any commanded production, inspection, copying, testing or sampling of~~
18 ~~documents~~ the subpoena commands the production of documents, electronically stored information,
19 ~~or tangible things~~ or ~~the~~ inspection of premises before trial, ~~shall be then~~ before it is served, a notice
20 ~~must be served on each party in the manner prescribed by subsection (b) of~~ accordance with K.S.A.
21 60-205(b), and amendments thereto.

22 (c) ***Protection of persons Protecting a person subject to subpoenas a subpoena.***

23 (1) ***Avoiding undue burden or expense; sanctions.*** A party or ~~an~~ attorney responsible for
24 ~~the issuance and service of~~ issuing and serving a subpoena ~~shall must~~ take reasonable
25 steps to avoid imposing undue burden or expense on a person subject to ~~that the~~
26 subpoena. The issuing court ~~on behalf of which the subpoena was issued shall must~~
27 enforce this duty and impose ~~upon the party or attorney in breach of this duty~~ an
28 appropriate sanction; ~~— which may include, but is not limited to, a lost earnings and~~
29 reasonable ~~attorney fee~~ attorney's fees — on a party or attorney who fails to comply .

30 (2) ***Command to produce materials or permit inspection.***

31 (A) ***Appearance not required.*** A person commanded to produce ~~and permit inspection,~~
32 ~~copying, testing or sampling of~~ designated documents, electronically stored
33 information, ~~books, papers, documents~~ or tangible things, ~~or to permit the~~
34 inspection of premises, need not appear in person at the place of production or
35 inspection unless also commanded to appear for a deposition, hearing, or trial.

36 (B) ***Objections.*** ~~Subject to subsection (d)(2), a~~ A person commanded to produce
37 designated materials or to ~~and permit inspection, copying, testing or sampling may;~~
38 ~~within 14 days after service of the subpoena or before the time specified for~~
39 ~~compliance if such time is less than 14 days after service, serve upon on~~ the party

1 or attorney designated in the subpoena a written objection to inspecting, copying,
2 testing, or sampling producing any or all of the designated materials or to
3 inspecting inspection of the premises — or to producing electronically stored
4 information in the form or forms requested. The objection must be served before
5 the earlier of the time specified for compliance or 14 days after the subpoena is
6 served. If an objection is made, the following rules apply:

7 (i) the party serving the subpoena shall not be entitled to inspect, copy, test or
8 sample the materials or inspect the premises except pursuant to an order of
9 the court by which the subpoena was issued. If objection has been made, the
10 party serving the subpoena may, upon At any time, on notice to the
11 commanded person commanded to produce, the serving party may move at
12 any time the issuing court for an order to compel the compelling production;
13 or inspection copying, testing or sampling.

14 (ii) Such an order to compel shall protect any person who is not a party or an
15 officer of a party from significant expense resulting from the inspection,
16 copying, testing or sampling commanded. These acts may be required only
17 as directed in the order, and the order must protect a person who is neither a
18 party nor a party's officer from significant expense resulting from
19 compliance.

20 (3) Quashing or modifying a subpoena.

21 (A) When required. On timely motion, the issuing court by which a subpoena was
22 issued shall must quash or modify the a subpoena if it that:

23 (i) Fails fails to allow a reasonable time for compliance to comply;

24 (ii) requires a resident of this state who is not neither a party or an nor a party's
25 officer of a party to travel to a place more than 100 miles from the place
26 where that person resides, is employed, or regularly transacts business in
27 person or requires a nonresident who is not neither a party or an nor a party's
28 officer of a party to travel to a place more than 100 miles from the place
29 where the nonresident was served with the subpoena, is employed, or
30 regularly transacts business in person; — except that, subject to the
31 provisions of subsection (c)(3)(B)(iii) subdivision (B)(iii), such a nonparty
32 the person may in order to attend trial be commanded to travel to the place
33 of trial;

34 (iii) requires disclosure of privileged or other protected matter, and if no
35 exception or waiver applies; or

36 (iv) subjects a person to undue burden.

37 (B) If a subpoena When permitted. To protect a person subject to or affected by a
38 subpoena, the issuing court may, on motion, quash or modify the subpoena if it

1 requires:

2 (i) ~~Requires disclosure of disclosing~~ a trade secret or other confidential research,
3 development, or commercial information; ~~or~~

4 (ii) ~~requires disclosure of disclosing~~ an unretained expert's opinion or
5 information ~~not describing that does not describe~~ specific events or
6 occurrences in dispute and ~~resulting results~~ from the expert's study ~~made not~~
7 ~~at the request of any that was not requested by a party;~~ or

8 (iii) ~~requires~~ a person who is ~~not neither~~ a party ~~or an~~ nor a party's officer of a
9 party to incur substantial expense to travel more than 100 miles to attend
10 trial;

11 (C) **Specifying conditions as an alternative.** the court may, to protect a person subject
12 to or affected by the subpoena, quash or modify the subpoena or, if the party in
13 whose behalf the subpoena is issued In the circumstances described in subsection
14 (c)(3)(B), the court may, instead of quashing or modifying a subpoena, order
15 appearance or production under specified conditions if the serving party:

16 (i) shows a substantial need for the testimony or material that cannot be
17 otherwise met without undue hardship; and

18 (ii) ~~assures ensures~~ that the ~~subpoenaed~~ person to whom the subpoena is
19 addressed will be reasonably compensated, ~~the court may order appearance~~
20 ~~or production only upon specified conditions.~~

21 (4) **Person in prison.** A person confined in prison may be required to appear for
22 examination by deposition only in the county where the person is imprisoned.

23 (d) **Duties in responding to a subpoena.**

24 (1) **Producing documents or electronically stored information.** These procedures apply to
25 producing documents or electronically stored information:

26 (A) **Documents.** A person responding to a subpoena to produce documents ~~shall must~~
27 produce them as they are kept in the ~~usual~~ ordinary course of business or ~~shall must~~
28 organize and label them to correspond ~~with to~~ the categories in the demand.

29 (B) **Form for producing electronically stored information not specified.** If a
30 subpoena does not specify ~~the a~~ form or forms for producing electronically stored
31 information, ~~the a~~ person responding to a subpoena must produce ~~the information~~
32 it in a form or forms in which ~~the person it is~~ ordinarily ~~maintains it maintained~~ or
33 in a reasonably usable form or forms ~~that are reasonable useable.~~

1 (C) Electronically stored information produced in only one form. ~~A~~ The person
2 responding to a subpoena need not produce the same electronically stored
3 information in more than one form.

4 (D) Inaccessible electronically stored information. ~~A~~ The person responding to a
5 subpoena need not provide discovery of electronically stored information from
6 sources that the person identifies as not reasonably accessible because of undue
7 burden or cost. On motion to compel discovery or to ~~quash~~ for a protective order,
8 the person ~~from whom discovery is sought~~ responding must show that the
9 information ~~sought~~ is not reasonably accessible because of undue burden or cost.
10 If that showing is made, the court may nonetheless order discovery from such
11 sources if the requesting party shows good cause, considering the limitations of
12 subsection (b)(2)(A) of K.S.A. 60-226(b)(2)(A), and amendments thereto. The
13 court may specify conditions for the discovery.

14 (2) Claiming privilege or protection.

15 (A) Information withheld. When information subject to a subpoena is withheld on ~~A~~
16 person withholding subpoenaed information under a claim that such information
17 it is privileged or subject to protection as trial-preparation materials, material must:

18 (i) expressly make the claim; ~~shall be made expressly~~ and

19 (ii) ~~shall be supported by a description~~ describe the nature of the withheld
20 documents, communications, or things ~~not produced that is sufficient to in a~~
21 manner that, without revealing information itself privileged or protected, will
22 enable the demanding party to contest parties to assess the claim.

23 (B) Information produced. If information is produced in response to a subpoena ~~that~~
24 is subject to a claim of privilege or of protection as trial-preparation material, the
25 person making the claim may notify any party that received the information of the
26 claim and the basis for it. After being notified, a party must promptly return,
27 sequester, or destroy the specified information and any copies it has; ~~and may must~~
28 not use or disclose the information until the claim is resolved; must take
29 reasonable steps to retrieve the information if the party disclosed it before being
30 notified; and ~~A receiving party~~ may promptly present the information to the court
31 under seal for a determination of the claim. ~~If the receiving party disclosed the~~
32 information before being notified, it must take reasonable steps to retrieve it. The
33 person who produced the information must preserve the information until the claim
34 is resolved.

35 (e) Contempt. The issuing court may hold in contempt a person who, having been served, fails
36 Failure by any person without adequate excuse to obey a the subpoena served upon the person may
37 be considered a contempt of the court in which the action is pending or the court of the county in
38 which the deposition is to be taken. Punishment for contempt ~~shall~~ should be in accordance with

1 K.S.A. 20-1204, and amendments thereto. ~~An adequate cause for~~ A nonparty’s failure to obey exists
2 when a ~~must be excused if the~~ subpoena purports to require a ~~the~~ nonparty to attend or produce at
3 a place ~~not within~~ outside the limits ~~provided by~~ of subsection (c)(3)(A)(iii).

4 **COMMENT**

5 The language of K.S.A. 60-245 has been amended as part of the general restyling of the
6 Kansas Code to make it more easily understood and to make style and terminology
7 consistent throughout the Code. These changes are intended to be stylistic only.

8 Although there are some differences between K.S.A. 60-245 and Federal Rule 45, such
9 as the issuing authority for and service of subpoenas in subsection (a) and the differentiation
10 between residents and nonresidents in subsection (c), the Kansas Code generally follows the
11 federal rule. There are no counterparts in the Kansas Code of Federal Rule 45(b)(2), (3), and
12 (4). Subsection (c)(4) has no counterpart in the federal rule.

13 The reference to discovery of “books” in former subsection (a)(1)(C) was deleted to
14 achieve consistent expression throughout the discovery rules. Books remain a proper subject
15 of discovery. The last sentence of new subsection (a)(1)(C) was revised to be consistent
16 with K.S.A. 60-245a(c), which makes clear that the use of a nonparty business records
17 subpoena under the procedure in that section is optional and not mandatory.

18 The deletion in subsection (a)(3) of the reference to a facsimile of the clerk’s signature
19 is not a substantive change. K.S.A. 20-365 independently governs the clerks’ use of
20 facsimile signatures.

21 Former subsection (b) required “prior notice” to each party of any commanded
22 production of documents and things or inspection of premises. Federal courts have agreed
23 that notice must be given “prior” to the return date, and have tended to converge on an
24 interpretation that requires notice to the parties before the subpoena is served on the person
25 commanded to produce or permit inspection. That interpretation is adopted in amended
26 subsection (b) because the Committee believes it is appropriate for Kansas to follow the
27 general present federal practice.

28 Subsection (c) was added in 1997 to incorporate a 1991 amendment to the federal rule.
29 The 1997 amendment did not include the federal language stating that an appropriate
30 sanction can include lost wages. The Committee believes that the federal rules should be
31 followed as closely as possible unless there is a clear reason to deviate. In this case, adding
32 the “lost wages” language does not effect a substantive change. The subsection already
33 allowed for “an appropriate sanction, which may include, but is not limited to, a reasonable
34 attorney fee.”

35 The language of former subsection (d)(2)(A) addressing the manner of asserting privilege
36 is replaced by adopting the wording of K.S.A. 60-226(b)(7). The same meaning is better
37 expressed in the same words. The method of asserting privilege under this section is now
38 the same as the method of asserting privilege under K.S.A. 60-226(b)(7).

1 **60-245a. Subpoena of nonparty business records of a business not a party.**

2 (a) **Definitions.** As used in this section:

3 (1) "Business" means any kind of business, profession, occupation, calling, or operation of
4 institutions, whether carried on for profit or not.

5 (2) "Business records" means writings or electronically stored information made by
6 personnel or staff of a business, or persons acting under their control, which are
7 memoranda or records of acts, conditions, or events made in the regular course of
8 business at or about the time of the act, condition, or event recorded.

9 (b) **Subpoena for business records only.** Any party may request production of business records
10 from a nonparty by causing to be issued a nonparty business records subpoena pursuant to this
11 section. A subpoena duces tecum which commands the production of business records in an action
12 in which the business is not a party shall The subpoena must inform the person to whom it is
13 directed that the person may serve upon on the party or attorney designated in the subpoena written
14 objection to production of any or all of the business records designated in the subpoena within 14
15 days after the service of the subpoena or at or before the earlier of the time specified for compliance;
16 if the time is less than or 14 days after service the subpoena is served. If such an objection is made,
17 the business records need not be produced except pursuant to an order of unless ordered by the court
18 upon on motion, with notice to the person to whom the subpoena was directed.

19 (1) **Duties of requesting party.**

20 (A) **Must give notice of intent.** Not less than 14 days before issuance of a nonparty
21 business records subpoena, the requesting party must give notice to all parties of
22 the intent to request the subpoena. A copy of the proposed subpoena must be
23 served on all parties with the notice. If prior to the issuance of the subpoena any
24 party objects to the production of the records sought, the subpoena must not be
25 issued unless ordered by the court.

26 (B) **Requesting party to provide declaration form.** When the subpoena is issued, it
27 must be accompanied by a form of declaration that complies with subdivision (3),
28 to be completed by the records custodian.

29 (C) **Canceling deposition.** If receipt of the records makes the taking of a deposition
30 unnecessary, the requesting party must cancel the deposition and give written
31 notice to the parties of the receipt of the records and the cancellation of the
32 deposition.

33 (2) **Appearance not required; producing records; time to respond.** Unless the personal
34 attendance of a custodian of the business records and or the production of original
35 business records are is required under subsection (d c), it is sufficient compliance with

1 a nonparty business records subpoena of business records if, within the earlier of the time
2 specified for compliance or 14 days after receipt of the subpoena, a custodian of the
3 business records delivers to the clerk of the court party or attorney requesting them, by
4 mail or otherwise, a true and correct copy of all the records described in the subpoena
5 and mails a completed copy of the a declaration or an affidavit that complies with
6 subdivision (3) accompanying the records to the party or attorney requesting them within
7 14 days after receipt of the subpoena. The custodian must file the declaration or affidavit
8 with the court. If return of the records is desired, the words "return requested" must be
9 inscribed clearly on the envelope or wrapper.

10 **(3) Declaration or affidavit of a custodian of the records.**

11 **(A) Contents of declaration or affidavit accompanying documents produced.** The
12 records described in the subpoena ~~shall~~ must be accompanied by ~~the~~ a declaration
13 pursuant to K.S.A. 53-601, and amendments thereto, or an affidavit, of a custodian of the
14 records; — or, when a declarant or affiant lacks knowledge of all the required facts, more
15 than one declaration or affidavit may be made — stating in substance each of the
16 following:

17 (1 i) ~~The affiant~~ the declarant or affiant is ~~a~~ duly an authorized custodian of the
18 records and has authority to certify records;

19 (2 ii) the copy is a true copy of all the records described in the subpoena that are
20 in the business' possession, custody, or control and whether it is all or part
21 of the requested records; and

22 (3 iii) the records were prepared by the personnel or staff of the business, or
23 persons acting under their control, in the regular course of the business at or
24 about the time of the act, condition, or event recorded.

25 **(B) When none of the requested records is produced.** If the business has none of the
26 records described in the subpoena, ~~the affiant shall so state~~ a custodian of the
27 records of the business must submit a declaration pursuant to K.S.A. 53-601, and
28 amendments thereto, or an affidavit, stating that fact in the affidavit and shall send
29 only those records of which the affiant has custody. When more than one person
30 has knowledge of the facts required to be stated in the affidavit, more than one
31 affidavit may be made.

32 The copy of the records shall be separately enclosed in a sealed envelope or wrapper on which
33 the title and number of the action, name and address of the witness, and the date of the subpoena
34 are clearly inscribed. If return of the copy is desired, the words "return requested" must be
35 inscribed clearly on the sealed envelope or wrapper. The sealed envelope or wrapper shall be
36 delivered to the clerk of the court. Thirty days after termination of the case, records which are
37 not introduced in evidence or required as part of the record may be destroyed or returned to the
38 custodian of the records who submitted them if return has been requested after notice is given.

1 (4) *Costs for copying the records.* The person to whom the subpoena is directed may
2 demand the reasonable costs of providing the copying of the records may be demanded
3 of the party causing the subpoena to be issued. If the costs are demanded, the records
4 need not be produced until the costs of copying are advanced.

5 (5) *Inspecting the record.* After the copy of the records is delivered, a party desiring to
6 inspect or copy them must give reasonable notice to the parties. If inspection is
7 requested, the notice must state the time and place of inspection. If copies are requested,
8 the reasonable costs of copying the records may be demanded of the requesting party.
9 If the costs are demanded, the copies need not be provided until the costs are advanced.

10 (6) *Disposal or return of records.* Thirty days after termination of the case, records that are
11 not introduced in evidence or required as part of the record may be destroyed, or returned
12 to the records custodian who submitted them if return was requested, after giving notice
13 to the parties.

14 ~~(c) The subpoena shall be accompanied by an affidavit to be used by the records custodian.~~

15 ~~(d c) *Subpoena duces tecum for attendance of a custodian and original business records;*~~
16 ~~*objections.* Any party may require the personal attendance of a business records custodian of~~
17 ~~business records and or the production of original business records in an action in which the business~~
18 ~~is not a party by causing a subpoena duces tecum to be issued pursuant to K.S.A. 60-245, and~~
19 ~~amendments thereto.~~

20 ~~(e) Notice of intent to request the issuance of a subpoena pursuant to this section where the~~
21 ~~attendance of the custodian of the business records is not required shall be given to all parties to the~~
22 ~~action at least 10 days prior to the issuance thereof by the party requesting issuance of the subpoena.~~
23 ~~A copy of the proposed subpoena shall also be served upon all parties along with such notice. In the~~
24 ~~event any party objects to the production of the documents sought by such subpoena prior to its~~
25 ~~issuance, the subpoena shall not be issued until further order of the court in which the action is~~
26 ~~pending. If receipt of the records makes the taking of a deposition unnecessary, the party who caused~~
27 ~~the subpoena for the business records to be issued shall cancel the deposition and shall notify the~~
28 ~~other parties to the action in writing of the receipt of the records and the cancellation of the~~
29 ~~deposition.~~

30 ~~After the copy of the record is filed, a party desiring to inspect or copy it shall give reasonable notice~~
31 ~~to every other party to the action. The notice shall state the time and place of inspection. Thirty days~~
32 ~~after termination of the case, records which are not introduced in evidence or required as part of the~~
33 ~~record may be destroyed or returned to the custodian of the records who submitted them if return~~
34 ~~has been requested after notice has been given.~~

35 **COMMENT**

36 The language of K.S.A. 60-245a has been amended as part of the general restyling of the
37 Kansas Code to make it more easily understood and to make style and terminology
38 consistent throughout the Code.

1 A substantive change has been made to revised subsection (b)(2) at the request of the
2 Kansas Association of District Court Clerks & Administrators and the Office of Judicial
3 Administration. Nonparty business records will now be delivered to the party or attorney
4 requesting them and not to the court clerk.

5 K.S.A. 60-245a has also been amended regarding affidavits. Former subsection (c)
6 required the requesting party to provide the nonparty with an affidavit form to sign and
7 return with the records. This requirement was changed because K.S.A. 53-601 allows a
8 written unsworn declaration, certificate, verification, or statement subscribed in proper form
9 as true under penalty of perjury to substitute for an affidavit. The Committee determined
10 that providing both an affidavit and a declaration to the nonparty would be overly
11 cumbersome and could lead to confusion. Revised subsection (b) now requires that the
12 requesting party provide only a declaration form, although the nonparty retains the option
13 of submitting an affidavit in response.

14 When testimony of the custodian is desired, the procedure under K.S.A. 60-245 is to be
15 followed and this section does not apply.

16 There is no counterpart of this section under the federal rules, but a similar procedure is
17 possible under Rule 45(c)(2)(A) and Federal Rule of Evidence 902(11).

18 The time set in the former statute at 10 days has been revised to 14 days. See the
19 Comment to K.S.A. 60-206.

20 **60-246. ~~Objections~~ Objecting to rulings a ruling or order.** ~~Formal exceptions to rulings or orders~~
21 ~~of the court are~~ A formal exception to a ruling or order is unnecessary. It is sufficient that a party,
22 ~~at the time~~ When the ruling or order of the court is requested or made or sought, makes known to
23 ~~the court~~ a party need only state the action which he or she desires that it wants the court to take or
24 ~~his or her objection~~ objects to, the action of the court and his or her along with the grounds therefor;
25 ~~for the request or objection.~~ and, if a Failing to object does not prejudice a party has who had no
26 ~~opportunity to object to a~~ do so when the ruling or order at the time it is was made, the absence of
27 ~~an objection does not thereafter prejudice the party.~~

28 COMMENT

29 The language of K.S.A. 60-246 has been amended as part of the general restyling of the
30 Kansas Code to make it more easily understood and to make style and terminology
31 consistent throughout the Code. These changes are intended to be stylistic only.

32 **60-247. Jurors.**

33 (a) Number of prospective jurors. ~~In all civil trials, upon the request of a party, the~~ The court

1 ~~shall cause~~ must call enough prospective jurors ~~to be called, examined, and passed so that, after~~
2 ~~challenges~~ for cause ~~before any~~ and peremptory challenges ~~are required~~ allowed by law, ~~so that there~~
3 will remain sufficient jurors, after the number of peremptory challenges allowed by law for the case
4 ~~on trial shall have been exhausted, to enable the court to cause twelve (12) or sufficient jurors to be~~
5 sworn to try the case.

6 (b) *Voir dire examination of Examining jurors.* Prospective jurors ~~shall~~ must be examined
7 under oath ~~as to~~ or affirmation regarding their qualifications to sit as jurors. The court ~~shall~~ must
8 permit the parties or their attorneys to conduct an examination of prospective jurors.

9 (c) *Challenges.*

10 (1) *Challenges for cause.* All challenges for cause, whether to the array or panel or to
11 individual prospective jurors, must be decided by the court.

12 (2) *Peremptory challenges.* ~~In civil cases~~ After the panel has been passed for cause, each
13 party ~~shall be~~ is entitled to ~~three (3)~~ peremptory challenges, except as provided in
14 subsection (h) of section K.S.A. 60-248(i), ~~as amended~~ and amendments thereto,
15 ~~pertaining to~~ when there are alternate jurors. Multiple defendants or multiple plaintiffs
16 ~~shall be~~ are considered as a single party for the purpose of making challenges. However,
17 ~~except that if the judge~~ court finds ~~there is~~ a good faith controversy ~~existing~~ exists
18 between multiple plaintiffs or multiple defendants, the court ~~in its discretion and in the~~
19 ~~interest of justice~~, may allow any of the parties, single or multiple, additional peremptory
20 challenges and permit them to be exercised separately or jointly. ~~All challenges for~~
21 ~~cause, whether to the array or panel or to individual prospective jurors, shall be~~
22 ~~determined by the court.~~ Peremptory challenges ~~shall~~ must be exercised in a manner
23 ~~which that~~ will not communicate to the challenged prospective juror the identity of the
24 challenging party or attorney.

25 (d) *Oath of jurors.* The jurors ~~shall be sworn~~ must swear or affirm to try the case conscientiously
26 and return a verdict according to the law and the evidence.

27 **COMMENT**

28 The language of K.S.A. 60-247 has been amended as part of the general restyling of the
29 Kansas Code to make it more easily understood and to make style and terminology
30 consistent throughout the Code. These changes are intended to be stylistic only.

31 Subsection (a) was added by the Supreme Court in 1976 and has no counterpart in the
32 federal rules.

33 Federal Rule 47(b) requires that the court allow the number of peremptory challenges
34 provided in 28 U.S.C. § 1870. Subsection (c) is similar to 28 U.S.C. § 1870, but adds the
35 required finding of a “good faith controversy” before the court can allow additional
36 peremptory challenges and permit them to be exercised separately or jointly. Kansas also
37 added the last sentence of subsection (c)(2).

1 There is no counterpart in the Kansas Code of Federal Rule 47(c) regarding excusing a
2 juror for good cause. Subsection (d) has no counterpart in the federal rule.

3 **60-248. Jury trial procedure.**

4 (a) *Stipulation as to number.* The parties may stipulate that the jury shall consist of any number
5 less than 12 or, subject to the provisions of subsection (g), that a verdict or a finding of a stated
6 majority of the jurors shall be taken as the verdict or finding of the jury.

7 (b) *View of property or place.* ~~Whenever in the opinion of~~ When the court finds it is proper for
8 the jury to ~~have a~~ view of property ~~which that~~ is the subject of litigation or ~~of the place in which~~
9 ~~where~~ any material fact occurred, the court may order the jury to be ~~conducted taken~~, as a ~~body,~~
10 ~~group and~~ under the charge of an officer, to the property or place, ~~which shall be shown to them~~
11 ~~by~~ The court must appoint a person or persons ~~appointed by the court for that purpose to conduct~~
12 ~~the view.~~ While the jury is thus absent, no person other than the appointed person so appointed shall
13 is permitted to speak to any juror on any subject connected with the trial. A view permitted under
14 this subsection ~~shall must~~ not be considered by the court in determining any questions of the
15 sufficiency or insufficiency of evidence ~~admitted in an action.~~

16 (c) *Case submitted, action and conduct of jury.* When ~~the a~~ case is finally submitted to the jury,
17 ~~it shall the jury must~~ retire for deliberation. The jurors must be kept together in a convenient place
18 under the charge of an officer until they agree upon on a verdict, or are discharged by the court, ;
19 ~~subject to the discretion of the~~ The court to may permit them to separate temporarily at night and
20 at their meals. ~~Unless the court orders otherwise, The the~~ officer having them charge of the jurors
21 ~~under the officer's charge shall must~~ not make or allow to be made any communications to be made
22 to them, except the officer may ask them if they are agreed upon on their verdict, ~~unless by order~~
23 ~~of the court. The officer shall not before~~ Before the verdict is rendered, the officer must not
24 communicate to any person the state of their the jury's deliberations or the verdict agreed upon on.

25 (d) *Separation of jury, admonition of court.* If the jurors are permitted to separate, either during
26 the trial or after the case is submitted to them, ~~they shall be admonished by the court must admonish~~
27 them that:

28 (1) it is their duty not to converse with, or allow themselves to be addressed by, any other
29 person on any subject of the trial;

30 (2) that it is their duty to keep an open mind and not to express an opinion on the subject of
31 the trial until the case is finally submitted to them; and

32 (3) that the admonition applies to every separation of the jurors.

33 (e) *Jury may request information after retiring.* ~~If, after~~ After the jury has retired for

1 deliberation, it ~~may request~~ ~~desires~~ further information as to any part of the law or evidence
2 pertaining to the case, ~~it may communicate its~~ ~~by communicating the~~ request ~~in writing~~ through the
3 bailiff to the court, ~~in the manner directed by the court~~, following which the ~~The~~ court, after notice
4 to counsel for the parties, may consider and ~~make such provision for a response~~ ~~respond~~ to the jury's
5 request ~~in writing or on the record~~ of the jury as the court finds to be required under the
6 circumstances.

7 (f) **Discharge of jury, when.** The court may discharge the jury:

8 (1) ~~may be discharged by the court on account of the~~ ~~because of~~ sickness of a juror, or other
9 necessity ~~to be found by the court~~; or

10 (2) by the parties' consent; ~~of both parties~~, or

11 (3) ~~after it has been kept together until~~ ~~when~~ it satisfactorily appears that there is no
12 probability of the jurors reaching a verdict.

13 (g) **Verdict; number of jurors required; form; correction.** ~~Whenever~~ ~~When~~ the jury consists of
14 12 members, the agreement of 10 jurors ~~shall be~~ ~~is~~ sufficient to render a verdict. In all other cases,
15 subject to the stipulation of the parties as provided in subsection (a), the verdict ~~shall~~ ~~must~~ be by
16 agreement of all the jurors. The verdict ~~shall~~ ~~must~~ be ~~written, in writing and~~ signed by the presiding
17 juror, ~~and The court or clerk must read the verdict by the clerk to the jury jurors~~, and ~~ask the inquiry~~
18 ~~made~~ whether it is their verdict. ~~If less than the required number of jurors agree, the jury must be~~
19 ~~sent out again.~~ ~~The court must on a party's request, or may on its own, poll the jurors individually.~~
20 ~~If the poll reveals a lack of assent by the number of jurors required, the court must either direct the~~
21 ~~jury to deliberate further or order a new trial.~~ ~~If agreement of the required number of jurors agree~~
22 ~~is expressed~~, and no party requires the jurors to be polled individually, the verdict is complete, and
23 the ~~court must then discharge the jury~~ ~~discharged from the case~~. If the verdict is defective in form
24 only, ~~it the verdict~~ may be corrected by the court, with the assent of the jury, before ~~it the jury~~ is
25 discharged.

26 (h) **Alternate jurors.** ~~Immediately after the jury is empaneled and sworn, the trial judge~~ ~~The~~
27 ~~court~~ may empanel one or more alternate or additional jurors ~~whenever, in the judge's discretion,~~
28 ~~the judge believes it advisable to have alternate jurors available to replace jurors who, prior to the~~
29 ~~time the jury retires to consider its verdict, become or are found to be unable to perform their duties.~~
30 Alternate jurors ~~shall~~ ~~must~~ be selected in the same manner, have the same qualifications, be subject
31 to the same examination and challenges, take the same oath, and have the same functions, powers,
32 and privileges as the regular jurors. Each party ~~shall be~~ ~~is~~ entitled to one peremptory challenge to
33 the alternate jurors. The alternate jurors ~~shall~~ ~~must~~ be seated near the ~~other regular~~ jurors, with equal
34 ~~power and facilities for seeing and hearing~~ ~~ability to see and hear~~ the proceedings ~~in the case~~, and
35 they must attend the ~~entire trial of the cause at all times with the other jurors~~. The alternate jurors
36 ~~shall~~ ~~must~~ obey the orders of and ~~be~~ ~~are~~ bound by the admonition of the court upon each
37 adjournment, but if the regular jurors are ordered to be kept in custody during the trial ~~of the cause~~,
38 the alternate jurors also ~~shall~~ ~~must~~ be ~~kept in confinement~~ ~~confined~~ with the other jurors. Upon ~~final~~
39 submission of the case to the jury, the alternate jurors may be discharged or they may be retained
40 separately and not discharged until the ~~final decision of the jury~~ ~~reaches its decision~~. If the alternate
41 jurors are not discharged on ~~final~~ submission of the case and if any regular juror is discharged ~~prior~~

1 to before the jury's reaching jury reaches a decision, the court may draw the name of an alternate
2 juror who shall to replace the discharged juror, and be subject to the same rules and regulations as
3 though the juror had been selected as one of the original jurors.

4 COMMENT

5 The language of K.S.A. 60-248 has been amended as part of the general restyling of the
6 Kansas Code to make it more easily understood and to make style and terminology
7 consistent throughout the Code.

8 Subsection (a) originally followed Federal Rule 48, and the rest of the subsections are
9 unique to Kansas. Kansas has not adopted the 1991 amendments to Federal Rule 48. The
10 former rule was rendered obsolete at that time by the adoption in many federal districts of
11 local rules establishing 6 as the standard size for a civil jury. In 2009, Rule 48 was divided
12 into two sections – (a) Number of Jurors, and (b) Verdict. Also added in 2009 was new
13 Federal Rule 48(c) regarding polling, which has been incorporated with some revisions into
14 subsection (g).

15 Subsection (h) has been amended to allow alternate jurors to be selected at the same time
16 the regular jury is being selected. A similar change to K.S.A. 22-3412(c), governing
17 criminal jury trials, was enacted by the legislature during the 2009 session.

18 ~~60-248a. Application of 1978 amendments to 60-248. The amendments effected in K.S.A. 60-248~~
19 ~~by section 1 of this act shall not apply to any civil action commenced prior to the effective date of~~
20 ~~this act, and in all such actions, the provisions of K.S.A. 60-248 which were in effect on the date~~
21 ~~immediately preceding the effective date of this act shall govern.~~

22 COMMENT

23 K.S.A. 60-248a is no longer necessary and has been deleted.

24 **60-249. *Special verdict; and interrogatories general verdict and questions***

25 (a) *Special verdicts verdict.*

26 (1) *In general.* The judge court may require a jury to return only a special verdict in the
27 form of a special written finding upon on each issue of fact. In that event the The court
28 may do so by: submit to the jury

29 (A) submitting written questions susceptible of a categorical or other brief answer;
30 or may submit

31 (B) submitting written forms of the several special findings which that might
32 properly be made under the pleadings and evidence; or

1 (C) it may use such using any other method of submitting the issues and requiring the
2 written findings thereon as it deems most that the court considers appropriate.

3 (2) **Instructions.** The judge shall court must give to the jury such explanation and instruction
4 concerning the matter thus submitted without commenting on the evidence, as may be
5 the instructions and explanations necessary to enable the jury to make its findings upon
6 on each submitted issue.

7 (3) **Issues not submitted.** If in so doing the court omits any issue of fact raised by the
8 pleadings or by the evidence, each A party waives his or her the right to a jury trial by
9 jury of the on any issue so omitted of fact raised by the pleadings or evidence but not
10 submitted to the jury unless, before the jury retires, he or she the party demands its
11 submission to the jury. As to an issue omitted without such demand If the party does not
12 demand submission, the court may make a finding on the issue. ; or, if it fails to do so,
13 If the court makes no finding, it shall be deemed is considered to have made a finding
14 in accordance consistent with the its judgment on the special verdict.

15 (b) **General verdict accompanied by answer to interrogatories with answers to written**
16 **questions.**

17 (1) **In general.** The judge court may, if requested in writing on written request, submit to the
18 jury, together with appropriate forms for a general verdict, together with written
19 interrogatories upon questions on one or more substantial questions of disputed facts on
20 which decision is necessary to a verdict issues of fact that the jury must decide. The
21 number and form thereof shall be subject to the control of the judge. The court shall must
22 give such explanation or instruction as may be the instructions and explanations
23 necessary to enable the jury both to make answers to the interrogatories and to render a
24 general verdict and answer the questions in writing, and the court shall must direct the
25 jury to do both to make written answers and to render a general verdict.

26 (2) **Verdict and answers consistent.** When the general verdict and the answers are
27 harmonious consistent, the court shall direct the entry of the must approve an appropriate
28 judgment upon on the verdict and answers.

29 (3) **Answers inconsistent with the verdict.** When the answers are consistent with each other
30 but one or more is inconsistent with the general verdict, the court may;

31 (A) direct the entry of approve an appropriate judgment in accordance with according
32 to the answers, notwithstanding the general verdict;

33 (B) or may return direct the jury for to further consideration of consider its answers
34 and verdict; or

35 (C) may order a new trial.

36 (4) **Answers inconsistent with each other and the verdict.** When the answers are

1 inconsistent with each other and one or more is likewise also inconsistent with the
2 general verdict, judgment shall must not be entered; instead, but the court shall return
3 must direct the jury for to further consideration of consider its answers and verdict, or
4 shall must order a new trial.

5 COMMENT

6 The language of K.S.A. 60-249 has been amended as part of the general restyling of the
7 Kansas Code to make it more easily understood and to make style and terminology
8 consistent throughout the Code. These changes are intended to be stylistic only.

9 K.S.A. 60-249 follows Federal Rule 49 except subsection (b) has been changed to
10 require a written request. Language providing that the number and form of written questions
11 are subject to the court's control has been deleted. No change to the court's discretion is
12 intended. The language was unnecessary.

13 **60-249a. Itemized verdict, personal injury actions; jury instructions.**

14 ~~(a) In any action for damages for personal injury, the jury's instructions and the itemized verdict~~
15 ~~form shall refer only to those items of damage upon which there is evidence introduced at trial.~~

16 ~~(b a) *Itemizing damages awarded.* If the trier of fact finds for the plaintiff in an In any~~
17 ~~action for damages for personal injury, if the jury finds for the plaintiff, the trier of fact must itemize~~
18 ~~verdict shall be itemized by the trier of fact to reflect the amounts awarded for the following items~~
19 ~~of damage, subject to the provisions of subsection (a):~~

20 (1) ~~Noneconomic noneconomic~~ injuries and losses, as follows:

21 (A) ~~Pain pain~~ and suffering,

22 (B) disability,

23 (C) disfigurement, and any accompanying mental anguish;

24 (2) reasonable expenses of necessary medical care, hospitalization, and treatment received;
25 and

26 (3) economic injuries and losses other than those itemized under subsection (b)(2).

27 ~~(e b) *Future damages.* Where When~~ applicable, ~~the trier of fact must further itemize~~ the amounts
28 required to be itemized pursuant to ~~under~~ subsection (b) shall be further itemized by the trier of fact
29 to reflect those amounts awarded for ~~injuries and losses~~ damages sustained to date and those

1 awarded for ~~injuries and losses~~ damages reasonably expected to be sustained in the future.

2 (c) *Damages considered by jury.* In an action for damages for personal injury, the instructions
3 to the jury and the itemized verdict form must refer only to those items of damage on which
4 evidence has been introduced at trial.

5 COMMENT

6 The language of K.S.A. 60-249a has been amended as part of the general restyling of the
7 Kansas Code to make it more easily understood and to make style and terminology
8 consistent throughout the Code. These changes are intended to be stylistic only.

9 K.S.A. 60-249a has been reorganized for clarity. Former subsections (b) and (c) apply
10 in jury and nonjury actions. Because former subsection (a) applies only to jury actions, it
11 was moved to the end of the statute as subsection (c). Former subsections (b) and (c) now
12 appear first as (a) and (b).

13 There is no counterpart of this section in the federal rules.

14 **60-250. Judgment as a matter of law in a jury trial; related motion for a new trial.**

15 (a) *Judgment as a matter of law.*

16 (1) *In general.* If ~~during a trial by jury~~ a party has been fully heard on an issue during a jury
17 trial and the court finds that there is no legally sufficient evidentiary basis for a
18 reasonable jury would not have a legally sufficient evidentiary basis to find for that the
19 party on that issue, the court may:

20 (A) ~~determine~~ resolve the issue against ~~that the~~ the party; and

21 (B) ~~may~~ grant a motion for judgment as a matter of law against ~~that the~~ the party with
22 respect to on a claim or defense that, ~~cannot~~ under the controlling law, can be
23 maintained or defeated without only with a favorable finding on that issue.

24 (2) *Motion.* ~~Motions~~ A motion for judgment as a matter of law may be made at any time
25 before submission of the case is submitted to the jury. ~~Such a~~ The motion shall must
26 specify the judgment sought and the law and the facts on which the moving party is
27 entitled that entitle the movant to the judgment.

28 (3) ~~Decisions~~ *Comparative fault actions.* The court must reserve decision on motions a
29 motion for judgment as a matter of law by parties a party joined pursuant to subsection
30 (e) of under K.S.A. 60-258a(c), and amendments thereto, shall be reserved by the court
31 until all evidence has been presented by any party alleging the movant's fault.

32 (b) *Renewal of* Renewing the motion for judgment after trial; alternative motion for a new

1 ~~trial. Whenever~~ If the court does not grant a motion for a judgment as a matter of law made at the
2 close of all the evidence is denied or for any reason is not granted under subsection (a), the court is
3 deemed considered to have submitted the action to the jury subject to a the court's later
4 determination of deciding the legal questions raised by the motion. Such a motion may be renewed
5 by service and filing not later No later than 10 28 days after the entry of judgment — or, if the
6 motion addresses a jury issue not decided by the verdict, no later than 28 days after the date the jury
7 was discharged — for failing to return a verdict. A motion for a new trial under K.S.A. 60-259 and
8 amendments thereto may be joined with a renewal of the movant may file a renewed motion for
9 judgment as a matter of law, or a new trial may be requested in the alternative and may include an
10 alternative or joint request for a new trial under K.S.A. 60-259, and amendments thereto. In ruling
11 on the renewed motion, the court may:

12 (1) ~~If a verdict was returned the court, in disposing of the renewed motion, may allow the~~
13 ~~judgment on the verdict, if the jury returned a verdict; to stand or may reopen the~~
14 ~~judgment and either~~

15 (2) order a new trial; or

16 (3) direct the entry of judgment as a matter of law. ~~If no verdict was returned, the court, in~~
17 ~~disposing of the renewed motion, may direct the entry of judgment as a matter of law or~~
18 ~~may order a new trial.~~

19 **(c) Granting the renewed motion; conditional ruling on a motion for a new trial.**

20 (1) **In general.** If the court grants a renewed motion for judgment as a matter of law, it must
21 also conditionally rule on any motion for a new trial by determining whether a new trial
22 should be granted if the judgment is later vacated or reversed. The court must state the
23 grounds for conditionally granting or denying the motion for a new trial.

24 (2) **Effect of a conditional ruling.** Conditionally granting the motion for a new trial does
25 not affect the judgment's finality; if the judgment is reversed, the new trial must proceed
26 unless the appellate court orders otherwise. If the motion for a new trial is conditionally
27 denied, the appellee may assert error in that denial; if the judgment is reversed, the case
28 must proceed as the appellate court orders.

29 **(d) Time for a losing party's new-trial motion.** Any motion for a new trial under K.S.A. 60-
30 259, and amendments thereto, by a party against whom judgment as a matter of law is rendered must
31 be filed no later than 28 days after the entry of the judgment.

32 **(e) Denying the motion for judgment as a matter of law; reversal on appeal.** If the court denies
33 the motion for judgment as a matter of law, the prevailing party may, as appellee, assert grounds
34 entitling it to a new trial should the appellate court conclude that the trial court erred in denying the
35 motion. If the appellate court reverses the judgment, it may order a new trial, direct the trial court
36 to determine whether a new trial should be granted, or direct the entry of judgment.

1 **COMMENT**

2 The language of K.S.A. 60-250 has been amended as part of the general restyling of the
3 Kansas Code to make it more easily understood and to make style and terminology
4 consistent throughout the Code.

5 The Committee determined that Federal Rule 50(c), (d), and (e) should be adopted in
6 K.S.A. 60-250. It appears they may have been inadvertently omitted when the Code was
7 adopted in 1964. Subsection (b) already authorizes combining a motion for a new trial and
8 a renewed motion for judgment as a matter of law. Subsections (c), (d), and (e) merely give
9 guidance to the court on how to consider those joint motions.

10 Formerly, K.S.A. 60-250, 60-252, and 60-259 adopted 10-day periods for their respective
11 post-judgment motions. K.S.A. 60-206(b) prohibits any expansion of those periods.
12 Experience has proved that in many cases it is not possible to prepare a satisfactory
13 post-judgment motion in 10 days, even under the former rule that excluded intermediate
14 Saturdays, Sundays, and legal holidays. Rather than introduce the prospect of uncertainty
15 in appeal time by amending K.S.A. 60-206(b) to permit additional time, the former 10-day
16 periods are expanded to 28 days. K.S.A. 60-206(b) continues to prohibit expansion of the
17 28-day period.

18 Formerly, K.S.A. 60-250, 60-252, and 60-259 used inconsistent language regarding
19 motions, including “service and filing,” “made,” and “served.” Now all use “file” or “filed”
20 to make uniform what must be done for a post-trial motion to delay the time for filing a
21 notice of appeal.

22 **60-251. Instructions to the jury; objections; preserving a claim of error.**

23 (a) ***When-made Requests.***

24 (1) ***Before or at the close of the evidence.*** At the close of the evidence or at ~~such any~~ earlier
25 reasonable time during the trial as the judge reasonably directs that the court orders, any
26 a party may file and furnish to every other party written requests that for the jury
27 instructions it wants the court ~~instruct the jury on the law as set forth in the requests to~~
28 give.

29 (2) ***After the close of the evidence.*** After the close of the evidence, a party may:

30 (A) file requests for instructions on issues that could not reasonably have been
31 anticipated by an earlier time that the court set for requests; and

32 (B) with the court’s permission, file untimely requests for instructions on any issue.

33 (b) ***Instructions.*** ~~The judge shall instruct the jury at the close of the evidence, before argument~~
34 ~~and the judge may, in his or her discretion, after the opening statements, instruct the jury on such~~

1 matters as in the judge's opinion will assist the jury in considering the evidence as it is presented.
2 court:

3 (1) must inform the parties of its proposed instructions and proposed action on the requests
4 before instructing the jury and before final jury arguments;

5 (2) must give the parties an opportunity to object on the record and out of the jury's hearing
6 before the instructions and arguments are delivered;

7 (3) must instruct the jury at the close of the evidence, before argument; and

8 (4) may instruct the jury at any time before the jury is discharged.

9 (b) ***When waived.*** No party may assign as error the giving or failure to give an instruction unless he
10 or she objects thereto before the jury retires to consider its verdict stating distinctly the matter to
11 which he or she objects and the grounds of his or her objection unless the instruction is clearly
12 erroneous. Opportunity shall be given to make the objections out of the hearing of the jury.

13 (c) ***Objections.***

14 (1) ***How to make.*** A party who objects to an instruction or the failure to give an instruction
15 must do so on the record, stating distinctly the matter objected to and the grounds for the
16 objection.

17 (2) ***When to make.*** An objection is timely if:

18 (A) a party objects at the opportunity provided under subsection (b)(2); or

19 (B) a party was not informed of an instruction or action on a request before that
20 opportunity to object, and the party objects promptly after learning that the
21 instruction or request will be, or has been, given or refused.

22 (d) ***Assigning error; clearly erroneous.***

23 (1) ***Assigning error.*** A party may assign as error:

24 (A) an error in an instruction actually given, if that party properly objected; or

25 (B) a failure to give an instruction, if that party properly requested it and — unless
26 the court rejected the request in a definitive ruling on the record — also properly
27 objected.

28 (2) ***Clearly erroneous instruction.*** A court may consider an error in the instructions that has
29 not been preserved as required by subsection (d)(1) if the giving or failure to give an
30 instruction is clearly erroneous and the error affects substantial rights.

1 COMMENT

2 The language of K.S.A. 60-251 has been amended as part of the general restyling of the
3 Kansas Code to make it more easily understood and to make style and terminology
4 consistent throughout the Code.

5 K.S.A. has been amended to incorporate 2003 amendments to Federal Rule 51. Detailed
6 comments can be found in the 2003 Federal Advisory Committee Notes. Some differences
7 remain. The mandate that the court instruct the jury at the close of the evidence, before
8 argument, is not found in the federal rule. New subsection (b)(3) is intended to reconfirm
9 that the court may instruct the jury at any time, including after opening statements.

10 Also, the standard of error under Kansas law is “clearly erroneous,” rather than the “plain
11 error” standard in Federal Rule 51. There is a body of established Kansas case law defining
12 the “clearly erroneous” standard, which is retained in revised K.S.A. 60-251.

13 **60-252. Findings and conclusions by the court; judgment on partial findings.**

14 (a) ***Effect Findings and conclusions.***

15 (1) ***In general.*** ~~In all actions an action~~ tried ~~upon on~~ the facts without a jury or with an
16 advisory jury or upon entering summary judgment ~~or involuntary dismissal~~, the judge
17 ~~shall court must~~ find, and either orally or in writing state, the controlling facts specially
18 and the judge's state its conclusions of law thereon separately. The findings and
19 conclusions may be stated on the record after the close of evidence or may appear in an
20 opinion or a memorandum of decision filed by the court. Judgment shall must be entered
21 pursuant to under K.S.A. 60-258, and amendments thereto.

22 (2) ***For an interlocutory injunction.*** In granting or refusing an interlocutory injunctions
23 injunction, except in divorce cases, the judge shall set forth court must similarly state the
24 findings and conclusions of law that support its action.

25 (3) ***Effect of a master's findings.*** Requests for findings are not necessary. Findings of fact
26 shall not be set aside unless clearly erroneous, and due regard shall be given to the
27 opportunity of the trial court to judge the credibility of the witnesses. The A master's
28 findings of a master, to the extent that the judge adopts them adopted by the court, shall
29 must be considered as the court's findings of the court. If an opinion or memorandum
30 of decision is filed, it will be sufficient if the findings of fact and conclusions of law
31 appear therein.

32 (4) ***Questioning the evidentiary support.*** A party may later question the sufficiency of the
33 evidence supporting the findings, whether or not the party requested findings, objected
34 to them, moved to amend them, or moved for judgment on partial findings.

1 standards that govern judgment as a matter of law in a jury case have no bearing on a
2 decision under subsection (c).

3 Formerly, K.S.A. 60-250, 60-252, and 60-259 adopted 10-day periods for their respective
4 post-judgment motions. K.S.A. 60-206(b) prohibits any expansion of those periods.
5 Experience has proved that in many cases it is not possible to prepare a satisfactory
6 post-judgment motion in 10 days, even under the former rule that excluded intermediate
7 Saturdays, Sundays, and legal holidays. Rather than introduce the prospect of uncertainty
8 in appeal time by amending K.S.A. 60-206(b) to permit additional time, the former 10-day
9 periods are expanded to 28 days. K.S.A. 60-206(b) continues to prohibit expansion of the
10 28-day period.

11 Formerly, K.S.A. 60-250, 60-252, and 60-259 used inconsistent language regarding
12 motions, including “service and filing,” “made,” and “served.” Now all use “file” or “filed”
13 to make uniform what must be done for a post-trial motion to delay the time for filing a
14 notice of appeal.

15 **60-252a. Trial by the court; judgment; rulings, decisions, time limitation.** ~~Whenever any civil~~
16 ~~action in a district court shall be tried by the court without a jury or with an advisory jury only, and~~
17 ~~the court is required to render judgment in such action, or when a court is called upon to rule on a~~
18 ~~motion or objection and such~~ When a judgment or decision is not entered within ninety (90) days
19 after the trial and final submission of said motion, objection or an action tried by the court without
20 a jury or with an advisory jury, or of a motion or objection, the judge shall be court must required
21 to file a written report with the supreme court setting forth stating the reasons why a judgment,
22 ruling, or decision has not been entered.

23 COMMENT

24 The language of K.S.A. 60-252a has been amended as part of the general restyling of the
25 Kansas Code to make it more easily understood and to make style and terminology
26 consistent throughout the Code. These changes are intended to be stylistic only.

27 There is no counterpart of this section in the federal rules.

28 **60-252b. Rules of supreme Supreme court rules.** The supreme court is ~~hereby~~ authorized and
29 directed to adopt ~~such rules as are necessary,~~ and to require ~~such~~ reports from the district courts or
30 ~~district court~~ clerks ~~thereof,~~ to ~~insure~~ ensure compliance ~~by such courts~~ with the provisions of
31 K.S.A. 60-252a, and amendments thereto.

32 COMMENT

33 The language of K.S.A. 60-252b has been amended as part of the general restyling of the

1 Kansas Code to make it more easily understood and to make style and terminology
2 consistent throughout the Code. These changes are intended to be stylistic only.

3 There is no counterpart of this section in the federal rules.

4 **60-253. Trial by masters.**

5 (a) **Reference.** With the parties' consent, all or any issues of fact or law or both may be referred
6 to a master. Otherwise, the court may order a reference only if it finds that the ends of justice will
7 be measurably advanced, and, in a case triable to a jury, only on issues that involve an examination
8 of complex or voluminous accounts. As used in this chapter, "master" includes a referee, an auditor,
9 a commissioner, and an examiner. A master must not have a relationship to the parties, attorneys,
10 action, or court that would require disqualification of a judge under the code of judicial conduct
11 unless the parties, with the court's approval, consent to the appointment after the master discloses
12 any potential grounds for disqualification.

13 (a) **b) Appointment Compensation and compensation oath.** As used in this chapter, the word
14 "master" includes a referee, an auditor, a commissioner and an examiner. The court must fix the
15 master's compensation to be allowed to a master shall be fixed by the court, and shall be charged
16 upon such of the which must be paid as the court orders by a party or parties or paid out of any from
17 a fund or subject matter of the action, which is in within the custody and court's control of the court
18 as the court may direct. The master shall may not retain such the master's report as security for such
19 the master's compensation. When the a party ordered to pay the compensation allowed by the court
20 does not pay it after notice and within the time prescribed ordered by the court, the master is entitled
21 to a writ of execution against the delinquent party. The master must be sworn or affirmed well and
22 faithfully swear or affirm to hear and examine the cause, and to make a just and true report therein,
23 according to the best of the master's understanding. The oath or affirmation may be administered by
24 any person authorized to take depositions.

25 (b) **Reference.** With the consent of the parties, all or any issues of fact or law or both may be
26 referred to a master. Otherwise, the judge may order a reference only on a finding that the ends of
27 justice will be measurably advanced thereby, and, in a case triable to a jury, only on such issues as
28 involve an examination of complex or voluminous accounts.

29 (c) **Powers.** The order of reference to the master may specify or limit the master's powers. The
30 order and may direct such the master to report only upon on particular issues, or to do or perform
31 particular acts, or only to receive and report evidence, only and The order may fix the time and place
32 for beginning and closing the hearings and for the filing of the master's report. Subject to the
33 specifications and limitations stated in the order, the master has and shall exercise the power to
34 regulate all proceedings in every hearing before such the master and to do all acts and take all
35 measures necessary or proper for the efficient performance of such the master's duties under the
36 order. The master may require the production before such master of evidence upon on all matters
37 embraced in the reference, including the production of all applicable books, papers, vouchers,
38 documents, and writings, and electronically stored information applicable thereto. The master may

1 rule ~~upon on~~ the admissibility of evidence unless otherwise directed by the order of reference, ~~and~~
2 ~~has the authority to~~ The master may put parties and witnesses on oath and may examine them ~~and~~
3 ~~may call the parties to the action and examine them upon oath~~. When a party ~~so~~ requests, the master
4 ~~shall must~~ make a record of the evidence offered and excluded in the same manner and subject to
5 the same limitations as ~~provided in subsection (c) of K.S.A. 60-243, and amendments thereto, for~~
6 a court sitting without a jury.

7 (d) ***Proceedings.***

8 (1) ***Meetings.*** When a reference is made, the clerk ~~shall forthwith~~ must promptly furnish the
9 master with a copy of the order of reference. ~~Upon receipt thereof unless~~ Unless the
10 order of reference ~~otherwise~~ provides otherwise, the master ~~shall forthwith~~ must
11 promptly set a time and place for the first meeting of the parties or their attorneys, ~~to be~~
12 ~~held~~ within ~~20~~ 21 days after the date of the order of reference, and ~~shall must~~ notify the
13 parties or their attorneys. ~~It is the duty of the~~ The master to must proceed with all
14 reasonable diligence. ~~Either party, on notice to the parties and master, may apply to the~~
15 ~~court for an order requiring the master to speed the proceedings and to make the master's~~
16 ~~report.~~ If a party fails to appear at the time and place appointed for a proceeding, the
17 master may proceed ex parte or, ~~in the master's discretion,~~ adjourn the proceedings
18 proceeding to a future day, giving notice to the absent party of the adjournment. A party,
19 on notice to the parties and master, may apply to the court for an order requiring the
20 master to complete the proceedings and to make the master's report.

21 (2) ***Witnesses.*** The parties may procure the attendance of witnesses before the master by ~~the~~
22 ~~issuance and service of~~ causing subpoenas to be issued and served as provided in K.S.A.
23 60-245, and amendments thereto. If, ~~without adequate excuse,~~ a witness fails to appear
24 or give evidence, ~~he or she~~ the witness may be punished ~~as for a contempt and be~~
25 ~~subjected to the consequences, penalties, and remedies~~ sanctions provided in K.S.A. 60-
26 237 and 60-245, and amendments thereto.

27 (3) ***Statement of accounts.*** When matters of accounting are in issue before the master, the
28 master may prescribe the form in which the accounts ~~shall must~~ be submitted and ~~in any~~
29 ~~proper case~~ may require or receive the testimony and statement of an accountant on the
30 subject ~~in evidence a statement by a certified public accountant who is called as a~~
31 ~~witness.~~ Upon On a party's objection of a party to any of the items ~~thus~~ submitted or
32 ~~upon on~~ a showing that the form of statement is insufficient, the master may require a
33 different form of statement to be furnished, or the accounts or specific items thereof to
34 be proved by oral examination of the accounting parties, ~~or upon on~~ written
35 interrogatories, or in ~~such other~~ another manner as the master ~~directs~~ orders.

36 (e) ***Report.***

37 (1) ***Contents and filing.*** The master ~~shall must~~ prepare a report ~~upon on~~ the matters
38 submitted to the master by the order of reference and, if required to make findings of fact
39 and conclusions of law, the master ~~shall set~~ must state them ~~forth~~ in the report. The

1 master ~~shall~~ must file the report with the clerk of the court and, in ~~an a nonjury~~ action
2 ~~to be tried without a jury~~, unless otherwise directed by the order of reference, ~~shall~~ must
3 file with it a transcript of the proceedings and of the evidence and the original exhibits.
4 The clerk ~~shall forthwith~~ must promptly serve on ~~mail to all the~~ parties notice of the
5 filing.

6 (2) *In nonjury actions.* In an ~~a nonjury~~ action, ~~to be tried without a jury~~ the court ~~shall~~ must
7 accept the master's findings of fact unless clearly erroneous. Within ~~10~~ 14 days after
8 being served with notice of the filing of the report, ~~any a~~ party may serve on the other
9 parties written objections ~~thereto upon to the report the other parties~~. Application to the
10 court for action upon on the report and upon on objections ~~thereto shall to the report~~
11 must be by motion and upon on notice as prescribed in ~~subsection (c) of K.S.A. 60-~~
12 ~~206(c)~~, and amendments thereto. The court after hearing may adopt or modify the report,
13 ~~or may modify it, or may reject it the report~~ in whole or in part, ~~or may~~ receive further
14 evidence, ~~or may recommit it the report~~ with instructions.

15 (3) *In jury actions.* In an ~~a jury~~ action, ~~to be tried by a jury~~ the master ~~shall~~ must not be
16 ~~directed to~~ report the evidence unless required ordered by the court. If the master is
17 available for cross-examination, the master's findings upon on the issues submitted to the
18 master are admissible as evidence of the matters found and may be read to the jury,
19 subject to the ~~ruling of the court upon any~~ court's ruling on objections ~~in point of law~~
20 ~~which may be made~~ to the report.

21 (4) *Stipulation as to findings.* The effect of a master's report is the same whether or not the
22 parties have consented to the reference. When the parties stipulate that a master's
23 findings of fact ~~shall be~~ are final, only questions of law arising upon from the report ~~shall~~
24 ~~thereafter~~ may later be considered.

25 (5) *Draft report.* Before filing ~~the master's a~~ report, a ~~the~~ master may submit a draft ~~thereof~~
26 of the report to counsel for all parties ~~for the purpose of receiving to receive~~ their
27 suggestions.

28 COMMENT

29 The language of K.S.A. 60-253 has been amended as part of the general restyling of the
30 Kansas Code to make it more easily understood and to make style and terminology
31 consistent throughout the Code.

32 When adopted, K.S.A. 60-253 followed Federal Rule 53 with minor variations. Federal
33 Rule 53 has been amended several times, most substantially in 2003. Because masters are
34 not used in state courts nearly as often as in federal court, the Committee determined it is not
35 necessary to conform K.S.A. 60-253 to the federal rule.

36 The order of subsections (a) and (b) was reversed because it is more logical for the
37 reference provision to appear first. The Committee determined that the disqualification

1 provision in Federal Rule 53(a)(2) would be beneficial, and this was added to the end of
2 revised subsection (a).

3 In subsection (c), “electronically stored information” has been added to the list of
4 evidence of which the master can require production.

5 The time set in the former statute at 10 and 20 days have been revised to 14 and 21 days,
6 respectively. See the Comment to K.S.A. 60-206.

7 **60-254. Judgments Judgment.**

8 (a) *Definition.* A judgment is the final determination of the parties’ rights ~~of the parties~~ in an
9 action.

10 (b) *Judgment upon on multiple claims or involving multiple parties.* When an action presents
11 more than one claim for relief — is presented in an action, whether as a claim, counterclaim, ~~cross-~~
12 ~~claim crossclaim,~~ or third-party claim — or, when multiple parties are involved, the court may direct
13 ~~the~~ entry of a final judgment as to one or more, but fewer than all, ~~of the~~ claims or parties only upon
14 an express determination if the court expressly determines that there is no just reason for delay, ~~and~~
15 ~~upon an express direction for the entry of judgment. In the absence of such determination and~~
16 ~~direction~~ Otherwise, any order or other ~~form of~~ decision, however designated, ~~which that~~ adjudicates
17 fewer than all the claims or the rights and liabilities of fewer than all the parties ~~shall does~~ not
18 ~~terminate end~~ the action as to any of the claims or parties; and ~~the order or other form of decision~~
19 ~~is subject to revision may be revised~~ at any time before the entry of a judgment adjudicating all the
20 claims and all the parties’ rights and liabilities ~~of all the parties.~~

21 (c) *Demand for judgment; relief to be granted.* A default judgment by default shall must not
22 ~~be different differ~~ in kind from, or exceed in amount, ~~that prayed for in the demand for judgment~~
23 what is demanded in the pleadings. Before ~~any~~ a default judgment is taken in ~~any an~~ action in which
24 ~~a the~~ pleading of the party seeking relief states only that the amount sought as ~~contains a demand~~
25 ~~for money~~ damages is in excess of \$75,000, ~~without demanding a specific amount of money,~~ as
26 provided in ~~subsection (a) of~~ K.S.A. 60-208(a), and amendments thereto, the party seeking relief
27 must notify the party against whom relief is sought of the amount of money for which judgment will
28 be taken. Notice ~~shall must~~ be given by ~~certified mail,~~ return receipt delivery requested, or as the
29 court ~~may order orders,~~ at least ~~10~~ 14 days ~~prior to before~~ the date judgment is sought. ~~Proof of~~
30 ~~service shall be filed and submitted to the court. Except as to a party against whom a judgment is~~
31 ~~entered by default, every~~ Every other final judgment ~~shall should~~ grant the relief to which ~~the each~~
32 party ~~in whose favor it is rendered~~ is entitled, even if the party has not demanded ~~such that~~ relief in
33 ~~such party's its~~ pleadings.

34 **COMMENT**

35 The language of K.S.A. 60-254 has been amended as part of the general restyling of the
36 Kansas Code to make it more easily understood and to make style and terminology

1 consistent throughout the Code.

2 Under the Kansas Code, “judgment” is defined differently than under the federal rules.
3 Subsection (c) requires the giving of notice before taking a default judgment for money
4 damages when the pleading specifies that the amount sought was in excess of \$75,000. That
5 requirement is not found in the federal rules. The notice must now be given by return receipt
6 delivery rather than certified mail, allowing the same options as for service of process. The
7 provision mandating proof of service is deleted as unnecessary. K.S.A. 60-205(d)(1) now
8 requires a certificate of service be filed with any paper required to be served. There is no
9 counterpart in the Kansas Code of Federal Rule 54(d).

10 The time set in the former statute at 10 days has been revised to 14 days. See the
11 Comment to K.S.A. 60-206.

12 **60-255. Default.**

13 (a) *Entry.* ~~When a party against whom a judgment for affirmative relief is sought has failed to~~
14 ~~plead or otherwise defend, the party is in default. Upon~~ On request and proper a showing by the that
15 a party is entitled thereto to a default judgment, the judge shall court must render judgment against
16 a the party in default for the remedy to which the requesting party is entitled. But no a default
17 judgment by default shall may be entered against a minor or incapacitated person unless only if
18 represented in the action by a guardian, conservator, or other legally authorized representative who
19 has appeared in the action, or by a guardian ad litem appointed by the court. If the party against
20 whom a default judgment by default is sought has appeared personally in the action, he or she (or
21 , if appearing by a representative, his or her that party or its representative) shall must be served with
22 written notice of the application request for judgment at least three (3) 7 days prior to before the
23 hearing on such application. If, in order to enable the court to enter judgment or to carry it into
24 effect, it is necessary to take an account or to determine the amount of damages or to establish the
25 truth of any averment by evidence or to make an investigation of any other matter, the The court
26 may conduct such hearings or order such references as it deems necessary and proper and shall
27 accord a make referrals — preserving any statutory right of to a jury trial by jury to the parties when
28 and as required by any statute of the state. — when, to enter or effectuate judgment, it needs to:

29 (1) conduct an accounting;

30 (2) determine the amount of damages;

31 (3) establish the truth of any allegation by evidence; or

32 (4) investigate any other matter.

33 (b) *Setting aside a default judgment.* ~~For good cause shown the~~ The court may set aside a
34 default judgment entered by default under in accordance with K.S.A. 60-260(b) and 60-309, and
35 amendments thereto.

1 ~~(c) *Plaintiffs, counterclaimants, cross-claimants*. The provisions of this section apply whether the~~
2 ~~party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has~~
3 ~~pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations~~
4 ~~of K.S.A. 60-254(c).~~

5 ~~(d) *Judgment against the state*. No A default judgment by default shall may be entered against~~
6 ~~the state, its officers, or an officer or its agencies agency thereof unless only if the claimant~~
7 ~~establishes his or her a claim or right to relief by evidence satisfactory to that satisfies the court.~~

8 COMMENT

9 The language of K.S.A. 60-255 has been amended as part of the general restyling of the
10 Kansas Code to make it more easily understood and to make style and terminology
11 consistent throughout the Code.

12 K.S.A. 60-255 is substantially similar to Federal Rule 55, except that only the court can
13 enter a default judgment. Subsection (a) now defines when a party is in default.

14 Amended K.S.A. 60-255 omits former subsection (c), which included two provisions.
15 The first recognized that K.S.A. 60-255 applies to described claimants. The list was
16 incomplete and unnecessary. Subsection (a) applies K.S.A. 60-255 to any party against
17 whom a judgment for affirmative relief is requested. The second provision was a redundant
18 reminder that K.S.A. 60-254(c) limits the relief available by default judgment.

19 The time set in the former statute at 3 days has been revised to 7 days. See the Comment
20 to K.S.A. 60-206.

21 **60-256. Summary judgment.**

22 (a) ~~*For claimant* By a claiming party. A party seeking claiming relief to recover upon a claim,~~
23 ~~counterclaim or cross-claim or to obtain a declaratory may move, with or without supporting~~
24 ~~affidavits or supporting declarations pursuant to K.S.A. 53-601, and amendments thereto, for~~
25 ~~summary judgment on all or part of the claim. may at any time after the expiration of 20 days from~~
26 ~~the commencement of the action or after service of a motion for summary judgment by the adverse~~
27 ~~party, move with or without supporting affidavits for a summary judgment in the party's favor as to~~
28 ~~all or any part thereof.~~

29 (b) ~~*For* By a defending party. A party against whom a claim, counterclaim or cross-claim is~~
30 ~~asserted or a declaratory judgment relief is sought may, at any time, move, with or without~~
31 ~~supporting affidavits or supporting declarations pursuant to K.S.A. 53-601, and amendments thereto,~~
32 ~~for a summary judgment in the party's favor as to on all or any part of the claim thereof.~~

33 (c) ~~*Motion and proceeding thereon* Time for a motion; response and reply; proceedings. The~~

1 motion shall be served at least 21 days before the time fixed for the hearing. The adverse party prior
2 to the day of hearing may serve opposing affidavits.

3 (1) These times apply unless a different time is set by local rule or the court orders
4 otherwise:

5 (A) a party may move for summary judgment at any time until 30 days after the close
6 of all discovery;

7 (B) a party opposing the motion must file a response within 21 days after the motion
8 is served or a responsive pleading is due, whichever is later; and

9 (C) the movant may file a reply within 14 days after the response is served.

10 (2) The judgment sought shall should be rendered forthwith if the pleadings, depositions,
11 answers to interrogatories and admissions the discovery and disclosure materials on file,
12 together with the and any affidavits or declarations, if any, show that there is no genuine
13 issue as to any material fact and that the moving party movant is entitled to a judgment
14 as a matter of law. A summary judgment, interlocutory in character, may be rendered on
15 the issue of liability alone although there is a genuine issue as to the amount of damages.

16 (d) *Case not fully adjudicated on the motion.*

17 (1) Establishing facts. If on motion under this section summary judgment is not rendered
18 upon on the whole case or for all the relief asked and a trial is necessary action, the court
19 should, to the extent practicable, determine what material facts are not genuinely at issue.
20 The court should so determine at the hearing of the motion, by examining the pleadings
21 and the evidence before it and by interrogating counsel the attorneys, shall if practicable
22 ascertain what material facts exist without substantial controversy and what material
23 facts are actually and in good faith controverted. It shall thereupon make should then
24 issue an order specifying the what facts that appear without substantial controversy, —
25 including the extent to which the amount items of damages or other relief — is not in
26 controversy, and directing such further proceedings in the actions as are just are not
27 genuinely at issue. Upon the trial of the action the The facts so specified shall must be
28 deemed treated as established in the action, and the trial shall be conducted accordingly.

29 (2) Establishing liability. An interlocutory summary judgment may be rendered on liability
30 alone, even if there is a genuine issue on the amount of damages.

31 (e) *Form of affidavits Affidavits or declarations; further testimony; defense required.*

32 (1) In general. Supporting and A supporting or opposing affidavits shall affidavit or
33 declaration must be made on personal knowledge, shall set forth such out facts as that

1 would be admissible in evidence, and shall show affirmatively that the affiant or
2 declarant is competent to testify to on the matters stated therein. Sworn or certified
3 copies of all papers or parts thereof If a paper or part of a paper is referred to in an
4 affidavit or declaration, a sworn or certified copy must shall be attached thereto to or
5 served therewith with the affidavit or declaration. The court may permit affidavits an
6 affidavit or declaration to be supplemented or opposed by depositions, answers to
7 interrogatories, or further additional affidavits or declarations.

8 (2) ***Opposing party's obligation to respond.*** When a motion for summary judgment is
9 properly made and supported as provided in this section, an adverse opposing party may
10 not rest upon the mere rely merely on allegations or denials of the adverse party's in its
11 own pleading; but rather, its the adverse party's response; must — by affidavits or by
12 declarations pursuant to K.S.A. 53-601, and amendments thereto, or as otherwise
13 provided in this section; must — set forth out specific facts showing that there is a
14 genuine issue for trial. If the adverse opposing party does not so respond, summary
15 judgment should, if appropriate, shall be entered against the adverse that party.

16 (f) ***When affidavits or declarations are unavailable.*** Should it appear from the affidavits of If
17 a party opposing the motion shows by affidavit or by declaration pursuant to K.S.A. 53-601, and
18 amendments thereto, that, for specified the party cannot for reasons, it cannot stated present by
19 affidavit facts essential to justify such party's its opposition, the court may:

20 (1) ~~refuse the application for judgment deny the motion; or may~~

21 (2) order a continuance to permit enable affidavits or declarations to be obtained, or
22 depositions to be taken, or other discovery to be had undertaken; or

23 (3) ~~may make such issue any other just order as is just.~~

24 (g) ***Affidavits or declarations made submitted in bad faith.*** Should it appear to the satisfaction
25 of the court at any time that any of the affidavits presented pursuant to this section are presented If
26 satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for the
27 purpose of delay, the court shall forthwith must order the submitting party or attorney employing
28 them to pay to the other party the amount of the reasonable expenses which the filing of the
29 affidavits caused the party to incur, including reasonable attorney attorney's fees, it incurred as a
30 result. and any An offending party or attorney may be adjudged guilty of held in contempt.

31 COMMENT

32 The language of K.S.A. 60-256 has been amended as part of the general restyling of the
33 Kansas Code to make it more easily understood and to make style and terminology
34 consistent throughout the Code.

35 Former subsections (a) and (b) referred to summary judgment motions on or against a
36 claim, counterclaim, or crossclaim, or to obtain a declaratory judgment. The list was

1 incomplete. K.S.A. 60-256 applies to third-party claimants, intervenors, claimants in
2 interpleader, and others. Amended subsections (a) and (b) carry forward the present
3 meaning by referring to a party claiming relief and a party against whom relief is sought.

4 A formal affidavit is no longer required. K.S.A. 53-601 allows a written unsworn
5 declaration, certificate, verification, or statement subscribed in proper form as true under
6 penalty of perjury to substitute for an affidavit.

7 Former subsections (c), (d), and (e) stated circumstances in which summary judgment
8 “shall be rendered,” the court “shall if practicable” ascertain facts existing without
9 substantial controversy, and “if appropriate, shall” enter summary judgment. In each place
10 “shall” is changed to “should.” It is established that although there is no discretion to enter
11 summary judgment when there is a genuine issue as to any material fact, there is discretion
12 to deny summary judgment when it appears that there is no genuine issue as to any material
13 fact. *Kennedy v. Silas Mason Co.*, 334 U.S. 249, 256-257 (1948). Many lower court
14 decisions are gathered in 10A Wright, Miller & Kane, Federal Practice & Procedure: Civil
15 3d, § 2728. “Should” in amended subsection (c) recognizes that courts will seldom exercise
16 the discretion to deny summary judgment when there is no genuine issue as to any material
17 fact. Similarly sparing exercise of this discretion is appropriate under subsection (e)(2).
18 Subsection (d)(1), on the other hand, reflects the more open-ended discretion to decide
19 whether it is practicable to determine what material facts are not genuinely at issue.

20 Former subsection (d) used a variety of different phrases to express the K.S.A. 60-256(c)
21 standard for summary judgment – that there is no genuine issue as to any material fact.
22 Amended subsection (d) adopts terms directly parallel to K.S.A. 60-256(c).

23 The timing provisions for summary judgment are outmoded. They are consolidated and
24 substantially revised in new subsection (c)(1). The new rule allows a party to move for
25 summary judgment at any time, even as early as the commencement of the action. If the
26 motion seems premature both subsection (c)(1) and K.S.A. 60-206(b) allow the court to
27 extend the time to respond. The rule does set a presumptive deadline at 30 days after the
28 close of all discovery.

29 The presumptive timing rules are default provisions that may be altered by an order in
30 the case or by local rule. A case management order entered under K.S.A. 60-216(b) may
31 supersede the rule provisions, deferring summary-judgment motions until a stated time or
32 establishing different deadlines.

33 If a motion for summary judgment is filed before a responsive pleading is due from a
34 party affected by the motion, the time for responding to the motion is 21 days after the
35 responsive pleading is due.

1 **60-257. Declaratory judgment judgments; procedure.** ~~The~~ This article governs the procedure for
2 obtaining a declaratory judgment pursuant to under article 17 of this chapter, ~~shall be in accordance~~
3 ~~with this article, and the right to trial by jury may be demanded under the circumstances and in the~~
4 ~~manner provided in~~ K.S.A. 60-238 and 60-239, and amendments thereto, govern a demand for a jury
5 trial. The existence of another adequate remedy does not preclude a declaratory judgment for
6 declaratory relief in cases where it that is otherwise appropriate. The court may order a speedy
7 hearing of ~~an action for~~ a declaratory judgment action ~~and may advance it on the calendar.~~

8 **COMMENT**

9 The language of K.S.A. 60-257 has been amended as part of the general restyling of the
10 Kansas Code to make it more easily understood and to make style and terminology
11 consistent throughout the Code. These changes are intended to be stylistic only.

12
13 **60-258. Entry of judgment.** Entry of judgments ~~shall be~~ is subject to ~~the provisions of~~ K.S.A. 60-
14 254(b), and amendments thereto. No judgment ~~shall be~~ is effective unless and until a journal entry
15 or judgment form is signed by the ~~trial~~ judge and filed with the clerk ~~of the court.~~ When judgment
16 is entered by judgment form, the clerk ~~shall~~ must serve a copy of the judgment form on all attorneys
17 of record within ~~three~~ 3 court days. Service may be made ~~personally or by mail~~ as authorized by
18 K.S.A. 60-205, and amendments thereto. Failure of service of a copy of the judgment form ~~shall~~
19 does not affect the judgment's validity of the judgment.

20 **COMMENT**

21 The language of K.S.A. 60-258 has been amended as part of the general restyling of the
22 Kansas Code to make it more easily understood and to make style and terminology
23 consistent throughout the Code. These changes are intended to be stylistic only.

24 K.S.A. 60-258 is substantially different from Federal Rule 58.

25 **60-258a. Comparative negligence.**

26 (a) ***Effect of contributory negligence.*** The contributory negligence of ~~any~~ a party in a civil
27 action ~~shall~~ does not bar ~~such that~~ party or ~~such party's~~ its legal representative from recovering
28 damages for negligence resulting in death, personal injury, property damage, or economic loss, if
29 ~~such that~~ party's negligence was less than the causal negligence of the party or parties against whom
30 a claim for recovery is made, but the award of damages to ~~any that~~ party in such action shall must
31 be diminished reduced in proportion to the amount of negligence attributed to ~~such that~~ party. If ~~any~~
32 such a party is claiming claims damages for a decedent's wrongful death, the negligence of the
33 decedent, if any, ~~shall~~ must be imputed to ~~such that~~ party.

34 (b) ***Special verdicts or findings required.*** ~~Where~~ When the comparative negligence of the parties

1 ~~in any such action~~ is an issue, the jury ~~shall~~ must return special verdicts; ~~—~~ or in the absence of a
2 jury, the court ~~shall~~ must make special findings; ~~—~~ determining the percentage of negligence
3 attributable to each of the parties, ~~party~~ and ~~determining~~ the total amount of damages sustained by
4 each of the claimants ~~claimant.~~, and ~~the~~ The court must determine the appropriate entry of judgment
5 shall be made by the court. No general verdict shall be returned by the jury.

6 (c) **Joining additional parties.** On motion of any party against whom a claim is asserted for
7 negligence resulting in death, personal injury, property damage, or economic loss, any other person
8 whose causal negligence is claimed to have contributed to ~~such the~~ death, personal injury, property
9 damage, or economic loss, ~~shall~~ must be joined as an additional party ~~to the action.~~

10 (d) **Apportioning liability.** ~~Where~~ When the comparative negligence of the parties ~~in any action~~
11 is an issue and recovery is ~~allowed~~ permitted against more than one party, each ~~such~~ party ~~shall be~~
12 is liable for that portion of the total dollar amount awarded as damages to ~~any a~~ claimant in the
13 proportion that the amount of ~~such that~~ party's causal negligence bears to the amount of the causal
14 negligence attributed to all parties against whom ~~such~~ recovery is ~~allowed~~ permitted.

15 (e) **Applicability.** ~~The provisions of this~~ This section ~~shall be~~ is applicable to actions ~~pursuant~~
16 to under this chapter and to actions commenced ~~pursuant to~~ under the code of civil procedure for
17 limited actions.

18 COMMENT

19 The language of K.S.A. 60-258a has been amended as part of the general restyling of the
20 Kansas Code to make it more easily understood and to make style and terminology
21 consistent throughout the Code. These changes are intended to be stylistic only.

22 There is no counterpart in the federal rules of K.S.A. 60-258a.

23 ~~60-258b. Same; act inapplicable to actions accruing prior to July 1, 1974. The provisions of this~~
24 ~~act shall not apply to any cause of action which has accrued prior to the effective date of this act.~~

25 COMMENT

26 K.S.A. 60-258b is no longer necessary and has been deleted.

1 **60-259. New trial; amendment of judgments altering or amending a judgment.**

2 (a) **In general.**

3 **(1) Grounds for a new trial.** ~~A~~ The court may, on motion, grant a new trial ~~may be granted~~
4 to all or any of the parties and on all or part of the issues ~~when it appears that the rights~~
5 of the party are substantially affected ~~for the following reasons:~~

6 **(A)** ~~First. Because of~~ abuse of discretion of ~~by~~ the court, misconduct of ~~by~~ the jury
7 or an opposing party, or accident or surprise ~~which that~~ ordinary prudence could
8 not have guarded against, or for any other cause whereby ~~because~~ the party was
9 not afforded a reasonable opportunity to present ~~his~~ its evidence and be heard on
10 the merits of the case;

11 **(B)** ~~Second. Erroneous~~ erroneous rulings or instructions of ~~by~~ the court;

12 **(C)** ~~Third. That~~ the verdict, report, ~~or~~ decision was given under the influence of
13 passion or prejudice;

14 **(D)** ~~Fourth. That~~ the verdict, report, ~~or~~ decision is in whole or in part contrary to the
15 evidence;

16 **(E)** ~~Fifth. For~~ newly discovered evidence ~~that is~~ material for the ~~moving~~ party
17 applying, which ~~he~~ it could not, with reasonable diligence, have discovered and
18 produced at the trial; or

19 **(F)** ~~Sixth. That~~ the verdict, report, ~~or~~ decision was procured by ~~the~~ corruption of the
20 party obtaining it. ~~In and in~~ this case, ~~the new trial~~ shall ~~must~~ be granted as a
21 matter of right, and all the costs ~~made in the case~~ incurred up to the time of
22 granting the new trial ~~shall~~ must be charged to the party obtaining the ~~verdict,~~
23 report, or ~~decision, report or verdict.~~

24 **(2) Further action after a nonjury trial.** ~~After a nonjury trial, the court may, on~~ ~~On~~ motion
25 for a new trial ~~in an action tried without a jury, the court may~~ open the judgment if one
26 has been entered, take additional testimony, amend findings of fact and conclusions of
27 law or make new ones, ~~and direct the entry of a new judgment.~~

28 (b) **Time for to file a motion for a new trial.** ~~A motion for a new trial shall~~ must be served ~~filed~~
29 not no ~~later than~~ 10 ~~28~~ days after the entry of judgment. ~~After~~ While a ~~timely-filed~~ motion has been
30 thus timely served ~~is pending,~~ the court in its discretion may ~~(1) upon application on motion~~ and
31 notice to the parties ~~while the motion is pending,~~ permit the moving party to amend the motion for
32 a new trial to state different or additional ~~reasons~~ grounds; ~~(2) grant the pending motion upon~~
33 grounds not stated by the moving party and in that case the court shall specify the grounds in its

1 order.

2 (c) ***Definite statement of grounds reasons***. The motion ~~shall~~ should not follow the general
3 language of ~~the statute~~ subsection (a) in stating the grounds reasons for a new trial, but ~~shall~~ rather
4 must state specifically the alleged error or other grounds reasons relied on.

5 (d) ***Time for serving to serve affidavits or declarations***. When a motion for a new trial is based
6 ~~upon~~ on affidavits or on declarations pursuant to K.S.A. 63-601, and amendments thereto, they ~~shall~~
7 must be served filed with the motion. The opposing party has ~~ten (10)~~ 14 days after such service
8 ~~within which being served to serve file~~ opposing affidavits or declarations, which period may be
9 ~~extended for an additional period not exceeding twenty (20) days, either by the court for good cause~~
10 ~~shown or by the parties by written stipulation.~~ The court may permit reply affidavits or declarations.

11 (e) ***New trial on ~~On the court's initiative of court or for reasons not in the motion~~***. ~~Not~~ No later
12 than ~~ten (10)~~ 28 days after the entry of judgment, the court, of on its own, initiative may order a new
13 trial for any reason that would justify granting one on a party's for which it might have granted a
14 ~~new trial on~~ motion, of a party, and in the order After giving the parties notice and an opportunity
15 to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion.
16 In either event, the court must specify the grounds therefor reasons in its order.

17 (f) ***Motion to alter or amend a judgment***. A motion to alter or amend the a judgment ~~shall~~ must
18 ~~be served and filed not no~~ later than ~~ten (10)~~ 28 days after the entry of the judgment.

19 (g) ***Production of evidence***. ~~In all cases where the ground of a case in which a reason for the~~
20 ~~motion is error in the exclusion of evidence, want lack of fair reasonable opportunity to produce~~
21 ~~present evidence, or newly discovered evidence, such the evidence shall must be produced presented~~
22 ~~at the hearing of the motion by affidavit or by declaration pursuant to K.S.A. 53-601, and~~
23 ~~amendments thereto, or, when authorized by the judge court, by deposition or oral testimony of the~~
24 ~~witnesses, and the opposing party may rebut the same respond~~ in like manner.

25 COMMENT

26 The language of K.S.A. 60-259 has been amended as part of the general restyling of the
27 Kansas Code to make it more easily understood and to make style and terminology
28 consistent throughout the Code. These changes are intended to be stylistic only.

29 There are substantial differences between K.S.A. 60-259 and Federal Rule 59.

30 Subsection (a) is amended to delete the phrase “when it appears that the rights of the
31 party are substantially effected.” That guidance for the court is already set out in the last
32 sentence of K.S.A. 60-261.

33 The substance of former subsection (b)(2) was moved to revised subsection (e), which
34 now conforms to Federal Rule 59(d).

35 Formerly, K.S.A. 60-250, 60-252, and 60-259 adopted 10-day periods for their respective

1 post-judgment motions. K.S.A. 60-206(b) prohibits any expansion of those periods.
2 Experience has proved that in many cases it is not possible to prepare a satisfactory
3 post-judgment motion in 10 days, even under the former rule that excluded intermediate
4 Saturdays, Sundays, and legal holidays. Rather than introduce the prospect of uncertainty
5 in appeal time by amending K.S.A. 60-206(b) to permit additional time, the former 10-day
6 periods are expanded to 28 days. K.S.A. 60-206(b) continues to prohibit expansion of the
7 28-day period.

8 Formerly, K.S.A. 60-250, 60-252, and 60-259 used inconsistent language regarding
9 motions, including “service and filing,” “made,” and “served.” Now all use “file” or “filed”
10 to make uniform what must be done for a post-trial motion to delay the time for filing a
11 notice of appeal.

12 A formal affidavit is no longer required. K.S.A. 53-601 allows a written unsworn
13 declaration, certificate, verification, or statement subscribed in proper form as true under
14 penalty of perjury to substitute for an affidavit.

15 Former subsection (d) set a 10-day period after being served with a motion for new trial
16 to file opposing affidavits. It also provided that the period could be extended for up to 20
17 days for good cause or by stipulation. The apparent 20-day limit on extending the time to
18 file opposing affidavits seemed to conflict with the K.S.A. 60-206(b) authority to extend
19 time without any specific limit. This tension between the two rules may have been
20 inadvertent. It is resolved by deleting the former subsection (d) limit. K.S.A. 60-206(b)
21 governs. The underlying 10-day period was extended to 14 days to reflect the change in the
22 K.S.A. 60-206(a) method for computing periods of less than 11 days.

23 **60-260. Relief from a judgment or order.**

24 (a) ~~*Clerical Corrections based on clerical mistakes; oversights and omissions.*~~ The court may
25 correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in
26 a Clerical mistakes in judgments, orders judgment, order, or other parts part of the record. The court
27 may do so on motion or on its own, with or without notice. But after an appeal has been docketed
28 in the appellate court and while it is pending, such a mistake may be corrected only with the
29 appellate court’s leave. and errors therein arising from oversight or omission may be corrected by
30 the court at any time of its own initiative or on the motion of any party and after such notice, if any,
31 as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the
32 record on appeal is filed in the appellate court, and thereafter while the appeal is pending may be
33 so corrected with leave of the appellate court.

34 (b) ~~*Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc Grounds*~~
35 for relief from a final judgment, order, or proceeding. On motion and upon such just terms as are
36 just, the court may relieve a party or said party's its legal representative from a final judgment, order,
37 or proceeding for the following reasons:

- 1 (1) mistake, inadvertence, surprise, or excusable neglect;
- 2 (2) newly discovered evidence ~~which by due~~ that, with reasonable diligence, could not have
3 been discovered in time to move for a new trial under K.S.A. 60-259(b), and
4 amendments thereto;
- 5 (3) fraud (whether ~~heretofore denominated~~ previously called intrinsic or extrinsic),
6 misrepresentation, or ~~other~~ misconduct of by an adverse opposing party;
- 7 (4) the judgment is void;
- 8 (5) the judgment has been satisfied, released, or discharged; ~~or a prior it is based on an~~
9 earlier judgment upon which it is based ~~that has been reversed or otherwise vacated;~~ or
10 applying it prospectively is no longer equitable ~~that the judgment should have~~
11 prospective application; or
- 12 (6) any other reason that justifies ~~justifying~~ relief from the operation of the judgment.

13 **(c) Timing and effect of the motion.**

- 14 (1) **Timing.** ~~The A~~ motion under subsection (b) must ~~shall~~ be made within a reasonable
15 time; ~~—~~ and for reasons (1), (2), and (3) ~~not no~~ more than one year after the entry of the
16 judgment; or order; or the date of the proceeding was entered or taken.
- 17 (2) **Effect on finality.** ~~A~~ ~~The~~ motion under this subsection (b) does not affect the finality of
18 a judgment judgment's finality or suspend its operation.

19 **(d) Other powers to grant relief.** This section does not limit a court's ~~the~~ power of a court to:

- 20 (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
21 or
- 22 (2) to grant relief to a defendant not actually personally notified as provided in under K.S.A.
23 60-309, and amendments thereto, to a defendant who was not personally notified of the
24 action; or
- 25 (3) to set aside a judgment for fraud upon on the court.

26 **(e) Bills and writs abolished.** The following bills are abolished: bills of review, bills in the
27 nature of bills of review, and writs Writs of coram nobis, coram vobis, and audita querela, and bills
28 of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining
29 any relief from a judgment shall be by motion as prescribed in this article or by an independent
30 action.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

COMMENT

The language of K.S.A. 60-260 has been amended as part of the general restyling of the Kansas Code to make it more easily understood and to make style and terminology consistent throughout the Code. These changes are intended to be stylistic only.

The final sentence of former subsection (b) specified that the procedure for obtaining any relief from a judgment was by motion as prescribed in article 2 or by an independent action. That provision is deleted as unnecessary. Relief continues to be available only as provided in the Kansas Code or by independent action.

60-261. Harmless error. ~~Unless justice requires otherwise, no~~ ~~No error in either the admission admitting or the exclusion of excluding evidence — and no or any other error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties a party — is ground for granting a new trial, or for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at~~ At every stage of the proceeding, the court must disregard any error or defect in the proceeding which does all errors and defects that do not affect the any party's substantial rights of the parties.

COMMENT

The language of K.S.A. 60-261 has been amended as part of the general restyling of the Kansas Code to make it more easily understood and to make style and terminology consistent throughout the Code. These changes are intended to be stylistic only.

60-262. Stay of proceedings to enforce a judgment.

(a) *Automatic stay; exceptions* ~~== for injunctions and receiverships.~~ Except as stated ~~herein in this section,~~ no execution ~~shall may~~ issue ~~upon on~~ a judgment, nor ~~shall may~~ proceedings be taken ~~for its enforcement to enforce it,~~ until ~~the expiration of 10 14 days have passed~~ after its entry. ~~Unless But unless the court orders otherwise ordered by the court,~~ an interlocutory or final judgment in an action for an injunction or in a receivership action, ~~shall the following actions are not be stayed during the period after its entry being entered, even if and until an appeal is taken; or during the pendency of an appeal.~~ The provisions of subsection (c) govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal:

(1) for an injunction; or

(2) for a receivership.

1 (b) *Stay pending the disposition of a ~~on~~ motion for new trial or for judgment.* In its discretion
2 and on such conditions On appropriate terms for the opposing party's security of the adverse party
3 as are proper, the court may stay the execution of ~~or any proceedings to enforce a judgment~~ — or
4 any proceedings to enforce it ~~—~~ pending ~~the~~ disposition of any of the following motions:

5 (1) under K.S.A. 60-250, and amendments thereto, for judgment as a matter of law;

6 (2) under K.S.A. 60-252(b), and amendments thereto, to amend the findings or for additional
7 findings;

8 (3) under K.S.A. 60-259, and amendments thereto, a motion for a new trial or to alter or
9 amend a judgment; made pursuant to K.S.A. 60-259, and amendments thereto; or

10 (4) under K.S.A. 60-260, and amendments thereto, of a motion for relief from a judgment
11 or order made pursuant to K.S.A. 60-260, and amendments thereto, or of a motion for
12 judgment as a matter of law made pursuant to K.S.A. 60-250, and amendments thereto,
13 or of a motion for amendment to the findings or for additional findings made pursuant
14 to subsection (b) of K.S.A. 60-252.

15 (c) *Injunction pending appeal.* ~~When~~ While an appeal is taken pending from an interlocutory
16 order or final judgment granting that grants, dissolving dissolves, or denying denies an injunction,
17 the judge in such judge's discretion court may suspend, modify, restore, or grant an injunction during
18 the pendency of the appeal upon such on terms as to for bond or otherwise as it considers proper for
19 the security of other terms that secure the opposing party's rights of the adverse party.

20 (d) *Stay upon with bond on appeal.* ~~When~~ If an appeal is taken, the appellant may obtain a stay
21 by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subsection
22 (a) except in an action described in subsection (a)(1) or (a)(2). The bond may be given at upon or
23 after the time of filing the notice of appeal. The stay is effective takes effect when the court approves
24 the supersedeas bond is approved by the court.

25 (e) *Stay in favor of without bond on an appeal by the state, its officers, or agency thereof its*
26 *agencies.* ~~The court must not require a~~ When an appeal is taken by the state or an officer or agency
27 thereof or by direction of any department of the state and the operation or enforcement of the
28 judgment is stayed, no bond, obligation, or other security shall be required from the appellant when
29 granting a stay on an appeal by the state, its officers, or its agencies or on an appeal directed by a
30 department of the state.

31 (f) *Power of appellate court Appellate court's power not limited.* ~~The provisions in this~~ This
32 section do does not limit any the power of the appellate court or of a judge or justice thereof one of
33 its judges or justices:

34 (1) to stay proceedings during the pendency of an appeal — or to suspend, modify, restore,
35 or grant an injunction — during the pendency of while an appeal is pending; or

1 (2) to ~~make any issue an~~ order appropriate to preserve the status quo or the effectiveness of
2 the judgment ~~subsequently~~ to be entered.

3 (g) ~~*Stay of judgment upon with multiple claims or parties.*~~ When a court has ordered a final
4 judgment on some but not all of the claims presented in the action under the conditions stated in
5 subsection (b) of K.S.A. 60-254, and amendments thereto, ~~the~~ A court may stay the enforcement of
6 that a final judgment entered under K.S.A. 60-254(b), and amendments thereto, until the entering
7 of it enters a subsequent later judgment or judgments, and may prescribe such conditions as are
8 terms necessary to secure the benefit thereof to of the stayed judgment for the party in whose favor
9 the judgment is ~~it was~~ entered.

10 COMMENT

11 The language of K.S.A. 60-262 has been amended as part of the general restyling of the
12 Kansas Code to make it more easily understood and to make style and terminology
13 consistent throughout the Code. These changes are intended to be stylistic only.

14 K.S.A. 60-262 is substantially similar to Federal Rule 62, except the Kansas Code has
15 no counterparts of Federal Rule 62(f) or the last sentence of Federal Rule 62(c).

16 The final sentence of former subsection (a) referred to subsection (c). It is deleted as
17 unnecessary. Subsection (c) governs of its own force.

18 The time set in the former statute at 10 days has been revised to 14 days. See the
19 Comment to K.S.A. 60-206.

20 **60-263. Disability of judge.** If ~~by reason of death, sickness or other disability,~~ a judge before whom
21 an action has been tried is unable, ~~because of sickness, death, or other disability,~~ to perform the
22 court's duties to be performed by the court under this article after a verdict is returned or findings
23 of fact and conclusions of law are filed, ~~then~~ any other judge sitting in or assigned to the court in
24 which the action was tried may perform those duties, ~~;~~ ~~but~~ ~~However,~~ ~~if such other~~ the successor
25 judge may grant a new trial if the judge finds for any reason is satisfied that ~~he or she~~ the judge
26 cannot perform those duties ~~because he or she did not preside at the trial or for any other reason,~~ the
27 judge may in his or her discretion grant a new trial.

28 COMMENT

29 The language of K.S.A. 60-263 has been amended as part of the general restyling of the
30 Kansas Code to make it more easily understood and to make style and terminology
31 consistent throughout the Code. These changes are intended to be stylistic only.

32 K.S.A. 60-263 originally followed the federal rule. Federal Rule 63 was substantially
33 revised in 1991 and is now applicable to any situation in which a judge is unable to proceed
34 with a hearing or trial.

1 **60-264. Process in behalf of and against persons not parties** **Enforcing relief for or against a**
2 **nonparty.** When an order grants relief for a nonparty or is made in favor of a person who is not a
3 party to the action, he or she may enforce obedience to the order by the same process as if he or she
4 were a party; and, when obedience to an order may be lawfully enforced against a nonparty person
5 who is not a party, he or she is liable to the same process the procedure for enforcing obedience to
6 the order is the same as if he or she were for a party.

7 **COMMENT**

8 The language of K.S.A. 60-264 has been amended as part of the general restyling of the
9 Kansas Code to make it more easily understood and to make style and terminology
10 consistent throughout the Code. These changes are intended to be stylistic only.

11 K.S.A. 60-264 follows Federal Rule 71.

12 **60-265. Applicability of article.**

13 (a) **Generally.** The provisions of this article shall apply only to civil actions and proceedings in
14 the district courts, other than actions commenced pursuant to the code of civil procedure for limited
15 actions, and shall apply to original actions in the supreme court except:

16 (b) **Additional circumstances when this article may be applicable.** In actions and proceedings
17 in the district courts, other than civil actions, the codes of procedure adopted for those proceedings
18 must govern. When the codes of procedure adopted for proceedings in the district court other than
19 civil actions, or the codes of procedure for any other court, commission, or other judicial or quasi-
20 judicial body, fail to contain a specific provision on a particular procedure, then the provisions of
21 this article may be adopted.

22 (1) When made applicable in any other courts, boards, commissions, or other judicial or
23 quasi-judicial bodies by specific statutory provisions referring to this article.

24 (2) When any other such court or judicial or quasi-judicial body adopts by an order, which
25 order is consistent with all statutes controlling its procedures, all or a part of this article
26 for its own proceedings, either in a particular matter before it or in any matters generally,
27 or

28 (3) When any statute pertaining to any such court or other judicial or quasi-judicial body,
29 which statute was enacted prior to the adoption of this article and which incorporated by
30 reference procedures under the then existing code of civil procedure, then the most
31 nearly comparable provisions of this article shall be applicable to the procedures in such
32 court or body until modified or supplemented by specific statutes or orders in accordance
33 with clauses (1) or (2) of this section.

34 (c) **Matters not specifically included in this article.** In any matter over which the court has

1 ~~jurisdiction but with reference to which~~ When no specific provision is included in this article refers
2 specifically to a matter over which the court has jurisdiction, the court ~~shall~~ must proceed in ~~such~~
3 a just and equitable manner as shall be just and equitable to protect ~~that protects~~ the rights and
4 interests of all affected parties ~~affected thereby~~.

5 COMMENT

6 The language of K.S.A. 60-265 has been amended as part of the general restyling of the
7 Kansas Code to make it more easily understood and to make style and terminology
8 consistent throughout the Code.

9 Other than the addition of language excluding limited actions, K.S.A. 60-265 has not
10 been amended since its adoption in 1963. At that time, the Judicial Council Advisory
11 Committee noted: “There are many provisions in the Kansas substantive law for special
12 procedure. We cannot expect to reach them all in this code. The most practical solution will
13 be to amend the provisions in the substantive law to conform to these rules.” The
14 amendment simplifies the statute, consistent with that approach, and makes clearer the
15 relationship after unification of the district court between this code and other codes such as
16 those governing probate, juvenile justice, and care of children proceedings. Language
17 permitting the adoption of all or part of these procedural rules by any other court or body has
18 been deleted as unnecessary.

19 The former reference to proceedings in the supreme court has been deleted. Appellate
20 procedure has changed significantly since the Code was enacted and is now governed by
21 Supreme Court Rules.

22 K.S.A. 60-265 has no counterpart in the federal rules.

23 **60-266. Jurisdiction and venue** unaffected. This article ~~shall~~ does not ~~be construed to~~ extend or
24 limit the jurisdiction of the district courts or the venue of actions ~~therein~~ in those courts.

25 COMMENT

26 The language of K.S.A. 60-266 has been amended as part of the general restyling of the
27 Kansas Code to make it more easily understood and to make style and terminology
28 consistent throughout the Code. These changes are intended to be stylistic only.

29 K.S.A. 60-266 is similar to Federal Rule 82.

30 **60-267. Rules by district courts.**

1 (c) Original discovery documents subject to or covered by a protective order, court rule, statute,
2 or written agreement of the parties ~~shall~~ must be retained, returned, destroyed, or disposed of in
3 accordance with the terms of the order, rule, statute, or ~~written~~ agreement.

4 (d) As used in this section, "closed" means when an order terminating the action or proceeding
5 has been filed and all appeals have been terminated, the time for appeal has expired, or when the
6 judgment is either satisfied or barred under ~~the provisions of~~ K.S.A. 60-2403, and amendments
7 thereto.

8 COMMENT

9 The language of K.S.A. 60-270 has been amended as part of the general restyling of the
10 Kansas Code to make it more easily understood and to make style and terminology
11 consistent throughout the Code. These changes are intended to be stylistic only.

12 K.S.A. 60-270 has no counterpart in the federal rules.

13 **60-271. Acceptance of ~~petitions~~ filings by ~~telefacsimile communication~~ electronic means.**

14 (a) ~~Generally. Pursuant to~~ To the extent provided by supreme court rule, the clerks of the district
15 and the appellate courts in the state of Kansas shall ~~must~~ accept documents for filing by telefacsimile
16 communication, petitions, pleadings and other papers as specified in K.S.A. 60-205, and
17 amendments thereto electronic means. As used in this section, "document" means a pleading,
18 motion, exhibit, declaration, affidavit, memorandum, paper, order, notice, and any other filing by
19 or to the court.

20 (b) ~~Signatures and verifications. A document may be signed or verified by electronic means that~~
21 are consistent with supreme court rules. The signature on the telefacsimile communication shall be
22 accepted as satisfying or verification by electronic means satisfies the requirements of requirement
23 for signing or verifying a document in K.S.A. 60-211, and amendments thereto, and in any other
24 section in this code.

25 (c) ~~As used in this section, telefacsimile communication means the use of electronic equipment~~
26 ~~to send or transmit a copy of a document via telephone line.~~

27 COMMENT

28 The language of K.S.A. 60-271 has been amended as part of the general restyling of the
29 Kansas Code to make it more easily understood and to make style and terminology
30 consistent throughout the Code. These changes are intended to be stylistic only.

31 No substantive change to current rules regarding telefacsimile filing is intended. The use
32 of the broader terms "electronic means" and "document" will accommodate future expansion
33 of electronic filing methods pursuant to supreme court rule. Subsection (c) is deleted as

1 unnecessary.

2 K.S.A. 60-271 has no counterpart in the federal rules.

3 **60-301. Summons; issuance.** ~~Upon~~ On the filing of the a petition, the clerk ~~shall forthwith~~ must
4 promptly issue a summons for service ~~upon~~ on each defendant in accordance with K.S.A. 60-303,
5 and amendments thereto. ~~Upon~~ On the written request, of the plaintiff the clerk must promptly issue
6 a separate or additional summonses shall issue for any defendant summons. A summons must be
7 served with a copy of the petition.

8 **COMMENT**

9 The language of K.S.A. 60-301 has been amended as part of the general restyling of the
10 Kansas Code to make it more easily understood and to make style and terminology
11 consistent throughout the Code. These changes are intended to be stylistic only.

12 **60-302. Summons; form.** The summons ~~shall~~ must be signed by the clerk, dated the day it is issued,
13 and bear the court's ~~be under the~~ seal, ~~of the court and shall be deemed~~ The summons is sufficient
14 if in substantial compliance with the form set forth by the judicial council.

15 **COMMENT**

16 The language of K.S.A. 60-302 has been amended as part of the general restyling of the
17 Kansas Code to make it more easily understood and to make style and terminology
18 consistent throughout the Code. These changes are intended to be stylistic only.

19 **60-303. Methods of service of process.**

20 (a) ***In general.*** Methods of service of process within this state, except service by publication as
21 provided in K.S.A. 60-307, and amendments thereto, are described in this section. Methods of
22 out-of-state service of process are described in K.S.A. 60-308, and amendments thereto.

23 (b) ***Who serves process.*** The sheriff of the county in which the action is filed ~~shall~~ must serve
24 any process by any method authorized by this section, or as otherwise provided by law, unless a
25 party, either personally or through an attorney, notifies the clerk that the party elects to undertake
26 responsibility for service ~~and so notifies the clerk.~~

27 (c) ***Service by return receipt delivery.***

- 1 (1) Service of process ~~may be made~~ by return receipt delivery, ~~shall include service which~~
2 ~~is~~ effected by certified mail, priority mail, commercial courier service, overnight delivery
3 service, or other reliable personal delivery service to the party addressed, in each
4 instance evidenced by a written or electronic receipt showing to whom delivered, ~~the~~
5 date of delivery, ~~the~~ address where delivered, and ~~the~~ person or entity effecting delivery.
- 6 (2) The sheriff, party, or party's attorney ~~must give to the person or entity effecting delivery~~
7 ~~shall cause~~ a copy of the process and petition or other document ~~to be placed~~ in a sealed
8 envelope, ~~with postage or other delivery fees prepaid~~, addressed to the person to be
9 served in accordance with K.S.A. 60-304, and amendments thereto, ~~with postage or other~~
10 ~~delivery fees prepaid~~, and the sealed envelope placed in the custody of the person or
11 entity effecting delivery.
- 12 (3) Service of process ~~shall be considered~~ ~~is~~ obtained under K.S.A. 60-203, and amendments
13 thereto, upon the delivery of the sealed envelope.
- 14 (4) After service and return of the return receipt, the sheriff, party, or party's attorney ~~shall~~
15 ~~must~~ execute ~~and file~~ a return ~~on of~~ service, ~~stating~~ ~~The return of service must state~~ the
16 nature of the process, to whom delivered, the date of delivery, the address where
17 delivered, and the person or entity effecting delivery. ~~The original return of service shall~~
18 ~~be filed with the clerk, along with~~ ~~It must include~~ a copy of the return receipt evidencing
19 ~~such~~ delivery.
- 20 (5) If the sealed envelope is returned with an endorsement showing refusal to accept
21 delivery, the sheriff, party, or the party's attorney may send a copy of the process and
22 petition or other document by first-class mail, ~~postage prepaid~~, addressed to the party to
23 be served, or may elect other methods of service. If mailed, service ~~shall be~~ ~~is~~ considered
24 ~~to be~~ obtained ~~three 3~~ days after the mailing, ~~by first-class mail, postage prepaid~~, which
25 ~~shall~~ ~~Mailing must~~ be evidenced by a certificate ~~of service~~ filed with the clerk. If the
26 unopened envelope sent ~~by~~ first-class mail is returned as undelivered for any reason,
27 ~~service is not obtained and~~ the sheriff, party, or party's attorney ~~shall~~ ~~must~~ file an
28 amended certificate ~~of service~~ with the clerk indicating nondelivery, ~~and service by such~~
29 ~~mailing shall not be considered obtained~~. Mere failure to claim ~~the sealed envelope sent~~
30 ~~by~~ return receipt delivery is not refusal of service within the meaning of this subsection.

31 (d) *Personal and residence service.*

- 32 (1) ~~The~~ ~~A~~ party may file ~~with the clerk~~ a written request ~~with the clerk~~ for personal ~~service~~
33 or, ~~in the case of service on an individual~~, for residence service.
- 34 (A) Personal service ~~shall be made~~ ~~is effected~~ by delivering or offering to deliver a
35 copy of the process and ~~accompanying documents~~ ~~petition or other document~~ to
36 the person to be served.
- 37 (B) Residence service ~~shall be made on an individual~~ ~~is effected~~ by leaving a copy
38 of the process and petition, or other document ~~to be served~~, at the ~~individual's~~
39 dwelling ~~house~~ or usual place of abode ~~of the person to be served~~ with ~~some~~

1 ~~person~~ someone of suitable age and discretion ~~residing therein~~ who resides there.

2 (C) If ~~personal or residence~~ service cannot be made ~~upon on~~ an individual, other than
3 a minor or a disabled person, ~~by personal or residence service~~, service ~~may be~~
4 ~~made~~ is effected by leaving a copy of the process and petition; or other document
5 ~~to be served~~, at the ~~defendant's~~ individual's dwelling ~~house~~ or usual place of
6 abode and mailing ~~to the individual by first-class mail, postage prepaid~~, a notice
7 that ~~such the~~ copy has been left at ~~such the~~ individual's dwelling house or usual
8 place of abode ~~to the individual by first-class mail~~.

9 (2) When process is to be served under this subsection, the clerk ~~of the court shall~~ must
10 ~~deliver the process and~~ sufficient copies of the process and petition; or other document
11 ~~to be served~~, to the sheriff of the county where the process is to be served or, if
12 requested, to a person appointed to serve process or to the ~~plaintiff's~~ requesting party's
13 attorney.

14 (3) Service, levy, and execution of all process under this subsection, including, but not
15 limited to, writs of execution, orders of attachment, replevin orders, orders for delivery,
16 writs of restitution, and writs of assistance, ~~shall~~ must be made by a sheriff within the
17 sheriff's county, by the sheriff's deputy, by an attorney admitted to the practice of law
18 ~~before the supreme court of in~~ Kansas or by ~~some~~ a person appointed as a process server
19 by a judge or clerk of the district court, ~~except that a~~ A subpoena may also be served
20 by any other person who is not a party and is ~~not less than~~ at least 18 years of age.
21 Process servers ~~shall~~ should be appointed freely and may be authorized either to serve
22 process in a single case or in cases generally during a fixed period of time. ~~A~~ An
23 appointed process server or an authorized attorney may make the service anywhere in
24 or ~~out of the~~ outside this state and ~~shall~~ must be allowed the fees prescribed for the
25 sheriff in K.S.A. 28-110, and amendments thereto, ~~for the sheriff and such~~ The court
26 may allow other fees and costs ~~as the court shall allow~~. ~~All persons~~ A person authorized
27 under this subsection to serve, levy, ~~or and~~ execute process ~~shall be~~ is considered an
28 "officer" as that term is used in K.S.A. 60-706 and 60-2401, and amendments thereto.

29 (4) In all cases when the person to be served, or an agent authorized by the person to accept
30 service of process, refuses to receive ~~copies thereof~~ the process, the offer of the duly
31 authorized process server to deliver ~~copies thereof~~ the process, and the refusal, ~~shall be~~
32 a is sufficient service of the process.

33 (e) ***Acknowledgment or appearance.*** An acknowledgment of service on the summons is
34 equivalent to service. The voluntary appearance by a ~~defendant~~ party is equivalent to service ~~as of~~
35 on the date of appearance.

36 (f) ***Other service methods for garnishments.*** In addition to other methods listed in this section,
37 a person serving a garnishment process may serve the process by any of the following methods:

38 (1) ***First-class mail.*** Process may be sent to a person by first-class mail by placing a copy
39 of the process and petition or other document to be served in an envelope addressed to

1 the person to be served in accordance with K.S.A. 60-304, and amendments thereto, at
2 the person's last known address. The envelope used for service must be addressed to the
3 person in accordance with K.S.A. 60-304, and amendments thereto, and must contain
4 adequate postage. The envelope must be sealed and placed in the United States mail.
5 Service by first-class mail is complete when the envelope is placed in the mail unless it
6 is returned undelivered.

7 (2) *Telefacsimile communication.* Process may be sent to a garnishee by telefacsimile
8 communication at a telefacsimile number designated by the garnishee. Service is
9 complete upon receipt of a confirmation generated by the transmitting machine.

10 (3) *Internet electronic mail.* Process may be sent to a garnishee by internet electronic mail
11 at an internet electronic mail address designated by the garnishee and as provided by
12 supreme court rules. Service is complete upon receipt of an electronic confirmation of
13 delivery.

14 COMMENT

15 The language of K.S.A. 60-303 has been amended as part of the general restyling of the
16 Kansas Code to make it more easily understood and to make style and terminology
17 consistent throughout the Code.

18 Although K.S.A. 60-303 states that it describes methods of service in the state,
19 subsection (d)(3) refers to service outside the state, and K.S.A. 60-308 now refers back to
20 K.S.A. 60-303 for service by return receipt delivery.

21 Subsection (f) was modeled after K.S.A. 61-3003(g) and was added so that process
22 methods for garnishment actions would be the same under Chapter 60 and Chapter 61.
23 Differences between subsection (f) and K.S.A. 61-3003(g) are intended to be stylistic only.

24 **60-304. Service of process, on whom made.** As used in this section, "serving" means making
25 service by any of the methods described in K.S.A. 60-303, and amendments thereto, unless a specific
26 method of making service is prescribed in this section. Except for service by publication under
27 K.S.A. 60-307, and amendments thereto, service of process under this article ~~shall~~ must be made as
28 follows:

29 (a) **Individual.** ~~Upon~~ On an individual other than a minor or a disabled person, by serving the
30 individual or by serving an agent authorized by appointment or by law to receive service of process,
31 ~~but if~~ If the agent is one designated by statute to receive service, such further notice as the statute
32 requires ~~shall~~ must be given. Service by return receipt delivery ~~shall~~ must be addressed to an
33 individual at the individual's dwelling ~~house~~ or usual place of abode and to an authorized agent at
34 the agent's usual or designated address. ~~If service by return receipt delivery to the individual's~~
35 ~~dwelling house or usual place of abode is refused or unclaimed,~~ the sheriff, party, or party's attorney
36 ~~seeking service may complete service by certified mail, restricted delivery, by serving the individual~~
37 ~~at a business address after filing files~~ a return ~~on~~ of service stating that the return receipt delivery

1 to the individual at ~~such the~~ individual's dwelling ~~house~~ or usual place of abode ~~has been was~~
2 refused or unclaimed and ~~that~~ a business address is known for ~~such the~~ individual, ~~the~~ sheriff, party,
3 ~~or party's attorney may complete service by return receipt delivery, addressed to the individual at~~
4 ~~the individual's business address.~~

5 (b) **Minor.** ~~Upon~~ On a minor, by serving:

6 (1) the minor; and ~~also~~

7 (2) either

8 (A) the minor's guardian or conservator, if the minor has one within ~~the~~ this state; ~~or~~

9 (B) the minor's father, ~~or~~ mother, or other person having the minor's care or control
10 or with whom ~~such the~~ minor resides; ~~or~~

11 (C) if service cannot be made ~~upon any of them~~ as specified in subdivision (A) or
12 (B), ~~then~~ as provided by order of the ~~judge~~ court.

13 Service by return receipt delivery ~~shall~~ must be addressed to an individual at the individual's
14 dwelling ~~house~~ or usual place of abode and to a corporate guardian or conservator at ~~such the~~
15 ~~guardian~~ guardian's or conservator's usual place of business.

16 (c) **Disabled person.** ~~Upon~~ On a disabled person, as defined in K.S.A. 77-201, and amendments
17 thereto, by:

18 (1) serving

19 (A) ~~such the~~ person's guardian, conservator, or a competent adult member of ~~such the~~
20 person's family with whom the person resides; ~~or~~

21 (B) if ~~such the~~ person ~~is living~~ resides in an institution, ~~then~~ the director or chief
22 executive officer of the institution; ~~or~~

23 (C) if service cannot be made ~~upon any of them~~ as specified in subdivision (A) or
24 (B), ~~then~~ as provided by order of the ~~judge,~~ court; and

25 (2) unless the ~~judge~~ court otherwise orders, serving the disabled person.

26 Service by return receipt delivery ~~shall~~ must be addressed to ~~a~~ the director or chief executive officer
27 of an institution at the institution, to any other individual at the individual's dwelling ~~house~~ or usual
28 place of abode, and to a corporate guardian or conservator at ~~such guardian~~ the guardian's or
29 conservator's usual place of business.

30 (d) **Governmental bodies.** On:

- 1 (1) ~~Upon~~ a county, by serving one of the county commissioners, ~~or~~ the county clerk, or the
2 county treasurer;
- 3 (2) ~~upon~~ a township, by serving the clerk or ~~the~~ a trustee;
- 4 (3) ~~upon~~ a city, by serving the clerk or the mayor;
- 5 (4) ~~upon~~ any other public corporation, body politic, district, or authority, by serving the
6 clerk or secretary or, if the clerk or secretary is not to be found, to any officer, director,
7 or manager thereof; and
- 8 (5) ~~upon~~ the state or any governmental agency of the state, when subject to suit, by serving
9 the attorney general or an assistant attorney general.

10 Service by return receipt delivery ~~shall must~~ be addressed to the appropriate official at the official's
11 governmental office. Income withholding orders for support and orders of garnishment of earnings
12 of state officers and employees ~~shall must~~ be served ~~upon on~~ the state or governmental agency of
13 the state in the manner provided by K.S.A. 60-723, and amendments thereto.

14 (e) *Corporations, domestic or foreign limited liability ~~company companies~~, domestic or*
15 *foreign limited ~~partnership partnerships~~, domestic or foreign limited liability ~~partnership~~*
16 *~~partnerships~~, and partnerships.* ~~Upon On~~ a domestic or foreign corporation, domestic or foreign
17 limited liability company, domestic or foreign limited partnership, domestic or foreign limited
18 liability partnership, or ~~upon~~ a partnership or other unincorporated association, ~~when by law it may~~
19 ~~be sued as such~~, that is subject to suit in a common name, by:

- 20 (1) ~~by~~ serving an officer, manager, partner, or a resident, managing, or general agent, ~~or~~
- 21 (2) ~~by~~ leaving a copy of the summons and petition ~~or other document~~ at any ~~of its~~ business
22 office of the defendant ~~offices~~ with the person having charge thereof; or
- 23 (3) ~~by~~ serving any agent authorized by appointment or ~~required~~ by law to receive service of
24 process; and ~~—~~ if the agent is one authorized by ~~law statute~~ to receive service and the
25 ~~law statute~~ so requires; ~~—~~ by also mailing a copy to the defendant.

26 Service by return receipt delivery on an officer, partner, or agent ~~shall must~~ be addressed to ~~such the~~
27 person at the person's usual place of business.

28 (f) *Resident agent for a corporation Corporation, limited liability company, limited*
29 *partnership, or limited liability partnership resident agent.* ~~Whenever any A~~ domestic corporation,
30 domestic limited liability company, ~~or~~ domestic limited partnership, ~~or any and~~, if it is authorized
31 ~~to transact business or transacts business without authority in this state~~, a foreign corporation,
32 foreign limited liability company, or foreign limited partnership ~~authorized to transact business or~~
33 ~~transacting business without authority in this state~~, irrevocably authorizes the secretary of state as

1 ~~its agent to accept on its behalf service of process, or any notice or demand required or permitted~~
2 ~~by law to be served on it, when (1) it fails to appoint or maintain in this state a resident agent upon~~
3 ~~on whom service of legal process or service of any such notice or demand may be had, whenever~~
4 ~~the or (2) its resident agent of such corporation, limited liability company or limited partnership~~
5 ~~cannot with reasonable diligence be found at the registered office in this state, the secretary of state~~
6 ~~shall be irrevocably authorized as the agent and representative of the corporation, limited liability~~
7 ~~company or limited partnership to accept service of any process or service of any notice or demand~~
8 ~~required or permitted by law to be served upon the corporation, limited liability company or limited~~
9 ~~partnership. Service on the secretary of state of any process, notice, or demand against the~~
10 ~~corporation, limited liability company or limited partnership shall must be made by delivering to the~~
11 ~~secretary of state, by personal service or by return receipt delivery, the original and two copies of~~
12 ~~the process and two copies of the petition, notice, or demand, or the clerk of the court may send the~~
13 ~~original process and two copies of both the process and the petition, notice or demand directly to the~~
14 ~~secretary of state by return receipt delivery. In the event that When any process, notice, or demand~~
15 ~~is served on the secretary of state, the secretary shall must promptly forward immediately cause a~~
16 ~~copy of such process, notice or demand to be forwarded it by return receipt delivery, addressed to~~
17 ~~the corporation, limited liability company, or limited partnership at its principal office as it appears~~
18 ~~in the records of the secretary of state, or to at the registered or principal office of the corporation,~~
19 ~~limited liability company, or limited partnership in the state of its incorporation or formation. The~~
20 ~~secretary of state shall must keep a record of all processes, notices, and demands served upon on the~~
21 ~~secretary under this subsection, and shall must record in the record the time of the service and the~~
22 ~~action taken by of the secretary with reference to it. A fee of \$40 shall must be paid to the secretary~~
23 ~~of state by the party requesting the service of process, to cover the cost of such service of serving~~
24 ~~process, except the secretary of state may waive the fee for state agencies. That The fee shall must~~
25 ~~not be included within in or paid from any deposit as security for any costs or the docket fee required~~
26 ~~by K.S.A. 60-2001 or 61-4001, and amendments thereto.~~

27 (g) *Insurance companies or associations.* Service of summons or other process ~~may also be~~
28 ~~made on any insurance company or association, organized under the laws of the this state of Kansas,~~
29 ~~may also be made by service on serving the commissioner of insurance in the same manner as that~~
30 ~~provided for service on foreign insurance companies or associations. All the requirements of law~~
31 ~~relating to service on foreign insurance companies so far as applicable shall also apply to domestic~~
32 ~~insurance companies.~~

33 (h) *Service upon on an employee.* If the plaintiff a party or the plaintiff's a party's agent or
34 attorney files an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto, that
35 to the best of the affiant's or declarant's knowledge and belief the defendant is a nonresident who
36 person to be served is employed in this state, and is a nonresident or that the place of residence of
37 the defendant person is unknown, the affiant or declarant may direct request that the service of
38 summons or other process be made by the sheriff or other duly authorized person by directing direct
39 an officer, partner, managing or general agent, or the person individual having charge of the office
40 or place of employment at which the defendant person to be served is employed, to make the
41 defendant person available for the purpose of permitting to permit the sheriff or other duly
42 authorized person to serve the summons or other process.

1 **COMMENT**

2 The language of K.S.A. 60-304 has been amended as part of the general restyling of the
3 Kansas Code to make it more easily understood and to make style and terminology
4 consistent throughout the Code. These changes are intended to be stylistic only.

5 A formal affidavit is no longer required. K.S.A. 53-601 allows a written unsworn
6 declaration, certificate, verification, or statement subscribed in proper form as true under
7 penalty of perjury to substitute for an affidavit.

8 **60-305. Process agents for public utilities, except motor common and contract carriers.** Every
9 individual, partnership, association, or corporation engaged in the business of transmission of
10 communications, or the distribution of electricity, gas, water, or petroleum products; ~~___~~ which is
11 subject to regulation by the state corporation commission, and doing business in this state, ~~shall~~
12 ~~designate~~ — must appoint, in accordance with K.S.A. 60-306, and amendments thereto, a resident
13 of ~~the this~~ state of Kansas upon on whom process may be served. ~~Any~~ The individual, partnership,
14 association, company or corporation may revoke the appointment ~~and designation of such person~~
15 ~~upon whom process may be served~~, by appointing any other qualified person qualified as above
16 ~~specified and filing an instrument of appointment as provided in accordance with~~ K.S.A. 60-306,
17 and amendments thereto. ~~Every~~ A second or subsequent appointment ~~shall must~~ also designate state
18 the name of the person ~~whose place is filled~~ who is being replaced by ~~such the~~ appointment.

19 ~~If any such company~~ An individual, partnership, association, or corporation ~~that~~ fails to
20 ~~designate and appoint such a person to receive process~~, as required by this section, ~~such process~~ may
21 be served ~~as provided by~~ under the other provisions of this article ~~3 of chapter 60 of the Kansas~~
22 ~~Statutes Annotated, and amendments thereto.~~

23 **COMMENT**

24 The language of K.S.A. 60-305 has been amended as part of the general restyling of the
25 Kansas Code to make it more easily understood and to make style and terminology
26 consistent throughout the Code. These changes are intended to be stylistic only.

27 **60-305a. Process agents for motor common carriers.** Every individual, partnership, association,
28 or corporation engaged in the business of transportation as a common carrier; ~~___~~ which is subject
29 to regulation by the state corporation commission, and doing business in this state ~~— shall must~~
30 ~~designate some~~ appoint a person residing in this state on whom ~~all~~ process ~~and notices issued by any~~
31 ~~court of record~~ may be served. ~~In every case such~~ The individual, partnership, company association,
32 or corporation ~~shall must~~ file a certificate of the appointment ~~and designation of such person~~ in the
33 office of the state corporation commission or as required ~~pursuant to by~~ 49 U.S.C. 11506. ~~The~~
34 ~~service~~ Service of the process upon on the appointed person so designated, in any civil action, shall

1 ~~be deemed and held to be as effectual and complete as if has the same effect as~~ service of such
2 ~~process were made upon~~ on the president or other chief officer of such ~~the~~ individual, partnership,
3 ~~company association,~~ or corporation. ~~Any~~ ~~The~~ individual, partnership, ~~company association,~~ or
4 corporation may revoke the appointment and designation of such person upon whom process may
5 ~~be served,~~ by appointing any other ~~qualified~~ person ~~qualified as above specified~~ and filing a
6 certificate of such ~~the~~ appointment. ~~Every~~ ~~A~~ second or subsequent appointment ~~shall~~ ~~and~~ certificate
7 ~~of appointment must also designate~~ state the name of the person ~~whose place is filled~~ who is being
8 ~~replaced by~~ such ~~the~~ appointment. ~~If any such~~ ~~An~~ individual, partnership, ~~company association,~~ or
9 corporation ~~that~~ fails to designate and appoint such a person to receive process, as required by this
10 section, ~~such process may be served in any county as provided by~~ under the other provisions of ~~this~~
11 article 3 of chapter 60 of Kansas Statutes Annotated, and amendments thereto.

12 COMMENT

13 The language of K.S.A. 60-305a has been amended as part of the general restyling of the
14 Kansas Code to make it more easily understood and to make style and terminology
15 consistent throughout the Code. These changes are intended to be stylistic only.

16 **60-306. Process service agent.**

17 (a) *Generally.* ~~Any~~ ~~An~~ individual, partnership, association, or corporation may ~~file in the office~~
18 ~~of the secretary of state an instrument appointing~~ appoint a resident of the ~~this~~ state of Kansas as
19 ~~service agent upon whom process for such person, fiduciary, company, or corporation may be~~
20 ~~served, and consenting~~ consent without limitation or exception other than as provided in this act that
21 service of process may be issued out of any court upon such ~~served on the~~ service agent as the agent
22 of such ~~the~~ individual, partnership, association, or corporation. ~~The~~ ~~An~~ instrument appointing such
23 ~~the~~ service agent ~~shall~~ ~~must~~ be acknowledged, must be filed with the office of the secretary of state,
24 ~~and must include;~~ shall state

25 (1) ~~the name and address of the person or entity making the appointment;~~

26 (2) ~~the~~ ~~name and~~ residence or office address of the service agent; ~~;~~ and

27 (3) ~~if an entity makes the appointment, the state of its formation~~ shall be recorded at length
28 ~~upon the register of service agents and shall state that such designation is made pursuant~~
29 ~~to this section.~~

30 (b) *Change of address.* An appointment ~~shall~~ ~~must~~ be amended, in writing, and filed with the
31 secretary of state whenever the name or address of the service agent ~~is no longer accurate~~ changes.

32 (c) *Period of appointment.* ~~The~~ ~~An~~ appointment ~~shall remain~~ ~~remains~~ in effect for a period of
33 three years from the date of its filing unless ~~it is~~ revoked in a writing; ~~that is~~ executed in the same
34 manner as such ~~the~~ appointment, ~~which revocation shall be recorded and indexed in the register of~~
35 ~~service agents~~ and is filed with the office of the secretary of state.

1 (d) *Collection of fee.* The fee for filing an appointment, amendment, or revocation shall be is
2 \$20. The secretary of state shall must remit all fees received pursuant to this section to the state
3 treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
4 receipt of each such remittance, the The state treasurer shall must deposit the entire amount in the
5 state treasury to the credit of the information and copy service fee fund created in K.S.A. 75-438,
6 and amendments thereto.

7 (e) *Effect of service upon on agent.* When any person, fiduciary an individual, partnership,
8 association, or corporation shall have has appointed such a service agent and such the appointment
9 remains unexpired and unrevoked, process issued in any action or proceeding against such person,
10 fiduciary the individual, partnership, association, or corporation in any court may be served upon
11 such on the service agent. Service by publication shall be is of no force or effect where when an
12 appointment of service agent made and filed as herein provided under this section remains in effect,
13 unless process showing upon on its face the name and address of such the service agent shall have
14 has been duly issued to the proper officer of the county of such the service agent's address residence
15 as shown on the register of service agents and returned by such the officer to whom it has been
16 directed, with a notation, that such files a return stating that the officer cannot find such the service
17 agent in the county. Such notation shall also state the name of the service agent who could not be
18 found.

19 COMMENT

20 The language of K.S.A. 60-306 has been amended as part of the general restyling of the
21 Kansas Code to make it more easily understood and to make style and terminology
22 consistent throughout the Code.

23 Subsections (a)(1), (2), and (3) were added at the request of the office of the secretary
24 of state. References to recording appointments in the “register of service agents” have been
25 deleted as outdated. Appointments must now be “filed” with the office of the secretary of
26 state, which more accurately represents current practice.

27 **60-307. Service by publication.**

28 (a) *When permissible.* Service may be made by publication in any of the following cases:

- 29 (1) ~~In actions~~ in an action to obtain a divorce, maintenance, or an annulment of the contract
30 of a marriage if the defendant resides out of the outside this state or if the party with due
31 diligence is unable to make service of serve summons upon on the defendant within the
32 this state-;
- 33 (2) ~~In actions~~ in an action brought against a person who is a nonresident of the this state or
34 a foreign corporation having in this state property or debts owing to the person or foreign
35 corporation sought to be taken by any of a provisional remedies remedy or to be

1 appropriated in any way;

2 (3) ~~In actions which relate~~ in an action in which the defendant is a nonresident of this state
3 or a foreign corporation or if the party with due diligence is unable to serve summons on
4 the defendant in this state:

5 (A) which relates to or the subject of which is real or personal property in this
6 state, if any defendant has or claims a lien or interest, vested or contingent,
7 in the property; ~~or~~

8 (B) in which the relief demanded consists wholly or partly in excluding the
9 defendant from any interest in the property; ~~or in actions~~

10 (C) for partition; or

11 (D) for foreclosure of a lien, ~~if the defendant is a nonresident of the state or a~~
12 ~~foreign corporation or if the party with due diligence is unable to make~~
13 ~~service of summons upon the defendant within the state;~~

14 (4) ~~In all actions~~ in an action in which the defendant, being a resident of this state, has
15 departed from this state or from the county of the defendant's residence; with the intent
16 to delay or defraud creditors or to avoid the service of a summons, or hides in the state
17 or county with that intent, or in an action against a domestic corporation ~~which that~~ has
18 not been legally dissolved, if the officers ~~thereof~~ of the corporation have departed from
19 ~~the~~ this state or cannot be found; and

20 (5) ~~In any of the actions mentioned~~ in an action specified in this subsection, publication
21 service may be had on any of the following who are made defendants ~~as such~~:

22 (A) ~~The~~ unknown heirs, executors, administrators, devisees, trustees, creditors, and
23 assigns of any a person alleged to be deceased defendants;

24 (B) ~~the~~ unknown spouses of any defendants spouse of a defendant;

25 (C) ~~the~~ unknown officers, successors, trustees, creditors, and assigns of any
26 defendants a defendant that are is an existing, dissolved, or dormant corporations
27 corporation;

28 (D) ~~the~~ unknown executors, administrators, devisees, trustees, creditors, successors,
29 and assigns of any defendants a defendant that are is or were partners or was in
30 partnership; and

31 (E) ~~the~~ unknown guardians, conservators, and trustees of any defendants a defendant
32 that are minors is a minor or are is under any legal disability; ~~and the unknown~~
33 ~~heirs, executors, administrators, devisees, trustees, creditors and assigns of any~~

1 ~~person alleged to be deceased.~~

2 (b) **Construction and effect.** The ~~process~~ provisions of this section ~~shall be construed as~~ are
3 separate and permissive methods of obtaining service. If ~~the a~~ defendant served ~~in accordance with~~
4 under this section does not appear, judgment may be rendered affecting the property, res, or status
5 within the jurisdiction of the court as to the defendant, but ~~the service shall not warrant a personal~~
6 judgment may not be rendered against the defendant personally.

7 (c) **Affidavit or declaration for service by publication.** Before service by publication as ~~provided~~
8 in under this section can be made, ~~one of the parties a party~~ or the party's attorney ~~shall must~~ file an
9 affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto, stating ~~any all~~ of the
10 following facts that ~~are applicable~~ apply:

11 (1) ~~The the~~ residences of all named defendants sought to be served, if known, ~~and~~ the names
12 of all defendants whose residences are unknown after reasonable effort to ascertain ~~the~~
13 same: them, and the specific efforts made to ascertain the residences;

14 (2) ~~The the~~ affiant or declarant has made a reasonable but unsuccessful effort to ascertain
15 the names and residences of any defendants sought to be served as unknown parties ~~in~~
16 accordance with under subsection (a)(5); and the specific efforts made to ascertain the
17 names and residences;

18 (3) ~~The the~~ party seeking service by publication is unable to ~~procure obtain~~ service of
19 summons on the defendants in this state ~~;~~

20 (4) ~~The the~~ case is one of those mentioned in ~~clauses~~ subsection (a)(1) through (4) of
21 subsection (a).

22 The form of the affidavit or declaration shall be deemed is sufficient if in substantial compliance
23 with the form set forth by the judicial council. When the affidavit or declaration is filed, service
24 may proceed by publication.

25 (d) **Publication; contents and form of notice; description of actions involving property, when.**

26 (1) **Where to publish notice.** The notice ~~shall must~~ be published once a week for three
27 consecutive weeks in ~~some a~~ newspaper published in the county where the petition is
28 filed and ~~which newspaper that~~ is authorized by law to publish legal notices. If there is
29 no newspaper published in the county, the notice may be published in a newspaper
30 having general circulation in the county.

31 (2) **Contents of notice.** The notice must name ~~the defendants~~ any defendant to be served and
32 notify ~~them the defendant~~ and all other persons who are or may be concerned that:

33 (A) the ~~defendants have~~ defendant has been sued in a named court; ~~and~~

1 (B) the defendant must answer ~~or plead otherwise to~~ the petition, or other pleading,
2 filed in the court ~~or otherwise defend~~, on or before a specified date ~~to be stated~~,
3 which date shall be not less than 41 days ~~from~~ after the date the notice is first
4 published, ~~or~~ ; and

5 (C) if the defendant does not answer or otherwise defend, the petition or other
6 pleading ~~filed~~ will be taken as true, and judgment, the nature of which ~~shall~~ must
7 be stated, will be rendered accordingly.

8 (3) ***Form of notice.*** The notice ~~shall be deemed is~~ sufficient if in substantial compliance
9 with the form set forth by the judicial council.

10 (4) ***Property description.*** ~~Where~~ When the action affects property, the notice need not
11 expressly describe the property; unless the description is otherwise required by law, but
12 the property may be identified by reference to the pleading.

13 (e) ***Mailing copy of notice.*** The party seeking ~~to secure~~ service by publication ~~shall~~ must, within
14 ~~seven~~ 7 days after the first publication, mail a copy of the publication notice to each defendant
15 whose address is stated in the affidavit or declaration for service by publication.

16 (f) ***When service complete.*** Service by publication ~~shall be deemed is~~ complete when it has been
17 made in the manner and for the time prescribed in subsections (d) and (e), ~~and the~~ The service ~~shall~~
18 must be proved under K.S.A. 60-312(c), and amendments thereto. No judgment by default ~~shall~~ may
19 be entered on the service until proof of service is made, approved by the court, and filed.

20 COMMENT

21 The language of K.S.A. 60-307 has been amended as part of the general restyling of the
22 Kansas Code to make it more easily understood and to make style and terminology
23 consistent throughout the Code.

24 A formal affidavit is no longer required. K.S.A. 53-601 allows a written unsworn
25 declaration, certificate, verification, or statement subscribed in proper form as true under
26 penalty of perjury to substitute for an affidavit. Subsection (c) was amended to require that
27 the affidavit or declaration supporting service by publication state the specific efforts made
28 to ascertain names and/or addresses.

29 The phrase “or otherwise defend” was added to subsection (d)(2)(B) to conform with
30 amended K.S.A. 60-255(a).

31 60-308. Service outside state.

32 (a) ***Proof and effect.***

1 (1) Service of process may be made ~~upon on~~ any party outside ~~the this~~ state. If ~~upon on~~ a
2 ~~person party~~ domiciled in this state or ~~upon on~~ a ~~person who~~ party that has submitted to
3 the jurisdiction of the courts of this state, such service ~~shall provide~~ provides personal
4 jurisdiction over that party; otherwise it ~~shall provide~~ provides in rem jurisdiction over
5 specifically identified property that party ~~may have~~ has in ~~the this~~ state.

6 (2) The service of process ~~shall must~~ be made (A) in the same manner as service within this
7 state, by ~~any an~~ officer authorized to ~~make service of~~ serve process in this state or in the
8 state where the ~~defendant party~~ is served, or (B) by ~~sending a copy of the process and of~~
9 ~~the petition or other document to the person to be served in the manner provided in~~
10 ~~subsection (d) a party or the party's attorney pursuant to K.S.A. 60-303(c), and~~
11 ~~amendments thereto~~. No order of a court is required. ~~The server must file an~~ An affidavit
12 ~~or a declaration pursuant to K.S.A. 53-601, and amendments thereto~~, or any other
13 competent ~~proofs, of the server shall be filed~~ proof, stating the time, manner, and place
14 of service. The court may consider the affidavit or declaration, or any other competent
15 ~~proofs~~ proof, in determining whether service has been properly made.

16 (3) No default ~~shall may~~ be entered until the expiration of at least 30 days after service. A
17 default judgment rendered on service outside this state may be set aside only on a
18 showing ~~which would be that is~~ timely and sufficient ~~to set aside a default judgment~~
19 ~~under subsection (b) of K.S.A. 60-260(b), and amendments thereto, to set aside a default~~
20 ~~judgment~~.

21 (b) *Submitting to jurisdiction.*

22 (1) Any person, whether or not a citizen or resident of this state, who in person or through
23 an agent or instrumentality does any of the following acts ~~hereinafter enumerated~~,
24 thereby submits the person and, if an individual, the individual's personal representative,
25 to the jurisdiction of the courts of this state ~~as to for any~~ cause of action claim for relief
26 arising from the ~~doing of any of these acts~~ act:

27 (A) ~~Transaction of~~ transacting any business ~~within in~~ this state;

28 (B) ~~commission of~~ committing a tortious act ~~within in~~ this state;

29 (C) ~~ownership, use or possession of any~~ owning, using, or possessing real estate
30 ~~situated located~~ in this state;

31 (D) contracting to insure any person, property, or risk located ~~within in~~ this state at the
32 time of contracting;

33 (E) entering into an express or implied contract, by mail or otherwise, with a resident
34 of this state to be performed in whole or in part by either party in this state;

35 (F) acting ~~within in~~ this state as director, manager, trustee, or other officer of any
36 corporation organized under the laws of or having a place of business ~~within in~~ this

- 1 state or ~~acting~~ as executor or administrator of any estate ~~within in~~ this state;
- 2 (G) causing to persons or property ~~within in~~ this state any injury arising out of an act
3 or omission outside ~~of~~ this state by the defendant if, at the time of the injury, either:
- 4 (i) the defendant was engaged in solicitation or service activities ~~within in~~ this
5 state; or
- 6 (ii) products, materials, or things processed, serviced, or manufactured by the
7 defendant anywhere were used or consumed ~~within in~~ this state in the
8 ordinary course of trade or use;
- 9 (H) living in the marital relationship ~~within the in this~~ state notwithstanding subsequent
10 departure from ~~the this~~ state, ~~as to for~~ all obligations arising for maintenance, child
11 support, or property settlement under article 16 of this chapter, if the other party
12 to the marital relationship continues to reside in ~~the this~~ state;
- 13 (I) serving as the insurer of ~~any a~~ person at the time of ~~any an~~ act by the person which
14 is the subject of an action in a court of competent jurisdiction ~~within the in this~~
15 state ~~of Kansas~~ which results in judgment being taken against the person;
- 16 (J) ~~performing an act of having~~ sexual intercourse ~~within the in this~~ state, ~~as to in~~ an
17 action ~~against a person~~ seeking to adjudge the person to be a parent of a child and
18 ~~as to in~~ an action to require the person to provide support for a child as provided
19 by law, if (i) the conception of the child results from the act and (ii) the other party
20 to the act or the child continues to reside in ~~the this~~ state; or
- 21 (K) entering into an express or implied arrangement, whether by contract, tariff, or
22 otherwise, with a corporation or partnership, ~~either general or limited~~, residing or
23 doing business in this state under which ~~such the~~ corporation or partnership has
24 supplied transportation services; or communication services or equipment,
25 including, ~~without limitation~~, telephonic communication services, for a business
26 or commercial user ~~where when~~ the services supplied to ~~such the~~ user are
27 managed, operated, or monitored ~~within the in this~~ state ~~of Kansas~~, provided that
28 ~~such the~~ person is ~~put on given~~ reasonable notice that arranging or continuing ~~such~~
29 ~~the~~ transportation services or ~~telecommunication communication~~ services may
30 result in ~~the extension of~~ jurisdiction ~~pursuant to~~ under this section.
- 31 (L) having contact with this state which would support jurisdiction consistent with the
32 constitutions of the United States and of this state.
- 33 (2) A person ~~may be considered to have submitted~~ submits to the jurisdiction of the courts
34 of this state for a ~~cause of action~~ claim for relief which did not arise in this state if
35 substantial, continuous, and systematic contact with this state is established ~~that which~~
36 would support jurisdiction consistent with the constitutions of the United States and of

1 this state.

2 (c) **Section not exclusive.** Nothing contained in this section limits or affects the right to serve
3 any process in any other manner provided by law, including, but not limited to, K.S.A. 17-7301, 17-
4 7307, 40-218 and 50-631, and amendments thereto.

5 ~~(d) **Service by return receipt delivery.** (1) Service of any out-of-state process by return receipt~~
6 ~~delivery shall include service effected by certified mail, priority mail, commercial courier service,~~
7 ~~overnight delivery service, or other reliable personal delivery service to the party addressed, in each~~
8 ~~instance evidenced by a written or electronic receipt showing to whom delivered, date of delivery,~~
9 ~~address where delivered, and person or entity effecting delivery. (2) The party or party's attorney~~
10 ~~shall cause a copy of the process and petition or other document to be placed in a sealed envelope~~
11 ~~addressed to the person to be served in accordance with K.S.A. 60-304, and amendments thereto,~~
12 ~~with postage or other delivery fees prepaid, and the sealed envelope placed in the custody of the~~
13 ~~person or entity effecting delivery. (3) Service of process shall be considered obtained under K.S.A.~~
14 ~~60-203, and amendments thereto, upon the delivery of the sealed envelope. (4) After service and~~
15 ~~return of the return receipt, the party or party's attorney shall execute a return on service stating the~~
16 ~~nature of the process, to whom delivered, the date, the address where delivered and the person or~~
17 ~~entity effecting delivery. The original return of service shall be filed with the clerk, along with a~~
18 ~~copy of the return receipt evidencing such delivery. (5) If the sealed envelope is returned with an~~
19 ~~endorsement showing refusal to accept delivery, the party or the party's attorney may send a copy~~
20 ~~of the process and petition or other document by first-class mail addressed to the party to be served,~~
21 ~~or may elect other methods of service. If mailed, service shall be considered obtained three days~~
22 ~~after the mailing by first-class mail, postage prepaid, which shall be evidenced by a certificate of~~
23 ~~service filed with the clerk. If the unopened envelope sent first-class mail is returned as undelivered~~
24 ~~for any reason, the party or party's attorney shall file an amended certificate of service with the clerk~~
25 ~~indicating nondelivery, and service by such mailing shall not be considered obtained. Mere failure~~
26 ~~to claim return receipt delivery is not refusal of service within the meaning of this subsection.~~

27 **COMMENT**

28 The language of K.S.A. 60-308 has been amended as part of the general restyling of the
29 Kansas Code to make it more easily understood and to make style and terminology
30 consistent throughout the Code.

31 A formal affidavit is no longer required. K.S.A. 53-601 allows a written unsworn
32 declaration, certificate, verification, or statement subscribed in proper form as true under
33 penalty of perjury to substitute for an affidavit.

34 Under subsection (b)(2), Kansas courts are authorized to exercise general jurisdiction to
35 the extent allowed by the U.S. and Kansas constitutions. Subsection (b)(1)(L) was added
36 to ensure that courts can also exercise specific jurisdiction to the extent of due process.

37 Subsection (d) is deleted as unnecessary. The reference in subsection (a)(2) to K.S.A.
38 60-303(c), which sets out the details of service by return receipt delivery, is sufficient.

1 **60-309. ~~Opening~~ Relief from default judgment ~~rendered~~ entered on service by publication.**

2 (a) *Procedure*. A party against ~~whom~~ which a judgment has been ~~rendered without other~~ entered
3 on service ~~than~~ by publication in a newspaper, may, at any time within ~~two~~ (2) years after ~~the~~ its
4 entry, move for relief from of the judgment, ~~have the same opened and to be let in~~ allowed to defend.
5 Before ~~the judgment~~ such relief may be ~~opened~~ granted, the applicant shall give notice to movant
6 must serve the motion on the adverse party, of his or her intention to make such an application and
7 ~~shall~~ file a full answer to the petition, pay all costs if the court ~~require~~ requires them to be paid, and
8 ~~make it appear to the satisfaction of~~ satisfy the court by affidavit or a declaration pursuant to K.S.A.
9 53-601, and amendments thereto, that ~~during the pendency of the action~~ the applicant movant had
10 no actual notice ~~thereof of the action~~ in time to appear ~~in court and make a defense~~. The adverse
11 party ~~on the hearing of the application~~ may present ~~counter affidavits~~ counter-affidavits or counter-
12 declarations.

13 (b) *Sale for value after ~~six~~ 3 months*. If no ~~proceedings are commenced~~ motion is made under
14 subsection (a) within ~~six~~ (6) 3 months ~~from~~ after the date the judgment was entered, ~~any~~ a sale of
15 property made to a purchaser for value in reliance ~~upon~~ on the judgment, is not affected by ~~any such~~
16 ~~proceedings~~ a later-filed motion.

17 (c) *Judicial sales*. If property is sold on order of sale under the judgment ~~sought to be opened~~
18 from which relief is sought, the sale is not affected by ~~any proceedings brought~~ a motion under
19 subsection (a). Unless the court finds from affidavits, declarations pursuant to K.S.A. 53-601, and
20 amendments thereto, or other evidence that actual notice ~~has been~~ was given before judgment to the
21 ~~defendants~~ parties served only by publication, the ~~court must impound the~~ proceeds of the sale shall
22 be impounded by the court and not distributed distribute them (1) until ~~three~~ 3 months have elapsed
23 ~~from~~ after the ~~time~~ date the judgment was entered, or (2) until ~~proceedings~~ a motion under
24 subsection (a), if brought within ~~said three months~~ the 3-month period, ~~are~~ is disposed of and the
25 right to the impounded proceeds determined.

26 (d) *Bond in lieu of impounding proceeds*. In lieu of impounding the proceeds of sale as
27 provided in subsection (c), any party having an interest under the judgment may give a bond, to be
28 approved by the court, for the payment of an amount not exceeding the amount of the proceeds of
29 sale; to other persons found ~~in such proceedings~~ to be entitled ~~thereto~~ to the proceeds.

30 **COMMENT**

31 The language of K.S.A. 60-309 has been amended as part of the general restyling of the
32 Kansas Code to make it more easily understood and to make style and terminology
33 consistent throughout the Code.

1 A formal affidavit is no longer required. K.S.A. 53-601 allows a written unsworn
2 declaration, certificate, verification, or statement subscribed in proper form as true under
3 penalty of perjury to substitute for an affidavit.

4 The time period in subsection (b) has been shortened from 6 months to 3 months. The
5 Committee determined there is no justification for having different rules for sales for value
6 and judicial sales.

7 **60-310. Procedure ~~where only part of~~ when not all defendants are served.**

8 (a) ***Same Generally.*** ~~Where the~~ In an action is against two or more defendants, ~~and when~~ one
9 or more ~~shall have been served~~, but not all ~~of them~~ have been served, the plaintiff may proceed as
10 follows:

11 ***First. (1)*** If the action ~~be~~ is against defendants jointly indebted ~~upon on~~ a contract, the plaintiff
12 may proceed against the defendants served, unless the court orders otherwise ~~direct~~;
13 and if ~~he or she~~ recover ~~the plaintiff recovers~~ judgment, it may be entered against all
14 the defendants ~~thus~~ jointly indebted ~~so far only as that it~~ and may be enforced only
15 against the joint property of all defendants, and the separate property of the
16 defendants served.

17 ***Second. (2)*** If the action ~~be~~ is against defendants severally liable, the plaintiff may, without
18 prejudice to ~~his or her~~ the plaintiff's rights against those not served, proceed
19 against the defendants served in the same manner as if they were the only
20 defendants.

21 (b) ***Same Action against defendant not served.*** Nothing in this section ~~shall be so construed as~~
22 ~~to make~~ makes a judgment against one or more defendants jointly or severally liable a bar to another
23 action against those not served.

24 **COMMENT**

25 The language of K.S.A. 60-310 has been amended as part of the general restyling of the
26 Kansas Code to make it more easily understood and to make style and terminology
27 consistent throughout the Code. These changes are intended to be stylistic only.

28 **60-311. Where process may be served.** All process issued ~~for service from any court within the~~
29 in this state may be served anywhere ~~within the territorial limits of the~~ in this state and, when
30 authorized by law, may be served outside this state.

31 **COMMENT**

1 The language of K.S.A. 60-311 has been amended as part of the general restyling of the
2 Kansas Code to make it more easily understood and to make style and terminology
3 consistent throughout the Code. These changes are intended to be stylistic only.

4 **60-312. Proof of service.** Proof of service ~~shall~~ must be filed with the court and made as follows:

5 (a) *Personal and residence service.*

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

10 (2) If ~~service of such~~ process is ~~directed to and~~ delivered to a person, other than an officer,
11 for service, ~~such the~~ person ~~shall~~ must make an affidavit or a declaration pursuant to
12 K.S.A. 53-601, and amendments thereto, as to the time, place, and manner of such
13 person's service ~~thereof.~~

14 (b) *Service by return receipt delivery.* Service by return receipt delivery ~~shall~~ must be proven
15 proved in the manner provided by ~~subsection (c) of K.S.A. 60-303(c) or subsection (c) of K.S.A. 60-~~
16 ~~308, and amendments thereto.~~

17 (c) *Publication service.* Service by publication ~~shall~~ must be ~~proven~~ proved by an affidavit or
18 a declaration pursuant to K.S.A. 53-601, and amendments thereto, showing the dates upon on which
19 and the newspaper in which the notice of publication was published. A copy of the notice ~~shall~~ must
20 be ~~attached to~~ filed with the affidavit or declaration ~~which shall be filed in the cause.~~ When mailing
21 of copies of the publication notice is required ~~in accordance with subsection (e) of~~ by K.S.A. 60-
22 307(e), and amendments thereto, the proof of ~~such~~ mailing ~~shall~~ must be by affidavit or by
23 declaration pursuant to K.S.A. 53-601, and amendments thereto, of the person who mailed such the
24 copies and such affidavit shall be filed with the clerk of the court in which the action has been filed.
25 If ~~such~~ mailing was by certified mail, the return receipt ~~shall~~ must be ~~made a part of~~ filed with the
26 affidavit or declaration and filed therewith.

27 (d) *Time for return.* ~~The~~ An officer or other person receiving a summons or other process ~~shall~~
28 make for service must file a return of service promptly and in any event within 10 not later than 14
29 days after the service is effected. If the ~~summons or other~~ process cannot be served it ~~shall~~ must
30 be returned to the court within 30 days after the date of ~~issue~~ issued with a statement of the reason for
31 the failure to serve ~~the same~~ it, except the court may extend the time for service ~~thereof may be~~
32 extended up to 90 days from after the date of issue by order of the court or judge of the court to
33 which it is returnable issued. Immediately upon Upon receipt of the return upon on any summons
34 or other process ~~by the clerk of the court issuing the same, such the~~ clerk ~~shall~~ must serve a
35 copy of ~~such the~~ return to on the attorney for the party requesting the issuance of ~~such the~~ summons
36 or other process or, if ~~such the~~ party has no attorney, ~~then to~~ on the requesting party's self party.

1
2
3
4
5
6
7
8
9

10
11
12
13

14

15
16
17

COMMENT

The language of K.S.A. 60-312 has been amended as part of the general restyling of the Kansas Code to make it more easily understood and to make style and terminology consistent throughout the Code.

A formal affidavit is no longer required. K.S.A. 53-601 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit.

The time set in subsection (d) has been revised from 10 to 14 days. See the Comment to K.S.A. 60-206.

60-313. Amendment of return or proof of service. ~~At any time in his or her discretion and upon such terms as he or she deems just, the judge~~ The court 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.

COMMENT

The language of K.S.A. 60-313 has been amended as part of the general restyling of the Kansas Code to make it more easily understood and to make style and terminology consistent throughout the Code. These changes are intended to be stylistic only.