

**REPORT OF THE CIVIL CODE ADVISORY COMMITTEE
REGARDING THE TIME FOR A DEFENDANT SERVED OUTSIDE THE STATE
TO FILE A RESPONSIVE PLEADING UNDER THE CODE OF CIVIL PROCEDURE**

December 2, 2022

In December 2021, the Family Law Advisory Committee requested that the Judicial Council study K.S.A. 60-212(a), governing the time to serve a responsive pleading, and consider whether action is needed to clarify the time period for out-of-state defendants. The Council accepted the study request and assigned the study to the Civil Code Advisory Committee.

The members of the Civil Code Advisory Committee are:

F. James Robinson, Jr., Chair, Wichita; practicing attorney
James M. Armstrong, Wichita; practicing attorney
Prof. James Concannon, Topeka; Senator Robert J. Dole Distinguished Professor of Law Emeritus at Washburn University School of Law
Hon. Bruce T. Gatterman, Larned; Chief Judge in the 24th Judicial District
Allen G. Glendenning, Great Bend; practicing attorney
John L. Hampton, Lawrence; practicing attorney
Hon. Kellie E. Hogan, Wichita; District Court Judge in the 18th Judicial District
Hon. Kevin P. Moriarty, Olathe; Retired District Court Judge in the 10th Judicial District
Prof. Lumen N. Mulligan, Lawrence; Earl B. Shurtz Research Professor, Kansas University School of Law
Etta L. Walker, Sharon Springs; practicing attorney
Hon. Teresa L. Watson, Topeka; District Court Judge in the 3rd Judicial District
Donald W. Vasos, Mission; practicing attorney
Larry Zimmerman, Topeka; practicing attorney

Background

The Judicial Council's divorce forms provide two options for a summons and return of service, one for "In State" and one for "Out of State." In June 2021, the Office of Judicial Administration questioned why the "Out of State" summons form gives the out-of-state respondent 30 days to file an answer when K.S.A. 60-212(a) provides only that an answer must be served within 21 days. The Family Law Advisory Committee reviewed the statutes and could not find any statutory authority for an out-of-state respondent to have 30 days to respond rather than 21 days. The Committee agreed to delete the "Out of State" option and provide only one summons form stating that the respondent has 21 days to file an answer.

After the revised divorce summons form was published on the Judicial Council website in July 2021, staff realized a conflict now existed between the divorce summons and the general summons form posted in the Chapter 60 section of the website. K.S.A. 60-302 requires the Judicial Council to provide a summons form, stating a “summons is sufficient if in substantial compliance with the form set forth by the judicial council.” Because the statute requires substantial compliance with the Judicial Council’s summons form for a summons to be deemed sufficient, the Council could not continue to post different versions of summons forms that are substantively inconsistent. The revised divorce summons form was removed from the website and the two prior summons forms were restored. The Family Law Advisory Committee requested that the Council study this issue to resolve the discrepancy between the two versions of the summons form and determine whether action is needed to clarify the time period within which out-of-state defendants are required to respond.

Discussion

This is not the first time the Civil Code Advisory has discussed this issue. In 2011, the Committee considered a question from Judge James Vano about the regular Chapter 60 summons form posted on the Judicial Council website. The form contains three options for response time – 21 days, 30 days, and 40 days. The 40-day option is for insurance companies served through the insurance commissioner under K.S.A. 40-218 and was not at issue. Judge Vano questioned the 30-day option. While the judge acknowledged that K.S.A. 60-308(a)(3) prohibits entry of default judgment until 30 days after service if the defendant is served outside the state, he did not believe that provision changes the requirement under K.S.A. 60-212(a) that a responsive pleading is due within 21 days of being served with a summons and petition. This is the same conclusion the Family Law Advisory Committee reached before revising the divorce summons forms to eliminate the different timeframe for respondents served out of state.

In 2011, this Committee agreed that Judge Vano’s reading of the statutes was correct on its face. However, after also considering the legislative history, the Committee believed the 30-day option in the summons form should be retained. The Committee modified only the Notes on Use to the form as follows:

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

- 21 days for a defendant served in state, other than an insurance company served under K.S.A. 40-218. K.S.A. 60-212;
- if 30 days for a defendant is served out-of-state, no default may be taken against that defendant until 30 days after service. K.S.A. 60-308;
- 40 days for an insurance company when service is made on the commissioner of insurance under K.S.A. 40-218;

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

Taking another look at the issue at the request of the Family Law Advisory Committee, this Committee again discussed the legislative history. The Committee discussed the fact that a Judicial Council advisory committee prepared the draft of the Kansas Code of Civil Procedure that was adopted by the Legislature in 1963, and the same Judicial Council Code Revision Advisory Committee also drafted the accompanying appendix of forms that were simultaneously adopted by the Legislature and located in K.S.A. 60-269. The introduction to the forms stated: "The following forms are intended for illustration only, but they are expressly declared by K.S.A. 60-268 to be sufficient." At the time the forms were adopted in 1963, Form No. 5, the "Summons for Personal Service Outside the State of Kansas," required the defendant "to serve a copy of your pleading . . . within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the petition."

In 2005, the Legislature deleted the appendix of civil code forms from the statute book, and K.S.A. 60-268 was amended to delete the reference to the appendix of forms and state instead that forms would be provided by the Judicial Council. At that time, Form No. 5 still provided a 30-day response time for defendants served outside the state. The Legal Forms Advisory Committee was tasked with preparing the forms removed from the statute for publication on the Council's website and inclusion in a future forms book to be published and sold by Judicial Council. The Legal Forms Advisory Committee drafted a new combined summons form that retained as an option the 30-day response time as set forth in Form No. 5 and cited K.S.A. 60-308 as support in the form's Notes on Use for the statement that provided: "The time within which an Answer or other responsive pleading is to be filed by a party served with process is . . .30 days for a defendant served out-of-state."

As in 2011, this Committee agrees that there is no explicit statutory support for a 30-day response time for defendants served outside the state. This time, however, a majority of the Committee members do not think the legislative history and the 30-day default judgment limitation in K.S.A. 60-303(a)(3) are sufficient justification for maintaining the status quo. Since there is no statutory support for the 30-day option in the summons form, something must be changed – either statutorily or in the form – to eliminate the inconsistency between the two.

The Committee discussed the possibility of simply deleting the 30-day option from the form and considered whether the Judicial Council has the authority to make changes to a form that had earlier been adopted by the Legislature. Did the Legislature transfer to the Judicial Council the authority to amend the forms when it removed them from the statute and transferred to the Council the responsibility for providing them? The Committee agreed that the Council has authority to amend a form removed from a statute and transferred to the Council and noted that the difficulty of amending statutory forms was the primary reason the Legislature began transferring responsibility for forms to the Council. Absent a change in the underlying statutes, this transfer of authority would not ordinarily include the authority to make a substantive change to the form. But, as the Committee agreed, the summons form situation is an anomaly. There was no statutory support for the 30-day response time contained in Form No. 5, and the Council's version of the summons retained that inconsistency. The

Committee agreed that the Council has a responsibility to ensure that the forms accurately represent the law, which in this unusual scenario includes amending a form provision the Legislature had previously approved.

Some concerns were expressed about making a change to the form without also amending K.S.A. 60-308 because the 30-day response time for out-of-state defendants has been contained in the summons form for over 50 years. Attorneys are used to this practice and may not know that a form change has occurred if there is no statutory amendment to bring it to their attention. Other Committee members did not find this concern persuasive because no harm would occur if the 30-day option were deleted and a plaintiff or plaintiff's attorney, unaware of the form revision, mistakenly uses the old form. The only consequence would be that the defendant is given a little extra time.

In addition to the absence of statutory support for the 30-day option, the Committee discussed other factors that add support to the proposal for its deletion from the form. It was noted that advances in electronic communications and other technologies have significantly, if not completely, erased any need for a defendant served in another state to have more time than an in-state defendant to file a responsive pleading. Professor Lumen Mulligan raised the issue of Supreme Court Rule 113, which allows a defendant to obtain from the clerk up to a 14-day extension of the time to file a responsive pleading. The clerk's duty to grant extensions under Rule 113 is ministerial, and the seeker of an extension is merely required to prepare an order for the clerk's signature and serve copies on all other parties. Thus, every defendant, whether served in or out of state, now may seek 35 days to answer without facing default judgment. Rule 113 was not enacted until 1976 and is another factor that was not in play at the time the drafters of the 1963 code and forms may have believed there were reasons an out-of-state defendant should be given extra time to respond.

The Committee discussed whether to recommend striking the 30-day default judgment limitation from K.S.A. 60-308(a)(3) in addition to deleting the 30-day response option from the summons form, but a majority of the Committee found a statutory amendment to be unnecessary. In addition, the Committee noted that Supreme Court Rule 113 does not apply to Chapter 61 and that the Chapter 61 long-arm statute in K.S.A. 61-3006(a)(3) states a rule applicable "except as provided in" K.S.A. 60-308(a)(3). This is not to say that the current Chapter 60, Chapter 61, and Supreme Court Rule provisions create perfectly interlocking gears. Rather, the committee concluded that beneficial statutory amendment in this area would require a comprehensive review of current statutes with similarly comprehensive amendments. The Committee believes it best not to suggest piecemeal amendments. Ultimately, the Committee agreed to recommend amendments only to the Chapter 60 summons forms. The Committee agreed the amendments should include information about the default judgment limitation in K.S.A. 60-308(a)(3) and the right to seek an extension under Supreme Court Rule 113, which the Committee initially discussed incorporating into the Notes on Use. After further discussion, the Committee agreed to include information about the substance of K.S.A. 60-308 and Rule 113 in the body of both the regular summons form and the third-party summons form and to delete the Notes on Use in both. The now-dissolved Legal Forms Advisory Committee drafted

Notes on Use for the civil forms removed from the statutes in anticipation of a new forms publication that did not come to fruition. Those Notes on Use were deleted from all the other civil forms in 2017. The Committee also discussed and agreed to further clarify the language in the body of the forms to make them as user-friendly as possible.

Finally, the Committee agreed to remove the 40-day option from the summons form and draft a new form specifically for use in cases involving service on the commissioner of insurance under K.S.A. 40-218. The Committee noted the current summons and return provisions do not match up well with the requirements of K.S.A. 40-218 and sought input from the Office of the Commissioner of Insurance when drafting the new form. The Committee believes it will be easier for users if there are separate forms for a general summons, third-party summons, and a summons served under K.S.A. 40-218 rather than providing only one form in which the user must select from three options the applicable number of days within which the defendant must respond.

Conclusion

The Committee acknowledges that the 30-day response time for out-of-state defendants was included in Form No. 5, the “Summons for Personal Service Outside the State of Kansas” form, which was adopted by the Legislature in 1963 and included in the statutes until responsibility for the appendix of forms in K.S.A. 60-269 was transferred to the Judicial Council in 2005. Although the Judicial Council retained that 30-day response time when it began posting the statutory summons form, there has never been specific statutory support for giving a defendant served out of state a longer response time than that afforded to an in-state defendant.

To harmonize the Judicial Council’s Chapter 60 summons form with the statutes, the Committee recommends making the following amendments: 1) deleting the 30-day and 40-day response time options; 2) incorporating language informing the defendant of the right to seek a 14-day extension under Supreme Court Rule 113 and the default judgment limitation if served outside Kansas, and further clarifying language in the form for the potential self-represented defendant; 3) making the same changes to the third-party summons form; 4) deleting the Notes on Use from both forms; and 5) drafting a separate summons and return for use in cases involving service on the commissioner of insurance under K.S.A. 40-218.

The revised summons forms are attached to this report.

[CAPTION]

IN THE _____ JUDICIAL DISTRICT
DISTRICT COURT OF _____ COUNTY, KANSAS
[SITTING AT (Name of city, if more than one court location in county)]

_____,)
Plaintiff,)
v _____)
_____,)
Defendant.)

Case No. _____

Proceeding Pursuant to K.S.A. Chapter 60

SUMMONS

To: _____ (Defendant's name)

A lawsuit has been filed against you.

Within ~~(21)~~ **(30)** ~~(40)~~ days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached petition or a motion under K.S.A. 60-212. Under Kansas Supreme Court Rule 113, you may seek from the clerk of the court an extension of up to 14 additional days to serve and to file an answer or a K.S.A. 60-212 motion. The answer or motion must be served on the plaintiff's attorney, or the plaintiff if plaintiff has no attorney, at the following address:

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

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

If you fail within 21 days to serve and to file an answer or a K.S.A. 60-212 motion as described above or obtain a Rule 113 extension, the court may enter default judgment by default will be entered against you for the relief demanded in the petition. If you were served outside of Kansas, however, the court may not enter default judgment against you until at least 30 days after service of this summons. You also must file your answer or motion with the court.

The answer or K.S.A. 60-212 motion must be served on the plaintiff's attorney, or the plaintiff if plaintiff has no attorney, at the following address:

Attorney's name or Plaintiff's name

Attorney's address or Plaintiff's address

You also must file your answer or K.S.A. 60-212 motion with the court.

If When you file an answer, you must state as a counterclaim(s) any related claim(s) which that you may have against the plaintiff ~~must be stated as a counterclaim in your answer~~. If you fail to do so, you will thereafter be barred from making such claim(s) in any other action.

Date _____

Clerk's Seal

Clerk of the District Court.

By _____
Deputy

RETURN OF SERVICE OF SUMMONS ON AN INDIVIDUAL

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

_____(1) **Personal Service** - on the _____ day of _____, 2____, by delivering or offering to deliver the documents to the above-named person;

_____(2) **Residence Service** - on the _____ day of _____, 2____, by leaving the documents at the dwelling or usual place of abode of the above-named person, with some person of suitable age and discretion who resides there;

_____(3) **Residence Service** - on the _____ day of _____, 2____, by leaving a copy of the documents at the dwelling or usual place of abode of the above-named person and mailing to that person by first-class mail a notice that the copy has been left at the individual's dwelling or place of abode;

_____(4) **Return Receipt Delivery** - by causing to be delivered on the _____ day of _____, 2____, the documents by return receipt delivery to the above-named person at the following address: _____ with delivery being made by the following person or entity: _____.

A copy of the return receipt evidencing delivery is attached to this Return of Service.

_____(5) **Return Receipt Delivery Refused** - by mailing on the _____ day of _____, 2____, the documents by first-class, postage prepaid, to the above-named person at the following address: _____.

_____(6) **Other Method of Service** - _____ (Describe other method of service allowed by law).

_____(7) **No Service**. The above-named person was not served for the following reason(s): _____.

Service by a Person other than a Law Enforcement Officer in Kansas

Affidavit of Service

STATE OF KANSAS)
) ss.
COUNTY OF _____)

I, _____ (name) _____, swear or affirm that the foregoing Return on Service of Summons is true and correct.

Executed on _____, 2____.

(Signature of Person serving process)

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

(Signature of person
authorized to administer oaths)

Authority

K.S.A. 60-302, 60-213(a), 60-303, 60-308, and 60-312.

Notes on Use

~~_____The summons must be signed by the clerk or deputy, dated the day it is issued, and bear the court's seal. K.S.A. 60-302.~~

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

- ~~• _____ 21 days for a defendant served in state other than an insurance company served under K.S.A. 40-218, K.S.A. 60-212;~~
- ~~• _____ if a defendant is served out of state no default may be taken against that defendant until 30 days after service, K.S.A. 60-308;~~
- ~~• _____ 40 days for an insurance company when service is made on the commissioner of insurance under K.S.A. 40-218;~~

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

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

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

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

~~Methods of service described in K.S.A. 60-303 are service by return receipt delivery [K.S.A. 60-303(e)], and personal and residence service [K.S.A. 60-303(d)]. Service by publication is authorized by K.S.A. 60-307. Additional methods of serving garnishment process include service by first class mail, telefacsimile, and internet electronic mail [K.S.A. 60-303(f)].~~

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

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

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

~~Pursuant to K.S.A. 60-203 a civil action is commenced at the time a petition is filed with the court if service of process is obtained or the first publication is made for service by publication within 90 days after the petition is filed, except that the court may extend that time an additional 30 days upon a showing of good cause by the plaintiff. If service of process or first publication is not made within the 90 day time period, or within the 60-308 day extension of time for service, the action is deemed commenced as of the date of service of process or first publication.~~

~~An officer or other person receiving a summons or other process must file a return of service not later than 14 days after the service is effected. If the process cannot be served it must be returned to the court within 30 days after the date issued with a statement of the reason for the failure to serve it, except the court may extend the time for service up to 90 days after the date issued. Upon receipt of the return on any summons or other process, the clerk must serve a copy of the return on the attorney for the party requesting issuance of the summons or other process or, if the party has no attorney, on the requesting party. K.S.A. 60-312(d).~~

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

~~After service and return of the return receipt, the sheriff, party, or party's attorney must execute and file a return of service. The return of service must state the nature of the process, to whom delivered, the date of delivery, the address where delivered, and the person or entity effecting delivery. It must include a copy of the return receipt evidencing delivery. K.S.A. 60-303(e)(4).~~

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

~~Proof of personal and residence service must be filed with the court and made as follows:~~

- ~~(1) Every officer to whom summons or other process is delivered for service must make a statement subject to penalty of perjury as provided in K.S.A. 21-3805, and amendments thereto, as to the time, place, and manner of service. K.S.A. 60-312(a)(1).~~
- ~~(2) If process is delivered to a person, other than an officer, for service, the person must make an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto, showing as to the time, place, and manner of service. K.S.A. 60-312(a)(2).~~

~~When service is made outside this state, the server must file an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto, or any other competent proof, stating the time, manner, and place of service. The court may consider the affidavit or declaration or any other competent proof in determining whether service has been properly made. K.S.A. 60-308(a)(2).~~

IN THE _____ JUDICIAL DISTRICT
DISTRICT COURT OF _____ COUNTY, KANSAS
[SITTING AT ____ (Name of city, if more than one court location in county) ____]

_____,)
Plaintiff)
v) Case No. _____
_____,)
Defendant and Third-party plaintiff.)
v)
_____,)
Third-party defendant)

THIRD-PARTY SUMMONS

To ____ (Third-party defendant's name) _____:

A lawsuit has been filed against defendant _____, who as third-party plaintiff is making this claim against you to pay part or all of what the third-party plaintiff may owe to the plaintiff _____.

Within ~~(21)~~ ~~(30)~~ ~~(40)~~ days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff and on the defendant an answer to the attached third-party petition or a motion under K.S.A. 60-212. Under Kansas Supreme Court Rule 113, you may seek from the clerk of the court an extension of up to 14 additional days to serve and to file an answer or a K.S.A. 60-212 motion. The answer or motion must be served on the plaintiff's attorney, or the plaintiff if plaintiff has no attorney, at the following address:

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

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

~~The answer or motion must also be served on the defendant's attorney, or the defendant if defendant has no attorney, at the following address:~~

(Attorney's name) _____ (Defendant and Third-party Plaintiff's name) _____

(Attorney's address) _____ (Defendant and Third-party Plaintiff's address) _____

If you fail within 21 days to serve and to file an answer or a K.S.A. 60-212 motion ~~as described above~~ or obtain a Rule 113 extension, the court may enter default judgment by default will be entered against you for the relief demanded in the third-party petition. If you were served outside of Kansas, however, the court may not enter default judgment against you until at least 30 days after service of this summons.

The answer or K.S.A. 60-212 motion must be served on the plaintiff's attorney, or the plaintiff if plaintiff has no attorney, at the following address:

Attorney's name or Plaintiff's name _____

Attorney's address or Plaintiff's address _____

The answer or K.S.A. 60-212 motion also must be served on the defendant's attorney, or the defendant if defendant has no attorney, at the following address:

Attorney's name or Defendant/Third-party Plaintiff's name _____

Attorney's address or Defendant/Third-party Plaintiff's address _____

You also must file your answer or K.S.A. 60-212 motion with the court and serve it on any other parties.

If When you file an answer, you must state as a counterclaim(s) any related claim (s) which that you may have against the defendant/third-party plaintiff ~~must be stated~~

~~as a counterclaim in your answer.~~ If you fail to do so, you will thereafter be barred from making such claim(s) in any other action.

Date _____

Clerk's Seal

Clerk of the District Court.

By _____
Deputy

RETURN OF SERVICE OF SUMMONS ON AN INDIVIDUAL

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

- _____(1) **Personal Service** - on the _____ day of _____, 2____, by delivering or offering to deliver the documents to the above-named person;
- _____(2) **Residence Service** - on the _____ day of _____, 2____, by leaving the documents at the dwelling or usual place of abode of the above-named person, with some person of suitable age and discretion who resides there;
- _____(3) **Residence Service** - on the _____ day of _____, 2____, by leaving a copy of the documents at the dwelling or usual place of abode of the above-named person and mailing to that person by first-class mail a notice that the copy has been left at the individual's dwelling or place of abode;
- _____(4) **Return Receipt Delivery** - by causing to be delivered on the _____ day of _____, 2____, the documents by return receipt delivery to the above-named person at the following address: _____ with delivery being made by the following person or entity: _____.
- A copy of the return receipt evidencing delivery is attached to this Return of Service.
- _____(5) **Return Receipt Delivery Refused** - by mailing on the _____ day of _____, 2____, the documents by first-class, postage prepaid, to the above-named person at the following address: _____.
- _____(6) **Other Method of Service** - _____ (Describe other method of service allowed by law).
- _____(7) **No Service**. The above-named person was not served for the following reason(s): _____

Service by a Person other than a Law Enforcement Officer in Kansas

Affidavit of Service

STATE OF KANSAS)
) ss.
COUNTY OF _____)

I, _____ (name) _____, swear or affirm that the foregoing Return on Service of Summons is true and correct.

Executed on _____, 2____.

(Signature of Person serving process)

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

(Signature of person
authorized to administer oaths)

Authority

K.S.A. 60-302, 60-213(a), 60-303, 60-308, and 60-312.

Notes on Use

~~_____ The summons must be signed by the clerk or deputy, dated the day it is issued, and bear the court's seal. K.S.A. 60-302.~~

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

- ~~• _____ 21 days for a defendant served in state, other than an insurance company served under K.S.A. 40-218, K.S.A. 60-212;~~
- ~~• _____ if a defendant is served out of state no default may be taken against that defendant until 30 days after service, K.S.A. 60-308;~~
- ~~• _____ 40 days for an insurance company when service is made on the commissioner of insurance under K.S.A. 40-218;~~

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

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

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

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

~~_____ Methods of service described in K.S.A. 60-303 are service by return receipt delivery [K.S.A 60-303(e)].~~

~~and personal and residence service [K.S.A. 60-303(d)].— Service by publication is authorized by K.S.A. 60-307. Additional methods of serving garnishment process include service by first-class mail, telefacsimile, and internet electronic mail [K.S.A. 60-303(f)].~~

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

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

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

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

~~—An officer or other person receiving a summons or other process must file a return of service not later than 14 days after the service is effected.— If the process cannot be served it must be returned to the court within 30 days after the date issued with a statement of the reason for the failure to serve it, except the court may extend the time for service up to 90 days after the date issued.— Upon receipt of the return on any summons or other process, the clerk must serve a copy of the return on the attorney for the party requesting issuance of the summons or other process or, if the party has no attorney, on the requesting party.— K.S.A. 60-312(d).~~

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

~~—After service and return of the return receipt, the sheriff, party, or party's attorney must execute and file a return of service.— The return of service must state the nature of the process, to whom delivered, the date of delivery, the address where delivered, and the person or entity effecting delivery. It must include a copy of the return receipt evidencing delivery.— K.S.A. 60-303(e)(4).~~

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

~~—Proof of personal and residence service must be filed with the court and made as follows:—~~

~~(1) Every officer to whom summons or other process is delivered for service must make a statement subject to penalty of perjury as provided in K.S.A. 21-3805, and amendments thereto, as to the time, place, and manner of service.— K.S.A. 60-312(a)(1).~~

~~(2) If process is delivered to a person, other than an officer, for service, the person must make an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto, showing as to the time, place, and manner of service.— K.S.A. 60-312(a)(2).~~

~~—When service is made outside this state, the server must file an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto, or any other competent proof, stating the time, manner, and place of service. The court may consider the affidavit or declaration or any other competent proof in determining whether service has been properly made.— K.S.A. 60-308(a)(2).~~

IN THE _____ JUDICIAL DISTRICT
DISTRICT COURT OF _____ COUNTY, KANSAS
[SITTING AT (Name of city, if more than one court location in county)]

_____,)
Plaintiff,)
V) Case No. _____
_____,)
Defendant.)

Proceeding Pursuant to K.S.A. Chapter 60

SUMMONS

(Insurance company or fraternal benefit society served under K.S.A. 40-218)

To: _____,
Defendant's name

A civil lawsuit has been filed against you.

Within 40 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached petition or a motion under K.S.A. 60-212. Under Kansas Supreme Court Rule 113, you may seek from the clerk of the court an extension of up to 14 additional days to serve and to file an answer or a K.S.A. 60-212 motion.

If you fail within 40 days to serve and to file an answer or a K.S.A. 60-212 motion or obtain a Rule 113 extension, the court may enter default judgment against you for the relief demanded in the petition.

The answer or K.S.A. 60-212 motion must be served on the plaintiff's attorney, or the plaintiff if plaintiff has no attorney, at the following address:

Attorney's name or Plaintiff's name

Attorney's address or Plaintiff's address

You also must file your answer or K.S.A. 60-212 motion with the court.

When you file an answer, you must state as a counterclaim(s) any related claim(s) that you may have against the plaintiff. If you fail to do so, you will thereafter be barred from making such claim(s) in any other action.

Date _____

Clerk of the District Court.

Clerk's Seal

By _____
Clerk or Deputy

CERTIFICATE OF SERVICE ON THE COMMISSIONER OF INSURANCE

I certify that I served the original of this summons and two copies of the summons and petition (and insert any other documents served) on _____, the Commissioner of Insurance or the Commissioner's designee, in the following manner:

- Personal Service** - on the _____ day of _____, 2____, by delivering documents to the above-named person.

Signature

- Certified Mail, Return Receipt Requested** - by causing to be delivered on the _____ day of _____, 2____, the documents by certified mail, return receipt requested, to the Commissioner of Insurance at the following address: _____

Clerk or Deputy

**RETURN OF SERVICE OF SUMMONS ON AN INSURANCE COMPANY
OR FRATERNAL BENEFIT SOCIETY**

I certify that:

I received this summons and two copies of the summons and the petition (and _____ insert any other documents served _____) on _____ (date of receipt) _____;

I forwarded a copy of the documents on the on the _____ day of _____, 2____, by certified mail, return receipt requested, to the following:

_____ (name and address of each person to whom copies were forwarded)

Date _____

Seal of Commissioner
of Insurance

Commissioner of Insurance

By: _____
Title: _____

Authority

K.S.A. 40-218.