

60-307. Service by publication. (a) *When permissible.* Service may be made by publication in any of the following cases:

- (1) In an action to obtain a divorce, maintenance or an annulment of a marriage if the defendant resides outside this state or if the party with due diligence is unable to serve summons on the defendant within this state;
 - (2) in an action brought against a person who is a nonresident of this state or a foreign corporation having in this state property or debts owing to the person or foreign corporation sought to be taken by a provisional remedy or to be appropriated in any way;
 - (3) in an action, in which the defendant is a nonresident of this state or a foreign corporation or if the party with due diligence is unable to serve summons on the defendant in this state:
 - (A) Which relates to or the subject of which is real or personal property in this state, if any defendant has or claims a lien or interest, vested or contingent, in the property;
 - (B) in which the relief demanded consists wholly or partly in excluding the defendant from any interest in the property;
 - (C) for partition; or
 - (D) for foreclosure of a lien;
 - (4) in an action in which the defendant, being a resident of this state, has departed from this state or from the county of the defendant's residence with the intent to delay or defraud creditors or to avoid the service of a summons, or hides in the state or county with that intent, or in an action against a domestic corporation that has not been legally dissolved, if the officers of the corporation have departed from this state or cannot be found; and
 - (5) in an action specified in this subsection, on any of the following who are made defendants:
 - (A) Unknown heirs, executors, administrators, devisees, trustees, creditors and assigns of a person alleged to be deceased;
 - (B) unknown spouse of a defendant;
 - (C) unknown officers, successors, trustees, creditor [creditors] and assigns of a defendant that is an existing, dissolved or dormant corporation;
 - (D) unknown executors, administrators, devisees, trustees, creditors, successors and assigns of a defendant that is or was in partnership; and
 - (E) unknown guardians, conservators and trustees of a defendant that is a minor or is under any legal disability.
- (b) *Construction and effect.* The provisions of this section are separate and permissive methods of obtaining service. If a defendant served under this section does not appear, judgment may be rendered affecting the property, res or status within the jurisdiction of the court as to the defendant, but judgment may not be rendered against the defendant personally.
- (c) *Affidavit or declaration for service by publication.* Before service by publication under this section can be made, a party or the party's attorney must file an affidavit or a declaration pursuant to K.S.A. 53-601, and amendments thereto, stating all of the following facts that apply:
- (1) The residences of all named defendants sought to be served, if known, and the names of all defendants whose residences are unknown after reasonable effort to ascertain them and the specific efforts made to ascertain the residence;
 - (2) the affiant or declarant has made a reasonable but unsuccessful effort to ascertain the names and residence of any defendants sought to be served as unknown parties under subsection (a)(5) and the specific efforts made to ascertain the names and residences;
 - (3) the party seeking service by publication is unable to obtain service of summons on the defendants in this state; and
 - (4) the case is one of those mentioned in subsections (a)(1) through (a)(4).
- The form of the affidavit or declaration is sufficient if in substantial compliance with the form set forth by the judicial council. When the affidavit or declaration is filed, service may proceed by publication.
- (d) *Publication; contents and form of notice; actions involving property.* (1) *Where to publish notice.* The notice must be published once a week for three consecutive weeks in a newspaper published in the county where the petition is filed and that is authorized by law to publish legal notices. If there is no newspaper published in the county, the notice may be published in a newspaper having general circulation in the county.
- (2) *Contents of notice.* The notice must name any defendant to be served and notify the defendant and all other persons who are or may be concerned that:
- (A) The defendant has been sued in a named court;
 - (B) the defendant must answer the petition or other pleading or otherwise defend, on or before a specified date not less than 41 days after the date the notice is first published; and
 - (C) if the defendant does not answer or otherwise defend, the petition or other pleading will be taken as true, and judgment, the nature of which must be stated, will be rendered accordingly.
- (3) *Form of notice.* The notice is sufficient if in substantial compliance with the form set forth by the judicial council.
- (4) *Property description.* When the action affects property, the notice need not expressly describe the property unless the description is otherwise required by law, but the property may be identified by reference to the pleading.
- (e) *Mailing copy of notice.* The party seeking service by publication must, within seven days after the first publication, mail a copy of the publication notice to each defendant whose address is stated in the affidavit or declaration for service by publication.
- (f) *When service complete.* Service by publication is complete when it has been made in the manner and for the time prescribed in subsections (d) and (e). The service must be proved under subsection (c) of K.S.A. 60-312, and amendments thereto. No judgment by default may be entered on the service until proof of service is made, approved by the court and filed.

History: L. 1963, ch. 303, 60-307; L. 1965, ch. 355, § 1; L. 1970, ch. 232, § 2; L. 1982, ch. 152, § 22; L. 1990, ch. 202, § 8; L. 1994, ch. 68, § 3; L. 2005, ch. 101, § 11; L. 2010, ch. 135, § 152; July 1.