

2012 Kansas Statutes

60-230. Depositions by oral examination; requirements; examination; copies; attendance. (a) *When a deposition may be taken.* (1) *Without leave.* A party may, by oral questions, depose any person including a party, without leave of court except as provided in subsection (a)(2). The deponent's attendance may be compelled by subpoena under K.S.A. 60-245, and amendments thereto.

(2) *With leave.* A party must obtain leave of court, and the court must grant leave to the extent consistent with subsection (b)(2) of K.S.A. 60-226, and amendments thereto:

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

(i) The deponent has already been deposed in the case; or

(ii) the party seeks to take the deposition of a nonparty before the time specified in subsection (b) of K.S.A. 60-216, and amendments thereto, unless the party certifies in the notice, with supporting facts, that the deponent is expected to leave Kansas and be unavailable for examination in Kansas after that time; or

(B) if the deponent is confined in prison.

(b) *Notice of the deposition; other formal requirements.* (1) *Notice in general.* A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) *Producing documents.* If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under K.S.A. 60-234, and amendments thereto, to produce documents and tangible things at the deposition.

(3) *Method of recording.* (A) *Method stated in a stipulation or order.* The parties may stipulate or the court may order that the testimony at a deposition be recorded by other than stenographic means. A party may arrange to have a stenographic record made at the party's own expense.

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

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

(5) *Officer's duties.* (A) *Before the deposition.* Unless the parties stipulate otherwise a deposition must be conducted before an officer appointed or designated under K.S.A. 60-228, and amendments thereto. The officer must begin the deposition with an on-the-record statement that includes:

(i) The officer's name and business address;

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

(iii) the deponent's name;

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

(v) the identity of all persons present.

(B) *Conducting the deposition; avoiding distortion.* If the deposition is recorded nonstenographically, the officer must repeat the items in subsection (b)(5)(A)(i) through (iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(C) *After the deposition.* At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(6) *Notice or subpoena directed to an organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which the person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This subsection does not preclude a deposition by any other procedure allowed by the rules of civil procedure.

(c) *Examination and cross-examination; record of the examination; objections; written questions.* (1) *Examination and cross-examination.* The examination and cross-examination of a deponent proceed as they would at trial under the provisions of K.S.A. 60-243, and amendments thereto. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under subsection (b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer. If requested by one of the parties, the testimony must be transcribed. The court may order the cost of transcription paid by one or some of, or apportioned among, the parties.

(2) *Objections.* An objection at the time of the examination, whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition or to any other aspect of the deposition, must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court or to present a motion under subsection (d)(3).

(3) *Participating through written questions.* Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) *Motion to terminate or limit.* (1) *Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses or oppresses the deponent or party. The motion may be filed in the court where the action is pending or where the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(2) *Order*. The court may order that the deposition be terminated or may limit its scope and manner as provided in subsection (c) of K.S.A. 60-226, and amendments thereto. If terminated, the deposition may be resumed only by order of the court where the action is pending.

(3) *Award of expenses*. The provisions of subsection (a) of K.S.A. 60-237, and amendments thereto, apply to the award of expenses.

(e) *Review by the witness; changes*. (1) *Review; statement of changes*. Unless waived by the deponent and by the parties, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) To review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) *Changes indicated in the officer's certificate*. The officer must note in the certificate prescribed by subsection (f)(1) whether the deposition was reviewed and, if so, must attach any changes the deponent makes during the 30-day period.

(f) *Certification and delivery; exhibits; copies of the transcript or recording; notice of delivery or filing; retention of original*. (1) *Certification and delivery*. The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of (witness's name)" and must promptly send it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering or deterioration.

(2) *Documents and tangible things*. (A) *Originals and copies*. Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them, but if the person who produced them wants to keep the originals the person may:

(i) Offer copies to be marked, attached to the deposition and then used as originals, after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked, in which event the originals may be used as if attached to the deposition.

(B) *Order regarding the originals*. Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.

(3) *Copies of the transcript or recording*. Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.

(4) *Notice of delivery or filing*. The court may order the officer to file the deposition promptly with the court. The officer must serve notice of the sending or filing of the deposition on all parties.

(5) *Retention of original*. Except when filed with the court, the original of a deposition must be retained by the party to whom it is sent and made available for appropriate use by any party.

(g) *Failure to attend a deposition or serve a subpoena; expenses; persons attending*. A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

(1) Attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who consequently did not attend.

(h) *Persons attending deposition*. Unless otherwise stipulated or ordered by the court, no person may attend a deposition except:

(1) The officer before whom the deposition is being taken;

(2) the reporter, stenographer or person recording the deposition;

(3) the parties to the action;

(4) the parties' attorneys and the attorneys' paralegals or legal assistants; and

(5) the deponent.

History: L. 1963, ch. 303, 60-230; L. 1970, ch. 234, § 1; amended by Supreme Court order dated July 20, 1972; L. 1982, ch. 242, § 1; L. 1983, ch. 194, § 1; L. 1987, ch. 219, § 1; L. 1987, ch. 218, § 2; L. 1987, ch. 220, § 1; L. 1997, ch. 173, § 13; L. 2010, ch. 135, § 99; July 1.