

2012 Kansas Statutes

60-232. Use of depositions in court proceedings. (a) *Using depositions.* (1) *In general.* At a hearing or trial all or part of a deposition may be used against a party on these conditions:

(A) The party was present or represented at the taking of the deposition or had reasonable notice of it;

(B) it is used to the extent it would be admissible under the rules of evidence if the deponent were present and testifying; and

(C) the use is allowed by subsections (a)(2) through (a)(8).

(2) *Impeachment and other uses.* Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness, or for any other purpose allowed by the rules of evidence.

(3) *Deposition of party, agent or designee.* An adverse party may use for any purpose that deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent or designee under subsection (b)(6) of K.S.A. 60-230 or subsection (a)(4) of K.S.A. 60-231, and amendments thereto.

(4) *Unavailable witness.* A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds:

(A) That the witness is dead;

(B) that the witness is more than 100 miles from the place of hearing or trial, or is outside this state, unless it appears that the witness' absence was procured by the party offering the deposition;

(C) that the witness cannot attend or testify because of age, illness, infirmity or imprisonment;

(D) that the party offering the deposition could not procure the witness' attendance by subpoena; or

(E) on motion and notice, that exceptional circumstances make it desirable, in the interest of justice and with due regard to the importance of live testimony in open court, to permit the deposition to be used.

(5) *Limitations on use.* A deposition taken without leave of court pursuant to a notice under subsection (a)(2)(A)(ii) of K.S.A. 60-230, and amendments thereto, must not be used against a party who shows that, when served with the notice, it could not, despite diligent efforts, obtain an attorney to represent it at the deposition.

(6) *Using part of a deposition.* If a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.

(7) *Substituting a party.* Substituting a party under K.S.A. 60-225, and amendments thereto, does not affect the right to use a deposition previously taken.

(8) *Deposition taken in an earlier action.* A deposition lawfully taken and, if required, filed in any federal- or state-court action may be used in a later action involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by the rules of evidence.

(b) *Objections to admissibility.* Subject to subsection (b) of K.S.A. 60-228, and amendments thereto, and subsection (d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) *Form of presentation.* Unless the court orders otherwise, a party must provide a transcript of the entire deposition from which the offered portions were taken, but may provide the court with the testimony in nontranscript form as well. On any party's request, deposition testimony offered in a jury trial for any purpose other than impeachment must be presented in nontranscript form, if available, unless the court, for good cause, orders otherwise.

(d) *Waiver of objections.* (1) *To the notice.* An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) *To the officer's qualification.* An objection based on disqualification of the officer before whom a deposition is to be taken is waived if not made:

(A) Before the deposition begins; or

(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) *To the taking of the deposition.* (A) *Objection to competence, relevance or materiality.* An objection to a deponent's competence, or to the competence, relevance or materiality of testimony, is not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.

(B) *Objection to an error or irregularity.* An objection to an error or irregularity at an oral examination is waived if:

(i) It relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct or other matters that might have been corrected at that time; and

(ii) it is not timely made during the deposition.

(C) *Objection to a written question.* An objection to the form of a written question under K.S.A. 60-231, and amendments thereto, is waived if not served in writing on the party submitting the question within the time for serving responsive questions or, if the question is a recross-question, with seven days after being served with it.

(4) *To completing and returning the deposition.* An objection to how the officer transcribed the testimony, or prepared, signed, certified, sealed, endorsed, sent or otherwise dealt with the deposition, is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

History: L. 1963, ch. 303, 60-232; amended by Supreme Court order dated July 20, 1972; L. 1987, ch. 218, § 4; L. 1997, ch. 173, § 15; L. 2010, ch. 135, § 101; July 1.