

# 2018 Kansas Statutes

**60-245. Subpoenas.** (a) *In general.* (1) *Form and contents.* (A) *Requirements; in general.* Every subpoena must:

- (i) State the court from which it is issued;
- (ii) state the title of the action, the court in which it is pending and the file number of the action;
- (iii) command each person to whom it is directed to do the following at a specified time and place: Attend and testify; produce designated documents, electronically stored information or tangible things in that person's possession, custody or control; or permit the inspection of premises; and

- (iv) set out the text of subsections (c) and (d).

(B) *Command to attend a deposition; notice of the recording method.* A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(C) *Combining or separating a command to produce or to permit inspection; specifying the form for electronically stored information.* A command to produce documents, electronically stored information or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced. Subpoena and production of records of a business that is not a party may be in accordance with K.S.A. 60-245a, and amendments thereto.

(D) *Command to produce; included obligations.* A command in a subpoena to produce documents, electronically stored information or tangible things requires the responding party to permit inspection, copying, testing or sampling of the materials.

(2) *Issued from which court.* A subpoena must issue as follows:

(A) For attendance at a hearing or trial, from the court where the hearing or trial is to be held;

(B) for attendance at a deposition, from the court in which the action is pending or from the officer before whom the deposition is to be taken, or, if the deposition is to be taken outside this state, from an officer authorized by the law of the other state to issue the subpoena; and

(C) for production or inspection, if separate from a subpoena commanding a person's attendance, from the court in which the action is pending, or, if the production, inspection, copying, testing or sampling is to be made outside this state, from an officer authorized by the law of the other state to issue the subpoena.

(3) *Issued by whom.* Every subpoena issued by the court must be issued by the clerk under the seal of the court or by a judge. The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. The blank subpoena must bear the seal of the court and the clerk's signature. The party to whom a blank subpoena is issued must fill it in before service.

(b) *Service.* Service of a subpoena may be made anywhere within this state, must be made in accordance with K.S.A. 60-303, and amendments thereto, and must, if the subpoena requires a person's attendance, be accompanied by the fees for one day's attendance and the mileage allowed by law. If, independently of a deposition, the subpoena commands the production of documents, electronically stored information or tangible things or the inspection of premises before trial, then before it is served, a notice must be served on each party in accordance with subsection (b) of K.S.A. 60-205, and amendments thereto.

(c) *Protecting a person subject to a subpoena.* (1) *Avoiding undue burden or expense; sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction, which may include lost earnings and reasonable attorney's fees, on a party or attorney who fails to comply.

(2) *Command to produce materials or permit inspection.* (A) *Appearance not required.* A person commanded to produce designated documents, electronically stored information or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing or trial.

(B) *Objections.* A person commanded to produce designated materials or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the designated materials or to inspecting the premises, or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection; and

(ii) these acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or modifying a subpoena.* (A) *When required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) Fails to allow a reasonable time to comply;

(ii) requires a resident of this state who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed or regularly transacts business in person or requires a nonresident who is neither a party nor a party's officer to travel more than 100 miles from where the nonresident was served with the subpoena, is employed or regularly transacts business in person, except that, subject to paragraph (3)(B) (iii), the person may be commanded to travel to the place of trial;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) Disclosing a trade secret or other confidential research development or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying conditions as an alternative.* In the circumstances described in subsection (c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions as the serving party:

(i) Shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(4) *Person in prison.* A person confined in prison may be required to appear for examination by deposition only in the county where the person is imprisoned.

(d) *Duties in responding to a subpoena.* (1) *Producing documents or electronically stored information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for producing electronically stored information not specified.* If a subpoena does not specify a form for producing electronically stored information, a person responding to a subpoena must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically stored information produced in only one form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible electronically stored information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (b)(2)(A) of K.S.A. 60-226, and amendments thereto. The court may specify conditions for the discovery.

(2) *Claiming privilege or protection.* (A) *Information withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) Expressly make the claim; and

(ii) describe the nature of the withheld documents, communications or things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. Punishment for contempt should be in accordance with K.S.A. 20-1204, and amendments thereto. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of subsection (c)(3)(A)(ii).

*History:* L. 1963, ch. 303, 60-245; amended by Supreme Court order dated July 20, 1972; amended by Supreme Court order dated July 28, 1976; L. 1982, ch. 243, § 1; L. 1985, ch. 196, § 2; L. 1990, ch. 202, § 2; L. 1997, ch. 173, § 24; L. 2008, ch. 21, § 6; L. 2010, ch. 135, § 114; July 1.