

**IN THE \_\_\_\_\_ JUDICIAL DISTRICT  
DISTRICT COURT OF \_\_\_\_\_ COUNTY, KANSAS**

<i>Plaintiff</i>	)	
v.	)	Case No. _____
<i>Defendant</i>	)	

**K.S.A. 60-245: SUBPOENA TO TESTIFY AT A DEPOSITION —  
WITH OR WITHOUT DOCUMENTS**

To:

\_\_\_\_\_  
*(Name of person to whom this subpoena is directed)*

**YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment: \_\_\_\_\_

\_\_\_\_\_.

Place:

Date and Time:

The deposition will be recorded by this method: \_\_\_\_\_.

*Production at Deposition:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material *(leave blank if not applicable)*:

Included with this subpoena is payment for one day's attendance and the mileage allowed by law.

The following provisions of K.S.A. 60-245 are attached – K.S.A. 60-245(c), relating to your protection as a person subject to a subpoena and the place of compliance; and K.S.A. 60-245(d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Requesting Attorney or Party \_\_\_\_\_

Bar Registration Number \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

[Facsimile number] \_\_\_\_\_

[Email address] \_\_\_\_\_

**PROOF OF SERVICE**

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

***Complete one of the following:***

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ;

**or**

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_.

I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

Under K.S.A. 60-303(d)(3) and K.S.A. 28-110, my fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct.

Executed on: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service:

## K.S.A. 60-245(c), (d), and (e)

### (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).