



General Order 74.2 - Legal Process

PURPOSE: Describe service of civil process, civil arrest, seizure of real or personal property, and petitions to determine if persons are in need of care for Mental, Alcohol, or Substance Abuse.

DATE OF APPROVAL: 8/31/11

DATE OF ISSUE: 08/31/11

EFFECTIVE DATE: 08/31/11

REVIEW DATE: Annual

AMENDS: 74.2.2, 74.2.5, 74.2.6

THIS ORDER CANCELS: 74.2 Approved 08/08/03

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REVIEWED BY: Standard Review Committee

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DEFINITIONS:

- A. Alias Documents: A document issued when the original has not produced its desired effect due to being defective in form or manner of service, and when issued, supersedes the first writ. Examples: Summons & Alias Summons, Citations & Alias Citations, Warrants & Alias Warrants, etc.
- B. Complaint: The original or initial pleading by which an action is commenced under codes or rules of civil procedure. The complaint, together with the summons, is required to be served on the defendant.

- C. Corporate Officers: Those persons who fill the offices which are provided for in the charter such as president, treasurer, etc., though in a broader sense the term includes vice-president, general manager, and other officials of the corporation.
- D. Garnishment: A statutory proceeding whereby a person's property, money, or credits in possession or under control of, or owing by, a Garnishee such as an employer or financial institution are applied to the payment of a money judgment to a winning plaintiff in a civil action, following proper statutory process against both debtor and garnishee.
- E. Injunction: A judicial order requiring person to whom it's directed at, to do or refrain from doing a particular thing.
- F. Judgment: The official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit.
- G. Motion: An application made to a court or judge for the purpose of obtaining a rule or order directing some act to be done in favor of the applicant.
- H. Order: Direction of a court or judge made or entered in writing, and not included in a judgment.
- I. Petition: A formal, written application to a court requesting judicial action on a certain matter.
- J. Replevin: Court order whereby the owner or person entitled to repossession of personal property from another person who has wrongfully taken or who wrongfully maintains possession of such property, excluding real estate.
- K. Repossession: The act of resuming possession of property when the purchaser fails to keep up payments on it in accordance with the provisions of a purchase agreement entered into between the buyer and the seller.
- L. Restraining Order: An order which may issue upon the filing of an application for an injunction forbidding the defendant or respondent to carry out the threatened act until a hearing on the application can be had.
- M. Service: The exhibition or delivery of a writ, summons, and complaint, criminal summons, notice, order, etc., by an authorized person to a person who is thereby officially notified of some action or proceeding in which he is concerned, and is thereby advised or warned of some action or step which he is commanded to take or forbear.
- N. Subpoena: A command to appear at a certain time and place to give testimony upon a certain matter.
- O. Subpoena Duces Tecum: A process by which the court, at the instances of a party, commands a witness who has in his/her possession or control some document or paper that is pertinent to the issues of a pending controversy, to produce it at the trial.
- P. Summons: Writ or process directed to the sheriff or other proper officer, requiring him/her to notify the person named that an action has been commenced against him/her in the court from where the process issues, and that he/she is required to appear, on a day named, and answer the complaint in such action.

- Q. Writ: An order issued from a court requiring the performance of a specified act or giving authority to have it done.
- R. Protection From Abuse (PFA) orders: Court orders issued by the Family Court Services office or other jurisdictions as provided by law, which are designed to protect the victims of domestic violence or stalking from continued abuse or other courses of action specified within the body of the order by prohibiting contact between the parties involved and temporarily awarding custody of children and/or dwellings until further court proceedings can occur.
- S. Ex Parte orders: Court orders issued on behalf of one party in a child custody civil cases or probate actions that are based solely on facts brought before that court by that party.
- T. Reciprocal orders: A court order issued by a local district court judge which grants full faith and credit to orders brought before the court from a jurisdiction outside the State of Kansas.
- U. Writ of Habeas Corpus (Ad Prosequendum): A Writ signed by a district court judge ordering the U.S. Marshal to deliver a prisoner in federal custody for trial by a state court.
- V. Endorsement: The written instructions of a judge presiding within the 18th Judicial District to enforce a court order from outside the state of Kansas, absent a reciprocal order.
- W. Care and Treatment Order: An order issued by the Probate court to the Sheriff's department for the pick-up, transportation and admission of persons suffering from mental illness, alcoholism or drug addiction, to an appropriate care facility as directed by the court.
- X. Writs of Execution: A court order issued in civil cases instructing the Sheriff's department to levy upon the non-exempt personal property of a judgment debtor, for the purpose of satisfying a money judgment.
- Y. Writ of Restitution and Execution: A court order issued to evict the tenants from and to return control of rental property owned by a landlord.
- Z. Writ of Assistance: A court order issued to evict the residents of real estate which has been foreclosed upon, to return control of the property to the mortgager obtaining the judgment.
- AA. Plaintiff/Petitioner: The party bringing a legal action.
- BB. Defendant/Respondent: The party who is being sued in a legal action.
- CC. Garnishee: A party to a garnishment order who is served garnishment papers and must take a portion of wages, non-exempt funds or other monies being held by them on behalf of a judgment debtor and send such funds to the court clerk for the purpose of satisfying a money judgment in a civil suit.
- DD. Order Nunc Pro Tunc: A court order correcting a defect in a previous order.
- EE. Order to Enter: A court order directing forced entry into a building for the purpose of serving process.

74.2.1 SERVICE OF CIVIL PROCESS

- A. Lawsuits begin at the clerk of the district court. Lawsuit or tort is filed with the clerk of the district court for hearing within the court system. Legal papers are filed to notify the person being sued that an action has been filed against them (summons), the specific wrongs alleged (complaint), and the proposed remedy to redress these wrongs requested from the courts (petition).
- B. Deputies should have court paperwork in their possession when attempting service of civil process. The following can be considered to determine the validity of such documents.
 - 1. Judge's signature or stamp.
 - 2. Court seal or other evidence of filing by the Clerk of the District Court such as clock stamps, Clerks stamps, etc.
 - 3. In the case of PFA's, Care and Treatment Orders, or restraining orders, Sheriff's records can be consulted for verification of the service or validity of existing documents, which are on file. For such orders issued from out of state from jurisdictions that are in compliance with [Title 18 USC 2256](#), the Violence Against Womens Act (VAWA), a check of the NCIC files for the presence of a protective order issued against the respondent can be used as verification such an order exists. Protective orders originating from out of state will be given full faith and will be enforced in the same manner as those originating locally.
 - 4. All other orders issued from out of state must be accompanied by the endorsement of, or a reciprocal order issued by a judge presiding with the 18th Judicial District of Kansas.
- C. The civil process procedures in general are mandated by the Kansas civil process statutes found in Chapters 60 and 61 of the Kansas Statute Annotated. Service of civil process may vary according to a specific court order or specific statute. Rules for the service of civil process are found in [K.S.A. 60-303](#) for civil actions and [K.S.A. 61-1803](#) for limited (small claims) actions.
- D. DO NOT SERVE or attempt to serve any process on a person who has filed for bankruptcy when the process relates in any manner to actions seeking the payment of money or return of property. DO NOT SERVE or attempt to serve upon persons who have filed for bankruptcy, any process relating to liens, attempting to establish liens, or attempting to enforce liens of any kind. FEDERAL LAW PROHIBITS THESE ACTIONS and overrides all other law. This is called the "Automatic Stay". IT IS A VIOLATION OF FEDERAL LAW FROM WHICH YOU ARE NOT IMMUNE TO DO OR ATTEMPT ANY OF THOSE ACTS. (Basic Civil Process in Kansas, 07/11, page 31.) The clerk of the district court for the 18th Judicial District has asked that the following procedure be followed if you are confronted with this situation.
 - 1. Obtain the federal case number for the bankruptcy action from the defendant.

2. Return the process to the clerk noting NO SERVICE, BANKRUPTCY FILED IN U.S. COURT CASE # , on the return of the process provided. (See the example below.)
- E. If you are attempting to collect money on a Writ of Execution and the person says that he/she has paid all that is owed, ask to see the Satisfaction of Judgment form. This is a form from the court that states that they have paid what is owed and that the judgment is satisfied in the eyes of the court. If they have this form, try to obtain a copy and attach the copy to your return. If they only have one copy, then transcribe all of the information on the copy to your return. DO NOT COLLECT ANY MONIES OR PROPERTY without checking with the court to see which order is valid.
1. If they do not have this form, the Writ is presumed to be valid.
- F. All civil process intended for personal service by the Sedgwick County Sheriff's Office must be addressed to a recipient located within Sedgwick County. Court documents authorized for service by certified or first class mail may be served by mailing them to addresses outside of Sedgwick County.

74.2.2 OPEN

74.2.3 SEIZURE OF REAL OR PERSONAL PROPERTY

- A. The seizure of property pursuant to a court order is an activity with a potential for resistance. Therefore, in the execution of such orders, only a commissioned deputy of the sheriff's department will be issued such orders. This does not exclude private process servers or others appointed by the court to serve process including the seizure of property.

74.2.4 TYPES OF SERVICE

- A. Personal Service -- Personal service shall be made by delivering or offering to deliver a copy of the court documents to the person named in the process. If the person refused to accept the documents, after the deputy has identified his/herself and their intent to effect service of process, they should leave them anyway and note this in your return. Deputies attempting service are not required to nor should attempt to touch the person in order to accomplish service except in the case of care and treatment orders issued under Chapter 59. Listed as PS on the return.
- B. Residence Service -- Residence service is obtained by leaving a copy of the process at the subject's dwelling with some person of "suitable age and discretion who resides there". NOTE: Make sure the person is capable of understanding that they are to give the paper to the subject and that they live there. Note the full name of the person you gave the paper to and their relationship to the subject being served. If the person whom service has been made upon refuses to give you their name, record the physical description of that person in your return. Listed as RS on the return.
- C. Residence Service Tacked -- For some papers, service can be accomplished by placing a copy of the process onto the building. For this process, use scotch tape to attach the process to the front door of the building. DO NOT USE NAILS, TACKS, ETC., to attach the process to the building. A postcard must then be mailed to the person named in the

process advising them that a paper was served on them at that address. Listed as RSTD on the return.

- D. Mail Service -- Civil Process may be served by certified mail or in the case of Chapter 61 Garnishments by first class mail. When serving process by certified mail, a return receipt is required and must be attached to the envelope mailed to the subject. When the receipt is returned to the deputy, it is attached to the return of process to show that the individual received it. If the certified letter is refused, it is re-mailed as a first class letter to the subject. This constitutes service and is noted as such in the return. When serving Chapter 61 garnishments by first class mail the deputy will issue an amended return to note that the defendant was not found in the event that the mail was returned as being undeliverable.
- E. Corporate Service -- Corporate service is accomplished by serving an officer of the corporation. This means that the president, vice-president, treasurer, secretary of the corporation, general manager, or other agent authorized to receive process must be served. DO NOT leave a copy with the secretary or receptionist unless he/she states that they are authorized to receive process by the corporation. Listed as CS on the return.
- F. Service to an Agent -- Many corporations and some individuals have appointed an agent (usually an attorney) to receive process. Serve the papers on the agent. This constitutes valid personal or corporate service. Be sure to note the name of the agent on the return and the address where the paper was served.
- G. No Service -- This occurs when the defendant cannot be found within Sedgwick County. Make the notation; Defendant not found at the above address on the return service.

74.2.5 SPECIAL SERVICE SITUATIONS

A. Minors

- 1. In case other than JV or JC cases, two (2) people must be served:
 - a. The minor must be served;
 - b. The parent or guardian must also be served.
- 2. There should be two (2) sets of papers sent for service.
- 3. If only one set of papers is sent, serve the parent or guardian.

B. Mentally Disabled Persons

- 1. Same as minors.
- 2. The second person served can be:
 - a. Guardian;
 - b. Conservator; or
 - c. Competent member of the person's family with whom the person resides.
- 3. If the person lives in an institution, serve its director or chief executive officer.

C. Government Agencies

1. Counties -- serve:
 - a. County commissioner;
 - b. County clerk; or
 - c. County Treasurer.
2. Townships -- serve:
 - a. Clerk; or
 - b. Trustee.
3. Cities -- serve:
 - a. Mayor; or
 - b. Clerk.
4. Other public corporations -- serve:
 - a. Clerk;
 - b. Secretary (this is the agency secretary, not a clerical employee); or
 - c. Officer, director, or manager.
5. State of Kansas -- serve:
 - a. Attorney general or assistant attorney general.
6. Federal Offices-serve:
 - a. United States Attorney for Kansas
 - b. United States Marshals Office
 - c. Other offices, employees and agencies as provided for by federal law or regulation.

D. Hospital Patients

1. Contact hospital security when entering the hospital.
2. Check with the patient's doctor before service.

E. Doctors and Other Professional Persons

1. Usually are very busy and long delays may result.
2. Try to arrange an appointment or have them name an agent to receive the process.

F. Prisoners

1. Contact the jail or prison where the prisoner is being held to arrange service.

G. Acceptance of Service by Attorneys

1. An attorney representing the plaintiff or defendant can accept service of process for their client.
2. This includes individuals, government agencies, businesses, and corporations.
3. The case of PFAs and other Protective Orders issued in compliance with [title 18 USC 2265](#), the Violence Against Womens Act (VAWA), the attorney accepting service should provide the deputy serving the process with the personal identifiers required by that act.

H. Active Duty Military Personnel

1. Shall be served in the following manner if the address of service is upon a military reservation such as McConnell Air Force Base;
 - a. **(R)** The Security Forces Investigations Section will be contacted and arrangements shall be made to serve the service member.
2. National Guard or Reserve members who are to be served while on active duty and not on McConnell Air Force Base, but at a location within Sedgwick County, will be served in the following manner.
 - a. The appropriate unit administration will be contacted to determine whether or not the service member will be available for service of process during normal Civil section business hours.
 - b. Arrangements will be made with the unit First Sergeant to serve the service member at that time.
 - c. If the service member is unavailable during normal business hours the deputy will attempt to have the service member come up to the Judicial Division offices to be served.

74.2.6 RETURN OF SERVICE

- A. Upon service of the process, deputies will complete the sheriff's return of service section on the return copy of the documents being served. Given that all process does not contain this section, the deputy will provide the return information to include, but not be limited to the following information:
 1. Date the process was received, in most cases the mechanical time stamp will suffice;
 2. Date and time the process was served;
 3. Method of service made upon the recipient;
 4. Upon whom service was made, if Residential or Agent Service is made the relationship to the person to whom the process was originally directed;
 5. Address of service, if different from the one present on the document.
 6. Brief explanation as to why service was not possible; and
 7. Deputy's signature.

8. **(R)** Deputy's printed name and ID number.
- B. Every process server must make a return on service in compliance with [K.S.A. 60-312](#). The return must be made within ten (10) days of service on Chapter 60 papers, and within two (2) days on Chapter 61 papers. To avoid problems, make a return the same day of service. Most papers have a pre-printed area for return. Make sure that the return is put in the proper area. If no pre-printed return is on the paper, use a return rubber stamp and fill it out. (See [Appendix A](#).)
- C. A declaration that the return is true and correct shall be added. The declaration may be written in or rubber-stamped and signed upon the return of service. This declaration shall read: I declare under the penalty of perjury that the above return is true and correct or I declare under penalty of perjury that the foregoing return is true and correct.
- D. If no service can be made, the return must be made within 30 days of receipt of the paper, only if no court date or other service date is stamped on the paper. State the reason for no service. Show all attempts at service on the return by noting date and time of attempt somewhere on the front.
- E. For returns of specific court papers, see [Appendix A](#).

74.2.7 INITIATING CIVIL PROCESS

- A. Deputies are often asked how to initiate various types of civil process. In all cases, it takes a court order. Deputies and other employees shall not offer legal advice or make referrals to any attorney to any person at any time.
- B. The most common actions asked about are:
 1. Protection from Abuse, PFA. (See [Appendix A](#).)
 2. Evictions. (See [Appendix A](#))

74.2.8 TYPES OF CIVIL PROCESS PAPERS

- A. See [Appendix A](#).

74.2.9 SERVICE OF PROBATE COURT; CARE AND TREATMENT PETITIONS

- A. Under Probate Court Ex Parte Petition for Care and Treatment; persons may be picked up by law enforcement personnel and transported to a treatment facility for evaluation.
 1. Kansas statutes: [KSA 59-2957](#) Mental Care and Treatment, and KSA 59-29b57 Alcohol or Substance Abuse Care and Treatment.
- B. After receiving a Care and Treatment Petition deputies will examine the document to determine if the order is a serve only or pickup order.
- C. When deputies receive a serve only petition they will proceed directly to the listed location. The patient will be served a copy and a copy of the petition will be left with the Unit charge nurse.
- D. Deputies will utilize the following procedure when serving pick up orders.

1. If it is found the order directs deputies to pick up and transport a patient for treatment, the deputies will first make a copy of the petition and file it in the Sheriff Records Section.
 2. If possible the deputies will contact the petitioner and arrange to meet them prior to the pickup. The petitioner may be involved in the initial contact with the patient if they wish to assist.
 3. Upon contacting patients, deputies should notify them they have a court order to transport them to a hospital for treatment. If necessary the deputies may tell patients they have no choice in the matter, they are required by state statute to transport them, with force if necessary.
 4. Deputies should be extremely security conscious due to the patients mental condition and the potential that they could harm themselves or others. Extreme care should be taken with both mental and substance abuse patients to prevent injury to the patient or any other person.
 5. The patient should be secured as described in [71.1.11](#) E prior to transportation.
- E. The Petition for Care and Treatment will describe where the patient is to be transported. Patients that are considered to be medically stable by their personal physician will normally be transported directly to the facility as specified by the order.
1. Prior medical stabilization will be noted in the Petition and will state whether the patient needs to be taken for medical screening as required.
 2. Patients that have not received a prior medical stabilization certification from their physician will be transported for medical screening by ER personnel.
- F. Deputies will stand by in the Emergency Room with the patient during medical screening.
1. Deputies will contact ER charge nurses and inform them of the petition and any special circumstances.
 2. Deputies may serve the patient their copy of the Petition at this time or later when they arrive at the facility as directed by the court.
 3. Deputies will contact the facility security upon their arrival if patient is violent or considered an escape risk.
- G. When the patient is determined to be medically stable by ER personnel they will be transported by deputies to the approved facility.
1. Upon arrival at the facility, the charge nurse will be served the hospital copy of the petition.
 2. Deputies will advise the facility personnel of any special circumstances or security issues they have with the patient prior to leaving.

- H. When Emergency Room personnel are not willing to certify the patient as medically stable, the patient will be left in the ER under the supervision of ER staff and St. Joseph security.
 - 1. The ER charge nurse will be served the hospital copy of the petition when a patient is left in the ER.
 - 2. Deputies will contact the facility security and advise them of any special circumstances or security issues they have with the patient prior to leaving.
- I. When patients are not medically cleared and admitted for medical reasons, Via Christi St. Joseph will assume responsibility for later transportation to the mental facility.