

[CAPTION]

**AFFIDAVIT FOR SERVICE BY PUBLICATION**

State of Kansas            )  
  )  
County of \_\_\_\_\_)        **ss:**

\_\_\_\_\_, of lawful age, being first duly sworn, states:

1. The affiant is (the plaintiff) (the defendant) (an attorney for the plaintiff) (an attorney for the defendant) in the above action and makes this affidavit for the purpose of obtaining service by publication upon the parties named herein.

2. The defendants on whom service by publication is sought and whose names and addresses are known are as follows:

(Names and addresses)

3. The defendants on whom service by publication is sought whose names are known but whose residences are unknown, notwithstanding reasonable effort of the affiant to ascertain the same, are as follows:

(Names)

4. The affiant has made a reasonable but unsuccessful effort to ascertain the names and residences of any defendants sought to be served as unknown parties in accordance with K.S.A. 60-307(a)(5).

5. The affiant is unable to procure service of summons on any of the specified defendants within this state.

**6. This action is one of those mentioned in subsections (a)(1) through (4) of K.S.A. 60-307 and amendments thereto [or cite whatever statutory authority is appropriate].**

\_\_\_\_\_  
**(Signature)**

**Subscribed and sworn to before the undersigned on \_\_\_\_\_, 2\_\_\_\_.**

\_\_\_\_\_  
**Notary Public**

**My Appointment Expires:**

**Authority**

K.S.A. 60-307.

**Notes on Use**

K.S.A. 60-307 sets forth the kinds of cases in which service may be made by publication. Service by publication must be construed as a separate and permissive method of obtaining service. If a defendant served by publication does not appear, no personal judgment may be obtained, but the court can issue judgment affecting property, *res*, or status within the court's jurisdiction. K.S.A. 60-307(b).

Before service by publication can be made, a party or a party's attorney must file an Affidavit as set forth above. Once the Affidavit is filed, service by publication can proceed. K.S.A. 60-307(c). The requirements for service by publication must be strictly met in order to have obtained adequate service. See Form 014e.

As shown in paragraph 6 of this form, this affidavit format can be used in any type of case in which service by publication is allowed by statute. These actions include, but are not limited to quiet title or foreclosure of real estate (K.S.A. 19-1219), eminent domain (K.S.A. 26-503), child in need of care (K.S.A. 38-1534), probate (K.S.A. 59-2209), name change (K.S.A. 60-1402), and limited actions (K.S.A. 61-3003). In other actions, e.g., actions pursuant to the Kansas Parentage Act, the statute authorizes service by any manner prescribed by the court. See K.S.A. 38-117.

**Comment**

Due process requires that notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover B. & T. Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950). "Without such notice, due process is denied and any judgment rendered is void." *Sweetser v. Sweetser*, 7 Kan.App.2d 463, 465, 643 P.2d 1150 (1982). Service by publication has been held sufficient to satisfy the constitutional requirements of due process and equal protection. *Board of County Commissioners v. Alldritt*, 217 Kan. 331, 333-334, 536 P.2d 1377 (1975). Where names and addresses are known or easily ascertainable, notice by publication service, alone, is not sufficient to satisfy the constitutional requirements of due process. *Chapin v. Aylward*, 204 Kan. 448, 464 P.2d 177 (1970).

"While it is universally recognized that service by publication under certain factual circumstances will satisfy the constitutional requirements of due process, we hold that in a severance proceeding it must be affirmatively shown that the party seeking such service exercised due diligence in attempting to identify and locate the parent upon whom

such service is desired. . . . We will not here attempt to establish the scope or type of effort which might be considered the minimum requirements for a showing of due diligence and, hence, due process. Each case must rest upon its own particular facts.” *In re Woodard*, 231 Kan. 544, 554-555, 646 P.2d 1105 (1982). The Kansas Court of Appeals has held that “[d]ue diligence does not require the use of all conceivable means possible to an inquiry into the absent parent’s whereabouts.” *In re L.S.*, 14 Kan.App.2d 261, 264, 788 P.2d 875 (1990). The Court of Appeals went on to quote the Nebraska Supreme Court, which has held that due diligence “is such an inquiry as a reasonably prudent person would make in view of the circumstances and must extend to those places where information is likely to be obtained and to those persons who, in the ordinary course of events, would be likely to receive news of or from the absent person.” 14 Kan.App.2d at 264, citing *In the Interest of A.W.*, 224 Neb. 764, 766, 401 N.W.2d 477 (1987).

The requirement in K.S.A. 60-307(e) that a copy of the notice be mailed to each defendant whose address is stated in the affidavit for service by publication is mandatory, and the failure to do so is a denial of due process. *Board of County Commissioners v. Knight*, 2 Kan.App.2d 74, 80, 574 P.2d 575 (1978). “Where personal service is unsuccessful, but a defendant’s mailing address is known to plaintiff, though not listed in an affidavit for service by publication, due process requires utilization of that address. A plaintiff may not overcome its duty to provide defendant the best notice reasonably possible under the circumstances by merely listing a defendant’s residence as unknown in its affidavit for service by publication. Mailing a copy of that publication notice to a known mailing address is also necessary.” *Federal Nat’l Mtg. Ass’n v. Beard*, 8 Kan. App. 2d 371, Syl. ¶ 3, 659 P.2d 232 (1983).

The statutory scheme for mailing a copy of publication notice to each heir whose address is known to petitioner indicates that the term “known” as used in K.S.A. 59-2209, which requires that petitioner mail a copy of published notice to each heir whose name and address are known to petitioner within 7 days after first publication, means an heir known to the petitioner or an heir who by the exercise of due diligence should have been known. *In re Barnes’ Estate*, 212 Kan. 502, Syl. ¶4, 512 P.2d 387 (1973). The failure of a petitioner in a proceeding to probate a will to mail A copy of the published notice of hearing to an heir who, after the exercise of due diligence, is unknown to the petitioner does not deprive the probate court of jurisdiction to hear the petition. *Id.*, 212 Kan. at 502, Syl. ¶5.