

## **Rule 4. Process.**

(a) **Summons - Issuance.** Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver it to the plaintiff or the plaintiff's attorney, who shall cause the summons and a copy of the complaint to be served in accordance with this rule. Upon request of the plaintiff separate or additional summonses shall issue against any defendants.

### **(b) Summons - Form.**

(1) The summons shall be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney or the plaintiff's name and address if the plaintiff is unrepresented. It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in judgment by default against the defendant for the relief demanded in the complaint. The summons must also notify the defendant that the defendant has a duty to inform the court and all other parties, in writing, of the defendant's or defendant's attorney's current mailing address and telephone number, and to inform the court and all other parties of any changes, as set out in Civil Rule 5(i).

(2) The summons must be on the current version of the summons form developed by the administrative director or a duplicate of the court form. A party or attorney who lodges a duplicate certifies by lodging the duplicate that it conforms to the current version of the court form.

### **(c) Methods of Service - Appointments to Serve Process - Definition of Peace Officer.**

(1) Service of all process shall be made by a peace officer, by a person specially appointed by the Commissioner of Public Safety for that purpose or, where a rule so provides, by registered or certified mail.

(2) A subpoena may be served as provided in Rule 45 without special appointment.

(3) Special appointments for the service of all process relating to remedies for the seizure of persons or property pursuant to Rule 64 or for the service of process to enforce a judgment by writ of execution shall only be made by the Commissioner of Public Safety after a thorough investigation of each applicant, and such appointment may be made subject to such conditions as appear proper in the discretion of the Commissioner for the protection of the public. A person so appointed must secure the assistance of a peace officer for the completion of process in each case in which the person may encounter physical resistance or obstruction to the service of process.

(4) Special appointments for the service of all process other than the process as provided under paragraph (3) of this subdivision shall be made freely when substantial savings in travel fees and costs will result.

(5) The term "peace officer" as used in these rules shall include any officer of the state police, members of the police force of any incorporated city, village or borough, United States Marshals and their deputies, other officers whose duty is to enforce and preserve the public peace, and within the authority conferred upon them, persons specially appointed pursuant to paragraph (3) of this subdivision.

(d) **Summons - Personal Service.** The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) *Individuals.* Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally, or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) *Infants.* Upon an infant, by delivering a copy of the summons and complaint to such infant personally, and also to the infant's father, mother or guardian, or if there be none within the state, then to any person having the care or control of such infant, or with whom the infant resides, or in whose service the infant is employed; or if any service cannot be made upon any of them, then as provided by order of the court.

(3) *Incompetent Persons.* Upon an incompetent person, by delivering a copy of the summons and complaint personally -

(A) To the guardian of the person or a competent adult member of the person's family with whom the person resides, or if the person is living in an institution, then to the director or chief executive officer of the institution, or if service cannot be made upon any of them, then as provided by order of the court; and

(B) Unless the court otherwise orders, also to the incompetent person.

(4) *Corporations or Limited Liability Companies.* Upon a domestic or foreign corporation or limited liability company, by delivering a copy of the summons and of the complaint to a managing member, an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.

(5) *Partnerships.* Upon a partnership, by delivering a copy of the summons and of the complaint personally to a general partner of such partnership, or to a managing or general agent of the partnership, or to any other agent authorized by appointment or by law to receive service of process, or to a person having control of the business

of the partnership; or if service cannot be made upon any of them, then as provided by order of the court.

(6) *Unincorporated Associations*. Upon an unincorporated association, by delivering a copy of the summons and the complaint personally to an officer, a managing or general agent, or to any other person authorized by appointment or by law to receive service of process; or if service cannot be made upon any of them, then as provided by order of the court.

(7) *State of Alaska*. Upon the state, by sending a copy of the summons and the complaint by registered or certified mail to the Attorney General of Alaska, Juneau, Alaska, and

[a] to the chief of the attorney general's office in Anchorage, Alaska, when the matter is filed in the Third Judicial District; or

[b] to the chief of the attorney general's office in Fairbanks, Alaska, when the matter is filed in the Fourth Judicial District.

(8) *Officer or Agency of State*. Upon an officer or agency of the state, by serving the State of Alaska as provided in the preceding paragraph of this rule, and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation, the copies shall be delivered as provided in paragraph (4) of this subdivision of this rule.

(9) *Public Corporations*. Upon a borough or incorporated city, town, school district, public utility district, or other public corporation in the state, by delivering a copy of the summons and of the complaint to the chief executive officer or chief clerk or secretary thereof.

(10) *Unknown Parties*. Upon unknown persons who may be made parties in accordance with statute and these rules, by publication as provided in subdivision (e) of this rule.

(11) *Officer or Agency of State as Agent for Non-governmental Defendant*. Whenever, pursuant to statute, an officer or an agency of the State of Alaska has been appointed as agent to receive service for a non-governmental defendant, or whenever, pursuant to statute, an officer or agency of the State of Alaska, has been deemed, considered or construed to be appointed as agent for a non-governmental defendant by virtue of some act, conduct or transaction of such defendant, service of process shall be made in the manner provided by statute.

(12) *Personal Service Outside State*. Upon a party outside the state in the same manner as if service were made within the state, except that service shall be made by a sheriff, constable, bailiff, peace officer or other officer having like authority in the jurisdiction where service is made, or by a person specifically appointed by the court

to make service, or by service as provided in subsection (h) of this rule. In an action to enforce any lien upon or claim to, or to remove any encumbrance or lien or cloud upon the title to, real or personal property within the state, such service shall also be made upon the person or persons in possession or in charge of such property, if any. Proof of service shall be in accordance with (f) of this rule.

(13) *Personal Service in a Foreign Country.* Upon an individual in a foreign country -

(A) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(B) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(ii) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(iii) unless prohibited by the law of the foreign country, by delivery to the individual personally of a copy of the summons and the complaint, or by any form of mail requiring a signed receipt by the party to be served, so long as the return receipt is filed with the court; or

(C) by other means not prohibited by international agreement as may be directed by the court.

Regardless of which method of service is followed for personal service in a foreign country, before entry of judgment, the court must be satisfied that the method used was a method reasonably likely to effect actual notice.

(e) **Other Service.** When it shall appear by affidavit of a person having knowledge of the facts filed with the clerk that after diligent inquiry a party cannot be served with process under (d) of this rule, service may be made by publication or as otherwise directed by the court as provided in this subdivision. Service by publication will be allowed in adoption cases only if ordered by the court for compelling reasons.

(1) *Diligent Inquiry.* Inquiry as to the absent party's whereabouts shall be made by the party who seeks to have service made, or by the party's attorney actually entrusted with the conduct of the action, or by the agent of the attorney. It shall be made of any person who the inquirer has reason to believe possesses knowledge or information as to the absent party's residence or address or the matter inquired of. Unless otherwise ordered by the court, diligent inquiry shall include a reasonable

effort to search the internet for the whereabouts of the absent party. The inquiry shall also be undertaken in person or by letter, and the inquirer shall state that an action has been or is about to be commenced against the party inquired for, that the object of the inquiry is to give such party notice of the action in order that such party may appear and defend it. When the inquiry is made by letter, postage shall be enclosed sufficient for the return of an answer. The affidavit of inquiry shall be made by the inquirer. It shall fully specify the inquiry made, of what persons and in what manner it was made, and a description of any efforts that were made to search the internet, so that by the facts stated therein it may appear that diligent inquiry has been made for the purpose of effecting actual notice.

(2) *Service by Publication in a Newspaper.* A notice shall be published four times during four consecutive calendar weeks, once in each week, in a newspaper published in the district in which the action is pending, or if none be published therein, then in a newspaper published in this state circulating in such district. Prior to the last publication, the party who seeks to have service made must send the absent party a copy of the notice and the complaint or the pleading (A) by registered or certified mail, with return receipt requested, with postage prepaid, and (B) by regular first class mail. The notice must be addressed in care of the absent party's residence or the place where the party usually receives mail, unless it shall appear by affidavit that the absent party's residence or place is unknown or cannot be ascertained after inquiry.

(3) *Other Service.* In its discretion the court may allow service of process to be made upon an absent party in any other manner which is reasonably calculated to give the party actual notice of the proceedings and an opportunity to be heard, if an order permitting such service is entered before service of process is made.

(4) *Form and Contents of Notice - Time.* The notice referred to in paragraph (2) of this subdivision shall be in the form of a summons. It shall state briefly the nature of the action, the relief demanded, and why the party to whom it is addressed is made a party to the action. Where the action concerns real property or where real property of a party has been attached, the notice shall set forth a legal description of the property, shall state the municipality or district in which it is located, and the street or road on which the property is situated, and if the property is improved, it shall state the street number of the same. Where personal property of a party has been attached, the notice shall generally describe the property. If a mortgage is to be foreclosed, the notice shall state the names of all parties thereto and the dates that the mortgage was executed. The notice shall specify the time within which the absent party has to appear or answer or plead, which shall not be less than 20 days after personal service or, if service is made by publication, not less than 30 days after the last date of publication, and shall state the effect of a failure to appear or answer or plead. If the absent party does not appear or answer or plead within the time specified within the notice, the court may proceed as if such party had been served with process within the state.

(5) *Proof of Service.* If service is made by publication, proof of publication shall be made by the affidavit of the newspaper's publisher, printer, manager, foreman, or principal clerk, or by the certificate of the attorney for the party at whose instance the service was made. A printed copy of the published notice with the name of the newspaper and dates of publication marked therein shall be attached to the affidavit or certificate. Proof of mailing shall be made by affidavit of a deposit in a post office of the copies of the notice and the complaint or other pleadings.

(f) **Return.** The person serving the process shall give proof of service thereof to the party requesting issuance of the process or to the party's attorney promptly and in any event within the time during which the person served must respond to the process. Within 120 days after filing of the complaint, the party shall file and serve an affidavit identifying the parties who have been served, the date service was made and the parties who remain unserved. If service is made by a person other than a peace officer, the person shall make affidavit thereof, proof of service shall be in writing and shall set forth the manner, place, date of service, and all pleadings or other papers served with the process. Failure to make proof of service does not affect the validity of the service.

(g) **Amendment.** At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the parties against whom the process issued.

(h) **Service of Process by Mail.** In addition to other methods of service provided for by this rule, process may also be served within this state or the United States or any of its possessions by registered or certified mail, with return receipt requested, upon an individual other than an infant or an incompetent person and upon a corporation, partnership, unincorporated association, or public corporation. In such case, copies of the summons and complaint or other process shall be mailed for restricted delivery only to the party to whom the summons or other process is directed or to the person authorized under federal regulation to receive the party's restricted delivery mail. All receipts shall be so addressed that they are returned to the party serving the summons or process or the party's attorney. Service of process by mail under this paragraph is complete when the return receipt is signed.

(i) RESERVED

(j) **Summons - Time Limit for Service.** The clerk shall review each pending case 120 days after filing of the complaint to determine whether all defendants have been served. If any defendant has not been served, the clerk shall send notice to the plaintiff to show good cause in writing why service on that defendant is not complete. If good cause is not shown within 30 days after distribution of the notice, the court shall dismiss without prejudice the action as to that defendant. The clerk may enter the dismissal if the plaintiff has not opposed dismissal. If the court finds good cause why service has not been made, the court shall establish a new deadline by which plaintiff must file proof of service or proof that plaintiff has made diligent efforts to serve.

(Adopted by SCO 5 October 9, 1959; amended by SCO 49 effective January 1, 1963; by SCO 66 effective July 1, 1964; by SCO 90 effective July 24, 1967; by SCO 168 dated June 25, 1973; by SCO 215 effective May 23, 1975; by SCO 266 effective March 31, 1977; by SCO 282 effective November 15, 1977; by SCO 306 effective April 11, 1978; by SCO 357 effective June 30, 1978; by SCO 373 effective August 15, 1979; by SCO 465 effective June 1, 1981; by SCO 591 effective July 1, 1984; by SCO 679 effective June 15, 1986; by SCO 697 effective September 15, 1986; by SCO 714 effective September 15, 1986; by SCO 788 effective March 15, 1987; by SCO 815 effective August 1, 1987; by SCO 836 effective August 1, 1987; by SCO 1025 effective July 15, 1990; by SCO 1128 effective July 15, 1993; by SCO 1153 effective July 15, 1994; by SCO 1269 effective July 15, 1997; by SCO 1295 effective January 15, 1998; by SCO 1445 effective October 15, 2001; by SCO 1482 effective October 15, 2002; by SCO 1522 effective October 15, 2003; by SCO 1525 effective October 15, 2003; by SCO 1570 effective October 15, 2005; by SCO 1581 effective October 15, 2005; by SCO 1607 effective October 15, 2006; by SCO 1713 effective nunc pro tunc to May 16, 2009; by SCO 1716 effective nunc pro tunc to July 1, 2009; by SCO 1769 effective April 16, 2012; and by SCO 1788 effective nunc pro tunc June 15, 2012)

**Note:** In 1996, the legislature enacted AS 18.66.160, which relates to service of process in a proceeding to obtain a domestic violence protective order. According to 77 ch. 64 SLA 1996, this statute has the effect of amending Civil Rule 4.

**Note:** AS 10.06.580(b), as enacted by ch. 166, 1, SLA 1988, amended Civil Rule 4 by allowing a corporation in an action brought under AS 10.06.580 to serve non-resident dissenting shareholders by certified mail and publication without satisfying the conditions under which certified mail and publication can be used under Civil Rule 4. AS 10.06.638, as enacted by ch. 166, 1, SLA 1988, amended Civil Rule 4 by changing (1) the requirements for service by publication, and (2) how long a corporation has to respond to a complaint in an involuntary dissolution proceeding before the Commissioner of Commerce and Economic Development may take a default judgment against the corporation.

**Note:** Section 132 of ch. 87 SLA 1997 adds AS 25.27.265(c) which authorizes the court to allow CSED to serve a party by mailing documents to the last known address on file with the agency. This is permitted only if the court finds that CSED has made diligent efforts to serve documents in the appropriate manner. According to 153 of the Act, 132 has the effect of amending Civil Rules 4 and 5 by allowing service at the opposing party's last known address on file with the child support enforcement agency in certain circumstances.

**Note:** Ch. 61 SLA 2002 (HB 52), Section 2, repeals and reenacts AS 33.36.110 to authorize the governor to execute the Interstate Compact for Adult Offender Supervision. According to Section 6 of the Act, Article VIII(a)(2) of the Compact, contained in the new AS 33.36.110, would have the effect of amending Civil Rule 4 by entitling the Interstate Commission for Adult Offender Supervision to receive service of process of a judicial proceeding in this state that pertains to the Interstate Compact for

Adult Offender Supervision and that may affect the powers, responsibilities or actions of that commission.

**Note:** Ch. 128 SLA 2002 (HB 393), Section 3, adds a new Chapter 66 to Title 45 of the Alaska Statutes, concerning the sale of business opportunities. According to Section 4 of the Act, AS 45.66.120(b) has the effect of amending Civil Rule 4 by requiring that the clerk of the court mail a copy of the complaint to the attorney general when an action is filed under AS 45.66.120.

**Note:** Chapter 87 SLA 03 (HB 1) enacted AS 18.65.865, which addresses service of process of protective orders issued under AS 18.65.850-860 for persons who are victims of stalking not involving domestic violence. According to Section 8(a) of the Act, the new AS 18.65.865 has the effect of amending Civil Rule 4 relating to service of process by requiring that service be made in accordance with AS 18.66.160, which governs service of domestic violence protective orders.

**Note to SCO 1570:** Civil Rule 4(d)(13), concerning service on individuals in a foreign country, parallels the language in Federal Rule of Civil Procedure 4(f). The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, referred to in Civil Rule 4(d)(13), generally provides for service of process by a central authority (usually the Ministry of Justice) in the Convention countries pursuant to a request submitted on a form USM-94 available at the office of any United States Marshall or at <http://www.usmarshals.gov/forms/usm94.pdf>. The Convention also permits service of process by international registered mail subject to the option of individual countries to object to such service. Many countries have objected, including Argentina , China , the Czech Republic , Egypt , Germany , Greece , the Republic of South Korea , Latvia , Lithuania , Luxembourg , Norway , Poland , the Slovak Republic , Sri Lanka , Switzerland , Turkey , Ukraine , and Venezuela ; service by registered mail is therefore not appropriate in those countries. The full text of the Convention may be found at [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=17](http://www.hcch.net/index_en.php?act=conventions.text&cid=17) . Current information on the Convention may be found in the United States Department of State's Circular on Service of Process Abroad, available at [http://travel.state.gov/law/judicial/judicial\\_680.html](http://travel.state.gov/law/judicial/judicial_680.html).

**Note:** Chapter 54 SLA 2005 (HB 95) enacted extensive amendments and new provisions related to public health, including public health emergencies and disasters. According to Section 13(a) of the Act, AS 18.15.375(c)(3), (d), and (e), and 18.15.385(d) – (k), enacted in Section 8, have the effect of amending Civil Rule 4 by adding special proceedings, timing, and pleading requirements for matters involving public health.

**Note:** Chapter 10 SLA 2009 (HB 137), effective May 16, 2009, enacted changes relating to an Interstate Compact on Educational Opportunity for Military Children. According to section 2 of the Act, AS 14.34.010-.090 have the effect of changing Civil Rule 4 by entitling the Interstate Commission on Educational Opportunity for Military Children to receive service of process of a judicial proceeding in this state that pertains

to the Interstate Compact on Educational Opportunity for Military Children, and in which the validity of a compact provision or rule is an issue for which a judicial determination has been sought.

**Note:** Chapter 37 SLA 2009 (HB 141), effective July 1, 2009, enacted changes relating to the Interstate Compact for Juveniles. According to section 11 of the Act the changes made to AS 47.15.010 have the effect of changing Civil Rule 4 by entitling the Interstate Commission for Juveniles to receive service of process of a judicial proceeding in this state that pertains to the Interstate Compact for Juveniles, and in which the validity of a compact provision or rule is an issue for which a judicial determination has been sought.

**Note:** Chapter 65, SLA 2012 (HB 296) added a new subsection (c) to AS 09.05.050 relating to service of process on prisoners, effective June 15, 2012. According to section 5 of the Act, AS 09.05.050, including the amendment made by section 1, has the effect of amending Alaska Rule of Civil Procedure 4, relating to service of process on prisoners committed to the custody of the commissioner of corrections.