

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1570

Amending Civil Rules 4, 5, and 12
concerning Service of Process,
Notification to the Court, and Time
for an Answer, and Adding a Note
to Civil Rule 4.

IT IS ORDERED:

1. Subsections (b), (d), (e), and (h) of Civil Rule 4 are amended to read as follows:

Rule 4. Process.

(a) Summons – Issuance.

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(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).

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(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:

* * * *

(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.

* * * *

(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.

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(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.

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2. Civil Rule 4 is amended by adding a Note at the end to read as follows:

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://hcch.e-vision.nl/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/info/judicial/judicial_686.html.

3. Civil Rule 5 is amended to add a new subsection (i) as follows:

(i) **Changes in Mailing Address and Telephone Number.** While a case is pending, the parties must immediately inform the court and all other parties, in writing, of any changes in their mailing addresses and telephone numbers, except as provided in Civil Rule 65.1.

4. Civil Rule 12(a) is amended to read as follows:

Rule 12. Defenses and Objections — When and How Presented — By Pleading or Motion — Motion for Judgment on Pleadings.

(a) **When Presented.** A defendant shall serve an answer within 20 days after the service of the summons and complaint upon that defendant, unless otherwise directed when service of process is made pursuant to Rule 4(e). A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The state or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within 40 days after the service upon the attorney

general of the pleading in which the claim is asserted. A non-governmental party shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within 40 days after service upon an officer or agency of the state appointed, authorized, or designated as agent to receive service for such party pursuant to statute. An individual in a foreign country who is served with a summons and complaint under subsection (d)(13) of Rule 4 shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within 40 days after service upon that individual. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

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DATED: May 25, 2005

EFFECTIVE DATE: October 15, 2005

Chief Justice Bryner

Justice Matthews

Justice Eastaugh

Justice Fabe

Justice Carpeneti