

**Rule 4. Service****4.01 Summons; Form**

The summons shall state the name of the court and the names of the parties, be subscribed by the plaintiff or by the plaintiff's attorney, give an address within the United States where the subscriber may be served in person and by mail, state the time within which these rules require the defendant to serve an answer, and notify the defendant that if the defendant fails to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

(Amended effective July 1, 2021.)

***Advisory Committee Comment - 2021 Amendments***

*Rule 4.01 is amended to remove the requirement that a plaintiff have a Minnesota address for mail and personal service. The committee believes that this provision suited the needs of a different time, and that no compelling reason exists to require a Minnesota address to commence litigation. The committee believes that any address in the United States would provide a workable means of effecting either personal or mailed service. This conclusion is particularly applicable to signing of a summons by a member of the Minnesota Bar who may happen to have an office outside of Minnesota.*

*With the implementation of e-filing and e-service, the role of this requirement for an address for the signer of the summons is undoubtedly diminished. This provision nonetheless is an important backstop to e-service for cases where the plaintiff is either self-represented or represented by an attorney licensed in Minnesota but not maintaining an office in Minnesota.*

**4.02 By Whom Served**

Unless otherwise ordered by the court, the sheriff or any other person not less than 18 years of age and not a party to the action, may make service of a summons or other process.

**4.03 Personal Service**

Service of summons within the state shall be as follows:

**(a) Upon an Individual.** Upon an individual by delivering a copy to the individual personally or by leaving a copy at the individual's usual place of abode with some person of suitable age and discretion then residing therein.

If the individual has, pursuant to statute, consented to any other method of service or appointed an agent to receive service of summons, or if a statute designates a state official to receive service of summons, service may be made in the manner provided by such statute.

If the individual is confined to a state institution, by serving also the chief executive officer at the institution.

If the individual is a judicial officer or employee of the Minnesota judicial branch, and the complaint is related to the individual's office, employment, or agency, service may be made by delivering a copy to: (1) the court administrator of the district court or their designee, for district court judges and employees; or (2) the Clerk of the Appellate Courts or their designee, for Court of Appeals judges and employees, Supreme Court Justices and employees, and the State Court Administrator and the administrator's employees.

If the individual is an infant under the age of 14 years, by serving also the individual's father or mother, and if neither is within the state, then a resident guardian if the infant has one known to

the plaintiff, and if the infant has none, then the person having control of such defendant, or with whom the infant resides, or by whom the infant is employed.

**(b) Upon Partnerships and Associations.** Upon a partnership or association which is subject to suit under a common name, by delivering a copy to a member or the managing agent of the partnership or association. If the partnership or association has, pursuant to statute, consented to any other method of service or appointed an agent to receive service of summons, or if a statute designates a state official to receive service of summons, service may be made in the manner provided by such statute.

**(c) Upon a Corporation.** Upon a domestic or foreign corporation, by delivering a copy to an officer or managing agent, or to any other agent authorized expressly or impliedly or designated by statute to receive service of summons, and if the agent is one authorized or designated under statute to receive service any statutory provision for the manner of such service shall be complied with. In the case of a transportation or express corporation, the summons may be served by delivering a copy to any ticket, freight, or soliciting agent found in the county in which the action is brought, and if such corporation is a foreign corporation and has no such agent in the county in which the plaintiff elects to bring the action, then upon any such agent of the corporation within the state.

**(d) Upon the State.** Upon the state by delivering a copy to the attorney general, a deputy attorney general or an assistant attorney general.

**(e) Upon Public Corporation.** Upon a municipal or other public corporation by delivering a copy

(1) To the chair of the county board or to the county auditor of a defendant county;

(2) To the chief executive officer or to the clerk of a defendant city, village or borough;

(3) To the chair of the town board or to the clerk of a defendant town;

(4) To any member of the board or other governing body of a defendant school district;

or

(5) To any member of the board or other governing body of a defendant public board or public body not hereinabove enumerated.

If service cannot be made as provided in this Rule 4.03(e), the court may direct the manner of such service.

(Amended effective January 1, 2024.)

***Advisory Committee Comments - 2023 Amendment***

*Rule 4.03(a) is amended to permit judges, justices, and court staff to be served at their office, if the complaint is related to the individual's office, employment, or agency. The purpose of the rule change is to minimize service of judicial branch personnel at their home, and corresponding security concerns, by establishing an alternative means of service.*

**4.04 Service by Publications; Personal Service Out of State**

**(a) Service by Publications.** Service by publication shall be sufficient to confer jurisdiction:

(1) When the defendant is a resident individual domiciliary having departed from the state with intent to defraud creditors, or to avoid service, or remains concealed therein with the like intent;

(2) When the plaintiff has acquired a lien upon property or credits within the state by attachment or garnishment, and

(A) The defendant is a resident individual who has departed from the state, or cannot be found therein, or

(B) The defendant is a nonresident individual or a foreign corporation, partnership or association;

When quasi in rem jurisdiction has been obtained, a party defending the action thereby submits personally to the jurisdiction of the court. An appearance solely to contest the validity of quasi in rem jurisdiction is not such a submission.

(3) When the action is for marriage dissolution or separate maintenance and the court has ordered service by published notice;

(4) When the subject of the action is real or personal property within the state in or upon which the defendant has or claims a lien or interest, or the relief demanded consists wholly or partly in excluding the defendant from any such interest or lien;

(5) When the action is to foreclose a mortgage or to enforce a lien on real estate within the state.

The summons may be served by three weeks' published notice in any of the cases enumerated herein when the complaint and an affidavit of the plaintiff or the plaintiff's attorney have been filed with the court. The affidavit shall state the existence of one of the enumerated cases, and that the affiant believes the defendant is not a resident of the state or cannot be found therein, and either that the affiant has mailed a copy of the summons to the defendant at the defendant's place of residence or that such residence is not known to the affiant. The service of the summons shall be deemed complete 21 days after the first publication.

**(b) Personal Service Outside State.** Personal service of such summons outside the state, proved by the affidavit of the person making the same, shall have the same effect as the published notice provided for herein.

**(c) Service Outside United States.** Unless otherwise provided by law, service upon an individual, other than an infant or an incompetent person, may be effected in a place not within the state:

(1) 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; or

(2) 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;

(A) 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; or

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

(C) unless prohibited by the law of the foreign country, by

(i) delivery to the individual personally of a copy of the summons and the complaint;  
or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the court administrator to the party to be served; or

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

(Amended effective January 1, 1997; amended effective July 1, 2015.)

#### ***Advisory Committee Comment - 1996 Amendment***

*Rule 4.04 is amended to conform the rule to its federal counterpart, in part. The new provision adopts verbatim the provisions for service of process outside the United States contained in the federal rules. This modification is appropriate because this subject is handled well by the federal rule and because it is advantageous to have the two rules similar. This is particularly valuable given the dearth of state-court authority on foreign service of process. Existing portions of the rule are renumbered for clarity.*

#### ***Advisory Committee Comments - 2015 Amendments***

*Rule 4.04 is amended to implement a new statute directing the courts to accept documents without notarization if they are signed under the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." Minnesota Statutes, section 358.116 (2014) codifying Minnesota Laws 2014, chapter 204, section 3). The statute allows the courts to require specifically, by rule, that notarization is necessary. The difficulty in accomplishing and documenting notarization for documents that are e-filed and e-served militates against requiring formal notarization, and notarization often places a significant burden on self-represented litigants. Rule 15 of the Minnesota General Rules of Practice provides that documents signed in accordance with its terms constitute "affidavits." Rule 15 of the Minnesota General Rules of Practice establishes uniform requirements for the formalities of documents signed under penalty of perjury.*

#### **4.041 Additional Information to be Published**

In all cases where publication of summons is made in an action in which the title to, or any interest in or lien upon, real property is involved or affected or is brought in question, the publication shall also contain a description of the real property involved, affected or brought in question thereby, and a statement of the object of the action. No other notice of the pendency of the action need be published.

#### **4.042 Service of the Complaint**

If the defendant shall appear within 14 days after the completion of service by publication, the plaintiff, within 7 days after such appearance, shall serve the complaint, by copy, on the defendant or the defendant's attorney. The defendant shall then have at least 21 days in which to answer the same.

(Amended effective January, 1, 2020.)

#### ***Advisory Committee Comment - 2019 Amendments***

*Rule 4.042 is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines*

*under the rules - counting all days regardless of the length of the period and standardizing the time periods, where practicable, to a 7-, 14-, 21- or 28-day schedule.*

*The amendment to Rule 4.042 also lengthens the time to respond to a Complaint served following service of the Summons by publication, to 21 days. This is the same period a party has following other forms of service of the Complaint, and there is no reason to require a shorter period. See Rule 12.01. This amendment is intended to obviate at least some motions for extension of the time to answer that are encountered under the shorter deadline in the previous rule.*

#### **4.043 Service by Publication; Defendant May Defend; Restitution**

If the summons is served by publication, and the defendant receives no actual notification of the action, the defendant shall be permitted to defend upon application to the court before judgment and for sufficient cause; and, except in an action for marriage dissolution, the defendant, in like manner, may be permitted to defend at any time within one year after judgment, on such terms as may be just. If the defense is sustained, and any part of the judgment has been enforced, such restitution shall be made as the court may direct.

#### **4.044 Nonresident Owner of Land Appointing an Agent**

If a nonresident person or corporation owning or claiming any interest or lien in or upon lands in the state appoints an agent pursuant to Minnesota Statutes, section 557.01, service of summons in an action involving such real estate shall be made upon the agent or the principal in accordance with Rule 4.03, and service by publication shall not be made upon the principal.

#### **4.05 Waiving Service of Summons**

**(a) Requesting a Waiver.** An individual, corporation, or association that is subject to service under Rule 4.03 has a duty to avoid unnecessary expenses of serving the summons. A plaintiff may request that the defendant waive service of a summons. The notice and request must:

(1) be in writing and be addressed:

(A) to the individual defendant; or

(B) for a defendant subject to service under Rule 4.03(b)-(e) to the agent authorized to receive service;

(2) be accompanied by a copy of the complaint, two copies of Form 22B or a substantially similar form, and a prepaid means for returning a signed copy of the form;

(3) inform a defendant, using Form 22B or a substantially similar form, of the consequences of waiving and not waiving service;

(4) state the date when the request is sent;

(5) give a defendant 30 days after the request was sent - or 60 days if sent to a defendant outside the United States - to return the waiver; and

(6) be sent by first-class mail or other reliable means.

**(b) Failure to Waive.** If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:

(1) the expenses later incurred in making service; and

(2) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

**(c) Time to Answer a Waiver.** A defendant who, before being served with process, timely returns a signed waiver need not serve an answer to the complaint until 60 days after the request was sent to that defendant - or until 90 days after it was sent to that defendant outside the United States.

**(d) Results of Filing of a Waiver.** When a plaintiff files a waiver of service, proof of service is not required and these rules apply as if a summons and complaint had been served on the date of signing of the waiver.

**(e) Jurisdiction and Venue Not Waived.** Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

(Amended effective July 1, 2018.)

#### ***Advisory Committee Comment - 2018 Amendments***

*Rule 4.05 is completely revamped to replace the somewhat unreliable procedure relying on the "Acknowledgement of Service" form with a more straightforward procedure, used in federal court since 1993, relying on a "Waiver of Service" form. New Rule 4.05 is modeled closely on its federal counterpart.*

*The former procedure created the illusion that valid service could be accomplished by U.S. Mail, but it was a procedure that gave control over the process completely to the defendant and little incentive to a plaintiff to make use of it. This rule does not authorize service by mere mailing - it is necessary for the defendant to waive formal service and return the waiver-of-service form. Service is accomplished and proven by the waiver, not the mailing. Additionally, the new procedure is not limited to delivery by mail or any other means expressly authorized by these rules - it allows valid service to be accomplished by any means that is agreed to the defendant being served - mail, private courier, email, or even social media would all be acceptable if the defendant agreed to waive service under this rule. The only requirement is that the defendant sign and return a waiver-of-service form.*

#### **4.06 Return**

Service of summons and other process shall be proved by the certificate of the sheriff or other peace officer making it, by the affidavit of any other person making it, by the written admission or acknowledgment of the party served, or if served by publication, by the affidavit of the printer or the printer's designee. The proof of service in all cases other than by published notice shall state the time, place, and manner of service. Failure to make proof of service shall not affect the validity of the service.

(Amended effective August 1, 2000.)

#### **4.07 Amendments**

The court in its discretion and on such terms as it deems just may at any time allow any summons or other process or proof of service thereof to be amended, unless it clearly appears that substantial rights of the person against whom the process issued would be prejudiced thereby.