

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 357

Amending Civil Rule
4(d) and (e) by
Deleting the Requirement
of Filing an Affidavit
of Diligent Inquiry
Prior to Obtaining
Personal Service
Outside the State

IT IS ORDERED:

1. Paragraph (d) of Civil Rule 4 is amended to read:

(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 him personally, or by leaving copies thereof at his 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 his 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 he resides, or in

whose service he 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 his family with whom he resides, or if he 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.

(4) Corporations. Upon a domestic or foreign corporation, by delivering a copy of the summons and of the complaint to 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 member 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 delivering a copy of the summons and the complaint personally to the attorney general or to the person in the judicial district designated by him in a writing filed with the clerk of the court, and when service is made upon such person so designated, by also sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of Alaska at Juneau, Alaska.

(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 the State. Upon a party outside the state in the same manner as if service was 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.

2. Paragraph (e) of Civil Rule 4 is amended to read:

(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.

(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 his 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. The inquiry shall 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 and of what persons and in what manner 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. 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 a copy of the notice and the complaint or the pleading shall be sent by registered mail, with postage prepaid, to the absent party, addressed in care of such party's residence or the place where such party usually receives mail, unless it shall appear by affidavit that such residence or place is unknown and 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 him 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

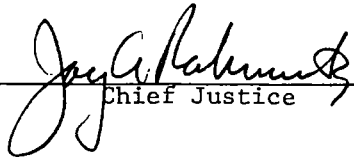
is addressed is made a party to the action. Where the action concerns real property or where real property of a party has been attached, the notice shall set forth a legal description of the property, shall state the municipality or district in which it is located, and the street or road on which the 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, no 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, to which affidavit or certificate shall be attached a printed copy of the published notice with the name and the dates of the newspaper marked thereon. 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.

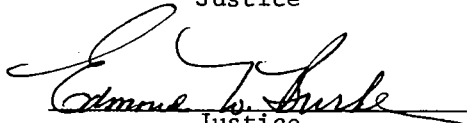
DATED: March 14, 1979

EFFECTIVE DATE: June 30, 1979


Chief Justice

Justice


Justice


Justice


Justice

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