

# 1 TIME LIMIT FOR SERVICE AND ALASKA'S ONE-YEAR'S SAVING STATUTE

## State Court

Alaska Rule of Civil Procedure 4(j) provides that the clerk of court will review each pending case 120 days after filing of the complaint to determine whether all of the defendants have been served. If any defendant has not been served, the clerk will send notice to the plaintiff to show good cause why service is not complete. If good cause is not shown within thirty (30) days, the court will dismiss the action without prejudice as to that defendant.

AS 09.10.240 provides that, if an action was commenced within the time prescribed and was dismissed after the time limited for bringing a new action, plaintiff may commence a new action upon the same cause of action within one year after the dismissal. Consequently, an action is not time-barred if it is brought within one year after a timely action on the same claim was dismissed without prejudice (for example, for plaintiff's failure to prosecute).<sup>1</sup>

### Appendices:

Alaska R. Civ. P. 4  
AS 09.10.240

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<sup>1</sup> Atlas Enters., Inc. v. Consolidated Constr. Co., 572 P.2d 68 (Alaska 1977); Smith v. Stratton, 835 P.2d 1162 (Alaska 1992).

## 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.** The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

(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.

(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 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.

(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. 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 or certified mail, with return receipt requested, 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 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, 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, 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 therein. 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, and unincorporated association. 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) *Service on Custody Investigator and Guardian Ad Litem.* In all cases involving the custody or visitation of a minor in which a custody investigator or a guardian ad litem has been appointed, the parties shall serve the custody investigator and the guardian ad litem with all pleadings involving the care, custody, or control of the minor.

(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; and by SCO 1295 effective January 15, 1998)

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.

#### Cross References

- (d) CROSS REFERENCE: AS 09.05.010
- (e)(5) CROSS REFERENCE: AS 09.25.070

#### Annotations

#### Cases

The court did not acquire jurisdiction over an infant where copies of the summons and complaint were merely delivered to the infant's father, as copies must also be delivered to the infant personally. The requirement for delivering copies of the summons and complaint is not contingent upon the infant's age. *Hartwell v. Cooper*, Op. No. 140, 380 P2d 591 (Alaska 1963).

Where a foreign corporation has no officer or agent in Alaska, service made by delivering copies to the State Commissioner of Commerce is in accordance with rule and statute, but to resolve whether such service is effective to give jurisdiction over the foreign corporation depends on the issue (1) whether state law provides for assertion of jurisdiction under the facts of the case and (2) whether such assertion is consistent with due process. *Northern Supply, Inc. v. Curtiss-Wright Corporation*, Op. No. 271, 397 P2d 1013 (Alaska 1965).

Service of order requiring appearance of insurance company as garnishee was properly made upon the State Department of Commerce under this rule as made available by Civil Rule 89(f)(1) and under statute (AS 21.10.155). *Liberty National Insurance Company v. Eberhart*, Op. No. 281, 398 P2d 997 (Alaska 1965).

Once service of process had been achieved upon a party, the service related back to the date of the complaint. *Coughlan v. Coughlan*, Op. No. 395, 423 P2d 1010 (Alaska 1967).

Where suits between the same parties and for the same relief were commenced in two different courts of competent jurisdiction, the court in which the complaint was filed first was the first to obtain jurisdiction although service of summons had been achieved at an earlier date in the second action than it was obtained in the first action. *Coughlan v. Coughlan*, Op. No. 395, 423 P2d 1010 (Alaska 1967).

Process in a juvenile proceeding must be delivered to the child himself. Jurisdiction over the child cannot be obtained by delivering the summons and petition to his parents. *RLR v. State*, Op. No. 706, 487 P2d 27 (Alaska 1971).

Infancy does not render all waivers void. *RLR v. State*, Op. No. 706, 487 P2d 27 (Alaska 1971).

Appearance by a child in a juvenile proceeding and failure to object to the failure to serve him with a copy of the petition waives any defect in process where the infant is represented by counsel. *RLR v. State*, Op. No. 706, 487 P2d 27 (Alaska 1971).

The State-Operated School System is a state agency for purposes of service and process. *Alaska State-Operated School System v. Mueller*, Op. No. 1157, 536 P2d 99 (Alaska 1975).

Civil Rule 5(b), not this rule, applies to proceedings which seek to enforce the terms of a prior divorce decree relating to child support payments. *Balchen v. Balchen*, Op. No. 1469, 566 P2d 1324 (Alaska 1977).

A local or the agent of a local is not the agent for an international union for purposes of service unless the facts of an individual case reveal the opposite to be true. *Intern. Bro. of Team., Local 959 v. King*, Op. No. 1532, 572 P2d 1168 (Alaska 1977).

Jurisdiction is obtained over a partnership when service is perfected on any member or agent, and the court acquires jurisdiction over all partners therein. *Coleman v. Lofgren*, Op. No. 1839, 593 P2d 632 (Alaska 1979).

Court did not abuse its discretion in revoking process server's license for improper conduct in attempting a levy of execution. *Cowles v. Wolfe*, Op. No. 2512, 645 P2d 201 (Alaska 1982).

Where service of process is by certified mail, a return receipt is generally not adequate as proof of service in the absence of an affidavit attesting to the fact that the mail which was delivered contained the required documents. *D.A. v. D.R.L.*, Op. No. 3138, 727 P2d 768 (Alaska 1986).

In mortgage foreclosure action, service of process on the husband and wife at their mortgaged residence, service having been personally received only by the wife, was insufficient for the court to obtain personal jurisdiction over the husband, where the couple had previously obtained a divorce, the residence had been awarded to the wife, the husband had moved out six months prior to service of process, and the husband had not expressly or impliedly made his ex-wife an agent for service of process. *Beam v. Adams*, Op. No. 3269, 749 P2d 366 (Alaska 1988).

Service of process on state was defective, thus default judgment against state was set aside; summons and complaint were mailed to assistant attorney general in Juneau and to attorney general's office in Fairbanks, but this rule required summons and complaint to be mailed to attorney general in Juneau and chief of attorney general's office in Fairbanks. *State, Dept. of Corrections v. Kila, Inc.*, Op. No. 4141, 884 P2d 661 (Alaska 1994).

Civil Rule 65, rather than Civil Rule 4, determines when person becomes bound by domestic violence protective order. *MacDonald v. State*, Op.No. 1665, 997 P2d 1187 (Alaska 2000).

Defendant, who had actual knowledge of domestic violence protective order, was bound by order even though he was not formally served with written copy of order. *MacDonald v. State*, Op.No. 1665, 997 P2d 1187 (Alaska 2000).

Conviction of defendant for violation of ex parte domestic violence protective order did not violate constitutional right to due process where defendant had not been served with written copy of order but did have actual knowledge that order had been issued against him. *MacDonald v. State*, Op.No. 1665, 997 P2d 1187 (Alaska 2000).

**Sec. 09.10.240. Commencement of action after dismissal or reversal.** If an action is commenced within the time prescribed and is dismissed upon the trial or upon appeal after the time limited for bringing a new action, the plaintiff or, if the plaintiff dies and the cause of action in favor of the plaintiff survives, the heirs or representatives may commence a new action upon the cause of action within one year after the dismissal or reversal on appeal. All defenses available against the action, if brought within the time limited, are available against the action when brought under this provision. (§ 1.24 ch 101 SLA 1962)