

North Dakota Long-Arm

N.D. R. Civ. P. 4

Rule 4. Persons subject to jurisdiction -- Process -- Service.

(a) Definition of person. As used in this rule, "person", whether or not a citizen or domiciliary of this state and whether or not organized under the laws of this state, includes:

- (1) an individual, executor, administrator or other personal representative;
- (2) any other fiduciary;
- (3) any two or more persons having a joint or common interest;
- (4) a partnership;
- (5) an association;
- (6) a corporation; and
- (7) any other legal or commercial entity.

(b) Personal jurisdiction.

(1) Personal jurisdiction based on presence or enduring relationship. A court of this state may exercise personal jurisdiction over a person found within, domiciled in, organized under the laws of, or maintaining a principal place of business in, this state as to any claim for relief.

(2) Personal jurisdiction based on contacts. A court of this state may exercise personal jurisdiction over a person who acts directly or by an agent as to any claim for relief arising from the person's having such contact with this state that the exercise of personal jurisdiction over the person does not offend against traditional notions of justice or fair play or the due process of law, under one or more of the following circumstances:

- (A) transacting any business in this state;
- (B) contracting to supply or supplying service, goods, or other things in this state;
- (C) committing a tort within or outside this state causing injury to another person or property within this state;
- (D) committing a tort within this state, causing injury to another person or property within or outside this state;
- (E) having an interest in, using, or possessing property in this state;

- (F) contracting to insure another person, property, or other risk within this state;
 - (G) acting as a director, manager, trustee, or officer of a corporation organized under the laws of, or having its principal place of business within, this state;
 - (H) enjoying any other legal status or capacity within this state; or
 - (I) engaging in any other activity, including cohabitation or sexual intercourse, within this state.
- (3) Limitation on jurisdiction based on contacts. If jurisdiction over a person is based solely on paragraph (2) of this subdivision, only a claim for relief arising from bases enumerated in paragraph (2) may be asserted against that person.
- (4) Acquisition of jurisdiction. A court of this state may acquire personal jurisdiction over any person through service of process as provided in this rule or by statute, or by voluntary general appearance in an action by any person either personally or through an attorney or any other authorized person.
- (5) Inconvenient forum. If the court finds, in the interest of substantial justice, the action should be heard in another forum, the court may stay or dismiss the action in whole or in part on any condition that may be just.

(c) Process.

- (1) Contents of summons. The summons must:
- (A) specify the venue of the court in which the action is brought;
 - (B) contain the title of the action specifying the names of the parties;
 - (C) be directed to the defendant;
 - (D) It must state the time within which these rules require the defendant to appear and defend;
 - (E) notify the defendant that, if the defendant fails to appear and defend, default judgment will be rendered against the defendant for the relief demanded in the complaint; and
 - (F) be dated and subscribed by the plaintiff or the plaintiff's attorney and include the post office address of the plaintiff or plaintiff's attorney.
 - (G) If the action involves real estate and service is by publication, include the additional information required by Rule 4(e)(8).
- (2) Copy of complaint. A copy of the complaint must be served with the summons, except when service is by publication under Rule 4(e).

(d) Personal service.

(1) By whom. Service of all process may be made:

(A) within the state by any person of legal age and not a party to nor interested in the action; and

(B) outside the state by any person who may make service under the law of this state or under the law of the place where service is made, or by a person who is designated by a court of this state.

(2) How service made within the state. Personal service of process within the state must be made as follows:

(A) Serving an individual fourteen years of age and older. Service must be made on an individual 14 or more years of age by:

(i) delivering a copy of the summons to the individual personally;

(ii) leaving a copy of the summons at the individual's dwelling or usual place of residence in the presence of a person of suitable age and discretion who resides there;

(iii) delivering, at the office of the process server, a copy of the summons to the individual's spouse if the spouses reside together;

(iv) delivering a copy of the summons to the individual's agent authorized by appointment or by law to receive service of process; or

(v) any form of mail or third-party commercial delivery addressed to the individual to be served and requiring a signed receipt and resulting in delivery to that individual.

(B) Serving an individual under the age of fourteen. Service must be made on an individual under the age of 14 by delivering a copy of the summons to:

(i) the individual's guardian, if the individual has one within the state;

(ii) the individual's parent or any person or agency having the individual's care or control, or with whom the individual resides, if the individual does not have a guardian within the state; or

(iii) the person designated by court order, if service cannot be made under (i) or (ii).

(C) Serving an incompetent individual or appointed guardian. Service must be made on an individual who has been judicially adjudged incompetent or for whom a guardian of the individual's person or estate has been appointed in this state, by delivering a copy of the summons to the individual's guardian. If a general guardian and a guardian ad litem have been appointed, both must be served.

(D) Serving a corporation, partnership, or association. Service must be made on a domestic or foreign corporation or on a partnership or other unincorporated association, by:

(i) delivering a copy of the summons to an officer, director, superintendent or managing or general agent, or partner, or associate, or to an agent authorized by appointment or by law to receive service of process on its behalf, or to one who acted as an agent for the defendant with respect to the matter on which the plaintiff's claim is based and who was an agent of the defendant at the time of service;

(ii) if the sheriff's return indicates no person upon whom service may be made can be found in the county, then service may be made by leaving a copy of the summons at any office of the domestic or foreign corporation, partnership, or unincorporated association within this state with the person in charge of the office; or

(iii) any form of mail or third-party commercial delivery addressed to any of the foregoing persons and requiring a signed receipt and resulting in delivery to that person.

(E) Serving a municipal or public corporation. Service must be made on a city, township, school district, park district, county, or any other municipal or public corporation, by delivering a copy of the summons to any member of its governing board.

(F) Serving the state and its agencies.

(i) State. Service must be made on the state by delivering a copy of the summons to the governor or attorney general or an assistant attorney general.

(ii) State agency. Service must be made on an agency of the state, such as the Bank of North Dakota or the North Dakota Mill and Elevator Association, by delivering a copy of the summons to the managing head of the agency or to the attorney general or an assistant attorney general.

(G) Serving an agent not authorized to receive process. If service is made on an agent who is not expressly authorized by appointment or by law to receive service of process on behalf of the defendant, a copy of the summons and complaint must be mailed or delivered via a third-party commercial carrier to the defendant with return receipt requested not later than ten days after service by depositing a copy of the summons and complaint, with postage or shipping prepaid, in a post office or with a commercial carrier in this state and directed to the defendant to be served at the defendant's last reasonably ascertainable address.

(3) How service of process is made outside the state. Service on any person subject to the personal jurisdiction of the courts of this state may be made outside the state:

(A) in the same manner as service within this state, with the force and effect as though service had been made within this state;

(B) under the law of the place where service is made for service in that place in an action in any of its courts of general jurisdiction; or

(C) as directed by court order.

(e) Service by publication.

(1) When service by publication permitted. A defendant, whether known or unknown, who has not been served personally under subdivision (d) of this rule may be served by publication in one or more of the following situations only if:

(A) the claim for relief is based on one or more grounds for the exercise of personal jurisdiction under paragraph (2) of subdivision (b) of this rule;

(B) the subject of the action is real or personal property in this state, and:

(i) the defendant has or claims a lien or other interest in the property, whether vested or contingent,

(ii) the relief demanded against the defendant consists wholly or partly in excluding the defendant from that lien or interest or in defining, regulating, or limiting that lien or interest, or

(iii) the action otherwise affects the title to the property;

(C) the action is to foreclose a mortgage, cancel a contract for sale, or to enforce a lien on or a security interest in real or personal property in this state;

(D) the plaintiff has acquired a lien on the defendant's property or credits within this state by attachment, garnishment, or other judicial processes and the property or credit is the subject matter of the litigation or the underlying claim for relief relates to the property or credits;

(E) the action is for divorce, separation, or annulment of a marriage of a state resident;

(F) the action is to determine parenting rights and responsibilities of an individual subject to the court's jurisdiction; or

(G) the action is to award, partition, condemn, or escheat real or personal property in this state.

(2) Filing of complaint and declaration for service by publication. Before service of the summons by publication is authorized, a complaint and declaration must be filed with the clerk of court where the action is venued. The complaint must set forth a claim in favor of the plaintiff and against the defendant and be based on one or more of the situations specified in paragraph (e)(1). The declaration must be executed by the plaintiff or the plaintiff's attorney and must state one or more of the following:

(A) that after diligent inquiry personal service of the summons cannot be made on the defendant in this state to the best knowledge, information, and belief of the declarant;

(B) that the defendant is a domestic corporation that has forfeited its charter or right to do business in this state or has failed to file its annual report as required by law;

(C) that the defendant is a domestic or foreign corporation and has no officer, director, superintendent, managing agent, business agent, or other agent authorized by appointment or by law on whom service of process can be made on its behalf in this state; or

(D) that all persons having or claiming an estate or interest in, or lien or encumbrance on, the real property described in the complaint, whether as heirs, devisees, legatees, or personal representative of a deceased person, or under any other title or interest, and not in possession, nor appearing of record in the office of the register of deeds, the clerk of the district court, or the county auditor of the county in which the real property is situated, to have such claim, title or interest in the property, are proceeded against as unknown persons defendant under N.D.C.C. Chs. 32-17 or 32-19 and stating facts necessary to satisfy the requirements of those chapters.

(3) Number of publications. Service of the summons by publication may be made by publishing the summons three times, once each week for three successive weeks, in a newspaper published in the county where the action is pending. If no newspaper is published in that county, publication may be made in a newspaper having a general circulation in the county.

(4) Mailing or delivering summons and complaint. A copy of the summons and complaint, at any time after the filing of the declaration for publication and no later than 14 days after the first publication of the summons, must be deposited in a post office or with a third-party commercial carrier in this state, postage or shipping prepaid, and directed to the defendant to be served at the defendant's last reasonably ascertainable address.

(5) Personal service outside state is equivalent to publication. After the declaration for publication and the complaint in the action are filed, personal service of the summons and complaint on the defendant out of state is equivalent to and has the same force and effect as the publication and mailing or delivery provided for in paragraphs (e)(3) and (4).

(6) Time when first publication or service outside state must be made. The first publication of the summons, or personal service of the summons and complaint on the defendant outside the state, must be made within 60 days after the filing of the declaration for publication. If not made, the action is considered discontinued as to any defendant not served within that time.

(7) When defendant served by publication is permitted to defend.

(A) The defendant who is served by publication, or the defendant's representative, on application and sufficient cause shown at any time before judgment, must be allowed to defend the action.

(B) Except in an action for divorce, the defendant who is served by publication, or the defendant's representative, on just terms, may be allowed to defend at any time within three years after entry of judgment if the defendant files a declaration with the court that states:

(i) the defendant has a good and meritorious defense to the action; and

(ii) the defendant had no actual notice or knowledge of the action to enable the defendant to make application to defend before the entry of judgment.

(C) If the defense is successful and the judgment, or any part of the judgment, has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold under the judgment to a purchaser in good faith may not be affected.

(D) A defendant is considered to have had notice of the action and of the judgment if the defendant:

(i) receives a copy of the summons in the action by mail or delivery under paragraph (e)(4); or

(ii) is personally served the summons outside the state under paragraph (e)(5).

(8) Additional information to be published for real property. In all cases in which publication of summons is made in an action that the title to, or an interest in or lien on, real property is involved, the publication must also contain a description of the real property and a statement of the object of the action.

(f) Serving a person in a foreign country. Unless otherwise provided by law, an individual, other than a minor or an incompetent person, may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is 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, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

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

(C) unless prohibited by the foreign country's law by

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

(ii) using any form of mail or third-party commercial delivery that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

(4) Serving a minor or incompetent person. Unless otherwise provided by law, service must be made on a minor or an incompetent person in a place not within any judicial district of the United States in the manner prescribed by paragraphs (2)(A), (2)(B), and (3).

(5) Serving a foreign corporation, partnership, or association. Unless otherwise provided by law, service must be made on a foreign corporation, partnership or other unincorporated association, that is subject to suit under a common name, in a place not within any judicial district of the United States in the manner prescribed for individuals in this subdivision except personal delivery under paragraph (2)(C)(i).

(g) When service by publication or outside state complete. Service by publication is complete fifteen days after the first publication of the summons. Personal service of the summons and complaint upon the defendant outside the state is complete fifteen days after the date of service.

(h) Amendment of process or proof of service. The court may allow any process or proof of service to be amended at any time on notice and just terms, unless it clearly appears that the substantial rights of the party against whom the process was issued would be materially prejudiced.

(i) Proof of service. Proof of service of the summons and of the complaint or notice, if any, accompanying the summons or of other process, must be made as follows:

(1) if served by the sheriff or other officer, by the officer's certificate of service;

(2) if served by any other person, by the server's declaration of service;

(3) if served by publication, by a declaration made as provided in N.D.C.C. § 31-04-06 and a declaration of mailing or a declaration of delivery via a third-party commercial carrier of a copy of the summons and complaint under paragraph (e)(4) of this rule, if the summons and complaint has been deposited;

(4) in any other case of service by mail or delivery via a third-party commercial carrier resulting in delivery under paragraph (d)(2) or (d)(3), by a declaration of mailing or a declaration of delivery of a copy of the summons and complaint or other process, with return receipt attached; or

(5) by the written admission of the defendant.

(j) Contents of proof of service.

(1) The certificate, declaration, or admission of service mentioned in subdivision (i) must state the date, time, place, and manner of service.

(2) If the process, pleading, order of court, or other paper is served personally by a person other than the sheriff or person designated by law, the declaration of service must also state that:

(A) the server is of legal age and not a party to the action nor interested in the action, and

(B) the server knew the person served to be the person named in the papers served and the person intended to be served.

(k) Contents of declaration of mailing or delivery via a third-party commercial carrier. A declaration of mailing or delivery required by this rule must:

(1) state a copy of the process, pleading, order of court, or other paper to be served was deposited by the declarant, with postage or shipping prepaid, in the mail or with a third-party commercial carrier and directed to the party shown in the declaration to be served at the party's last reasonably ascertainable address;

(2) contain the date and place of deposit;

(3) indicate the declarant is of legal age; and

(4) contain the return receipt, if any, attached to the declaration.

(l) Effect of mail or delivery refusal. If a summons and complaint or other process is mailed or sent with delivery restricted and requiring a receipt signed by the addressee, the addressee's refusal to accept the mail or delivery constitutes delivery. Return of the mail or delivery bearing an official indication on the cover that delivery was refused by the addressee is prima facie evidence of the refusal. Service is complete on the date of refusal.

(m) Service under statute. If a statute requires service and does not specify a method of service, service must be made under this rule.