

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: an individual, executor, administrator or other personal representative; any other fiduciary; any two or more persons having a joint or common interest; a partnership; an association; a corporation; and any other legal or commercial entity.

(b) Jurisdiction over person.

(1) Personal jurisdiction based upon 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 his or its principal place of business in, this state as to any claim for relief.

(2) Personal jurisdiction based upon 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 without 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 without this state;

(E) owning, having any 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 upon contacts. If jurisdiction over a person is based solely upon paragraph (2) of this subdivision, only a claim for relief arising from bases enumerated therein 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 that 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) Summons -- Contents. The summons must specify the venue of the court in which the action is brought, contain the title of the action specifying the names of the parties, and be directed to the defendant. It must state the time within which these rules require the defendant to appear and defend, and must notify the defendant that in case of the defendant's failure to do so, judgment by default will be rendered against the defendant for the relief demanded in the complaint. It must 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. (See N.D.R.Civ.P. 4(e)(8) for additional information required if the action involves real estate and service is by publication.)

(2) Summons served with or without complaint. A copy of the complaint need not be served with the summons in which case the summons must state that the complaint is or will be filed with the clerk of the court in which the action is commenced, and if the defendant within twenty days after service of the summons causes notice of appearance to be given and in person or by an attorney demands in writing a copy of the complaint, specifying a place within the state where it may be served, a copy thereof within twenty days thereafter must be served accordingly. If, in that case, the complaint is not filed with the clerk within twenty days after service of the summons, the action is deemed discontinued.

(3) Summons served and complaint not filed. The defendant may serve a written demand on the plaintiff to file the complaint. Service of the demand must be made under subdivision (d) on the plaintiff's attorney or on the plaintiff if the plaintiff is not represented by an attorney. If the plaintiff does not file the complaint within 20 days after service of the demand, service of the summons is void. The demand must contain notice that if the complaint is not filed within 20 days, service of the summons is void under this rule.

(4) The defendant may file the summons and complaint, and the costs incurred on behalf of the plaintiff may be taxed as provided in N.D.R.Civ.P. 54(e).

(d) Personal service.

(1) By whom process served. Service of all process may be made: within the state by any person of legal age not a party to nor interested in the action; and outside the state by any person who may make service under the law of this state or under the law of the place in which service is made or 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) upon an individual fourteen 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 house or usual place of abode in the presence of a person of suitable age and discretion then residing therein; (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) upon an individual under the age of fourteen years, by delivering a copy of the summons to the individual's guardian, if the individual has one within the state, and, if not, then to the individual's father or mother or any person or agency having the individual's care or control, or with whom the individual resides. If service cannot be made upon any of them, then as directed by order of the court;

(C) upon 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) upon a domestic or foreign corporation or upon 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 in its behalf, or to one who acted as an agent for the defendant with respect to the matter upon which the claim of the plaintiff 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) upon 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) upon the state, by delivering a copy of the summons to the governor or attorney general or an assistant attorney general and, upon an agency of the state, such as the Bank of North Dakota or the State 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; or

(G) if service is made upon 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 the same, 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 made outside the state. Service upon any person subject to the personal jurisdiction of the courts of this state may be made outside the state:

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

(B) in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction; or

(C) as directed by order of the court.

(e) Service by publication.

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

(A) The claim for relief is based upon 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 the defendant has or claims a lien thereon or other interest therein, whether vested or contingent, or 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 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 upon or a security interest in real or personal property in this state;

(D) The plaintiff has acquired a lien upon property or credits or the defendant 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 from bed and board, or annulment of a marriage of a resident of this state or to determine custody of an individual subject to the court's jurisdiction; or

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

(2) Filing of complaint and affidavit for service by publication. Before service of the summons by publication is authorized in any case, there must be filed with the clerk of the court in which the action is commenced a complaint setting forth a claim in favor of the plaintiff and against the defendant based on one or more of the situations specified in paragraph (1) of this subdivision and an affidavit executed by the plaintiff or the plaintiff's attorney stating, as may be applicable, one or more of the following:

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

(B) That the defendant is a domestic corporation which 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 upon whom service of process can be made in its behalf in this state; or

(D) That all persons having or claiming an estate or interest in, or lien or encumbrance upon, 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 therein, are proceeded against as unknown persons defendant pursuant to N.D.C.C. ch. 32-17 or 32-19, and stating facts necessary to satisfy the requirement of those chapters.

(3) Number of publications. Service of the summons by publication may be made by publishing the same three times, once in each week for three successive weeks, in a newspaper published in the county in which the action is pending, and if no newspaper is published in that county then in a

newspaper having a general circulation therein although published in another county.

(4) Mailing or delivering summons and complaint. A copy of the summons and complaint, at any time after the filing of the affidavit for publication and not later than ten 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 equivalent to publication. After the affidavit for publication and the complaint in the action are filed, personal service of the summons and complaint upon 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 (3) and (4) of this subdivision.

(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 upon the defendant out of the state, must be made within sixty days after the filing of the affidavit for publication. If not so made, the action is deemed discontinued as to any defendant not served within that time.

(7) When defendant served by publication permitted to defend. The defendant upon whom service by publication is made, or the defendant's representative, on application and sufficient cause shown at any time before judgment, must be allowed to defend the action. Except in an action for divorce, the defendant upon whom service by publication is made, or the defendant's representative, upon making it appear to the satisfaction of the court by affidavit, stating the facts, that the defendant has a good and meritorious defense to the action, and the defendant had no actual notice or knowledge of the pendency of the action so as to enable the defendant to make application to defend before the entry of judgment, and upon filing an affidavit of merits, may be allowed to defend at any time within three years after entry of judgment on such terms as may be just. 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. A defendant who receives a copy of the summons in the action mailed or delivered to the defendant as provided in paragraph (4), or upon whom the summons is personally served out of this state, as provided in paragraph (5), is deemed to have had notice of the pendency of the action and of the judgment.

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

(f) Service upon a person in a foreign country. 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 any judicial district of the United States:

(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 the service is reasonably calculated to give notice:

(A) in the manner prescribed by law to 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 or third-party commercial delivery requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) by any other means not prohibited by international agreement as may be directed by the court. Unless otherwise provided by law, service must be effected upon an infant or an incompetent person in a place not within any judicial district of the United States in the manner prescribed by paragraphs (2)(A) or (B), and (3). Unless otherwise provided by law, service must be effected upon 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 as provided in paragraph (2)(C)(i).

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

(h) Amendment. At any time and upon such notice and terms as it deems just, the court, in its discretion, 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 party against whom the process issued.

(i) Proof of service. Proof of service of the summons and of the complaint or notice, if any, accompanying the same 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 affidavit of service;

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

(4) in any other case of service by mail or delivery via a third-party commercial carrier resulting in delivery in accordance with paragraph (2) or (3) of subdivision (d) of this rule, by an affidavit of mailing or an affidavit 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) Content of proof of service. The certificate, affidavit or admission of service mentioned in subdivision (i) of this rule must state the date, time, place and manner of service. If the process, pleading, order of court, or other paper is served personally by a person other than the sheriff or person designated by the law, the affidavit of service must also state that the server is of legal age

and not a party to the action nor interested in the action, and that the server knew the person served to be the person named in the papers served and the person intended to be served.

(k) Content of the affidavit of mailing or delivery via a third-party commercial carrier. An affidavit of mailing or delivery required by this rule must state a copy of the process, pleading, order of court, or other paper to be served was deposited by the affiant, with postage or shipping prepaid, in the mail or with a third-party commercial carrier and directed to the party shown in the affidavit to be served at the party's last reasonably ascertainable address. The affidavit must contain the date and place of deposit and indicate the affiant is of legal age. The return receipt, if any, must be attached to the affidavit.

(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.

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