

Alabama Rules of Criminal Procedure

Rule 17. Subpoenas.

Rule 17.4. Service of subpoena.

(a) **GENERALLY.** Subpoenas may be served by mail as provided in section (c). If personal service of a subpoena is requested, service shall be as provided in section (d).

(b) **SERVICE OF INCARCERATED PERSON.** Service of a subpoena on an individual incarcerated in any penal institution or detention facility within this state shall be deemed complete by serving the warden, director, or similar official of the institution by certified mail, or personally, if personal service is required. Such subpoena shall be accompanied by a court order, signed by the judge, addressed to the Commissioner of the Department of Corrections.

(c) **SERVICE BY CERTIFIED MAIL.**

(1) *When proper.* A subpoena, whether requested by the state or the defendant, may be served by certified mail or as provided in section (d).

(2) *How served.* The sheriff shall place a copy of the subpoena to be served in an envelope and shall address the envelope to the person to be served. The sheriff shall affix adequate postage and place the sealed envelope in the United States mail as certified mail with instructions to forward, return receipt requested, with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered. When the person to be served is an individual, the sheriff shall also request restricted delivery, unless otherwise ordered by the court. The sheriff shall forthwith enter the fact of the mailing on the court's copy of the subpoena and shall make a similar entry and promptly return the same, with the receipt attached, to the court clerk when the return receipt is received by the sheriff.

(3) *When effective.* Service by certified mail shall be deemed complete and the time for answering shall run from the date of delivery as evidenced by the return receipt.

(4) *Failure of delivery.* If the receipt shows failure of delivery to the addressee, or, other than in the case of an individual, his agent, the clerk shall follow the notification procedure set forth in subsection (d)(3) of this rule. Failure to make service within fourteen (14) days and failure to make proof of service do not affect the validity of service.

(d) **DELIVERY BY PERSONAL SERVICE.**

(1) *By whom.* When a subpoena issued from any court subject to the provisions of these rules is to be delivered personally, a subpoena may be served by the sheriff of the county in which the party to be served resides or may be found, by the sheriff's deputy, or by any other person who is not a party to the action to which the subpoena relates and who is 21 years of age or older.

(2) *How served and returned.* Service of the subpoena may be executed upon the witness either personally or by leaving a copy at the witness's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. When the copy of the subpoena has been delivered, the person serving the subpoena shall endorse that fact on the subpoena and return it to the clerk, who shall make the appropriate entry on the case action summary sheet. The return of the subpoena in the manner described herein shall be prima facie evidence of service of the subpoena.

(3) *Failure of Service.* When the person serving a subpoena is unable to serve it within fourteen (14) days, that person shall endorse that fact and the reason therefor on the subpoena and return the subpoena and copies to the clerk, who shall make the appropriate entry on the docket sheet of the action. In the event of failure of service, the clerk shall forthwith notify, by mail, the attorney of record, or, if there is no attorney of record, the party at whose instance the subpoena was issued. The clerk shall enter the fact of notification on the case action summary sheet of the action. Failure to make service within fourteen (14) days and failure to make proof of service do not affect the validity of service.

[Amended eff. 1-1-96.]

Committee Comments to Rule 17.4 as Originally Adopted

An important new feature of the service of subpoenas is the general requirement to use *certified* mail (instead of ordinary mail), which under present day postal services would be more expeditious. It could prevent some losses and delays. Also, under some varying factual situations it would be fairer to the addressee than the use of ordinary mail. Moreover, under Rule 17.4(c) the use of certified mail is not necessary if "*otherwise ordered.*"