

IN THE SUPREME COURT OF ALABAMA  
February 19, 2016

ORDER

IT IS ORDERED that Rule 4, Alabama Rules of Civil Procedure, be amended to read in accordance with Appendix A to this order;

IT IS FURTHER ORDERED that the Committee Comments to Amendment to Rule 4, Effective July 1, 2016, are adopted to read in accordance with Appendix B to this order;

IT IS FURTHER ORDERED that the amendment of Rule 4 and the adoption of the Committee Comments be effective July 1, 2016;

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 4:

"Note from the reporter of decisions: The order amending Rule 4, Ala. R. Civ. P., and adopting the Committee Comments effective July 1, 2016, including Justice Bolin's special writing concurring in part to and dissenting in part from that order, in which Justice Stuart concurs, is published in that volume of Alabama Reporter that contains Alabama cases from \_\_\_ So. 3d."

Moore, C.J., and Parker, Murdock, Main, Wise, and Bryan, JJ., concur.

Stuart and Bolin, JJ., concur in part and dissent in part.

I, Julia Jordan Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 19<sup>th</sup> day of February, 2016

*Julia Jordan Weller*  
Clerk, Supreme Court of Alabama

BOLIN, Justice (concurring in part and dissenting in part).

I concur with this Court's adoption of the amendments to Rule 4, Alabama Rules of Civil Procedure. However, the Standing Committee on the Alabama Rules of Civil Procedure recommended to this Court two additional amendments that I believe have merit and that should have also been adopted. I dissent from the order insofar as it does not adopt those amendments.

The Standing Committee originally recommended that the portion of Rule 4(b) pertaining to the ability of the plaintiff to show good cause and thereby to receive an extension of time for service for an appropriate period should be accomplished "by motion" filed by the plaintiff in the trial court. To gain relief, this "good-cause" information has to be transmitted in some form between the plaintiff and the trial court to establish the existence of good cause. Requiring that it be done by motion would provide a record on the case-action-summary sheet and would avoid ex parte communications between the plaintiff and the trial court.

The Standing Committee also originally suggested to this Court that, pursuant to Rule 4(h), a licensed attorney listed as counsel for a party may also accept service of process for that party, whether for an original defendant, a third-party

defendant, or a counterclaim defendant. A licensed attorney is an officer of the court and therefore owes duties of fidelity and truthfulness to the court. Additionally, an attorney for a party is by his or her contract of employment an agent for that party and should be empowered by Rule 4(h) to accept service of process upon the record. Practice since the inception of the Alabama Rules of Civil Procedure has led most counsel in Alabama to accept process without an express provision for doing so. The proposed change to Rule 4(h) would have expressly provided for this practice.

This Court should have accepted the Standing Committee's original recommendations. I dissent from the order insofar as it does not.

Stuart, J., concurs

## APPENDIX A

### Rule 4, Alabama Rules of Civil Procedure

#### (a) Summons or Other Process.

(1) Issuance. Upon the filing of the complaint, or other document required to be served in the manner of an original complaint, the clerk shall forthwith issue the required summons or other process for service upon each defendant. Upon request of the plaintiff separate or additional summons shall issue at any time against any defendant.

(2) Form. The summons or other process, or each of them in cases involving multiple defendants, shall be signed by the clerk, contain the name of the court and the name of the first party on each side with an appropriate indication of other parties in cases involving multiple parties, be directed to the defendant or each defendant in cases involving multiple defendants, 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 the defendant's failure to do so, judgment by default may be rendered against the defendant for the relief demanded in the complaint.

(3) Copy of Complaint or Other Document. A copy of the complaint, showing the case number assigned to the action, or other document to be served shall accompany each summons or other process. The plaintiff shall furnish the clerk with sufficient copies of the complaint or other document to be served. Copies are not required if the complaint or other document is filed electronically.

(4) Plaintiff and Defendant Defined. For the purpose of issuance and service of summons or other process, "plaintiff" shall include any party seeking the issuance of service of summons, and "defendant" shall include any party upon whom service of summons or other process is sought.

(5) Instructions and Form. The plaintiff shall furnish the clerk with instructions for service of the complaint or other document and, when requested by the clerk, the plaintiff shall also furnish sufficient properly completed copies of the summons or other process. When the plaintiff has requested the

clerk to issue service by certified mail, the plaintiff, at the request of the clerk, shall also furnish properly completed postal forms necessary for such service.

(b) Time Limit for Service. If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative, after at least fourteen (14) days' notice to the plaintiff, may dismiss the action without prejudice as to the defendant upon whom service was not made or direct that service be effected within a specified time; provided, however, that if the plaintiff shows good cause for the failure to serve the defendant, the court shall extend the time for service for an appropriate period. This subdivision does not apply to fictitious-party practice pursuant to Rule 9(h) or to service in a foreign country.

(c) Upon Whom Process Served. Service of process, except service by publication as provided in Rule 4.3, shall be made as follows:

(1) Individual. Upon an individual, other than a minor or an incompetent person, by serving the individual or by leaving a copy of the summons and the complaint 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 the complaint to an agent authorized by appointment or by law to receive service of process;

(2) Minor. Upon a minor by serving any one of the following: the father, the mother, the guardian, the individual having care of the minor or with whom the minor lives, or the spouse, if the minor is married, and, if the minor is over the age of sixteen (16) years, by also serving the minor personally;

(3) Incompetent Not Confined. Upon an incompetent person not confined by serving the incompetent and that person's guardian but, if no guardian has been appointed, by serving the incompetent and a person with whom the incompetent lives or a person who cares for the incompetent;

(4) Incompetent Confined. Upon an incompetent person not having a guardian and confined in any institution for the mentally ill or mentally deficient, by serving the

superintendent of the institution or similar official or person having the responsibility for custody of the incompetent person;

(5) Incarcerated Person. Upon an individual incarcerated in any penal institution or detention facility within this state, by serving the individual, except that when the individual to be served is a minor, by serving any one of the following: the father, the mother, the guardian, the individual having care of the minor, or the spouse, if the minor is married, and, if the minor is over the age of sixteen (16) years, by also serving the minor personally;

(6) Corporations and Other Entities. Upon a domestic or foreign corporation or upon a partnership, limited partnership, limited liability partnership, limited liability company, or unincorporated organization or association, by serving an officer, a partner (other than a limited partner), a managing or general agent, or any agent authorized by appointment or by law to receive service of process.

(7) State. Upon this state or any one of its departments, agencies, offices, or institutions, by serving the officer responsible for the administration of the department, agency, office, or institution, and by serving the attorney general of this state;

(8) Local Governments and Other Governmental Entities. Upon a county, municipal corporation, or any other governmental entity not previously mentioned, or an agency thereof, by serving the chief executive officer or the clerk, or other person designated by appointment or by statute to receive service of process, or upon the attorney general of the state if such service is accompanied by an affidavit of a party or the party's attorney that all such persons described herein are unknown or cannot be located.

(d) Amendment. The court, within its discretion and upon such terms as are just, may at any time allow or approve the amendment of any process or proof of service thereof, unless the amendment would cause material prejudice to the substantial rights of the party against whom the process was issued.

(e) Service Refused. If service of process is refused, and the certified mail receipt or the return of the person

serving process states that service of process has been refused, the clerk shall send by ordinary mail a copy of the summons or other process and complaint or other document to be served to the defendant at the address set forth in the complaint or other document to be served. Service shall be deemed complete when the fact of mailing is entered of record.

(f) Multiple Defendants; Incomplete Service; Dismissal of Fictitiously Named Defendants. When there are multiple defendants and the summons (or other document to be served) and the complaint have been served on one or more, but not all, of the defendants, the plaintiff may proceed to judgment as to the defendant or defendants on whom process has been served and, if the judgment as to the defendant or defendants who have been served is final in all other respects, it shall be a final judgment. After the entry of judgment, if the plaintiff is able to obtain service on a defendant or defendants not previously served (except, however, defendants designated as fictitious parties as allowed by Rule 9(h), who shall be deemed to have been dismissed voluntarily when the case was announced ready for trial against other defendants sued by their true names), the court shall hear and determine the matter as to such defendant or defendants in the same manner as if such defendant or defendants had originally been brought into court, but such defendant or defendants shall be allowed the benefit of any payment or satisfaction that may have been made on the judgment previously entered in the action.

(g) Effect of Availability of Alternative or Dual Modes of Service of Process. There shall be no objection to the service of process or notice to litigants, that two or more modes of service of notice are provided by law or under these rules, but service of notice perfected in any one manner or mode that is provided for by law or under these rules shall be deemed sufficient, notwithstanding that other modes or manner of service and notice are provided by law or under these rules.

(h) Acceptance or Waiver of Service. A defendant may accept or waive service of process by a document signed by the defendant and filed with the clerk of court from which the process issued.

(i) Methods of Service. Service under this rule shall include the following:

(1) Delivery by a Process Server.

(A) By Sheriff or Constable. When process issued from any court subject to the provisions of these rules is to be delivered personally within this state, the clerk of the court shall deliver or mail the process and sufficient copies of the process and complaint, or other documents to be served, to the sheriff or constable of the county in which the party to be served resides or may be found.

(B) By Designated Person. As an alternative to delivery by the sheriff, or when process is to be delivered personally outside this state, process issuing from any court governed by these rules may be served by any person not less than nineteen (19) years of age, who is not a party and is not related within the third degree by blood or marriage to the party seeking service of process.

(C) How Served and Returned. The person serving process shall deliver a copy of the process and accompanying documents to the defendant or other person who may be served under the provisions of Rule 4(c). When the copy of the process has been delivered, the person serving process shall endorse that fact on the return copy of the process, stating the date of service and the first and last name of the person served. If the service is substituted service on a person other than the defendant, the return shall also include sufficient information to show the person served qualifies as a person to be served for the defendant under Rule 4(c). The return shall be signed by the server and filed with the clerk of the issuing court, who shall make the appropriate entry on the docket sheet and electronic record relating to the action.

If the service is made by a sheriff, deputy sheriff, or elected constable, the return shall clearly indicate the name, official title, and badge number or precinct number of the serving officer or constable. If the service is made by a Designated Person under Rule 4(i)(1)(B), the return shall clearly indicate the name, the physical address of the home or business, and the telephone number of the person serving process and must include a statement that the server meets the

requirements of Rule 4(i)(1)(B). The return of the person serving process in the manner described herein shall be prima facie evidence that process has been served.

(D) Failure of Service. When the person serving process is unable to serve a copy of the process within sixty (60) days from issuance of the process by the clerk of court, the person serving process shall endorse that fact and the reason therefor on the process and return the process and copies to the clerk, who shall make the appropriate entry on the docket sheet and the electronic record relating to the action. Failure to make service within the sixty- (60-) day period and failure to make proof of service do not affect the validity of service perfected beyond that period.

(2) Service by Certified Mail.

(A) When Proper. When the plaintiff files a written request with the clerk for service by certified mail, service of process shall be made by that method. Alternatively, the attorney or party filing the process and complaint may initiate service by certified mail as provided in this rule.

(B) How Served.

(i) In the event of service by certified mail by the clerk, the clerk shall place a copy of the process and complaint or other document to be served in an envelope and shall address the envelope to the person to be served with instructions to forward. In the case of an entity within the scope of one of the subdivisions of Rule 4(c), the addressee shall be a person described in the appropriate subdivision. The clerk 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. The case number of the case in which the pleading has been filed shall be included on the return receipt. The clerk

shall forthwith enter the fact of mailing on the docket sheet of the action and make a similar entry when the return receipt is received.

(ii) Alternatively, the attorney or party filing the process and complaint or other document to be served may obtain a copy of the filed pleading from the clerk or, if the pleading was filed electronically, use the copy returned electronically by the clerk. The attorney or party shall then place that copy of the process and complaint or other document to be served in an envelope and address the envelope to the person to be served with instructions to forward. In the case of an entity within the scope of one of the subdivisions of Rule 4(c), the addressee shall be a person described in the appropriate subdivision. The attorney or party 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. The return receipt shall be addressed to the clerk of the court issuing the process and shall identify the case number of the case in which the pleading has been filed. Upon mailing, the attorney or party shall immediately file with the court an "Affidavit of Certified Mailing of Process and Complaint." That affidavit shall verify that a filed copy of the process and complaint or other document to be served has been mailed by certified mail in accordance with this rule.

(C) When Effective. Service by certified mail shall be deemed complete and the time for answering shall run from the date of delivery to the named addressee or the addressee's agent as evidenced by signature on the return receipt. Within the meaning of this subdivision, "agent" means a person or entity specifically authorized by the

addressee to receive the addressee's mail and to deliver that mail to the addressee. Such agent's authority shall be conclusively established when the addressee acknowledges actual receipt of the summons and complaint or the court determines that the evidence proves the addressee did actually receive the summons and complaint in time to avoid a default. An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within time to avoid a default. In the case of an entity included in one of the provisions of Rule 4(c), "defendant," within the meaning of this subdivision, shall be such a person described in the applicable subdivision of 4(c).

(D) Failure of Delivery. Failure to make service within the sixty- (60-) day period and failure to make proof of service do not affect the validity of service perfected beyond that period.

(dc) District Court Rule. Rule 4 applies in the district courts.

## APPENDIX B

### Committee Comments to Amendment to Rule 4, Effective July 1, 2016

Rule 4(a)(2) is amended to require that the summons served on the defendant should include notice that entry of a default judgment is a possible consequence of a served defendant's failure to appear or to defend, rather than an automatic result, as the previous language suggested.

Rule 4(c)(2) requires service on a minor by and through his or her mother, father, or other representative as set out in the rule and, in addition, previously required that minors over 12 years of age be served personally. The rule is amended to require separate, additional personal service only on minors over the age of 16, it appearing that separate delivery of legal process to minors under that age is without practical benefit.

Rule 4(c)(5) is amended to incorporate the contemporaneous amendment to Rule 4(c)(2) limiting the requirement for separate personal service to minors over the age of 16 to require personal service on an incarcerated minor only if the minor is over the age of 16.

Rule 4(h) is amended to state the manner for acceptance or waiver of service of process -- by a document signed by a defendant and filed in the manner set out in the amended rule.

Rule 4(i)(1)(B) is amended to require that persons designated to serve process under this section must be not less than nineteen (19) years of age and must not be a party to the action or related within the third degree by blood or marriage to the party seeking service of process.

Rule 4(i)(1)(C) is amended to specifically encompass service on both the defendant and substituted service on other persons who may be served on the defendant's behalf as provided by Rule 4(c). The amendment sets out new, specific requirements as to how service of process is to be made and how the return of service is to be made. There has been a significant increase in the number of cases in which a plaintiff elects to use a person designated for service of process rather than the sheriff or other officer, and this amendment addresses that change by providing detailed

procedural guidance. This section now sets out with specificity the manner in which service must be made and how it must be returned to the clerk of the issuing court. The amendments to the second paragraph of this section set out in detail the information identifying the server that must be provided on each of the respective returns made by sheriffs, deputy sheriffs, constables, or persons designated for service of process.

Rule 4(i)(1)(D) is amended to increase to sixty (60) days the time in which a person serving process must make a return to the clerk of court upon failure of service as a more practical time frame than the previous thirty- (30-) day period, considering the administrative procedures involved.

Rule 4(i)(2)(D) is amended to increase to sixty (60) days the time in which undelivered certified mail must be returned, conforming this subsection to the contemporaneous amendment to Rule 4(i)(1)(D).