



IN THE SUPREME COURT OF ALABAMA

August 14, 2023

ORDER

IT IS ORDERED that Rule 4(i)(2)(D), Alabama Rules of Civil Procedure, be amended to read in accordance with Appendix A to this order;

IT IS FURTHER ORDERED that Rule 4(i)(3), Alabama Rules of Civil Procedure, be adopted to read in accordance with Appendix B to this order;

IT IS FURTHER ORDERED that Rule 45(b)(1), Alabama Rules of Civil Procedure, be amended to read in accordance with Appendix D to this order;

IT IS FURTHER ORDERED that the Committee Comments to the Adoption of Rule 4(i)(3) Effective August 14, 2023, and the Committee Comments to the Amendment of Rule 45(b)(1) Effective August 14, 2023, be adopted to read in accordance with Appendices C and E, respectively, to this order;

IT IS FURTHER ORDERED that Form 1C. and Form 1D. be adopted to read in accordance with Appendices F and G, respectively, to this order and that they be added to "APPENDIX I. FORMS" to the Alabama Rules of Civil Procedure;

IT IS FURTHER ORDERED that the amendment of Rule 4(i)(2)(D), the adoption of Rule 4(i)(3), the amendment of Rule 45(b)(1), the adoption of the Committee Comments thereto, and the adoption of Form 1C. and Form 1D. are effective immediately; and

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 4, Rule 45, Form 1C., and Form 1D.:



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"Note from the reporter of decisions: The order amending Rule 4(i)(2)(D), adopting Rule 4(i)(3), and amending Rule 45(b)(1), Alabama Rules of Civil Procedure, adopting the Committee Comments thereto, and adopting Form 1C. and Form 1D., effective August 14, 2023, is published in that volume of *Alabama Reporter* that contains Alabama cases from __ So. 3d."

Parker, C.J., and Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, Mitchell, and Cook, JJ., concur.

Witness my hand and seal this 14th day of August, 2023.

Megan B. Rhodeseck

**Clerk of Court,
Supreme Court of Alabama**

**FILED
August 14, 2023
Clerk of Court
Supreme Court of Alabama**



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APPENDIX A

Rule 4(i)(2)(D), Alabama Rules of Civil Procedure

(D) Failure of Delivery. Failure to make service within sixty (60) days from issuance of the process by the clerk of the court and failure to make proof of service do not affect the validity of service perfected beyond that period.



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APPENDIX B

Rule 4(i)(3), Alabama Rules of Civil Procedure

(3) *Service by Commercial Carrier.*

(A) When Proper.

(i) When the plaintiff files a written request with the clerk for service by commercial carrier, service of process shall be made by that method. For purposes of this subdivision, "commercial carrier" means only those commercial carriers approved by the Administrative Director of Courts, pursuant to Rule 45 of the Alabama Rules of Judicial Administration. When service by commercial carrier is initiated by the clerk, the clerk's choice of commercial carrier is limited to those approved by the Administrative Director of Courts.

(ii) Alternatively, the attorney or party filing the process and complaint may initiate service by commercial carrier as provided in this rule. For purposes of this subdivision, "commercial carrier" means any foreign or domestic business entity that is not a party to the civil action; that has as its primary purpose the delivery of letters and parcels of any type; and that will deliver to the sender a written or electronic receipt showing to whom the process and complaint were delivered, the written or electronic signature of the recipient, the date of delivery, the address where delivered, and the person or entity effecting delivery.



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(B) How Served.

(i) In the event of service by commercial carrier initiated by the clerk, the clerk shall deliver to the commercial carrier 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. 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 provide to the commercial carrier payment of the required shipping costs, with instructions to the commercial carrier to provide to the clerk a written or electronic receipt showing to whom the process and complaint or other document to be served was delivered, the written or electronic signature of the recipient, the date of delivery, the address where delivered, and the person or entity effecting delivery. The clerk shall forthwith enter the fact of delivery to the commercial carrier on the docket sheet of the action and make a similar entry when a delivery 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 deliver to the commercial carrier that 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. In the case of



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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 provide to the commercial carrier payment of the required shipping costs, with instructions to the commercial carrier to provide to the attorney or party a written or electronic receipt showing to whom the process and complaint or other document to be served was delivered, the written or electronic signature of the recipient, the date of delivery, the address where delivered, and the person or entity effecting delivery. Upon delivery to the commercial carrier, the attorney or party shall immediately file with the court an "Affidavit of Delivery to a Commercial Carrier 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 delivered to a commercial carrier in accordance with this rule.

(C) When Effective. Service by commercial carrier shall be deemed complete and the time for answering shall run from the date of delivery as evidenced by the commercial carrier's written or electronic receipt showing to whom the process and complaint or other document to be served was delivered, the written or electronic signature of the recipient, the date of delivery, the address where delivered, and the person or entity effecting delivery. When service is initiated under Rule 4(i)(3)(B)(ii), the attorney or party shall, within ten (10) days after receiving the commercial carrier's written or electronic delivery receipt, file with the court a "Proof of Service by Commercial Carrier" that identifies the commercial carrier and explains the method of service, states the name of the person served, notes the date of delivery, and



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has attached a printed copy of the commercial carrier's written or electronic delivery receipt or other evidence of delivery. Within the meaning of this subdivision, "agent" means a person or entity specifically authorized by the addressee to receive the addressee's commercial-carrier deliveries and to deliver them 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 sixty (60) days from issuance of the process by the clerk of the court and failure to make proof of service do not affect the validity of service perfected beyond that period.



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APPENDIX C

Committee Comments to Adoption of Rule 4(i)(3) Effective August 14, 2023

Rule 4(i) is amended to add a new subdivision (3) that permits service by a "commercial carrier." Rule 45 of the Rules of Judicial Administration, adopted effective February 26, 2020, allows circuit clerks to substitute service by certified mail with service by a commercial carrier approved by the Administrative Director of Courts ("the Director"). Rule 4(i)(3) permits the serving attorney or party to elect service by a commercial carrier. If the clerk is requested to initiate the service by commercial carrier, Rule 4(i)(3)(A)(i) restricts the clerk to using a commercial carrier that has been approved by the Director. The current list of approved commercial carriers can be ascertained by contacting the Administrative Office of Courts ("AOC").

If the attorney or party initiates the service by commercial carrier, the attorney or party may use any "commercial carrier" within the definition stated in Rule 4(i)(3)(A)(ii).

A new Form 1C. has been adopted to be used as a summons when service is made by commercial carrier, and that form has been added to Appendix I to these rules.

If service by commercial carrier is initiated by the attorney or party, instead of by the clerk, the commercial carrier's evidence of service shall be returned to the initiating attorney or party, who shall then file with the court a "Proof of Service by Commercial Carrier" document containing the information required by Rule 4(i)(3)(C). A new Form 1D. has been adopted to serve as a "Proof of Service by Commercial Carrier" document, and that form has been added to Appendix I to these rules. Note that the commercial carrier's delivery charges to the initiating



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attorney or party may be greater than the amount charged to the clerk, which amount may be governed by an AOC-negotiated discounted rate.

Additionally, although Rule 4(e) sets forth a procedure to be followed when service of process has been refused, that procedure applies only to attempted service by certified mail or by a process server. Rule 4(e) does not apply to refusals of attempted service by commercial carrier. If attempted service by commercial carrier cannot be completed, the serving attorney or party will have to reattempt service by commercial carrier or attempt a different form of service.



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APPENDIX D

Rule 45(b)(1), Alabama Rules of Civil Procedure

(b) Service.

(1) A subpoena issued on behalf of any party may be served by the sheriff, a deputy sheriff, or any other person who is not a party, who is not related within the third degree by blood or marriage to the party seeking service of process, and who is not less than 19 years of age or by certified mail or commercial carrier pursuant to the provisions of Rule 4. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person or by leaving a copy at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein and, if the person's attendance at a place more than 100 miles from the person's residence is commanded, by tendering to that person the fees for one day's attendance and an amount to reimburse the mileage allowed by law. Prior notice of intent to secure the issuance of a subpoena to command production of documents and things or inspection of premises before trial under the procedure set forth in subparagraph (a)(3) of this rule shall be served on each party in the manner prescribed by Rule 5(b).



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APPENDIX E

Committee Comments to Amendment of Rule 45(b)(1) Effective August 14, 2023

Rule 4(i)(3) now permits the summons and complaint to be served by commercial carrier. This corresponding amendment to Rule 45(b)(1), adding the words "or commercial carrier," permits service of subpoenas in the same manner as the service permitted in Rule 4(i)(3).



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APPENDIX F

FORM 1C. SUMMONS

(THIS SUMMONS IS TO BE USED WHEN SERVICE
IS BY COMMERCIAL CARRIER)

IN THE CIRCUIT COURT FOR _____ COUNTY, ALABAMA

CIVIL ACTION NO. _____

A.B., Plaintiff

v.

C.D., Defendant

SUMMONS

This service by commercial carrier of this summons is initiated upon the written request of Plaintiff's attorney pursuant to the Alabama Rules of Civil Procedure.

NOTICE TO _____

The Complaint which is attached to this summons is important and you must take immediate action to protect your rights. You are required to mail or hand deliver a copy of a written Answer, either admitting or denying each allegation in the Complaint, to _____, the lawyer for the Plaintiff(s), whose address is: _____.

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN THIRTY (30) DAYS FROM THE DATE OF DELIVERY OF THIS SUMMONS AND COMPLAINT AS EVIDENCED BY THE RETURN RECEIPT, OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. You must also file the original of your Answer with the Clerk of this Court within a reasonable time afterward.

Clerk of Court

Dated: _____



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APPENDIX G

FORM 1D. PROOF OF SERVICE BY COMMERCIAL CARRIER

(THIS FORM IS TO BE USED WHEN SERVICE
IS BY COMMERCIAL CARRIER)

IN THE CIRCUIT COURT FOR _____ COUNTY, ALABAMA
CIVIL ACTION NO. _____

A.B., Plaintiff

v.

C.D., Defendant

PROOF OF SERVICE BY COMMERCIAL CARRIER

Pursuant to Rule 4(i)(3)(C), Alabama Rules of Civil Procedure, this notice is filed with the Court to show that a copy of the Summons and Complaint or other document was served via commercial carrier in the method described, as follows:

1. Name of the serving party or the party's attorney:
2. Name of party served:
3. Name of person served:
4. Description of document(s) served:
5. Date of service:
6. Location of service:
7. Name of commercial carrier making the service:

Attach a copy of the commercial carrier's written or electronic receipt or proof of delivery.

Signature of serving party or attorney

Include the phone number, address, and email address of the serving party or attorney.