

## **Minnesota Rules of Civil Procedure**

Does a process server have to be licensed in Minnesota?

No.

### Minnesota Process Server Requirements

Unless otherwise ordered by the court, the sheriff or any other person not less than 18 years of age and not a party to the action, may make service of a summons or other process.

### Minnesota Rules of Civil Procedure

Please note that lobbyists are active in the state of Minnesota and laws concerning civil procedure and process serving can change. Therefore the information listed below may have been amended. For updated process serving legislation, please visit the Minnesota Legislation web site.

- Rule 4.02. By Whom Served
- Rule 4.03. Personal Service - Service of summons within the state shall be as follows:
  1. Upon an Individual.
  2. Upon Partnerships and Associations.
  3. Upon a Corporation.
  4. Upon the State.
  5. Upon Public Corporations.
- Rule 4.04. Service By Publications; Personal Service out of State
  1. Service by Publications.
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- Advisory Committee Comments - 1996 Amendments
  1. Rule 4.041. Additional Information to be Published In all cases where...(continued)
  2. Rule 4.042. Service of the Complaint
  3. Rule 4.043. Service by Publication...(continued)
  4. Rule 4.044. Nonresident Owner of Land Appointing an Agent
  5. Rule 4.05. Service by Mail
  6. Rule 4.06. Return Service of summons and other process...(continued)
  7. Rule 4.07. Amendments
  8. Rule 45.03. Service
- MINNESOTA STATUTES
  1. 624.04 Service of process on the Sabbath prohibited.
  2. 645.44 Particular words and phrases
  3. Subd. 5. Service Outside United States.

### **RULE 4.02. BY WHOM SERVED**

Unless otherwise ordered by the court, the sheriff or any other person not less than 18 years of age and not a party to the action, may make service of a summons or other process.

#### Advisory Committee Note - 1985

The language of the first paragraph of the existing rule 4.02 was deleted because it is no longer necessary. Under current Minnesota law, a prevailing party may recover the cost of service of process, whether by sheriff or private process server as costs and disbursements. See Minn.stat. § 549.04 (Supp. 1983). The changes to the second paragraph are intended to clarify the language of the rule and incorporate provisions for service of process other than summonses and subpoenas presently contained in Rule 4.05. Under the rule any person who is not a party to the action and is 18 years of age or over may serve a summons or other process service of subpoenas is governed by Rule 45.03, and the changes in Rule 4.02 are intended to be make the two rules consistent. The rule provides that the court may direct service of any process by any means it deems appropriate. As a practical matter, courts will rarely have occasion to direct a specific means of service of process.

**RULE 4.03. PERSONAL SERVICE SERVICE OF SUMMONS WITHIN THE STATE SHALL BE AS FOLLOWS:**

**UPON AN INDIVIDUAL.**

Upon an individual by delivering a copy to the individual personally or by leaving a copy at the individual's usual place of abode with some person of suitable age and discretion then residing therein. If the individual has, pursuant to statute, consented to any other method of service or appointed an agent to receive service of summons, or if a statute designates a state official to receive service of summons, service may be made in the manner provided by such statute. If the individual is confined to a state institution, by serving also the chief executive officer at the institution. If the individual is an infant under the age of 14 years, by serving also the individual's father or mother, and if neither is within the state, then a resident guardian if the infant has one known to the plaintiff, and if the infant has none, then the person having control of such defendant, or with whom the infant resides, or by whom the infant is employed.

**UPON PARTNERSHIPS AND ASSOCIATIONS.**

Upon a partnership or association which is subject to suit under a common name, by delivering a copy to a member or the managing agent of the partnership or association. If the partnership or association has, pursuant to statute, consented to any other method of service or appointed an agent to receive service of summons, or if a statute designates a state official to receive service of summons, service may be made in the manner provided by such statute.

**UPON A CORPORATION.**

Upon a domestic or foreign corporation, by delivering a copy to an officer or managing agent, or to any other agent authorized expressly or impliedly or designated by statute to receive service of summons, and if the agent is one authorized or designated under statute to receive service any statutory provision for the manner of such service shall be complied with. In the case of a transportation or express corporation, the summons may be served by delivering a copy to any ticket, freight, or soliciting agent found in the county in which the action is brought, and if such corporation is a foreign corporation and has no such agent in the county in which the plaintiff elects to bring the action, then upon any such agent of the corporation within the state.

**UPON THE STATE.**

Upon the state by delivering a copy to the attorney general, a deputy attorney general or an assistant attorney general.

**UPON PUBLIC CORPORATIONS.**

Upon a municipal or other public corporation by delivering a copy

1. To the chair of the county board or to the county auditor of a defendant county;
2. To the chief executive officer or to the clerk of a defendant city, village or borough;
3. To the chair of the town board or to the clerk of a defendant town;
4. To any member of the board or other governing body of a defendant school district; or
5. To any member of the board or other governing body of a defendant public board or public body not hereinabove enumerated. If service cannot be made as provided in this Rule 4.03(e), the court may direct the manner of such service.

**RULE 4.04. SERVICE BY PUBLICATIONS; PERSONAL SERVICE OUT OF STATE  
SERVICE BY PUBLICATIONS.**

Service by publication shall be sufficient to confer jurisdiction:

1. When the defendant is a resident individual domiciliary having departed from the state with intent to defraud creditors, or to avoid service, or remains concealed therein with the like intent;
2. When the plaintiff has acquired a lien upon property or credits within the state by attachment or garnishment, and
  - a. The defendant is a resident individual who has departed from the state, or cannot be found therein, or

b. The defendant is a nonresident individual or a foreign corporation, partnership or association; When quasi in rem jurisdiction has been obtained, a party defending the action thereby submits personally to the jurisdiction of the court. An appearance solely to contest the validity of quasi in rem jurisdiction is not such a submission.

3. When the action is for marriage dissolution or separate maintenance and the court has ordered service by published notice;

4. When the subject of the action is real or personal property within the state in or upon which the defendant has or claims a lien or interest, or the relief demanded consists wholly or partly in excluding the defendant from any such interest or lien;

5. When the action is to foreclose a mortgage or to enforce a lien on real estate within the state. The summons may be served by three weeks' published notice in any of the cases enumerated herein when the complaint and an affidavit of the plaintiff or the plaintiff's attorney have been filed with the court. The affidavit shall state the existence of one of the enumerated cases, and that affiant believes the defendant is not a resident of the state or cannot be found therein, and either that the affiant has mailed a copy of the summons to the defendant at the defendant's place of residence or that such residence is not known to the affiant. The service of the summons shall be deemed complete 21 days after the first publication.

#### PERSONAL SERVICE OUTSIDE STATE.

Personal service of such summons outside the state, proved by the affidavit of the person making the same sworn to before a person authorized to administer an oath, shall have the same effect as the published notice provided for herein.

#### SERVICE OUTSIDE UNITED STATES.

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 the state:

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 Extra-judicial Documents; or

2. if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

a. in the manner prescribed by the law of 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 requiring a signed receipt, to be addressed and dispatched by the court administrator to the party to be served; or

3. by other means not prohibited by international agreement as may be directed by the court.

#### ADVISORY COMMITTEE COMMENTS - 1996 AMENDMENTS

Rule 4.04 is amended to conform the rule to its federal counterpart, in part. The new provision adopts verbatim the provisions for service of process outside the United States contained in the federal rules. This modification is appropriate because this subject is handled well by the federal rule and because it is advantageous to have the two rules similar. This is particularly valuable given the dearth of state-court authority on foreign service of process. Existing portions of the rule are renumbered for clarity.

#### RULE 4.041. ADDITIONAL INFORMATION TO BE PUBLISHED IN ALL CASES

where publication of summons is made in an action in which the title to, or any interest in or lien upon, real property is involved or affected or is brought in question, the publication shall also contain a description of the real property involved, affected or brought in question thereby, and a statement of the object of the action. No other notice of the pendency of the action need be published.

Advisory Committee Note - 1969 The additional information required by the rule is substantially identical with the notice of lis pendens published with the summons in actions for partition and to determine adverse claims (M.S.A. §§ 558.02 and 559.02, both preserved by Appendix A). The publication of either would probably be sufficient but the existing confusion warrants the amendment and corresponding changes in the Appendices and the forms. The form of summons prescribed by M.S.A. § 284.16 for actions involving tax titles is not changed.

#### RULE 4.042. SERVICE OF THE COMPLAINT

If the defendant shall appear within 10 days after the completion of service by publication, the plaintiff, within 5 days after such appearance, shall serve the complaint, by copy, on the defendant or the defendant's attorney. The defendant shall then have at least 10 days in which to answer the same.

#### RULE 4.043. SERVICE BY PUBLICATION

Defendant May Defend; Restitution If the summons is served by publication, and the defendant receives no actual notification of the action the defendant shall be permitted to defend upon application to the court before judgment and for sufficient cause; and, except in an action for marriage dissolution, the defendant, in like manner, may be permitted to defend at any time within one year after judgment, on such terms as may be just. If the defense is sustained, and any part of the judgment has been enforced, such restitution shall be made as the court may direct.

Advisory Committee Note - 1985

The only change in [Rules 4.013 and 4.044] is to substitute "marriage dissolution" for "divorce" in order to conform the language of the rule to that of the statute governing such actions. See Minn.Stat. § 518.002 (1982).

#### RULE 4.044. NONRESIDENT OWNER OF LAND APPOINTING AN AGENT

If a nonresident person or corporation owning or claiming any interest or lien in or upon lands in the state appoints an agent pursuant to Minn.Stat. § 557.01, service of summons in an action involving such real estate shall be made upon the agent or the principal in accordance with Rule 4.03, and service by publication shall not be made upon the principal.

#### RULE 4.05. SERVICE BY MAIL

In any action service may be made by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 22 and a return envelope, postage prepaid, addressed to the sender. If acknowledgment of service under this rule is not received by the sender within the time defendant is required by these rules to serve an answer, service shall be ineffectual. Unless good cause is shown for not doing so, the court shall order the payment of the costs of personal service by the person served if such person does not complete and return the notice and acknowledgment of receipt of summons within the time allowed by these rules.

Advisory Committee Note - 1985

Existing Rule 4.05 is deleted in its entirety because it is now covered by Rule 4.02. The Committee also determined it is unnecessary to place an apparent burden on the Court to direct service of all process other than summonses and subpoenas. See Minn.R.Civ.P. 4.02. Notes of Advisory Committee - 1984 amendment. The Committee considered various alternatives permitting service by mail, including two amendments Rule 4.04 to the Federal Rules of Civil Procedure which were adopted in 1983. The United States Supreme Court first amended Fed.R.Civ.P. 4 to authorize service by mail. See Fed.R.Civ.P. 4 (c)(2)(C)(ii). Congress then adopted a further amendment which superseded the Supreme Court's action. See P.L. # 97462 [H.R. 7154] 196 Stat. 25271. Under the present federal rule, service may be effected by mail. The Minnesota Supreme Court has also recognized the effectiveness of service by mail under the Minnesota Long-Arm Statute, Minn. Stat. § 543.19 (1980). The Minnesota Supreme Court in *Stonewall Insurance Co. v. Horak*, 325 N.W.2d 134 (Minn. 1982), recognized that actual receipt of the summons and complaint by mail, evidenced by a certified mail receipt signed by the individual defendant, constituted delivery under Minn.R.Civ.P. 4.03 (a) and the statute. This rule does not modify the holding, in *Stonewall*. The change in Minn.R.Civ.P. 4.05 permitting service by

mail adopts the essential provisions of Fed.Civ.P. 4. The rule authorizes use of the mails to deliver the summons and complaint to a defendant within or without the state, and makes service effective if the defendant acknowledges receipt of the summons and complaint. The Committee recommends that a new form (Form 22) be adopted to provide notice of the effect of the service by mail upon the defendants served. The form advises the defendant that by signing the acknowledgment of receipt the defendant admits only actual receipt of the summons and complaint and that signing does not constitute an appearance or a submission to the jurisdiction of the court and does not waive any other defenses. If an acknowledgement is not signed and returned, the plaintiff may then seize the summons and complaint by any other means authorized by the rules or by statute. There is no restriction on the means of service that may be used following unsuccessful service by mail. The Minnesota rule differs from the federal rule. See *Federal Deposit Insurance Co. v. Sims*, 100 F.R.D. 792 (N.D.Ala. 1984) (attempted mail service prevents service by publication under federal rule). The rule retains the provision of its federal counterpart shifting the cost of personal service to a defendant who declines to acknowledge receipt of the summons and complaint by mail. The Committee believes this provision is an essential part of the system for service by mail, and is necessary to discourage defendants from unjustifiably refusing to acknowledge receipt. *Eden Foods, Inc. v. Eden's Own Products, Inc.*, 101 F.R.D. 96 (E.D.Mich.1984).

**RULE 4.06. RETURN SERVICE OF SUMMONS AND OTHER PROCESS SHALL BE PROVED BY THE CERTIFICATE OF THE SHERIFF MAKING IT**

by the affidavit of any other person making it, by the written admission or acknowledgement of the party served, or if served by publication, by the affidavit of the printer or the printer's designee. The proof of service in all cases other than by published notice shall state the time, place, and manner of service. Failure to make proof of service shall not affect the validity of the service. Advisory Committee Note - 1985

The change in this rule is intended to reflect that an acknowledgment of receipt, as permitted by Rule 4.05 and as contained in Form 22, constitutes adequate proof of service.

**RULE 4.07. AMENDMENTS**

The court in its discretion and on such terms as it deems just may at any time allow any summons or other process or proof of service thereof to be amended, unless it clearly appears that substantial rights of the person against whom the process issued would be prejudiced thereby.

**RULE 45.03. SERVICE**

A subpoena may be served by the sheriff, a deputy sheriff, or any other person who is not a party. 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 usual place of abode with some person of suitable age and discretion then residing therein and by tendering to the person the fees for 1 day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the state of Minnesota or an officer or agency thereof, fees and mileage need not be tendered.

**MINNESOTA STATUTES**

**624.04 SERVICE OF PROCESS ON THE SABBATH PROHIBITED.**

Every service of legal process upon the Sabbath day, except in case of a breach or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime, or where such service is expressly authorized by statute, is hereby prohibited.

**645.44 PARTICULAR WORDS AND PHRASES**

**SUBD. 5. SERVICE OUTSIDE UNITED STATES.**

No public business shall be transacted on any holiday, except in cases of necessity and except in cases of public business transacted by the legislature, nor shall any civil process be served thereon....

You should contact Arden Process Services, Inc., if you have specific questions about Process Serving in Minnesota.