

SERVICE OF PROCESS

A Judge's Perspective
May 2024

Objective

To have a conversation about "service of process" and help each other do a better job at handling the duties and opportunities presented by issues surrounding "service of process."

Disclaimer

- Judges do not like to even think about service of process unless forced to rule on an issue that is before them.
- Lawyers do not like to even think about service of process unless forced to by an opposing party.
- Clerks must think about service of process even if, like the rest of the folks mentioned, they do not want to think about it.
- This may very well be the most boring presentation ever!

Wikipedia Definition

Service of Process

In the U.S. legal system service of process is the procedure by which a party to a lawsuit gives an appropriate notice of initial legal action to another party (such as a defendant), court or administrative body in an effort to exercise jurisdiction over that person so as to force that person to respond to the proceeding before the court, body or other tribunal.

Notice is provided by delivering a set of court documents (called process) to the person to be served.

How do we start?

Rule 3. Commencement of Action

All civil actions are commenced by filing a complaint with the clerk of the court. An action is commenced within the meaning of any statute of limitations upon such filing of a complaint, whether process be issued or not issued and whether process be returned served or unserved. If process remains unissued for 90 days or is not served within 90 days from issuance, regardless of the reason, the plaintiff cannot rely upon the original commencement to toll the running of a statute of limitations unless the plaintiff continues the action by obtaining issuance of new process within one year from issuance of the previous process or, if no process is issued, within one year of the filing of the complaint.

Tenn. R. Civ. P. 3

Service of Process in Civil Cases

Service of civil process is governed by Tennessee Rule of Civil Procedure 4, which states:

Rule 4.01. Summons; Issuance; By Whom Served; Sanction for Delay

(1) Upon the filing of the complaint, the clerk of the court shall promptly issue the required summons and cause it, with necessary copies of the complaint and summons, to be delivered for service to any person authorized to serve process. This person shall serve the summons, and the return endorsed thereon shall be proof of the time and manner of service. A summons may be issued for service in any county against any defendant, and separate or additional summonses may be issued against any defendant upon request of plaintiff. Nothing in this rule shall affect existing laws with respect to venue.

(2) A summons and complaint may be served by any person who is not a party and is not less than 18 years of age. The process server must be identified by name and address on the return.

(3) If a plaintiff or counsel for a plaintiff (including a third-party plaintiff) intentionally causes delay of prompt issuance or prompt service of a summons, the filing of the complaint (or third-party complaint) will not toll any applicable statutes of limitation or repose.

Tenn. R. Civ. P. 4.01

More of Rule 4

Rule 4.02. Summons; Form

The summons shall be issued in the name of the State of Tennessee, be dated and signed by the clerk, contain the name of the court and county, the title of the action, and the file number. The summons shall be directed to the defendant, shall state the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of his or her failure to do so judgment by default will be rendered against that defendant for the relief demanded in the complaint. The summons shall state the name and address of the plaintiff's attorney, if any; otherwise, it shall state the plaintiff's address.

<See Rules of Civil Procedure Annotated, 4th (Tennessee Practice, volumes 3 and 4), for a comprehensive treatment of practice and procedure under these Rules. Procedural forms for use in civil cases are set forth in Civil Procedure Forms, 3rd (Tennessee Practice, volumes 5 and 6). >

Tenn. R. Civ. P. 4.02

More of Rule 4

Rule 4.03. Summons; Return

(1) The person serving the summons shall promptly make proof of service to the court and shall identify the person served and shall describe the manner of service. If a summons is not served within 90 days after its issuance, it shall be returned stating the reasons for failure to serve. The plaintiff may obtain new summonses from time to time, as provided in Rule 3, if any prior summons has been returned unserved or if any prior summons has not been served within 90 days of issuance.

(2) When process is served by mail, the original summons, endorsed as below; an affidavit of the person making service setting forth the person's compliance with the requirements of this rule; and, the return receipt shall be sent to and filed by the clerk. The person making service shall endorse over his or her signature on the original summons the date of mailing a certified copy of the summons and a copy of the complaint to the defendant and the date of receipt of the return receipt from the defendant. If the return receipt is signed by the defendant, or by a person designated by Rule 4.04 or by statute, service on the defendant shall be complete. If not, service by mail may be attempted again or other methods authorized by these rules or by statute may be used.

(3) Failure to promptly file proof of service does not affect the validity of service.

Tenn. R. Civ. P. 4.03

Part of 4.04

Rule 4.04. Service Upon Defendants Within the State

The plaintiff shall furnish the person making the service with such copies of the summons and complaint as are necessary. Service shall be made as follows:

(1) Upon an individual other than an unmarried infant or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally, or if he or she evades or attempts to evade service, by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, whose name shall appear on the proof of service, or by delivering the copies to an agent authorized by appointment or by law to receive service on behalf of the individual served.

(2) Upon an unmarried infant or an incompetent person, by delivering a copy of the summons and complaint to the person's resident guardian or conservator if there is one known to the plaintiff; or if no guardian or conservator is known, by delivering the copies to the individual's parent having custody within this state; or if no such parent is within this state, then by delivering the copies to the person within this state having control of the individual. If none of the persons defined and enumerated above exists, the court shall appoint a practicing attorney as guardian ad litem to whom the copies shall be delivered. If any of the persons directed by this paragraph to be served is a plaintiff, then the person who is not a plaintiff who stands next in the order named above shall be served, in addition to the service provided in this paragraph, service shall also be made on an unmarried infant who is fourteen (14) years of age or more, and who is not otherwise incompetent.

More 404

(3) Upon a partnership or unincorporated association (including a limited liability company) which is named defendant under a common name, by delivering a copy of the summons and of the complaint to a partner or managing agent of the partnership or to an officer or managing agent of the association, or to an agent authorized by appointment or by law to receive service on behalf of the partnership or association.

(4) Upon a domestic corporation, or a foreign corporation doing business in this state, by delivering a copy of the summons and of the complaint to an officer or managing agent thereof, or to the chief agent in the county wherein the action is brought, or by delivering the copies to any other agent authorized by appointment or by law to receive service on behalf of the corporation.

(5) Upon a nonresident individual who transacts business through an office or agency in this state, or a resident individual who transacts business through an office or agency in a county other than the county in which the resident individual resides, in any action growing out of or connected with the business of that office or agency, by delivering a copy of the summons and of the complaint to the person in charge of the office or agency.

Tenn. R. Civ. P. 4.04

More of 4.04

(6) Upon the state of Tennessee or any agency thereof, by delivering a copy of the summons and of the complaint to the attorney general of the state or to any assistant attorney general.

(7) Upon a county, by delivering a copy of the summons and of the complaint to the chief executive officer of the county, or if absent from the county, to the county attorney if there is one designated; if not, by delivering the copies to the county clerk.

(8) Upon a municipality, by delivering a copy of the summons and of the complaint to the chief executive officer thereof, or to the city attorney.

(9) Upon any other governmental or any quasi-governmental entity, by delivering a copy of the summons and of the complaint to any officer or managing agent thereof.

404 contd.

(10) Service by mail of a summons and complaint upon a defendant may be made by the plaintiff, the plaintiff's attorney or by any person authorized by statute. After the complaint is filed, the clerk shall, upon request, furnish the original summons, a certified copy thereof and a copy of the filed complaint to the plaintiff, the plaintiff's attorney or other authorized person for service by mail. Such person shall send, postage prepaid, a certified copy of the summons and a copy of the complaint by registered return receipt or certified return receipt mail to the defendant. If the defendant to be served is an individual or entity covered by subparagraph (2), (3), (4), (5), (6), (7), (8), or (9) of this rule, the return receipt mail shall be addressed to an individual specified in the applicable subparagraph. The original summons shall be used for return of service of process pursuant to Rule 4.03(2). Service by mail shall not be the basis for the entry of a judgment by default unless the record contains either: (a) a return receipt showing personal acceptance by the defendant or by persons designated by Rule 4.04 or statute; or (b) a return receipt stating that the addressee or the addressee's agent refused to accept delivery, which is deemed to be personal acceptance by the defendant pursuant to Rule 4.04(11). If the defendant is a domestic corporation, a foreign corporation authorized to conduct business in this state, or any entity required to register with the Tennessee Secretary of State and appoint a registered agent, a refusal to accept delivery shall be the basis for a default judgment only where the motion for default is accompanied by evidence from the Tennessee Secretary of State showing that moving party made the certified mail service with the correct entity name and the correct name and address for the registered agent authorized by law to receive service of process. If service by mail is unsuccessful, it may be tried again or other methods authorized by these rules or by statute may be used.

(11) When service of a summons, process, or notice is provided for or permitted by registered or certified mail under the laws of Tennessee and the addressee or the addressee's agent refuses to accept delivery and it is so stated in the return receipt of the United States Postal Service, the written return receipt if returned and filed in the action shall be deemed an actual and valid service of the summons, process, or notice. Service by mail is complete upon mailing

Part of 4.05

Rule 4.05. Service Upon Defendant Outside This State

(1) Whenever the law of this state authorizes service outside this state, the service, when reasonably calculated to give actual notice, may be made:

- (a) by any form of service authorized for service within this state pursuant to Rule 4.04;
- (b) in any manner prescribed by the law of the state in which service is effected for an action in any of the courts of general jurisdiction in that state;
- (c) as directed by the court.

The provisions of this Rule 4.05 are inapplicable when service is effected in a place not within any judicial district of the United States.

(2) Service of process pursuant to this Rule 4.05 shall include a copy of the summons and of the complaint.

Tenn. R. Civ. P. 4.05

The rest of 4.05

(3) Service by mail upon a corporation shall be addressed to an officer or managing agent thereof, or to the chief agent in the county wherein the action is brought, or by delivering the copies to any other agent authorized by appointment or by law to receive service on behalf of the corporation.

(4) Service by mail upon a partnership or unincorporated association (including a limited liability company) that is named defendant under a common name shall be addressed to a partner or managing agent of the partnership or to an officer or managing agent of the association, or to an agent authorized by appointment or by law to receive service on behalf of the partnership or association.

(5) When service of summons, process, or notice is provided for or permitted by registered or certified mail, under the laws of Tennessee, and the addressee, or the addressee's agent, refuses to accept delivery, and it is so stated in the return receipt of the United States Postal Service, the written return receipt, if returned and filed in the action, shall be deemed an actual and valid service of the summons, process, or notice. Service by mail is complete upon mailing.

(6) Service by mail shall not be the basis for the entry of a judgment by default unless the record contains either: (a) a return receipt showing personal acceptance by the defendant or by persons designated by Rule 4.05 or statute; or (b) a return receipt stating that the addressee or the addressee's agent refused to accept delivery, which is deemed to be personal acceptance by the defendant pursuant to Rule 4.05(5). If the defendant is a domestic corporation, a foreign corporation authorized to conduct business in this state, or any entity required to register with the Tennessee Secretary of State and appoint a registered agent, a refusal to accept delivery shall be the basis for a default judgment only where the motion for default is accompanied by evidence from the Tennessee Secretary of State showing that moving party made the certified mail service with the correct entity name and the correct name and address for the registered agent authorized by law to receive service of process.

Waiver of Service

Rule 4.07. Waiver of Service; Duty to Save Costs of Service; Request to Waive

(1) A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

(2) An individual, corporation, or association that is subject to service and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request

(a) shall be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer or managing or general agent (or other agent authorized by appointment of law to receive service of process) of a defendant subject to service;

(b) shall be dispatched through first-class mail or other reliable means;

(c) shall be accompanied by a copy of the complaint and shall identify the court in which it has been filed;

(d) shall inform the defendant of the consequences of compliance and of a failure to comply with the request;

(e) shall set forth the date on which the request is sent;

(f) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent; and

(g) shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing.

Tenn. R. Civ. P. 4.07

Waiver of service

If a defendant fails to comply with a request for waiver made by a plaintiff, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

(3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent.

(4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and complaint had been served at the time of filing the waiver, and no proof of service shall be required.

(5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service

Constructive Service

Rule 4.08. Constructive Service

Currentness

In cases where constructive service of process is permissible under the statutes of this state, such service shall be made in the manner prescribed by those statutes, unless otherwise expressly provided in these rules.

Tenn. R. Civ. P. 4.08

Statutory Service in General Sessions Court

§ 16–15–901. Civil Warrants; Delivery to Persons Authorized to Serve Process

Full Text Document for § 16–15–901. Civil Warrants; Delivery to Persons Authorized to Serve Process

§ 16–15–902. Return of Service

§ 16–15–903. Personal Service of Process; Requirements; Authorized Representatives to Accept Service on Behalf of State, Counties, and Municipalities; Service by Mail

§ 16–15–904. Service upon Defendants Outside of State

§ 16–15–905. Constructive Service

Statutory Examples Chancery Court Actions

§ 21-1-203. Personal service; exceptions

(a) Personal service of process on the defendant in a court of chancery is dispensed with in the following cases:

(1) When the defendant is a nonresident of this state;

(2) When, upon inquiry at the defendant's usual place of abode, the defendant cannot be found so as to be served with process, and there is just ground to believe that the defendant is gone beyond the limits of the state;

(3) When the sheriff makes return upon any leading process that the defendant is not to be found;

Tenn. Code Ann. § 21-1-203 (West)

Chancery Actions Continued

(4) When the name of the defendant is unknown and cannot be ascertained upon diligent inquiry;

(5) When the residence of the defendant is unknown and cannot be ascertained upon diligent inquiry;

(6) When judicial and other attachments will lie, under this code, against the property of the defendant; and

(7) When a domestic corporation has ceased to do business and has no known officers, directors, trustees or other legal representatives on whom personal service may be had.

(b) To dispense with process in any of the cases listed in subsection (a), the facts shall be stated under oath in the bill, or by separate affidavit, or appear by the return.

Class Action TRCP Rule 23

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interest of the class.

Tenn. R. Civ. P. 23.01

Health Care Liability Action

In these cases a pre suit notice is required. This alters the way we view service of process.

Probate

§ 30-1-104. Service of process; nonresident representatives

(a)(1) Whenever a nonresident of the state qualifies in this state as the executor or administrator of a person dying in or leaving assets or property in this state, for the purpose of suing or being sued, or for the purpose of being cited or otherwise notified by the court in which the decedent's estate is being administered, the nonresident shall be deemed to have assented to be treated as a resident citizen of this state.

(b) The nonresident of the state, qualifying as executor or administrator as aforementioned, shall give to the clerk of the probate court of the county in which the nonresident qualifies the nonresident's address, and a letter so mailed to the nonresident at that address shall be sufficient notice, unless subsequently changed and notice accordingly given to the probate court clerk, in which event notice to the changed address, shall be sufficient.

Tenn. Code Ann. § 30-1-104 (West)

Delinquent Tax Cases

§ 67-5-2415. Jurisdiction; service of process; notice; pleadings

(a) The court shall have jurisdiction to award personal judgment against an owner upon the claim for the debt upon determining that proper process has been served upon such owner. The court shall have jurisdiction to award a judgment enforcing the lien by a sale of the parcel upon determining that any the following actions have occurred as to each owner:

(1) That proper process has been served upon an owner;

(2) That the owner has actual notice of the proceedings by mail or otherwise; or

(3) That constructive notice by publication pursuant to §§ 21-1-203 and 21-1-204, except as modified in this section, utilizing a description of the parcel in accord with § 67-5-2502(a)(1), has been given to unborn, unbound and unknown owners and that the plaintiff has made or will make a diligent effort prior to the confirmation of the sale of the parcel to give actual notice of the proceedings to persons owning an interest in the parcel, as identified by the searches described in § 67-5-2502(c)(2).

(b) Notice shall also be sufficient if received by an owner in time to afford the owner a reasonable period to prevent the loss of owner's interest in the parcel. Such loss shall be deemed to occur upon the expiration or termination of the redemption period established by part 27 of this chapter.

(c) Notice of the pendency of the proceedings as to a parcel constitutes notice of the pending sale of the parcel and vice versa.

(d) If process is to be served upon a defendant, the defendant does not have to receive a copy of the complaint or exhibits. The plaintiff may in lieu thereof furnish to the defendant a notice identifying the proceedings sufficiently for the defendant to determine the parcel which is subject to the delinquent taxes for which the defendant is being sued.

Tenn. Code Ann. § 67-5-2415 (West)

Long Arm Statutes

§ 20-2-201. Foreign Corporations

§ 20-2-202. Unincorporated Associations and Partnerships

§ 20-2-203. Motor Vehicle Accidents; Agent for Process; Secretary of State

§ 20-2-204. Motor Vehicle Accidents; Agent for Process; Death of Party

§ 20-2-205. Motor Vehicle Accidents; Agent for Process; Service

Continued

§ 20-2-206. Motor Vehicle Accidents; Service of Process; Evidence

§ 20-2-207. Continuances

§ 20-2-208. Steamboat Owners

§ 20-2-209. Watercraft; Agent for Process; Secretary of State

§ 20-2-210. Watercraft; Agent for Process; Death of Party

§ 20-2-211. Watercraft; Agent for Process; Service

Contd.

§ 20–2–217. Personal Service; Proof
§ 20–2–218. Applicability
§ 20–2–219. Construction of Law
§ 20–2–220. Secretary of State; Deputies and Assistants; Authority
§ 20–2–221. Definition of Person

Contd.

§ 20–2–212. Continuances
§ 20–2–213. Construction of Law
§ 20–2–214. Personal Service; Unavailability; Jurisdiction
§ 20–2–215. Registered or Certified Mail; Personal Representative; Fees
§ 20–2–216. Proof of Mailing; Receipt

Contd.

§ 20–2–222. Personal Jurisdiction Based upon Enduring Relationship
§ 20–2–223. Personal Jurisdiction Based on Conduct
§ 20–2–224. Service Outside the State
§ 20–2–225. Other Bases of Jurisdiction Unaffected; Jurisdiction
Whenever Permitted by Constitution
§ 20–2–226. Service of Process Fee

Issues with Personal Service of Process

Issues with Mail Service of Process

Issues with all types of service of process outside the state.

Issues with Publication Service

Issues in e-filing jurisdictions.

Takeaways

1. It all starts with you. It begins with the filing of a complaint.
2. You are obligated to issue a summons for service of process.
3. You are obligated to assess fees for service of process.
4. You receive any type of return made.
5. You issue additional process based upon timeline and request.
6. Ultimately you follow the rules and the statutes.
7. Know the types of cases that you deal with and how service can be different.
8. Know the fees associated with the type of cases you handle and act accordingly.
9. When in doubt, have a conversation with other clerks or your judges
10. The Judge sorts out whether service of process is effective.

THE LAST SLIDE

THANK YOU FOR THE OPPORTUNITY TO INTERACT WITH THE CLERKS
FROM ACROSS THE STATE!

HAVE A GREAT CONFERENCE!
