

IN THE SUPREME COURT OF THE STATE OF NEVADA

JIM MCGOWEN, Trustee of McGowen &  
Fowler, PLLC and/or DOES 1-10, inclusive;  
and DOES 11-20,

Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT  
COURT, in and for the County of Washoe,  
State of Nevada, and THE HONORABLE  
DAVID A. HARDY, District Judge,

Respondent,

STEVEN B. CRYSTAL, individually and as  
Trustee of the Barbara L. Crystal Decedent  
Trust,

Real Party in Interest.

Case No.

District Court Case No. CV17-00281

Dept. 15

Electronically Filed  
Jun 23 2017 09:58 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**PETITION**

**From the Second Judicial District Court  
The Honorable David A. Hardy, District Judge**

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**PETITION FOR WRIT OF MANDAMUS**

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### **NRAP 26.1 Disclosure**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Jim McGowen is an individual erroneously sued below as Jim McGowen, Trustee of McGowen & Fowler PLLC which does not have a parent corporation and is not a publicly held company.

Snell and Wilmer L.L.P. represents McGowen, has appeared in this case, and is attorney of record for Jim McGowen, an individual erroneously sued below as Jim McGowen, Trustee of McGowen & Fowler PLLC.

### **NRAP 21 Disclosure**

The matter raised in this Petition falls in one of the categories of cases retained by the Supreme Court pursuant to NRAP 17(a). This matter invokes the original jurisdiction of the Supreme Court and raises a principal issue of statewide importance. NRAP 17(a)(1), (14). This matter is not within any of the categories of cases presumptively assigned to the Court of Appeals pursuant to NRAP 17(b) either by virtue of its subject matter or under NRAP 17(b)(8).

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## **PETITION FOR WRIT OF MANDAMUS**

Jim McGowen, erroneously sued below as Trustee of McGowen & Fowler PLLC (McGowen) petitions this Court under NRAP 21 and NRS 34.150, et seq., to issue a writ of mandamus directing the Second Judicial District Court of the State of Nevada and the Honorable David A. Hardy (collectively the District Court) to vacate the District Court's May 31, 2017 order denying McGowen's motion to quash service of summons and complaint, and to enter an order granting that motion.

### **I. Introduction.**

This petition presents a single issue: whether service of summons and complaint on a defendant can be made by the attorney or secretary of the attorney for the plaintiff. The issue is simple and straightforward. All prior holdings of this Court have prohibited such service,<sup>1</sup> and the drafter's notes to the last and current revision of Nevada Rule of Civil Procedure 4(c) (NRCP or Rule 4) inform all practitioners in Nevada that service by counsel for a party, or counsel's assistant, is prohibited. The District Court, however, concluded otherwise. The District Court concluded that such service is now permitted under Rule 4(c) as last revised by this Court, and that by revising Rule 4(c) in 2004 to permit such service this Court "abrogated" the controlling precedent (*Sawyer, supra* at footnote 1) that formerly

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<sup>1</sup> *Sawyer v. Sugarless Shops*, 106 Nev. 265, 792 P.2d 14 (1990); *Nevada Cornell Silver Mines v. Hankins*, 51 Nev. 420, 279 P.27 (1929).

prohibited it. Although the issue presented here is simple and straight forward, the answer is important because (1) this Court has not visited this issue since the last revision of Rule 4(c), (2) this Court has never officially “abrogated its previous controlling precedent,” as the District Court suggests, and (3) the District’s Court ruling is contrary to existing precedent, as well as the drafter’s notes to the last revision. Practitioners are in need of guidance from this Court on important issues of effective service of process in Nevada.

## **II. Statement of Facts.**

McGowen is an attorney licensed to practice and practicing law in the State of Texas, where he resides. Declaration of James McGowen, ¶¶ 1-3, attached to Motion to Quash, **APPX000022, Vol. I**. He is a partner in McGowen and Fowler, PLLC, which is a Professional Limited Liability Corporation duly formed and existing under the laws of the State of Texas. *Id.* On behalf of a client, McGowen travelled to Nevada on February 8, 2017, to attend a settlement conference in Carson City scheduled for February 9 that related to litigation between the plaintiff below, Steven B. Crystal, and a third party (Ron Bush) involving several pieces of valuable artwork. *Id.* at ¶¶ 6-10. McGowen’s client was not a party to the litigation, but had an interest in the artwork. *Id.* On the morning of February 9, Bush’s attorneys drove McGowen to what he thought was going to be the settlement conference. Immediately after getting into the car, McGowen was informed by

Bush's attorney that they would have to first attend a very short deposition in the case at Litigation Services in South Reno, after which they would travel to the settlement conference in Carson City. *Id.* at ¶ 9.

The attorneys for Bush suggested that McGowen attend the deposition as the subject matter allegedly related to the artwork, but this was false. The deposition did not relate to the artwork at all. *Id.* at ¶ 10. During a break in the deposition, McGowen was served with a complaint by the plaintiff, captioned: *Steven B. Crystal, individually and as Trustee of The Barbara L. Crystal Decedent Trust, Plaintiff vs. Jim McGowen, Trustee of McGowen & Fowler, PLLC, and/or Does 1-10 inclusive; and Does 11-20, Defendants.* *Id.* at ¶¶ 10-13. The summons was issued for *Jim McGowen, Trustee of McGowen & Fowler, PLLC.* **APPX000004, Vol. I.** The complaint and summons were served on McGowen by Chris Wicker, the attorney for Crystal, and Diane Kelling, Wicker's secretary or assistant. Declaration of McGowen, ¶ 3, **APPX000022, Vol. I;** Declaration Wicker, ¶ 9, **APPX000054, Vol. I.** There is some dispute as to whether Kelling handed the summons and complaint to McGowen, or whether she handed them to Wicker, who then handed them to McGowen. *Compare* Declaration of McGowen, ¶ 3, **APPX000022, Vol. I, with** Declaration Wicker, ¶ 9, **APPX000054, Vol. I.** The actual mechanics of who actually handed the papers to McGowen, however, is not relevant, as the rule prohibits both.

McGowen moved to quash service of summons and complaint under NRCP 12 and 4(c) and applicable case law, on the grounds that service cannot be made by counsel, or the assistant to counsel, for the plaintiff, and on the further ground that McGowen was tricked or deceived into entering into the jurisdiction, rendering him immune from process. Motion to Quash, **APPX000007-000030, Vol. I**. The District Court denied the motion with respect to trickery and deceit, finding that McGowen had voluntarily entered the jurisdiction for business purposes, and that his presence was neither facilitated nor encouraged by counsel for Crystal.<sup>2</sup> With respect to service, the Court also concluded that service by counsel is permitted under the rules stating: “*Although counsel should be cautious, service of process by an adverse attorney or his or her employee is not prohibited in Nevada.*” Order dated May 31, 2017, p. 2 l:7-8, **APPX000386, Vol. II**.

In reaching this conclusion, the District Court distinguished this Court’s holding in *Sawyer v. Sugarless Shops*, 106 Nev. 265, 792 P.2d 14 (1990) on the ground that it was decided before the most recent revision to Rule 4(c), and because “*Sawyer was abrogated when, in response to it, the Nevada Supreme Court amended NRCP 4 to expressly require service by a non-party. See NRCP 4 (drafter’s note 2004 amendment).*” Order, p. 2, n. 1, **APPX000386, Vol. II**. This is error.

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<sup>2</sup> McGowen’s challenge to service of process by trickery or deceit is not raised in this Petition.



As set forth more fully below, this Court has never abrogated *Sawyer*, nor did this Court revise Rule 4(c) in response to its holding in *Sawyer*, which remains good law unless and until this Court actually and officially abrogates it. If the Court wants to abrogate *Sawyer*, the Court should actually do so, in order to provide firm guidance to all practitioners in the state, rather than leave the issue open to different interpretations by different district court judges. Moreover, any overruling of *Sawyer* should not be retrospective, but prospective.

### **III. Why the Writ Should Issue.**

A writ of mandamus is available to compel the performance of an act that the law requires. NRS 34.150; *Smith v. District Court*, 107 Nev. 674, 818 P.2d 849 (1991). The decision whether to consider a Petition for writ relief is discretionary. *Smith*, 107 Nev. at 674, 818 P.2d at 849. The primary standard controlling the exercise of discretion is “judicial economy.” *Smith v. Eighth Judicial District Court*, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997). Among the factors the Court considers are (1) whether the petitioner has no plain, speedy, and adequate legal remedy (*Horton v. Dist. Court*, 123 Nev. 468, 474, 168 P.3d 731, 736 (2007)); (2) whether disputed factual issues exist, *Smith*, 113 Nev. at 1345, 950 P.2d at 281; (3) whether the District Court’s holding violated clear authority under a statute or rule, *Id.*; (4) whether there are important policy issues that require clarification, *Id.*; and (5) whether the issues involved are dispositive. *Moore v. Eighth Judicial*

*District Court*, 96 Nev. 415, 417, 610 P.2d 188, 189 (1980). This Petition satisfies all requirements.

McGowen has no plain, speedy or adequate remedy at law. While an appeal may ultimately lie at the end of the case, such remedy is inadequate because McGowen, as well as his adversaries and the Court, will have spent vast amounts of time, money and resources litigating a case as to which there may be no jurisdiction. In this regard, it is important to consider that during the hearing on the motion to quash, counsel for Crystal conceded that Nevada's long arm statute was ineffectual to obtain jurisdiction over McGowen in Nevada by service to process in Texas because he did not have sufficient minimum contacts to justify the exercise of jurisdiction under *Int'l Shoe v. Washington*, 326 U.S. 310 (1945) incorporated into *Trump v. Eighth Jud. Dist. Ct.*, 109 Nev. 687, 698, 857 P.2d 740, 747 (1993), Nevada's long arm statute under NRS 14.065. In sum, jurisdiction could only be obtained by "physical presence" under *Pennoyer v. Neff*, 95 U.S. 714 (1878) as adopted by this Court in *Cariaga v. Eighth Judicial Dist. Court*, 104 Nev. 544, 546, 762 P.2d 886 (1988). Counsel for Crystal acknowledged that jurisdiction could probably not be obtained under a minimum contacts analysis. *See* Opposition to Motion to Quash, p. 5:22-28, **APPX000035, Vol. I**; Transcript, **APPX000224-000225, APPX000248, Vol II**. Moreover, this case is at the very earliest stage of its proceedings, and if preservation of judicial resources and judicial economy are

pole stars for determining the appropriateness of writ relief, this case fully qualifies.

Second, there are no disputed factual issues before the Court to complicate the proceedings, or undermine the efficacy of relief. For purposes of this petition, the disputed issue as to whether plaintiff's attorney or his secretary served the summons and complaint is immaterial. All material facts relating to service are undisputed, and the issue before the Court is solely and exclusively an issue of law.

Third, the District Court order plainly (actually admittedly) violates clear authority. Indeed, the Court acknowledged that its ruling is inconsistent with this Court's controlling precedent in *Sawyer*, 106 Nev. 265, 792 P.2d 14, as well as this Court's longstanding and historical interpretation of Rule 4(c). The District Court justified its deviation from this Court's holding on the dubious proposition that by adopting a revision to Rule 4(c) in 2004, this Court implicitly abrogated or overruled its holding in *Sawyer*. Order, p. 2, n. 1, **APPX000386, Vol. II.**

Fourth, the petition involves important issues in need of clarification. This Court has never overruled *Sawyer*, nor can any such intent be found in the 2004 revision to Rule 4(c), or in the drafter's notes. If the Court wants to change its long standing precedent that has governed the practice in this state for decades, it should do so explicitly rather than leave the question open to different interpretations by different district court judges.

Last, the issue may be dispositive of the entire case, in that if service is improper under Rule 4 and *Sawyer*, the case will be dismissed. While it may be refiled, based on concessions of counsel for the plaintiff regarding lack of “due process” minimum contacts jurisdiction in Nevada, any refiling of the action would likely occur in the State of Texas, as there is no jurisdiction over McGowen in Nevada save and except for the fact that he happened to be physically present in Nevada when summons and complaint were served on him.

#### **IV. Issue Presented.**

Under NRCP 4(c), which prohibits service of summons and complaint by a party to an action, may summons and complaint be served by an attorney for a party, or the attorney’s employed secretary?

#### **V. Argument.**

##### **A. Rule 4(c) Prohibits Service of Summons and Complaint by the Attorney for Plaintiff or His or Her Secretary.**

The history of Rule 4 begins with this Court’s holding in *Nevada Cornell Silver Mines v. Hankins*, 51 Nev. 420, 279 P.27 (1929). The issue presented in that case was whether service of summons and complaint by an attorney for the plaintiff was void under a statute that allowed service to be made by “*any citizen over the age of 21.*” Although the statute did not expressly prohibit service by

counsel for the plaintiff, the Court observed: *“It was admittedly the rule at common law that an interested party could not serve a summons and the common law exists in this state except where expressly changed by statute, but it is claimed that section 5022 authorizes such service.”* *Id.* at 429 (citations omitted).

The Court rejected this argument in a lengthy opinion citing to numerous holdings throughout the United States and England, and multiple learned treatises, holding the following:

*[T]he legislature never intended by enacting that a summons shall be served by “any citizen,” ... to confer that authority upon a party to an action. ... If the conclusion which we have reached to the effect that it was not the legislative intent to confer upon a plaintiff authority to serve a summons on the defendant is sound, then by what process of reasoning can it be said that the statute should be construed to authorize plaintiff’s attorney to make such service, since at common law he too was precluded from doing so?*

*Id.* at 433. The Court went on to conclude that the judgment obtained by such improper service was void. *Id.* at 433-435. In short, the Court held that Nevada common law, as does the common law elsewhere, precludes service of summons and complaint by the attorney for the plaintiff.

In this regard, it is also important to remember that by statute, the legislature has specifically adopted the common law of England as the law in Nevada. *See* NRS 1.030 (“The common law in England, so far as it is not repugnant to or in conflict with the Constitution and laws of the United States, or the Constitution and laws of this State, shall be the rule of decision in all the courts of this State.”).

This Court adopted the Nevada Rules of Civil Procedure in 1952. They were principally based on the federal rules. As originally drafted, service of summons and complaint could be made by any citizen over the age of 21. The rule was amended in 1978 to permit service to be made by any citizen over the age of 18. *Id.* Then came the seminal case of *Sawyer v. Sugarless Shops, Inc., supra*, which was decided in 1990. At that time, and in accordance with the aforementioned 1978 revision, Rule 4(c) permitted service to be made by any citizen over the age of 18 (instead of 21). Service of summons and complaint became an issue. In invalidating service, this Court held as follows:

*Nevada has long standing rules prohibiting service by a party. This was a common law requirement and has not been changed by statute.*

*There are obvious and sound policy reasons for this prohibition...Something as fundamental and decisive as service is best taken away from the **parties or their counsel or counsel's employees.***

*Sawyer v. Sugarless Shops*, 106 Nev. 265, 792 P.2d 14 (1990) at 17 (citing *Nevada*

*Cornell Silver Mines v. Hankins*, 51 Nev. 420, 429-432, 279 P. 27, 29-30 (1929)) (emphasis added).

In 1998, this Court appointed a committee in ADKT to review and revamp, as appropriate, the entirety of the NRCP. *See* Exhibit 1 attached hereto, **ADD004-5**. The committee made many proposals, among which included a proposed revision to NRCP 4(c) that brought it into “linguistic compliance” and essentially “codified” the “non-party” rule enunciated in *Sawyer*. *Id.* at **ADD009-12**. The revisions were formally adopted in 2004. *See id.* at **ADD006-8**. Rule 4(c) was changed to read that service may be made “*by any person who is not a party and who is over the age of 18 years of age.*” *Id.* at **ADD009**. In making this revision, the committee expressly stated that the amendment was made to conform to the holding in *Sawyer* (citing *Sawyer* itself), and clarifying the service rule as follows: “*The amendment to subdivision (c) adding the words who is not a party clarifies that service may be made by any person who is over 18 years of age so long as he or she is also a disinterested person. The revised provision is consistent with the current Federal rule and with the common law rule followed in Nevada, requiring that service be made by a disinterested person, see Sawyer v. Sugarless Shops, Inc., 106 Nev. 265, 269-270, 792 P.2d 14, 17 (1990) (‘Nevada has long had rules prohibiting service by a party. This was a common law requirement and has not been changed by statute.’).*” *Id.* at **ADD012** (emphasis added). The foregoing is an

exact replication of the drafter's notes as they appear in the current version of the Nevada Rules of Civil Procedure. *Id.* at **ADD018**.

It is readily apparent that *Sawyer* was decided when Rule 4(c) permitted service to be made by any citizen over the age of 18, and that the Court engrafted onto that rule the longstanding common law requirement that service could not be effected by such citizen if he or she was a party. Under *Sawyer*, “party” included the attorney for the plaintiff, and his or her employees. The 2004 revision to Rule 4 adopted the exact language of *Sawyer* in precluding service by a party, and there is no reason to conclude, or assume, that by codifying *Sawyer*, and adopting *Sawyer*'s exact language, this Court intended for some unknown and unexpressed reason to except the revised rule from *Sawyer*'s prohibition of service by the attorney of a party, or his or her secretary. Indeed, the drafter's notes indicate the exact opposite, by expressly noting that the rule was intended to codify *Sawyer*, including *Sawyer*'s prohibition of service by persons that are interested in the action by virtue of their relationship to a party, which *Sawyer* determined to include counsel and his or her employees.

In sum, the District's Court's conclusion that this Court's revision of Rule 4(c) in 2004 “abrogated *Sawyer*,” is wrong. It did not. It rather reaffirmed and confirmed it. Moreover, the District Court's conclusion that the revision was made in response to *Sawyer* is partly correct, and partly incorrect. As noted above, the



revision to Rule 4(c) was part of a wholesale review of all the rules (but not just Rule 4). The District Court was correct that the revision to Rule 4 was made partly in response to *Sawyer*, but the District Court was incorrect in assuming the intent of the revision was to abrogate *Sawyer*. In point of fact, the intent was to make the rule conform to *Sawyer*, and the longstanding law in Nevada for over 80 years, and under the common law for over a century before that, that service of summons and complaint cannot be made by the attorney for the plaintiff or his or her secretary.

## **VI. Conclusion.**

NRCP 4(c) was revised in 2004 to conform to the language and holding of *Sawyer*, which itself, was based on long standing jurisprudence in all common law countries and states, including Nevada, that service of summons and complaint cannot be effected by counsel for the plaintiff or his or her secretary. That intent is manifested in the 2004 revision to the rule which incorporated the language of *Sawyer*, and in the drafter's notes which confirmed that the intent of the revision was to conform the rule to the holding in *Sawyer*, and the common law in Nevada, that service of summons and complaint cannot be effected by the attorney for the plaintiff or his or her secretary. It is undisputed in this case that service of summons and complaint were effected by either or both counsel for plaintiff and his secretary, and that the District Court erred in denying McGowen's motion to

quash. This Court should issue a writ of mandate directing the district Court to grant that motion.

Dated: June 23, 2017

SNELL & WILMER L.L.P.

By: /s/ William E. Peterson

William E. Peterson, Bar No. 1528

Janine C. Prupas, Bar No. 9156

Carrie L. Parker, Bar No. 10952

50 West Liberty Street, Suite 510

Reno, Nevada 89501

*Attorneys for Petitioner*

**VERIFICATION**

STATE OF NEVADA     )  
  ) ss.  
COUNTY OF WASHOE)

I, William E. Peterson, being duly sworn, deposes and says:

1.     I am an attorney licensed to practice law in the State of Nevada. I am a member of the law firm of Snell & Wilmer L.L.P., and one of the attorneys of record for Petitioner in the above-captioned matter. I make this Affidavit as verification of the Petition for Writ of Mandamus (Petition) filed concurrently herewith. I am over the age of eighteen (18) years, and am competent to testify to the matters stated herein.

2.     I make this Affidavit pursuant to NRS 15.010 and 34.030. The Petition I being verified by me as Petitioner's counsel because the facts upon which the Petition is based are within my personal knowledge and concern proceedings in which I was involved before the Second Judicial District Court.

3.     I have participated in the drafting and reviewing of the Petition and know the contents thereof. To the best of my knowledge, the Petition and the facts contained therein are true and correct, except those facts stated on information and belief which I believe to be true.

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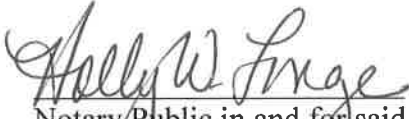
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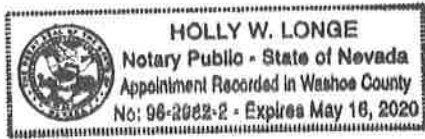
4. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 22nd day of June, 2017.

  
\_\_\_\_\_  
William E. Peterson

SUBSCRIBED AND SWORN to before me this 22nd day of June, 2017.

  
\_\_\_\_\_  
Notary Public in and for said  
County and State



## **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this petition for rehearing complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14 font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the petition exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 3,556 words.

3. Finally, I hereby certify that I have read this petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: June 23, 2017

SNELL & WILMER L.L.P.

By: /s/ William E. Peterson

---

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Carrie L. Parker, Bar No. 10952  
50 West Liberty Street, Suite 510  
Reno, Nevada 89501

*Attorneys for Petitioner*

### CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On June 23, 2017, I caused to be served a true and correct copy of the foregoing **PETITION FOR WRIT OF MANDAMUS** upon the following by the method indicated:

- ☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- ☒ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Reno, Nevada addressed as set forth below.
- ☐ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

The Honorable David A. Hardy  
Second Judicial District Court  
Department 15  
75 Court Street  
Reno, Nevada 89501

W. Chris Wicker  
Dane W. Anderson  
Woodburn and Wedge  
6100 Neil Road, Suite 500  
Reno, Nevada 89511

By: /s/ Holly W. Longe  
An employee of Snell & Wilmer L.L.P.

# EXHIBIT 1



IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE AMENDMENT OF ) ADKT. NO. 7  
NEVADA RULE OF CIVIL PROCEDURE 4(c) )  
TO PERMIT SERVICE OF PROCESS BY )  
A PERSON OVER THE AGE OF EIGHTEEN )

FILED

OCT 26 1978

Petition to Permit Service of Process

By a Person Over the Age of Eighteen

C.R. [Signature]  
CLERK OF SUPREME COURT

COMES NOW THE DIRECTOR OF THE ADMINISTRATIVE  
OFFICE OF THE COURTS, and respectfully submits the following  
administrative rule for adoption by the Supreme Court of Nevada.

I. GROUNDS

NRS 129.010 states that "All persons of the age of  
eighteen who are under no legal disability, shall be capable of  
entering into any contract, and shall be, to all intents and  
purposes, held and considered to be of lawful age." Nevada Rule  
of Civil Procedure 4(c) states that process must be served by a  
person over the age of twenty-one. In order to make the Nevada  
Rules of Civil Procedure consistent with Nevada Revised Statutes,  
we feel that it is necessary to amend the Nevada Rules of Civil  
Procedure, striking the age of twenty-one and inserting the age  
of eighteen in Rule 4(c).

II. PROPOSED RULE

Nevada Rules of Civil Procedure 4(c) would read as  
follows:

(c) By Whom Served: Process shall be served by the sheriff  
of the county where the defendant is found, or by his deputy, or  
by any citizen of the United States over eighteen years of age,  
except that a subpoena may be served as provided in Rule 45;  
where the service of process is made outside of the United States,  
after an order of publication, it may be served either by any

78-00006

citizen of the United States over eighteen years of age or by any resident of the country, territory, colony, or province, who is over eighteen years of age.

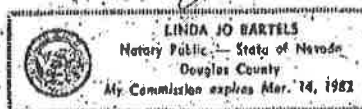
Respectfully submitted,

*John C. De Graff*  
John C. De Graff, Director  
Administrative Office of the Courts

STATE OF NEVADA )  
COUNTY OF CARSON CITY )

On this 25<sup>th</sup> day of October, 1978, personally appeared before me, a notary public, JOHN C. DE GRAFF, who duly signed this document in my presence.

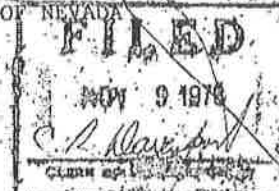
*Linda Jo Bartels*  
Linda Jo Bartels



ADKT No. 7

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF NEVADA )  
RULE OF CIVIL PROCEDURE 4(c) )



Order Amending Nevada Rule of Civil Procedure 4(c) to Permit  
Service of Process by Persons Over the Age of Eighteen

IT IS HEREBY ORDERED that Rule 4(c) of the Nevada Rules of Civil Procedure be, and the same hereby is, amended to read as follows:

(c) By Whom Served. Process shall be served by the Sheriff of the county where the defendant is found, or by his deputy, or by any citizen of the United States over [twenty-one] eighteen years of age, except that a subpoena may be served as provided in Rule 45, where the service of process is made outside of the United States; after an order of publication, it may be served either by any citizen of the United States over [twenty-one] eighteen years of age or by any resident of the country, territory, colony, or province, who is over [twenty-one] eighteen years of age.

IT IS HEREBY FURTHER ORDERED that this order shall become effective sixty (60) days after its entry. Publication of this order shall be made by the mailing of a copy by the clerk of this Court to each member of the State Bar of Nevada according to the clerk's official list of membership of such bar (which will include all district judges and district attorneys), and the certificate of the clerk of this Court as to the accomplishment of such mailing shall be conclusive evidence of the adoption and publication of the foregoing amended Rule, in accordance with the provisions of Nevada Revised Statute 2:120.

DATED THIS 9th day of November, 1978.

Batjer C.J.  
Batjer

Mowbray J.  
Mowbray

Thompson J.  
Thompson

Gunderson J.  
Gunderson

Makoukian J.  
Makoukian

78-00008

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF A STUDY  
COMMITTEE TO REVIEW THE NEVADA  
RULES OF CIVIL PROCEDURE.

ADKT 276

FILED

MAY 05 1998

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Bloom*  
CHIEF DEPUTY CLERK

P E T I T I O N

Whereas, the Nevada Rules of Civil Procedure were adopted by order of this court on August 29, 1952; and

Whereas, the Nevada Rules of Civil Procedure, when adopted, were based primarily upon the Federal Rules of Civil Procedure then in effect; and

Whereas, it does not appear that the Nevada Rules of Civil Procedure, as a whole, have been substantively reviewed or modified during the last ten years; and

Whereas, it appears that the Federal Rules of Civil Procedure have undergone frequent and substantial modifications in the last ten years; and


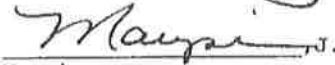
Whereas, the Nevada Rules of Civil Procedure are now substantially different from the Federal Rules of Civil Procedure in certain respects; and

Whereas, a review of the differences between the Nevada Rules of Civil Procedure and the Federal Rules of Civil Procedure, and an analysis of the factors underlying these differences will assist this Court in determining what modifications, if any, would improve the Nevada Rules of Civil Procedure;

98-00616

Now therefore, the undersigned Justices of the Nevada Supreme Court do hereby petition this Court on its Administrative Docket to establish a committee, to be appointed by the Chief Justice, for the purpose of analyzing the differences between the Nevada Rules of Civil Procedure and Federal Rules of Civil Procedure, and for the purpose of making recommendations to the Court with respect to modifying the Nevada Rules of Civil Procedure.

Dated this 5th day of May, 1998.

  
Shearing J.  
  
Maupin J.

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF A STUDY  
COMMITTEE TO REVIEW THE  
NEVADA RULES OF CIVIL  
PROCEDURE.

ADKT No. 276

FILED

JUL 26 2004

J. Rebaud  
CLERK OF THE SUPREME COURT

ORDER AMENDING THE NEVADA RULES OF CIVIL PROCEDURE

WHEREAS, in July 1999, this court appointed an Advisory Committee to study the Nevada Rules of Civil Procedure and to propose amendments or revision; and

WHEREAS, on March 19, 2003, the Committee submitted to this court a report of its activities and recommended specific amendments to the Nevada Rules of Civil Procedure; and

WHEREAS, this court solicited and considered public comment on the recommended amendments; and

WHEREAS, this court has concluded that amendment of the Nevada Rules of Civil Procedure is warranted, accordingly,

IT IS HEREBY ORDERED:

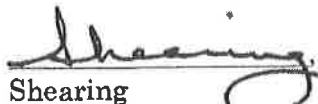
1. That the Nevada Rules of Civil Procedure shall be amended and shall read as set forth in Exhibit A.
2. That the Introductory Statement and Forms 3, 19 and 31 of Appendix of Forms to the Nevada Rules of Civil Procedure shall be amended and shall read as set forth in Exhibit B.
3. That a new Form 33 for Consent to Service by Electronic Means Under Rule 5 shall be added to the Appendix of Forms and shall read as set forth in Exhibit B.
4. That these rule amendments shall become effective January 1, 2005, and shall govern all proceedings brought after that date

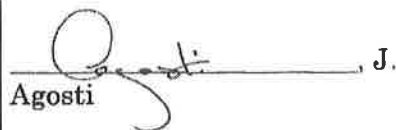
04-23812

and all further proceedings in actions pending on that date, unless in the opinion of the district court their application in a particular pending action would not be feasible or would work an injustice, in which event the former procedure applies.

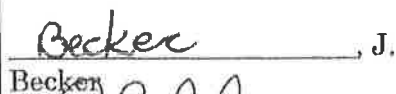
5. That the clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendments.

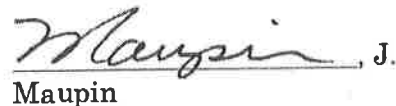
Dated this 26th day of July, 2004.

 C.J.  
Shearing

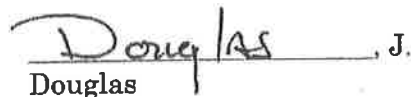
 J.  
Agosti

 J.  
Rose

 J.  
Becker

 J.  
Maupin

 J.  
Gibbons

 J.  
Douglas

cc: All District Court Judges  
All District Court Clerks  
David I. Nielsen, Discovery Commissioner, First District  
Wesley M. Ayers, Discovery Commissioner, Second District  
Chris Beecroft, Arbitration Commissioner, Eighth District  
Steven D. McMorris, Arbitration Commissioner, Ninth District  
Administrative Office of the Courts



## RULE 1

### EXHIBIT A

#### AMENDMENTS TO THE NEVADA RULES OF CIVIL PROCEDURE

##### I. SCOPE OF RULES—ONE FORM OF ACTION

###### RULE 1. SCOPE OF RULES

These rules govern the procedure in the district courts in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed *and administered* to secure the just, speedy, and inexpensive determination of every action.

###### DRAFTER'S NOTE 2004 AMENDMENT

*The amendment adds the words "and administered" to the second sentence consistent with the 1993 amendment to the federal rule. As explained in the advisory committee notes to the federal rule, the purpose of this revision is to emphasize the court's duty to ensure that litigation is resolved without undue cost or delay.*

###### RULE 2. ONE FORM OF ACTION

There shall be one form of action to be known as "civil action."

##### II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

###### RULE 3. COMMENCEMENT OF ACTION

A civil action is commenced by filing a complaint with the court.

###### RULE 4. PROCESS

(a) **Summons: Issuance.** Upon the filing of the complaint, the clerk shall forthwith issue a summons and deliver it to the plaintiff or to the plaintiff's attorney, who shall be responsible for service of the summons and a copy of the complaint. Upon request of the plaintiff, separate or additional summons shall issue against any defendants.

## RULE 4

(b) **Same: Form.** The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and county and the names of the parties, be directed to the defendant, 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] *the defendant must appear and defend, and shall notify [him that in case of his] the defendant that failure to do so will result in a judgment by default [will be rendered against him] against the defendant* for the relief demanded in the complaint. When service of the summons is made by publication, the summons shall, in addition to any special statutory requirements, also contain a brief statement of the object of the action substantially as follows: "This action is brought to recover a judgment dissolving the contract of marriage (or bonds of matrimony) existing between you and the plaintiff," or "foreclosing the mortgage of plaintiff upon the land (or other property) described in complaint," or as the case may be.

(c) **By Whom Served.** Process shall be served by the sheriff of the county where the defendant is found, or by [his] a deputy, or by any [citizen of the United States] *person who is not a party and who is over [eighteen] 18 years of age*, except that a subpoena may be served as provided in Rule 45; where the service of process is made outside of the United States, after an order of publication, it may be served either by any [citizen of the United States] *person who is not a party and who is over [eighteen] 18 years of age* or by any resident of the country, territory, colony or province, *who is not a party and who is over [eighteen] 18 years of age*.

(d) **Summons: Personal Service.** The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made by delivering a copy of the summons attached to a copy of the complaint as follows:

(1) **Service Upon Nevada Corporation.** If the suit is against a corporation formed under the laws of this state; to the president or other head of the corporation, secretary, cashier, managing agent, or resident agent thereof; provided, when for any reason service cannot be had in the manner hereinabove provided, then service may be made upon such corporation by delivering to the secretary of state, or [his] *the deputy secretary of state*, a copy of said summons attached to a copy of the

#### RULE 4

complaint, and by posting a copy of said process in the office of the clerk of the court in which such action is brought or pending; defendant shall have [twenty (20)] 20 days after such service and posting in which to appear and answer; provided, however, that before such service shall be authorized, plaintiff shall make or cause to be made and filed in such cause an affidavit setting forth the facts showing that personal service on or notice to the officers, managing agent or resident agent of said corporation cannot be had within the state; and provided further, that if it shall appear from such affidavit that there is a last known address of a known officer of said corporation outside the state, plaintiff shall, in addition to and after such service upon the secretary of state and posting, mail or cause to be mailed to such known officer at such address by registered mail, a copy of the summons and a copy of the complaint, and in all such cases defendant shall have [twenty (20)] 20 days from the date of such mailing within which to answer or plead.

**(2) Service Upon Foreign Corporation or Nonresident Entity.** If the suit is against a foreign corporation, or a nonresident partnership, joint-stock company or association, doing business and having a managing or business agent, cashier, or secretary within this state; to such agent, cashier, or secretary or to an agent designated for service of process as required by law; or in the event no such agent is designated, to the secretary of state or the deputy secretary of state, as provided by law.

**(3) Service Upon Minors.** If against a minor, under the age of [fourteen] 14 years, residing within this state, to such minor, personally, and also to [his] the minor's father, mother, or guardian; or if there be none within this state; then to any person having the care or control of such minor, or with whom [he] the minor resides, or in whose service [he] the minor is employed.

**(4) Service Upon Incompetent Persons.** If against a person residing within this state who has been judicially declared to be of unsound mind, or incapable of conducting his or her own affairs, and for whom a guardian has been appointed, to such person and also to his or her guardian.

#### RULE 4

**(5) Service Upon Local Governments.** If against a county, city, or town, to the [chairman] chairperson of the board of commissioners, president of the council or trustees, mayor of the city, or other head of the legislative department thereof.

**(6) Service Upon Individuals.** In all other cases to the defendant personally, or by leaving copies thereof at [his] the defendant'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 complaint to an agent authorized by appointment or by law to receive service of process.

**(e) Same: Other Service.**

**(1) Service by Publication.**

**(i) General.** [When] In addition to methods of personal service, when the person on whom service is to be made resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or [conceals himself] by concealment seeks to avoid the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the court or judge thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, and that [he] the defendant is a necessary or proper party to the action, such court or judge may grant an order that the service be made by the publication of summons.

Provided, when said affidavit is based on the fact that the party on whom service is to be made resides out of the state, and the present address of the party is unknown, it shall be a sufficient showing of such fact if the affiant shall state generally in such affidavit that at a previous time such person resided out of this state in a certain place (naming the place and stating the latest date known to affiant when such party so resided there); that such place is the last place in which such party resided to the knowledge of affiant; that such party no longer resides at such place; that affiant does not know the present place of residence of such party or where such party can be found; and that affiant does not know and has never been informed and has no reason to believe that such party now resides in this state; and, in such case, it shall be

#### RULE 4

presumed that such party still resides and remains out of the state, and such affidavit shall be deemed to be a sufficient showing of due diligence to find the defendant. This rule shall apply to all manner of civil actions, including those for divorce.

(ii) Property. In any action which relates to, or the subject of which is, real or personal property in this state in which such person defendant or corporation defendant has or claims a lien or interest, actual or contingent, therein, or in which the relief demanded consists wholly or in part of excluding such person or corporation from any interest therein, and the said defendant resides out of the state or has departed from the state, or cannot after due diligence be found within the state, or [conceals himself] by concealment seeks to avoid the service of summons, the judge or justice may make an order that the service be made by the publication of summons; said service by publication shall be made in the same manner as now provided in all cases of service by publication.

(iii) Publication. The order shall direct the publication to be made in a newspaper, published in the State of Nevada, to be designated by the court or judge thereof, for a period of [four] 4 weeks, and at least once a week during said time. In addition to in-state publication, where the present residence of the defendant is unknown the order may also direct that publication be made in a newspaper published outside the State of Nevada whenever the court is of the opinion that such publication is necessary to give notice that is reasonably calculated to give a defendant actual notice of the proceedings. In case of publication, where the residence of a nonresident or absent defendant is known, the court or judge shall also direct a copy of the summons and complaint to be deposited in the post office, directed to the person to be served at [his] the person's place of residence. [When publication is ordered, personal service of a copy of the summons and complaint, out of the state, shall be equivalent to completed service by publication and deposit in the post office, and the person so served shall have twenty days after said service to appear and answer or otherwise plead.] The service of summons shall be deemed complete in cases of publication at the expiration of [four] 4 weeks from the first publication, and in cases when a deposit of a copy of

#### RULE 4

the summons and complaint in the post office is also required, at the expiration of [four] 4 weeks from such deposit.

(2) Personal Service Outside the State. Personal service of summons upon a party outside this state may be made by delivering a copy of the summons, together with a copy of the complaint, to the party served in the manner provided by statute or rule of court for service upon a party of like kind within this state. [This method of service may be used only where the party being served has submitted to the jurisdiction of the courts of this state as provided by NRS 14.065.] The methods of service are cumulative, and may be utilized with, after, or independently of, other methods of service.

(3) Statutory Service. Whenever a statute provides for service, service may be made under the circumstances and in the manner prescribed by the statute.

(f) Territorial Limits of Effective Service. All process, including subpoenas, may be served anywhere within the territorial limits of the State and, when a statute or rule so provides, beyond the territorial limits of the State. A voluntary appearance of the defendant shall be equivalent to personal service of process upon [him] the defendant in this State.

(g) Return. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. Proof of service shall be as follows:

(1) If served by the sheriff or [his] deputy, the affidavit or certificate of such sheriff or deputy; or,

(2) If by any other person, [his] the affidavit thereof; or

(3) In case of publication, the affidavit of the publisher, [his] foreman or principal clerk, or other employee having knowledge thereof, showing the same, and an affidavit of a deposit of a copy of the summons in the post office, if the same shall have been deposited; or,

(4) The written admission of the defendant.

In case of service otherwise than by publication, the certificate or affidavit shall state the date, place and manner of service.

#### RULE 4

Failure to make proof of service shall not affect the validity of the service.

(h) **Amendment.** At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(i) **Summons: Time Limit for Service.** If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint [and the party on whose behalf such service was required cannot show good cause why such service was not made within that period], the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion, unless the party on whose behalf such service was required files a motion to enlarge the time for service and shows good cause why such service was not made within that period. If the party on whose behalf such service was required fails to file a motion to enlarge the time for service before the 120-day service period expires, the court shall take that failure into consideration in determining good cause for an extension of time. Upon a showing of good cause, the court shall extend the time for service and set a reasonable date by which service should be made.

#### DRAFTER'S NOTE 2004 AMENDMENT

The amendments to subdivisions (b), (d), (f) and (g) are technical.

The amendment to subdivision (c), adding the words "person who is not a party," clarifies that service may be made by any person who is over 18 years of age so long as he or she is also a disinterested person. The revised provision is consistent with the current federal rule and with the common law rule, followed in Nevada, requiring that service be made by a disinterested person, see *Sawyer v. Sugarless Shops*, 106 Nev. 265, 269-70, 792 P.2d 14, 17 (1990) ("Nevada has long had rules prohibiting service by a party. This was a common law requirement and has not been changed by [statute]." (citation omitted)).

#### RULE 5

The amendments to subdivision (e)(1)(iii) clarify that a publication order is not a precondition to personal service outside of the state by removing the fourth sentence of the former rule. The amendment to subdivision (e)(2) removes language that provided that personal service outside of Nevada could be used "only where the party being served has submitted to the jurisdiction of the courts of this state as provided by NRS 14.065." The revision corresponds to the 1995 amendments to NRS 14.065.

Subdivision (i) is similar to the federal rule except that the district court is limited to enlarging the time for service only upon a motion to enlarge the 120-day service period that demonstrates good cause why service was not made within the 120-day period. Thus, unlike the federal rule, the Nevada rule does not give the district court discretion to enlarge the time for service in the absence of a showing of good cause. Additionally, unlike the federal rule, the revised Nevada rule clarifies that in deciding whether there is good cause why service was not made within the 120-day period, the district court must consider whether the party on whose behalf such service was required filed a motion to enlarge the time for service within the 120-day period.

#### RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) **Service: When Required.** Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(b) **Same: How Made.** [Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon

West's Nevada Revised Statutes Annotated
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Nevada Rules of Court
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Nevada Rules of Civil Procedure (Refs & Annos)
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II. Commencement of Action; Service of Process, Pleadings, Motions, and Orders
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Rules of Civil Procedure, Rule 4

Rule 4. Process

Currentness

**(a) Summons: Issuance.** Upon the filing of the complaint, the clerk shall forthwith issue a summons and deliver it to the plaintiff or to the plaintiff's attorney, who shall be responsible for service of the summons and a copy of the complaint. Upon request of the plaintiff, separate or additional summons shall issue against any defendants.

As amended, eff. Feb. 11, 1986.

**Advisory Committee's Notes**

The federal rule is revised to delete the phrase providing that the summons shall be delivered "to the marshal or to a person specially appointed to serve it." As at present, the summons may be delivered to plaintiff's attorney or to whomever he designates.

**(b) Same: Form.** The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and county and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which the defendant must appear and defend, and shall notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. When service of the summons is made by publication, the summons shall, in addition to any special statutory requirements, also contain a brief statement of the object of the action substantially as follows: "This action is brought to recover a judgment dissolving the contract of marriage (or bonds of matrimony) existing between you and the plaintiff," or "foreclosing the mortgage of plaintiff upon the land (or other property) described in complaint," or as the case may be.

As amended, eff. Sept. 27, 1971; Jan. 1, 2005.

**Advisory Committee's Notes**

The federal rule was supplemented by addition of former NCL § 8575(2), providing that a summons to be published shall contain a brief statement of the object of the action. In 1971, this provision was amended to make clear that it did not dispense with any special statutory requirements.

(c) **By Whom Served.** Process shall be served by the sheriff of the county where the defendant is found, or by a deputy, or by any person who is not a party and who is over 18 years of age, except that a subpoena may be served as provided in Rule 45; where the service of process is made outside of the United States, after an order of publication, it may be served either by any person who is not a party and who is over 18 years of age or by any resident of the country, territory, colony or province, who is not a party and who is over 18 years of age.

As amended, eff. Jan. 8, 1979; eff. Jan. 1, 2005.

#### Advisory Committee's Notes

The first portion of NCL § 8578 is substituted for the federal rule, to retain existing law as to who may make service.

(d) **Summons: Personal Service.** The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made by delivering a copy of the summons attached to a copy of the complaint as follows:

(1) **Service Upon Nevada Corporation.** If the suit is against an entity or association formed under the laws of this state or registered to do business in this state, to the registered agent thereof or, if the entity or association is (i) a corporation, to any officer thereof; (ii) a general partnership, to any partner thereof; (iii) a limited partnership, to any general partner thereof; (iv) a member-managed limited-liability company, to any member thereof; (v) a manager-managed limited-liability company, to any manager thereof; (vi) a business trust, to any trustee thereof; (vii) a miscellaneous organization mentioned in NRS Chapter 81, to any officer or director thereof; provided, when for any reason service cannot be had in the manner hereinabove provided, then service may be made upon such entity by delivering to the secretary of state, or the deputy secretary of state, a copy of said summons attached to a copy of the complaint, and by posting a copy of said process in the office of the clerk of the court in which such action is brought or pending; defendant shall have 20 days after such service and posting in which to appear and answer; provided, however, that before such service shall be authorized, plaintiff shall make or cause to be made and filed in such cause an affidavit setting forth the facts showing that personal service on or notice to the entity or association cannot be had in the manner provided in this subsection within the state; and provided further, that if it shall appear from such affidavit that there is a last known address of a known officer, general partner, member, manager, trustee or director of said entity or association outside the state, plaintiff shall, in addition to and after such service upon the secretary of state and posting, mail or cause to be mailed to such known officer, general partner, member, manager, trustee or director at such address by registered or certified mail, a copy of the summons and a copy of the complaint, and in all such cases defendant shall have 20 days from the date of such mailing within which to answer or plead.

(2) **Service Upon Foreign Corporation or Nonresident Entity.** If the suit is against an unregistered foreign entity or association that has an officer, general partner, member, manager, trustee or director within this state, to such officer, general partner, member, manager, trustee or director or, if none, then service on such unregistered entity or association may be made by delivery to the secretary of state or the deputy secretary of state, in the manner and after affidavit as provided in subsection (d)(1) of this rule or otherwise as provided by law.

As amended, eff. March 16, 1964; Jan. 1, 2005; May 1, 2009.

**(3) Service Upon Minors.** If against a minor, under the age of 14 years, residing within this state, to such minor, personally, and also to the minor's father, mother, or guardian; or if there be none within this state; then to any person having the care or control of such minor, or with whom the minor resides, or in whose service the minor is employed.

**(4) Service Upon Incompetent Persons.** If against a person residing within this state who has been judicially declared to be of unsound mind, or incapable of conducting his or her own affairs, and for whom a guardian has been appointed, to such person and also to his or her guardian.

**(5) Service Upon Local Governments.** If against a county, city, or town, to the chairperson of the board of commissioners, president of the council or trustees, mayor of the city, or other head of the legislative department thereof.

**(6) Service Upon Individuals.** In all other cases to the defendant personally, or by leaving copies thereof at the defendant'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 complaint to an agent authorized by appointment or by law to receive service of process.

As amended, eff. March 16, 1964; Jan. 1, 2005.

#### Advisory Committee's Notes

Existing rules governing personal service were written into the federal rule in 1953 by the insertion of 1931 NCL § 8579. The provision for personal service upon an individual was broadened by adopting the provision for leaving copies as under federal practice. The copy of the complaint need not be certified. By amendment, effective March 16, 1964, provision was made in N.R.C.P. 4(d)(2) for effecting service upon a nonresident partnership doing business in Nevada.

#### **(c) Same: Other Service.**

##### **(1) Service by Publication.**

**(i) General.** In addition to methods of personal service, when the person on whom service is to be made resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or by concealment seeks to avoid the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the court or judge thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, and that the defendant is a necessary or proper party to the action, such court or judge may grant an order that the service be made by the publication of summons.

Provided, when said affidavit is based on the fact that the party on whom service is to be made resides out of the state, and the present address of the party is unknown, it shall be a sufficient showing of such fact if the affiant shall state

generally in such affidavit that at a previous time such person resided out of this state in a certain place (naming the place and stating the latest date known to affiant when such party so resided there); that such place is the last place in which such party resided to the knowledge of affiant; that such party no longer resides at such place; that affiant does not know the present place of residence of such party or where such party can be found; and that affiant does not know and has never been informed and has no reason to believe that such party now resides in this state; and, in such case, it shall be presumed that such party still resides and remains out of the state, and such affidavit shall be deemed to be a sufficient showing of due diligence to find the defendant. This rule shall apply to all manner of civil actions, including those for divorce.

**(ii) Property.** In any action which relates to, or the subject of which is, real or personal property in this state in which such person defendant or corporation defendant has or claims a lien or interest, actual or contingent, therein, or in which the relief demanded consists wholly or in part of excluding such person or corporation from any interest therein, and the said defendant resides out of the state or has departed from the state, or cannot after due diligence be found within the state, or by concealment seeks to avoid the service of summons, the judge or justice may make an order that the service be made by the publication of summons; said service by publication shall be made in the same manner as now provided in all cases of service by publication.

**(iii) Publication.** The order shall direct the publication to be made in a newspaper, published in the State of Nevada, to be designated by the court or judge thereof, for a period of 4 weeks, and at least once a week during said time. In addition to in-state publication, where the present residence of the defendant is unknown the order may also direct that publication be made in a newspaper published outside the State of Nevada whenever the court is of the opinion that such publication is necessary to give notice that is reasonably calculated to give a defendant actual notice of the proceedings. In case of publication, where the residence of a nonresident or absent defendant is known, the court or judge shall also direct a copy of the summons and complaint to be deposited in the post office, directed to the person to be served at the person's place of residence. The service of summons shall be deemed complete in cases of publication at the expiration of 4 weeks from the first publication, and in cases when a deposit of a copy of the summons and complaint in the post office is also required, at the expiration of 4 weeks from such deposit.

As amended, eff. March 1, 1997; Jan. 1, 2005.

**(2) Personal Service Outside the State.** Personal service of summons upon a party outside this state may be made by delivering a copy of the summons, together with a copy of the complaint, to the party served in the manner provided by statute or rule of court for service upon a party of like kind within this state. The methods of service are cumulative, and may be utilized with, after, or independently of, other methods of service.

As amended, eff. Aug. 8, 1994; Jan. 1, 2005.

**(3) Statutory Service.** Whenever a statute provides for service, service may be made under the circumstances and in the manner prescribed by the statute.

#### Advisory Committee's Notes

Existing rules governing service of process by publication are written into the federal rules, by insertion of 1931



NCL §§ 8582, 8583 and 1943 NCL § 8582.01, as subsecs. (1)(i), (ii) and (iii) of this rule. The inserted sections are identical with the existing statutes, except that 20 days is substituted for 30 days, as the period within which answer must be made. In addition, subsec. (2), adopted from Colorado, makes provision for personal service outside the state, in personal actions against residents, and in limited other instances. The Colorado rule is revised to make provision for affidavit and order prior to such service, inserting the same language as to affidavit and order as found in NCL § 8582. The rule also provides that the various methods of service are cumulative. If service by publication, and personal service outside the state under subsec. (2) are sought simultaneously, the requisite facts can be made to appear in one affidavit or separate affidavits.

**(f) Territorial Limits of Effective Service.** All process, including subpoenas, may be served anywhere within the territorial limits of the State and, when a statute or rule so provides, beyond the territorial limits of the State. A voluntary appearance of the defendant shall be equivalent to personal service of process upon the defendant in this State.

As amended, eff. Jan. 1, 2005.

#### Advisory Committee's Notes

The federal rule is revised to provide that all process may be served anywhere within the state, and to provide that a general appearance is the equivalent of personal service.

**(g) Return.** The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. Proof of service shall be as follows:

- (1) If served by the sheriff or deputy, the affidavit or certificate of such sheriff or deputy; or,
- (2) If by any other person, the affidavit thereof; or
- (3) In case of publication, the affidavit of the publisher, foreman or principal clerk, or other employee having knowledge thereof, showing the same, and an affidavit of a deposit of a copy of the summons in the post office, if the same shall have been deposited; or,
- (4) The written admission of the defendant.

In case of service otherwise than by publication, the certificate or affidavit shall state the date, place and manner of service. Failure to make proof of service shall not affect the validity of the service.

As amended, eff. Jan. 1, 2005.

**Advisory Committee's Notes**

The federal rule is revised to insert the provisions of NCL §§ 8588 and 8589, as to proof of service.

**(h) Amendment.** At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

**(i) Summons: Time Limit for Service.** If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion, unless the party on whose behalf such service was required files a motion to enlarge the time for service and shows good cause why such service was not made within that period. If the party on whose behalf such service was required fails to file a motion to enlarge the time for service before the 120-day service period expires, the court shall take that failure into consideration in determining good cause for an extension of time. Upon a showing of good cause, the court shall extend the time for service and set a reasonable date by which service should be made.

**Credits**

Added, eff. June 9, 1986. As amended, eff. Jan. 1, 2005; eff. May 1, 2009.

<Effective January 1, 1953>

**Editors' Notes**

**DRAFTER'S NOTES 2004 AMENDMENT**

The amendments to subdivisions (b), (d), (f) and (g) are technical.

The amendment to subdivision (c), adding the words "person who is not a party," clarifies that service may be made by any person who is over 18 years of age so long as he or she is also a disinterested person. The revised provision is consistent with the current federal rule and with the common law rule, followed in Nevada, requiring that service be made by a disinterested person, see *Sawyer v. Sugarless Shops*, 106 Nev. 265, 269-70, 792 P.2d 14, 17 (1990) ("Nevada has long had rules prohibiting service by a party. This was a common law requirement and has not been changed by [statute]." (citation omitted)).

The amendments to subdivision (e)(1)(iii) clarify that a publication order is not a precondition to personal service outside of the state by removing the fourth sentence of the former rule. The amendment to subdivision (e)(2) removes language that provided that personal service outside of Nevada could be used "only where the party being served has submitted to the jurisdiction of the courts of this state as provided by NRS 14.065." The revision corresponds to the 1995 amendments to NRS 14.065.

Subdivision (i) is similar to the federal rule except that the district court is limited to enlarging the time for service

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only upon a motion to enlarge the 120-day service period that demonstrates good cause why service was not made within the 120-day period. Thus, unlike the federal rule, the Nevada rule does not give the district court discretion to enlarge the time for service in the absence of a showing of good cause. Additionally, unlike the federal rule, the revised Nevada rule clarifies that in deciding whether there is good cause why service was not made within the 120-day period, the district court must consider whether the party on whose behalf such service was required filed a motion to enlarge the time for service within the 120-day period.

#### ADVISORY COMMITTEE'S NOTES

Existing statutes as to process are in general written into the federal rules, and to some extent supplemented.

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Current with amendments received through February 1, 2017.

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