

RULE 4. Process: Summons

(A) Summons: issuance. Upon the filing of the complaint the clerk shall forthwith issue a summons for service upon each defendant listed in the caption. Upon request of the plaintiff separate or additional summons shall issue at any time against any defendant.

(B) Summons: form; copy of complaint. The summons shall be signed by the clerk, contain the name and address of the court and the names and addresses 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 times within which these rules or any statutory provision require the defendant to appear and defend, and shall notify the defendant that in case of failure to do so, judgment by default will be rendered against the defendant for the relief demanded in the complaint. Where there are multiple plaintiffs or multiple defendants, or both, the summons may contain, in lieu of the names and addresses of all parties, the name of the first party on each side and the name and address of the party to be served.

A copy of the complaint shall be attached to each summons. The plaintiff shall furnish the clerk with sufficient copies.

(C) Summons: plaintiff and defendant defined. For the purpose of issuance and service of summons "plaintiff" shall include any party seeking the issuance and service of summons, and "defendant" shall include any party upon whom service of summons is sought.

(D) Waiver of service of summons. Service of summons may be waived in writing by any person entitled thereto under Rule 4.2 who is at least eighteen years of age and not under disability.

(E) Summons: time limit for service. If a service of the summons and complaint is not made upon a defendant within six months 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. This division shall not apply to out-of-state service pursuant to Rule 4.3 or to service in a foreign country pursuant to Rule 4.5.

(F) Summons: revivor of dormant judgment. Upon the filing of a motion to revive a dormant judgment the clerk shall forthwith issue a summons for service upon each judgment debtor. The summons, with a copy of the motion attached, shall be in the same form and served in the same manner as provided in these rules for service of summons with complaint attached, shall command the judgment debtor to serve and file a response to the motion within the same time as provided by these rules for service and filing of an answer to a complaint, and shall notify the judgment debtor that in case of failure to respond the judgment will be revived.

[Effective: July 1, 1970; amended effective July 1, 1971; July 1, 1973; July 1, 1975; July 1, 1984; July 1, 2008.]

Staff Note (July 1, 2008 Amendment)

The adoption of the Ohio Rules of Civil Procedure in 1970 left unclear the procedure and manner of service for a motion to revive a dormant judgment, formerly governed by R.C. 2325.15 and R.C. 2325.16 which referred to statutes superseded by the Rules. Division (F) of Rule 4 has been adopted to make clear that R.C. 2325.15 and R.C. 2325.16 are superseded by this new Rule. It requires, consistent with the practice under the prior statutes, that a motion to revive a dormant judgment be served upon the judgment debtor in the same manner as service of summons with complaint attached, affording the debtor an opportunity to show cause against the revivor.

RULE 4.1 Process: Methods of Service

All methods of service within this state, except service by publication as provided in Civ.R. 4.4(A), are described in this rule. Methods of out-of-state service and for service in a foreign country are described in Civ.R. 4.3 and 4.5.

(A) Service by clerk.

(1) Methods of service.

(a) Service by United States certified or express mail. Evidenced by return receipt signed by any person, service of any process shall be by United States certified or express mail unless otherwise permitted by these rules. The clerk shall deliver a copy of the process and complaint or other document to be served to the United States Postal Service for mailing at the address set forth in the caption or at the address set forth in written instructions furnished to the clerk as certified or express mail return receipt requested, with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered.

(b) Service by commercial carrier service. Unless the serving party furnishes written instructions to the clerk that service be made pursuant to Civ.R. 4.1(A)(1)(a), the clerk may make service of any process by a commercial carrier service utilizing any form of delivery requiring a signed receipt. The clerk shall deliver a copy of the process and complaint or other document to be served to a commercial carrier service for delivery at the address set forth in the caption or at the address set forth in written instructions furnished to the clerk, with instructions to the carrier to return a signed receipt showing to whom delivered, date of delivery, and address where delivered.

(2) Docket entries; Return. The clerk shall forthwith enter on the appearance docket the fact of delivery to the United States Postal Service for mailing or the fact of delivery to a specified commercial carrier service for delivery, and make a similar entry when the return receipt is received. If the return shows failure of delivery, the clerk shall forthwith notify the attorney of record or, if there is no attorney of record, the party at whose instance process was issued and enter the fact and method of notification on the appearance docket. The clerk shall file the return receipt or returned envelope in the records of the action.

(3) Costs. All postage and commercial carrier service fees shall be charged to costs. If the parties to be served are numerous and the clerk determines there is insufficient security for costs, the clerk may require the party requesting service to advance an amount estimated by the clerk to be sufficient to pay the costs of delivery.

(B) Personal service. When the plaintiff files a written request with the clerk for personal service, service of process shall be made by that method.

When process issued from the Supreme Court, a court of appeals, a court of common pleas, or a county court is to be served personally under this division, the clerk of the court shall deliver the process and sufficient copies of the process and complaint, or other document to be served, to the sheriff of the county in which the party to be served resides or may be found. When process issues from the municipal court, delivery shall be to the bailiff of the court for service on all defendants who reside or may be found within the county or counties in which that court has territorial jurisdiction and to the sheriff of any other county in this state for service upon a defendant who resides in or may be found in that other county. In the alternative, process issuing from any of these courts may be delivered by the clerk to any person not less than eighteen years of age, who is not a party and who has been designated by order of the court to make personal service of process under this division. The person serving process shall locate the person to be served and shall tender a copy of the process and accompanying documents to the person to be served. When the copy of the process has been served, the person serving process shall endorse that fact on the process and return it to the clerk, who shall make the appropriate entry on the appearance docket.

When the person serving process is unable to serve a copy of the process within twenty-eight days, the person shall endorse that fact and the reasons therefor on the process and return the process and copies to the clerk who shall make the appropriate entry on the appearance docket. In the event of failure of service, the clerk shall follow the notification procedure set forth in division (A)(2) of this rule. Failure to make service within the twenty-eight day period and failure to make proof of service do not affect the validity of the service.

(C) Residence service. When the plaintiff files a written request with the clerk for residence service, service of process shall be made by that method.

When process is to be served under this division, deliver the process and sufficient copies of the process and complaint, or other document to be served, to the sheriff of the county in which the party to be served resides or may be found. When process issues from the municipal court, delivery shall be to the bailiff of the court for service on all defendants who reside or may be found within the county or counties in which that court has territorial jurisdiction and to the sheriff of any other county in this state for service upon a defendant who resides in or may be found in that county. In the alternative, process may be delivered by the clerk to any person not less than eighteen years of age, who is not a party and who has been designated by order of the court to make residence service of process under this division. The person serving process shall effect service by leaving a copy of the process and the complaint, or other document to be served, at the usual place of residence of the person to be served with some person of suitable age and discretion then residing therein. When the copy of the process has been served, the person serving process shall endorse that fact on the process and return it to the clerk, who shall make the appropriate entry on the appearance docket.

When the person serving process is unable to serve a copy of the process within twenty-eight days, the person shall endorse that fact and the reasons therefor on the process, and return the process and copies to the clerk, who shall make the appropriate entry on the appearance docket. In the event of failure of service, the clerk shall follow the notification procedure set forth in division (A)(2) of this rule. Failure to make service within the twenty-eight-day period and failure to make proof of service do not affect the validity of service.

[Effective: July 1, 1970; amended effective July 1, 1971; July 1, 1980; July 1, 1997; July 1, 2012; July 1, 2016.]

Staff Note (July 1, 1997 Amendment)

Rule 4.1 Process: Methods of Service

Prior to the 1997 amendment, service of process under this rule was permitted only by certified mail. It appears that service of process by express mail, i.e. as that sort of mail is delivered by the United States Postal Service, can always be obtained return receipt requested, and thus could accomplish the purpose of notification as well as certified mail. The amendment provides for this additional option for service.

Other amendments to this rule are nonsubstantive grammatical or stylistic changes, including lettering of the divisions (A-C) in place of the previous numbering (1-3).

Staff Note (July 1, 2012 Amendment)

Rule 4.1(A) is subdivided and amended to permit the clerk to make service of process using a commercial carrier service to make delivery by any method requiring a signed receipt. A "signed receipt" includes the return and filing of an electronic image of the signature. The amendment also removes the "by mail" limitation to the clerk's method of notifying plaintiff or plaintiff's attorney of a failure of delivery.

Divisions (B) and (C) are amended to make clear that the methods of service of process permitted to be made by a person designated by the court are limited to personal service and residence service.

Rule 4.1(C), which describes residence service, is also amended to track and incorporate where applicable the language of Civ.R. 4.1(B) which describes personal service, clarifying which portions of the two methods are the same and which portions are different.

Staff Notes (July 1, 2016 Amendment)

Division 4.1(A)(1)(b) of this rule was adopted in 2012 to provide the clerk with an option to make service of process by a commercial carrier service as an alternative to service by United States certified or express mail. Under certain circumstances, the serving party may prefer that service be made by U.S. mail. Therefore, the provisions of Civ.R. 4.1(A)(1)(b) are amended to permit the serving party to furnish written instructions to the clerk that service be made by United States certified or express mail pursuant to Civ.R. 4.1(A)(1)(a), in which case the commercial carrier option is not available to the clerk for the initial attempt to make service of process.

RULE 4.2 Process: Who May be Served

Service of process pursuant to Civ.R. 4 through Civ.R. 4.6, except service by publication as provided in Civ.R. 4.4(A), shall be made as follows:

(A) Upon an individual, other than a person under sixteen years of age or an incompetent person, by serving the individual;

(B) Upon a person under sixteen years of age by serving either the person's guardian or any one of the following persons with whom the person to be served lives or resides: a parent or the individual having the care of the person; or by serving the person if the person neither has a guardian nor lives or resides with a parent or a person having his or her care;

(C) Upon an incompetent person by serving either the incompetent's guardian or the person designated in division (E) of this rule, but if no guardian has been appointed and the incompetent is not under confinement or commitment, by serving the incompetent;

(D) Upon an individual confined to a penal institution of this state or of a subdivision of this state by serving the individual, except that when the individual to be served is a person under sixteen years of age, the provisions of division (B) of this rule shall be applicable;

(E) Upon an incompetent person who is confined in any institution for the mentally ill or mentally deficient or committed by order of court to the custody of some other institution or person by serving the superintendent or similar official of the institution to which the incompetent is confined or committed or the person to whose custody the incompetent is committed;

(F) Upon a corporation either domestic or foreign: by serving the agent authorized by appointment or by law to receive service of process; or by serving the corporation at any of its usual places of business by a method authorized under Civ.R. 4.1(A)(1); or by serving an officer or a managing or general agent of the corporation;

(G) Upon a limited liability company by serving the agent authorized by appointment or by law to receive service of process; or by serving the limited liability company at any of its usual places of business by a method authorized under Civ.R. 4.1(A)(1); or by serving a manager or member;

(H) Upon a partnership, a limited partnership, or a limited partnership association by serving the entity at any of its usual places of business by a method authorized under Civ.R. 4.1(A)(1) or by serving a partner, limited partner, manager, or member;

(I) Upon an unincorporated association by serving it in its entity name at any of its usual places of business by a method authorized under Civ.R. 4.1(A)(1); or by serving an officer of the unincorporated association;

(J) Upon a professional association by serving the association in its corporate name at the place where the corporate offices are maintained by a method authorized under Civ.R. 4.1(A)(1); or by serving a shareholder;

(K) Upon this state or any one of its departments, offices and institutions as defined in division (C) of section 121.01 of the Revised Code, by serving the officer responsible for the administration of the department, office or institution or by serving the attorney general of this state;

(L) Upon a county or upon any of its offices, agencies, districts, departments, institutions or administrative units, by serving the officer responsible for the administration of the office, agency, district, department, institution or unit or by serving the prosecuting attorney of the county;

(M) Upon a township by serving one or more of the township trustees or the township clerk or by serving the prosecuting attorney of the county in which the township is located, unless the township is organized under Chapter 504. of the Revised Code, in which case service may be made upon the township law director;

(N) Upon a municipal corporation or upon any of its offices, departments, agencies, authorities, institutions or administrative units by serving the officer responsible for the administration of the office, department, agency, authority, institution or unit or by serving the city solicitor or comparable legal officer;

(O) Upon any governmental entity not mentioned above by serving the person, officer, group or body responsible for the administration of that entity or by serving the appropriate legal officer, if any, representing the entity. Service upon any person who is a member of the "group" or "body" responsible for the administration of the entity shall be sufficient.

Service of process pursuant to Civ.R. 4 through 4.6, except service by publication as provided in Civ.R. 4.4(A), may be made upon an address confidentiality "program participant," as defined by R.C. 111.41(G), by serving the Secretary of State.

[Effective: July 1, 1970; amended effective July 1, 1971; July 1, 1996; July 1, 1997; July 1, 2009; July 1, 2012; July 1, 2016; July 1, 2017.]

Staff Note (July 1, 2017 Amendment)

At the request made by the Legislature in Section 3 of 2016 Sub.H.B. No. 359, the 2017 amendment adds a final paragraph to the rule to allow service of process to be made upon an address confidentiality "program participant," as defined by R.C. 111.41(G), by serving the Secretary of State as the program participant's agent. "Program participants" include victims of domestic violence and other persons who would be at risk of harm should their addresses be disclosed.

Staff Note (July 1, 2012 Amendment)

Divisions (F) through (J) are amended to permit service of process to be made at a place of business not only by United States certified or express mail as previously authorized, but also by a commercial carrier service under the 2012 amendments to Civ.R. 4.1(A)(1).

Staff Note (July 1, 2009 Amendment)

Division (G) is inserted into Civ.R. 4.2 to provide for service on a limited liability company in a manner similar to the provisions of Civ.R. 4.2(F) for service upon a corporation, and the remaining divisions of the rule are re-lettered.

Staff Note (July 1, 1997 Amendment)

Rule 4.2 Process: Who may be served

Prior to the 1997 amendment, service of process under this rule was permitted only by certified mail. It appears that service of process by express mail, i.e. as that sort of mail is delivered by the United States Postal Service, can always be obtained return receipt requested, and thus could accomplish the purpose of notification equally well as certified mail. Therefore, the amendment provides for this additional option for service.

Other amendments to this rule are nonsubstantive grammatical or stylistic changes, including lettering of the divisions (A-N) in place of the previous numbering (1-14).

Staff Note (July 1, 1996 Amendment)

Rule 4.2 Process: Who May be Served

In 1991, the General Assembly enacted Chapter 504 of the Ohio Revised Code to give townships an option to organize the "limited self-government form" of government. Townships electing this form of government are required by law to appoint a law director who "shall be the legal advisor to the board of township trustees ... and all other township officers." R.C. 504.15. Upon attaining Chapter 504 status, then, the prosecuting attorney of the county in which the township is located no longer serves as the "legal advisor" of the township. The amendment recognizes this statutory development and should facilitate service of process in actions against Chapter 504 townships.

Staff Note (July 1, 2016 Amendments)

Division 4.2(B) of the rule is amended to substitute "a parent" for "father" and "mother" as a person upon whom service of process may be made to effectuate service of process upon a person under sixteen years of age. The amendment is made in accordance with the July 26, 2015 Administrative Action of the Ohio Supreme Court, *06/26/2015 Administrative Actions*, 2015-Ohio-2568, which ordered that the Ohio Rules of Civil Procedure be construed and amended as gender neutral where appropriate to comply with the decision of U.S. Supreme Court in *Obergefell v. Hodges*, 576 U.S. ___, 135 S.Ct. 2584 (2015).

RULE 4.3 Process: Out-of-State Service

(A) When service permitted. Service of process may be made outside of this state, as provided in this rule, in any action in this state, upon a person who, at the time of service of process, is a nonresident of this state or is a resident of this state who is absent from this state. "Person" includes an individual, an individual's executor, administrator, or other personal representative, or a corporation, partnership, association, or any other legal or commercial entity, who, acting directly or by an agent, has caused an event to occur out of which the claim that is the subject of the complaint arose, from the person's:

- (1) Transacting any business in this state;
- (2) Contracting to supply services or goods in this state;
- (3) Causing tortious injury by an act or omission in this state, including, but not limited to, actions arising out of the ownership, operation, or use of a motor vehicle or aircraft in this state;
- (4) Causing tortious injury in this state by an act or omission outside this state if the person regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;
- (5) Causing injury in this state to any person by breach of warranty expressly or impliedly made in the sale of goods outside this state when the person to be served might reasonably have expected the person who was injured to use, consume, or be affected by the goods in this state, provided that the person to be served also regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;
- (6) Having an interest in, using, or possessing real property in this state;
- (7) Contracting to insure any person, property, or risk located within this state at the time of contracting;
- (8) Living in the marital relationship within this state notwithstanding subsequent departure from this state, as to all obligations arising for spousal support, custody, child support, or property settlement, if the other party to the marital relationship continues to reside in this state;
- (9) Causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when the person to be served might reasonably have expected that some person would be injured by the act in this state;

(10) Causing tortious injury to any person by a criminal act, any element of which takes place in this state, that the person to be served commits or in the commission of which the person to be served is guilty of complicity.

(B) Methods of service.

(1) Service by clerk. The clerk may make service of process or other documents to be served outside the state in the same manner as provided in Civ.R. 4.1(A)(1) through Civ.R. 4.1(A)(3).

(2) Personal service. When ordered by the court, a "person" as defined in division (A) of this rule may be personally served with a copy of the process and complaint or other document to be served. Service under this division may be made by any person not less than eighteen years of age who is not a party and who has been designated by order of the court to make personal service of process. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person who will make the service. The person serving process shall locate the person to be served and shall tender a copy of the process and accompanying documents to the person to be served.

Proof of service may be made as prescribed by Civ.R. 4.1 (B) or by order of the court. Failure to make service within the twenty-eight-day period and failure to make proof of service do not affect the validity of service.

[Effective: July 1, 1970; amended effective July 1, 1971; July 1, 1980; July 1, 1988; July 1, 1991; July 1, 1997; July 1, 2012; July 1, 2014.]

Staff Note (July 1, 2014 Amendments)

Rule 4.3(B)(2) is amended to be consistent with the provisions of Civ.R. 4.1(B) relating to personal service within the state which specify, "The person serving process shall locate the person to be served and shall tender a copy of the process and accompanying documents to the person to be served" and "Failure to make service within the twenty-eight-day period and failure to make proof of service do not affect the validity of service."

Staff Note (July 1, 2012 Amendment)

Rule 4.3(B) is amended to incorporate, rather than restate, the provisions of amended Civ.R. 4.1(A)(1) through Civ.R. 4.1(A)(3) for service by the clerk. The substantive changes (1) permit the clerk to make service of process outside the state using a commercial carrier service to make delivery by any method requiring a signed receipt and (2) make clear that the method of service of process permitted to be made by a person designated by the court is limited to personal service.

Also eliminated is a prior provision permitting service outside the state to be completed by the filing of an affidavit when service by certified or express mail is returned showing failure of delivery. Rules 4.6(C) and (D) address returns of service showing "refused" and "unclaimed" when service is attempted by U.S. mail under Civ.R. 4.1(A)(1)(a), and those provisions apply to service attempted outside the state by that method.

Staff Note (July 1, 1997 Amendment)

Rule 4.3 Process: Out-of-state service

Prior to the 1997 amendment, service of process under this rule was permitted only by certified mail. It appears that service of process by express mail, i.e. as that sort of mail is delivered by the United States Postal Service, can always be obtained return receipt requested, and thus could accomplish the purpose of notification equally well as certified mail. Therefore, the amendment provides for this additional option for service.

Other amendments to this rule are nonsubstantive grammatical or stylistic changes.

RULE 4.4 Process: Service by Publication

(A) Residence unknown.

(1) Service by Publication in a Newspaper. Except in an action or proceeding governed by division (A)(2) of this rule, when service of process is required upon a party whose residence is unknown, service shall be made by publication in actions where such service is authorized by law. Before service by publication can be made, an affidavit of the party requesting service or that party's counsel shall be filed with the court. The affidavit shall aver that service of summons cannot be made because the residence of the party to be served is unknown to the affiant, all of the efforts made on behalf of the party to ascertain the residence of the party to be served, and that the residence of the party to be served cannot be ascertained with reasonable diligence.

Upon the filing of the affidavit, the clerk shall cause service of notice to be made by publication in a newspaper of general circulation in the county in which the action or proceeding is filed. If no newspaper is published in that county, then publication shall be in a newspaper published in an adjoining county. The publication shall contain the name and address of the court, the case number, the name of the first party on each side, and the name and last known address, if any, of the person or persons whose residence is unknown. The publication also shall contain a summary statement of the object of the pleading or other document seeking relief against a party whose residence is unknown, and a summary statement of the demand for relief, and shall notify the party to be served that such party is required to answer or respond either within twenty-eight days after the publication or at such other time after the publication that is set as the time to appear or within which to respond after service of such pleading or other document. The publication shall be published at least once a week for six successive weeks unless publication for a lesser number of weeks is specifically provided by law. Service of process shall be deemed complete at the date of the last publication.

After the last publication, the publisher or its agent shall file with the court an affidavit showing the fact of publication together with a copy of the notice of publication. The affidavit and copy of the notice shall constitute proof of service of process.

(2) Service by Publication by Posting and Mail.

(a) Actions and Proceedings other than Civil Protection Order Proceedings. In divorce, annulment, or legal separation actions, and in actions pertaining to the care, custody, and control of children whose parents are not married, and in all post-decree proceedings:

- (i) if the residence of the party upon whom service is sought is unknown; and,
- (ii) if the matter is not governed by Civ. R. 65.1; and,
- (iii) if the party requesting service upon another party is proceeding with a poverty affidavit;

service by publication shall be made by posting and mail. Before service by posting and mail can be made under this division (A)(2)(a), an affidavit of the party requesting service or that party's counsel shall be filed with the court. The affidavit shall contain the same averments required by division (A)(1) of this rule and, in addition, shall set forth the defendant's last known address.

Upon the filing of the affidavit, the clerk shall cause service of notice to be made by posting in a conspicuous place in the courthouse or courthouses in which the general and domestic relations divisions of the court of common pleas for the county are located and in two additional public places in the county that have been designated by local rule for the posting of notices pursuant to this rule. Alternatively, the postings, except for protection orders issued pursuant to Civ.R. 65.1, under this division (A)(2)(a), may be made on the website of the clerk of courts, if available, in a section designated for such purpose. The notice shall contain the same information required by division (A)(1) of this rule to be contained in a newspaper publication. The notice shall be posted for six successive weeks.

(b) Civil Protection Order Proceedings. In civil protection order proceedings where the party's residence upon whom service is sought is unknown, service may be made by posting and mail without the necessity of a poverty affidavit. Before service by posting and mail can be made under this division (A)(2)(b), an affidavit of the party requesting service or that party's counsel shall be filed with the court. The affidavit shall contain the same averments required by division (A)(1) of this rule and, in addition, shall set forth the last known address of the party to be served.

Upon the filing of the affidavit, the clerk shall cause service of notice to be made by posting in a conspicuous place in the courthouse or courthouses within the county where Civ.R. 65.1 civil protection order proceedings may be filed and in two additional public places in the county that have been designated by local rule for the posting of notices pursuant to this rule. The postings under this division (A)(2)(b) shall not be made on the website of the clerk of courts. The notice shall contain the same information required by division (A)(1) of this rule to be contained in a newspaper publication. The notice shall be posted for six successive weeks.

(c) Additional Requirement for Mailing. When service by publication is sought by posting and mail under either division (A)(2)(a) or division (A)(2)(b) of this rule, the clerk shall also cause the documents for service to be mailed by United States ordinary mail, address correction requested, to the last known address of the party to be served. The clerk shall obtain a certificate of mailing from the United States Postal Service. If the clerk is notified of a corrected or forwarding address of the party to be served within the six-week period that notice is posted pursuant to division (A)(2)(a) or division (A)(2)(b) of this rule, the clerk shall cause the documents for service to be mailed to the corrected or forwarding address. The clerk shall note the name, address, and date of each mailing on the docket.

(d) Docket Entry of Posting; Completion of Service. After the last week of posting under either division (A)(2)(a) or division (A)(2)(b) of this rule, the clerk shall note on the docket where and when notice was posted. Service shall be complete upon the entry of posting.

(B) Residence known. If the residence of a party to be served is known, and the action is one in which service by publication is authorized by law, service of process shall be effected by a method other than by publication as provided by:

- (1) Civ.R. 4.1, if the party to be served is a resident of this state,
- (2) Civ.R.4.3(B) if party to be served is not a resident of this state, or
- (3) Civ.R.4.5, in the alternative, if service on party to be served is to be effected in a foreign country.

If service of process cannot be effected under the provisions of this subdivision or Civ.R.4.6(C) or Civ.R.4.6(D), service of process shall proceed by publication.

[Effective: July 1, 1970; amended effective July 1, 1971; July 1, 1991; July 1, 2012; July 1, 2013; July 1, 2016; July 1, 2018.]

Staff Notes (July 1, 2018 Amendments)

Background to the July 1, 2018 Amendments to Civ.R. 4.4.

As initially adopted in 1970, Civ.R. 4.4(A) provided that when the defendant's residence was unknown, service could be obtained by publication, but only by publication in a newspaper.

In 1991, Civ.R. 4.4(A) was divided into two divisions -- Civ.R. 4.4(A)(1) set forth essentially the same "publication by newspaper" provisions contained in the then-existing rule, while a new Civ.R.4.4(A)(2) allowed an indigent plaintiff in a divorce, annulment, or legal separation action to obtain service by publication "by posting and mail" when the defendant's residence is unknown. In 2013, the application of the publication "by posting and mail" provisions of Civ.R. 4.4(A)(2) were expanded to include an indigent plaintiff in actions pertaining to the care, custody, and control of children whose parents are not married, and in all post-decree proceedings; and a provision for posting at a website of the clerk of courts was added.

In 2016, the application of the publication "by posting and mail" provisions of Civ.R. 4.4(A)(2) were again expanded to include an indigent plaintiff in a civil protection order proceeding pursuant to Civ.R. 65.1; but such civil protection order plaintiffs were precluded from publishing protection orders at a website of the clerk of courts since such publication is prohibited by 18 U.S.C. Section 2265(d)(3).

After the adoption of the 2016 amendments to the rule, the Supreme Court Advisory Committee on Domestic Violence requested that the rule be further amended to allow any petitioner in a civil protection order proceeding, regardless of indigency, to make use of the publication "by posting and mail" provisions of Civ.R. 4.4(A)(2) when the defendant's residence is unknown.

The July 1, 2018 amendments amend and reorganize the rule to eliminate confusion resulting from the existing structure and terminology of its provisions, and to address and account for a number of matters related to its application, including the following:

- Service by publication may be sought by parties other than plaintiffs and may be sought against parties other than defendants, particularly in divorce, annulment, or legal separation actions; in actions pertaining to the care, custody, and control of children whose parents are not married; in post-decree proceedings in such actions; and in civil protection order proceedings governed by Civ.R. 65.1;
- Service by publication may be sought for the service of documents other than complaints -- such as petitions, motions, and orders -- in divorce, annulment, or legal separation actions; in actions pertaining to the care, custody, and control of children whose parents are not married; in post-decree proceedings in such actions; and in civil protection order proceedings governed by Civ.R. 65.1;
- A time other than within twenty-eight days of service may be required to respond or appear in response to service of a document other than a complaint -- such as service of a petition, motion, or order in divorce, annulment, or legal separation actions; in actions pertaining to the care, custody, and control of children whose parents are not married; in post-decree proceedings in such actions; and in civil protection order proceedings governed by Civ.R. 65.1.

Although the basis for the 1991 exemption from the payment of court costs due to indigency, and the basis provided by R.C. 3113.31(J) for the exemption from the payment of court costs in civil protection order proceedings are decidedly different, part of the rationale which apparently supported the 1991 adoption of Civ.R. 4.4(A)(2) justifies permitting parties in civil protection order proceedings, regardless of indigency, to obtain service by publication by posting and mail, i.e., those parties are not required to pay the substantial costs of service by publication in a newspaper. See *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971) and *State ex rel. Blevins, v. Mowery*, 45 Ohio St.3d 20, 543 N.E.2d 99 (1989); also see the Staff Notes to the 1998 amendments to Juv.R. 16.

Division (A)(1). Service by Publication in a Newspaper.

The rule is amended by replacing the terms “plaintiff” and “defendant” with the terms “party requesting service” and “party to be served.”

The rule is amended by replacing “where the complaint is filed” with “where the action or proceeding is filed.”

The rule is amended by replacing “object of the complaint” with “object of the pleading or other document.”

The rule is amended to provide “within twenty-eight days after the publication or at such other time after the publication that is set as the time to appear or within which to respond after service of such pleading or other document.”

Division (A)(2). Service by Publication by Posting and Mail.

The rule is amended by further sub-dividing it into division (A)(2)(a) addressing service by publication by posting and mail in actions or proceedings other than civil protection order proceedings, and division (A)(2)(b) addressing service by publication by posting and mail in civil protection order proceedings; division (A)(2)(c) addresses the additional requirement for mailing; and division (A)(2)(d) addresses the docketing of the entry of posting and completion of service.

The rule is amended by replacing “proceeding in forma pauperis” with “proceeding with a poverty affidavit.”

The rule is amended by replacing the “defendant” with the “party upon whom service is sought.”

Division (A)(2)(b). Civil Protection Order Proceedings.

The new division (A)(2)(b) contains the same general requirements of division (A)(2)(a) except:

- The requirement of a poverty affidavit is eliminated.
- “Courthouses within which domestic relations divisions * * * are located” is replaced with “Courthouses within the county where Civ.R. 65.1 civil protection order proceedings may be filed[;]”
- Posting on the website of the clerk of courts is prohibited.

Division (A)(2)(c). Additional Requirements for Mailing.

The rule is amended by replacing “complaint and summons” with “documents for service.”

The rule is amended by replacing “defendant’s last known address” with “last known address of the party to be served.”

Division (B). Residence known.

The rule is amended by replacing “defendant” with “party to be served.”

Staff Note (July 1, 2016 Amendment)

Division (A): Residence unknown.

Division (A)(2) of this rule is amended to provide that publication by posting service of process is an appropriate method of service in Civ.R. 65.1 civil protection order proceedings under the conditions described in that division of the rule. As stated in division (A)(2) of the rule, a petitioner who is proceeding in forma pauperis and who requests publication by posting service of process must file an affidavit with the court containing the same averments required by division (A)(1) of the rule, i.e., that service of summons cannot be made because the residence of the defendant is unknown to the affiant, all of the efforts made on behalf of the party to ascertain the residence of the defendant, and that the residence of the defendant cannot be ascertained with reasonable diligence.

The service of process by publication by way of posting of a civil protection order shall not impact the prompt entry of such an order into the protection order file of the National Crime Information Center. It is to be noted that the alternative method of posting on the website of the clerk of courts is not available for service of protection orders issued pursuant to Civ.R. 65.1.

RULE 4.5 Process: Alternative Provisions for Service in a Foreign Country

When Civ. R. 4.3 or Civ. R. 4.4 or both allow service upon a person outside this state and service is to be effected in a foreign country, service of the summons and complaint shall be made as provided in this rule.

(A) Hague Convention Signatory. If the foreign country is a signatory to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, service shall be pursuant to a method allowed by the Articles of that Convention, including any method allowed by Article 8 or Article 10 to which the foreign country has not objected in accordance with Article 21.

(B) Other cases. In all cases to which division (A) does not apply, service may be made in a manner provided by Civ. R. 4.3(B)(1) or, if applicable, Civ. R. 4.4, and may also be made:

(1) In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction when service is calculated to give actual notice;

(2) As directed by the foreign authority in response to a letter rogatory when service is calculated to give actual notice;

(3) Upon an individual by delivery to him or her personally;

(4) Upon a corporation or partnership or association by delivery to an officer, a managing or general agent;

(5) By any form of delivery requiring a signed receipt, when the clerk of the court addresses the delivery to the party to be served and delivers the summons to the person who will make the service;

(6) As directed by order of the court.

Service under division (B)(3) or (B)(6) of this rule may be made by any person not less than eighteen years of age who is not a party and who has been designated by order of the court, or by the foreign court. On request the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

(C) Return. Proof of service may be made as prescribed by Civ.R. 4.1(B), or by the law of the foreign country, or by order of the court. Failure to make service within the twenty-eight-day period and failure to make proof of service do not affect the validity of service.

When delivery is made pursuant to division (B)(5) of this rule, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

[Effective: July 1, 1970; amended effective July 1, 1997; July 1, 2012; July 1, 2014.]

Staff Note (July 1, 2014 Amendments)

Rule 4.5(C) is amended to be consistent with the provision of Civ.R. 4.1(B) relating to personal service within the state which specifies, "Failure to make service within the twenty-eight-day period and failure to make proof of service do not affect the validity of service."

Staff Note (July 1, 2012 Amendment)

Rule 4.5 is amended to provide that when service is to be made in a foreign country that is a signatory to the Hague Convention, the provisions of that Convention supersede the other methods for service in a foreign country that are described in the rule. Pursuant to the 2012 amendments to Civ.R. 4.1(A) and Civ.R. 4.3(B)(1), delivery by commercial carrier service, requiring a signed receipt, is also authorized when the Hague Convention does not apply.

Staff Note (July 1, 1997 Amendment)

Rule 4.5 Process: Alternative Provisions for Service in a Foreign Country

The 1997 amendment changed a cross-reference in division (B) necessitated by the relettering of Civ. R. 4.1, also effective July 1, 1997. Other amendments to this rule are nonsubstantive grammatical or stylistic changes.

RULE 4.6 Process: Limits; Amendment; Service Refused; Service Unclaimed

(A) Limits of effective service. All process may be served anywhere in this state and, when authorized by law or these rules, may be served outside this state.

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

(C) Service refused. If attempted service of process by United States certified or express mail or by commercial carrier service within or outside the state is refused, and the certified or express mail envelope or return of the commercial carrier shows such refusal, or the return of the person serving process by personal service within or outside the state or by residence service within the state specifies that service of process has been refused, the clerk shall forthwith notify the attorney of record or, if there is no attorney of record, the party at whose instance process was issued and enter the fact and method of notification on the appearance docket. If the attorney, or serving party, after notification by the clerk, files with the clerk a written request for ordinary mail service, the clerk shall send by United States ordinary mail a copy of the summons and complaint or other document to be served to the defendant at the address set forth in the caption, or at the address set forth in written instructions furnished to the clerk. The mailing shall be evidenced by a certificate of mailing which shall be completed and filed by the clerk. Answer day shall be twenty-eight days after the date of mailing as evidenced by the certificate of mailing. The clerk shall endorse this answer date upon the summons which is sent by ordinary mail. Service shall be deemed complete when the fact of mailing is entered of record. Failure to claim United States certified or express mail or commercial carrier service is not refusal of service within the meaning of this division. This division shall not apply if any reason for failure of delivery other than "Refused" is also shown on the United States certified or express mail envelope.

(D) United States certified or express mail service unclaimed. If a United States certified or express mail envelope attempting service within or outside the state is returned with an endorsement stating that the envelope was unclaimed, the clerk shall forthwith notify the attorney of record or, if there is no attorney of record, the party at whose instance process was issued and enter the fact and method of notification on the appearance docket. If the attorney, or serving party, after notification by the clerk, files with the clerk a written request for ordinary mail service, the clerk shall send by United States ordinary mail a copy of the summons and complaint or other document to be served to the defendant at the address set forth in the caption, or at the address set forth in written instructions furnished to the clerk. The mailing shall be evidenced by a certificate of mailing which shall be completed and filed by the clerk. Answer day shall be twenty-eight days after the date of mailing as evidenced by the certificate of mailing. The clerk shall endorse this answer date upon the summons which is sent by ordinary mail. Service shall be deemed complete when the fact of mailing is entered of record, provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing

failure of delivery. If the ordinary mail envelope is returned undelivered, the clerk shall forthwith notify the attorney, or serving party.

(E) Duty of attorney of record or serving party. The attorney of record or the serving party shall be responsible for determining if service has been made and shall timely file written instructions with the clerk regarding completion of service notwithstanding the provisions in Civ. R. 4.1 through 4.6 which instruct a clerk to notify the attorney of record or the serving party of failure of service of process.

[Effective: July 1, 1970; amended effective July 1, 1971; July 1, 1978; July 1, 1997; July 1, 2012.]

Staff Note (July 1, 2012 Amendment)

Divisions (C) and (D) are amended (1) to specify that their provisions for service by United States ordinary mail apply to service by commercial carrier that is returned showing "Refused" but do not apply to service by commercial carrier that is returned showing "Unclaimed" and (2) to make clear that these divisions are applicable to U.S. mail service attempted both within and outside the state.

Division (C) relating to service "Refused" is also amended to specify that its provisions do not apply to ambiguous returns of U.S. certified or express mail stating other reasons for failure of delivery that suggest lack of actual notice to the defendant, such as "unable to forward". Division (D) relating to service "Unclaimed" is not similarly amended with respect to returns stating both "Unclaimed" and other reasons for failure of delivery; however, division (D) continues to apply only to U.S. Postal Service returns showing that the addressee was notified of, and failed to claim, the certified or express mail envelope.

Staff Note (July 1, 1997 Amendment)

Rule 4.6 Process: Limits; amendment; service refused; service unclaimed

Prior to the 1997 amendment, service of process under this rule was permitted only by certified mail. It appears that service of process by express mail, i.e. as that sort of mail is delivered by the United States Postal Service, can always be obtained return receipt requested, and thus could accomplish the purpose of notification equally well as certified mail. Therefore, the amendment provides for this additional option for service.

Other amendments to this rule are nonsubstantive grammatical or stylistic changes.