

**STATE OF VERMONT
VERMONT SUPREME COURT
JUNE TERM, 2024**

Order Promulgating Amendments to Rule 4(c), (d), (e), and (f) of the Vermont Rules of Civil Procedure

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 4(c), (d), (e), and (f) of the Vermont Rules of Civil Procedure be amended as follows (new matter underlined; deleted matter struck through):

RULE 4. PROCESS

(c) **By Whom Served.** Service of all process ~~must shall~~ be made by a sheriff or deputy sheriff, by a constable or other person authorized by law, or by some indifferent person specially appointed for that purpose by any superior judge, ~~or a judge of the court to which it is returnable,~~ except that process served by mail under paragraph (d)(2) or subdivision (f), ~~or~~ and a notice and request sent pursuant to subdivision ~~(l)~~, ~~of this rule~~ may be deposited in the mail by plaintiff or plaintiff's attorney, ~~and a~~ A subpoena may be served as provided in Rule 45. Special appointments to serve process ~~must shall~~ be made freely when substantial savings in travel fees will result.

(d) ~~Summons: Personal Service Within the State.~~ The summons and complaint ~~must shall~~ be served together. ~~Personal service~~ Service within the state ~~may shall~~ be made as follows:

* * * * *

(2) Upon the State of Vermont or any agency or officer thereof, by delivering ~~a copy of~~ the summons and ~~of the~~ complaint to the Attorney General or the Deputy Attorney General. But service ~~Service of a copy of~~ the complaint and written disclosure of material evidence and information required to be served pursuant to 32 V.S.A. § 632(b)(3), ~~enacted by Act No. 25 of 2015,~~ or 31 U.S.C. § 3730(b)(2); must use a ~~shall be by any~~ method of delivery that requires a requiring the signature by the ~~of an~~ addressee or an agent of the an addressee. When service may be made upon an officer of the state as a statutory agent for the service of process under paragraph (1), (7), or (8) of this subdivision, service in accordance with the applicable statute may be made by mailing the summons and complaint to the officer by first-class mail, postage prepaid.

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(e) ~~Personal Service Outside the State.~~ A person whose contact or activity in the state or such contact or activity imputable to that person is sufficient to support a personal judgment against that person may be served with the summons and complaint outside the state, in the same

manner as if such service were made within the state, or in any manner in which service may be effected under the laws of the state in which the person is served. Service outside the state may be made by any person authorized to serve civil process by the laws of the place of service or by a person specially appointed to serve it.

An affidavit of the person making service ~~must~~ shall be filed with the court, stating the time, manner, and place of service. Such service has the same force and effect as ~~personal~~ service within the state.

(f) Service by Mail Outside the State.

(1) When Available. A party may serve the summons and complaint by mail on a person outside the state if: ~~Where service cannot with due diligence be made personally within or outside the state, service of the summons and complaint may be made by mail upon a person described in subdivision (e) in the following cases:~~

~~(A) Where the person to be served has an interest in, title to, or right to the possession of goods, chattels, rights, credits, land, tenements, or hereditaments in the state which has been or on pending motion may be attached or secured by trustee process in the commencement of the action, or will be affected by a judgment in the action;~~

~~(A) After due diligence, the party is unable to serve the person according to subdivision (d) or (e);~~

~~(B) The person to be served has contact or activity in the state or imputable contact or activity sufficient to support a personal judgment; and~~

~~(C) The person to be served:~~

~~(i) has an interest in, title to, or right to the possession of goods, chattels, rights, credits, land, tenements, or hereditaments in the state which has been or on pending motion may be attached or secured by trustee process in the commencement of the action, or will be affected by a judgment in the action;~~
~~or~~

~~(Bii) Where the person to be served is one against whom a judgment for divorce or annulment of marriage is sought.~~

(2) Return Receipt. The party must first attempt a mail delivery that requires a signature by the addressee or the agent of the addressee for receipt of mail. If delivery is successful, service is complete on delivery if the party files proof of service with:

(A) The signed return receipt; and

(B) An affidavit stating the party's efforts to serve the person according to subdivision (d) or (e).

(3) First-Class Mail. If the receipt is not returned signed according to paragraph (2), then the party may mail the summons and complaint by first-class mail. Service is complete when mailed, if the party files proof of service with:

(A) Any notice that delivery was refused; and

(B) An affidavit stating:

(i) the party's efforts to serve the person according to subdivision (d) or (e) and by return receipt mail;

(ii) that the mail was not returned as undeliverable; and

(iii) that the party used the last known address of the person to be served.

~~Such service shall be by delivery to the defendant outside the state by registered or certified mail, with restricted delivery and return receipt requested. Service by registered or certified mail under this paragraph shall be complete when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused, provided that the plaintiff shall file with the court an affidavit setting forth the efforts made to obtain personal service and either the return receipt or, if acceptance was refused, an affidavit that upon notice of such refusal a copy of the summons and complaint was sent to the defendant by ordinary first class mail.~~

~~(2) When service may be made upon an officer of the state as a statutory agent for the service of process pursuant to paragraph (1), (7) or (8) of subdivision (d), service in accordance with the applicable statute may be made by mailing a copy of the summons and of the complaint by first class mail, postage prepaid, to the officer.~~

Reporter's Notes—2025 Amendment

Rule 4(c) permits any superior judge to appoint an indifferent person to serve process. The rule is amended to reflect the 2010 restructuring of the judiciary by omitting the phrase permitting appointment by “a judge of the court to which it is returnable.” A cross-reference to service under paragraph (d)(2) is added because that paragraph now includes provisions for mail service by plaintiff or plaintiff's attorney that do not require a sheriff or other official. Other changes are made for clarity with no change of meaning intended.

The caption and text of Rules 4(d) and 4(e) are amended to delete the references to “personal” service. This clarifies that Rules 4(d) and 4(e) authorize methods of substituted service not within the common meaning of personal service as in-hand delivery to the person to be served.

Rule 4(d)(2) is amended to aggregate into a single subdivision the methods of service on the State of Vermont or any agency or officer thereof. Former Rule 4(f)(2), relating to mail service on an officer of the state as a statutory process agent, is moved to Rule 4(d)(2). The existing provision of Rule 4(d)(2), for service in false claims actions, is reworded for clarity with no change of meaning intended. As stated in the prior reporter’s note, “The provision in the rule for service ‘by any method of delivery requiring the signature of an addressee or an agent of an addressee’ is intended to include service by registered mail, certified mail, commercial carrier, or in-hand delivery.” See V.R.C.P. 4(d)(2), Reporter’s Notes—2016 Amendment.

Rule 4(f) is recaptioned “Service by Mail Outside the State.” The text is reorganized to clarify each step in the mail service process and, in some cases, to modify the requirements of the existing rule.

Rule 4(f)(1) clarifies what was implicit in the original rule, that it applies only to service by mail outside the state. The jurisdictional requirements of Rule 4(e) for service outside the state are repeated in the text of Rule 4(f)(1)(B). The rule remains limited to two special classes of cases involving property and divorce, Rule 4(f)(1)(C)(i) and (ii).

Rule 4(f)(2) changes the requirement to use “registered or certified mail, with restricted delivery and return receipt requested” to any mail delivery method that “requires a signature by the addressee or the agent of the addressee for receipt of mail.” The change reflects 1 V.S.A. § 134a, which states that registered mail in this context includes “any method of mail delivery requiring the signature of the addressee or his or her agent.” See V.R.C.P. 4, Reporter’s Notes—2016 Amendment.

Rule 4(f)(3) clarifies when service by first-class mail under Rule 4(f) is permitted and how it is completed. The requirements that the first-class mailing use the last known address of the person to be served, and that the mailing not be returned as undeliverable, are new. They are intended to assure that the method of service “be such as is reasonably calculated to reach interested parties.” Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 318 (1950).

2. That these amendments be prescribed and promulgated effective January 1, 2025. The Reporter's Notes are advisory.

3. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 3rd day of June, 2024.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

Nancy J. Waples, Associate Justice