

## **RULE 4:4. Process**

### **4:4-1. Summons; Issuance**

The plaintiff, plaintiff's attorney or the clerk of the court may issue the summons. If a summons is not issued within 15 days from the date of the Track Assignment Notice, the action may be dismissed in accordance with R. 4:37-2(a). Separate or additional summonses may issue against any defendants.

Note: Source-R.R. 4:4-1; amended July 13, 1994 to be effective September 1, 1994; amended July 12, 2002 to be effective September 3, 2002.

### **4:4-2. Summons: Form**

Except as otherwise provided by R. 5:4-1(b) (summary proceedings in family actions), the face of the summons shall be in the form prescribed by Appendix XII-A to these Rules. It shall be in the name of the State, signed in the name of the Superior Court Clerk and directed to the defendant. It shall contain the name of the court and the plaintiff and 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 serve an answer upon the plaintiff or plaintiff's attorney, and shall notify the defendant that if he or she fails to answer, judgment by default may be rendered for the relief demanded in the complaint. It shall also inform the defendant of the necessity to file an answer and proof of service thereof with the deputy clerk of the Superior Court in the county of venue, except in mortgage and tax foreclosure actions an answer shall be filed with the Clerk of the Superior Court in Trenton unless and until the action is deemed contested and the papers have been sent by the Clerk to the county of venue in which event an answer shall be filed with the deputy clerk of the Superior Court in the county of venue. If the defendant is an individual resident in this state, the summons shall advise that if he or she is unable to obtain an attorney, he or she may communicate with the Lawyer Referral Service of the county of his or her residence, or the county in which the action is pending, or, if there is none in either county, the Lawyer Referral Service of an adjacent county. The summons shall also advise defendant that if he or she cannot afford an attorney, he or she may communicate with the Legal Services Office of the county of his or her residence or the county in which the action is pending or the Legal Services of New Jersey statewide toll free hotline at 1-888-LSNJ-LAW (1-888-576-5529). If the defendant is an individual not resident in this State, the summons shall similarly advise him or her, directing the defendant, however, to the appropriate agency in the county in which the action is pending. The reverse side or second page of the summons shall contain a current listing, by county, of telephone numbers of the Legal Services Office and the Lawyer Referral Office serving each county and the Legal Services of New Jersey statewide toll free hotline at 1-888-LSNJ-LAW (1-888-576-5529), which list shall be updated regularly by the Administrative Office of the Courts and made available to legal forms publishers and to any person requesting such list.

Note: Source - R.R. 4:4-2; amended November 27, 1974 to be effective April 1, 1975; amended July 29, 1977 to be effective September 6, 1977; amended July 21, 1980 to be effective September 8, 1980; amended July 16, 1981 to be effective September 14, 1981; amended December 20, 1983 to be effective December 31, 1983; amended June 29, 1990 to be effective September 4, 1990; amended July 13, 1994 to be effective September 1, 1994; amended June 28, 1996 to be effective September 1, 1996; amended July 10, 1998 to be effective September 1, 1998; amended July 23, 2010 to be effective September 1, 2010.

### **4:4-3. By Whom Served; Copies**

- **(a) Summons and Complaint.** Summonses shall be served, together with a copy of the complaint, by the sheriff, or by a person specially appointed by the court for that purpose, or by plaintiff's attorney or the attorney's agent, or by any other competent adult not having a direct interest in the litigation. If personal service cannot be effected

after a reasonable and good faith attempt, which shall be described with specificity in the proof of service required by R. 4:4-7, service may be made by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, to the usual place of abode of the defendant or a person authorized by rule of law to accept service for the defendant or, with postal instructions to deliver to addressee only, to defendant's place of business or employment. If the addressee refuses to claim or accept delivery of registered or certified mail, service may be made by ordinary mail addressed to the defendant's usual place of abode. The party making service may, at the party's option, make service simultaneously by registered or certified mail and ordinary mail, and if the addressee refuses to claim or accept delivery of registered mail and if the ordinary mailing is not returned, the simultaneous mailing shall constitute effective service. Mail may be addressed to a post office box in lieu of a street address only as provided by R. 1:5-2. Return of service shall be made as provided by R. 4:4-7.

- **(b) Writs.** Unless the court otherwise orders, all writs and process to enforce a judgment or order shall be served by the sheriff.
- **(c) Private Service; Costs.** When service of process pursuant to this rule has been made by any person other than the sheriff, the allowance of taxed costs pursuant to R. 4:42-8 shall include a cost of service not exceeding the fee and mileage expenses allowable by law to the sheriff for that service.

Note: Source-R.R. 4:4-3, 5:5-1(c), 5:2-2; amended July 14, 1992 to be effective September 1, 1992; paragraph (b) amended July 13, 1994 to be effective September 1, 1994; captions and text of paragraphs (a) and (b) deleted and replaced with new captions and text July 5, 2000 to be effective September 5, 2000; paragraph (c) added July 12, 2002 to be effective September 3, 2002.

#### **4:4-4. Summons; Personal Service; In Personam Jurisdiction**

Service of summons, writs and complaints shall be made as follows:

- **(a) Primary Method of Obtaining In Personam Jurisdiction.** The primary method of obtaining in personam jurisdiction over a defendant in this State is by causing the summons and complaint to be personally served within this State pursuant to R. 4:4-3, as follows:
  - **(1)** Upon a competent individual of the age of 14 or over, by delivering a copy of the summons and complaint to the individual personally, or by leaving a copy thereof at the individual's dwelling place or usual place of abode with a competent member of the household of the age of 14 or over then residing therein, or by delivering a copy thereof to a person authorized by appointment or by law to receive service of process on the individual's behalf;
  - **(2)** Upon a minor under the age of 14, by delivering a copy of the summons and complaint personally to a parent or the guardian of the minor's person or to a competent adult member of the household with whom the minor resides;
  - **(3)** Upon a mentally incapacitated person, by delivering a copy of the summons and complaint personally to the guardian of the person of the mentally incapacitated individual or to a competent adult member of the household with whom the mentally incapacitated person resides, or if the mentally incapacitated person resides in an institution, to the director or chief executive officer thereof;
  - **(4)** Upon individual proprietors and real property owners, provided the action arises out of a business in which the individual is engaged within this State or out of any real property or interest in real property in this State owned by the individual, by delivering a copy of the summons and complaint to the individual if competent, or, whether or not the individual proprietor or property owner is competent, to a managing or general agent employed by the individual in such business or for the management of such real property, or if service cannot be made in that manner, then by delivering a copy of the summons and complaint to any employee or agent of the individual within this State acting in the discharge

of his or her duties in connection with the business or the management of the real property;

- **(5)** Upon partnerships and unincorporated associations subject to suit under a recognized name, by serving a copy of the summons and complaint in the manner prescribed by paragraph (a)(1) of this rule on an officer or managing agent or, in the case of a partnership, a general partner;
  - **(6)** Upon a corporation, by serving a copy of the summons and complaint in the manner prescribed by paragraph (a)(1) of this rule on any officer, director, trustee or managing or general agent, or any person authorized by appointment or by law to receive service of process on behalf of the corporation, or on a person at the registered office of the corporation in charge thereof, or, if service cannot be made on any of those persons, then on a person at the principal place of business of the corporation in this State in charge thereof, or if there is no place of business in this State, then on any employee of the corporation within this State acting in the discharge of his or her duties, provided, however, that a foreign corporation may be served only as herein prescribed subject to due process of law;
  - **(7)** Upon the State of New Jersey, by registered, certified or ordinary mail of a copy of the summons and complaint or by personal delivery of a copy of the summons and complaint to the Attorney General or to the Attorney General's designee named in a writing filed with the Clerk of the Superior Court. No default shall be entered for failure to appear unless personal service has been made under this paragraph. In an action under N.J.S.A. 2A:45-1 et seq. (lien or encumbrance held by the State), the notice in lieu of summons shall be in the form, manner and substance prescribed by N.J.S.A. 2A:45-2, and shall be served, together with a copy of the complaint, on the Attorney General or designee as herein provided, but if the lien or encumbrance arises by reason of a recognizance entered into in connection with any proceeding in the Superior Court or any criminal judgment rendered in such court, the notice, together with a copy of the complaint, shall be served on the county prosecutor or the prosecutor's designee named in a writing filed with the Clerk of the Superior Court;
  - **(8)** Upon other public bodies, by serving a copy of the summons and complaint in the manner prescribed by paragraph (a)(1) of this rule on the presiding officer or on the clerk or secretary thereof.
  - The foregoing subparagraphs (a)(1) through (a)(8) notwithstanding, in personam jurisdiction may be obtained by mail under the circumstances and in the manner provided by R.4:4-3.
- **(b) Obtaining In Personam Jurisdiction by Substituted or Constructive Service.**
- **(1) By Mail or Personal Service Outside the State.** If it appears by affidavit satisfying the requirements of R. 4:4-5(b) that despite diligent effort and inquiry personal service cannot be made in accordance with paragraph (a) of this rule, then, consistent with due process of law, in personam jurisdiction may be obtained over any defendant as follows:
    - **(A)** personal service in a state of the United States or the District of Columbia, in the same manner as if service were made within this State or by a public official having authority to serve civil process in the jurisdiction in which the service is made or by a person qualified to practice law in this State or in the jurisdiction in which service is made; or
    - **(B)** personal service outside the territorial jurisdiction of the United States, in accordance with any governing international treaty or convention to the extent required thereby, and if none, in the same manner as if service were made within the United States, except that service shall be made by a person specially appointed by the court for that purpose; or

- **(C)** mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, and, simultaneously, by ordinary mail to: (1) a competent individual of the age of 14 or over, addressed to the individual's dwelling house or usual place of abode; (2) a minor under the age of 14 or a mentally incapacitated person, addressed to the person or persons on whom service is authorized by paragraphs (a)(2) and (a)(3) of this rule; (3) a corporation, partnership or unincorporated association that is subject to suit under a recognized name, addressed to a registered agent for service, or to its principal place of business, or to its registered office. Mail may be addressed to a post office box in lieu of a street address only as provided by R. 1:5-2.
  - **(2) As Provided by Law.** Any defendant may be served as provided by law.
  - **(3) By Court Order.** If service can be made by any of the modes provided by this rule, no court order shall be necessary. If service cannot be made by any of the modes provided by this rule, any defendant may be served as provided by court order, consistent with due process of law.
- **(c) Optional Mailed Service.** Where personal service is required to be made pursuant to paragraph (a) of this rule, service, in lieu of personal service, may be made by registered, certified or ordinary mail, provided, however, that such service shall be effective for obtaining in personam jurisdiction only if the defendant answers the complaint or otherwise appears in response thereto, and provided further that default shall not be entered against a defendant who fails to answer or appear in response thereto. This prohibition against entry of default shall not apply to mailed service authorized by any other provision of these rules. If defendant does not answer or appear within 60 days following mailed service, service shall be made as is otherwise prescribed by this rule, and the time prescribed by R. 4:4-1 for issuance of the summons shall then begin to run anew.

Note: Source - R.R. 4:4-4. Paragraph (a) amended July 7, 1971 to be effective September 13, 1971; paragraphs (a) and (b) amended July 14, 1972 to be effective September 5, 1972; paragraph (f) amended July 15, 1982 to be effective September 13, 1982; paragraph (e) amended July 26, 1984 to be effective September 10, 1984; paragraph (a) amended November 1, 1985 to be effective January 2, 1986; paragraphs (a), (f) and (g) amended November 5, 1986 to be effective January 1, 1987; paragraph (i) amended November 2, 1987 to be effective January 1, 1988; paragraph (e) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a) and (b) amended July 14, 1992 to be effective September 1, 1992; text deleted and new text substituted July 13, 1994 to be effective September 1, 1994; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a)(3), (b)(1)(A), (b)(1)(C), and (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (a) amended July 9, 2008 to be effective September 1, 2008; paragraph (b)(1) amended July 23, 2010 to be effective September 1, 2010.

#### **4:4-5. Summons; Service on Absent Defendants; In Rem or Quasi In Rem Jurisdiction**

- **(a) Methods of Obtaining *In Rem* Jurisdiction.** Whenever, in actions affecting specific property, or any interest therein, or any res within the jurisdiction of the court, or in matrimonial actions over which the court has jurisdiction, wherein it shall appear by affidavit of the plaintiff's attorney or other person having knowledge of the facts, that a defendant cannot, after diligent inquiry as required by this rule, be served within the State, service may, consistent with due process of law, be made by any of the following four methods:
  - **(1)** personal service outside this State as prescribed by R. 4:4-4(b)(1)(A) and (B); or
  - **(2)** service by mail as prescribed by R. 4:4-4(b)(1)(C); or
  - **(3)** by publication of a notice to absent defendants once in a newspaper published or of general circulation in the county in which the venue is laid; and also by mailing, within 7 days after publication, a copy of the notice as herein provided and the complaint to the defendant, prepaid, to the defendant's residence or the

place where the defendant usually receives mail, unless it shall appear by affidavit that such residence or place is unknown, and cannot be ascertained after inquiry as herein provided or unless the defendants are proceeded against as unknown owners or claimants pursuant to R. 4:26-5(c). If defendants are proceeded against pursuant to R. 4:26-5(c), a copy of the notice shall be posted upon the lands affected by the action within 7 days after publication. The notice of publication to absent defendants required by this rule shall be in the form of a summons, without a caption. The top of the notice shall include the docket number of the action, the court, and county of venue. The notice shall state briefly:

- **(A)** the object of the action, the name of the plaintiff and defendant followed by *et al.*, if there are additional parties, the name of the person or persons to whom the notice is addressed, and the basis for joining such person as a defendant; and
  - **(B)** if the action concerns real estate, the municipality in which the property is located, its street address, if improved, or the street on which it is located, if unimproved, and its tax map lot and block numbers; and
  - **(C)** if the action is to foreclose a mortgage, tax sale certificate, or lien of a condominium or homeowners association, the parties to the instrument and the date thereof, and the recording date and book and page of a recorded instrument; and
  - **(D)** the information required by R. 4:4-2 regarding the availability of Legal Services and Lawyer Referral Services together with telephone numbers of the pertinent offices in the vicinage in which the action is pending or the property is located; or
- **(4)** as may be provided by court order.
- **(b) Contents of Affidavit of Inquiry.** The inquiry required by this rule shall be made by the plaintiff, plaintiff's attorney actually entrusted with the conduct of the action, or by the agent of the attorney; it shall be made of any person who the inquirer has reason to believe possesses knowledge or information as to the defendant's residence or address or the matter inquired of; the inquiry shall be undertaken in person or by letter enclosing sufficient postage for the return of an answer; and the inquirer shall state that an action has been or is about to be commenced against the person inquired for, and that the object of the inquiry is to give notice of the action in order that the person may appear and defend it. The affidavit of inquiry shall be made by the inquirer fully specifying the inquiry made, of what persons and in what manner, so that by the facts stated therein it may appear that diligent inquiry has been made for the purpose of effecting actual notice.

Note: Source - R.R. 4:4-5(a)(b)(c)(d), 4:30-4(b) (second sentence). Paragraph (c) amended July 7, 1971 to be effective September 13, 1971; paragraph (c) amended July 14, 1972 to be effective September 5, 1972; amended July 24, 1978 to be effective September 11, 1978; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a) (b) (c) (d) amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended June 28, 1996 to be effective September 1, 1996; introductory paragraph amended, paragraph (c) amended, and portion of paragraph (c) relocated as closing paragraph of rule July 9, 2008 to be effective September 1, 2008; introductory paragraph designated as paragraph (a), paragraph (a) caption adopted, former paragraphs (a), (b), and (c) redesignated as subparagraphs (a)(1), (a)(2), and (a)(3), former subparagraphs (c)(1), (c)(2), (c)(3), and (c)(4) redesignated as subparagraphs (a)(3)(A), (a)(3)(B), (a)(3)(C), and (a)(3)(D), former paragraph (d) redesignated as subparagraph (a)(4), concluding paragraph designated as paragraph (b), and paragraph (b) caption adopted July 23, 2010 to be effective September 1, 2010.

#### **4:4-6. General Appearance; Acknowledgment of Service**

A general appearance or an acceptance of the service of a summons, signed by the defendant's attorney or signed and acknowledged by the defendant (other than an infant or mentally incapacitated person), shall have the same effect as if the defendant had been properly served.

Note: Source-R.R. 4:4-6; amended July 17, 1975 to be effective September 8, 1975; amended July 12, 2002 to be effective September 3, 2002.

#### **4:4-7. Return**

The person serving the process shall make proof of service thereof on the original process and on the copy. Proof of service shall be promptly filed with the court within the time during which the person served must respond thereto either by the person making service or by the party on whose behalf service is made. The proof of service, which shall be in a form prescribed by the Administrative Director of the Courts, shall state the name of the person served and the place, mode and date of service, and a copy thereof shall be forthwith furnished plaintiff's attorney by the person serving process. If service is made upon a member of the household pursuant to R. 4:4-4 that person's name shall be stated in the proof or, if such name cannot be ascertained, the proof shall contain a description of the person upon whom service was made. If service is made by a person other than a sheriff or a court appointee, proof of service shall be by similar affidavit which shall include the facts of the affiant's diligent inquiry regarding defendant's place of abode, business or employment. If service is made by mail, the party making service shall make proof thereof by affidavit which shall also include the facts of the failure to effect personal service and the facts of the affiant's diligent inquiry to determine defendant's place of abode, business or employment. With the proof shall be filed the affidavit or affidavits of inquiry, if any, required by R. 4:4-4 and R. 4:4-5. Where service is made by registered or certified mail and simultaneously by regular mail, the return receipt card, or the printout of the electronic confirmation of delivery, which shall include an image of the recipient's signature, provided by the U.S. Postal Service, or the unclaimed registered or certified mail shall be filed as part of the proof. A party making service by registered or certified mail and simultaneously by regular mail may file a photocopy of the return receipt card in lieu of the original return receipt card as the proof of service but only if the original is unavailable. Failure to make proof of service does not affect the validity of service.

Note: Source — R.R. 4:4-7. Amended July 14, 1972 to be effective September 5, 1972; amended June 29, 1990 to be effective September 4, 1990; amended July 14, 1992 to be effective September 1, 1992; amended July 13, 1994 to be effective September 1, 1994; amended July 10, 1998 to be effective September 1, 1998; amended July 12, 2002 to be effective September 3, 2002; amended July 23, 2010 to be effective September 1, 2010; amended July 19, 2012 to be effective September 4, 2012.

#### **4:4-8. Amendment**

The person serving the process may file an additional or amended proof of service within the time provided by R. 4:4-7. The court may thereafter allow any process or proof of service thereof to be amended upon such terms as it deems appropriate unless such amendment would materially prejudice the rights of the party against whom process issued.

Note: Source-R.R. 4:4-8.