

RULE 1.070 | PROCESS

(a) Summons; Issuance. On the commencement of the action, summons or other process authorized by law must be issued forthwith by the clerk or judge under the clerk's or the judge's signature and the seal of the court and delivered for service without praecipe.

(b) Service; By Whom Made. Service of process may be made by an officer authorized by law to serve process, but the court may appoint any competent person not interested in the action to serve the process. When so appointed, the person serving process must make proof of service by affidavit promptly and in any event within the time during which the person served must respond to the process. Failure to make proof of service will not affect the validity of the service. When any process is returned not executed or returned improperly executed for any defendant, the party causing its issuance must be entitled to such additional process against the unserved party as is required to effect service.

(c) Service; Numerous Defendants. If there is more than 1 defendant, the clerk or judge must issue as many writs of process against the several defendants as may be directed by the plaintiff or the plaintiff's attorney.

(d) Service by Publication or Any Other Means. Service of process by publication or any other means may be made as provided by statute.

(e) Copies of Initial Pleading for Persons Served. At the time of personal service of process a copy of the initial pleading must be delivered to the party on whom service is made. The date and hour of service must be endorsed on the original process and all copies of it by the person making the service. The party seeking to effect personal service must furnish the person making service with the necessary copies. When the service is made by publication, copies of the initial pleadings must be furnished to the clerk and mailed by the clerk with the notice of action to all parties whose addresses are stated in the initial pleading or sworn statement.

(f) Service of Orders. If personal service of a court order is to be made, the original order must be filed with the clerk, who must certify or verify a copy of it without charge.



The person making service must use the certified copy instead of the original order in the same manner as original process in making service.

(g) Fees; Service of Pleadings. The statutory compensation for making service will not be increased by the simultaneous delivery or mailing of the copy of the initial pleading in conformity with this rule.

(h) Pleading Basis. When service of process is to be made under statutes authorizing service on nonresidents of Florida, it is sufficient to plead the basis for service in the language of the statute without pleading the facts supporting service.

(i) Service of Process by Mail. A defendant may accept service of process by mail.

(1) Acceptance of service of a complaint by mail does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

(2) A plaintiff may notify any defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request must:

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

(B) be dispatched by certified mail, return receipt requested;

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

(D) inform the defendant of the consequences of compliance and of failure to comply with the request;

(E) state the date on which the request is sent;

(F) allow the defendant 20 days from the date on which the request is received to return the waiver, or, if the address of the defendant is outside of



the United States, 30 days from the date on which it is received to return the waiver; and

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

(3) If a defendant fails to comply with a request for waiver within the time provided herein, the court must impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure is shown.

(4) A defendant who, before being served with process, timely returns a waiver so requested is not required to respond to the complaint until 60 days after the date the defendant received the request for waiver of service. For purposes of computing any time prescribed or allowed by these rules, service of process will be deemed effected 20 days before the time required to respond to the complaint.

(5) When the plaintiff files a waiver of service with the court, the action must proceed, except as provided in subdivision (i)(4) above, as if a summons and complaint had been served at the time of filing the waiver, and no further proof of service is required.

(j) Summons; Time Limit. If service of the initial process and initial pleading is not made on a defendant within 120 days after filing of the initial pleading directed to that defendant the court, on its own initiative after notice or on motion, must direct that service be effected within a specified time or must dismiss the action without prejudice or drop that defendant as a party; provided that if the plaintiff shows good cause or excusable neglect for the failure, the court must extend the time for service for an appropriate period. When a motion for leave to amend with the attached proposed amended complaint is filed, the 120-day period for service of amended complaints on the new party or parties will begin on the entry of an order granting leave to amend. A dismissal under this subdivision will not be considered a voluntary dismissal or operate as an adjudication on the merits under rule 1.420(a)(1).



Committee Notes

1971 Amendment. Subdivisions (f), (g), and (h) of the existing rule are combined because they deal with the same subject matter. The “notice of suit” is changed to “notice of action” to comply with the statutory change in 1967. Subdivision (g) is new and provides for substitution of a certified or verified copy of a court order that must be served. The original is to be filed with the clerk and not removed. Subdivision (i) is relettered to (h).

1972 Amendment. Subdivision (a) is amended to require the officer issuing the process to sign it and place the court seal on it. This was required by former section 47.04, Florida Statutes, and is essential to the validity of process. When the statute was repealed these procedural requirements were omitted and inadvertently not included in the rule. Subdivision (b) is changed to eliminate the predicate for court appointment of a person to make service of process. This makes the rule more flexible and permits the court to appoint someone to make service at any appropriate time.

1980 Amendment. Subdivision (i) is added to eliminate pleading evidentiary facts for “long arm” service of process. It is based on the long-standing principle in service by publication that pleading the basis for service is sufficient if it is done in the language of the statute. See *McDaniel v. McElvy*, 91 Fla. 770, 108 So. 820 (1926). Confusion has been generated in the decisions under the “long arm” statute. See *Wm. E. Strasser Construction Corp. v. Linn*, 97 So. 2d 458 (Fla. 1957); *Hartman Agency, Inc. v. Indiana Farmers Mutual Insurance Co.*, 353 So. 2d 665 (Fla. 2d DCA 1978); and *Drake v. Scharlau*, 353 So. 2d 961 (Fla. 2d DCA 1978). The amendment is not intended to change the distinction between pleading and proof as enunciated in *Elmex Corp. v. Atlantic Federal Savings & Loan Association of Fort Lauderdale*, 325 So. 2d 58 (Fla. 4th DCA 1976). It is intended to eliminate the necessity of pleading evidentiary facts as well as those of pecuniary benefit that were used in the *Elmex* case. The amendment is limited to pleading. If the statutory allegations are attacked by motion, the pleader must then prove the evidentiary facts to support the statutory requirements. If denied in a pleading, the allegations must be proved at trial. Otherwise, the allegations will be admitted under rule 1.110(e).

1988 Amendment. Subdivision (j) has been added to require plaintiffs to cause service of original summons within 120 days of filing the complaint absent good cause for further delay.

1992 Amendment. Subdivision (d) is repealed because the reason for the rule ceased when process was permitted to run beyond county boundaries. The amendment to subdivision (j) (redesignated as (i)) is intended to clarify that a dismissal under this subdivision is not to be considered as an adjudication on the merits under rule 1.420(a)(1) of these rules.

1996 Amendment. Subdivision (i) is added to provide some formality to the practice of requesting waiver of service of process by a sheriff or person appointed to serve papers or by publication. The committee intends that only the manner of service will be waived by this procedure. By accepting service pursuant to this rule, the defendant will not waive any objection to venue or jurisdiction over the person or admit to the sufficiency of the pleadings or to allegations with regard to long-arm or personal jurisdiction. For example, service of process would be void should a motion to dismiss be granted because the complaint did not allege the basis for long-arm jurisdiction over a nonresident defendant. *City Contract Bus Service, Inc. v. H.E. Woody*, 515 So. 2d 1354 (Fla. 1st



DCA 1987). Under such circumstances, the defendant must be served pursuant to law or again waive service pursuant to this rule. Subdivision (i)(2)(F) allows the defendant 20 days from receipt (or 30 days if the defendant is outside of the United States) to return the waiver. Accordingly, the committee intends that the waiver be received by the plaintiff or the plaintiff's attorney by the twentieth day (or the thirtieth day if the defendant is outside of the United States). The former subdivision (i) has been redesignated as subdivision (j). Form 1.902 may be used to give notice of an action and request waiver of process pursuant to this rule.

2003 Amendment. Subdivision (j) is amended in accordance with *Totura & Co., Inc. v. Williams*, 754 So. 2d 671 (Fla. 2000). See the amendment to rule 1.190(a).

