JUDICIAL PROCESS OF NORTH CAROLINA

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THE SERVICE OF LEGAL PROCESS IN NORTH CAROLINA

A Treatise on the Constitutional Foundations, Statutory Framework, and Two Centuries of Jurisprudence Governing the Service of Process in the Courts of the State of North Carolina

Prepared for the Attorneys and Private Clients of
Judicial Process of North Carolina

by

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Preface

Every civil action begins with a summons, and every judgment ultimately rests upon it. Between the filing of a complaint and the entry of a decree lies the quiet, indispensable act of bringing the defendant before the court in a manner the law recognizes. That act is the service of process. It is at once the most mechanical and the most consequential step in litigation: mechanical because it is governed by rules of striking specificity, and consequential because a misstep at this threshold can void everything that follows, however meritorious the claim and however diligent the advocacy.

This treatise has been prepared by Judicial Process of North Carolina for the attorneys, paralegals, corporate counsel, and private clients who rely upon it. Its purpose is to set out, in a single authoritative volume, the law that governs the service of civil process in the State of North Carolina: the constitutional foundations, the statutory framework of Chapter 1 and Chapter 1A of the General Statutes, the procedural rules that implement them, and the jurisprudence of the Supreme Court of North Carolina and the Court of Appeals that has interpreted them across more than two centuries of reported decisions. Where the older cases speak to principles that endure, they are cited alongside their modern successors, for the law of process in this State is, to an unusual degree, a continuous conversation between the present and the past.

The work is intended to be both scholarly and practical. Each chapter proceeds from principle to rule to application, and each concludes with observations drawn from the daily experience of a professional process serving firm. The reader who requires only a quick answer will find it in the headings and the summary tables; the reader who requires the full reasoning will find that as well. Citations follow the conventions of legal authority and are collected in a Table of Authorities at the close of the volume.

Nothing in this publication constitutes legal advice to any particular person or in respect of any particular matter. The rules discussed here are amended with some regularity, and the decisions interpreting them continue to accumulate. Counsel should verify the current text of every statute and rule before relying upon it, and should consult the reported decisions in full. Judicial Process of North Carolina is pleased to assist in the practical execution of service under any of the methods described, and welcomes inquiries concerning unusual or difficult matters.

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PART I

Foundations

Chapter 1. The Constitutional Office of Service of Process

1.1 Process as the Instrument of Jurisdiction

A court speaks only through its judgments, and a judgment binds only those over whom the court has acquired jurisdiction. In the Anglo American tradition, jurisdiction over the person of a defendant is not presumed from the mere pendency of a lawsuit; it is acquired by an affirmative act of the court, executed through its officers, by which the defendant is commanded to appear and answer. That act is the service of the summons. The Supreme Court of North Carolina has stated the proposition in the plainest terms for more than a century: a judgment rendered against a defendant who has neither been served with process nor voluntarily appeared is not merely erroneous but void, a nullity that may be disregarded and collaterally attacked at any time. The principle is older than the Republic. It descends from the common law writ system, in which the original writ was the foundation of the action and its want was fatal, and it survived intact the transition to code pleading in 1868 and to the modern Rules of Civil Procedure a century later.

The North Carolina Rules of Civil Procedure, codified at N.C. Gen. Stat. § 1A-1, express the modern form of this rule in Rule 4, which prescribes how a summons issues and how it must be served. The jurisdictional statutes of Article 6A of Chapter 1, N.C. Gen. Stat. §§ 1-75.1 through 1-75.12, supply the framework: they define the grounds upon which the courts of this State may exercise jurisdiction over persons and property, and they provide that jurisdiction over a person is exercised "by service of process" in the manner prescribed by Rule 4, or by the defendant's voluntary appearance. N.C. Gen. Stat. §§ 1-75.6, 1-75.7. The two bodies of law operate in tandem. Article 6A asks whether the court *may* reach the defendant; Rule 4 asks whether the court *has* reached the defendant. Both questions must be answered affirmatively before a court may proceed to judgment, and a plaintiff who satisfies one but not the other has accomplished nothing.

1.2 Due Process and the Federal Overlay

The state law of service does not operate in isolation. The Fourteenth Amendment to the Constitution of the United States forbids any State to deprive a person of life, liberty, or property without due process of law, and the Supreme Court of the United States has long held that the assertion of judicial power over an absent defendant is such a deprivation unless attended by adequate notice and a legitimate basis for jurisdiction. *Pennoyer v. Neff*, 95 U.S. 714 (1878), established the territorial theory of personal jurisdiction that governed American courts for nearly seventy years: a State could bind a defendant only if he was personally served within its borders, or if the action proceeded against property located there. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), replaced the territorial theory with the "minimum contacts" inquiry that governs today, asking whether the defendant has such contacts with the forum that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

On the question of notice specifically, the controlling authority remains *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). *Mullane* holds that due process requires notice "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." The standard is one of reasonableness rather than perfection, and it is measured against the practical alternatives available to the plaintiff at the time. Notice by publication, the Court explained, is constitutionally tolerable only where the names and addresses of interested persons are unknown and cannot with reasonable diligence be ascertained; where a person's whereabouts are known or readily discoverable, publication alone will not suffice. The North Carolina rules on service by publication, discussed in Chapter 12, are a direct legislative response to *Mullane*, and the North Carolina courts read the "due diligence" requirement of Rule 4(j1) through *Mullane*'s lens.

The Constitution of North Carolina adds its own guarantee. Article I, Section 19, the "law of the land" clause, has been construed by the Supreme Court of North Carolina as synonymous with the federal due process guarantee, and Article I, Section 18 assures that "every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law." These provisions operate as an independent state constitutional floor beneath the statutory law of process, and they explain why the North Carolina courts have consistently refused to treat defective service as a mere technicality curable by proof that the defendant learned of the suit through other channels.

1.3 Strict Compliance and Its Rationale

The North Carolina courts have adopted, and repeatedly reaffirmed, a rule of strict compliance with the statutory methods of service. The formulation most often quoted is that a defendant's actual notice of the litigation is not a substitute for service of process in the manner prescribed by Rule 4. The Court of Appeals has applied the rule with particular force where the plaintiff attempted a recognized method but executed it imperfectly. In *Fulton v. Mickle*, 134 N.C. App. 620, 518 S.E.2d 518 (1999), the court held that where the summons and complaint were not delivered in the manner the Rule requires, the defendant's awareness of the action did not cure the defect, and the trial court lacked personal jurisdiction. The court reasoned that Rule 4 is not merely a device for conveying information but the jurisdictional act itself; to hold otherwise would substitute the court's ad hoc assessment of the defendant's knowledge for the Legislature's prescribed procedure, and would invite precisely the uncertainty the Rule exists to prevent.

The rationale for strict compliance is threefold. First, it protects the defendant, who is entitled to know with certainty when the clock on his obligation to respond has begun to run. Second, it protects the plaintiff, who is entitled to know with certainty that the judgment eventually obtained will withstand attack. Third, it protects the integrity of the judicial system itself, which cannot function if the validity of its judgments depends upon after the fact inquiries into what the defendant did or did not know. A rule that is easy to satisfy and hard to evade serves all three interests, and that is what Rule 4 aspires to be.

Strict compliance is not, however, hypertechnicality. The same courts that refuse to excuse a failure to follow the Rule have declined to void service for immaterial variances in form. *Wiles v. Welparnel Construction Co.*, 295 N.C. 81, 244 S.E.2d 155 (1978), is the leading authority. There the summons was directed to the corporation's registered agent rather than to the corporation itself, though the corporation was properly named as defendant in the caption and the complaint. The Supreme Court, expressly declining to follow an older line of decisions that had voided process for similar defects, held that the summons was sufficient: the corporation was named as a party, its agent was the person the Rule contemplates, and no one could have been misled. The court cautioned that it was not relaxing the substantive requirements of service, only refusing to elevate a matter of form above the Rule's evident purpose. The distinction between substance and form is not always easy to draw, and much of the reported jurisprudence discussed in this treatise consists of the courts drawing it.

Chapter 2. The Statutory and Regulatory Architecture

2.1 Chapter 1A: The Rules of Civil Procedure

The Rules of Civil Procedure were enacted by the General Assembly in 1967 and took effect on January 1, 1970, displacing the Code of Civil Procedure that had governed since 1868. They are codified as a single section of the General Statutes, N.C. Gen. Stat. § 1A-1, within which the individual rules are numbered. Unlike the Federal Rules of Civil Procedure, which are promulgated by the Supreme Court of the United States under the Rules Enabling Act, the North Carolina Rules are statutes, enacted and amended by the Legislature, and they are construed as such. This distinction matters in the law of service: the North Carolina courts do not possess the inherent authority to relax a method of service the Legislature has prescribed, and they have consistently said so.

The rules bearing directly upon service are these. Rule 3 governs the commencement of an action. Rule 4 governs the issuance, content, delivery, and service of the summons, and it is the central subject of this treatise. Rule 5 governs the service of pleadings and papers subsequent to the original complaint. Rule 6 governs the computation of time. Rule 12 governs the defenses of lack of personal jurisdiction, insufficiency of process, and insufficiency of service of process, and the waiver of those defenses. Rule 45 governs subpoenas. Rule 55 governs default. Rule 60 governs relief from judgments, including judgments void for want of service.

2.2 Chapter 1, Article 6A: Jurisdiction

Article 6A of Chapter 1, enacted in 1967 contemporaneously with the Rules, contains the jurisdictional statutes. Section 1-75.2 defines terms. Section 1-75.3 provides that jurisdiction is exercised as provided by the Article and the Rules. Section 1-75.4, the so called "long arm" statute, enumerates the grounds upon which the courts of this State may exercise personal jurisdiction over a defendant, resident or nonresident, who is served in the manner prescribed by Rule 4(j) or Rule 4(j1). Section 1-75.6 restates that jurisdiction over a person may be exercised by service of process or by appearance. Section 1-75.7 provides that a court having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to Rule 4(j) or 4(j1), or who makes a general appearance. Section 1-75.8 addresses jurisdiction in rem and quasi in rem. Section 1-75.10 prescribes the manner in which service is proved. Section 1-75.11 prohibits the entry of judgment against a defendant who has not appeared unless the court finds, on the record, that the defendant was served and that a ground for personal jurisdiction exists.

The interplay of section 1-75.4 and Rule 4 is the subject of a large body of case law concerning nonresident defendants. The Supreme Court in *Dillon v. Numismatic Funding Corp.*, 291 N.C. 674, 231 S.E.2d 629 (1977), established the two step inquiry that continues to govern: the court first asks whether the long arm statute authorizes the exercise of jurisdiction over the defendant, and then asks whether that exercise comports with the due process standard of *International Shoe*. Because the General Assembly intended section 1-75.4 to extend the jurisdiction of the North Carolina courts to the full limits permitted by the Constitution, the two inquiries in practice tend to merge. But the statutory inquiry is not a formality. It requires that the defendant have been served under Rule 4, and it is the service, not the contacts, that makes the jurisdiction effective.

2.3 Commencement, Issuance, and the Five Day Rule

Rule 3 provides that a civil action is commenced by filing a complaint with the court. Rule 4(a) provides that upon the filing of the complaint, summons shall be issued forthwith, and in any event within five days. The summons is issued by the clerk of superior court, who signs and seals it, and it is thereupon delivered for service to the sheriff of the county in which service is to be made, or to some other person duly authorized by law to serve summons. The five day rule is not directory. In *Roshelli v. Sperry*, 57 N.C. App. 305, 291 S.E.2d 355 (1982), the Court of Appeals held that where the summons was not issued within five days of the filing of the complaint, the action was not deemed commenced on the date of filing but only upon the later issuance of the summons, with the consequence that the statute of limitations, which had run in the interval, barred the claim. The decision has been followed consistently, and it illustrates a recurring theme of the law of process: the requirements of Rule 4 are not merely procedural but have substantive consequences for the plaintiff's rights.

The practitioner should note that the five day period is measured from the filing of the complaint, not from the date counsel delivers the file to the process server. Where a complaint is filed late in the day or immediately before a holiday, the responsible attorney should confirm that the clerk has issued the summons and that the file is in the hands of the sheriff or authorized server without delay. Judicial Process of North Carolina routinely receives files in which the summons was issued days after filing; while the action may be salvaged in many such cases, it is far better to avoid the question altogether.

Chapter 3. Historical Development of Process in North Carolina

3.1 The Colonial and Early Statehood Period

The law of process in North Carolina begins with the reception of the English common law. Under the Lords Proprietors and later the Crown, the courts of the colony employed the writ system of Westminster: the original writ of capias ad respondendum, which commanded the sheriff to take the body of the defendant and produce him before the court, and the writ of summons, which commanded the defendant to appear. The sheriff was, then as now, the officer of the court charged with execution of process, and his return upon the writ was the court's evidence that its command had been obeyed. The Constitution of 1776 and the statutes of the early General Assembly carried the system forward with little change. The Revised Statutes of 1837 and the Revised Code of 1854 codified the practice: an action at law was commenced by the issuance of a writ from the clerk, returnable to the next term of court, and the sheriff was required to serve it and make return.

The reported decisions of the early Supreme Court, which was constituted in its modern form in 1818, reflect a rigorous attention to the formalities of the writ. The court repeatedly held that a judgment rendered without service of the writ was void, that the sheriff's return was the proper and ordinarily conclusive evidence of service as between the parties, and that a defendant who wished to challenge the return must do so by a direct proceeding against the officer rather than by collateral attack upon the judgment. These early cases established principles that the modern rules continue to embody: the primacy of the sheriff as the serving officer, the evidentiary weight of the official return, and the distinction between a judgment that is void for want of jurisdiction and a judgment that is merely erroneous.

3.2 The Code of Civil Procedure of 1868

The Constitution of 1868 abolished the distinction between actions at law and suits in equity and directed the Legislature to enact a code of procedure. The General Assembly responded with the Code of Civil Procedure, modeled closely upon the Field Code of New York. The Code replaced the writ with the summons, a simpler instrument directed to the defendant rather than to the sheriff, which notified the defendant of the action and required him to answer within a stated period. It provided for personal service by delivering a copy to the defendant, for service upon corporations by delivery to designated officers, for service upon minors and incompetents through their representatives, and, for the first time in a comprehensive way, for service by publication upon defendants who could not be found within the State.

The Code provisions on service, successively recodified in the Code of 1883, the Revisal of 1905, the Consolidated Statutes of 1919, and the General Statutes of 1943, remained the law of North Carolina for a century. They generated an extensive jurisprudence concerning who might be served on behalf of a corporation, what constituted a proper return, when publication was permissible and what it must contain, and when a defendant's conduct amounted to a general appearance waiving defects in service. Much of that jurisprudence was carried forward by the drafters of the modern Rules, and the courts continue to cite pre 1970 decisions as authority where the language of the old statute and the new rule is materially the same.

3.3 The Rules of Civil Procedure and Subsequent Amendment

The Rules of Civil Procedure, effective in 1970, rewrote the law of service in the form that persists today. Rule 4 as originally enacted provided for personal delivery, abode service, service upon agents, and service by publication, and it preserved the sheriff as the primary serving officer while permitting service by other persons in limited circumstances. The most consequential subsequent amendments have expanded the methods available. Service by registered or certified mail, return receipt requested, was added early and has become the most common method in practice. Service by a designated delivery service authorized under 26 U.S.C. § 7502(f)(2), which encompasses the major private courier companies, was added to accommodate modern commercial practice. Service by mail with signature confirmation, a United States Postal Service product less costly than certified mail, was added in a later amendment. Each of these methods carries its own proof requirements under section 1-75.10, and each has generated its own line of decisions.

The trajectory of amendment has been toward greater flexibility in method coupled with continued insistence upon documentary proof. The General Assembly has been willing to let the plaintiff choose among a widening menu of methods, but it has not been willing to let the plaintiff rely upon an informal delivery, however reliable, that leaves no record. That policy choice explains the shape of the modern rule and should inform the practitioner's approach to every service decision.

PART II

The Summons and Its Life

Chapter 4. The Form, Content, and Issuance of the Summons

4.1 Contents Required by Rule 4(b)

Rule 4(b) prescribes the contents of the summons. It must run in the name of the State and be dated and signed by the clerk, assistant clerk, or deputy clerk of superior court of the county in which the action is commenced. It must contain the title of the cause and the name of the court and county in which the action has been commenced. It must be directed to the defendant. It must notify the defendant to appear and answer within thirty days after service, and it must notify the defendant that failure to answer will result in judgment by default for the relief demanded in the complaint. It must identify the plaintiff's attorney by name and address, or the plaintiff if unrepresented. Form AOC CV 100, promulgated by the Administrative Office of the Courts, is used almost universally and satisfies each of these requirements when properly completed.

The summons must be issued in the name of the defendant to be served. Where there are multiple defendants, a separate summons is issued for each, and each must be served with a copy of the complaint. Where a defendant is a corporation or other entity, the summons should name the entity as it is named in the complaint; the practice of naming the registered agent in the summons, though tolerated in *Wiles* where the entity was otherwise properly identified, invites needless dispute and should be avoided.

4.2 Defects in Form: Amendment Under Rule 4(i)

Rule 4(i) provides that at any time, in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued. The provision is the modern expression of a long standing distinction between defects that render a summons void and defects that render it merely irregular. A void summons, for example one that was never issued by the clerk, or one directed to no one, cannot be amended into validity, because there is nothing to amend. An irregular summons, for example one that misstates the county, misspells a party's name, or omits the attorney's address, may be amended, and the amendment relates back to the original issuance.

The Court of Appeals has treated the question of prejudice as central. Where the defendant was in fact served with a document that identified the action and the court, and where the defect is one of description rather than identity, amendment is ordinarily allowed. Where the defect goes to identity itself, as where the summons names a different person or entity from the one the plaintiff intended to sue, the courts have been far more reluctant, and the plaintiff is generally relegated to Rule 15 and its relation back doctrine, with the attendant risk that the limitations period has expired. The lesson for the practitioner is that the summons should be prepared with the same care as the complaint. The process server can execute service flawlessly and still deliver a void judgment if the document served was itself defective.

4.3 What Must Accompany the Summons

Rule 4(a) requires that the summons be served together with a copy of the complaint. Service of the summons alone, or of the complaint alone, is not service of process. In practice the two are stapled or bound together and served as a unit, and the return or affidavit of service should recite that both were served. Where the complaint is accompanied by exhibits, the exhibits should be included. Where other documents are to be served at the same time, such as a notice of hearing, a motion for preliminary injunction, or discovery requests, they may be served with the summons and complaint under Rule 4, and it is good practice to itemize every document in the proof of service. A process server's affidavit that recites service of "the summons and complaint" when in fact a dozen additional papers were delivered creates an avoidable evidentiary gap.

Chapter 5. The Duration of the Summons: Time Limits, Endorsement, and Alias and Pluries Process

5.1 The Sixty Day Period of Rule 4(c)

Rule 4(c) provides that personal service or substituted personal service of summons must be made within sixty days after the date of the issuance of the summons. When the summons has not been served within that period, it loses its vitality and becomes functus officio. Service attempted upon a summons that has expired is a nullity, and a judgment based upon such service is void. The sixty day period, however, does not run against service by publication, which is governed by its own timing provisions under Rule 4(j1), nor does the expiration of the summons terminate the action; it simply means that the plaintiff must obtain new process before proceeding.

5.2 Endorsement and Alias and Pluries Summons: Rule 4(d)

Rule 4(d) provides two mechanisms for keeping the action alive when the original summons has not been served. The first is endorsement: at any time within ninety days after the issuance of the original summons or of the last preceding endorsement, the plaintiff may secure an endorsement upon the original summons by the clerk for an extension of time within which to complete service. The second is the alias or pluries summons: within the same ninety day period, the plaintiff may sue out an alias summons, or a pluries summons if an alias has already issued, which is a new summons in the same action referring to the original. Either mechanism, if timely invoked, continues the action from its original commencement. The two may be used in succession indefinitely, each new endorsement or summons extending the chain by ninety days.

The ninety day period is jurisdictional in its consequences. In *Lemons v. Old Hickory Council, Boy Scouts of America, Inc.*, 322 N.C. 271, 367 S.E.2d 655 (1988), the Supreme Court held that where the plaintiff failed to obtain an endorsement or sue out an alias or pluries summons within ninety days, the action was discontinued as to the unserved defendant under Rule 4(e), and a summons subsequently issued commenced a new action as of its date, with the result that the statute of limitations, which had run in the interval, barred the claim. The Court of Appeals reached the same conclusion in *Dozier v. Crandall*, 105 N.C. App. 74, 411 S.E.2d 635 (1992), and the line of authority is unbroken. The practitioner should calendar the ninetieth day from the issuance of every summons and every endorsement, and should treat that date as a limitations deadline, because in effect it is one.

The endorsement must be made by the clerk. In *Johnson v. City of Raleigh*, 98 N.C. App. 147, 389 S.E.2d 849 (1990), the Court of Appeals held that an endorsement written upon the summons by the plaintiff's attorney rather than by the clerk was ineffective, and that the resulting failure to extend the summons within ninety days discontinued the action. The case is a reminder that the mechanisms of Rule 4(d) are formal acts of the court, not clerical conveniences, and must be executed by the officer the Rule designates.

5.3 Discontinuance and Its Consequences: Rule 4(e)

Rule 4(e) provides that when there is neither endorsement nor issuance of alias or pluries summons within the ninety day period, the action is discontinued as to any defendant not theretofore served with summons within the time allowed. The Rule further provides that the plaintiff may thereafter sue out an alias or pluries summons and the action shall be deemed to have commenced on the date of such issuance. The effect is that the plaintiff does not lose the action altogether; the plaintiff loses only the benefit of the original commencement date, which is fatal only if the statute of limitations has expired in the interval.

A number of decisions have addressed what happens when a summons in the chain is defective. The general rule is that a defective link breaks the chain. If an alias summons is issued more than ninety days after the original summons or the last valid endorsement, it does not continue the action but begins a new one. If an alias summons fails to refer to the original summons as Rule 4(d) requires, the courts have been divided about whether the omission is fatal, with the weight of authority treating a summons that is otherwise clearly a continuation of the same action as sufficient. Because the consequences of a broken chain are so severe, the plaintiff's counsel and the process server should together review every summons in the chain for timing and form before service is attempted.

5.4 Summary Table: Critical Deadlines in the Life of a Summons

Event	Time Limit	Authority	Consequence of Failure
Issuance of summons after filing of complaint	Five days	Rule 4(a)	Action deemed commenced on date of issuance (*Roshelli v. Sperry*)
Personal or substituted service of summons	Sixty days from issuance	Rule 4(c)	Summons expires; service upon it is void
Endorsement or alias/pluries summons	Ninety days from issuance or last endorsement	Rule 4(d)	Action discontinued; new commencement date (*Lemons*; *Dozier*)
Defendant's answer after service	Thirty days from service	Rule 12(a)	Default may be entered (Rule 55)
Answer after service by	Forty days from first	Rule 4(j1)	Default may be entered

Event	Time Limit	Authority	Consequence of Failure
publication	publication		
Motion to vacate void judgment	No fixed limit; "reasonable time"	Rule 60(b)(4)	Void judgment remains subject to attack

PART III

The Serving Officer

Chapter 6. Who May Serve Process in North Carolina

6.1 The Sheriff as Primary Officer

North Carolina is, in the vocabulary of the process serving profession, a "sheriff state." Rule 4(a) directs that the summons be delivered for service to the sheriff of the county in which service is to be made, or to some other person duly authorized by law to serve summons. The sheriff, an elected constitutional officer under Article VII of the State Constitution, has served process in this jurisdiction since the colonial period, and the Rules preserve that primacy. In the ordinary case, personal delivery and abode service are performed by the sheriff or a deputy, and the sheriff's return upon the summons, signed and dated, constitutes proof of service under section 1-75.10(a)(1).

The sheriff's primacy is not merely a matter of tradition. The Supreme Court has explained that the sheriff's return carries a presumption of regularity grounded in the officer's official duty and accountability, a presumption that a private person's affidavit does not automatically enjoy. The practitioner who elects private service where sheriff service is available thus accepts a modestly heavier evidentiary burden if the service is later challenged, in exchange for the speed, flexibility, and investigative capability that a professional firm can provide.

6.2 Private Service Under Rule 4(h1)

Rule 4(h1), captioned "Summons: When Process Returned Unexecuted," provides that if a proper officer returns a summons or other process unexecuted, the plaintiff may cause service to be made by anyone who is not less than twenty one years of age, who is not a party to the action, and who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made. The private server so authorized may serve by personal delivery or abode service in the same manner as the sheriff, and must prove service by affidavit under section 1-75.10(a)(2). The affidavit must set forth the facts showing that service was made in accordance with the Rule, including the server's qualifications under Rule 4(h1), the date, time, place, and manner of service, and the identity of the person served.

The precondition of a return "unexecuted" is essential and frequently misunderstood. A private person may not simply be substituted for the sheriff at the plaintiff's election; the sheriff must first have attempted service and returned the summons with a notation that service was not made. The attempt need not be exhaustive, and the sheriff's return of "not found," "unable to locate," or "moved, no forwarding address" satisfies the requirement. But absent such a return, service by a private person under Rule 4(h1) is ineffective, and the Court of Appeals has so held. The professional process server should therefore always confirm, before undertaking personal service in a North Carolina action, that the file contains a sheriff's return unexecuted, and should recite the fact of that return in the affidavit of service.

Rule 4(h), the companion provision, addresses the situation in which there is no proper officer available in the county to execute process, or the officer is a party to or interested in the action. In such case the clerk of superior court may issue process to some other suitable person. The provision is rarely invoked, but it furnishes the mechanism for private service where the sheriff is himself the defendant or has a disqualifying interest.

6.3 Service by Mail and by Delivery Service: No Officer Required

The methods of service by registered or certified mail, by designated delivery service, and by mail with signature confirmation, discussed in detail in Chapter 7, do not require the participation of the sheriff or any other officer, and do not require a prior return unexecuted. Rule 4(j)(1)(c) through (e) authorize any person to effect service by these methods, and section 1-75.10(a)(4) through (6) prescribe the affidavit by which such service is proved. In practice these methods are most often executed by the plaintiff's attorney or by a professional process serving firm acting on the attorney's behalf. Judicial Process of North Carolina executes mail service as a matter of routine, maintains the postal and courier records that the statute requires, and prepares the affidavits in the form the courts expect.

6.4 Service of Subpoenas: Rule 45

The restrictions of Rule 4(h1) do not apply to subpoenas. Rule 45(b) provides that any subpoena may be served by the sheriff, by the sheriff's deputy, by a coroner, or by any person who is not a party and is not less than eighteen years of age. Service is made by delivering a copy to the person named, or by registered or certified mail, return receipt requested. A subpoena for the attendance of a witness only, as distinguished from a subpoena duces tecum, may additionally be served by telephone communication by the sheriff, the sheriff's designee, or a coroner. Proof of service is by the server's certificate, or, for mail service, by the return receipt. Because the qualifications for serving subpoenas are less restrictive and no prior sheriff attempt is required, the professional process server's role in subpoena practice is broader and less encumbered than in the service of original process.

6.5 The Professional Standard

North Carolina does not license or register private process servers, and there is no statutory code of conduct governing them. The absence of regulation places a corresponding weight upon the professional standards the serving firm adopts for itself. Judicial Process of North Carolina adheres to the following principles, which it commends to every practitioner: the server personally performs the act of service and personally executes the affidavit, never delegating either; the affidavit recites facts within the server's personal knowledge and nothing else; the server records the date, time, address, and physical description of every person served or encountered at the time of the event, not afterward; the server never leaves papers at a location without first determining that the location is the defendant's dwelling and that the recipient resides there; and the server retains contemporaneous field notes and, where lawful and appropriate, photographic documentation. These practices are not required by the Rules, but they are what transforms an affidavit from a conclusory recital into persuasive evidence when service is challenged, and they are the difference between a firm whose service withstands scrutiny and one whose service does not.

PART IV

The Methods of Service

Chapter 7. Service Upon Natural Persons

7.1 The Menu of Rule 4(j)(1)

Rule 4(j)(1) prescribes five methods by which a natural person may be served. They are: (a) personal delivery, or the leaving of copies at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; (b) delivery to an agent authorized by appointment or by law to be served or to accept service of process; (c) mailing by registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee; (d) depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt; and (e) mailing by signature confirmation as provided by the United States Postal Service, addressed to the party to be served, and delivering to the addressee. The methods are alternatives; any one suffices. The plaintiff need not attempt them in any particular order, with the single exception that service by publication under Rule 4(j1) is available only after the methods of Rule 4(j) have been attempted with due diligence.

7.2 Personal Delivery

Personal delivery is the oldest and most reliable method. It is accomplished by handing the summons and complaint to the defendant. The defendant's cooperation is not required. If the defendant refuses to take the papers, the server may leave them in the defendant's immediate presence, informing the defendant of their nature, and the service is complete. The decisions of the North Carolina courts and of courts generally are in accord that a defendant cannot defeat service by declining to extend a hand, and that papers placed at the feet of a defendant who has slammed a door, or on the seat of a car whose driver has rolled up the window, have been delivered. The server should record the circumstances with particularity, because a refusal is precisely the situation in which the defendant later denies that service occurred.

Personal delivery may be made anywhere within the State: at the defendant's home, place of employment, a public street, a courthouse, or any other location where the defendant is found. The server should identify the defendant with reasonable certainty before service, by asking the defendant to confirm his or her name, by comparison to a photograph or description, or by other reliable means, and the affidavit should state the basis of identification.

7.3 Abode Service: "Suitable Age and Discretion" and "Residing Therein"

Abode service, sometimes called substituted personal service, is accomplished by leaving copies at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Each element carries meaning. The place must be the defendant's dwelling house or usual place of abode: the residence where the defendant actually lives, not a former residence, a vacation property the defendant occasionally visits, a business address, or the home of a relative where the defendant does not reside. The person with whom the papers are left must be of suitable age and discretion, a standard that has no fixed numerical threshold but which the courts assess by asking whether the recipient could reasonably be expected to understand the significance of the papers and to deliver them to the defendant. And the recipient must be residing therein at the time of service: a resident spouse, adult child, parent, or roommate qualifies; a visiting guest, a housekeeper who does not live in, a landlord, or a neighbor does not.

The "residing therein" requirement is the one most often litigated and most often overlooked by inexperienced servers. It is not enough that the recipient answered the door at the defendant's home; the recipient must live there. A server who leaves papers with a person who is merely present, without inquiring whether that person resides at the address, has not effected abode service, and the affidavit that recites "left with co resident" without a factual basis for the recital is worthless if challenged. The professional practice is to ask, and to record the recipient's name, relationship to the defendant, and confirmation of residence. Where the recipient declines to identify himself or herself, the server should record a physical description and the statements made, and should consider whether a further attempt at personal delivery would be prudent.

The dwelling requirement generates its own difficulties in an era of mobile populations and multiple residences. A defendant may have more than one usual place of abode, and the courts have recognized that a person who divides time between two homes may be served at either. But a defendant who has moved away, even temporarily, cannot be served at the former address, and the question whether a departure was a move or an absence is a question of fact upon which the server's investigation and testimony will be decisive. Judicial Process of North Carolina, as a matter of practice, verifies residence through multiple independent sources before effecting abode service in any contested or high value matter.

7.4 Service Upon an Agent Authorized by Appointment or by Law

Rule 4(j)(1)(b) permits service by delivery to an agent authorized by appointment or by law to be served or to accept service of process. Two categories of agent are contemplated. An agent by appointment is one whom the defendant has designated for the purpose, most commonly by a contractual provision, a power of attorney, or a written authorization to counsel to accept service. An agent by law is one upon whom a statute confers the authority, such as the Commissioner of Motor Vehicles under N.C. Gen. Stat. § 1-105 for nonresident motorists, or the Commissioner of Insurance under N.C. Gen. Stat. § 58-16-30 for insurers, discussed in Chapter 11.

The scope of an appointed agent's authority is construed strictly. An attorney who represents the defendant in other matters, or who has corresponded on the defendant's behalf concerning the dispute, is not thereby an agent authorized to accept service; the authority must be specific to the acceptance of process in the action. A defendant's employee, business partner, or family member is not an agent by appointment absent evidence of actual authorization. The plaintiff who relies upon service on an agent must be prepared to prove the agency, and the process server who serves an agent should obtain, where possible, a written acknowledgment of the agent's authority to accept service.

7.5 Service by Registered or Certified Mail

Service by registered or certified mail, return receipt requested, is the most frequently employed method of service in North Carolina civil practice and the subject of the largest body of modern case law. Its requirements, on the face of the Rule, are simple: the summons and complaint are mailed by registered or certified mail, return receipt requested, addressed to the party to be served, and delivered to the addressee. Proof is made under section 1-75.10(a)(4) by an affidavit of the serving party averring that a copy of the summons and complaint was deposited in the post office for mailing by registered or certified mail, return receipt requested, that it was in fact received as evidenced by the attached registry receipt or other evidence satisfactory to the court of delivery to the addressee, and that the genuine receipt or other evidence of delivery is attached.

The central interpretive question has been what "delivering to the addressee" requires where the return receipt is signed by someone other than the defendant. The Supreme Court addressed the question in *Harris v. Maready*, 311 N.C. 536, 319 S.E.2d 912 (1984). There the receipts were signed by persons other than the named defendants, and the defendants contended that service was therefore incomplete. The Court held that when the plaintiff has complied with the mailing requirements of the Rule and has filed the affidavit required by section 1-75.10, a rebuttable presumption of valid service arises, and the burden shifts to the defendant to show, by affidavit or other evidence, that the mail was not in fact delivered to the addressee. The General Assembly subsequently amended section 1-75.10 to codify the point, providing that the affidavit and receipt raise a presumption that the person who signed the receipt was an agent of the addressee authorized to receive mail. The presumption is rebuttable, but the defendant must do more than deny receipt; the defendant must offer evidence that the signatory was not authorized and that the papers did not reach the defendant.

Grimsley v. Nelson, 342 N.C. 542, 467 S.E.2d 92 (1996), reaffirmed and extended *Harris*. The Supreme Court held that the presumption of valid service arises whenever the plaintiff has mailed the process in the prescribed manner and the receipt shows delivery to the address, regardless of who signed, and that the defendant's unsupported assertion that he did not receive the papers is insufficient to rebut it. The Court of Appeals applied the rule in *Fender v. Deaton*, 130 N.C. App. 657, 503 S.E.2d 707 (1998), holding that a receipt signed by a person at the defendant's residence raised the presumption and that the defendant's affidavit denying authorization did not, without more, overcome it. The practical consequence is that certified mail service directed to the defendant's correct address and signed for by any person at that address will ordinarily be upheld, and the defendant who wishes to contest it must come forward with concrete evidence of non delivery.

The presumption depends, however, upon the mail having been addressed to the party to be served. Mail addressed to a wrong address, to a business the defendant no longer operates, or to a relative's residence where the defendant does not reside, does not raise the presumption, and the plaintiff must prove actual delivery to the defendant. Nor does the presumption arise where the plaintiff fails to file the affidavit section 1-75.10 requires, or files an affidavit that omits the required averments. The affidavit is not a formality; it is the evidentiary foundation of the presumption, and its absence leaves the plaintiff with nothing but a receipt whose significance the court must evaluate without statutory assistance.

A further point of practice: the return receipt must be the "genuine" receipt. A photocopy is not sufficient, and a receipt that has been lost cannot be replaced by the plaintiff's recollection. The United States Postal Service now provides electronic return receipts and online tracking records, and the courts have accepted these as "other evidence satisfactory to the court" under the statute. The serving party should preserve the original green card where one exists, and should print and retain the complete electronic tracking and signature record in every case.

7.6 Designated Delivery Service and Signature Confirmation

Rule 4(j)(1)(d) authorizes service by depositing the summons and complaint with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt. The designated delivery services are those the Internal Revenue Service has approved for the timely mailing rule of the Internal Revenue Code, and they include specified services of the principal private courier companies. Proof is by affidavit under section 1-75.10(a)(5), which parallels the certified mail affidavit and must attach the delivery receipt. The same presumption of valid service applies, and the same case law governs.

Rule 4(j)(1)(e) authorizes service by mail with signature confirmation, a United States Postal Service product that records the recipient's signature electronically at the time of delivery and makes it available online. Proof is by affidavit under section 1-75.10(a)(6), attaching the signature confirmation record. The method is less expensive than certified mail and provides comparable evidence of delivery. It is not, however, available for mail addressed to a post office box in the same manner as certified mail, and the serving party should confirm the applicable postal regulations before use.

The practitioner should note that the delivery service must be one that the Internal Revenue Service has actually designated. An ordinary ground shipment, a same day courier, or a service of a company not on the designated list does not satisfy the Rule, however reliable it may be. The list is published by the Internal Revenue Service and updated periodically; Judicial Process of North Carolina maintains the current list and uses only designated services for Rule 4 delivery.

7.7 Comparative Assessment

Each method has advantages. Personal delivery is definitive and begins the response period immediately, but it requires that the defendant be located and, in North Carolina, that the sheriff first attempt service if a private server is to be used. Abode service is nearly as reliable when performed by a careful server, but its elements are fact intensive and its proof depends upon the server's investigation. Certified mail is inexpensive and does not require locating the defendant physically, but it takes time, depends upon the accuracy of the address, and can be defeated by a defendant who declines to sign or whose mail is refused or returned unclaimed. Designated delivery service is faster than the postal service and produces excellent documentation, but is more costly. Signature confirmation is economical but newer and less familiar to some clerks and courts. The prudent plaintiff will often pursue two methods in parallel, mailing the process by certified mail on the day of issuance while simultaneously placing the summons with the sheriff for personal service, so that if one method fails the other may already have succeeded.

Chapter 8. Service Upon Minors and Incompetent Persons

Rule 4(j)(2) governs service upon persons under disability. A minor under the age of eighteen is served by delivering copies to the minor and also to a parent or guardian having custody of the minor, or if there is none, to any other person having the care and control of the minor; if there is no such person, then service upon the minor alone suffices. A person adjudicated incompetent or otherwise under a legal disability is served by delivering copies to the person and also to the person's guardian or other legal representative; if there is no guardian, service upon the person alone suffices. In each case, service may be accomplished by any of the methods available under Rule 4(j)(1), so that certified mail to the minor and separately to the parent is permissible.

The rationale is protective. A minor or incompetent person may be unable to appreciate the significance of the summons or to protect his or her interests, and the requirement of dual service ensures that a competent adult with responsibility for the person receives notice. The courts have treated the requirement as mandatory, and a judgment against a minor served only individually, without service upon a parent or guardian, is subject to attack. The protective purpose is reinforced by Rule 17(b) and (c), which require the appointment of a guardian ad litem to represent a minor or incompetent defendant, and by Rule 55(b), which prohibits default judgment against such a defendant absent representation. The process server should ascertain the age and capacity of every individual defendant before service, and where the defendant is or may be under disability, should serve both the defendant and the appropriate representative and should document both deliveries separately.

Chapter 9. Service Upon Corporations, Limited Liability Companies, Partnerships, and Associations

9.1 Domestic and Foreign Corporations: Rule 4(j)(6)

Rule 4(j)(6) prescribes the methods for serving a domestic or foreign corporation. They are: (a) delivering a copy to an officer, director, or managing agent of the corporation, or leaving copies in the office of such officer, director, or managing agent with the person who is apparently in charge of the office; (b) delivering a copy to an agent authorized by appointment or by law to be served or to accept service of process, or leaving copies in the office of such agent with the person apparently in charge; (c) mailing by registered or certified mail, return receipt requested, addressed to the officer, director, or agent to be served; (d) depositing with a designated delivery service addressed to the officer, director, or agent to be served, and obtaining a delivery receipt; and (e) mailing with signature confirmation addressed to the officer, director, or agent to be served. The Rule does not authorize service upon a corporation by mailing to the corporation itself without designating an officer, director, or agent; the mail must be addressed to a person within one of those categories, though the courts have accepted an address to the corporation "attention" a named officer or to the "registered agent" by title.

The "managing agent" category has been construed functionally. A managing agent is one who has general supervisory authority over the corporation's business, or over a substantial part of it, such that service upon that person may fairly be expected to result in notice to the corporation. A store manager, plant manager, branch manager, or regional supervisor ordinarily qualifies; a sales clerk, receptionist, security guard, or line employee ordinarily does not. The question is one of fact, and the process server should record the title and apparent responsibilities of the person served.

The presumption of valid service for mail directed to a corporation was addressed in *Lane v. Winn Dixie Charlotte, Inc.*, 169 N.C. App. 180, 609 S.E.2d 456 (2005). The plaintiff mailed the summons and complaint by certified mail to the corporation at the address of the store where the injury occurred, and the receipt was signed by a store employee. The Court of Appeals held that under *Harris* and *Grimsley* the presumption of valid service arose, that the corporation's evidence that the signatory was not an officer or registered agent did not by itself rebut the presumption, and that the trial court erred in dismissing the action. The decision confirms that the *Harris* presumption applies to corporate as well as individual defendants, but the practitioner should not read it as license to mail process to any corporate location. The mail in *Lane* was addressed to the corporation at a place of business where a managing agent was to be expected, and the court's reasoning depended on that fact.

9.2 The Registered Agent and Service Through the Secretary of State

Every domestic corporation, foreign corporation authorized to transact business in this State, limited liability company, and limited partnership is required by Chapter 55D of the General Statutes to maintain a registered agent and registered office in North Carolina. N.C. Gen. Stat. § 55D-30. The registered agent is the entity's agent for service of process by law, and delivery to the registered agent under Rule 4(j)(6)(b) is the most secure method of corporate service, because the agent's authority is a matter of public record and cannot be disputed. The name and address of the registered agent are available through the Secretary of State's online business registry, and the process server should consult that registry, rather than a commercial database, immediately before service, because agents change.

Where the entity has no registered agent, or the agent cannot with reasonable diligence be found at the registered office, N.C. Gen. Stat. § 55D-33 provides that the entity may be served by delivering the process to the Secretary of State, who forwards it by registered or certified mail to the entity at its principal office or, if none is on record, to the address of its last known officer. Service is effective upon delivery to the Secretary of State, and the statute prescribes the fee and the manner in which the Secretary's certificate of service is obtained. The provision is the modern successor to the long standing rule that a corporation which fails to maintain the statutory agent thereby consents to be served through the State, and it is an invaluable tool for reaching defunct, delinquent, or evasive entities. Its use requires that the plaintiff first attempt service upon the registered agent and document the failure, and the process server's affidavit of the attempt is the foundation for the Secretary of State filing.

9.3 Limited Liability Companies

Rule 4(j)(6) by its terms addresses corporations, and the North Carolina Limited Liability Company Act, Chapter 57D, provides that a limited liability company is served in the same manner as a corporation, with the members and managers standing in the place of directors and officers. Service upon a manager of a manager managed company, or upon a member of a member managed company, or upon the registered agent, satisfies the Rule. Service upon a member who has no management authority in a manager managed company is of doubtful validity, and the process server should ascertain the company's management structure from its articles of organization, which are on file with the Secretary of State, before serving an individual member.

9.4 Partnerships and Unincorporated Associations

Rule 4(j)(7) provides that a general or limited partnership is served by delivering copies to any general partner, or to an attorney in fact or agent authorized by appointment or by law to be served, or by leaving copies in the office of the general partner, attorney in fact, or agent with the person apparently in charge; or by registered or certified mail, designated delivery service, or signature confirmation addressed to any general partner, attorney in fact, or agent. Rule 4(j)(8) makes corresponding provision for unincorporated associations, organizations, and societies, permitting service upon an officer, director, managing agent, or member of the governing body, or upon an authorized agent, or by mail directed to such persons. Limited partnerships are additionally required to maintain a registered agent under Chapter 55D, and may be served through that agent or through the Secretary of State under section 55D-33.

The practitioner should note that service upon a partnership is not service upon the individual partners in their individual capacities, and that a judgment against the partnership binds partnership assets but not the separate property of a partner who was not individually served. Where the plaintiff seeks personal liability of the partners, each must be named and served as an individual defendant under Rule 4(j)(1).

9.5 Misnomer and Misidentification

Corporate defendants are frequently misdescribed in pleadings and process. The corporation's legal name may differ from its trade name; a parent may be named where a subsidiary is the proper defendant; a dissolved corporation may be named where a successor now holds the liability. The courts distinguish between misnomer, in which the correct entity is served but under an incorrect name, and misidentification, in which the wrong entity is served. Misnomer is curable by amendment under Rule 4(i) or Rule 15, and the amendment relates back, because the entity actually served had notice of the action. Misidentification is not curable by amendment, because the entity the plaintiff now seeks to sue was never served and had no notice; the plaintiff must commence anew, and the limitations period is measured from the new commencement. *Wiles v. Welparnel*, discussed in Chapter 1, sits at the misnomer end of the spectrum, and the decisions since have consistently asked whether the entity that received the process was the entity the plaintiff intended to sue. The process server can assist by recording, at the time of service, exactly what entity name appears on the premises, the signage, and the identification of the person served.

Chapter 10. Service Upon Governmental Defendants

10.1 The State of North Carolina and Its Agencies

Rule 4(j)(3) provides that the State of North Carolina is served by delivering a copy of the summons and complaint to the Attorney General or to a deputy or assistant attorney general, or by mailing copies by registered or certified mail, designated delivery service, or signature confirmation addressed to the Attorney General or a deputy or assistant attorney general. Rule 4(j)(4) provides that an agency of the State is served by delivering copies to the process agent appointed by the agency, and that if no such agent has been appointed, service is upon the Attorney General or a deputy or assistant attorney general as for the State itself. Each agency is required to designate a process agent and to file the designation with the Attorney General, and the Attorney General maintains a list of agency process agents that the practitioner may consult.

Service upon a State officer in an official capacity, as distinguished from an agency, is made upon the officer in the manner provided for natural persons, and, where the action seeks relief against the State, upon the Attorney General as well. The distinction between official and individual capacity claims has jurisdictional consequences under the doctrine of sovereign immunity and should be resolved before process is prepared.

10.2 Counties, Cities, and Local Entities

Rule 4(j)(5) prescribes service upon counties, cities, towns, villages, and other local public bodies. A county is served by delivering copies to its county manager or, if there is none, to the chairman, clerk, or any member of the board of commissioners. A city, town, or village is served by delivering copies to its mayor, city manager, or clerk. Any other local public body, such as a board of education, a housing authority, a sanitary district, or a hospital authority, is served by delivering copies to an officer or director of the body, or to an agent authorized by appointment or by law. In each case, service may alternatively be made by registered or certified mail, designated delivery service, or signature confirmation addressed to the officer designated. The plaintiff who serves a county attorney, a city attorney, or the general counsel of a local agency, rather than the officer the Rule designates, has not complied with the Rule, notwithstanding that such counsel is the person who will in fact defend the action, unless counsel has been expressly authorized to accept service.

The practitioner should further note that the identity of the proper officer changes with the organization of local government. A county that has adopted the county manager form is served upon the manager; one that has not is served upon the board. A city that operates under a council manager charter is served upon the manager; one that operates under a mayor council charter may be served upon the mayor. The process server should verify the form of government from the county or municipal charter, or from the clerk's office, before service.

10.3 Foreign States and Their Instrumentalities

Rule 4(j)(9) provides that a foreign state or its political subdivision, agency, or instrumentality is served in the manner prescribed by the Foreign Sovereign Immunities Act, 28 U.S.C. § 1608. The federal statute prescribes a hierarchy of methods, beginning with any special arrangement for service between the plaintiff and the foreign state, proceeding to service under an applicable international convention, then to service by mail from the clerk of court to the foreign ministry, and finally to service through the United States Department of State by diplomatic channels. Service upon a foreign sovereign is a specialized undertaking requiring coordination with the clerk of superior court and, frequently, with federal authorities, and it should not be attempted without counsel experienced in the field.

Chapter 11. Statutory Agents and Special Statutes

11.1 Nonresident Motorists: N.C. Gen. Stat. § 1-105

Section 1-105 provides that the acceptance by a nonresident of the privileges of operating a motor vehicle upon the highways of this State, or the operation by a nonresident of a motor vehicle on those highways, constitutes the appointment of the Commissioner of Motor Vehicles as the nonresident's agent for service of process in any action arising out of an accident or collision in which the nonresident may be involved. The statute is the descendant of the nonresident motorist acts upheld by the Supreme Court of the United States in *Hess v. Pawloski*, 274 U.S. 352 (1927), and it remains in active use. Service is accomplished by leaving a copy of the process, with a fee, with the Commissioner or in the Commissioner's office, and by sending notice of the service and a copy of the process by registered or certified mail to the defendant, with the return receipt or other evidence of delivery attached to an affidavit of compliance filed with the court. Section 1-105.1 extends the same mechanism to residents who depart the State after an accident and cannot be found within it.

The statute is strictly construed, and each of its steps is mandatory. The failure to send the notice to the defendant, or to file the affidavit of compliance, or to attach the return receipt, has each been held to defeat service. The process server executing service under section 1-105 must therefore attend to both halves of the transaction, the delivery to the Commissioner and the notice to the defendant, and must document both.

11.2 Insurers: N.C. Gen. Stat. § 58-16-30

Every insurance company licensed to do business in North Carolina is required, as a condition of its license, to appoint the Commissioner of Insurance as its attorney for service of process, and section 58-16-30 prescribes the manner in which such service is made. Process is served by delivering two copies to the Commissioner, who forwards one to the insurer by registered or certified mail. Service is complete upon delivery to the Commissioner, and the insurer's time to answer runs from the date the Commissioner mails the copy. The provision applies to domestic and foreign insurers alike and furnishes a reliable method of reaching an insurer whose registered agent or home office is difficult to identify. Surplus lines insurers and unauthorized insurers are subject to distinct provisions of Chapter 58 that designate the Commissioner as agent under differing conditions, and the practitioner should consult the applicable article before proceeding.

11.3 Other Statutory Agents

The General Statutes contain numerous other provisions designating a public officer as agent for service upon a class of defendants. Nonresident persons who engage in specified activities within the State, such as the sale of securities, the practice of certain professions, or the operation of aircraft or watercraft, are by statute deemed to have appointed a designated official as agent. Executors, administrators, and trustees are served under the provisions of Chapter 28A and Chapter 36C in addition to Rule 4. Each such statute prescribes its own procedure, and each is a trap for the plaintiff who assumes that Rule 4 is exhaustive. The process server presented with an unusual defendant should ask whether a special statute applies before selecting a method.

11.4 Summary Ejectment and Small Claims

Actions in small claims court before a magistrate, including summary ejectment actions under Chapter 42, are governed by special service provisions. N.C. Gen. Stat. § 7A-217 provides that a magistrate summons may be served by any method authorized by Rule 4, and additionally by the plaintiff or the sheriff mailing the summons and complaint by certified mail, return receipt requested, to the defendant. N.C. Gen. Stat. § 42-29 provides that in summary ejectment, if the defendant cannot be found, the officer may serve the summons by posting a copy in a conspicuous part of the premises and, where the plaintiff seeks only possession, that posting together with mailing to the defendant's last known address constitutes service. Where the plaintiff seeks a money judgment in addition to possession, posting alone is insufficient and personal, abode, or mail service must be obtained. The distinction is frequently misunderstood by landlords who obtain a judgment for rent upon posted service and later discover that the money judgment is void.

Chapter 12. Service by Publication

12.1 The Constitutional Setting

Service by publication is the method of last resort. It is a fiction, in the sense that the defendant is presumed to have read a legal notice in a newspaper that, in the ordinary course, the defendant will never see. The Supreme Court of the United States has tolerated the fiction, in *Mullane* and its successors, only because there is no alternative when a defendant's whereabouts cannot be ascertained, and only upon condition that the plaintiff has first exhausted the reasonable means of finding the defendant. The North Carolina rule embodies both the tolerance and the condition, and the North Carolina courts have policed the condition with vigor.

12.2 The Elements of Rule 4(j1)

Rule 4(j1) provides that a party that cannot with due diligence be served by personal delivery, registered or certified mail, or designated delivery service may be served by publication. The elements are these. First, the plaintiff must have exercised due diligence in attempting the methods of Rule 4(j). Second, the notice must be published once a week for three successive weeks in a newspaper qualified for legal advertising under N.C. Gen. Stat. §§ 1-597 and 1-598, and circulated in the area where the party to be served is believed by the serving party to be located, or, if there is no reliable information concerning the location of the party, then in the county where the action is pending. Third, the notice must be captioned in the action, must name the party to be served, must state that a pleading seeking relief against that party has been filed, must state the nature of the relief sought, and must require the party to make defense to the pleading not later than forty days after a date stated in the notice, which date must be the date of the first publication or a date certain after it. Fourth, where the plaintiff has the party's post office address, the plaintiff must mail a copy of the notice to the party at or immediately prior to the first publication. Fifth, proof is made by affidavit of the publisher showing the publication and its dates, together with an affidavit of the serving party showing the circumstances warranting publication and the mailing, if any.

Each element is mandatory and the omission of any one is fatal. Publication for two weeks rather than three, publication in a newspaper that does not meet the statutory qualifications, a notice that omits the nature of the relief or that states an answer period shorter than forty days, or a failure to mail the notice where an address was known, has each been held to void the service and the judgment resting upon it.

12.3 Due Diligence

The requirement of due diligence has generated the most substantial body of publication case law. The Court of Appeals in *Fountain v. Patrick*, 44 N.C. App. 584, 261 S.E.2d 514 (1980), and *Emanuel v. Fellows*, 47 N.C. App. 340, 267 S.E.2d 368 (1980), established that due diligence requires the plaintiff to use all resources reasonably available to locate the defendant, and that a plaintiff who has information that would lead a reasonable person to the defendant, but fails to follow it, has not been diligent. In *Barclays American/Mortgage Corp. v. BECA Enterprises*, 116 N.C. App. 100, 446 S.E.2d 883 (1994), the court held that the inquiry is whether the plaintiff acted as a reasonable person would in attempting to locate the defendant, and that the plaintiff's failure to pursue an obvious avenue, there the telephone directory and public records that disclosed the defendant's address, precluded resort to publication. *Jones v. Wallis*, 211 N.C. App. 353, 712 S.E.2d 180 (2011), applied the rule to void a judgment where the plaintiff had published without adequately exhausting methods that would readily have disclosed the defendant's location.

The courts have declined to prescribe a fixed checklist, holding instead that what constitutes due diligence depends upon the circumstances of each case. But the decisions reveal a consistent pattern of inquiries the courts expect. They include: attempted personal service by the sheriff at the last known address; attempted certified mail at the last known address; inquiry of the defendant's relatives, neighbors, employers, and known associates; examination of telephone directories and online directories; examination of public records, including voter registration, motor vehicle registration, real property records, and court records; inquiry of the postal service for a forwarding address; and, in the modern era, examination of commercial locator databases and social media. The plaintiff need not perform every conceivable inquiry, but the plaintiff must perform those that a reasonable person in the plaintiff's position would perform, and must be able to describe each of them in the affidavit.

The due diligence affidavit is the single most important document in a publication service, and it is the document most often prepared carelessly. An affidavit that recites in conclusory terms that "diligent search has been made" is insufficient. The affidavit must set forth the specific steps taken, the dates on which they were taken, the persons contacted, and the results. It should be executed by the person who actually performed the search, not by counsel on information and belief. Judicial Process of North Carolina prepares due diligence affidavits as a matter of routine, supported by a documented skip tracing file, and the firm's experience is that such an affidavit will withstand a Rule 60(b)(4) motion years after the judgment where a conclusory one will not.

12.4 The Newspaper and the Notice

Sections 1-597 and 1-598 prescribe the qualifications of a newspaper for legal advertising. The newspaper must have been admitted to the United States mail as second class matter, or its successor classification, in the county where publication is to occur; must have a general circulation to actual subscribers; and must have been regularly published for at least one year. Free distribution publications, trade journals, and publications of limited circulation do not qualify. The clerk of superior court in each county can identify the qualified newspapers, and the process server should confirm qualification before publication, because publication in an unqualified newspaper is no publication at all.

The form of the notice is prescribed by the Rule and the Administrative Office of the Courts provides a model. The notice should track the Rule's language precisely. In particular, the statement of the nature of the relief sought should be specific enough to inform the defendant of what is at stake, without reproducing the complaint; "an action for money damages arising out of a motor vehicle collision on or about a stated date" is adequate, while "an action for relief" is not. The date from which the forty days run should be stated as a date certain, and the affidavit of publication should confirm that the first publication occurred on or before that date.

12.5 Publication in Actions In Rem and Quasi In Rem

Publication is most frequently employed in actions affecting title to land, in foreclosures, in actions to quiet title, in partition proceedings, in domestic actions where the spouse cannot be located, and in proceedings to establish or terminate parental rights. In actions in rem and quasi in rem, section 1-75.8 supplies the jurisdictional basis, and the presence of the property within the State substitutes for the presence of the defendant. But the notice requirements of *Mullane* apply with full force, and where the defendant's address is known or ascertainable, the plaintiff must mail as well as publish. The Supreme Court of the United States in *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983), held that publication alone is constitutionally inadequate to notify a mortgagee of record whose address is reasonably ascertainable, and the North Carolina courts have applied the same principle to lienholders, heirs, and other interested persons in proceedings affecting property.

Chapter 13. Service Outside North Carolina and Abroad

13.1 Service in Other States

Rule 4(j3) provides that service upon a defendant outside this State may be made in the manner prescribed by Rule 4(j) for service within the State, or in the manner prescribed by the law of the place where service is made for the service of process in an action in a court of general jurisdiction of that place. A North Carolina plaintiff serving a defendant in another state thus has a choice: to follow the North Carolina methods, which will be familiar and whose proof requirements are known, or to follow the methods of the foreign state, which may be broader. Personal delivery by any person qualified under the law of the state where service is made is effective, and the sheriff first requirement of Rule 4(h1) does not apply, because no North Carolina sheriff has jurisdiction to serve outside the State. Certified mail, designated delivery service, and signature confirmation are equally available for out of state defendants and are the methods most commonly employed.

Service outside the State must be accompanied by a basis for personal jurisdiction under section 1-75.4, and the two inquiries of *Dillon v. Numismatic Funding* must both be satisfied. The plaintiff's complaint should plead the jurisdictional facts, and the affidavit of service should establish the method. Proof is under section 1-75.10, and where service was made under the foreign state's law, the affidavit should recite that law and the manner of compliance.

13.2 The Hague Service Convention

Service upon a defendant in a foreign country that is a party to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, the Hague Service Convention, must comply with the Convention. The Supreme Court of the United States held in *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694 (1988), that the Convention is mandatory whenever the law of the forum requires the transmission of documents abroad for service, and the North Carolina courts have applied the Convention as the supreme law of the land under the Supremacy Clause. The Convention establishes a Central Authority in each contracting state to receive requests for service and to execute them in accordance with local law. The plaintiff transmits the request, with the documents translated into the official language of the receiving state where required, to the Central Authority, which effects service and returns a certificate. Article 10 of the Convention permits service by mail and through judicial officers of the receiving state unless that state has objected, and many states have. The plaintiff must determine the receiving state's declarations and reservations before selecting a method.

The Supreme Court in *Water Splash, Inc. v. Menon*, 581 U.S. 271 (2017), resolved a long standing division among the lower courts by holding that Article 10(a) permits service by mail where the receiving state has not objected and where the law of the forum authorizes mail service. Because North Carolina law authorizes service by certified mail and designated delivery service, a North Carolina plaintiff may serve a defendant by those methods in a Hague state that has not objected to Article 10(a), provided the plaintiff can establish delivery to the addressee under section 1-75.10.

Where the receiving state has objected, service must proceed through the Central Authority, a process that in many jurisdictions requires several months.

13.3 The Inter American Convention and Letters Rogatory

The Inter American Convention on Letters Rogatory and its Additional Protocol, to which the United States and a number of Latin American states are parties, provides a parallel mechanism for service in those states through designated Central Authorities using a prescribed form. For countries that are party to neither convention, service is accomplished by letters rogatory, a formal request from the North Carolina court to the courts of the foreign state, transmitted through diplomatic channels, or by any method permitted by the law of the foreign state that is reasonably calculated to give notice. Rule 4(j3) authorizes service abroad by the methods available under North Carolina law where those methods are not prohibited by the law of the foreign state, and the practitioner should obtain advice from counsel in the foreign jurisdiction concerning what is permitted, because some states treat the service of foreign process by private persons within their borders as an offense.

Judicial Process of North Carolina coordinates international service under both conventions and by letters rogatory, and its affiliate Poindexter Global Intelligence effects service in Puerto Rico and the Dominican Republic in compliance with local law and the forum court's rules. The firm's experience is that the success of international service depends almost entirely upon the accuracy of the initial documentation: a request that is properly translated, correctly addressed, and accompanied by the required number of copies will be executed; one that is not will be returned months later unexecuted.

13.4 Service in North Carolina for Foreign Proceedings

Requests from foreign courts for service within North Carolina under the conventions are transmitted through the designated United States Central Authority and executed in this State in accordance with the Rules, and the Uniform Interstate Depositions and Discovery Act, Chapter 1F of the General Statutes, governs the issuance and service of subpoenas in this State in aid of proceedings pending in other states. A process server in North Carolina who effects service of foreign process should comply with both the foreign court's requirements and the North Carolina rules concerning who may serve and how service is proved, because the foreign court will scrutinize the affidavit under its own law and the North Carolina court may be asked to enforce the resulting judgment under the Uniform Enforcement of Foreign Judgments Act, Chapter 1C, Article 17.

PART V

Proof, Defects, Waiver, and Consequences

Chapter 14. Proof of Service

14.1 The Statutory Scheme of Section 1-75.10

Section 1-75.10 prescribes the manner in which service of process is proved, and Rule 4(j2) incorporates it. The statute is organized by method. Personal service or substituted personal service by the sheriff or other officer is proved by the officer's certificate, that is, the return, showing the place, time, and manner of service. Service by a person other than an officer is proved by the affidavit of the person, showing the place, time, and manner of service, and, where service was made under Rule 4(h1), the facts establishing the server's qualifications. Service by publication is proved by the affidavit of the publisher and the affidavit of the serving party described in Chapter 12. Service by registered or certified mail is proved by the affidavit of the serving party averring the deposit, the receipt, and the attachment of the genuine receipt. Service by designated delivery service and by signature confirmation is proved by parallel affidavits attaching the delivery receipt or signature confirmation record.

The proof of service is not itself the service; it is the evidence of it. Service that was properly made but improperly proved may be re proved by a corrected affidavit, and Rule 4(i) authorizes the court to permit amendment of proof of service. Conversely, a perfect affidavit does not validate service that was not properly made. The distinction matters when service is challenged: the defendant who attacks the affidavit is attacking the evidence, and the plaintiff may respond with better evidence; the defendant who attacks the service itself is attacking the jurisdictional act, and no amount of evidence will cure a method that did not comply with the Rule.

14.2 The Officer's Return and Its Evidentiary Weight

The sheriff's return of service has, since the earliest reported decisions of this State, enjoyed a strong presumption of truth. The modern statement of the rule is found in *Harrington v. Rice*, 259 N.C. 179, 130 S.E.2d 305 (1963), in which the Supreme Court held that the officer's return is prima facie evidence of service and that a defendant who seeks to impeach it must do so by evidence that is clear, unequivocal, and convincing. A defendant's bare denial that he was served, contradicting the return, does not meet the standard. The rule rests upon the officer's official duty, the criminal and civil liability that attends a false return, and the public interest in the stability of judgments. The Court of Appeals has applied the standard in numerous subsequent decisions and has extended a similar, though somewhat less robust, presumption to the affidavit of a private process server whose qualifications and account of service are set forth with particularity.

The return should be complete. It should identify the officer, the summons served, the person upon whom service was made, the manner of service, the date and time, and the address. A return that recites only "served" without particulars invites challenge and, if challenged, leaves the officer to reconstruct the event from memory. The sheriffs of North Carolina generally use the standard return form printed on AOC CV 100, and the process server who serves under Rule 4(h1) should use an affidavit containing at least the same information and, ideally, considerably more.

14.3 The Affidavit of the Private Process Server

The affidavit of a private process server under section 1-75.10(a)(2) must be sworn before a notary public or other officer authorized to administer oaths, and it must set forth facts, not conclusions. The affidavit should recite the server's name, age, and residence; the server's relationship, if any, to the parties, and the absence of any disqualifying relationship under Rule 4(h1); the fact that the sheriff returned the summons unexecuted and the date of that return; the documents served; the date, time, and address of service; the name and physical description of the person served; the manner of service, whether personal delivery or abode service; and, for abode service, the facts establishing that the address was the defendant's dwelling house or usual place of abode and that the recipient was of suitable age and discretion and resided therein. The affidavit should be signed and dated and should attach, where available, a copy of the served summons showing the sheriff's return unexecuted.

Judicial Process of North Carolina prepares its affidavits in this form as a matter of routine and retains the underlying field notes, GPS records, and photographic documentation in its file for a period well beyond any limitations period for attack upon the judgment. The firm's experience, consistent with the reported decisions, is that a detailed and contemporaneously supported affidavit is very rarely successfully impeached, while a conclusory affidavit is impeached with regularity.

14.4 Section 1-75.11: Judgment Against a Defendant Who Has Not Appeared

Section 1-75.11 provides that where a defendant fails to appear, the court shall not enter judgment against the defendant unless the court finds, upon the record, that service was made in the manner prescribed by Rule 4 and that a ground for personal jurisdiction under section 1-75.4 exists. The statute further provides that the court's findings may be based upon the proof of service filed under section 1-75.10 together with the verified complaint or affidavits establishing the jurisdictional facts. In practice the clerk of superior court, upon a motion for entry of default under Rule 55(a), reviews the proof of service before entering default, and the judge, upon a motion for default judgment under Rule 55(b), makes the findings the statute requires. A default judgment entered without the requisite proof of service in the file is subject to being set aside, and the process server's affidavit is thus the foundation of the plaintiff's judgment as well as of the court's jurisdiction.

Chapter 15. Defects in Service, Waiver, and Void Judgments

15.1 The Defenses of Rule 12(b)(2), (4), and (5)

Rule 12(b) enumerates as defenses that may be raised by motion the lack of jurisdiction over the person, Rule 12(b)(2); the insufficiency of process, Rule 12(b)(4); and the insufficiency of service of process, Rule 12(b)(5). The three are distinct. Lack of personal jurisdiction is the absence of a constitutional and statutory basis for the court's authority over the defendant, typically the absence of minimum contacts. Insufficiency of process is a defect in the summons itself: it was not issued by the clerk, it was not directed to the defendant, it omitted a required element. Insufficiency of service of process is a defect in the manner of service: the summons was left with a person who did not reside at the dwelling, was mailed to the wrong address, was served after it had expired. A motion should identify which defense is invoked, and the defendant who invokes the wrong one may find that the right one has been waived.

The burden of proof upon a motion challenging service is initially upon the plaintiff, who must show that service was made in a manner the Rule authorizes; but where the plaintiff produces proof of service under section 1-75.10, the presumption of validity arises, and the burden shifts to the defendant to rebut it. The court decides the motion upon affidavits, and may take evidence where the affidavits conflict. Findings of fact upon a service motion are reviewed for competent evidence; conclusions of law are reviewed de novo.

15.2 Waiver Under Rule 12(h)(1) and General Appearance

Rule 12(h)(1) provides that the defenses of lack of personal jurisdiction, insufficiency of process, and insufficiency of service of process are waived if omitted from a motion under Rule 12 that raises other defenses, or if neither made by motion nor included in a responsive pleading. The rule is strict. A defendant who files an answer without asserting the defense, or who moves to dismiss for failure to state a claim without joining the service defense, has waived it, and the court thereafter has jurisdiction over the defendant notwithstanding that the service was defective.

Section 1-75.7 provides, independently of Rule 12, that a court has jurisdiction over a person who makes a general appearance in the action. A general appearance is any act by which the defendant invokes the authority of the court or seeks relief from it upon a matter other than the court's jurisdiction over the defendant. The Supreme Court in *Lynch v. Lynch*, 302 N.C. 189, 274 S.E.2d 212 (1981), held that a defendant who sought affirmative relief from the court before challenging service had made a general appearance and waived the defect, and explained that the doctrine rests upon the elementary proposition that a party may not invoke the court's power and simultaneously deny that the court has power over him. The doctrine has ancient roots; the pre 1970 decisions are replete with holdings that a defendant who moved for a continuance, sought a bill of particulars, or engaged in discovery had appeared generally. Under the modern Rules the concept of the "special appearance" has been abolished, and the defendant may assert the service defense together with defenses on the merits in the same pleading without waiver, provided the service defense is included. What the defendant may not do is litigate the merits first and raise service later.

15.3 Actual Notice and the Rejection of Substantial Compliance

The defendant's actual knowledge of the action, however acquired, does not confer jurisdiction and does not cure defective service. The North Carolina courts have adhered to this rule with remarkable consistency, and the practitioner should not expect a court to be persuaded that a defendant who "obviously knew about the lawsuit" should be bound by a judgment despite the failure to serve. The rule is sometimes criticized as elevating form over substance. The criticism misunderstands the function of Rule 4. The Rule does not exist merely to convey information; it exists to define the moment at which the court's authority attaches and the defendant's obligation to respond begins. A regime in which that moment depended upon proof of the defendant's subjective knowledge would be a regime of endless litigation about what the defendant knew and when, and the certainty the

Rule provides would be lost. The plaintiff who has a cooperative defendant should obtain an acceptance of service; the plaintiff who has an evasive defendant should serve in strict compliance with the Rule; and the plaintiff who has neither should not rely upon the defendant's knowledge.

Acceptance of service is the recognized mechanism by which a defendant may dispense with formal service. Rule 4(j5) provides that a defendant may accept service by a written acknowledgment, signed by the defendant or the defendant's attorney, filed with the court. The acknowledgment is the equivalent of service on the date of its execution, and the defendant's time to answer runs from that date. Where the defendant has counsel and is disposed to cooperate, acceptance of service is the most efficient course, and counsel for the plaintiff should request it in the first communication.

15.4 Void Judgments and Rule 60(b)(4)

A judgment entered against a defendant who was not served with process and who did not appear is void for want of jurisdiction. Rule 60(b)(4) authorizes the court to relieve a party from a void judgment upon motion, and the courts have held that a void judgment may be attacked at any time, the "reasonable time" limitation of Rule 60(b) being satisfied by definition in the case of a judgment that was never valid. The Supreme Court in *Sink v. Easter*, 284 N.C. 555, 202 S.E.2d 138 (1974), addressed the distinction between a judgment that is void and one that is merely voidable, holding that where the court lacked jurisdiction over the defendant the judgment was a nullity subject to attack in a subsequent proceeding, and that the trial court has no discretion to deny relief from a void judgment. A void judgment may also be attacked collaterally, in a separate action or in a proceeding to enforce it, and it may be disregarded by a court asked to give it effect.

The consequences for the plaintiff are severe. A plaintiff who obtains a default judgment upon defective service, executes upon it, and sells the defendant's property, may be liable in damages to the defendant when the judgment is set aside, and the purchaser at the execution sale may take nothing. A plaintiff who obtains a judgment of divorce upon defective service may discover, upon remarriage, that the first marriage was never dissolved. A plaintiff who obtains a foreclosure judgment upon defective publication may find the title unmarketable a decade later. The law of service is, in this sense, the law of the security of judgments, and every dollar spent upon careful service is insurance against these outcomes.

15.5 Relief From Judgments Under Rule 60(b)(1) and (6)

Distinct from the void judgment is the judgment that was validly entered upon proper service against a defendant who, for reasons of mistake, inadvertence, surprise, or excusable neglect, failed to respond. Such a judgment is voidable, not void, and relief is available under Rule 60(b)(1) upon a motion made within one year, or under Rule 60(b)(6) for any other reason justifying relief, upon a showing that the defendant has a meritorious defense. The distinction is frequently confused. A defendant who was served by certified mail signed for by a family member who failed to deliver the papers has been served; the remedy, if any, is under Rule 60(b)(1), and the defendant must move within a year and show a meritorious defense. A defendant who was never served at all, because the mail went to a wrong address and was signed for by a stranger, has not been served; the remedy is under Rule 60(b)(4), without time limit and without regard to the merits.

Chapter 16. Service of Pleadings and Papers After the Summons

16.1 Rule 5

Once the defendant has been served with the summons and complaint, or has appeared, subsequent pleadings and papers are served under Rule 5, not Rule 4. Rule 5(b) provides that service upon a party represented by an attorney is made upon the attorney unless the court orders otherwise, and that service is made by delivering a copy to the attorney or party, or by mailing it to the attorney or party at the last known address, or, where the party consents, by electronic mail or through the court's electronic filing system. Delivery includes handing the paper to the person, leaving it at the person's office with a clerk or other person in charge, or, if there is no one in charge, leaving it in a conspicuous place in the office. Service by mail is complete upon deposit, and Rule 6(e) adds three days to any period that runs from service by mail. Proof is by certificate of service, which may be signed by the attorney or the person making service.

The distinction between Rule 4 and Rule 5 is jurisdictional in the one direction and not in the other. A paper that requires Rule 4 service, such as an amended complaint adding a new party, or a third party complaint, or a motion for contempt initiating a new proceeding against a person not yet before the court, is not effectively served under Rule 5. Conversely, an ordinary pleading or motion in a pending action need not be served under Rule 4 and its formalities, and the plaintiff who serves a motion by the sheriff has done no harm but has wasted the expense. Where an amended complaint adds a claim against an existing party, Rule 5 suffices; where it adds a party, Rule 4 governs as to that party.

16.2 Special Proceedings, Estates, and Domestic Actions

Special proceedings before the clerk of superior court, including partition, adoption, guardianship, and certain estate proceedings, are commenced by petition and a special proceeding summons, and the summons is served under Rule 4. N.C. Gen. Stat. § 1-394. The special proceeding summons differs from the civil summons principally in the period allowed for response, which is ten days rather than thirty. Estate proceedings under Chapter 28A are governed by the provisions of that Chapter as to notice, and creditors' claims are subject to the notice to creditors published under N.C. Gen. Stat. § 28A-14-1. Domestic actions, including divorce, custody, and equitable distribution, are civil actions commenced by summons and complaint and served under Rule 4, and actions for absolute divorce in particular are frequently the occasion for service by publication upon a spouse whose whereabouts are unknown. The requirements of due diligence apply with full force, and the North Carolina courts have set aside divorce judgments obtained upon inadequate publication.

16.3 Subpoenas in Practice

The service of subpoenas, governed by Rule 45 and discussed in Chapter 6, is the area of practice in which the professional process server is least encumbered and most frequently engaged. A subpoena for testimony at trial or deposition, or for the production of documents, may be served by any person over eighteen who is not a party, by personal delivery or by certified mail. The subpoena must be accompanied, where it commands attendance, by the witness fee and mileage allowed by law, and a subpoena served without the fee may be disregarded by the witness. Proof is by the server's certificate. Because a subpoena is process of the court and its disobedience is punishable as contempt, the server should serve subpoenas with the same care as original process, should record the circumstances with the same particularity, and should be prepared to testify to service if the witness fails to appear and the court is asked to issue a show cause order.

Chapter 17. The Federal Comparison

Practitioners who divide their practice between the state and federal courts should be alert to the differences between Rule 4 of the North Carolina Rules and Rule 4 of the Federal Rules of Civil Procedure. The federal rule permits service by any person who is at least eighteen years old and not a party, without any requirement of prior attempt by a marshal or sheriff; the North Carolina rule, as discussed in Chapter 6, requires a sheriff's return unexecuted before a private person may serve. The federal rule contains an elaborate mechanism for waiver of service, under which the plaintiff may request that the defendant waive formal service by mail and the defendant who refuses without good cause bears the costs of subsequent service; the North Carolina rule contains only the simpler acceptance of service under Rule 4(j5). The federal rule allows ninety days for service after the filing of the complaint; the North Carolina rule allows sixty days from the issuance of the summons, extendable by endorsement or alias and pluries process. The federal rule permits service upon an individual by following the law of the state in which the district court sits or in which service is made; the North Carolina rule applies its own methods within the State and permits the use of foreign methods only for service outside the State.

The federal courts sitting in North Carolina may thus permit service by methods that would be ineffective in the state courts, and vice versa. A private process server who serves a summons in a federal action need not await a sheriff's return; the same server in a state action must. An attorney who removes an action from state to federal court after defective state service may find that the federal court, under Rule 4(m), will permit the plaintiff a fresh opportunity to serve; an attorney who remands may find the state rules reasserted. The professional process serving firm should ask, at intake, in which court the action is pending, and should apply the corresponding rule.

Chapter 18. Practice Standards for the Professional Process Server

18.1 Intake and Verification

Every engagement begins with verification. The firm should confirm that the summons has been issued by the clerk and bears the clerk's signature and seal, that it is directed to the defendant to be served, that it is within its sixty day period, that any prior summons in the chain was timely endorsed or succeeded, and that a copy of the complaint and every other document to be served is in the file. Where private personal service is requested, the firm should confirm that the sheriff has returned the summons unexecuted and should obtain a copy of the return. Where mail service is requested, the firm should confirm the address through independent sources. Where publication is requested, the firm should confirm that the client has attempted the methods of Rule 4(j) and should undertake or document the due diligence search.

18.2 Locating the Defendant

Skip tracing is the professional term for the systematic effort to locate a person who cannot be found at a known address. It is both an investigative discipline and a legal necessity, because it is the substance of the due diligence that Rule 4(j1) demands. The firm's standard search proceeds from the most reliable and least intrusive sources outward: the client's own records; public records of the county and State, including property, voter, motor vehicle, and court records; the postal service; commercial locator databases drawing upon credit header, utility, and consumer records; professional licensing records; social media and open source intelligence; and, where warranted, field inquiry of neighbors, employers, and relatives. Each step is dated and documented, and the resulting file supports both the choice of method and the affidavit that proves it. Poindexter Global Intelligence, the firm's investigative affiliate, performs this work for matters in which the defendant is out of state, abroad, or actively evading.

18.3 Conduct in the Field

The process server is an officer of the court in function if not in title, and conduct in the field should reflect that. The server should identify himself or herself truthfully; should not impersonate a law enforcement officer, delivery person, or other official; should not use force, threats, or deception to gain entry to premises; should not enter closed premises without invitation; and should not serve on Sunday where the applicable statute prohibits it, or at hours or in places that a court would regard as harassment. The server should be courteous but should not be deterred by hostility, and should understand that refusal to accept papers does not defeat personal delivery. The server should carry identification, a copy of the summons showing the sheriff's return unexecuted, and the means to record the event contemporaneously. Where the defendant is represented by counsel who has agreed to accept service, the server should coordinate with counsel rather than surprise the defendant at home.

18.4 Documentation and Testimony

The affidavit of service is a sworn statement, and a false affidavit is perjury. The practice sometimes described as "sewer service," in which a server executes an affidavit of service that was never made, is a crime, a fraud upon the court, and the single greatest source of void judgments in the jurisdictions where it has flourished. No reputable firm tolerates it, and every client should insist upon a firm whose servers personally perform the service they swear to. The affidavit should be prepared from field notes made at the time of service, should be reviewed by the server before execution, and should be sworn before a notary who is not the server. The firm should retain the file, including field notes, photographs, GPS data, and correspondence, for at least ten years, and should be prepared to produce the server as a witness at any hearing upon a challenge to service. Judicial Process of North Carolina regards the willingness of its servers to testify, and the quality of the record they bring to the witness stand, as the ultimate measure of its work.

18.5 A Checklist for Counsel

- Confirm that the summons was issued within five days of the filing of the complaint and bears the clerk's signature and seal.
- Calendar the sixtieth day for service and the ninetieth day for endorsement or alias and pluries summons from every issuance and every endorsement.
- Verify the defendant's legal name and, for entities, the registered agent, through the Secretary of State immediately before service.
- Consider parallel service: certified mail on the day of issuance together with delivery to the sheriff for personal service.
- If private personal service is to be used, obtain the sheriff's return unexecuted first and include it in the server's affidavit.
- For abode service, require the server to confirm and record that the recipient resides at the dwelling and is of suitable age and discretion.
- For mail service, preserve the genuine return receipt and the complete electronic tracking and signature record, and file the affidavit required by section 1-75.10 before seeking default.
- For publication, document every step of the due diligence search with dates, confirm the newspaper's statutory qualification, publish for three successive weeks, mail the notice where an address is known, and file both affidavits.
- For defendants under disability, serve both the defendant and the parent, guardian, or representative, and document each delivery separately.
- For governmental defendants, serve the officer the Rule designates, not the entity's attorney.
- For out of state and foreign defendants, plead the jurisdictional facts under section 1-75.4 and comply with the Hague Service Convention or other applicable treaty.
- Before moving for default judgment, confirm that the proof of service in the file satisfies section 1-75.10 and will support the findings section 1-75.11 requires.

Conclusion

The law of service of process in North Carolina is the product of two and a half centuries of continuous development, from the writs of the colonial courts through the Code of 1868 to the modern Rules and their amendments. Its animating principle has never changed: a court may bind only those it has reached, and it reaches a defendant only by an act the law recognizes. What has changed is the range of acts the law recognizes, which has widened from the sheriff's hand to the postal service, the private courier, the electronic signature, and the Central Authority of a foreign state. Each expansion has been accompanied by a corresponding insistence upon proof, and the modern practitioner who understands that insistence, and who builds the record the courts expect, will find that the law of service is not an obstacle but an instrument.

Judicial Process of North Carolina exists to provide that instrument. The firm serves civil process throughout the State under every method the Rules permit, executes mail and delivery service with the documentation the courts require, performs the skip tracing and due diligence that publication demands, coordinates international service under the conventions and by letters rogatory, and stands behind every affidavit with a server who will testify to it. Attorneys and private clients who require service of process in North Carolina, or who face a challenge to service already made, are invited to contact the firm at ServiceOfProcess.biz. Investigative, out of state, and international needs may be directed to Poindexter Global Intelligence at poindexter-associates.com.

Table of Authorities

Constitutional Provisions

U.S. Const. amend. XIV, § 1

N.C. Const. art. I, §§ 18, 19

N.C. Const. art. VII, § 2

Statutes and Rules of North Carolina

N.C. Gen. Stat. § 1-75.1 et seq. (Article 6A, Jurisdiction)

N.C. Gen. Stat. §§ 1-75.4, 1-75.6, 1-75.7, 1-75.8, 1-75.10, 1-75.11

N.C. Gen. Stat. § 1-105 and § 1-105.1 (nonresident and departed motorists)

N.C. Gen. Stat. § 1-394 (special proceedings summons)

N.C. Gen. Stat. §§ 1-597, 1-598 (newspapers qualified for legal advertising)

N.C. Gen. Stat. § 1A-1, Rules 3, 4, 5, 6, 12, 15, 17, 45, 55, and 60

N.C. Gen. Stat. ch. 1C, art. 17 (Uniform Enforcement of Foreign Judgments Act)

N.C. Gen. Stat. ch. 1F (Uniform Interstate Depositions and Discovery Act)

N.C. Gen. Stat. § 7A-217 (small claims summons)

N.C. Gen. Stat. ch. 28A (Administration of Decedents' Estates)

N.C. Gen. Stat. § 42-29 (summary ejectment service)

N.C. Gen. Stat. §§ 55D-30, 55D-33 (registered agents; service through Secretary of State)

N.C. Gen. Stat. ch. 57D (North Carolina Limited Liability Company Act)

N.C. Gen. Stat. § 58-16-30 (service upon insurers through Commissioner of Insurance)

Federal Statutes, Rules, and Treaties

26 U.S.C. § 7502(f)(2) (designated delivery services)

28 U.S.C. § 1608 (Foreign Sovereign Immunities Act, service)

Fed. R. Civ. P. 4

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163

Inter American Convention on Letters Rogatory, Jan. 30, 1975, and Additional Protocol, May 8, 1979

Decisions of the Supreme Court of the United States

Hess v. Pawloski, 274 U.S. 352 (1927)

International Shoe Co. v. Washington, 326 U.S. 310 (1945)

Mennonite Board of Missions v. Adams, 462 U.S. 791 (1983)

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950)

Pennoyer v. Neff, 95 U.S. 714 (1878)

Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694 (1988)

Water Splash, Inc. v. Menon, 581 U.S. 271 (2017)

Decisions of the Supreme Court of North Carolina

Dillon v. Numismatic Funding Corp., 291 N.C. 674, 231 S.E.2d 629 (1977)

Grimsley v. Nelson, 342 N.C. 542, 467 S.E.2d 92 (1996)

Harrington v. Rice, 259 N.C. 179, 130 S.E.2d 305 (1963)

Harris v. Maready, 311 N.C. 536, 319 S.E.2d 912 (1984)

Lemons v. Old Hickory Council, Boy Scouts of America, Inc., 322 N.C. 271, 367 S.E.2d 655 (1988)

Lynch v. Lynch, 302 N.C. 189, 274 S.E.2d 212 (1981)

Sink v. Easter, 284 N.C. 555, 202 S.E.2d 138 (1974)

Wiles v. Welparnel Construction Co., 295 N.C. 81, 244 S.E.2d 155 (1978)

Decisions of the Court of Appeals of North Carolina

Barclays American/Mortgage Corp. v. BECA Enterprises, 116 N.C. App. 100, 446 S.E.2d 883 (1994)

Dozier v. Crandall, 105 N.C. App. 74, 411 S.E.2d 635 (1992)

Emanuel v. Fellows, 47 N.C. App. 340, 267 S.E.2d 368 (1980)

Fender v. Deaton, 130 N.C. App. 657, 503 S.E.2d 707 (1998)

Fountain v. Patrick, 44 N.C. App. 584, 261 S.E.2d 514 (1980)

Fulton v. Mickle, 134 N.C. App. 620, 518 S.E.2d 518 (1999)

Johnson v. City of Raleigh, 98 N.C. App. 147, 389 S.E.2d 849 (1990)

Jones v. Wallis, 211 N.C. App. 353, 712 S.E.2d 180 (2011)

Lane v. Winn Dixie Charlotte, Inc., 169 N.C. App. 180, 609 S.E.2d 456 (2005)

Roshelli v. Sperry, 57 N.C. App. 305, 291 S.E.2d 355 (1982)

About the Author

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