

Rule 508. Summons; Trial Date

(a) Trial Date. When an action has been properly commenced, the court administrator shall set a trial date and prepare a summons. Unless otherwise ordered by a judge, the trial date shall not be less than 14 days from the date of mailing or service of the summons.

(b) Contents of Summons. The summons shall state the amount and nature of the claim; require the defendant to appear at the trial in person or if a corporation, by officer or agent; shall specify that if the defendant does not appear judgment by default may be entered for the amount due the plaintiff, including fees, expenses and other items provided by statute or by agreement, and where applicable, for the return of property demanded by the plaintiff; and shall summarize the requirements for filing a counterclaim.

(c) Service on Plaintiff. The court administrator shall summon the plaintiff by first class mail or by any electronic means of delivering notice authorized by Rule 14 of the General Rules of Practice for the District Courts.

(d) Service on Defendant.

(1) If the defendant's address as shown on the statement of claim is within the county, the administrator shall summon the defendant by first class mail, except that if the claim exceeds \$2,500 the summons must be served by the plaintiff by certified mail, and proof of service must be filed with the administrator. If the summons is not properly served and proof of service filed within sixty (60) days after issuance of the summons, the action shall be dismissed without prejudice.

(2) If the defendant's address as shown on the statement of claim is outside the county but within the state, and the law provides for service of the summons anywhere within the state, the administrator shall summon the defendant by first class mail, except that if the claim exceeds \$2,500 the summons must be served by the plaintiff by certified mail, and proof of service must be filed with the administrator. If the summons is not properly served and proof of service filed within sixty (60) days after issuance of the summons, the action shall be dismissed without prejudice.

(3) If the defendant's address as shown on the statement of claim is outside the state, the administrator shall forward the summons to the plaintiff who, within sixty (60) days after issuance of the summons, shall cause it to be served on the defendant and file proof of service with the administrator. If the summons is not properly served and proof of service filed within sixty (60) days after issuance of the summons, the action shall be dismissed without prejudice. A party who is unable to pay the fees for service of a summons may apply for permission to proceed without payment of fees pursuant to the procedure set forth in Minnesota Statutes, section 563.01.

(4) Service by mail, whether first class or certified, shall be effective upon mailing.

(e) Proof of Service.

Service by first class mail or certified mail shall be proven by an affidavit of service in form substantially similar to that published by the state court administrator. Service may be alternatively proven, when made by the court administrator, by any appropriate notation in the court record of the date, time, method, and address used by the administrator to effect service.

(f) Service by Electronic Means; When Complete; Proof of Service.

Unless these rules require personal service, any document may be served by electronic means under Rule 14 of the General Rules of Practice for the District Courts upon any party who has agreed to or is required to accept service by electronic means. Completion of service by electronic means under Rule 14 is governed by Rule 14. When a document has been served through the E-

Filing System in accordance with Rule 14, the record of service on the E-Filing System shall constitute proof of service.

(Amended effective January 1, 2006; amended effective January 1, 2010; amended effective July 1, 2015; amended effective January 1, 2020.)

1993 Committee Comment

The territorial jurisdiction of conciliation court is limited to the county boundaries, and a summons cannot be issued outside the county except in certain situations, including: recovery of certain student loans by educational institutions located within the county; recovery of alleged dishonored checks issued within the county; certain claims arising out of rental property located within the county; actions against two or more defendants when one defendant resides in the county; actions against foreign corporations doing business in this state; and actions against nonresidents other than foreign corporations when the state has jurisdiction under Minnesota Statutes, section 543.19. Minnesota Statutes 1993 Supplement, section 491A.01, subdivisions 3, 6 to 10. In situations in which the address of the defendant as shown on the statement of claim is outside the state, the summons is forwarded to the plaintiff who is then responsible for causing service of the summons on the defendant in the manner provided by law and filing proof of service with the court within sixty (60) days of issuance of the summons.

*Various laws govern the service of a summons on nonresident defendants. See, e.g. Minnesota Statutes, sections 45.028 (foreign insurance entities doing business in this state); 303.13 (foreign corporations doing business in this state); 543.19 (other nonresident defendants subject to the jurisdiction of Minnesota's courts). The procedure under each of these laws is different, and it is the plaintiff's responsibility to ensure that the appropriate procedures are followed. For example, service on an unregistered foreign corporation pursuant to Minnesota Statutes 1991 Supplement, section 303.13, can be accomplished by delivering three copies of the summons to the secretary of state and payment of a \$35 fee. The secretary of state then mails a copy to the defendant corporation and keeps a record of the mailing. Rule 508(d) requires that the plaintiff file an affidavit of compliance which should be accompanied by the fee receipt from the secretary of state's office or a copy of the summons bearing the date and time of filing with the secretary of state. Service on an unregistered foreign insurance entity pursuant to Minnesota Statutes 1990, section 45.028, subdivision 2, may be accomplished by: (1) delivering a single copy of the summons to the commissioner of commerce (as of August 1, 1992, there is no filing fee); and (2) the plaintiff mailing a copy of the summons and notice of service to the foreign insurance company by certified mail; and (3) filing of an affidavit of compliance with the court. Service is not effective until all steps are completed, including the filing of the affidavit of compliance, which should be accompanied by receipts or other proof of mailing and filing with the commissioner of commerce. Finally, service on other nonresidents pursuant to Minnesota Statutes 1990, section 543.19, requires that the summons be "personally served" on the nonresident and proof of service filed with the court. Such "personal service" may only be made by a sheriff or any other person not less than eighteen (18) years of age who is not a party to the action. *Reichel v. Hefner*, 472 N.W.2d 346 (Minnesota Appellate 1991) (applying Minn. R. Civ. P. 4.02 for the district courts).*

When service on a foreign corporation has been made under Minnesota Statutes, section 303.13, through the Office of the Secretary of State, the defendant corporation so served shall have thirty (30) days from the date of mailing by the secretary of state in which to answer the complaint. Thus, the conciliation court trial date must be scheduled to allow the defendant the full thirty (30) days to appear. Similarly, when certain foreign insurance entities are served under Minnesota Statutes, section 45.028, subdivision 2, the law also provides a 30-day response period [see, e.g., Minnesota Statutes, section 64B.35, subdivision 2 (fraternal benefit societies)] or prohibits default judgments

until the expiration of thirty (30) days from the filing of the affidavit of compliance. [Minnesota Statutes, section 60A.21, subdivision 1, clause (4) (unauthorized foreign insurer)].

Rule 508(d) recognizes that in most situations involving resident defendants, first class mail is a sufficient method of notifying the defendant of the claim. If for some reason the summons cannot be delivered by mail, the last sentence of Rule 508(a) recognizes that personal service of the summons pursuant to the rules of civil procedure for the district court is always an effective means of providing notice of the claim. The party filing the claim is responsible for obtaining personal service, including any costs involved. As indicated above, "personal service" may only be made by a sheriff or any other person not less than eighteen (18) years of age who is not a party to the action.

The provisions requiring service by certified mail were added in order to make the rules consistent with statutes. See Minnesota Statutes 1993 Supplement, section 491A.01, subdivision 3, paragraph (b). If the claim exceeds \$2,500, the plaintiff is responsible for causing service of the summons on the defendant by certified mail, and filing proof of service with the court within sixty (60) days of issuance of the summons.

Advisory Committee Comment - 2006 Amendment

Rule 508(d)(4) is a new provision, intended to remove any confusion in the rule over when service by mail is deemed complete. This question is important in determining questions of timing. Making service effective upon mailing is consistent with the provisions of Minn. R. Civ. P. 5.02 and Minn. R. Civ. App. P. 125.03.

The rule has historically required proof of service, but has not specified how service is proven. Rule 508(e) specifies that an affidavit of service should be prepared in form substantially similar to new Form 508.1 to prove service by anyone other than the court administrator. Where the rule requires the administrator to effect service by mail or certified mail, it is not necessary to require an affidavit of the administrator to prove service, and Rule 508(e) recognizes that a notation of the facts of service in the court's file will suffice to prove that service was effected.

Some courts follow the practice of using certified mail receipts as proof of service. In fact these receipts generally only prove receipt of the mailing, not the mailing itself. Although proof of receipt may be important if a question arises as to the effectiveness of service, it is not an adequate substitute for proof of the facts of service, including the date of mailing.