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Service of Process and
Summons - Rules of Civil
Procedure - Domestic Relations

Rule 4(c)(1), Alabama Rules
of Civil Procedure, as
amended August 1, 1992,
concerning service of
process, applies in the
Domestic Court.

Dear Sheriff Jones:

This opinion is issued in response to your request for
an opinion from the Attorney General.

QUESTION

Does the August 1, 1992, revision to
Rule 4(c)(1), Alabama Rules of Civil
Procedure, concerning service of process,
apply in the Domestic Court?

FACTS AND ANALYSIS

The Alabama Rules of Civil Procedure apply to Domestic
Courts, from which direct appeal lies to the Court of Civil
Appeals. Alabama Rules of Civil Procedure, Rule 1(a).
Unless the provisions of an amendment specifically mandate
that the amended rule no longer applies in a particular

court, the rule, as amended, would continue to apply in the courts originally affected by the Rule.

It is, of course, the ultimate goal of pleadings under the Alabama Rules of Civil Procedure to provide fair notice to adverse parties of the claim against them and the grounds upon which it rests. The liberality with which the rules are construed must be balanced against the requirement of fair notice to adverse parties and strict adherence to statutorily prescribed procedures. Simpson v. Jones, 460 So.2d 1282 (Ala. 1984).

The August 1, 1992, revision to Rule 4(c)(1) permits service upon an individual by serving the individual or by leaving a copy of the summons and the complaint at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and complaint to an authorized agent. This amendment does not change the application of the rule.

There have been questions raised as to the possibility of a lack of actual notice arising under circumstances in domestic or divorce cases where service is rendered in accordance with the new Rule. A lack of notice can be raised, it should be noted, by parties to any legal proceeding. The courts have resolved such issues before, and will likely resolve many more.

For example, in Hall v. Hall, 524 So.2d 370, 371 (Ala.Civ.App. 1988), the court held that providing notice of a child support modification proceeding to the appropriate party by even ordinary mail is adequate, citing Hayes v. Hayes, 472 So.2d 646 (Ala.Civ.App. 1988) and the Alabama Rules of Civil Procedure. In Ex parte v. Williams, 474 So.2d 707 (Ala. 1985) the appellate court held that compliance with procedures of process service established under Rules 4 and 5, A.R.C.P., due notice and a hearing or an opportunity to be heard before a court of competent jurisdiction satisfies due process requirements of the law. If a question of adequacy of notice arose, the trial court would likely hear evidence on the issue and make a ruling thereupon, which would be reviewable on appeal.

However, it is our opinion that the process server has fulfilled his legal duty by complying with the service requirements of Amended Rule 4(c)(1), A.R.C.P. Absent a

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contrary finding by a trial court, service in accordance with Rule 4(c)(1) is sufficient notice to the parties.

CONCLUSION

Rule 4(c)(1), Alabama Rules of Civil Procedure, as amended August 1, 1992, concerning service of process, applies in the Domestic Court.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General

By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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