



BOB RILEY
GOVERNOR

STATE OF ALABAMA
DEPARTMENT OF INSURANCE
201 MONROE STREET, SUITE 1700
POST OFFICE BOX 303351
MONTGOMERY, ALABAMA 36130-3351
TELEPHONE: (334) 269-3550
FACSIMILE: (334) 241-4192
INTERNET: www.aldoi.gov

WALTER A. BELL
COMMISSIONER
ASSISTANT COMMISSIONER
RAGAN INGRAM
DEPUTY COMMISSIONER
D. DAVID PARSONS
CHIEF EXAMINER
RICHARD L. FORD
STATE FIRE MARSHAL
RICHARD MONTGOMERY
GENERAL COUNSEL
REYN NORMAN
RECEIVER
DENISE B. AZAR
LICENSING MANAGER
JIMMY W. GUNN

MEMORANDUM

RECEIVED AND FILED
MARY H. HARRIS

AUG 09 2005

TO: Circuit Clerks
FROM: Walter A. Bell, Commissioner of Insurance
DATE: July 28, 2005
SUBJECT: Service of Process on Insurance Companies under Ala. Code § 27-3-24, §27-3-25 (1975) and ARCP 4

CIRCUIT & DISTRICT
COURT CLERK
SHELBY CO.

There has been confusion regarding service of process on insurance companies. The Department wishes to inform you of the proper procedures for serving an insurance company. Under Ala. Code § 27-3-24 (1975), an insurance company appoints the Commissioner of Insurance as its agent for service of process. Under provisions of Ala. Code §27-3-25 (1975), the Commissioner must have served upon him, by the proper officer in Montgomery County, copies of the documents to be served in triplicate. The final requirement for proper service on the Commissioner as agent for an insurance company is a \$25.00 check payable to the Commissioner of Insurance. This requirement is spelled out in Ala. Code § 27-4-2(a) (13) (1975).

There is nothing that prohibits an insurance company from receiving service of process by any other method provided for by law, as stated in Ala. Code §27-3-25(d) (1975) and ARCP 4. The name and address of the person to whom service of process for an insurance company is to be forwarded is available on our website at www.aldoi.gov; just click on Agents Service of Process. If the information is not available online, you may call Ken Smithson at 334-241-4156, or 334-241-4151. We will continue to act as agent for service of process when the summons and complaint are properly filed, but we believe it would be more efficient for all parties concerned to have the summons and complaint mailed by certified mail directly to the insurance company at the address provided on our website.

We have enclosed an attachment with the excerpts of the applicable statutes and court rules. If you have any questions or problems regarding service of process please call Ken Smithson, in the Examination Division at the 334-241-4156.

Statutes Related to Service of Process on Insurance Companies

Section 27-3-24

Service of process on insurers — Appointment of commissioner as agent.

(a) Each insurer applying for a certificate of authority to transact business in this state shall file with the commissioner an appointment of the commissioner and his successors in office, on a form as furnished by the commissioner, as its attorney upon whom may be served all lawful process in any action or proceeding against it in this state and therein shall agree that any such process served upon such attorney shall be of the same force and validity as if served on the insurer. The appointment shall be irrevocable, shall bind the insurer and any successor in interest or to the assets or liabilities of the insurer and shall remain in effect as long as there is outstanding in this state any obligation or liability of the insurer resulting from its transactions therein.

(b) At the time of such appointment of the commissioner as its process agent, the insurer shall file with the commissioner designation of the name and address of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.

Section 27-3-25

Service of process on insurers - How served; time to answer or plead.

(a) Service of process upon the commissioner as process agent of the insurer under Section 27-3-24 shall be made by the proper officer of Montgomery County by serving copies in triplicate of the process upon the commissioner or upon his assistant, deputy or other person in charge of his office. Upon receiving such service, the commissioner shall promptly forward a copy thereof by certified mail or registered mail, with return receipt requested, to the person last designated by the insurer to receive the same, as provided under subsection (b) of Section 27-3-24, return one copy with his admission of service and retain one copy in the files of the department. The commissioner shall keep a record of all actions filed against insurers wherein process is served on the commissioner, noting the name of the insurer, the date of service and the type of action.

(d) This section shall not be deemed to prohibit service of process upon an insurer by any other method provided for by law.

Section 27-4-2

Advance fees, licenses and miscellaneous charges.

(a) The Commissioner of Insurance shall collect in advance fees, licenses, and miscellaneous charges as follows:

(13) The commissioner is hereby authorized and directed to collect a fee of twenty-five dollars (\$25) when, in acting as agent for service of process for any insurance company, fraternal benefit society, mutual aid association, nonresident producer, or nonresident surplus line broker, he or she accepts the service of legal process as provided by the laws of this state. The commissioner shall refuse to receive and file or serve any process unless the process is accompanied by the aforementioned fee, which shall be taxed as costs in the action.

Rule 4.1 Process: Methods of In-State Service

(a) Methods of Service. Methods of Service. All service of process within this state shall be made as provided in this rule except when service by publication is available pursuant to Rule 4.3. Service within this state under this rule shall include delivery by a process server and service by certified mail; and each of the foregoing methods of service shall be deemed to confer in personam jurisdiction. Unless otherwise requested or permitted by these rules, service of process within this state shall be made by delivery by a process server.

(b) Delivery by a Process Server.

(1) By Sheriff or Constable. When process issued from any court subject to the provisions of these rules is to be delivered personally, the clerk of the court shall deliver or mail the process and sufficient copies of the process and complaint, or other documents to be served, to the sheriff or constable of the county in which the party to be served resides or may be found.

(c) Service by Certified Mail.

(1) When Proper. When the plaintiff files a written request with the clerk for service by certified mail, service of process shall be made by that method.

(2) How Served. In the event of service by certified mail, the clerk shall place a copy of the process and complaint or other document to be served in an envelope and shall address the envelope to the person to be served with instructions to forward. The clerk shall affix adequate postage, and place the sealed envelope in the United States mail as certified mail with instructions to forward, return receipt requested, with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered. When the person to be served is an individual, the clerk shall also request restricted delivery, unless otherwise ordered by the court. The clerk shall forthwith enter the fact of mailing on the docket sheet of the action and make a similar entry when the return receipt is received.

(3) When Effective. Service by certified mail shall be deemed complete and the time for answering shall run from the date of delivery to the named addressee or the addressee's agent as evidenced by signature on the return receipt.

(4) Failure of Delivery. If the receipt shows failure of delivery to the addressee or the addressee's agent, the clerk shall follow the notification procedure set forth in subsection (b)(4) of this rule. Failure to make service within the thirty-day period and failure to make proof of service do not affect the validity of service.

(dc) District Court Rule. Rule 4.1 applies in the district courts. (Adopted 10/14/76, effective 1/16/77; Amended 8/1/92; Amended eff. 10/1/95.) Committee Comments See Committee Comments following Rule 4.4.

Rule 4.2 Process: Basis For and Methods of Out-Of-State Service

(a) Basis for Out-of-State Service.

(b) Methods of Out-of-State Service. All service of process outside of this state shall be made as set forth below except when service by publication is available pursuant to Rule 4.3. Service outside of this state under this rule shall include service by certified mail and delivery by a process server; and each method shall be deemed to confer in personam jurisdiction. Unless otherwise requested or permitted by these rules, service of process outside this state shall be made by certified mail.

(1) Certified Mail.

(A) How Served. The clerk shall place a copy of the process and complaint or other document to be served in an envelope and shall address the envelope to the person to be served at that person's last known address with instructions to forward. The clerk shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered. When the person to be served is an individual, the clerk shall also request restricted delivery, unless otherwise ordered by the court. The clerk shall forthwith enter the fact of mailing on the docket sheet of the action and make a similar entry when the return receipt is received.

(B) When Effective. Service by certified mail shall be deemed complete and the time for answering shall run from the date of delivery of process as evidenced by the return receipt.

(C) Failure of Delivery. If the return receipt shows failure of delivery, the clerk shall forthwith notify, by mail, the attorney of record, or if there is no attorney of record, the party at whose instance process was issued. In the event that the return receipt shows failure of delivery, service is complete when the serving party or the serving party's attorney, after notification by the clerk, files with the clerk an affidavit setting forth facts indicating the reasonable diligence utilized to ascertain the whereabouts of the party to be served, and service by publication is made under Rule 4.3(c).