**Service Instructions for Pro Sub**

The Order to Show Cause or Summons in a Pro Sub is served on named Defendants in the manner of Summon in a civil action under Rule 4.03 Minn. R. Civ. Pro. Ordinarily, the Report of Examiner will contain instructions for service of process which you should follow. These special notes are provided to clarify the service requirements in unusual situations.

NOTE: Most Pro Sub cases use an Order to Show Cause. If a Summons is required, the Report of Examiner will say so. Where these instructions say “Order to Show Cause” but your case requires a Summons, make the appropriate mental substitution.

Delegation. Torrens cases require service on specific persons named as Defendants in the Report of Examiner. The only permissible ‘substituted service’ situations are set forth below. Do not serve someone who claims to be authorized to accept service unless the recipient can prove the person named in the Report has delegated authority to accept service to the recipient.

Agent for Service. You may serve a registered agent for a business entity by handing to and leaving with.

Attorney-at-law. You may **not** serve the attorney-at-law for a defendant. *Mavco v. Eggink,* 739 N.W.2d 148 (Minn. 2007).

Attorney-in-fact. You may serve the attorney-in-fact for a defendant only if you also e-file in the court file a copy of the Power of Attorney instrument authorizing the attorney-in-fact to accept service and the attorney-in-fact’s affidavit stating the power of attorney has not been revoked or terminated.

Dissolved entity. Serve a dissolved, withdrawn, or revoked business entity governed by Minn. Stat., Chapters 302A, 303, 317A, 322A, 322B, or 323 in the manner provided by Minn. Stat. § 5.25. Note: service is not complete until 30 days after date of mailing by the Secretary of State, not date of delivery to the Secretary of State.

Spouse. You may serve a Defendant at his/her usual place of abode by leaving the Order to Show Cause with a person of suitable age and discretion residing therein. Rule 4.03(a) Minn. R. Civ. Pro. You may NOT serve the defendant in that manner outside the home, for instance leaving with a spouse at their place of employment.

Name Change

The Report of Examiner names Defendants based on interests shown in the land records.

Where the Examiner has named a trust or business entity Defendant that has changed its name through merger or amendment of articles, file an Affidavit in the Court File stating the facts and serve the successor entity. A Supplemental Report of Examiner is not required. Include a paragraph in the final Order explaining the name change.

Where the Examiner has named an individual Defendant whose name has changed by adoption, divorce, immigration, marriage, or court-ordered name change, file an Affidavit in the Court File stating the facts and serve the individual. Make sure the Affidavit of Service uses the individual’s new name. A Supplemental Report of Examiner is not required. Include a paragraph in the final Order explaining the name change.

Deceased Defendant

When a person dies, that person’s interest in real estate passes at the moment of death to his/her heirs/devisees, subject to administration by the probate court. You cannot serve a dead person, and the correct person for service depends on the situation:

Probate Opened

If a case has been opened to probate the dead person’s estate but no Personal Representative has been appointed, ask the Examiner of Titles who to serve.

If a case has been opened to probate the dead person’s estate and a Personal Representative has been appointed and is still serving, file an Affidavit in the court file stating those facts and email a copy of the affidavit to the Examiner of Titles. The Examiner of Titles will issue a Supplemental Report of Examiner naming the proper persons for service. Copy the information from the Affidavit into a new paragraph in the final Order to explain the change.

If a case has been opened to probate the dead person’s estate but the case is now closed, look in the court file for a determination of heirs or devisees under a Will. File an Affidavit in the court file stating those facts and email a copy of the affidavit to the Examiner of Titles. The Examiner of Titles will issue a Supplemental Report of Examiner naming the proper persons for service. Copy the information from the Affidavit into a new paragraph in the final Order to explain the change.

No Probate Opened

If no case was opened to probate the dead person’s estate, the proper persons for serve are the unknown heirs of the deceased. You must make a diligent search for the heirs.  A “diligent search” must include, at a minimum, searching the deceased owner’s name on MNCIS (may reveal a family court file containing names of heirs) and the internet (may reveal an obituary).  If the results of this minimum search are inconclusive, additional investigation should include:

Review of the Certificate of Title for co-owners

Search of Grantor/Grantee Index for other properties owned

Bankruptcy search

Internet search by name

Whitepages and Dexonline

Asking neighbors, associates, friends of the party

Checking prison and military records

Skip tracing

If the results are still inconclusive (nobody found or too many found), ask the Examiner of Titles for further guidance.

When your diligent search is complete, file an Affidavit in the court file stating the facts and email a copy of the affidavit to the Examiner of Titles. The Examiner of Titles will issue a Supplemental Report of Examiner naming the proper persons for service. Copy the information from the Affidavit into a new paragraph in the final Order to explain the change.

Unknown heirs must be served by two consecutive weeks’ published notice in a qualified newspaper for Ramsey County AND by First Class mail to the last known address of the decedent. For purposes of these instructions, a “qualified newspaper” is a “legal newspaper.” The Secretary of State maintains a list of legal newspapers available on-line for free.

United States of America as Defendant

Service of process on an agency of the federal government is governed by 28 USC 2410(b).

To serve the United States, deliver one copy each of the Order to Show Cause and the Petition to the United States Attorney for the District of Minnesota by personal service, and send one copy each of the Order to Show Cause and the Application, by registered mail or by certified mail, to the Attorney General of the United States in Washington, D.C. (service by mail is effective upon mailing, not upon return of the receipt). NOTE: If your initial Petition did not mention the interest of the United States so you filed an Amended Petition, serve the Amended Petition, not the initial Petition. The purpose of serving the Petition is so the US Attorney knows what interest is being challenged. Make sure you send the correct document giving that information.

When scheduling a hearing for Interlocutory Order or Default Judgment, remember that the United States is entitled to 60 days to Answer.

Specific Entities as Defendant

State of Minnesota, Rule 4.03(d), deliver a copy to the Attorney General, Deputy Attorney General or Assistant Attorney General.

Municipal corporation (county, city, township, school district, other public board), Rule 4.03(e), deliver a copy to the persons named for their respective organizations.

Minnesota Housing Finance Agency, deliver a copy to one of its 7 members, which members include the State Planning Director, the State Auditor and 5 other members as defined in Minn. Stat. 462.04.

Ramsey County, Ramsey County HRA, Ramsey County Regional Rail Authority: deliver a copy to a member of the Ramsey County Board. Note: Ramsey County once adopted a resolution delegating authority to receive service of process, but that resolution has been rendered obsolete as the individuals named to accept service are no longer employed by the county. At this time, the only permissible means of service is on a member of the County Board.

City. Serve the Mayor or City Clerk pursuant to Rule 4.03(e)(2) of Minn. R. Civ. P., at least 10 days prior to the hearing date.

St. Paul Housing and Redevelopment Authority, deliver a copy to one of its commissioners as designated in Minn. Stat. 469.003. In St. Paul, the HRA Commissioners are the members of the City Council.

St. Paul Economic Development Authority, Port Authority, or Board of Water Commissioners: deliver a copy to one of the members of the City Council. These entities have not adopted an effective delegation resolution.

Capital Watershed District. A watershed district is a political subdivision. Minn. Stat. 103D.225, Subd. 6. Service is governed by Rule 4.03 (e)(5). Deliver a copy to any member of the Board of Managers.

Town of White Bear, deliver a copy to the chair of the town board or Town Clerk pursuant to Rule 4.03(e)(3), Minn. R. Civ. P., at least 10 days prior to the hearing date.

School District, serve a member of the school board pursuant to Rule 4.03(e)(5) of Minn. R. Civ. P., at least 10 days prior to the hearing date. Do not serve the superintendent, principal, or school secretary.

End of memo