

Rule 3. Commencement of the Action; Service of the Complaint; Filing of the Action**3.01 Commencement of the Action**

A civil action is commenced against each defendant:

(a) when the summons is served upon that defendant; or

(b) at the date of signing a waiver of service pursuant to Rule 4.05; or

(c) when the summons is delivered for service to the sheriff in the county where the defendant resides personally, by U.S. Mail (postage prepaid), by commercial courier with proof of delivery, or by electronic means consented to by the sheriff's office either in writing or electronically; but such delivery shall be ineffectual unless within 60 days thereafter the summons is actually served on that defendant or the first publication thereof is made.

Filing requirements are set forth in Rule 5.04, which requires filing with the court within one year after commencement for non-family cases.

(Amended effective July 1, 2013; amended effective July 1, 2015; amended effective July 1, 2018; amended effective September 1, 2020.)

Advisory Committee Comment - 2018 Amendments

Rule 3.01 is amended to implement the amendment to Rule 4.05, which replaces the somewhat unreliable procedure involving the "Acknowledgment of Service" form with a more straightforward procedure relying on a "Waiver of Service" form. Rule 3.01 defines the date of commencement of an action using the waiver of process procedure.

Advisory Committee Comments - 2020 Amendments

Rule 3.01 is amended to clarify the forms of delivery to sheriffs that may be used to commence an action. It does not restrict or change how service on the defendant is accomplished.

The committee expects that most sheriffs will make available on their websites or will provide information upon inquiry as to how they prefer to receive requests for service under this rule. Transmittal by U.S. Mail is expressly authorized, and a party may use Certified Mail, Return Receipt Requested in order to obtain proof of receipt. The rule also authorizes delivery to the sheriff by commercial courier (e.g., Federal Express, UPS), which may be most effective in getting the required documents in the sheriff's hands and would also create a record of delivery (although the rule does not require a proof of delivery).

The amended rule intentionally does not authorize delivery to the sheriff in the proper county by facsimile. As anachronistic and inconvenient as facsimile is for most purposes in 2020, it is particularly ill-suited for this purpose. Minn. R. Civ. P. 3.02 requires service of the complaint with the summons and that may result in lengthy facsimile transmissions. Moreover, faxes impose undue burdens on sheriffs' offices. Sheriffs in most counties will accept delivery by hand delivery, U.S. Mail, commercial courier, or email to a designated email address.

3.02 Service of Complaint

A copy of the complaint shall be served with the summons, except when the service is by publication as provided in Rule 4.04.

Advisory Committee Comments - 2015 Amendments

This rule is amended to add the explicit provision for consent to service by any means in subdivision (b), not only service by mail. If the party to be served consents to service, the service is effective and constitutionally sound regardless of method. Thus, a party may consent to service by ordinary electronic mail even though the rules do not otherwise provide for it.