RULE 5
SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in rule 4. In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) Service: How Made.

(1) On Attorney or Party. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, filing with the clerk of the court an affidavit of attempt to serve. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service on an attorney is subject to the restrictions in subsections (b)(4) and (5) of this rule and in rule 71, Withdrawal by Attorneys.

(2) Service by Mail.

(i) How made. If service is made by mail, the papers shall be deposited in the post office addressed to the person on whom they are being served, with the postage prepaid. The service shall be deemed complete upon the third day following the day upon which they are placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday, following the third day.

(ii) Proof of service by mail. Proof of service of all papers permitted to be mailed may be by written acknowledgment of service, by affidavit of the person who mailed the papers, or by

certificate of an attorney. The certificate of an attorney may be in form substantially as follows:

CERTIFICATE

I certify that I mailed a copy of the foregoing _____ to (John Smith), (plaintiff's) attorney, at (office address or residence), and to (Joseph Doe), an additional (defendant's) attorney (or attorneys) at (office address or residence), postage prepaid, on (date).

_____
(John Brown)
Attorney for (Defendant) William Noe

(3) Service on Nonresidents. Where a plaintiff or defendant who has appeared resides outside the state and has no attorney in the action, the service may be made by mail if his residence is known; if not known, on the clerk of the court for him. Where a party, whether resident or nonresident, has an attorney in the action, the service of papers shall be upon the attorney instead of the party. If the attorney does not have an office within the state or has removed his residence from the state, the service may be upon him personally either within or without the state, or by mail to him at either his place of residence or his office, if either is known, and if not known, then by mail upon the party, if his residence is known, whether within or without the state. If the residence of neither the party nor his attorney, nor the office address of the attorney is known, an affidavit of the attempt to serve shall be filed with the clerk of the court.

(4) Service on Attorney Restricted After Final Judgment. A party, rather than the party's attorney, must be served if the final judgment or decree has been entered and the time for filing an appeal has expired, or if an appeal has been taken (i) after the final judgment or decree upon remand has been entered or (ii) after the mandate has been issued affirming the judgment or decree or disposing of the case in a manner calling for no further action by the trial court. This rule is subject to the exceptions defined in subsection (b)(6).

(5) Required Notice to Party. If a party is served under circumstances described in subsection (b)(4), the paper shall (i) include a notice to the party of the right to file written opposition or a response, the time within which such opposition or response must be filed, and the place where it must be filed; (ii) state that failure to respond may result in the requested relief being granted; and (iii) state that the paper has not been served on that party's lawyer.

(6) Exceptions. An attorney may be served notwithstanding subsection (b)(4) of this rule if (i) fewer than 63 days have elapsed since the filing of any paper or the issuance of any process in the action or proceeding or (ii) if the attorney has filed a notice of continuing representation.

(7) Service by Other Means. Service under this rule may be

made by delivering a copy by any other means, including facsimile or electronic means, consented to in writing by the person served. Service by facsimile or electronic means is complete on transmission when made prior to 5:00 p.m. on a judicial day. Service made on a Saturday, Sunday, or holiday or after 5:00 p.m. on any other day shall be deemed complete at 9:00 a.m. on the first judicial day thereafter; Service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. Service under this subsection is not effective if the party making service learns that the attempted service did not reach the person to be served.

(c) Service: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing.

(1) Time. Complaints shall be filed as provided in rule 3. All pleadings and other papers after the complaint required to be served upon a party shall be filed with the court either before service or promptly thereafter.

(2) Sanctions. If a party fails to file any pleading or paper under this rule, the court upon 5 days' notice of motion for sanctions may dismiss the action or strike the pleading or other paper and grant judgment against the defaulting party for costs and terms including a reasonable attorney fee unless good cause is shown for, or justice requires, the granting of an extension of time.

(3) Limitation. No sanction shall be imposed if prior to the hearing the pleading or paper other than the complaint is filed and the moving attorney is notified of the filing before he leaves his office for the hearing.

(4) Nonpayment. No further action shall be taken in the pending action and no subsequent pleading or other paper shall be filed until the judgment is paid. No subsequent action shall be commenced upon the same subject matter until the judgment has been paid.

(e) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him or her, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Papers may be filed by facsimile transmission if permitted elsewhere in these or other rules of court, or if authorized by the clerk of the receiving court. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not

presented in proper form as required by these rules or any local rules or practices.

(f) Other Methods of Service. Service of all papers other than the summons and other process may also be made as authorized by statute.

(g) Certified Mail. Whenever the use of "registered" mail is authorized by statutes relating to judicial proceedings or by rule of court, "certified" mail, with return receipt requested, may be used.

(h) Service of Papers by Telegraph. [Rescinded.]

(i) Filing by Facsimile. (Reserved. See GR 17--Facsimile Transmission.)

[Amended effective September 1, 1993; September 1, 1994; September 1, 2005.]