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Washington State Supreme Court

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NO. 89853-7

**SUPREME COURT  
OF THE STATE OF WASHINGTON**

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THERESA SCANLAN,  
Respondent,

v.

KARLIN TOWNSEND and "JOHN DOE" TOWNSEND,  
Petitioners.

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**SUPPLEMENTAL BRIEF OF RESPONDENT**

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**Kyle Drinnon, WSBA No. 45960  
G. Parker Reich, WSBA No. 35500  
Attorneys for Respondent**

**JACOBS & JACOBS  
114 E. Meeker Avenue  
Puyallup, WA 98372  
(253) 845-0577**

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## **A. INTRODUCTION**

This case is about the clear and unambiguous language of the service of process statute and civil rules. For the last 121 years, there have been two primary ways in which the courts can gain personal jurisdiction over a private defendant in a civil action. Service of process is valid when, within the 90-day period after filing of the suit, (1) **any** person over the age of 18, who is competent to be a witness in the action and not a party to the case delivers a copy of the summons and complaint into the hands of the defendant personally, or (2) **any** person over the age of 18, who is competent to be a witness in the action and not a party to the case leaves a copy of the summons and complaint at the house of the defendant's usual abode with some person of suitable age and discretion then resident therein. These two methods are frequently referred to as personal service and substitute service respectively.

Although, this case has been continuously mischaracterized as yet another argument over the substitute service portion of the service statute, it is in fact about the first prong, personal service. The facts as outlined in every argument from both parties are clear: Mr. Pyne personally delivered a copy of the summons and complaint into the hands of Ms. Townsend within the 90-day period after filing suit. These undisputed facts establish that Ms. Scanlan complied with the clear and unambiguous language of

the statute and Civil Rules. Accordingly, the Court of Appeals was correct when it held that the undisputed record establishes effective service of process.

## **B. ARGUMENT**

1. Policy does not support adding additional requirements to the service of process statute or Civil Rules in order to dismiss this case on a technicality not currently in existence.

The statute and rules, plain on their face, must not be construed as to dispose of the merits of this case on a manufactured technicality. This Court, when discussing the liberal construction of abode service, adhered to CR 1 and RCW 1.12.010 by finding that there should be no limiting rule of strict construction and that the rules shall be construed to secure the just, speedy, and inexpensive determination of every action by promoting a policy to decide cases on their merits. *Sheldon v. Fettig*, 129 Wn.2d 601, 609, 919 P.2d 1209 (1996) (“[m]odern rules of procedure are intended to allow the court to reach the merits, as opposed to the disposition on technical niceties.”). Subsequently, this Court also noted that RCW 4.28.080 has remained untouched on this issue since 1893, and that it should be enforced as it was written. *Salts v. Estes*, 133 Wn.2d 160, 169-171, 943 P.2d 275 (1997). Although *Salts* again addresses only the abode service prong and not the personal service prong at issue in this case, the

ruling supports a policy favorable to deciding the present case on its merits because Ms. Scanlan strictly complied with the plain language of RCW 4.28.080(15) and CR 4(c). *Id.* at 171. This same policy of construction in favor of deciding a case on its merits should be applied to the personal service prong of the service of process statute and rules.

There is no requirement — in statute, common law or court rule — that a person must consent to serve process. Petition for Review, 4,16. There is no court in this nation that has even contemplated such a requirement on service of process. In the present case, there is a factual dispute between Mr. Pyne and the person originally hired to serve process regarding the expressed consent of Mr. Pyne to serve process on Ms. Townsend. CP 45, 123-124. However, the dispute is irrelevant because the undisputed record shows that Mr. Pyne ultimately did personally serve process on Ms. Townsend in the proper time period. CP 109.

There is no authority to support the position that a server of process must also have process served upon them. Ms. Townsend argues that personal service in this case was ineffective because “service upon [Mr. Pyne] was defective” even though he has never been a party to the present case. Petition for Review, 7. This argument presumes that abode service or personal service on a process server is a prerequisite to service on any defendant. However, RCW 4.28.080 (15) clearly states that “[t]he

summons shall be served by delivering a copy thereof, as follows: (15) to the defendant personally, or by leaving a copy of the summons at the house. . .” with no mention of additional restrictions. RCW 4.28.080 (15) (emphasis added). Nor do the civil rules contain such a requirement. CR 4(c) states “service. . . shall be. . . by any person over 18 years of age who is competent to be a witness in the action, other than a party.” CR 4(d)(2) states that “[p]ersonal service shall be as provided in RCW 4.28.080-090...” Ms. Townsend’s argument fails because there is simply no authority to support it.

Application of the plain language of the service statute and Civil Rules to the facts of this case mandates the conclusion that Mr. Pyne meets all of the qualifications to serve process and served the defendant personally. All of these additional “requirements” are asserted with the intent of adding more procedural barriers to properly hearing cases on the merits. If, at any time in the last 121 years, legislature had intended such barriers or requirements to exist, they would have been expressly stated as requirements in the statute. This Court recognized the wisdom in this policy in *Salts* when it stated, “The Legislature is free to amend the statute; we are not.” 133 Wn.2d at 171.

2. Substitute/abode service, and substantial compliance are irrelevant to the issue in this case.

This case is not about the validity of substitute service at the usual abode of the defendant; rather it is about actual compliance with the service of process statute through personal service on the defendant. Ms. Townsend properly states many of the rules regarding service of process and construction of the service statute, but goes astray by only applying the substitute service prong of the statute. Petition for Review, 8. Ms. Scanlan has contended at all levels of the present case, that personal service was affected when Mr. Pyne — a person competent to serve process — handed a copy of the summons and complaint to Ms. Townsend personally. Ms. Scanlan has not made any argument on appeal of substitute service, substantial compliance, close is good enough, or any other creative misconstruction of the statute. Instead, Ms. Scanlan has argued, and continues to argue, that she directly complied with the personal service prong of the statute and associated court rules.

Ms. Townsend continues to apply the issue of abode service in a case that has moved beyond that issue. This misunderstanding of the Court of Appeals' decision is again reflected when Ms. Townsend contends that the "definition of a process server" was broadened "to include any adult who was given the summons and complaint at a place other than the

defendant's usual abode. . ." Petition for Review, 17. The underlying decision properly defines process server to be "any person over 18 years of age who is competent to be a witness in the action, other than a party" exactly as stated in CR 4(c). This conflation of "process server" and "abode service" becomes even more apparent by the conspicuous absence of proposed definition for "process server." CR 4(c) is clear as to who can serve process and the Court of Appeals appropriately applied the rule.

3. The sufficiency of actual notice is not at issue in this case.

Ms. Scanlan does not assert that actual notice is sufficient – a concern contemplated in *Gerean* and hinted at in Ms. Townsend's petition. *Gerean v. Martin-Joven*, 108 Wn. App. 963, 972, 33 P.3d 427 (2001); Petition for Review at 14. On the contrary, Ms. Scanlan complied with statute and Civil Rules by serving a copy of the summons and complaint to Ms. Townsend through effective personal service. Further, Ms. Scanlan met her burden of proof to show that, through deposition testimony and by concession of Ms. Townsend's attorney on record, personal service of process was made upon Ms. Townsend within the 90-day period.

The facts of this case do not lend themselves to an argument of actual notice. For example, when Ms. Townsend personally received the summons and complaint from Mr. Pyne, if she then chose to dispose of the documents unread thus having no actual knowledge of the case, effective

service of process would still have been accomplished. Had Mr. Pyne simply disposed of the documents rather than deliver them by hand and in person to Ms. Townsend, no effective personal service would have been accomplished. Additionally, had Mr. Pyne disposed of the documents but mentioned that the case was pending to Ms. Townsend; actual notice would have been achieved but no effective personal service would have been accomplished. Ms. Scanlan has never argued that actual notice is sufficient and the facts of this case do not support such an exploration of the issue.

### **C. CONCLUSION**

The Court of Appeals correctly found that Mr. Pyne affected personal service of process when he placed a copy of the summons and complaint into the hands of Ms. Townsend within the 90-day tolling period. This finding is supported by the policy of not adding additional requirements to the statute and Civil Rules that do not presently exist. It also supports the clear policy of this Court to decide a case on its merits, rather than a manufactured procedural technicality. Additionally, the analyses of substitute service of process or actual notice are not at issue in this case and are inappropriate on this fact pattern. Therefore, the respondent respectfully requests that this Court uphold the ruling of the Court of Appeals.

Respectfully submitted this 30<sup>th</sup> day of May, 2014,

JACOBS & JACOBS



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G. Parker Reich, WSBA No. 35500  
Kyle D. Drinnon, WSBA No. 45960  
Attorneys for Respondent Scanlan  
114 E Meeker Ave.  
Puyallup, WA 98372  
Telephone: (253) 845-0577  
Fax: (253) 845-9060

**DECLARATION OF SERVICE**

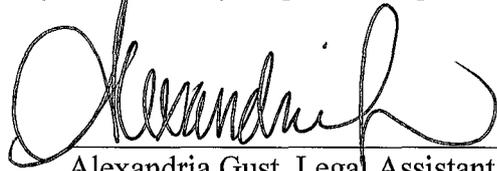
I declare that I served the foregoing Supplemental Brief of Respondent on the party below:

Michael E. Abrahamson  
Jill Skiller  
Hollenbeck, Lancaster, Miller & Andrews  
15500 SE 30<sup>th</sup> Place, Suite 201  
Bellevue, WA 98007

by causing a full, true, and correct copy thereof to be given to ABC Legal Messengers for hand delivery by May 30, 2014, to the party at the address listed above, which is the last known address for the party's office, on the date set forth below.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 30<sup>th</sup> day of May, 2014, at Puyallup, Washington.



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Alexandria Gust, Legal Assistant  
JACOBS & JACOBS  
114 East Meeker  
Puyallup, WA 98372  
(253) 845-0577

**RCW 1.12.010****Code to be liberally construed.**

The provisions of this code shall be liberally construed, and shall not be limited by any rule of strict construction.

[1891 c 23 § 1, part; Code 1881 §§ 758, 1686; 1877 p 153 § 763; 1854 p 221 § 504; RRS § 144.]

**Notes:**

**Reviser's note:** (1) This section is a part of 1891 c 23 § 1. The introductory phrase of that section provides: "The following provisions relative to the construction of statutes shall be rules of construction and shall constitute a part of the code of procedure of this state:"

(2) This section was originally section 504 of the 1854 statute entitled "An act to regulate the practice and proceedings in civil actions." Section 504 of the 1854 statute reads as follows: "The provisions of this act shall be liberally construed and shall not be limited by any rule of strict construction." Identical language appears in Code of 1881 § 1686 relating to probate, and again in Code of 1881 § 758, being part of "An act to regulate the practice and proceedings in civil actions" except that in the latter instance the 1881 codifier changed the words "this act" to read "this code."

**RCW 4.28.080****Summons, how served.**

Service made in the modes provided in this section is personal service. The summons shall be served by delivering a copy thereof, as follows:

- (1) If the action is against any county in this state, to the county auditor or, during normal office hours, to the deputy auditor, or in the case of a charter county, summons may be served upon the agent, if any, designated by the legislative authority.
- (2) If against any town or incorporated city in the state, to the mayor, city manager, or, during normal office hours, to the mayor's or city manager's designated agent or the city clerk thereof.
- (3) If against a school or fire district, to the superintendent or commissioner thereof or by leaving the same in his or her office with an assistant superintendent, deputy commissioner, or business manager during normal business hours.
- (4) If against a railroad corporation, to any station, freight, ticket or other agent thereof within this state.
- (5) If against a corporation owning or operating sleeping cars, or hotel cars, to any person having charge of any of its cars or any agent found within the state.
- (6) If against a domestic insurance company, to any agent authorized by such company to solicit insurance within this state.
- (7)(a) If against an authorized foreign or alien insurance company, as provided in RCW 48.05.200.
- (b) If against an unauthorized insurer, as provided in RCW 48.05.215 and 48.15.150.
- (c) If against a reciprocal insurer, as provided in RCW 48.10.170.
- (d) If against a nonresident surplus line broker, as provided in RCW 48.15.073.
- (e) If against a nonresident insurance producer or title insurance agent, as provided in RCW 48.17.173.
- (f) If against a nonresident adjuster, as provided in RCW 48.17.380.
- (g) If against a fraternal benefit society, as provided in RCW 48.36A.350.
- (h) If against a nonresident reinsurance intermediary, as provided in RCW 48.94.010.
- (i) If against a nonresident life settlement provider, as provided in RCW 48.102.011.
- (j) If against a nonresident life settlement broker, as provided in RCW 48.102.021.
- (k) If against a service contract provider, as provided in RCW 48.110.030.
- (l) If against a protection product guarantee provider, as provided in RCW 48.110.055.
- (m) If against a discount plan organization, as provided in RCW 48.155.020.

(8) If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefor within this state.

(9) If against a company or corporation other than those designated in subsections (1) through (8) of this section, to the president or other head of the company or corporation, the registered agent, secretary, cashier or managing agent thereof or to the secretary, stenographer or office assistant of the president or other head of the company or corporation, registered agent, secretary, cashier or managing agent.

(10) If against a foreign corporation or nonresident joint stock company, partnership or association doing business within this state, to any agent, cashier or secretary thereof.

(11) If against a minor under the age of fourteen years, to such minor personally, and also to his or her father, mother, guardian, or if there be none within this state, then to any person having the care or control of such minor, or with whom he or she resides, or in whose service he or she is employed, if such there be.

(12) If against any person for whom a guardian has been appointed for any cause, then to such guardian.

(13) If against a foreign or alien steamship company or steamship charterer, to any agent authorized by such company or charterer to solicit cargo or passengers for transportation to or from ports in the state of Washington.

(14) If against a self-insurance program regulated by chapter 48.62 RCW, as provided in chapter 48.62 RCW.

(15) In all other cases, to the defendant personally, or by leaving a copy of the summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein.

(16) In lieu of service under subsection (15) of this section, where the person cannot with reasonable diligence be served as described, the summons may be served as provided in this subsection, and shall be deemed complete on the tenth day after the required mailing: By leaving a copy at his or her usual mailing address with a person of suitable age and discretion who is a resident, proprietor, or agent thereof, and by thereafter mailing a copy by first-class mail, postage prepaid, to the person to be served at his or her usual mailing address. For the purposes of this subsection, "usual mailing address" does not include a United States postal service post office box or the person's place of employment.

[2012 c 211 § 1; 2011 c 47 § 1; 1997 c 380 § 1; 1996 c 223 § 1; 1991 sp.s. c 30 § 28; 1987 c 361 § 1; 1977 ex.s. c 120 § 1; 1967 c 11 § 1; 1957 c 202 § 1; 1893 c 127 § 7; RRS § 226, part. FORMER PART OF SECTION: 1897 c 97 § 1 now codified in RCW 4.28.081.]

### **Notes:**

**Rules of court:** Service of process -- CR 4(d), (e).

**Effective date, implementation, application -- Severability -- 1991 sp.s. c 30:** See RCW 48.62.900 and 48.62.901.

**Severability -- 1977 ex.s. c 120:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 120 § 3.]

Service of process on

foreign corporation: RCW 23B.15.100 and 23B.15.310.

foreign savings and loan association: RCW 33.32.050.

nonadmitted foreign corporation: RCW 23B.18.040.

nonresident motor vehicle operator: RCW 46.64.040.

**RCW 4.28.090**

**Service on corporation without officer in state upon whom process can be served.**

Whenever any corporation, created by the laws of this state, or late territory of Washington, does not have an officer in this state upon whom legal service of process can be made, an action or proceeding against the corporation may be commenced in any county where the cause of action may arise, or the corporation may have property, and service may be made upon the corporation by depositing a copy of the summons, writ, or other process, in the office of the secretary of state, which shall be taken, deemed and treated as personal service on the corporation: PROVIDED, A copy of the summons, writ, or other process, shall be deposited in the post office, postage paid, directed to the secretary or other proper officer of the corporation, at the place where the main business of the corporation is transacted, when the place of business is known to the plaintiff, and be published at least once a week for six weeks in a newspaper of general circulation at the seat of government of this state, before the service shall be deemed perfect.

[1985 c 469 § 1; 1893 c 127 § 8; RRS § 227.]

RULE CR 1  
SCOPE OF RULES

These rules govern the procedure in the superior court in all suits of a civil nature whether cognizable as cases at law or in equity with the exceptions stated in rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

[Adopted effective July 1, 1967; amended effective September 1, 2005.]

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RULE 4  
PROCESS

(a) Summons--Issuance.

(1) The summons must be signed and dated by the plaintiff or his attorney, and directed to the defendant requiring him to defend the action and to serve a copy of his appearance or defense on the person whose name is signed on the summons.

(2) Unless a statute or rule provides for a different time requirement, the summons shall require the defendant to serve a copy of his defense within 20 days after the service of summons, exclusive of the day of service. If a statute or rule other than this rule provides for a different time to serve a defense, that time shall be stated in the summons.

(3) A notice of appearance, if made, shall be in writing, shall be signed by the defendant or his attorney, and shall be served upon the person whose name is signed on the summons. In condemnation cases a notice of appearance only shall be served on the person whose name is signed on the petition.

(4) No summons is necessary for a counterclaim or cross claim for any person who previously has been made a party. Counterclaims and cross claims against an existing party may be served as provided in rule 5.

(b) Summons.

(1) Contents. The summons for personal service shall contain:

(i) the title of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, and the names of the parties to the action, plaintiff and defendant;

(ii) a direction to the defendant summoning him to serve a copy of his defense within a time stated in the summons;

(iii) a notice that, in case of failure so to do, judgment will be rendered against him by default. It shall be signed and dated by the plaintiff, or his attorney, with the addition of his post office address, at which the papers in the action may be served on him by mail.

(2) Form. Except in condemnation cases, and except as provided in rule 4.1, the summons for personal service in the state shall be substantially in the following form:

SUPERIOR COURT OF WASHINGTON  
FOR ( \_\_\_\_\_ ) COUNTY

_____ ,	)	
Plaintiff,	)	No. _____
v.	)	
_____ ,	)	SUMMONS (20 days)
Defendant.	)	

TO THE DEFENDANT: A lawsuit has been started against you in the above entitled court by \_\_\_\_\_, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice

before a default judgment may be entered.

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing this summons. Within 14 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

This summons is issued pursuant to rule 4 of the Superior Court Civil Rules of the State of Washington.

(signed) \_\_\_\_\_

Print or Type Name

( ) Plaintiff ( ) Plaintiff's Attorney

P. O. Address \_\_\_\_\_

Dated \_\_\_\_\_

Telephone Number \_\_\_\_\_

(c) By Whom Served. Service of summons and process, except when service is by publication, shall be by the sheriff of the county wherein the service is made, or by his deputy, or by any person over 18 years of age who is competent to be a witness in the action, other than a party. Subpoenas may be served as provided in rule 45.

(d) Service.

(1) Of Summons and Complaint. The summons and complaint shall be served together.

(2) Personal in State. Personal service of summons and other process shall be as provided in RCW 4.28.080-.090, 23B.05.040, 23B.15.100, 46.64.040, and 48.05.200 and .210, and other statutes which provide for personal service.

(3) By Publication. Service of summons and other process by publication shall be as provided in RCW 4.28.100 and .110, 13.34.080, and 26.33.310, and other statutes which provide for service by publication.

(4) Alternative to Service by Publication. In circumstances justifying service by publication, if the serving party files an affidavit stating facts from which the court determines that service by mail is just as likely to give actual notice as service by publication, the court may order that service be made by any person over 18 years of age, who is competent to be a witness, other than a party, by mailing copies of the summons and other process to the party to be served at his last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender. The summons shall contain the date it was deposited in the mail and shall require the defendant to appear and answer the complaint within 90 days from the date of mailing. Service under this subsection has the same jurisdictional effect as service by publication.

(5) Appearance. A voluntary appearance of a defendant does not preclude his right to challenge lack of jurisdiction over his person, insufficiency of process, or insufficiency of service of process pursuant to rule 12(b).

(e) Other Service.

(1) Generally. Whenever a statute or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or not found within the state, service may be made under the circumstances and in the manner prescribed by the statute or order, or if there is no provision prescribing the manner of service, in a manner prescribed by this rule.

(2) Personal Service Out of State--Generally. Although rule 4 does not generally apply to personal service out of state, the prescribed form of

summons may, with the modifications required by statute, be used for that purpose. See RCW 4.28.180.

(3) Personal Service Out of State--Acts Submitting Person to Jurisdiction of Courts. (Reserved. See RCW 4.28.185.)

(4) Nonresident Motorists. (Reserved. See RCW 46.64.040.)

(f) Territorial Limits of Effective Service. All process other than a subpoena may be served anywhere within the territorial limits of the state, and when a statute or these rules so provide beyond the territorial limits of the state. A subpoena may be served within the territorial limits as provided in rule 45 and RCW 5.56.010.

(g) Return of Service. Proof of service shall be as follows:

(1) If served by the sheriff or his deputy, the return of the sheriff or his deputy endorsed upon or attached to the summons;

(2) If served by any other person, his affidavit of service endorsed upon or attached to the summons; or

(3) If served by publication, the affidavit of the publisher, foreman, principal clerk, or business manager of the newspaper showing the same, together with a printed copy of the summons as published; or

(4) If served as provided in subsection (d)(4), the affidavit of the serving party stating that copies of the summons and other process were sent by mail in accordance with the rule and directions by the court, and stating to whom, and when, the envelopes were mailed.

(5) The written acceptance or admission of the defendant, his agent or attorney;

(6) In case of personal service out of the state, the affidavit of the person making the service, sworn to before a notary public, with a seal attached, or before a clerk of a court of record.

(7) In case of service otherwise than by publication, the return, acceptance, admission, or affidavit must state the time, place, and manner of service. Failure to make proof of service does not affect the validity of the service.

(h) Amendment of Process. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(i) Alternative Provisions for Service in a Foreign Country.

(1) Manner. When a statute or rule authorizes service upon a party not an inhabitant of or found within the state, and service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made: (A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory or a letter of request; or (C) upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail, requiring a signed receipt, to be addressed and mailed to the party to be served; or (E) pursuant to the means and terms of any applicable treaty or convention; or (F) by diplomatic or consular officers when authorized by the United States Department of State; or (G) as directed by order of the court. Service under (C) or (G) above may be made by any person who is not a party and is not less than 21 years of age or who is designated by order of the court or by the foreign court. The method for service of process in a foreign country must comply with applicable treaties, if any, and must be reasonably calculated, under all the circumstances, to give actual notice.

(2) Return. Proof of service may be made as prescribed by section (g) of this rule, or by the law of the foreign country, or by a method provided in any applicable treaty or convention, or by order of the court. When service is made pursuant to subsection (1)(D) of this section, proof of

service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(j) Other Process. These rules do not exclude the use of other forms of process authorized by law.

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