Civil Procedure - Notice

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Alabama Court of
Civil Appeals

Probate Judge Conference
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CIVIL PROCEDURE - NOTICE

Alabama Probate Judges Conference

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Selected Topics

- Notice to a party that a court case has been commenced, and that an interest of the party could be affected.
- Notice to a party of things that occur during the case (e.g., hearing dates).
- Although not a topic for this discussion, notice can also include non-parties who receive subpoenas.

Why is Notice So Important?

- Lack of adequate notice can make a judgment or order void.
- Can be reversed but can also be challenged much later by a motion filed under Rule 60(b)(4), Ala. R. Civ. P.
- Unlike most other provisions, there is no time limit to file a motion under Rule 60(b)(4). Ex parte Full Circle Distrib., L.L.C., 883 So.2d 638 (2003).

- "When the grant or denial of relief turns on the validity of the judgment, as under Rule 60(b)(4), discretion has no place. If the judgment is valid, it must stand; if it is void, it must be set aside."
- "A judgment is void only if the court that rendered it lacked jurisdiction of the subject matter or of the parties, or if it acted in a manner inconsistent with due process." Satterfield v. Winston Indus., Inc., 553 So. 2d 61, 64 (Ala. 1989).

- "A judgment is void if the court rendering the judgment lacked personal jurisdiction over the parties." Ex parte Full Circle Distribution, LLC., 883 So.2d 638, 644 (Ala. 2003).
- "One of the requisites of personal jurisdiction over a defendant is 'perfected service of process giving notice to the defendant of the suit being brought.'" Horizons 2000, Inc. v. Smith, 620 So. 2d 606, 607 (Ala. 1993).

ARCP in the Probate Court

- Rule 1(a), Ala. R. Civ. P., amended effective January 1, 2013, provides that, subject to certain exceptions, the Alabama Rules of Civil Procedure apply in probate court proceedings. See Committee Comments to Amendment to Rule 1(a), Effective January 1, 2013.
- Ala. Code §12-13-12; etc.

Notice of the Case

- Notice informing the party of the case and that a judgment by default can be entered.
- Required for the court to have personal jurisdiction.
- Obtained by serving the summons (document describing the case, the court, and the date an answer is due) and the complaint (document describing the claims). Rule 4, Ala. R. Civ. P.

Service of Process

- "It is well settled that failure of proper service under Rule 4, A.R.Civ.P., deprives a court of jurisdiction and renders judgment...void." Shaddix v. Shaddix, 603 So.2d 1096, 1098-1099 (1992).
- "Strict compliance regarding service of process is required." Aaron v. Aaron, 571 So. 2d 1150, 1151 (Ala. Civ. App. 1990).

- "Even if defendant had actual notice of an action, this does not confer personal jurisdiction without compliance with Rule 4." Gaudin v. Collateral Agency, Inc., 624 So. 2d 631, 632 (Ala. Civ. App. 1993)

ARCP 4: Upon whom process [is] served

- (h) Acceptance or Waiver of Service. A defendant may accept or waive service of process by a document signed by the defendant and filed with the clerk of court from which the process issued.
- (c) Service of process, except service by publication as provided in Rule 4.3, shall be made as follows:

- (c)(1) INDIVIDUAL. Upon an individual, other than a minor or an incompetent person, by serving the individual or by leaving a copy of the summons and the complaint at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and the complaint to an agent authorized by appointment or by law to receive service of process.

- (2) Minor
- (3) Incompetent not confined.
- (4) Incompetent confined.
- (5) Incarcerated person.
- (6) Corporations and other entities.
- (7) State.
- (8) Local governments and other governmental entities.

- **ARCP 4(a)(5) Instructions and Form.** The plaintiff shall furnish the clerk with instructions for service of the complaint or other document and, when requested by the clerk, the plaintiff shall also furnish sufficient properly completed copies of the summons or other process. When the plaintiff has requested the clerk to issue service by certified mail, the plaintiff, at the request of the clerk, shall also furnish properly completed postal forms necessary for such service.

(i) Methods of Service

- (1) (A) By Sheriff or Constable.
- (B) By Designated Person.
- (2) Service by Certified Mail.

ARCP 4.3 Service by Publication

- (a) Scope of Rule. This rule applies as follows: (1) To a claim historically equitable involving property under the control of the court (e.g., administration of an estate, interpleader, partition) or marital status which claim has heretofore been deemed appropriate for service by publication where the identity or residence of a defendant is unknown or…

- …where a resident defendant has been absent from that defendant's residence for more than thirty (30) days since the filing of the complaint and the method of service by publication in such instances is not specifically provided by statute; and,
- (2) To a claim, whether legal or equitable, against a defendant who avoids service of process as described in subdivision (c) of this rule. …. In no event shall an in personam judgment be entered on service by publication except as provided in subdivision (c) of this rule.

- **(b) Residence Known; When Publication Appropriate.** When the residence of a defendant is known and the action is one in which service by publication is permitted, service of process must first be attempted by one of the methods of service other than publication as is provided by Rule 4....

- **(c) Avoidance of Service.** When a defendant avoids service and that defendant's present location or residence is unknown and the process server has endorsed the fact of failure of service and the reason therefor on the process and returned it to the clerk or where the return receipt shows a failure of service, the court may, on motion, order service to be made by publication. ...

- Generally, a party who participates in the litigation (e.g., files an answer) waives any deficiencies in the service. See Rule 12(b).
- But "[w]hen the service of process on the defendant is contested as being improper or invalid, the burden of proof is on the plaintiff to prove that service of process was performed correctly and legally." Horizons 2000, Inc. v. Smith, 620 So. 2d 606, 607 (Ala. 1993).

Notice of Case Events

- Notice of additional pleadings, motions, hearing dates, trial date, orders.
- Service on the party of information about the case after the party has been served with the initial notice.
- Rule 5, Ala. R. Civ. P.

- Generally required for procedural due process.
- [A] judgment entered without affording a party procedural due process is void. Ex parte Third Generation, Inc., 855 So.2d 489, 492 (Ala. 2003).
- Procedural " 'due process ... means notice, a hearing according to that notice, and a judgment entered in accordance with such notice and hearing.'" Neal v. Neal, 856 So.2d 766, 782 (Ala. 2002).

Rule 5, Ala. R. Civ. P. Service and Filing of Pleadings and Other Papers

- **(b) Same: How Made.** 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 is ordered by the court.

- If the attorney for the party to be served or the party to be served is a registered user of the electronic-filing system as provided for by order or rules of the Supreme Court of Alabama, service may be made by electronic transmittal in accordance therewith. Service by electronic means in compliance with those orders and rules shall be complete on transmission of the electronic document.

Examples of Potential Issues

- Proceeding when it is obvious that a party did not get notice (e.g., returned envelope.)
- Entering relief that is different from the pleadings where a party was served and did not appear.

- Case Study: After a case was placed on administrative docket and had no activity for over 10 years, the trial court entered an order dismissing case for lack of prosecution.
- Over a year later, plaintiff files a Rule 60(b)(4) motion, claiming no notice the case had been restored to active docket or notice and opportunity to be heard that the case might be dismissed.
- The record contained no materials to contradict the claims.

- "The trial court acted in a manner inconsistent with due process when it dismissed the action on its own motion without notice and a hearing, and, therefore, its order of dismissal was void." Ex parte U.S. Steel Min. Co., LLC, 160 So.3d 1245 (2014).
- Note that because there is no time limit to file a Rule 60(b)(4) claim, the delay between the date of the order dismissing the case and the motion did not matter.

- "Unless a court clerk voluntarily assumes the obligation to notify a litigant of a scheduled trial date, the clerk's failure to so notify a litigant does not violate the due-process rights of the litigant, who is under a duty to inform the clerk of his or her service address and to keep apprised of the status of his or her own case." Marks v. Marks, 181 So. 3d 361, 363–64 (Ala. Civ. App. 2015).