RULE 4. PROCESS

(a) Summons: Form. The summons shall bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

(b) Same: Issuance. The summons may be procured in blank from the clerk and shall be filled out by the plaintiff's attorney as provided in subdivision (a) of this rule. The plaintiff's attorney shall deliver to the person who is to make service the original summons upon which to make return of service and a copy of the summons and of the complaint for service upon the defendant.

(c) Service. Service of the summons and complaint may be made as follows:

(1) By mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment form and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this paragraph is received by the sender within 20 days after the date of mailing, service of the summons and complaint shall be made under paragraph (2) or (3) of this subdivision.

(2) By a sheriff or a deputy within the sheriff's county, or other person authorized by law, or by some person specially appointed by the court for that purpose. Special appointments to serve process shall be made freely when substantial savings in travel fees will result.

(3) By any other method permitted or required by this rule or by statute.

(d) Summons: Personal Service. The summons and complaint shall be served together. Personal service within the state shall be made as follows:

(1) Upon an individual other than a minor or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof 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 of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given. The court, on motion, upon a showing that service as prescribed above cannot be made with due diligence, may order service to be made by leaving a copy of the summons and of the complaint at the defendant's dwelling house or usual place of abode; or to be made by publication pursuant to subdivision (g) of this rule, if the court deems publication to be more effective.

(2) Upon a minor, by delivering a copy of the summons and of the complaint personally (a) to the minor and (b) also to the minor's guardian if the minor has one within the state, known to the plaintiff, and if not, then to the minor's father or mother or other person having the minor's care or control, or with whom the minor resides, or if service cannot be made upon any of them, then as provided by order of the court.

(3) Upon an incompetent person, by delivering a copy of the summons and of the complaint personally (a) to the guardian of the incompetent person or a competent adult member of the incompetent person's family with whom the incompetent person resides, or if the incompetent person is living in an institution, then to the director or chief executive officer of the institution, or if service cannot be made upon any of them, then as provided by order of the court and (b) unless the court otherwise orders, also to the incompetent person.

(4) Upon a county, by delivering a copy of the summons and of the complaint to one of the county commissioners or their clerk or the county treasurer.

(5) Upon a town, by delivering a copy of the summons and of the complaint to the clerk or one of the selectmen or assessors.

(6) Upon a city, by delivering a copy of the summons and of the complaint to the clerk, treasurer, or manager.

(7) Upon the United States, by delivering a copy of the summons and of the complaint to the United States attorney for the district of Maine or to an

assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the United States District Court for the district of Maine and by sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency provided that any further notice required by statute or regulation shall also be given.

Upon an officer or agency of the United States, by serving the United States and by delivering a copy of the summons and of the complaint to such officer or agency, provided that any further notice required by statute or regulation shall also be given. If the agency is a corporation the copy shall be delivered as provided in paragraph (8) or (9) of this subdivision of this rule.

Upon any other public corporation, by delivering a copy of the summons and of the complaint to any officer, director, or manager thereof and upon any public body, agency or authority by delivering a copy of the summons and the complaint to any member thereof.

(8) Upon a domestic private corporation (a) by delivering a copy of the summons and of the complaint to any officer, director or general agent; or, if no such officer or agent be found, to any person in the actual employment of the corporation; or, if no such person be found, to the Secretary of State, provided that the plaintiff's attorney shall also send a copy of the summons and of the complaint to the corporation by registered or certified mail, addressed to the corporation's principal office as reported on its latest annual return; or (b) by delivering a copy of the summons and of the complaint to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, provided that any further notice required by the statute shall also be given.

(9) Upon a corporation established under the laws of any other state or country (a) by delivering a copy of the summons and of the complaint to any officer, director or agent, or by leaving such copies at an office or place of business of the corporation within the state; or (b) by delivering a copy of the summons and of the complaint to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, provided that any further notice required by the statute shall also be given.

(10) Upon a partnership subject to suit in the partnership name in any action, and upon all partners whether within or without the state in any action on a claim arising out of partnership business, (a) by delivering a copy of the summons and of the complaint to any general partner or any managing or general agent of the partnership, or by leaving such copies at an office or place of business of the partnership within the state; or (b) by delivering a copy of the summons and of the complaint to any agent, attorney in fact, or other person authorized by appointment or by statute to receive or accept service on behalf of the partnership, provided that any further notice required by the statute shall also be given.

(11) Upon the State of Maine by delivering a copy of the summons and of the complaint to the Attorney General of the State of Maine or one of the Attorney General's deputies, either (a) personally or (b) by registered or certified mail, return receipt requested; and in any action attacking the validity of an order of an officer or agency of the State of Maine not made a party, by also sending a copy of the summons and of the complaint by ordinary mail to such officer or agency. The provisions of Rule 4(f) relating to completion of service by mail shall here apply as appropriate.

(12) Upon an officer or agency of the State of Maine by the method prescribed by either paragraph (1) or (7) of this subdivision as appropriate, and by also sending a copy of the summons and of the complaint by ordinary mail to the Attorney General of the State of Maine.

(13) Upon all trustees of an express trust, whether within or without the state, in any action on a claim for relief against the trust, except an action by a beneficiary in that capacity, (a) by delivering a copy of the summons and of the complaint to any trustee, or by leaving such copies at an office or place of business of the trust within the state; or (b) by delivering a copy of the summons and of the complaint to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the trust, provided that any further notice required by the statute shall also be given.

(14) Upon another state of the United States, by the method prescribed by the law of that state for service of process upon it.

(e) Personal Service Outside State. A person who is subject to the jurisdiction of the courts of the state may be served with the summons and complaint outside the state, in the same manner as if such service were made within the state, by any person authorized to serve civil process by the laws of the

place of service or by a person specially appointed to serve it. An affidavit of the person making service shall be filed with the court stating the time, manner, and place of service. Such service has the same force and effect as personal service within the state.

(f) Service by Mail in Certain Actions.

(1) Outside State. Where service cannot, with due diligence, be made personally within the state, service of the summons and complaint may be made upon a person who is subject to the jurisdiction of the courts of the state by delivery to that person outside the state by registered or certified mail, with restricted delivery and return receipt requested, in the following cases: where the pleading demands a judgment that the person to be served be excluded from a vested or contingent interest in or lien upon specific real or personal property within the state, or that such an interest or lien in favor of either party be enforced, regulated, defined or limited, or otherwise affecting the title to any property.

(2) Family Division Actions. Service of the summons and complaint or a post-judgment motion may be made in an action pursuant to Chapter XIII of these Rules upon a person who is subject to the jurisdiction of the courts of the state by delivery to that person, whether in or outside the state, by registered or certified mail, with restricted delivery and return receipt requested.

(3) Service Completion. Service by registered or certified mail shall be complete when the registered or certified mail is delivered and the return receipt signed or when acceptance is refused, provided that the plaintiff shall file with the court either the return receipt or, if acceptance was refused, an affidavit that upon notice of such refusal a copy of the summons and complaint was sent to the defendant by ordinary mail.

(g) Service by Publication.

(1) *When Service May Be Made.* The court, on motion upon a showing that service cannot with due diligence be made by another prescribed method, shall order service by publication in an action described in subdivision (f) of this rule, unless a statute provides another method of notice, or when the person to be served is one described in subdivision (e) of this rule.

(2) *Contents of Order.* An order for service by publication shall include (i) a brief statement of the object of the action; (ii) if the action may affect

any property or credits of the defendant described in subdivision (f) of this rule, a description of any such property or credits; and (iii) the substance of the summons prescribed by subdivision (a) of this rule. The order shall also direct its publication once a week for 3 successive weeks in a designated newspaper of general circulation in the county where the action is pending; and the order shall also direct the mailing to the defendant, if the defendant's address is known, of a copy of the order as published.

(3) *Time of Publication; When Service Complete.* The first publication of the summons shall be made within 20 days after the order is granted. Service by publication is complete on the twenty-first day after the first publication. The plaintiff shall file with the court an affidavit that publication has been made.

(h) Return of Service. The person serving the process shall make proof of service thereof on the original process or a paper attached thereto for that purpose, and shall forthwith return it to the plaintiff's attorney. The plaintiff's attorney shall, within the time during which the person served must respond to the process, file the proof of service with the court. If service is made under paragraph (c)(1) of this rule, return shall be made by the plaintiff's attorney filing with the court the acknowledgment received pursuant to that paragraph. The attorney's filing of such proof of service with the court shall constitute a representation by the attorney, subject to the obligations of Rule 11, that the copy of the complaint mailed to the person served or delivered to the officer for service was a true copy. If service is made by a person other than a sheriff or the sheriff's deputy or another person authorized by law, that person shall make proof thereof by affidavit. The officer or other person serving the process shall endorse the date of service upon the copy left with the defendant or other person. Failure to endorse the date of service shall not affect the validity of service.

(i) Amendment. 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.

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

(1) *Manner.* When service is to be effected upon a 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, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivery to the individual 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 dispatched by the clerk of the court to the party to be served; or (E) as directed by order of the court. Service under (C) or (E) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the court or by the foreign court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

(2) *Return.* Proof of service may be made as prescribed by subdivision (h) of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (1)(D) of this subdivision, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

Advisory Note
July 1, 2009

The amendment to Rule 4(f) changes only the heading of paragraph 2 to recognize the Rule's applicability to Family Division Actions under Chapter XIII.

Advisory Notes
June 2008

Rule 4(f)(2) is amended [effective January 1, 2009] to recognize that Rule 80 is abrogated and to cite to Chapter XIII of these Rules that now governs most Family Division and domestic relations actions. The amendment also recognizes that post-judgment motions may be served by this service by certified mail alternative.

Advisory Committee's Notes
December 4, 2001

Rule 4(f) is amended to permit service by registered or certified mail in action arising under Rule 80(a) regardless of whether the person to be served is in

or outside the state. The former rule permitted such service only upon persons outside the state and only in actions for divorce or annulment. The intent of the amendment is to afford litigants, many of whom are *pro se*, an easy and inexpensive means of serving initial process.

Advisory Committee's Notes
May 1, 2000

In subdivision (1) and subdivision (2), the term "minor" is substituted for the term "infant."

Advisory Committee's Notes
1993

Rule 4(d)(10) is amended for conformity to recent statutory changes.

When Rule 4(d)(10) was adopted in 1967, Maine was among those states which did not recognize the "entity" theory of partnership. Thus, an action against a partnership on a partnership liability could be brought only against the individual partners. Rule 4(d)(10) was intended to simplify service of process in such an action by eliminating the necessity of personal service upon every partner named as a defendant in favor of service upon one partner or a general or managing agent of the partnership. *See* M.R. Civ. P. 4(d)(10) advisory committee's note, 1 Field, McKusick & Wroth, *Maine Civil Practice* 53-55 (2d ed. 1970); *Thurston v. Continental Casualty Co.*, 567 A.2d 922, 923-24 (Me. 1989).

Subsequently, the Legislature has provided specifically that both general and limited partnerships may sue and be sued in the partnership name. 31 M.R.S.A. §§ 160-A, 290-A, enacted by P.L. 1987, ch. 92. Accordingly, the present amendment expressly extends the service provisions of Rule 4(d)(10) to "a partnership subject to suit in the partnership name." Service upon such a partnership may be had "in any action," whether or not the claim can be said to have arisen "out of partnership business."

The rule continues to provide a means for service upon partners individually in a claim that does arise out of partnership business. This provision thus permits service against members of a partnership established in a state which does not recognize the entity theory. Service under the rule will also support jurisdiction against all partners as to their personal liability under the general law of partnership for claims that cannot be satisfied out of the partnership property. Note

that the present rule is one of service of process only. While partners are not indispensable parties in an action on a partnership liability, they and the partnership are bound by a judgment only if formally named and joined as parties to the action. *See* 1 Field, McKusick & Wroth, *supra* § 4.4. The service provisions of the rule apply whether the partnership and partners are joined or are sued in separate actions.

In clause (a) of the rule, the amendment limits service to "general" partners. Limited partners, who under the Revised Uniform Limited Partnership Act, 31 M.R.S.A. §§ 401-527, are not individually liable for the obligations of the partnership and do not participate in control of the partnership business, do not have sufficient stake or responsibility to assure that service upon them will be adequate notice to general partners. *See* 31 M.R.S.A. § 433; *cf. id.* § 409(1).

Clause (b) of the rule incorporates as an alternative means of service upon a limited partnership the provisions of the Revised Uniform Limited Partnership Act for service upon a statutory agent. Thus, under 31 M.R.S.A. §409(l)(B), (C), service may be had upon the registered agent or any liquidating trustee of the partnership. If no registered agent has been appointed, or can be found, then the Secretary of State, by virtue of 31 M.R.S.A. § 409(2), is deemed the agent of the partnership for service of process. Similarly, under 31 M.R.S.A. § 410, the Secretary of State is deemed to be the agent for service of process upon a nonresident general partner. Similar provisions are made for service on foreign limited partnerships by 31 M.R.S.A. §§ 500-502.

The service provisions of the Revised Uniform Limited Partnership Act contain savings for other methods of service. *See* 31 M.R.S.A. § 409(3) (domestic limited partnership); § 500(4) (foreign limited partnership authorized to do business in the state); § 501(2) (foreign limited partnership not authorized to do business in the state). While there is no similar saving in 31 M.R.S.A. § 410 for service upon nonresident general partners of domestic limited partnerships, the methods therein prescribed are not in terms exclusive of service under Rule 4(d)(10)(a).

Advisory Committee's Notes
1992

Rule 4(c)(1) is amended to clarify the intent of the rule. As promulgated in 1990, Rule 4(c)(1) provided that, if no acknowledgement of service by mail is received by plaintiff within 20 days, service may be made by an officer or specially

appointed person under Rule 4(c)(2). The amendment, substituting "shall" for "may," follows Federal Rule 4(c)(2)(C)(ii), upon which the Maine rule was based. The intention is to make clear that the original service by mail is invalid if no acknowledgment is received, and that service under paragraph (2) or (3) must be employed if jurisdiction of the defendant is to be obtained.

Rule 4(c)(3) is added to clarify the relationship between service by ordinary mail with acknowledgement under Rule 4(c)(1) and other methods. Service under Rule 4(c)(1) is an option that may be used initially against any defendant in lieu of the special service methods permitted or required by Rules 4(d)-(g), (j), and applicable statutes. Plaintiff may, however, choose at the outset to bypass Rule 4(c)(1) and make service initially by a method specifically provided by rule or statute for the type of defendant in question, which may be personal service or another method such as registered or certified mail. If service is attempted under Rule 4(c)(1) but fails for lack of acknowledgement, plaintiff must resort to either personal service or another method as appropriate in order to obtain jurisdiction.

Advisory Committee's Notes
1991

Rule 4(c), providing that service of process is to be made by a sheriff, a deputy, another person authorized by law, or a person especially appointed by the court, is replaced by new Rule 4(c). Under the new provisions, service of the summons and complaint may be made by mail with written acknowledgement of receipt. Simultaneous amendments to Rules 4A(c) and 4B(c) make clear that writs of attachment and summonses on trustee process must be served by a sheriff or deputy.

The change is intended to make service both more efficient and more economical. In many counties, delays occur because of the backlog of civil process in sheriffs' offices. In addition, the costs of service, which may be significant in cases involving multiple parties, can be reduced by making service by mail freely available to Maine litigants. Such service is now available in the federal and many state courts, and in Maine, under Rule 4(f), may be used against out-of-state defendants. Since the party serving the summons and complaint bears the burden of establishing that service has been made and the risk of loss if service is ineffective, it may be assumed that parties will continue to resort to service by officer in difficult cases.

Rule 4(c)(1) provides that in the first instance service of summons and complaint may be made by the party or any person acting for the party by ordinary first-class mail. The sender must include with the summons and complaint two copies of a form of notice designed to alert the recipient to the procedure and an acknowledgement of receipt of service to be returned by the recipient in a postage-paid envelope provided for that purpose. If the sender does not receive the acknowledgement within twenty days of the mailing of the summons and complaint, the sender has the option of making service in hand under paragraph (2) of the subdivision. A form of notice and acknowledgement is being added to the Appendix of Forms as Form 3.20 by simultaneous amendment. Note that the acknowledgement must be received within 20 days of the mailing date, while the time for answer under Rule 12(a) is still 20 days from the date of service. In this case, the date on which the defendant mails the acknowledgement, which constitutes acceptance of this form of service, is the date of service for purposes of the time for answer.

Rule 4(c)(2) carries forward the language of former Rule 4(c) permitting service by a sheriff, a deputy, or "other person authorized by law," which includes constables and police and other governmental officers specifically authorized by statute. *See e.g.* 12 M.R.S.A. § 6025 (marine patrol officers); 34-A M.R.S.A. § 3231(H) (warden of the state prison). The clause in the present rule referring to the subpoena is deleted because Rule 4(c) will now apply only to service of summons and complaint. The provisions of the present rule for special appointment for service remain in effect.

Rule 4(h) is amended to conform to the provisions of new Rule 4(c) by providing for return of service when service is made by mail.

Advisory Committee's Notes
1990

Rule 4(d)(14) is added to make clear that service of process may properly be made under the Maine Rules of Civil Procedure upon one of the other 49 states of the United States in an appropriate case when that state requires service to be made upon it in a manner not otherwise provided in Rule 4(d). Service under this provision may be made outside Maine in accordance with Rule 4(e). The provision of Rule 4(j) for service upon any party in a foreign country by means appropriate under the law of that country would reach a result similar to that under Rule 4(d)(14) if a foreign country were a party.

Advisory Committee's Notes
1987

Rule 4(c) is amended to eliminate constables from the enumeration of those generally empowered to serve civil process. By statute, a constable's power to serve process is limited to his own town or "an adjoining plantation." 14 M.R.S.A. § 703. The rule as originally promulgated carried the implication that a constable could serve process anywhere within the state. Under the amended rule, a constable may still serve process in a proper case as an "other person authorized by law."

Advisory Committee's Notes
1985

Rule 4(d)(8)(a) is amended to eliminate the requirement that, when service is made upon a domestic private corporation by delivery to the Secretary of State, the copy of the process sent to the corporation by registered or certified mail be sent return receipt requested, with instructions to deliver to addressee only. Since postal regulations require that an individual be named for delivery to addressee only, and there may be no current officer or director of a corporation that still has assets, the requirement may frustrate service. In this situation, the mailing is simply a backup to service upon the Secretary of State as statutory agent of the corporation and is not required by the statute. Therefore, elimination of the addressee-only requirement will cause no real diminution in the notice afforded. *See* 13-A M.R.S.A. § 305(2).

Advisory Committee's Notes
1981

Rule 4(e) is amended to make the rule more reflective of the present state of the law. As originally promulgated, the rule envisioned only two situations in which personal service might be had outside the state: service upon a domiciliary and service under the long-arm statute, 14 M.R.S.A. §704-A. Accordingly, the original rule limited such service expressly to cases involving domiciliaries and cases within the scope of the long-arm statute's language of submission to the jurisdiction. Plainly, there are other situations where out-of-state service is constitutionally valid, as well as appropriate-*e.g.*, jurisdiction by consent, or jurisdiction under jurisdictional provisions other than the long-arm statute, such as those in the Maine Business Corporations Act, 13-A M.R.S.A. § 306, or the Probate Code, 18-A M.R.S.A. §§ 4-301, 3-602, 5-208.

Rule 4(f) is amended to conform the rule to the effect of the decision in *Shaffer v. Heitner*, 433 U.S. 186 (1977). Related amendments are being made in Rules 4A(f) and 4B(h).

In *Shaffer,* the Court overruled a line of cases founded on *Pennoyer v. Neff*, 95 U.S. 714 (1878), and exemplified by *Harris v. Balk*, 198 U.S. 215 (1905), which had held that, by the attachment of the tangible or intangible property of a nonresident defendant within the state, the courts of a state acquired jurisdiction to render a judgment subjecting that property to a claim against the defendant, regardless of the connection of the claim with the property or the state. Rule 4(f) as originally promulgated provided a means of service in three such situations. *See* 1 Field, McKusick, and Wroth, *Maine Civil Practice* 4.11, 4A.6 (2d ed. 1970). *Shaffer* holds that this form of "quasi in rem" jurisdiction violates due process, and that a state can exercise jurisdiction over the property of a nonresident defendant only if he has sufficient contacts with the state to sustain jurisdiction of his person in the action.

Rule 4(f) in its original form was in effect a grant of jurisdiction over the property or status of the defendant in the three situations therein provided for, without regard to the contacts of the defendant. The effect of the present amendment is to limit service by mail to situations where jurisdiction is otherwise proper—that is, borrowing the language of Rule 4(e) as simultaneously amended, where defendant is "subject to the jurisdiction of the courts of the state." Thus the mere presence of property or a pending adjudication of marital status, within the state will no longer of itself be a basis for such service. In such cases, however, where the defendant has sufficient contacts with Maine related to the transaction in suit, so that service under the long-arm statute and Rule 4(e) would be proper, service may be had outside the state by mail in the two situations provided in amended Rule 4(f): (1) Where title or other interest in real or personal property is involved; (2) where the action is for divorce or annulment. Ordinarily, in these situations, there will be contacts. *See Shaffer v. Heitner*, *supra*, at 207-08.

Advisory Committee's Note
September 1, 1980

This rule is amended to provide a simple and efficient means of effectuating service on the United States or an agency thereof in a Maine court. The amendment is taken with only minor changes from Federal Rule 4(d)(4) and (5). Since federal statutes and regulations may contain provision for specific forms of

service in particular classes of cases, language has been added similar to that in Rules 4(d)(8)-(10), (13), requiring that any form of notice specified in such a provision also be given.

Advisory Committee's Note
December 1, 1975

This amendment is made to conform to a change in the Postal Regulations effective February 13, 1975, which makes obsolete the present language of Rule 4(f) requiring "return receipt requested, with instructions to deliver to addressee only." The new regulation provides for "Restricted Delivery." Mail so marked may be delivered either to the addressee or to a person he specifically authorizes in writing to receive his Restricted Delivery mail. Authorization may be given by use of Form 3801, Standing Delivery Order, or by a letter to the postmaster. The sender may request on P.S. Form 3811 a Restricted Delivery return receipt for delivery to addressee only showing either (1) to whom and date delivered, or (2) to whom, date, and where delivered. Either form would satisfy this amendment.

Advisory Committee's Note
December 1, 1975

This amendment is designed to accomplish with respect to express trusts what Rule 4(d)(10) has done with respect to partnerships. Under Maine law a trust is not an "entity" which may sue and be sued as such. The trustees must sue and be sued and a judgment can be rendered only against them. This amendment does not change the requirement of joinder but eliminates the necessity of individual service upon each trustee. The purpose is to provide in actions on claims against a trust a means of serving process upon trustees that is less difficult and expensive than individual service, while fully satisfying the constitutional requirements of due process.

In these days the use of business trusts is increasing, notably in the field of real estate development, and it is as appropriate to simplify service here as in the case of partnerships. There is, moreover, no reason to differentiate between the trust created to undertake business activity and any other form of express trust, including testamentary trusts. Requiring the trust to be "express" prevents applicability of the amendment to implied or constructive trusts created by operation of law. The amendment will enable a plaintiff to use the simplified service on claims arising out of relations between the trust and third persons, such as tort or contract claims. The exclusion of actions by beneficiaries suing as such

is to prevent the amendment from being used when the internal affairs of the trust are involved and the individual liability of a trustee may come in issue. Nor does the amendment provide for service on claims against trustees for breach of trust, for objectives such as restoration to the trust estate of assets wrongfully diverted from it.

Advisory Committee's Note
April 15, 1975

Paragraphs (11) and (12) are added to Rule 4(d) in order to specify the methods for making service upon the State of Maine and any officer or agency of the State. Service upon the State is made by service upon the Attorney General. This is parallel to Federal Civil Rule 4(d)(4). See also Rule 4(d)(2) of the Vermont Rules of Civil Procedure. Like the Federal Rule the new Maine Rule requires that in any action attacking the validity of an order of an officer or agency of the State of Maine not made a party, a copy of the summons and of the complaint just be mailed to that officer or agency. The new Maine rule, however, does go further than the Federal Rule in simplifying the form of service by permitting registered or certified mail upon the Attorney General (rather than personal service), and by permitting service by ordinary mail upon a state officer or agency which is not a party.

For service upon a State officer or agency Rule 4(d)(12) incorporates the existing procedure for service under either paragraph (1) or (7) with the added requirement that a copy of the summons and complaint also be sent by ordinary mail to the Attorney General. The evident purpose of both paragraphs (11) and (12) is to assure early notice to the Attorney General, who is charged with the defense of many such actions.

Advisory Committee's Note
November 1, 1969

A certificate of election of a corporation's clerk previously was filed in the registry of deeds in the county or district where the corporation was located or where it had a place of business or a general agent, but by 1965 Laws, c. 61, § 1 such certificates of election are now filed in the office of the Secretary of State. Accordingly, the "last resort" method of service upon a domestic private corporation by delivery to the registry of deeds has become inappropriate. Furthermore, it is doubtful whether the existing provision of Rule 4(d) (8) satisfies the requirements of due process. It can be said of delivery to a filing office even

more truly than of publication that "it would be idle to pretend that [it] alone . . . is a reliable means of acquainting interested parties of the fact that their rights are before the courts." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315, 70 S.Ct. 652, 658, 94 L.Ed. 865 (1950).

To meet these defects in the existing rule the "last resort" method of service is changed to be delivery to the Secretary of State accompanied by mailing of a copy of the summons and of the complaint to the corporation at its principal office as reported on its latest annual return. This provision is comparable to that of Section 3–5(b) of the proposed Maine Business Corporation Act (West Pub. Co. 1969). That proposed Act directs the Secretary of State to cause the mailing immediately. Since it is thought that the rules cannot direct the Secretary of State to take action, responsibility for the mailing under the rule is left to the attorney for the plaintiff.

Advisory Committee's Note
December 31, 1967

Many substantial business enterprises are conducted today by partnerships. Many doing business in Maine, as, for example, accounting and insurance and stock brokerage firms, have a large number of partners, many or even most of whom reside outside the state. The new Rule 4(d) (10) is intended to afford, in actions arising out of partnership business, a means for serving process upon partners that is less difficult and expensive than the present ones, and that, at the same time, complies fully with the constitutional requirements of due process.

In Maine, where the common law of partnerships still prevails, suits by and against partnerships cannot be in a common name, but rather must be in the names of partners. Until Maine adopts the "entity theory" by rule or statute, the "persons composing [the partnership] must sue and be sued; and a judgment can only be rendered against them." *Macomber v. Wright*, 35 Me. 156, 157 (1852).

The new Rule 4(d) (10) does not change the *Macomber v. Wright* rule. It does not eliminate the necessity to name as defendants all partners whom the plaintiff wishes to hold on a partnership liability. However, it does eliminate the necessity of making personal service upon each and every one of the partners who are named as defendants. For the procedural purpose of service of process, the partners are treated by the amendment much the same as if they had elected the corporate form of doing business rather than the partnership. *Compare* subdivisions (d) (8) and (d) (9). Service upon one partner (or upon a general or

managing agent of the partnership) will be effective as service upon all partners sued on a partnership liability.

Under the existing procedure, service may be made upon a partner only by service upon him personally by the method provided in Rule 4(d) (1), subject to other methods being available in limited circumstances. Even if all members of the partnership are Maine residents such requirements for service are onerous in the case of any partnership of more than two or three partners. When many of the partners reside outside the state, even though personal service upon such non-resident partners is expressly authorized by Maine's "long-arm" statute (the 1959 Jurisdiction Act) as to most causes of action arising in Maine (14 M.R.S.A. § 704), the complications involved in getting personal service upon many different partners, often residing in many different states, can for practical purposes deny justice to meritorious claims against the partnership.

On causes of action arising out of the doing within Maine by one partner or an agent of the partnership of any of the acts listed in the 1959 Jurisdiction Act, such as the transaction of any business or the commission of a tortious act, all partners are by that Act declared to have submitted themselves to the jurisdiction of the courts of this state. The particular mode for serving process provided by the Act is expressly stated not to limit or affect "the right to serve any process in any other manner now or hereafter provided by law." 14 M.R.S.A. § 704(4). The Committee is confident that the method for making service provided in the new subdivision (d) (10) satisfies due process. *Cf. Henry L. Doherty & Co. v. Goodman,* 294 U.S. 623, 55 S.Ct. 553, 79 L.Ed. 1097 (1935). The Federal Rules and the rules of states following the entity theory of partnerships permit process to be served as prescribed in the new subdivision. *See* F.R. 4(d) (3); N.J.Rule 4.4-4(e); Minn.Rule 4.03(b); McKinney's N.Y. CPLR § 310. There is no factual or substantive law difference that would make such service adequate in giving the partners due notice of the action under the entity theory, but would render such service inadequate in Maine with its common law concept of the partnership. Indeed Maine already permits service upon partners by less than personal service upon all, in two limited situations: (1) Rule 4B (c), preserving the substance of a pre-rules statute, makes service of trustee process on one partner an effective attachment as to any of the defendant's property in the hands of the firm; and (2) Rule 4(j) (1), added in 1966 after careful study by both those concerned with federal rulemaking and those here in Maine, permits service upon a partnership in a foreign country by delivery to a managing or general agent.

In this day of mammoth partnerships, it may be difficult for the plaintiff's attorney to determine the names of all the parties. With the new subdivision (d) (10), it would appear permissible for him then to caption his suit by the style "John Smith v. James Jones, Henry Richards and all other persons who are partners of James Jones and Henry Richards in the partnership known as `Jones & Company'." The plaintiff could, through discovery against Jones and Richards determine the names of all other partners and could amend his complaint prior to trial so as to include those defendants specifically. The original service upon either Jones or Richards or a general or managing agent of the partnership would have been effective to give them the constitutionally required notice of the action and of its application to them.

Reporter's Notes
December 1, 1959

This rule is a combination of Federal Rule 4, existing Maine statutes, and new provisions designed to simplify and improve methods of serving process.

Rule 4(a) prescribes the form of the summons and is substantially the same as Federal Rule 4(b). *See* Form 1 in the Appendix of Forms. The reference to the facsimile signature of the clerk is inserted to make it clear that R.S.1954, Chap. 106, Sec. 9 [now 4 M.R.S.A. § 108], is not superseded by the rule. Alternate Form 1 in the Appendix of Forms is provided so that the clerk in one county may issue a summons for the commencement of an action in another county. Alternate Forms 2 and 2A are provided for the same reason.

Rule 4(b) places upon the plaintiff's attorney the obligation to fill out the summons, which he procures in blank from the clerk, and to make the necessary copies of both summons and complaint. It is also provided that in all cases the plaintiff's attorney shall deliver the papers to the officer for service. This departs from the Federal Rules, which require the clerk to prepare the summons and deliver it to the officer for service. It does not seem desirable to put this additional burden upon the clerk's office.

Rule 4(c) provides for service by presently authorized officers or by a person specially appointed by the court, the latter being taken from Federal Rule 4(c).

The general statutes relating to method of service of process, R.S.1954, Chap. 112, Sec. 17ff, have been repealed and service of process will in general be governed by Rule 4(d) to (i), inclusive.

Rule 4(d) (1) changes the requirements for personal service upon an individual by eliminating the possibility that the process may be left at the last and usual place of abode without delivery of it to any person. The present practice of sliding the process under the door of an empty house is subject to possible abuse. The last sentence provides, however, that the court may order service to be made by leaving the process at the defendant's dwelling house or usual place of abode upon a showing that the prescribed service cannot be made with due diligence. This is designed to cover the situation where the officer might have to make repeated attempts to serve a defendant who was trying to evade service. It is intended as an alternative for rare cases and contemplates a substantial showing by the plaintiff. Because of the possibility that leaving the process at an empty house might in the particular circumstances be less effective than publication, the court may order service by the latter method (which would normally be accompanied by mailing the published notice to the defendant's address).

Service by reading the writ or original summons to the defendant, as provided in R.S.1954, Chap. 112, Sec. 18, is not preserved in the rule.

The reference to service on an agent "authorized by appointment or by law to receive service", taken from Federal Rule 4(d) (1), covers the situation where a defendant individual has made an actual appointment, whether voluntary or under compulsion of a statute such as R.S.1954, Chap. 84, Sec. 10 [now 32 M.R.S.A. § 4002] (non-resident real estate brokers and salesmen). It also covers situations where no appointment has been made in fact, but where the doing of an act within the state is given the effect of appointing a public official as agent for service. R.S.1954, Chap. 22, Sec. 70, as amended [now 29 M.R.S.A. § 1911] (non-resident operators of motor vehicles and aircraft), is such a statute. When service is on a statutory agent, such further notice as the statute requires shall be given.

Rule 4(d) (2) to (9), inclusive, incorporates to a large extent the repealed statutes for service of process, but with some simplifications and modifications. As in the case of individuals, corporations may be served through an agent authorized by appointment or statute to receive such service on behalf of the corporation. This has the effect of retaining the numerous provisions scattered through the Revised Statutes which either require the designation of an agent for service of process as a condition of engaging in business activity in the state or provide that service upon a named public official shall be sufficient. Any further notice required by the statute shall also be given. These requirements for service and notice vary from statute to statute without apparent reason, but it has seemed

preferable to retain them as they are rather than to substitute a single uniform method of service.

Rule 4(e) also provides that service may be made outside the state upon a person who has submitted to the jurisdiction of the courts of the state. The word "person" includes a corporation. R.S.1954, Chap. 10, Sec. 22 (XIV) [now 1 M.R.S.A. § 72]. Taken in connection with 1959 Laws, c. 317, § 125, which becomes R.S.1954, Chap. 112, Sec. 21, as amended [now 14 M.R.S.A. § 704] this provision significantly extends the jurisdiction of the courts of Maine.

The purpose is to make a non-resident who comes into Maine and commits a tort or fails to perform a contract answerable for that wrong in the Maine courts even though he departs from the state before he can be served with process. It is an extension of the principle of the familiar non-resident motor vehicle statute (R.S.1954, Chap. 22, Sec. 70 [now 29 M.R.S.A. § 1911]). Under the 1959 amendment, a defendant can be personally served outside the state and a personal judgment rendered against him, on which he can of course be sued in his home state. At present jurisdiction cannot be obtained over such a non-resident without personal service in the state; but if his property can be attached, judgment good only against that property can be had. *Martin v. Bryant*, 108 Me. 253, 80 A. 702 (1911).

This statute is borrowed with slight change from Illinois Revised Statutes, Chap. 110, Par. 17, the constitutionality of which has been upheld in that state, *Nelson v. Miller*, 11 Ill.2d 378, 143 N.E.2d 673 (1957), and it is believed that the United States Supreme Court would also uphold it. *International Shoe Co. v. Washington,* 326 U.S. 310, 66 S.Ct. 154 (1945) ; *McGee v. International Life Ins. Co.*, 355 U.S. 220, 78 S.Ct. 199 (1957) ; and *see Smyth v. Twin State Improvement Corp.*, 116 Vt. 569, 80 A.2d 664 (1951) (upholding a Vermont statute making the commission of a single tort a basis of jurisdiction over a foreign corporation). Moreover, it seems eminently fair to provide that a person who comes to Maine and commits a wrongful act shall by so doing submit himself to the jurisdiction of the Maine courts, rather than to require the Maine resident whom he has wronged to pursue him to his home state. Maine being the place of the wrong, it is presumably the most convenient place to assemble the witnesses for trial.

Rule 4(f) deals with service by mail outside the state. It is limited to cases (1) where the plaintiff has made an attachment or served a trustee writ within the state, (2) where the object of the action is to affect the defendant's title to real or personal property within the state, or (3) in divorce or annulment actions. In these

cases the out-of-state service is not the basis for a personal judgment, but it satisfies due process requirements of notice so that a judgment affecting the defendant's property or status is effective. *Plurede v. Levasseur*, 89 Me. 172, 36 A. 110 (1896) (notice of enforcement of lien). If the address of a person to be served is unknown or if the rights of unknown claimants are involved, publication under Rule 4(g) can be used. In such a case publication satisfies due process.

Rule 4(g) deals with service by publication, which is permitted only upon a showing that service cannot be made by another prescribed method. These rules recognize, as Mr. Justice Jackson did in *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 315, 70 S.Ct. 652, 658 (1950), that "it would be idle to pretend that publication alone . . . is a reliable means of acquainting interested parties of the fact that their rights are before the courts." The typical situation for service by publication will be when the whereabouts of the person to be served cannot be ascertained with due diligence.

Rule 4(h) provides that the proof of service shall be made on the original process and that the person making the service shall return it to the plaintiff's attorney, who has the duty to file it with the court within the time during which the defendant must answer the complaint. Since it is the attorney's responsibility to make sure that the service and proof thereof were proper, it seems wise to have the process returned to him instead of having the officer return it to the court. It is not necessary that the original complaint be delivered to the officer who serves the copy. *See* the third sentence of Rule 4(h).

Rule 4(i) is not covered by any existing statute, but is consistent with the general common law rule, and apparently with Maine practice. *Cf. Glidden v. Philbrick*, 56 Me. 222 (1868); *Fairfield v. Paine*, 23 Me. 498 (1844).