

# The Supreme Court of South Carolina

Re: Amendments to the South Carolina Rules of Civil Procedure and the South Carolina Rules of Magistrates Court

Appellate Case No. 2012-212128

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## ORDER

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Pursuant to Article V, § 4 of the South Carolina Constitution, Rule 4 of the South Carolina Rules of Civil Procedure (SCRPC) and Rule 6 of the South Carolina Rules of Magistrates Court (SCRMC) are amended as shown in the attachment to this order. These amendments shall be submitted to the General Assembly as provided by Article V, § 4A of the South Carolina Constitution.

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina  
January 31, 2013

**Rule 4(d), SCRPC, is amended to add paragraph (d)(9) as follows:**

**(d)(9) Service by Commercial Delivery Service.** Service of a summons and complaint upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule may be made by the plaintiff or by any person authorized to serve process pursuant to Rule 4(c) by a commercial delivery service which meets the requirements to be considered a designated delivery service in accordance with 26 U.S.C. § 7502(f)(2). Service is effective upon the date of delivery as shown in the delivery record of the commercial delivery service. Service pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a delivery record showing the acceptance by the defendant which includes an original signature or electronic image of the signature of the person served. Any such default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the delivery receipt was signed by an unauthorized person. If delivery of the process is refused or is returned undelivered, service shall be made as otherwise provided by these rules.

**The following Note is added to Rule 4(d), SCRPC:**

**Note to 2013 Amendment:**

Rule 4(d)(9) authorizes service of process to be made by a qualifying commercial delivery service and is similar to service by registered or certified mail.

**Rule 4(g), SCRPC, is amended to provide as follows:**

**(g) Proof and Return.** The person serving the process shall make proof of service thereof promptly and deliver it to the officer or person who issued same. If served by the sheriff or his deputy, he shall make proof of service by his certificate. If served by any other person, he shall make affidavit thereof. If served by publication, the printer or publisher shall make an affidavit thereof, and an affidavit of mailing shall be made by the party or his attorney if mailing of process is permitted or required by law. Failure to make proof of service does not affect the validity of the service. The proof of service shall state the date, time and place of such service and, if known, the name and address of the person actually served

at the address of such person, and if not known, then the date, time and place of service and a description of the person actually served. If service was by mail, the person serving process shall show in his proof of service the date and place of mailing, and attach a copy of the return receipt or returned envelope when received by him showing whether the mailing was accepted, refused, or otherwise returned. If the mailing was refused, the return shall also make proof of any further service on the defendant pursuant to paragraph (8) of subdivision (d) of this rule. The return along with the receipt or envelope and any other proof shall be promptly filed by the clerk with the pleadings and become a part of the record. If service was by commercial delivery service, the person initiating the service of process shall make an affidavit identifying the process or other documents served and shall attach to the affidavit a delivery record of the commercial delivery service which shall contain the date, time, and place of delivery, the name of the person served, and include an original signature or electronic image of the signature of the person served. The affidavit and delivery record and any other proof shall be promptly filed by the clerk with the pleadings and become a part of the record.

**The following Note is added to Rule 4(g), SCRPC:**

**Note to 2013 Amendment:**

This amendment to Rule 4(g) details the proof required when a party serves process utilizing a commercial delivery service.

**Rule 6(d), SCRMC, is amended to add paragraph (d)(7) as follows:**

**(7) Service by Commercial Delivery Service.** Service of a summons, complaint, and any appropriate attachments upon a defendant of any class referred to in paragraph (d)(1) or (d)(3) of this subdivision of this rule may be made by a commercial delivery service which meets the requirements to be considered a designated delivery service in accordance with 26 U.S.C. § 7502(f)(2). Service is effective upon the date of delivery as shown in the delivery record of the commercial delivery service. Service pursuant to this paragraph shall not be the basis for the entry of a default judgment unless the record contains a delivery record showing the acceptance by the defendant, which includes an original signature or electronic image of the signature of the person served. Any default judgment shall be set aside pursuant to Rule 12 if the defendant demonstrates to the court that the delivery record was signed by an unauthorized person. If delivery of the process is refused or is returned undelivered, service shall be made as otherwise provided by these rules.

**Rule 6(g), SCRMC, is amended to provide as follows:**

**(g) Proof and Return.** The person serving the process shall promptly make proof of service and deliver it to the court. If served by the sheriff, the sheriff's deputy, or a magistrate's constable, proof of service shall be made by certificate. If served by any other person, the person shall make an affidavit of service. If served by publication, the printer or publisher shall make an affidavit of publication, and an affidavit of mailing shall be made to the party or the party's attorney if mailing of process is permitted or required by law. Failure to make proof of service does not affect the validity of service. The proof of service shall state the date, time, and place of service and a description of the person actually served. If service was by mail, the person serving process shall show in the proof of service the date and place of mailing, and attach a copy of the return receipt or the returned envelope showing whether the mailing was accepted, refused, or otherwise returned. If the mailing was refused, the return shall also show proof of any further service on the defendant pursuant to paragraph (d)(6) of this rule. The return along with the receipt or envelope and any other proof shall be promptly filed with the court with the pleadings and become a part of the record. If service was by commercial delivery service, the person initiating the service of process shall make an affidavit identifying the process or other documents served and shall attach to the affidavit a

delivery record of the commercial delivery service which shall contain the date, time, and place of delivery, the name of the person served, and include an original signature or electronic image of the signature of the person served. The affidavit and delivery record and any other proof shall be promptly filed with the court with the pleadings and become a part of the record.

SUBMITTED TO THE GENERAL ASSEMBLY