

1 CV

2 Dept. No.

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8 Plaintiff,

9 vs.

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11 Defendant.

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**SUMMONS**

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**TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND, IN WRITING, WITHIN TWENTY (20) DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.**

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A civil complaint of petition has been filed by the Plaintiff against you for the relief as set forth in that document (see complaint or petition on file). When service is by publication, add a brief statement of the object of the action. See Nevada Rules of Civil Procedure, Rule 4(b). The object of this action is: \_\_\_\_\_

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1. If you intend to defend this lawsuit, you must do the following within twenty (20) days after service of this summons, exclusive of the day of service:

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a. File with the Clerk of Court, whose address is shown below, a **formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and:

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b. Serve a copy of your answer upon the attorney or plaintiff whose address is shown below.

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2. Unless you respond, a default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the complaint.

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Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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Issued on behalf of plaintiff or plaintiff's attorney:

TAMI RAE SPERO, CLERK OF THE COURT

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Name: \_\_\_\_\_

By: \_\_\_\_\_

27

Address: \_\_\_\_\_

Clerk of the Sixth Judicial District Court  
50 W. 5<sup>th</sup> St., #207  
Winnemucca, NV 89445

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Phone Number: \_\_\_\_\_

## RULE 2. ONE FORM OF ACTION

There shall be one form of action to be known as "civil action."

## NEVADA CASES.

Ancillary equitable action not violation of rule where no money sought on note which was subject of legal action. Where plaintiff filed an action at law on a promissory note and obtained a writ of attachment, and filed an ancillary action, in equity praying for injunction, for determination of the status of property as community property subject to attachment in the action at law, and for costs and general relief, it was not necessary to consider provisions of Nev. Art. 6, § 14, and RL § 4943 (cf. N.R.C.P. 2), to the effect that there shall be but one form of civil action because it did not appear in the complaint, even inferentially, or within any issue made by the pleadings, that plaintiff sought judgment in an equitable action for a sum of money due on the note. *Stock Growers & Ranchers Bank v. Millsich*, 48 Nev. 373, 233 Pac. 41 (1925)

## II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

## RULE 3. COMMENCEMENT OF ACTION

A civil action is commenced by filing a complaint with the court.  
[As amended; effective October 1, 1959.]

## NEVADA CASES.

Action commenced when original complaint is filed, not amended complaint. In an appeal from an order dismissing an action for want of prosecution, where, in January 1966, appellant filed a complaint charging respondent with conspiracy and in March 1966 filed an amended complaint, trial court did not abuse its discretion in dismissing in March 1968 the action for failure to prosecute because under N.R.C.P. 41(e) the court, on a motion of the opposite party, may dismiss any action for want of prosecution if plaintiff has failed for 2 years after an action is filed to bring such action to trial and under N.R.C.P. 3 an action is commenced when an original complaint, rather than an amended complaint, is filed. The court, in any case, has inherent power to refuse to hear a case that has been filed but not prosecuted with diligence. *Volpert v. Papagna*, 85 Nev. 437, 456 P.2d 848 (1969), cited. *P.T.P., Inc. v. Casey*, 85 Nev. 562, at 563, 459 P.2d 770 (1969). *Hassett v. St. Mary's Hosp. Ass'n*, 86 Nev. 900, at 902, 478 P.2d 154 (1970). *Moore v. Cherry*, 90 Nev. 390, at 393, 528 P.2d 1018 (1974). *Adler v. State*, 93 Nev. 521, at 524, 569 P.2d 403 (1977) (dissenting opinion). *Goldberg v. Eighth Judicial Dist. Court*, 93 Nev. 614, at 617, 572 P.2d 521 (1977). *Johnson v. Harber*, 94 Nev. 524, at 527, 582 P.2d 800 (1978), see also *Walls v. Brewster*, 112 Nev. 175, at 178, 912 P.2d 261 (1996). *Baker v. Noback*, 112 Nev. 1106, at 1110, 921 P.2d 1201 (1996). *Morgan v. Las Vegas Sands, Inc.*, 118 Nev. 315, at 321, 43 P.3d 1036 (2002)

## RULE 4. PROCESS

(a) **Summons: Issuance.** Upon the filing of the complaint, the clerk shall forthwith issue a summons and deliver it to the plaintiff or to the plaintiff's attorney, who shall be responsible for service of the summons and a copy of the complaint. Upon request of the plaintiff, separate or additional summons shall issue against any defendants.  
[As amended; effective February 11, 1986.]

(b) **Same: Form.** The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and county and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which the defendant must appear and defend, and shall notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. When service of the summons is made by publication, the summons shall, in addition to any special statutory requirements, also contain a brief statement of the object of the action substantially as follows: "This action is brought to recover a judgment dissolving the contract of marriage (or bonds of matrimony) existing between you and the plaintiff," or "foreclosing the mortgage of plaintiff upon the land (or other property) described in complaint," or as the case may be.  
[As amended; effective January 1, 2005.]

(c) **By Whom Served.** Process shall be served by the sheriff of the county where the defendant is found, or by a deputy, or by any person who is not a party and who is over 18 years of age, except that a subpoena may be served as provided in Rule 45; where the service of process is made outside of the United States, after an order of publication, it may be served either by any person who is not a party and who is over 18 years of age or by any resident of the country, territory, colony or province, who is not a party and who is over 18 years of age.  
[As amended; effective January 1, 2005.]

(d) **Summons: Personal Service.** The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made by delivering a copy of the summons attached to a copy of the complaint as follows:

(1) **Service Upon Nevada Corporation.** If the suit is against a corporation formed under the laws of this state; to the president or other head of the corporation, secretary, cashier, managing agent, or resident agent thereof; provided, when for any reason service cannot be had in the manner hereinabove provided, then service may be made upon such corporation by delivering to the secretary of state, or the deputy secretary of state, a copy of said summons attached to a copy of the complaint, and by posting a copy of said process in the office of the clerk of the court in which such action is brought or pending; defendant shall have 20 days after such service and posting in which to appear and answer; provided, however, that before such service shall be authorized, plaintiff shall make or cause to be made and filed in such cause an affidavit setting forth the facts showing that personal service on or notice to the officers, managing agent or resident agent of said corporation cannot be had within the state; and provided further, that if it shall appear from such affidavit that there is a last known address of a known officer of said corporation outside the state, plaintiff shall, in addition to and after such service upon the secretary of state and posting, mail or cause to be mailed to such known officer at such address by registered mail, a copy of the summons and a copy of the complaint, and in all such cases defendant shall have 20 days from the date of such mailing within which to answer or plead.  
[As amended; effective January 1, 2005.]

(2) **Service Upon Foreign Corporation or Nonresident Entity.** If the suit is against a foreign corporation, or a nonresident partnership, joint-stock company or association, doing business and having a managing or business agent, cashier, or

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secretary within this state; to such agent, cashier, or secretary or to an agent designated for service of process as required by law; or in the event no such agent is law.

[As amended; effective January 1, 2005.]

**(3) Service Upon Minors.** If against a minor, under the age of 14 years, residing within this state, to such minor, personally, and also to the minor's father, mother, or guardian; or if there be none within this state; then to any person having the care or control of such minor, or with whom the minor resides, or in whose service the minor is employed.

[As amended; effective January 1, 2005.]

**(4) Service Upon Incompetent Persons.** If against a person residing within this state who has been judicially declared to be of unsound mind, or incapable of conducting his or her own affairs, and for whom a guardian has been appointed, to such person and also to his or her guardian.

[As amended; effective January 1, 2005.]

**(5) Service Upon Local Governments.** If against a county, city, or town, to the chairperson of the board of commissioners, president of the council or trustees, mayor of the city, or other head of the legislative department thereof.

[As amended; effective January 1, 2005.]

**(6) Service Upon Individuals.** In all other cases to the defendant personally, or by leaving copies thereof at the defendant'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 complaint to an agent authorized by appointment or by law to receive service of process.

[As amended; effective January 1, 2005.]

**(e) Same: Other Service.**

**(1) Service by Publication.**

**(i) General.** In addition to methods of personal service, when the person on whom service is to be made resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or by concealment seeks to avoid the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the court or judge thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, and that the defendant is a necessary or proper party to the action, such court or judge may grant an order that the service be made by the publication of summons.

Provided, when said affidavit is based on the fact that the party on whom service is to be made resides out of the state, and the present address of the party is unknown, it shall be a sufficient showing of such fact if the affiant shall state generally in such affidavit that at a previous time such person resided out of this state in a certain place (naming the place and stating the latest date known to affiant when

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such party so resided there); that such place is the last place in which such party resided to the knowledge of affiant; that such party no longer resides at such place; that affiant does not know the present place of residence of such party or where such party can be found; and that affiant does not know and has never been informed and has no reason to believe that such party now resides in this state; and, in such case, it shall be presumed that such party still resides and remains out of the state, and such affidavit shall be deemed to be a sufficient showing of due diligence to find the defendant. This rule shall apply to all manner of civil actions, including those for divorce.

(ii) **Property.** In any action which relates to, or the subject of which is, real or personal property in this state in which such person defendant or corporation defendant has or claims a lien or interest, actual or contingent, therein, or in which the relief demanded consists wholly or in part of excluding such person or corporation from any interest therein, and the said defendant resides out of the state or has departed from the state, or cannot after due diligence be found within the state, or by concealment seeks to avoid the service of summons, the judge or justice may make an order that the service be made by the publication of summons; said service by publication shall be made in the same manner as now provided in all cases of service by publication.

(iii) **Publication.** The order shall direct the publication to be made in a newspaper, published in the State of Nevada, to be designated by the court or judge thereof, for a period of 4 weeks, and at least once a week during said time. In addition to in-state publication, where the present residence of the defendant is unknown the order may also direct that publication be made in a newspaper published outside the State of Nevada whenever the court is of the opinion that such publication is necessary to give notice that is reasonably calculated to give a defendant actual notice of the proceedings. In case of publication, where the residence of a nonresident or absent defendant is known, the court or judge shall also direct a copy of the summons and complaint to be deposited in the post office, directed to the person to be served at the person's place of residence. The service of summons shall be deemed complete in cases of publication at the expiration of 4 weeks from the first publication, and in cases when a deposit of a copy of the summons and complaint in the post office is also required, at the expiration of 4 weeks from such deposit.

[As amended; effective January 1, 2005.]

(2) **Personal Service Outside the State.** Personal service of summons upon a party outside this state may be made by delivering a copy of the summons together with a copy of the complaint, to the party served in the manner provided by statute or rule of court for service upon a party of like kind within this state. The methods of service are cumulative, and may be utilized with, after, or independently of, other methods of service.

[As amended; effective January 1, 2005.]

(3) **Statutory Service.** Whenever a statute provides for service, service may be made under the circumstances and in the manner prescribed by the statute.

(f) **Territorial Limits of Effective Service.** All process, including subpoenas, may be served anywhere within the territorial limits of the State and, when a statute or rule so provides, beyond the territorial limits of the State. A voluntary appearance of the defendant shall be equivalent to personal service of process upon the defendant in this State.

[As amended; effective January 1, 2005.]

(g) **Return.** The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. Proof of service shall be as follows:

- (1) If served by the sheriff or deputy, the affidavit or certificate of such sheriff or deputy; or,
- (2) If by any other person, the affidavit thereof; or
- (3) In case of publication, the affidavit of the publisher, foreman or principal clerk, or other employee having knowledge thereof, showing the same, and an affidavit of a deposit of a copy of the summons in the post office, if the same shall have been deposited; or,
- (4) The written admission of the defendant.

In case of service otherwise than by publication, the certificate or affidavit shall state the date, place and manner of service. Failure to make proof of service shall not affect the validity of the service.

[As amended; effective January 1, 2005.]

(h) **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.

(i) **Summons: Time Limit for Service.** If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion, unless the party on whose behalf such service was required files a motion to enlarge the time for service and shows good cause why such service was not made within that period. If the party on whose behalf such service was required fails to file a motion to enlarge the time for service before the 120-day service period expires, the court shall take that failure into consideration in determining good cause for an extension of time. Upon a showing of good cause, the court shall extend the time for service and set a reasonable date by which service should be made.

[Added; effective June 9, 1986; Amended effective January 1, 2005.]

**DRAFTER'S NOTE  
2004 AMENDMENT**

The amendments to subdivisions (b), (d), (f) and (g) are technical.  
The amendment to subdivision (c), adding the words "person who is not a party," clarifies that service may be made by any person who is over 18 years of age so long as he or she is also a disinterested person. The revised provision is consistent with the current federal rule and with the common law rule, followed in Nevada, requiring that