

## **Essay Question No. 5**

### **Answer question in booklet No. 5**

Paul was injured in a car accident when a delivery truck owned by Speedy Deliveries Inc., an Alaska corporation, ran a red light and collided with his car. David was an employee of Speedy Deliveries Inc. and was driving the truck at the time of the accident. Aurelia was the general manager of Speedy Deliveries Inc.

Paul filed a complaint for personal injury in the Alaska District Court against David, Aurelia and Speedy. He caused Aurelia to be served personally by a process server with a proper summons and complaint. The complaint alleged three counts of negligence based, respectively, on: (1) David's negligent driving, (2) Aurelia's negligent supervision of David, and (3) Speedy Deliveries' vicarious liability. Paul asked for \$1,000,000 in damages and for injunctive relief requiring Speedy Deliveries to institute proper training procedures for its drivers.

Speedy Deliveries Inc. received a summons and complaint in the mail addressed to Speedy Deliveries. The summons did not have a court seal, date, or court clerk's signature.

David did not receive either a summons or a complaint.

1. Discuss jurisdictional issues as to each defendant.
2. Discuss the motions to dismiss that Aurelia and Speedy could file instead of an answer on the merits.

**Essay Question No. 5**  
**\*\*\*GRADERS' GUIDE\*\*\***  
**Civil Procedure**

**1. Problems with jurisdiction. (50 points)**

*(Note to graders: All cited Alaska statutes and court rules are provided below.)*

**Subject matter jurisdiction.** The District Court lacks subject matter jurisdiction of the Complaint, both because of the amount of money claimed, and because of the claim for equitable or injunctive relief. The District Court is a court of limited jurisdiction, unlike the Superior Court. AS 22.15.030(a)(1), AS 22.15.050(a)(2.)

**Personal jurisdiction.** The summons sent to defendant Speedy Deliveries, Inc., is defective. It appears to be an unissued summons, showing no sign of having been issued by the Court, because it lacks the seal of the Court and lacks the Clerk's signature. AS 22.15.140 and Rule 4(b)(1).

Moreover, the method of service is insufficient. Under Rule 4(d)(4) a corporation such as Speedy Deliveries, Inc., must be served through specific corporate officials or other agents authorized to receive service (typically an agent registered with the State of Alaska to perform this function.) Also, when service is by mail, it must be by registered or certified mail with return receipt requested. Rule 4(h.) Assuming Speedy received the summons only by regular mail, Paul did not satisfy Rule 4(h.)

As far as the facts and question show, no summons has been served in any manner on the defendant driver David.

Speedy Deliveries, Inc., received defective process, defectively served, and David has not received any kind of service. As of now, the Court lacks personal jurisdiction of Speedy Deliveries, Inc., and David, and they need not appear or answer at this time. Thus, only Aurelia has been properly served. She may choose to answer, or move for dismissal under Rule 12.

**2. Defendants' motion options. (50 points)**

**Defendant Aurelia**

While she must appear and defend, Aurelia may immediately work to narrow the issues and reduce the risks presented by the lawsuit. She should assert the District Court's lack of subject matter jurisdiction, Rule 12(b)(1,) and plaintiff's failure to state a claim on which relief can be granted, Rule 12(b)(6,) because the District Court simply lacks power to order equitable relief or award \$1 million. She could assert these defenses by Answer. But her best

initial action would be to assert the defenses by filing a Rule 12 Motion to Dismiss. This approach requires the District Court Judge to dismiss, although such a dismissal is not a final judgment. See penultimate sentence of Rule 12(b;) *see also* Rule 58.

### **Defendant Speedy Deliveries, Inc**

The company does not need to answer at this time. It may disregard the lawsuit and attempted service. Alternatively, the company may file a Rule 12(b) Motion to Dismiss based on the process and service defects, and on subject matter jurisdiction and failure to state a claim on which relief can be granted. Whether to wait, or file the Motion now, is a judgment call. However, if the company files the Motion it *must* raise its process and service defenses, either in the Motion, or, barring a Motion, in its Answer. Those defenses must be pled at this early stage, or they are waived. See Rule 12(h)(1,) **Waiver or Preservation of Certain Defenses.**

---

The referenced statutes and Civil Rules, with pertinent language italicized:

### **ALASKA STATUTES**

#### **Chapter 22.15. DISTRICT COURTS AND MAGISTRATES**

...

##### **Sec. 22.15.030. Civil jurisdiction.**

(a) *The district court has jurisdiction of civil cases, including foreign judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170 or 09.43.530 to the extent permitted by AS 09.43.010 and 09.43.300, as follows:*

(1) *for the recovery of money or damages when the amount claimed exclusive of costs, interest, and attorney fees does not exceed \$100,000 for each defendant;*

(2) *for the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed \$100,000;*

(3) *for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding \$100,000;*

(4) *to give judgment without action upon the confession of the defendant for any of the cases specified in this section, except for a penalty or forfeiture imposed by statute;*

(5) *for establishing the fact of death or cause and manner of death of any person in the manner prescribed in AS 09.55.020 - 09.55.069;*

(6) *for the recovery of the possession of premises in the manner provided under AS 09.45.070 - 09.45.160 when the value of the arrears and damage to the property does not exceed \$100,000;*

(7) for the foreclosure of a lien when the amount in controversy does not exceed \$100,000;

(8) for the recovery of money or damages in motor vehicle tort cases when the amount claimed exclusive of costs, interest, and attorney fees does not exceed \$100,000 for each defendant;

(9) over civil actions for taking utility service and for damages to or interference with a utility line filed under AS 42.20.030 ;

(10) over cases involving protective orders for domestic violence under AS 18.66.100 - 18.66.180.

(b) Insofar as the civil jurisdiction of the district courts and the superior court is the same, the jurisdiction is concurrent. Except for a petition for a protective order under AS 18.66.100 - 18.66.180, an action that falls within the concurrent jurisdiction of the superior court and the district court may not be filed in the superior court, except as provided by rules of the supreme court.

...

**Sec. 22.15.050. Actions not within civil jurisdiction.**

The jurisdiction of the district courts does not extend to

- (1) an action in which the title to real property is in question;
- (2) *an action of an equitable nature, except as otherwise provided by law.*

**Sec. 22.15.140. Process.**

Process of the district court shall be in the name of the State of Alaska, *signed by the* district judge, magistrate, *clerk,* or deputy clerk of the district court in the judicial district where the process is issued, dated when issued, *sealed with the seal of the court,* and made returnable according to rule prescribed by the supreme court and shall run throughout the state.

**ALASKA RULES OF CIVIL PROCEDURE**

**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 the plaintiff's attorney, who shall cause the summons and a copy of the complaint to be served in accordance with this rule. Upon request of the plaintiff separate or additional summonses shall issue against any defendants.

(b) **Summons - Form**

- (1) The summons *shall be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the defendant,* and state the name and address of the plaintiff's attorney or the plaintiff's name and address if the plaintiff is unrepresented. It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in judgment by default against

the defendant for the relief demanded in the complaint. The summons must also notify the defendant that the defendant has a duty to inform the court and all other parties, in writing, of the defendant's or defendant's attorney's current mailing address and telephone number, and to inform the court and all other parties of any changes, as set out in Civil Rule 5(i).

...

**(c) Methods of Service - Appointments to Serve Process - Definition of Peace Officer.**

(1) Service of all process shall be made by a peace officer, by a person specially appointed by the Commissioner of Public Safety for that purpose *or, where a rule so provides, by registered or certified mail.*

...

**(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 as follows:

(1) *Individuals.* Upon an individual other than an infant 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.

..

(4) *Corporations or Limited Liability Companies.* Upon a domestic or foreign corporation or limited liability company, *by delivering a copy of the summons and of the complaint to a managing member, an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.*

...

**(h) Service of Process by Mail.** In addition to other methods of service provided for by this rule, process may also be served within this state or the United States or any of its possessions *by registered or certified mail, with return receipt requested,* upon an individual other than an infant or an incompetent person and upon a corporation, partnership, unincorporated association, or public corporation. *In such case, copies of the summons and complaint or other process shall be mailed for restricted delivery only to the party to whom the summons or other process is directed or to the person authorized*

under federal regulation to receive the party's restricted delivery mail. All receipts shall be so addressed that they are returned to the party serving the summons or process or the party's attorney. Service of process by mail under this paragraph is complete when the return receipt is signed.

**Rule 12. Defenses and Objections--When and How Presented--By Pleading or Motion--Motion for Judgment on Pleadings.**

(a) **When Presented.** *A defendant shall serve an answer within 20 days after the service of the summons and complaint upon that defendant, unless otherwise directed when service of process is made pursuant to Rule 4(e). . . . The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.*

(b) **How Presented.** *Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counter-claim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. A decision granting a motion to dismiss is not a final judgment under Civil Rule 58. When the decision adjudicates all unresolved claims as to all parties, the judge shall direct the appropriate party to file a proposed final judgment. The proposed judgment must be filed within 20 days of service of the decision, on a separate document distinct from any opinion, memorandum or order that the court may issue.*

(h) **Waiver or Preservation of Certain Defenses.**

*(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15 (a) to be made as a matter of course.*

*(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.*

*(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter the court shall dismiss the action.*