

Montana Department of Justice Policy: *Service of process upon the State of Montana and its officers; and serving notices of constitutional challenge*
Effective June 20, 2022

POLICY STATEMENT

The Montana Rules of Civil Procedure provide straightforward procedures to accomplish service of legal process upon the State of Montana, its agencies, its boards, and its officers. The Rules also address the procedure for notifying the Attorney General of constitutional challenges to state laws. This policy summarizes these service procedures and announces the Attorney General’s foregoing policy regarding notice under M. R. Civ. P. 5.1(a).

SERVING THE STATE OF MONTANA AND ITS OFFICERS

Rule 4(l) of the Montana Rules of Civil Procedure provides “[t]he state, as well as any state board or agency, must be served by delivering a copy of the summons and complaint to the attorney general and any other party prescribed by statute. Whenever an officer or employee of the state is sued in an individual capacity for an act or omission occurring in connection with duties performed on the state’s behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the officer or employee under Rules 4(e), 4(f), 4(g), 4(h), or 4(n).”

Service of process upon any state board or agency is not effective unless a summons and complaint is served upon the Attorney General. Likewise, whenever a state officer or employee is sued for an act or omission related to duties performed on the state’s behalf, service is not effective unless a summons and complaint is served upon the Attorney General. *Note, the summonses must be “properly completed.” M.R.Civ.P. 4(c)(1). And when the State, a State agency, or a State officer or employee is sued in his official capacity or individual capacity for acts or omissions occurring in connection with duties performed on the State’s behalf, those defendants must respond within 42 days—not the customary 21 days—after service is completed. M.R.Civ.P. 12(a)(2).

Example A: Plaintiff brings suit against the Department of Administration and serves a summons and complaint only upon the Department of Administration. Service is not effective unless and until Plaintiff delivers a copy of the summons and complaint to the Attorney General as required by M.R.Civ.P. 4(l).

Example B: Plaintiff brings suit against an employee of the Commissioner of Securities and Insurance related to acts the employee performed within the scope of his employment. Plaintiff only delivers a copy of the summons and complaint to the Attorney General. Service is not effective unless and until Plaintiff serves the Commissioner under Rule 4(e), 4(f), 4(g), 4(h), or 4(n).

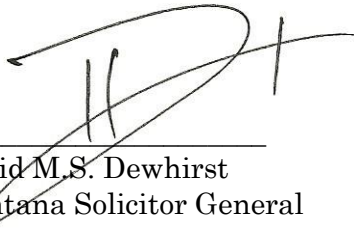
Example C: Plaintiff brings suit against Defendants State of Montana, the Governor, and the Secretary of State to challenge the constitutionality of a particular law. Plaintiff serves a copy of the complaint and a summons for Defendant State of Montana upon the Attorney General; Plaintiff serves a copy of the complaint and a summons for Defendant Governor upon the Governor; and Plaintiff serves a copy of the complaint and a summons for Defendant Secretary of State upon the Secretary of State. Service is not effective unless and until Plaintiff serves the Attorney General with a copy of the complaint and summons for Defendant Governor and Defendant Secretary of State. See *McDonald v. Jacobsen*, 2021 MT 287, ¶¶ 18, 22.

NOTICE OF CONSTITUTIONAL CHALLENGE

Montana Rule of Civil Procedure 5.1(a) provides: “A party that files a pleading, written motion, or other paper challenging the constitutionality of a state statute must promptly file a notice of constitutional question stating the question and identifying the paper that raises it, and serve the notice and paper on the state attorney general either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.” (Emphasis added.)

The former attorney general allowed service of a notice of constitutional question to be accomplished by sending such notice to the contactdoj@mt.gov email address. This form of service has proven ineffective, unreliable, and ill-advised.

Effective immediately, therefore, Attorney General Austin Knudsen no longer designates any electronic address for the purpose of serving the notice documents identified in Rule 5.1. He will not accept service of any M.R.Civ.P. 5.1 notice of constitutional question by electronic mail. **Consequently, the only appropriate method for service of a notice of constitutional question is by certified or registered mail.**



David M.S. Dewhirst
Montana Solicitor General

6/20/2022
Date