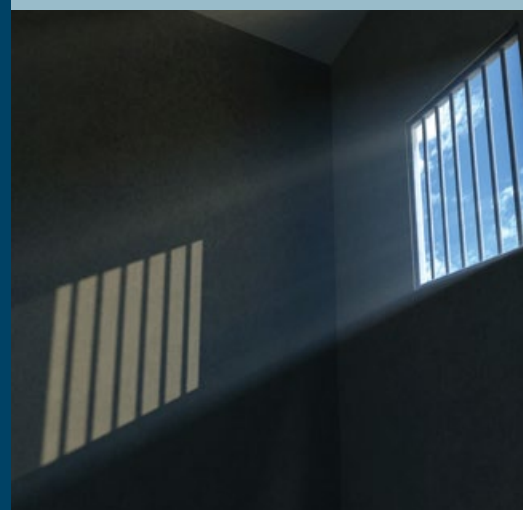


2016

Trends in State Courts

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Opening Courts to the Public



Alaska Court System Legal Notice Website*

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Declining readership reduces the effectiveness of publishing legal notices in print newspapers. Alaska's legal notice website offers a viable alternative for serving notice in lawsuits.

Imagine you filed a lawsuit in court but do not know where the opposing party is located to serve him or her. Instead of paying over \$500 to publish a legal notice for several weeks in a newspaper that you doubt the opposing party has ever heard of or read, the court allows you to serve by other methods. You could post the legal notice free on the court's legal notice website, which is "Google" searchable from anywhere in the world with an Internet connection. Alternatively, if you are in touch with the opposing party on Facebook but he or she refuses to provide a current mailing address, you could request to serve the notice via Facebook. This situation is now reality in the Alaska Court System.

Recognizing the need to respond to a new societal landscape, the Alaska Court System changed the default service method for absent defendants from publication in a print newspaper to an online posting to the court's legal notice website.¹ Court rules also permit other alternate service-delivery methods, including social-networking accounts, email, and online newspapers, in addition to traditional newspaper publication and posting to bulletin boards. Three factors spurred these changes: Notice by print publication was 1) ineffective, 2) expensive for litigants, and 3) outdated because of increasing availability of information on the Internet and society's reliance on social media.

¹ *Absent defendant* is the term used when the plaintiff is unable to serve the complaint after a diligent inquiry as to the defendant's whereabouts.

History and Process

In 2003 and 2007 there were unsuccessful proposals to replace the default method of notice by publication in a newspaper in cases involving name changes and absent defendants, respectively. These proposals lacked data about the ineffectiveness of service by newspaper publication, and newspaper print readership had yet to take a precipitous decline. In 2011 the Alaska Supreme Court changed the diligent-inquiry rule to require “a reasonable effort to search the internet for the whereabouts of the absent party.” Regular mail was also added as a requirement, in addition to certified mail, to address situations where the defendant is avoiding service by certified mail.

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In February 2012 the issue of alternate service arose again. This time it was spurred by a request from an online newspaper that wanted to be declared a “newspaper of general circulation” for purposes of publishing legal notices. When this matter was introduced, Civil Rules Committee members immediately raised the issue of the limited effectiveness and high cost of publishing notices in newspapers. The belief was that service by publication rarely reaches the intended parties or results in their appearance. In the intervening time since the idea was first considered in 2007, print-newspaper readership and advertising



revenues had substantially declined as evidenced by reports of newspapers shutting down across the country. There was interest in having the court system consider publishing notices to absent defendants and name-change notices on the court’s website. A subcommittee, composed of two AOC staff members and an assistant attorney general, was formed to explore changes to the publication rule and draft a rule-change proposal.

The subcommittee met several times and early on decided to collect data to determine the effectiveness of service by publication. To do this, subcommittee members reviewed all cases statewide in which service by publication occurred in 2010 and 2011. Excluding name-change cases, in both years, family-law cases represented the majority of cases in which service by publication was used. The next largest category was debt cases. The remaining cases included personal-injury auto cases, real-estate matters, forcible-entry-and-detainer cases, and a smattering of other case types. The vast majority of notices by publication came from Anchorage cases, with almost all other notices coming from courts in larger communities and almost nothing coming out of rural Alaska.

Service by publication rarely reaches the intended parties or results in their appearance.

The subcommittee looked at all the cases in which service by publication was granted (excluding name-change cases). A default judgment was entered in almost all cases; a handful of defendants responded, and in only three cases could the defendant's participation be possibly attributed to effective notice by publication.

The subcommittee also researched the costs to publish in newspapers of general circulation. The costs varied based on the length of the notice and the individual newspaper's fees, but always exceeded several hundred dollars.

Subcommittee Findings and Recommendations

The analysis revealed:

- the number of cases in which service by newspaper publication occurs;
- the vast majority of notices served by publication in a newspaper occur in larger communities and not rural communities;
- the defendant response rate was incredibly low, making a strong case that service by newspaper publication is an ineffective method to notify parties of lawsuits against them; and
- service by publication is costly for litigants.

From this analysis, the subcommittee concluded that the current default practice for attempting to serve notice on absent defendants was ineffective and expensive. The subcommittee recommended to the Civil Rules Committee that the court system create a legal notice website and change the default method to posting on the website.

However, service by publication in a newspaper would still be an option a litigant could request if the litigant has reason to believe that this would be an effective method of service. The Civil Rules Committee unanimously recommended to the Alaska Supreme Court changes to the relevant rules providing the default method for service to be posting on the court system's legal notice website. The supreme court adopted the recommendation, with minor stylistic edits, effective October 14, 2014.

Rule Changes

The Alaska Supreme Court amended two rules that authorize posting to the court's legal notice website. Civil Rule 4(e) replaces newspaper publication as the default method of "other" service with posting on a new, Google-searchable legal-notice site accessible from the court system's home page. Civil Rule 84 replaces newspaper publication as the required method of publicizing a name change with posting on the court website. In adopting these changes, the supreme court considered the limited efficacy and high cost of newspaper publication, the evolving role of newspapers in many communities, and the development of other platforms to reach people.

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Civil Rule 4(e)—Other Service

The supreme court changed Civil Rule 4(e), which governs service when, after diligent inquiry, a party cannot be served. Revised Civil Rule 4(e) retains the mailing requirement, requires posting on the court website, and provides for additional service by other methods in the court’s discretion. The additional service methods in Rule 4(e)(3) include service to an absent party’s email, posting to the absent party’s social-networking account, publication in a print or online newspaper, physical posting, or any other methods that the court determines to be reasonable and appropriate.

The amended rule requires that the party seeking to use an alternate service method discuss in the affidavit of diligent inquiry whether other methods of service listed above would be more likely to give the absent party notice. Website posting and mailing is just the minimum service effort required. If other service options exist that are better calculated to provide notice in a given case, the rule encourages the court to explore them.

Civil Rule 84—Change of Name

The Supreme Court amended Civil Rule 84 to require that name-change applications and judgments be posted on the new court system legal notice website. The rule no longer requires newspaper publication in every name-change case, but the court retains discretion to order publication or posting as appropriate in particular cases. Child-name-change cases have additional service requirements for parents.

It is important to note that these rules changes did not impact case types for which there are statutory requirements for service by publication in a newspaper. For example, Alaska Statutes require newspaper publication for notice to creditors when probating an estate.

Forms

To facilitate use of the alternate service process, the administrative office created new forms using plain language and amended existing forms. These forms are available on the court’s website.

Legal Notice Website

After the rules were adopted, the court’s technology department began website development to ensure the site would be operational when the change went into effect three months later. The goal was to develop an automated process that would require minimal data entry by court clerks and reduce the potential for data-entry errors. As such, the decision was made to harness the power of the case management system and pull existing case data to populate notices to the extent possible.

Notices for certain case types (such as name changes and divorces with an absent spouse when only ending the marriage is at issue) include static information as to the nature of the action and the relief sought. For these case types, the case-specific information (case number, parties’ names, hearing date, etc.) is auto populated from the case management system to create the notice.

Notice of Judgment—Change of Name

A judgment has been issued by the Superior Court in Anchorage, Alaska, in Case # 3AN-15-XXXCI ordering that the petitioner’s name will be changed from Alyce Simeonoff to Stacey Marz, effective on the effective date stated in the clerk’s Certificate of Name Change.

Sample—Auto Populated Notice of Judgment

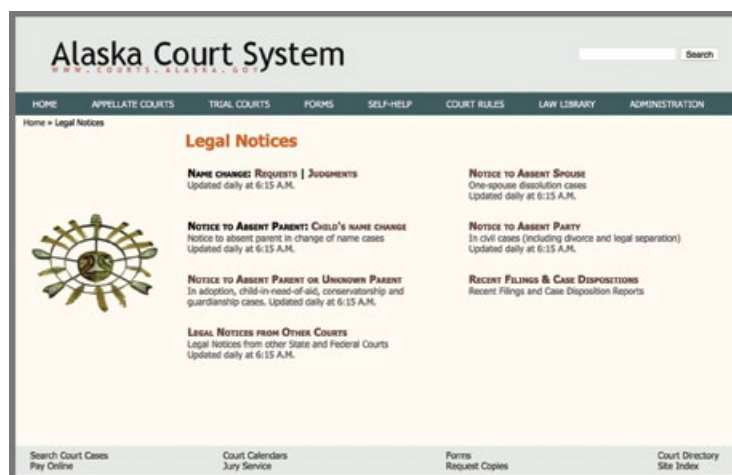
In all other cases, the moving party is required to submit to the court the notice to be served on the absent party. The notice must describe specifically the nature of the action and the relief sought. The clerk sends a scanned image of the notice in PDF format to an e-mail address specifically created for posting notices to the court's legal notice website. The posting process is automated by using case-management-system docket entries and a database for tracking posted notices and automatically removing said notices after the posting period is complete (see www.courtrecords.alaska.gov/webdocs/scheduled/lnwabd.pdf).

After completion of the notice-posting period, the clerk prepares and distributes to the moving party a "Certificate of Service of Posting to the Alaska Court System's Legal Notice Website." When the court requires other methods of service in addition to posting on the legal notice website, the moving party must file proof of service using the form of proof required by the rule.

In the first 11 months since the rule permitting legal notice posting has been in effect, 1,924 legal notices have been posted to the website. Less than two months after the website went live, a U.S. District Court judge authorized service by posting on the Alaska Court System's Legal Notice website in one of its cases. The Alaska Court System has taken the position that it will post legal notices from other jurisdictions and provide a clerk's certificate of

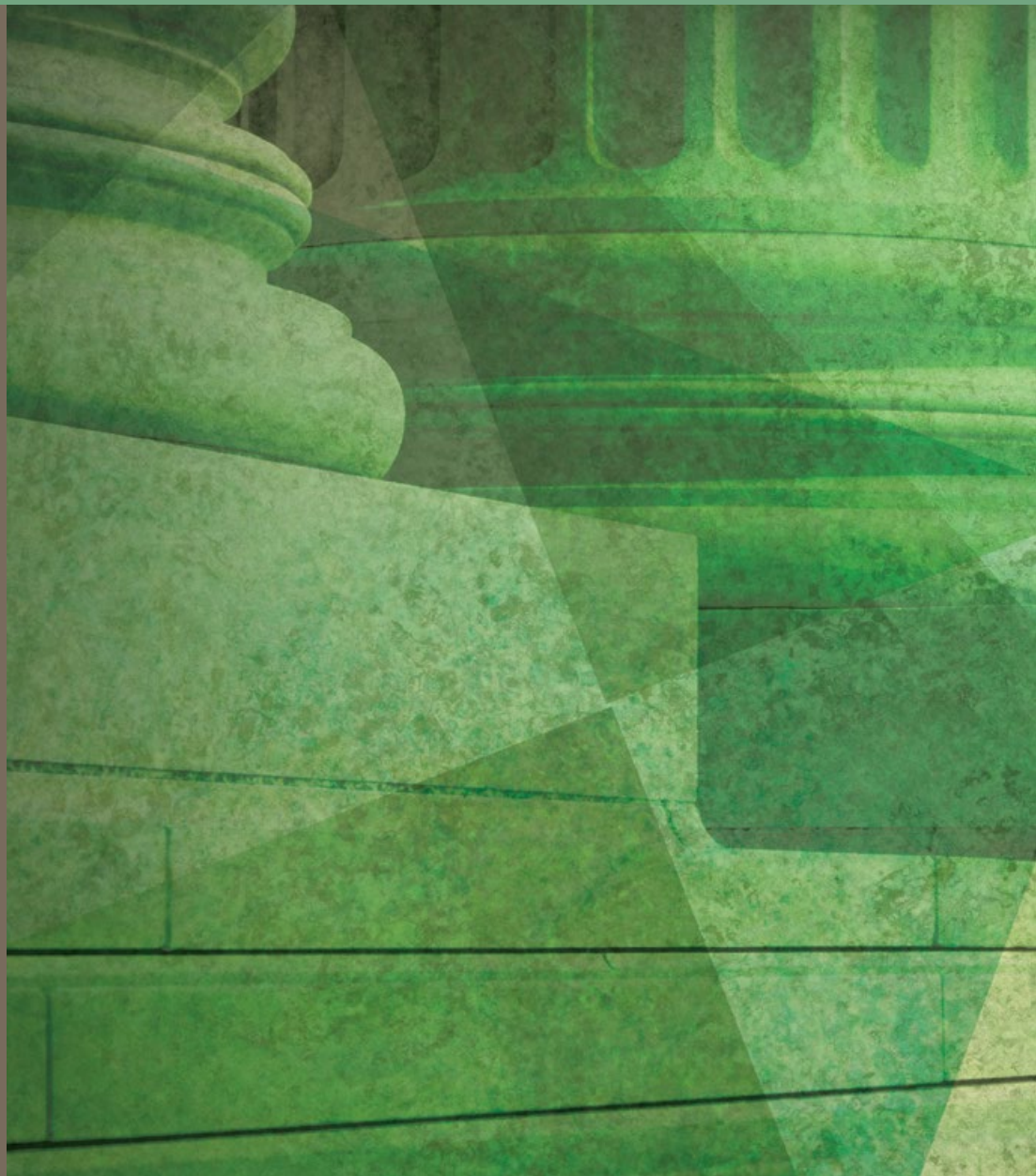
posting. Surveys to clerks of court revealed high customer satisfaction with the legal notice website and the elimination of publication costs in most cases. In addition, clerks appreciate the ease of the process from the clerical end. Moreover, three clerks of court reported that litigants have appeared after learning about cases from the legal notice website. Interestingly, these clerks come from diverse locations—largest urban court, a midsized court, and a remote rural court.

In 2007 the proposal to create a legal notice website to publish notice to absent defendants was deemed too radical an idea. A relatively short time later, however, the importance and viability of print newspapers in society had changed dramatically. People rely on immediate electronic information and live their lives online. Courts must stay current and provide their customers with options that make sense in today's world. The time has come to reflect the societal cultural shift where online information should be the first approach.



Note: The legal notice website was created using existing court resources with no additional expenses (www.courts.alaska.gov/notices/index.htm).

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