



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

H.B. 2281, RELATING TO SERVICE BY PUBLICATION IN PATERNITY CASES.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 1, 2016

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Lynette J. Lau, Administrator, Child Support Enforcement Agency

Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports this bill.

The provisions of this bill amend section 584-8, Hawaii Revised Statutes (HRS), to clarify that service by publication is allowed in those situations where defendants in paternity cases cannot be located or personally served.

Currently, section 584-8(c), HRS, only specifies service by registered or certified mail when the defendant is not found within the circuit although it does indicate that other methods of service provided by statute or court rule apply. The family court has long authorized the Department of the Attorney General, Child Support Enforcement Agency, to serve defendants in paternity cases by publication if they cannot be located or personally served. Furthermore, all other types of family court proceedings including divorce, adoption, guardianship, and child protective services, have explicit provisions in the relevant statutes authorizing service by publication of a person who cannot be located or personally served. There is no similar wording in section 584-8, HRS. This measure will codify the family court's practice of allowing service by publication in paternity cases and make service in these cases consistent with service in other family court proceedings. This measure also benefits the public by explicitly providing for an additional method of service in the establishment of paternity and by helping to make the child support process more efficient.

The Department of the Attorney General respectfully asks the Committee to pass this bill.

PETER L. FRITZ

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HOUSE OF REPRESENTATIVES
THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016

COMMITTEE ON JUDICIARY

Testimony on H.B. 2281

Hearing: March 1, 2016

(RELATING TO SERVICE BY PUBLICATION IN PATERNITY CASES)

Chair Rhoads, Vice Chair San Buenaventura and members of the Committee. My name is Peter Fritz. I am **offering comments**.

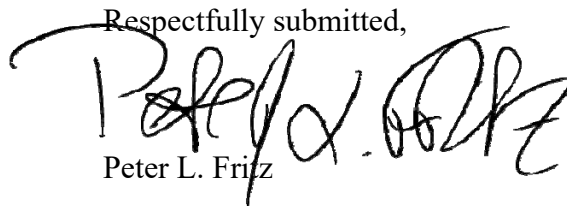
This bill amends the Uniform Parentage Act to allow for service by publication when defendants cannot be located or personally served.

I respectfully suggest that the committee explore amending this bill to include service of legal process notice by publication to an absent party's e-mail account or posting of the notice to the absent party's social networking account when a party has been unsuccessful in locating or personally serving a defendant. The amendment would allow party to move for court permission, after filing an affidavit that all reasonable efforts to serve legal process personally have been exhausted, to serve and notify evasive parties of legal proceedings through social media accounts or by other electronic means. Several courts have permitted such service and recognized that a person's presence on social media may be easier to trace than locating his or her physical whereabouts.

Alaska is one state that has adopted procedures that allow for posting of a notice to a social networking account or an email to a party's email account. For the Committee's consideration, I have attached a copy of the Alaska Rules of Civil Procedure, a copy of the webpage of instructions for alternate service, form motion for alternate service and form to request to serve defendant by posting and alternative service and affidavit of diligent inquiry.

Thank you for the opportunity to testify.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter L. Fritz", written over a printed name.

Peter L. Fritz

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(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.

(5) *Partnerships.* Upon a partnership, by delivering a copy of the summons and of the complaint personally to a general partner of such partnership, or to a managing or general agent of the partnership, or to any other agent authorized by appointment or by law to receive service of process, or to a person having control of the business of the partnership; or if service cannot be made upon any of them, then as provided by order of the court.

(6) *Unincorporated Associations.* Upon an unincorporated association, by delivering a copy of the summons and the complaint personally to an officer, a managing or general agent, or to any other person authorized by appointment or by law to receive service of process; or if service cannot be made upon any of them, then as provided by order of the court.

(7) *State of Alaska.* Upon the state, by sending a copy of the summons and the complaint by registered or certified mail to the Attorney General of Alaska, Juneau, Alaska, and

(A) to the chief of the attorney general's office in Anchorage, Alaska, when the matter is filed in the Third Judicial District; or

(B) to the chief of the attorney general's office in Fairbanks, Alaska, when the matter is filed in the Fourth Judicial District.

(8) *Officer or Agency of State.* Upon an officer or agency of the state, by serving the State of Alaska as provided in the preceding paragraph of this rule, and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation, the copies shall be delivered as provided in paragraph (4) of this subdivision of this rule.

(9) *Public Corporations.* Upon a borough or incorporated city, town, school district, public utility district, or other public corporation in the state, by delivering a copy of the summons and of the complaint to the chief executive officer or chief clerk or secretary thereof.

(10) *Unknown Parties.* Upon unknown persons who may be made parties in accordance with statute and these rules, by publication as provided in subdivision (e) of this rule.

(11) *Officer or Agency of State as Agent for Non-governmental Defendant.* Whenever, pursuant to statute, an officer or an agency of the State of Alaska has been appointed as agent to receive service for a non-governmental defendant, or whenever, pursuant to statute, an officer or agency of the State of Alaska, has been deemed, considered or construed to be appointed as agent for a non-governmental defendant by virtue of some act, conduct or transaction of such defendant, service of process shall be made in the manner provided by statute.

(12) *Personal Service Outside State.* Upon a party outside the state in the same manner as if service were made within the state, except that service shall be made by a sheriff, constable, bailiff, peace officer or other officer having like authority in the jurisdiction where service is made, or by a person specifically appointed by the court to make service, or by service as provided in subsection (h) of this rule. In an action to enforce any lien upon or claim to, or to remove any encumbrance or lien or cloud upon the title to, real or personal property within the state, such service shall also be made upon the person or persons in possession or in charge of such property, if any. Proof of service shall be in accordance with (f) of this rule.

(13) *Personal Service in a Foreign Country.* Upon an individual in a foreign country—

(A) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(B) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(ii) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(iii) unless prohibited by the law of the foreign country, by delivery to the individual personally of a copy of the summons and the complaint, or by any form of mail requiring a signed receipt by the party to be served, so long as the return receipt is filed with the court; or

(C) by other means not prohibited by international agreement as may be directed by the court.

Regardless of which method of service is followed for personal service in a foreign country, before entry of judgment, the court must be satisfied that the method used was a method reasonably likely to effect actual notice.

(e) **Other Service.** When it shall appear by affidavit of a person having knowledge of the facts filed with the clerk that after diligent inquiry a party cannot be served with process under subsections (d) or (h) of this rule, service shall be made by posting on the Alaska Court System's legal notice website and as otherwise directed by the court as provided in this subsection. The party who seeks to have service made under this subsection shall include in the affidavit of diligent inquiry a discussion of whether other methods of service listed in paragraph (e)(3) may be more likely to give the absent party actual notice. In adoption cases, service by posting on the Alaska Court System's legal notice website or by publication will be allowed only if ordered by the court for compelling reasons.

(1) *Diligent Inquiry.* Inquiry as to the absent party's whereabouts shall be made by the party who seeks to have service made, or by the party's attorney actually entrusted with the conduct of the action, or by the agent of the attorney. It shall be made of any person who the inquirer has reason to believe possesses knowledge or information as to the absent party's residence or address or the matter inquired of. Unless otherwise ordered by the court, diligent inquiry shall include a reasonable effort to search the internet for the whereabouts of the absent party. The inquiry shall also be undertaken in person or by letter, and the inquirer shall state that an action has been or is about to be commenced against the party inquired for, that the object of the inquiry is to give such party notice of the action in order that such party may appear and defend it. When the inquiry is made by letter, postage shall be enclosed sufficient for the return of an answer. The affidavit of inquiry shall be made by the inquirer. It shall fully specify the inquiry made, of what persons and in what manner it was made, and a description of any efforts that were made to search the internet, so that by the facts stated therein it may appear that diligent inquiry has been made for the purpose of effecting actual notice.

(2) *Service by Posting on the Alaska Court System's Legal Notice Website.* A notice shall be continuously posted for four consecutive weeks on the Alaska Court System's legal notice website. Prior to the last week of posting, the party who seeks to have service made must send the absent party a copy of the notice and the complaint or the pleading (A) by registered or certified mail, with return receipt requested, with postage prepaid, and (B) by regular first class mail. The notice must be addressed in care of the absent party's residence or the place where the party usually receives mail, unless it shall appear by affidavit that the absent party's residence or place is unknown or cannot be determined after inquiry.

(3) *Additional Service by Other Methods.* In addition to the service required under paragraph (2), the court, in its discretion, may require service of process to be made upon an absent party in any other manner that is reasonably calculated to give the party actual notice of the proceedings and an opportunity to be heard. The method of service could include publication of the notice in a print or online newspaper or other publication at least once a week for four consecutive weeks; **service of the notice to the absent party's e-mail account; posting of the notice to the absent party's social networking account;** physically posting a copy of the notice and complaint on a public bulletin board or on the front door of the absent party's place of residence; or any method the court determines to be reasonable and appropriate.

(4) *Mailing Required.* If service is allowed by any method listed in paragraph (3), the party who seeks to have service made must also send the absent party a copy of the notice and the complaint by mail as required in paragraph (2). Proof of mailing shall be made by affidavit of a deposit in a post office of the copies of the notice and the complaint or other pleadings.

(5) *Form and Contents of Notice—Time.* The notice referred to in paragraphs (2), (3) and (6) shall be in the form of a summons. It shall state briefly the nature of the action, the

relief demanded, and why the party to whom it is addressed is made a party to the action. Where the action concerns real property or where real property of a party has been attached, the notice shall set forth a legal description of the property, shall state the municipality or district in which it is located, and the street or road on which the property is situated, and if the property is improved, it shall state the street number of the same. Where personal property of a party has been attached, the notice shall generally describe the property. If a mortgage is to be foreclosed, the notice shall state the names of all parties thereto and the dates that the mortgage was executed. The notice shall specify the time within which the absent party has to appear or answer or plead, which shall not be less than 20 days after personal service or, if service is made by publication, not less than 30 days after the last date of publication, and shall state the effect of a failure to appear or answer or plead. If the absent party does not appear or answer or plead within the time specified within the notice, the court may proceed as if such party had been served with process within the state.

(6) *Proof of Service.*

(A) *Service by Posting on the Alaska Court System's Legal Notice Website.* If service is made by posting to the Alaska Court System's Legal Notice Website, proof of posting shall be made by certification of the court clerk. A printed copy of the posted notice and the dates of posting shall be attached to the clerk's certificate.

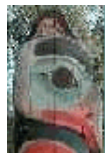
(B) *Service by Publication in a Printed Newspaper.* If service is made by publication in a printed newspaper, proof of publication shall be made by the affidavit of the newspaper's publisher, printer, manager, foreman, or principal clerk, or by the certificate of the attorney for the party at whose instance the service was made. A printed copy of the published notice with the name of the newspaper and dates of publication marked therein shall be attached to the affidavit or certificate.

(C) *Service by Posting to an Online Publication Website.* If service is made by posting to an online publication website, proof of posting shall be made by affidavit of the online publication's publisher, printer, manager, foreman, or principal clerk, or by the certificate of the attorney for the party at whose instance the service was made. A printed copy of the posted notice with the name of the online publication and dates of posting marked therein shall be attached to the affidavit or certificate.

(D) *Service by E-mail or Posting to a Social Networking Account.* If service is made by e-mail or posting to a social networking account, proof of e-mail transmission or electronic posting shall be made by affidavit. If service is made by e-mail, a copy of the sent e-mail transmission shall be attached to the affidavit. If service is made by posting a notice on the absent party's social networking account, a screen print of the posting shall be attached to the affidavit.

(E) *Service by Posting to a Public Bulletin Board or on the Front Door of the Absent Party's Place of Residence.* If service is made by posting to a public bulletin board or on the front door of the absent party's place of residence, proof of

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Alaska Court System Self-Help Center: Family Law

[Family Law Home](#) | [Forms & Instructions](#) | [FAQs](#) | [Glossary](#) | [Court System Home](#) | [Tell Us How We're Doing](#)

Instructions for Alternate Service

- [What is alternate service?](#)
- [How do I do alternate service?](#)
- [What are the steps to post to the legal notice website?](#)
- [How do I know whether to post to the court's legal notice website or use another method?](#)
- [What happens after the alternate service is done?](#)
- [What forms do I use for alternate service?](#)

What is alternate service?

Usually when you start a case you are required to serve the defendant by a process server or certified mail/restricted delivery/return receipt. However, sometimes you cannot locate the defendant. In that situation, you may ask the court for permission to serve the defendant in a different way. For example, you can ask to post on the court's legal notice website, post to someone's social media account, email, publish in a newspaper that the defendant reads or post at a shelter or some other location the defendant is known to frequent.

How do I do alternate service?

Before filing anything, you need to try every method to find the defendant, which is called "diligent inquiry." Then you have to file a request to the court asking to serve the defendant by another method, such as posting to the court's legal notice website. You can read about all of the steps below to ask the court to post to the court's legal notice website or another method of service.

What are the steps to post to the legal notice website?


1. Begin your [diligent inquiry](#). This means you must look really hard for someone. Please see our [Tips on Locating People](#) for ideas of how to look. Keep track of that you try to find the [defendant](#). If you can't find the defendant, you'll have to file a request asking for permission to do alternate service and list out what you tried, including that you:
 - wrote to and/or questioned defendant's friends and family
 - wrote to and/or questioned defendant's current and previous employer(s)
 - checked telephone directories and Polk city directories (available at the library), and called telephone information
 - used a locate-and-research company (such as Accurint, Ingens, Motznic, etc.) to find the defendant
 - conducted people-finder research on the Internet
 - checked Facebook and/or other online social networks
 - sent the summons to the defendant by first class mail (not certified) and included postage sufficient for the return of an answer
 - inquired of motor vehicle registrars at specific cities
 - called utility companies
 - searched property tax listings

- searched the Alaska Court System's trial court records online (www.courtrecords.alaska.gov/) to find any cases involving the defendant
 - went to the courthouse to check the file(s) for a current address
 - checked out of state court records
 - searched recorded or filed documents at the Recorders Office of the Alaska Dept. of Natural Resources (<http://dnr.alaska.gov/ssd/recoff/search.cfm>) and recorders' offices outside of Alaska
 - searched business license information at the Alaska Division of Corporations, Business, and Professional Licensing (<http://www.commerce.state.ak.us/>) and other local and state agencies outside of Alaska
 - searched military locator services including:
 - Air Force: (210) 565-2660
 - Army: (703) 325-8151 or (866) 771-6357
 - Navy: (866) 827-5672
 - Marines: (703) 784-3942 or (800) 268-3710
 - Coast Guard: <http://www.uscg.mil/locator>
 - www.dmdc.osd.mil/appj/scra/scraHome.do
 - checked to see if the defendant is in a state jail facility in Alaska by calling the Department of Corrections at (907) 269-7425.
2. If you cannot find the person after trying all of the different things listed above, you will need to open your case so that you can get the summons and standing order from the court. See [forms and instructions for starting a case](#) for more information. Once you have the documents ready to file, you must complete your [diligent inquiry](#) by attempting to serve the other side copies of the documents by certified mail/ restricted delivery/ return receipt and/or [process server](#).
3. After your case is open, if you were NOT able to serve the opposing party by the US postal service or a process server, you can ask the court to serve the opposing party by another method such as posting on the court's free legal notice website. If you think there is a better method to notify the defendant, such as posting to a social media account, e-mailing, publishing in a newspaper, or physically posting on a bulletin board, you can ask for that specifically.

Fill out:


- Request to Serve Defendant by Posting or Alternative Service, and Affidavit of Diligent Inquiry, [CIV-145](#) .

In the *Request* section, check the:

- 1st box if you want to post to the court's free legal notice website. Fill out the *Affidavit* section through No. 4.
 - 2nd box if you want to serve by another method. Fill out the entire *Affidavit* section, including No. 5 that states why you think another method is likely to provide notice.
- Notice to Absent Defendant, [CIV-101](#) . Fill out everything but the signature and date lines. If the Judge approves your request, the clerk will send this notice back to you.
 - If you attempted to have the defendant served by process server or by certified mail, attach copies of the Return of Service or green postal card.
4. Make one copy of each of these documents and any attachments.
5. File the original documents at your local court. Keep one copy for your records.
6. Now you wait. The clerk will be directed to sign the *Notice to Absent Defendant* if the court finds your attempts to notify the defendant to be sufficient. The court will then post the notice on the Alaska Court System's legal notice website for 4 weeks in a row.

7. Before the last week of posting, you must send a copy of the *Notice* and the complaint by **regular first class mail** and **registered or certified mail** to the defendant at defendant's last known residence or workplace. However, if you have already tried to serve the defendant by certified mail, then before the last week of posting, just send by regular first class mail.

File:

- Affidavit, SHC-1625 [Word](#) | [PDF](#)  (1 week before posting ends that states you:
 - tried to serve the defendant by **regular first class mail** and **registered or certified mail**.
OR
 - that you could NOT serve by mail because you cannot find the defendant's last known mailing address.)

8. After the Notice has been posted on the legal notice website for 4 weeks, the clerk will complete a certificate of service of posting to the Alaska Court System's legal notice website. The court will put the certificate of service of posting in your case file and send you a copy in the mail.

How do I know whether to post to the court's legal notice website or use another method?

Choose the method that is most likely to give the other side notice of the case. Posting to the court's legal notice website is free and is the method to use if you do not know if another way that is more likely to notify the other side about the case. But if you think that posting on a social media account, e-mailing, publishing in the newspaper, or posting a paper notice on a bulletin board is more likely to give the other side notice of the case, you can ask the court to serve by that method. Be aware that some methods have costs like publishing in a newspaper's legal notice section.

What happens after the alternate service is done?


If the defendant does not [answer](#), you may file for [default](#) 30 days after the last day of required publication or posting. If the defendant does answer, your case will move forward as a [contested](#) case the trial judge will set hearings and a trial if needed to resolve the issues in your case.

What forms do I use for alternate service?

See the Alternate Service Packet, [SHC-PAC2](#).

7 April 2015
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www.courts.alaska.gov
webmaster@akcourts.us

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT _____

In the Matter of the Dissolution)
of the Marriage of)
_____ and)
_____)
Party A and Party B.)
_____)

CASE NO. _____

**MOTION AND ORDER FOR
ALTERNATIVE SERVICE**

MOTION

I, _____, hereby request that the court authorize
(Name of Petitioner)
the use of an alternate method of notifying my absent spouse, in addition to posting on the
Alaska Court System's legal notice website, because

Service method requested:

The above request is made in order to more likely give notice to my absent spouse.

Date

Signature of Petitioner

ORDER

IT IS ORDERED that petitioner provide notice to the absent spouse:

in the manner requested above.

by posting on the Alaska Court
System's legal notice website.

Date

Superior Court Judge

I certify that on _____,
I sent a copy of this order to the petitioner.

Type Judge's Name

Clerk: _____

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IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
 AT _____

)	
)	
)	
vs.	Plaintiff(s),)	CASE NO. _____ CI
)	
)	
)	REQUEST TO SERVE DEFENDANT BY POSTING AND
)	ALTERNATIVE SERVICE,
) Defendant(s).	AND AFFIDAVIT OF DILIGENT INQUIRY

REQUEST

- I request the court’s permission to serve defendant (name) _____
 under Civil Rule 4(e) by posting on the Alaska Court System’s legal notice website.
- Additional alternative service:

AFFIDAVIT

I state the following upon oath or upon affirmation under penalty of perjury:

1. An action has been or is about to be commenced against the defendant.
2. Attempts to Serve Defendant. Attempts to serve the defendant with the summons and complaint were made in the following manner:
 - Personal service by process server which was returned un-served because (attach return):

 - Certified mail, restricted delivery, return receipt requested, sent on _____
 to defendant's last known address: _____
 It was returned un-served because (attach envelope):

3. Attempts to Locate Defendant. In addition to the above, in order to fulfill my obligation to diligently inquire as to the defendant's whereabouts and to serve the summons on the defendant, I did the following (**check only the boxes that apply**):

a. I wrote to and/or questioned defendant's friends and family:

<u>Persons Contacted</u>	<u>Relationship</u>	<u>Results</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

b. I wrote to and/or questioned defendant's current and previous employer(s):

<u>Employers Contacted</u>	<u>Results</u>
_____	_____
_____	_____

c. I checked telephone directories and Polk city directories (available at the library), and called telephone information as follows:

<u>Directories Checked</u>	<u>Results</u>
_____	_____
_____	_____

d. I used a locate-and-research company (such as Accurint, Ingens, Motznic, etc.) to find the defendant:

<u>Companies Contacted</u>	<u>Results</u>
_____	_____
_____	_____

e. I conducted people-finder research on the Internet:

<u>Websites Researched</u>	<u>Results</u>
_____	_____
_____	_____
_____	_____

f. I checked Facebook and/or other online social networks with these results:

g. I sent the summons to the defendant by first class mail (not certified) to the following address: _____ on (date) _____

with the following results: _____
I enclosed postage sufficient for the return of an answer.

h. I inquired of motor vehicle registrars at (cities): _____

with the following results: _____

i. I called utility companies as follows:

<u>Companies Contacted</u>	<u>City</u>	<u>Results</u>
_____	_____	_____
_____	_____	_____

j. I searched property tax listings as follows:

<u>Communities Searched</u>	<u>Results</u>
_____	_____
_____	_____

k. I searched the Alaska Court System's trial court records online (www.courtrecords.alaska.gov/) to find any cases involving the defendant. Then I went to the courthouse to check the file(s) for a current address and found the following: _____

l. I searched court records outside of Alaska with the following results:

<u>Location of Courts</u>	<u>Results</u>
_____	_____
_____	_____

m. I searched recorded or filed documents at:

(1) the Recorders Office of the Alaska Dept. of Natural Resources (<http://dnr.alaska.gov/ssd/recoff/search.cfm>) with the following results: _____

(2) a recorders office outside of Alaska, located in _____ with the following results: _____

n. I searched business license information at:

(1) the Alaska Division of Corporations, Business, and Professional Licensing (<http://www.commerce.state.ak.us/>) with the following results: _____

(2) other local and state agencies outside of Alaska with the following results: _____

o. I believe the defendant may be in the military. Therefore, I contacted the following military locator service(s):

- Air Force: (210) 565-2660
 - Army: (703) 325-8151 or (866) 771-6357
 - Navy: (866) 827-5672
 - Marines: (703) 784-3942 or (800) 268-3710
 - Coast Guard: <http://www.uscg.mil/locator/>
- with the following results: _____

p. Other: _____

4. The purpose of my inquiry was to give the defendant notice of the action in order that the defendant may appear and defend it.

5. I believe the following methods of service may be more likely to give the absent party notice (publication in a print or online newspaper, e-mail, posting on the absent party's social network account, physically posting on the front door of an absent party's place of residence, any other appropriate methods):

After completing all the inquiries listed above, I do not know the whereabouts of the defendant, and I do not know of any other sources of information through which I can learn the whereabouts of the defendant.

Date

Signature of Party or Attorney or Attorney's Agent

Print or Type Name

Subscribed and sworn to or affirmed before me at _____, Alaska
on _____
(date)

(SEAL)

Clerk of Court, Notary Public, or other
person authorized to administer oaths/
My commission expires: _____

ORDER

It is ordered that:

(date)

Clerk / Judge

Type or Print Name