

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Service of process is the formal delivery of a writ, summons, or other legal process or notice. Statutes governing service of process are strictly construed to insure that defendants receive notice of an action against them and have the opportunity to protect their rights.

Personal service is the primary method of obtaining jurisdiction over the person of the defendant, and is the most effective method of giving notice to the defendant that a suit has been commenced against him or her.¹ Service of original process is made by delivering a copy of the process to the person to be served with a copy of the complaint, petition, or other initial pleading or paper.²

In designated types of cases, service of process by publication is authorized in place of personal service on a party.³ Service of process by publication is generally the service of process on an absent or unknown defendant by publishing a notice in a newspaper or other public medium. The purpose of providing service of process by publication is to give an unknown, absent, or concealed defendant an opportunity to come into court and defend the suit against him or her within the time specified in the order to appear.⁴ Statutes allowing service by publication must provide for sufficient notice of the action to be fair to the defendants and to satisfy the due process requirements of the state and federal constitutions.⁵

Section 49.031, F.S., provides that in order to serve process by publication, the plaintiff must file a sworn statement containing certain information. Section 49.041, F.S., provides that the sworn statement must include a provision stating that a diligent search and inquiry has been made to discover the name and residence of the person being served by publication.

Section 49.011, F.S., provides that service of process by publication may be had in any action or proceeding:

- To enforce a legal or equitable lien on or claim to a title or interest in real or personal property within the jurisdiction of the court or a fund held or debt owed by a party on whom process can be served in Florida;
- To quiet title or remove an encumbrance, lien, or cloud on the title to any real or personal property within the jurisdiction of the court or a fund held or debt owed by any party on whom process can be served in Florida;
- To partition real or personal property within the jurisdiction of the court;
- For the dissolution or annulment of a marriage;
- For the construction of a will, deed, contract, or other written instrument, and for a judicial declaration or enforcement of a legal or equitable right, title, claim, lien, or interest thereunder;

¹ *Bedford Computer Corp. v. Graphic Press, Inc.*, 484 So. 2d 1225 (Fla. 1986).

² Section 48.031(1)(a), F.S.

³ Section 49.011, F.S.

⁴ *Seiton v. Miami Roofing & Sheet Metal*, 10 So. 2d 428 (1942)

⁵ *Gribbel v. Henderson*, 151 Fla. 712, 10 So. 2d 734 (1942)

- To reestablish lost instruments or records that have or should have their situs within the jurisdiction of the court;
- In which there is issued and executed a writ of replevin, garnishment, or attachment;
- In which any other writ or process is issued and executed that places any property, fund, or debt in the custody of the court;
- To revive a judgment by motion or scire facias;
- For adoption;
- In which personal service of process or notice is not required by the statutes or constitution of Florida or the Constitution of the United States;
- In probate or guardianship proceedings where personal service of process or notice is not required by the statutes or the constitution of Florida or the Constitution of the United States;
- For termination of parental rights pursuant to part IX of chapter 39; and
- For temporary custody of a minor child.⁶

Service of process by publication in other types of action is improper.⁷ Therefore, service of process by publication is not currently allowed in any action to determine paternity proceedings because it is not expressly provided for in statute.

The Department of Revenue has been granted the authority to help obtain and enforce court ordered child support obligations. In many cases the Department of Revenue must file a petition with the court to establish paternity before the department can request the court to order child support payments. When a child is born to a married woman, there is a legal presumption that the child's "legal father" is the mother's husband. The "legal father" is also presumed to be the person whose name is on the child's birth certificate. In certain situations, a person may sign the birth certificate even though they may not know for sure whether they are the biological father. When a dispute arises as to who the actual "biological father" of a child is, for purposes of establishing child support, a determination of paternity action is filed to determine the biological father.

In a judicial action to determine paternity and obtain a child support order against an alleged biological father, where another person has already been designated the legal father, the current legal father must be made a party to the action.⁸ As a necessary party, the legal father must be served notice before a final judgment of paternity and support order can be obtained. In many cases, the legal father cannot be located and therefore cannot be personally served with legal process. Since service of process cannot be made by publication in a paternity action, these paternity and support cases cannot be resolved.

Section 742.09, F.S., provides that it is a first-degree misdemeanor for any owner, publisher, or operator of any newspaper, magazine, or other publication of any kind, or any broadcaster, to publish the name of any party in a determination of parentage action or proceeding.

Effect of Bill

This bill amends s. 49.011, F.S., to add determination of paternity to the list of actions or proceedings where service of process by publication is allowed. However, the bill limits service of process by publication in a paternity action to only the legal father in a paternity action in which another man is alleged to be the child's biological father.

This bill creates s. 409.257(2), F.S., to provide that the Department of Revenue may serve process upon a legal father by publication in any action or proceeding to determine paternity. Before service may be made by publication on a legal father in a paternity action, however, there must first be a diligent search and inquiry concerning the location of the legal father as required in s. 49.041, F.S. The

⁶ Section 49.011, F.S.

⁷ *Honegger v. Coastal Fertilizer & Supply, Inc.*, 712 So. 2d 1161 (Fla. 2nd DCA 1998)

⁸ *Department of Revenue v. Cummings et al*, 930 So. 2d 604 (Fla. 2006)

Department of Revenue is required to follow the regulations for service by publication provided in ch. 49, F.S.

This bill amends the criminal offense at s. 742.09, F.S., to provide that it will not be a first-degree misdemeanor for a newspaper, magazine or other publication to publish the name of any party in a paternity action or proceeding when it is for the purpose of serving process by publication in a determination of paternity action or proceeding.

C. SECTION DIRECTORY:

Section 1 amends s. 49.011, F.S., relating to service of process by publication.

Section 2 amends s. 409.257, F.S., relating to service of process.

Section 3 amends s. 742.09, F.S., relating to publishing of names; penalty.

Section 4 provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

If the Department of Revenue chooses to use the publication method of serving process in a paternity proceeding, as provided by this bill, then the Department will have to pay the costs that are charged by the newspaper or magazine to print such legal notice.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill appears that it could have a negative impact on county workload and revenues by allowing notice to be served through publication in newspaper instead of by the sheriff. The sheriff would normally receive a fee for carrying out a personal service of process in a paternity action or proceeding, and under this bill a person could serve notice through publication and avoid the fee, which would normally be charged by the sheriff.

2. Expenditures:

This bill appears to reduce county expenditures by possibly reducing the number of process notices that a sheriff might otherwise be required to serve. In some counties the cost of serving process is greater than the fee collected, so this bill could reduce expenditures if less people served notice by publication in a paternity action.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement was submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.