

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1432

INTRODUCER: Senator Stargel

SUBJECT: Service of Process

DATE: February 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1432 authorizes additional methods of service of process if personal service of process cannot be effected.

Under current law, a process server may personally serve process, such as a subpoena or summons, on a witness or opposing party in a lawsuit. In certain instances in which personal service of process is not possible, existing law authorizes substitute service of process, which is the service of the process on the intended recipient's spouse or person in charge of the recipient's business or private mailbox. If personal service or substitute service of process cannot be effected, existing law authorizes constructive service of process, which is usually accomplished by publishing a notice to the defendant in a newspaper.

This bill allows a process server to effect substitute service of process on the person in charge of the intended recipient's virtual office or executive office or mini-suite. A virtual office may be an office that provides communications services such as telephone or fax services, and address services without providing dedicated office space, provided that all communications are routed through a common receptionist. An executive office or mini-suite is similar, except that it includes dedicated office space.

The bill also authorizes electronic service of process as a type of constructive service of process. Electronic service of process is any electronic method of delivering notice to a defendant by electronic mail, social media, or other electronic means in which a reasonable expectation of delivery is ascertainable.

The same requirements for service of process by publication apply to electronic service of process, such as requiring a sworn statement as a condition precedent to service of process.

II. Present Situation:

Service of Process and Process Servers

The role of a process server is to serve summons, subpoenas, and other forms of process in civil and criminal actions.¹ The term “to serve” means to make legal delivery of a notice or a pleading.² A summons is a writ or a process beginning a plaintiff’s legal action and requiring a defendant to appear in court to answer the summons.³ A subpoena is a legal writ or order commanding a person to appear before a court or other tribunal.⁴ A subpoena can command a person to be present for a deposition or for a court appearance.

The sheriff of the county where the person is to be served is generally responsible for serving as process server. However, notice of the initial nonenforceable civil process, criminal witness subpoenas, and criminal summons may be delivered by a process server other than the sheriff—a special process server or a certified process server. Special process servers and certified process servers must meet certain statutory qualifications and appear on a list approved and maintained by the sheriff or the chief judge of a judicial circuit.⁵

Types of Process

Personal Service of Process

A process server generally must effect service of process by personal service by:

- Serving the person directly or by leaving a copy of a complaint, petition, or initial pleading or paper at the person’s usual place of abode with a person who is 15 years old or older; or
- Serving a person at his or her place of employment in a private area designated by the employer.⁶

Substitute Service of Process

If a person cannot be personally served, a process server may accomplish substitute service of process by:

- Serving process on a spouse if the cause of action is not an adversarial proceeding between the spouse and the person to be served, if the spouse requests service, and if the spouse and person to be served live together; or
- Serving process on an employee or other person in charge of the intended recipient’s business if the intended recipient is a sole proprietor and two attempts have been made to serve him or her.⁷

¹ Sections 48.011 and 48.021, F.S. “... the common law writ of *capias ad respondum* was the historical precedent to contemporary service of process. ...the writ obtained in personam jurisdiction over the defendant, allowing the royal court to secure the appearance of the defendant by taking him into custody.” Troy Blair, *Receipt of a Complaint, Prior to or Unattended by Formal Service of Process, does not Trigger a Defendant’s Thirty-day Period to Remove a Case: Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 38 DUQ. L.REV. 663, 666 (Winter 2000).

² BLACK’S LAW DICTIONARY (10th ed. 2014).

³ BLACK’S LAW DICTIONARY (10th ed. 2014).

⁴ BLACK’S LAW DICTIONARY (10th ed. 2014).

⁵ Sections 48.021(1) and 48.29, F.S.

⁶ Section 48.031(1), F.S.

⁷ Section 48.031 (2), F.S.

Additionally, service of process of witness subpoenas may be accomplished through United States mail for the following cases:

- Criminal traffic case;
- Misdemeanor case;
- Second degree felony; or
- Third degree felony.⁸

To serve a subpoena on a witness by mail, the subpoena must be sent to the last known address of the witness at least 7 days before the appearance required in the subpoena. However, if a witness fails to appear in response to a subpoena served by mail, he or she may not be found in contempt of court.⁹

The final approved method of substitute service of process applies in instances in which the only address of person to be served is a private mailbox, discoverable through a public records search. If the process server confirms that the intended recipient maintains a mailbox at that location, the process server may leave a copy of the process with the person in charge of the private mailbox.¹⁰

Constructive Service of Process, including by Publication

Although the preferred methods of service of process are personal service or substitute service of process, another method is available. In instances in which these types of service of process may not be effected, constructive process is permitted in limited circumstances and actions. One type of constructive service of process is service by publication.

Service of process may be made by publication in certain legal actions, including:

- To enforce any legal or equitable lien or claim to any title or interest in real or personal property within the jurisdiction of the court or any fund held or debt owing by any party on whom process can be served within this state.
- To quiet title or remove any encumbrance, lien, or cloud on the title to any real or personal property within the jurisdiction of the court or any fund held or debt owing by any party on whom process can be served within this state.
- To partition real or personal property within the jurisdiction of the court.
- For dissolution or annulment of marriage.
- For the construction of any will, deed, contract, or other written instrument and for a judicial declaration or enforcement of any legal or equitable right, title, claim, lien, or interest thereunder.
- To reestablish a lost instrument or record which has or should have its situs within the jurisdiction of the court.
- In which a writ of replevin, garnishment, or attachment has been issued and executed.
- In certain parenting actions, including adoption, termination of parental rights, and to establish paternity in certain cases.

⁸ Section 48.031(3)(A), F.S.

⁹ Section 48.031(3)(A), F.S.

¹⁰ Section 48.031(6), F.S.

- In which personal service of process or notice is not required by the statutes or constitution of this state or by the Constitution of the United States.
- In probate or guardianship proceedings in which personal service of process or notice is not required by the statutes or constitution of this state or by the Constitution of the United States.¹¹

Service of process by publication may be effected upon any known or unknown person, corporation, or group who operates or does business in the state.¹²

If service of process is to be made by publication, the plaintiff or the plaintiff's attorney who requests service of process must first file a sworn statement as a condition precedent to the process being served through publication.¹³ What must be included in the sworn statement varies slightly, depending on the intended recipient. For example, the sworn statement on a service of process on a natural person must attest:

- That a diligent search and inquiry has been conducted to discover the name and address of the person served;
- To whether the person to be served is over or under the age of 18, or if age is unknown; and
- That the residence of the person is unknown, out-of-state or out-of-country, or in the state but that the person has either been absent from the state or concealed his or her whereabouts.¹⁴

The Use of Social Media for Service of Process

In recent years, various courts in the United States and internationally¹⁵ have approved service of process by social media, including email, and accounts such as Facebook for defendants who are difficult to locate. Still, courts remain reluctant to embrace service of process through electronic means. For example, the State of New York adopted a law which authorizes a plaintiff seeking a divorce to file an ex parte application with the court requesting approval of service of process in an alternative fashion. The law does not limit as acceptable the forms of process the plaintiff may request.¹⁶ In reviewing an action in which a wife attempted to serve her husband with a divorce summons using a private message through a social networking website, the court noted, "Consideration must also be given to the fact that the way plaintiff proposes to provide defendant with notice of the divorce represents a radical departure from the traditional notice of what constitutes service of process."¹⁷

As such, in those jurisdictions in which service of process by social media is permitted, this method of process is reserved as service of a last resort.¹⁸

¹¹ Section 49.011, F.S.

¹² Section 49.021, F.S.

¹³ Section 49.031, F.S.

¹⁴ Section 49.041, F.S.

¹⁵ Courts in New Zealand, Canada, and the United Kingdom have allowed service of process through social media. Hans van Horn, *Evolutionary Pull, Practical Difficulties, and Ethical Boundaries: Using Facebook to Serve Process on International Defendants*, 26 PAC MCGEORGE GLOBAL BUS. & DEV. LJ. 555, 566-568 (2013).

¹⁶ McKinney's CPLR 308(5), N.Y. Law

¹⁷ *Baidoo v. Blood—Dzraku*, 48 Misc.3d 309, 310, 312, 313 (N.Y. 2015).

¹⁸ Alyssa L. Eisenberg, *Keep Your Facebook Friends Close and Your Process Server Closer: The Expansion of Social Media Service of Process to cases Involving Domestic Defendants*, 51 SAN DIEGO L. REV. 779, 781 (Aug-Sept. 2014); John R. Higgin, *The Emergence of "E-Service" Under CPLR 308(5)*, 85 N.Y. ST. B.J. 28, 30 (Oct. 2013).

III. Effect of Proposed Changes:

Substitute Service of Process at a Virtual Office

Current law authorizes process to be served through substitute service of process, such as to a private mailbox. This bill provides that a process server may also effect substitute service if the only address is for a virtual office, or an executive office or mini-suite. A virtual office may be an office that provides communications services such as telephone or fax services, and address services without providing dedicated office space, provided that all communications are routed through a common receptionist. An executive office or mini-suite includes a dedicated office space and other supportive services.

Once the process server confirms that the person to be served maintains a virtual office or mini-suite, the server may leave a copy at that location.

Constructive Service of Process by Electronic Service of Process

The bill also establishes as a type of constructive service of process, electronic service of process. Electronic service of process is any electronic method of delivering notice to a defendant by electronic mail, social media, or other electronic means in which a reasonable expectation of delivery is ascertainable.

The court may order electronic service of process in any action in which service of process by publication is currently authorized. The same requirements for service of process by publication apply to electronic service of process, such as requiring a sworn statement as a condition precedent to service of process. The sworn statement must attest that the diligent search and inquiry included email addresses and social media accounts of the person to be served. If a plaintiff attaches the sworn statement to a motion filed with the court, the court must grant by order electronic service of process. Electronic service of process requires proof of service of process by affidavit of the person having knowledge of the electronic service.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

A plaintiff may benefit by having a case be heard in instances in which alternative service of process provided in the bill leads to the location of otherwise difficult to reach defendants. Additionally, the cost of constructive service of process by electronic means will be far less than constructive service by the publication of a notice in a newspaper.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 48.031, 49.011, 49.021, 49.031, 49.041, 49.051, and 49.061.

This bill creates the following sections of the Florida Statutes: 49.13 and 49.14.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.