

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 Rules

BILL: CS/CS/SB 1432

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Stargel

SUBJECT: Service of Process

DATE: March 1, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/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.

The bill defines a virtual office as 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.

This bill allows a process server to effect substitute service of process on:

- A person in charge of an intended recipient's virtual office or executive office or mini suite; or
- A registered agent, officer, or director of a corporation, whose address or the principal place of business of the corporation is a virtual office, an executive office, or a mini suite.

Under the state’s long-arm statute, the courts of this state do not have jurisdiction over a defendant who is engaged in isolated activity in the state. The statute further provides that the courts of this state lack jurisdiction to enforce penalties or fines imposed by a state agency from another state in which the defendant does not have a mandatory right of review of the agency order. In addition to prohibiting a court from enforcing only agency orders that impose a penalty or fine, this bill restricts the jurisdiction of courts to enforce any agency order.

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:

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.

- 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

Process may be served on a domestic or foreign corporation by personal service on a president or vice president or other head or officer of the corporation, or on a registered agent in this state.⁸ If the address for the registered agent, officer, director, or principal place of business is a residence or private mailbox, substitute service may be made by serving the agent, officer, or director.⁹

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.¹⁰

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.¹¹

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.¹²

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.

⁷ Section 48.031 (2), F.S.

⁸ Section 48.081(3)(b), F.S.

⁹ Section 48.081(3)(b), F.S.

¹⁰ Section 48.031(3)(A), F.S.

¹¹ Section 48.031(3)(A), F.S.

¹² Section 48.031(6), F.S.

- 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.
- 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.
- A writ of replevin, garnishment, or attachment that has been issued and executed.
- Certain parenting actions, including adoption, termination of parental rights, and to establish paternity in certain cases.
- An action in which personal service of process or notice is not required by the statutes or state constitution 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.¹³

Service of process by publication may be effected upon any known or unknown person, corporation, or group that operates or does business in the state.¹⁴

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.¹⁵ 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.¹⁶

Florida's Long-arm Statute

A long-arm statute is a statute that grants personal jurisdiction over a nonresident defendant who has had contacts with the state in which the statute is in effect.¹⁷ In determining whether a defendant is subject to jurisdiction, the court must determine whether:

- The defendant has minimum contact with the forum state; and

¹³ Section 49.011, F.S.

¹⁴ Section 49.021, F.S.

¹⁵ Section 49.031, F.S.

¹⁶ Section 49.041, F.S.

¹⁷ BLACK'S LAW DICTIONARY (10th ed. 2014).

- The exercise of jurisdiction would offend traditional notions of fair play and substantial justice.¹⁸

Florida's long-arm statute is provided in section 48.193, F.S., which provides, in part:

A person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if she or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state.¹⁹

Acts that subject a person or entity to the long-arm jurisdiction of the state include:

- Operating a business in the state or having an office or agency in the state;
- Committing a tort in the state;
- Owning, using, possessing, or holding a mortgage or other lien on real property in the state;
- Contracting to insure a person, property, or risk located in the state at the time of contracting; and
- Breaching a contract in the state by failing to perform acts required in contract to be performed within the state.²⁰

For the long-arm statute to apply, a defendant must be engaged in substantial and not isolated activity within the state.²¹

An exception in the long-arm statute prohibits a court from enforcing penalties or fines imposed by an agency of another state if the other state does not provide a mandatory right of review of the agency in a state court of competent jurisdiction.²²

III. Effect of Proposed Changes:

This bill revises the law on substitute service of process and long-arm jurisdiction.

Substitute Service of Process

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 communication services such as telephone or fax services, and address services without providing dedicated office space, if all communications are routed through a common receptionist. An executive office or mini-suite includes a dedicated office space and other supportive services.

¹⁸ *Horizon Aggressive Growth, L.P., v. Rothstein-Kass*, 421 F.3d 1162, 1166 (11th Cir. 2005), quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

¹⁹ Section 48.193(1)(a), F.S.

²⁰ *Id. Internet Solutions Corp. v. Marshall*, 39 So.3d 1201 (Fla. 2010).

²¹ Section 48.193(2), F.S.

²² Section 48.193(1)(b), F.S.

This bill allows a process server to effect substitute service of process on:

- A person in charge of an intended recipient's virtual office or executive office or mini suite;
or
- A registered agent, officer, or director of a corporation, whose address or the principal place of business of the corporation is a virtual office, an executive office, or a mini suite.

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

Long-arm Jurisdiction

Under the state's long-arm statute, the courts of this state do not have jurisdiction over a defendant who is engaged in isolated activity in the state. The statute further provides that the courts of this state lack jurisdiction to enforce penalties or fines imposed by a state agency from another state in which the defendant does not have a mandatory right of review of the agency order. In addition to prohibiting a court from enforcing only agency orders that impose a penalty or fine, this bill restricts the jurisdiction of courts to enforce any agency order.

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 heard in instances in which alternative service of process provided in the bill leads to the location of otherwise difficult to reach defendants.

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, 48.081, and 48.193.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules on February 29, 2016:

The CS:

- Specifies that an agency order issued out of state is unenforceable against a corporation incorporated or having its principal place of business in the state if the other state does not provide a mandatory right of review of the agency decision.
- Authorizes service of process on a domestic or foreign corporation whose registered agent, officer, or director, or the principal place of business of the corporation is a virtual office, an executive officer, or a mini suite.

CS by Judiciary on February 16, 2016:

The CS removes the authority for a type of constructive service of process, electronic service of process, from the bill.

- B. **Amendments:**

None.