

State of New Jersey

N J L R C

New Jersey Law Revision Commission

FINAL REPORT

RELATING TO SERVICE OF PROCESS

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Introduction

The Commission's review of statutes concerning process continues the effort begun in 1989 to revise Title 2A provisions concerning the courts and the administration of civil justice. The current 21 sections include many which are outdated or unnecessary, some overlapping or conflicting with the Supreme Court's power over practice and procedure.

Service of process is governed primarily by Court Rules. Rules 4:4-3 and 6:2-3 control who serves process and what is to be done if service is ineffective. Rules 4:4-4 and 6:2-3 control the manner of service. The aspects of service of process now regulated by Court Rules are appropriately regulated by rule. The Supreme Court has authority over practice and procedure in the courts. *Winberry v. Salisbury*, 5 N.J. 240 (1950) cert. den. 340 U.S. 877. The manner of service of process has been specifically held to be a matter of procedure within the Court's province. *N.J. District Ct. Ass'n, Inc. v. N.J. Supreme Court*, 205 N.J. Super. 582 (Law Div. 1985), *aff'd o.b.* 208 N.J. Super. 527, certif. den. 104 N.J. 386, cert. den. 479 U.S. 1086. Statutes that conflict with the Rules on process have been held invalid. *N.J. District Ct. Ass'n, Inc. v. N.J. Supreme Court*, 205 N.J. Super at 588.

While few of the statutory sections regulating service of process are in conflict with Court Rules on the subject, most of the sections unnecessarily duplicate the rules. These provisions require the sheriff or other person assigned to make prompt service of process and subject the sheriff to liability of amercement, 2A:15-20; allow service on Saturday and Sunday, 15-21 and 15-21.1; require the sheriff to sign the return of process, 15-22; provide that in the event of the death or disability of an officer the court may order a person acting in his place to complete any process already underway, 15-25; and require the sheriff to serve writs of scire facias, 15-39. While other sections neither duplicate nor conflict with court rules, they provide a level of detailed statutory requirement that no longer appears appropriate. See 2A:15-23 which requires the sheriff to maintain a book recording return of process.

A few sections do concern matters that can be the subject of valid legislation. Sections 15-26 through 15-35 provide for substituted service of process on the Secretary of State and the Commissioner of Banking and Insurance. Substituted service is a matter for legislation and court rules allow that service where it is established by statute. *R.* 4:4-4(b)(2). In some respects, even these sections serve no real modern purpose. Other statutes require corporations, banks and insurance companies to designate an agent in this state to accept service of process. The proposal generalizes the current statutes to allow substituted service whenever an agent or address for service is required by statute and service cannot be made there.

Section 2A:15-37 and -38 of the current law makes special provision for service of process on domestic corporations. Section 15-37 authorizes the court to allow service of process on domestic corporations by publication upon submission of an affidavit that service by other means is impossible. This section conflicts with Court Rules which allow publication only in regard to quasi in rem actions; *R.* 4:4-5(c), and which require only one publication. Service by publication is disfavored because it is least calculated and likely to give actual notice. *Boddie v. Connecticut*, 91 Sup. Ct. 780 (1971). Section 15-38 creates a lien on the real property of any

corporation from the time that an order for publication under section 15-37 has been entered. The commission recommends repeal of both sections, 15-37 and 15-38.

The Commission also considered the issue of whether a party to choose to have process served by a private company instead of by the sheriff. At present, unless the court specially appoints someone else, process is served by the sheriff. R. 4:4-3(a). Current statutes seem to assume that service is to be made by the sheriff, but nothing in the statutes actually requires that result. E.g., 2A:15-20, and 15-22. It is the Court Rules that give the sheriff the responsibility for service of process. The Commission takes the position that regulation of service of process should be left to Court Rules. However, the Commission recommends that the Supreme Court consider amending the rules to allow service of process by private parties.

1. Substituted service of process

a. If a business entity, foreign or domestic, is required to register with a state official or agency to transact business in this state and is required to register an address or an agent in this state for the service of process, process in any action in any court of this state directed to the business may be served at the address or on the agent registered,

b. If a business entity, foreign or domestic, is required to register with a state official or agency to transact business in this state and is required to register an address or an agent in this state for the service of process, process in any action in any court of this state directed to the business may be served on the state official or agency, if:

(1) the business entity has failed to register or re-register as required by law; or

(2) the business entity has failed to maintain a registered address or a registered agent in this state for service of process, as required by law.

c. The official or agency upon which substituted service has been made, within two days after service, shall notify the business entity to which the process was directed, by a letter to its registered office, if any, or to any officer of the entity known to the official or agency. A copy of the process or other paper served shall be enclosed with the letter.

d. Service of process as provided in subsection (a) shall be as effective in any action as if the business entity had entered its general appearance in the action.

Source: 2A:15-26; 15-35.

Comment

The proposed section incorporates the elements of the source sections, which relate only to the Secretary of State and the Commissioner of Banking and Insurance. It, however, generalizes the provisions so as to apply to either of the two officers authorized in the existing sections, and to other agencies which have a similar role. This general language in the section authorizing substitute service of process will also make it unnecessary to enact amendments to accommodate changes in the regulatory agencies and their names.

The section provides one way to serve process on business entities. It is not exclusive. Other options for service of process are found in the Court Rules. See, R.4:4-4.

TABLE OF DISPOSITIONS

<i>Section</i>	<i>Disposition</i>	<i>Comment</i>
2A:15-20	deleted	unnecessary; covered by Court Rules.
2A:15-21	deleted	unnecessary in absence of statute prohibiting service on Saturday
2A:15-21.1	deleted	unnecessary in absence of statute prohibiting service on Sunday
2A:15-22	deleted	unnecessary; covered by Court Rules.
2A:15-23	deleted	unnecessary; covered by Court Rules.
2A:15-24	deleted	unnecessary; covered by Evidence Rules.
2A:15-25	deleted	conflicts with N.J.S.A. 2A:9-107
2A:15-26	§1(a)	
2A:15-27	§1(b)	
2A:15-28	§1(c)	
2A:15-29	deleted	unnecessary; see, N.J.S.A. 22A:4:1a
2A:15-30	deleted	unnecessary
2A:15-31	§1(a)	
2A:15-32	§1(c)	
2A:15-33	§1(b)	
2A:15-34	deleted	unnecessary; see, N.J.S.A. 22A:4-3
2A:15-35	deleted	unnecessary
2A:15-36	deleted	unnecessary; covered by Court Rules.
2A:15-37	deleted	unnecessary; covered by Court Rules.
2A:15-38	deleted	unnecessary; covered by Court Rules.
2A:15-39	deleted	unnecessary; covered by Court Rules.