

A Look At Substitute Service In Minnesota

By Scott Gray

Service of summons within the state shall be as follows: Upon an individual by delivering a copy to the individual personally or by leaving a copy at the individual's usual place of abode with some person of suitable age and discretion then residing therein.

Minnesota, unlike some states, allows for most types of legal documents requiring personal service to be served via substitute service. Although I believe it is preferable to serve the process on the person named, and instruct our process servers to make that their primary goal in all circumstances, for proper substitute service to occur, four elements related to the person being served must exist.

First, service must be made at the defendant's usual abode. The Minnesota Supreme Court has established that "usual abode" is the defendant's customary dwelling place or residence. Therefore, in Minnesota, there is no way to legally establish what constitutes someone's usual abode. It is not necessarily the address where they have their driver's license registered, or a property they own or rent, or the address at which they receive mail, or the address they used on their tax return, or any other address other than where they actually reside.

Second, the person served must be of suitable age. Since the premise for allowing substitute service is that person accepting service merely has to act as a conduit to the defendant to reasonably insure that the defendant receives notice, many are surprised to learn that it is generally accepted that a person 14 years of age or older is of suitable age. The question of suitable age is another one of fact rather than law. Although the Supreme Court established that someone 14 years or older is presumptively of suitable age to receive process, it also established that someone under 14 years of age is not presumptively unsuitable to receive process. Consequently, it could be argued that based on the circumstances, a person of any age could possibly be suitable for service to insure that the defendant receives notice.

Third, the person must be of suitable discretion. Suitable discretion can be another moving target. It is generally accepted that discretion is called into question when someone is intellectually disabled, intoxicated or mood altered, or is hostile and or com-

bative and refuses to cooperate with the process of accepting the pleadings. Again, if the presumption of the substitute service is to reasonably insure that the defendant receive notice, it is critical that the process be left with someone with suitable discretion to see to it the pleadings are passed along.

Fourth, the person must reside at the defendant's usual abode. "Residing" is the final moving target of fact not law. The Supreme Court stated that what constitutes residing is to be determined on a case by case basis while considering various factors such as the duration of their presence, their relationship to the defendant, and whether service was reasonably calculated to reach the intended party. As a partial measuring stick, case law has established that service left with a relative staying temporarily with the defendant for 10 days, was suitable to accept service.

I stated earlier that I believe it is preferable to strive for personal service on the actual defendant. Although historically contests of the issue of valid substitute service are infrequent, the fact that in most cases there is no legal means of establishing the elements I've identified, especially in the case of a service related to a statute of limitations where there is no recourse to ineffective service after the statutory time limit has passed, I would recommend strongly that relying solely on substitute service to commence your action be questioned. And, as referenced in earlier articles in this publication, greater scrutiny of service of process has begun and will not only continue but likely to intensify due to increasing contests of mortgage foreclosure actions and the vigilance of the Consumer Financial Protection Board. In fact, a number of our clients have generally adopted the policy of not allowing us to service process via substitute service, and despite the increased cost associated with personal service only, find relative value in doing so when weighed against the potential costs of a disputed substitute service.

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