

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 2289

By: Grau

5
6
7 COMMITTEE SUBSTITUTE

8 An Act relating to private process servers; amending
9 12 O.S. 2011, Section 158.1, which relates to the
10 licensing of private process servers; modifying
11 qualifications for private process server licenses;
12 deleting process for issuing county-specific
13 licenses; modifying identifiers listed on licenses;
14 modifying notice requirements; providing procedure
15 for denying initial license applications; authorizing
16 Attorney General to file certain petition; updating
17 language; directing the Administrative Office of the
18 Courts to establish and maintain statewide registry
19 of private process servers; providing for the
20 promulgation of rules; requiring approval of rules by
21 the Supreme Court; amending 12 O.S. 2011, Section
22 2004, which relates to the Oklahoma Pleading Code;
23 requiring inclusion of certain information on return
24 of service; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2011, Section 158.1, is
amended to read as follows:

Section 158.1 A. Service and return of process in civil cases
may be by an authorized licensed private process server. The
presiding judge of the judicial administrative district in which the

1 county is located, or an associate district judge or district judge
2 of the county as may be designated by the presiding judge, shall be
3 authorized to issue a license to make service of process in civil
4 cases to persons deemed qualified to do so.

5 B. Any person ~~eighteen~~ who is:

6 1. Eighteen (18) years of age or older,~~of;~~

7 2. Of good moral character,~~and found;~~

8 3. Found ethically and mentally fit;

9 4. A resident of the State of Oklahoma for a period of not less
10 than six (6) months; and

11 5. A resident of the county or judicial administrative district
12 in which the application is submitted for a period of not less than
13 thirty (30) days,

14 may obtain a license by filing an application ~~therefor~~ with the
15 court clerk on a verified form to be prescribed by the

16 Administrative Office of the Courts. The form shall require the

17 applicant to identify whether the applicant has had a process server

18 license issued by the State of Oklahoma, any other state, or any

19 county in Oklahoma at any time prior to the current application.

20 C. ~~The applicant filing for a license to serve process only in~~
21 ~~the county issuing such license shall pay a license fee of Thirty-~~

22 ~~five Dollars (\$35.00), and the regular docketing, posting, mailing,~~

23 ~~and filing fees prescribed by law. The license shall contain the~~

24 ~~name, address, a brief description of the licensee, and, at the~~

1 ~~discretion of the district court clerk, a recent photograph of the~~
2 ~~licensee. The license shall state that the licensee is an officer~~
3 ~~of the court only for the purpose of service of process and only~~
4 ~~within the county in which the license is issued. The license shall~~
5 ~~be carried by the licensee while on duty as a private process~~
6 ~~server. At the end of one (1) calendar year from the date of~~
7 ~~issuance of the initial license, the license shall be renewed for a~~
8 ~~period of one (1) year. The license shall be renewed each~~
9 ~~succeeding year. A fee of Five Dollars (\$5.00) shall be charged for~~
10 ~~each license renewal. Upon an annual filing of a certified copy of~~
11 ~~a license issued pursuant to the provisions of this paragraph and~~
12 ~~payment of a filing fee of Twenty-five Dollars (\$25.00) to the court~~
13 ~~clerk of any county within this state, a licensed process server may~~
14 ~~serve process only in that county for the district court having~~
15 ~~jurisdiction for that county.~~

16 ~~D.~~ The applicant filing for a license to serve process anywhere
17 in this state shall pay a license fee of One Hundred Fifty Dollars
18 (\$150.00), and the regular docketing, posting, mailing, and filing
19 fees prescribed by law. The license shall contain the full legal
20 name, address, county in which the license was issued, a brief
21 description of the licensee, and, ~~at the discretion of the district~~
22 ~~court clerk,~~ a recent photograph of the licensee. The license shall
23 state that the licensee is an officer of the court only for the
24 purpose of service of process. The authority of the licensee shall

1 be statewide. The license shall be carried by the licensee while on
2 duty as a private process server. At the end of one (1) calendar
3 year from the date of issuance of the initial license, the license
4 shall be renewed for a period of three (3) years. The license shall
5 be renewed each succeeding three (3) years. A fee of Fifteen
6 Dollars (\$15.00) per renewal shall be charged for each statewide
7 license renewal. A license issued pursuant to this subsection
8 entitles ~~its~~ the holder of the license to serve process in any
9 county in this state.

10 All fees collected pursuant to this section shall be deposited
11 in the court fund.

12 ~~E.~~ D. Upon the filing of an application for a license, the
13 court clerk shall give ~~five (5)~~ thirty (30) days' notice of hearing
14 by causing the notice to be continually posted in the courthouse for
15 thirty (30) days on the website of the county, or be posted in the
16 courthouse, and notice one time by publication in a legal newspaper
17 of the county, as defined in Section 106 of Title 25 of the Oklahoma
18 Statutes, in which the application is filed. A fee for payment of
19 the legal notice shall be collected from the applicant by the court
20 clerk at the time the applicant files for a license and the
21 newspaper shall receive payment from the court clerk upon receipt of
22 the proof of publication affidavit from the newspaper. A copy of
23 the notice shall be mailed to the district attorney, the sheriff,
24 ~~and the chief of police or marshal~~ in the county seat in which the

1 application was filed, and the Oklahoma State Bureau of
2 Investigation and shall contain the name of the applicant and the
3 time and place the presiding judge or the associate district judge
4 or district judge designated by the presiding judge, will act upon
5 the application.

6 ~~F.~~ E. If, at the time of consideration of the application or
7 renewal, there are no protests and the applicant appears qualified,
8 the application for the license shall be granted by the presiding
9 judge or such associate district judge or district judge as is
10 designated by the presiding judge and, upon executing bond running
11 to the State of Oklahoma in the amount of Five Thousand Dollars
12 (\$5,000.00) for faithful performance of his or her duties and filing
13 the bond with the court clerk, the applicant shall be authorized and
14 licensed to serve civil process in ~~the jurisdictions permitted~~
15 ~~according to the type of license that is issued~~ any county in this
16 state. If, at the time of consideration of the application for the
17 license, the presiding judge, associate district judge or district
18 judge as is designated by the presiding judge determines that the
19 applicant does not meet all of the qualifications necessary for a
20 license, the applicant shall be prohibited from reapplying for a
21 license to serve process for a period of not less than one (1) year
22 from the date of denial.

23 ~~G.~~ F. If any citizen of this state files a written protest
24 setting forth objections to the licensing of the applicant, the

1 district court clerk shall so advise the presiding judge or such
2 associate district judge or district judge as is designated by the
3 presiding judge, who shall set a later date for hearing of
4 application and protest. The hearing shall be held within ~~thirty~~
5 ~~(30)~~ sixty (60) days and after notice to all persons known to be
6 interested.

7 H. G. Proof of service of process shall be shown by affidavit
8 as provided for by subsection G of Section 2004 of this title.

9 ~~I. H.~~ H. The district attorney of the county wherein a license
10 authorized under this act has been issued or the Attorney General
11 may file a petition in the district court to revoke the license
12 issued to any licensee, as authorized pursuant to the provisions of
13 this section, alleging the violation by the licensee of any of the
14 provisions of the law. After at least ~~ten (10)~~ thirty (30) days'
15 notice by certified mail to the licensee, the chief or presiding
16 judge, sitting without jury, shall hear the petition and enter an
17 order thereon. If the license is revoked, the licensee shall not be
18 permitted to reapply for a license for a period of five (5) years
19 from the date of revocation. Notwithstanding any other ~~provisions~~
20 provision of this section, any licensee whose license has been
21 revoked one time shall pay the sum of One Thousand Dollars
22 (\$1,000.00) as a renewal fee. If a second revocation occurs, the
23 chief or presiding judge shall not allow an applicant to renew the
24 license.

1 the plaintiff's attorney, if any, otherwise, the plaintiff's
2 address, and the time within which these rules require the defendant
3 to appear and defend, and shall notify the defendant that in case of
4 failure to appear, judgment by default will be rendered against the
5 defendant for the relief demanded in the petition.

6 2. A judgment by default shall not be different in kind from or
7 exceed in amount that prayed for in either the demand for judgment
8 or in cases not sounding in contract in a notice which has been
9 given the party against whom default judgment is sought. Except as
10 to a party against whom a judgment is entered by default, every
11 final judgment shall grant the relief to which the party in whose
12 favor it is rendered is entitled, even if the party has not demanded
13 such relief in his or her pleadings.

14 C. BY WHOM SERVED: PERSON TO BE SERVED.

15 1. SERVICE BY PERSONAL DELIVERY.

16 a. At the election of the plaintiff, process, other than
17 a subpoena, shall be served by a sheriff or deputy
18 sheriff, a person licensed to make service of process
19 in civil cases, or a person specially appointed for
20 that purpose. The court shall freely make special
21 appointments to serve all process, other than a
22 subpoena, under this paragraph.

23 b. A summons to be served by the sheriff or deputy
24 sheriff shall be delivered to the sheriff by the court

1 clerk or an attorney of record for the plaintiff.
2 When a summons, subpoena, or other process is to be
3 served by the sheriff or deputy sheriff of another
4 county, the court clerk shall mail it, together with
5 the voucher of the court clerk for the fees collected
6 for the service, to the sheriff of that county. The
7 sheriff shall deposit the voucher in the Sheriff's
8 Service Fee Account created pursuant to Section 514.1
9 of Title 19 of the Oklahoma Statutes. The sheriff or
10 deputy sheriff shall serve the process in the manner
11 that other process issued out of the court of the
12 sheriff's own county is served. A summons to be
13 served by a person licensed to make service of process
14 in civil cases or by a person specially appointed for
15 that purpose shall be delivered by an attorney of
16 record for the plaintiff to such person.

17 c. Service shall be made as follows:

- 18 (1) upon an individual other than an infant who is
19 less than fifteen (15) years of age or an
20 incompetent person, by delivering a copy of the
21 summons and of the petition personally or by
22 leaving copies thereof at the person's dwelling
23 house or usual place of abode with some person
24 then residing therein who is fifteen (15) years

1 of age or older or by delivering a copy of the
2 summons and of the petition to an agent
3 authorized by appointment or by law to receive
4 service of process,

5 (2) upon an infant who is less than fifteen (15)
6 years of age, by serving the summons and petition
7 personally and upon either of the infant's
8 parents or guardian, or if they cannot be found,
9 then upon the person having the care or control
10 of the infant or with whom the infant lives; and
11 upon an incompetent person by serving the summons
12 and petition personally and upon the incompetent
13 person's guardian,

14 (3) upon a domestic or foreign corporation or upon a
15 partnership or other unincorporated association
16 which is subject to suit under a common name, by
17 delivering a copy of the summons and of the
18 petition to an officer, a managing or general
19 agent, or to any other agent authorized by
20 appointment or by law to receive service of
21 process and, if the agent is one authorized by
22 statute to receive service and the statute so
23 requires, by also mailing a copy to the
24 defendant,

1 (4) upon the United States or an officer or agency
2 thereof in the manner specified by Federal Rule
3 of Civil Procedure 4,

4 (5) upon a state, county, school district, public
5 trust or municipal corporation or other
6 governmental organization thereof subject to
7 suit, by delivering a copy of the summons and of
8 the petition to the officer or individual
9 designated by specific statute; however, if there
10 is no statute, then upon the chief executive
11 officer or a clerk, secretary, or other official
12 whose duty it is to maintain the official records
13 of the organization, and

14 (6) upon an inmate incarcerated in an institution
15 under the jurisdiction and control of the
16 Department of Corrections, by delivering a copy
17 of the summons and of the petition to the warden
18 or superintendent or the designee of the warden
19 or superintendent of the institution where the
20 inmate is housed. It shall be the duty of the
21 receiving warden or superintendent or a designee
22 to promptly deliver the summons and petition to
23 the inmate named therein. The warden or
24 superintendent or his or her designee shall

1 reject service of process for any inmate who is
2 not actually present in said institution.

3 2. SERVICE BY MAIL.

4 a. At the election of the plaintiff, a summons and
5 petition may be served by mail by the plaintiff's
6 attorney, any person authorized to serve process
7 pursuant to subparagraph a of paragraph 1 of this
8 subsection, or by the court clerk upon a defendant of
9 any class referred to in division (1), (3) or (5) of
10 subparagraph c of paragraph 1 of this subsection.

11 Service by mail shall be effective on the date of
12 receipt or if refused, on the date of refusal of the
13 summons and petition by the defendant.

14 b. Service by mail shall be accomplished by mailing a
15 copy of the summons and petition by certified mail,
16 return receipt requested and delivery restricted to
17 the addressee. When there is more than one defendant,
18 the summons and a copy of the petition or order shall
19 be mailed in a separate envelope to each defendant.
20 If the summons is to be served by mail by the court
21 clerk, the court clerk shall enclose the summons and a
22 copy of the petition or order of the court to be
23 served in an envelope, prepared by the plaintiff,
24 addressed to the defendant, or to the resident service

1 agent if one has been appointed. The court clerk
2 shall prepay the postage and mail the envelope to the
3 defendant, or service agent, by certified mail, return
4 receipt requested and delivery restricted to the
5 addressee. The return receipt shall be prepared by
6 the plaintiff. Service by mail to a garnishee shall
7 be accomplished by mailing a copy of the summons and
8 notice by certified mail, return receipt requested,
9 and at the election of the judgment creditor by
10 restricted delivery, to the addressee.

11 c. Service by mail shall not be the basis for the entry
12 of a default or a judgment by default unless the
13 record contains a return receipt showing acceptance by
14 the defendant or a returned envelope showing refusal
15 of the process by the defendant. Acceptance or
16 refusal of service by mail by a person who is fifteen
17 (15) years of age or older who resides at the
18 defendant's dwelling house or usual place of abode
19 shall constitute acceptance or refusal by the party
20 addressed. In the case of an entity described in
21 division (3) of subparagraph c of paragraph 1 of this
22 subsection, acceptance or refusal by any officer or by
23 any employee of the registered office or principal
24 place of business who is authorized to or who

1 regularly receives certified mail shall constitute
2 acceptance or refusal by the party addressed. A
3 return receipt signed at such registered office or
4 principal place of business shall be presumed to have
5 been signed by an employee authorized to receive
6 certified mail. In the case of a state municipal
7 corporation, or other governmental organization
8 thereof subject to suit, acceptance or refusal by an
9 employee of the office of the officials specified in
10 division (5) of subparagraph c of paragraph 1 of this
11 subsection who is authorized to or who regularly
12 receives certified mail shall constitute acceptance or
13 refusal by the party addressed. If delivery of the
14 process is refused, upon the receipt of notice of such
15 refusal and at least ten (10) days before applying for
16 entry of default, the person elected by plaintiff
17 pursuant to subparagraph a of this paragraph to serve
18 the process shall mail to the defendant by first-class
19 mail a copy of the summons and petition and a notice
20 prepared by the plaintiff that despite such refusal
21 the case will proceed and that judgment by default
22 will be rendered against him unless he appears to
23 defend the suit. Any default or judgment by default
24 shall be set aside upon motion of the defendant in the

1 manner prescribed in Section 1031.1 of this title, or
2 upon petition of the defendant in the manner
3 prescribed in Section 1033 of this title if the
4 defendant demonstrates to the court that the return
5 receipt was signed or delivery was refused by an
6 unauthorized person. A petition shall be filed within
7 one (1) year after the defendant has notice of the
8 default or judgment by default but in no event more
9 than two (2) years after the filing of the judgment.

10 3. SERVICE BY PUBLICATION.

11 a. Service of summons upon a named defendant may be made
12 by publication when it is stated in the petition,
13 verified by the plaintiff or the plaintiff's attorney,
14 or in a separate affidavit by the plaintiff or the
15 plaintiff's attorney filed with the court, that with
16 due diligence service cannot be made upon the
17 defendant by any other method.

18 b. Service of summons upon the unknown successors of a
19 named defendant, a named decedent, or a dissolved
20 partnership, corporation, or other association may be
21 made by publication when it is stated in a petition,
22 verified by the plaintiff or the plaintiff's attorney,
23 or in a separate affidavit by the plaintiff or the
24 plaintiff's attorney filed with the court, that the

1 person who verified the petition or the affidavit does
2 not know and with due diligence cannot ascertain the
3 following:

4 (1) whether a person named as defendant is living or
5 dead, and, if dead, the names or whereabouts of
6 the person's successors, if any,

7 (2) the names or whereabouts of the unknown
8 successors, if any, of a named decedent,

9 (3) whether a partnership, corporation, or other
10 association named as a defendant continues to
11 have legal existence or not; or the names or
12 whereabouts of its officers or successors,

13 (4) whether any person designated in a record as a
14 trustee continues to be the trustee; or the names
15 or whereabouts of the successors of the trustee,
16 or

17 (5) the names or whereabouts of the owners or holders
18 of special assessment or improvement bonds, or
19 any other bonds, sewer warrants or tax bills.

20 c. Service pursuant to this paragraph shall be made by
21 publication of a notice, signed by the court clerk,
22 one (1) day a week for three (3) consecutive weeks in
23 a newspaper authorized by law to publish legal notices
24 which is published in the county where the petition is

1 filed. If no newspaper authorized by law to publish
2 legal notices is published in such county, the notice
3 shall be published in some such newspaper of general
4 circulation which is published in an adjoining county.
5 All named parties and their unknown successors who may
6 be served by publication may be included in one
7 notice. The notice shall state the court in which the
8 petition is filed and the names of the plaintiff and
9 the parties served by publication, and shall designate
10 the parties whose unknown successors are being served.
11 The notice shall also state that the named defendants
12 and their unknown successors have been sued and must
13 answer the petition on or before a time to be stated
14 (which shall not be less than forty-one (41) days from
15 the date of the first publication), or judgment, the
16 nature of which shall be stated, will be rendered
17 accordingly. If jurisdiction of the court is based on
18 property, any real property subject to the
19 jurisdiction of the court and any property or debts to
20 be attached or garnished must be described in the
21 notice.

22 (1) When the recovery of money is sought, it is not
23 necessary for the publication notice to state the
24 separate items involved, but the total amount

1 that is claimed must be stated. When interest is
2 claimed, it is not necessary to state the rate of
3 interest, the date from which interest is
4 claimed, or that interest is claimed until the
5 obligation is paid.

6 (2) It is not necessary for the publication notice to
7 state that the judgment will include recovery of
8 costs in order for a judgment following the
9 publication notice to include costs of suit.

10 (3) In an action to quiet title to real property, it
11 is not necessary for the publication notice to
12 state the nature of the claim or interest of
13 either party, and in describing the nature of the
14 judgment that will be rendered should the
15 defendant fail to answer, it is sufficient to
16 state that a decree quieting plaintiff's title to
17 the described property will be entered. It is
18 not necessary to state that a decree forever
19 barring the defendant from asserting any interest
20 in or to the property is sought or will be
21 entered if the defendant does not answer.

22 (4) In an action to foreclose a mortgage, it is
23 sufficient that the publication notice state that
24 if the defendant does not answer, the defendant's

1 interest in the property will be foreclosed. It
2 is not necessary to state that a judgment forever
3 barring the defendant from all right, title,
4 interest, estate, property and equity of
5 redemption in or to said property or any part
6 thereof is requested or will be entered if the
7 defendant does not answer.

8 d. Service by publication is complete when made in the
9 manner and for the time prescribed in subparagraph c
10 of this paragraph. Service by publication shall be
11 proved by the affidavit of any person having knowledge
12 of the publication. No default judgment may be
13 entered on such service until proof of service by
14 publication is filed with and approved by the court.

15 e. Before entry of a default judgment or order against a
16 party who has been served solely by publication under
17 this paragraph, the court shall conduct an inquiry to
18 determine whether the plaintiff, or someone acting in
19 behalf of the plaintiff, made a distinct and
20 meaningful search of all reasonably available sources
21 to ascertain the whereabouts of any named parties who
22 have been served solely by publication under this
23 paragraph. Before entry of a default judgment or
24 order against the unknown successors of a named

1 defendant, a named decedent, or a dissolved
2 partnership, corporation or association, the court
3 shall conduct an inquiry to ascertain whether the
4 requirements described in subparagraph b of this
5 paragraph have been satisfied.

6 f. A party against whom a default judgment or order has
7 been rendered, without other service than by
8 publication in a newspaper, may, at any time within
9 three (3) years after the filing of the judgment or
10 order, have the judgment or order set aside in the
11 manner prescribed in Sections 1031.1 and 1033 of this
12 title. Before the judgment or order is set aside, the
13 applicant shall notify the adverse party of the
14 intention to make an application and shall file a full
15 answer to the petition, pay all costs if the court
16 requires them to be paid, and satisfy the court by
17 affidavit or other evidence that during the pendency
18 of the action the applicant had no actual notice
19 thereof in time to appear in court and make a defense.
20 The title to any property which is the subject of and
21 which passes to a purchaser in good faith by or in
22 consequence of the judgment or order to be opened
23 shall not be affected by any proceedings under this
24 subparagraph. Nor shall proceedings under this

1 subparagraph affect the title of any property sold
2 before judgment under an attachment. The adverse
3 party, on the hearing of an application to open a
4 judgment or order as provided by this subparagraph,
5 shall be allowed to present evidence to show that
6 during the pendency of the action the applicant had
7 notice thereof in time to appear in court and make a
8 defense.

9 g. The term "successors" includes all heirs, executors,
10 administrators, devisees, trustees, and assigns,
11 immediate and remote, of a named individual,
12 partnership, corporation, or association.

13 h. Service outside of the state does not give the court
14 in personal jurisdiction over a defendant who is not
15 subject to the jurisdiction of the courts of this
16 state or who has not, either in person or through an
17 agent, submitted to the jurisdiction of the courts of
18 this state.

19 4. SERVICE ON THE SECRETARY OF STATE.

20 a. Service of process on a domestic or foreign
21 corporation may be made by serving the Secretary of
22 State as the corporation's agent, if:
23
24

1 (1) there is no registered agent for the corporation
2 listed in the records of the Secretary of State;

3 or

4 (2) neither the registered agent nor an officer of
5 the corporation could be found at the registered
6 office of the corporation, when service of
7 process was attempted.

8 b. Before resorting to service on the Secretary of State
9 the plaintiff must have attempted service either in
10 person or by mail on the corporation at:

11 (1) the corporation's last-known address shown on the
12 records of the Franchise Tax Division of the
13 Oklahoma Tax Commission, if any is listed there;
14 and

15 (2) the corporation's last-known address shown on the
16 records of the Secretary of State, if any is
17 listed there; and

18 (3) the corporation's last address known to the
19 plaintiff.

20 If any of these addresses are the same, the plaintiff is
21 not required to attempt service more than once at any
22 address. The plaintiff shall furnish the Secretary of
23 State with a certified copy of the return or returns
24 showing the attempted service.

1 c. Service on the Secretary of State shall be made by
2 filing two (2) copies of the summons and petition with
3 the Secretary of State, notifying the Secretary of
4 State that service is being made pursuant to the
5 provisions of this paragraph, and paying the Secretary
6 of State the fee prescribed in paragraph 7 of
7 subsection A of Section 1142 of Title 18 of the
8 Oklahoma Statutes, which fee shall be taxed as part of
9 the costs of the action, suit or proceeding if the
10 plaintiff shall prevail therein. If a registered
11 agent for the corporation is listed in the records of
12 the Secretary of State, the plaintiff must also
13 furnish a certified copy of the return showing that
14 service on the registered agent has been attempted
15 either in person or by mail, and that neither the
16 registered agent nor an officer of the corporation
17 could be found at the registered office of the
18 corporation.

19 d. Within three (3) working days after receiving the
20 summons and petition, the Secretary of State shall
21 send notice by letter, certified mail, return receipt
22 requested, directed to the corporation at its
23 registered office or the last-known address found in
24 the office of the Secretary of State, or if no address

1 is found there, to the corporation's last-known
2 address provided by the plaintiff. The notice shall
3 enclose a copy of the summons and petition and any
4 other papers served upon the Secretary of State. The
5 corporation shall not be required to serve its answer
6 until forty (40) days after service of the summons and
7 petition on the Secretary of State.

8 e. Before entry of a default judgment or order against a
9 corporation that has been served by serving the
10 Secretary of State as its agent under this paragraph,
11 the court shall determine whether the requirements of
12 this paragraph have been satisfied. A default
13 judgment or order against a corporation that has been
14 served only by service on the Secretary of State may
15 be set aside upon motion of the corporation in the
16 manner prescribed in Section 1031.1 of this title, or
17 upon petition of the corporation in the manner
18 prescribed in Section 1033 of this title, if the
19 corporation demonstrates to the court that it had no
20 actual notice of the action in time to appear and make
21 its defense. A petition shall be filed within one (1)
22 year after the corporation has notice of the default
23 judgment or order but in no event more than two (2)

1 years after the filing of the default judgment or
2 order.

3 f. The Secretary of State shall maintain an alphabetical
4 record of service setting forth the name of the
5 plaintiff and defendant, the title, docket number, and
6 nature of the proceeding in which the process has been
7 served upon the defendant, the fact that service has
8 been effected pursuant to the provisions of this
9 paragraph, the return date thereof, and the date when
10 the service was made. The Secretary of State shall
11 not be required to retain this information for a
12 period longer than five (5) years from receipt of the
13 service of process.

14 g. The provisions of this paragraph shall not apply to a
15 foreign insurance company doing business in this
16 state.

17 5. SERVICE BY ACKNOWLEDGMENT. An acknowledgment on the back of
18 the summons or the voluntary appearance of a defendant is equivalent
19 to service.

20 6. SERVICE BY OTHER METHODS. If service cannot be made by
21 personal delivery or by mail, a defendant of any class referred to
22 in division (1) or (3) of subparagraph c of paragraph 1 of this
23 subsection may be served as provided by court order in any manner
24

1 which is reasonably calculated to give the defendant actual notice
2 of the proceedings and an opportunity to be heard.

3 7. NO SERVICE BY PRISONER. No prisoner in any jail, Department
4 of Corrections facility, private prison, or parolee or probationer
5 under supervision of the Department of Corrections shall be
6 appointed by any court to serve process on any defendant, party or
7 witness.

8 D. SUMMONS AND PETITION. The summons and petition shall be
9 served together. The plaintiff shall furnish the person making
10 service with such copies as are necessary. The failure to serve a
11 copy of the petition with the summons is not a ground for dismissal
12 for insufficiency of service of process, but on motion of the party
13 served, the court may extend the time to answer or otherwise plead.
14 If a summons and petition are served by personal delivery, the
15 person serving the summons shall state on the copy that is left with
16 the person served the date that service is made. This provision is
17 not jurisdictional, but if the failure to comply with it prejudices
18 the party served, the court, on motion of the party served, may
19 extend the time to answer or otherwise plead.

20 E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

21 1. Service of the summons and petition may be made anywhere
22 within this state in the manner provided by subsection C of this
23 section.

24

1 2. When the exercise of jurisdiction is authorized by
2 subsection F of this section, service of the summons and petition
3 may be made outside this state:

4 a. by personal delivery in the manner prescribed for
5 service within this state,

6 b. in the manner prescribed by the law of the place in
7 which the service is made for service in that place in
8 an action in any of its courts of general
9 jurisdiction,

10 c. in the manner prescribed by paragraph 2 of subsection
11 C of this section,

12 d. as directed by the foreign authority in response to a
13 letter rogatory,

14 e. in the manner prescribed by paragraph 3 of subsection
15 C of this section only when permitted by subparagraphs
16 a and b of paragraph 3 of subsection C of this
17 section, or

18 f. as directed by the court.

19 3. Proof of service outside this state may be made in the
20 manner prescribed by subsection G of this section, the order
21 pursuant to which the service is made, or the law of the place in
22 which the service is made for proof of service in an action in any
23 of its courts of general jurisdiction.

1 4. Service outside this state may be made by an individual
2 permitted to make service of process under the law of this state or
3 under the law of the place in which the service is made or who is
4 designated to make service by a court of this state.

5 5. When subsection C of this section requires that in order to
6 effect service one or more designated individuals be served, service
7 outside this state under this section must be made upon the
8 designated individual or individuals.

9 6. a. A court of this state may order service upon any
10 person who is domiciled or can be found within this
11 state of any document issued in connection with a
12 proceeding in a tribunal outside this state. The
13 order may be made upon application of any interested
14 person or in response to a letter rogatory issued by a
15 tribunal outside this state and shall direct the
16 manner of service.

17 b. Service in connection with a proceeding in a tribunal
18 outside this state may be made within this state
19 without an order of court.

20 c. Service under this paragraph does not, of itself,
21 require the recognition or enforcement of an order,
22 judgment, or decree rendered outside this state.
23
24

1 F. ASSERTION OF JURISDICTION. A court of this state may
2 exercise jurisdiction on any basis consistent with the Constitution
3 of this state and the Constitution of the United States.

4 G. RETURN.

5 1. The person serving the process shall make proof of service
6 thereof to the court promptly and in any event within the time
7 during which the person served must respond to the process, but the
8 failure to make proof of service does not affect the validity of the
9 service.

10 2. When process has been served by a sheriff or deputy sheriff
11 and return thereof is filed in the office of the court clerk, a copy
12 of the return shall be sent by the court clerk to the plaintiff's
13 attorney within three (3) days after the return is filed. If
14 service is made by a person other than a sheriff, or deputy sheriff,
15 ~~or the~~ licensed process server, ~~that person~~ shall make affidavit
16 thereof. The return shall set forth the county of issuance, the
17 name of the person served and the date, place, and method of
18 service.

19 3. If service was by mail, the person mailing the summons and
20 petition shall endorse on the copy of the summons or order of the
21 court that is filed in the action the date and place of mailing and
22 the date when service was receipted or service was rejected, and
23 shall attach to the copy of the summons or order a copy of the
24 return receipt or returned envelope, if and when received, showing

1 whether the mailing was accepted, refused, or otherwise returned.
2 If the mailing was refused, the return shall also show the date and
3 place of any subsequent mailing pursuant to paragraph 2 of
4 subsection C of this section. When the summons and petition are
5 mailed by the court clerk, the court clerk shall notify the
6 plaintiff's attorney within three (3) days after receipt of the
7 returned card or envelope showing that the card or envelope has been
8 received.

9 H. AMENDMENT. At any time in its discretion and upon such
10 terms as it deems just, the court may allow any process or proof of
11 service thereof to be amended, unless it clearly appears that
12 material prejudice would result to the substantial rights of the
13 party against whom the process issued.

14 I. SUMMONS: TIME LIMIT FOR SERVICE. If service of process is
15 not made upon a defendant within one hundred eighty (180) days after
16 the filing of the petition and the plaintiff cannot show good cause
17 why such service was not made within that period, the action shall
18 be deemed dismissed as to that defendant without prejudice. The
19 action shall not be dismissed if a summons was served on the
20 defendant within one hundred eighty (180) days after the filing of
21 the petition and a court later holds that the summons or its service
22 was invalid. After a court quashes a summons or its service, a new
23 summons may be served on the defendant within a time specified by
24 the judge. If the new summons is not served within the specified

1 time, the action shall be deemed to have been dismissed without
2 prejudice as to that defendant. This subsection shall not apply
3 with respect to a defendant who has been outside of this state for
4 one hundred eighty (180) days following the filing of the petition.

5 SECTION 3. This act shall become effective January 1, 2013.

6

7 53-2-9852 CJB 02/28/12

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24