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ILLINOIS LAW MANUAL

CHAPTER I CIVIL PROCEDURE

The Rules of Civil Procedure are statutory. They are contained in The Illinois Code of Civil Procedure, 735 ILCS 5/1-101, et seq. Accordingly, the following analysis quotes and paraphrases several of the sections.

A. SERVICE OF PROCESS AND JURISDICTION

All lawsuits begin with the filing of a complaint. 735 ILCS 5/2-201. The clerk will then issue a summons on the request of the plaintiff. The form and content of the summons are provided for in S. Ct. Rule 101. Duplicate summonses are allowed under 735 ILCS 5/2-201(b). If the plaintiff fails to exercise reasonable diligence in obtaining service on the defendant, then the action may be subject to dismissal. See S. Ct. Rule 103(b). If dismissal for lack of due diligence occurs before the running of the statute of limitations, then the dismissal will be without prejudice; if dismissal is after the expiration of the applicable statute of limitations, the dismissal will be with prejudice and the plaintiff cannot sue again or counterclaim on the cause of action stated in the complaint. S. Ct. Rule 103(b).

1. Persons Authorized to Serve Process

Service need not be made by a sheriff of the county in which the service is to be made. 735 ILCS 5/2-202(a). In all counties except Cook, the sheriff may employ civilian personnel to serve process. In addition, in all counties except Cook, process may be served, without special appointment, by a person who is licensed or registered as a private detective under the Private Detective, Private Alarm, Private Security Locksmith Act of 2004 or by a registered employee of a private detective agency certified under the Act. 735 ILCS 5/2-202(a). In all Illinois counties, the court may order service to be made by a private person over 18 years of age and not a party to the action. Id. The process server must endorse his or her return on the summons and file the summons with the court. If service is by a private person, the return can be by affidavit. Id. “Return” is the report back to the court by the process server that he/she has served the summons or attempted to do so. Id.

2. Place of Service

Summons may be served upon defendants wherever they may be found in Illinois by any person authorized to serve process as described above. 735 ILCS 5/2-202(b).

The officer ... or other person attempting service ... [must]:

- (a) identify the sex, race and approximate age of the defendant or other person with whom the summons was left and
- (b) state the place where (whenever possible an exact street address) and the date and time of the day when the summons was left with the defendant or other person.

735 ILCS 5/2-203(b).

Any person who knowingly makes a false statement in this regard is liable in civil contempt. 735 ILCS 5/2-203(c).

Service may also be made on defendants who are not present or who cannot be found in Illinois. These defendants may be served in their state or county of residence. Again, the sheriff or process server must make a return to the Illinois court establishing the particulars of the service of summons in the same manner as required for service within the State of Illinois. 735 ILCS 5/2-208.

3. Service on Individual Defendants

Service of summons may be made directly by the process server handing the summons and complaint to the individual defendant or, in the alternative, by abode service. 735 ILCS 5/2-203(a). Abode service consists of the process server handing the summons and complaint to a member of the defendant's family 13 years of age or older, who regularly resides at the defendant's residence, and the subsequent mailing of the summons and complaint to the defendant at that address. 735 ILCS 5/2-203(a). Abode service is sometimes referred to as substitute service.

4. Service on Corporations

A private corporation may be served by leaving a copy of the process with the registered agent or any officer or agent of the corporation. 735 ILCS 5/2-204. An agent for purposes of service can be almost anyone in the corporation including a clerk, insurance salesperson, typist or receptionist. Megan v. L.G. Foster Co., 1 Ill. App. 3d 1036 (2nd Dist. 1971); United Bank of Loves Park v. Dohm, 115 Ill. App. 3d 286 (2nd Dist. 1983). However, the person must be an agent of the corporation itself and not some other corporation. Further, the person must understand the importance of the document just as with abode service on individuals. Megan v. L.B. Foster Co., 1 Ill. App. 3d 1036 (2nd Dist. 1971).

If the registered agent is unavailable, the Secretary of State is automatically authorized as an agent for the receipt of process. 805 ILCS 5/5.25.

5. Service on Partnership and Partners

A partnership sued in its firm name may be served by leaving a copy of the process with any partner personally or with any agent of the partnership. 735 ILCS 5/2-205(a). When a personal judgment is sought against a known partner for a partnership liability, the partner must be served:

- (a) in any manner provided for service on individuals; or
- (b) by leaving a copy of the summons for him or her with any other partner and mailing a copy of the summons in a sealed envelope with postage prepaid addressed to the partner against whom the judgment is sought at his or her usual place of abode as shown by an affidavit filed in the case.

735 ILCS 5/2-205(b).

Service on a non-resident partner against whom a personal judgment is sought may be made by leaving a copy of the summons with any other partner and mailing as provided above only if the cause of action sued on is a partnership liability arising out of the transaction of business within the State of Illinois. 735 ILCS 5/2-205(b).

6. Service on Voluntary Unincorporated Associations

Service on a voluntary unincorporated association, which is sued in its own name, may be made by leaving a copy of the process with any officer of the association personally or by leaving a copy of the process at the office of the association with an agent of the association. 735 ILCS 5/2-205.1. For the purposes of the Illinois Code of Civil Procedure, “voluntary unincorporated association” means any organization of two or more individuals formed for a common purpose excluding a partnership or corporation. 735 ILCS 5/2-209.1.

7. Service by Publication

Service by publication is allowed in any action affecting property or status within the jurisdiction of the court including an action to obtain the specific performance, reformation or rescission of a contract for the conveyance of land. The plaintiff or his/her attorney must file at the office of the clerk of the court in which the action is pending an affidavit showing that the defendant resides or has gone out of the state or upon due inquiry cannot be found or is concealed within this state so that process cannot be served upon him or her. In addition, the affidavit must state the place of residence of the defendant, if known, or that upon diligent inquiry his or her place of residence cannot be ascertained. Once this affidavit is filed, the clerk will initiate publication in some newspaper published in the county in which the action is pending.

735 ILCS 5/2-206(a).

If there is no newspaper published in that county, then the publication will be in a newspaper published in an adjoining county having a circulation in the county in which the action is pending. Publication must contain notice of the pendency of the action, the title of the court, the title of the case, including the names of the first named plaintiff and the first named defendant, the number of the case, the names of the parties to be served by publication, and the date on or after which default may be entered against such party. The clerk will also, within ten days of the first publication of the notice, send a copy of the notice by mail to each defendant whose place of residence is stated in the affidavit. The certificate of the clerk that he or she has sent a copy is evidence that the mailing has been completed. 735 ILCS 5/2-206. The publication may be made at any time after the suit has been filed and must be made at least once a week for three successive weeks. 735 ILCS 5/2-207.

8. Personal Service Outside the State of Illinois

Personal service outside of the state may be made in like manner as service within the state by any person over 18 years of age who is not a party to the action. No order of the court is required, and an affidavit of the service shall be filed stating the time, manner and place of service. 735 ILCS 5/2-208(b). If the service is upon a citizen or resident of this state or upon a person who has submitted to the jurisdiction of the courts of Illinois, it shall have the same force and effect as personal service of summons would have within Illinois. 735 ILCS 5/2-208(a). No default can be entered until the expiration of at least 30 days after service. 735 ILCS 5/2-208.

9. Acts Submitting Non-residents to Jurisdiction in Illinois

Acts submitting a non-resident person or corporation to jurisdiction of the courts of Illinois are as follows:

- (1) The transaction of any business within the State;
- (2) The commission of a tortious act within the State;
- (3) The ownership, use or possession of any real estate situated within the State;
- (4) Contracting to insure any person, property or risk located within Illinois at the time of contracting;
- (5) With respect to actions of dissolution of marriage, declaration of invalidity of marriage and legal separation, the maintenance in the State of a matrimonial domicile at the time of the cause of action arose or the commission in the State of any act giving rise to the cause of action;
- (6) With respect to actions brought under the Illinois Parentage Act of 1984, as now or hereafter amended [750 ILCS 45/1 et seq.], the performance of an act of sexual intercourse within the State during the possible period of conception;
- (7) The making or performance of any contract or promise substantially connected with this State;
- (8) The performance of sexual intercourse within the State which is claimed to have resulted in the conception of a child who resides in this State;

- (9) The failure to support a child, spouse or former spouse who has continued to reside in this State since the person either formally resided with them in the State or directed them to reside in the State;
- (10) The acquisition of ownership, possession or control of any asset or thing of value present within this State when ownership, possession or control was acquired;
- (11) The breach of any fiduciary duty within the State;
- (12) The performance of duties as a director or officer of a corporation organized under the laws of the State of Illinois or having its principle place of business within the State of Illinois;
- (13) The ownership of an interest in any trust administered within the State of Illinois; or
- (14) The exercise of powers granted under the authority of the State of Illinois as a fiduciary.

735 ILCS 5/2-209(a).

10. The Long Arm Statute

Section 2-209 of the Illinois Code of Civil Procedure is commonly referred to as a “long arm” statute. 735 ILCS 5/2-209. The commission of any one of the activities itemized in Section 9 above will submit a non-resident defendant to the jurisdiction of Illinois courts. In addition to the above, a court in Illinois may exercise jurisdiction in any action arising within or without the state against any person who:

- (1) Is a natural person present within this State when served;
- (2) Is a natural person domiciled or resident within this State when the cause of action arose, the action was commenced, or process was served;
- (3) Is a corporation organized under the laws of the State of Illinois; or
- (4) Is a person or corporation doing business within this State.

735 ILCS 5/2-209(b).

Domicile refers to a place where a person intends to make a permanent home or to return whenever absent. In Re Estate of Banks, 258 Ill. App. 3d 529, 532 (5th Dist. 1994).

11. Default

Judgment by default may be entered for failing to appear or for failure to plead. 735 ILCS 5/2-1301(d). The party seeking a default judgment must file a motion with the court and give proper notice to the other party. Accordingly, the court will then enter a default which it can set aside for 30 days. 735 ILCS 5/2-1301(e). The court must then enter a final judgment, and the defaulting party will have 90 days to appear if given notice of the judgment, or 1 year if they were not given notice. Id. Failure to give notice of the default judgment entry will not impair the order's validity or effect. 735 ILCS 5/2-1302.