

BUSINESS LITIGATION COMMITTEE
FLORIDA BAR BUSINESS LAW SECTION WINTER MEETING
January 18, 2018 @ 9:30 a.m.
MEETING AGENDA

- I. Call Meeting to Order
- II. Approval of Minutes
- III. Subcommittee/Taskforce Updates
 - a. Antitrust & Trade Regulations Subcommittee: Honorable Edward LaRose
 - b. Legislation Overview: Kacy Donlon
 - c. Uniform Commercial Real Estate Receivership Act Taskforce: Amanda Fernandez
 - d. Digital Currency Taskforce: Jude Cooper & Russell Landy
- IV. State/Federal Court Judicial Liaison Committee: Detra Shaw-Wilder
 - a. Introduction of Judges
- V. Committee Liaison Updates
 - a. Inclusion Mentoring & Fellowship
 - b. Pro Bono
 - c. E-discovery
 - d. Membership
 - e. Communications
- VI. Committee on Alternative Dispute Resolution Rules and Policy's proposed rules to the Florida Supreme Court
- VII. New Business
 - a. Amicus Brief re. Chapter 605: Keith Silverstein
 - b. ILS Proposed Bill on Modification of Chapter 48 Permitting Foreign Service of Process
- VIII. Adjourn

A bill to be entitled

An act relating to service of process in a foreign country; adopting a uniform method to serve process in a foreign country; amending s. 48.071; amending s. 48.131; amending 48.161; amending s. 48.194.

Be It Enacted by the Legislature of the State of Florida:

Section 1. 48.197 Service of process in a foreign country.—

(1) As an alternative to any method of service provided in Chapter 48 or 49, Florida Statutes, service of process may be made in a foreign country. If service of process is made in a foreign country on an individual—other than a minor, an incompetent person, or a person who has waived service of process under the Florida Rules of Civil Procedure—a domestic or foreign corporation, or a domestic or foreign partnership or other unincorporated association that is subject to suit under a common name, service of process shall be made:

(a) by any internationally agreed means of service that is reasonably calculated to give notice. Such means may include service authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents or the Inter-American Convention on Letters Rogatory and Additional Protocol;

(b) if there is no internationally agreed means, or if an international agreement allows but does not specify other means of service, by any of the following means, provided such means is reasonably calculated to give notice:

(i) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(ii) as a court or foreign authority of that foreign country directs in response to a letter rogatory or letter of request issued by a court of this state or other domestic authority; or

(iii) unless prohibited by the foreign country's law, by delivering a copy of the summons and complaint to the person to be served personally or by using any form of mail that the clerk addresses and sends to the person to be served and that requires a signed receipt; or

(c) by other means as a court of this state may order—whether such means is authorized by a statute governing service of process in an action in the courts of this state—provided such means is reasonably calculated to give notice and is not otherwise prohibited by international agreement.

(2) Service of process in a foreign country on a minor shall be made by serving the minor's parent, guardian, or legal guardian, if one is appointed, as directed by this section, provided service of process on such parent, guardian, or legal guardian shall take place in a foreign country. Service of process not in a foreign country on the minor's parent, guardian, or legal guardian shall be governed by s. 48.041 or other applicable section. If the court has appointed a guardian ad litem or other person, service of process shall be made in accordance with s. 48.041.

(3) Service of process in a foreign country on an incompetent person shall be made by serving the person who has care or custody of the incompetent person or legal guardian, if one is appointed, as directed by this section, provided service of process on such person or legal guardian shall take place in a foreign country. Service of process not in a foreign country on such person or legal guardian shall be governed by s. 48.042 or other applicable section. If the court has appointed a guardian ad litem or other person, service of process shall be made in accordance with s. 48.042.

(4) A party may move the court for any relief under this section. The court may make any order, issue any letter rogatory or letter of request, or permit a summons to be amended in furtherance of serving process under this section.

Section 2. Section 48.071, Florida Statutes, is amended to read:

48.071 Service on agents of nonresidents doing business in the state.—When any natural person or partnership not residing or having a principal place of business in this state engages in business in this state, process may be served on the person who is in charge of any business in which the defendant is engaged within this state at the time of service, including agents soliciting orders for goods, wares, merchandise or services. Any process so served is as valid as if served personally on the nonresident person or partnership engaging in business in this state in any action against the person or partnership arising out of such business. A copy of such process with a notice of service on the person in charge of such business shall be sent forthwith to the nonresident person or partnership by registered mail, ~~or~~ certified mail return receipt requested, or by use of a commercial firm regularly engaged in the business of document or package delivery. The plaintiff or his or her attorney shall prepare ~~An~~ affidavit of compliance with this section, which shall be filed before the return day or within such further time as the court may allow.

Section 3. Section 48.131, Florida Statutes, is amended to read:

48.131 Service on alien property custodian.—In every action or proceeding in any court or before any administrative board involving real, personal, or mixed property, or any interest therein, when service of process or notice is required or directed to be made upon any person, firm or corporation located, or believed to be located, within any country or territory in the possession of or under the control of any country between which and the United States a state of war exists, in addition to the giving of the notice or service of process, a copy of the notice or process shall be sent by registered mail, ~~or~~ certified mail, or by use of a commercial firm regularly engaged in the business of document or package delivery to the alien property custodian, addressed to him or her at Washington, District of Columbia; but failure to mail a copy of the notice or process to the alien property custodian does not invalidate the action or proceeding.

Section 4. Subsection (1) of section 48.161, Florida Statutes, is amended to read:

48.161 Method of substituted service on nonresident.—

(1) When authorized by law, substituted service of process on a nonresident or a person who conceals his or her whereabouts by serving a public officer designated by law shall be made by leaving a copy of the process with a fee of \$8.75 with the public officer or in his or her office or by mailing the copies by certified mail to the public officer with the fee. The service is sufficient service on a defendant who has appointed a public officer as his or her agent for the service of process. Notice of service and a copy of the process shall be sent forthwith by registered mail, ~~or~~ certified mail, or by use of a commercial firm regularly engaged in the business of document or package delivery by the plaintiff or his or her attorney to the defendant, ~~and the defendant's return receipt and the affidavit of the plaintiff or his or her attorney~~ The plaintiff or his or her

attorney shall prepare an affidavit of compliance, which shall be filed on or before the return day of the process or within such time as the court allows, ~~or~~ As an alternative to mailing, the notice of service and copy of process may also be served on the defendant personally. ~~shall be served on the defendant, i~~ If found within the state, the defendant shall be served in accordance with s. 48.031 by an officer authorized to serve legal process, or i If found in another state, territory, or commonwealth of the United States, without the state, by a sheriff or a deputy sheriff of any county of this state or any duly constituted public officer qualified to serve like process in the state or jurisdiction where the defendant is found, the defendant shall be served in accordance with s. 48.194. If found in a foreign country, the defendant shall be served in accordance with 48.197. The officer's return showing service shall be filed on or before the return day of the process or within such time as the court allows. The fee paid by the plaintiff to the public officer shall be taxed as cost if he or she prevails in the action. The public officer shall keep a record of all process served on him or her showing the day and hour of service.

Section 5. Subsections (1) and (2) of section 48.194, Florida Statutes, are amended to read:

48.194 Personal service ~~outside state~~ in another state, territory, or commonwealth of the United States.—

(1) Except as otherwise provided herein, service of process ~~on persons made outside of this state~~ in another state, territory, or commonwealth of the United States shall be made in the same manner as service within this state by any officer authorized to serve process in the state where service shall be made the person is served. No order of court is required. An affidavit of the officer shall be filed, stating the time, manner, and place of service. The court may consider the affidavit, or any other competent evidence, in determining whether service has been properly made. ~~Service of process on persons outside the United States may be required to conform to the provisions of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.~~

(2) Where in rem or quasi in rem relief is sought in a foreclosure proceeding as defined by s. 702.09, service of process on a person ~~outside of this state~~ in another state, territory, or commonwealth of the United States where the address of the person to be served is known may be made by registered mail as follows:

(a) The party's attorney or the party, if the party is not represented by an attorney, shall place a copy of the original process and the complaint, petition, or other initial pleading or paper and, if applicable, the order to show cause issued pursuant to s. 702.10 in a sealed envelope with adequate postage addressed to the person to be served.

(b) The envelope shall be placed in the mail as registered mail.

(c) Service under this subsection shall be considered obtained upon the signing of the return receipt by the person allowed to be served by law.