**LAW 102 – Civil Procedure**

**CLASS 16: SERVICE IN FEDERAL COURT, SERVICE IN STATE COURT/SERVICE AND PERSONAL JURISDICTION, VENUE**

September 25, 2017

Reading

Service in Federal Court: GPR 341-348 | Fed. R. Civ. P. 3; 4(a)-(b); 4(c)(1); 4(c)(2); 4(e); 4(h); 4(l)-(m); 77(a) |Service in State Court/Service and PJ GPR 348-63 | Venue GPR 367-84

PERSONAL JURISDICTION IN STATE COURT



**Notice/Service**

Due process restrictions on notice

* Constitutional restrictions on notice and service
* Same for federal and state courts
* Question is just about what you would do if you *wanted* someone to receive notice but were sensitive to cost

*“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”*

* Autonomy and accuracy sometimes sacrificed for efficiency. Can’t always reasonably give *every* interested party sufficient notice – they are bound even though they did not get their day in court (contrary to their autonomy) and the default judgment may not be correct (contrary to accuracy)

*Mullane v. Central Hanover Bank & Trust Co.* (U.S. 1950)

Taking into account:

* Value of interest of party to get notice
* Possibilities that alternative methods would increase likelihood of actual notice compared to method used
* Cost of alternative methods
* Is someone else vindicating party’s interests?

 - At least accuracy somewhat satisfied when someone other than the person bound is protecting her interests – even though autonomy is not satisfiued because the person does not get their day in court

If there’s a method of service, also want to ask if it’s constitutionally adequate.

**Service**

Waiver of service of summons

* Send to D
* D must return within 30 days
* If defendant doesn’t submit the waiver, then has to pay for actual service
* If defendant does submit, gets 60 days to answer vs. usual 21 days.
* Waiver can serve as proof of service. When you get it back and file it, that counts as time of service.
	+ Danger to doing waivers: statute of limitations often depends on time of service. Defendant could take his time.

[here I will concentrate on the rules for service for actions filed in ***federal court*** concerning defendants that are ***individuals***, ***corporations, and unincorporated associations*** when service is effectuated ***in the United States*** - ignoring:
service in other countries
service when the United States, a state, or a local government is the defendant
service on infants or incompetent persons]

Service when defendant is an individual

Who can serve:

**4(c) Service.**
…
 (2) By Whom. Any person who is at least 18 years old and not a party may serve a summons and complaint.

How you can serve:

**4(e) Serving an Individual Within a Judicial District of the United States.**
Unless federal law provides otherwise, an individual — other than a minor, an incompetent person, or a person whose waiver has been filed — may be served in a judicial district of the United States by:

1. following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or…

(2) doing any of the following:
    (A) delivering a copy of the summons and of the complaint to the individual personally;
    (B) leaving a copy of each at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
    (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

What if Mass. or Va. law had said a party may serve?

* Not going to make a difference. State law only relevant for *how* to serve.

Mass is actuyaly mnore restrictive on who may serve…

Mass. R. Civ. P. 4(c) By Whom Served.
Except as otherwise permitted by paragraph (h) of this rule, service of all process shall be made by a sheriff, by his deputy, or by a special sheriff; by any other person duly authorized by law; by some person specially appointed by the court for that purpose...

Distinction:
- state law applying in federal court
- federal courts’ borrowing state law (incorporating the state standard into federal law)

* 4(e)(1) incorporates state law

Why does R 4(e) refer to state law?

* People are more familiar with state law. Also, state law may have detailed methods federal courts can draw from (e.g. substituted methods for service)

**HYPO**:

2) P files an action against D in the E.D. Va. for violation of federal law.
- D resides in Boston, Massachusetts and has a summer home in Martha’s Vineyard.
- P waits 3 months after filing to have a process server deliver a copy of the summons and complaint to D at his summer home.
- D appears in the E.D. Va. and makes a motion to dismiss for insufficiency of service of process.
- What result?

* + **In hand service.** Doesn’t matter *where* defendant is served. Also in keeping with language of 4(e)(2)(A).
	+ **But** proper service also depends on whether D was served within 90 days:

4(m) Time Limit for Service.
If a defendant is not served within 90 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period…

**HYPO**:

3) P Corp. files an action against D in the E.D. Va. for violation of federal law

- D resides in Boston, Massachusetts and has a summer home in Martha’s Vineyard

- P Corp. has an employee deliver a copy of the summons and complaint to D at his summer home
- D appears in the E.D. Va. and makes a motion to dismiss for insufficiency of service of process

- What result?

* + Is this someone who can serve? Is an employee of a party considered a party?

4(c) Service.
…
 (2) By Whom. Any person who is at least 18 years old and not a party may serve a summons and complaint.

How to answer this question?

* Theory 1: no one working for corp is a party, even the CEO
	+ This is a problem because could have worry about CEO falsifying affidavit
* Theory 2: everyone working for corp is a party.
	+ Maybe too restrictive?
	+ Perhaps a corp may want to have an employee as the regular process server – should that really be forbidden?

 Plain language of 4(c)(2) does seem to answer. Look to purposes of 4(c)(2)?

* Why can’t a party serve? If party serves, may be too tempted to falsify affidavit.
* Where to draw the line when you have a corp. as a plaintiff? Employees have a financial interest in the company. Maybe exclude all employees?
* Maybe use rule for who gets service when D is a corp to answer the question of who may not serve when P is a corp
* What human being would you normally give service to if suing corp? FRCP4(h) Officer, manager, etc.
* One solution: only people who can receive service are the ones who should be prohibited to serve

**HYPO**:

4) P files an action against D in the E.D. Va. for violation of federal law

- D resides in Boston, Massachusetts and has a summer home in Martha’s Vineyard

- P has his brother leave a copy of the summons and complaint with D’s 16-year-old daughter who is staying for the summer at his summer home

- D appears in the E.D. Va. and makes a motion to dismiss for insufficiency of service of process. What result?

* + Not personal service. Not usual place of abode.
	+ Daughter old enough? Don’t know. Not mentioned in FRCP, flexible standard.

“suitable age and discretion”
16 years is generally considered OK

Either way, she also doesn’t reside there.

* + Brother not a party, so he’s ok to serve.
	+ BUT must also look to state law, because of FRCP 4(e)(1)
	+ Won’t work…

**Mass. R. Civ. P. 4(d) Summons: Personal Service Within the Commonwealth.**…Service shall be made as follows:
(1) Upon an individual by delivering a copy of the summons and of the complaint to him personally; or by leaving copies thereof at his last and usual place of abode; or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by statute to receive service of process, provided that any further notice required by such statute be given….

**Va.Code § 8.01-296**
**MANNER OF SERVING PROCESS UPON NATURAL PERSONS.**
A. In any action at law or in equity or any other civil proceeding in any court, process, for which no particular mode of service is prescribed, may be served upon natural persons as follows:
    1.         By delivering a copy thereof in writing to the party in person; or

 By substituted service in the following manner:
        a.         If the party to be served is not found at his usual place of abode, by delivering a copy of such process and giving information of its purport to any person found there, who is a member of his family, other than a temporary sojourner or guest, and who is of the age of sixteen years or older; or
        b.         If such service cannot be effected under subdivision 2 a, then by posting a copy of such process at the front door or at such other door as appears to be the main entrance of such place of abode…

**HYPO**:

What if P’s brother had knocked at the door of D’s home in Boston and finding no one there had left a copy of the summons and complaint attached to D’s front door?

* Ok according to MA statute to leave at the door. However, MA requires that a sheriff serve.
* Must you use a sheriff?
* No (says Green) – that concerns who may serve not how to serve

**HYPO**:

5) P files an action against D in the E.D. Va. for violation of federal law

- P serves D in accordance with Fed. R. Civ. P. 4

- D files a counterclaim against P and serves P by mailing a copy of the counterclaim to P’s attorney

- P appears in the E.D. Va. and makes a motion to dismiss the counterclaim for insufficiency of service of process. What result?

* + Once all parties are aware they are part of a lawsuit, more generous rules apply for delivering subsequent materials (Rule 5 – mostly done electronically).
	+ *Side note: Lawyer not an agent for service of process. How would you know if that lawyer was even your lawyer for the lawsuit?*

Serving corporations or unincorporated associations

(h) Serving a Corporation, Partnership, or Association.
…must be served:
(1) in a judicial district of the United States:
    (A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or
    (B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and — if the agent is one authorized by statute and the statute so requires — by also mailing a copy of each to the defendant...

* *4(h)(1)(B) mail as well as serve on agent because agent under no obligation to tell corporation. Must satisfy Mullane.*

**HYPO**:

1) P files an action against the D Corp. in the E.D. Va. for violation of federal law.
- P serves the D Corp. by having a process server leave a copy of the summons and complaint with a foreman at a D. Corp. plant in Pa.
- The D. Corp. appears in the E.D. Va. and makes a motion to dismiss the complaint for insufficiency of service of process. What result?

* + Foreman is not a manager or general agent of D Corp…?
	+ Why inappropriate? Must make sure you give to an individual who will apprise the corporation of the lawsuit.
	+ Best person to serve: chief legal officer/general counsel.
	+ BUT still need to check state law: might be ok under PA/VA state law
	+ This is because of 4(h)(1)(A) which says that service of corp or unincorporated assn in the manner prescribed by Rule 4(e)(1) for serving an individual is OK
		- NOTE: this means you look to state law on service of corp or unincorporated assn not state law on serve on human being
	+ If PA says it’s ok, still need to ask if it’s constitutional. Green worries that doesn’t satisfy *Mullane*…?

**HYPO**:

2) P files an action against the D Corp. in the E.D. Va. for violation of federal law

P serves D by having his lawyer leave a copy of the summons and complaint at house of the CEO of the D. Corp. in Pennsylvania with his 18-year-old son

the D. Corp. appears in the E.D. Va. and makes a motion to dismiss the complaint for insufficiency of service of process

what result?

* + P’s lawyer is not a party and so can serve
	+ 4(e)(2)(a) what does “delivery” mean? Left out “personally” – language used for service of an individual.
	+ Some courts have held tht in hand service not necessary for delivery.
	+ Secretary of CEO would be ok - would be *delivering* it to CEO.
	+ This is still an open question. Why would this situation be problematic? Probably not answering purpose of the important rule: **making sure it gets to someone who will apprise the corp. of the lawsuit.** (i.e. CEO’s son might not be as likely to deliver to his father if he just saw that corp. was being sued).
	+ NOTE: must still look to see if it is allowed under state law

Substituted service under state law

* Court approves alternative methods of service.
* State laws may have detailed methods other jurisdictions can draw from

*Baidoo v. Blood-Dzraku (NY Sup. Ct. 2015)*

* Court allowed service through facebook

4(e) Serving an Individual Within a Judicial District of the United States.
Unless federal law provides otherwise, an individual — other than a minor, an incompetent person, or a person whose waiver has been filed — may be served in a judicial district of the United States by

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or…

Service without Notice

* If service was proper but you didn’t find out and so defaulted, the judgment is valid, but you can sometimes get it set aside – you go to the rendering court
* Glannon wrongly suggests you always can get judgment set aside

**Rule 60. Relief from a Judgment or Order**…
 (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
(1) mistake, inadvertence, **surprise**, or excusable neglect;
(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)
(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
**(4) the judgment is void;**(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
(6) any other reason that justifies relief.
(c) Timing and Effect of the Motion.
(1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

* Judgment not always can be set aside.
* If service was adequate, then you have to appeal to surprise.
* You have one year before you are bound by judgment.

Service and Personal Jurisdiction

* Important to distinguish.

Venue in Federal Court

Why does venue exist?

* Restrict litigation to districts that are convenient.

What to remember about 28 USC 1391

* Statutory, not a constitutional issue
* About federal districts, not states
* Applicable only in federal court system
* Rough measure of convenience



Sec. 1391. - Venue generally
(b) Venue in general.--A civil action may be brought in--
(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

*(residence of human being = domicile for purposes of venue)*

(c) Residency.--For all venue purposes—

(1) a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled;

**HYPO**:

P (San. Fran. – N.D. Cal.) sues D1 (NYC – S.D.N.Y.) & D2 (Buffalo – W.D.N.Y.)
Suit is under 42 U.S.C. § 1983 concerning an allegedly unlawful arrest that occurred in an airport in NJ (D.N.J.)

* S.D.N.Y., W.D.N.Y., and D.N.J.
* SMJ? Yes, arises from federal action.