

HOUSE BILL 596

EXHIBIT 1
DATE 2/15/05
HB 596

Sub-service on second attempt or subsequent attempt

I have been a process server for 19 years. The purpose of this bill is to expedite justice, to save both a plaintiff and debtor additional costs and fees that they can't afford, and to make an officer or process server more efficient due to huge case loads. It will also make the profession safer. All too often when we go to serve a truck driver who is only home five days a month, his wife always answers the door. We cannot under the current law serve her. As a result we make 12 attempts incurring more mileage and attempt costs to finally serve him. This new bill would let us sub-serve the wife and she could forward the information onto her husband so that he could act on it. This new bill would also allow us to serve an eviction notice to any co-resident other than the person named on the lease to forward to such person. This would expedite the eviction for the plaintiffs for non-payment of rent etc. Places of employment for process servers can also be difficult for service of process. They sometimes deny you access to the employee or out of privacy will not give us a work schedule so that we can affect service. Sometimes they will tell us that he or she is on a job site in West Yellowstone or Big Sky. As a result we have to make several attempts to these places incurring time and mileage costs that either the plaintiff or debtor may have to incur. Under this bill we will be able to serve process at the defendant's place of employment and then when he or she returns to the workplace they may receive the papers. Montana is one of the last states that require personal service of process. This legislation is fashioned after states such as California, Colorado, Washington D.C., Missouri and Nevada just to name a few. Copies of their statutes are attached. This legislation will also help the safety of the process server. Instead of attempting to serve the truck driver 10 times and upsetting his wife, as we cannot divulge the contents of the service to her by law, we may simply serve her. In fact one Bozeman process server was held to the ground at by a father wielding a 12-gauge shotgun because he was trying to serve his daughter on numerous attempts.

Under this new law the process server could have simply given the father the papers on the second attempt, and would have been gone. As you can see a process server making numerous attempts on a person can annoy them, put them on the defensive or when they get tipped off the defendant will avoid service altogether. I was nearly run over by a defendant's car when he was tipped that I had made numerous attempts to serve him. This bill will reduce these dangers significantly. This bill only applies to monetary summons and complaints, and eviction notices and will not affect divorce papers or temporary restraining orders which have to be personally served for obvious reasons.

The second part of this bill deals with a Writ of Execution. The writ can be a demand for money signed by a judge for a financial institution. Too often when the funds are readily available the bank or financial institution takes 10 or more days to relinquish the funds. This bill will help us provide the requested funds to be transferred in a more timely manner to the plaintiff who is deserving of such.

CALIFORNIA
§ 415.20

(a) In lieu of personal delivery of a copy of the summons and of the complaint to the person to be served as specified in section 416.10, 416.20, 416.30, 416.40, or 416.50, a summons may be served by leaving a copy of the summons and of the complaint during usual office hours in his or her office with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served at the place where a copy of the summons and of the complaint were left. Service of a summons in this manner is deemed complete on the 10th day after such mailing.

(b) If a copy of the summons and of the complaint cannot with reasonable diligence be personally delivered to the person to be served as specified in section 416.60, 416.70, 416.80, or 416.90, a summons may be served by leaving a copy of the summons and of the complaint at such person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served at the place where a copy of the summons and of the complaint were left. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

STATE LAW.txt
(Amended by Stats. 1989, Ch. 1416, Sec. 15.)

COLORADO
Rule 4. Process.

(1) Upon a natural person over the age of eighteen years by delivering a copy or copies thereof to the person, or by leaving a copy or copies thereof at the person's usual place of abode, with any person over the

age of eighteen years who is a member of the person's family, or at the person's usual place of business, with the person's secretary, bookkeeper, manager, or chief clerk; or by delivering a copy to an agent authorized by appointment or by law to receive service of process;

(2) Upon a natural person, between the ages of thirteen years and eighteen years, by delivering a copy thereof to the person and another copy thereof to the person's father, mother, or guardian, or if there be none in the state, then by delivering a copy thereof to any person in whose care or control the person may be; or with whom the person resides, or in whose service the person is employed; and upon a natural person under the age of thirteen years by delivering a copy to the person's father, mother, or guardian, or if there be none in the state, then by delivering a copy thereof

to the person in whose care or control the person may be.

Washington DC
Rule 4. Summons.

(2) by delivering a copy of the summons, complaint and initial order

to the individual personally or by leaving copies thereof at the individual's

dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons, complaint and initial order to an agent authorized by appointment or by law

to receive service of process.

MISSOURI
RULE 54.13 PERSONAL SERVICE WITHIN THE STATE

(b) How and on whom Made. Personal service within the state shall be

made as follows:

(1) On Individual. Upon an individual, including an infant or incompetent person not having a legally appointed guardian, by delivering a copy of the summons and petition personally to the individual or by leaving a copy of the summons and petition at the individual's dwelling house or usual place of abode with some person of the individual's family over the age of fifteen years, or by delivering a copy of the summons and petition to an agent authorized by appointment or required by law to receive service of process.

NEVADA
Rule 4. Process

(6) In all other cases to the defendant personally, or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.