

To: House Committee on Judiciary
From: Beth Novotny and Teri Corsones
Date: April 16, 2020
Re: Service of Process Matters

Thank you for the opportunity to comment on service of process matters during the state of emergency. The topic has come up in in three contexts. Each involved bar representatives comprised of the VBA Section and Division Chairs and the County Bar Association Presidents, with whom we've held a phone conference each week since March 25. Much of the discussions during the calls concern questions regarding the Supreme Court's Administrative Order 49 that was issued following Governor Scott's Stay at Home order. With respect to personal service, three different proposals regarding service have been discussed.

The first involved the question of what to do about civil actions whose statute of limitations would otherwise expire during the duration of the emergency order. Because much litigation work, including service of process of the summons and complaint on the defendant or defendants, involves in-person contact, the prohibition against in-person contact under the Stay at Home order posed a distinct challenge. In collaboration with the Vermont Attorneys for Justice and Judge Grearson, proposed language was presented to the bar group and consensus was reached. The consensus is reflected in section 6 of S.114 that House Judiciary reviewed on April 9. The bar group supports section 6 of H. 114.

The second involved the question of service of court documents after a lawsuit has commenced. Justice Robinson asked the bar group to review a proposal that would require attorneys to email copies of court filings to other attorneys, versus paper mailing them. Attorneys could also email copies of court filings to pro se litigants, as long as the pro se litigant was agreeable. The bar group provided feedback and the Court ultimately recently amended paragraph 6 of AO 49 to implement the proposal.

The third involved service of process to commence an action. This type of service is usually accomplished through sheriffs or constables personally serving court papers by handing them to the receiving party. Out of concern for the health and safety of both process servers and recipients of process during the prohibition against in-person contacts, the bar group proposed that service of process would be deemed effective if it is sent by registered or certified mail, return receipt requested, plus first class mail, and also by email if the recipient's email address can be reasonably ascertained. The proposal included a companion amendment to the default judgment rule that no judgment of default would be entered unless the movant established that the motion for default judgment was served in the alternative manner, as well as by a tack order and a claim or right to relief by evidence satisfactory to the court.

The Civil Rules Committee reviewed the proposal and ultimately preferred an alternative a 90-day delay of all deadlines for personal service. Committee members felt that the service by mail alternative would create many disputes over whether a defendant actually received the process. They also were concerned about the in-person contact at the post office if a litigant had to go to the post office to receive certified or registered pieces of mail

It's my understanding that the Court is currently considering an amendment to AO 49 that will result in a 90 day delay of deadlines for personal service. The bar group will be happy to comment on any proposals along those lines when a proposal is presented. We hope that this overview is helpful