

**RESOLUTION 08-09-04**

**DIGEST**

Subpoenas: Service On Persons Living In Gated Communities

Amends Code of Civil Procedure section 415.21 to provide for service of a subpoena in the same manner as service of summons in gated communities.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 415.21 to provide for service of a subpoena in the same manner as service of summons in gated communities. This resolution should be approved in principle so that sheriffs, marshals and registered process servers have access to gated communities when a subpoena needs to be served.

It should make no difference whether it is a summons and complaint or a subpoena that is being attempted to be served. A person should not be able to avoid service because he or she lives in a gated community or a security building with a doorman.

**TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 415.21, to read as follows:

- 1     § 415.21
- 2             (a) Notwithstanding any other provision of law, any person shall be granted
- 3     access to a gated community for a reasonable period of time for the purpose of performing
- 4     lawful service of process or service of a subpoena, upon identifying to the guard the person
- 5     or persons to be served, and upon displaying a current driver’s license or other
- 6     identification, and one of the following:
- 7             (1) A badge or other confirmation that the individual is acting in his or her
- 8     capacity as a representative of a county sheriff or marshal.
- 9             (2) Evidence of current registration as a process server pursuant to Chapter 16
- 10   (commencing with Section 22350) of Division 8 of the Business and Professions Code.
- 11             (b) This section shall only apply to a gated community which is staffed at the time
- 12   service of process is attempted by a guard or other security personnel assigned to control
- 13   access to the community.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Santa Barbara County Bar Association

## STATEMENT OF REASONS

Existing Law: Requires the guard of a gated community to allow sheriffs, marshals and registered process servers access to the gated community “for a reasonable period of time for purpose of performing lawful service of process . . . .” Existing law does not, however, require that similar access be given to such persons for the service of a subpoena to compel testimony at a deposition, hearing or trial.

This Resolution: Would amend Code of Civil Procedure section 415.21 to require guards of gated communities to allow law enforcement officials and registered process servers access to such communities for a reasonable period of time for the purpose of serving a subpoena to compel testimony at a deposition, hearing or trial.

The Problem: Although Code of Civil Procedure section 415.21 requires that law enforcement officials and registered process servers be given access to gated communities in order to serve summons, no similar provision exists for the service of a subpoena to compel testimony at a deposition, hearing or trial. This omission should be cured because no person should be able to evade lawful service of a subpoena by virtue of their ability to live in a gated community. As the Fourth District stated in *Bein v. Brechtrl-Jochim Group, Inc.* (1992) 6 Cal.App.4th 1387, 1393 [8 Cal.Rptr.2d 351], “[l]itigants have the right to choose their abodes; they do not have the right to control who may sue or serve them by denying them physical access.” Individuals who live in gated communities should not be able to evade service of a subpoena by denying law enforcement officials or register process servers access to their residences.

## IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

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