

## RESOLUTION 07-05-2007

### DIGEST

#### Foreign Corporations: Service of Process

Amends Code of Civil Procedure section 415.30 to allow the agent of a foreign corporation to be served process by mail at a post office address.

### RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

#### History:

No similar resolutions found.

#### Reasons

This resolution amends Code of Civil Procedure section 415.30 to allow the agent of a foreign corporation to be served process by mail at a post office address. This resolution should be disapproved because it fails to completely close the loophole that is sought to be corrected.

This resolution would permit service to be completed on a registered agent of a foreign corporation who lists its address as a post office address by mail to that post office address with return receipt requested, in lieu of a notice and acknowledgement of receipt as is presently required. What is not considered, however, is the consequence of a failure or refusal by the agent to provide a return receipt. If the agent fails or refuses to provide a return receipt, service would not be effective.

It may be that good and sufficient reasons exist for prohibiting substituted service by mailing to a post office address. Also, in the case of a foreign corporation that elects to use a registered agent with such an address, perhaps service ought to be permitted at the address chosen by such corporation whether or not a return receipt is provided. Also, Corporations Code section 1505 requires a registered agent to have a physical address within the state. That section would have to be amended as well for this resolution to achieve its intended result.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Association recommend that legislation be sponsored to amend Code of Civil Procedure section 415.30 to read as follows:

- 1 §415.30
- 2 (a) A summons may be served by mail as provided in this section. A copy of the
- 3 summons and of the complaint shall be mailed (by first-class mail or airmail, postage
- 4 prepaid) to the person to be served, together with two copies of the notice and
- 5 acknowledgment provided for in subdivision (b) and a return envelope, postage prepaid,
- 6 addressed to the sender.
- 7 (b) The notice specified in subdivision (a) shall be in substantially the following
- 8 form:

9 (Title of court and cause, with action number, to be  
10 inserted by the sender prior to mailing)

11  
12 NOTICE

13  
14 To: (Here state the name of the person to be served.)

15 This summons is served pursuant to Section 415.30 of the California Code of Civil  
16 Procedure. Failure to complete this form and return it to the sender within 20 days may  
17 subject you (or the party on whose behalf you are being served) to liability for the payment  
18 of any expenses incurred in serving a summons upon you in any other manner permitted by  
19 law. If you are served on behalf of a corporation, unincorporated association (including a  
20 partnership), or other entity, this form must be signed in the name of such entity by you or  
21 by a person authorized to receive service of process on behalf of such entity. In all other  
22 cases, this form must be signed by you personally or by a person authorized by you to  
23 acknowledge receipt of summons. Section 415.30 provides that this summons is deemed  
24 served on the date of execution of an acknowledgment of receipt of summons.

25  
26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 Signature of sender

29  
30 ACKNOWLEDGMENT OF RECEIPT OF SUMMONS

31  
32 This acknowledges receipt on (insert date) of a copy of the summons and of the  
33 complaint at (insert address).

34  
35 Date: \_\_\_\_\_  
36 (Date of this acknowledgment is executed)

37  
38 \_\_\_\_\_  
39 (c) Service of a summons pursuant to this section is deemed complete on the date a  
40 written acknowledgment of receipt of summons is executed, if such acknowledgment  
41 thereafter is returned to the sender.

42 (d) If the person to whom a copy of the summons and of the complaint are mailed  
43 pursuant to this section fails to complete and return the acknowledgment form set forth in  
44 subdivision (b) within 20 days from the date of such mailing, the party to whom the  
45 summons was mailed shall be liable for reasonable expenses thereafter incurred in serving or  
46 attempting to serve the party by another method permitted by this chapter, and, except for  
47 good cause shown, the court in which the action is pending, upon motion, with or without  
48 notice, shall award the party such expenses whether or not he is otherwise entitled to recover  
49 his costs in the action.

50 (e) A notice or acknowledgment of receipt in form approved by the Judicial Council  
51 is deemed to comply with this section.

52 (f) If a corporation doing business in this state registers with the Secretary of State  
53 as having an agent for service of process with a post office box the summons and complaint

54 may be served by sending a copy of the summons and of the complaint to the registered  
55 agent for service of process pursuant to Section 416.10, subdivision (a) at the post office box  
56 by first-class mail, postage prepaid, requiring a return receipt without the need for a notice  
57 of acknowledgement required under this section. Service of the summons and of the  
58 complaint by this form of mail is deemed complete on the 10th day after such mailing.

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

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS:

Existing Law: A party is permitted to serve a summons and complaint on a corporation by first-class mail, postage prepaid with an acknowledgment of receipt; if the acknowledgment is not returned service on the corporation is deemed incomplete. (Code Civ. Proc., § 415.30, subd. (c).)

This Resolution: Would enable a party to serve a summons and complaint on a corporation doing business in this State with a designated agent for service of process with a post office box by first-class mail, postage prepaid, return receipt requested, and service would be complete on the 10th day after such mailing.

The Problem: When a corporation doing business in this state designates an agent for service of process with a post office box it forces a litigant to mail the summons and complaint to the agent. Under the current law, anytime a litigant serves a summons and complaint by mail they must include a notice of acknowledgment. (Code Civ. Proc., § 415.30.) But if the corporation refuses to sign the acknowledgment, service is incomplete and the litigant must turn to other expensive modes of service unnecessarily. (Code Civ. Proc., § 415.30, subd. (c).)

A litigant can serve a summons and complaint on a corporation by personal service, service by mail, substituted service, or service on the Secretary of State per court order. (Code Civ. Proc., §§ 415.10.)

Substituted service is available for corporate defendants. (Code Civ. Proc., § 415.20, subds. (a) and (b).) But a litigant cannot effect substituted service on a post office box. (Code Civ. Proc., § 415.20, subd. (a).) This mode of service is unavailable unless the litigant has demonstrated that a good faith effort that personal service was made. (Code Civ. Proc., § 415.20, subd. (b).)

The litigant can personally serve the corporation's president, officer, or general manager, i.e., a person who is apparently in charge of the corporation's office or headquarters, as long as the person served is of such rank to make it reasonably certain that the corporation will be apprised of service. (*Gibble v. Car-Lene Research, Inc.* (1998) 67 Cal.App.4th 295, 302-303.) Often times this requires personal service on a person out of state and involves undue burden and expense.

Finally, after exhausting all of those alternatives, the litigant can obtain a court order after having demonstrated due diligence permitting the litigant to serve the Secretary of State. This requires undue burden and expense on the litigant.

Corporations who designate an agent for service of process with a post office box are taking advantage of a loophole in the statutes governing the service of a summons and complaint. If a corporation is going to do business in this state and designates an agent for service of process with a post office box the same rule applicable to service on out-of-state corporations should apply. It should not be more burdensome to serve a corporation doing business in this State than it is to serve a corporation not doing business in this State.

#### IMPACT STATEMENT

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

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