



The Florida Senate

Interim Project Report 2006-144

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Committee on Justice Appropriations

Senator Victor D. Crist, Chair

SHERIFF COSTS - SERVICE OF PROCESS

SUMMARY

Service of process, the delivery of legal documents such as a summons, complaint, subpoena, an order to show cause, writs, or notice to quit the premises, is required before legal action may proceed in court. There are two types of service of process, enforceable and nonenforceable. Enforceable service of process involves a court order requiring the sheriff to take action (i.e., eviction, seizure of property). Nonenforceable service of process is designed to place another party on notice that he or she must take action (i.e., summons to appear, witness subpoena).

As required in s. 48.021, F.S., service of process must be performed by the sheriff, except that initial nonenforceable service of process may be served by a special process server (appointed by the sheriff of the county) or by a certified process server (appointed by the chief judge of the judicial circuit).

The sheriff's responsibilities regarding service of process, procedures and fees assessed by the sheriff are established in s. 30.231, F.S. The current fee of \$20 has been in place since 1994. Many argue that this fee does not cover costs of performing this service.

It is recommended that the Legislature review s. 30.231, F.S., and consider increasing the fee for the service of process activity and allow for additional fees for alias and pluries, (i.e., second and subsequent writs).

It is recommended that the Legislature review s. 48.29(2)(f), F.S., and consider revising the statute to require examinations testing the knowledge of laws and rules regarding service of process for certified process servers.

It is recommended that the Legislature review s. 48.021 (2), F.S., and consider requiring special process servers, who are not employees of the sheriff's office, to secure a bond. The bond established for certified

process servers in s. 48.29 F.S., may also need to be increased from \$5,000.

BACKGROUND

United States legal procedure requires that parties in a case be notified if actions are taken against them in a court of law.

Service of process is defined as providing legal notice of a court or administrative body's exercise of its jurisdiction over individuals who are the subject of proceedings or actions brought before the court or body.

Chapter 30.15, F.S., mandates that sheriffs, in their respective counties, in person or by deputy, shall execute all process of the Supreme Court, circuit courts, county courts, and boards of county commissioners of this state, and execute such other writs, processes, warrants and other papers directed to them as may come to their hands to be executed in their counties.

The complainant, or plaintiff, in a suit is charged a fee for the provision of service of process to the respondent, or defendant.

Chapter 30.231, F.S., mandates that in civil cases sheriffs of all counties of the state shall charge fixed, nonrefundable fees for docketing and service of process according to the following schedule:

Service of Process Fees	
Summons, Subpoenas, Writs (except executions), Order To Show Cause	\$20
Writs requiring a levy or seizure of property (except executions)	\$50 + \$20
Executions Docketing/Indexing, regardless of # persons involved	\$20
Levies Real Property (each parcel described) Personal Property (one fee/exceptions)	\$50

Section 48.021(1), F.S., provides that all process shall be served by the sheriff of the county where the person to be served is found, “except initial nonenforceable civil process may be served by a special process server appointed by the sheriff as provided for or by certified process server.”¹

There are two types of service of process, enforceable and nonenforceable. Enforceable service of process involves a court order requiring the sheriff to take action (i.e., eviction, seizure of property). Nonenforceable service of process is designed to place another party on notice that he or she must take action (i.e., summons to appear, witness subpoena).

Service of Process by Type
<i>Non-Enforceable (Designed to place another party on notice that he or she must take action)</i>
Summons
Subpoenas
Order to Show Cause
Injunctions (general only--not domestic violence or protective injunctions)
Notices
Writ of Garnishment
<i>Enforceable (A court order directs the sheriff to take action)</i>
Injunctions (Domestic Violence and Protective)
Writ of Attachment (Order to seize property to satisfy a judgment)
Writ of Body Attachment (Order to detain – for contempt)
Writ of Execution (Court’s written order directing sheriff to enforce a judgment)
Writ of Replevin (Order to seize property for plaintiff)
Writ of Possession (Order to evict)

Special Process Servers

A special process server is appointed by the sheriff and serves process only in the county appointed. The special process server a) may be retained as a civilian officer employed by the sheriff’s department, b) may be independent of the sheriff’s office, or c) may work under contract with the sheriff.

According to s. 48.021(2)(b), F.S., a person applying with the sheriff’s office to become a special process server must:

- Be at least 18 years of age;
- Have no mental or legal disability;

- Be a permanent resident of the state;
- Submit to a background investigation;
- Certify that he or she has no pending criminal case, no record of any felony conviction, nor a record of conviction of a misdemeanor involving moral turpitude of dishonesty within the past 5 years;
- Submit to an examination testing the applicant’s knowledge of the laws and rules regarding the service of process; and
- Take an oath that he or she will honestly, diligently, and faithfully exercise the duties of a certified process server.

Certified Process Servers

A certified process server must be appointed by the chief judge of the judicial circuit in which he or she shall be allowed to serve process. The chief judge of each circuit has discretion as to whether or not to appoint certified process servers. Of Florida’s 67 counties, 37 counties have certified process servers appointed by the chief judge of the judicial circuit.²

According to s. 48.29(3), F.S., a person applying with the chief judge to become a certified process server must:

- Be at least 18 years of age;
- Have no mental or legal disability;
- Be a permanent resident of the state;
- Submit to a background investigation;
- Certify that he or she has no pending criminal case, no record of any felony conviction, nor a record of conviction of a misdemeanor involving moral turpitude of dishonesty within the past 5 years;
- If prescribed by the chief judge of the circuit, submit to an examination testing his or her knowledge of the laws and rules regarding the service of process;
- Execute a bond in the amount of \$5,000 which shall be reviewed annually for the benefit of any person injured by any malfeasance, misfeasance, neglect of duty, or incompetence of the applicant, in connection with his or her duties as a process server, and
- Take an oath that he or she will honestly, diligently, and faithfully exercise the duties of a certified process server.

¹ Statute changed to allow nonenforceable process to be served by certified civil process servers. Ch. 88-135, L.O.F.

² Florida Association of Professional Process Servers’ website: www.fapps.org/florida_circuits_by_county.asp

Differences Between the Special Process Server and the Certified Process Server

Differences between the special process server and the certified process server are requirements for examination and bonding. Examinations testing the special process server applicant’s knowledge of the laws and rules regarding service of process are mandatory for special process servers³; examination is discretionary for certified process servers, given only “if prescribed by the chief judge of the circuit”⁴.

Bonding requirements are set at \$5,000 for certified process servers and must be secured and paid by the appointed server. The purpose of the bond is to reduce liability for the county or chief judge for actions of the certified process server. No statutory requirement exists for bonding of special process servers. Most special process servers are employees of the sheriff’s office.

METHODOLOGY

Staff researched s. 30.231, F.S., to ascertain the date of the last increase in fees for this activity. Internet research on price level increases was conducted using data made available by the Federal Bureau of Labor Statistics on the Consumer Price Index, increases in gasoline prices, and average wage increases for Florida deputy sheriffs were compared with 1994 data. Information on fees charged by other states for sheriffs service of process was obtained, and site visits and interviews were conducted with representatives from Florida sheriffs’ offices from one small, one medium and one large county to obtain information, observe procedures, and learn more about the service of process activity. A survey on costs was sent to each of the 67 sheriff’s offices. Interviews with members of the Florida Association of Process Servers (FAPPS) were conducted.

FINDINGS

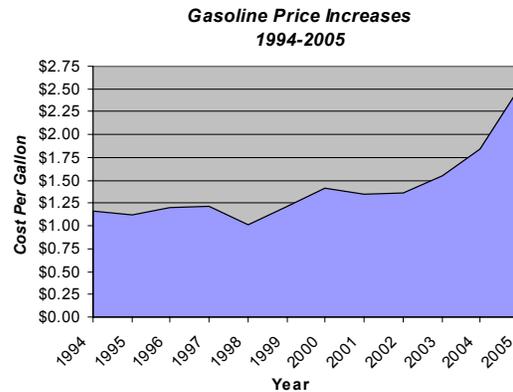
Major factors driving costs for service of process include process servers time, gasoline, vehicle expense, as well as the expense of administering the function. Administrative duties include logging in requests, logging out when service has been completed, updating the Florida Crime Information Center (FCIC) and National Crime Information Center (NCIC) databases when applicable, using verification systems to locate

persons for whom addresses are incorrect or insufficient, mailing return of service to clerks of courts, attorneys, or other applicable parties. In addition, other costs include supplies, costs in administering training and testing of applicants or employees serving process.

Staff was unable to obtain actual mileage, actual hours spent, and other actual costs associated with this activity. Although most sheriffs offices have a civil enforcement unit to handle the activity, costs are not accounted by each service of process. Some costs such as gasoline and vehicle maintenance are paid from the sheriff’s general budget. Mileage records are not logged in most sheriffs’ offices for this activity. At best, the civil enforcement unit’s staff and supplies to carry out the function may be budgeted separately.

Price Level Data

According to data retrieved from the U.S. Department of Energy, Energy Information Administration, between mid-August 1994 and mid-August 2005, regular unleaded gasoline prices have risen 110 percent, from \$1.20 per gallon to \$2.52 per gallon.⁵



The Consumer Price Index (CPI) measures the average change over time in prices paid by an urban consumer for a market basket of consumer goods and services. According to the U.S. Department of Labor, Bureau of Labor Statistics, the CPI has moved on average, approximately two to three percent per year. The accumulated increase in CPI since 1994 is 31.7 percent.

³ See s. 48.021(2)(b)6., F.S.

⁴ See s. 48.29(2)(f), F.S.

⁵ <http://www.eie.doe.gov.org>

Consumer Price Index 1994-2005
(Base Year 1982-84 = 100)

Year	July
1994	148.4
1995	152.5
1996	157
1997	160.5
1998	163.2
1999	166.7
2000	172.8
2001	177.5
2002	180.1
2003	183.9
2004	189.4
2005	195.4

In reviewing wages data on deputy and sheriff patrol officers since 1995, the mean average wage in 1995 was \$16.05 per hour. In 2005, the mean average wage is \$21.08 per hour, an increase of approximately 31.3 percent. This wage data closely follows the Consumer Price Index.

Observations

Staff conducted site visits to sheriff’s offices in small, medium, and large counties to learn about the service of process activity, understand how each office carried out requests, and to observe both nonenforceable and enforceable service of process detail.

Small County

Liberty County, a small county with a population of 7,227, covering 845 square miles has very few service of process requests. Requests average 30 per month. No mileage is kept for this function; but, because the land area is large, it is evident that many miles can be traveled to serve process. Discussions with the sheriff and staff indicate that the county spends much more than is received in fees for service of process. In addition to service of process in which fees are collected, some process must be performed by the sheriff for which no revenues are received.

Medium County

Leon County, a mid-size county with a population of 255,500, covering 696 square miles employs civilians who serve as civil process officers for the sheriff’s department to serve nonenforceable process.

As part of service of process detail, legislative staff spent three hours observing nonenforceable service of process. One legal document was served to a county jail prisoner. The other two legal documents were

undeliverable because of incorrect address information. Paperwork for the two undeliverable legal documents included the civilian officer’s notations that service of these documents had been attempted once prior.

Because the sheriff’s office, by law, must exercise diligence in locating the person to be served, the next step requires research to find a valid address. Section 30.231(3), F.S., states “the party requesting service of process shall provide the sheriff with the best known address where the person may be served. Failure to perfect service at the address provided does not excuse the sheriff from his or her duty to exercise due diligence in locating the person to be served.”

Large County

Duval County, a large county with a population of 826,279, covering 840 square miles utilizes special process servers to serve nonenforceable process. Duval County subcontracts with appointed special process servers; however the special process servers are independent of the sheriff’s office. These servers are not statutorily required to carry the same bond as certified process servers.

The Duval County Sheriff’s Office receives more than 50,000 service of process requests yearly. Approximately 74 percent of all requests are nonenforceable. According to the civil enforcement unit, the Duval County Sheriff’s Office spent in excess of \$1.3 million for service of process during calendar year 2004. The estimated revenue for the year was \$840,000.

Deputies have their own precincts in which they are responsible for serving enforceable process. Legislative staff was assigned duty with a deputy for an afternoon to observe and interview the deputy about the activity. Several evictions notices were posted, and several protective injunctions were attempted.

According to the deputies, domestic violence injunctions require an average of between five to six attempts, sometimes process is not served because the person cannot be found within the timeframe required prior to the court appearance date. Many times these injunctions are re-filed and go back through the process with the same result.

With both nonenforceable and enforceable process, initial legal documentation resulting in non-service by sheriffs may be returned to the sheriff of the same county by the courts, attorneys, or others. The sheriff is not paid for these subsequent attempts.

Civil enforcement unit staff stressed the importance of training and testing process servers. Because the rules are complex and procedures differ among types of process, those appointed to serve must be knowledgeable of the laws and rules that apply. Service of process must be precise; if it is not, the judicial process is compromised.

Survey Data

A survey was sent to all 67 county sheriffs’ offices, of which 33, or 49 percent, of sheriffs responded. Of all responses received, each county sheriff’s office stated that the \$20 fee did not cover the cost of the service. All sheriffs responding, with the exception of one sheriff who provided no answer, supported an increase in the amount set in statute.

Most sheriffs responding to the survey indicated that they have a civil enforcement unit which handles only service of process requests. All but one county responding to the survey stated that they utilize deputies to serve some of the nonenforceable service of process. Twelve counties responded that they utilize special service processors to serve some of the non-enforceable service of process. Five counties responded that they utilize special process servers to serve all nonenforceable process.

Cost data provided by sheriff’s offices responding to the survey indicate that the average cost per nonenforceable service of process is \$29; the average cost per enforceable service of process is \$49. This data, however, did not appear to be inclusive of all expenses attributable to the function. Sheriff’s offices were asked to suggest what they felt a reasonable fee to cover the costs of this function should be. The average for all suggested fees provided was \$37.

Sheriffs’ Responses To Survey (Estimated Figures)			
	Low	High	Avg
% Requests / Nonenforc. SOP	59%	99%	86%
Avg # Attempts per SOP	2	6	4
Avg Cost / Nonenforc. Attempt	\$10	\$50	\$29
Avg Cost per Enforce. Attempt	\$30	\$88.75	\$49
Suggested Fee	\$25	\$75	\$37

What Other States’ Sheriffs’ Offices Charge

Without contacting each state, and counties within states, it was difficult to determine precise figures on service of process fees. Some states vary their fees by county; some states charge additional fees for mileage, notary or return of service. Using information received from the National Association of Professional Process Servers (NAPPS), the Florida Association of Process Servers (FAPPS), and internet research, it appears that only a handful of states have fees as low as or lower than Florida. These include North Carolina (\$15), South Carolina (\$15), Virginia (\$12), and Wyoming (\$20 first 3 attempts).

The following chart compares Florida to some other states. Larger states listed include California, Michigan, New York and Texas; southern border states include Alabama, Georgia and Mississippi.

State	Fee	Additional Fees	Per Mile Charge
Alabama	0-\$50		
California	\$30	\$10 Notary	
Florida	\$20		
Georgia	\$25		
Michigan	\$20		\$0.34-\$0.56
Mississippi	\$25		
New York	\$37		\$0.23
Texas	\$40-\$75		

Comments from Various Sheriffs’ Offices

“A large number of papers served by the sheriff’s office are free of charge including those for the state attorney and public defender, among others.”

“There is probably no way to recover all costs associated with service of process; however, this is a statutory duty of the office of the sheriff and must be performed.”

“Cost of perfecting service does not match actual cost charged per statute. Fuel charge plus salary, wear and tear of vehicles, etc., should keep up w/inflation and fuel increases.”

“This is a service the sheriff performs for the justice system. Although the fee does not cover the full cost, taxes do support this function of the sheriff’s department. While a fee increase is justifiable, the purpose of a fee increase should not be to make money.”

Conclusions

Sheriffs' fees for service of process have not changed in eleven years. Basic data relating to increases in the consumer price index, gasoline prices, and wages for deputy sheriffs since 1994 indicate the probability that sheriff's costs to serve process have risen substantially.

It is impossible to calculate the absolute cost of this service without accurate accounting records to track such items as: 1) number of services attempted, 2) number of hours involved, 3) personnel costs, 4) gasoline and vehicle maintenance expense, 5) uniform expense, and 6) administrative expenses associated.

The laws pertaining to service of process are complex. An examination testing the knowledge of the law and rules of service of process should be required of certified process servers as it is for special process servers.

Certified process servers are required to secure a bond; however, some suggest that the \$5,000 bond is not sufficient.

Because of county liability, bonding of special service process servers, who are not employees of the sheriffs, is advised.

RECOMMENDATIONS

The Legislature should consider increasing the fee in s. 30.231, F.S., to account for increased costs since the fee was last set in 1994.

The Legislature should also consider revising s. 30.231, F.S., to allow for additional fees for alias and pluries.

Because the rules of service of process are complex, the Legislature should review s. 48.29(2)(f), F.S., and consider requiring examination of certified process servers as required for special process servers.

The Legislature should review s. 48.021 (2), F.S., and consider requiring special process servers, who are not sheriffs office employees, to secure a bond.

The bond, established in s. 48.29, F.S., for certified process servers may also need to be increased from \$5,000.