



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

(850) 561-5600
www.FLORIDABAR.org

SECTION LEGISLATIVE OR POLITICAL ACTIVITY REQUEST FORM

- This form is for committees, divisions and sections to seek approval for section legislative or political activities.
- Requests for legislative and political activity must be made on this form.
- Political activity is defined in SBP 9.11(c) as “activity by The Florida Bar or a bar group including, but not limited to, filing a comment in a federal administrative law case, taking a position on an action by an elected or appointed governmental official, appearing before a government entity, submitting comments to a regulatory entity on a regulatory matter, or any type of public commentary on an issue of significant public interest or debate.”
- Voluntary bar groups must advise TFB of proposed legislative or political activity and must identify all groups the proposal has been submitted to; if comments have been received, they should be attached. SBP 9.50(d).
 - The Legislation Committee and Board will review the proposal unless an expedited decision is required.
 - If expedited review is requested, the Executive Committee may review the proposal.
 - The Bar President, President-Elect, and chair of the Legislation Committee may review the proposal if the legislature is in session or the Executive Committee cannot act because of an emergency.

General Information

Submitted by: *(list name of section, division, committee, TFB group, or individual name)*

Real Estate Leasing Committee of the Real Property, Probate, and Trust Law Section

Address: *(address and phone #)* c/o Brenda Ezell, Chair, 904.432.3200

3560 Cardinal Point Drive, Suite 202, Jacksonville, FL 32257

Position Level: *(TFB section / division / committee)* Committee

651 East Jefferson Street • Tallahassee, FL 32399-2300 • FAX: (850) 561-9405

Proposed Advocacy

Complete Section 1 below if the issue is legislative, 2 if the issue is political. Section 3 must be completed.

1. Proposed Wording of Legislative Position for Official Publication

Proposal to create Florida Statutes 49.072 establishing a process to serve unknown parties in possession of real property.

Three horizontal lines for additional text.

2. Political Proposal

Four horizontal lines for additional text.

3. Reasons For Proposed Advocacy

a. Is the proposal consistent with Keller v. State Bar of California, 496 US 1 (1990), and The Florida Bar v. Schwarz, 552 So. 2d 1094 (Fla. 1989)? Yes

b. Which goal or objective of the Bar's strategic plan is advanced by the proposal? Objective 1: Ensure the Judicial System, a co-equal branch of government, is fair, impartial, adequately funded and open to all.

- c. Does the proposal relate to: (check all that apply)
Regulation and discipline of attorneys
[X] Improvement of the functioning of the courts, judicial efficacy, and efficiency
Increasing the availability of legal services to the public
Regulation of lawyer client trust accounts
Education, ethics, competency, integrity and regulation of the legal profession

d. Additional Information:

Referrals to Other Committees, Divisions & Sections

The section must provide copies of its proposed legislative or political action to all bar divisions, sections, and committees that may be interested in the issue. SBP 9.50(d). List all divisions, sections, and committees to which the proposal has been provided pursuant to this requirement. Please include with your submission any comments received. **The section may submit its proposal before receiving comments but only after the proposal has been provided to the bar divisions, sections, or committees.** Please feel free to use this form for circulation among the other sections, divisions and committees.

Business Law Section. Note: We have provided a copy to the Clerks of Court.

Contacts

Board & Legislation Committee Appearance *(list name, address and phone #)*

Wilhelmina F. Kightlinger, 1408 N. West Shore Blvd., Suite 900, Tampa, FL 33607, (612) 371-1123

Appearances before Legislators *(list name and phone # of those having direct contact before House/Senate committees)*

Peter Dunbar, Dean Mean & Dunbar, 215 S. Monroe, Suite 815 815; Tallahassee, FL 32301 (850) 999-4100

French Brown, Dean Mean & Dunbar, 215 S. Monroe, Suite 815 815; Tallahassee, FL 32301 (850) 999-4100

Meetings with Legislators/staff *(list name and phone # of those having direct contact with legislators)*

Peter Dunbar, Dean Mean & Dunbar, 215 S. Monroe, Suite 815, Tallahassee, FL 32301 (850) 999-4100

French Brown, Dean Mean & Dunbar, 215 S. Monroe, Suite 815, Tallahassee, FL 32301 (850) 999-4100

Submit this form and attachments to the OGC, jhooks@floridabar.org, (850) 561-5662.



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To: Leadership of the Business Law Section
Section/Division/Committee

From: RPPTL Section, RE Leasing Committee

Re: Proposed Legislative Position re: Bill to Add a new §49.072

As you are aware, Standing Board Policy 9.50(d) requires voluntary bar groups to contact all divisions, sections and committees that might be interested in proposed legislative or political activity. The policy also requires sections to identify all groups to which proposals have been submitted for comment and to include comments when submitting the proposal.

We thought your section might be interested in the above issue and have attached a copy of our proposal for your review and comment. Our proposal is in **support of** :

Adding a new §49.072 regarding service on unknown parties in possession.

Thanks for your consideration of this request. Please let us know if your section will provide comments.



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Adding a new §49.072 regarding service on unknown parties in possession.

Thanks for your consideration of this request. Please let us know if your section will provide comments.

1 49.072 Service of Process for removal of unknown parties in
2 possession. - This section applies only to actions
3 governed by Section 51.011, Florida Statutes, and only to
4 the extent such actions seek relief for the removal of
5 unknown parties in possession of real property. All
6 provisions of this section are cumulative to other
7 provisions of law or rules of court about service of
8 process, and all other provisions about service of process
9 are cumulative to this section.

10 (1) A Summons shall be issued in the name of "Unknown
11 Party in Possession" when the name of an occupant of real
12 property is not known to the Plaintiff and the property
13 which the unknown party occupies is identified in the
14 Complaint and Summons. A separate Summons shall be issued
15 for each such unknown occupant.

16 (2) The Plaintiff shall attempt to serve the Summons on
17 any unknown occupant(s) of the property described in the
18 Summons and Complaint. If service on the unknown occupant
19 is not affected on the first attempt, at least one further
20 attempt must be made. The minimum time delay between the
21 two attempts to obtain service shall be 6 hours. The
22 process server shall make an inquiry as to the name(s) of
23 the unknown occupant(s) at the time of service. The return
24 of service shall note the name(s) of the occupant(s) if
25 obtained by the process server or state that the name(s) of

RM:6724080:1

26 the occupant(s) could not be obtained after inquiry. If the
27 name(s) of the occupant(s) become known to the Plaintiff
28 through the return of service or otherwise, then without
29 notice or hearing thereon, all subsequent proceedings shall
30 be taken under the true name(s) of such occupant(s) and all
31 prior proceedings shall be deemed amended accordingly.

32 (3) If service is not affected on an unknown party in
33 possession after two attempts to obtain service as provided
34 in subsection (2), and even if an unknown party in
35 possession is served as provided in subsection (2), service
36 of process shall also be made on unknown parties in
37 possession as follows:

38 (a) by attaching the Summons and Complaint to a
39 conspicuous location on the premises involved in the
40 proceedings, and

41 (b) upon issuance of the Summons, the Plaintiff shall
42 provide the Clerk of Court with one additional copy of the
43 Summons and Complaint for each unknown occupant and a pre-
44 stamped envelope for each unknown occupant addressed to the
45 unknown occupant at the address of the premises involved in
46 the proceedings. The Clerk of Court shall immediately mail
47 a copy of the Summons and Complaint by first class mail,
48 note the fact of mailing in the Docket, and file a
49 certificate in the court file of the fact and date of
50 mailing.

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51 (4) Service shall be effective on the Unknown Party in
52 Possession, whether or not personal service is made, on the
53 date of attaching the Summons and Complaint to a
54 conspicuous location on the premises or mailing, whichever
55 occurs later, and at least 5 days from the date of service
56 must have elapsed before a Judgment for final removal of
57 the unknown party in possession may be entered.

58 (5) The Judgment and Writ of Possession shall refer to any
59 "Unknown Party in Possession" by name if the name is shown
60 on the return of service or is otherwise known to the
61 Plaintiff. If the name of any unknown party in possession
62 is not shown on the return of service or otherwise known to
63 the Plaintiff, and service has been affected as provided in
64 this section, the Judgment and Writ of Possession shall
65 refer to each such person as an "Unknown Party in
66 Possession" and the Writ of Possession shall be executed by
67 the Sheriff by placing the Plaintiff in possession of the
68 property and dispossessing the occupants.

69 (6) This bill shall be effective upon becoming law.

WHITE PAPER

SERVICE OF PROCESS ON UNKNOWN PARTIES IN POSSESSION

I. SUMMARY

This legislation fills a gap in Florida law by authorizing the issuance and service of a Summons to remove people who are wrongfully occupying another's property, but whose identities are unknown to the landowner or landlord.

II. CURRENT SITUATION

Florida has an extensive statutory scheme detailing how landowners and landlords may (1) evict a tenant from property (the Landlord/Tenant Act, Chapter 83, Florida Statutes), or (2) remove a party who is in unlawful possession of property (the Unlawful Detainer Statute, Chapter 82, Florida Statutes).

A hole has been revealed in that statutory scheme, however, that is wreaking havoc on landowners and landlords.

In recent years more and more landowners and landlords who have been preparing to have parties evicted or removed from their property have discovered *strangers* occupying their property - parties they do not know and whom they cannot identify by name in a Complaint.

In such cases, because they do not know the names of the strangers occupying their property, it has been common practice when filing eviction and unlawful detainer actions for the Plaintiff to name as a Defendant in the Complaint "John Doe, unknown party in possession," and to seek the issuance of a Summons for "John Doe, unknown party in possession."

Because "John Doe, unknown party in possession" is descriptive of the party being sued, but does not identify someone by name, some Clerks of Courts have refused to issue such a Summons.

Florida's statutes and rules for the issuance of Summonses do not specify precisely how the identity of the party being sued is to be described in the Summons, but they generally contemplate a Summons being issued in the name of each Defendant identified in the Complaint. *Section 48.031, Florida Statutes; Rule 1.070, Florida Rules of Civil Procedure; Forms 1.902, 1.923 Florida Rules of Civil Procedure.*

Some Clerks have taken the position that absent a clear statutory directive to issue a Summons to a party who is not identified by name, they will not issue a "John Doe" Summons.

Moreover, several Florida Courts have ruled that a Complaint filed against a party whose identity is unknown and who is identified only as "John Doe," does not commence an action against that party. *Grantham v. Blount, Inc.*, 683 So. 2d 538 (Fla. 2d DCA 1996); *Gilliam v. Smart*, 809 So. 2d 905 (Fla. 2d DCA 2002).

Even if the unnamed individual is personally served with the Complaint, the Courts have ruled that no action has been commenced against him unless he is properly identified by name. *Liebman v. Miami-Dade County Code Compliance Office*, 54 So. 3d 1043 (Fla. 3d DCA 2011) (citing *Grantham*, 683 So. 2d 538). See also *Unknown Pers. In Possession of Subject Prop. V. MTGLQ Inv'rs, LP*, 217 So. 3d 1193 (Fla. 3d DCA 2017); *Dinardo v. Bayview Loan Servicing, LLC*, 307 So. 3d 718 (Fla. 4th DCA 2020) (dissenting opinion).

To compound the problem, there is no statutory requirement that strangers occupying another's property identify themselves to landowners or landlords who ask them for their names.

As such, landowners and landlords have been frustrated in their efforts to remove strangers who are wrongfully occupying their property. They cannot convince some Clerks to issue a Summons for such unknown parties, nor can they obtain the names of the strangers which those Clerks require before they will issue the Summons.

While Chapter 49, Florida Statutes authorizes constructive service of process by publication against persons whose names are unknown, it only applies when personal service "cannot be had." Sections 49.011, 49.021, Florida Statutes. See, *Shepherd v. Deutsche Bank Trust Co. Americas*, 922 So. 2d 340, 343 (Fla. 5th DCA 2006).

Since the address of unknown parties in possession is known, personal service on such individuals may be possible. Ironically, in those instances where such individuals could be readily served with personal service, the only reason personal service "cannot be had," is that some Clerks refuse to issue a Summons for unnamed parties.

Furthermore, even assuming constructive service by publication is authorized for unknown parties in possession who could be served personally if only the Clerks would issue a Summons, service by publication requires 4 weeks of publication. Section 49.10, Florida Statutes.

Eviction and unlawful detainer actions are expedited proceedings under Section 51.011, Florida Statutes. See Sections 82.03(4), 83.21, and 83.59(2), Florida Statutes. Those statutes recognize the rights of landowners and landlords to promptly obtain possession of their property when others are no longer there lawfully. Defendants must respond to a Complaint within 5 days of service, or a default can be entered allowing the landowner or landlord immediate possession.

Requiring weeks of publication to serve a stranger occupying one's property, but authorizing immediate service and 5 days to respond for a known party, wrongfully favors the stranger. It permits strangers to unjustifiably extend their use of another's property simply because their identity is unknown. This is bad public policy, and strangers who wrongfully possess another's property should not be advantaged over known parties.

Over the past several years Florida has seen a huge influx of "squatters" – strangers who take possession of property without the knowledge or consent of the landowner or landlord. As a result, the need to correct this problem is growing, urgent, compelling, and widespread.

III. EFFECT OF PROPOSED CHANGES

This statute would allow landowners and landlords to have a Summons issued for unknown parties in possession when filing an eviction or unlawful detainer action, and it would prescribe a method for service of process on such individuals which is substantially similar to the long-standing method for service of process on known parties.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have an impact on state or local governments.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

This statute will have a direct positive economic impact on the private sector by allowing landowners and landlords to efficiently and cost-effectively retake possession of their property from unknown parties in possession.

VI. CONSTITUTIONAL ISSUES

Notice which is “reasonably calculated, under all the circumstances, to apprise interested persons of the pendency of (an) action (to which they are a party) and afford them an opportunity to present their objections,” is a fundamental requirement of due process under the Fourteenth Amendment to the United States Constitution. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

The purpose of service of process is to satisfy this requirement of due process. “The object to be accomplished by service of process is to advise the defendant that an action has been commenced against him and warn him that he must appear within a certain time and at a certain place to make such defense as he has.” *Abbate v. Provident Nat’l Bank*, 631 So. 2d 312, 313 (Fla. 5th DCA 1994).

In this instance, the service of process provisions in the proposed statute will give clear notice to an unknown person occupying the property that an eviction or wrongful detainer action has been filed against him, and that he has 5 days to respond with any defenses. Because both the Summons and Complaint must identify the property that the unknown party occupies, and specify that the party being served is an “Unknown Party in Possession” of that specific property, the recipient will clearly know he is the person against whom relief is being sought, and he will know by when, and how, to respond with any defenses.

As to the method of service, the service of process provisions in the proposed bill are patterned after the service of process provisions in three other statutes: (1) the Landlord/Tenant Statute (Section 83.22, Florida Statutes), (2) the Unlawful Detainer Statute (Section 82.05, Florida Statutes), and (3) the Service of Process Statute for Actions for Possession of Real Property (Section 48.183, Florida Statutes).

The service of process provisions in the three other statutes provide for (a) personal service of process on the occupant, or (b) if the occupant cannot be found after at least two attempts, constructive service by attaching the Summons to a conspicuous location on the premises and

having the Clerk mail a copy of the Complaint and Summons to the unknown occupant at the address of the premises involved in the proceedings.

These methods for constructive service of process have been part of the eviction and unlawful detainer statutes for over 50 years and have been regularly used for known occupants. No reported Florida decision has found them unconstitutional.

The proposed bill goes even further than these three other statutes in assuring due process to the unknown occupant. The proposed bill specifies that even if there is personal service on the occupant, since the name of the party being served may be unknown, the Plaintiff must still post the Summons and Complaint on the property and have copies mailed to the unknown parties at the property address. This assures that if personal service is affected on someone who is unknown, but someone else actually occupies the property, there will still be service through posting on the property and mailing.

By using the same posting and mailing methods for service of process on unknown parties in possession as have been used for decades on known parties, no new constitutional issues should be presented.

Indeed, posting the Summons and Complaint on the property and mailing copies to the address of the unknown occupants is a more targeted method of giving unknown occupants constructive notice, and more likely to provide the occupants actual notice of the action against them, than is service by publication. As such, it is more likely to withstand constitutional scrutiny than publication, which is the only existing alternative. *Mullane v. Central Hanover Bank & Trust Co.*, *supra* at 318-19. *Accord, Estela v. Cavalcanti*, 76 So.3d 1054 (Fla.3d DCA 2011).

Finally, and moreover, because an action solely for possession of property is an *in rem* or *quasi in rem* proceeding, no personal jurisdiction is required, and the proposed service of process procedure for unknown parties in possession should not run afoul of any due process rights. *See McDaniel v. McElvy*, 108 So. 820, 830-31 (Fla. 1926); *Hinton v. Gold*, 813 So. 2d 1057, 1059 (Fla. 4th DCA 2002).

V. OTHER INTERESTED PARTIES

The Clerks of Courts.

The Florida Bar Business Law Section