STATE OF NEW YORK

9783

IN SENATE

May 30, 2024

Introduced by Sen. HOYLMAN-SIGAL -- (at request of the Office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the surrogate's court procedure act, in relation to allowing certain methods for service of process

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 1, 2 and 3 of section 307 of the surrogate's court procedure act, as amended by chapter 355 of the laws of 2000, and subparagraph (ii) of paragraph (a) and paragraph (e) of subdivision 3 as amended by chapter 669 of the laws of 2022, are amended to read as follows:

1. Service by personal delivery. Service of the process may be made on any person by personal delivery [~~to him~~] of a copy of the process either within or without the state.

2. Service by registered or certified mail, [~~return receipt requested,~~] or by special mail service[~~, upon non-domiciliaries~~]. Service of the process may be made by registered or certified mail, [~~return receipt requested,~~] or by special mail service, [~~upon non-domiciliaries, whether or not they be natural persons~~] **within or without the state**.

3. Service by court order. As an alternative to service under subdivisions 1 and 2, service may be made in the manner directed by the court; but such service, except as provided by subdivision 6, shall not be ordered upon a domiciliary natural person unless it be shown that, with due diligence, service [~~by personal delivery within the state~~] **under subdivision 1 or 2** cannot be effected, or where for good cause shown, [~~personal service within the state~~] **such service** would be impracticable. Any proof necessary hereunder may be submitted in the petition or by affidavit. The court may take into account the size of the estate and the remoteness of kinship of any person to be cited in determining the appropriate due diligence necessary to permit alternate service under this section. The court may direct service by any one or more of the following methods, which shall not, however, be exclusive:

(a) service by publication, such as is provided by CPLR 316, subject to 308 and 309, and to such variations of CPLR 316 as the court may provide, except that

EXPLANATION--Matter in ***italics*** (underscored) is new; matter in brackets [-] is old law to be omitted.

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(i) where persons are to be served by publication, publication in only 1 newspaper shall be required, or

(ii) where a person is alleged to be within a country with which the United States of America is at war or a place with which the United States of America does not maintain postal communication, the court may direct that a copy of the process shall be mailed on behalf of such person to the officer who may have been appointed to take possession of the property of noncitizen enemies, or

(iii) where the person to be served is an absentee or alleged to be deceased, the court may direct that in addition to the foregoing requirements, the process be published in a newspaper published at or near the place where the absentee was last known to be, or

(iv) in an adoption proceeding under article seven of the domestic relations law or in a proceeding under section three hundred eighty-four-b of the social services law, a single publication in only one newspaper shall be sufficient.

(b) service by [~~mail, by registered or certified mail with or without return receipt requested, or by any manner of special mail service, as the court may direct~~] **electronic means, as that term is defined by CPLR 2103(f)(2), bearing the caption of the matter in the subject line of said transmission**;

(c) substituted service such as is provided by CPLR 308 (2) and (4), within or without the state, subject to 308 and 309, and to such variations of CPLR 308 as the court may provide;

(d) service within or without the state, by personal delivery to a person duly designated by respondent to receive process in his **or her** behalf, or to a person whose relationship, whatever its character, and by blood or otherwise to the respondent, indicates in the circumstances the probability that actual notice will reach the latter [~~through him~~];

(e) if the interest of a non-domiciliary noncitizen in the estate is less than $2,500 or his or her address is unknown or such estate's gross assets are less than $25,000, by delivery of a copy of the process to a consular official of the noncitizen's nation.

§ 2. Paragraph (a) of subdivision 1 of section 308 of the surrogate's court procedure act, as amended by chapter 685 of the laws of 1967, is amended to read as follows:

(a) The citation shall be served at least the following number of days before the return day:

(i) 10 days if the person is served within the state **by personal delivery**;

(ii) 20 days if the person is served [~~without the state but~~] within the United States, the District of Columbia, the Commonwealth of Puerto Rico or the possessions or territories of the United States **by other than personal delivery**; and

(iii) 30 days in all other cases **and where the office of the attorney general is a party**.

§ 3. Paragraphs (a), (e) and (f) of subdivision 2 of section 309 of the surrogate's court procedure act, as amended by chapter 355 of the laws of 2000, are amended to read as follows:

(a) mailing or by registered or certified mail, [~~with or without return receipt requested,~~] upon the mailing thereof;

(e) publication, on the 28th day after the first publication; [~~or~~]

(f) **electronic means, upon transmittal of the process to the recipient; or**

(g) any other means, as the court directs.

§ 4. This act shall take effect immediately.