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SERVICE OF CIVIL PROCESS IN OKLAHOMA*

David S. Clark**

I. INTRODUCTION

The major purpose of service of process rules should be to provide avenues for adequately informing defendants of the commencement of a civil action. A secondary function is to provide a ritual whereby a court may assert both subject matter jurisdiction over a particular case as well as personal or in rem jurisdiction to adjudicate the interests of a certain defendant, including his interest in property.¹

Issues concerning civil process and its service are closely related to questions regarding subject matter jurisdiction, jurisdiction over a person or property, procedural due process, and venue. All of these matters, if contested, must be satisfied before a court may proceed to hear a lawsuit. The provisions regulating service of a summons vary widely throughout the United States.² History and inertia have left many states with a somewhat bewildering array of statutes and court rules, sometimes mixing issues of jurisdiction with those concerning process and its service.

In contrast, Federal Rule 4 is an example of a relatively pristine norm dealing exclusively and concisely with process and its service.³ It

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1. See D. CLARK, OKLAHOMA CIVIL PRETRIAL PROCEDURE: THE SUMMONS, JURISDICTION AND VENUE ch. II (in press 1983); 4 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1063, at 204 (1969).

2. See, e.g., 1 F. ELLIOTT, TEXAS CIVIL PRACTICE IN DISTRICT AND COUNTY COURTS 321-418 (rev. ed. 1981) (summons referred to as a citation); 2 B. WITKIN, CALIFORNIA PROCEDURE 1384-1454 (2d ed. 1970); Trautman, *Commencement of Actions and Service of Process in Washington*, 16 WILLAMETTE L. REV. 87, 87-124 (1979).

3. FED. R. CIV. P. 4. Rule 4, as with the other federal rules, is prohibited from affecting jurisdiction or venue. *Id.* 82.

was drafted to foster maximum flexibility in the procedures for notifying all classes of defendants of an action's commencement and to minimize historical technicalities associated with service of a summons.⁴ Rule 4—a rather long rule—places a time limit on service and covers the topics of issuance and form of a summons; by whom process is served; mail service; service on individuals; service on corporations, partnerships, and other unincorporated associations; service on government entities; return and proof of service; amendment; and service in a foreign country. As encompassing as it is, however, Rule 4 does not constitute an exhaustive treatment of the procedures for making service of a summons in a federal suit.⁵ In several areas, it expressly incorporates the appropriate manner of service from the state law of the state where a federal court is located or in which service is made. This reference may present an exclusive method of service—as for service on infants and incompetents⁶ or for service outside the state where the federal court sits⁷—or a supplemental method. State law is supplemental, for instance, with respect to service of a summons on an individual or on a corporation, partnership, or other unincorporated association.⁸

This Article focuses on the service of civil process in Oklahoma.⁹ Oklahoma is typical of most states in that it has a large number of statutory provisions on the subject.¹⁰ The coherence of these provisions could be improved by a careful study of and comparison with Federal Rule 4. Nevertheless, examination of federal law would only provide a beginning to improvement of the Oklahoma statutory scheme. As noted earlier, federal courts defer to particular state norms in several important areas.¹¹ The burden of study and reform, therefore, remains in Oklahoma, with its bar and judiciary, and especially with the legislature.

Section II of this Article begins by discussing the commencement of a civil action in Oklahoma and the appropriate time for service of a summons. Then, section III describes persons who may serve a summons under a variety of situations. In sections IV through VIII, the

4. C. WRIGHT & A. MILLER, *supra* note 1, § 1061, at 198.

5. *See, e.g.*, Federal Interpleader Act, 28 U.S.C. § 2361 (1976); FED. R. CIV. P. 71A(d) (condemnation proceedings).

6. FED. R. CIV. P. 4(d)(2).

7. *Id.* 4(e).

8. *Id.* 4(c)(2)(C)(i).

9. This Article only briefly refers to the form and issuance of a summons. For a more detailed treatment of these matters, see D. CLARK, *supra* note 1, ch. III.

10. Many, but not all, of these statutes are found at OKLA. STAT. tit. 12, ch. 6 (1981).

11. *See supra* notes 6-8 and accompanying text.

intricacies of personal and substituted service are developed by differentiating the person or entity served process: (1) individuals; (2) corporations, both domestic and foreign; (3) partnerships, trusts, and other unincorporated associations; (4) governmental entities including public corporations, municipalities, counties, the State of Oklahoma, and the United States; and (5) minors and wards. Next, sections IX through XI develop alternative methods of serving a summons under appropriate circumstances: (1) by mail; (2) by publication; and (3) by posting. In section XII, service on nonresidents within Oklahoma is covered, while section XIII deals with service of process outside Oklahoma. Finally, section XIV describes the return and proof of service under a variety of service techniques.

II. TIME FOR SERVICE

A civil lawsuit is deemed to commence officially at different times depending upon the method of service used by the plaintiff.¹² Thus, if personal or substituted service is elected, a civil action begins on the date when a summons is issued. If service is by certified mail, an action commences on the mailing date. And if service is by publication, an action begins on the date publication notice is signed by the court clerk.¹³

Once a plaintiff has filed his petition with the court clerk,¹⁴ how long does he have to accomplish service on the defendant? For the first attempt to serve a defendant, the permissible periods are established by statute and vary according to the service method selected. Thus, the time allowed until the return date is ten to sixty days from the issuance date for personal or substituted service,¹⁵ twenty-one days from the mailing date for certified mail service,¹⁶ and sufficient time for notice signed by the clerk to be published one day a week for three consecutive weeks in a newspaper authorized for publication service.¹⁷

12. See D. CLARK, *supra* note 1, ch. III.A. For a discussion of the form and issuance of a summons, see *id.*; *cf.* FED. R. CIV. P. 3 ("A civil action is commenced by filing a complaint with the court.").

13. OKLA. STAT. tit. 12, § 151 (1981).

14. See *id.*

15. *Id.* § 155(a); *cf.* FED. R. CIV. P. 4(j) (120 days from filing of complaint to service of summons).

16. OKLA. STAT. tit. 12, § 155(b) (1981); *cf.* FED. R. CIV. P. 4(c)(2)(C)(ii) (20 days from mailing date to time of sender's receipt of acknowledgment of service).

17. OKLA. STAT. tit. 12, §§ 173-174 (1981). Section 173 provides that when service is obtained upon a defendant by publication, a notice signed by the clerk of the court must be published one day per week for three consecutive weeks. *Id.* § 173. Section 174 then provides that

There are special rules for a forcible entry and detainer action.¹⁸ Since service must occur at least three days before trial in a forcible entry and detainer action,¹⁹ the return date should be listed to guide the sheriff. Special rules also apply for some actions involving children.²⁰

Service of process on the return date is permitted.²¹ Professor George Fraser argues, furthermore, that even if a defendant is served after the return date and a plaintiff moves to give the defendant additional time to answer, a court should grant the plaintiff's motion rather than quash the summons. In this way, a plaintiff is not penalized by a dilatory sheriff or process server and a defendant is allowed the statutory period in which to answer.²²

A plaintiff also has the right to request that the court clerk issue a new summons or publication notice—based on the original filed petition—as long as the statute of limitations has not run on his cause of action.²³ This right applies even where a court has quashed an earlier summons for defects in form or in service.²⁴ An alias summons may

service on the defendant shall be deemed complete when it is made in compliance with § 173. *Id.* § 174.

18. See D. CLARK, *supra* note 1, ch. III.B.

19. "[S]ervice [of summons] shall be at least three (3) days before the day of the trial" OKLA. STAT. tit. 12, § 1148.5 (1981).

20. See D. CLARK, *supra* note 1, ch. III.C.

21. "Service of process on the return date shall not make the service invalid." OKLA. STAT. tit. 12, § 154.1 (1981).

22. Fraser, *Oklahoma's Judicial Reforms Revisited*, 23 OKLA. L. REV. 1, 6 (1970); see *Jones v. Standard Lumber Co.*, 121 Okla. 186, 249 P. 343 (1926). In *Jones*, the defendant was served with a summons containing an incorrect answer date. The defendant contended that this error rendered the summons void. *Id.* at 187, 249 P. at 344. The court, however, found that the defendants were neither deceived nor misled by the error. Since it could have been corrected by the court upon timely motion by the defendants and they, knowing of the error, made no effort to correct it nor any other effort to defend until after the expiration of the statutory answer period, the summons was held valid. *Id.* at 187-88, 249 P. at 344-45.

But see *Braden v. Williams*, 101 Okla. 11, 222 P. 948 (1924). In *Braden*, the court held that the trial court had erred when it failed to grant a defendant's motion to quash a summons served on the return date. *Id.* at 12, 222 P. at 948. Section 154.1 of title 12, enacted in 1969, Act of Mar. 5, 1969, ch. 55, § 1, 1969 Okla. Sess. Laws 56, overruled *Braden*. See *supra* note 21 for the text of § 154.1.

23. OKLA. STAT. tit. 12, § 154.4 (1981). A new summons will not affect the validity of the service of a prior summons. However, the costs of issuing and serving a subsequent summons, after the first summons is validly served, must be paid by the party causing the issuance of the subsequent summons. *Id.*; cf. FED. R. CIV. P. 4(a) ("Upon request of the plaintiff separate or additional summons shall issue against any defendants.").

24. OKLA. STAT. tit. 12, § 154.5 (1981). See generally Annot., 6 A.L.R.3d 1179 (1966) (effect on process of error in middle name or initial); Annot., 97 A.L.R. 746 (1935) (defects or informalities as to appearance or return day in a summons); Annot., 6 A.L.R. 841 (1920) (effect of defects as to the appearance or return day in a summons).

also be appropriate in this situation.²⁵ The same time limits established for the first service attempt then apply to the new or alias summons or notice.

If a plaintiff files his petition near the terminal date under the relevant statute of limitations, special rules regarding time for service apply. In title 12, construing section 97 in light of the more recently amended section 151, section 97 permits service within sixty days of the commencement date as defined in section 151.²⁶ Depending on the manner of service, section 151 establishes commencement on the day of a summon's issuance, where there is personal or substituted service on a defendant; its mailing; or a signed publication notice.²⁷ The service date, which must be no more than sixty days following the commencement date, is then calculated as the time when a summons is properly served, a return receipt from certified mail is signed, or the first publication of notice occurs.²⁸ Multiple attempts at service are permitted.²⁹

If the statutory period of limitation expires on the plaintiff's claim after timely commencement and a court quashes the summons, a plaintiff has the right to ask a clerk to issue *one* new summons, which must be served on the defendant within sixty days from the date of the order quashing the prior summons or its service.³⁰ In *Lake v. Lietch*,³¹ the Oklahoma Supreme Court held that this savings provision does not provide multiple opportunities to perfect a defective service after the statute of limitations has lapsed. Only one chance for successful service is allowed.³²

Generally, process may be served on Sundays.³³ The period within which an act is to be accomplished is computed by excluding the first day and including the last day, unless the last day is Sunday, in

25. See *Martin v. District Court*, 460 P.2d 898, 899 (Okla. 1969); D. CLARK, *supra* note 1, ch. III.A.

26. OKLA. STAT. tit. 12, § 97 (1981).

27. *Id.* § 151.

28. *Id.* § 97; see *Kile v. Cotner*, 415 P.2d 961, 962 (Okla. 1966); *Cowley-Lanter Lumber Co. v. Dow*, 150 Okla. 150, 151-52, 300 P. 781, 782-83 (1931); *State ex rel. Mothershead v. Bruce*, 128 Okla. 85, 86-87, 261 P. 361, 362 (1927).

29. See *Tyler v. Taylor*, 578 P.2d 1214, 1215 (Okla. Ct. App. 1977). For a discussion of the defendant's perspective in challenging an action for failure to meet the statutory limitation period, see D. CLARK, *supra* note 1, ch. IX.A.

30. OKLA. STAT. tit. 12, § 154.5 (1981); see *Fleming v. Hall*, 638 P.2d 1115, 1116 (Okla. 1981).

31. 550 P.2d 935 (Okla. 1976).

32. *Id.* at 936-37; see also 29 OKLA. L. REV. 798, 798-99 (1976) (discussing procedure for perfecting service after the statute of limitations has run).

33. OKLA. STAT. tit. 12, § 188 (1981). See *generally* Annot., 63 A.L.R.3d 423 (1975) (validity of service on Sundays or holidays).

which case it is not counted.³⁴ When the clerk's office is not open for business on the last day to perform an official act or to receive a document, the act may be performed or the document filed on the next day that the office is open.³⁵

III. PERSONS WHO MAY SERVE A SUMMONS

A plaintiff desiring personal service will normally either direct the court clerk who issues a summons to deliver it to the local sheriff or have the plaintiff's attorney deliver it himself to the sheriff.³⁶ The sheriff is required to endorse the summons with the day and hour he receives it.³⁷ The sheriff—or his deputy³⁸—will then serve the summons on the defendant if possible, enter the time and manner of service on the original, and return the writ to the clerk with his certified proof of service.³⁹ A sheriff need not verify his return of service by affidavit.⁴⁰

Where a summons is to be served by the sheriff of an Oklahoma county different from the place of issuance, the court clerk must mail it, together with a voucher for the fees collected, to the court clerk of the county where service will be made.⁴¹ The latter clerk should then deliver the summons to the sheriff for service. A sheriff who neglects his duty to serve process may be fined up to one thousand dollars and held liable to the plaintiff for damages.⁴² Personal service outside Oklahoma may be accomplished by delivering the summons to a sheriff of the appropriate county along with the correct fees. A foreign service return must state the authority of the person making service and must

34. OKLA. STAT. tit. 12, § 73 (1981); *Evans v. Davis*, 406 P.2d 975, 976 (Okla. 1965); *St. Louis I. M. & S. Ry. v. True*, 71 Okla. 264, 269, 176 P. 758, 763 (1918), *cert. denied*, 249 U.S. 611 (1919). *See generally* Annot., 98 A.L.R.2d 1331 (1964) (inclusion or exclusion of first or last day when computing time in which to act).

35. OKLA. STAT. tit. 12, § 82 (1981); *Evans v. Davis*, 406 P.2d 975, 977 (Okla. 1965) (Thanksgiving holiday); *see David v. Pennwalt Corp.*, 592 P.2d 980, 981-82 (Okla. 1979) (court-house closed early, due to bad weather).

36. OKLA. STAT. tit. 12, § 153.1(a) (1981); *cf.* FED. R. Civ. P. 4(c) (service may be made by a United States marshal, his deputy, or by a special court-appointed person). In 1980, Rule 4(c) was amended to permit service by persons licensed as private process servers within a state where the federal court is located or process will be served. *See infra* text accompanying notes 50-58 for Oklahoma's rules.

Rule 4(c) recently has been further broadened to permit service under most circumstances "by any person who is not a party and is not less than 18 years of age." *Id.* 4(c)(2)(A) (as amended by Pub. L. No. 97-462, 51 U.S.L.W. 202 (1983) (effective Feb. 26, 1983)).

37. OKLA. STAT. tit. 12, § 53 (1981).

38. *Id.* tit. 19, § 514.

39. *Id.* tit. 12, §§ 54, 158(A); *see infra* notes 331 & 334 and accompanying text.

40. *Canard v. Ryan*, 172 Okla. 339, 341, 45 P.2d 122, 125 (1935).

41. OKLA. STAT. tit. 12, § 153.1(a) (1981).

42. *Id.* § 54.

be verified by oath.⁴³

If the local sheriff is a defendant in the lawsuit or is partial toward a defendant, the court clerk must deliver the summons to the county clerk for service and return.⁴⁴ If the county is also a defendant in the action, the court where the case is filed should appoint a responsible citizen from the defendant county who is not interested in the action to serve process.⁴⁵

A plaintiff who does not want a sheriff to deliver the summons may request that a judge appoint any responsible citizen of the county, who is not a party or interested in the suit, to serve the process. The service return must state the authority of the person making service and must be verified by affidavit.⁴⁶ A sheriff may also appoint any responsible county citizen, who is neither a party nor interested in the suit, to serve process.⁴⁷ The Oklahoma Supreme Court has found that this non-interest limitation precludes service by "anyone whose fortunes, professional reputation or personal well-being would be materially affected by the outcome of the action."⁴⁸ This includes the plaintiff's attorney as well as a salaried employee of a law firm representing a party.⁴⁹

43. *Id.* §§ 158(A), 170.3, 1702.02. Section 158 concerns service of process within Oklahoma, § 170.3 concerns service of process outside Oklahoma, and § 1702.02 is part of the Uniform Interstate and International Procedure Act, *see id.* § 1706.04, as adopted by Oklahoma.

44. [W]henever any party, his agent or attorney, shall make and file with the clerk of the proper court an affidavit, stating that he believes that the sheriff of the county will not, by reason of either partiality, prejudice, consanguinity or interest, faithfully perform his duties in any suit commenced in said court, the clerk shall direct the original, or other process, in such suit to the county clerk who shall execute the same in like manner as the sheriff might or ought to have done

Id. § 54.

In any action or proceeding pending in any county in which the sheriff of such county shall be a party defendant, service of summons upon such sheriff . . . shall be made by the county clerk of such county to whom summons for service upon said sheriff . . . shall be delivered by the court clerk, and such county clerk shall make due return thereof

Id. § 158(B).

45. *Id.* § 158(C).

46. Section 52 of title 12 allows the judge or, in the judge's absence, any clerk to appoint a person for good cause to serve a particular process. *Id.* § 52. Section 158(A) of title 12 provides that a summons may be served by any responsible citizen of the county, who is neither a party nor interested in the action and who is appointed by either the officer to whom the summons is delivered or by the court in which the action is brought. *Id.* § 158(A). Both sections require that when such a person serves a summons he must verify the return by affidavit. In addition, § 158(A) requires that the person endorse his authority on the original writ. *Id.*

47. *Id.*

48. *Bramlett v. District Court*, 557 P.2d 424, 427 (Okla. 1976).

49. *Id.* (party's attorney); *White Stag Mfg. Co. v. Mace*, 556 P.2d 997, 998 (Okla. 1976) (salaried employee of party's attorney); *see also Pleadings and Procedure, Annual Survey of Oklahoma*

In 1976, the Oklahoma Legislature provided for the licensure of persons as private process servers.⁵⁰ Any person over seventeen years old may file an application with a county court clerk.⁵¹ The presiding judge of the judicial administrative district in which the county is located is then authorized to issue a license if the applicant is mentally and ethically fit.⁵² The court clerk should keep a list of licensed process servers posted in his office. Accordingly, a plaintiff may designate one of these persons, along with his license number, on the summons before presenting it to the clerk for issuance.⁵³ The fees for service shall be handled between the party and the licensee.⁵⁴ A licensee's authority to serve process is statewide.⁵⁵ His return of service must be verified by affidavit,⁵⁶ which may be acknowledged by a notary.⁵⁷ Personal service outside Oklahoma may be accomplished either by a person authorized to serve process within that jurisdiction or by a person designated by an Oklahoma court.⁵⁸

The service of summons by a person other than the individual indicated on the summons is valid as long as the person actually serving a summons is authorized to perform such a function. The service return should be made by the person serving the summons.⁵⁹

IV. SERVICE ON INDIVIDUALS

A plaintiff initially has the choice of three methods of service on an individual defendant: personal, substituted, or by mail. Personal service requires that the summons and petition be physically delivered to the named defendant.⁶⁰ Actual delivery is probably not necessary where a defendant is within close proximity to the sheriff or process

Law, 2 OKLA. CITY U.L. REV. 337, 366-69 (1977) (discussing Oklahoma cases holding that "interested" attorneys cannot serve process).

50. Act of Apr. 29, 1976, ch. 74, 1976 Okla. Sess. Laws 94, amended by Act of May 16, 1979, ch. 177, 1979 Okla. Sess. Laws 450 (codified at OKLA. STAT. tit. 12, § 158.1 (1981)).

51. OKLA. STAT. tit. 12, § 158.1(B) (1981).

52. *Id.* § 158.1(A), (B); see TULSA DIST. CT. R. 38.1(1).

53. OKLA. STAT. tit. 12, § 158.1(I) (1981); TULSA DIST. CT. R. 38.1(5).

54. OKLA. STAT. tit. 12, § 158.2 (1981).

55. *Id.* § 158.1(A).

56. *Id.* § 158.1(G) (requiring proof of service of process be shown by affidavit as provided by *id.* § 158); see *id.* § 431; *supra* note 46 and accompanying text; *infra* § XIV.

57. OKLA. STAT. tit. 49, § 6 (1981); see *id.* tit. 12, §§ 432, 435-436.

58. *Id.* tit. 12, §§ 170.3, 1702.02.

59. *Id.* § 154.7. But see *City of Enid v. Rector*, 97 Okla. 280, 283, 223 P. 846, 848 (1924) (amendment allowed when return signed by person other than one who actually served it).

60. OKLA. STAT. tit. 12, § 159 (1981); cf. FED. R. CIV. P. 4(d)(1) ("delivering a copy of the summons and of the complaint to him personally").

server and the defendant refuses to accept delivery. The sheriff has substantially complied when he attempts to make actual delivery in a reasonable manner. A defendant should be made aware of the location of the summons and it should be placed as near him as possible (e.g., under the screen door of his residence or under the windshield wiper of his automobile), so that he can readily take it into his possession.

Substituted service consists of process delivered to one other than the named individual defendant. Section 159 of title 12 dictates that such service may be accomplished by leaving the summons at a defendant's "usual place of residence with some member of his family over fifteen years of age."⁶¹ Elements of this statute that might cause interpretation problems include: (1) "usual place of residence" and (2) "member of his family." The Oklahoma Supreme Court recently affirmed that its standard of interpretation for service statutes is substantial compliance rather than the older strict compliance rule.⁶²

A defendant's usual residence, for the purpose of section 159, is the place where he customarily lives,⁶³ normally where he maintains his possessions and intends to return whenever he is absent.⁶⁴ "Residence" normally precludes a person's place of business.⁶⁵ A homestead tax exemption has limited probative value in determining residency.⁶⁶ For a married person, his or her residence is presumptively where a spouse and family live.⁶⁷ Such a presumption, however, may be rebut-

61. OKLA. STAT. tit. 12, § 159 (1981); cf. FED. R. CIV. P. 4(d)(1) ("his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein"). See *generally* Annot., 91 A.L.R.3d 827 (1979) (person of suitable age and discretion for purposes of substituted service); Annot., 87 A.L.R.2d 1163 (1963) (place or manner of delivering papers pursuant to statute allowing substituted service by leaving summons at usual place of abode); Annot., 172 A.L.R. 521 (1948) (leaving process at residence as compliance with requirement that defendant be personally served).

62. Compare *Jackson v. Welch*, 545 P.2d 1254, 1256 (Okla. 1976) (substantial compliance is achieved when the purpose of the statute is shown to have been served) and *Williams v. Egan*, 308 P.2d 273, 278 (Okla. 1957) (service on non-resident co-partnership found to be in substantial compliance with applicable statutes) with *Letteer v. Conservancy Dist.*, 385 P.2d 796, 801 (Okla. 1963) (statutes substituting other than personal service must be strictly followed). See *generally* Annot., 45 A.L.R.2d 1090 (1956) (application of doctrine of *idem sonans* to constructive and substituted service).

63. *Heiny v. Sommers*, 131 Okla. 214, 216, 268 P. 287, 290 (1928).

64. *Jones v. Reser*, 61 Okla. 46, 47, 160 P. 58, 59 (1916).

65. *Cohen v. Cochran Grocery Co.*, 70 Okla. 168, 169-70, 173 P. 642, 642 (1918) (leaving a copy of summons at defendant's usual place of business with defendant's manager not sufficient); see *Seekatz v. Brandenburg*, 150 Okla. 53, 57, 300 P. 678, 682 (1931) (leaving a copy of summons at defendant's son's place of business not sufficient). See *generally* Annot., 32 A.L.R.3d 112 (1970) (construction of the phrase "usual place of abode").

66. *Anderson v. Ticknor*, 571 P.2d 1245, 1247 (Okla. Ct. App. 1977).

67. *Pipkin v. Pipkin*, 393 P.2d 534, 536 (Okla. 1964); *Jones v. Reser*, 61 Okla. 46, 47, 160 P. 58, 59 (1916).

ted by showing a separate residence, either by voluntary agreement,⁶⁸ imprisonment,⁶⁹ or divorce.⁷⁰

The family member requirement in section 159 has two components: (1) a family relationship between the member served and the defendant must not be too attenuated, and (2) the family member must permanently reside with the defendant. First, the concept of family goes beyond immediate family members, such as parents and children, and may include a daughter-in-law.⁷¹ However, the relationship between a summons' recipient and the defendant must be more confidential and intimate than a relationship with a resident servant in an employer-employee situation.⁷² There is no general provision in Oklahoma providing for service upon an individual's agent, such as his regular attorney.⁷³ Second, it has been held that the notion of permanency is not met where the defendant's mother had her own home but visited the defendant during the winter months.⁷⁴

Both the permanency and relationship issues should be closely investigated when a summons is delivered to a defendant's paramour who is cohabiting at the defendant's residence. If a common law marriage exists, the section 159 "family" language is clearly satisfied, although the problem of proof may be substantial. Without such proof, a court must determine whether the facts surrounding the cohabitation provide a sufficient family relationship under modern mores. It may be helpful to remember that the purpose of substituted service is to provide a reasonable means of notifying a defendant that a lawsuit is pending.⁷⁵

Other instances of substituted service exist. To illustrate, a corporation, association, city, county, or other artificial entity must necessarily be summoned by substituted service, although its agent may be personally presented with process.⁷⁶

A plaintiff, for his third choice, may serve a defendant "by certi-

68. *Heiny v. Sommers*, 131 Okla. 214, 216, 268 P. 287, 289-90 (1928).

69. *Lipe v. Hale*, 158 Okla. 145, 146, 12 P.2d 696, 697 (1932).

70. *McInnish v. Continental Oil Co.*, 362 P.2d 969, 970 (Okla. 1961).

71. *Jackson v. Smith*, 83 Okla. 64, 66, 200 P. 542, 543-44 (1921).

72. *Moore v. Kasishke*, 189 Okla. 336, 338, 117 P.2d 113, 115 (1941).

73. *High v. Southwestern Ins. Co.*, 520 P.2d 662, 665 (Okla. 1974).

74. *Cleaves v. Funk*, 76 F.2d 828, 829-30 (10th Cir. 1935); *see Jackson v. Smith*, 83 Okla. 64, 66, 200 P. 542, 544 (1921).

75. *See Comment, Substituted Service of Process on Cohabitants*, 52 U. COLO. L. REV. 321, 321-25 (1981).

76. *See infra* §§ V, VI & VII.

fied mail with a request for a return receipt from the addressee only.”⁷⁷

Regardless of the manner of service chosen—personal, substituted, or mail—a copy of the plaintiff’s petition should be attached to the summons and served together with the process.⁷⁸ Where there are multiple defendants, a copy of the summons, along with the petition, should be served on each defendant.⁷⁹ To illustrate, substituted service on two defendants living at one abode, even though members of the same family, will be valid only if two copies of process are left with another family member.⁸⁰

In a forcible entry and detainer action,⁸¹ a plaintiff initially has only two methods of service available: (1) personal service on the defendant or (2) substituted service on any person over fifteen years of age residing in the detained premises.⁸² Nevertheless, if personal or substituted service cannot be made by the exercise of reasonable diligence, service by registered mail with return receipt is permissible.⁸³ As an alternative to registered mail with return receipt, a plaintiff whose sole requested relief is restoration of possession of his premises may effect service by posting⁸⁴ plus mailing a summons by registered or certified mail.⁸⁵ Service is valid even though a defendant fails to sign a return receipt or even to receive or see the summons.⁸⁶

In a few instances, a resident defendant may be served process through an agent authorized by statute.⁸⁷ For example, a licensed pawnbroker is required to appoint a resident service agent with the Ad-

77. OKLA. STAT. tit. 12, § 153.1(b) (1981); see *infra* notes 237-60 and accompanying text; cf. FED. R. CIV. P. 4(c)(2)(C)(ii) (Service may be made by first-class mail, postage prepaid “to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to form 18-A and a return envelope, postage prepaid, addressed to the sender.”).

78. OKLA. STAT. tit. 12, § 153 (1981); OKLA. DIST. CT. R. 1; cf. FED. R. CIV. P. 4(d) (same rule).

79. OKLA. STAT. tit. 12, § 153.1(b) (1981) provides that when service by mail is made on multiple defendants, a copy of the summons and petition must be separately mailed to each defendant. See *id.* §§ 178, 179 (service on some of several defendants who are jointly or severally liable).

80. Chaney v. Reddin, 201 Okla. 264, 266, 205 P.2d 310, 312 (1949). See generally Annot., 8 A.L.R.2d 343 (1949) (necessity of leaving copy for each person served).

81. See D. CLARK, *supra* note 1, ch. III.B.

82. OKLA. STAT. tit. 12, § 1148.5 (1981).

83. *Id.* The return receipt must be postmarked at least three days before the trial date. *Id.*

84. See *infra* notes 293-96 and accompanying text.

85. OKLA. STAT. tit. 12, § 1148.5A (1981). The notice must be posted on the property 10 days prior to the trial date and the summons must be mailed at least seven days prior to the trial date. *Id.*

86. *Id.*

87. Cf. *infra* notes 298-304 and accompanying text (service on nonresidents within Oklahoma via an agent).

ministrator of Consumer Affairs.⁸⁸ Failure to comply with this requirement permits a plaintiff to conclude service on the Administrator himself.⁸⁹ A similar procedure applies to licensed precious metal and gem dealers, although here the appointment is to be communicated to the Administrator of the Department of Consumer Credit.⁹⁰ Finally, a securities issuer or dealer is deemed to have appointed the Securities Administrator as his attorney to receive a summons and to forward notice of the process to the defendant.⁹¹

The issuance and service of a summons under section 153 of title 12 is required only in those situations where a claim for affirmative relief is asserted against a person who is not already a party to the original action. In *Horath v. Pierce*,⁹² the Oklahoma Supreme Court held that a person who has been served process or who has entered an appearance is already subject to jurisdiction, thus eliminating the necessity to serve him with a new summons before other claims may be asserted against him.⁹³ Of course, a copy of any pleading subsequent to the initial petition must be served on opposing counsel.⁹⁴

Lastly, process issued by a court outside Oklahoma may be served in Oklahoma without a court order.⁹⁵ Alternatively, it may be served with an Oklahoma court order granted either upon application by an interested person or in response to a letter rogatory.⁹⁶

V. SERVICE ON CORPORATIONS

Service of process on a corporation raises the issue of who should be served within the corporate organization. Since personal service on an artificial entity is not possible, substituted service, as provided by section 163 of title 12, directs a sheriff to serve either: (1) the president, mayor, chairman of the board of directors or board of trustees, or other chief officer within a county or (2) a statewide service agent duly appointed to receive process.⁹⁷ Service by certified mail is also authorized upon these particular individuals by requesting a return receipt from

88. OKLA. STAT. tit. 59, § 1504(C) (1981).

89. *Id.*

90. *Id.* § 1524(E).

91. *Id.* tit. 71, § 413(g)-(h).

92. 506 P.2d 548 (Okla. 1973).

93. *Id.* at 551-54.

94. OKLA. DIST. CT. R. 2; *see* 26 OKLA. L. REV. 127 (1973).

95. OKLA. STAT. tit. 12, § 1702.04(b) (1981).

96. *Id.* § 1702.04(a).

97. *Id.* § 163; *cf.* FED. R. CIV. P. 4(d)(3) ("to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process"). *See generally*

the addressee only.⁹⁸ The list of chief officer titles in section 163 is not exclusive and may include a different designation given by a particular corporation to its most important official.⁹⁹ Under some circumstances, a vice-president may qualify as a chief officer. For instance, when the president is absent from a county, a vice-president may become the successor chief officer.¹⁰⁰ By this reasoning, consequently, service may be made upon any officer in a corporate chain of authority if the officers above him cannot be found within the county.¹⁰¹ The officer served, however, must be sufficiently integrated into actual corporate affairs so that he can forward a summons to the appropriate individual.¹⁰²

Instead of the chief corporate officer, a plaintiff may designate service upon the registered service agent which all domestic, domesticated, and foreign corporations doing business in Oklahoma are required to appoint.¹⁰³ Upon application to the Secretary of State for a certificate of incorporation, an Oklahoma company must include in its articles of incorporation the name of a registered service agent located at the address provided for its registered office.¹⁰⁴ No foreign corporation may transact business in Oklahoma until it becomes domesticated.¹⁰⁵ Upon application to the Secretary of State for a certificate of domestication, the foreign company must include in its articles of domestication the name of a registered service agent located at the address given for its registered office.¹⁰⁶ This registered office should be located in Oklahoma City or in the county of the corporation's princi-

Annot., 26 A.L.R.2d 1086 (1952) (authorized agent to receive service under FED. R. Civ. P. 4(d) and similar state statutes).

98. OKLA. STAT. tit. 12, § 153.1(b) (1981); *see infra* notes 237-41, 255-60, and accompanying text; *cf.* FED. R. Civ. P. 4(c)(2)(C)(ii) (service by first-class mail, postage prepaid).

99. [T]he official title of the chief officer need not be president or mayor, but may be whatever the corporation designates, and under this blanket provision of the statute, if one is the chief officer, no matter what his official title may be, the statute makes him subject to service of summons.

Colonial Ref. Co. v. Lathrop, 64 Okla. 47, 52, 166 P. 747, 750 (1917).

100. *Id.* at 52, 166 P. at 750-51.

101. A & A Tool & Supply Co. v. Gray, 192 Okla. 657, 659, 140 P.2d 926, 928 (1943) (service on vice-president was valid when corporation's president could not be found).

102. *See id.* at 659, 140 P.2d at 928 (citing 19 C.J.S. *Corporations* § 1312, at 995 (1940)).

103. "Every corporation shall have and continuously maintain in this state a registered agent, on whom service of summons may be had." OKLA. STAT. tit. 18, § 1.17 (1981); *cf. id.* § 476 (foreign banking corporation acting as a personal representative or trustee in ancillary proceedings).

104. *Id.* § 1.208(a)(2). Once the Secretary of State receives the articles and finds they contain the required information, he will issue a certificate of incorporation. *Id.* § 1.232(a).

105. *Id.* § 1.199(a).

106. *Id.* §§ 1.228(a)(5), 1.232(a).

pal place of business in Oklahoma.¹⁰⁷ Once the Secretary of State has issued an appropriate certificate, he maintains on alphabetically arranged card files in his office information available to plaintiffs regarding service agents.¹⁰⁸

Every corporation is obligated to continuously maintain a registered office in Oklahoma,¹⁰⁹ along with a registered service agent.¹¹⁰ The purpose of this requirement is to allow Oklahoma residents to obtain local redress against corporations, particularly against foreign corporations doing business in Oklahoma.¹¹¹ If a foreign corporation transacts business in Oklahoma without a valid certificate of domestication, any person so engaged is guilty of a misdemeanor,¹¹² and the corporation itself or its successor may not maintain a lawsuit in an Oklahoma court, although it may defend a lawsuit.¹¹³

The registered service agent for a domestic corporation should be an Oklahoma resident individual or another domestic corporation. For a domesticated corporation, the service agent should be either a resident individual of Oklahoma City, or of the county where the principal place of business in Oklahoma is located, or a domestic corporation with an office in Oklahoma City. The agent's business office must be identical to the defendant corporation's registered office.¹¹⁴ A foreign corporation which has not domesticated may nevertheless designate a registered service agent with the Secretary of State subject to the same limitations applicable to a domesticated corporation.¹¹⁵

Service of process upon an individual registered agent can be accomplished by personal service or service by mail, but apparently not by substituted service, in the same manner as upon any individual defendant.¹¹⁶ Service upon a corporate registered agent is made by deliv-

107. *Id.* §§ 1.17(a) (Business Corporation Act), 475.1 (foreign corporation).

108. *Id.* § 1.246(a). The telephone number to call in order to obtain such information is (405) 521-3048.

109. *Id.* § 1.16(a).

110. *Id.* § 1.17(a); *see id.* § 1.204(b)(4)-(5) (consequences of failing to maintain registered agent or to notify Secretary of State of change in location of registered office).

111. *Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co.*, 100 F.2d 770, 774 (10th Cir. 1939), *rev'd on other grounds*, 309 U.S. 4, 9, *reh'g denied*, 309 U.S. 693 (1940); *see OKLA. CONST.* art. 9, § 43. *See generally* Annot., 113 A.L.R. 9 (1938) (service on foreign corporations).

112. *OKLA. STAT.* tit. 18, § 1.201(c) (1981) (affects any person, agent, officer, or employee affiliated with the foreign corporation).

113. *Id.* § 1.201(a); *see id.* § 1.204(b)(4); *Wilson v. Williams*, 222 F.2d 692, 697 (10th Cir. 1955); *V.I.P. Inv. Corp. v. Mayes*, 567 P.2d 86, 90 (Okla. 1977).

114. *OKLA. STAT.* tit. 18, § 1.17(a) (1981).

115. *Id.* §§ 475.1-2.

116. *Fidelity-Phenix Fire Ins. Co. v. Penick*, 401 P.2d 514, 517-18 (Okla. 1965) (overruling *State Life Ins. Co. v. Oklahoma City Nat'l Bank*, 21 Okla. 823, 97 P. 574 (1908), which had

ering process to any officer or employee at its registered office or by mail service.¹¹⁷ A service agent, however, has no duty to aid service of process, for instance by remaining perpetually available. In one case, where a plaintiff elected to use service by mail on defendant's service agent and a mailperson left a postal notice of attempted delivery when the agent was absent. Shortly thereafter the letter was returned to the court clerk as undelivered and the statute of limitations ran. Even though a notice of attempted delivery gave the agent information that a certified mailing was available for retrieval from the post office, he had no duty to take such action.¹¹⁸

A plaintiff should exercise great care in determining the correct service agent to receive process. This is particularly true where a corporation has reorganized, changed registered agents,¹¹⁹ or merged with another corporation.¹²⁰

In summary, the basic rule is that service on corporations should be made by delivering process personally or by mail to the chief officer or to a registered service agent. It is only when such service has failed or is impossible—and such a statement should appear on the return¹²¹—that a plaintiff may choose another manner of authorized service.¹²²

One avenue open to the plaintiff when ordinary service has failed is to serve process on the Secretary of State as a substitute for the corporation's registered agent. Whenever a domestic, domesticated, or foreign corporation fails to maintain a registered agent in Oklahoma, service of process on the Secretary of State is appropriate.¹²³ In addi-

allowed substituted service, insofar as it related to service on a foreign corporation); *see supra* notes 61-62 and accompanying text.

117. OKLA. STAT. tit. 18, § 1.17(c) (1981).

118. *Snyder v. Southwestern Bell Tel. Co.*, 548 P.2d 218, 219-20 (Okla. 1976); *see Pleadings and Procedure, Annual Survey of Oklahoma Law*, 2 OKLA. CITY U.L. REV. 337, 364-66 (1977).

119. *See* OKLA. STAT. tit. 18, § 1.17(e) (1981).

120. *See* *Marathon Battery Co. v. Kilpatrick*, 418 P.2d 900, 905 (Okla. 1965).

121. *See infra* notes 336-37 and accompanying text; *cf. infra* note 142 (railroad corporations).

122. *Magnolia Petroleum Co. v. Evans Lumber Co.*, 351 P.2d 1067, 1070-71 (Okla. 1960); *Denison Peanut Co. v. Moss*, 262 P.2d 161, 162 (Okla. 1953); *Mid-Continent Petroleum Corp. v. Brewer*, 207 Okla. 230, 232-33, 248 P.2d 1039, 1041-42 (1952).

123. OKLA. STAT. tit. 12, § 190 (Supp. 1982) provides that where a foreign corporation has no registered agent in Oklahoma, service may be made on the Secretary of State. *Id.* tit. 18, § 1.17(a) requires every corporation to maintain a registered agent on whom process may be served. It further provides that, in the case of a foreign or domesticated corporation, "such registered agent shall be the Secretary of State," although a foreign or domesticated corporation may designate an additional service agent. *Id.* If a domestic corporation fails to maintain a registered agent as required, service may be accomplished by serving the Secretary of State. *Id.* § 1.17(d).

In *Municipal Paving Co. v. Herring*, 50 Okla. 470, 150 P. 1067 (1915), the Oklahoma Supreme Court held that where defendant, a foreign corporation, was attempting to quash service

tion, when the charter of an Oklahoma corporation expires or is canceled, service may be made on the Secretary of State.¹²⁴ This type of service is arranged with the court clerk who issues the summons. The clerk mails triplicate copies of the summons along with a petition to the Secretary of State. Receipt of the summons by the Secretary constitutes effective service. If a corporation's address is not available in the Secretary's records, the plaintiff should set forth the last known address as diligently ascertained. Within three working days after service, the Secretary should send a copy of the summons plus the petition to the corporation by registered or certified mail with request for a return receipt. At that time, the Secretary will enter on the summons the date service was made on him and the mailing date, and then return the summons to the clerk who issued it.¹²⁵

The second avenue open to a plaintiff if the chief officer or registered agent cannot be served is to attempt service in a particular county, under section 163 of title 12, upon a corporation's cashier (usually with banks), treasurer, secretary, clerk, or managing agent.¹²⁶ If a clerk or other listed officer is served, he should be sufficiently integrated into actual corporate business so that he would reasonably understand the nature of the papers delivered.¹²⁷ A director of the corporation, for instance, is not considered a "managing agent."¹²⁸

Section 163 is based on the geographical focus of counties. It does not, however, require that the corporate chief officer be absent from a particular county before valid substituted service may be made upon the list of corporate officers mentioned; it merely requires that the chief

on the Secretary of State, the burden of proof was upon the defendant, rather than on the plaintiff, to show it had an alternative registered agent in Oklahoma. *Id.* at 472, 150 P. at 1068.

124. OKLA. STAT. tit. 18, § 1.198b(a) (1981). Section 1.198b does not, however, apply when a corporation voluntarily dissolves. *Riffe Petroleum v. McMichael Asphalt Co.*, 585 P.2d 1123, 1125 (Okla. 1978).

125. OKLA. STAT. tit. 12, § 170.10(a)-(d) (Supp. 1982) (foreign corporations); *id.* tit. 18, § 1.198b(a) (1981) (domestic corporations). See generally Annot., 86 A.L.R.2d 1000 (1962) (manner of service on a foreign corporation which has withdrawn); Annot., 75 A.L.R.2d 1399 (1961) (service on a dissolved domestic corporation in the absence of an express statute); Annot., 148 A.L.R. 975 (1944) (requisites of substituted service on a public official); Annot., 45 A.L.R. 1447 (1926) (effect of service of process on a designated agent for a foreign corporation ceasing to do business within the state).

126. See *Shawnee Gas & Elec. Co. v. Griffith*, 96 Okla. 261, 262-63, 222 P. 235, 236-37 (1924); *Levy v. Tradesmen's State Bank*, 71 Okla. 245, 246-47, 176 P. 512, 513 (1919). See generally Annot., 17 A.L.R.3d 625 (1968) (determining the managing agent of a foreign corporation under a statute authorizing service on such an agent); Annot., 71 A.L.R.2d 178 (1960) (determining the managing agent of a domestic corporation under a statute authorizing service on such an agent).

127. See *A & A Tool & Supply Co. v. Gray*, 192 Okla. 657, 659, 140 P.2d 926, 928 (1943).

128. *Oklahoma Fire Ins. Co. v. Barber Asphalt Paving Co.*, 34 Okla. 149, 153-54, 125 P. 734, 736 (1912).

officer not be found in the county. A sheriff need not repeatedly try to locate a designated officer until the return date of the summons.¹²⁹ Where a sheriff's good faith or intelligence is not put directly into issue, a statement in his return that a certain officer could not be found in a county overcomes affidavits merely stating the opposite.¹³⁰ This second tier list of corporate officers, however, may not be used solely because no registered service agent's office is located within a particular county. A service agent's authority extends throughout the state and must be used before resorting to the second tier of officers set forth in section 163.¹³¹

In the unusual case where neither a chief officer, cashier, treasurer, secretary, clerk, nor managing agent can be found in a county and a registered agent does not exist, a summons may be left at a corporation's usual place of business with a person who has charge of the office.¹³² Substituted service has been held valid, for example, when made on a farm boss in charge of an oil and gas well for the defendant oil corporation.¹³³

There are special rules for certain types of corporations which supplant the basic scheme provided in section 163 of title 12 and section 1.17 of title 18.¹³⁴ To illustrate, a railroad or stage company¹³⁵ may be served by delivering process personally or by mail to the chief officer or to a designated service agent.¹³⁶ Companies in this context include individuals or entities owning and operating motor vehicle lines.¹³⁷

129. *Levy v. Tradesmen's State Bank*, 71 Okla. 245, 247, 176 P. 512, 513-14 (1919) (sheriff acted promptly and with the utmost good faith).

130. *Colvert Ice Cream & Dairy Prods. Co. v. Citrus Prods. Co.*, 179 Okla. 285, 286, 65 P.2d 455, 456 (1937).

131. *Magnolia Petroleum Co. v. Evans*, 351 P.2d 1067, 1070-71 (Okla. 1960); *Mid-Continent Petroleum Corp. v. Brewer*, 207 Okla. 230, 232-33, 248 P.2d 1039, 1041 (1952); *Kelly v. Travelers Indem. Co.*, 199 Okla. 151, 152-53, 184 P.2d 759, 760-61 (1947).

132. OKLA. STAT. tit. 12, § 163 (1981); *see Humphrey v. Coquillard*, 37 Okla. 714, 721-22, 132 P. 899, 901-02 (1913).

133. *Katschor v. Eason Oil Co.*, 185 Okla. 275, 276-77, 91 P.2d 670, 672 (1939).

134. The Oklahoma Supreme Court has consistently held that the exclusive method of serving summons on railroad corporations is fixed by OKLA. STAT. tit. 12, §§ 165-168 (1981). *Kansas, Okla. & Gulf Ry. v. Hill*, 186 Okla. 531, 532, 99 P.2d 115, 115-16 (1940); *Kansas, Okla. & Gulf Ry. v. Martin*, 175 Okla. 73, 74, 51 P.2d 577, 578-79 (1935); *Hilliard v. St. Louis & S. F. R.R.*, 98 Okla. 22, 23-24, 223 P. 877, 878 (1924); *St. Louis & S. F. R.R. v. Clark*, 17 Okla. 562, 567, 87 P. 430, 431 (1906).

135. *See Johnson v. Martin*, 177 Okla. 281, 281, 283, 58 P.2d 847, 847, 849 (1936).

136. *See Kansas, Okla. & Gulf Ry. v. Hill*, 186 Okla. 531, 532, 99 P.2d 115, 116 (1940); *St. Louis & S. F. R.R. v. Clark*, 17 Okla. 562, 565-69, 87 P. 430, 431-32 (1906); OKLA. STAT. tit. 12, §§ 153.1(b), 166 (1981).

137. *See Johnson v. Martin*, 177 Okla. 281, 283, 58 P.2d 847, 849 (1936) ("The use of the term 'stage company' by the legislature in the enactment of said statutes was intended to include all corporations, companies, partnerships, firms, or individuals owning or operating a stage line.").

Every railroad and stage company doing business in Oklahoma is required to appoint a resident service agent in each county where it transacts business or where its routes extend.¹³⁸ A certificate of such appointment must then be filed with the county court clerk.¹³⁹ If a sheriff cannot personally serve a designated agent, substituted service is permissible at the agent's residence,¹⁴⁰ presumably subject to the family member and age limits of title 12, section 159.¹⁴¹

When the chief officer or service agent cannot be found in a particular county—or when the railroad or stage company fails to appoint or maintain an agent—process may be served on a local repair superintendent, freight agent, ticket agent, station keeper, or some person in charge of or employed at a local depot or station.¹⁴²

Insurance corporations also receive special treatment in Oklahoma. A domestic insurer may be served in any manner appropriate for corporations generally—including service on the Secretary of State—as well as by service on the corporation's attorney if it is a reciprocal insurer or a Lloyd's association insurer.¹⁴³ Service on a domestic assessment insurance corporation, or mutual benefit association, may also be achieved by delivering process to the company's president, managing agent, or secretary.¹⁴⁴ A foreign insurance corporation, on

138. OKLA. STAT. tit. 12, § 165 (1981).

139. *Id.* § 166.

140. *Id.* § 168.

141. "[S]ervice shall be made . . . by leaving one [copy of the summons] at his usual place of residence with *some member of his family over fifteen years of age . . .*" *Id.* § 159 (emphasis added).

142. *Id.* §§ 167-168; see *Missouri-Kan.-Tex. R.R. v. Smithart*, 475 P.2d 823, 824 (Okla. 1970); *Midland Valley R.R. v. Pettie*, 196 Okla. 52, 53, 162 P.2d 543, 545 (1945).

When summons is served on one of the persons designated in § 167, however, the sheriff's return must affirmatively recite that service could not be made on the chief officer or service agent and that the railroad has failed to appoint a service agent as required. *Kansas, Okla. & Gulf Ry. v. Hill*, 186 Okla. 531, 532, 99 P.2d 115, 116 (1940); *St. Louis & S. F. R.R. v. Reed*, 59 Okla. 95, 98-99, 158 P. 399, 402 (1916); *St. Louis & S. F. R.R. v. Clark*, 17 Okla. 562, 567-69, 87 P. 430, 431-32 (1906). The failure to so recite will not render the service void, but rather voidable; the plaintiff may amend the return. *Smithart*, 475 P.2d at 824-25.

143. "Service of process against a domestic insurer may be made upon the insurer corporation in the manner provided by laws applying to corporations generally, or upon the insurer's attorney-in-fact if a reciprocal insurer of a Lloyd's association." OKLA. STAT. tit. 36, § 621(B) (1981).

"Legal process shall be served upon a domestic reciprocal insurer by serving the insurer's attorney at his principal offices." *Id.* § 2915(A).

Sections 3001-3013 of title 36 deal with Lloyd's associations. See *id.* § 3013(A). Section 3010 provides that when an action is based on an insurance policy issued by the "attorney" (as defined in *id.* § 3002) of a Lloyd's underwriter, service may be made on either the Insurance Commissioner or the Oklahoma "attorney-in-fact." *Id.* § 3010. Such service has the same effect as if served on the attorney and on each underwriter personally.

144. *Id.* § 2404(A)(6).

the other hand, at the time it applies for a certificate of authority to operate in Oklahoma, appoints the Insurance Commissioner as its attorney to receive process.¹⁴⁵ Service must first be attempted on the Commissioner when the plaintiff's cause of action arises from the defendant corporation's transaction of business in Oklahoma.¹⁴⁶ If the cause of action does not arise from an Oklahoma transaction, alternatively, service is proper through the Secretary of State where the insurer is otherwise doing business in Oklahoma.¹⁴⁷

Service of process upon the Insurance Commissioner is fulfilled by personal service or by mail service, but generally not by substituted service.¹⁴⁸ Three copies of process should be served on the Commissioner who will forward a copy to the person designated by the insurance corporation to receive notice of an Oklahoma summons.¹⁴⁹

An unauthorized foreign insurance corporation which transacts any insurance business in Oklahoma is deemed to have appointed the Insurance Commissioner as its attorney to receive process on actions arising out of such business.¹⁵⁰ The Commissioner then forwards a copy of process to the defendant's principal place of business.¹⁵¹ In this situation, a plaintiff has the option to serve process on an unauthorized foreign insurance corporation under title 12, section 163 or to use substituted service on any person in Oklahoma who on behalf of the corporation is transacting insurance business.¹⁵²

145. *Id.* § 621(A).

146. *See* *Kelley v. Travelers Indem. Co.*, 199 Okla. 151, 152-53, 184 P.2d 759, 760-61 (1947). OKLA. STAT. tit. 36, § 621(B) (1981) provides, "Service of such process against a foreign or alien insurer shall be made only by service of process upon the Insurance Commissioner." Section 2408 requires that all foreign assessment corporations and associations admitted to transact business in Oklahoma designate an agent for the service of process in the same manner as required by legal reserve life insurance companies. *Id.* § 2408; *cf. id.* § 2732 (foreign fraternal insurance benefit societies).

147. *Continental Oil Co. v. National Fire Ins. Co.*, 541 P.2d 1315, 1317-18 (Okla. 1975).

148. *See* *Fidelity-Phenix Fire Ins. Co. v. Penick*, 401 P.2d 514, 517-18 (Okla. 1965); OKLA. STAT. tit. 36, § 623 (1981). *See generally* Annot., 148 A.L.R. 975 (1944) (service of process on a public official as substituted service).

149. Section 622(A) of title 36 provides that when the Insurance Commissioner is served with legal process, he must forward a copy by registered mail to the person designated by the insurer pursuant to § 621(C). OKLA. STAT. tit. 36, § 622(A) (1981). Once the process is served upon the Insurance Commissioner and forwarded as required, service is complete. *Id.* § 622(B).

150. *Id.* § 1103(A).

151. *Id.* § 1103(B).

152. Section 1103(C) provides that the service of process "shall also be valid if served upon any person within Oklahoma who, in this state on behalf of such insurer, is soliciting insurance, or making, issuing, or delivering any insurance policy, or collecting or receiving any premium, membership fee, assessment, or other consideration for insurance." *Id.* § 1103(C). Section 1103(E) then provides that the procedure for service on unauthorized insurers shall not prevent service in any

VI. SERVICE ON PARTNERSHIPS, TRUSTS, AND OTHER UNINCORPORATED ASSOCIATIONS

In Oklahoma, unincorporated associations may be sued under their collective name without identifying individuals composing the association.¹⁵³ The plaintiff should stand ready to show, nevertheless, either that his suit concerns an interest in real property claimed by the association¹⁵⁴ or that the association transacts "business for gain or speculation under a particular appellation."¹⁵⁵ "Business" in this context is interpreted to refer to matters of a pecuniary nature rather than to social advancement, but does not necessarily require a profit.¹⁵⁶

Service of process on an unincorporated association, such as a partnership, is accomplished by personally delivering a summons to *any* member of the association.¹⁵⁷ This rule is satisfied even by service on an inactive member receiving pension benefits from a labor union sued by another union member.¹⁵⁸ Care must be taken, however, not to transgress an association defendant's right to procedural due process notice.¹⁵⁹

Business partnerships present no difficulty under the "gain or speculation" requirement in section 182 of title 12. Trade unions, moreover, have generally been accepted as engaged in "business." For example, in 1956, a plaintiff showed that the Teamsters Union had twenty-seven million dollars in assets and five million dollars in annual receipts including income from investments, bond discounts, and the sale of supplies.¹⁶⁰ Churches, on the other hand, may present a problem since they are not ostensibly organized as a business. If chal-

other lawful manner. *Id.* § 1103(E). Thus, any method of service available in title 12 or title 18 should be available to serve an unauthorized insurer.

153. *Id.* tit. 12, §§ 182, 183.1 (respectively dealing with service of process against unincorporated associations and trusts, and service of process for actions concerning title or interest in real property held in an unincorporated association's name).

154. *See id.* § 183.1.

155. *See id.* § 182.

156. *International Bhd. of Teamsters, Local 516 v. Santa Fe Packing Co.*, 300 P.2d 660, 662 (Okla. 1956). The court stated that collective bargaining and mutual aid were merely social objectives and not business for gain or speculation as required by § 182 of title 12. 300 P.2d at 662.

157. OKLA. STAT. tit. 12, § 182 (1981); *cf.* FED. R. CIV. P. 4(d)(3) (service in the same manner as upon corporations); *id.* 4(c)(2)(C)(i) (optional use of Oklahoma law for a federal district court located in Oklahoma).

158. *Torbett v. International Typographical Union*, 508 P.2d 268, 270 (Okla. 1973).

159. *See D. CLARK, supra* note 1, ch. VII.

160. *Couch v. International Bhd. of Teamsters*, 302 P.2d 117, 120 (Okla. 1956). *But see International Bhd. of Teamsters, Local 516 v. Santa Fe Packing Co.*, 300 P.2d 660, 662 (Okla. 1956) (collective bargaining and mutual aid are social objectives and the court will not take judicial notice that a union is within the statutory requirement of § 182).

lenged, a plaintiff should obtain a church's financial statement to determine if significant business transactions occur. Historically, the Oklahoma Supreme Court has upheld service of process on a church trustee as well as on a pastor.¹⁶¹ In practice, this issue may not commonly be raised for two reasons. First, no business showing is necessary when a suit concerns an interest in real property.¹⁶² Second, many churches and other charitable organizations are incorporated, empowered to engage in business, and therefore should be served process in the same manner as any other corporation.¹⁶³

Trusts also may be sued without naming particular trustees. There is no business requirement and service is made by personally delivering a summons on *any* individual designated as a trustee.¹⁶⁴

Partnerships, trusts, and other unincorporated associations may be sued by using their special appellation in the caption of a plaintiff's petition and on the summons to be served on the defendant or defendants. Where an association name is similar to an individual's name, a plaintiff should be careful to state unambiguously a defendant's capacity as an individual or as a representative. Failure to specify capacity, however, does not negate an otherwise valid service of process.¹⁶⁵ To further aid the sheriff, a plaintiff should clearly state in a return of service the name of an individual to be served process and his status as a representative for the named defendant.¹⁶⁶

VII. SERVICE ON GOVERNMENTAL ENTITIES

This discussion of service of process on governmental entities in Oklahoma begins with public corporations other than cities and towns,

161. *Light of Truth Spiritualist Church v. Davis*, 198 Okla. 694, 696, 181 P.2d 969, 971 (1947) (service on trustee, designated as trustee, was sufficient); *Board of Trustees v. Oklahoma City ex rel. Rauch*, 196 Okla. 491, 491-92, 166 P.2d 91, 92 (1946) (service on pastor of the church, who was also chairman of the board of trustees, was sufficient).

162. See OKLA. STAT. tit. 12, § 183.1 (1981).

163. See *id.* tit. 18, § 549; *supra* notes 97-133 and accompanying text.

164. OKLA. STAT. tit. 12, § 182 (1981).

165. See *Phelps v. Exchange Bank of Commerce*, 181 Okla. 145, 146, 73 P.2d 137, 138 (1937) (service naming administrator of an estate in his representative capacity did not negate administrator's personal liability where the suit concerned a matter on which the administrator was personally liable); *Allen v. Clover Valley Lumber Co.*, 171 Okla. 238, 239, 42 P.2d 850, 852 (1935) (where personal service was made on a real party in interest, it was not fatally defective even though the party was designated in his wrong capacity); Note, *Process: Service on Personal Representatives and Trustees*, 27 OKLA. L. REV. 537, 537-39 (1974). See generally Annot., 124 A.L.R. 86 (1940) (amending process by correcting a mistake in a party's name); Annot., 121 A.L.R. 1325 (1939) (amending process by changing the description of a party from a corporation to a partnership or association, or vice versa).

166. See *infra* notes 341-42 and accompanying text.

and then covers municipalities, counties, the State of Oklahoma and its divisions, and, finally, the United States Government. In suits against the government, of course, a plaintiff will want to consider whether the entity sued has waived or will waive sovereign immunity.¹⁶⁷

Service on a public corporation, not regulated by a special service of process statute, is achieved in the same manner as service upon a private corporation. Normally, this requires personal or mail service upon either the chief corporate officer or service agent appointed to receive summonses.¹⁶⁸ Water conservancy districts are examples of public corporations¹⁶⁹ which have special statutes regulating service of process. A summons should be delivered to the president of the board of directors of the conservancy district being sued. If the president is not found in the county, then a member of the board of directors may be served. Finally, if none of the above can be found within the county, service should be made on the secretary or treasurer for the district, and a copy of the documents should be left at the district's usual place of business with the person in charge of the office.¹⁷⁰

Provisions governing service of summons divide incorporated municipalities into cities¹⁷¹ and towns.¹⁷² Process is correctly served on a city or town by mail or by personally delivering a summons to the mayor.¹⁷³ If a mayor of a city is absent, process should then be served on either the vice-mayor or the president of the city council and if neither of them are present, service should be concluded on the city clerk.¹⁷⁴ In a case involving a town, process should be served on the town clerk when the mayor is absent.¹⁷⁵ Since these sections are part of

167. See *State ex rel. Dep't of Highways v. Cook*, 542 P.2d 1405, 1406 (Okla. 1975); *Hawks v. Walsh*, 177 Okla. 564, 565-66, 61 P.2d 1109, 1110 (1936); OKLA. STAT. tit. 74, § 18(g) (1981). See generally Spector, *State Sovereign Immunity in Tort: Oklahoma's Long and Tortuous Road*, 34 OKLA. L. REV. 526 (1981) (discussing suits against governmental entities).

168. See OKLA. STAT. tit. 12, §§ 153.1, 163 (1981); *supra* notes 97-131 and accompanying text; cf. FED. R. CIV. P. 4(d)(6) ("Upon a state or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the complaint to the chief executive officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state . . .").

169. See OKLA. STAT. tit. 82, § 546 (1981).

170. *Id.* § 669.

171. See *id.* tit. 11, §§ 1-102(2), 2-101.

172. See *id.* §§ 1-102(10), 2-101.

173. "Any notice or process affecting a city shall be served upon the mayor Any notice or process affecting a town shall be served upon the mayor" *Id.* § 22-103. Section 153.1(b) of title 12 provides for service by mail and § 159 provides for service by personal delivery. *Id.* tit. 12, §§ 153.1(b), 159.

174. *Id.* tit. 11, § 22-103.

175. *Id.*; see *Town of Braman v. Brown*, 172 Okla. 8, 9-10, 48 P.2d 293, 295 (1935).

the 1977 Oklahoma Municipal Code, they supplant those older provisions which are inconsistent in sections 163 and 184 of title 12.¹⁷⁶ A plaintiff may also desire to sue a particular municipal employee in addition to a city or town. Service of process on an employee should be concluded in the same manner as on any individual.¹⁷⁷ The municipality, however, may elect to have its own counsel defend an employee served with process when a suit concerns acts taken in the performance of a statutorily required duty.¹⁷⁸

An Oklahoma county should be sued in the name of "Board of County Commissioners of the County of X."¹⁷⁹ Process must be served personally or by mail on the county clerk for the board of county commissioners.¹⁸⁰ A county sheriff defendant may be served personally, by mail, or by leaving a summons at his office during business hours.¹⁸¹

The issue of when an Oklahoma county or municipality should be joined in a lawsuit is one of joinder of parties. For example, both the relevant municipality and county should be served process in a suit to vacate a platted tract, street, or easement.¹⁸² Alternatively, only a municipality and non-governmental parties should be sued in an action to reopen a public way or easement.¹⁸³

The Attorney General is the chief law officer for the state.¹⁸⁴ Except for constitutional and legislative restrictions, he possesses broad common law duties which include dominion over litigation where he

176. See OKLA. STAT. tit. 11, § 1-103(1) (1981) (only substantive, and not procedural, rights are vested).

177. See *supra* notes 60-80 and accompanying text.

178. See OKLA. STAT. tit. 11, §§ 23-101 to 103.1 (1981). Section 23-101(A) states that when an action is brought against a municipal employee for an act done or omitted in good faith in the course of his employment, the municipality must direct either the municipal attorney or some other legal counsel employed by the municipality to defend the employee. *Id.* § 23-101(A). Section 23-101(B) allows the municipality to direct its legal officer to appear on behalf of its employees where the municipality has an interest in the subject matter of the litigation. *Id.* § 23-101(B). The procedure for the defense of a municipal employee is set forth in § 23-102. Section 23-103 requires that the municipality bear the cost of the litigation when it is required or chooses to defend a municipal employee pursuant to § 23-101. *Id.* § 23-103. An employee is defined in *id.* § 23-103.1.

179. *Id.* tit. 19, § 4.

180. *Id.* tit. 12, § 153.1; tit. 19, § 5; see *Board of County Comm'rs v. Weatherford*, 565 P.2d 35, 37 (Okla. 1977).

181. OKLA. STAT. tit. 12, § 153.1; tit. 19, § 521.

182. *Id.* tit. 11, § 42-103(B)(1) (serve governing body of the municipality); *id.* § 42-103(B)(2) (serve board of county commissioners).

183. *Id.* § 42-112(1).

184. *Id.* tit. 74, § 18.

properly appears in the interest of the State of Oklahoma.¹⁸⁵ In addition, statutes delegate dominion over certain litigation involving the state.¹⁸⁶ Plaintiffs who desire to sue the state, therefore, should as a general rule serve process personally or by mail on the Oklahoma Attorney General.¹⁸⁷ Although some state entities have the authority to employ attorneys—such as the Corporation Commission, State Insurance Fund, Tax Commission, Land Office, and the State Highway Commission—section 18c of title 74 dictates that “all the legal duties . . . shall devolve upon and are hereby vested in the Attorney General.”¹⁸⁸ This implies that, absent a specific statute to the contrary, service of process for any action against the state is proper on the attorney general. This interpretation is supported by provisions requiring that the attorney general be notified before a case against the state is terminated by a default judgment.¹⁸⁹

There are several examples of suits against state entities where service of process is authorized on a person other than the attorney general. First, a plaintiff who requests a district court hearing to review the denial or revocation of a driver's license by the Department of Public Safety should serve a copy of his petition and order for hearing upon the Commissioner of Public Safety by certified mail.¹⁹⁰ Second, service upon the State Highway Director, as representative for the Department of Highways and Highway Commission,¹⁹¹ is appropriate (1) in a quiet title action where the Department or Commission may claim an interest in real property¹⁹² or (2) to contest a condemnation proceeding for the Department to acquire real property.¹⁹³ Third, the Executive Director should be served process in suits against the Public Employees Retirement System.¹⁹⁴ Fourth, in suits for injuries involv-

185. *Sarkeys v. Independent School Dist.*, 592 P.2d 529, 533-34 (Okla. 1979); *State ex rel. Nesbitt v. District Court*, 440 P.2d 700, 707 (Okla. 1967).

186. *See* OKLA. STAT. tit. 74, §§ 18b(a)-(c), (f), 18c (1981).

187. *See generally State ex rel. Howard v. Oklahoma Corp. Comm'n*, 614 P.2d 45 (Okla. 1980); OKLA. STAT. tit. 74, §§ 18b(m)-(n), 18c, 18c-2 (1981); 1969 Op. Okla. Att'y Gen. 178 (suggesting service proper on attorney general).

188. OKLA. STAT. tit. 74, § 18c (1981).

189. *See id.* tit. 12, §§ 707-709. Section 707 requires that before a default judgment may be entered against the state, proof must be made that the attorney general was notified at least ten days prior to trial. Without such proof, any judgment entered shall be void. *Id.* § 709.

190. *Id.* tit. 47, § 6-211(d).

191. *See id.* tit. 69, § 301(a) (creation of state highway department); § 305 (creation of position of state highway director).

192. *Id.* § 320.

193. *See id.* § 1203(c), (e)(1).

194. *Id.* tit. 74, § 904(1).

ing insured vehicles or motorized machinery owned or operated by the state, a plaintiff should serve summons on the director, the head, or any member of the governing body of the state department or agency which owns or operates the insured equipment.¹⁹⁵

If a plaintiff chooses to join a particular state employee in his action against a state entity, he should serve process on the employee in the same way as on an individual defendant.¹⁹⁶ If the individual was acting in good faith during the course of his employment, the attorney general, if requested, is required to defend the action on the employee's behalf.¹⁹⁷ Alternatively, the attorney general may direct a staff attorney from the defendant's agency to represent an employee.¹⁹⁸

The United States Government may be sued in an Oklahoma district court only in limited circumstances. It is proper, for instance, in suits involving real or personal property where the United States has a lien, frequently a tax lien. These suits may include actions to quiet title, to foreclose a mortgage or lien, to partition the property, or an interpleader action where the United States is one of the claimants.¹⁹⁹ Service of process on the United States is completed by personally delivering a summons and petition to the United States Attorney for the district in which the action is brought or by leaving these documents with either an assistant United States Attorney or a clerical employee designated by the United States Attorney, whose name is filed in writing with the clerk of an Oklahoma court in which an action is commenced. In addition, a plaintiff must send a copy of a petition and process by registered or certified mail to the Attorney General in Washington, D.C.²⁰⁰

VIII. SERVICE ON MINORS AND WARDS

In suing a minor defendant under fourteen years of age, section 169 of title 12 explicitly requires service of process on both the minor and his father or guardian.²⁰¹ However, if neither the father nor guard-

195. *Id.* tit. 47, § 158.1.

196. *See supra* notes 60-80 and accompanying text.

197. OKLA. STAT. tit. 74, § 20f(A) (1981).

198. *Id.* § 20f(C).

199. 28 U.S.C. § 2410(a) (1976).

200. *Id.* § 2410(b); *cf.* FED. R. CIV. P. 4(d)(4) (service upon the United States in a federal court suit); *id.* 4(d)(5) (service on a United States officer or agency in a federal court case).

201. "When the defendant is a minor, under the age of fourteen (14) years, the service must be upon him *and* upon his guardian or father . . ." OKLA. STAT. tit. 12, § 169 (1981) (emphasis added); *see* *Babb v. National Life Ass'n*, 184 Okla. 273, 273-74, 86 P.2d 771, 772 (1939) ("Service of summons upon minor defendants is governed by . . . § 169; and the statute must be strictly

ian can be found within a county, the summons should be served on the mother or person who lives with and cares for or controls the minor. If none of these persons can be located, then service on the minor alone is sufficient.²⁰² On the other hand, service on a parent or guardian alone, without service on the minor, is inadequate to give a court personal jurisdiction over the minor.²⁰³ In addition, neither an infant nor his guardian may waive the failure to correctly serve process on the minor.²⁰⁴ This latter doctrine serves no important policy for a child under fourteen years old, since a parent or guardian is considered to oversee the best interests of a young child and should be able to waive this type of procedural defect.²⁰⁵

Minors, fourteen years of age or older, should be served in the same manner as individual adults.²⁰⁶ Since age is computed from the first minute of birth,²⁰⁷ a person is "more than" fourteen years old the first minute past his fourteenth birthday for the purpose of section 169.²⁰⁸ A guardian *ad litem* cannot be appointed until after summons has been served.²⁰⁹ Service on a minor's guardian, moreover, is ineffective to gain jurisdiction over the minor.²¹⁰ In juvenile proceedings, a summons must be served on any child, twelve years of age or older, as

observed A strict compliance with these requirements is necessary to proper protection of the minor."); cf. FED. R. CIV. P. 4(d)(2) (service on an infant or incompetent person must follow the state law where service is made).

202. OKLA. STAT. tit. 12, § 169 (1981).

203. Taylor v. Scott, 83 Okla. 30, 30, 200 P. 427, 427 (1921); Bruner v. Nordmeyer, 48 Okla. 415, 421, 150 P. 159, 161 (1915). In *Taylor*, the first summons return indicated the minor was not served and did not show that the person served was served in his capacity as guardian of the minor. 83 Okla. at 30, 200 P. at 427. The second summons return indicated that an alias summons was served on the minor, but that no copy had been served on the guardian, father, mother nor on any other person with custody. *Id.* at 31, 200 P. at 427. The court held that service on the minor without service on the parent or guardian was insufficient to give the court "personal jurisdiction" over the minor. *Id.* at 31, 200 P. at 427.

204. Tanner v. Schultz, 97 Okla. 132, 133, 223 P. 174, 174 (1924); Bolling v. Campbell, 36 Okla. 671, 677, 128 P. 1091, 1093 (1912).

205. See D. CLARK, *supra* note 1, ch. IX.B.

206. OKLA. STAT. tit. 12, § 169 (1981); see Babb v. National Life Ass'n, 184 Okla. 273, 274, 86 P.2d 771, 772 (1939); Bruner v. Nordmeyer, 48 Okla. 415, 421-22, 150 P. 159, 161 (1915); *supra* notes 60-80 and accompanying text.

207. OKLA. STAT. tit. 15, § 13 (1981).

208. "The period [of minority] must be calculated from the first minute of the day on which a person is born to the same minute of the corresponding day completing the period of minority." *Id.*

209. *Id.* tit. 12, § 228; Tanner v. Schultz, 97 Okla. 132, 132-33, 223 P. 174, 175 (1924); Taylor v. Scott, 83 Okla. 30, 31, 200 P. 427, 427 (1921); Bolling v. Campbell, 36 Okla. 671, 677, 128 P. 1091, 1093 (1913); see also OKLA. STAT. tit. 12, § 229 (1981) (appointment of a guardian *ad litem*).

210. Frost v. Blockwood, 408 P.2d 300, 305-06 (Okla. 1965); Bruner v. Nordmeyer, 48 Okla. 415, 421-22, 150 P. 159, 161 (1915).

well as on the person with actual custody of the child.²¹¹

In proceedings to appoint a guardian, service of notice on the potential ward is required as a matter of procedural due process.²¹² If the prospective ward is a minor over age fourteen, section 761 of title 58 calls for notice, deemed reasonable by a judge, to the minor himself.²¹³ In addition, reasonable notice also must be given to the minor's relatives residing in the county as well as to any person caring for the minor. This provision does not require personal notice,²¹⁴ although it would be desirable. However, publication notice is insufficient when a parent who is caring for the child resides in the county where a petition seeking guardianship by a stranger is filed.²¹⁵ The notice required need not be in the form of a summons or served by an officer.²¹⁶

Where the ward is represented to the court as an insane or mentally incompetent person, title 58, section 851 requires notice to the supposedly insane or incompetent person.²¹⁷ "Incompetency" in this context includes persons who, due to old age or disease, cannot properly take care of themselves or manage their property.²¹⁸ Historically, this provision has been construed as calling for personal service of notice.²¹⁹ Alternatively, however, registered mail notice with return re-

211. OKLA. STAT. tit. 10, § 1104(b) (1981); see D. CLARK, *supra* note 1, ch. III.C.

212. See D. CLARK, *supra* note 1, ch. VII.

213. "Before making the appointment [of guardian] the court must cause actual notice by any means it deems reasonable to be given . . . , if he is above the age of fourteen (14) years, to the minor himself." OKLA. STAT. tit. 58, § 761 (1981); see *id.* tit. 15, § 13.

214. *Hawkins v. Tiger*, 163 Okla. 55, 56, 20 P.2d 578, 579 (1932); *Taylor v. Appling*, 569 P.2d 549, 552 (Okla. Ct. App. 1977).

215. *Smith v. Page*, 117 Okla. 223, 223-24, 246 P. 217, 217-18 (1926).

216. *Clark v. Kinder*, 269 P.2d 345, 347-48 (Okla. 1954).

217. [T]he court shall cause notice to be given to the supposed insane or incompetent person and shall cause notice, by any means deemed proper to the judge, to be given to some known near relative of such alleged insane or incompetent person who is not the petitioner, of the time and place of hearing the case, not less than five (5) days before the time so appointed

OKLA. STAT. tit. 58, § 851 (1981).

218. *Miller v. Bogan*, 441 P.2d 971, 974 (Okla. 1968); *Heinrich v. Simms*, 379 P.2d 845, 847 (Okla. 1963).

219. See *In re Mize's Guardianship*, 193 Okla. 164, 165, 142 P.2d 116, 117-18 (1943); *Colby v. Jacobs*, 179 Okla. 170, 170-71, 64 P.2d 881, 881-82 (1936). But see *Warlick v. Stevenson*, 571 P.2d 843, 844-45 (Okla. 1977).

Section 851 requires that notice be given "by any means deemed proper to the judge." OKLA. STAT. tit. 58, § 851 (1981) (emphasis added). In *Colby*, the court held that service accomplished by leaving a certified copy of the notice at the defendant's residence with her husband was not sufficient. *Colby*, 179 Okla. at 171, 64 P.2d at 882. In the syllabus of the case, the court stated that the statute requiring notice "contemplates personal service of notice upon the party to be affected thereby." *Id.* at 170, 64 P.2d at 881. In the opinion itself, the court stated, "The provision that notice be 'given to' the alleged incompetent certainly contemplates personal service as was ordered by the court." *Id.* at 171, 64 P.2d at 882.

In *Mize*, the court stated, "No personal service was had on Elnora Mize as required by . . .

ceipt requested recently has been upheld.²²⁰ Irregularities in service are waivable.²²¹ In 1972, the legislature amended section 851,²²² adding a requirement that notice a judge deems "proper" also be given to some known near-relative.²²³ Due process mandates that "proper" be interpreted as "reasonable."

A potential ward who resides outside Oklahoma but has property here may be put under an Oklahoma guardianship.²²⁴ The ward and

§ 851, so far as the record shows." *Mize*, 193 Okla. at 165, 142 P.2d at 117 (emphasis added). The opinion does not detail how service was attempted in *Mize*. The court stated, "The notice must be served personally on the alleged incompetent person, and in the absence of such service the court does not acquire jurisdiction," and cited *Colby* as the precedent for its holding. *Id.* at 165, 142 P.2d at 118.

In *Warlick*, the supreme court reversed a court of appeals, which, relying on *Colby* and *Mize*, had held that personal service of the notice was mandatory under § 851 and that service of the notice via registered mail, return receipt requested, did not satisfy § 851, even though the defendant had signed the return receipt. *Warlick*, 571 P.2d at 844-45. The supreme court held that the postman's personal delivery to the defendant, as reflected by her signature on the return receipt, constituted being "personally served" and that "the requirements of . . . § 851 regarding notice to the potential ward were satisfied." *Id.* at 845.

The court, however, noted that § 851 makes no provision on how notice must be served. *Id.* This is precisely the argument that was made by the respondent in *Colby* when he argued that service by leaving the notice at the defendant's residence with her husband was sufficient. *Colby*, 179 Okla. at 171, 42 P.2d at 882. In rejecting this argument in *Colby*, the court relied on the fact that the county judge expressly ordered the notice be personally served on the defendant and that the service was not made as ordered. *Id.* In *Mize*, the county court also expressly directed that the order be personally served on the defendant. *Mize*, 193 Okla. at 165, 142 P.2d at 117.

The *Warlick* court noted in dicta that in both *Colby* and *Mize*, on which the court of appeals had relied in making its decision, the trial courts' orders to serve notice on the alleged incompetent or insane individual "specifically ordered that personal service be made." *Warlick*, 571 P.2d at 845 (emphasis added).

In light of this dictum in *Warlick*, unless the trial court specifically orders personal service as in *Colby* and *Mize*, service on an allegedly insane or incompetent individual should be sufficient when it is accomplished in the same manner as service on any individual. See *supra* notes 60-80 and accompanying text; see also Wallace, *Notice—Appointment of Guardian for Incompetent or Insane Person*, 45 OKLA. B.J. 1037, 1038 (1974) (requirement that notice be given "by any means deemed proper to the judge" should include service by certified mail and other methods; a court might select personal service to expedite the appointment of a guardian).

220. *Warlick v. Stevenson*, 571 P.2d 843, 845 (Okla. 1977); see *supra* note 219.

221. See *Shimonek v. Tillman*, 150 Okla. 177, 183-84, 1 P.2d 154, 160-61 (1931). See generally Annot., 175 A.L.R. 1324 (1948); Annot., 77 A.L.R. 1227 (1932) (each annotation chronicles substituted or constructive service in a proceeding to have a person declared insane and a conservator appointed).

222. Act of Apr. 7, 1972, ch. 174, 1972 Okla. Sess. Laws 236; see also Wallace, *supra* note 219 (discussing notice to be afforded before guardianship hearing).

223. OKLA. STAT. tit. 58, § 851 (1981).

224. "A guardian of the property, within this state, of a person not residing therein, who is a minor, or of unsound mind, may be appointed by the district court." OKLA. STAT. tit. 30, § 9 (1981).

When a person liable to be put under guardianship, according to the provisions of this chapter, resides without this state, and has estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the judge of the district court of any county in which there is any estate of such absent person, for the appointment of a guardian; and if, after notice given to all interested, in such manner as

all persons with an interest in the Oklahoma property should be given notice prior to the hearing at which a guardian is to be appointed.²²⁵

In 1965, the Oklahoma Legislature created the category of conservatorship.²²⁶ A conservator has the same powers and duties as a guardian under section 851, except as to the custody of the conservatee.²²⁷ Moreover, conservatorship applies to a person who, due to advanced age or physical disability, cannot manage his property.²²⁸ In a situation where a petition is filed for the appointment of a conservator, section 890.1 of title 58 requires personal service of notice on the potential conservatee,²²⁹ but irregularities in service including failure to notify are waivable.²³⁰ In 1977,²³¹ the legislature provided for appointment of a temporary guardian for persons aged sixty-five or over who require protective services to maintain their mental and physical health when they are unable to acquire such needed services themselves.²³² The ward should receive notice of an appointment hearing,²³³ although notice again may be waived by the court.²³⁴

Once a person is classified as a ward or a conservatee, a summons

the judge orders, and a full hearing and examination, it appears proper, a guardian for such absent person may be appointed.

Id. tit. 58, § 861.

225. *Id.* tit. 58, § 861; *Blancett v. Eslinger*, 324 P.2d 273, 277 (Okla. 1958) (notice provision of § 861 is mandatory jurisdictional prerequisite). See *supra* note 224 for the text of § 861.

226. Act of July 21, 1965, ch. 513, 1965 Okla. Sess. Laws 1056.

227. OKLA. STAT. tit. 58, § 890.5 (1981); *Coston v. Kamp*, 549 P.2d 124, 127 (Okla. Ct. App. 1976); see *Lindsay v. Gibson*, 635 P.2d 331, 333 (Okla. 1981).

228. OKLA. STAT. tit. 58, § 890.1 (1981); *Lindsay v. Gibson*, 635 P.2d 331, 334 (Okla. 1981) (Lavender, J., dissenting).

229. When it is represented to the court upon verified petition of any person or any relative or friend that such person is an inhabitant or resident of the county and by reason of advanced age or physical disability is unable to manage his property, the court must cause notice to be served personally on the person alleged to be unable to manage his property, of the time and place of hearing such petition, not less than five (5) days before the time so appointed . . .

OKLA. STAT. tit. 58, § 890.1 (1981).

230. "If the person for whose property the conservator is to be appointed, is himself the petitioner, or consents in writing to the appointment of a conservator as herein provided, no notice shall be required." *Id.*

231. Act of June 17, 1977, ch. 264, 1977 Okla. Sess. Laws 965; see OKLA. STAT. tit. 43A, § 801 (1981) ("This act may be cited as the 'Protective Services for the Elderly Act of 1977'").

232. See OKLA. STAT. tit. 43A, §§ 802, 803(3), 808(A), (D)(4) (1981). Section 808(A) allows the Department of Human Services to petition the court for an emergency order authorizing protective services for an elderly person under certain enumerated situations. Section 808(D)(4) empowers the court to appoint a temporary guardian for an elderly person. "Elderly person" is defined in § 803(3) as "any person aged sixty-five (65) or over residing in the state." *Id.* § 803(3).

233. "The elderly person must receive a forty-eight-hour notice of the hearing." *Id.* § 808(C).

234. "The court may waive the forty-eight-hour notice requirement upon showing that immediate and reasonably foreseeable death or serious physical harm to the person will result from the forty-eight-hour delay." *Id.*

for a civil action against him should be served on his guardian or conservator in the same manner as process would be served on an individual.²³⁵ A guardian may waive defects in a process or its service.²³⁶

IX. SERVICE BY MAIL

The plaintiff, as a general rule, may choose mail service of a summons whenever it is appropriate for a sheriff to conclude service.²³⁷ The court clerk, to accomplish mail service, should enclose the summons and a copy of the petition in an envelope addressed to a defendant or to his resident service agent if one has been explicitly or impliedly appointed.²³⁸ Within five days of a summons' issuance, the envelope should be placed in certified mail with postage prepaid and with a return receipt by the addressee alone requested.²³⁹ The clerk should endorse on a copy of the summons the mailing date, as well as the date when the addressee received the envelope and signed the return card.²⁴⁰ This return receipt must be delivered to the clerk within twenty-one days from the mailing date, functioning as a proof of service.²⁴¹

Service by mail also is authorized when it will be concluded outside Oklahoma.²⁴² The scheme described for service within Oklahoma should be followed when personal jurisdiction is based on one of Oklahoma's principal long-arm statutes,²⁴³ or when personal or

235. *Id.* tit. 58, § 810; *see id.* §§ 804, 852, 862, and *supra* notes 60-80 and accompanying text.

236. OKLA. STAT. tit. 58, § 810 (1981).

237. *Id.* tit. 12, § 153.1; *cf.* FED. R. CIV. P. 4(c)(2)(C)(ii) (as amended by Act of Jan. 12, 1983, Pub. L. No. 97-462, 51 U.S.L.W. 202 (1983) (effective Feb. 26, 1983) (Mail service is permitted "by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to form 18-A and a return envelope, postage prepaid, addressed to the sender.")).

238. OKLA. STAT. tit. 12, § 153.1(b) (1981); *see supra* notes 103-20, 123-25, 134-39, 143-52 and accompanying text (service on corporations); *infra* notes 298-302 and accompanying text (service on nonresidents).

239. *See* OKLA. STAT. tit. 12, §§ 151, 153.1(b), 155(c) (1981). Section 155(c) requires the clerk to mail a summons within five days of its issuance. *Id.* § 155(c). Section 153.1(b) requires that the clerk send the summons by certified mail, postage prepaid, with a request for a return receipt from addressee only. *Id.* § 153.1(b). Section 151 provides that the action commences when the summons, prepaid as required in § 153.1, is deposited in the United States mail. *Id.* § 151.

240. *Id.* § 153.1(b).

241. *Id.* § 155(b); *see infra* note 352 and accompanying text.

242. OKLA. STAT. tit. 12, §§ 170.1, 1702.01(a)(3) (1981); *see infra* notes 318, 321, and accompanying text.

243. OKLA. STAT. tit. 12, § 170.1 (1981) provides that service may be made by mail outside Oklahoma when the defendant is subject to the Oklahoma court's jurisdiction pursuant to *id.* §§ 187 and 1701.03, the Oklahoma long-arm statutes, as well as pursuant to other enumerated statutes. *Id.* § 170.1, 170.1(1).

in rem jurisdiction attaches from one of the other statutes or categories mentioned in title 12, section 170.1.²⁴⁴ This interpretation follows from title 12, section 170.4—enacted in 1972²⁴⁵—and should supersede any ambiguities existing in the earlier title 12, section 1702.01(b).²⁴⁶ The ambiguity issue has been raised as to whether a “return receipt from addressee only” is required from a defendant to demonstrate effective service outside Oklahoma.²⁴⁷ Section 170.4 would so mandate, since the quoted language appears in section 153.1(b), even though section 1702.01(a)(3) speaks only of a “return receipt.”²⁴⁸

There are many statutes which explicitly refer to mail service in particular situations. These are listed in Appendix 1. Where a difference exists between one of these special statutes and the general mail service procedure detailed in sections 153.1 and 155 of title 12, an attempt should be made to reconcile the conflict.²⁴⁹ For instance, statutes

244. “Service of summons by mail outside of this state shall be made in the manner prescribed in Section 153.1 of this title for service of summons by mail within this state.” *Id.* § 170.4. The other statutes and categories mentioned in § 170.1 where personal or in rem jurisdiction attach include actions brought pursuant to § 1701.02 of title 12 (personal jurisdiction over a person domiciled in, organized under the laws of, or maintaining his principal place of business in Oklahoma); §§ 391, 392 and 421-425 of title 47 (nonresident motorists); §§ 501 and 502 of title 52 (nonresident leaseholders); actions against foreign insurers or other foreign corporations where title 18 authorizes service on the Secretary of State; actions pursuant to § 131 of title 12 (in rem jurisdiction over property located in Oklahoma); divorce or annulment proceedings; actions in which the defendant claims a lien or interest in realty or personalty in Oklahoma; and actions where the defendant has property or debts in Oklahoma which may be appropriated to satisfy the plaintiff’s claim. *Id.* § 170.1(1)-(7).

245. Act of Mar. 31, 1972, ch. 208, § 4, 1972 Okla. Sess. Laws 292, 293.

246. When two statutes conflict, the general rule of construction is that the latest enactment in point of time should prevail. *City of Sand Springs v. Department of Pub. Welfare*, 608 P.2d 1139, 1151 (Okla. 1980); *Poafpybitty v. Skelly Oil Co.*, 394 P.2d 515, 519 (Okla. 1964); *State ex rel. Williamson v. Empire Oil Corp.*, 353 P.2d 130, 134-35 (Okla. 1960); *In re Layman’s Estate*, 208 Okla. 174, 175, 254 P.2d 784, 786 (1953). OKLA. STAT. tit. 75, § 22 (1981) provides:

If the provisions of any code, title, chapter or article conflict with or contravene the provisions of any former code, title, chapter or article, the provisions of the latter code, title, chapter or article must prevail as to all matter and questions arising thereunder out of the same subject matter.

See D. CLARK, *supra* note 1, ch. I.D.

247. See *Morgan v. Atwell*, 569 P.2d 529, 532 (Okla. Ct. App. 1977).

248. But see *id.* In *Morgan*, the court of appeals rejected the defendant’s argument that mail service must have delivery restricted to an addressee only. The court did not analyze a possible conflict between the requirements of title 12, §§ 153.1 and 170.4 with the provision in § 1702.01(a)(3). Rather, the court only addressed the ambiguity existing between subsections (a)(3) and (b) of § 1702.01. Moreover, the evidence showed the summons was delivered to the defendant. 569 P.2d at 531-32.

249. See *Poafpybitty v. Skelly Oil Co.*, 394 P.2d 515, 519 (Okla. 1964) (“Where there are two or more acts or provisions of law relating to the same subject, effect is to be given to both, if that be practicable”); *Smith v. Southwestern Bell Tel. Co.*, 349 P.2d 646, 650 (Okla. 1960) (“[T]he well-settled rule is that where two acts, or parts of acts, are reasonably susceptible of a construction that will give effect to both and to the words of each . . . it should be adopted in preference to [one] which leads to the conclusion there is a conflict.”).

which provide for registered mail,²⁵⁰ in contrast to section 153.1 certified mail, may also be satisfied by using certified mail. Reconciliation is permitted by title 25, section 221.²⁵¹ Similarly, in suing an incorporated town in Oklahoma, the plaintiff under certain circumstances is permitted to satisfy mail service with a return receipt requested.²⁵² This should be allowed when relied upon as an option to section 153.1 and its provision for return receipt from addressee only.²⁵³ If such reconciliation is impossible, a plaintiff should use the special procedure.²⁵⁴

Section 155(b) of title 12 seems to require that the court obtain a signed receipt to prove effective service of process.²⁵⁵ The Oklahoma Supreme Court, furthermore, has found that an addressee service agent does not have a duty to respond to a postal notice of attempted delivery to complete service of summons.²⁵⁶ May a defendant thus avoid service merely by refusing delivery of the envelope or by refusing to sign a receipt?²⁵⁷ Most states, apparently, find that a receipt returned with the notation "refused by the addressee" is sufficient to constitutionally confer personal jurisdiction and to satisfy their statutes, frequently on an estoppel theory or on the ground that there has been substantial compliance.²⁵⁸ In *Williams v. Egan*, the Oklahoma Supreme Court stated:

250. *E.g.*, OKLA. STAT. tit. 47, § 394(b) (1981).

251. It is hereby declared and directed that use of "certified United States mail with return receipt requested," or "certified mail," "restricted delivery" shall be a full and complete legal compliance with the statutes of Oklahoma permitting, directing, or requiring use of "registered United States mail" or "certified United States mail" or "Certified United States Mail" a return receipt requested, or "certified United States mail," "restricted delivery," or any other such similar designations by any person in a public or private capacity, and all provisions of the statutes of Oklahoma are hereby modified to effect such change.

Id. tit. 25, § 221; *see also* Poafpybitty v. Skelly Oil Co., 394 P.2d 515, 519 (Okla. 1964) (effect is to be given to both applicable provisions on a subject, if practicable).

252. OKLA. STAT. tit. 12, § 186 (1981) (specific statute for mailing of notice to town officers).

253. *Id.* § 153.1(b) (general statute for service by mail).

254. The general rule of construction in Oklahoma is that when a special statute clearly applies to the matter in controversy and is in conflict with the procedure set forth in a general statute, the special statute applies rather than the general statute. *Southwestern Bell Tel. Co. v. Oklahoma County Excise Bd.*, 618 P.2d 915, 919 (Okla. 1980); *see* D. CLARK, *supra* note 1, ch. I.D.

255. "When the summons is issued for service by mail, service shall not be considered effected, unless . . . the return receipt requested appearing to bear addressee's signature is delivered to the court clerk who issued the summons." OKLA. STAT. tit. 12, § 155(b) (1981); *cf.* FED. R. CIV. P. 4(c)(2)(C)(ii) (requires receipt of an acknowledgment of service). *See* D. CLARK, *supra* note 1, ch. III.A, for a sample certificate of service by mail.

256. *Snyder v. Southwestern Bell Tel. Co.*, 548 P.2d 218, 220 (Okla. 1976).

257. *See generally* Annot., 95 A.L.R.2d 1033 (1964) (statutory service on nonresident motorists and return receipts).

258. *See* Note, *Service of Process by Mail*, 74 MICH. L. REV. 381, 387-93 (1975); Note, *Constitutional Law: The Validity of Service of Process by Mail When There Is No Return Receipt: The Outer Limits of Due Process*, 25 OKLA. L. REV. 566, 567-69 (1972); *cf.* *Akron-Canton Regional Airport Auth. v. Swinehart*, 406 N.E.2d 811, 814 n.2 (Ohio 1980) (signed receipt not necessary).

"[W]e cannot subscribe to the contention that it is an absolute requisite to good and valid service that the defendants actually receive a copy of the summons and petition in order to vest jurisdiction in the courts of the state."²⁵⁹ However, this statement antedates mail service in Oklahoma and particularly the legislative language in section 155(b). Until the court rules on this point, the prudent lawyer should consider alternative means of achieving service, either by a sheriff, process server, or by publication when a defendant conceals himself.²⁶⁰

X. SERVICE BY PUBLICATION

If personal, substituted, or mail service of summons is not feasible, title 12, section 170.6 authorizes constructive service by publication when (1) it is specifically allowed by statute and (2) summons cannot be served with due diligence upon a defendant by any other manner.²⁶¹

Section 170.6(A) broadly permits publication service in any case to obtain in personam jurisdiction over Oklahoma residents,²⁶² domestic corporations, and unincorporated associations.²⁶³ In addition, when a defendant is located outside Oklahoma, publication is allowed in all the circumstances contemplated in section 170.1.²⁶⁴ This includes constructive service on foreign corporations and insurers as well as on non-residents within the purview of Oklahoma long-arm statutes.²⁶⁵

Section 170.6(A), by incorporating section 170.1(4) to 170.1(6), allows publication service in any case to obtain true in rem jurisdiction where the property, or marital status, is located within Oklahoma. Finally, section 170.6(B) permits publication in any case to acquire quasi in rem jurisdiction where a defendant has tangible or intangible property in Oklahoma.²⁶⁶

Since authorization for publication service is so widely permitted under section 170.6, recent court decisions concentrate on the "due diligence" requirement to determine whether this manner of notice is appropriate.²⁶⁷ However, an inquiry into this issue normally is not made

259. 308 P.2d 273, 276 (Okla. 1957).

260. See OKLA. STAT. tit. 12, § 170.6(A)(4) (1981); *infra* notes 261-78 and accompanying text.

261. OKLA. STAT. tit. 12, § 170.6 (1981).

262. *Id.* § 170.6(A)(2).

263. *Id.* § 170.6(A)(3).

264. *Id.* § 170.6(A)(1).

265. See *id.* § 170.1 (1981). See *infra* Appendix 2 for a list of other statutes authorizing publication in particular cases.

266. OKLA. STAT. tit. 12, § 170.6(B) (1981); see *id.* § 170.1(7).

267. See generally Note, *Civil Procedure—Constitutionality of Constructive Service of Process on*

until a defendant contests the mode of service or until the plaintiff requests a default judgment.²⁶⁸ The plaintiff has the burden of presenting evidence that demonstrates he has met the standard of due diligence by ascertaining the whereabouts of a defendant and attempting service on him by other means, or by showing that such service would be impracticable. At the time of default, the plaintiff cannot rely upon judicial approval of an unsupported conclusion of due diligence.²⁶⁹ For instance, a bare recital in the plaintiff's affidavit of due diligence in attempting to locate a corporation's service agent is inadequate to support an inference that a defendant corporation has no registered agent.²⁷⁰ Facts should show that primary sources of information—such as local tax rolls, deed records, or judicial records—and secondary sources such as telephone and city directories have been utilized in trying to locate a defendant. A trial judge should, if convinced, then recite in the journal entry of judgment that service by publication has been made and that, after examining the evidence and proof of publication, he approves the process.²⁷¹

In *Johnson v. McDaniel*,²⁷² the Oklahoma Supreme Court held that both federal and state due process require that all sources of information concerning a defendant's whereabouts must be exhausted before publication service is justified. Due process was not met where a plaintiff used publication service after a summons was returned unclaimed when the defendant's address was easily obtainable from the law firm files of a plaintiff.²⁷³ Once a defendant's location has been ascertained, substantial effort must be given to concluding service before publication may be considered. To illustrate, where a defendant was living at an address shown on the summons and her place of employment also was listed correctly, five trips recorded on his return by a sheriff who "could not catch her" revealed insufficient diligence, when no evidence showed that a summons had been mailed.²⁷⁴

A plaintiff may obtain constructive service by presenting to a court

Missing Defendants, 48 N.C.L. REV. 616 (1970) (arguments favoring constructive service when all possible means of locating defendant have been exhausted).

268. See *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713, 719 (Okla. 1968).

269. *Id.*

270. *Farmer's Union Coop. Royalty Co. v. Woodward*, 515 P.2d 1381, 1384 (Okla. 1973).

271. *Dana P. v. State*, 656 P.2d 253, 257 (Okla. 1982); *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713, 718-20 (Okla. 1968); OKLA. DIST. CT. R. 16; see *Hammer v. Baldwin*, 203 Okla. 680, 682, 225 P.2d 801, 804 (1950).

272. 569 P.2d 977 (Okla. 1977).

273. *Id.* at 981.

274. *Tammie v. Rodriguez*, 570 P.2d 332, 334 (Okla. 1977).

clerk an affidavit, or the equivalent in a verified petition, to obtain service by publication.²⁷⁵ The pleading or affidavit should recite that publication is specifically allowed by statute and that summons cannot be served with due diligence upon defendant in any other manner.²⁷⁶ Sections 170.6 and 170.1(7) require additional allegations in the affidavit.²⁷⁷ The court has strictly construed these requirements when they only minimally comply with due process. For example, an affidavit which failed to state that the affiant was unable to ascertain the names or whereabouts of a corporate defendant's officers was insufficient to authorize service by publication.²⁷⁸

Upon presentation of an appropriate affidavit, the clerk should sign plaintiff's publication notice.²⁷⁹ The twenty-five dollar fee should be waived for indigents in appropriate cases.²⁸⁰ This notice must be published one day a week for three consecutive weeks in a newspaper authorized to publish legal notices printed in the county where the petition was filed.²⁸¹ The requirements related to newspapers and legal notices are established in sections 101 to 114 of title 25.²⁸² If no newspaper is published in the county where suit is filed, a newspaper printed in Oklahoma with general circulation in that county should be used.²⁸³ Once publication has been completed, constructive service may be proved with an affidavit from the printer, his foreman or principal clerk, or by another person with knowledge of the publication.²⁸⁴ A default judgment may not be entered until the affidavit is approved by

275. For an example of such an affidavit, see D. CLARK, *supra* note 1, ch. III.A.

276. See OKLA. STAT. tit. 12, § 170.6 (1981).

277. See D. CLARK, *supra* note 1, ch. III.A.

278. *Farmer's Union Coop. Royalty Co. v. Woodward*, 515 P.2d 1381, 1385 (Okla. 1973); see *Faulkner v. Kirkes*, 276 P.2d 264, 266 (Okla. 1954) (affidavit made by plaintiff's attorney must recite that the plaintiff was unable to ascertain with due diligence the names or whereabouts of defendants). See generally Annot., 21 A.L.R.2d 929 (1952) (sufficiency of affidavit alleging due diligence for the purpose of obtaining service by publication).

279. OKLA. STAT. tit. 12, § 173 (1981). For an example of a publication notice, see D. CLARK, *supra* note 1, ch. III.A.

280. See *Del Moral Rodriguez v. State*, 552 P.2d 397, 400 (Okla. 1976); OKLA. STAT. tit. 28, § 156 (1981); see also *Pleadings and Procedure, Annual Survey of Oklahoma Law*, 2 OKLA. CITY U.L. REV. 337, 369-71 (1977) (discussing *Rodriguez*).

281. OKLA. STAT. tit. 12, § 173 (1981); see *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713, 720 (Okla. 1968); see also OKLA. STAT. tit. 12, § 75 (1981) (publication in "patent insides").

282. OKLA. STAT. tit. 25, §§ 101-114 (1981).

283. *Id.* tit. 12, § 173.

284. *Id.* § 174; see *Price v. Citizens' State Bank*, 23 Okla. 723, 730, 102 P. 800, 803 (1909); cf. *infra* notes 329-51 and accompanying text (return of service of summons). For an example of an affidavit to prove publication, see D. CLARK, *supra* note 1, ch. VIII.I.

the court and filed,²⁸⁵ although defects in publication affidavits and notices may be waived by a defendant.²⁸⁶

Certain disadvantages exist, however, in using publication service when the plaintiff obtains a default judgment. First, a defendant has three years from the judgment date to ask the trial court to reopen the judgment and allow him to come in and defend.²⁸⁷ The defendant does have the burden of showing that he had no actual notice of the suit in time to appear and defend.²⁸⁸ Second, a default judgment is void and may be attacked directly or collaterally at any time, even if a defendant had actual notice of a claim's pendency, if it affirmatively appears from the judgment roll that the court lacked jurisdiction. A jurisdictional defect related to publication service must be patent from the face of a judgment roll without resort to inferences or extrinsic evidence.²⁸⁹ For example, a default judgment against a corporation based on publication notice was held to be subject to collateral attack because an affidavit for publication failed to mention the inability to ascertain by due diligence the names or whereabouts of corporate officers.²⁹⁰

There are numerous statutes, listed in Appendix 2 of this Article, which authorize publication service in particular circumstances. As with mail service, an attempt should be made to reconcile any differences which exist between one of the listed special statutes and the general publication scheme covered by title 12, sections 170.6 and 173. If such reconciliation is impossible, a plaintiff should use the special pro-

285. OKLA. STAT. tit. 12, § 174 (1981); see *Hammer v. Baldwin*, 203 Okla. 680, 682, 225 P.2d 801, 804 (1951).

286. See *Locke v. First Nat'l Bank*, 121 Okla. 38, 39, 248 P. 869, 870 (1926) (defendant waived any defects in service by publication when he submitted to the jurisdiction of the court: by filing a demurrer and answer before his motion to quash was disposed of and by asking for affirmative relief at trial); *Hill v. Persinger*, 57 Okla. 663, 664, 157 P. 744, 745 (1916) (defendants waived any defects in publication service by entering general appearance in presenting motion to vacate on both jurisdictional and non-jurisdictional grounds); D. CLARK, *supra* note 1, ch. IX.B.

287. OKLA. STAT. tit. 12, § 176 (1981); see *Choctaw & Chickasaw Missionary Baptist Ass'n v. Matthews*, 304 P.2d 994, 997-98 (Okla. 1957); D. CLARK, *supra* note 1, ch. IX.D. OKLA. STAT. tit. 10, § 1131 (1981) limits the time to reopen a default judgment to six months where parental rights are terminated. *Dana P. v. State*, 656 P.2d 253, 257 (Okla. 1982).

288. OKLA. STAT. tit. 12, § 176 (1981); *Gann v. Gann*, 459 P.2d 605, 606 (Okla. 1969); see *Perkins v. Masek*, 366 P.2d 101, 104-05 (Okla. 1961) (section 176 applies only when a defendant shows he had no actual notice in time to appear in court and make his defense); *Morgan, Delayed Attacks on Final Judgments—Part II*, 33 OKLA. L. REV. 737, 747-50 (1980).

289. *Barton v. Alpine Invs., Inc.*, 596 P.2d 532, 534 (Okla. 1979), *cert. denied*, 444 U.S. 1031 (1980); see *Opala & Duensing, The Immortal Remnants of the Common-Law Record Concept in Oklahoma: What a Common Oklahoma Lawyer Needs to Know*, 18 TULSA L.J. 541, 551, 556 (1983); see also *Civil Pleadings and Procedure, Annual Survey of Oklahoma Law*, 5 OKLA. CITY U.L. REV. 51, 89-93 (1980) (discussing *Barton*).

290. *Farmers' Union Coop. Royalty Co. v. Woodward*, 515 P.2d 1381, 1384-85 (Okla. 1973).

cedure.²⁹¹ This appears to conform to the legislative intent in providing for a specific procedure for service by publication in certain situations.²⁹²

XI. SERVICE BY POSTING

As an alternative to publication, constructive service by posting a summons on real property is permitted only on rare occasions. For instance, in a forcible entry and detainer action,²⁹³ if a plaintiff cannot with reasonable diligence conclude personal or substituted service on a defendant, he may have a sheriff post a summons on the building.²⁹⁴ In addition, the plaintiff must send a copy of the summons by registered or certified mail to the defendant's last-known address. Service is fulfilled even though a defendant may not see the posted summons or receive the mailed process.²⁹⁵ This posting method satisfies procedural due process only where it truly is a last resort to notify a defendant or where it is coupled with supplemental notice by mail.²⁹⁶

XII. SERVICE ON NONRESIDENTS WITHIN OKLAHOMA

Nonresidents may be served process if they consent to service or are present in Oklahoma, as long as this consent or presence meets minimum standards of substantive due process.²⁹⁷ A common device utilized to allow service of a summons within Oklahoma on a nonresident is to explicitly or implicitly appoint an Oklahoma agent to receive such a summons. As noted earlier, the use of registered service agents is mandatory for domestic corporations and foreign corporations engaged in business in Oklahoma.²⁹⁸ Appendix 3 lists certain other examples of agents which have been approved by the legislature to receive process on behalf of nonresidents.

The Oklahoma nonresident motorist statute illustrates the creation

291. See D. CLARK, *supra* note 1, ch. I.D; *supra* note 251.

292. See *State ex rel. Moore v. O'Bannon*, 182 Okla. 173, 175, 77 P.2d 70, 71-72 (1938) (specific statutory procedure for publication service in an action for quiet title to lands of decedents whose heirs have not been determined within three years of death supersedes the general publication procedure).

293. See D. CLARK, *supra* note 1, ch. III.B.

294. OKLA. STAT. tit. 12, § 1148.5A (1981).

295. *Id.*

296. *Greene v. Lindsey*, 102 S. Ct. 1874, 1879-81 (1982); see D. CLARK, *supra* note 1, ch. VII.

297. See D. CLARK, *supra* note 1, ch. V.B, .D.

298. See *supra* notes 103-15, 138, 145 and accompanying text. See *generally* Annot., 91 A.L.R. 1327 (1934) (power of state to provide for nonpersonal service on a nonresident doing business within the state).

of an appointed agent.²⁹⁹ The mere use and operation of a motor vehicle in Oklahoma by a nonresident is deemed to be an appointment of the Secretary of State as his attorney. The Secretary is then authorized to receive service of summons on the nonresident's behalf for suits concerning use of the vehicle.³⁰⁰ A plaintiff must deliver a summons to the Secretary of State by personal service or by certified mail with return receipt requested, together with a two dollar fee.³⁰¹ In addition, the plaintiff should then send, by registered mail with return receipt requested, within fifteen days after service on the Secretary, a notification of such service to the defendant at his last-known residence.³⁰² Alternatively, the plaintiff may forward this notification to the defendant by personal or substituted service.³⁰³ The Oklahoma Supreme Court has established substantial compliance as the standard to determine whether a plaintiff has met the requirements for service under this statutory scheme. This is not as severe as strict compliance, but is nevertheless a stringent criterion.³⁰⁴

The nonresident motorist provisions are not mandatory for the plaintiff. As a result, he may choose to serve process on a nonresident outside Oklahoma under one of Oklahoma's long-arm statutes.³⁰⁵

XIII. SERVICE OUTSIDE OKLAHOMA

Service of process may be concluded outside Oklahoma in any civil action.³⁰⁶ This does not, however, guarantee personal jurisdiction over a defendant or in rem jurisdiction.³⁰⁷ Section 170.1 of title 12 contains a helpful illustrative list of situations where service will normally signal the acquisition of jurisdiction, whether personal,³⁰⁸ quasi in rem,³⁰⁹ or true in rem.³¹⁰ Section 170.1(1) incorporates by reference

299. See D. CLARK, *supra* note 1, ch. V.D.

300. OKLA. STAT. tit. 47, § 391(a)-(b) (1981); see *Williams v. Egan*, 308 P.2d 273, 276-77 (Okla. 1957).

301. OKLA. STAT. tit. 47, § 391(b) (1981).

302. *Id.* § 394. See *id.* § 395 for the form of this notification.

303. *Id.* § 397.

304. *Jackson v. Welch*, 545 P.2d 1254, 1256 (Okla. 1976).

305. *Morgan v. Atwell*, 569 P.2d 529, 531-32 (Okla. 1977); see *Parks v. Slaughter*, 270 F. Supp. 524, 525-26 (W.D. Okla. 1967); *infra* notes 306-11 and accompanying text.

306. OKLA. STAT. tit. 12, §§ 170.1, 1701.04 (1981); see *id.* §§ 187(b), 1702.01; cf. FED. R. CIV. P. 4(e) (when there is no applicable federal norm, use the rules for the state in which the federal court is located for service "upon a party not an inhabitant of or found within the state").

307. See D. CLARK, *supra* note 1, ch. V.

308. See OKLA. STAT. tit. 12, § 170.1(1)-(3) (1981).

309. *Id.* § 170.1(7).

310. *Id.* § 170.1(4)-(6).

the two principal long-arm statutes which provide jurisdiction over nonresidents.³¹¹

The form of a summons to be served outside Oklahoma should be the same as process served within the state.³¹² In addition, the summons should be issued and generally made returnable as in local cases.³¹³ A copy of the petition should be attached to the summons when it is served on a defendant.³¹⁴ Finally, in cases where jurisdiction is quasi or true in rem, Oklahoma real property and any other property or debts to be attached or garnished should be specifically described in the summons, in a notice or other instrument attached to the summons, or in the petition served on a defendant.³¹⁵

The manner of service permitted outside Oklahoma is even broader than the authorized methods within Oklahoma. The in-state methods for personal service,³¹⁶ substituted service,³¹⁷ mail service,³¹⁸ and publication service³¹⁹ are all allowed for service in another state. Furthermore, personal or substituted service may be fulfilled in a manner prescribed for actions in general jurisdiction courts by the law of the place where service will be completed.³²⁰ The Uniform Interstate and International Procedure Act permits registered or certified return receipt mail service without the "addressee only" restriction, but this has been implicitly repealed by the subsequent enactment of title 12, section 174.³²¹ The Uniform Act also allows service "as directed by the court."³²²

For service outside the United States, treaty provisions may be applicable and should be checked. For instance, the United States has ratified the Hague Convention on the Service Abroad of Judicial and

311. *Id.* §§ 187, 1701.02.

312. *Id.* § 170.2; see D. CLARK, *supra* note 1, ch. III.A.

313. OKLA. STAT. tit. 12, § 170.2 (1981); see D. CLARK, *supra* note 1, ch. III.A.; *supra* notes 36-39 and accompanying text; *infra* note 327 and accompanying text.

314. OKLA. STAT. tit. 12, § 170.2 (1981). However, failure to attach a copy of the petition "shall not affect the jurisdiction of the court." *Id.*

315. *Id.* § 170.5.

316. *Id.* § 1702.01(a)(1).

317. *Id.* § 170.3.

318. *Id.* § 170.4.

319. *Id.* § 170.6.

320. *Id.* §§ 170.3, 1702.01(a)(2); cf. Louis, *Modern Statutory Approaches to Service of Process Outside the State—Comparing the North Carolina Rules of Civil Procedure with the Uniform Interstate and International Procedure Act*, 49 N.C.L. REV. 235, 238-58 (1971).

321. See *supra* notes 243-48 and accompanying text.

322. OKLA. STAT. tit. 12, § 1702.01(a)(5) (1981); *Vemco Plating, Inc. v. Denver Fire Clay Co.*, 496 P.2d 117, 120-21 (Okla. 1972).

Extrajudicial Documents in Civil or Commercial Matters.³²³ Nineteen other nations are signatories, including Germany, France, Japan, the Netherlands, and the United Kingdom. The Hague Convention requires each contracting nation to designate a central authority which is available to either serve process itself or arrange to have it served by an appropriate agency. Normally, personal service is requested, but some countries permit *remise simple*—the delivery of a document to a person who comes to a local police station, for example, to voluntarily accept it. Other methods of service are permitted in many countries, but France will not allow diplomatic officials to serve process. A few of the parties to the Convention require translation of a summons, complaint, or other document into their official language. To initiate litigation under the Convention, a model request and the documents to be served should be sent by an Oklahoma sheriff or process server directly to the foreign central authority by air mail. The United States Department of Justice maintains a list of the names and addresses of the various central authorities.³²⁴ For countries which are not parties to the Hague Convention, service is allowed as directed by a foreign authority in response to an Oklahoma letter rogatory.³²⁵

Proof of personal or substituted service outside Oklahoma may be made with an affidavit of the individual who completed service, stating the time and manner of service, as well as his authority in so doing.³²⁶ The return of service must comport with Oklahoma statutes, the law of the place where service was achieved for returns in general jurisdiction courts, or be pursuant to an Oklahoma court's order.³²⁷ Proof of mail service should follow Oklahoma practice.³²⁸

XIV. RETURN AND PROOF OF SERVICE

The function of a return of service is to prove that a summons and attached petition have actually been delivered in a manner provided by

323. Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638, 658 U.N.T.S. 163, *reprinted in* 8 MARTINDALE-HUBBELL LAW DIRECTORY 4619 (1982).

324. *See* Bishop, *International Litigation in Texas: Service of Process and Jurisdiction*, 35 Sw. L.J. 1013, 1017-20 (1982).

325. OKLA. STAT. tit. 12, § 1702.01(a)(4) (1981). Federal rule 4(i) supplements this provision for use in a federal court, authorizing five methods of service abroad. FED. R. CIV. P. 4(i); *see id.* 4(e); Bishop, *supra* note 324, at 1028-31.

326. OKLA. STAT. tit. 12, §§ 158(A), 170.3, 1702.01(b); *see infra* note 335 and accompanying text.

327. OKLA. STAT. tit. 12, § 1702.01(b) (1981).

328. *See id.* §§ 170.4, 153.1; *supra* notes 237-60 and accompanying text. *But see* OKLA. STAT. tit. 12, § 1702.01(b) (1981).

statute. The jurisdiction of a court depends upon the sufficiency of service of process.³²⁹ A return cannot vest a court with jurisdiction where service on a defendant is defective. Conversely, an improper return cannot deprive a court of jurisdiction where a defendant is properly served.³³⁰ The return of service constitutes prima facie evidence of the time and manner of delivery to a particular person; it cannot be impeached solely by uncorroborated testimony from a party to be served.³³¹ Rather, a defendant has the burden to present strong and convincing proof of inadequate service.³³² An alternative to the service return is a defendant's acknowledgment of receipt on the back of a summons.³³³

Section 153 of title 12 presents a model return of service which a sheriff may use in fulfilling personal or substituted service of a summons on an individual.³³⁴ A private process server may use the same form, with an additional notarized affidavit verifying his authority to serve process and that he in fact completed this service and return.³³⁵

The return of service for a summons delivered to a corporate defendant should declare the hierarchy of service attempts which must be made in the return before service will be considered proper on a corporation.³³⁶ Before proceeding with service on someone other than a chief officer or the registered service agent, therefore, the return must show that the chief officer cannot be found in the county and that the

329. See D. CLARK, *supra* note 1, ch. II; cf. FED. R. CIV. P. 4(g) ("Failure to make proof of service does not affect the validity of the service.").

330. See *Ferguson v. Hilborn*, 402 P.2d 914, 919 (Okla. 1965) (defects which are amendable do not render service void where it is sufficient to give defendant notice); *Selected Invs. Corp. v. Bell*, 201 Okla. 408, 411, 206 P.2d 989, 991 (1949) ("It is the service of summons and not the return thereof which confers jurisdiction upon the court to render judgment."); OKLA. STAT. tit. 12, § 154.2 (1981) ("Defects in the form of the return of a summons do not constitute grounds for quashing the summons or its service."); *id.* § 170.3 ("Defects in the return or its verification shall not affect the jurisdiction of the court, and such defects may be cured by amendment."); *id.* § 170.10(d) (Supp. 1982) ("Failure to return the summons as provided in this subsection shall not affect the jurisdiction of the court over the foreign corporation."); Note, *supra* note 165, at 539. See generally Annot., 82 A.L.R.2d 668 (1962) (effect of failure to return service).

331. *Wilson v. Upton*, 373 P.2d 229, 231 (Okla. 1962).

332. See *id.*; *Katschor v. Eason Oil Co.*, 185 Okla. 275, 277, 91 P.2d 670, 672 (1939).

333. See OKLA. STAT. tit. 12, § 162 (1981) (providing that defendant's acknowledgment on back of summons is equivalent of service).

334. *Id.* § 153. See D. CLARK, *supra* note 1, ch. III.A for a sample form (Form 3.2).

335. See OKLA. STAT. tit. 12, §§ 52, 158(A), 158.1(G), 170.3 (1981); cf. FED. R. CIV. P. 4(g) (affidavit required on a return not made by a U.S. marshal or his deputy). See D. CLARK, *supra* note 1, at ch. VIII.M. for a sample process server affidavit (Form 8.2).

336. See *Patrick's, Inc. v. Mosseriano*, 292 P.2d 1003, 1006 (Okla. 1955); *Denison Peanut Co. v. Moss*, 262 P.2d 161, 162 (Okla. 1953); *Mid-Continent Petroleum Corp. v. Brewer*, 207 Okla. 230, 232, 248 P.2d 1039, 1041 (1952); OKLA. STAT. tit. 12, § 163 (1981); *id.* tit. 18, § 1.17(a).

service agent is also unavailable to accept process.³³⁷ There are special rules for service of process on particular types of corporations, such as railroads,³³⁸ insurance companies,³³⁹ and public corporations.³⁴⁰ Consequently, the return should recite compliance with these special rules.

Partnerships, trusts, and other unincorporated associations may be sued by using their special appellation.³⁴¹ The return should show that the person actually served is a representative of the defendant association.³⁴²

When service of process occurs outside Oklahoma, even by a sheriff, the return must be verified and state the authority of the person achieving service.³⁴³

Defects in a return or in a verification do not affect a court's jurisdiction or constitute grounds for quashing a summons or its service.³⁴⁴ Jurisdiction is obtained with the service of process; a return is then made for the plaintiff's benefit rather than for a defendant's protection.³⁴⁵ Errors in a return may be corrected by amendment, which should be freely granted.³⁴⁶ Similarly, failure to file a return on time does not affect a properly served summons.³⁴⁷ Amendments have been permitted where a sheriff fails to sign a return,³⁴⁸ makes an error in dating a return,³⁴⁹ omits the service date,³⁵⁰ or signs a return when an-

337. *Ozark Marble Co. v. Still*, 24 Okla. 559, 561, 103 P. 586, 587 (1909).

338. See *Missouri-Kan.-Tex. R.R. v. Smithart*, 475 P.2d 823, 824 (Okla. 1970); *Kansas, Okla. & Gulf Ry. v. Hill*, 186 Okla. 531, 532, 99 P.2d 115, 115-16 (1940); OKLA. STAT. tit. 12, §§ 165-168 (1981); *supra* notes 135-42 and accompanying text.

339. See *Kelley v. Travelers Indem. Co.*, 199 Okla. 151, 152-53, 184 P.2d 759, 760-61 (1947); OKLA. STAT. tit. 36, §§ 621-622, 2915, 3010 (1981); *supra* notes 143-52 and accompanying text.

340. See *Town of Braman v. Brown*, 172 Okla. 8, 10, 48 P.2d 293, 295 (1935); OKLA. STAT. tit. 12, §§ 184-186 (1981); *supra* notes 168-78 and accompanying text.

341. See *supra* notes 153-66 and accompanying text. See D. CLARK, *supra* note 1, ch. VIII.M for a sample return of service for this class of defendants (Form 8.3).

342. See *United Bhd. of Carpenters v. McMurtrey*, 179 Okla. 575, 576-77, 66 P.2d 1051, 1052-53 (1937); Note, *supra* note 330, at 539-40 (1974).

343. OKLA. STAT. tit. 12, § 170.3 (1981); see *id.* § 158; *supra* notes 326-27 and accompanying text.

344. OKLA. STAT. tit. 12, § 154.2 (1981) (in-state service); *id.* § 170.3 (service outside state).

345. *Selected Invs. Corp. v. Bell*, 201 Okla. 408, 411, 206 P.2d 989, 991 (1949); Note, *Process: Defects in the Return of the Summons*, 18 OKLA. L. REV. 101, 101 (1965). See generally Annot., 31 A.L.R.3d 1393 (1970) (civil liability of one making a false or fraudulent return of service); Annot., 82 A.L.R.2d 668 (1962) (effect of failure to make a return on the validity of service or on a court's jurisdiction).

346. See *Missouri-Kan.-Tex. R.R. v. Smithart*, 475 P.2d 823, 824-25 (Okla. 1970); OKLA. STAT. tit. 12, §§ 170.3, 317 (1981); see also 24 OKLA. L. REV. 114-15 (1971) (discussing *Smithart*); cf. FED. R. CIV. P. 4(h) (amendment allowed at any time in the court's discretion and upon such terms as it deems just).

347. *Frazier v. Nichols*, 48 Okla. 33, 34, 149 P. 1181, 1181-82 (1915).

348. *Chapman v. Norris*, 171 Okla. 154, 155, 42 P.2d 487, 488 (1935).

349. *Fitzsimmons v. Rauch*, 197 Okla. 426, 428, 172 P.2d 633, 636 (1946).

other officer actually served it.³⁵¹

Where service of process is by mail, the return receipt signed by an addressee-defendant should be used to prove completed service.³⁵²

Constructive service by publication should be proved with an affidavit from the printer, his foreman or principal clerk, or by another person with knowledge of the publication.³⁵³ Service by posting may be shown with a return of service by a sheriff or process server describing the time, manner, and place of posting.³⁵⁴

350. *Lee v. State*, 47 Okla. 738, 739-40, 150 P. 665, 665-66 (1915).

351. *City of Enid v. Rector*, 97 Okla. 280, 283, 223 P. 846, 848 (1924); *see* OKLA. STAT. tit. 12, § 154.7 (1981).

352. *See* OKLA. STAT. tit. 12, §§ 153.1(b), 155(b) (1981). *See generally* Annot., 95 A.L.R.2d 1033 (1964) (service on a nonresident motorist and the return receipt). *See* D. CLARK, *supra* note 1, ch. III.A for a sample certificate of service by mail (Form 3.2).

353. OKLA. STAT. tit. 12, § 174 (1981). For a sample proof of publication affidavit, *see* D. CLARK, *supra* note 1, ch. VIII.I (Form 8.1).

354. *See* OKLA. STAT. tit. 12, §§ 158(A), 158.1(A) (1981).

Appendix 1
Mail Service in Particular Actions

<u>Action</u>	<u>Title</u>	<u>Section</u>	<u>Special Treatment</u> ³⁵⁵
Termination of parental rights	10	1105	
Child custody (service outside Oklahoma)	10	1607(A)(3)	Return receipt sufficient
Incorporated town as defendant	12	186	Return receipt sufficient
Forcible entry and detainer	12	1148.5	Return receipt sufficient
Insurer as defendant (Insurance Commissioner as attorney)	36	623	Return receipt sufficient
Unauthorized insurer as defendant	36	6103(C)(4)	Return receipt sufficient
Appeal denial or revocation of driver's license	47	6-211(d)	Simple certified mail
Nonresident motorist as defendant	47	394	Return receipt sufficient
Nonresident itinerant merchant	47	427(b)	
Probate of will	58	25, 26, 34, 241(b)	Ordinary mail
Letters of administration (probate)	58	128	Ordinary mail
Executor's or administrator's sale of property	58	414	Ordinary mail
Guardian's sale of property	58	827	Ordinary mail

355. Ordinary treatment is explicitly or implicitly called for where this column is blank. Ordinary mail service is authorized under *id.* § 153.1 which requires certified mail with a return receipt requested by the addressee only. *See supra* notes 237-48 and accompanying text.

<u>Action</u>	<u>Title</u>	<u>Section</u>	<u>Special Treatment</u>
Termination of life estate or joint tenancy	58	911	Ordinary mail
Nonresident watercraft owner or operator as defendant	63	816	Return receipt sufficient
Railroad eminent domain	66	53	Ordinary mail

Appendix 2

Publication Service in Particular Actions

<u>Action</u>	<u>Title</u>	<u>Section</u>	<u>Special Treatment</u> ³⁵⁶
Adoption	10	60.7	One time notice
Termination of parental rights	10	1105, 1131	One time notice
Child custody (service outside Oklahoma)	10	1607(A)(4)	
Unincorporated association as defendant	12	182, 183.1	
Incorporated town as defendant	12	184-186	Form for affidavit and notice detailed
Divorce	12	1273	
Partition	12	1509(B)	One time notice
Probate of will	58	25, 32, 33, 241(b), 331, 702	Form for notice detailed
Letters of administration (probate)	58	128, 944	One time notice
Executor's or administrator's sale of property	58	414	One time notice
Guardian's sale of property	58	827	One time notice
Termination of life estate or joint tenancy	58	911	One time notice
Railroad eminent domain	66	53	Two time notice
Department of Highways eminent domain	69	1203(c), 1203(e)(2)	Two time notice, One time notice
Heirship proceeding	84	260	Form for notice detailed

356. Ordinary treatment is explicitly or implicitly called for where this column is blank. Ordinary publication service is authorized under *id.* §§ 170.6, 173; *see supra* notes 261-86 and accompanying text.

Appendix 3

Appointment of Agents to Receive Process for Nonresidents

<u>Nonresident</u>	<u>Title</u>	<u>Section</u>	<u>Agent</u>
Aerial pesticide applicator	2	3-82(f)	Resident or Secretary of Board of Agriculture
Banking association acting as executor, administrator, or trustee	18	476	Secretary of State or resident
Insurance agent	36	1425(I)(2)(b)	Insurance Commissioner
Motorist	47	391(b)	Secretary of State
Itinerant merchant	47	426	Secretary of the Tax Commission
Oil and gas lessee	52	501(b)	Secretary of State
Limited partnership	54	174(A), 174(b)(1)(d)	Resident (or corporation) or Secretary of State
Executor, administrator, or guardian	58	162	Resident
Polygraph examiner	59	1461(A)	Secretary of the Polygraph Examiners Board
Pawnbroker	59	1504(C)	Resident or Administrator of Consumer Affairs
Metal and gem dealer	59	1524(E)	Resident or Administrator of the Department of Consumer Credit
Real estate agent or broker	59	858-306	Secretary-Treasurer of the Real Estate Commission
Motorboat owner or operator	63	816	Secretary of State
Transacting business with the Highway Commission	69	312	Resident or Secretary of State

<u>Nonresident</u>	<u>Title</u>	<u>Section</u>	<u>Agent</u>
Securities broker, agent, or issuer	71	413(h)	Securities Administrator