Established in 1982

Office of the President
Lance D. Randall
P.O. Box 72
Melbourne, FL 32902-0072
Direct (954) 214-8263 Fax (954) 963-5186
Lance@LRI.US – Email, WWW.FAPPS.ORG

December 12, 2013

Lt. Robert Corriveau
Orange County Sheriff's Office
425 North Orange Ave, Suite 240
Orlando, FL 32801
Via Certified Mail

RE: G.O. 6.4.4

Dear Lt. Corriveau;

On behalf of the Florida Association of Professional Process Servers, ("FAPPS"), I would like to call your attention to an issue of vital importance and great concern, not just for the members of our statewide association (FAPPS), but the entire process service profession as a collective whole, in the State of Florida. It is my sincerest interest to find a common ground to resolve what we (FAPPS) feel are a few rather serious defects in the Orange County Sheriff's Office's ("OCSO") recent mandate pursuant to general order 6.4.4 Inasmuch, on behalf of FAPPS I am requesting that the Orange County Sheriff's Office ("OCSO") review the arguments herein and use them to repeal some of the newly created or recently enforced policies affecting process servers that we (FAPPS) deem to be inappropriate, conflicting with certain laws/rules, and in some cases, unfair.

We last spoke about the mandate and our concerns in late October of 2013. At that time, you and I had a conversation pertaining to the OCSO's mandate that the fees for service be placed upon the affidavit of service (the "mandate") which was something that had never been enforced before. When I asked what the intended purpose of the mandate was, you stated that you were just the person designated to enforce the mandate, and that the mandate came from a higher authority. When I pressed for the justification for this mandate, you replied (generally) that it

was required pursuant to the Florida Sunshine Law as well as part of the mandatory disclosure of fees in accordance with Rule 4-1.5. I replied that I was unable to understand how the OCSO felt a private process server fell into the category of a Government agency, Body, Board, or Commission as referenced in the FL Sunshine Law, or under the classification of a Lawyer / Attorney as described in C.R.P. 4-1.5. It is the opinion of FAPPS and our association's counsel that those laws and rules do not in any way apply to a private process server.

After our October conversation, I was under the impression that we had actually reached some common ground and you were going to look into this before taking any further action. At that time, you made it clear that you would not be penalizing any special process server ("SPS") for failure to adhere to this mandate until at least the first of the year, which I interpreted to be January 1, 2014.

During the aforementioned phone conversation it was mutually agreed that we would send each other compelling arguments and documentation pertaining to the merits, or lack thereof, pursuant to the mandate. As of today's date I have yet to receive any communication from you or your office. Conversely, please allow this letter to serve as my response as President of FAPPS.

As evidenced by the almost non-stop phone calls coming into my office as well as to various members of our Board of Directors, the mandate is causing great concern throughout the private process server profession, and rightfully so. Based upon the evidence and finding stated in the following paragraphs, I respectfully request that you take everything presented herewith into consideration, reevaluate the mandate, and make any and all corrective measures to reflect a workable compromise in accordance to the established laws, rules and statutes.

Sometime during the week of November 18th through November 22nd, 2013 there was a class and or mandatory training session for SPS in Orange County. During this session, it was brought to my attention that the OSCO is moving ahead with this unjustified mandate. By this action you are threatening peoples' livelihood by promising to revoke their appointment if they do not

comply with it. This is a gross abuse of the OSCO's statutory authority over SPS and exceeds the powers and ability of the Sheriff.

As we discussed on the phone, the OSCO's mandate that all process servers place on the "Return/Affidavit of Service" (a "Return") the fee that the person knocking on the door is receiving and then classify said fee to be the "Service of Process Fee", is without merit. Not only is that not the fee reflecting the actual final costs of service, the OSCO's mandate causes the process server to make a decision to falsify an affidavit (because it is not the actual cost of service) which is a felony or risk losing their right to work in Orange County, FL. Personally, as well as on behalf of FAPPS, I am of the opinion that neither is an acceptable option. Moreover, I fail to see any logic why a government agency (the OSCO) created to protect and serve the community would enforce an ill-conceived mandate which would compromise its own citizens in this fashion.

Furthermore, the OCSO is not asking its civil or enforceable service deputies to adhere to the same policy when they are serving indicating a clear prejudice against the private process servers in Orange County, FL. As a point of fact, the OCSO has no authority or control over any private process server throughout the remaining counties in the state of Florida. It seems clear that there exists a double standard when it comes to private process servers in Orange County, FL. If this is not a clear act of selective discrimination, I would like to know why.

The fees charged for service of process are a compilation of the accumulated charges associated with the originating process serving company in any given city including, but not limited to courier, issuance, shipping, administrative, overhead, operating, fuel, insurance, licenses and any other fees associated with or in the process of attempting service of process in a diligent manner by a person authorized to effect service in the specified geographical area.

The legal documents may start in Miami, FL and change hands more than once before they wind up in the hands of the actual person "knocking on the door" as you would describe them. This is not inclusive of any additional fees incurred if the original address for service is not good and

additional addresses must be attempted. It is not possible for the person actually knocking on the door at an address to know exactly what the entire fees for service on any one particular document are.

In furtherance of this point, I'm sure that you are aware that the fees for service of process have no direct relation to that of the OCSO which are expressly limited by statute and the Sheriff's office undertakes far less of the administrative services and technology that we provide in the private sector. Moreover, the fees paid by agencies to their server network are confidential trade secrets and proprietary business information. The OCSO's mandate is a tortious interference with our advantageous business relationships between Attorneys, Law Firms, Process Servers, Litigants and other agencies throughout the country. I suspect that the OCSO would not want to have their civil process deputies put their hourly wage on their Returns or otherwise indicate what percentage of their hourly wage and benefits package was spent completing that serve.

FL SS 48.021 sets forth the requirement for a Return or Affidavit of Service and does not grant the Sheriff any authority to regulate the content of either form, nor is the Sheriff vested with any statutory authority which would allow him or her to require, as a condition for appointment, certain criteria or information to be placed upon an Return of Service/Affidavit as that power is solely vested in the legislature and the Judiciary.

In addition to the foregoing, I have obtained a copy of the Orange County Sheriff's Office General Order 6.4.4 that you are presenting to all SPS in your jurisdiction. While I thought the service fee mandate was improper enough, I became even more concerned when I read some other requirements the OCSO is attempting to set forth. In my opinion, some of the rules stretch well beyond the scope of the Sheriff's ability and authority and cross over into the realm of an employee/employer relationship. Based on the fact that private process servers are neither employees or sub-contractors of the OCSO, your ability to make certain demands and implement criteria is limited to the creation of a Special Process Server Program as I will set forth and break down through the remainder of this letter.

In General Order 6.4.4:

Under paragraph #2, last sentence "All special process servers serve at the pleasure of the Sheriff". That is simply not correct. FL SS 48.021(2)(e) allows the sheriff to revoke an appointment of a special process server only after determining that a process server was not fully and properly discharging his or her duties, thus not merely at the pleasure of the Sheriff and we request this sentence to be omitted.

Under paragraph 3 sub-section G paragraph 5, we agree and support the request for process servers to present themselves in a professional manner and dress appropriately, however paragraphs c, d, e, f, & g cross the line of an independent party, not under the employ or sub-contract of the Sheriff's Department and these provisions exceed the statutory limitations of a non-employee, non-contracted independent person. Private process servers do not perform any services on behalf of and are not compensated in any way by the Orange County Sheriff's Department, thus eliminating any type of ability to demand a dress code and we request that you remove the sentences that describe in full detail what clothes a private special process server may wear.

Under paragraph 7, your department again is trying to exceed its authority by attempting to legislate amongst itself and change the criteria of which the statute is written. FL SS 48.031(5) reads "*A person serving process shall place, on the first page of at least one of the processes served, the date and time of service and his or her identification number and initials for all service of process.*" Nowhere does it state on the "original and all copies of the process" or a process server shall place by "typing or printing his/her name, business address, telephone number, or the title special process server" and it further does not specify the return of service must be notarized or notate the cost of service. We request that you remove such additional criteria as it does not pertain to the eligibility of becoming a special process server, and it is extremely dangerous to provide to a person who was just served and may be in an emotional state of mind, the full name, address and telephone number of the process server. This is in addition to the fact that you are not requiring your own personnel to adhere to

this same hazardous policy. Continuing to require this may have negligent consequences associated with it if the person served decides to come after the process server in a violent rage. Additionally concerning is that you wholly omit the reference that requires the initials of the process server – which is specifically what the statute requires and advising contrary to the statute is confusing, unnecessary, beyond the Sheriff's statutory authority and likely to result in successful challenges to service.

Under Paragraph 13, 14 & 15; the OCSO has set forth a condition that directly interferes with an advantageous business relationship and the Sheriff's authority does not consist of the ability to tell any private person who they may or may not be employed by or transact business with. Revoking an appointment for this sole reason (with paragraph 14 being a partial exception) does not meet the criteria needed to determine that a special process server is not faithfully discharging their duties. Paragraph 14 is covered under your paragraph 16 which we support with limitations and only after a proper investigation utilizing methods of due process has been conducted.

While performing my research, I came across another policy wherein the OCSO is restricting the amount of process servers to be appointed and placing a limit of 100 special process servers at any given time regardless of any person successfully meeting the eligibility requirements to become appointed as a special process server. This is in direct opposition of FL SS 48.021(2) (a) "*The sheriff shall add to such list the names of those natural persons who have met the requirements provided for in this section*" and we request said cap be lifted.

Enclosed with this letter you will find the appellate ruling 687 So.2d 897 Sutor (v) Cochran, Sheriff of Broward County, Florida, the Florida Sunshine Law, C.R.P. 4-1.5, FL SS 48 and your General Order 6.4.4 dated 9-14-2012.

In light of certain statutory limitations, unnecessary regulation, and unworkable sections of the mandate; I respectfully request that you re-reconsider the policies that we strongly believe exceed the Sheriff's authority, and address these aforementioned issues to formulate a common

sense solution within the rule of law. I am willing to attend any meetings you would like to call so that we may discuss this and any other matters you deem necessary in an effort to come to a unified agreement which I believe is possible prior to FAPPS seeking injunctive relief in the court of law.

I wish to express that FAPPS is not against the Orange County Sheriff's Department and we will take any measures necessary to maintain a healthy and pleasurable relationship with the Sheriff. We will further support your program in every way possible as long as it falls within the scope of the law and provides equal rights of the special process servers as a whole.

In accordance with our initial telephone conversation, I look forward to your review of the information provided and anticipate a timely response.

Sincerely,

Lance Randall
FAPPS President

CC: The Honorable Jerry L. Demings, Sheriff of Orange County;
2500 West Colonial Dr., Orlando, FL 32804

Professional Standards Division, Orange County Sheriff's Office;
2500 West Colonial Dr., Orlando, FL 32804

Major Danny Vereen, Judicial Process Section, Orange County Sheriff's Office;
425 North Orange Ave, Suite 170, Orlando, FL 32801

FAPPS Board of Directors; via e-mail to Board@FAPPS.Org

687 So.2d 897, 22 Fla. L. Weekly D293
(Cite as: 687 So.2d 897)

H

District Court of Appeal of Florida,
Fourth District.
Scott **SUTOR**, Appellant,
v.
Ron **COCHRAN**, **Sheriff** of Broward County, Florida, Appellee.

No. 95–3434.
Jan. 29, 1997.
Reconsideration Denied Feb. 28, 1997.

Special process server filed suit against **sheriff** challenging conditions on appointments as special process servers and seeking declaratory and injunctive relief and damages under § 1983. The Circuit Court, Seventeenth Judicial Circuit, Broward County, John T. Luzzo, J., declared termination conditions invalid, denied injunctive relief, and dismissed § 1983 claim without prejudice. Appeal was taken. The District Court of Appeal, Pariente, J., held that: (1) **sheriff** exceeded his statutory authority by requiring that applicants for appointment as special process servers agree to use only forms purchased from **sheriff**, to charge only fixed fee set by **sheriff**, and to be subject to termination at **sheriff's** pleasure; (2) process server was not entitled to injunctive relief concerning unlawful termination conditions, absent any foreseeable threat of unlawful termination; and (3) process server's § 1983 claim had to be dismissed, without prejudice, as not yet ripe for adjudication.

Affirmed in part, reversed in part, and remanded for entry of amended final judgment.

West Headnotes

[1] Sheriffs and Constables 353 87

353 **Sheriffs** and Constables
353III Powers, Duties, and Liabilities
353k87 k. Duties as to service and return of process in general. Most Cited Cases

Sheriff exceeded his statutory authority by requiring that applicants for appointment as special process servers agree to use only forms purchased from **sheriff**; statutes only authorized **sheriff** to prescribe requirements directly related to statutory criteria of eligibility to become special process server and indicated that forms used by process servers be subject to approval by court rather than **sheriff**. West's F.S.A. §§ 48.021(2)(b, c), 48.29(6)(b).

[2] Sheriffs and Constables 353 87

353 **Sheriffs** and Constables
353III Powers, Duties, and Liabilities
353k87 k. Duties as to service and return of process in general. Most Cited Cases

Sheriff exceeded his statutory authority by requiring that applicants for appointment as special process servers agree to charge only fixed fee set by **sheriff**; statutes only authorized **sheriff** to prescribe requirements directly related to statutory criteria of eligibility to become special process server and specifically authorized special process server to charge reasonable fee for his or her services. West's F.S.A. § 48.021(2)(b, c), (3).

[3] Sheriffs and Constables 353 87

353 **Sheriffs** and Constables
353III Powers, Duties, and Liabilities
353k87 k. Duties as to service and return of process in general. Most Cited Cases

687 So.2d 897, 22 Fla. L. Weekly D293
(Cite as: 687 So.2d 897)

Sheriff exceeded his statutory authority by requiring that applicants for appointment as special process servers agree to be subject to termination at **sheriff's** pleasure, which directly conflicted with statute allowing **sheriff** to revoke appointment as special process server only after determining that process server was not fully and properly discharging his or her duties. West's F.S.A. § 48.021(2)(e).

[4] Injunction 212 ⚿1304

212 Injunction
212IV Particular Subjects of Relief
212IV(H) Employment and Compensation
212k1304 k. Public employees and officials. Most Cited Cases
(Formerly 212k22)

Special process server was not entitled to injunctive relief concerning unlawful termination conditions which **sheriff** had placed on server's appointment as special process server, absent any foreseeable threat that server would be subject to unlawful termination. West's F.S.A. § 48.021(2)(e).

[5] Constitutional Law 92 ⚿4156

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)7 Labor, Employment, and Public Officials
92k4156 k. Rights and interests protected in general. Most Cited Cases
(Formerly 92k277(1))

Due process property right may be created by termination provisions in statute where statute lists specific grounds for discharge or states that employee can be discharged only for just cause. U.S.C.A. Const.Amend. 14.

[6] Constitutional Law 92 ⚿3869

92 Constitutional Law
92XXVII Due Process
92XXVII(B) Protections Provided and Deprivations Prohibited in General
92k3868 Rights, Interests, Benefits, or Privileges Involved in General
92k3869 k. In general. Most Cited Cases
(Formerly 92k252.5)

Constitutional Law 92 ⚿3894

92 Constitutional Law
92XXVII Due Process
92XXVII(B) Protections Provided and Deprivations Prohibited in General
92k3892 Substantive Due Process in General
92k3894 k. Rights and interests protected; fundamental rights. Most Cited Cases
(Formerly 92k252.5)

Rights based on state law may be rescinded constitutionally so long as elements of procedural, not substantive, due process are observed. U.S.C.A. Const.Amend. 14.

[7] Civil Rights 78 ⚿1383

78 Civil Rights
78III Federal Remedies in General
78k1378 Time to Sue
78k1383 k. Employment practices. Most Cited Cases
(Formerly 78k210)

Special process server's § 1983 claim against

687 So.2d 897, 22 Fla. L. Weekly D293
(Cite as: 687 So.2d 897)

sheriff, asserting due process violation concerning **sheriff's** unlawful condition on appointment as process server requiring that he agree to be terminated from position at **sheriff's** pleasure, had to be dismissed without prejudice as not yet ripe for adjudication, even assuming process server had protected property interest in position, in light fact that he had not been terminated. 42 U.S.C.A. § 1983; West's F.S.A. § 48.021(2)(e).

***898** Michel Ociacovski Weisz and Lee Katherine Goldstein of Law Offices of Michel O. Weisz, Miami, for appellant.

Charles T. Whitelock and Craig H. Blinderman of Whitelock, Rodriguez & Williams, P.A., Fort Lauderdale, for appellee.

PARIENTE, Judge.

This case requires us to consider the scope of a **sheriff's** authority, pursuant to section 48.021, Florida Statutes (1993), to regulate special process servers. We reverse in part because certain requirements imposed by appellee, Broward County **Sheriff** Ron **Cochran** (the **sheriff**), exceeded the scope of his statutory authority. However, because appellant, Scott **Sutor**, was neither denied appointment nor terminated from his appointed position as a special process server, we affirm the trial court's dismissal of his civil rights claim.

BACKGROUND FACTS

Sutor filed suit against the **sheriff**, challenging the **sheriff's** requirement that special process servers, including **Sutor**, enter into a Special Process Server Agreement (the Agreement) as a condition of appointment and continued service. **Sutor's** three-count complaint requested declaratory relief, injunctive relief, and damages pursuant to 42 U.S.C. § 1983. **Sutor** claimed that the **sheriff** had both exceeded the scope of his authority, pursuant to section 48.021, and violated **Sutor's** constitutional rights with respect to his protected property interest in his position as a special process server.

***899** The Agreement provided,[FN1] in relevant part, that the undersigned agreed to accept and abide by the following provisions:

> FN1. Certain of these provisions were enumerated in the documents entitled "Special Process Server Program" and "Special Process Server Program Policy," which were referenced by the Agreement.

(1) To use only those pre-numbered four-part "return of service" affidavits provided by the **sheriff** at a cost of $2 each (the uniform affidavit provision).

(2) To adhere to the fee structure prescribed by section 30.231, Florida Statutes, the statute which establishes the fee structure for **sheriffs** (the fee provision).

(3) To accept the following termination provisions (the termination provisions):

(A) The appointment of special process server shall be:

1. temporary;

2. served at the pleasure of the **sheriff**;

3. a privilege not a right; and

4. subject to termination without recourse, at any time without cause, by the **sheriff** or his authorized agent.

(B) No property interest may be claimed in the appointment, and the special process server

687 So.2d 897, 22 Fla. L. Weekly D293
(Cite as: 687 So.2d 897)

waives any rights to the enforcement of any claim regarding any due process rights.

By stipulation, the parties agreed that special process servers appointed by the **sheriff** were neither employees of the **sheriff** nor deputy **sheriffs**. The parties further stipulated that the chief judge of the Seventeenth Judicial Circuit neither approved the use of the uniform affidavits nor authorized the $2 charge. The parties also stipulated that the $2 charge pertained only to special process servers and not to deputy **sheriffs** serving non-enforceable original process. **Sutor** testified, without dispute, that his business as a special process server derived solely from providing services to private attorneys.

In its final judgment, the trial court held that the **sheriff** did not exceed his statutory authority by requiring special process servers to accept both the uniform affidavit and the fee provisions of the Agreement. However, the trial court declared that the **sheriff** had exceeded his statutory authority with respect to the termination provisions. The trial court denied injunctive relief based on the lack of a present, actual controversy, and dismissed the civil rights claim without prejudice after finding that **Sutor** had no property interest in his position as a special process server.

BACKGROUND OF SPECIAL PROCESS SERVER PROGRAM

An overview of the statutory scheme is helpful to an understanding of the parameters of the **sheriff's** discretion over the appointment of special process servers. Chapter 48 pertains to "Process and Service of Process" generally. *See* § 48.011–48.31, Fla. Stat. (1993). Section 48.021, the section at issue in this lawsuit, requires that all process "shall be served by the **sheriff**," except that "initial nonenforceable civil process may be served by a special process server appointed by the **sheriff** as provided for in this section or by a certified process server as provided for in ss. 48.25–48.31." [FN2]

FN2. Both special process servers and certified process servers perform a valuable function by relieving the **sheriff** of the statutory duty to serve process in all cases, thus enabling the **sheriff's** office to concentrate on performing its essential law enforcement functions, such as making arrests, transporting prisoners, and serving writs. The litigants are also better served because their attorneys have the option of utilizing either a special process server or a certified process server from an approved list. There are many situations where the litigant may be in need of more expeditious service than the **sheriff** can provide at any one particular time because of other pressing demands on the **sheriff**. There may also be situations which require more personal attention, such as where a particular defendant is evading service or is otherwise difficult to serve.

Pursuant to statute, special process servers are regulated by the **sheriff** of each county, and certified process servers are regulated by the chief judge of each county. *See* §§ 48.021, 48.27. The statutory scheme for the two types of appointed process servers are identical in most respects. *Compare* § 48.021 *with* §§ 48.25–48.31.

***900** The **sheriff's** statutory authority to appoint special process servers predated the legislative creation of certified process servers. In 1988, the legislature enacted the Florida Certified Process Server Act, placing certified process servers under the jurisdiction of the chief judge. *See* Ch. 88–135, § 3, at 720–21, Laws of Fla; *see also* §§ 48.27–48.31. The purpose of this bill was to establish a list of certified process servers who would be authorized to serve initial nonenforceable process on a person found in the circuit. *See* Staff of Fla. S. Comm. on Judiciary, CS for SB 484 (1988) Staff Analysis 1 (rev. April 20, 1988) (on file with comm.). [FN3]

687 So.2d 897, 22 Fla. L. Weekly D293
(Cite as: 687 So.2d 897)

FN3. Although not explicitly stated, the obvious purpose of this Act was to eliminate the necessity of an individual having to seek court approval pursuant to Florida Rule of Civil Procedure 1.070(b) for appointment as a process server if the person had previously been placed on the approved list of certified process servers. While we can discern no apparent reason for the **sheriff** and the chief judge to maintain separate lists of process servers, the Senate Staff Analysis specifically stated that "[t]he bill does not affect service by a **sheriff's** special process server." *See* Staff of Fla. S. Comm., CS for SB 484 (1988) Staff Analysis 1 (rev. April 20, 1988) (on file with comm.). Thus, with the enactment of the Florida Certified Process Server Act, two parallel and potentially redundant systems for service of initial process in a civil lawsuit presently exist.

The Florida Certified Process Server Act provides detailed minimum statutory qualifications for a certified process server. Initially, there were no statutory qualifications for the **sheriff's** special process servers other than that the process server be at least 18 years of age, a permanent resident of the state, and of good moral character. *See* § 48.021(2) (1989). In 1991, after the enactment of the Florida Certified Process Server Act, the legislature substantially amended section 48.021 to "formalize[ ] the minimum requirement and qualifications of special process servers that are currently at the absolute discretion of county **sheriffs**." *See* Staff of Fla. H.R. Comm. on Judiciary, HB 155, 2095 (1991) Staff Analysis 1 (final May 28, 1991) (on file with comm.); *see also* Ch. 91–306, § 2, at 2967–68, Laws of Fla. These minimum requirements and qualifications were patterned after the previously-enacted qualifications for certified process servers. *Compare* § 48.021 *with* §§ 48.25–48.31.

Subsection 48.021(2)(a) grants the **sheriff** of each county the authority to establish an approved list of special process servers. The **sheriff**, like the chief judge, is not required to create a list of process servers. *See* § 48.021(2)(a), § 48.29(1). However, once the **sheriff** in the exercise of his discretion establishes the list, the **sheriff** "shall" add to the list "the names of those natural persons who have met the requirements provided for in this section." § 48.021(2)(a).

Subsection 48.021(2)(b) establishes the minimum requirements of eligibility.[FN4] Subsection 48.021(2)(c) allows the **sheriff** to "prescribe additional rules and requirements *directly related to* [the statutory criteria of] eligibility of a person to become a special process server or to have his name maintained on the list of special process servers." (Emphasis supplied).

FN4. The statutory requirements provide that:

> A person applying to become a special process server shall:
>
> 1. Be at least 18 years of age.
>
> 2. Have no mental or legal disability.
>
> 3. Be a permanent resident of the state.
>
> 4. Submit to a background investigation....
>
> 5. Obtain and file with the application a certificate of good conduct....
>
> 6. Submit to an examination testing the applicant's knowledge of the laws and rules regarding the service of process....
>
> 7. Execute a bond....

687 So.2d 897, 22 Fla. L. Weekly D293
(Cite as: 687 So.2d 897)

> 8. Take an oath that the applicant will honestly, diligently, and faithfully exercise the duties of a special process server.
>
> § 48.021(2)(b), Fla. Stat. (1993).

The first issue we must confront is whether the **sheriff** exceeded his statutory authority by requiring special process servers to accept certain provisions of the Agreement. We address each challenged provision.[FN5]

> FN5. **Sutor** also challenged the provision requiring special process servers to obtain a private investigator's licence. However, this provision has been eliminated from the Agreement. Thus, we do not need to reach the validity of this requirement.

UNIFORM AFFIDAVIT PROVISION

[1] The uniform affidavit provision requires a special process server to use only those forms provided by the **sheriff** and requires**901** those forms to be purchased from the **sheriff** at a cost of $2 each. This provision does not directly relate to the eligibility of a person to become a special process server; therefore, authority for imposing this provision cannot be derived from subsection 48.021(2)(c).

Section 48.21 sets forth the requirements for return of service. While it requires a valid affidavit of execution, this section does not grant the **sheriff** authority to regulate the forms used by special process servers. The **sheriff** is also not vested with any statutory authority which allows him to require, as a condition of appointment, that special process servers purchase forms from him at a set fee.[FN6]

> FN6. We do not reach the issue of whether the **sheriff** could limit the fees charged if the **sheriff** subcontracted work to a special process server. Here, although the authority to serve process derived from **Sutor's** appointment as a special process server by the **sheriff**, his business derived from work obtained through private attorneys. Thus, the question of the fee to be charged would be a matter of contract between **Sutor** and the private attorneys.

It would be within the jurisdiction of the judiciary, not the **sheriff**, to prescribe the use of a uniform affidavit for return of service in a civil lawsuit. Service of process is addressed by Florida Rules of Civil Procedure 1.070(a) and (b). Rule 1.070(a) requires that a summons or other process authorized by law be delivered for service. Form 1.902, which has been approved by the supreme court, sets forth a judicially-approved form of summons. Rule 1.070(b) requires proof of service by affidavit.

While our supreme court has not approved a form for return of service, subsection 48.29(6)(b) of the Florida Certified Process Server Act states: "Return of service shall be made by a certified process server on *a form which has been reviewed and approved by the court.*" (Emphasis supplied). Because certified process servers and special process servers fulfill the same functions when serving process, it is logical that any forms used by either process server be subject to court approval.

THE FEE PROVISION

The fee provision of the Agreement requires special process servers to "[c]harge only a reasonable fee for services as prescribed by Florida Statute 30.231." Section 30.231 specifies that all **sheriffs** charge fixed, nonrefundable fees, and subsection 30.231(1)(a) sets a fixed charge of $12 for each summons or writ to be served.[FN7]

> FN7. By amendment in 1994, the fee chargeable was increased to $20. Ch. 94–

687 So.2d 897, 22 Fla. L. Weekly D293
(Cite as: 687 So.2d 897)

170, § 1, at 1040, Laws of Fla.

[2] The **sheriff** is not vested with discretion pursuant to subsection 48.021(2)(c) to regulate the fees of special process servers because the fee provision, like the uniform affidavit provision, does not directly relate to the eligibility of a person to become a special process server. There is no other statute which authorizes the **sheriff** to set the fees charged by special process servers.

The fee provision, in fact, directly conflicts with the express plain language of subsection 48.021(3), which provides: "A special process server appointed in accordance with this section ... *may charge a reasonable fee* for his services." (Emphasis supplied). If the legislature had intended to limit the fees charged by special process servers to those in the schedule of **sheriff's** fees, it would have set forth this limitation and not authorized a special process server to charge a "reasonable fee."

Although charging an unreasonable fee might constitute grounds for revoking a special process server's appointment, the **sheriff** was not authorized to limit the fees charged to a fixed fee schedule—especially where, as here, the special process server's business was obtained solely from private attorneys desiring to utilize his services.

THE TERMINATION PROVISIONS

[3] We also address the termination provisions of the Agreement, which provided that the appointment of a special process server was subject to termination without cause at the **sheriff's** pleasure. The termination provisions also required the special ***902** process server to waive all rights to contest termination.

Subsection 48.021(2)(e) provides the following:

> The **sheriff** shall have the discretion to revoke an appointment at any time that *he determines a special process server is not fully and properly discharging the duties as a special process server.* The **sheriff** shall institute a program to determine whether the special process servers appointed as provided for in this section are faithfully discharging their duties pursuant to such appointment, and a reasonable fee may be charged for the costs of administering such program.
>
> (Emphasis added).

[4] Subsection 48.021(2)(e) does not grant the **sheriff** unfettered discretion.[FN8] To the contrary, this subsection expressly limits the discretion of a **sheriff** to discharge a special process server. Before discharging a special process server, the **sheriff** is statutorily required to determine whether the special process server is "faithfully discharging his duties," a determination that must be made in accordance with a program instituted by the **sheriff**. Because the termination provisions directly conflict with a special process server's statutory rights, we affirm the trial court's finding that the **sheriff** exceeded his authority by requiring acceptance of the termination provisions.

> FN8. Prior to 1991, subsection 48.021(2)(e) specifically provided that "[t]he special process server shall serve at the pleasure of the **sheriff**." This language was eliminated by statutory amendment in 1991. *See* Ch. 91–306, § 2, at 2968, Laws of Fla.

Despite invalidating the provisions related to termination, the trial court declined **Sutor's** request for injunctive relief. The trial court found that "there is no present, actual controversy affecting Plaintiff's rights with regard to such deficiencies, and unless and until one exists, this Court deems no injunction appropriate." Because there was no foreseeable threat that **Sutor** would be subject to an unlawful termination, we find no abuse of discretion in the trial court's

687 So.2d 897, 22 Fla. L. Weekly D293
(Cite as: 687 So.2d 897)

denial of injunctive relief.

CIVIL RIGHTS CLAIM

[5] **Sutor's** § 1983 civil rights action was premised on the theory that by requiring him to accept the termination provisions in the Agreement as a condition to continuing to serve process, the **sheriff** violated his due process rights. **Sutor** based his right to due process on a protected property interest, created by section 48.021, in his position as a special process server.[FN9] The trial court held that there had been no implication of due process because **Sutor** had no property interest in his position. The trial court then dismissed the civil rights claim as "moot without prejudice."

FN9. A property right may be created by the termination provisions in a statute where the statute lists specific grounds for discharge or states that the employee can be discharged only for just cause. *See Thomason v. McDaniel*, 793 F.2d 1247, 1249 (11th Cir.1986); *Ragucci v. City of Plantation*, 407 So.2d 932, 935 (Fla. 4th DCA 1981). As to whether or not a property interest in appointment is created by a state statute, see generally *Coyne v. City of Somerville*, 972 F.2d 440 (1st Cir.1992).

[6] **Sutor's** protected property interest, if any, arose solely as a result of rights created by section 48.021 and did not flow from either the Florida or United States Constitutions. "[S]tate law based rights constitutionally may be rescinded *so long as the elements of procedural—not substantive—due process are observed.*" *Jacobi v. City of Miami Beach*, 678 So.2d 1365, 1367 (Fla. 3d DCA 1996) (emphasis supplied) (citing *McKinney v. Pate*, 20 F.3d 1550, 1556 (11th Cir.1994) (en banc), *cert. denied*, 513 U.S. 1110, 115 S.Ct. 898, 130 L.Ed.2d 783 (1995)).

[7] As to any procedural due process claim, even assuming *arguendo* that section 48.021 did create a protected property interest in **Sutor's** position as special process server, procedural due process was never implicated in this case because **Sutor** was neither denied appointment nor terminated as a special process server. Therefore, the trial court properly dismissed the civil rights action without prejudice.

Having properly determined that the civil rights claim should be dismissed "without ***903** prejudice," the trial court should not have reached the substantive issue of whether **Sutor** had a protected property interest. This issue was not yet ripe for adjudication. Accordingly, the findings in section (4) of the final judgment are stricken.

CONCLUSION

We reverse that part of the trial court's final judgment upholding the uniform affidavit and fee provisions because these provisions exceeded the scope of both the **sheriff's** express and discretionary authority granted by statute. We affirm that part of the trial court's judgment declaring that the **sheriff** exceeded **his** statutory authority with respect to the termination provisions.

We affirm the trial court's denial of injunctive relief, and we affirm the dismissal of the civil rights action without prejudice for the reasons stated in this opinion. However, because the civil rights claim was not ripe for adjudication, we strike the trial court's findings as to whether **Sutor** had a protected property interest in his position as a process server.

AFFIRMED IN PART; REVERSED IN PART; REMANDED FOR ENTRY OF AN AMENDED FINAL JUDGMENT.

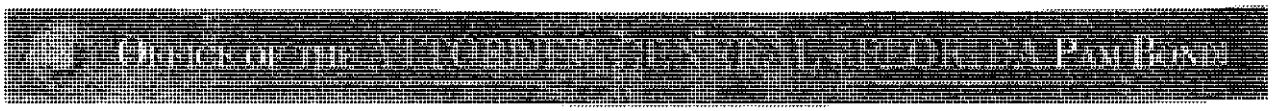
GUNTHER, C.J., and BAKER, MOSES Jr., Associate Judge, concur.

Fla.App. 4 Dist.,1997.

687 So.2d 897, 22 Fla. L. Weekly D293
(Cite as: 687 So.2d 897)

Sutor v. Cochran
687 So.2d 897, 22 Fla. L. Weekly D293

END OF DOCUMENT



Open Government - The "Sunshine" Law

To assist the public and governmental agencies in understanding the requirements and exemptions to Florida's open government laws, the Attorney General's Office compiles a comprehensive guide known as the Government-in-the-Sunshine manual. The manual is published each year at no taxpayer expense by the First Amendment Foundation in Tallahassee.

Florida began its tradition of openness back in 1909 with the passage of Chapter 119 of the Florida Statutes or the "Public Records Law." This law provides that any records made or received by any public agency in the course of its official business are available for inspection, unless specifically exempted by the Florida Legislature. Over the years, the definition of what constitutes "public records" has come to include not just traditional written documents such as papers, maps and books, but also tapes, photographs, film, sound recordings and records stored in computers.

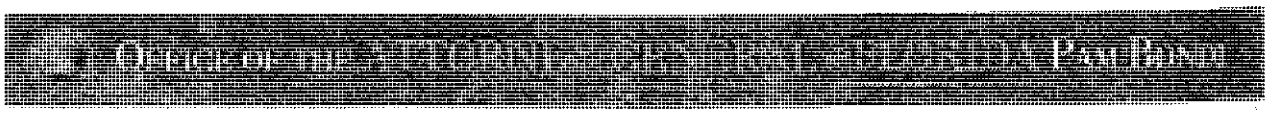
Florida's Government-in-the-Sunshine Law was enacted in 1967. Today, the Sunshine Law regarding open government can be found in Chapter 286 of the Florida Statutes. These statutes establish a basic right of access to most meetings of boards, commissions and other governing bodies of state and local governmental agencies or authorities.

Throughout the history of Florida's open government, its courts have consistently supported the public's right of access to governmental meetings and records. As such, they also have been defining and redefining what a public record is and who is covered under the open meetings law. One area of public concern was whether or not the Legislature was covered under the open meetings requirements. To address that concerns, a Constitutional amendment was passed overwhelmingly by the voters in 1990 providing for open meetings in the legislative branch of government.

The Attorney General's Office has consistently sought to safeguard Florida's pioneering Government-in-the-Sunshine laws. Our attorneys have worked, both in the courtroom and out, to halt public records violations. In 1991, a decision by the Florida Supreme Court raised questions which made it clear that the best way to ensure the public's right of access to all three branches of government was to secure that right through the Florida Constitution. The Attorney General's Office then drafted a definitive constitutional amendment, which guaranteed continued openness in the state's government and reaffirmed the application of open government to the legislative branch and expanded it to the judiciary. This amendment passed in 1992.

Florida Toll Free Numbers:

- Fraud Hotline 1-866-966-7226
- Lemon Law 1-800-321-5366



Open Government - Frequently Asked Questions

The following questions and answers are intended to be used as a reference only -- interested parties should refer to the Florida Statutes and applicable case law before drawing legal conclusions.

- What is the Sunshine Law?
- What are the requirements of the Sunshine law?
- What agencies are covered under the Sunshine Law?
- Are federal agencies covered by the Sunshine Law?
- Does the Sunshine Law apply to the Legislature?
- Does the Sunshine Law apply to members-elect?
- What qualifies as a meeting?
- Can a public agency hold closed meetings?
- Does the law require that a public meeting be audio taped?
- Can a city restrict a citizen's right to speak at a meeting?
- As a private citizen, can I videotape a public meeting?
- Can a board vote by secret ballot?
- Can two members of a public board attend social functions together?
- What is a public record?
- Can I request public documents over the telephone and do I have to tell why I want them?
- How much can an agency charge for public documents?
- Does an agency have to explain why it denies access to public records?
- When does a document sent to a public agency become a public document?
- Are public employee personnel records considered public records?
- Can an agency refuse to allow public records to be inspected or copied if requested to do so by the maker or sender of the documents?
- Are arrest records public documents?
- Is an agency required to give out information from public records or produce public records in a particular form as requested by an individual?
- What agency can prosecute violators?
- What is the difference between the Sunshine Amendment and the Sunshine Law?
- How can I find out more about the open meetings and public records laws?

- **What is the Sunshine Law?**
  Florida's Government-in-the-Sunshine law provides a right of access to governmental proceedings at both the state and local levels. It applies to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action. There is also a constitutionally guaranteed right of access. Virtually all state and local collegial public bodies are covered by the open meetings requirements with the exception of the judiciary and the state Legislature which has its own constitutional provision relating to access.
- **What are the requirements of the Sunshine law?**
  The Sunshine law requires that 1) meetings of boards or commissions must be open to the public; 2) reasonable notice of such meetings must be given, and 3) minutes of the meeting must be taken.
- **What agencies are covered under the Sunshine Law?**
  The Government-in-the-Sunshine Law applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or political subdivision."

Thus, it applies to public collegial bodies within the state at both the local as well as state level. It applies equally to elected or appointed boards or commissions.

- **Are federal agencies covered by the Sunshine Law?**
  Federal agencies operating in the state do not come under Florida's Sunshine law.
- **Does the Sunshine Law apply to the Legislature?**
  Florida's Constitution provides that meetings of the Legislature be open and noticed except those specifically exempted by the Legislature or specifically closed by the Constitution. Each house is responsible through its rules of procedures for interpreting, implementing and enforcing these provisions. Information on the rules governing openness in the Legislature can be obtained from the respective houses.
- **Does the Sunshine Law apply to members-elect?**
  Members-elect of public boards or commissions are covered by the Sunshine law immediately upon their election to public off ice.
- **What qualifies as a meeting?**
  The Sunshine law applies to all discussions or deliberations as well as the formal action taken by a board or commission. The law, in essence, is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission. There is no requirement that a quorum be present for a meeting to be covered under the law.
- **Can a public agency hold closed meetings?**
  There are a limited number of exemptions which would allow a public agency to close a meeting. These include, but are not limited to, certain discussions with the board's attorney over pending litigation and portions of collective bargaining sessions. In addition, specific portions of meetings of some agencies (usually state agencies) may be closed when those agencies are making probable cause determinations or considering confidential records.
- **Does the law require that a public meeting be audio taped?**
  There is no requirement under the Sunshine law that tape recordings be made by a public board or commission, but if they are made, they become public records.
- **Can a city restrict a citizen's right to speak at a meeting?**
  Public agencies are allowed to adopt reasonable rules and regulations which ensure the orderly conduct of a public meeting and which require orderly behavior on the part of the public attending. This includes limiting the amount of time an individual can speak and, when a large number of people attend and wish to speak, requesting that a representative of each side of the issue speak rather than every one present.
- **As a private citizen, can I videotape a public meeting?**
  A public board may not prohibit a citizen from videotaping a public meeting through the use of nondisruptive video recording devices.
- **Can a board vote by secret ballot?**
  The Sunshine law requires that meetings of public boards or commissions be "open to the public at all times." Thus, use of preassigned numbers, codes or secret ballots would violate the law.
- **Can two members of a public board attend social functions together?**
  Members of a public board are not prohibited under the Sunshine law from meeting together socially, provided that matters which may come before the board are not discussed at such gatherings.
- **What is a public record?**
  The Florida Supreme Court has determined that public records are all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge. They are not limited to traditional written documents. Tapes, photographs, films and sound recordings are also considered public records subject to inspection unless a statutory exemption exists.
- **Can I request public documents over the telephone and do I have to tell why I want them?**
  Nothing in the public records law requires that a request for public records be in writing or in person, although individuals may wish to make their request in writing to ensure they have an accurate record of what they requested. Unless otherwise exempted, a custodian of public records must honor a request

for records, whether it is made in person, over the telephone, or in writing, provided the required fees are paid. In addition, nothing in the law requires the requestor to disclose the reason for the request.

- **How much can an agency charge for public documents?**
  The law provides that the custodian shall furnish a copy of public records upon payment of the fee prescribed by law. If no fee is prescribed, an agency is normally allowed to charge up to 15 cents per one-sided copy for copies that are 14" x 8 1/2" or less. A charge of up to $1 per copy may be assessed for a certified copy of a public record. If the nature and volume of the records to be copied requires extensive use of information technology resources or extensive clerical or supervisory assistance, or both, the agency may charge a reasonable service charge based on the actual cost incurred.
- **Does an agency have to explain why it denies access to public records?**
  A custodian of a public record who contends that the record or part of a record is exempt from inspection must state the basis for that exemption, including the statutory citation. Additionally, when asked, the custodian must state in writing the reasons for concluding the record is exempt.
- **When does a document sent to a public agency become a public document?**
  As soon as a document is received by a public agency, it becomes a public record, unless there is a legislatively created exemption which makes it confidential and not subject to disclosure.
- **Are pnblic employee personnel records considered public records?**
  The rule on personnel records is the same as for other public documents ... unless the Legislature has specifically exempted an agency's personnel records or authorized the agency to adopt rules limiting public access to the records, personnel records are open to public inspection. There are, however, numerous statutory exemptions that apply to personnel records.
- **Can an agency refuse to allow pnblic records to be inspected or copied if requested to do so by the maker or sender of the documents?**
  No. To allow the maker or sender of documents to dictate the circumstances under which documents are deemed confidential would permit private parties instead of the Legislature to determine which public records are public and which are not.
- **Are arrest records public documents?**
  Arrest reports prepared by a law enforcement agency after the arrest of a subject are generally considered to be open for public inspection. At the same time, however, certain information such as the identity of a sexual battery victim is exempt.
- **Is an agency required to give out information from public records or produce public records in a particular form as requested by an individual?**
  The Sunshine Law provides for a right of access to inspect and copy existing public records. It does not mandate that the custodian give out information from the records nor does it mandate that an agency create new records to accommodate a request for information.
- **What agency can prosecute violators?**
  The local state attorney has the statutory authority to prosecute alleged criminal violations of the open meetings and public records law. Certain civil remedies are also available.
- **What is the difference between the Sunshine Amendment and the Sunshine Law?**
  The Sunshine Amendment was added to Florida's Constitution in 1976 and provides for full and public disclosure of the financial interests of all public officers, candidates and employees. The Sunshine Law provides for open meetings for governmental boards
- **How can I find out more about the open meetings and public records laws?**
  Probably the most comprehensive guide to understanding the requirements and exemptions to Florida's open government laws is the Government-in-the-Sunshine manual compiled by the Attorney General's Office. The manual is updated each year and is available for purchase through the First Amendment Foundation in Tallahassee. For information on obtaining a copy, contact the **First Amendment Foundation at (850) 224-4555.**

Florida Toll Free Numbers:

- Fraud Hotline 1-866-966-7226

- Lemon Law 1-800-321-5366

4 RULES OF PROFESSIONAL CONDUCT
4-1 CLIENT-LAWYER RELATIONSHIP

RULE 4-1.5 FEES AND COSTS FOR LEGAL SERVICES

(a) Illegal, Prohibited, or Clearly Excessive Fees and Costs. An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar. A fee or cost is clearly excessive when:

(1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney; or

(2) the fee or cost is sought or secured by the attorney by means of intentional misrepresentation or fraud upon the client, a nonclient party, or any court, as to either entitlement to, or amount of, the fee.

(b) Factors to Be Considered in Determining Reasonable Fees and Costs.

(1) Factors to be considered as guides in determining a reasonable fee include:

(A) the time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(B) the likelihood that the acceptance of the particular

employment will preclude other employment by the lawyer;

(C) the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;

(D) the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;

(E) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;

(F) the nature and length of the professional relationship with the client;

(G) the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services; and

(H) whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

(2) Factors to be considered as guides in determining reasonable costs include:

(A) the nature and extent of the disclosure made to the client about the costs;

(B) whether a specific agreement exists between the lawyer and client as to the costs a client is expected to pay and how a cost is calculated that is charged to a client;

(C) the actual amount charged by third party providers of

services to the attorney;

(D) whether specific costs can be identified and allocated to an individual client or a reasonable basis exists to estimate the costs charged;

(E) the reasonable charges for providing in-house service to a client if the cost is an in-house charge for services; and

(F) the relationship and past course of conduct between the lawyer and the client.

All costs are subject to the test of reasonableness set forth in subdivision (a) above. When the parties have a written contract in which the method is established for charging costs, the costs charged thereunder shall be presumed reasonable.

(c) Consideration of All Factors. In determining a reasonable fee, the time devoted to the representation and customary rate of fee need not be the sole or controlling factors. All factors set forth in this rule should be considered, and may be applied, in justification of a fee higher or lower than that which would result from application of only the time and rate factors.

(d) Enforceability of Fee Contracts. Contracts or agreements for attorney's fees between attorney and client will ordinarily be enforceable according to the terms of such contracts or agreements, unless found to be illegal, obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar, prohibited by this rule, or clearly excessive as defined by this rule.

(e) Duty to Communicate Basis or Rate of Fee or Costs to Client. When the lawyer has not regularly represented the client, the basis or rate of the fee and costs shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. A fee for legal services that is

nonrefundable in any part shall be confirmed in writing and shall explain the intent of the parties as to the nature and amount of the nonrefundable fee. The test of reasonableness found in subdivision (b), above, applies to all fees for legal services without regard to their characterization by the parties.

The fact that a contract may not be in accord with these rules is an issue between the attorney and client and a matter of professional ethics, but is not the proper basis for an action or defense by an opposing party when fee-shifting litigation is involved.

(f) Contingent Fees. As to contingent fees:

(1) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by subdivision (f)(3) or by law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(2) Every lawyer who accepts a retainer or enters into an agreement, express or implied, for compensation for services rendered or to be rendered in any action, claim, or proceeding whereby the lawyer's compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall do so only where such fee arrangement is reduced to a written contract, signed by the client, and by a lawyer for the lawyer or for the law firm representing the client. No lawyer or firm may participate in the fee without the consent of the client in writing. Each

participating lawyer or law firm shall sign the contract with the client and shall agree to assume joint legal responsibility to the client for the performance of the services in question as if each were partners of the other lawyer or law firm involved. The client shall be furnished with a copy of the signed contract and any subsequent notices or consents. All provisions of this rule shall apply to such fee contracts.

(3) A lawyer shall not enter into an arrangement for, charge, or collect:

(A) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(B) a contingent fee for representing a defendant in a criminal case.

(4) A lawyer who enters into an arrangement for, charges, or collects any fee in an action or claim for personal injury or for property damages or for death or loss of services resulting from personal injuries based upon tortious conduct of another, including products liability claims, whereby the compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall do so only under the following requirements:

(A) The contract shall contain the following provisions:

(i) "The undersigned client has, before signing this contract, received and read the statement of client's rights and understands each of the rights set forth therein. The undersigned client has signed the statement and received a signed copy to refer to while being represented by the undersigned attorney(s)."

(ii) "This contract may be cancelled by written notification to the attorney at any time within 3 business days of the date the contract was signed, as shown below, and if cancelled the client shall not be obligated to pay any fees to the attorney for the work performed during that time. If the attorney has advanced funds to others in representation of the client, the attorney is entitled to be reimbursed for such amounts as the attorney has reasonably advanced on behalf of the client."

(B) The contract for representation of a client in a matter set forth in subdivision (f)(4) may provide for a contingent fee arrangement as agreed upon by the client and the lawyer, except as limited by the following provisions:

(i) Without prior court approval as specified below, any contingent fee that exceeds the following standards shall be presumed, unless rebutted, to be clearly excessive:

a. Before the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for such action:

1. 33 1/3% of any recovery up to $1 million; plus
2. 30% of any portion of the recovery between $1 million and $2 million; plus
3. 20% of any portion of the recovery exceeding $2 million.

b. After the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time

period provided for such action, through the entry of judgment:

1. 40% of any recovery up to $1 million; plus
2. 30% of any portion of the recovery between $1 million and $2 million; plus
3. 20% of any portion of the recovery exceeding $2 million.

c. If all defendants admit liability at the time of filing their answers and request a trial only on damages:

1. 33 1/3% of any recovery up to $1 million; plus
2. 20% of any portion of the recovery between $1 million and $2 million; plus
3. 15% of any portion of the recovery exceeding $2 million.

d. An additional 5% of any recovery after institution of any appellate proceeding is filed or post-judgment relief or action is required for recovery on the judgment.

(ii) If any client is unable to obtain an attorney of the client's choice because of the limitations set forth in subdivision (f)(4)(B)(i), the client may petition the court in which the matter would be filed, if litigation is necessary, or if such court will not accept jurisdiction for the fee division, the circuit court wherein the cause of action arose, for approval of any fee contract between the client and an attorney of the client's choosing. Such authorization shall be given if the court determines the client has a complete understanding of the client's rights and the terms of the proposed

contract. The application for authorization of such a contract can be filed as a separate proceeding before suit or simultaneously with the filing of a complaint. Proceedings thereon may occur before service on the defendant and this aspect of the file may be sealed. A petition under this subdivision shall contain a certificate showing service on the client and, if the petition is denied, a copy of the petition and order denying the petition shall be served on The Florida Bar in Tallahassee by the member of the bar who filed the petition. Authorization of such a contract shall not bar subsequent inquiry as to whether the fee actually claimed or charged is clearly excessive under subdivisions (a) and (b).

(iii) Subject to the provisions of 4-1.5(f)(4)(B)(i) and (ii) a lawyer who enters into an arrangement for, charges, or collects any fee in an action or claim for medical liability whereby the compensation is dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall provide the language of article I, section 26 of the Florida Constitution to the client in writing and shall orally inform the client that:

a. Unless waived, in any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first $250,000 of all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in

excess of $250,000, exclusive of reasonable and customary costs and regardless of the number of defendants.

b. If a lawyer chooses not to accept the representation of a client under the terms of article I, section 26 of the Florida Constitution, the lawyer shall advise the client, both orally and in writing of alternative terms, if any, under which the lawyer would accept the representation of the client, as well as the client's right to seek representation by another lawyer willing to accept the representation under the terms of article I, section 26 of the Florida Constitution, or a lawyer willing to accept the representation on a fee basis that is not contingent.

c. If any client desires to waive any rights under article I, section 26 of the Florida Constitution, in order to obtain a lawyer of the client's choice, a client may do so by waiving such rights in writing, under oath, and in the form provided in this rule. The lawyer shall provide each client a copy of the written waiver and shall afford each client a full and complete opportunity to understand the rights being waived as set forth in the waiver. A copy of the waiver, signed by each client and lawyer, shall be given to each client to retain, and the lawyer shall keep a copy in the lawyer's file pertaining to the client. The waiver shall be retained by the lawyer with the written fee contract and closing statement under the same conditions and requirements provided in 4-1.5(f)(5).

WAIVER OF THE CONSTITUTIONAL RIGHT PROVIDED IN ARTICLE I, SECTION 26 OF THE FLORIDA CONSTITUTION

On November 2, 2004 voters in the State of Florida approved The Medical Liability Claimant's Compensation Amendment that was identified as Amendment 3 on the ballot. The amendment is set forth below:

The Florida Constitution
Article 1, Section 26 is created to read "Claimant's right to fair compensation." In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first $250,000 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of $250,000, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation.

The undersigned client understands and acknowledges that (initial each provision):

_____ I have been advised that signing this waiver releases an important constitutional right; and

_____ I have been advised that I may consult with separate counsel before signing this waiver; and that I may request a hearing before a judge to further explain this waiver; and

_____ By signing this waiver I agree to an **increase in the attorney fee** that might otherwise be owed if the constitutional provision listed above is not waived. Without prior court approval, the increased fee that I agree to may be up to the maximum contingency fee percentages set forth in Rules

Regulating The Florida Bar 4-1.5(f)(4)(B)(i). Depending on the circumstances of my case, the maximum agreed upon fee may range from 33 1/3% to 40% of any recovery up to $1 million; plus 20% to 30% of any portion of the recovery between $1 million and $2 million; plus 15% to 20% of any recovery exceeding $2 million; and

_____ I have three (3) business days following execution of this waiver in which to cancel this waiver; and

_____ I wish to engage the legal services of the lawyers or law firms listed below in an action or claim for medical liability the fee for which is contingent in whole or in part upon the successful prosecution or settlement thereof, but I am unable to do so because of the provisions of the constitutional limitation set forth above. In consideration of the lawyers' or law firms' agreements to represent me and my desire to employ the lawyers or law firms listed below, I hereby knowingly, willingly, and voluntarily waive any and all rights and privileges that I may have under the constitutional provision set forth above, as apply to the contingency fee agreement only. Specifically, I waive the percentage restrictions that are the subject of the constitutional provision and confirm the fee percentages set forth in the contingency fee agreement; and

____ I have selected the lawyers or law firms listed below as my counsel of choice in this matter and would not be able to engage their services without this waiver; and I expressly state that this waiver is made freely and voluntarily, with full knowledge of its terms, and that all questions have been answered to my satisfaction.

ACKNOWLEDGMENT BY CLIENT FOR PRESENTATION TO THE COURT

The undersigned client hereby acknowledges, under oath, the following:

I have read and understand this entire waiver of my rights under the constitutional provision set forth above.

I am not under the influence of any substance, drug, or condition (physical, mental, or emotional) that interferes with my understanding of this entire waiver in which I am entering and all the consequences thereof.

I have entered into and signed this waiver freely and voluntarily.

I authorize my lawyers or law firms listed below to present this waiver to the appropriate court, if required for purposes of approval of the contingency fee agreement. Unless the court requires my attendance at a hearing for that purpose, my lawyers or law firms are authorized to provide this waiver to the court for its consideration without my presence.

Dated this _____ day of _____, ____.

By: _____
CLIENT

Sworn to and subscribed before me this _____ day of _____, _____ by _____, who is personally known to me, or has produced the following identification: _____.

By: _____
Notary Public

My Commission Expires:

Dated this _____ day of _____, ____.

By: _____
ATTORNEY

(C) Before a lawyer enters into a contingent fee contract for representation of a client in a matter set forth in this rule, the lawyer shall provide the client with a copy of the statement of client's rights and shall afford the client a full and complete opportunity to understand each of the rights as set forth therein. A copy of the statement, signed by both the client and the lawyer, shall be given to the client to retain and the lawyer shall keep a copy in the client's file. The statement shall be retained by the lawyer with the written fee contract and closing statement under the same conditions and requirements as subdivision (f)(5).

(D) As to lawyers not in the same firm, a division of any fee within subdivision (f)(4) shall be on the following basis:

(i) To the lawyer assuming primary responsibility for the legal services on behalf of the client, a minimum of 75% of the total fee.

(ii) To the lawyer assuming secondary responsibility for the legal services on behalf of the client, a maximum of 25% of the total fee. Any fee in excess of 25% shall be presumed to be clearly excessive.

(iii) The 25% limitation shall not apply to those cases in which 2 or more lawyers or firms accept substantially equal active participation in the providing of legal services. In such circumstances counsel shall apply to the court in which the matter would be filed, if litigation is necessary, or if such court will not accept jurisdiction for the fee

division, the circuit court wherein the cause of action arose, for authorization of the fee division in excess of 25%, based upon a sworn petition signed by all counsel that shall disclose in detail those services to be performed. The application for authorization of such a contract may be filed as a separate proceeding before suit or simultaneously with the filing of a complaint, or within 10 days of execution of a contract for division of fees when new counsel is engaged. Proceedings thereon may occur before service of process on any party and this aspect of the file may be sealed. Authorization of such contract shall not bar subsequent inquiry as to whether the fee actually claimed or charged is clearly excessive. An application under this subdivision shall contain a certificate showing service on the client and, if the application is denied, a copy of the petition and order denying the petition shall be served on The Florida Bar in Tallahassee by the member of the bar who filed the petition. Counsel may proceed with representation of the client pending court approval.

(iv) The percentages required by this subdivision shall be applicable after deduction of any fee payable to separate counsel retained especially for appellate purposes.

(5) In the event there is a recovery, upon the conclusion of the representation, the lawyer shall prepare a closing statement reflecting an itemization of all costs and expenses, together with the amount of fee received by each participating lawyer or law firm. A copy of the closing statement shall be executed by all participating lawyers, as well as the client, and each shall receive a copy. Each participating lawyer shall retain a copy of the written fee contract and closing statement for 6 years after

execution of the closing statement. Any contingent fee contract and closing statement shall be available for inspection at reasonable times by the client, by any other person upon judicial order, or by the appropriate disciplinary agency.

(6) In cases in which the client is to receive a recovery that will be paid to the client on a future structured or periodic basis, the contingent fee percentage shall be calculated only on the cost of the structured verdict or settlement or, if the cost is unknown, on the present money value of the structured verdict or settlement, whichever is less. If the damages and the fee are to be paid out over the long term future schedule, this limitation does not apply. No attorney may negotiate separately with the defendant for that attorney's fee in a structured verdict or settlement when separate negotiations would place the attorney in a position of conflict.

(g) Division of Fees Between Lawyers in Different Firms. Subject to the provisions of subdivision (f)(4)(D), a division of fee between lawyers who are not in the same firm may be made only if the total fee is reasonable and:

(1) the division is in proportion to the services performed by each lawyer; or

(2) by written agreement with the client:

(A) each lawyer assumes joint legal responsibility for the representation and agrees to be available for consultation with the client; and

(B) the agreement fully discloses that a division of fees will be made and the basis upon which the division of fees will be made.

(h) Credit Plans. A lawyer or law firm may accept payment under a credit plan. No higher fee shall be charged and no additional

charge shall be imposed by reason of a lawyer's or law firm's participation in a credit plan.

(i) Arbitration Clauses. A lawyer shall not make an agreement with a potential client prospectively providing for mandatory arbitration of fee disputes without first advising that person in writing that the potential client should consider obtaining independent legal advice as to the advisability of entering into an agreement containing such mandatory arbitration provisions. A lawyer shall not make an agreement containing such mandatory arbitration provisions unless the agreement contains the following language in bold print:

NOTICE: This agreement contains provisions requiring arbitration of fee disputes. Before you sign this agreement you should consider consulting with another lawyer about the advisability of making an agreement with mandatory arbitration requirements. Arbitration proceedings are ways to resolve disputes without use of the court system. By entering into agreements that require arbitration as the way to resolve fee disputes, you give up (waive) your right to go to court to resolve those disputes by a judge or jury. These are important rights that should not be given up without careful consideration.

STATEMENT OF CLIENT'S RIGHTS FOR CONTINGENCY FEES

Before you, the prospective client, arrange a contingent fee agreement with a lawyer, you should understand this statement of your rights as a client. This statement is not a part of the actual contract between you and your lawyer, but, as a prospective client, you should be aware of these rights:

1. There is no legal requirement that a lawyer charge a client a set fee or a percentage of money recovered in a case. You, the client, have the right to talk with your lawyer about the proposed fee and to bargain about the rate or percentage as in any other contract. If

you do not reach an agreement with 1 lawyer you may talk with other lawyers.

2. Any contingent fee contract must be in writing and you have 3 business days to reconsider the contract. You may cancel the contract without any reason if you notify your lawyer in writing within 3 business days of signing the contract. If you withdraw from the contract within the first 3 business days, you do not owe the lawyer a fee although you may be responsible for the lawyer's actual costs during that time. If your lawyer begins to represent you, your lawyer may not withdraw from the case without giving you notice, delivering necessary papers to you, and allowing you time to employ another lawyer. Often, your lawyer must obtain court approval before withdrawing from a case. If you discharge your lawyer without good cause after the 3-day period, you may have to pay a fee for work the lawyer has done.

3. Before hiring a lawyer, you, the client, have the right to know about the lawyer's education, training, and experience. If you ask, the lawyer should tell you specifically about the lawyer's actual experience dealing with cases similar to yours. If you ask, the lawyer should provide information about special training or knowledge and give you this information in writing if you request it.

4. Before signing a contingent fee contract with you, a lawyer must advise you whether the lawyer intends to handle your case alone or whether other lawyers will be helping with the case. If your lawyer intends to refer the case to other lawyers, the lawyer should tell you what kind of fee sharing arrangement will be made with the other lawyers. If lawyers from different law firms will represent you, at least 1 lawyer from each law firm must sign the contingent fee contract.

5. If your lawyer intends to refer your case to another lawyer or counsel with other lawyers, your lawyer should tell you about that at the beginning. If your lawyer takes the case and later decides to

refer it to another lawyer or to associate with other lawyers, you should sign a new contract that includes the new lawyers. You, the client, also have the right to consult with each lawyer working on your case and each lawyer is legally responsible to represent your interests and is legally responsible for the acts of the other lawyers involved in the case.

6. You, the client, have the right to know in advance how you will need to pay the expenses and the legal fees at the end of the case. If you pay a deposit in advance for costs, you may ask reasonable questions about how the money will be or has been spent and how much of it remains unspent. Your lawyer should give a reasonable estimate about future necessary costs. If your lawyer agrees to lend or advance you money to prepare or research the case, you have the right to know periodically how much money your lawyer has spent on your behalf. You also have the right to decide, after consulting with your lawyer, how much money is to be spent to prepare a case. If you pay the expenses, you have the right to decide how much to spend. Your lawyer should also inform you whether the fee will be based on the gross amount recovered or on the amount recovered minus the costs.

7. You, the client, have the right to be told by your lawyer about possible adverse consequences if you lose the case. Those adverse consequences might include money that you might have to pay to your lawyer for costs and liability you might have for attorney's fees, costs, and expenses to the other side.

8. You, the client, have the right to receive and approve a closing statement at the end of the case before you pay any money. The statement must list all of the financial details of the entire case, including the amount recovered, all expenses, and a precise statement of your lawyer's fee. Until you approve the closing statement your lawyer cannot pay any money to anyone, including you, without an appropriate order of the court. You also have the right to have every lawyer or law firm working on your case sign

this closing statement.

9. You, the client, have the right to ask your lawyer at reasonable intervals how the case is progressing and to have these questions answered to the best of your lawyer's ability.

10. You, the client, have the right to make the final decision regarding settlement of a case. Your lawyer must notify you of all offers of settlement before and after the trial. Offers during the trial must be immediately communicated and you should consult with your lawyer regarding whether to accept a settlement. However, you must make the final decision to accept or reject a settlement.

11. If at any time you, the client, believe that your lawyer has charged an excessive or illegal fee, you have the right to report the matter to The Florida Bar, the agency that oversees the practice and behavior of all lawyers in Florida. For information on how to reach The Florida Bar, call 850/561-5600, or contact the local bar association. Any disagreement between you and your lawyer about a fee can be taken to court and you may wish to hire another lawyer to help you resolve this disagreement. Usually fee disputes must be handled in a separate lawsuit, unless your fee contract provides for arbitration. You can request, but may not require, that a provision for arbitration (under Chapter 682, Florida Statutes, or under the fee arbitration rule of the Rules Regulating The Florida Bar) be included in your fee contract.

_____

Client Signature

_____

Date

_____

Attorney
Signature

_____

Date

Comment

Bases or rate of fees and costs

When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. The conduct of the lawyer and client in prior relationships is relevant when analyzing the requirements of this rule. In a new client-lawyer relationship, however, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee but only those that are directly involved in its computation. It is sufficient, for example, to state the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. Although hourly billing or a fixed fee may be the most common bases for computing fees in an area of practice, these may not be the only bases for computing fees. A lawyer should, where appropriate, discuss alternative billing methods with the client. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth.

General overhead should be accounted for in a lawyer's fee, whether the lawyer charges hourly, flat, or contingent fees. Filing fees, transcription, and the like should be charged to the client at the actual amount paid by the lawyer. A lawyer may agree with the

client to charge a reasonable amount for in-house costs or services. In-house costs include items such as copying, faxing, long distance telephone, and computerized research. In-house services include paralegal services, investigative services, accounting services, and courier services. The lawyer should sufficiently communicate with the client regarding the costs charged to the client so that the client understands the amount of costs being charged or the method for calculation of those costs. Costs appearing in sufficient detail on closing statements and approved by the parties to the transaction should meet the requirements of this rule.

Rule 4-1.8(e) should be consulted regarding a lawyer's providing financial assistance to a client in connection with litigation.

Lawyers should also be mindful of any statutory, constitutional, or other requirements or restrictions on attorneys' fees.

In order to avoid misunderstandings concerning the nature of legal fees, written documentation is required when any aspect of the fee is nonrefundable. A written contract provides a method to resolve misunderstandings and to protect the lawyer in the event of continued misunderstanding. Rule 4-1.5 (e) does not require the client to sign a written document memorializing the terms of the fee. A letter from the lawyer to the client setting forth the basis or rate of the fee and the intent of the parties in regard to the nonrefundable nature of the fee is sufficient to meet the requirements of this rule.

All legal fees and contracts for legal fees are subject to the requirements of the Rules Regulating The Florida Bar. In particular, the test for reasonableness of legal fees found in rule 4-1.5(b) applies to all types of legal fees and contracts related to them.

Terms of payment

A lawyer may require advance payment of a fee but is obliged to return any unearned portion. See rule 4-1.16(d). A lawyer is not,

however, required to return retainers that, pursuant to an agreement with a client, are not refundable. A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to rule 4-1.8(i). However, a fee paid in property instead of money may be subject to special scrutiny because it involves questions concerning both the value of the services and the lawyer's special knowledge of the value of the property.

An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures. When there is doubt whether a contingent fee is consistent with the client's best interest, the lawyer should offer the client alternative bases for the fee and explain their implications. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage.

Prohibited contingent fees

Subdivision (f)(3)(A) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony, or other financial orders because such contracts

do not implicate the same policy concerns.

Contingent fee regulation

Subdivision (e) is intended to clarify that whether the lawyer's fee contract complies with these rules is a matter between the lawyer and client and an issue for professional disciplinary enforcement. The rules and subdivision (e) are not intended to be used as procedural weapons or defenses by others. Allowing opposing parties to assert noncompliance with these rules as a defense, including whether the fee is fixed or contingent, allows for potential inequity if the opposing party is allowed to escape responsibility for their actions solely through application of these rules.

Rule 4-1.5(f)(4) should not be construed to apply to actions or claims seeking property or other damages arising in the commercial litigation context.

Rule 4-1.5(f)(4)(B) is intended to apply only to contingent aspects of fee agreements. In the situation where a lawyer and client enter a contract for part noncontingent and part contingent attorney's fees, rule 4-1.5(f)(4)(B) should not be construed to apply to and prohibit or limit the noncontingent portion of the fee agreement. An attorney could properly charge and retain the noncontingent portion of the fee even if the matter was not successfully prosecuted or if the noncontingent portion of the fee exceeded the schedule set forth in rule 4-1.5(f)(4)(B). Rule 4-1.5(f)(4)(B) should, however, be construed to apply to any additional contingent portion of such a contract when considered together with earned noncontingent fees. Thus, under such a contract a lawyer may demand or collect only such additional contingent fees as would not cause the total fees to exceed the schedule set forth in rule 4-1.5(f)(4)(B).

The limitations in rule 4-1.5(f)(4)(B)(i)c. are only to be applied in the case where all the defendants admit liability at the time they file their initial answer and the trial is only on the issue of the amount or extent of the loss or the extent of injury suffered by the client. If the

trial involves not only the issue of damages but also such questions as proximate cause, affirmative defenses, seat belt defense, or other similar matters, the limitations are not to be applied because of the contingent nature of the case being left for resolution by the trier of fact.

Rule 4-1.5(f)(4)(B)(ii) provides the limitations set forth in subdivision (f)(4)(B)(i) may be waived by the client upon approval by the appropriate judge. This waiver provision may not be used to authorize a lawyer to charge a client a fee that would exceed rule 4-1.5(a) or (b). It is contemplated that this waiver provision will not be necessary except where the client wants to retain a particular lawyer to represent the client or the case involves complex, difficult, or novel questions of law or fact that would justify a contingent fee greater than the schedule but not a contingent fee that would exceed rule 4-1.5(b).

Upon a petition by a client, the trial court reviewing the waiver request must grant that request if the trial court finds the client: (a) understands the right to have the limitations in rule 4-1.5(f)(4)(B) applied in the specific matter; and (b) understands and approves the terms of the proposed contract. The consideration by the trial court of the waiver petition is not to be used as an opportunity for the court to inquire into the merits or details of the particular action or claim that is the subject of the contract.

The proceedings before the trial court and the trial court's decision on a waiver request are to be confidential and not subject to discovery by any of the parties to the action or by any other individual or entity except The Florida Bar. However, terms of the contract approved by the trial court may be subject to discovery if the contract (without court approval) was subject to discovery under applicable case law or rules of evidence.

Rule 4-1.5 (f) (4) (B) (iii) is added to acknowledge the provisions of Article 1, Section 26 of the Florida Constitution, and to create an affirmative obligation on the part of an attorney contemplating a

contingency fee contract to notify a potential client with a medical liability claim of the limitations provided in that constitutional provision. This addition to the rule is adopted prior to any judicial interpretation of the meaning or scope of the constitutional provision and this rule is not intended to make any substantive interpretation of the meaning or scope of that provision. The rule also provides that a client who wishes to waive the rights of the constitutional provision, as those rights may relate to attorney's fees, must do so in the form contained in the rule.

Rule 4-1.5(f)(6) prohibits a lawyer from charging the contingent fee percentage on the total, future value of a recovery being paid on a structured or periodic basis. This prohibition does not apply if the lawyer's fee is being paid over the same length of time as the schedule of payments to the client.

Contingent fees are prohibited in criminal and certain domestic relations matters. In domestic relations cases, fees that include a bonus provision or additional fee to be determined at a later time and based on results obtained have been held to be impermissible contingency fees and therefore subject to restitution and disciplinary sanction as elsewhere stated in these Rules Regulating The Florida Bar.

Fees that provide for a bonus or additional fees and that otherwise are not prohibited under the Rules Regulating The Florida Bar can be effective tools for structuring fees. For example, a fee contract calling for a flat fee and the payment of a bonus based on the amount of property retained or recovered in a general civil action is not prohibited by these rules. However, the bonus or additional fee must be stated clearly in amount or formula for calculation of the fee (basis or rate). Courts have held that unilateral bonus fees are unenforceable. The test of reasonableness and other requirements of this rule apply to permissible bonus fees.

Division of fee

A division of fee is a single billing to a client covering the fee of 2 or more lawyers who are not in the same firm. A division of fee facilitates association of more than 1 lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Subject to the provisions of subdivision (f)(4)(D), subdivision (g) permits the lawyers to divide a fee on either the basis of the proportion of services they render or by agreement between the participating lawyers if all assume responsibility for the representation as a whole and the client is advised and does not object. It does require disclosure to the client of the share that each lawyer is to receive. Joint responsibility for the representation entails the obligations stated in rule 4-5.1 for purposes of the matter involved.

Disputes over fees

Since the fee arbitration rule (chapter 14) has been established by the bar to provide a procedure for resolution of fee disputes, the lawyer should conscientiously consider submitting to it. Where law prescribes a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class, or a person entitled to a reasonable fee as part of the measure of damages, the lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

Referral fees and practices

A secondary lawyer shall not be entitled to a fee greater than the limitation set forth in rule 4-1.5(f)(4)(D)(ii) merely because the lawyer agrees to do some or all of the following: (a) consults with the client; (b) answers interrogatories; (c) attends depositions; (d) reviews pleadings; (e) attends the trial; or (f) assumes joint legal responsibility to the client. However, the provisions do not contemplate that a secondary lawyer who does more than the above is necessarily entitled to a larger percentage of the fee than that

allowed by the limitation.

The provisions of rule 4-1.5(f)(4)(D)(iii) only apply where the participating lawyers have for purposes of the specific case established a co-counsel relationship. The need for court approval of a referral fee arrangement under rule 4-1.5(f)(4)(D)(iii) should only occur in a small percentage of cases arising under rule 4-1.5(f)(4) and usually occurs prior to the commencement of litigation or at the onset of the representation. However, in those cases in which litigation has been commenced or the representation has already begun, approval of the fee division should be sought within a reasonable period of time after the need for court approval of the fee division arises.

In determining if a co-counsel relationship exists, the court should look to see if the lawyers have established a special partnership agreement for the purpose of the specific case or matter. If such an agreement does exist, it must provide for a sharing of services or responsibility and the fee division is based upon a division of the services to be rendered or the responsibility assumed. It is contemplated that a co-counsel situation would exist where a division of responsibility is based upon, but not limited to, the following: (a) based upon geographic considerations, the lawyers agree to divide the legal work, responsibility, and representation in a convenient fashion. Such a situation would occur when different aspects of a case must be handled in different locations; (b) where the lawyers agree to divide the legal work and representation based upon their particular expertise in the substantive areas of law involved in the litigation; or (c) where the lawyers agree to divide the legal work and representation along established lines of division, such as liability and damages, causation and damages, or other similar factors.

The trial court's responsibility when reviewing an application for authorization of a fee division under rule 4-1.5(f)(4)(D)(iii) is to determine if a co-counsel relationship exists in that particular case.

If the court determines a co-counsel relationship exists and authorizes the fee division requested, the court does not have any responsibility to review or approve the specific amount of the fee division agreed upon by the lawyers and the client.

Rule 4-1.5(f)(4)(D)(iv) applies to the situation where appellate counsel is retained during the trial of the case to assist with the appeal of the case. The percentages set forth in subdivision (f)(4)(D) are to be applicable after appellate counsel's fee is established. However, the effect should not be to impose an unreasonable fee on the client.

Credit Plans

Credit plans include credit cards. If a lawyer accepts payment from a credit plan for an advance of fees and costs, the amount must be held in trust in accordance with chapter 5, Rules Regulating The Florida Bar, and the lawyer must add the lawyer's own money to the trust account in an amount equal to the amount charged by the credit plan for doing business with the credit plan.

[Revised: 07/01/2012]

Select Year: 2012 Go

The 2012 Florida Statutes

Title XIX PUBLIC BUSINESS | Chapter 286 PUBLIC BUSINESS: MISCELLANEOUS PROVISIONS | View Entire Chapter

CHAPTER 286
PUBLIC BUSINESS: MISCELLANEOUS PROVISIONS

286.001 Reports statutorily required; filing, maintenance, retrieval, and provision of copies.
286.0105 Notices of meetings and hearings must advise that a record is required to appeal.
286.011 Public meetings and records; public inspection; criminal and civil penalties.
286.0111 Legislative review of certain exemptions from requirements for public meetings and recordkeeping by governmental entities.
286.0113 General exemptions from public meetings.
286.0115 Access to local public officials; quasi-judicial proceedings on local government land use matters.
286.012 Voting requirement at meetings of governmental bodies.
286.021 Department of State to hold title to patents, trademarks, copyrights, etc.
286.031 Authority of Department of State in connection with patents, trademarks, copyrights, etc.
286.035 Constitution Revision Commission; powers of chair; assistance by state and local agencies.
286.036 Taxation and Budget Reform Commission; powers.
286.041 Prohibited requirements of bidders on contracts for public works relative to income tax returns.
286.043 Limitation on use of funds for discriminatory contract or bid specifications relating to car rental concessions at airports.
286.23 Real property conveyed to public agency; disclosure of beneficial interests; notice; exemptions.
286.25 Publication or statement of state sponsorship.
286.26 Accessibility of public meetings to the physically handicapped.
286.27 Use of state funds for greeting cards prohibited.
286.29 Climate-friendly public business.

286.001 Reports statutorily required; filing, maintenance, retrieval, and provision of copies.—

(1) Unless otherwise specifically provided by law, any agency or officer of the executive, legislative, or judicial branches of state government, the State Board of Education, the Board of Governors of the State University System, or the Public Service Commission required or authorized by law to make reports regularly or periodically shall fulfill such requirement by filing an abstract of the report with the statutorily or administratively designated recipients of the report and an abstract and one copy of the report with the Division of Library and Information Services of the Department of State, unless the head of the reporting entity makes a determination that the additional cost of providing the entire report to the statutorily or administratively designated recipients is justified. A one-page summary justifying the

determination shall be submitted to the chairs of the governmental operations committees of both houses of the Legislature. The abstract of the contents of such report shall be no more than one-half page in length. The actual report shall be retained by the reporting agency or officer, and copies of the report shall be provided to interested parties and the statutorily or administratively designated recipients of the report upon request.

(2) With respect to reports statutorily required of agencies or officers within the executive, legislative, or judicial branches of state government, the State Board of Education, the Board of Governors of the State University System, or the Public Service Commission, it is the duty of the division, in addition to its duties under s. 257.05, to:

(a) Regularly compile and update bibliographic information on such reports for distribution as provided in paragraph (b). Such bibliographic information may be included in the bibliographies prepared by the division pursuant to s. 257.05(3)(c).

(b) Provide for at least quarterly distribution of bibliographic information on reports to:

1. Agencies and officers within the executive, legislative, and judicial branches of state government, the State Board of Education, the Board of Governors of the State University System, and the Public Service Commission, free of charge; and

2. Other interested parties upon request properly made and upon payment of the actual cost of duplication pursuant to s. 119.07(1).

(3) As soon as practicable, the administrative head of each executive, legislative, or judicial agency and each agency of the State Board of Education, the Board of Governors of the State University System, and the Public Service Commission required by law to make reports periodically shall ensure that those reports are created, stored, managed, updated, retrieved, and disseminated through electronic means.

(4) Nothing in this section shall be construed to waive or modify the requirement in s. 257.05(2) pertaining to the provision of copies of public documents to the division.

History.—ss. 26, 28, 29, ch. 84-254; s. 12, ch. 92-98; s. 104, ch. 92-142; s. 29, ch. 95-196; s. 34, ch. 2007-217.

286.0105 Notices of meetings and hearings must advise that a record is required to appeal.—Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The requirements of this section do not apply to the notice provided in s. 200.065(3).

History.—s. 1, ch. 80-150; s. 14, ch. 88-216; s. 209, ch. 95-148.

286.011 Public meetings and records; public inspection; criminal and civil penalties.—

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding $500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission. However, this subsection shall not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.

(5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision appeals any court order which has found said board, commission, agency, or authority to have violated this section, and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such board, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.

(6) All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility.

(7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision is charged with a violation of this section and is subsequently acquitted, the board or commission is authorized to reimburse said member for any portion of his or her reasonable attorney's fees.

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation.

History.—s. 1, ch. 67-356; s. 159, ch. 71-136; s. 1, ch. 78-365; s. 6, ch. 85-301; s. 33, ch. 91-224; s. 1, ch. 93-232; s. 210, ch. 95-148; s. 1, ch. 95-353; s. 2, ch. 2012-25.

286.0111 Legislative review of certain exemptions from requirements for public meetings and recordkeeping by governmental entities.—The provisions of s. 119.15, the Open Government Sunset Review Act, apply to the provisions of law which provide exemptions to s. 286.011, as provided in s. 119.15.

History.—s. 9, ch. 84-298; s. 2, ch. 85-301; s. 3, ch. 95-217; s. 53, ch. 2008-4.

286.0113 General exemptions from public meetings.—

(1) That portion of a meeting that would reveal a security system plan or portion thereof made confidential and exempt by s. 119.071(3)(a) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(2)(a) For purposes of this subsection:

1. "Competitive solicitation" means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.

2. "Team" means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

(b)1. Any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2. Any portion of a team meeting at which negotiation strategies are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(c)1. A complete recording shall be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.

2. The recording of, and any records presented at, the exempt meeting are exempt from s. 119.07 (1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an

intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.

3. If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

History.—s. 2, ch. 2001-361; s. 44, ch. 2005-251; s. 2, ch. 2006-158; s. 2, ch. 2006-284; s. 13, ch. 2010-151; s. 2, ch. 2011-140.

286.0115 Access to local public officials; quasi-judicial proceedings on local government land use matters.—

(1)(a) A county or municipality may adopt an ordinance or resolution removing the presumption of prejudice from ex parte communications with local public officials by establishing a process to disclose ex parte communications with such officials pursuant to this subsection or by adopting an alternative process for such disclosure. However, this subsection does not require a county or municipality to adopt any ordinance or resolution establishing a disclosure process.

(b) As used in this subsection, the term "local public official" means any elected or appointed public official holding a county or municipal office who recommends or takes quasi-judicial action as a member of a board or commission. The term does not include a member of the board or commission of any state agency or authority.

(c) Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any local public official the merits of any matter on which action may be taken by any board or commission on which the local public official is a member. If adopted by county or municipal ordinance or resolution, adherence to the following procedures shall remove the presumption of prejudice arising from ex parte communications with local public officials.

1. The substance of any ex parte communication with a local public official which relates to quasi-judicial action pending before the official is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter.

2. A local public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a local public official shall not be presumed prejudicial to the action, and such written communication shall be made a part of the record before final action on the matter.

3. Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.

4. Disclosure made pursuant to subparagraphs 1., 2., and 3. must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond

to the communication. This subsection does not subject local public officials to part III of chapter 112 for not complying with this paragraph.

(2)(a) Notwithstanding the provisions of subsection (1), a county or municipality may adopt an ordinance or resolution establishing the procedures and provisions of this subsection for quasi-judicial proceedings on local government land use matters. The ordinance or resolution shall provide procedures and provisions identical to this subsection. However, this subsection does not require a county or municipality to adopt such an ordinance or resolution.

(b) In a quasi-judicial proceeding on local government land use matters, a person who appears before the decisionmaking body who is not a party or party-intervenor shall be allowed to testify before the decisionmaking body, subject to control by the decisionmaking body, and may be requested to respond to questions from the decisionmaking body, but need not be sworn as a witness, is not required to be subject to cross-examination, and is not required to be qualified as an expert witness. The decisionmaking body shall assign weight and credibility to such testimony as it deems appropriate. A party or party-intervenor in a quasi-judicial proceeding on local government land use matters, upon request by another party or party-intervenor, shall be sworn as a witness, shall be subject to cross-examination by other parties or party-intervenors, and shall be required to be qualified as an expert witness, as appropriate.

(c) In a quasi-judicial proceeding on local government land use matters, a person may not be precluded from communicating directly with a member of the decisionmaking body by application of ex parte communication prohibitions. Disclosure of such communications by a member of the decisionmaking body is not required, and such nondisclosure shall not be presumed prejudicial to the decision of the decisionmaking body. All decisions of the decisionmaking body in a quasi-judicial proceeding on local government land use matters must be supported by substantial, competent evidence in the record pertinent to the proceeding, irrespective of such communications.

(3) This section does not restrict the authority of any board or commission to establish rules or procedures governing public hearings or contacts with local public officials.

History.—s. 1, ch. 95-352; s. 31, ch. 96-324.

286.012 Voting requirement at meetings of governmental bodies.—No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases, said member shall comply with the disclosure requirements of s. 112.3143.

History.—s. 1, ch. 72-311; s. 9, ch. 75-208; s. 2, ch. 84-357; s. 13, ch. 94-277.

286.021 Department of State to hold title to patents, trademarks, copyrights, etc.—The legal title and every right, interest, claim or demand of any kind in and to any patent, trademark or copyright, or application for the same, now owned or held, or as may hereafter be acquired, owned and held by the state, or any of its boards, commissions or agencies, is hereby granted to and vested in the Department of State for the use and benefit of the state; and no person, firm or corporation shall be entitled to use the same without the written consent of said Department of State.

History.—s. 1, ch. 21959, 1943; ss. 22, 35, ch. 69-106; s. 2, ch. 70-440; s. 15, ch. 79-65.

Note.—Former s. 272.01.

286.031 Authority of Department of State in connection with patents, trademarks, copyrights, etc.—The Department of State is authorized to do and perform any and all things necessary to secure letters patent, copyright and trademark on any invention or otherwise, and to enforce the rights of the state therein; to license, lease, assign, or otherwise give written consent to any person, firm or corporation for the manufacture or use thereof, on a royalty basis, or for such other consideration as said department shall deem proper; to take any and all action necessary, including legal actions, to protect the same against improper or unlawful use or infringement, and to enforce the collection of any sums due the state and said department for the manufacture or use thereof by any other party; to sell any of the same and to execute any and all instruments on behalf of the state necessary to consummate any such sale; and to do any and all other acts necessary and proper for the execution of powers and duties herein conferred upon said department for the benefit of the state.

History.—s. 2, ch. 21959, 1943; ss. 22, 35, ch. 69-106; s. 2, ch. 70-440; s. 16, ch. 79-65.

Note.—Former s. 272.02.

286.035 Constitution Revision Commission; powers of chair; assistance by state and local agencies.—

(1) The chair of the Constitution Revision Commission, appointed pursuant to s. 2, Art. XI of the State Constitution, is authorized to employ personnel and to incur expenses related to the official operation of the commission or its committees, to sign vouchers, and to otherwise expend funds appropriated to the commission for carrying out its official duties.

(2) All state and local agencies are hereby authorized and directed to assist, in any manner necessary, the Constitution Revision Commission established pursuant to s. 2, Art. XI of the State Constitution upon its request or the request of its chair.

History.—s. 1, ch. 77-201; s. 211, ch. 95-148.

286.036 Taxation and Budget Reform Commission; powers.—

(1) The Taxation and Budget Reform Commission appointed pursuant to s. 6, Art. XI of the State Constitution, is authorized to employ personnel and to incur expenses related to the official operation of the commission or its committees, and to expend funds appropriated to the commission for carrying out its official duties. Commission members and staff are entitled to per diem and reimbursement of travel expenses incurred in carrying out their duties, as provided in s. 112.061.

(2) All state and regional agencies and governments are authorized and directed to assist, in any manner necessary, the Taxation and Budget Reform Commission upon its request.

(3) All local governments are authorized to assist the Taxation and Budget Reform Commission in any manner necessary. Municipal and county governments are encouraged to cooperate with the commission, examine their taxation and budgetary policies, and submit recommendations to the commission in the form and manner prescribed by the commission.

(4) Each Taxation and Budget Reform Commission established pursuant to s. 6, Art. XI of the State Constitution and this section may not act or operate later than June 30 of the third year following the year in which the commission is required to be established.

(5) The Taxation and Budget Reform Commission is assigned, for administrative purposes, to the legislative branch. The Office of Legislative Services is directed to expedite, where possible, the business of the commission consistent with prudent financial and management practices.

(6) The Legislative Auditing Committee may at any time, without regard to whether the Legislature is then in session or out of session, take under consideration any matter within the scope of the duties of

the Taxation and Budget Reform Commission, and in connection therewith may exercise the powers of subpoena by law vested in a standing committee of the Legislature.

History.—s. 12, ch. 90-203; s. 6, ch. 2007-98.

286.041 Prohibited requirements of bidders on contracts for public works relative to income tax returns.—

(1) The state or any of its departments, agencies, bureaus, commissions, and officers and the counties, consolidated governments, municipalities, school districts, special districts, and other public bodies of this state, and the departments, agencies, bureaus, commissions, and officers thereof, shall not require, directly or indirectly, an audit or inspection of any federal or state income tax returns of any company, corporation, or person as a prior condition before entering into contracts with said company, corporation, or person to construct any public work or to supply any materials, labor, equipment or services, or any combination thereof.

(2) Any person who violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, except that the fine shall not be less than $100.

History.—s. 1, ch. 72-130.

286.043 Limitation on use of funds for discriminatory contract or bid specifications relating to car rental concessions at airports.—No public funds shall be used by a unit of local government for the purpose of promulgating contract or bid specifications relating to car rental concessions at airports which would preclude a corporation authorized to do business in this state from submitting bids or entering into such contracts with such unit of local government. Nothing in this section shall prevent the local government from providing in such specifications a minimum annual guarantee of revenue to be paid to such unit of local government.

History.—s. 4, ch. 79-119.

286.23 Real property conveyed to public agency; disclosure of beneficial interests; notice; exemptions.—

(1) Any person or entity holding real property in the form of a partnership, limited partnership, corporation, trust, or any form of representative capacity whatsoever for others, except as otherwise provided in this section, shall, before entering into any contract whereby such real property held in representative capacity is sold, leased, taken by eminent domain, or otherwise conveyed to the state or any local governmental unit, or an agency of either, make a public disclosure in writing, under oath and subject to the penalties prescribed for perjury, which shall state his or her name and address and the name and address of every person having a beneficial interest in the real property, however small or minimal. This written disclosure shall be made to the chief officer, or to his or her officially designated representative, of the state, local governmental unit, or agency of either, with which the transaction is made at least 10 days prior to the time of closing or, in the case of an eminent domain taking, within 48 hours after the time when the required sum is deposited in the registry of the court. Notice of the deposit shall be made to the person or entity by registered or certified mail before the 48-hour period begins.

(2) The state or local governmental unit, or an agency of either, shall send written notice by registered mail to the person required to make disclosures under this section, prior to the time when such disclosures are required to be made, which written request shall also inform the person required to make such disclosure that such disclosure must be made under oath, subject to the penalties prescribed for perjury.

(3)(a) The beneficial interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to chapter 517, whose interest is for sale to the general public, is hereby exempt from the provisions of this section. When disclosure of persons having beneficial interests in nonpublic entities is required, the entity or person shall not be required by the provisions of this section to disclose persons or entities holding less than 5 percent of the beneficial interest in the disclosing entity.

(b) In the case of an eminent domain taking, any entity or person other than a public officer or public employee, holding real property in the form of a trust which was created more than 3 years prior to the deposit of the required sum in the registry of the court, is hereby exempt from the provisions of this section. However, in order to qualify for the exemption set forth in this section, the trustee of such trust shall be required to certify within 48 hours after such deposit, under penalty of perjury, that no public officer or public employee has any beneficial interest whatsoever in such trust. Disclosure of any changes in the trust instrument or of persons having beneficial interest in the trust shall be made if such changes occurred during the 3 years prior to the deposit of said sum in the registry of the court.

(4) This section shall be liberally construed to accomplish the purpose of requiring the identification of the actual parties benefiting from any transaction with a governmental unit or agency involving the procurement of the ownership or use of property by such governmental unit or agency.

History.—ss. 1, 2, 3, 4, 5, ch. 74-174; s. 1, ch. 77-174; s. 72, ch. 86-186; s. 7, ch. 91-56; s. 212, ch. 95-148.

286.25 Publication or statement of state sponsorship.—Any nongovernmental organization which sponsors a program financed partially by state funds or funds obtained from a state agency shall, in publicizing, advertising, or describing the sponsorship of the program, state: "Sponsored by (name of organization) and the State of Florida." If the sponsorship reference is in written material, the words "State of Florida" shall appear in the same size letters or type as the name of the organization.

History.—s. 1, ch. 77-224.

286.26 Accessibility of public meetings to the physically handicapped.—

(1) Whenever any board or commission of any state agency or authority, or of any agency or authority of any county, municipal corporation, or other political subdivision, which has scheduled a meeting at which official acts are to be taken receives, at least 48 hours prior to the meeting, a written request by a physically handicapped person to attend the meeting, directed to the chairperson or director of such board, commission, agency, or authority, such chairperson or director shall provide a manner by which such person may attend the meeting at its scheduled site or reschedule the meeting to a site which would be accessible to such person.

(2) If an affected handicapped person objects in the written request, nothing contained in the provisions of this section shall be construed or interpreted to permit the use of human physical assistance to the physically handicapped in lieu of the construction or use of ramps or other mechanical devices in order to comply with the provisions of this section.

History.—s. 1, ch. 77-277; s. 1, ch. 79-170; s. 116, ch. 79-400; s. 1, ch. 81-268.

286.27 Use of state funds for greeting cards prohibited.—No state funds shall be expended for the purchase, preparation, printing, or mailing of any card the sole purpose of which is to convey holiday greetings.

History.—s. 1, ch. 92-21.

286.29 Climate-friendly public business.—The Legislature recognizes the importance of leadership by state government in the area of energy efficiency and in reducing the greenhouse gas

emissions of state government operations. The following shall pertain to all state agencies when conducting public business:

(1) The Department of Management Services shall develop the "Florida Climate-Friendly Preferred Products List." In maintaining that list, the department, in consultation with the Department of Environmental Protection, shall continually assess products currently available for purchase under state term contracts to identify specific products and vendors that offer clear energy efficiency or other environmental benefits over competing products. When procuring products from state term contracts, state agencies shall first consult the Florida Climate-Friendly Preferred Products List and procure such products if the price is comparable.

(2) Effective July 1, 2008, state agencies shall contract for meeting and conference space only with hotels or conference facilities that have received the "Green Lodging" designation from the Department of Environmental Protection for best practices in water, energy, and waste efficiency standards, unless the responsible state agency head makes a determination that no other viable alternative exists. The Department of Environmental Protection is authorized to adopt rules to implement the "Green Lodging" program.

(3) Each state agency shall ensure that all maintained vehicles meet minimum maintenance schedules shown to reduce fuel consumption, which include: ensuring appropriate tire pressures and tread depth; replacing fuel filters and emission filters at recommended intervals; using proper motor oils; and performing timely motor maintenance. Each state agency shall measure and report compliance to the Department of Management Services through the Equipment Management Information System database.

(4) When procuring new vehicles, all state agencies, state universities, community colleges, and local governments that purchase vehicles under a state purchasing plan shall first define the intended purpose for the vehicle and determine which of the following use classes for which the vehicle is being procured:

(a) State business travel, designated operator;
(b) State business travel, pool operators;
(c) Construction, agricultural, or maintenance work;
(d) Conveyance of passengers;
(e) Conveyance of building or maintenance materials and supplies;
(f) Off-road vehicle, motorcycle, or all-terrain vehicle;
(g) Emergency response; or
(h) Other.

Vehicles described in paragraphs (a) through (h), when being processed for purchase or leasing agreements, must be selected for the greatest fuel efficiency available for a given use class when fuel economy data are available. Exceptions may be made for individual vehicles in paragraph (g) when accompanied, during the procurement process, by documentation indicating that the operator or operators will exclusively be emergency first responders or have special documented need for exceptional vehicle performance characteristics. Any request for an exception must be approved by the purchasing agency head and any exceptional performance characteristics denoted as a part of the procurement process prior to purchase.

(5) All state agencies shall use ethanol and biodiesel blended fuels when available. State agencies administering central fueling operations for state-owned vehicles shall procure biofuels for fleet needs to the greatest extent practicable.

History.—s. 23, ch. 2008-227.

The Florida Senate

2013 Florida Statutes

Title VI	Chapter 48
CIVIL PRACTICE AND PROCEDURE	PROCESS AND SERVICE OF PROCESS

CHAPTER 48
PROCESS AND SERVICE OF PROCESS

48.011 Process; how directed.
48.021 Process; by whom served.
48.031 Service of process generally; service of witness subpoenas.
48.041 Service on minor.
48.042 Service on incompetent.
48.051 Service on state prisoners.
48.061 Service on partnerships and limited partnerships.
48.062 Service on a limited liability company.
48.071 Service on agents of nonresidents doing business in the state.
48.081 Service on corporation.
48.091 Corporations; designation of registered agent and registered office.
48.101 Service on dissolved corporations.
48.111 Service on public agencies and officers.
48.121 Service on the state.
48.131 Service on alien property custodian.
48.141 Service on labor unions.
48.151 Service on statutory agents for certain persons.
48.161 Method of substituted service on nonresident.
48.171 Service on nonresident motor vehicle owners, etc.
48.181 Service on nonresident engaging in business in state.
48.183 Service of process in action for possession of premises.
48.19 Service on nonresidents operating aircraft or watercraft in the state.
48.193 Acts subjecting person to jurisdiction of courts of state.
48.194 Personal service outside state.
48.195 Service of foreign process.
48.196 Service of process in connection with actions under the Florida International Commercial Arbitration Act.
48.20 Service of process on Sunday.
48.21 Return of execution of process.
48.22 Cumulative to other laws.
48.23 Lis pendens.
48.25 Short title.
48.27 Certified process servers.
48.29 Certification of process servers.
48.31 Removal of certified process servers; false return of service.

48.011 Process; how directed.— Summons, subpoenas, and other process in civil actions run throughout the state. All process except subpoenas shall be directed to all and singular the sheriffs of the state.

History.—s. 1, ch. 4397, 1895; GS 1397; RGS 2594; CGL 4234; s. 2, ch. 29737, 1955; s. 4, ch. 67-254.

Note.— Former s. 47.08.

48.021 Process; by whom served.—

(1) All process shall be served by the sheriff of the county where the person to be served is found, except initial nonenforceable civil process, criminal witness subpoenas, and criminal summonses may be served by a special process server appointed by the sheriff as provided for in this section or by a certified process server as provided for in ss. 48.25-48.31. Civil witness subpoenas may be served by any person authorized by rules of civil procedure.

(2)(a) The sheriff of each county may, in his or her discretion, establish an approved list of natural persons designated as special process servers. The sheriff shall add to such list the names of those natural persons who have met the requirements provided for in this section. Each natural person whose name has been added to the approved list is subject to annual recertification and reappointment by the sheriff. The sheriff shall prescribe an appropriate form for application for appointment. A reasonable fee for the processing of the application shall be charged.

(b) A person applying to become a special process server shall:

1. Be at least 18 years of age.
2. Have no mental or legal disability.
3. Be a permanent resident of the state.
4. Submit to a background investigation that includes the right to obtain and review the criminal record of the applicant.
5. Obtain and file with the application a certificate of good conduct that specifies there is no pending criminal case against the applicant and that there is no record of any felony conviction, nor a record of a misdemeanor involving moral turpitude or dishonesty, with respect to the applicant within the past 5 years.
6. Submit to an examination testing the applicant's knowledge of the laws and rules regarding the service of process. The content of the examination and the passing grade thereon, and the frequency and the location at which the examination is offered must be prescribed by the sheriff. The examination must be offered at least once annually.
7. Take an oath that the applicant will honestly, diligently, and faithfully exercise the duties of a special process server.

(c) The sheriff may prescribe additional rules and requirements directly related to subparagraphs (b)1.-7. regarding the eligibility of a person to become a special process server or to have his or her name maintained on the list of special process servers.

(d) An applicant who completes the requirements of this section must be designated as a special process server provided that the sheriff of the county has determined that the appointment of special process servers is necessary or desirable. Each special process server must be issued an identification card bearing his or her identification number, printed name, signature and photograph, and an expiration date. Each identification card must be renewable annually upon proof of good standing.

(e) The sheriff shall have the discretion to revoke an appointment at any time that he or she determines a special process server is not fully and properly discharging the duties as a special process server. The sheriff shall institute a program to determine whether the special process servers appointed as provided for in this section are faithfully discharging their duties pursuant to such appointment, and a reasonable fee may be charged for the costs of administering such program.

(3) A special process server appointed in accordance with this section shall be authorized to serve process in only the county in which the sheriff who appointed him or her resides and may charge a reasonable fee for his or her services.

(4) Any special process server shall be disinterested in any process he or she serves; and if the special process server willfully and knowingly executes a false return of service or otherwise violates the oath of office, he or she shall be guilty of a felony of the third degree, punishable as provided for in s. 775.082, s. 775.083, or s. 775.084, and shall be permanently barred from serving process in Florida.

History.—s. 16, July 22, 1845; s. 1, ch. 3721, 1887; RS 1014, 1246; GS 1401; RGS 2598; s. 1, ch. 9318, 1923; CGL 4238; s. 4, ch. 67-254; s. 12, ch. 73-334; s. 1, ch. 76-263; s. 2, ch. 79-396; s. 1, ch. 81-266; s. 1, ch. 88-135; s. 2, ch. 91-306; s. 268, ch. 95-147; s. 16, ch. 98-34; s. 2, ch. 2009-215.

Note.—Former s. 47.12.

48.031 Service of process generally; service of witness subpoenas.—

(1)(a) Service of original process is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents. Minors who are or have been married shall be served as provided in this section.

(b) Employers, when contacted by an individual authorized to make service of process, shall permit the authorized individual to make service on employees in a private area designated by the employer.

(2)(a) Substitute service may be made on the spouse of the person to be served at any place in the county, if the cause of action is not an adversary proceeding between the spouse and the person to be served, if the spouse requests such service, and if the spouse and person to be served are residing together in the same dwelling.

(b) Substitute service may be made on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge of the business at the time of service if two or more attempts to serve the owner have been made at the place of business.

(3)(a) The service of process of witness subpoenas, whether in criminal cases or civil actions, shall be made as provided in subsection (1). However, service of a subpoena on a witness in a criminal traffic case, a misdemeanor case, or a second degree or third degree felony may be made by United States mail directed to the witness at the last known address, and the service must be mailed at least 7 days prior to the date of the witness's required appearance. Failure of a witness to appear in response to a subpoena served by United States mail that is not certified may not be grounds for finding the witness in contempt of court.

(b) A criminal witness subpoena may be posted by a person authorized to serve process at the witness's residence if three attempts to serve the subpoena, made at different times of the day or night on different dates, have failed. The subpoena must be posted at least 5 days prior to the date of the witness's required appearance.

(4)(a) Service of a criminal witness subpoena upon a law enforcement officer or upon any federal, state, or municipal employee called to testify in an official capacity in a criminal case may be made as provided in subsection (1) or by delivery to a designated supervisory or administrative employee at the witness's place of employment if the agency head or highest ranking official at the witness's place of employment has designated such employee to accept such service. However, no such designated employee is required to accept service:

1. For a witness who is no longer employed by the agency at that place of employment;
2. If the witness is not scheduled to work prior to the date the witness is required to appear; or
3. If the appearance date is less than 5 days from the date of service.

The agency head or highest ranking official at the witness's place of employment may determine the days of the week and the hours that service may be made at the witness's place of employment.

(b) Service may also be made in accordance with subsection (3) provided that the person who requests the issuance of the criminal witness subpoena shall be responsible for mailing the subpoena in accordance with that subsection and for making the proper return of service to the court.

(5) A person serving process shall place, on the first page of at least one of the processes served, the date and time of service and his or her identification number and initials for all service of process. The person serving process shall list on the return-of-service form all initial pleadings delivered and served along with the process. The person issuing the process shall file the return-of-service form with the court.

(6) If the only address for a person to be served, which is discoverable through public records, is a private mailbox, substitute service may be made by leaving a copy of the process with the person in charge of the private mailbox, but only if the process server determines that the person to be served maintains a mailbox at that location.

(7) A gated residential community, including a condominium association or a cooperative, shall grant unannounced entry into the community, including its common areas and common elements, to a person who is attempting to serve process on a defendant or witness who resides within or is known to be within the community.

History.—s. 5, Nov. 23, 1828; RS 1015; GS 1402; RGS 2599; CGL 4246; s. 6, ch. 29737, 1955; s. 4, ch. 67-254; s. 1, ch. 75-34; s. 3, ch. 79-396; s. 3, ch. 82-118; s. 1, ch. 84-339; s. 7, ch. 85-80; s. 2, ch. 87-405; s. 6, ch. 93-208; s. 269, ch. 95-147; s. 1, ch. 95-172; s. 1, ch. 98-410; s. 1, ch. 2004-273; s. 2, ch. 2011-159.

Note.—Former s. 47.13.

48.041 Service on minor.—

(1) Process against a minor who has never been married shall be served:

(a) By serving a parent or guardian of the minor as provided for in s. 48.031 or, when there is a legal guardian appointed for the minor, by serving the guardian as provided for in s. 48.031.

(b) By serving the guardian ad litem or other person, if one is appointed by the court to represent the minor. Service on the guardian ad litem is unnecessary when he or she appears voluntarily or when the court orders the appearance without service of process on him or her.

(2) In all cases heretofore adjudicated in which process was served on a minor as prescribed by any law heretofore existing, the service was lawfully made, and no proceeding shall be declared irregular or illegal if a guardian ad litem appeared for the minor.

History.—ss. 1, 2, ch. 7853, 1919; CGL 4273, 4274; s. 1, ch. 19175, 1939; CGL 1940 Supp. 4274(13); s. 2, ch. 29737, 1955; s. 4, ch. 67-254; s. 1, ch. 84-176; s. 270, ch. 95-147.

Note.—Former ss. 47.23-47.25.

48.042 Service on incompetent.—

(1) Process against an incompetent shall be served:

(a) By serving two copies of the process to the person who has care or custody of the incompetent or, when there is a legal guardian appointed for the incompetent, by serving the guardian as provided in s. 48.031.

(b) By serving the guardian ad litem or other person, if one is appointed by the court to represent the incompetent. Service on the guardian ad litem is unnecessary when he or she appears voluntarily or when the court orders the appearance without service of process on him or her.

(2) In all cases heretofore adjudicated in which process was served on an incompetent as prescribed by any law heretofore existing, the service was lawfully made, and no proceeding shall be declared irregular or illegal if a guardian ad litem appeared for the incompetent.

History.—s. 2, ch. 84-176; s. 271, ch. 95-147.

48.051 Service on state prisoners.—Process against a state prisoner shall be served on the prisoner.

History.—s. 30, ch. 3883, 1889; RS 3043; GS 4124; RGS 6243; CGL 8580; s. 1, ch. 21992, 1943; s. 1, ch. 25041, 1949; s. 44, ch. 57-121; s. 4, ch. 67-254; ss. 19, 35, ch. 69-106; s. 13, ch. 71-355.

Note.—Former s. 47.26.

48.061 Service on partnerships and limited partnerships.—

(1) Process against a partnership shall be served on any partner and is as valid as if served on each individual partner. If a partner is not available during regular business hours to accept service on behalf of the partnership, he or she may designate an employee to accept such service. After one attempt to serve a partner or designated employee has been made, process may be served on the person in charge of the partnership during regular business hours. After service on any partner, plaintiff may proceed to judgment and execution against that partner and the assets of the partnership. After service on a designated employee or other person in charge, plaintiff may proceed to judgment and execution against the partnership assets but not against the individual assets of any partner.

(2) Process against a domestic limited partnership may be served on any general partner or on the agent for service of process specified in its certificate of limited partnership or in its certificate as amended or restated and is as valid as if served on each individual member of the partnership. After service on a general partner or the agent, the plaintiff may proceed to judgment and execution against the limited partnership and all of the general partners

individually. If a general partner cannot be found in this state and service cannot be made on an agent because of failure to maintain such an agent or because the agent cannot be found or served with the exercise of reasonable diligence, service of process may be effected by service upon the Secretary of State as agent of the limited partnership as provided for in s. 48.181. Service of process may be made under ss. 48.071 and 48.21 on limited partnerships.

(3) Process against a foreign limited partnership may be served on any general partner found in the state or on any agent for service of process specified in its application for registration and is as valid as if served on each individual member of the partnership. If a general partner cannot be found in this state and an agent for service of process has not been appointed or, if appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence, service of process may be effected by service upon the Secretary of State as agent of the limited partnership as provided for in s. 48.181, or process may be served as provided in ss. 48.071 and 48.21.

History.—s. 13, Nov. 23, 1828; RS 1017; GS 1404; RGS 2601; CGL 4248; s. 4, ch. 67-254; s. 74, ch. 86-263; s. 3, ch. 87-405; s. 272, ch. 95-147.

Note.—Former s. 47.15.

48.062 Service on a limited liability company.—

(1) Process against a limited liability company, domestic or foreign, may be served on the registered agent designated by the limited liability company under chapter 605 or chapter 608. A person attempting to serve process pursuant to this subsection may serve the process on any employee of the registered agent during the first attempt at service even if the registered agent is a natural person and is temporarily absent from his or her office.

(2) If service cannot be made on a registered agent of the limited liability company because of failure to comply with chapter 605 or chapter 608 or because the limited liability company does not have a registered agent, or if its registered agent cannot with reasonable diligence be served, process against the limited liability company, domestic or foreign, may be served:

(a) On a member of a member-managed limited liability company;

(b) On a manager of a manager-managed limited liability company; or

(c) If a member or manager is not available during regular business hours to accept service on behalf of the limited liability company, he, she, or it may designate an employee of the limited liability company to accept such service. After one attempt to serve a member, manager, or designated employee has been made, process may be served on the person in charge of the limited liability company during regular business hours.

(3) If, after reasonable diligence, service of process cannot be completed under subsection (1) or subsection (2), service of process may be effected by service upon the Secretary of State as agent of the limited liability company as provided for in s. 48.181.

(4) If the address provided for the registered agent, member, or manager is a residence or private mailbox, service on the limited liability company, domestic or foreign, may be made by serving the registered agent, member, or manager in accordance with s. 48.031.

(5) This section does not apply to service of process on insurance companies.

History.—s. 3, ch. 2013-180.

48.071 Service on agents of nonresidents doing business in the state.—When any natural person or partnership not residing or having a principal place of business in this state engages in business in this state, process may be served on the person who is in charge of any business in which the defendant is engaged within this state at the time of service, including agents soliciting orders for goods, wares, merchandise or services. Any process so served is as valid as if served personally on the nonresident person or partnership engaging in business in this state in any action against the person or partnership arising out of such business. A copy of such process with a notice of service on the person in charge of such business shall be sent forthwith to the nonresident person or partnership by registered or certified mail, return receipt requested. An affidavit of compliance with this section shall be filed before the return day or within such further time as the court may allow.

History.—s. 1, ch. 59-280; s. 4, ch. 67-254; s. 273, ch. 95-147.

Note.—Former s. 47.161.

48.081 Service on corporation.—

(1) Process against any private corporation, domestic or foreign, may be served:

(a) On the president or vice president, or other head of the corporation;

(b) In the absence of any person described in paragraph (a), on the cashier, treasurer, secretary, or general manager;

(c) In the absence of any person described in paragraph (a) or paragraph (b), on any director; or

(d) In the absence of any person described in paragraph (a), paragraph (b), or paragraph (c), on any officer or business agent residing in the state.

(2) If a foreign corporation has none of the foregoing officers or agents in this state, service may be made on any agent transacting business for it in this state.

(3)(a) As an alternative to all of the foregoing, process may be served on the agent designated by the corporation under s. 48.091. However, if service cannot be made on a registered agent because of failure to comply with s. 48.091, service of process shall be permitted on any employee at the corporation's principal place of business or on any employee of the registered agent. A person attempting to serve process pursuant to this paragraph may serve the process on any employee of the registered agent during the first attempt at service ev en if the registered agent is temporarily absent from his or her office.

(b) If the address provided for the registered agent, officer, director, or principal place of business is a residence or private mailbox, service on the corporation may be made by serving the registered agent, officer, or director in accordance with s. 48.031.

(4) This section does not apply to service of process on insurance companies.

(5) When a corporation engages in substantial and not isolated activities within this state, or has a business office within the state and is actually engaged in the transaction of business therefrom, service upon any officer or business agent while on corporate business within this state may personally be made, pursuant to this section, and it is not necessary in such case that the action, suit, or proceeding against the corporation shall have arisen out of any transaction or operation connected with or incidental to the business being transacted within the state.

History.—s. 8, Nov. 21, 1829; s. 2, Feb. 11, 1834; s. 1, ch. 3590, 1885; RS 1019; GS 1406; s. 1, ch. 6908, 1915; s. 1, ch. 7752, 1918; RGS 2604; CGL 4251; s. 1, ch. 57-97; ss. 1, 2, 3, ch. 59-46; s. 4, ch. 67-254; s. 1, ch. 67-399; s. 6, ch. 79-396; s. 7, ch. 83-216; s. 1, ch. 84-2; s. 2, ch. 2004-273; s. 3, ch. 2011-159.

Note.—Former s. 47.17.

48.091 Corporations; designation of registered agent and registered office.—

(1) Every Florida corporation and every foreign corporation now qualified or hereafter qualifying to transact business in this state shall designate a registered agent and registered office in accordance with chapter 607.

(2) Every corporation shall keep the registered office open from 10 a.m. to 12 noon each day except Saturdays, Sundays, and legal holidays, and shall keep one or more registered agents on whom process may be served at the office during these hours. The corporation shall keep a sign posted in the office in some conspicuous place designating the name of the corporation and the name of its registered agent on whom process may be served.

History.—ss. 1, 2, 11, 13, 14, ch. 11829, 1927; CGL 4257, 4258, 4267, 4269, 4270; ss. 1, 2, ch. 20842, 1941; s. 1, ch. 29873, 1955; s. 24, ch. 57-1; s. 1, ch. 63-241; s. 1, ch. 65-32; s. 4, ch. 67-254; s. 2, ch. 67-562; ss. 10, 35, ch. 69-106; s. 3, ch. 71-114; s. 1, ch. 71-269; s. 28, ch. 71-377; s. 1, ch. 76-209.

Note.—Former ss. 47.34, 47.35, 47.42, 47.43, 47.45, 47.50.

48.101 Service on dissolved corporations.—Process against the directors of any corporation which was dissolved before July 1, 1990, as trustees of the dissolved corporation shall be served on one or more of the directors of the dissolved corporation as trustees thereof and binds all of the directors of the dissolved corporation as trustees thereof. Process against any other dissolved corporation shall be served in accordance with s. 48.081.

History.—s. 1, ch. 19064, 1939; CGL 1940 Supp. 4251(1); s. 4, ch. 67-254; s. 3, ch. 97-230.

Note.—Former s. 47.22.

48.111 Service on public agencies and officers.—

(1) Process against any municipal corporation, agency, board, or commission, department, or subdivision of the state or any county which has a governing board, council, or commission or which is a body corporate shall be served:

(a) On the president, mayor, chair, or other head thereof; and in his or her absence;

(b) On the vice president, vice mayor, or vice chair, or in the absence of all of the above;

(c) On any member of the governing board, council, or commission.

(2) Process against any public agency, board, commission, or department not a body corporate or having a governing board or commission shall be served on the public officer being sued or the chief executive officer of the agency, board, commission, or department.

(3) In any suit in which the Department of Revenue or its successor is a party, process against the department shall be served on the executive director of the department. This procedure is to be in lieu of any other provision of general law, and shall designate said department to be the only state agency or department to be so served.

History.—ss. 1, 2, ch. 3242, 1881; RS 581, 1021, 1022; GS 774, 1408, 1409; RGS 1494, 2606, 2607; CGL 2203, 4253, 4254; s. 4, ch. 67-254; s. 1, ch. 73-73; s. 8, ch. 83-216; s. 274, ch. 95-147.

Note.—Former ss. 47.20, 47.21.

48.121 Service on the state.—When the state has consented to be sued, process against the state shall be served on the state attorney or an assistant state attorney for the judicial circuit within which the action is brought and by sending two copies of the process by registered or certified mail to the Attorney General. The state may serve motions or pleadings within 40 days after service is made. This section is not intended to authorize the joinder of the Attorney General or a state attorney as a party in such suit or prosecution.

History.—s. 2, ch. 29724, 1955; s. 4, ch. 67-254; s. 7, ch. 2001-266.

Note.—Former s. 69.18.

48.131 Service on alien property custodian.—In every action or proceeding in any court or before any administrative board involving real, personal, or mixed property, or any interest therein, when service of process or notice is required or directed to be made upon any person, firm or corporation located, or believed to be located, within any country or territory in the possession of or under the control of any country between which and the United States a state of war exists, in addition to the giving of the notice or service of process, a copy of the notice or process shall be sent by registered or certified mail to the alien property custodian, addressed to him or her at Washington, District of Columbia; but failure to mail a copy of the notice or process to the alien property custodian does not invalidate the action or proceeding.

History.—s. 1, ch. 22074, 1943; s. 4, ch. 67-254; s. 275, ch. 95-147.

Note.—Former s. 47.51.

48.141 Service on labor unions.—Process against labor organizations shall be served on the president or other officer, business agent, manager or person in charge of the business of such labor organization.

History.—s. 4, ch. 67-254.

48.151 Service on statutory agents for certain persons.—

(1) When any law designates a public officer, board, agency, or commission as the agent for service of process on any person, firm, or corporation, service of process thereunder shall be made by leaving one copy of the process with the public officer, board, agency, or commission or in the office thereof, or by mailing one copy to the public officer, board, agency, or commission. The public officer, board, agency, or commission so served shall retain a record copy and promptly send the copy served, by registered or certified mail, to the person to be served as shown by his or her or its records. Proof of service on the public officer, board, agency, or commission shall be by a notice accepting the process which shall be issued by the public officer, board, agency, or commission promptly after service and filed in

the court issuing the process. The notice accepting service shall state the date upon which the copy of the process was mailed by the public officer, board, agency, or commission to the person being served and the time for pleading prescribed by the rules of procedure shall run from this date. The service is valid service for all purposes on the person for whom the public officer, board, agency, or commission is statutory agent for service of process.

(2) This section does not apply to substituted service of process on nonresidents.

(3) The Chief Financial Officer or his or her assistant or deputy or another person in charge of the office is the agent for service of process on all insurers applying for authority to transact insurance in this state, all licensed nonresident insurance agents, all nonresident disability insurance agents licensed pursuant to s. 626.835, any unauthorized insurer under s. 626.906 or s. 626.937, domestic reciprocal insurers, fraternal benefit societies under chapter 632, warranty associations under chapter 634, prepaid limited health service organizations under chapter 636, and persons required to file statements under s. 628.461.

(4) The Director of the Office of Financial Regulation of the Financial Services Commission is the agent for service of process for any issuer as defined in s. 517.021, or any dealer, investment adviser, or associated person registered with that office, for any violation of any provision of chapter 517.

(5) The Secretary of State is the agent for service of process for any retailer, dealer or vendor who has failed to designate an agent for service of process as required under s. 212.151 for violations of chapter 212.

(6) For purposes of this section, records may be retained as paper or electronic copies.

History.—s. 4, ch. 67-254; ss. 10, 12, 13, 35, ch. 69-106; s. 14, ch. 71-355; s. 29, ch. 71-377; s. 2, ch. 76-100; s. 16, ch. 79-164; s. 4, ch. 83-215; s. 1, ch. 87-316; s. 10, ch. 90-248; s. 276, ch. 95-147; s. 100, ch. 2003-261; s. 4, ch. 2011-159.

48.161 Method of substituted service on nonresident.—

(1) When authorized by law, substituted service of process on a nonresident or a person who conceals his or her whereabouts by serving a public officer designated by law shall be made by leaving a copy of the process with a fee of $8.75 with the public officer or in his or her office or by mailing the copies by certified mail to the public officer with the fee. The service is sufficient service on a defendant who has appointed a public officer as his or her agent for the service of process. Notice of service and a copy of the process shall be sent forthwith by registered or certified mail by the plaintiff or his or her attorney to the defendant, and the defendant's return receipt and the affidavit of the plaintiff or his or her attorney of compliance shall be filed on or before the return day of the process or within such time as the court allows, or the notice and copy shall be served on the defendant, if found within the state, by an officer authorized to serve legal process, or if found without the state, by a sheriff or a deputy sheriff of any county of this state or any duly constituted public officer qualified to serve like process in the state or jurisdiction where the defendant is found. The officer's return showing service shall be filed on or before the return day of the process or within such time as the court allows. The fee paid by the plaintiff to the public officer shall be taxed as cost if he or she prevails in the action. The public officer shall keep a record of all process served on him or her showing the day and hour of service.

(2) If any person on whom service of process is authorized under subsection (1) dies, service may be made on his or her administrator, executor, curator, or personal representative in the same manner.

(3) This section does not apply to persons on whom service is authorized under s. 48.151.

(4) The public officer may designate some other person in his or her office to accept service.

History.—ss. 2, 4, ch. 17254, 1935; CGL 1936 Supp. 4274 (8), (10); s. 1, ch. 59-382; s. 4, ch. 67-254; s. 4, ch. 71-114; s. 1, ch. 71-308; s. 57, ch. 90-132; s. 277, ch. 95-147.

Note.—Former ss. 47.30, 47.32.

48.171 Service on nonresident motor vehicle owners, etc.— Any nonresident of this state, being the operator or owner of any motor vehicle, who accepts the privilege extended by the laws of this state to nonresident operators and owners, of operating a motor vehicle or of having it operated, or of permitting any motor vehicle owned, or leased, or controlled by him or her to be operated with his or her knowledge, permission, acquiescence, or consent, within the state, or any resident of this state, being the licensed operator or owner of or the lessee, or otherwise entitled to control

any motor vehicle under the laws of this state, who becomes a nonresident or conceals his or her whereabouts, by the acceptance or licensure and by the operation of the motor vehicle, either in person, or by or through his or her servants, agents, or employees, or by persons with his or her knowledge, acquiescence, and consent within the state constitutes the Secretary of State his or her agent for the service of process in any civil action begun in the courts of the state against such operator or owner, lessee, or other person entitled to control of the motor vehicle, arising out of or by reason of any accident or collision occurring within the state in which the motor vehicle is involved.

History.—s. 1, ch. 17254, 1935; CGL 1936 Supp. 4274(7); ss. 1, 2, ch. 25003, 1949; s. 4, ch. 67-254; s. 278, ch. 95-147.

Note.—Former s. 47.29.

48.181 Service on nonresident engaging in business in state.—

(1) The acceptance by any person or persons, individually or associated together as a copartnership or any other form or type of association, who are residents of any other state or country, and all foreign corporations, and any person who is a resident of the state and who subsequently becomes a nonresident of the state or conceals his or her whereabouts, of the privilege extended by law to nonresidents and others to operate, conduct, engage in, or carry on a business or business venture in the state, or to have an office or agency in the state, constitutes an appointment by the persons and foreign corporations of the Secretary of State of the state as their agent on whom all process in any action or proceeding against them, or any of them, arising out of any transaction or operation connected with or incidental to the business or business venture may be served. The acceptance of the privilege is signification of the agreement of the persons and foreign corporations that the process against them which is so served is of the same validity as if served personally on the persons or foreign corporations.

(2) If a foreign corporation has a resident agent or officer in the state, process shall be served on the resident agent or officer.

(3) Any person, firm, or corporation which sells, consigns, or leases by any means whatsoever tangible or intangible personal property, through brokers, jobbers, wholesalers, or distributors to any person, firm, or corporation in this state is conclusively presumed to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business or business venture in this state.

History.—s. 1, ch. 6224, 1911; RGS 2602; CGL 4249; s. 1, ch. 26657, 1951; s. 1, ch. 57-747; s. 4, ch. 67-254; s. 2, ch. 84-2; s. 279, ch. 95-147.

Note.—Former s. 47.16.

48.183 Service of process in action for possession of premises.—

(1) In an action for possession of any residential premises, including those under chapters 83, 723, and 513, or nonresidential premises, if the tenant cannot be found in the county or there is no person 15 years of age or older residing at the tenant's usual place of abode in the county after at least two attempts to obtain service as provided above in this subsection, summons may be served by attaching a copy to a conspicuous place on the property described in the complaint or summons. The minimum time delay between the two attempts to obtain service shall be 6 hours. Nothing herein shall be construed as prohibiting service of process on a tenant as is otherwise provided on defendants in civil cases.

(2) If a landlord causes or anticipates causing a defendant to be served with a summons and complaint solely by attaching them to some conspicuous place on the property described in the complaint or summons, the landlord shall provide the clerk of the court with an additional copy of the complaint and a prestamped envelope addressed to the defendant at the premises involved in the proceeding. The clerk of the court shall immediately mail the copy of the summons and complaint by first-class mail, note the fact of mailing in the docket, and file a certificate in the court file of the fact and date of mailing. Service shall be effective on the date of posting or mailing, whichever occurs later, and at least 5 days must elapse from the date of service before a judgment for final removal of the defendant may be entered.

History.—s. 4, ch. 73-330; s. 1, ch. 75-34; s. 1, ch. 83-39; s. 2, ch. 84-339; s. 4, ch. 87-405; s. 1, ch. 88-379; s. 3, ch. 94-170; s. 2, ch. 98-410; s. 1, ch. 2003-263.

48.19 Service on nonresidents operating aircraft or watercraft in the state.—The operation, navigation, or maintenance by a nonresident of an aircraft or a boat, ship, barge, or other watercraft in the state, either in person or through others, and the acceptance thereby by the nonresident of the protection of the laws of this state for the aircraft or watercraft, or the operation, navigation, or maintenance by a nonresident of an aircraft or a boat, ship, barge, or other watercraft in the state, either in person or through others, other than under the laws of the state, or any person who is a resident of the state and who subsequently becomes a nonresident or conceals his or her whereabouts, constitutes an appointment by the nonresident of the Secretary of State as the agent of the nonresident or concealed person on whom all process may be served in any action or proceeding against the nonresident or concealed person growing out of any accident or collision in which the nonresident or concealed person may be involved while, either in person or through others, operating, navigating, or maintaining an aircraft or a boat, ship, barge, or other watercraft in the state. The acceptance by operation, navigation, or maintenance in the state of the aircraft or watercraft is signification of the nonresident's or concealed person's agreement that process against him or her so served shall be of the same effect as if served on him or her personally.

History.—s. 1, ch. 59-148; s. 1, ch. 65-118; s. 4, ch. 67-254; s. 2, ch. 70-90; s. 280, ch. 95-147.

Note.—Former s. 47.162.

48.193 Acts subjecting person to jurisdiction of courts of state.—

(1)(a) A person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state for any cause of action arising from any of the following acts:

1. Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.
2. Committing a tortious act within this state.
3. Owning, using, possessing, or holding a mortgage or other lien on any real property within this state.
4. Contracting to insure a person, property, or risk located within this state at the time of contracting.
5. With respect to a proceeding for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintaining a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.
6. Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either:
   a. The defendant was engaged in solicitation or service activities within this state; or
   b. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use.
7. Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.
8. With respect to a proceeding for paternity, engaging in the act of sexual intercourse within this state with respect to which a child may have been conceived.
9. Entering into a contract that complies with s. 685.102.

(b) Notwithstanding any provision of this subsection, a penalty or fine imposed by an agency of any other state shall not be enforceable against any person or entity incorporated or having its principal place of business in this state where such other state does not provide a mandatory right of review of such agency decision in a state court of competent jurisdiction.

(2) A defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity.

(3) Service of process upon any person who is subject to the jurisdiction of the courts of this state as provided in this section may be made by personally serving the process upon the defendant outside this state, as provided in s. 48.194. The service shall have the same effect as if it had been personally served within this state.

(4) If a defendant in his or her pleadings demands affirmative relief on causes of action unrelated to the transaction forming the basis of the plaintiff's claim, the defendant shall thereafter in that action be subject to the jurisdiction of the court for any cause of action, regardless of its basis, which the plaintiff may by amendment assert against the defendant.

(5) Nothing contained in this section limits or affects the right to serve any process in any other manner now or hereinafter provided by law.

History.—s. 1, ch. 73-179; s. 3, ch. 84-2; s. 3, ch. 88-176; s. 3, ch. 93-250; s. 281, ch. 95-147; s. 1, ch. 2013-164.

48.194 Personal service outside state.—

(1) Except as otherwise provided herein, service of process on persons outside of this state shall be made in the same manner as service within this state by any officer authorized to serve process in the state where the person is served. No order of court is required. An affidavit of the officer shall be filed, stating the time, manner, and place of service. The court may consider the affidavit, or any other competent evidence, in determining whether service has been properly made. Service of process on persons outside the United States may be required to conform to the provisions of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

(2) Where in rem or quasi in rem relief is sought in a foreclosure proceeding as defined by s. 702.09, service of process on a person outside of this state where the address of the person to be served is known may be made by registered mail as follows:

(a) The party's attorney or the party, if the party is not represented by an attorney, shall place a copy of the original process and the complaint, petition, or other initial pleading or paper and, if applicable, the order to show cause issued pursuant to s. 702.10 in a sealed envelope with adequate postage addressed to the person to be served.

(b) The envelope shall be placed in the mail as registered mail.

(c) Service under this subsection shall be considered obtained upon the signing of the return receipt by the person allowed to be served by law.

(3) If the registered mail which is sent as provided for in subsection (2) is returned with an endorsement or stamp showing "refused," the party's attorney or the party, if the party is not represented by an attorney, may serve original process by first-class mail. The failure to claim registered mail is not refusal of service within the meaning of this subsection. Service of process pursuant to this subsection shall be perfected as follows:

(a) The party's attorney or the party, if the party is not represented by an attorney, shall place a copy of the original process and the complaint, petition, or other initial pleading or paper and, if applicable, the order to show cause issued pursuant to s. 702.10 in a sealed envelope with adequate postage addressed to the person to be served.

(b) The envelope shall be mailed by first-class mail with the return address of the party's attorney or the party, if the party is not represented by an attorney, on the envelope.

(c) Service under this subsection shall be considered obtained upon the mailing of the envelope.

(4) If service of process is obtained under subsection (2), the party's attorney or the party, if the party is not represented by an attorney, shall file an affidavit setting forth the return of service. The affidavit shall state the nature of the process; the date on which the process was mailed by registered mail; the name and address on the envelope containing the process; the fact that the process was mailed registered mail return receipt requested; who signed the return receipt, if known, and the basis for that knowledge; and the relationship between the person who signed the receipt and the person to be served, if known, and the basis for that knowledge. The return receipt from the registered mail shall be attached to the affidavit. If service of process is perfected under subsection (3), the party's attorney or the party, if the party is not represented by an attorney, shall file an affidavit setting forth the return of service. The affidavit shall state the nature of the process; the date on which the process was mailed by registered mail; the name

and address on the envelope containing the process that was mailed by registered mail; the fact that the process was mailed registered mail and was returned with the endorsement or stamp "refused"; the date, if known, the process was "refused"; the date on which the process was mailed by first-class mail; the name and address on the envelope containing the process that was mailed by first-class mail; and the fact that the process was mailed by first-class mail with a return address of the party or the party's attorney on the envelope. The return envelope from the attempt to mail process by registered mail and the return envelope, if any, from the attempt to mail the envelope by first-class mail shall be attached to the affidavit.

History.—s. 1, ch. 73-179; s. 4, ch. 93-250; s. 7, ch. 97-278.

48.195 Service of foreign process.—

(1) The service of process issued by a court of a state other than Florida may be made by the sheriffs of this state in the same manner as service of process issued by Florida courts. The provisions of this section shall not be interpreted to permit a sheriff to take any action against personal property, real property, or persons.

(2) An officer serving such foreign process shall be deemed as acting in the performance of his or her duties for the purposes of ss. 30.01, 30.02, 843.01, and 843.02, but shall not be held liable as provided in s. 839.19 for failure to execute any process delivered to him or her for service.

(3) The sheriffs shall be entitled to charge fees for the service of foreign process, and the fees shall be the same as fees for the service of comparable process for the Florida courts. When the service of foreign process requires duties to be performed in excess of those required by Florida courts, the sheriff may perform the additional duties and may collect reasonable additional compensation for the additional duties performed.

History.—s. 7, ch. 79-396; s. 36, ch. 81-259; s. 11, ch. 91-45; s. 282, ch. 95-147.

48.196 Service of process in connection with actions under the Florida International Commercial Arbitration Act.—

(1) Any process in connection with the commencement of an action before the courts of this state under chapter 684, the Florida International Commercial Arbitration Act, shall be served:

(a) In the case of a natural person, by service upon:

1. That person;

2. Any agent for service of process appointed in, or pursuant to, any applicable agreement or by operation of any law of this state; or

3. Any person authorized by the law of the jurisdiction where process is being served to accept service for that person.

(b) In the case of any person other than a natural person, by service upon:

1. Any agent for service of process appointed in, or pursuant to, any applicable agreement or by operation of any law of this state;

2. Any person authorized by the law of the jurisdiction where process is being served to accept service for that person; or

3. Any person, whether natural or otherwise and wherever located, who by operation of law or internal action is an officer, business agent, director, general partner, or managing agent or director of the person being served; or

4. Any partner, joint venturer, member or controlling shareholder, wherever located, of the person being served, if the person being served does not by law or internal action have any officer, business agent, director, general partner, or managing agent or director.

(2) The process served under subsection (1) shall include a copy of the application to the court together with all attachments thereto and shall be served in the following manner:

(a) In any manner agreed upon, whether service occurs within or without this state;

(b) If service is within this state:

1. In the manner provided in ss. 48.021 and 48.031, or

2. If applicable under their terms, in the manner provided in ss. 48.161, 48.183, 48.23, or chapter 49; or

(c) If service is outside this state:

1. By personal service by any person authorized to serve process in the jurisdiction where service is being made or by any person appointed to do so by any competent court in that jurisdiction;

2. In any other manner prescribed by the laws of the jurisdiction where service is being made for service in an action before a local court of competent jurisdiction;

3. In the manner provided in any applicable treaty to which the United States is a party;

4. In the manner prescribed by order of the court;

5. By any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the person being served; or

6. If applicable, in the manner provided in chapter 49.

(3) No order of the court is required for service of process outside this state. The person serving process shall make proof of service to the court by affidavit or as prescribed by the law of the jurisdiction where process is being served or as prescribed in an order of the court. Such proof shall be made prior to expiration of the time within which the person served must respond. If service is by mail, the proof of service shall state the date and place of mailing and shall include a receipt signed by the addressee or other evidence of delivery satisfactory to the court.

History.—s. 2, ch. 86-266; s. 1, ch. 2010-60.

48.20 Service of process on Sunday.— Service or execution on Sunday of any writ, process, warrant, order, or judgment is void and the person serving or executing, or causing it to be served or executed, is liable to the party aggrieved for damages for so doing as if he or she had done it without any process, writ, warrant, order, or judgment. If affidavit is made by the person requesting service or execution that he or she has good reason to believe that any person liable to have any such writ, process, warrant, order, or judgment served on him or her intends to escape from this state under protection of Sunday, any officer furnished with an order authorizing service or execution by the trial court judge may serve or execute such writ, process, warrant, order, or judgment on Sunday, and it is as valid as if it had been done on any other day.

History.—s. 44, Nov. 23, 1828; RS 1025; GS 1413; RGS 2611; CGL 4275; s. 4, ch. 67-254; s. 12, ch. 73-334; s. 283, ch. 95-147; s. 5, ch. 2004-11.

Note.— Former s. 47.46.

48.21 Return of execution of process.—

(1) Each person who effects service of process shall note on a return-of-service form attached thereto, the date and time when it comes to hand, the date and time when it is served, the manner of service, the name of the person on whom it was served and, if the person is served in a representative capacity, the position occupied by the person. The return-of-service form must be signed by the person who effects the service of process. However, a person employed by a sheriff who effects the service of process may sign the return-of-service form using an electronic signature certified by the sheriff.

(2) A failure to state the facts or to include the signature required by subsection (1) invalidates the service, but the return is amendable to state the facts or to include the signature at any time on application to the court from which the process issued. On amendment, service is as effective as if the return had originally stated the omitted facts or included the signature. A failure to state all the facts in or to include the signature on the return shall subject the person effecting service to a fine not exceeding $10, in the court's discretion.

History.—s. 18, Nov. 23, 1828; RS 1026; GS 1414; RGS 2612; CGL 4276; s. 4, ch. 67-254; s. 4, ch. 94-170; s. 1356, ch. 95-147; s. 3, ch. 2004-273; s. 5, ch. 2011-159.

Note.— Former s. 47.47.

48.22 Cumulative to other laws.— All provisions of this chapter are cumulative to other provisions of law or rules of court about service of process, and all other provisions about service of process are cumulative to this chapter.

History.—s. 9, ch. 11829, 1927; CGL 4265; s. 7, ch. 22858, 1945; s. 4, ch. 67-254.

Note.— Former ss. 47.33, 47.44.

(g) Execute a bond in the amount of $5,000 with a surety company authorized to do business in this state for the benefit of any person wrongfully injured by any malfeasance, misfeasance, neglect of duty, or incompetence of the applicant, in connection with his or her duties as a process server. Such bond shall be renewable annually; and

(h) Take an oath of office that he or she will honestly, diligently, and faithfully exercise the duties of a certified process server.

(4) The chief judge of the circuit may, from time to time by administrative order, prescribe additional rules and requirements regarding the eligibility of a person to become a certified process server or to have his or her name maintained on the list of certified process servers.

(5)(a) An applicant who completes the requirements set forth in this section and whose name the chief judge by order enters on the list of certified process servers shall be designated as a certified process server.

(b) Each certified process server shall be issued an identification card bearing his or her identification number, printed name, signature and photograph, the seal of the circuit court, and an expiration date. Each identification card shall be renewable annually upon proof of good standing and current bond.

(6) A certified process server shall place the information required in s. 48.031(5) on the first page of at least one of the processes served. Return of service shall be made by a certified process server on a form which has been reviewed and approved by the court.

(7)(a) A person may qualify as a certified process server and have his or her name entered on the list in more than one circuit.

(b) A process server whose name is on a list of certified process servers in more than one circuit may serve process on a person found in any such circuits.

(c) A certified process server may serve foreign process in any circuit in which his or her name has been entered on the list of certified process servers for that circuit.

(8) A certified process server may charge a fee for his or her services.

History.—s. 4, ch. 88-135; s. 284, ch. 95-147; s. 4, ch. 2004-273; s. 6, ch. 2011-159.

48.31 Removal of certified process servers; false return of service.—

(1) A certified process server may be removed from the list of certified process servers for any malfeasance, misfeasance, neglect of duty, or incompetence, as provided by court rule.

(2) A certified process server must be disinterested in any process he or she serves; if the certified process server willfully and knowingly executes a false return of service, he or she is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and shall be permanently barred from serving process in this state.

History.—s. 5, ch. 88-135; s. 285, ch. 95-147.

ORANGE COUNTY SHERIFF'S OFFICE

GENERAL ORDER

Effective Date: September 14, 2012	☒ **Rescinds** – G.O. 6.4.4 (August 19, 2011) ☐ **Amends**	**Number:** 6.4.4
SUBJECT: SPECIAL PROCESS SERVERS		**Print Date:**
Distribution: ALL PERSONNEL	**CALEA Standards:** **CFA Standards:**	

This order consists of the following:

1. Purpose
2. Policy
3. Procedures

1. Purpose

The purpose of this policy is to establish guidelines and procedures for the appointment and administration of special process servers.

2. Policy

The Sheriff may appoint special process servers who are citizens of Florida, to serve non-enforceable process within Orange County. All special process servers serve at the pleasure of the Sheriff.

3. Procedures

A. The Judicial Process Section Commander or his/her designee shall be responsible for appointing and managing special process servers.

1. All records on special process servers shall be maintained by the Special Process Server Coordinator.

B. All special process servers shall meet the criteria listed in Section 48.021, F.S., and applicable agency directives.

C. A special process server is appointed for a one-year term effective from the date of appointment.

D. A special process server will be issued a Sheriff's Office Identification Card which clearly identifies the appointee as a special process server.

E. All special process servers shall be issued the current Special Process Servers Policies and Procedure Manual, which shall include this general order.

1. Special process servers shall be held responsible for complying with the policies and procedures outlined in the manual.

2. The Special Process Server Coordinator shall be responsible for updating and amending the Special Process Servers Policies and Procedure Manual

when necessary.

F. Training and Testing

1. Each applicant for appointment as a special process server must attend an initial training school on service of process.

2. Each applicant for special process server must pass a written examination on the laws governing the service of process prior to appointment with a score higher than 85%.

3. All special process servers may be required to attend an annual retraining seminar approved by the Judicial Process Section Commander or his/her designee.

G. Rules of Conduct

1. Special process servers shall serve process in accordance with Florida Statutes, and any other applicable laws and/or regulations.

2. All special process servers shall serve only non-enforceable process.

3. While serving process, special process servers shall present their Sheriff's Office Identification upon request.

4. Special process servers shall charge a reasonable fee for the service of process. There is no minimum or maximum amount that must be charged.

5. Special process servers represent the Sheriff by virtue of their power and identification. When serving process they shall be courteous, professional, properly groomed and appropriately attired.
   a. Special process servers are expected to portray a professional appearance to the general public.
   b. All clothing will be of a professional nature. Clothing should be worn and fit in such a manner that it does not expose the abdomen, cleavage, or buttocks areas. No dress code can cover all contingencies, so Special Process Servers must exert a certain amount of judgment in their choice of clothing to wear to work.
   c. Slacks or dress pants will reflect a business-like, professional appearance.
   d. Collared or golf style shirts are acceptable.
   e. Professional, cuffed, or hemmed walking or dress shorts are permitted. The hem or cuff should be approximately one (1) inch above the knee.
   f. Washed-out, torn, frayed, or faded fabric is not appropriate.
   g. Shoes are to be worn at all times. Shoes must be in good repair. No slippers, flip-flops (plastic or leather), jellies, or beach shoes will be worn. Females may wear dress sandals if they are professional in appearance.
   h. Special process servers who have questions about the

appropriateness of specific items of clothing should discuss them with the Special Process Server Coordinator in advance.

6. Special process servers shall serve no process in which they have an interest in the cause of action.

7. Special process servers are required to type, legibly hand write, stamp, or by other printed methods, the following on the original and all copies of process:
   a. Name and identification number of the individual serving the process
   b. His/her business address and telephone number
   c. The title "Special Process Server"
   d. The date and time of service
   e. Have return notarized
   f. Notate the cost of service (on affidavit only)

8. Any lawsuits brought against a special process server due to actions as an appointee of the Sheriff, shall be reported as soon as practical to the Special Process Server Coordinator.

9. Any change in a special process server's home/work telephone number and/or address must be reported to the Special Process Server Coordinator within 48 hours of the change.

10. Failure to comply with a request made by a member of the Sheriff's Office designated to investigate a complaint could result in immediate revocation of the special process server appointment.

11. Special process servers shall truthfully answer all questions and inquires asked by a Sheriff's Office employee or appointee acting on the Sheriff's authority.

12. Any special process server who has his or her appointment suspended or revoked for misconduct in another county or judicial circuit may also have his or her appointment suspended or revoked in Orange County for that misconduct.

13. No special process server shall serve process for or sub-contract with a corporation in which a corporation officer's appointment as a special process server was suspended or revoked for misconduct.

14. No special process server shall be employed by or sub-contract with any company, corporation, individual, partnership or business which directs any special process server to violate the written directives of the agency.

15. No special process server shall be employed by or sub-contract with any former special process server, whose appointment was revoked or suspended for misconduct, for the purpose of serving process.

16. Any violation of the written directives may subject the special process server to immediate revocation of appointment.

17. The Sheriff reserves the right to amend the rules of conduct at any time.

H. Investigative Procedure

1. The Special Process Server Coordinator shall be responsible for investigating complaints of misconduct against a special process server.

2. Upon completing an investigation of misconduct, the Special Process Server Coordinator shall forward the investigation report and any recommendation to the Judicial Process Section Commander or designee for review and consideration.

I. Disciplinary Procedure

1. The Judicial Process Section Commander or designee shall have the authority to discipline special process servers.

2. A violation of the rules of conduct by a special process server may result in any of one or a combination of the following types of corrective or disciplinary action:
   a. Retraining
   b. Counseling
   c. Written reprimand
   d. Probationary period not to exceed on year
   e. Suspension of appointment not to exceed one year
   f. Revocation of appointment

3. A special process server who has his or her appointment suspended or revoked by the Judicial Process Section Commander or his/her designee may appeal the disciplinary action to the Court Services Division Commander or his/her designee.
   a. The appeal request must be made in writing via certified mail within ten (10) calendar days of being notified of the suspension or revocation of appointment. This ten-day period shall be computed as specified in General Order 5.1.0.
   b. The Division Commander in charge of the appeal shall schedule a hearing to consider the case. The hearing shall not be open to the public. The Division Commander shall ensure the hearing is tape-recorded in its entirety. The Division Commander shall have wide latitude to run the hearing as he or she deems appropriate to support the efficiency and effectiveness of the proceedings. The Division Commander may eject any person who disrupts the proceedings.
   c. The special process server shall submit a written statement explaining the specifics of his or her appeal to the Division Commander no later than three (3) calendar days before the scheduled hearing.
   d. Special process servers may be accompanied by an attorney or other representative, who may consult with the appellant during the hearing

but cannot speak for him or her.

e. The special process server who is appealing the discipline may make a verbal statement at the hearing not to exceed thirty (30) minutes. The Division Commander may question him or her.

f. Special process servers shall only be entitled to one appeal. A copy of the Division Commander's decision shall be forwarded to the Sheriff.

g. Written reprimands and probationary periods cannot be appealed.

h. Counseling is not formal discipline and is not appealable.

Jerry L. Demings

SHERIFF JERRY L. DEMINGS