

# WASHINGTON CASE UPDATE

## Not So Personal Service: Secondhand Service Sufficient

**From the desk of Kyle Riley: Is the benevolent relative who hands the defendant an improperly served summons and complaint an inadvertent process server? Read on to find out how the Washington Supreme Court resolved this question.**

**Claims Pointer: A defendant will be unable to quash service of process when they are served within the 90 day tolling period by any nonparty over 18 years of age. Thus, a helpful relative or friend may inadvertently serve process on the defendant when they pass on served documents to the defendant. As long as a person delivering the summons and complaint meets the statutory requirements for service of process, it will be effective.**

case in point...

Scanlan v. Townsend, 336 P.3d 1155 (2014).

On October 28, 2008, Theresa Scanlan (Scanlan) and Karlin Townsend (Townsend) were involved in a car accident. Scanlan filed a personal injury action against Townsend, and a process server delivered a copy of the summons and complaint to Townsend's father at her father's home. Townsend did not live with her father, but later Townsend's father handed the summons and complaint directly to Townsend within the statute of limitations. In a deposition Townsend testified that her father delivered the summons and complaint to her at the end of December 2011 or early January 2012. Townsend's attorney also stipulated Townsend's father delivered the complaint and summons to her within the 90 day tolling period. Townsend filed a motion to dismiss.

In opposition, Scanlan filed a declaration of the process server who indicated he asked a man (presumably Townsend's father) if she lived at the address and he indicated "Townsend came back to live with us." The declaration further stated the summons and complaint were left with the man and he indicated he would give them to Townsend when she came back. At the trial court level, Scanlan argued she served Townsend via substitute service. The trial court dismissed the lawsuit for lack of proper service. The Court of Appeals reversed the dismissal, finding that Townsend's father personally served Townsend. The Washington Supreme Court granted review of Townsend's claim that Scanlan failed to comply with RCW 4.28.080(15), which requires serving a copy of the summons to the defendant personally or by leaving a copy of the summons at the house of defendant's usual

abode with a person of suitable age and discretion residing therein.

Townsend argued she was not served properly within the three year statute of limitations, and that her father was not competent to serve process because process on her father was defective in the first instance and could not be cured by his delivery of the summons and complaint to Townsend at a later time. The Court addressed for the first time whether "secondhand service" satisfies Washington service of process requirements. The Court pointed out that under CR 4(c) any nonparty over 18 years of age may serve process. A plain reading of the rule reveals that the legislature designated not only who could serve a summons, but also who could not, and nothing in the rule restricts a person who is not a process server or government agent from serving process.

Concluding that Washington allows for secondhand service, the Court addressed whether Townsend's father (who had received the summons and complaint and told the process server that he would deliver them) could have served process on Townsend. The Court held that Townsend's father, who was over 18 years old and not a party to the action, met the statutory minimums for authority to serve Townsend with the summons and complaint. Additionally, because Townsend's father personally handed the summons and complaint to Townsend within the 90 day tolling period, service was proper on Townsend.



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