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COURTS

Probate Courts: Provide Method for Service of Process on Minors or Incapacitated Adults in Probate Court Proceedings

CODE SECTION: O.C.G.A. § 15-9-17 (new)
BILL NUMBER: HB 71
ACT NUMBER: 1001
SUMMARY: The Act provides a modernized method for serving process upon minors or incapacitated adults in probate court proceedings. There are two requirements. First, the probate court must mail, by certified mail, a copy of the document being served to the minor or incapacitated adult. Second, the probate court must serve the legal guardian or guardian ad litem. The guardian must acknowledge service and certify that the document has been delivered to the minor or incapacitated adult. The court's certificate of service and the guardian's acknowledgement and certification must be filed with the court as proof of this service.

EFFECTIVE DATE: July 1, 1994

History

This Act provides an alternative method of service for practitioners in an effort to address the peculiar practice of physically serving young children or certain incapacitated adults.¹ The former method of service—physically serving the individual—is often a formality with little practical benefit.² Although serving minors or incapacitated adults is not a widespread problem in the legal community, this Act

1. Telephone Interview with Rep. Ray Holland, House District No. 157 (June 13, 1994) [hereinafter Holland Interview]. Interestingly, Rep. Holland had a personal interest in sponsoring HB 71. As a young practitioner in Ashburn, Georgia, Rep. Holland witnessed the peculiar practice of the county sheriff serving papers on a young infant named Seth Denham. Seth's father had passed away and Rep. Holland watched as the sheriff served the infant while his family looked on. In the 1994 Georgia General Assembly, twelve-year-old Seth served as a page for Rep. Holland. Rep. Holland gave Seth a copy of HB 71 and told him to return to his school and inform his friends and classmates that the "Seth Denham Bill" had passed the General Assembly. *Id.*

2. *Id.*

modernizes the law and allows practitioners to use a more palatable method of service.³

HB 71

The Act establishes a new method for serving minors or incapacitated adults in probate court. Although the Act alters the previously accepted and traditional method of service, it outlines measures that are more than adequate for ensuring notice to the affected individuals.⁴ This new method of service is cumulative and thus is not the required or even the preferred method in all situations.⁵ For example, service upon minors in probate matters according to Code section 9-11-4(j) remains an option for practitioners.⁶

There are two requirements for proper service under this Act. First, the probate court must mail, by certified mail, a copy of any document being served to the minor or incapacitated adult.⁷ In the initial version of the bill, the language was unclear as to who mailed the copy of the document.⁸ The Senate Committee on Special Judiciary offered a committee substitute that added the provision requiring the probate court to do the mailing.⁹

The second requirement of the Act was contained in the initial version of the bill and remained unchanged throughout the amendment and substitute process.¹⁰ This provision requires service upon the legal guardian or guardian ad litem for any document mailed to the minor or incapacitated adult.¹¹ However, in order for this service to be valid the guardian must both acknowledge receiving the document and certify that he or she has given the document to the minor or incapacitated adult.¹² These "service" requirements do not contemplate personal service, but merely allow service of process to be complete once the requirements are met.¹³

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3. *Id.*

4. *Id.*

5. *Id.*

6. See O.C.G.A. § 15-9-17 (1994) (using the permissive language "may" rather than "shall" in reference to service according to this Code section); see also Holland Interview, *supra* note 1.

7. O.C.G.A. § 15-9-17(1) (1994).

8. HB 71, as introduced, 1994 Ga. Gen. Assem.

9. HB 71 (SCS), 1994 Ga. Gen. Assem.

10. Compare HB 71, as introduced, 1994 Ga. Gen. Assem. with O.C.G.A. § 15-9-17(2) (1994).

11. O.C.G.A. § 15-9-17(2) (1994).

12. *Id.*

13. Holland Interview, *supra* note 1.