

RESOLUTION 06-12-2015

DIGEST

Civil Procedure: Service of Process in Gated Communities

Amends Code of Civil Procedure section 415.21 to authorize any investigator employed by a government entity to serve process in a gated community.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 415.21 to read as follows:

§415.21

1 (a) Notwithstanding any other law, any person shall be granted access to a gated
2 community for a reasonable period of time for the sole purpose of performing lawful service of
3 process or service of a subpoena, upon identifying to the guard the person or persons to be
4 served, and upon displaying a current driver's license or other identification, and one of the
5 following:

6 (1) A badge or other confirmation that the individual is acting in his or her capacity as a
7 representative of a county sheriff, ~~or marshal,~~ or investigator employed by a government entity.

8 (2) Evidence of current registration as a process server pursuant to Chapter 16
9 (commencing with Section 22350) of Division 8 of the Business and Professions Code or of
10 licensure as a private investigator pursuant to Chapter 11.3 (commencing with Section 7512) of
11 Division 3 of the Business and Professions Code.

12 (b) This section shall only apply to a gated community that is staffed at the time service
13 of process is attempted by a guard or other security personnel assigned to control access to the
14 community.

(Proposed new language underlined; language to be deleted in strikeout.)

PROPONENT: Los Angeles County Bar Association.

STATEMENT OF REASONS:

The Problem: Public Defender investigators are not peace officers and often are not registered process servers. As such Public Defender investigators have been denied access to gated communities when the investigator was serving a subpoena. This is despite the fact that Public Defender investigators are government employees and carry a badge. The same problem can occur with investigators from other governmental entities, such as District Attorney investigators even though they are peace officers.

The Solution: This resolution gives investigators employed by public entities the same access to gated communities as any other persons serving process.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESPONSIBLE FLOOR DELEGATE: Mark Harvis

RESOLUTION COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolution found.

Reasons:

This resolution amends Code of Civil Procedure section 415.21 to authorize any investigator employed by a government entity to serve process in a gated community. This resolution should be approved in principle because it ensures that authorized persons would be allowed entrance to serve process in a gated community so long as that person had adequate identification as to his or her authority and purpose.

This resolution applies to gated communities where the gate to which entrance is sought is staffed at the time of entrance. Under this resolution, any investigator who is employed by a government entity would be entitled to enter a gated community to serve process in the same way that a sheriff, California state or federal marshal, or registered process server can. Such investigators are already authorized to serve process and should be allowed to do so to the same extent that all other authorized process servers can.

Private gate entrance staff for gated communities are not required to be licensed. Unless the person seeking entrance has a badge identifying that person as a peace officer, private guard staff often refuse entrance. This resolution would ensure that authorized persons, including government investigators, are allowed entrance so long as those persons had adequate identification as to his or her authority and purpose.

SECTION COMMENTS TO RESOLUTION 06-12-2015

STATE BAR OF CALIFORNIA'S COMMITTEE ON ADMINISTRATION OF JUSTICE

APPROVE

The State Bar's Committee on Administration of Justice (CAJ) agrees that an "investigator employed by a government entity" should be added to the list of individuals who are granted access to a gated community for the sole purpose of performing lawful service of process or service of a subpoena.

Disclaimer

This position is only that of the State Bar of California's Committee on Administration of Justice. This position has not been adopted by the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Committee activities relating to this position are funded from voluntary sources.