

## What If You Can't Find Your Debtor?



Collection lawyers sometimes find the most frustrating part of a lawsuit is attempting to get the debtor served. This is because service is not achieved by the lawyer himself. He must depend upon certified mail, the Sheriff, or in some cases, Special Bailiffs, to get the necessary result.

Kentucky law has eased things somewhat through KRS 271b.5-040, which designates service requirements upon corporations. As you know, corporations must provide the Secretary of State with the name and address of a registered agent upon whom process can be served.

All too frequently, an experienced collection lawyer finds that the listed process agent is nowhere to be found at the registered office. KRS 271b.5-040 provides, however, that if a corporation has no registered agent, or if the agent cannot with "reasonable diligence" be served, the corporation may be served by registered or certified mail, return receipt requested, if the

Summons and Complaint are addressed to the Secretary of the corporation at its principal office.

Service under the statute is deemed perfected at the earliest of (a) the date the corporation receives the mail; (b) the date shown on the return receipt, if signed on behalf of the corporation; (c) five (5) days after its deposit in the United States Mail, as evidenced by the postmark, if mailed post-paid and correctly addressed.

The statute does not require actual service. The reasoning of the drafters is clear. A corporation is, after all, a creature of statute. As such, it must play by the rules. If a corporation is to enjoy the protection of this unnatural creation, that is, corporate status (including the ability to shield its principals from personal liability), it must pay the price. This statute prevents a Kentucky corporation from evading service of process. The debtor corporation can run, but it can't hide. If the corporation simply refuses its mail or ignores it, default judgment based upon mere mailing of the Summons and Complaint to the corporate secretary will be sufficient for a creditor to obtain a default judgment and execution thereunder. □

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