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Service of Federal Process in Florida

Who in Florida can serve a Federal Summons and Complaint and/or a Federal Writ of Garnishment? Under the Federal Rules of Civil Procedure (Rule 4(C)(2), service may be made by ANY person who is not a party to the action, and is not less than 18 years of age. Occasionally there is some interesting case law concerning this. Benny v. Pipes, 799 F.2d 489 (1986), cert. denied 484 U.S. 870, 108 S.Ct. 198 (1987), was a civil rights suit brought by two prisoners against several prison guards. Service was made by a fellow prisoner, not a party to the action. The guards apparently rejected the notion that service could be effective from the hands of a prisoner who was "a convicted felon", and therefore reacted to the service by crumpling the papers and throwing them in the trash. The Ninth Circuit Court of Appeals held that service was valid.

No pertinent sections of Florida law specifically refer to service rules as appling to Writs of Garnishment, and so a controversy over the sufficiency of service of a Writ of Garnishment in a federal court in Florida will be governed by the federal rules (i.e., any non-party over the age of 18 can serve).

Strong v. Laubach, 371 F.3d 1242 (10th Cir. 2004) sets forth the necessary credentials for service of a Writ of Garnishment in federal court in the state of Florida. *Laubach* stands for the general proposition that federal rules will only apply and control (regarding sufficiency of process) "if there is no state statute specifically applicable to service of garnishments. In other words, a specific state garnishment rule trumps the federal rules." *Id.* at 1247.[1] In *Laubach*, the Tenth Circuit observed that Oklahoma's general garnishment statute did not contain a specific rule for service of process (insofar as the disputed issue was concerned, precisely) and instead referred to the general Oklahoma procedural law for rules governing service of process. However, it did find that the general statute covering service of process had been amended to include a specific provision applicable to garnishments. Accordingly, the Court held that this specific state statute applied rather than the federal "exception" under FRCP 69(a).[2]

Broadly applying that reasoning to Florida, I surmised that state rules for service of process would apply to federal writs of garnishment. After reviewing the Oklahoma statutory scheme under review in *Laubach* and comparing it to Florida's in the present context, it is certainly arguable that *Laubach* is inapposite, anyway. As in *Laubach*, Florida's general garnishment statute(s) (Chapter 77) does not contain a specific rule for service of process with respect to age or licensure. However, there does not seem to be any Florida analogue for the garnishment-specific amendment or provision that the *Laubach* court seized upon either.[3] I was unable to find any language in either Chapter 77 or Chapter 48 of the Florida Statutes explicitly referring to garnishment (service) in a manner similar to that amendment of import of *Laubach*. Thus, since no state statute appears to expressly govern the sufficiency of service of a writ of garnishment by a mechanism similar to what was presented in *Laubach*, it's at least arguable that any controversy over sufficiency in Florida should be governed by the federal rule/exception by default. If that's the case, then any person who is 18 and not a party to the action would be eligible to serve.[4]

In *U.S. for Use of Tanos v. St. Paul Mercury Ins. Co.,* 361 F.2d 838 (5th Cir. 1966), the Tenth Circuit held that FRCP 4 controlled service in a Florida garnishment action because there were no specific state statutes on the books. Applying older federal rules, the *Tanos* Court held that service had to be effectuated by a U.S. Marshal. As we have previously researched and discussed, that federal rule has since been amended to allow for service to be executed by any non-party over the age of 18. The only reason that the basic *Tanos* logic would not apply in any contemporary dispute would be if the Florida garnishment rules have since been changed or supplemented a la *Laubach* - - and it does not appear they have.

These minimal requirements will only suffice where there exists no conflicting or controlling state statute, as Fed. R. Civ. P. 69(a), in pertinent part, provides:

"The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution - - must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies."

I would also mention that the court in *Gen. Elec. Capital Corp. v. THE JANE R.*, CIV. A. 97-1176, 2000 WL 825679 (E.D. La. June 23, 2000), contrasted the situation it was presented with from *Tanos* and thereby otherwise indicated that *Tanos* was still good law. There again, the issue was whether a state statute explicitly trumped the federal rule. The Court found that one did, holding that "the Louisiana provisions for garnishment proceedings set forth a process for service specific to this situation."[5] Conversely, Chapter 77 provisions in Florida only refer to service obliquely. Per *Laubach* and *Tanos,* this lack of specific prescription should trigger a procedural default to the federal rule.

[1]*The rule for service under Fed. R. Civ. P. 4(c)(2) is that service may be executed by "[a]ny person who is at least 18 years old and not a party" to the action.*

[2]If a "specific state garnishment rule merely refers to the state's general rules for service of process...federal law governs." *Laubach*, 371 F.2d at 1247 (citing *Okla. Radio Assocs. v. FDIC,* 969 F.2d 940, 043 (10th Cir. 1992).

[3]§ 77.04 does cover form requirements, generally.

[4]For what it's worth, this Interpretation avoids the absurdity of permitting service of a federal summons and complaint by someone meeting these minimum criteria but disallowing service of a garnishment writ executed by that same person.

[5] The Court observed that

> [t]he Louisiana Code of Civil Procedure has specific articles which address garnishment proceedings in articles 2411 through 2413. Article 2412 address the method of service in such a proceeding and subsection C provides that service of garnishment interrogatories "shall be made in the manner of provided for the service of citation". C.C.P. 2412(C).

Respectfully Submitted
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