

#67

3/6/68

Memorandum 68-32

Subject: Study 67 - Unincorporated Associations (Assembly Bill No. 39)

You will recall that at the last meeting the Commission accepted the suggestion of the State Bar that Assembly Bill No. 39 be revised to permit service on a mere member of an unincorporated association only if none of the officers listed in the bill can be found in the state "after diligent search." The bill was amended accordingly. The amendment necessitated deletion of the urgency clause since it would have imposed a requirement for service that does not now exist and lawyers would be unaware of the new requirement for at least several months after the passage of the bill.

We enclose a copy of Assembly Bill No. 39 as introduced and as amended in the Assembly. We assume that by the time you receive this memorandum the bill will have passed the Assembly.

The staff has given considerable thought to the revised bill. We have concluded that the bill in its present form (with the State Bar amendment) is not a desirable solution to the problem. Accordingly, we make the following suggestions for further revision of the bill:

1. The bill should amend Section 411 of the Code of Civil Procedure (to take effect upon passage of the bill) to permit service on a designated officer whether or not an agent for service has been designated but the "diligent search" requirement should not be included in this amendment. An urgency clause would be added to the bill so that this amendment could take effect upon passage of the bill. The reasons stated in the recommendation demonstrate the need for this amendment to take effect upon passage.

2. The bill could also amend Section 411 of the Code of Civil Procedure (to take effect at the normal effective date for measures enacted at the 1968 regular session) to add the "diligent search" requirement. However, the staff believes that further consideration should be given to whether this requirement should be imposed.

The phrase "after diligent search" which has been added by Assembly Bill No. 39 to subdivision (2.1) of Code of Civil Procedure Section 411 (unincorporated associations) already is used in subdivisions (1) (domestic corporations) and (7)(election candidates) of the same section. Note, however, that both subdivisions (1) and (7) contain references to other statute sections. An examination of the sections to which reference is made, Corporations Code Section 3302 and Elections Code Section 54 (included in Exhibit I), reveals that the plaintiff is required to file an affidavit showing the exercise of "due diligence" to effect service on the defendant and must obtain an order from the court before substitute service is permitted. See also Code of Civil Procedure Section 412 (service by publication), Code of Civil Procedure Section 1018 (persons leaving state for over one year, nonresidents, and foreign corporations), Corporations Code Section 3305 (service on dissolved corporation), and Corporations Code Section 6501 (service on foreign corporations)(included in Exhibit I). All of these sections require the filing of an affidavit and a court order permitting substituted service.

Note that although subdivisions (1) and (7) of Section 411 use the phrase "after diligent search" the sections referred to in those subdivisions use the phrase "due diligence."

In Civil Procedure Before Trial (Cal. Cont. Ed. Bar) at 502, the law is summarized as follows:

Due diligence means a systematic investigation and inquiry conducted in good faith by the party. The declaration or affidavit must show facts indicating sincere desire and honest effort to locate the defendant.

Most of the cases construing the "due diligence" requirement have arisen under the service of publication provisions of the Code of Civil Procedure. In the leading case, Rue v. Quinn, 137 Cal. 651, 66 Pac. 216, 70 Pac. 732 (1902), construing the "due diligence" requirement of Section 412 of the Code of Civil Procedure (service by publication), the court stated:

If the facts set forth in the affidavit have a legal tendency to show the exercise of diligence on behalf of the plaintiff in seeking to find the defendant within the state, and that after the exercise of such diligence he cannot be found, the decision of the judge that the affidavit shows the same to his satisfaction is to be regarded with the same effect as is his decision upon any other matter or fact submitted to his judicial determination.

The court further stated:

From the nature of the question to be determined, the evidence thereon must to a very great extent be hearsay, and the number and character of persons inquired of must in each case be determined by the judge. Diligence is in all cases a relative term, and what is due diligence must be determined by the circumstances of each case.

It is thus apparent that the affidavit and court order procedure serves two purposes. First, the judge who reviews the affidavit purporting to show "due diligence" can advise the plaintiff as to what additional steps are necessary before he will issue the order. Second, and most important, the determination and order of the judge is as difficult to set aside as any other fact determination by the judge. The affidavit and order thus serve a very useful purpose.

The remaining question is whether it would be desirable to require the plaintiff to obtain a court order before making service on a mere

member. Obviously, the burden to the plaintiff must be balanced against the need for notice to the defendant.

Consideration also should be given to permitting service on an unincorporated association by publication under the same circumstances where service by publication is authorized in the case of other defendants.

The following revised bill is submitted for consideration in connection with the matters outlined in this memorandum:

Section 1. Section 411 of the Code of Civil Procedure is amended to read:

411. The summons must be served by delivering a copy thereof as follows:

1. If the suit is against a domestic corporation: to the president or other head of the corporation, a vice president, a secretary, an assistant secretary, general manager, or a person designated for service of process or authorized to receive service of process. If such corporation is a bank, to any of the foregoing officers or agents thereof, or to a cashier or an assistant cashier thereof.

If no such officer or agent of the corporation can be found within the state after diligent search, then to the Secretary of State as provided in Sections 3301 to 3304, inclusive, of the Corporations Code, unless the corporation be of a class expressly excepted from the operation of those sections.

2. If the suit is against a foreign corporation, or a nonresident joint stock company or association, doing business in this state: in the manner provided by Sections 6500 to 6504, inclusive, of the Corporations Code.

2.1. If the suit is against an unincorporated association (not including a foreign partnership covered by Section 15700 of the Corporations Code): if

(a) If the unincorporated association is a general or limited partnership that has designated an agent for service of process as provided in Section 24003 of the Corporations Code, to the person so designated as-agent-fer-service-ef-process or to a general partner or the general manager of the partnership .

(b) If the association is not a general or limited partnership and the association has designated an agent for service of process as provided in Section 24003 of the Corporations Code, to the person so designated or to the president or other head of the association, a vice president, secretary, or general manager thereof.

(c) If no person has been designated as agent for service of process as provided in Section 24003 of the Corporations Code, or if the person so designated cannot be found at his address as specified in the index referred to in Section 24004 of the Corporations Code, then to any one or more of the association's members and by mailing a copy thereof to the association at its last known mailing address.

2.2. If the suit is against a foreign partnership covered by Section 15700 of the Corporations Code: in the manner provided by Section 15700 of the Corporations Code.

3. If the suit is against a minor, under the age of 14 years, residing within this state: to such minor, personally, and also to his father, mother, or guardian; or if there be none within this state, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed.

4. If the suit is against a person residing within this state and for whom a guardian or conservator has been appointed: to such person, and also to his guardian or conservator.

5. Except as otherwise specifically provided by statute, in an action or proceeding against a local or state public agency, to the clerk, secretary, president, presiding officer or other head thereof or of the governing body of such public agency. "Public agency" includes (1) every city, county, and city and county; (2) every public agency, authority, board, bureau, commission, corporation, district and every other political subdivision; and (3) every department and division of the state.

6. In all cases where a corporation has forfeited its charter or right to do business in this state, or has dissolved, by delivering a copy thereof to one of the persons who have become the trustees of the corporation and of its stockholders or members; or, in a proper case, as provided in Sections 3305 and 3306 of the Corporations Code.

7. If the suit is one brought against a candidate for public office and arises out of or in connection with any matter concerning his candidacy or the election laws and said candidate cannot be found within the state after diligent search, then as provided for in Section 54 of the Elections Code.

8. In all other cases to the defendant personally.

Comment. Subdivision 2.1 was added to Section 411 in 1967 to prescribe the manner of service of process on an unincorporated association. Under the subdivision as originally added, if an agent for service of process had been designated by the association, service could only be made on the person designated. The subdivision is amended to provide that service may be made on the association by delivering a copy of the process to one of the officers referred to in the subdivision, whether or not the association has designated an agent for service of process.

Sec. 2. Section 411 of the Code of Civil Procedure is amended to read:

411. The summons must be served by delivering a copy thereof as follows:

1. If the suit is against a domestic corporation: to the president or other head of the corporation, a vice president, a secretary, an assistant secretary, general manager, or a person designated for service of process or authorized to receive service of process. If such corporation is a bank, to any of the foregoing officers or agents thereof, or to a cashier or an assistant cashier thereof. If no such officer or agent of the corporation can be found within the state after diligent search, then to the Secretary of State as provided in Sections 3301 to 3304, inclusive, of the Corporations Code, unless the corporation be of a class expressly excepted from the operation of those sections.

2. If the suit is against a foreign corporation, or a nonresident joint stock company or association, doing business in this state: in the manner provided by Sections 6500 to 6504, inclusive, of the Corporations Code.

2.1. If the suit is against an unincorporated association (not including a foreign partnership covered by Section 15700 of the Corporations Code): if

(a) If the unincorporated association is a general or limited partnership that has designated an agent for service of process as provided in Section 24003 of the Corporations Code, to the person so designated as agent for service of process or to a general partner or the general manager of the partnership .

(b) If the association is not a general or limited partnership and the association has designated an agent for service of process as provided in Section 24003 of the Corporations Code, to the person so designated or to the president or other head of the association, a vice president, secretary, or general manager thereof.

(c) If no person has been designated as agent for service of process as provided in Section 24003 of the Corporations Code, or if the person so designated cannot be found at his address as specified in the index referred to in Section 24004 of the Corporations Code, and if no person listed in subdivision (a) or (b), as the case may be, can be found within the state after diligent search, then to any one or more of the association's members and by mailing a copy thereof to the association at its last known mailing address in the manner provided by Section 24007 of the Corporations Code .

2.2. If the suit is against a foreign partnership covered by Section 15700 of the Corporations Code: in the manner provided by Section 15700 of the Corporations Code.

3. If the suit is against a minor, under the age of 14 years, residing within this state: to such minor, personally, and also to his father, mother, or guardian; or if there be none within this state, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed.

4. If the suit is against a person residing within this state and for whom a guardian or conservator has been appointed: to such person, and also to his guardian or conservator.

5. Except as otherwise specifically provided by statute, in an action or proceeding against a local or state public agency, to the clerk, secretary, president, presiding officer or other head thereof or of the governing body of such public agency. "Public agency" includes (1) every city, county, and city and county; (2) every public agency, authority, board, bureau, commission, corporation, district and every other political subdivision; and (3) every department and division of the state.

6. In all cases where a corporation has forfeited its charter or right to do business in this state, or has dissolved, by delivering a copy thereof to one of the persons who have become the trustees of the corporation and of its stockholders or members; or, in a proper case, as provided in Sections 3305 and 3306 of the Corporations Code.

7. If the suit is one brought against a candidate for public office and arises out of or in connection with any matter concerning his candidacy or the election laws and said candidate cannot be found within the state after diligent search, then as provided for in Section 54 of the Elections Code.

8. In all other cases to the defendant personally.

Comment. Subdivision 2.1 was added to Section 411 in 1967 to prescribe the manner of service of process on unincorporated associations. Under the subdivision as originally added, if an agent for service of process had been designated by the association, service could only be made on the person designated. The subdivision is amended to provide that service may be made on the association by delivering a copy of the process to one of the officers referred to in the subdivision, whether or not the association has designated an agent for service of process.

Under subdivision 2.1 as originally enacted, service could be made on a mere member even though one of the responsible officers referred to in the subdivision could have been served. The subdivision is amended to require that service be made in the manner provided in Corporations Code Section 24007 if neither the agent for service, if one has been designated, nor any of the other persons designated in the subdivision can be found within the state after diligent search. The amendment conforms the subdivision to the statutory provisions relating to service of process on domestic corporations.

Sec. 3. Section 412 of the Code of Civil Procedure is amended to read:

412. Where the person on whom service is to be made resides out of the state; or has departed from the state; or cannot, after due diligence, be found within the state; or conceals himself to avoid the service of summons; or is a corporation or unincorporated association having no officer or other person upon whom summons may be served, who, after due diligence, can be found within the state, and the fact appears by affidavit to the satisfaction of the court, or a judge thereof; and it also appears by such affidavit, or by the verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a

necessary or proper party to the action; or when it appears by such affidavit, or by the complaint on file, that it is an action which relates to or the subject of which is real or personal property in this state, in which such person defendant or corporation defendant or unincorporated association defendant has or claims a lien or interest, actual or contingent, therein, or in which the relief demanded consists wholly or in part in excluding such person or corporation or unincorporated association from any interest therein, such court, or judge may make an order that the service be made by the publication of the summons.

Comment. Section 412 is amended to make the service by publication procedure applicable to actions against unincorporated associations.

Sec. 4. Section 24007 is added to the Corporations Code, to read:

24007. If designation of an agent for the purpose of service of process has not been made as provided in Section 24003, or if the agent designated cannot with due diligence be found at the address specified in the index referred to in Section 24004 for personal delivery of the process, and it is shown by affidavit to the satisfaction of a court or judge that personal service of process against an unincorporated association cannot be made with the exercise of due diligence upon an officer or agent referred to in subdivision 2.1 of Section 411 of the Code of Civil Procedure, the court or judge may make an order that service be made upon the unincorporated association by delivery of a copy of the process to any one or more of the association's members designated in the order and by mailing a copy of the process to the association at its last known address. Service in this manner constitutes personal service upon the unincorporated association.

Comment. Section 24007 is based on Corporations Code Section 3302 relating to service upon a domestic corporation, but service is made on one or more of the members of the association designated in the order rather than upon the Secretary of State.

"Due diligence" means a systematic investigation and inquiry conducted in good faith by the party. The affidavit must show fact indicating sincere desire and an honest effort to locate the defendant. See Civil Procedure Before Trial, 502 (Cal. Cont. Ed. Bar). Moreover, the following statements from Rue v. Quinn, 137 Cal. 651, 66 Pac. 216, 70 Pac. 732 (1902) are pertinent:

If the facts set forth in the affidavit have a legal tendency to show the exercise of diligence on behalf of the plaintiff in seeking to find the defendant within the state, and that after the exercise of such diligence he cannot be found, the decision of the judge that the affidavit shows the same to his satisfaction is to be regarded with the same effect as is his decision upon any other matter or fact submitted to his judicial determination.

* * * * *

From the nature of the question to be determined, the evidence thereon must to a very great extent be hearsay, and the number and character of persons inquired of must in each case be determined by the judge. Diligence is in all cases a relative term, and what is due diligence must be determined by the circumstances of each case.

Sec. 5. Section 1 of this act becomes operative on the effective date of this act. Sections 2, 3, and 4 of this act become operative on the 61st day after adjournment of the 1968 regular session of the Legislature.

Sec. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In 1967, subdivision 2.1 was added to Section 411 of the Code of Civil Procedure to prescribe the manner of service of process on unincorporated associations. As added, the subdivision requires that, if an agent for service of process has been designated by the association, service may be made only upon the agent designated. Hence, if an agent has been designated, service upon the association is not effected by serving the president, vice president, secretary, general manager, or general partner of the association. As the purpose of the change made in 1967 was only to preclude service on a mere member of the association if an agent had been designated, there was no need to preclude service upon a responsible officer even though an agent had been designated. The effect of this feature of the change has been to require plaintiffs to ascertain whether an agent has been designated in every case, including those in which the plaintiff is well aware of the identity of the responsible officers. This change in longstanding practice (e.g., effecting service on a partnership by serving a general partner) may also cause some plaintiffs inadvertently to fail to perfect service. To overcome these problems by permitting service to be made upon a responsible officer, as well as the designated agent, it is necessary that this act take effect immediately.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

STATUTORY PROVISIONS RELATING TO SERVICE

CODE OF CIVIL PROCEDURE

§ 412. Service by publication

Where the person on whom service is to be made resides out of the State; or has departed from the State; or can not, after due diligence, be found within the State; or conceals himself to avoid the service of summons; or is a corporation having no officer or other person upon whom summons may be served, who, after due diligence, can be found within the State, and the fact appears by affidavit to the satisfaction of the court, or a judge thereof; and it also appears by such affidavit, or by the verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action; or when it appears by such affidavit, or by the complaint on file, that it is an action which relates to or the subject of which is real or personal property in this State, in which such person defendant or corporation defendant has or claims a lien or interest, actual or contingent, therein, or in which the relief demanded consists wholly or in part in excluding such person or corporation from any interest therein, such court, or judge, may make an order that the service be made by the publication of the summons.

§ 1018. Service on various nonresidents

(a) Foreign corporations; nonresidents. Every foreign corporation and nonresident individual who either incurs any liability to the State of California under any tax law of the State or who is a guardian, receiver, or fiduciary of any individual, estate or trust, or corporation, or a member of a partnership, incurring any such liability, shall file with the Secretary of State a designation of a natural person, stating his residence or business address in this State, as its or his agent for the purpose of service of process in any action to enforce such liability in the courts of this State, and the delivery to such agent of a copy of any process in any such action shall constitute valid service on such foreign corporation, nonresident, individual, fiduciary or partner. A copy of such designation, certified by the Secretary of State, is sufficient evidence of the appointment of such agent for service of process. Such foreign corporation or nonresident individual shall file with the Secretary of State notice of any change of address of the person thus designated, and may revoke any such designation by filing notice of the revocation thereof with the Secretary of State.

(b) **Resident leaving state for over year.** Every resident individual who incurs any liability to the State of California under any tax law of the State or who is a guardian, receiver, or fiduciary of any individual, estate or trust, or corporation, or member of a partnership, incurring any such liability, who hereafter leaves the State for a period of longer than one year, or is hereafter absent from the State for a period longer than one year, and who is or was a resident at the time of leaving the State, shall file with the Secretary of State a designation of a natural person, stating his residence or business address in this State, as its or his agent for the purpose of service of process in any action to enforce such liability in the courts of this State, and the delivery to such agent of a copy of any process in any such action shall constitute valid service on such individual. A copy of such designation, certified by the Secretary of State, is sufficient evidence of the appointment of such agent for service of process. Such individual shall file with the Secretary of State notice of any change of address of the person thus designated, and may revoke any such designation by filing notice of the revocation thereof with the Secretary of State.

(c) **Service on secretary of state; affidavit of diligence.** In the event that no agent designated in accordance with the provisions of this section can be found with due diligence at the address given, or if the agent so designated be no longer authorized to act, or if no person has been designated, and if personal service of process upon the corporation or individual within this State cannot be made with the exercise of due diligence, then service shall be made by delivery of the process to the Secretary of State or to an assistant or deputy secretary of state, and such service shall be a sufficient service on said corporation or individual subject to compliance with subsection (d) hereof. The making and filing of an affidavit or affidavits in the action or proceeding showing what effort was made or action taken to comply with the above requirements of due diligence and the making of an order of the court in which said action or proceeding is pending finding that due diligence has been exercised and directing service of summons as herein provided, shall be sufficient proof of the fact of such exercise of due diligence.

(d) **Service on secretary of state; telegraphic notice.** In the event of service of process under subsection (c) hereof, there shall be delivered to the Secretary of State by the attorney representing the State a statement of the address of the corporation or individual to which or to whom notice, and a copy of the summons and complaint, shall be sent. Upon the receipt of such summons and complaint the Secretary of State forthwith shall give notice to the corporation or individual by telegraph, charges prepaid, to the address given in the statement delivered to the Secretary of State at the time of such service, of the service of the summons and complaint and shall forward to such corporation or individual by registered mail, a copy of such summons and complaint. Personal service of such notice and a copy of such summons and complaint upon the corporation or individual wherever found outside this State shall be the equivalent of said mailing.

(e) **Service on secretary of state; proof; return.** Proof of compliance with subsection (d) hereof shall be made in the event of serv-

ice by mail by certificate of the Secretary of State, under his official seal, showing said mailing, together with the defendant's return receipt. Such certificate and receipt shall be appended to the original summons which shall be filed with the court from out of which such summons issued within such time as the court may allow for the return of such summons. In the event of personal service outside this State such compliance may be proved by the return of any duly constituted public officer, qualified to serve like process of and in the State or jurisdiction where the defendant is found, showing such service to have been made. Such return shall be appended to the original summons which shall be filed as aforesaid.

(f) **Force and validity of service.** Service made under this section shall have the same legal force and validity as if service had been made personally in this State; provided, however, that the defendant may appear and answer the complaint within 30 days from the date of service.

(g) **Continuances.** The court in which the action is pending may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action.

(h) **Record of secretary of state.** The Secretary of State shall keep a record of all process served upon him and shall record therein the time of such service and his action in respect thereto.

(i) **Partial invalidity.** If any clause, sentence, paragraph, or part of this section shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this section, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

CORPORATIONS CODE§§ 3302, 3303. Service on domestic corporations**3302.**

If designation of an agent for the purpose of service of process has not been filed with the Secretary of State, or if the agent designated cannot with due diligence be found at the address designated for personal delivery of the process, and it is shown by affidavit to the satisfaction of a court or judge that personal service of process against a domestic corporation cannot be made with the exercise of due diligence upon the designated agent or in any other manner provided by law the court or judge may make an order that the service be made upon the corporation by delivering by hand to the Secretary of State, or to any person employed in his office in the capacity of assistant or deputy, one copy of the process for each defendant to be served, together with a copy of the order authorizing such service. Service in this manner constitutes personal service upon the corporation.

3303.

Upon the receipt of any such copy of process, the Secretary of State shall give notice of the service of the process to the corporation at its principal office in this State, by forwarding to such office, by registered mail with request for return receipt, the copy of the process. If the only address disclosed by the records of the Secretary of State for the principal office is the county in which it is located, then the process shall be mailed to the county seat addressed to the corporation in care of the county clerk, or it may be mailed to any address for the corporation specified in the court order. If the process is mailed in care of the county clerk, the county clerk shall promptly send it to the corporation at its address within the county, if known to him, and if unknown, he shall cause the process to be posted at the courthouse of the county for 30 days. The defendant shall appear within thirty days after delivery of the process to the Secretary of State.

The Secretary of State shall keep a record of all process served upon him under this division, and shall record therein the time of service and his action with reference thereto.

§ 3305. Service on dissolved corporation

3305. Summons or other process against a corporation dissolved on or after August 14, 1929, may be served by delivering a copy thereof to an officer, director, or person having charge of its assets, or if no such person can be found, to any agent upon whom process might be served at the time of dissolution. If none of such persons can be found with due diligence and it is so shown by affidavit to the satisfaction of the court or judge, then the court or judge may make an order that summons or other process be served upon the dissolved corporation by delivering a copy thereof, together with a copy of the order, to the Secretary of State or an assistant or deputy secretary of state.

Corporations dissolved prior to August 14, 1929, may be served in the manner prescribed in the Code of Civil Procedure.

§ 6501. Service on foreign corporation

6501. If the agent designated for the service of process be a natural person and cannot be found with due diligence at the address stated in the designation or if such agent be a corporation and no person can be found with due diligence to whom the delivery authorized by Section 6500 may be made for the purpose of delivery to such corporate agent, or if the agent designated is no longer authorized to act, or if no agent has been designated and if no one of the officers or agents of the corporation specified in Section 6500 can be found after diligent search and it is so shown by affidavit to the satisfaction of the court or judge, then the court or judge may make an order that service be made by personal delivery to the Secretary of State or to an assistant or deputy secretary of state of two copies of the process together with two copies of the order, except that if the corporation to be served has not filed the statement required to be filed by Section 6403 then only one copy of the process and order need be delivered but the order shall include and set forth an address to which such process shall be sent by the Secretary of State.

ELECTIONS CODE§ 54. Service on election candidate

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Whenever any candidate files a declaration of candidacy, nomination paper, affidavit of acceptance of sponsor's declaration, acceptance of nomination or any other paper evidencing an intention to be a candidate for any public office at any election in this State with either the Secretary of State or a county clerk, he shall by such filing irrevocably appoint the Secretary of State or the county clerk with whom the filing is made and their successors in office his attorneys upon whom all process in any action or proceeding against him arising out of or in connection with any matters concerning his candidacy or the election laws may be served with the same effect as if the candidate had been lawfully served with process. The appointment shall continue until the day of election.

If in any action or proceeding arising out of or *in connection* with any matters concerning his candidacy or the election laws it is shown by affidavit to the satisfaction of a court or judge that personal service of process against the candidate cannot be made with the exercise of due diligence, the court or judge may make an order that the service be made upon the candidate by delivering by hand to the Secretary of State or the county clerk appointed as his attorney for service of process, or to any person employed in his office in the capacity of assistant or deputy, one copy of the process for the defendant to be served, together with a copy of the order authorizing such service. Service in this manner constitutes personal service upon the candidate. The Secretary of State and the county clerks of all counties shall keep a record of all process served upon them under this section, and shall record therein the time of service and their action with reference thereto.

Upon the receipt of any such service of process the Secretary of State or the county clerk shall immediately give notice of the service of the process to the candidate by forwarding the copy of the process to the candidate at the address shown on his declaration, nomination paper, affidavit, acceptance or other evidence of intention to be a candidate filed with that officer, by special delivery registered mail with request for return receipt.