

Effectuating Service of Process on Foreign Nationals in Automobile Collision Cases

by Steven M. Baker

In instances where an "at-fault" foreign national is involved in a collision while operating a rental car, a \$1,000,000.00 liability policy (optional as to the rental vehicle) is often in play. In light of said policy limits, the plaintiff's practitioner might be lulled into a false sense of security, as the matter seems to be a "no-brainer". Simply file a complaint and effectuate substituted service pursuant to NRS 14.070, which allows a plaintiff involved in an automobile accident to effectuate service of process on a defendant through the Director of the Department of Motor Vehicles after the plaintiff has exercised due diligence in attempting to locate the defendant within the state as follows:

1. The use and operation of a motor vehicle over the public roads, streets or highways, or in any other area open to the public and commonly used by motor vehicles, in the State of Nevada by any person, either as

principal, master, agent or servant, shall be deemed an appointment by the operator, on behalf of the operator and the operator's principal, master, executor, administrator or personal representative, of the Director of the Department of Motor Vehicles to be his or her true and lawful attorney upon whom may be served all legal process in any action or proceeding against the operator or the operator's principal, master, executor, administrator or personal representative, growing out of such use or resulting in damage or loss to person or property, and the use or operation signifies his or her agreement that any process against him or her which is so served has the same legal force and validity as though served upon him or her personally within the State of Nevada.

2. Service of process must be made by leaving a copy of the process with a fee of \$5 in the hands of the Director of the Department of Motor

Vehicles or in the office of the Director, and the service shall be deemed sufficient upon the operator if notice of service and a copy of the process is sent by *registered or certified mail* by the plaintiff to the defendant at the address supplied by the defendant in the defendant's accident report, if any, and if not, at the best address available to the plaintiff, and a return receipt signed by the defendant or a return of the United States Postal Service stating that the defendant refused to accept delivery or could not be located, or that the address was insufficient, and the plaintiff's affidavit of compliance therewith are attached to the original process and returned and filed in the action in which it was issued. Personal service of notice and a copy of the process upon the defendant, wherever found outside of this state, by any person qualified to serve like process in the State of Nevada is the equivalent of mailing, and may be proved by the affidavit of the person making the personal service ap-



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pended to the original process and returned and filed in the action in which it was issued.

...

6. The provisions of this section apply to nonresident motorists and to resident motorists who have left the State or cannot be found within the State following an accident which is the subject of an action for which process is served pursuant to this section. (Emphasis added.)

Easy, right? . . . Wrong! Said sense of security will turn into nausea when a Motion to Quash Service of Process shows up on your desk early one Monday morning. Arguably, NRS 14.070, although it would seem logically to do so, does not effectuate proper service on a foreign national under the terms of the Hague Convention.

In *Dahya v. Second Judicial Dist. Ct.*, 117 Nev. 208, 19 P.3d 239, 241-42 (Nev. 2001), the Supreme Court of Nevada addressed whether service of process on a defendant residing in Spain conformed with the Hague Convention. The Supreme Court of Nevada held:

Stated simply, the Hague Convention is designed to provide 'a mechanism by which a plaintiff authorized to serve process under the laws of its country can effect service that will give appropriate notice to the party being served and will not be objectionable to the country in which the party is served.' The Hague Convention applies 'in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.' ...Thus, any failure to comply with the Hague Convention's service methods would have the effect of nullifying the attempted service. *Id.* at 241-242.

The Supreme Court of Nevada further stated:

Three liberal methods of service are permitted under the Hague Convention. First, service may go through the central authority of the receiving country. Second, service may go through diplomatic or consular agents that the receiving country considers 'non-objectionable.' And third, service may be done by any method permitted by the internal law

of the receiving country. *Id.* at 242. *See also* Hague Convention, Art. 5, 8-11 and 9.

Specifically, the Hague Convention provides in Article 19 as follows:

To the extent that the internal law of a contracting State permits methods of transmission, other than those provided for in the preceding articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions. *See* Hague Convention, Art. 19.

The Supreme Court of Nevada in analyzing the term "permits" in the aforementioned third method of service detailed in Article 19 of the Hague Convention, however, stated:

Specifically, the Hague Convention was adopted with clear and delineated guidelines for the sole purpose of creating uniformity when effecting service abroad. Thus, rather than relying on the procedural service of process mechanisms espoused by fifty separate states in this country, and countless nations abroad, the Hague Convention sought to avoid the hidden pitfalls that inevitably closed courtroom doors to unwary foreign litigants by adopting a uniform set of service rules. With this background in mind, we conclude that an interpretation of "permits" which would allow for service by any means not particularly objected to by the foreign state would be discordant with the drafters' intent. *See Dahya* at p. 243.

Accordingly, it would appear that a foreign national is potentially not subject to substituted service through the DMV, but instead must be served pursuant to the Hague Convention as set forth, *supra*.

Luckily, service of process through the Hague Convention is relatively easy. Specialized process service entities provide such capabilities, and the NJA can provide information regarding the same. Please contact the NJA for information regarding foreign national service should the issue arise. Hope this is helpful.

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