



**November 2013 Tip of the Month:
Strict Compliance with Service Requirements
is Necessary in Eviction Actions**

Submitted by: Tony Morris, VLN Bridge Fellow

The Minnesota Court of Appeals recently held that strict compliance with the service requirements of Minn. Stat. § 504B.331 was necessary in eviction actions for the court to have personal jurisdiction over defendants.¹ The decision overruled a line of cases which held that substantial compliance with the service requirements was sufficient.² Strict compliance is required even when the defendant has actual knowledge of the eviction proceeding.³ This article explains the service requirements and provides tips for advising tenants in eviction actions.

Minn. Stat. § 504B.331: Eviction Service Requirements

An eviction summons must be personally served on the defendant at least seven days before the hearing by anyone who is not a named party in the action.⁴ In evictions concerning unoccupied nonresidential property where the defendant cannot be located, service is proper if a copy of the summons is left “in a conspicuous place on the property for not less than a week.”⁵ In evictions concerning residential property where the defendant cannot be located in the county, the summons may be left “in a conspicuous place on the property for not less than a week” if:

- service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 p.m. and 10:00 p.m.; AND
- the plaintiff or the plaintiff’s attorney has signed and filed with the court an affidavit stating that:
 - the defendant cannot be found, or that the plaintiff or the plaintiff’s attorney believes that the defendant is not in the state; AND
 - a copy of the summons has been mailed to the defendant at the defendant’s last known address if any is known to the plaintiff.⁶

If the plaintiff deviates at all from these requirements, service is not in strict compliance with the statute, and the court must dismiss the action for lack of personal jurisdiction over the

¹ *Koski v. Johnson*, WL 5300888 (Minn.App. September 23, 2013).

² *Id.* at *8.

³ *Id.* at *10.

⁴ Minn. Stat. § 504B.331(a) (2013).

⁵ *Id.* at § 504B.331(d)(1)(i).

⁶ *Id.* at § 504B.331(d).

defendant.⁷ Case law primarily deals with service of residential defendants who cannot be located.⁸ The following sections explain these requirements in detail.

Key Requirements

- Before a summons may be mailed and posted, personal service must be attempted on two different days, with one attempt between 6:00 and 10:00 PM.⁹ These attempts must be made by someone who is not a named plaintiff in the case.¹⁰
- The plaintiff or plaintiff's attorney must sign and file an affidavit with the court stating that the defendant cannot be located or is believed to have left the state, and that a copy of the summons was mailed to the defendant at the defendant's last known address.¹¹
- The plaintiff must mail a copy of the summons even if the defendant is aware of the eviction proceedings, and even if a copy of the summons was posted on the property.¹²

Practice Tips for Eviction Actions

- Defendants should carefully examine how they were served and request dismissal if they find any defects. They must request dismissal *before* or *when* they address the merits of the action.¹³ If they file an answer on the merits and *then* raise a jurisdictional defense, the court may decide that the defendant has consented to the court's jurisdiction.¹⁴
- When the Court identifies a service defect, the defendants may be given a choice to either: 1 – consent to personal jurisdiction and proceed, or 2 – have the case dismissed for lack of personal jurisdiction. When advising pro se tenants, explain both options and be clear that after dismissing this case the landlord could still file again.
- Even a dismissed eviction case will remain on the defendant's record. Defendants whose evictions are dismissed for service defects should orally request expungement during the hearing. If the referee in the eviction action declines to immediately expunge the eviction, the defendant should file a separate action for expungement.
- Service defects do not prevent parties to an eviction action from reaching a settlement agreement. If the parties decide that reaching a settlement agreement is preferable to litigation, they may reach a settlement agreement and consent to personal jurisdiction.

⁷ *Koski* at *11.

⁸ *See id.*

⁹ Minn. Stat. § 504B.331(d)(1)(ii) (2013).

¹⁰ *Id.* at § 504B.331(a).

¹¹ *Id.* at § 504B.331(d)(2).

¹² *Id.* at § 504B.331(d)(2)(ii).

¹³ *Koski* at *10 (Noting that the defendant moved for dismissal based on inadequate service at the same time as when she filed her answer on the merits, and never affirmatively acquiesced to the court's jurisdiction).

¹⁴ *Id.* (Explaining that filing an answer on the merits without raising a jurisdictional defense may be seen as "affirmatively invoking the court's jurisdiction," and may waive the defendant's right to contest jurisdiction).