

CIVIL REMEDIES AND PROCEDURE: PROCESS.

Strict construction of phrase "member of his family" encompasses relationships of consanguinity to intended recipient of service of process. Relationship with in-law is not relationship of consanguinity. "Member of his family" does not include in-law residing in usual place of abode of party subject to substituted service of process.

The Honorable W.A. Talley Jr.
Judge, Goochland County General District Court
June 7, 1999

You ask whether § 8.01-296(2)(a) of the *Code of Virginia* permits a process server to serve civil process on the in-laws residing in the usual place of abode of the intended recipient.

Section 8.01-296 provides for the service of process in civil proceedings for which no other particular mode of service is prescribed. Section 8.01-296(1) provides that such process may be served "[b]y delivering a copy thereof in writing to the party in person." Section 8.01-296(2)(a) provides that substituted service may be effected,

[i]f the party to be served is not found at his usual place of abode, by delivering a copy of such process and giving information of its purport to any person found there, who is a member of his family, other than a temporary sojourner or guest, and who is of the age of sixteen years or older[.]

Your inquiry concerns whether the phrase "member of his family," as used in § 8.01-296(2)(a), includes in-laws residing in the usual place of abode of the party intended to be the recipient of process.

Section 8.01-296(2)(a) provides no statutory definition for the term "family."¹ In the absence of a statutory definition, the term "family" should be given its common, ordinary and accepted meaning.² "Family" is defined as "[a] fundamental social group in society consisting esp. of a man and woman and their offspring."³

In the case of *Fowler v. Mosher*, the Supreme Court of Virginia discussed the legal definition of "family," stating that, "[i]n a limited sense [family] signifies the father, mother and children. In a more extensive sense it comprehends all the individuals who live under the authority of another."⁴ In this case, the Court considered the legality of a substituted service of process whereby a deputy sheriff had left a copy of the notice with a boarder at the home of the appellant.⁵ The boarder was over sixteen years of age and the deputy sheriff had explained its purport to her.⁶ The Court held that such service was not sufficient, stating that the term "family" did not contemplate "a mere boarder" in the house.⁷ The Court added that the purpose of the statute "was to require service upon some person who would feel interested by the ties of consanguinity [blood], and the relation of dependence, to communicate the fact of the service to the party for whom it was designed."⁸

The "authority to issue and serve process, as provided for by constitution and statute, must be strictly construed."⁹ "Section 8.01-296(2) sets forth the manner of serving papers upon natural persons by substituted service"¹⁰ and is to be used where "no particular mode of service is prescribed."¹¹ "[T]his type of service has no validity unless the terms of the statute are strictly followed."¹² Employing strict construction to the phrase "member of his family" and consistent with *Fowler*, the phrase would thus encompass relationships of consanguinity to the party. The relationship between an in-law and a particular individual is not a relationship of consanguinity. Although it is arguable that the relationship of an in-law residing in the home of a party upon

whom service of process is sought may exceed that of a "mere boarder," strict construction of the terms in the statute requires a very limited application.

Accordingly, it is my opinion that the phrase "member of his family," as used in § 8.01-296(2)(a), would not include an in-law residing in the usual place of abode of a party subject to the substituted service of process provided therein.

¹ Compare § 16.1-228 (stating specific definition for phrase "family or household member").

² See *Commonwealth v. Orange-Madison Coop.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980); Op. Va. Att'y Gen.: 1997 at 57, 59; 1991 at 296, 298; 1990 at 233, 234.

³ The American Heritage Dictionary 488 (1985).

⁴ 85 Va. 421, 424, 7 S.E. 542, 543 (1888).

⁵ *Id.* at 423-24, 7 S.E. at 543.

⁶ *Id.* at 423, 7 S.E. at 543.

⁷ *Id.* at 424, 7 S.E. at 543.

⁸ *Id.*

⁹ 1983-1984 Op. Va. Att'y Gen. 116, 117.

¹⁰ 1982-1983 Op. Va. Att'y Gen. 306, 306.

¹¹ 1983-1984 Op. Va. Att'y Gen. 131, 131 (quoting § 8.01-296).

¹² 1982-1983 Op. Va. Att'y Gen., *supra* note 10, at 307 (citation omitted).