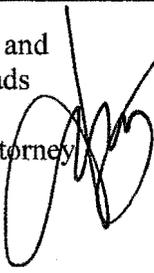


**CITY OF HIALEAH
CITY ATTORNEY'S OFFICE**

MEMORANDUM

TO: Mayor Carlos Hernandez and
Department/Division Heads

FROM: Lorena E. Bravo, City Attorney 

DATE: April 25, 2018

RE: **Procedures for acceptance of service of process**

This memorandum discusses the procedure to be followed in accepting service of process on behalf of the City or an employee when named in their official capacity. This memorandum is intended for the reading and understanding of all general employees with clerical tasks or in an office work setting and in particular staff in the Office of the Mayor, City Clerk's Office, Police and Fire Department whose tasks involve communicating with process servers. With your approval, the memorandum will be distributed to all City Department Heads for distribution to the designated employees within their respective department.

No one should accept service of process on behalf of any other officer or employee, in their official capacity, unless and as otherwise specifically allowed by the procedures described in this memorandum or other applicable official procedure. No one should accept service of process on behalf of any other officer or employee when that officer or employee is sued in their individual capacity under any circumstance. When in doubt, before accepting service, contact the Office of the City Attorney or request that the process server serve the person directly.

I. What is service of process?

According to principles of due process, state law and rules of civil procedure, before a court can exercise any authority to make decisions legally binding on a person or, in our case, a municipal corporation, the court must have jurisdiction over the person or corporation. A person or corporation is brought before a court through the service of process. Service of process puts the person or corporation on notice that an action has been started against that person, that he or she is required to appear at the time and place indicated on the summons, and that failure to appear will result in the entry of a judgment against the defendant granting the plaintiff the relief requested.

II. What is effective service of process on the City?

It is important to have a general understanding of the types of legal documents that must be served in the manner required by law.

a. Service of process of initial complaint, petition or other civil action

When a civil action is first filed against the City, the complaint, petition or other pleading filed will be served together with a summons. The style of the case will identify the City as the Defendant or Respondent.

Florida Statutes §48.111(1) sets forth the requirements for service of process on public agencies and officers. When the City is named as defendant in a civil action, the statute requires that process be served on the Mayor as the executive head, and in his or her absence, the President, the Vice-President or any other member of the city council in that order. Service may be made by a certified process server. Process must be made in person to the Mayor at his office on behalf of the City-Defendant.

The style of the case may also identify other officers or employees of the City in their official capacity. For example, the style of the case may identify the Chief of Police by name as the Chief of the Police Department or the City Clerk as Supervisor of Elections or Custodian of Records. Process must also be made in person to any other officer or employee named as a defendant in his or her official capacity. Finally, any person employed by the City may also be sued in the same case in that person's individual capacity.

No one should accept substitute service on behalf of any officer or employee named as a defendant in their official capacity unless and as otherwise specifically allowed by the procedures described in this memorandum or other applicable official procedure. Certainly, no one should accept service on behalf of any officer or employee when that officer or employee is sued in their individual capacity under any circumstance. When in doubt, before accepting service, contact the Law Department or request that the process server serve the person directly.

A simple way to distinguish when an officer or employee is sued in their official capacity or individual capacity is by reading the style of the case in the initial pleading or summons being served. When the City is sued, the style will list "The City of Hialeah, Florida, a municipal corporation" or some similar reference to the City, as a defendant. When an officer or employee is sued in their official capacity, the style of the case will name the person "John Doe, as Chief of Police of the City of Hialeah Police Department" or some similar reference to the official position or job title held by the person. When a person is sued individually, the style of the case will list the person by name only or "John Doe, individually" or without reference to the position or title held by the person in the City.

Remember, in order for the service of process to be valid or effective it must be served in strict compliance with the requirements of the law. If not served in the manner required by law, the City can request that the court dismiss the action for insufficient service of process.

(i) Limited substituted service allowed on behalf of the Mayor, as the executive head of the City of Hialeah when the City is named as a defendant

As discussed, every time the City is named as a defendant in the pleadings and summons to be served, the Mayor has to be served personally in his office. Having the Mayor make himself available to personally accept service is disruptive to his office and impractical. As such, the Mayor has authorized designated staff members in the Office of the Mayor to accept service of the initial process during normal business hours only. The Mayor does not have to be present when service of process is served. Once the summons and complaint are delivered, they must be stamped as received with the office stamp showing the date, time and initials of the person accepting service. The originals should then be delivered in person to the Office of the City Attorney on the same day of service. If delivering the originals to the Office of the City Attorney on the same day is not feasible, then no later than the next working day. A copy should be provided to the Mayor for his information.

(ii) Limited substituted service allowed on behalf of the Mayor when the Mayor is sued in his official capacity

It is also impractical and inconvenient to the Mayor to make himself available to personally accept service of the initial process when he is sued in his official capacity. As such, the Mayor may authorize designated staff members in the Office of the Mayor to accept service on his behalf of the initial process during normal business hours only. The Mayor has to be present when service of process is served. Once the summons and complaint are delivered, they must be stamped as received with the office stamp showing the date, time and initials of the person accepting service. The originals should then be delivered in person to the Office of the City Attorney on the same day of service. If delivering the originals to the Office of the City Attorney on the same day is not feasible, then no later than the next working day. A copy should be provided to the Mayor for his information.

b. Service of process of subpoena for testimony at deposition or trial

In addition to service of process of the initial pleadings and summons, subpoenas also require personal service on the person being ordered to take some action in the case, such as appear in court or at a deposition to provide testimony. A subpoena is an order requiring the appearance of the person to whom it is directed on a date, time and at the location specified in the subpoena to give testimony. The subpoena may require the person, in addition to appearing to provide testimony at trial or deposition, to bring documents described in the subpoena. This is called a subpoena duces tecum. Subpoenas are generally issued by attorneys as officers of the court by representing any party in the action. When the City or other city employee or officer, in their official capacity, are parties in the action and have received service of process of the initial pleading as discussed above, the attorney appearing on their behalf will coordinate any appearance for the purposes of testimony or production of documents required from the City. It is highly unlikely that a current employee will receive personal service of a subpoena in a matter in which the City is a party without the knowledge of the City Attorney's Office.

When the City is not a party to the action, but one of the parties requires the testimony of a city official or employee as a result of their official duties or employment capacity, the party must serve a subpoena to order the employee to appear and provide the testimony and produce documents, if required. All subpoenas must be served on the official or employee identified in the subpoena. No one should accept service on behalf of any official or employee unless allowed for in this memorandum. If the subpoena does not identify an employee or official by name, the subpoena may use other descriptive language such as an employment title or official position. Examples of these descriptive headings are “Person with the most knowledge”, “City Clerk”, “Records custodian”, “Building Official”, “Planning Director”. In these circumstances (where an employee or official is not identified by name specifically), the City is allowed to designate the proper employee or official who should respond to the subpoena. If you can identify the employee or official serving in the capacity identified in the subpoena, you must direct the process server to serve the subpoena on the person directly. Do not accept service on their behalf. For example, if the subpoena is directed to the “Building Official”, then the process server should be directed to serve the subpoena on the person in that capacity, i.e. Alexis Riveron as of this writing. If the specific employee or official is unavailable at the time, you can direct the process server to return on a date and time or go to the specific job site when and where the employee may be found during working hours. For example, if a process server is trying to serve a subpoena on John Doe, a firefighter employee, at the main administration building on a Monday morning but he works that week Tuesday at Fire Station 6, you must not accept the subpoena but instead direct the process server to Fire Station 6 on the days and time the firefighter employee is working there. If you cannot identify the employee specifically serving in the capacity identified in the subpoena to the process service (e.g. “person with the most knowledge” or because the capacity identified is not one you recognize), then direct the process server to the Office of the City Attorney.

(i) Limited substituted service of subpoenas for deposition or trial allowed for sworn law enforcement officers only.

If a sworn law enforcement officer is being subpoenaed in his/her official capacity, the Court Liaison Office can accept service on the officer’s behalf during normal working hours. The Court Liaison Office must stamp the subpoena with the date and time when received. Then, the subpoena must be given to the law enforcement officer and a copy to the Office of the City Attorney as expeditiously as possible. If delivering the subpoena to the Office of the City Attorney on the same day is not feasible, then no later than the next working day.

c. Service of process of subpoena for records without testimony or to the records custodian

These subpoenas will generally be address to the records custodian of a specific department or to the City Clerk as Official Custodian of Records for the City. Process servers attempting to serve a subpoena for records without testimony or to a records custodian should be directed to the Office of the City Clerk. The Office of the City Clerk will accept and respond to these subpoenas.

d. Service of process of witness subpoena in criminal cases only

Florida Statutes §48.031(4)(a) provides that a criminal witness subpoena upon a law enforcement officer of any municipal employee called to testify in an official capacity in a criminal case may be delivered to a designated supervisory or administrative employee designated to accept service. In the case of sworn law enforcement officers, the Court Liaison Office is hereby designated to accept service of all criminal witness subpoenas for testimony by sworn law enforcement in the officer's official capacity.

The Court Liaison Office must not accept service of the criminal witness subpoena if the law enforcement officer-witness is no longer employed by the City, if the law enforcement officer-witness is not scheduled to work prior to the date he/she is required to appear (e.g. the officer is scheduled to be on vacation or leave from work immediately preceding the date he or she is required to appear), or the law enforcement officer-witness is required to appear less than five days from the date of service.

All other employees must be served personally with a criminal witness subpoena. Please note that for civil or criminal traffic cases, misdemeanors, and certain felony cases, the subpoena may be mailed to the employee-witness at their place of employment.

e. Service of process on official or employee when sued individually

As mentioned repeatedly throughout this memorandum, no one should accept a summons or subpoena addressed to an officer or employee if it is not in that officer's or employee's official capacity.

Finally, all summonses, subpoenas or documents served upon the City, its officers or employees in an official capacity should be stamped when received with the date, time and name of the person receiving them. A copy should be delivered expeditiously to the person identified on the subpoena and to the Office of the City Attorney expeditiously. If delivering the documents to the Office of the City Attorney on the same day is not feasible, then no later than the next working day. If you have any question or doubt about the subject of this memorandum at any time, please contact the Office of the City Attorney.