

THE SUPREME COURT OF THE MALAYAN UNION

REGISTRAR'S CIRCULAR NO. 23 OF 1946

SERVICE OF PROCESS IN THE STATES

I refer to the provisions of Section 78 of the F.M.S. Civil Procedure Code which sets forth the circumstances under which process servers may exercise a discretion when there is difficulty in effecting service in the ordinary way.

2. Three unsuccessful attempts on separate days (over a reasonable period) is generally accepted as representing "due and reasonable diligence" and therefore sufficient to justify the process server adopting the alternative form of service prescribed. In many cases process servers will be able to obviate applications to the Courts for orders for substituted service if they follow carefully the intention of Section 78.

3. I annex a copy of the section referred to in English and Jawi and shall be glad if you will explain it carefully to your process servers. It would be of advantage to discuss the matter with the clerks in charge of civil work and to impress upon the process servers the operation of the section. If the process server is in any doubt after making his three attempts he should come back and ask for advice either from you or the civil clerk.

4. I annex a specimen of a process server's return of service which would normally be acceptable in the circumstances above contemplated.

Sd:  
REGISTRAR

The Registry,  
Supreme Court,  
Malayan Union,  
Kuala Lumpur. 3rd October, 1946.

(RAS.112/46).

Section 78 of the Civil Procedure Code (Cap.7)

Where -

- (a) the defendant or other person refuses or is unable to sign the acknowledgment, or
- (b) the serving-officer after using all due and reasonable diligence cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any person on whom the service can be made,

the serving-officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business, and shall then return the original to the Court from which it issued, with a return endorsed thereon or annexed thereto stating that he has so affixed the copy and

Details to be inserted in process server's return of service

1. That I went to Defendant's house (place of business) at 104 Batu Road, Tanjong Bahru, on 3rd, 6th, and 12th days of September, 1946 at 9.30 a.m., 12 noon, and 3.30 p.m. respectively to serve the summons herein.
  2. Defendant was not present and I was informed by a woman on each occasion that although defendant lived there she did not know when he would return. She refused to accept service.
  3. I then posted a copy of the plaint together with the summons to appear on the door of defendant's house.
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