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2-1-1975

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Recommended Citation

C. Pineiro Matthews, *Civil Law Lexicon: Notificaciones*, 7 U. Miami Inter-Am. L. Rev. 258 (1975)

Available at: <http://repository.law.miami.edu/umialr/vol7/iss1/14>

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CIVIL LAW LEXICON: NOTIFICACIONES

C. PINEIRO MATHEWS*

Notificación in the civil law means notice: the judicial act whereby the resolution of a judicial or administrative agency is communicated to a person or group of persons, according to the formalities dictated by law. In the United States "notice" means information, an advice, or written warning, in more or less formal shape, intended to apprise a person of some proceeding in which his interests are involved, or informing him of some fact which it is his right to know and the duty of the notifying party to communicate (BLACK'S Rev. 4th Ed. p. 1210). The process of transmitting the notice is called service. In the civil law, however, the concepts of notice and service are merged in one term: *notificación*. Generally, the term *notificación* is modified by one or more adjectives which denote the method of service.

Notice may be either (1) actual, where knowledge of a fact is expressly given, and brought home to a person directly via the public official making the service, or (2) where the litigants must resort to the court to inquire and learn about certain information or knowledge of a fact.

As in the United States, notice in civil law jurisdictions may be (a) personal, (b) by substituted service, (c) by publication, (d) oral, (e) by telegram, or (f) by mail.

a) *Notificación personal* (personal notice) is served directly on the person concerned. It is comparable to the U.S. term of "in hand" service. It should contain the date, names of the parties, the nature of the notice, and must be signed by the clerk of the court as well as the party or parties in interest. If the parties are unable to sign, then a witness may sign for them. Should they refuse to sign, then two witnesses designated by the clerk will sign.

b) *Notificación por cédula*—If the party to be served with the notice is not at home, the public official making the service may serve

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the notice on any other member of the family. Failing in this, it may be given to a neighbor who knows how to read. Should the latter refuse to accept it, the public official may post it on the door of the litigant's home. The concept of *notificación por cédula*, therefore, is a broad one, encompassing both personal notice and notice by substituted service. For example, serving the notice on a different member of the family, or a neighbor, constitutes sufficient notice since it is presumed that the interested party can gain knowledge of it by due diligence. Knowledge is imputed to that person by law.

Where the proper procedure for giving notice is not followed, notice will be considered a nullity. It becomes important, therefore, to adhere closely to the formalities dictated by the law of each country. In Argentina, for example, the sheriff's return is to be signed by the person on whom the notice was served, or if he is unable to sign, then by two witnesses. Nonetheless, it has been held that notice is valid when the signature of the person being served, or, alternatively, those of the witnesses, have been omitted. Similarly, the notice is null if the public official serving it does not specify where he delivered it. However, an entry by said official that it was served at the "indicated" domicile has been held valid. On the other hand, notice was invalid where the person to be served lived in an apartment building and the return didn't specify which floor he lived on. There, the doorman, upon whom notice was served, did not know the party to be notified, and the latter contended he never received it.

c) *Notificación por edictos* is notice by publication. This method is used to give notice to the public in general, or to all whom it may concern, or in cases where the person's domicile is unknown. In this case, notice is published in an official newspaper, or, if there is more than one official newspaper, in the one designated by the judge. The publication must contain the names of the litigants, and the object of the litigation, or the judgment.

The parties in interest have the burden of checking to make certain that the notice has been published correctly. Any error not corrected within the time allotted for publication of the notice renders the latter null, and the responsible parties must bear the cost of having it published again.

d) *Notificación automática* is oral notice received by the attorneys of actions taken on their pending cases during a periodic sounding of the docket by the trial court.

e) *Notificación por telegrama* (notice by telegram) may be employed to subpoena someone for a hearing, or to give notice of settlement

conferences, or of a motion to dismiss for lack of prosecution. Witnesses, experts, or interpreters may also be notified by telegram.

f) *Notificación por correo* is any notice sent by mail. Notice of the outcome of tax proceedings, for example, may be sent by certified letter. A copy of the record of pleadings in a case must also be sent by certified letter, return receipt requested.

Notices abroad, i. e. notifications to those outside the country concerned are normally made through letters rogatory to foreign tribunals, and in some jurisdictions via diplomatic representatives residing abroad.

Related terms to the *notificación* are: *citación* which is an order to a party to present himself before a judge or tribunal in order that a procedural act may be carried out; *emplazamiento* is the notice given the defendant to become a party to the proceeding, or to whoever has filed a petition to formalize same within a definite period of time; *requerimiento* is a notice by which a government official orders a party to do or not to do an act, explain specified acts, or make declarations relative to certain acts.

In general, the above covers the concept of *notificaciones*. The usual caveat concerning the different meaning of terms in particular jurisdictions is again raised.