Washington Law Review

Volume 72 | Number 2

4-1-1997

Sheldon v. Fettig: Interpreting the Substitute Service of Process Statute in Washington

Dana Richardson

SHELDON V. FETTIG: INTERPRETING THE SUBSTITUTE SERVICE OF PROCESS STATUTE IN WASHINGTON

Dana Richardson

Abstract: In *Sheldon v. Fettig*, the Washington Supreme Court announced a new rule for interpreting Washington's substitute service of process statute. This new rule calls for a liberal reading of the substitute service of process statute to better effect its legislative purpose, thus overruling the line of cases calling for strict construction of the substitute service of process statute. This Note analyzes the basis of the former rule, the *Sheldon* rule, and the *Sheldon* dissent's proposed rule. It concludes that the former rule of interpretation should be retained because it preserves canons of strict construction and better protects defendants' due process rights.

The obligation to provide a litigant with notice of impending actions is part of the limitation imposed by constitutional due process on a court's ability to exercise jurisdiction.[1] Like other state legislatures, the Washington Legislature has enacted a service of process statute defining a procedure to provide defendants with notice. Revised Code of Washington section 4.28.080(15) provides that "[t]he summons shall be served by delivering a copy thereof . . . to the defendant personally, or by leaving a copy of the summons at the house of his usual abode with some person of suitable age and discretion then resident therein."[2] Delivery of a summons and complaint directly to a defendant is considered personal service while delivery of a summons and complaint to someone else, on behalf of a defendant, is commonly considered substitute service.[3]

---

1. *See, e.g.*, Wichert v. Cardwell, 117 Wash. 2d 148, 151, 812 P.2d 858, 859 (1991) ("The purpose of statutes which prescribe the methods of service of process is to provide due process. 'The fundamental requisite of due process of law is the opportunity to be heard.' . . . That opportunity to be heard in turn depends upon notice that a suit is being commenced.") (quoting Grannis v. Ordean, 234 U.S. 385, 394 (1914)); *see also* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950); William R. Trail & Julia A. Beck, Peralta v. Heights Medical Center, Inc.: *A Void Judgment is a Void Judgment is a Void Judgment—Bill of Review and Procedural Due Process in Texas*, 40 Baylor L. Rev. 365, 365 (1988).

2. Wash. Rev. Code § 4.28.080(15) (1988). Aside from Revised Code of Washington section 4.28.080, a number of other Washington statues also contain provisions for service of process. *See, e.g.*, Wash. Rev. Code §§ 28A.58.460 (1982), 34.05.542(2) (1990) (Administrative Procedure Act); 46.64.040 (1987) (nonresident motorist statute), 51.52.110 (1990) (Industrial Insurance Act). Unless otherwise indicated, service of process will refer to service under Revised Code of Washington § 4.28.080(15).

3. *See* Milton D. Green, *Basic Civil Procedure* 43 (1972).

In *Sheldon v. Fettig*,[4] the Washington Supreme Court announced that the substitute service of process statute should be liberally construed to effectuate service and uphold jurisdiction of the court.[5] This decision changed the former rule that substitute service of process statutes should be strictly construed.[6] This Note focuses on the court's new rule of liberal interpretation of the substitute service of process statute. Part I reviews the rule of strict construction in place before the *Sheldon* decision, discussing that rule's reliance on statutory canons of strict construction and the basis of the former rule in procedural due process. Part II discusses the *Sheldon* rule of interpretation, its premise of ascertaining the Legislature's purpose, and its reference to Washington's general interpretive statute. Part II also considers the rule proposed by Justice Talmadge's dissent in *Sheldon*, requiring strict compliance with the service of process statute to gain original jurisdiction, but only substantial compliance to acquire appellate jurisdiction. Part III critically evaluates the *Sheldon* rule. This Note concludes by proposing a rule for a more equitable interpretation of the service of process statute.

I. SUBSTITUTE SERVICE OF PROCESS STATUTES WERE STRICTLY CONSTRUED BEFORE *SHELDON*

The *Sheldon* decision repudiated the former rule requiring strict construction of substitute service of process statutes.[7] Despite some deviations,[8] it was generally accepted before *Sheldon* that substitute service statutes were to be strictly construed. The cases requiring strict construction of substitute service of process statutes were based on

4. 129 Wash. 2d 601, 919 P.2d 1209 (1996).

5. *Id.* at 609, 919 P.2d at 1212.

6. *Id.* at 607, 919 P.2d at 1211. See Muncie v. Westcraft Corp., 58 Wash. 2d 36, 38, 360 P.2d 744, 745 (1961), for a statement of the former rule.

7. *See, e.g.*, John Hancock Mutual Life Ins. Co. v. Gooley, 196 Wash. 357, 368, 83 P.2d 221, 226 (1938) (holding substitute service of process insufficient when made upon defendants' daughter-in-law who was visiting hotel room that defendants temporarily occupied); Dolan v. Baldridge, 165 Wash. 69, 75, 4 P.2d 871, 873 (1931) (holding substitute service of process insufficient when served upon defendant's wife who had only returned to former residence to pack and ship household items).

8. *See, e.g.*, City of Spokane v. Department of Labor & Indus. (*In re* Saltis), 94 Wash. 2d 889, 897, 621 P.2d 716, 720 (1980) (holding that constructive service under APA need only substantially comply with terms of statute); Lee v. Barnes, 58 Wash. 2d 265, 362 P.2d 237 (1961) (concluding that parties could agree upon method of service that was not in statute but would, in all probability, result in actual service).

canons for interpreting statutes in conjunction with common law and the concern that procedural due process rights of litigants be guarded.[9]

A. Interpreting Statutes in Conjunction with the Common Law

Washington courts have often relied on the canon that statutes in derogation of common law should be strictly construed.[10] Washington courts have specifically applied the canon to service of process cases.[11] One of the first cases to adopt and explain the canon was *State v. Binnard*,[12] in which the court stated:

> [S]tatutes in derogation of the common law . . . are construed strictly, not operating beyond their words, or the clear repugnance of their provisions; that is, the new displaces the old only as directly and irreconcilably opposed in terms. For when the legislative power professes to add to the law, as it does in the enactment of an affirmative statute, we cannot assume for it an intention also to subtract from it, while there is any admissible rule of interpretation which, applied to the old, to the new, or to both, will enable all to stand.[13]

Madden v. Public Utilities District No. 1[14] outlined additional rules for interpreting statutes in conjunction with common law. The *Madden* court stated that, as a general matter, there is no legal interest in common law or statutory law remaining the same over time.[15] The court further explained that a statute plainly designed as a substitute for the common law must be given effect and that, when the statute and common law were so repugnant that both could not be given effect, the terms of the statute control.[16]

---

9. *See, e.g.*, Muncie v. Westcraft Corp., 58 Wash. 2d 36, 360 P.2d 744 (1961) (finding that substitute and constructive service statutes, enacted to protect due process rights, were in derogation of common law and should be strictly construed).

10. See, for example, McKeand v. Bird, 116 Wash. 208, 211, 199 P. 293, 294 (1921) and cases cited therein.

11. *See, e.g.*, *Muncie*, 58 Wash. 2d at 38, 360 P.2d at 745; State *ex rel.* Hopman v. Superior Court, 88 Wash. 612, 153 P. 315 (1915); Dubois v. Kapuni, 71 Wash. App. 621, 860 P.2d 431 (1993); *In re* Estate of Palucci, 61 Wash. App. 412, 810 P.2d 970 (1991).

12. 21 Wash. 349, 58 P. 210 (1889).

13. *Id.* at 353, 58 P. at 211.

14. 83 Wash. 2d 219, 517 P.2d 585 (1973).

15. *Id.* at 221–22, 517 P.2d at 587.

16. *Id.*

In the recent *Wichert v. Cardwell*[17] decision, the Washington Supreme Court, in dicta, called into question the use of this canon of strict construction.[18] In *Wichert*, the court cited conflicting precedent on the canon of strict construction[19] and concluded that strict construction did not require the court to construe the substitute service of process statute itself strictly.[20] Rather, strict construction merely required the court to read the statute closely to ascertain whether the statute was intended to change the common law.[21] According to this analysis, the court began with the assumption that common law required personal service and only personal service. A close reading of the statute indicated that the Legislature intended to change the common law by allowing substitute service. Then, based upon the conclusion that the statute itself need not be construed strictly, the court read the statute to give effect to its spirit and purpose.[22]

17. 117 Wash. 2d 148, 812 P.2d 858 (1991). The issue in *Wichert* was the meaning of the phrase "then resident therein" in the substitute service of process statute. *Id.* at 150, 812 P.2d at 859. The court initially explained that use of the canon regarding statutes in derogation of common law should begin with identification of the common law rule according to Revised Code of Washington section 4.04.010, which states: "The common law, so far as it is not inconsistent with the Constitution and laws of the United States, or of the state of Washington nor incompatible with the institutions and condition of society in this state, shall be the rule of decision in all courts of this state." Wash. Rev. Code § 4.04.010 (1988). A court should then consider whether the statute is in derogation of the common law rule keeping in mind that the code, in general, must be liberally construed under Revised Code of Washington section 1.12.010. *Wichert*, 117 Wash. 2d at 154, 812 P.2d at 861. The court held that leaving service with the daughter of the defendants who had stayed overnight at the defendants' house satisfied the statute even though the daughter was not "then resident therein." *Id.* at 152, 812 P.2d at 860.

18. *See Wichert*, 117 Wash. 2d at 153–55, 812 P.2d 860–61 (citing 3 Frank E. Horack, Jr., *Sutherland Statutory Construction* § 61.04 (4th ed. 1986) (stating that canon has been criticized as, among other things, mere justification for decisions reached on other grounds); 3 Roscoe Pound, *Jurisprudence* 664 (1949); Edwin W. Patterson, *The Interpretation and Construction of Contracts*, 64 Colum. L. Rev. 833, 852 (1964)).

19. *See id.* at 154–55, 812 P.2d at 861 (citing McNeal v. Allen, 95 Wash. 2d 265, 621 P.2d 1285 (1980) (indicating that statute pertaining to commencement of personal injury actions itself should be strictly construed and that statute should be examined closely to determine whether legislature intended to change common law); *Madden*, 83 Wash. 2d 219, 517 P.2d 585 (indicating that plain and unambiguous statute should be read in light of its obvious meaning regardless of common law rule)). The court approvingly cited a Minnesota case, Teders v. Rothermel, 286 N.W. 353 (Minn. 1939), for the proposition that a court should always effect the purpose of the legislature despite any departure from the common law rule. *Wichert*, 117 Wash. 2d at 155, 812 P.2d at 861.

20. *Wichert*, 117 Wash. 2d at 154–56, 812 P.2d at 861–62.

21. *See id.* at 154, 812 P.2d at 861.

22. *See id.* at 156, 812 P.2d at 862.

B. The Service of Process Statute Was Based on Protecting Procedural Due Process Rights

Washington courts have incorporated the U.S. Supreme Court's standard for reviewing adequacy of summons procedures to protect defendants' procedural due process rights.[23] The general standard for service of process was established by the landmark U.S. Supreme Court decision *Mullane v. Central Hanover Bank & Trust Co.*:[24] "The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it."[25] The Washington Supreme Court explained the *Mullane* standard of procedural due process in *Olympic Forest Products, Inc. v. Chaussee Corp.*[26] The *Chaussee* court determined that the boundaries of due process could not be specifically delineated but that adequate protection of defendants' due process rights required, at a minimum, the opportunity to be heard and notice reasonably calculated to apprise interested parties of any pending action.[27] To ensure this result, Washington courts have required that service of process comply with the terms of the pertinent statute as well as constitutional due process.[28]

II. *SHELDON V. FETTIG*

A. Background of the Case

1. Facts

In *Sheldon v. Fettig*,[29] the plaintiff attempted service by leaving a copy of the summons and complaint with the defendant's brother at the defendant's parents' house in Seattle.[30] The court identified a number of factors indicating that the defendant resided in Seattle. Specifically, the

---

23. *Compare* Olympic Forest Prods., Inc. v. Chaussee Corp., 82 Wash. 2d 418, 511 P.2d 1002 (1973) (discussing balance between state's interest and individual's right to be heard in garnishment case) *with In re* Harris, 98 Wash. 2d 276, 654 P.2d 109 (1982) (explicitly adopting U.S. Supreme Court's due process balancing test when determining sufficiency of summons).

24. 339 U.S. 306 (1950).

25. *Id.* at 315.

26. 82 Wash. 2d 418, 511 P.2d 1002 (1973).

27. *Id.* at 422, 511 P.2d at 1005.

28. *See, e.g.*, Thayer v. Edmonds, 8 Wash. App. 36, 503 P.2d 1110 (1972) (reasoning that service of process was not proper unless due process and statutory requirements were met).

29. 129 Wash. 2d 601, 919 P.2d 1209 (1996).

30. *See id.* at 604, 919 P.2d at 1210.

court noted that for at least seven weeks after relocating to Chicago to begin a flight-attendant training program, the defendant's parents' address was listed to receive forwarded mail. The defendant's voter registration, vehicle registration, and car insurance listed her parents' Seattle address. The defendant never acquired an Illinois driving license nor did she register to vote in Illinois. The defendant maintained a savings account in Seattle and also left personal belongings at her parents' residence.[31]

The court identified other factors indicating that the defendant had established a residence in Chicago. The court noted particularly that, upon completion of the training program, the defendant signed a lease for a Chicago residence, opened a checking account, joined a health club, and had her mail forwarded to her Chicago address. Although the defendant visited Seattle frequently after her move,[32] she did not have her own room at her parents' Seattle home, preferring usually to sleep at her boyfriend's house next door.[33]

2. *The Majority's Holding and Reasoning*

The defendant challenged the sufficiency of service of process arguing that her parents' Seattle residence was not her "house of usual abode" as required by statute.[34] In response, the court held that, under appropriate circumstances,[35] a defendant could maintain more than one house of usual abode.[36] Under this liberal reading of the statute, the court upheld the service of process.

The court began its analysis of the case by acknowledging that the substitute service statute had been strictly interpreted in the past[37] but

31. *See id.* at 604–05, 919 P.2d at 1210.

32. Defendant's father estimated that she was in Seattle four to six days each month. *See id.* at 605, 919 P.2d at 1210.

33. *See id.* at 604–05, 919 P.2d at 1210.

34. *See id.* at 606, 919 P.2d at 1211.

35. *See id.* at 612, 919 P.2d at 1214 (noting that if each house was center of domestic activity where defendant would likely receive prompt notice, then service of process would be proper at either location).

36. *See id.* The definition of "house of usual abode" is beyond the scope of this Note. For comments on that topic see 4 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1096 (1st ed. 1969) and Allen E. Korpela, Annotation, *Construction of Phrase "Usual Place of Abode," or Similar Terms Referring to Abode, Residence, or Domicile as Used in Statutes Relating to Service of Process*, 32 A.L.R.3d 112 (1970).

37. *Sheldon*, 129 Wash. 2d at 607, 919 P.2d at 1211 (citing Muncie v. Westcraft Corp., 58 Wash. 2d 36, 360 P.2d 744 (1961)).

noted that there was a recent trend to interpret the statute liberally to effectuate the spirit and intent of the statute.[38] In support of liberal interpretation, the court cited cases from other jurisdictions that had interpreted substitute service statutes liberally when the defendant actually received notice as, presumably, defendant had in this case.[39] The court found further support for its rule of liberal interpretation in Revised Code of Washington section 1.12.010, which prescribes liberal construction of code provisions,[40] and Civil Rule 1, which promotes the policy to decide cases on their merits rather than dismissing them on technicalities.[41] The court concluded by summarily pronouncing that the rule of liberal construction exceeded constitutional due process requirements.[42]

B. The Majority's Rule Requiring Liberal Interpretation of the Substitute Service of Process Statute

The *Sheldon* court's liberal reading of the substitute service of process statute departed from precedent. The court used two rationales to support its switch to a liberal interpretation. First, the court stated that a liberal reading facilitated the court's efforts to give effect to the purpose of the statute.[43] Second, the court noted that a liberal reading of the service of process statute was consistent with section 1.12.010 of the Revised Code of Washington calling for liberal construction of the Code's provisions.[44]

---

38. *See id.* at 607–08, 919 P.2d at 1211–12 (citing Martin v. Triol, 121 Wash. 2d 135, 847 P.2d 471 (1993); Wichert v. Cardwell, 117 Wash. 2d 148, 812 P.2d 858 (1991); Martin v. Meier, 111 Wash. 2d 471, 760 P.2d 925 (1988)).

39. *See id.* at 608–09, 919 P.2d at 1212 (citing Karlsson v. Rabinowitz, 318 F.2d 666 (4th Cir. 1963); Plonski v. Halloran, 420 A.2d 117 (Conn. 1980); Larson v. Hendrickson, 394 N.W.2d 524 (Minn. Ct. App. 1986)).

40. *See id.* at 609, 919 P.2d at 1212. Revised Code of Washington section 1.12.010 states, "The provisions of this code shall be liberally construed, and shall not be limited by any rule of strict construction." Wash. Rev. Code § 1.12.010 (1988) (originally enacted as An act to regulate the practice and proceedings in civil actions, § 504, 1854 Wash. Laws 221).

41. *Sheldon*, 129 Wash. 2d at 609, 919 P.2d at 1212. Civil Rule 1 states, "[The rules] shall be construed to secure the just, speedy, and inexpensive determination of every action." Wash. Civ. R. 1.

42. *Sheldon*, 129 Wash. 2d at 609, 919 P.2d at 1212.

43. *See id.* at 607, 919 P.2d at 1211.

44. *See id.* at 609, 919 P.2d at 1212 (citing Wash. Rev. Code § 1.12.010).

1. *Interpreting the Substitute Service of Process Statute According to Its Purpose*

Washington courts have developed a set of statutory interpretation rules that reflect a belief that the judiciary should interpret statutes to effect the Legislature's purpose.[45] Two of those rules were stated in *Wichert:* "(1) the spirit and intent of the statute should prevail over the literal letter of the law and (2) there should be made that interpretation which best advances the perceived legislative purpose."[46] In *Graffel v. Honeysuckle*,[47] the Washington Supreme Court cited two additional rules of statutory interpretation. One was that the primary source for determining legislative intent was the statute, its context, and its subject matter.[48] Second, the court presumed that an amendment to the wording of a statute indicated a change in the purpose of that statute.[49]

Applying the above guidelines, Washington courts have identified several purposes of the substitute service of process statute. The *Sheldon* court specified that the purposes of the substitute service of process statute were to act as a mechanism to fulfill due process and to provide defendants with service reasonably calculated to accomplish notice.[50] The court also stated that the statute was intended to provide plaintiffs a reasonable means to serve defendants.[51] In addition, an earlier case noted that the substitute service of process statute was intended to ensure the best service possible under the circumstances.[52]

---

45. *See, e.g.*, Grant v. Spellman, 99 Wash. 2d 815, 664 P.2d 1227 (1983) (stating that it is court's duty to ascertain and give effect to legislative purpose).

46. Wichert v. Cardwell, 117 Wash. 2d 148, 151, 812 P.2d 858, 859 (1991) (citing Bennett v. Hardy, 113 Wash. 2d 912, 784 P.2d 1258 (1990); *In re* R., 97 Wash. 2d 182, 641 P.2d 704 (1982)). The process of ascertaining the legislature's original purpose and interpreting a statute to further the purpose of the legislature has been supported on at least three grounds: (1) legislatures are vested with the exclusive power to create law and courts only role is to carry out the legislature's intent; (2) statutes are contracts between interest groups and the legislature and should be enforced according to their original terms and purpose; and (3) judges abuse their power when they expand upon the original meaning of statutes. *See* William N. Eskridge, Jr., *Dynamic Statutory Interpretation*, 135 U. Pa. L. Rev. 1479, 1481 (1987).

47. 30 Wash. 2d 390, 191 P.2d 858 (1948).

48. *See id.* at 399, 191 P.2d at 863; *see also Grant*, 99 Wash. 2d at 813, 664 P.2d at 1230 (finding that court must give effect to intent and purpose of legislature as expressed in statutes); Washington State Nurses Ass'n v. Board of Med. Exam'rs, 93 Wash. 2d 117, 605 P.2d 1269 (1980) (observing that statute's purpose may be discovered through historical context and examination of problem statute was intended to solve).

49. *Graffel*, 30 Wash. 2d at 399, 191 P.2d at 863.

50. Sheldon v. Fettig, 129 Wash. 2d 601, 609, 919 P.2d 1209, 1212 (1996).

51. *See id.* at 609, 919 P.2d at 1212–13 (citing *Wichert*, 117 Wash. 2d 148, 312 P.2d 858).

52. *See* Northwestern & Pac. Hypotheek Bank v. Ridpath, 29 Wash. 687, 70 P. 139 (1902).

2. *The Liberal Construction Statute*

The *Sheldon* majority based its holding on a liberal interpretation of the substitute service of process statute. The court declared that its rule of interpretation was consistent with Revised Code of Washington section 1.12.010, which calls for liberal construction of code provisions.[53] In *Wichert*, the Washington Supreme Court commented in dicta that Revised Code of Washington section 1.12.010 arguably applied to the service of process statute.[54]

C. *Justice Talmadge's Dissent and Proposed Rule*

Justice Talmadge's dissent in *Sheldon* differed with the majority's opinion on three separate grounds. First, he argued that the majority's conclusion that a defendant could have more than one house of usual abode contradicted the plain language of the statute.[55] Second, Justice Talmadge challenged the majority's factual conclusions.[56] Third, Justice Talmadge faulted the majority for disregarding two recent cases that required strict compliance with the service of process statute,[57] and two earlier cases in which "house of usual abode" was construed as the place where the defendant was actually living at the time of service.[58] This failure to follow precedent reinforced Justice Talmadge's concern over the inconsistency of the court's service of process decisions.[59] He concluded:

---

53. *Sheldon*, 129 Wash. 2d at 609, 919 P.2d at 1212.

54. *Wichert*, 117 Wash. 2d at 154, 812 P.2d at 861.

55. *Sheldon*, 129 Wash. 2d at 617, 919 P.2d at 1216 (1996) (Talmadge, J., dissenting).

56. The dissent found that the defendant was only an occasional visitor in her parents' home and that she was, in fact, living in Chicago. *Id.* at 619, 919 P.2d at 1217 (Talmadge, J., dissenting). Also, the defendant's use of her parents' address for her driver's license and voting registration did not make her parents' home her usual abode. *See id.* (Talmadge, J., dissenting).

57. *See id.* at 613–14, 919 P.2d at 1214–15 (Talmadge, J., dissenting) (citing Union Bay Preservation Coalition v. Cosmos Dev. & Admin. Corp., 127 Wash. 2d 614, 902 P.2d 1247 (1995) (requiring strict compliance with APA and its provisions regarding service on parties and not their attorneys of record); Weiss v. Glemp, 127 Wash. 2d 726, 903 P.2d 455 (1995) (invalidating service left on window sill just outside where defendant sat)).

58. *See id.* at 616–17, 919 P.2d at 1215–16 (Talmadge, J., dissenting) (citing Dolan v. Baldridge, 165 Wash. 79, 4 P.2d 871 (1931) (disallowing service upon defendant's wife while she returned to their former residence to pack and ship belongings); Lepeska v. Farley, 67 Wash. App. 548, 833 P.2d 437 (1992) (denying jurisdiction over defendant who was served at his mother's house while defendant maintained separate residence)).

59. The dissent stated:

> In recent opinions, we have struggled with issues relating to service of process, lurching between liberal and stringent interpretations of statutes and rules without a firm anchor in

> We serve the trial courts and the practicing bar poorly when we accept review of service of process cases and decide them as if they were *sui generis*, free of precedent and of consistent, guiding principles. I would decide this case as Washington judges have always decided such cases, and hold service of process was insufficient because it was not accomplished in accordance with RCW 4.28.080(15) where Fettig was actually living, at her "house of . . . usual abode."[60]

In his *Sheldon* dissent, Justice Talmadge referred to an earlier opinion where he had proposed a rule to govern service of process cases.[61] In that case, he recommended strict compliance with statutes when acquiring original jurisdiction, particularly for substitute service rules, and substantial compliance for matters of continuing and appellate jurisdiction.[62] This rule, he explained, would uphold the constitutional principles of notice and opportunity to participate fairly in court proceedings.[63] Additionally, Justice Talmadge commented that this rule would be "simpler" and "more appropriate" than the current rule.[64]

III. CRITICAL ANALYSIS OF THE *SHELDON* RULE OF INTERPRETATION

A. *The* Sheldon *Majority's Analysis According to Legislative Purpose Is Problematic and Difficult for Courts To Apply*

---

principle. By adopting here a liberal construction of the substituted service of process statute, the majority injects further confusion into our already chaotic jurisprudence.

Id. at 612, 919 P.2d at 1214 (Talmadge, J., dissenting).

60. *Id.* at 621, 919 P.2d at 1218 (Talmadge, J., dissenting).

61. *See id.* (Talmadge, J., dissenting) (citing *Union Bay*, 127 Wash. 2d 614, 902 P.2d 1247 (Talmadge, J., dissenting)). The issue in *Union Bay* was whether the plaintiff, by serving the parties' attorneys, had complied with the APA requirements of service on "all parties of record" to procure appellate jurisdiction. *Union Bay*, 127 Wash. 2d at 617–18, 902 P.2d at 1249. The court held that the APA's requirements of service were not fulfilled because the language and history of the APA excluded service on attorneys; therefore the statute required strict compliance with its terms. *Id.* at 618–20, 902 P.2d at 1249–51. In the *Union Bay* dissent, Justice Talmadge argued that, although "party" was legislatively defined, "parties of record" was not. *Id.* at 622, 902 P.2d at 1251 (Talmadge, J., dissenting). Because the Legislature had neither defined the key term nor explicitly repudiated the substantial compliance doctrine, Justice Talmadge found that service of process substantially complied with the statute and should have been upheld. *Id.* at 618–19, 622–24, 902 P. 2d at 1249–50, 1251–52 (Talmadge, J., dissenting).

62. *Union Bay*, 127 Wash. 2d at 621, 902 P.2d at 1250–51 (1995) (Talmadge, J., dissenting).

63. *See id.* at 624, 902 P.2d at 1252 (Talmadge, J., dissenting).

64. Weiss v. Glemp, 127 Wash. 2d 726, 734, 903 P.2d 455, 459 (1995) (Talmadge, J., concurring) (explaining his opinion in *Union Bay*).

Although Washington courts uniformly attempt to give effect to the Legislature's purpose and intent,[65] this process is not without its difficulties.[66] The first difficulty in ascertaining legislative purpose is that legislatures are collective bodies made up of individuals with divergent interests. Statutes are not the product of a single legislative intent. Rather, they are an amalgamation of competing interests that result in statutory language.[67] Washington courts have recognized this and have held that an individual legislator's statement of intent may not be imputed to the entire legislature.[68] Although it is not known what compromises or negotiations went into the writing of the substitute service of process statute, Washington courts have identified three legislative purposes behind the statute.[69] The several purposes identified by courts suggest that a unified legislative intent did not underlie the enactment of the substitute service of process statute.

The *Sheldon* court and Washington courts in general have tried to address lack of unified legislative intent by instructing courts to adopt the interpretation that best effects the legislative purpose. This instruction, however, does not tell courts how to weigh competing interests under the substitute service of process statute. As a result, Washington courts have identified legislative purposes that are in tension with each other.[70] Illustrative of this tension is the problem posed by students who list their parents' address as their permanent address for various purposes but never reside at their parents' home. A court must determine whether a parents' address denotes the place of usual house of

---

65. *See supra* Part II.A.1. Although legislative intent and legislative purpose are distinct concepts, Washington courts have long interchanged their use and relied on the determination of one for determination of the other. *See, e.g.*, Mid-Century Ins. Co. v. Henault, 128 Wash. 2d 207, 905 P.2d 379 (1995) (relying on legislative purpose when statute had no statement of legislative intent); City of Montesano v. Wells, 79 Wash. App. 529, 902 P.2d 1266 (1995) (stating that to give effect to legislative intent court should construe statutes in manner that best advances legislative purpose); McNiece v. Washington State Univ., 73 Wash. App. 801, 871 P.2d 649 (1994) (finding that legislative intent could be determined by looking at purpose of statute); Buttelo v. S.A. Woods-Yates Am. Mach. Co., 72 Wash. App. 397, 401, 864 P.2d 948, 951 (1993) (stating that "[t]he Legislature's intent can be determined by reference to the statute's underlying purpose").

66. *See, e.g.*, 2A C. Dallas Sands, *Sutherland Statutes and Statutory Construction* § 45.05, at 16 (4th ed. 1973) ("No single canon of interpretation can purport to give a certain and unerring answer to the question [of legislative intent].").

67. *Id.* § 45.06, at 19 ("Since an intention is a mental state and only individual persons have minds, only an individual can have an intention. It follows that the idea of a legislative intent must be regarded as a fiction or a figure of speech.").

68. *See, e.g.*, Johnson v. Continental W., Inc., 99 Wash. 2d 555, 663 P.2d 482 (1983) (finding that individual legislator's intent may only be seen as instructive of Legislature's intent).

69. *See supra* Part II.B.1.

70. *See supra* Part II.B.1.

abode or, under the *Sheldon* rule, whether it is the second house of usual abode. To facilitate a plaintiff's efforts to effectuate service, a court would be inclined to allow service at either location. However, to ensure that a defendant receives notice the court would likely restrict service to the place where the student actually resides. Reference to the purpose of the statute does not indicate which interpretation a court should adopt. When a statute, such as the substitute service of process statute, has more than one legislative purpose, courts need guidance in addition to the instruction to effectuate legislative purpose. That instruction alone does not tell courts how to weigh the competing interests of plaintiffs and defendants.[71]

Instructing courts to effectuate legislative purpose is equally problematic when the legislature has not indicated how the purpose of a statute should be fulfilled in a particular situation.[72] In this situation, it is of little assistance to instruct courts to interpret statutes according to the legislative purpose. When the service of process statute was enacted shortly before the turn of the century, it is probable that the Washington Legislature did not envision the simultaneous maintenance of domiciles in two distant states.[73] Because it is unlikely that the Legislature considered this possibility or how to effect the statute's purpose in such a case, reference to legislative purpose does not necessarily inform a court's interpretation of the substitute service of process statute.

Finally, under a literal theory of interpretation, use of liberal interpretation under *Sheldon* actually may fail to implement the purpose of the service of process statute. The literal theory of interpretation contends that the words of the statute are the statement of purpose.[74] The literal theory of interpretation is based on the reasoning that enacted words are the best indication of the legislature's purpose because they were agreed upon and adopted through the legislative process.

---

71. Interestingly, the rule that Washington courts have developed to balance competing interests under the personal service of process statute recognizes that personal service is preferable while allowing substantial compliance with personal service requirements to give plaintiff's a reasonable means to serve defendants. *See* Thayer v. Edmonds, 8 Wash. App. 36, 503 P.2d 1110 (1972).

72. *See, e.g.*, Eskridge, *supra* note 46, at 1480 (noting that some legislation has gaps or ambiguities about which there was little legislative debate).

73. Although the Legislature may have contemplated separate abodes within the state, given the means of transportation at the time, the Legislature would scarcely have envisioned simultaneously residing in cities as distant as Seattle and Chicago.

74. *See* United States v. American Trucking Ass'ns, 310 U.S. 534, 543 (1940) ("There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation.").

Washington courts have accepted this theory to the extent that they require that statutory construction begin with the words of the statute.[75] Under this theory, the purpose of the substitute service of process statute is effected when "a copy of the summons is left at the defendant's house of usual abode with a person of suitable age and discretion"[76] because this is the specific language the legislature chose to effectuate its purpose. A liberal interpretation rule that allows substitute service to occur at some place other than the usual place of abode departs from the words of the statute and, under the literal interpretation theory, actually fails to implement the Legislature's purpose.

In sum, although *Sheldon* calls for liberal interpretation to effectuate the legislature's purpose, determining legislative purpose is not a straightforward task. As an initial matter, statutes are not the product of a single legislative purpose. Rather, they represent compromises and negotiations of the legislative process. Statutes also may have numerous, inconsistent purposes, or there may be no legislative consideration of a statute's applicability to a particular situation. Finally, if one accepts the literal interpretation theory that the purpose of any given statute is contained within the words of the statute itself, *Sheldon*'s liberal interpretation that allows departure from the words of the statute fails to implement the Legislature's purpose.

B. The Sheldon *Majority's Application of the Liberal Construction Statute to the Service of Process Statute Is Problematic*

The applicability and scope of the liberal construction statute, Revised Code of Washington section 1.12.010, is not settled in Washington. As an initial matter, the interpretive statute has not been explicitly found to apply to the service of process statute.[77] As a more general matter, the liberal construction statute has not prevented judicial reliance on canons of strict construction. Statutes, such as Revised Code of Washington section 1.12.010, that direct judicial construction of code provisions were typically enacted in reaction to courts resisting the

75. *See, e.g.*, Service Employees Int'l, Local 6 v. Superintendent of Pub. Instruction, 104 Wash. 2d 344, 705 P.2d 776 (1985); Graffel v. Honeysuckle, 30 Wash. 2d 390, 191 P.2d 858 (1948); State v. Cameron, 71 Wash. App. 653, 861 P.2d 1069 (1993).

76. Wash. Rev. Code § 4.28.080(15) (1988).

77. Wichert v. Cardwell, 117 Wash. 2d 148, 154, 812 P.2d 858, 861 (1991) (finding that application of liberal construction statute to service of process statute was open to argument).

codification of issues previously governed by common law.[78] In some states, interpretative statutes specifically abolished the canon that statutes in derogation of common law should be strictly construed.[79] In these states, judges are prevented from using the common law to narrowly interpret statutes.[80] In Washington, however, the interpretative statute has less specific language.[81] Consequently, Washington courts have continued to apply canons of strict construction in the face of the liberal construction statute.[82] The continued use of canons of strict construction indicates that there are recognized judicial limits to the scope of the liberal construction statute.

1. Liberal Construction of a Statute Cannot Add Words to a Statute

Although the scope of the interpretive statute is not settled, generally courts agree that an interpretive statute calling for liberal construction may not stretch the meaning of a statute beyond the text itself.[83] Washington courts have followed this rule and declared that a court may not add words to a statute.[84] Justice Talmadge argued, in dissent, that the majority in *Sheldon* did just that. The majority's holding that a defendant could have more than one usual house of abode effectively re-wrote the statute to allow service at "'the house of . . . usual abode and one or more other places where the defendant may be frequently found.'"[85] The dissent argued that the statute's language calling for service at "the house of his usual abode," because it was stated in the singular, prohibited the possibility of more than one house of usual abode.[86] Without adding words to the statute, even liberal interpretation of the service of process statute could not have produced the rule that a

78. *See* Alan R. Romero, *Interpretive Directions in Statutes*, 31 Harv. J. on Legis. 211, 215 (1994) (explaining that courts relied on canons of strict construction to counteract legislative codifications of common law).

79. *See id.* at 216 n.24 (referring to Ark., Cal., Idaho, Iowa, Kan., Mo., Mont., Neb., Okla., Pa., & Utah).

80. *See id.* at 243.

81. *See supra* note 40 and accompanying text.

82. *See, e.g.*, Martin v. Meier, 111 Wash. 2d 471, 760 P.2d 925 (1988); State *ex rel.* McDonald v. Whatcom County Dist. Court, 92 Wash. 2d 35, 593 P.2d 546 (1979); Muncie v. Westcraft Corp., 58 Wash. 2d 36, 360 P.2d 744 (1961); State *ex rel.* Hopman v. Superior Court, 88 Wash. 612, 153 P. 315 (1915); *In re* Estate of Palucci, 61 Wash. App. 412, 810 P.2d 970 (1991).

83. *See* cases cited in Romero, *supra* note 78, at 240–41.

84. *See* Vita Food Prods., Inc. v. State, 91 Wash. 2d 132, 134, 587 P.2d 535, 536 (1978).

85. Sheldon v. Fettig, 129 Wash. 2d 601, 617, 919 P.2d 1209, 1216 (1996) (Talmadge, J., dissenting) (alterations in original).

86. *Id.* at 617, 587 P.2d at 1216 (Talmadge, J., dissenting).

defendant may maintain more than one usual house of abode. *Sheldon*'s holding adds words to the statute and violates the rule that courts may not stretch the meaning of a statute beyond the words themselves.

2. Sheldon*'s Rule of Liberal Interpretation Does Not Provide Clear Guidelines for the Resolution of Substitute Service of Process Cases*

The *Sheldon* rule calling for liberal construction of the substitute service of process statute does not give lower courts a reliable guideline to apply the statute in later cases because the court's use of the term "liberally construed" is ambiguous. "Liberally construed" could mean that, after a court applies regular interpretive methods (such as reference to context, legislative history, and interpretive canons), it must resolve remaining uncertainties in favor of the statute's purposes.[87] On the other hand, "liberally construed" could mean that liberal construction should produce the meaning that best furthers the purposes of the statute. For example, liberal construction of the substitute service of process statute under the first reading of the liberal construction statute would lead a court first to apply the canon that statutes in derogation of common law should be strictly construed and then to resolve remaining uncertainties in favor of the statute's purposes. Under the second interpretation, the court would forego use of interpretive canons or legislative history and simply refer to the legislative purposes underlying the substitute service of process statute.[88] Application of the substitute service of process statute under the first interpretation of the liberal construction statute would necessarily be narrower than it would be under the second interpretation of the liberal construction statute. Because *Sheldon*'s rule of interpretation under the liberal construction statute provides courts with at least two different interpretations and no method of determining which interpretation to apply, courts are left without a reliable method for interpreting the substitute service of process statute.

In conclusion, there are a number of problems with liberal construction as applied to the service of process statute. The first problem is that the applicability of the liberal construction statute to the substitute service of process statute has not been clearly established. Second, even a liberal interpretation of the service of process statute

87. *See* Romero, *supra* note 78, at 223–24.

88. As demonstrated *supra* Part III.A., reference to legislative purpose will not resolve the question of interpretation when the statute has multiple purposes.

should not add words to the statute. Finally, the concept of liberal interpretation is ambiguous and does not provide a clear guideline for further adjudication. The problem of ambiguity is particularly troublesome because doubt about the meaning of the statute increases litigation over the meaning of the statute's terms.[89]

IV. PROPOSED APPROACH: THE RULE REQUIRING STRICT CONSTRUCTION OF THE SUBSTITUTE SERVICE OF PROCESS STATUTE SHOULD BE RETAINED

A. Washington Canons of Construction Call for Strict Construction of the Substitute Service of Process Statute

Strict construction of the substitute service of process statute is consistent with Washington canons of construction and should be maintained. Washington courts generally abide by the canon that statutes in derogation of common shall be strictly construed.[90] Although the canon has been criticized recently,[91] there are valid reasons for the rule. The primary importance of the canon is that it safeguards the common law,[92] preserving the existing framework of legal rules and the private expectations that rest on the meaning of legal rules.[93] Strict construction of the substitute service of process statute would affirm the due process reasons behind the common law rule and justify reliance on existing legal rules.

In addition to the canon that statutes in derogation of common law should be strictly construed, three other canons used in Washington argue for strict construction of the substitute service of process statute.

---

89. *Cf.* M. Meredith Hayes, Parker v. Frank Emmet Real Estate: *Should Plaintiff's Choice of Service of Process Method Matter?*, 32 Cath. U. L. Rev. 974, 979 (1982–1983).

90. *See* cases cited *supra* note 82.

91. *See Sheldon*, 129 Wash. 2d 601, 919 P.2d 1209; Wichert v. Cardwell. 117 Wash. 2d 148, 812 P.2d 858 (1991); *see also* Barbara Page, *Statues in Derogation of Common Law: The Canon as an Analytical Tool*, 1956 Wis. L. Rev. 78; Gregory C. Sisk, *Interpretation of the Statutory Modification of Joint and Several Liability: Resisting the Deconstruction of Tort Reform*, 16 U. Puget Sound L. Rev. 1 (1992); Blake A. Watson, *Liberal Construction of CERCLA Under the Remedial Purpose Canon: Have the Lower Courts Taken A Good Thing Too Far?*, 20 Harv. Envtl. L. Rev. 199 (1996). *See generally* Roscoe Pound, *Common Law and Legislation*, 21 Harv. L. Rev. 383 (1908).

92. *See, e.g.*, McNeal v. Allen, 95 Wash. 2d 265, 621 P.2d 1285 (1980).

93. *See* Geoffrey P. Miller, *Pragmatics and the Maxims of Interpretation*, 1990 Wis. L. Rev. 1179, 1198; *see also* Page, *supra* note 91, at 81–82 (noting that Wisconsin courts relied on canon because reliance on common law had created rights and titles and declaring reliance on these as unjustified because it would cause widespread confusion and uncertainty).

The first canon is that a statute plainly designed as a substitute for the common law must be given effect over the common law rule.[94] This rule implies that a statute that is not a substitute for the common law need not override the common law rule. The Legislature did not plainly designate the liberal construction statute as a substitute for the judicially-developed rule that statutes in derogation of common law should be strictly construed.[95] Because the liberal construction statute was not plainly designed as a substitute for that common law rule of strict interpretation, the statute need not override the common law rule. Rather, the common law rule should continue to be given effect and, under the rule of strict construction before *Sheldon*, it would continue to be given effect.

A closely related canon supports strict interpretation of the substitute service statute. This canon states that when a statute and common law are so repugnant that both cannot be given effect, the statute will be deemed to abrogate the common law rule.[96] This canon obviously would not apply when the common law rule and the statute can be given effect simultaneously. The common law canon of strict construction has been treated as an exception to the liberal construction statute since the statute was enacted in 1854.[97] Because both have been given effect, it cannot be said that the liberal construction statute abrogated the common law rule of strict construction. The rule of interpretation before *Sheldon* recognized that the common law rule of strict construction was an exception to the statutory rule and called for a strict reading of the substitute service of process statute. Liberal interpretation of the substitute service statute under *Sheldon* ignores the fact that the statute and the common law rule have been given effect simultaneously. Because the common law rule and the statute were reconciled under the pre-*Sheldon* interpretation, the earlier interpretation should be retained.

Finally, Washington courts have followed the rule that the Legislature will not be assumed to have changed the common law unless it has clearly stated so.[98] The basis for this rule is that a legislature can reasonably be expected to plainly announce its intention to change

---

94. *See, e.g.*, State *ex rel.* Madden v. Public Util. Dist. No. 1, 83 Wash. 2d 219, 221, 517 P.2d 585, 587 (1973) (citing United States v. Matthews, 173 U.S. 381 (1899)).

95. *See supra* Part II.B.2.

96. *See, e.g.*, *Madden*, 83 Wash. 2d at 222, 517 P.2d at 587 (rejecting argument that common law rule controls over later statute in derogation of common law).

97. *See* cases cited *supra* note 82.

98. *See* McNeal v. Allen, 95 Wash. 2d 265, 621 P.2d 1285 (1980).

common law.[99] Accordingly, in an ambiguous statute, such as the liberal construction statute,[100] where there is no legislative indication that the rule that statutes in derogation of common law are to be strictly construed is to be changed, a reading of the statute that closely adheres to the common law rule of interpretation is appropriate.

Washington canons of construction indicate that the substitute service of process statute should be strictly construed. Strict construction of the statute safeguards the common law and the expectations built upon existing legal rules. Strict construction of the statute also is appropriate because the common law rule of strict construction has not been replaced by the liberal interpretation statute. In fact, both can be given effect under the rule before *Sheldon*. Finally, strict construction acknowledges the judicially developed presumption that the legislature will not change the common law unless it does so explicitly.

B. *Strict Construction of the Substitute Service of Process Statute Better Protects Defendants' Due Process Rights*

Strict construction of the service of process statute protects defendants' procedural due process rights more thoroughly than the *Sheldon* rule of interpretation. Any satisfactory rule for interpreting the service of process statute must protect defendants' due process rights as fully as possible. "The purpose of statutes which prescribe the methods of service of process is to provide due process. 'The fundamental requisite of due process of law is the opportunity to be heard.' . . . That opportunity to be heard in turn depends upon notice that a suit is being commenced."[101] Although the *Sheldon* rule of interpretation does not violate procedural due process *per se*,[102] its reliance on purposive analysis could result in a withdrawal from the fullest protection of defendants' due process rights. As discussed above, the substitute service of process statute has multiple purposes that may lead courts to

99. *See, e.g.*, State v. Calderon, 102 Wash. 2d 348, 684 P.2d 1293 (1984) (rejecting change of legislative policy by implication); State v. McCullum, 98 Wash. 2d 484, 656 P.2d 1064 (1983) (stating presumption that new legislation conformed to common law and prior judicial decisions); *see also* Miller, *supra* note 93, at 1197; *cf.* Glass v. Stahl Specialty Co., 97 Wash. 2d 880, 652 P.2d 948 (1982) (declining to introduce change in statutory language where legislative intent to do so was not expressed).

100. *See supra* Part III.B.2.

101. Wichert v. Cardwell, 117 Wash. 2d 148, 151, 812 P.2d 858, 859 (1991) (quoting Grannis v. Ordean, 234 U.S. 385, 394 (1914)).

102. *See* Sheldon v. Fettig, 129 Wash. 2d 601, 609, 919 P.2d 1209, 1212 (1996).

promote plaintiffs' interests over those of defendants.[103] The previous rule requiring strict adherence to the terms of the statute better protects defendants' due process rights.

Liberal interpretation of the substitute service of process statute is twice removed from the ideal method of service and inadequately protects defendants' due process rights. The substitute service of process statute originally was developed as an extension of the rule requiring personal service.[104] Recognizing that substitute service of process statutes extended beyond the ideal method of personally serving the defendant, legislatures enacted a specific procedure to ensure that defendants' due process rights were protected.[105] In *Wuchter v. Pizzutti*,[106] the U.S. Supreme Court determined that statutes calling for service other than personal service must be closely complied with to support proper service.[107] Washington courts have developed a similar requirement and have called for careful adherence to statutory service procedures.[108] *Sheldon*'s liberal reading of the statute's procedure takes yet another step away from the preferred method of personal service on the defendant. As one court noted, "the greater the deviation from statutory procedures, the greater the likelihood that the respondent's due process rights have been violated."[109] A liberal interpretation of the substitute service of process statute allows greater deviation from its provisions and compromises the protection of defendants' due process rights. By contrast, the rule of strict construction closely follows the legislatively adopted procedure to protect defendants' due process rights.

---

103. *See supra* Part III.A.

104. *See Wichert*, 117 Wash. 2d at 48, 812 P.2d at 858.

105. *See, e.g.*, Podgorny v. Great Cent. Ins. Co., 311 N.E.2d 640 (Ind. Ct. App. 1974) (finding that Illinois courts required strict compliance with substitute service of process statutory procedure because legislature deemed enacted procedure commensurate with due process rights).

106. 276 U.S. 13 (1928).

107. *Id.* at 24.

108. *See* Martin v. Triol, 121 Wash. 2d 135, 847 P.2d 471 (1993) (requiring close adherence to statutory service of process procedures); *Wichert*, 117 Wash. 2d at 152, 812 P.2d at 860 (noting that method of service must be reasonably calculated to provide notice even though defendant was not guaranteed to receive actual notice in all cases); Olympic Forest Prods., Inc. v. Chaussee Corp., 82 Wash. 2d 418, 413, 511 P.2d 1002, 1006 (1973) (stating that "[t]he procedural safeguards afforded in each situation should be tailored to the specific function to be served by them"); McAnulty v. Snohomish Sch. Dist. No. 201, 9 Wash. App. 834, 515 P.2d 523 (1973) (stating that actual notice could not substitute for adherence to terms of statute). *But see* City of Spokane v. Department of Labor & Indus. (*In re* Saltis), 94 Wash. 2d 889, 621 P.2d 716 (1980) (finding service sufficient when notice was actually received even though statute was not strictly followed).

109. *In re* Clinton, 762 P.2d 1381, 1389 (Colo. 1988).

Washington should follow other jurisdictions that require strict adherence to substitute service of process statutes to protect due process rights. Although some states require strict compliance with substitute and constructive service statutes mainly because they are in derogation of common law,[110] other states require strict compliance explicitly on due process grounds.[111] Other jurisdictions' strict adherence to the letter of substitute and constructive service statutes demonstrates the importance of compliance with these statutes to uphold defendants' due process rights. Washington should continue to apply the rule of strict construction to protect defendants' due process rights.

Because the *Sheldon* rule of interpretation relies on purposive analysis that may not protect defendants' due process rights, the previous rule of interpretation should be retained. The *Sheldon* rule of interpretation actually retreats from the statutory procedures and the example of other jurisdictions that require strict compliance with statutory procedures to safeguard defendants' due process rights.

C. *Although There Is Merit to Justice Talmadge's Proposed Rule, a More Thorough Inquiry Is Required Before It Can Be Adopted*

The basis of Justice Talmadge's proposed rule indicates that there should be a stricter standard for notice of commencement of an action than for notice of an appeal. As discussed above, Justice Talmadge has proposed that strict compliance with statutes be required when acquiring original jurisdiction and substantial compliance be required for matters

110. *See, e.g., In re* Estate of Manley, 226 N.Y.S.2d 21 (Surr. Ct. 1962); Gookin v. State Farm Fire & Cas. Ins. Co., 826 P.2d 229 (Wyo. 1992).

111. *See, e.g.*, Kott v. Superior Court, 53 Cal. Rptr. 2d 215 (Ct. App. 1996) (stating that personal service is preferred method of service and that strict compliance with substitute and constructive service statutes is required); Knabb v. Morris, 492 So. 2d 839 (Fla. Dist. Ct. App. 1986) (finding that due process required strict adherence to service of process statute); American Liberty Ins. Co. v. Maddox, 238 So. 2d 154 (Fla. Dist. Ct. App. 1970) (adhering to established rule that due process required strict compliance with service of process statutes); City of Chicago v. Pittsburgh Nat'l Bank, 523 N.E.2d 1130, 1131 (Ill. App. Ct. 1988) (stating that "strict compliance with the statutory requirements which protect defendant's rights to due process may not be ignored"); Taylor v. Landsman, 422 N.E.2d 403, 409 (Ind. Ct. App. 1981) (ruling according to Illinois law and noting that "Illinois courts have long required strict adherence to the statutorily prescribed manner for service of process"); Spearman v. Stover, 170 So. 259 (La. Ct. App. 1936) (finding that full compliance with constructive service of process statute was indispensable in affording due process of law to nonresidents); Donnelly v. Carpenter, 9 N.E.2d 888 (Ohio Ct. App. 1936) (construing constructive service statute strictly as if it was jurisdictional and instrumental to due process rights); Wiebusch v. Wiebusch, 636 S.W.2d 540 (Tex. Ct. App. 1982) (stating that constructive notice statutes must be strictly complied with to be consistent with requirements of due process).

of continuing and appellate jurisdiction.[112] In formulating his rule, Justice Talmadge did not cite any Washington case law that supports the proposition that statutory provisions for service of notice of appeal need only be substantially complied with.[113] In fact, aside from stating that his rule would be protective of due process rights, and that it would be less complicated than the current rule, Justice Talmadge did not thoroughly explain the basis for his proposed rule. In *Vasquez v. Department of Labor & Industries*,[114] Judge McInturff suggested a possible basis for Justice Talmadge's rule. Judge McInturff asserted that commencement of an action was different than an appeal because parties to an appeal have previously been notified of the action and have had the opportunity to offer their case. Parties to an action being commenced, however, may have no knowledge of the action until summons is served. It follows that this difference requires a stricter standard for serving notice to commence an action than to notice of an appeal.[115]

The first part of Justice Talmadge's rule, requiring strict compliance with notice provisions to gain jurisdiction initially, breaks from precedent. The Washington Supreme Court explained in *City of Spokane v. Department of Labor & Industries (In re Saltis)*[116] that substantial

---

112. *See supra* Part II.C.

113. *See, e.g.*, *Saltis*, 94 Wash. 2d 889, 896, 621 P.2d 716, 720 (holding that, under Industrial Insurance Act, service is proper if director of Labor and Industries actually received notice of appeal or notice of appeal was served in manner reasonably calculated to give notice); O'Neill v. Jacobs, 77 Wash. App. 366, 890 P.2d 1092 (1995) (finding that service by facsimile substantially complied with Mandatory Arbitration Rule and granted court jurisdiction over appeal); Petta v. Department of Labor & Indus., 68 Wash. App. 406, 842 P.2d 1006 (1992) (finding that, under Industrial Insurance Act, substantial compliance is sufficient to invoke appellate jurisdiction); Graves v. Vaagen Bros. Lumber, 55 Wash. App. 908, 781 P.2d 895 (1989) (noting difference between filing of notice and service of notice and court's general leniency toward compliance with necessary steps for service invoking appellate jurisdiction); State v. Sorenson, 2 Wash. App. 97, 466 P.2d 532 (1970) (concluding that filing of defendant's appeal bond substantially complied with required content of notice of appeal and was sufficient).

114. 44 Wash. App. 379, 722 P.2d 854 (finding that substantial compliance with procedural rules under Industrial Insurance Act was sufficient to invoke appellate jurisdiction of superior court).

115. *Id.* at 387–88, 722 P.2d at 859–60 (McInturff, J., concurring).

116. 94 Wash. 2d 889, 621 P.2d 716. The issue in *Saltis* was whether, under the Industrial Insurance Act, service was sufficient when there was no proof that service had been made upon the director of Labor and Industries. *Id.* at 892, 621 P.2d at 717–18. The Industrial Insurance Act states: "[A] worker, beneficiary, employer or other person aggrieved by the [board] decision may appeal to the superior court. . . . [T]he appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail, or personally, on the director and on the board." Wash. Rev. Code § 51.52.110 (1990). The court held that service was proper when the director received actual notice of appeal or when notice of appeal was served in a manner reasonably calculated to give notice. *Saltis*, 94 Wash. 2d at 896, 621 P.2d at 720.

compliance with service of process statutes is sufficient even to obtain initial jurisdiction because delay or the possibility of losing lawsuits should not result from complicated procedural technicalities.[117] Based on this policy, the Washington Supreme Court has explicitly rejected the first portion of Justice Talmadge's proposed rule.

Although it is beyond the scope of this Note to consider fully the ramifications of accepting Justice Talmadge's proposed rule, at first glance, Judge McInturff's explanation provides a compelling argument for applying a different standard to acquisition of initial jurisdiction than to acquisition of appellate jurisdiction. Applying a different standard, however, would be a considerable change in Washington law and would require further examination. Similarly, adoption of Justice Talmadge's proposal for strict compliance to gain initial jurisdiction would overrule established case law and possibly frustrate the policy to avoid loss of lawsuits on procedural grounds. Such a proposal with potentially far-reaching consequences should not be adopted without a more thorough consideration than can be afforded here.

V. CONCLUSION

The rule that substitute service of process statutes should be strictly interpreted should be retained for three reasons. First, strict compliance with substitute service of process statutes protects defendants' due process interests. There is a strong public policy interest in seeing that defendants receive notice of actions against them so that they may have their day in court in accordance with due process requirements. Second, although there is no vested legal interest in statutes and common law remaining the same, it is equitable to maintain private expectations that rest on the meaning of the rules. A strict reading safeguards the expectations that are based on common law and subsequent legal rules. Finally, *Sheldon*'s rule of liberal construction to effectuate the purpose of the statute provides a vague standard for lower courts and litigants. Strict construction provides a clearer guideline that would bring coherence to Washington's confused service of process jurisprudence and provide litigants with certainty when serving process. This certainty in turn would create less litigation over service of process sufficiency.

117. *Saltis*, 94 Wash. 2d at 895–96, 621 P.2d at 719.