LEGISLATIVE HISTORY CONCLUSIVELY SHOWS THAT MINN. STAT. § 504B.331 MANDATES THAT THE SUMMONS IN AN EVICTION ACTION BE POSTED ON THE TENANT'S OWN UNIT. POSTING ON THE MAIN DOOR OF A MULTI-UNIT BUILDING IS IMPROPER.

INTRODUCTION

After filing its Complaint with the court administrator, the first step the plaintiff (usually a landlord[1]) takes to prosecute a Minnesota Eviction Action is to have its process server serve a copy of the Summons and Complaint on the defendant (usually a tenant[1]). If service is improper, the case must be dismissed. *Koski v. Johnson*, 837 N.W.2d 739 (Minn. Ct. App. 2013).[2]

Minn. Stat. § 504B.331 sets out the three methods of service:

> [a] Direct service -- handing a copy of the a copy of the Summons and Complaint to the defendant.
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> [b] Substitute service -- handing a copy of the Summons and Complaint to a member of the defendant's household at the defendant's home.
>
> [c] Nail-and-mail service. This involves mailing a copy of the Summons and Complaint to the defendant, filing certain affidavits in a specific order[3], and then "posting the summons in a conspicuous place on the property". Before duct tape was invented, process servers usually used nails to affix the Summons and Complaint to a door, hence the rhyming expression "nail and mail".

This essay discusses the last nail-and-mail step. Is it okay for a lazy or sly process server to post the Summons and Complaint on a main entrance door of a multi-unit building instead of on the tenant's own door? This attempted shortcut doesn't happen often but it does happen. Is this shortcut allowed? As shown below the answer is No.

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[1]Other possible plaintiffs are a vendor (owner) suing its vendee (occupant) on a contract for deed or a mortgagee (lender) suing its mortgagor (occupant). There are a few other quite rare possibilities involving tax forfeitures and cooperative-member defaults. In all cases, the plaintiff is suing to remove the occupant.

[2] All the cited cases are available at https://scholar.google.com/

[3]The *Koski* case makes it clear that these steps must be done precisely correctly. Substantial compliance is not enough.

THE RELEVANT STATUTE

The nail-and-mail part of Minn. Stat. § 504B.331[4] says:

> (d) Where the defendant cannot be found in the county, **service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the property for not less than one week** if:
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> (1) the property described in the complaint is:
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> (i) nonresidential and no person actually occupies the property; or
>
> (ii) residential and service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 p.m. and 10:00 p.m.; and
>
> (2) the plaintiff or the plaintiff's attorney has signed and filed with the court an affidavit stating that:
>
> (i) the defendant cannot be found, or that the plaintiff or the plaintiff's attorney believes that the defendant is not in the state; and
>
> (ii) a copy of the summons has been mailed to the defendant at the defendant's last known address if any is known to the plaintiff.

(emphasis added)

THE ISSUE IS CLEARLY RESOLVED BY EXAMINGING THE HISTORY OF MINN. STAT. § 504B.331

The highlighted language says where to post the Summons and Complaint. On its face, the language does not specify exactly what "property" is involved. Standard textual analysis of the statute leads to the conclusion that this means the tenant's own door[5], but it turns out that examination of the history of this statute not only supports this conclusion but does so in a definitive manner. This essay is about that history.

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[4] Copies of Minnesota statutes, both current and prior-year versions, as well as session laws are available on the Minnesota Revisor's website, https://www.revisor.mn.gov/statutes/

[5]The rules of statutory construction that apply include construing the statute as a whole, construing words with reference to the words with which they are associated, the meanings of general words are limited and qualified by the special word in the statute, avoiding absurd results, avoiding constitutional concerns, and the purpose of the statute. I'm happy to provide details to any interested reader who contacts me.

First Step – Look at the Pre-Recodification Version of the Statute, Minn. Stat. § 566.06 (1998)

Minn. Stat. § 504B.331 (2022) was enacted as 1999 Minn. Laws ch 199 art 1 s 46.[6] However, the full story does not end there.

The 1999 law was not really the original version of this statute. In 1999 the landlord-tenant statutes were recodified by 1999 Minn. Laws ch. 199. This very long law rewrote (recodified) all the statutes in Minn. Stat. Chapters 504 and 566 into a new Minn. Stat. Chap. 504B. However, the purpose was not to change the substance of the law. The purpose was to modernize the language and make the statutes easier to read. As discussed in *Occhino v. Grover*, 640 N.W.2d 357 (Minn. Ct. App. 2002), the new statutes in chapter 504B and in the old chapters 504/566 are meant to have the same meaning. *Id*. at 362. The *Occhino* court stated the rule of construction as follows:

> The main purpose ... was to consolidate, clarify, and recodify the majority of Minnesota's housing statutes under one chapter. … and it was made clear that no substantive changes to the current housing laws were intended. [emphasis added]

The *Occhino* court compared section 504B.255 to section 504.32, but exactly the same principle applies to each pair of statutes in chapters 504B and 504/566. Therefore, if there is any question about the meaning of Minn. Stat. § 504B.331, one reads the old version, Minn. Stat. § 566.06 (1998). In other words, Minn. Stat. § 566.06 (1998) is in effect a direct translation of the current statute.

The nail-and-mail part of Minn. Stat. § 566.06 (1998) said the following:

> If the defendant cannot be found in the county ... and, in the case of a nonresidential premises, no person actually occupies the premises described in the complaint, or, in case the premises described in the complaint is residential, service has been attempted at least twice [and a bunch of affidavits filed] ... service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the premises for not less than one week [emphasis added].

In this version of the statute, the pertinent phrase – "posting the summons in a conspicuous place on the premises" -- appears at the end rather than at the beginning of the provision. "General words are construed to be restricted in their meaning by preceding particular words." Minn. Stat. § 645.08(3). Therefore, the last use of the word "premises" is restricted by the preceding words,

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[6]See the bottom of the Revisors's official publication of the statute. The listed 2005 amendment was part of the Revisor's bill, designed to "correct ... erroneous, ambiguous, and omitted text and obsolete references; eliminating certain redundant, conflicting, and superseded provisions; making miscellaneous technical corrections to statutes and other laws". It amended section 504B.331 by eliminating the obsolete reference to constables in parts of the statute unrelated to the subject of this essay.

i.e. “premises described in the complaint”. In section 566.06, the word “premises” is used instead of “property”, but that is unimportant (see *Occhino*). What is relevant is that “premises” in section 566.06 means “premises described in the complaint”, so “property” in section 504B.331 means “property described in the complaint”.

Second Step – Look at the Session Laws Underlying Minn. Stat. § 566.06 (1998)

Examination of the history of Minn. Stat. § 566.06 (1998) confirms this conclusion. This history is set out at the bottom of the Revisors’s official publication of the statute..

Why examine all these session laws? Why not just analyze Minn. Stat. § 566.06 (1998)? The codified statutes are actually a secondary source of law. They are the Revisor’s interpretation of the session laws. The session laws are the actual law. *Granville v. Minneapolis Public Schools*, 732 N.W. 2d 201,208 (Minn. 2007).[7] Every once in a while this matters, including one minor change the Revisor made when publishing the 1971 Minnesota Statutes. Each of these session laws are discussed below:

> The 1986 law was a Revisor’s bill dealing with gender-neutral language and thus of no import.[8]
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> 1985 Minn. Laws. ch. 214, s 1 merely changed when and how to use nail and mail on a residential tenant and switched the position of the “occupies the premises” language for grammatical ease. It made no changes to any language about where to nail the Summons and Complaint.
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> 1981 Minn. Laws ch 168 s 4 lengthened the notice period from either three or six days to seven days and eliminated a reference to minors under 14 years but made no changes to any language about where to nail the Summons and Complaint.

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[7]The *Granville* court explained the law in detail as follows [ellipses in original]:

As prima facie evidence, the statutes as printed in Minnesota Statutes "will establish a fact or sustain a judgment unless contradictory evidence is produced." Black's Law Dictionary 598 (8th ed. 2004). "Although the Minnesota Statutes are prima facie evidence of the laws of Minnesota, they are not the laws themselves. The actual laws of Minnesota as passed by the legislature * * * are contained in the session laws * * *." *Ledden v. State*, 686 N.W.2d 873, 877 (Minn.App.2004) (citation omitted), rev. denied (Minn. Dec. 22, 2004). "If the revisor has erred in codifying legislative enactments, it is the duty of the judiciary to give effect to the legislative intent and not to the letter of the law as codified because the revisor lacks the authority to make changes in the law." *Kuiawinski v. Palm Garden Bar*, 392 N.W.2d 899, 903 (Minn.App.1986) (citing *State v. Village of Pierz*, 241 Minn. 37, 41, 62 N.W.2d 498, 501 (Minn.1954)), rev. denied (Minn. Oct. 29, 1986).

[8]See footnote 6, describing the purpose of a Revisor’s bill.

1976 Minn. Laws ch 123 s 1 allowed non-sheriffs to act as process servers, eliminated one of the requirements of the affidavits, made a gramatical change, and eliminated a pulication-of-notice requirement, but made no changes to any language about where to nail the Summons and Complaint.

1973 Minn. Laws ch 611 s 9 also made some changes to the list of possible process servers but made no changes to any language about where to nail the Summons and Complaint. It also stated that it was doing so by amending Minnesota Statutes 1971, Section 566.06.

Minnesota Statutes 1971, Section 566.06 = Minn. Stat. § 566.06 (1971) read as follows in the section about nailing and mailing:

> In case the defendant ... cannot be found in the county ... service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the premises one week ... [color added]

1909 Minn. Laws ch 496 s 1 amended the prior statute, Revised Laws 4041[9], considerably and read as follows in the section about nailing and mailing:

> in case the defendant ... cannot be found in the county ... service of the summons may be made upon such defendant by posting the summons in a conspicuous place on said premises one week ... [color added]

In other words, even though the legislature made no changes to the law between 1909 and 1972, the Revisor unilaterally changed two words in the statute when he published Minnesota Statutes 1971. He changed "such defendant" to "the defendant" and "said premises" to "the premises." Presumably this was an effort to modernize the language;[10] as discussed in *Granville*, the Revisor had no power to change the statute.

The word "said" makes the passage not different but clearer. In a legal context, "said [means] "named or mentioned before; aforesaid; aforementioned".

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[9] Available at https://www.revisor.mn.gov/data/revisor/statute/1905/1905-076.pdf#search=%224041.%22

[10] The actual switch from "said" to "the" was a unilateral act by the 1971 Revisor, but if the current Revisor were asked by a legislator to draft a bill like section 566.06, he would use "the" instead of "said" if he followed the Revisor's style manual. The MINNESOTA REVISOR'S MANUAL WITH STYLES AND FORMS, 2013 EDITION at subchapter 8.25, says "**VERBOSE, OBSOLETE, OR VAGUE TERMS**. There are many common legalisms that are often unclear and nearly always unnecessary.... [For example] ... **Don't Use** such, said, same [Instead] **Use** a, an, the, it, that, them (or some other word or nothing)".

https://www.dictionary.com/browse/said[11] Therefore, "said premises" means the premises referred to earlier in the law, to wit "the premises described in the complaint".

To summarize this discourse about revisors from 51 years ago and the legislature from 113 years ago, the phrase "posting the summons in a conspicuous place on the premises" means "posting the summons in a conspicuous place on the premises described in the complaint". Minn. Stat. § 504B.331 (2022) uses the phrase "posting the summons in a conspicuous place on the property" rather than "posting the summons in a conspicuous place on the premises", but obviously the change from "premises" to "property" throughout this part of the statute is of no import and is just a distinction without a difference.

CONCLUSION

Plaintiff's process server has to post the summons on the premises described in the complaint, to wit the apartment door rather than a main entrance door.

[11] *Accord* BLACK'S LAW DICTIONARY (First Edition 1891) (the current edition in 1909) at 1058 ("Said [means] Before mentioned.... used with the same force as 'aforesaid").