

ILLINOIS POLLUTION CONTROL BOARD
June 1, 2023

PAUL CHRISTIAN PRATAPAS,)
)
 Complainant,)
)
 v.) PCB 23-67
) (Citizen's Enforcement - Water)
 LAKEWEST CUSTOM HOMES, RATHBUN)
 CSERVENYAK & KOZOL LLC, AND)
 @PROPERTIES)
)
 Respondents.)

ORDER OF THE BOARD (by J. Van Wie):

On December 1, 2022, Paul Christian Pratapas filed a citizen's complaint (Comp.) against Lakewest Custom Homes (Homes), Rathbun Cservenyak & Kozol LLC (Rathbun), and @Properties alleging violations of the Environmental Protection Act. On December 28, 2022, @Properties filed a motion arguing the complaint was not properly served and that the complaint is frivolous (Mot.). Neither Homes nor Rathbun filed a motion.

The Board first addresses the issue of service, and then discusses the motion to dismiss. The Board denies the motion to dismiss for failure to serve at this time, allows Mr. Pratapas to attempt to perfect service, and will address the motion to dismiss the complaint for frivolousness at a later time.

SERVICE OF COMPLAINT ON @PROPERTIES

Under the Environmental Protection Act (Act) (415 ILCS 5 (2020)), any person may bring an action before the Board to enforce Illinois' environmental requirements. See 415 ILCS 5/3.315, 31(d)(1) (2020); 35 Ill. Adm. Code 103. Under the Board's rules, an enforcement proceeding begins by serving a notice and the complaint on a respondent. See 35 Ill. Adm. Code 103.204(a), (b). Specifically, service must be "by U.S. Mail with a recipient's signature recorded, a third-party commercial carrier with a recipient's signature recorded, or personal service." *Id.* Notably, enforcement complaints may not be served by e-mail. See 35 Ill. Adm. Code 101.1000(e).

If service is not timely initiated or completed, then the "proceeding is subject to dismissal, and the filing party is subject to sanctions." 35 Ill. Adm. Code 101.304(b)(4). In this case, Mr. Pratapas used a sample complaint form available from the Board's website that is directed at citizen complaints. The Board's form includes a sample affidavit of service that lists appropriate methods of service. Mr. Pratapas reported to the Board that the complaint would be served on the respondent by "[p]ersonal service and [Mr. Pratapas] will make the personal delivery. However, the affidavit of service is not available to me currently." Comp. at 10.

Illinois law requires that a private corporation be served by “(1) leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State; or (2) in any other manner now or hereafter permitted by law.” 735 ILCS 5/2-204 (2020). Mr. Pratapas indicated that he personally served the complaint on respondents @Properties and Rathbun on December 1, 2022 at addresses in Naperville, and that on that date he also served the complaint on Homes via email. On December 23, 2022, Mr. Pratapas filed a certified mail receipt indicating that he mailed something to Homes.

@Properties filed its motion challenging service on December 28, 2022. @Properties notes that the Board’s rules are silent on how personal service may be effectuated, thus, the Board can look to the Code of Civil Procedure for guidance. Mot. at 2; *see also*, 35 Ill. Adm. Code 101.100, 101.304. @Properties argues that under the Code of Civil Procedure, personal service cannot be effectuated by a party to the action. Mot. at 4 (citing Gocheff v. Breeding, 53 Ill. App. 3d 608, 609 (5th Dist. 1977)); 735 ILCS 5/2-202. @Properties asserts that Mr. Pratapas attempted service and therefore, the service was improper. @Properties argues that the Board should dismiss the complaint, as the Board has no jurisdiction.

The Board’s rules for service do not state that a complainant may not be the party to personally serve the complaint on a respondent. *See* 35 Ill. Adm. Code 101.304, 103.204. In the Board’s sample complaint form, the Documentation of Service page includes an Affidavit of Service section listing appropriate methods of service. Under the Affidavit of Service section, a complainant may mark Subsection C to indicate that the complainant personally served the complaint themselves. The Board’s rules and sample forms therefore allow personal service of a complaint by a complainant. The Code of Civil procedure similarly allows for service of process on a private corporation to be made in any manner permitted by law. *See* 735 ILCS 5/2-204 (2020).

Here, while the Board’s rules may permit Mr. Pratapas to personally serve respondents, because respondents are private corporations, Mr. Pratapas still needs to serve them by leaving a copy of the complaint with their registered agent or other officer or agent of the corporation. *See* 735 ILCS 5/2-204 (2020). Mr. Pratapas did not indicate that he personally served the complaint on or mailed it to someone so authorized to accept it on behalf of @Properties, Rathbun or Homes. Additionally, Mr. Pratapas’ emailing service of the complaint on Homes is not permitted for enforcement actions. *See* 35 Ill. Adm. Code 101.1000(e). Therefore, service of the complaint on all three respondents was not proper.

The Board will allow Mr. Pratapas to correct service and file proper proof of service of the complaint on the respondents no later than Monday, July 3, 2023, which is the first business day following the 30th day after the date of this order (*see* 35 Ill. Adm. Code 101.300(a)), or face dismissal of the complaint for failure to properly serve the complaint. The Board therefore denies @Properties’ motion to dismiss for failure to properly serve the complaint at this time.

@PROPERTIES' MOTION TO DISMISS FOR FRIVOLOUSNESS

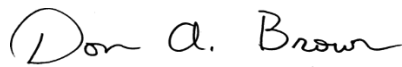
The Board cannot accept a complaint until the complaint has been properly served on the respondents. Therefore, the Board will delay its ruling on the motions to dismiss until such date, or after July 3, 2023.

ORDER

1. The Board denies respondent's motion to dismiss complaint for failure to serve.
2. The Board directs Mr. Pratapas to file the required proof of service of the complaint on the respondents no later than Monday, July 3, 2023.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 1, 2023, by a vote of 3-0.



Don A. Brown, Clerk
Illinois Pollution Control Board