



## **BEST PRACTICES FOR THE SERVICE OF PROCESS**

California Association of Legal Support Professionals

*Adopted by the Board of Directors of the California Association of Photocopiers and Process Servers  
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The foundation for the legal system of our country is due process. The rights of all parties are protected in order that an unfair advantage is not gained by one over another. The beginning of due process that can ultimately lead to forfeiture of rights and property is placing an individual or entity under the jurisdiction of the appropriate court as a result of the service of the applicable documents.

Courts have consistently addressed what constitutes notification and what efforts are necessary to insure that the opposing party is notified. Recently, the United States Supreme Court held in *Jones vs. Flowers* (decided April 26, 2006), that certified mail was not sufficient notice when the State of Arkansas knew that the notice attempt had failed. In reversing the state ruling, the court said, "Most Courts of Appeals and State Supreme Courts addressing this question have decided that government must do more in such a case, and many state statutes require more than mailed notice in the first instance."

As a matter of policy, the California Association of Legal Support Professionals affirms the following:

1. For the purposes of these Best Practices, "primary service" of process refers to any service of process by which the court obtains jurisdiction over an individual or entity. We acknowledge many types of "secondary service of process", referring to subsequent documents exchanged between parties following the primary service of process. The following Best Practices refer to primary service of process only.
2. The preferred and most effective and verifiable method for service of process is the personal, in-person delivery of process to the named individual or entity.
3. Primary service of process should be accomplished by a disinterested third party, knowledgeable of the applicable codes, who complies with the registration requirements as described in the Business and Professions Code.
4. When personal, in-person service upon an individual or entity cannot be effected, the next best method of service should be in-person delivery of process to a person authorized by court rule or statute to receive process on behalf of the named party. This type of service should be preceded by reasonable diligence to effect personal, in-person delivery on the named party and be followed by some type of additional notice (first class mailing, etc.) in order to ensure notification of the party.
5. When service cannot be effected as described above, the next best method of service is an alternative method authorized by court order upon demonstration of the fact that service cannot be effected by in-person delivery.

While continuing to affirm the above, we believe that a Trusted/Disinterested Third Party that is a Registered Process Server, as defined by the Business and Professions Code 22350 that attests to the facts of an electronic transaction is a necessary part of ensuring the due process rights of the parties. CALSPro recognizes that, while primary service of legal process by electronic means may have a limited use and value as it impacts due process, we maintain in order for electronic service to be trusted and reliable, it must be implemented in a way that embraces the following principles and concepts:

- Knowing and Voluntary
- Lawful Consent and/or Waiver
- Acknowledgement
- Receipted Transaction
- Proof of Delivery
- Secure and Reliable

Electronic Service of Process (eSOP) should be knowing and voluntary. Parties should be required to consent to eSOP and/or waive physical service of process. Proof that a party has consented or waived physical service must be documented and proven.

Electronic Service of Process must require a receipted transaction - Electronic service of process must include reliable proof that notice was actually received by a person who was authorized to accept service. The receipted transaction must reflect what was sent, when it was sent, what was sent was unaltered, what was sent was received and acknowledged by the intended recipient or its authorized agent.

The manner and method of electronic service should mimic the standards for physical service of process. The proof of service must be in a format that the courts or government accept as being reliable and secure. Electronic Service of Process is complete on the date that it is acknowledged by the recipient.

The trusted/disinterested third party process server must provide the parties and the courts with reliable proof that the documents were received and acknowledged by the intended recipient or its authorized agent.

Electronic Service of Process must be performed by a disinterested third party that is a Registered Process Server that can attest to the facts of the transaction.

Following the above principles, we believe that the electronic service of primary documents must include the following specifics.

- A. It must be voluntary with an opt- in provision.
- B. The list of entities that will voluntarily accept electronic service of primary process must be developed and overseen by a state agency, not the court or a private party. The list must be able to be accessed publically. The option to accept electronic service of primary process must also have an opt- out provision.
- C. The electronic service of primary process must be acknowledged by the recipient. The date and time of service must be the date and time of acknowledged receipt, not of date and time of electronic transmission. If a document is not acknowledged, it is not served.
- D. The act of electronic service of primary process must be effected by a registered process server who is a disinterested 3rd party. A proof of service will be generated and signed by the registered process server.
- E. Any system developed for the electronic service of primary documents must be verifiable, tamper proof, protecting any privacy rights guaranteed any party, reliable and free from vendor barriers.
- F. Electronic service of primary process must be guaranteed and trusted to the extent that the court has confidence in its jurisdiction and will enter a default if a written response is not filed.