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October 29, 2015

OASIS

35 Corporate Drive Suite 150

Burlington, MA 01803-4238

RE: [ECF-ESOP-v1.0]

Dear OASIS LegalXML Electronic Court Filing TC

On behalf of the California Association of Legal Support Professionals, I would like to extend our appreciation for the opportunity to participate in the discussion relating to the Legal Service MDE for Oasis LegalXML ECF version 5.0. We submit herewith revisions and comment to the proposed enhancement that we believe adds valuable insight to the document. We welcome the opportunity to engage in further conversation on this important topic.

Service of process and the due process protections we are afforded under the law served as the genesis for the formation of our Association forty-five years ago. The California Association of Legal Support Professionals (CALSPRO) is the oldest private organization with a primary focus on law, statutes and rules relating to the service of process. Through a vital legislative program, we have proactively protected due process in the California Legislature, and have directly impacted policy and procedure in the Judicial Council of California, the policy-making body of the California courts. A number of our members have testified as experts on subject matter relating to the service of process in California Superior Court. As well, members of our Association have testified before the California Assembly Judicial Committee, the California Senate Judiciary Committee and the Standing Committee of Rules of Practice and Procedure of the Judicial Conference of the United States. We believe it is fair to say that as an Association, we are subject matter experts, bringing decades of experience and valuable knowledge to the subject at hand

We understand that the focus of the enhancements is the primary service of process by electronic means. However, at any time that we consider matters relating to the primary service of process, by which the court obtains jurisdiction over an individual or entity, we would stand on the premise that the utmost level of concern for the law at this juncture is required. At the moment service upon an individual or entity is made and that party is placed under the jurisdiction of the court, basic rights and freedoms are at issue.

Essential to this conversation is to establish that secondary service of process and primary service of process are distinctly different. (Please note an alternative definition at Appendix B, Section 1(a.)(i).) For this reason, we would also assert that a generic reference to the "service of process" must be avoided. Primary service of process is conditioned very particularly by laws, rules and statutes because it is the origination of jurisdiction and

control by the court over an individual or entity and as such, empowers the court to restrict personal rights and freedoms and allow for the forfeiture of property. In the present study, the assumption is that all conditions are favorable and the parties are mutually satisfied. In reality, there are often entangled legal battles over the issue of jurisdiction and improper service. It is the real world intricacies that arise in court that our members are witness to day in and day out. Families lose businesses, parents lose the right to parent their children, and assets may be levied. All of these are a reality when the court gains jurisdiction by means of primary service of process. In contrast, secondary service of process is generated after the fact; after primary service of process has been confirmed and after any necessary motions to quash or otherwise oppose the service to obtain jurisdiction have been decided by the judiciary. And for this reason, secondary service of process is administered by a completely different set of laws, rules and statute, and we believe there is a cause for concern when the two concepts are not clearly differentiated.

Pursuant to our Best Practices, the preferred and most effective and verifiable method for the service of process is the personal, in-person delivery of process to the named individual or entity. Further, that the primary service of process should be accomplished by a trusted, disinterested third party. Admittedly, the purpose of the enhancements set forth pursuant to ECF-ESOP-v1.0 relates to the primary service of process by electronic means. We would assert that while electronic delivery is the goal in this study, the service of primary service of process by electronic means should, without exception, be completed by a trusted, disinterested third party. And again, returning to the very basic tenant of due process and the rights afforded by the Constitution, the act of obtaining jurisdiction over a party in a legal proceeding can be wrought with conflict, irrespective of the system utilized to the deliver the primary service of process. It is inferred in the present study that a court could be enabled with a delivery system allowing for the service of primary service of process by electronic means. In that case, the party responsible for service of primary service of process would then also be the trier of fact should a motion be made in opposition to the service. Based upon our experience with the judiciary, we would not expect that the court would see this as favorable, nor would the individuals or entities who utilize the court system for due process and justice in the actions they are party to. For this reason, we respectfully request that further revision give weight to the theory of a system which enables primary service of process by electronic means be made by a trusted, disinterested third party system and not the court itself.

We appreciate your review of our position herein and consideration of the suggested revisions and comment provided to the ECF-ESOP-v1.0. We welcome your responses and further inquiry. We are hopeful that this may result in ongoing dialogue on primary service of process. Please contact me directly at the telephone number below.

Thank you.

Very truly yours,



Steven C. Janney
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