

Volume 7 / Issue 2 / Summer 2014



LEGISLATION

Legislation:

Legislative Agenda for 2014 was Focused on AB 2286



MEMBERSHIP

Membership:

It's Not a Zero Sum Game



EDUCATION

Education:

Independent Contractor vs. Employee Revisited



CONFERENCE

Conference:

Fun in Beautiful San Diego
Save the Date – October 17-19, 2014



Association members get

\$50 off
new subscriptions

Plus, we'll donate
\$50 to CALSPRO



Activate your promotion and see full details here:
www.servemanager.com/pages/calspro

Or, call us at (800) 280-4400

- ✓ Invite clients, and share jobs.
- ✓ Save companies and contacts.
- ✓ Email attempts and affidavits.
- ✓ Print or email invoices.



INSIDE THIS ISSUE

- 2** **President's Message**
- 4** **Capitol Report**
- 5** **Independent Contractor vs. Employee Revisited**
- 8** **Best Practices Subcommittee Report**
- 9** **2014 Legislative Focus Was AB 2286**
- 12** **It's Not a Zero Sum Game**
- 14** **FTC Settlement Statement with the Decision and Order**
- 15** **FTC Press Release of April 4, 2014**
- 22** **2014 Conference**
- 23** **CALSPRO Advertising Report**
- 24** **eService Working Group**
- 25** **Pics from the June 21, 2014 Board Meeting**
- 26** **Through the Looking Glass**
- 28** ***The Bank of New York Mellon v. Preciado***

Thank you to our Advertisers

ServeNow – Inside Cover	TRISTAR – 13
DGR Legal – 3	Washington Pre-Trial Svcs, Inc – Backpage
Florida at your Fingertips – 7	Borg Process Servers, Inc. – Backpage
1-800-Process – 10	

eDelivery of your CALSPRO Press

The CALSPRO Newsletter is now available in e-mail format only! Make sure we have your current email address, so you don't miss an issue: stephanie@caladmanagement.com

CALSPRO is not responsible for the accuracy of any comments herein relating to their own case or actual law. All readers should do research as to the actual legality of any issue. Opinions, viewpoints, or articles published under a byline and appearing in this newsletter do not necessarily reflect the official position of this association. Acceptance of advertisements in no way constitutes professional approval or endorsement by CALSPRO. No anonymous Letters to the Editor will be printed. Your name will be withheld upon request.

© Copyright 2014, California Association of Legal Support Professionals. No material may be reproduced without the express written consent of the publisher. Controlled circulation postage paid in Sacramento, CA.

California Association of Legal Support Professionals

2520 Venture Oaks Way, Suite 150
Sacramento, California 95833
Phone: (916) 239-4065 • Fax: (916) 924-7323
Web site: www.calspro.org
E-mail: info@calspro.org



FIND US ON
FACEBOOK AND
TWITTER!



PRESIDENT'S MESSAGE

MICHAEL KERN

2014 CALSPRO PRESIDENT

During the past several months, I have been busy as your President by attending several events which are helping to brand the CALSPRO name both in and outside of California, making it more recognized by a variety of legal support professionals and potential members of our association.

This past April, I attended the NAPPS Annual Conference in Atlanta, GA, which focused on mobile office technology, an electronic platform for the future, and the topic of independent contractor vs. employee. These topics provided beneficial information regarding leveraging technology and safeguarding your company to be smart, strong and profitable in the future. When the by-law portion of the business meeting came up, there was a lot of debate over the proposed amendments, which took the meeting into the late hours of the afternoon. The Board and officer elections went fairly smoothly, resulting in many expected outcomes and a couple of surprises, including some long time Board members not being elected at all, and a total absence of a Californian on the board. To help disseminate the goings on at the conference, several attendees from CA, CO, IL and NJ came together and created a Twitter plan to advise members and followers with instant real time updates under the hashtag #NAPPS2014. These were then retweeted over and over so that many more people than ever before were getting this information right away. For this first time effort, I believe it was very well received, and was a successful and effective

means to reach members and others that had interest in the conference. I also believe NAPPS' leadership should continue and even expand this information sharing by way of Twitter, Facebook, and possibly even via a real time webcast of the conference for those who could not make the trip. There are other associations doing similar things for a modest cost. This may be a way for CALSPRO to reach out to our members that are not able to attend in person. Of course, we will ensure that the in-person experience is truly fantastic, so that there are clear advantages to attending in person.

After attending NAPPS, I was invited to and attended the 2nd Annual Process Servers Association of Colorado (PSACO) Conference in Denver, Colorado as a keynote speaker. The topic I was selected to represent was "growing your process service business". There were several other speakers providing expertise and insight into our profession, such as business tips for process servers, potential pitfalls in the area of employee vs. independent contractor relationships, skip tracing techniques, getting the most of your professional affiliations and using QuickBooks for increased profits. Every session of this conference was very well attended, and for those who were not able to be there, they offered online conference streaming over the internet, in which participants from 15 states were able to partake. The President of PSACO, Steve Glenn, provided his vision of the future of process serving and kept the attendees interested and engaged. Steve is also the

newly elect 1st Vice-President of NAPPS. I felt honored to be a speaker and to take part in the discussions, and also to share my vision to the attendees.

I was fortunate and honored to attend the 80th Legal Secretaries Inc (LSI) Conference in Concord, CA, this past month. CALSPRO was in attendance as a vendor, with one goal being to bolster membership in our supporting member category, and another to honor our CALSPRO Past President Mary Beaudrow (1998-2000), who was being installed as the new President of LSI. Mark Schwartz, a CALSPRO Past President and current board member, and Cliff Jacobs our current Vice-President, were also in attendance. Legal secretaries from throughout the state convened for continuing education, election of officers, and committee appointments. Mary recently quoted that being a part of CALSPRO leadership as a past president has helped shaped her to be the person she is today. I would like to offer her congratulations and know she will do a fantastic job as LSI President!

Legislatively, as you may remember from the previous CALSPRO Press, AB2286 was sponsored to move the process server registration from the county level to the state level within the State Bar of California. Our bill was making progress through the Assembly, but then we received opposition by the California Supreme

Continued on page 10

PROCESS SERVICE

MESSENGER SERVICE

SUBPOENA SERVICE

The most reliable Process Service in New Jersey

NOTARY SERVICE

DOCUMENT RETRIEVAL

FORECLOSURE SERVICES

OCCUPANCY & PROPERTY INSPECTIONS

800-326-0404
www.dgrlegal.com
service@dgrlegal.com





CAPITOL REPORT

MICHAEL D. BELOTE, ESQ.
CALIFORNIA ADVOCATES, INC.

HALF-EMPTY, HALF-FULL

California voters made two very fundamental changes to the state budget process a few years ago, and the results have been dramatic. First, the legislative vote requirement to adopt the annual budget was reduced from two-thirds to a simple majority, and second, legislative pay is permanently forfeited for each day after June 15 on which the budget has not been enacted. Which is the more significant change is a matter of interpretation.

The result, though, is reliably on-time budgets. By the evening of Sunday, June 15, 2014, both the Assembly and Senate had adopted the conference report containing the state budget. For courts, the news was mixed: on the positive side, the judicial branch budget was increased by something over \$200 million (again, the actual amount depends upon interpretation as the state budget is an exceedingly complicated document). Given the relatively small amount of truly discretionary spending increases available to the governor and legislature, this should be viewed as a show of support for the courts.

On the negative side, however, the budget increases still leave the court system perhaps \$50 million short of what the branch calculates as a break-even, status quo amount. It is possible that further court cuts in some counties will be necessary, even with the additional money. Potential cuts will play out over the next few months as the new spending plan takes effect with the beginning of the new fiscal year on July 1.

Thus, the question is one of interpretation, the proverbial half-empty, half-full question. There is no doubt, however, that

policymakers understand that courts have suffered mightily with the budget cuts of recent years, and more must be done to reinvest in the third branch of government.

Even as the budget was being debated and adopted, the legislature has also been busy hearing so-called "second house" bills. This means that the Senate is hearing Assembly bills sent their way, and the Assembly is conversely hearing Senate bills which are still alive. Literally hundreds of bills are being heard before July 4th, the beginning of the legislative summer recess, and a number of them are important to CALSPRO.

For example, the Los Angeles County Sheriff is sponsoring AB 2256 (Garcia), which initially proposed to amend various statutes relating to service of process. CALSPRO worked very cooperatively and collaboratively with representatives of the sheriff, and a number of items of concern were removed from the bill. As the bill stands now, the two items still remaining in the bill of interest are increases in various Government Code service of process fees for sheriffs, and slight but positive improvements in the law relating to service in gated communities. Thanks to CALSPRO Legislative Chair Steve Janney and his committee for reviewing and commenting on the initial language.

Second, CALSPRO has been busy on AB 2059 (Muratsuchi), relating to copying of medical records. The bill is sponsored by the Consumer Attorneys of California, representing the organized civil plaintiff's bar. The lawyers were concerned about issues of access and cost in obtaining electronic records, and a number of meetings have been held with various

stakeholder groups in the photocopy arena. Throughout these meetings, groups other than the plaintiff's bar have suggested changes to the law which CALSPRO believed were unfavorable to lawyers, litigants, and our members. It now appears that these changes will not be incorporated into AB 2059. Although the ultimate fate of the bill is unclear, at this point it does not appear that it will be necessary to oppose the bill.

Finally, Legislative Chair Steve Janney reported in his column that CALSPRO-sponsored AB 2286 will not be pursued this year, due to serious concerns raised by the California Supreme Court. AB 2286 proposed to move authority over the process server registration act from the local county clerks to the State Bar of California. The court's concern, which came as a surprise, is that backlogs in State Bar handling of lawyer discipline could be exacerbated by giving the Bar authority over a new class of persons. Since the Supreme Court has ultimate authority over lawyer discipline, an expression of concern in the legislature would have been taken very seriously.

The good news, however, is that other than the court, no other entity expressed concern about the philosophy of moving the process server registration law to the Bar. To the contrary, many were convinced that the move made good policy sense. This is an issue that will be revisited as the Bar backlog issues are addressed.

A very busy year, indeed.



Independent Contractor vs. Employee Revisited

by **Cliff Jacobs**,
*Continuing Education Committee
Chairman*

This past spring, four events occurred that once again shined the spotlight on the issue of whether someone working as an Independent Contractor (IC) is actually classifiable in the eyes of the government as an employee, and is, thereby, entitled to all of the benefits and protections under labor and other employment related codes. The ramifications are huge for both the companies and individuals involved.

The theme of this conversation centers on the correct and accurate classification of an individual based on what the individual is requested or required to do in the context of the standards within the profession. At stake is the potentially enormous liability for a business utilizing the services of IC's. So much so, that this topic was one of just three featured educational programs at the National Association of Professional Process Servers Annual Conference in Atlanta in early April, which was attended by both members and non-members from all over these United States. It was also a focal point at the more recent PACES Process Serving conference held in Denver at the end of April, which was attended by legal support professionals from at least 15 states.

The other events involve two CA lawsuits that directly involve the matter at hand; one, a Ventura case that is settling for up to two and a half million dollars, and the other, a new lawsuit filed in Los

Angeles on March 24th, 2014. This action is so recent that at this point it can provide little more than the Plaintiff's allegations of Labor Code and Business and Profession Code violations potentially stemming from the misclassification of employees as independent contractors. The case number of this Los Angeles County Class Action is BC 540315, and the face page of the Complaint lists 8 separate causes of action, each containing the specific codes allegedly violated. This is one case to keep your eye on because it may have a major impact on our businesses and our profession.

Ventura County case **56-2012-00416383-CU-OE-VTA** is a class action currently well into the settlement phase, which directly involves process servers who stand to receive over 2 million dollars collectively. A notice of proposed settlement dated March 21, 2014, was sent out to class members by order of the court. The deadline date to return a Settlement Share Claim to the Settlement Administrator or to file an Election Not to Participate is June 23, 2014, with the final approval hearing scheduled for August 7, 2014 at 8:30 a.m. in D-21 of Ventura Superior Court

A brief synopsis of this action alleges that the plaintiff and similar class members were incorrectly classified as independent contractors, but were required to perform the duties of, and were treated like employees. The time period covered in this action extends from April 30, 2008 to March

21, 2014, just under six years. The specific codes that were allegedly violated are CA Labor Code sections 201, 202, 203, 201, 221, 226, 226.3, 226.6, 226.7, 510, 512, 1194, 1197.1 and 2802; Business and Professions code section 17200; and certain Wage Orders issued by the Industrial Welfare Commission. Within the context of the allegation that the individuals were employees rather than IC's, the topics covered by these codes include such things as failure to reimburse for business related expenses, failure to provide meal and rests periods, and failure to pay minimum and overtime wages.

The amount of the settlement in simplistic terms is based on a maximum settlement amount of 2.5 million dollars. From that, subtract a 20K class representative (Plaintiff) payment; a 775k payment to Class Counsel for Fees and Expenses; a 15k payment to the Labor and Workforce Development Agency (LWDA); and 14.5K to the Settlement Administrator leaving a remainder of \$ 1,675,500.00 as a net settlement amount. The actual payout amount is based on multiplying 1) the ratio between total amount paid to an individual class member and total amount paid to all class members during that time period, with 2) the net settlement amount of 1.67 million. Settlement Share Claim forms have been sent to each of the process server class members. These forms show

Continued on page 6

the total amount paid to them during the specified time period, and their estimated Settlement Share based on those earnings. An approximation derived from several actual Settlement Share Claim forms show that someone paid 20k during the operative time period would receive about \$1,300 before taxes, someone paid 140K would receive about 10K before taxes, and someone who earned 450K would receive about 30K before taxes. This equates to about 6.62 % of the wages earned. There are other factors affecting the actual payout amounts including the fact that the Settlement Share Claim forms state that the settlement figure is an estimated amount, or that there is no guarantee that the settlement will be approved on August 7th.

It is important to note that the defendant denies all of the Plaintiff's material allegations, and more specifically asserts that the Plaintiff and representative class were correctly classified as IC's. However, after negotiations in front of a mediator, both sides recognized the potential risk of an unfavorable outcome and therefore agreed to this settlement. Because of the decision to settle, our profession is denied precedent setting rulings which would potentially be quite helpful in establishing appropriate business protocols to protect companies from similar claims. Nonetheless, there are several references readily available that can be very useful in determining the correct classification of a worker, and understanding acceptable and inappropriate practices for that classification.

The Common Law Test, which was first articulated in the case of *Empire Star Mines Co. v. Cal. Emp. Com.*, 28 Cal.2d 33 (1946), identified that the most important factor in determining whether a worker is an IC or employee is the right to control the manner and means of accomplishing the desired results. Having complete control, whether or not imposed, is indicative of an employer-employee relationship. There are many other factors within the common law test including the requirement of particular skills, the place of work, the length of time services are to be provided, direct (or indirect) or no supervision provided,

the method of payment, and whether the parties believe the relationship is employer-employee or IC based.

The Borello Test, established in the findings of *S.G. Borello & Sons, Inc. v. Department of Indus. Relations*, 48 Cal. 3d 341 (1989), was based on the CA Supreme Court's assertion that the common law test was just not enough; especially within the context of protections afforded by CA's Workers Compensation Act. The Court declared that a balance was needed between consideration of the right to control per the Common Law Test, and also several other factors (the Borello Test) including the worker's opportunity for profit or loss based on skill, the workers own investment in tools of the trade and materials, whether special skills are required, how permanent the working relationship is, and whether the service provided by the worker is integral to the employer's business. The difficulty here is in the understanding of what that balance should look like, largely because both tests are based on groups of multiple factors and different circumstances, with no single factor determining the outcome.

Fortunately, since then several other resources have been created and are useful guidelines to use in determining if an individual should be classified as an employee or an IC. In 1996, Industry Specific Regulations for Process Servers emerged in the California Code of Regulations section 4304-11 (22 CCR § 4304-11) which defined in clearer terms more specific elements consistent with being either an employee or an IC. This section was to be used in conjunction with section 4301-1 which contains the Common Law Test. If the process serving company does not follow sections 4304-11 then the more general section 4301-1 would apply.

Other resources that may be useful in making the determination of IC or Employee include the Fair Labor Standards Act, guidelines from agencies such as the Employment Development Department (EDD), Franchise Tax Board (FTB), Immigration and Naturalization

Service (INS), US Department of Labor (DOL), CA Labor Commission, and the Internal Revenue Service (IRS) 20 Factor Test on Employment Status. The IRS also has a page dedicated to "Independent Contractor or Employee" at the following link:

<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-Self-Employed-or-Employee>.

If you still cannot make the determination, there is a newly revised IRS Form, SS-8 (Rev. 5-2014) "Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding" available on the IRS website, which you can fill out and submit to the IRS. They will review the information you provide and make a determination for you.

I believe that this topic would be an ideal educational opportunity to present at our Annual Conference this October in Mission Bay. I welcome your thoughts on that, as well as your suggestions for other topics of interest that you would like to see addressed.

FLORIDA at YOUR FINGERTIPS

These firms have over 175 years of combined experience in the process service and/or investigative field. These companies provide instant service, status on service, and immediate returns to your firm. All are members of professional organizations and have superior service ratings by law firms and process service companies nationwide.

Please mention you saw us in "FLORIDA at YOUR FINGERTIPS."

1 Florida Coast Process LLC

2602 Tinoso Circle, Pensacola, FL 32526

407-440-8448 Fax 407-872-1883

Servicing: Escambia, Santa Rosa, Washington, Gulf, Walton & Okaloosa Counties.

Email: info@floridacoastprocess.com Website: floridacoastprocess.com

2 Vause's Process Service

P.O. Box 1777, Tallahassee, FL 32302 907 Delores Drive, Tallahassee, FL 32301

850-656-2605 Fax 850-222-2412

Servicing: All of Northeast Florida and specializing in service on state agencies and document retrievals in Tallahassee Florida.

Email: todd@vpsservice.com Website: vpsservice.com

3 Lehr's Process Service

1017 SW 86th Way, Gainesville, FL 32607

352-331-1010 Cell 352-339-6438 Fax 352-332-3895

Servicing: Alachua, Gilchrist, Union, Levy, Bradford & Marion Counties.

Email: Steve@LehrsProcessService.com Website: lehrsprocessservice.com

4 M & M Process, Inc.

7801 Pt. Meadows Drive, Unit 1106, Jacksonville, FL 32256

Toll Free 888-737-1013 904-737-5494 Fax 904-737-5497

Servicing: Duval, St. Johns, Clay, Nassau & Baker Counties.

Email: Mike@mmprocess.com Website: MMPProcess.com

5 Aallen Bryant & Associates, Inc.

P.O. Box 3828, Orlando, FL 32802-3828 511 E. Livingston St. Orlando, FL 32803

Toll Free 800-228-3463 407-872-0560 Fax 407-872-1883

Servicing: Orange, Seminole, Osceola, Lake, Volusia & Flagler Counties.

Email: info@aallen.com Website: aallen.com

6 Serve Legal Process, Inc.

309 South Willow Ave., Suite 2, Tampa, FL 33606

813-254-8762 Fax 866-627-3659

Servicing: West Central Florida.

Email: wmurray@servelegalprocess.com Website: servelegalprocess.com

7 World Class Investigations, Inc. d/b/a Process Express

753 S Apollo Blvd., Melbourne, FL 32901

321-728-0641 Fax 321-728-0818

Servicing: Brevard, Indian River, St. Lucie, Martin, Okechobee & Highlands Counties.

Email: info@wcipi.com Website: wcipi.com

8 Here Comes The Judge Legal Process Services

3293 Fruitville Road, Suite 106, Sarasota, FL 34237

Toll Free 800-621-4129 941-954-0169 Fax 941-954-1349

Servicing: Sarasota, Manatee, Desoto & Charlotte Counties.

Email: officestaff@hctjudge.com Website: hctjudge.com

9 South Florida Legal Services

2267 First Street, Ste. 19, Ft. Myers, FL 33901

239-332-7000 Fax 239-337-2100

Servicing: Charlotte, Lee, Collier, Monroe, Hendry & Glades Counties.

Email: SFLSNAPLES@aol.com Website: southfllegal.com

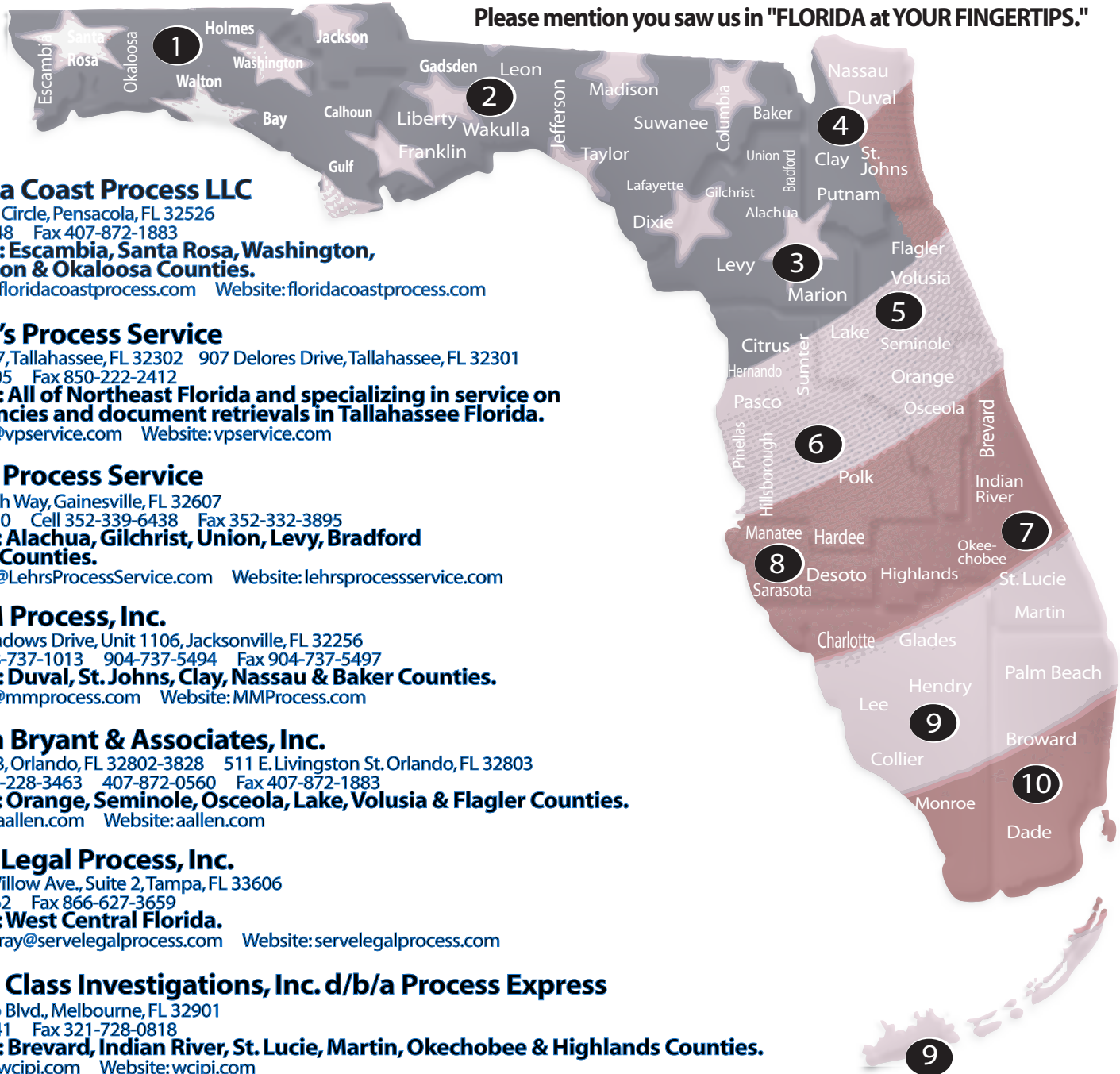
10 Process Services, Inc.

8330 State Road 84, Ft. Lauderdale, FL 33324

Toll Free 800-527-6401 954-474-4867 Fax 954-452-7313

Servicing: Broward, Dade & Palm Beach Counties. Same day service of CT Corporation.

Email: office@dealpsi.com Website: dealpsi.com



Best Practices Subcommittee Update

*by Wendy Bowman,
Best Practices
Committee Chairperson*



On direction from the membership, the Best Practices Committee was formed at our last conference. The committee was tasked to review and revise our Service of Process Best Practices so as to ensure that this document, one that sits at the heart of the Association, is up-to-date and relevant. Why is this necessary? It truly relates to the premise that in order to know where we are going, it is imperative that we know where we come from. What is our purpose? What do we value? What are our goals and objectives as representatives of the legal support profession? These questions and their answers create the basis for our association. When we are called to tackle big issues, the first step should be to review foundational documents.

Once those discussions were underway in committee, the Best Practices Committee agreed that, although technology is changing the way we do business, our

standards for the service of process have not changed. Therefore, the committee reconfirmed that CALSPro Best Practices were in order and are relevant. To view the Best Practices, please visit www.calspro.org/about-us/best-practices. However, the Committee did decide that we were due to add a Mission Statement and a set of Core Values. To view the Mission Statement and Core Values, please visit www.calspro.org/about-us/best-practices. Actually very self-explanatory by title, the Mission Statement defines our purpose; the Core Values set forth what we deem to be our principles; and Best Practices are the standards of the practice of our profession. Together, this trio of documents goes well to lay out the foundation of CALSPro.

Why is this important today? As we continue conversation and study the issues relating to eService and at such a future time we must develop a new policy, prepare legislation or create a position to

defend legislation, for that matter, it is extremely important for the Association to be on point and in agreement as to our intent and purpose. Without that, we run a greater risk of running off course.

If you are still coming up to speed on the issue of eService and the work of the eService Committee, the two-part series, *Remaining Relevant in the Digital Age*, by Mark Schwartz is a good place to start. To view the article please visit the links below. It cannot be stated strongly enough that we are at a door of change to our industry that will impact all of us. Stay informed. Questions or comments: wendy@sterlingmadison.com

Part 1: www.calspro.org/files/2013/08/CALSPro-Fall-2013-Newsletter.pdf

Part 2: www.calspro.org/files/2013/12/CALSPro-13-4-Web.pdf



Legislative Committee Update

by Steve Janney

Legislative Committee Chairperson

The CALSPro Legislative agenda for 2014 was focused on AB 2286. This is a bill introduced by Assembly Member Wagner and sponsored by CALSPro. To quote the bill, "This law would remove oversight of the registration of process servers from the counties and place it within the State Bar of California."

The bill was moving through the Assembly Judiciary Committee, with the first hearing scheduled for April 26, 2014. Unexpected and unanticipated opposition has recently been expressed by the California Supreme Court. The discussion focused on whether or not the State Bar had the authority to regulate any legal profession affiliated group outside of lawyers.

Discussions will continue within CALSPro regarding our registration with the possibility of new legislation being submitted in 2015.

We continue to monitor AB 2256. This bill has been introduced by the Sheriff and is currently in the Committee on the Judiciary.

The bill has been amended to address our concerns and thoughts.

I want to remind all CALSPro members that you can check on the active legislation being monitored by CALSPro by going to our website, www.calspro.org, clicking on the Legislative tab and then selecting active legislation.

California Budget

Governor Brown recently released his proposed budget. CALSPro is especially attentive to how that budget will affect the court system. We are all aware of the significant changes that have occurred over the past few years due to budget cuts and fee increases.

California Chief Justice Tani Cantil-Sakauye recently said that annual case filings have dropped by about 2.5 million statewide the last few years, possibly because delays, higher costs and longer drives have discouraged users. We would agree with the Chief Justice that the court system is

getting more difficult, rather than easier, to participate in.

Brown's proposed budget included, according to the *LA Times*, "\$60 million more for the cash strapped court system."

The CALSPro legislative agenda, the California budget and other topics were discussed at the June 21st Board Meeting in Sacramento. It was an informative and productive time, and it was great to see many of you there.



Court. After discussions with the court and our advocate, CALSPro asked Assembly Member Wagner to withdraw the bill. We will continue the discussion in order to find another way for continued enhancement of the process server registration with mandatory certification and accountability. We're hopeful that CALSPro will be able to submit new legislation in the beginning of 2015.

I also want to provide an update regarding our anti-trust situation. On April 3, 2014 we received the final signed consent decree order from the Federal Trade Commission. CALSPro has agreed to comply with all reporting, posting and notification requirements. The link containing the Federal Trade Commission's press release

is available on CALSPro's website under the code of ethics section. Per the FTC order additional information regarding this matter is included in this newsletter.

Don't forget the CALSPro 46th Annual Conference will be held at the Bahia Resort in San Diego, CA October 17-19th. The conference committee is working hard putting together another great event with speakers, education and fun. The process serving profession and courts are changing quickly, and the future direction of our profession is at a crossroads. We welcome all members to join the conversation and help shape our future association and profession. I invite and encourage all of you to attend this year's conference. Details will

be posted on our website well in advance, but start planning now to be there.

As a final note, CALSPro just had its Board of Directors meeting on June 21st at the Capitol Mall Embassy Suites in Sacramento. This was a great opportunity to see your board in action, check out our committees, and contribute in the association discussions. It was great to see some of you there!

Best,

Michael Kern,
CALSPro President



Save the Date – October 17-19, 2014

Bahia Hotel, San Diego

CALSPro Annual Conference

Bahia Hotel

Secluded on a 14-acre peninsula, the Bahia Hotel is a scenic beach location in the heart of San Diego's famous Mission Bay -- spectacular views of the Pacific Ocean can be enjoyed from all the vistas. Discover the lush tropical gardens, winding walkways, and gentle ocean breezes. You'll be close to all the major attractions, such as SeaWorld, the San Diego Zoo, Balboa Park, as well as experiencing the culture and excitement of bustling downtown San Diego. Enjoy the Bahia Belle Cruise, a "Turn of the Century" Mississippi-style sternwheeler, and the Catamaran Spa during your stay for our 46th Annual CALSPro Conference. Please watch for future announcements of our Conference program.

FOR Sale: **Zip Codes**

1-800-PROCESS

Is Offering Zip Codes For Sale.

If You Purchased The Zip Code, Anyone From Anywhere Can Directly Connect With Your Office. No Middle Man Is Involved. You Negotiate Your Own Deal With The Caller. No Call Center, No Commissions, No Sharing The Wealth. Anyone That Calls 1-800-PROCESS, Clicks Or Calls The Zip Code Purchased And They Are Directly Connected With You. Simple, Effective And Totally Owned And Controlled By You.

***You Own A Piece Of 1-800-Process Through Zip Codes.
All Calls Going To Your Zip Code
Go Directly To You With A Direct Connect.***

Interested?

***Go To 1800PROCESS.com
Or Call Doug Kramer At
1 800-687-0130 For More Information***



Membership Committee Update

by Larry Kirlin

Membership Committee Chairman



It's Not a Zero Sum Game

Where should a small to medium size process serving company spend their advertising money? CALSPro vs. NAPPS? CALSPro vs. Serve Now? It doesn't have to be an either-or decision.

CALSPro, Serve Now and NAPPS all serve different purposes and should be considered separate and vital to your business. Some people are already bristling because I mentioned Serve Now in the same sentence as the two professional associations. All I can say to those people is, settle down and hear me out.

The reason I group these three entities together is because each has a component that drives revenue towards your business. Take a look at the letter below that was sent out to former members a few months ago. It outlines the benefits of your CALSPro membership. All this for under \$17/month for an individual membership. What a bargain!

I realize this article is being distributed to people who are already members. What I'd like you to do is forward it to your non-member colleagues. Print it and place it in your server's box. Sing it from the rooftops! OK, maybe not the singing part.

Michael Kern,
2014 CALSPro President

Read and enjoy...

Dear Former CALSPro Member,

Let's get right to the point. We want you back!

This year we are offering membership opportunities designed to expand your company's services and presence to the legal community. One of several things available is an option to enhance your website directory listing. Another member benefit is the opportunity for members to directly access over 2500 online educational opportunities at very low prices through the members only section of our website.

If your business provides copy services, take note that we have redoubled our efforts to support the professional photocopy industry. The copy industry has many challenges on the near horizon. One of the most important, and potentially dangerous, is the electronic storage of records and the ease of transmitting them. We must be sure we remain a vital part of the discovery process. Specifically, one of the challenges we are currently facing is the cost to

obtain x-rays and MRI's. Some facilities are charging \$10 to \$35 for each x-ray, even when they are stored digitally and costs them only pennies to duplicate. It's even worse for MRI's. Sometimes the number of slides can be quite substantial. We are aware of several facilities that are charging the same x-ray cost for EACH SLIDE! This can require a fee advance in the hundreds or even thousands of dollars even though it is contained on one CD or DVD and they have already been paid for the health care services provided to the patient! When challenged, the witness's response is that the statutes do not regulate it and therefore they can charge what they please. We must do something about this before it gets worse, but we can only do it together.

The sole purpose of our association is to protect and promote our industry through legislation. But when it comes to accomplishing goals in Sacramento, it is necessary to lubricate the wheels of government. This takes two things. One is a strong lobbying advocate and the other is numbers, both in terms of members and in terms of money for political contributions. The first one we have covered. Our lobbying company, California Advocates,

Continued on page 13

has been our voice in Sacramento for many years. They have never failed to help us accomplish our goals and stand ready to help us move forward. The second requires your participation. The first thing you can do is to join our association.

Please consider joining CALSPro and making your voice be heard. Our board and legislative committee meetings are always open to members. We encourage you to share your thoughts, goals and concerns. Our industry can survive and thrive but only with the participation of companies like yours.

AFFORDABLE MARKETING

CALSPro now offers additional enhancement opportunities for your listings on the CALSPro website, including additional color, larger print, and a direct

link to your company's website all for just one low price of **\$100 per year**. That's under \$8.50 per month. We believe this unique marketing opportunity will add value to your membership.

LEGISLATIVE ADVOCACY

CALSPro's #1 priority since the associations founding (as CAPPs) over 40 years ago has always been our legislative program; fighting adverse legislation and proposing favorable legislation via friendly Legislators (think of this as industry insurance). This past year we fought SB 984, which would have had a devastating impact on our profession. Our Legislative Advocate was able to squelch the threat this time. The increase of recent bad publicity facing our industry throughout this past year both locally and nationally has called us

to strengthen our voice in Sacramento by fortifying our membership roles to protect our profession and ensure that we will all have a future in this industry.

I look forward to another great year for CALSPro and its members.

Visit www.calspro.org for more information.



TRISTAR SOFTWARE



TRISTAR SOFTWARE
WWW.TRISTARSOFTWARE.COM
SALES@TRISTARSOFTWARE.COM
805.227.1213

**Federal Trade Commission Settlement Statement
In the Matter of California Association of Legal Support Professionals
File No. 131 0205, Docket No. C-4447
April 3, 2014**

Dear CALSPRO Member,

As you may know, the Federal Trade Commission conducted an investigation concerning the provisions in CALSPRO's Code of Ethics that stated:

It is not ethical to cut the rates you normally and customarily charge when soliciting business from a member firm's client, or to speak disparagingly of another member . . . Never discuss the bad points of your competitor.

It is unethical to contact an employee of another member firm to offer him employment with your firm without first advising the member of your intent.

The Federal Trade Commission alleges that these provisions violate the Federal Trade Commission Act because they, without sufficient justification, restrain legal support professionals from competing for clients and employees, thereby depriving clients and employees of the benefits of competition among legal support professionals.

To end the investigation expeditiously and to avoid disruption to its core functions, CALSPRO voluntarily agreed, without admitting any violation of the law, to the entry of a Consent Agreement and a Decision and Order by the Federal Trade Commission. As a result, CALSPRO will not enforce, and will remove, the above provisions from its Code of Ethics.

More generally, the Federal Trade Commission has prohibited CALSPRO from certain activities that restrain members from engaging in price competition, soliciting employees, and advertising. CALSPRO may not restrain its members from offering discounts when soliciting business. CALSPRO may not restrain its members from soliciting employees, including, but not limited to, restraining its members from contacting employees unless they confirm to any Code of Ethics, rule, or regulation established by CALSPRO. Finally, CALSPRO may not restrain its members from advertising or publishing the prices, terms or conditions of sale of legal support products and services, including, but not limited to, restraining members from making statements about competitors' products, services, or business or commercial practices. However, CALSPRO is not prohibited from adopting and enforcing reasonable principles, rules, guidelines, or policies governing the conduct of its members with respect to representations that CALSPRO reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

The Decision and Order also requires that CALSPRO implement an antitrust compliance program.

A copy of the Decision and Order is enclosed. It is also available on the Federal Trade Commission website at www.ftc.gov, and through the CALSPRO website at www.calspro.org.

Thank you.

Federal Trade Commission Press Release

FTC Approves Final Orders Settling Charges that Two Professional Associations Restrained Competition Among Members through their Codes of Ethics

April 4, 2014

Following a public comment period, the Federal Trade Commission has approved separate final consent orders settling charges that two professional associations restrained competition among their members in violation of the FTC Act. The FTC first announced proposed consent orders with each association on December 16, 2013. The Music Teachers National Association, Inc. (MTNA) represents over 20,000 music teachers nationwide and is the umbrella organization for about 500 state and local music teacher associations across the country. As alleged in the FTC's complaint, MTNA and its members restrained competition in violation of the FTC Act through a code of ethics provision that restricted members from soliciting clients from rival music teachers.

In a separate complaint, the FTC charged that the California Association of Legal Support Professionals (CALSPRO), which represents companies and individuals that provide legal support services in California, violated the FTC Act through code of ethics provisions that restrained its members from competing against each other on price, disparaging each other through advertising, and soliciting legal support professionals for employment.

Under the final consent orders approved by the FTC [MTNA consent | CALSPRO consent], the two associations have agreed to eliminate the provisions in their codes of ethics that restrain competition among their members. The Commission vote approving each final order and letters to the public commenters [MTNA commenter letters | CALSPRO commenter letters] was 4-0. (FTC File Nos. 131-0118 and 131-0205; the staff contact is Armando Irizarry, Bureau of Competition, 202-326-2964)

The FTC's Bureau of Competition works with the Bureau of Economics to investigate alleged anticompetitive business practices and, when appropriate, recommends that the Commission take law enforcement action. To inform the Bureau about particular business practices, call 202-326-3300, send an e-mail to antitrust@ftc.gov, or write to the Office of Policy and Coordination, Bureau of Competition, Federal Trade Commission, 601 New Jersey Ave., N.W., Room 7117, Washington, DC 20001. To learn more about the Bureau of Competition, read Competition Counts. Like the FTC on Facebook, follow us on Twitter, and subscribe to press releases for the latest FTC news and resources.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

In the Matter of

California Association of Legal Support
Professionals,
a corporation.

Docket No. C-4447

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of California Association of Legal Support Professionals ("Respondent" or "CALSPRO") and Respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order ("Order"):

1. Respondent California Association of Legal Support Professionals is a non-profit corporation organized, existing, and doing business under, and by virtue of, the laws of the

State of California, with its office and principal place of business located at 2520 Venture Oaks Way, Suite 150, Sacramento, California 95833.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order, the following definitions, shall apply:

- A. "Respondent" or "CALSPRO" means California Association of Legal Support Professionals, its directors, boards, officers, employees, agents, representatives, councils, committees, foundations, divisions, successors, and assigns.
- B. "Antitrust Compliance Officer" means a person appointed under Paragraph IV.A. of this Order.
- C. "Antitrust Counsel" means a lawyer admitted to practice law in one or more of the judicial districts of the courts of the United States.
- D. "Antitrust Laws" means the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et. seq.*, the Sherman Act, 15 U.S.C. § 1 *et. seq.*, and the Clayton Act, 15 U.S.C. § 12 *et. seq.*
- E. "Code of Ethics" means a statement setting forth the principles, values, standards, or rules of behavior that guide the conduct of an organization and its members.
- F. "FTC Settlement Statement" means the statement attached to this Order as Appendix A.
- G. "Member" means a member of CALSPRO, including company, individual, associate, and vendor members.
- H. "Organization Documents" means any documents relating to the governance, management, or direction of Respondent, including, but not limited to, bylaws, rules, regulations, Codes of Ethics, policy statements, interpretations, commentaries, or guidelines.
- I. "Regulating" means (1) adopting, maintaining, recommending, or encouraging that Members follow any rule, regulation, interpretation, ethical ruling, policy, commentary, or guideline; (2) taking or threatening to take formal or informal disciplinary action; or (3) conducting formal or informal investigations or inquiries.

II.

IT IS FURTHER ORDERED that Respondent, directly or indirectly, or through any corporate or other device, in or in connection with Respondent's activities as a professional association in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, do forthwith cease and desist from Regulating, restricting, restraining, impeding, declaring unethical or unprofessional, interfering with or advising against:

- A. Price competition by its Members, including, but not limited to, restraining Members from offering discounts when soliciting business;
- B. Solicitation of employees by its Members, including, but not limited to, restraining Members from contacting employees unless they conform to any Code of Ethics, rule, or regulation established by Respondent; and
- C. Advertising or publishing by Members of the prices, terms or conditions of sale of legal support services, including, but not limited to, restraining its Members from making statements about competitors' products, services, or business or commercial practices;

Provided, however, that nothing in this Paragraph II shall prohibit Respondent from adopting and enforcing reasonable principles, Codes of Ethics, rules, regulations, guidelines, or policies governing the conduct of its Members with respect to representations that Respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

III.

IT IS FURTHER ORDERED that:

- A. No later than thirty (30) days from the date this Order is issued, Respondent shall:
 - 1. Post and maintain for five years on the Code of Ethics page of CALSPro's website, the following items:
 - (a) An announcement that states "CALSPro agreed to change its Code of Ethics and will not adopt, encourage its Members to follow, or enforce any Code of Ethics provision relating to price competition, solicitation of employees, or advertising that does not comply with the FTC Consent Order,"
 - (b) The FTC Settlement Statement; and
 - (c) A link to the Federal Trade Commission's website that contains the press release issued by the Commission in this matter; and

2. Distribute electronically or by other means a copy of the FTC Settlement Statement to its board of directors, officers, employees, and Members.
- B. No later than sixty (60) days from the date this Order is issued, Respondent shall:
1. Remove from CALSPro's Organization Documents and website any statement that is inconsistent with Paragraph II. of this Order; and
 2. Publish on CALSPro's website any revisions of CALSPro's Organization Documents, the press release issued by the Commission in this matter, and the FTC Settlement Statement.
- C. Respondent shall publish, in the font that is customarily used for feature articles:
1. Any revisions of CALSPro's Organization Documents, the press release issued by the Commission in this matter, and the FTC Settlement Statement in the next available edition of the "CALSPro Press" newsletter; and
 2. The FTC Settlement Statement in the edition of the "CALSPro Press" newsletter, or any successor publication, on or as close as possible to the first and second anniversary dates of first publication of the FTC Settlement Statement.
- D. For a period of five (5) years after this Order is issued, distribute electronically or by other means, a copy of the FTC Settlement Statement to each:
1. New Member no later than thirty (30) days after the date of commencement of the membership; and
 2. Member who receives a membership renewal notice at the time the Member receives such notice.
- E. Respondent shall maintain and make available to Commission staff for inspection and copying upon reasonable notice records adequate to describe in detail any:
1. Action against any Member taken in connection with the activities covered by Paragraph II. of this Order, including but not limited to enforcement, advisory opinions, advice or interpretations rendered; and
 2. Complaint received from any person relating to Respondent's compliance with this Order.

IV.

IT IS FURTHER ORDERED that Respondent shall design, maintain, and operate an antitrust compliance program to assure compliance with this Order and the Antitrust Laws:

- A. No later than thirty (30) days from the date this Order is issued, Respondent shall appoint and retain an Antitrust Compliance Officer for the duration of this Order to supervise Respondent's antitrust compliance program.
- B. For a period of three (3) years from the date this Order is issued, the Antitrust Compliance Officer shall be Michael Belote, Esq., after which a new Antitrust Compliance Officer may be appointed who shall be Antitrust Counsel, a member of the Board of Directors, or an employee of Respondent.
- C. For a period of five (5) years from the date this Order is issued, Respondent shall provide in-person annual training to its board of directors, officers, and employees concerning Respondent's obligations under this Order and an overview of the Antitrust Laws as they apply to Respondent's activities, behavior, and conduct.
- D. Respondent shall implement policies and procedures to:
 - 1. Enable persons (including, but not limited to, its board of directors, officers, employees, Members, and agents) to ask questions about, and report violations of, this Order and the Antitrust Laws, confidentially and without fear of retaliation of any kind; and
 - 2. Discipline its board of directors, officers, employees, Members, and agents for failure to comply fully with this Order.
- E. For a period of five (5) years from the date this Order is issued, Respondent shall conduct a presentation at each of its annual conferences that summarizes Respondent's obligations under this Order and provides context-appropriate guidance on compliance with the Antitrust Laws.

V.

IT IS FURTHER ORDERED that Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:

- A. No later than (i) ninety (90) days after the date this Order is issued, (ii) one hundred eighty (180) days after the date this Order is issued; and
- B. No later than one (1) year after the date this Order is issued and annually thereafter for four (4) years on the anniversary of the date on which this Order is issued, and at such other times as the Commission staff may request.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed:

- A. Dissolution of Respondent;
- B. Acquisition, merger, or consolidation of Respondent; or
- C. Any other change in Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent, Respondent shall without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at its expense; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on April 3, 2034.

By the Commission.



Donald S. Clark
Secretary

SEAL:

ISSUED: April 3, 2014



CALSPRO 46th Conference & Board Meeting SAN DIEGO – OCTOBER 17-19, 2014

San Diego is a beautiful coastal city to host our annual conference, and the Bahia Resort will make this event feel more like a retreat!

Please mark your calendars so that you won't miss this educational and empowering conference that will cover the following topics by expert presenters:

- **Employer Shared Responsibility/Health Care Reform**
- **HIPAA, HITECH Act, and New rules for the Business Associate**
- **Round Table Educational Opportunities may include such subject matter as business diversification/ancillary services, employment law, process serving tips, independent contractor/employee status, and other pertinent topics for our profession.**

And please enjoy again this year the golf tournament, silent auction, vast array of exhibitor booths and a fun Friday night welcome reception on the water. Don't forget – the CALSPRO Annual Conference is a great time to renew your CCPS designation by taking the exam that is offered!

Invest in your business and yourself by attending the CALSPRO 46th Annual Conference and Board Meeting. Your association is here to inspire, educate, and spark ideas to benefit you and your company. Return to your office with enthusiasm, new eyes to implement change, and be driven to experience another prosperous year in business. You can do it and we are here to help. I'm looking forward to re-connecting with each and every one of you.

**Stephanie Saylor
Conference Committee Chairperson**





eService Working Group

Dear CALSPro Member,

On March 29th, 2014, the Board of Directors held a meeting in Manhattan Beach, CA, and I participated. One of the topics discussed was eService and I made the suggestion that we conduct an Economic Impact Report to better understand the effect eService may have on the membership and our traditional service business.

In my opinion, a report of this nature is only effective if the data used to prepare it is complete and thorough. Regardless of the future of eService, one thing that is true is that it will affect every member in our organization at some point. It is our responsibility as a governing body to ensure that whatever position we advocate is integral to our clients as well as our members.

As a new member of the eService Committee, I wanted to first gauge your willingness as a member of CALSPro to share certain information regarding your service business. We would look to anonymously (via the home office) collect information specific to the volume of service you affect on a monthly basis, the types of documents you are serving, your coverage area, general

price points, etc. and of course, your opinion regarding the future of eService. So, I have two questions for you:

- 1. Would you be willing to share this information?**
- 2. Would you like to be on the working group that interprets and evaluates the results?**

Again, all of this information will be collected in a secure, anonymous manner to preserve the integrity of the information gathered. The results of any report will be shared with the entire membership. From this report we hope to be able to better understand the financial aspect of eService and how it may affect our industry.

I'd appreciate your help! Please contact me via email and let me know if you'd like to be a part of the group that helps us navigate these somewhat unpredictable waters of our digital age.

Warmest regards,

Alex Martinez
Chief Executive Officer
First Legal Network
amartinez@firstlegalsupport.com

CALSPro COMMITTEES

ADVERTISING
 Robert Porambo – Chairman
 213/483-4900
rporambo@knoxservices.com

ASSAULT ADVISOR
 Mike Hylan
 530/272-5463
process@alsolegalsupport.com

CONFERENCE
 Stephanie Saylor – Chairperson
 831/384-4030
Stephanie@SaylorLegal.com

DISPUTE RESOLUTION
 Jeremiah Jones – Chairman
 877/353-8281
jeremiah@boscolegal.org

EDUCATION
 Cliff Jacobs – Chairman
 415/475-6213
cjacobs@onelegal.com

eSERVICE
 Mark Schwartz
 415/491-0606
mschwartz@onelegal.com

FORMS
 Tony Klein – Chairman
 415/495-4221
tony@attorneyserviceofsf.com

LEGISLATIVE
 Steve Janney – Chairman
 213/628-6338
steve@janneyandjanney.com

MEMBERSHIP
 Larry Kirlin – Chairman
 559/233-1993
lkirlin@firstlegalsupport.com

NEWSLETTER
 Pat Woodman – Chairman
 888/722-6878
pat@prolegalnetwork.com

TECHNOLOGY
 Ken Hastings – Chairman
 951/296-2669
service@hastingspps.com

WEBSITE
 Chad Barger – Chairman
 800/366-5445
cbarger@attorneyscertified.com

Pictures from the June 21, 2014 Board of Directors Meeting – Sacramento California





Through the Looking Glass

by **Kenneth Hastings**

Technology Committee Chairman

As process servers and attorney service company owners, we need every advantage we can get. Whether it be a new techie gizmo or a piece of software that has just come on to the market for process servers, we can probably use it to our advantage. These pieces of technology range from those trendy little gadgets that everyone “oohs and aahhs” at to items that have real world practical application.

New opportunities to improve our business bombard us every day, but many times we are too busy to notice them. Well, take notice because there are many new technologies on the way that may aid us in the future. Usually these technologies make our jobs easier, faster or hopefully less complicated and more organized. For legal support professionals, that means easier to document as well as faster results and status to our clients, but let us not forget about safety. Safety is one of, if not the most important, reasons for utilizing technology in our industry.

Safety should be a concern for all process servers and attorney services. After all, we probably know a process server who has been assaulted. While many of these assaults have resulted in convictions, unfortunately many of these assaults go unreported because of the difficulty to prove “who assaulted who”. As a result,

many have started taking hidden pocket cameras with them while attempting to serve their documents. While these devices may help you with your prosecution, it probably does little to discourage the actual assault from taking place. Obviously, an additional benefit to having video includes evidence of your assailant and evidence of who you served. Maybe the presence of a camera in plain sight will deter such actions.

Next, let me explain Google Glass. Glass is a wearable computer display mounted on the frame of something similar to everyday eye wear. Developed with the intent of producing a computer that displays information in a smartphone-like environment right in front of your eye. That’s right, hands-free. It is said that Glass will do everything “out of the box” that your smartphone will do “out of the box” with one major caveat - Glass requires a smartphone to function. Google is, however, working with application developers to produce Glass-specific software.

One of Glass’s features is the ability, through a tiny microphone built into the frame, to use voice commands to navigate its apps and functions. Want to know what the forecast is going to be like today? While wearing Glass, look out the window of your office or say, “Google, what’s the today’s weather?” Glass will display the information on the “crystal” or heads-up-display (HUD).

Want to know how far away something is or how to get to a destination? Just ask Glass and the results will be displayed right in front of your eyes. “Okay”, you say, “but how does Glass help me as a process server or attorney service?” Well, for starters, there’s that all important safety.

Glass has made news for a couple of reasons this past year. Restaurants have started posting signs stating that their restaurants are “Glass Free Zones”, banning Glass users from their establishments, sighting invasion of their customers’ privacy. If you have thoughts of using Glass instead of your smartphone or that clunky, antiquated, enormous GPS that is mounted on your dash or windshield, think again.

A Temecula, California, woman has already been ticketed for using Glass while driving. She fought the ticket, creating the first case law for Google Glass users in California. The CHP enforced what they believed was law that is clearly stated. During the hearing, the judge stated he felt the new device fell under California Vehicle Code 27602. That particular section, according to CHP, states that it’s against the law in California for a motorist to drive a car if a television monitor, screen or similar video monitors is turned

Continued on page 27

on and visible to the driver. There was no proof or evidence that the Glass the driver was wearing was actually on while driving and was therefore dismissed. But what about using Glass while serving? Let's take a look at a real-world scenario.

So, now that we know where Glass can't be used, let us ask ourselves, "Where can it be used?" Well, I suggest just about everywhere else except places that require privacy such as public restrooms. Take Glass with you everywhere you go because you will never know when you will need it.

Let us imagine that you are out on a serve. You exit your vehicle and want to report on items that are present at the residence for your work order. Look down at the curb or up at the side of the house to record the house number. Look at the cars parked in front of the house or in the driveway to record license plate numbers and say, "Glass takes a picture." So far so good. "Glass records a video" you say as you are walking up to the front door. You ring the doorbell and wait. The door opens and you begin to ask questions, or explain who you are and what you are doing there. The person you are speaking to becomes enraged and starts to shove you, kick you and places their hands on you. Well, you've got it all on video. As you are being assaulted you shout, "Glass call 911". Glass sends the information to your smartphone and it dials 911. The dispatcher answers and can now hear the entire altercation. Now while this situation is hypothetical, it is plausible and there's no way to do this with just a smartphone alone. Glass makes it possible.

I've watched YouTube videos of Glass being used to transmit video of what the Glass wearer is seeing in real time. For example, a group of students are sitting in classroom a thousand miles away from their teacher, watching a video monitor or projector of live streaming video. The video is coming from Glass that their teacher is wearing in a museum, art gallery or other place of importance. In essence, these students are taking a virtual field trip.

This same type of scenario could be used by CALSPRO's Continuing Education Committee to provide online video based training to process servers and members. Instructors placing Glass on their heads while conducting the Process Server Continuing Education Workshop would allow persons to virtually attend from anywhere in the world, thereby immediately increasing the amount of people that CALSPRO could reach out to and further educate.

Ok, so we know what some of the "can-do's" and "don't-do's" are, but how much is it going to cost? Well, right now Glass is not for sale to the general public. Glass is still in the testing phase. Google calls the people who are fortunate enough to beta test Glass Explorers. In order to become an Explorer you have to explain to Google why you are a good candidate to be an Explorer and how you would use Glass. Oh by the way, did I forget to mention, in addition to getting permission from Google to be an Explorer, that it is going to set you back \$1,500? Glass, however, is expecting to hit the open market when it is available to the general public at a more reasonable rate of \$500.

I wanted to test whether or not an "Average Joe" could get his hands on Glass so I applied. Ultimately, I was accepted into the Explorer Program after explaining how Glass could be used in the Process Server industry, but there was still that little issue of \$1500. I decided to turn down the offer due to the high cost of the program but still receive offers from Google periodically, offering to allow me into the program.

So what does all of this mean to you? It means that you don't have to accept the status quo. You can choose to change the way service of process is done. You get to decide how the information that you obtain is used and/or provided to your clients. You can add a layer of safety when you serve.

The technology is out there. It is up to you to use it to your advantage. Don't let the technology pass you by. You may get left holding the paper.

Kenneth Hastings – Owner – Hastings Professional Process Servers
CALSPRO Director, Technology Chairperson

For more information regarding Glass visit the following links:

www.google.com/glass/start/

and for a virtual test drive visit:

www.youtube.com/watch?v=v1uyQZNq2vE
www.youtube.com/watch?v=eIXk87IKgCo



The Bank of New York Mellon v. Preciado, 224 Cal. App. 4th Supp. 1 (Cal. Super. Ct. 2013)

Court Invalidates Service Because of Insufficient Proof of Service of Notice to Tenant

by Tony Klein

Forms Committee Chairman



Special thanks to Andy Estin for bringing this case to light, and suggesting valuable edits to this summary. This case was decided in August, 2013, and the Supreme Court ordered it to be published in March, 2014.

A published opinion from the Appellate Division of the Santa Clara County Superior Court has invalidated a trial court judgment against tenants in a foreclosure matter because, inter alia, the plaintiff failed to establish that service of the notice was proper, based upon the proof of service. The case consolidated two unlawful detainer actions. One was filed against the owner of a foreclosed property, and another against the tenants in one of the units in the building.

Plaintiff, The Bank of New York Mellon (Bank) retained a registered process server who served notice on both the owner and tenants by posting the notice and mailing copies. Because there was no mail service at the subject property, a mailing was also perfected at a P.O. Box. The server provided proof of service which stated that “after a due and diligent effort”, the notice was posted and mailed to the tenants. (See attached proof of service the court relied on here.)

The foreclosed owner (FO) defendant responded to the complaint, as did the tenants who filed a pre-judgment claim. Both claimed that service was “littered with gross procedural irregularities”. The FO

defendant stated he saw no posted notice but received a copy at his post office box. The tenants claimed that they received no notice on their door or in the mail.

The court wrote that “[a]s a prerequisite to filing an unlawful detainer action, a tenant must be served with either a three, 30, or 90 days’ notice, depending on the individual’s status as a tenant.”

The manner of service employed here, the statute required that “if a place of residence and usual place of business cannot be ascertained or a person of suitable age or discretion cannot be found there, then [service is made] by affixing a copy in a conspicuous place on the property and delivering a copy to a person residing there, if such a person can be found, and also sending a copy through the mail addressed to the tenant at the place where the property is situated (post and mail service). A notice is valid and enforceable only if the lessor has strictly complied with these statutorily mandated requirements for service. (*Losornio v. Motta* (1998) 67 Cal. App.4th 110, 113–14 [78 Cal. Rptr. 2d 799]; *Liebovich v. Shahrokhkhany* (1997) 56 Cal. App.4th 511, 513 [65 Cal. Rptr. 2d 457].)” (emphasis added)

Most process serving statutes in California are to be liberally construed, meaning any minor defects in service are generally allowed if the defendant is not prejudiced by the defect. Because the Unlawful Detainer Act sets forth specific statutory

requirements, service must be made in strict compliance with the statute. Deviations from the specific statutory requirements are not allowed, but can be remedied with other evidence of compliance.

At trial, Bank asserted that when a registered process server provides proof of service, California Evidence Code § 647 eliminated the necessity for the server to be called as a witness, because “[t]he return of a process server ... upon process or notice establishes a presumption, affecting the burden of producing evidence, of the facts stated in the return.” (quoting *Palm Property Investments, LLC v. Yadegar*, 194 Cal.App.4th at p. 1427.)

Because the Bank did not proffer the server as a witness, the court had to rely solely on the server’s proof of service to determine whether the Bank gave proper notice under CCP § 1162. The server’s proof of service of the notice merely stated that “after a due and diligent effort”, service was made by posting and mailing.

The court relied on two prior decisions in their determination as to whether the Bank had complied with the statute.

Continued on page 29

In *Highland Plastics, Inc. v. Enders* (1980) 109 Cal.App.3d Supp. 1 [167 Cal. Rptr. 353], the appellate court analyzed whether there was sufficient evidence that the landlord complied with the “post and mail” provision of section 1162. They recognized that although due diligence is not required for service of the notice, it does mandate that posting and mailing is only allowed “[...] if the tenant cannot be located for personal service that the person making this substituted service first determine[s] either that the tenant’s... place of residence and business cannot be ascertained, or that a person of suitable age or discretion there cannot be found.” The deputy marshal testified that he had attempted service, and found nobody there, and posted the notice and mailed it. The appellate court concluded that there was substantial evidence supporting the trial court’s finding that there had been a proper service of the notice.

In *Hozz v. Lewis* (1989) 215 Cal.App.3d 314 [263 Cal. Rptr. 577], the appellate court held

that the trial court properly found that the landlord’s “post and mail” service of a three-day notice was adequate. The landlord’s agent testified at trial that he went to the apartment, rang the bell and knocked on the door, and when no one answered, he taped a copy of the notice to the door and slipped another copy under the door. He then mailed another copy addressed to the tenant.

In this case, the court said that a “post and mail” service is not authorized as a first-resort method of service. Here, [the server’s] declaration does not [...] establish that Bank complied with section 1162 as it does not show that personal service was ever attempted. The proofs of service do not state that Appellants [FO and tenants] were not home or that no one of a suitable age was home when the server posted the notice “in a conspicuous place.”

Unlike in *Highland Plastics, Inc.* and *Hozz*, the servers in those cases testified as to the circumstances that led up to the posting and

mailing. The necessary elements of service were described in court to establish that the landlord plaintiffs strictly complied with the service statute, curing any apparent defect in service. Here, the court could only rely on the server’s proof of service. Lacking all of the elements required in the statute, the Bank could not establish that they strictly complied with the statute.

Although this reported decision is not binding on all courts, it will expand tenant defendants with persuasive authority to attack the proof of service without the server’s testimony to support it. Therefore, a proof of service should track the language of the statute so that all of the elements of service are present.

On page 30 there is an example proof of service of a tenant meeting all the elements of service.



PROOF OF SERVICE

Tenant: _____

Address: _____

Date of Service: _____

DOCUMENTS SERVED:

☐ Three Day Notice to Pay Rent or Quit

☐ Three Day Notice to Perform Covenants or Quit

☐ Thirty Day Notice to Terminate Tenancy

☐ Sixty Day Notice to Terminate Tenancy

☐ On the date of service indicated above, I served the above-referenced documents on the Tenant by delivering a copy to Tenant, personally, pursuant to the requirements of the Code of Civil Procedure Section 1162.

☐ On the date of service indicated above, I served the above-referenced documents by leaving a copy with some person of suitable age and discretion at the address set forth above, and sending a copy through the mail addressed to the Tenant at his/her place of residence.

☐ I made a due and diligent attempt to personally serve the above-referenced documents on the Tenant, but finding no person of suitable age or discretion at the premises, on the date set forth above, I affixed a copy of the above-referenced documents in a conspicuous place on the property, and also sent a copy through the mail addressed to the Tenant at the place where the property is located.

I, _____, declare under penalty of perjury that the foregoing is true and correct. Executed on _____, at _____, California.



We serve Federal National Mortgage,
Capital One Bank, and all federal
government agencies!

DC metro including suburban MD and VA

CALL TOLL FREE: 888-868-0701

PDF your documents to us!

**Since 1994
NAPPS**

**www.pretrial.com
CALSPRO**

**WASHINGTON PRE-TRIAL SERVICES, INC.
4626 Wisconsin Avenue NW #300
Washington, DC 20016**



WWW.CALSPRO.ORG/BLOG/



**Michael and his team of experienced law clerks
and process servers are at your service
anywhere, anytime in Canada and the U.S.A.**

Specializing in:

- Process Serving
- Court Processing, Filings, Searching and Court Attendances
- Business, Personal, Driver's License and Plate Searches
(Secretary of State, UCC Search, MVA Search and Trademark Search)

**Enquire about our
"Flat Rate" Services**

Head Office:

365 Evans Avenue, #604
Toronto, Ontario, Canada M8Z 1K2
Tel: (416) 746-4437
Fax: (416) 746-2329
E-mail: info@borgps.com
www.borgprocessservers.com

North America Toll Free:

1-800-567-2674 (BORG)

