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You Got Served, But Was It Proper? Tips from Top Process Servers

By Ursula Furi-Perry

From the time he served his first document in the 1950s, Alan Crowe made it a point to be polite: he would dress nicely, knock on doors, never take a foot across a threshold, and always give his name. Now administrator of the National Association of Private Process Servers and owner of his own company, Crowe still believes that servers should remain professional. "Act like a gentleman or gentlewoman," Crowe said. "At least have some social graces."



Process servers "deliver documents from point A to point B," described Crowe. Hired by attorneys or private individuals, they also prepare a certificate or affidavit of service and sometimes file the same with the appropriate court. "Process servers provide an integral part of the justice system," said Sheila Cahill,

experienced process server and Treasurer, Web Administrator, and Membership Coordinator of the Arizona Process Servers' Association. "A lot of people get into this business because there is a certain kind of freedom to it," said Crowe. "You can [largely] pick the time and place to do it, and you don't have to answer to anybody other than the client." But the job has its challenges, like "trying to get those who run," Cahill recounted. There are also wide discrepancies in how different jurisdictions treat the profession. In some states, like Arizona and Montana, process servers must be licensed and undergo training and testing to prove knowledge of relevant laws. Many states have set residency and age requirements. Other jurisdictions barely regulate the profession.

Service of process is quite a significant step in civil litigation. "If you don't have valid service of process, you don't have a case," said Crowe. "The client is out the door, and...the courthouse door may be shut in the person's face." The consequences may indeed be dire: one needs only to thumb through a casebook on civil procedure to find a myriad of opportunities lost due to faulty service. Yet this important step often doesn't get the precise attention it needs. Before serving process, consider the following practical tips from our experts:

- **Be familiar with your jurisdiction's rules.** "All of the process server rules vary by state, sometimes drastically," said Cahill. Among other issues, research your state's laws on what constitutes process, what is

proper service of process, who must serve, to whom service may be made, and under what circumstances you may serve by substitute service or publication. "Get out the rules of procedure for serving process in your state, read them, and understand them," recommended Crowe. "Go to the annotated statutes, and read the cases after them as well," to see how courts have interpreted laws.

- **Be careful when serving in another jurisdiction.** "A problem [may] arise when someone in another jurisdiction sends documents to serve," Crowe explained. Generally, "the laws of the forum court prevail, not the laws of the state in which service is made," said Crowe, but some states provide that the serving party may choose between the rules of the forum and the state where process is served.
- **Give the job to someone who's qualified and trained.** Many states require that service be made by a constable or professional process server, while others allow any non-party over the age of 18 to serve, and some even permit attorneys and their employees to deliver the documents. Whoever serves process should be well versed in the procedural rules and considerations behind the task.
- **Research process servers in your area.** "Definitely contact a licensed process server when possible," said Cahill. "See if the courts keep a licensed list." You may also turn to process servers professional associations in your area or contact NAPPS directly. It is a nonprofit organization that keeps a national list of qualified process servers, in addition to a comprehensive list of laws behind service of process by jurisdiction. When all else fails, said Crowe, "if there's no other information, the best information you can get is longevity in the business" and favorable referrals from other firms.



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- **Document everything.** While required proof of service is often limited to time, place, documents, and the person served, it's a good idea to jot down more detail. "Where a defendant is contesting the validity of service, the process server and defendant [each] testify as to what they did," explained Crowe. This sometimes turns into "a swearing match as to whom

you believe." When the process server keeps notes of the party's physical attributes, the environment and surroundings, and other distinguishing information, it is "a lot easier to prove that this was a person you served," advised Crowe. After all, as one law professor put it: you don't want to end up in the casebook.

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