DIFFICULT SERVICE OF PROCESS
Requiring a Licensed Investigator

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THE LEGAL SUPPORT INVESTIGATIVE SERVICE

CONTENTS

INTRODUCTION

Service of process is traditionally handled by individual registered process servers and attorney document services. Generally, they offer affordability, often $150 for three attempts by relying on bulk workload where the process server will have numerous cases to attempt service every day. While a registered process server's role is pretty clearly defined, it is also limited. Their brevity at each stop-and-knock location when attempting to complete service is frequently hit or miss.

Ring door technology has created an additional obstacle for the traditional process server where the defendant/subject can now avoid service by remotely screening who is at their door.

The Legal Support Investigative Service

Under these circumstances, a law firm may resort to contracting a licensed investigator to complete a "**Difficult Service of Process**".

HIRING AN INVESTIGATOR

One problem encountered when being asked what an investigator charges for Service of Process is the attorney may have an unrealistic expectation of cost, assuming that licensed investigators will charge similarly to an attorney service. It usually requires a detailed explanation based on our professional knowledge and experience, so the attorney / client understands the potential costs BEFORE engaging an investigator.

Up front, I immediately explain that my services are based on an hourly rate plus expenses, no different than a standard investigation. I provide my hourly fee schedule so I don't waste their time or mine.

I further explain that we as an industry (licensed investigators) are exempted from being registered process servers due to the fact that locating and serving a defendant can take extensive investigative work which the process server is not licensed or trained to perform.

State licensed investigators are exempted from registering as process servers, per California Business & Professions Code, 22350(b)(4). The exception for investigators that not registered as a process server is that we cannot serve writs and levies.

Business and Professions Code 22350(b)(4)
Business and Professions Code 22350 (a) Any natural person who makes more than 10 services of process within this state during one calendar year, for specific compensation or in expectation of specific compensation, where that compensation is directly attributable to the service of process, shall file and maintain a verified certificate of registration as a process server with the county clerk of the county in which he or she resides or has his or her principal place of business. Any corporation or partnership that derives or expects to derive compensation from service of process within this state shall also file and maintain a verified certificate of registration as a process server with the county clerk of the county in which the corporation or partnership has its principal place of business. ***(b) This chapter shall not apply to any of the following:*** (1) Any sheriff, marshal, or government employee who is acting within the course and scope of his or her employment. (2) An attorney or his or her employees, when serving process related to cases for which the attorney is providing legal services. (3) Any person who is specially appointed by a court to serve its process. ***(4) A licensed private investigator or his or her employees.***

I also mention that our fees MAY be recoverable as well, per California Code of Civil Procedure - CCP § 1033.5(a)(4)(B).

California Code of Civil Procedure - CCP § 1033.5(a)(4)(B).
CCP § 1033.5(a)(4)(B). (a) The following items are allowable as costs under Section 1032:.0.2 (4) Service of process by a public officer, registered process server, or other means, as follows: ***(B) If service is by a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code, the recoverable cost is the amount actually incurred in effecting service, including, but not limited to, a stakeout or other means employed in locating the person to be served, unless those charges are successfully challenged by a party to the action.***

If the attorney / client finds the rates reasonable, I advise them, the more information I have the better chance of success we will have in locating and serving the subject.

(1) **DOCUMENTATION** - How or where did the law firm obtain the subject's address? Did client take pics or get a copy of the defendant's CDL, registration, insurance, etc. Is there a TCR – Traffic Collision Report, or any other documentation?

(2) **SKIP-TRACE** - Often the law firm will obtain the address from a TCR however, the document may be a couple years old and the subject since moved. Did the law firm or attorney service perform a skip-trace of the party? If so, how long ago were the database searches performed?

Keep in mind, most law firms & attorney services are not trained in skip-tracing and often rely on the information at the top of a search result, without knowing if they have the correct person or the most current address. Additionally, it is not uncommon with lengthy Asian and Hispanic names that a previous search was incorrectly ran, using the wrong and/or incomplete surname. Or if the name is very common, they may not have cross referenced known information, ensuring the correct "John Smith" was identified.

(3) **PRIOR ATTEMPTS** - How many prior attempts by the attorney service? This can be a factor in sub-service. Equally important is the days and times of their attempted service? Did the attorney service provide a report or declaration of attempts? If so, ask for a copy. You can use it to strategize the days and times of your attempts. If the process server generated a due diligence report, it may be important to incorporate their efforts into your declaration, demonstrating the difficulty in locating and serving the subject, which helps your attorney if they are pressed by deadlines.

I inform the attorney that I always photograph (with Date & Time Stamp app) the person being served so there is no question that service was completed. Once I've completed / signed the Proof of Service with accompanying photos, I may complete a Declaration of Due Diligence (if needed) detailing the efforts to locate and serve the defendant.

Based on their answers, I try to offer a ballpark range (low to high) of what it *MAY* cost based on my experience and the information provided. It's important to make sure they understand this is only a guess-timate. If the attorney agrees to continue, I usually write the attorney a detailed email of the scope of what we discussed which in essence changes the agreement from a verbal contract to a written contract.

NOTE: with the passage of SB-1454 (Sen. Ashby) effective July 2025, it requires California licensed investigators to have detailed contracts on all cases, making my last point on verbal and written agreements, a moot point unless the bill/law is revised.

SURVEILLANCE / FIELD WORK

I will bypass articulating how to perform skip-traces and conducting field surveillance, with the understanding that the reader, presumably licensed investigators already know how. There are a couple points to touch on though.

A new California bill, **AB-747 (ASH KALRA)**, is in the process of passing with near unanimous support that impacts the process server industry with mandates for increased accountability. The author (Kalra), refers to the process server industry as engaging in "sewer service", implying rampant improper and/or unethical service. Even with our B&P 22350 exemption, several of these new mandates will most likely affect us as well. In short, the burden of proof is now on the process server as well as the investigator to demonstrate a person was actually served and/or sub-service requirements were actually performed.

Item #7 of the bill Summary would require a photograph with Date & Time Stamp and GPS coordinates. For years, I have been using an app called Time Stamp Photo which addresses this issue. You can use the free version with ads, and fewer options … I purchased the unrestricted professional version.

One problem which is easily resolvable, we have all ran into, is with font color contrast. Where black text often gets lost in dark images or white text can get washed out in light, therefore I use a bright orange font which usually stands out pretty well in nearly every situation.

Another problem with the app that isn't as easy to rectify is cellphone GPS location that will sometimes register one block away from where you are actually located. This is often due to hillside or electrical interference where the signal may take longer to reach the tower, thus giving an incorrect distance and throwing the GPS triangulation off. And then there is always the issue of no signal at all in some remote areas. Under these scenarios, additional documentation or explanation may be required.

I'm not sure if the GPS positioning will make it through to the bill's final text verbiage; if not, then a simple date & time stamp body worn camera is another viable option. Either way, I still prefer using my cellphone. In over a decade of presenting a photo with the proof of service, I have only had one defendant deny being served and that was quickly refuted by my attorney with my photographic evidence of the defendant with the docs being handed to him..

Item #8 requires an image of the process server's registration card with the photos attached to the proof of service. I would assume, as this trickles down to us, we may be required to attach an image of our P.I. wallet license.

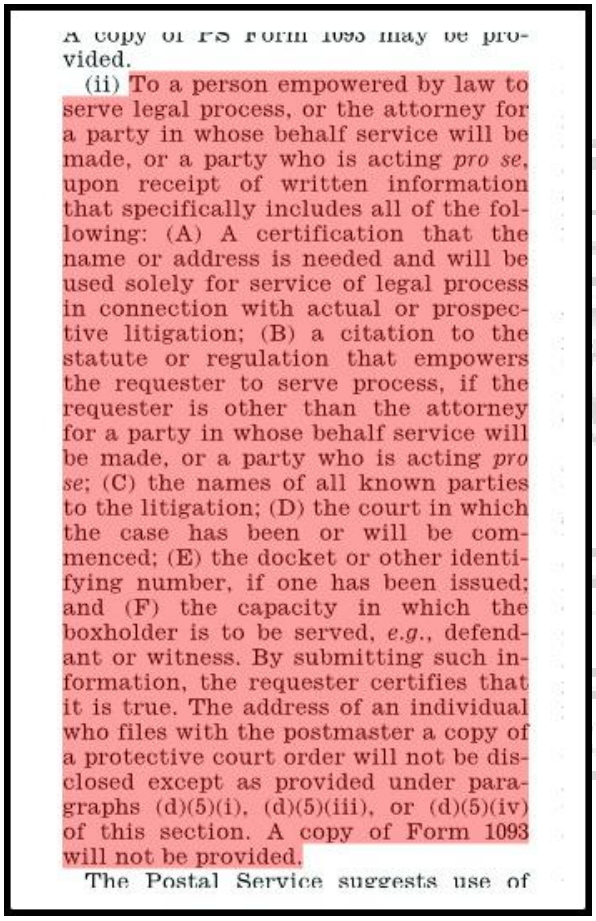
Item #9 would require an image of the front door of the residence or apartment where service is to be effectuated. Presumably in cases of sub-service, these will serve as integrity photos that prior attempts were actually made.

Another tool often overlooked is the United States Postal Service, Mail Forwarding Address Form. This form is important for multiple reasons. It may reveal a new, unknown address where the subject may

have moved or that he/she is still receiving mail there. Additionally, it is another form of documented due diligence in case you need to submit a declaration in support of Service by Publication.

NOTE: a declaration in support of Service by Publication is also where the attorney service efforts are import to include showing the judge that extensive efforts were taken to locate and serve the subject.

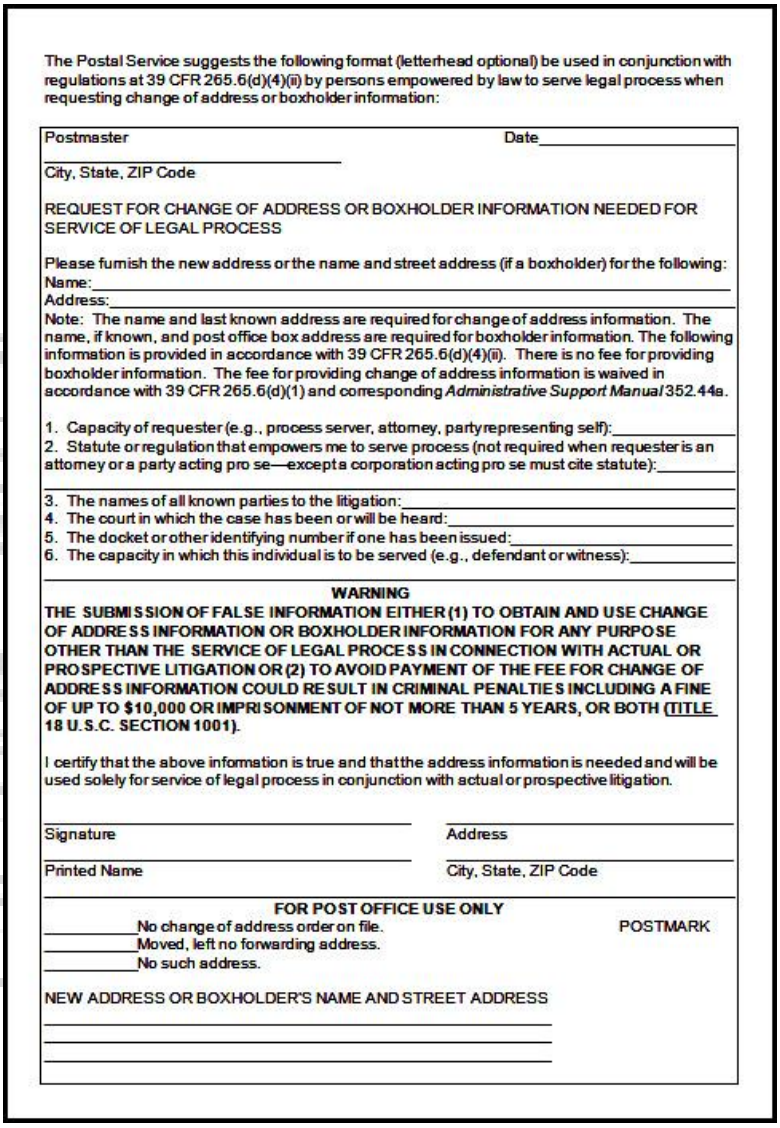
Federal legal authority for the USPS to provide a registered process server with subject's address: **39 CFR 265.6(d)(4)(ii)**



A copy of PS Form 1093 may be provided.

(ii) To a person empowered by law to serve legal process, or the attorney for a party in whose behalf service will be made, or a party who is acting *pro se*, upon receipt of written information that specifically includes all of the following: (A) A certification that the name or address is needed and will be used solely for service of legal process in connection with actual or prospective litigation; (B) a citation to the statute or regulation that empowers the requester to serve process, if the requester is other than the attorney for a party in whose behalf service will be made, or a party who is acting *pro se*; (C) the names of all known parties to the litigation; (D) the court in which the case has been or will be commenced; (E) the docket or other identifying number, if one has been issued; and (F) the capacity in which the boxholder is to be served, *e.g.*, defendant or witness. By submitting such information, the requester certifies that it is true. The address of an individual who files with the postmaster a copy of a protective court order will not be disclosed except as provided under paragraphs (d)(5)(i), (d)(5)(iii), or (d)(5)(iv) of this section. A copy of Form 1093 will not be provided.

The Postal Service suggests use of



The Postal Service suggests the following format (letterhead optional) be used in conjunction with regulations at 39 CFR 265.6(d)(4)(ii) by persons empowered by law to serve legal process when requesting change of address or boxholder information:

Postmaster Date

City, State, ZIP Code

REQUEST FOR CHANGE OF ADDRESS OR BOXHOLDER INFORMATION NEEDED FOR SERVICE OF LEGAL PROCESS

Please furnish the new address or the name and street address (if a boxholder) for the following:
Name:
Address:
Note: The name and last known address are required for change of address information. The name, if known, and post office box address are required for boxholder information. The following information is provided in accordance with 39 CFR 265.6(d)(4)(ii). There is no fee for providing boxholder information. The fee for providing change of address information is waived in accordance with 39 CFR 265.6(d)(1) and corresponding *Administrative Support Manual* 352.44a.

1. Capacity of requester (e.g., process server, attorney, party representing self):
2. Statute or regulation that empowers me to serve process (not required when requester is an attorney or a party acting pro se—except a corporation acting pro se must cite statute):
3. The names of all known parties to the litigation:
4. The court in which the case has been or will be heard:
5. The docket or other identifying number if one has been issued:
6. The capacity in which this individual is to be served (e.g., defendant or witness):

WARNING

THE SUBMISSION OF FALSE INFORMATION EITHER (1) TO OBTAIN AND USE CHANGE OF ADDRESS INFORMATION OR BOXHOLDER INFORMATION FOR ANY PURPOSE OTHER THAN THE SERVICE OF LEGAL PROCESS IN CONNECTION WITH ACTUAL OR PROSPECTIVE LITIGATION OR (2) TO AVOID PAYMENT OF THE FEE FOR CHANGE OF ADDRESS INFORMATION COULD RESULT IN CRIMINAL PENALTIES INCLUDING A FINE OF UP TO $10,000 OR IMPRISONMENT OF NOT MORE THAN 5 YEARS, OR BOTH (TITLE 18 U.S.C. SECTION 1001).

I certify that the above information is true and that the address information is needed and will be used solely for service of legal process in conjunction with actual or prospective litigation.

Signature Address

Printed Name City, State, ZIP Code

FOR POST OFFICE USE ONLY

_____ No change of address order on file. POSTMARK
_____ Moved, left no forwarding address.
_____ No such address.

NEW ADDRESS OR BOXHOLDER'S NAME AND STREET ADDRESS

USEFUL CASE LAW & CODES: TYPES OF DIFFICULT OR EVADING SERVICE

When forced to serve in a manner that deviates from traditional service of handing documents, here are some helpful cases to reference in your declaration when serving evading subjects.

I don't need to give lengthy scenarios, but there are situations during a difficult service of process where the person refuses to accept service or attempts to evade service. I attached self-explanatory case law with actual images that were attached to my declaration(s).

"DROP SERVICE"

Stafford v. Mach, 64 Cal.App.4th 1174 (1998)

Instead, when the process server asked for him, Mach started asking questions, said he had never heard of the person being served, refused to provide identification, and threatened to call the police.

The process server announced "drop service," leaving the papers with Mach and noted serving a "John Doe" with a detailed description on the proof of service.

The server also mailed the summons and complaint to Mach at the same home address.

This method is called "drop service" because the server literally drops the papers in front of the defendant and their door, making service proper even if the defendant refuses to pick up the papers. The court found service to be valid.

"SERVICE TOSSING DOCUMENTS OVER A FENCE"

Thomdyke v. Jenkins, 61 Cal App 2d 119 (1943)

"Service of a Summons on an evader was sustained when, after the Defendant had refused to take the papers, the process server tossed the folded papers over a wire fence and they landed at the feet of the Defendant as the server informed him that they were legal papers."

REFUSING SERVICE INSIDE VEHICLE

Trujillo v. Trujillo, 71 Cal App 2d 257 (1945)

Service was found to be proper when the legal papers were placed under the windshield wiper after the defendant locked himself in the vehicle.

SUB-SERVING AN EMPLOYEE OF A CORPORATION

Ludka v. Memory Magnetics Int'l (2nd Dist. 1972)

Tossing papers on a nearby table in the presence of a staff person. In this case, Ludka v. Memory Magnetics Int'l (2nd Dist. 1972), the process server went to the defendant's offices and asked to see the president but was told he was not there.

Unable to speak with another officer of the defendant corporation, the server tossed the papers on a coffee table near a receptionist and announced service. The server also mailed the summons and complaint to the defendant corporation.

The corporation's president declared the receptionist was not employed by the corporation, nor was she an agent for the process of service because his office was on the other side of the building. The court held service was sufficiently valid.

SERVICE CANNOT BE DENIED BY WALKING AWAY

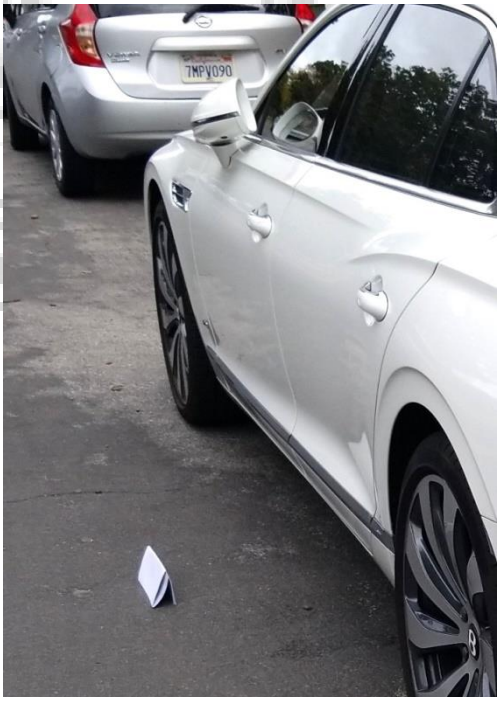
<u>In re Ball</u> (1934) 2 Cal App 2d 578, 579
"We take it that when men are within easy speaking distance of each other and facts occur that would convince a reasonable man that personal service of legal documents is being attempted, service cannot be avoided by denying service and moving away without consenting to take the documents in hand."

<u>Crescendo Corp. v. Shelted</u> (1968) 267 Cal App 2d 209
"the person on whom service is sought to be made may not by merely declining to take the document or documents offered to him claim that personal service was not made on him because the documents were not actually delivered to him."

Since we frequently have to serve the subject outdoors, usually when they are leaving or arriving at their home or place of work, it is not uncommon for the person to drop the docs (as in this case) and walk away, or never take them. This is why it's very import video the entire interaction with a date & time stamp app.

In this case, after photographing where the subject dropped the docs on the ground by their vehicle, I placed them underneath the windshield wiper so they would not blow away, and photographed it there, as well. Then upon return to my office, I prepared and registered mailed a second copy via USPS to their home address.

NOTE: These photographs were edited & cropped for this article so they would not reveal the person's face or license plate number.



THE LEGAL SUPPORT INVEST

SERVICE INSIDE A GATED COMMUNITY

CA Code of Civil Procedure 415.21.

415.21. (a) Notwithstanding any other provision of law, any person shall be granted access to a gated community for a reasonable period of time for the purpose of performing lawful service of process, upon identifying to the guard the person or persons to be served, and upon displaying a current driver's license or other identification, and one of the following:

(2) Evidence of current registration as a process server pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code. (b) This section shall only apply to a gated community which is staffed at the time service of process is attempted by a guard or other security personnel assigned to control access to the community.

SOP TRESPASS EXEMPTION

CA Penal Code 602.8.

602.8. (a) Any person who without the written permission of the landowner, the owner's agent or of the person in lawful possession of the land, willfully enters any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or who willfully enters upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands, is guilty of an infraction or a misdemeanor.

(c) Subdivision (a) shall not apply to any of the following: (3) Any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process.

In closing, I wanted to share this one gem from the REFUSING SERVICE INSIDE A VEHICLE.
Be safe, and happy hunting!

ABOUT THE AUTHOR

Randall Alexander has been a Legal Investigator and California state licensed investigator since 1999, specializing in Civil Litigation Support and Family Law Litigation. Randall served several years in multiple capacities with the California Association of Licensed Investigators, where he was specifically recognized for "Exceptional Service" to the association and its members.

In 2008, Randall was recognized as a Subject Matter Expert by the Bureau of Security and Investigative Services, a division of the California Department of Consumer Affairs. He has testified in civil and criminal matters in both state and federal courts, as well as a state administrative hearing.

Randall earned his Associate of Arts in Paralegal Studies from the Southern California College of Business and Law; an American Bar Association approved program where he completed coursework in: Advanced Legal Research, Torts & Personal Injury, Civil Litigation, Business Law Contracts, Criminal Law, Family Law Litigation, Legal Procedures, and Advanced Legal Writing. Additionally, Randall completed undergraduate coursework in Administration of Justice.

REFERENCES

California Business & Professions Code, 22350(b)(4).
Private Investigator Exemption

California Code of Civil Procedure - CCP § 1033.5(a)(4)(B).
Recoverable Fees

Stafford v. Mach (1st Dist. 1998)
Drop service, dropping docs at subject's feet when they refuse to accept service

Thomdyke v. Jenkins, 61 Cal App 2d 119
Dropping docs across fence when subject refused to accept or walk out.

Trujillo v. Trujillo, 71 Cal App 2d 257, 162 P 2d 640 (1945)
Placing documents under windshield wiper satisfies service when subject in vehicle refuses to accept them.

In re Ball (1934) 2 Cal App 2d 578, 579, 38 P 2d 411.
Reasonable attempt of service within speaking distance cannot be avoided by denying service and walking away

Crescendo Corp. v. Shelted (1968) 267 Cal App 2d 209,212,72 Cal Rptr 776.
Reasonable service cannot be denied simply by saying the documents were not handed to the defendant.

Ludka v. Memory Magnetics Int'l (2nd Dist. 1972)
Service complete when docs are dropped in front of employee when officers of a corporation are unavailable.

CA Code of Civil Procedure 415.21.
Access to a gated community for Service of Process

CA Penal Code 602.8.
Trespassing exemption for Service of Process

THE LEGAL SUPPORT INVESTIGATIVE SERVICE