

WHAT DOES A HORSE HAVE TO DO WITH PROCESS SERVING?

By: Joel Rosenthal – JFL Process Corp.



I recently had the opportunity to speak about process serving at a legal conference. The first slide in my deck was a drawing of a horse. I asked the audience how many used a process server who delivers documents by horse. Of course no one raised their hand. My next slide was a picture of a smart phone and I asked how many use a process server who has smart phone field technology deployed. A few hands went up but not more than 10-15% of the room.

I explained that the smart phone and associated web browser technology were the first wave of new technology in process serving in nearly a century when introduced several years ago. The first since the automobile replaced the horse as the primary method of transportation for process servers. I commented that five years from now, 95% of the law firms in the room will be using a process server who has smart phone.

Process serving companies can be divided into two groups – those that are embracing the new technology and those that fight it. Those that embrace it have deployed smart phone and web browser technology to create a complete and instantaneous electronic circle between the process servers in the field, the process serving company and the law firm client. This allows for some amazing innovations:

- Real-time transparent information shared with law firm clients via password-protected web-based portals (rather than secret information only known to the process serving company).
- GPS-verified, time/date stamped smart phone photos of every service attempt or posting evidencing the service location at time of service (rather than having no

independent evidence).

- Feasibility scoring of the time between each service attempt to identify unrealistic over-performance and cross-checking that all server attempts are within legal days and hours (rather than running the risk of unfeasible potentially “sewer service” routes or illegal hours for service).
- Increased good service percentages by mandating the best practices of the top field servers such as casting a wide net with morning, afternoon, evening and weekend attempts (rather than going to the same place on the same day and time).
- Daily electronic updates sent to law firm offices eliminating the need for manual data entry of service information — saves time, money, and reduces errors.
- All good serves entered into smart phones apps by process servers immediately relayed to the law firm by the process server’s mainframe (rather than finding out sometimes days later about service or posting).

Beyond all of these innovations, the new technology has very positive compliance implications. You spend thousands of dollars a year on process serving expenses but you are completely blind as to HOW, WHAT, WHERE, WHEN and in some cases WHO are the process servers. You know that the FTC looked at process serving in 2009 and in more recent years several CFPB officials have uttered the words “process serving” as an area of future interest? You realize that you have to establish compliance standards for process serving but you really do not know much about process serving practices.

A few years ago, process servers started to hear this exact story from a number of organizations. These organizations wanted to know more about process serving for the purpose of establishing some sort of guidelines. The gist of the conversation was — “We don’t know where to start, please help!!” This was the nexus for holding a summit to develop process serving compliance standards. The Process Serving Standards Summit was held and the result was a four page set of standards. The industry now has a set of process serving standards as a roadmap to answering HOW, WHAT, WHERE, WHEN and WHO.

Switching gears, process serving has been in the news quite a bit the last year. Here are 5 Ways to protect your organization from a process serving scandal:

1. **GPS AND AUDITING** — Use a process server who captures a GPS verified/time/date-stamped record of every service attempt or posting evidencing the service location. But this alone is not good enough. Capturing that information is no different than recording phone calls and not listening to the recordings. It is very important that your process server also audits every service attempt for compliance and quality. This greatly increases the accountability of the servers and the information they return. Your process server should also make it easy for your organization to audit their GPS records for at least three key components — existence of a GPS record, quality of the record (e.g. does the photo record look normal or unusual), and GPS location vs. document location.
2. **CONFLICTS OF INTEREST** — Organizations or their principals should not have any ownership position in the process serving companies that the organization uses without full and total disclosure to all of the organization’s clients. If there is any possibility of a conflict of interest, disclose and let your clients decide if there is a conflict.
3. **DO NOT UPCHARGE** — Organizations should not pass along to their clients or to consumers a higher cost for process serving expenses than they are paying for process serving.
4. **REPUTATION RISK** — Vet your process servers for any current or historical issues. For example, “sewer service” incidents, multi-million dollar class action suits/settlements, or large tax lien suits.
5. **PROCESS SERVING STANDARDS COMPLIANCE** — Use a process server that is compliant with the standards that resulted from the Process Serving Standards Summit.

We started off with a horse and I hope that this article is helpful in understanding the impact of the new technologies in process serving.

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