



NATIONAL ASSOCIATION OF PROFESSIONAL PROCESS SERVERS

1020 SW Taylor St., Suite 240, Portland, OR 97205 Tel: (503) 222-4180
Mailing add: P.O. Box 4547, Portland, OR 97208 Fax: (503) 222-3950
Toll-free: (800) 477-8211 (U.S. & Canada) - Website: www.napps.org
Gary A. Crowe, Administrator administrator@napps.org

Response to Expansion of Legal Service MDE National Association of Professional Process Servers October 20th, 2015

BACKGROUND

Founded in 1982, the National Association of Professional Process Servers (NAPPS) is the largest non-profit trade association for process servers in the United States. The association has a membership of over 2,200 members from coast to coast. Unlike sheriffs, who serve many functions in their capacity, such as solving crimes and apprehending criminals, process servers only serve legal process as an independent and trusted third party.

The United States Constitution guarantees every citizen the right to due process of law. As our founding fathers framed our Constitution, and the subsequent 5th and 14th amendments were written and ratified, it became clear that the concept of “due process” was an important and basic right of all Americans. The Framers derived the Due Process Clause of the 5th amendment from the Magna Carta, dating back to 1215. It has been widely held in case law that without proper service of process, our courts do not have jurisdiction over an American citizen.

PROPOSAL

NAPPS understands how electronic service of process (eSOP) can benefit the originators and frequent recipients of service of process. We do not dispute that it would save both the sender and the recipient time and money in the preparation and intake of paper-based process. We understand that for a recipient that opts in to a dedicated, non-email driven, eSOP platform, proper notification of legal process is quite likely.

We would like to comment on two sections of the proposed framework for enhancing the MDE.

First: We believe that a trusted third party, such as a private process server is quite necessary. The courts need the assurance from a trusted third party as to what was served, what entity was served, and exactly when it was served. One cannot seriously accept that the sender or the recipient of service should be given the power by the court to declare that service was made, and provide those assurances to the court. If the sender/server is NOT an independent trusted third party, it would be in their best financial

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interest for the recorded facts of service to be different than the truth. If the Recipient holds the records of service, and does not produce documents or appear in court in a timely manner, a strong incentive would be present to "lose" the records of service. The independent trusted third party does not have these incentives. They are paid for serving the papers and submitting the Affidavit or Return of Service detailing the facts of service to the court. They have no vested interest in the outcome of the case.

Each state, through legislative, administrative or superior court rule has detailed exactly who shall serve process, or, in other words, who shall serve as the trusted third party. Our position is that all forms of electronic service are still service, and the Statutes or Administrative Rules still apply. We believe that the Trusted Third Party in eSOP should be a person that is an authorized process server under that state's rules.

A possible alternative to using each state's provisions for determining who is qualified to serve as the Trusted Third Party would be to use a certification program administered by a National Trade Organization such as NAPPS that has a Code of Ethics and an Arbitration and Grievance program to weed out bad members.

In summary, it is the position of NAPPS that centuries of precedent show that neither the party that initiates service of process, nor the party that receives service of process, should be the party that certifies to the court that legal service has taken place. That is the role of the Trusted Third Party, and in most states the Trusted Third Party is a Sheriff or private process server acting under that state's Statutes, Administrative Rules or Rules of Civil Procedure. **Thus we suggest that appropriate elements of any XML or data definition include a slot for the pointer to the Trusted Third Party.**

Second: In Section 4, you mention Email and In-App Notifications as the two forms under which secondary eSOP is supported today. It is our position that Email has no place as a valid form of eSOP in any system. In addition to the well known reliability problems with email's store and forward system such as lost email, email in SPAM folders, abandoned accounts and many others, there is no place in an email based system for a Trusted Third Party to verify that the process was actually received by the intended recipient. We do understand and support Email's use as a notification system to bring the recipient back to the platform to view the In-App notification.

Thank you,

DocuSigned by:

Lance Randall

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Lance Randall, President

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