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## **Response to Expansion of Legal Service MDE**

### **New Jersey Professional Process Servers Association (NJPPSA)**

**October 29, 2015**

The New Jersey Professional Process Servers Association (NJPPSA), established in 1994, is a respected and recognized professional association that represents private process servers generally in New Jersey, with members within and throughout the United States.

#### **NAPPS Proposal**

NJPPSA fully supports the position paper submitted by the National Association of Professional Process Servers (NAPPS) with several expanded commentaries noted herein (see attached copy).

As NAPPS has expressed, to assure that constitutionally protected rights of due process of law are afforded to litigants, the role of a process server is vital. Whether service of legal process is done by traditional delivery of paper copies, or by emerging electronic means, the role of the process server is paramount. As such, the process server must be a competent, qualified person. In this context, the process server is referred to as a "Trusted Third Party".

#### **NJPPSA Proposal**

We agree. To ensure that service of legal process is conducted properly, and completed according to applicable rules and laws, it is necessary for an impartial Trusted Third Party, with no interest in the action, to handle the service. Without a Trusted Third Party, and allowing individuals or corporations to handle their own service of process, there is the potential for falsely stated completed service. A trusted third party can verify the delivery of such documents, maintaining the integrity of true and properly effectuated service.

The work product of a qualified process server is the proof of service that he or she submits to verify that service of process was properly done. This could be in the form of an affidavit of service, or a declaration made under penalty of perjury. In either form, the individual making the statement is responsible for its accuracy, and veracity. The penalty for false statements is perjury, subjecting that person to civil and criminal penalties. In the electronic scenario, the Trusted Third Party must, therefore, be an individual rather than a business entity that oversees each service. As such, each individual would be required to certify the accuracy and completion of each service, and be held individually liable and responsible by the court for any perjury.

To complete this task, qualified individual process servers should be granted an identification number along with a login to the court's portal, in the limited capacity the court best sees fit. This has already been done in some jurisdictions. For example, in the county of Philadelphia process servers can currently submit affidavits via their e-filing system utilizing their specific login. These process servers only have access to submit affidavits, and are not able to venture into the rest of the court's system.

NJPPSA has been advocating private process server participation in the New Jersey Court Judicial Electronic Filing System (JEFIS). On April 30, 2013, our association submitted a proposal to the Administrative Director of the New Jersey Administrative Office of the Courts (AOC) requesting this; see copy attached.

The recommendation that was submitted referred to participating process servers as "registered private process servers". In our opinion, this is the same as a "Trusted Third Party" referred to by NAPPs, but with these further requirements:

1. The individual should not only be authorized by court rule or statutes to service process but also knowledgeable in applicable court rules and statutes pertaining to service of legal process;
2. The individual be knowledgeable in, and ascribe to, a professional code of conduct;
3. The individual be knowledgeable, and demonstrate a proficiency, in the court's electronic filing system.
4. The individual should be publically identified and assigned an identification number by the Court.
5. The individual's continued participation in the electronic filing system is revocable by the Court for just cause.

Lastly, as indicated in the recommendation to the AOC noted above, NJPPSA would also like to suggest the inclusion of single electronic signature on proofs of service, rather than requiring cumbersome, two signatures of the affiant and notary on affidavits of service.

If you have any questions or would like to further discuss NJPPSA's recommendations and thoughts on the topic, please contact [info@njppsa.org](mailto:info@njppsa.org).

Regards,

Amanda Sexton

NJPPSA President



## **NATIONAL ASSOCIATION OF PROFESSIONAL PROCESS SERVERS**

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### **Response to Expansion of Legal Service MDE National Association of Professional Process Servers October 20<sup>th</sup>, 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 5<sup>th</sup> and 14<sup>th</sup> 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 5<sup>th</sup> 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

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,

Lance Randall, President  
National Association of Professional Process Servers



417 Champion Avenue  
Collingswood, NJ 08107  
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April 30, 2013

Honorable Glenn A. Grant  
Acting Administrative Director of the Courts  
Administrative Office of the Courts  
Hughes Justice Complex  
P.O. Box 037  
Trenton, NJ 08625-0037

Re: Proposed R. 1:32-2A Amendment

Dear Judge Grant:

On behalf of the New Jersey Professional Process Servers Association (NJPPSA), I submit for your consideration our comments on the proposed amendments to R. 1:32-2A, and any other relevant rules pertaining electronic filing, and electronic signatures that may result there from.

NJPPSA is the premier professional process server association within the State of New Jersey. Our members consist of dedicated private process servers who ascribe to high standards of professional and ethical conduct. Our Canons of Professional and Ethical Conduct for Professional Process Servers can be seen on our website [www.njppsa.org](http://www.njppsa.org).

As professional private process servers, we provide a critical service in the orderly and efficient administration of justice, i.e., proper, effective service of process consistent with the New Jersey Court Rules, and constitutional due process of law requirements. The work product of the professional private process server is the proof of service submitted to the court evidencing that proper service of process has been accomplished. Without that, nothing could properly proceed in any civil litigation.

Recognizing our vital role in the judicial system, we would like to participate in the ever expanding use of electronic filing, and electronic signatures. To that end, we ask consideration as follows:

1. To be able to voluntarily participate in electronic filing along with licensed New Jersey attorneys, at least to the extent of being able to file our proofs of service electronically.
2. To be able to submit our proofs of service with electronic signatures in the approved electronic court system.





To accomplish this, we request consideration of being added to the list of those persons permitted to file documents electronically as "registered private process servers", a new category that will require certain qualifications to be so designated. A copy of our proposed Registered Private Process Server designation is attached hereto as Exhibit "A".

Additionally, once permitted to be an electronic filer, our proofs of service should be submitted with electronic signatures. To accomplish this, we propose an amendment to R. 4:4-7 that would eliminate the need for registered private process servers to submit affidavits of service and, instead, be able to submit single signature returns of service made under penalty of perjury. A copy of our proposed amendment to R. 4:4-7 is attached hereto as Exhibit "B".

As indicated in our proposal for the establishment of a registered private process server category, a person seeking that designation would have to be identified, vetted, and would have to agree to uphold the laws of the State of New Jersey, and the New Jersey Court Rules.

Once so designated, that person should be assigned an identification number (ID) that would automatically call up that person's contact information. This would not only identify the person submitting a document but would also be part of the secured authentication method with the protocols to be established and approved by the Administrative Director of the Courts under the proposed R. 1:32-2A amendment. An electronic signature would thus have the same force and effect as an original handwritten signature thereby facilitating the use of single signature returns of service by registered private process servers, as recommended above.

I, and other members of our association, are available to discuss these proposals at your convenience.

Respectfully submitted,

JOHN D. HILTWINE  
NJPPSA President

JDH/jh

cc: NJPPSA members

New Jersey Law Journal

## EXHIBIT "A"

### ***Proposed Order Establishing Qualifications for Registered Private Process Servers and access to the Judicial Electronic Filing System (JEFIS)***

## **IN THE SUPREME COURT OF NEW JERSEY**

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Docket No.

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### **REGISTRATION OF PRIVATE PROCESS SERVERS PERMITTED TO ACCESS THE JUDICIAL ELECTRONIC FILING SYSTEM (JEFIS)**

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The New Jersey Court Rules allow for subpoenas, summons and other legal process to be served, essentially, by persons who are 18 years of age or older who are not party to the litigation for which the process is being served. These persons are generally referred to as private process servers. The use of private process servers has increased dramatically over the past several years, particularly since 2000 when the Court amended R. 4:4-3 to permit service of summons by persons other than the sheriff. The services provided by private process servers have been widely accepted by legal professionals who increasingly rely upon the private sector to deliver the notices required by due process of law. These services are essential and support the orderly administration of justice in the courts.

The increased reliance upon the services of private individuals has attracted more people into the field of process serving. Often, the experience, competence and integrity of these individuals is not known to the legal practitioners who employ their services, nor to the courts who accept their proofs or affidavits of service. The interests of the courts, legal practitioners, and the public will be best served by identifying and qualifying those persons who are serving process, making their names known through appropriate notices in legal publications and the judicial website, and providing them with credible forms of court approved identification cards.

The work product of the private process server is the proof of service submitted to the court evidencing that proper service of process has been accomplished. In order to allow access by registered private process servers to the New Jersey Judicial Electronic Filing System (JEFIS) for the purpose of filing proofs of service in an efficient and expeditious manner, the following qualifications are established:

**1. Designation of Registered Private Process Server.** All persons who are certified by the Administrative Director of the Courts as having met the qualifications and requirements of this Order shall be known and designated a Registered Private Process Server.

**2. Qualifications for Registered Private Process Server.** No person shall be designated a Registered Private Process Server unless the following requirements are satisfied:

- a. Proof of citizenship or lawful status in the United States.
- b. Proof of at least one (1) year experience in serving subpoenas and civil process within the State of New Jersey, and a statement that the person serves various forms of civil process that will result in the submission of proofs or affidavits of service to the New Jersey courts.
- c. Proof of age 18 years or older.
- d. Certification, under penalty of perjury, that the applicant has not been convicted of a crime.
- e. Agreement to abide by the Code of Conduct for Registered Private Process Servers.
- f. Agreement to adhere to New Jersey and federal laws and rules of court related to service of process.

**4. Code of Conduct for Registered Private Process Servers.** A Code of Conduct for Registered Private Process Servers is hereby established, and is annexed to this Order.

**5. Registration; Issuance of Identification Number.** All persons who satisfy the qualifications for Registered Private Process Server shall be issued an identification number by the Administrative Director of the Courts. The name of the Registered Private Process Server shall then be posted on the judicial website. The designation of Registered Private Process Server shall be effective for three (3) years from the last day of the month it issues.

**6. New Jersey Registered Private Process Server List.** All persons who have designated a Registered Private Process Servers shall have their names, identification numbers, and registration expiration dates appear on the judicial website. The website shall contain a hyperlink to the business address, telephone number, and other pertinent information for a Registered Private Process Server.



**7. Suspension or Termination of Access to Judiciary Electronic Filing System (JEFIS); Removal from List of Registered Private Process Servers; Restraints.** The Administrative Director of the Courts may, upon hearing with notice, and for good cause, terminate a person's designation as a Registered Private Process Server who shall then cease to have authority to access the Judicial Electronic Filing System (JEFIS).

SIGNED AND ENTERED this     day of                     , 2013.

## ***Proposed Canons of Conduct for Registered Private Process Servers***

## Canons of Conduct for Registered Private Process Servers

## Policy

To identify, qualify, and make public the names of persons known and designated registered private process servers who shall have access to the New Jersey Judicial Electronic Filing System (JEFIS) for the purpose of electronically filing proofs of service with the use of electronic signatures.

## Scope

These Canons shall be binding upon all persons who serve subpoenas and civil process pursuant to the New Jersey Court Rules, who have met the qualifications, and whose names have been placed upon the list of "New Jersey Registered Private Process Servers" maintained by the Administrative Office of the Courts.

## Canons

**Canon 1. High Standards of Conduct**

New Jersey registered private process servers shall maintain high standards of ethical and professional conduct and, at all times, to promote public confidence in the administration of justice.

## **Canon 2. Officer of the Court, Ethical Conduct**

A registered private process server, in the performance of his or her duties, shall be considered to be an officer of the court, and shall not engage in unethical conduct.

## **Canon 3. Registered Private Process Servers are not Employees of the Court; Misrepresentations; Use of Badges Prohibited.**

A registered private process server is not employee of the Court and shall not represent himself or herself to be a "court officer", a "law enforcement officer", or such other similar title unless that person has been so designated and appointed by a lawful authority, and is in the actual performance of duties related to such appointment when the representation is made. No registered private process server shall display to any person a badge indicating that he or she is a process server, registered, or otherwise.

## **Canon 4. Impropriety and Conflicts of Interest**

A registered private process server shall avoid the appearance of impropriety and conflict of interests, and shall not render services in any matter in which he or she is a party to the action.

## **Canon 5. Protection of Rights and Confidentiality**

Registered private process servers shall do all things possible to protect from unauthorized disclosure of all privileged or other confidential information that they obtain during the course of their professional duties.

## **Canon 6. Unauthorized Practice of Law**

All registered private process servers are bound by the rules governing the practice of law and shall, accordingly, refrain from the unauthorized practice of law. R. 1:21, 22.

## **Canon 7. Court Approved Identification Cards.**

All New Jersey registered private process servers shall have on their possession a court approved identification card while in the performance of their duties. The identification card shall be displayed to any party, witness or law enforcement officer that requests to see it. The approved identification card shall be in the form established by the Administrative Director of the Courts and shall contain the identification number assigned to each registered private process servers.

### **Canon 8. False Statements**

A registered private process server shall not falsify or misrepresent the facts surrounding the delivery of legal process to any person or entity.

### **Canon 9. Timely Performance of Assignments**

Once having accepted or undertaken an assignment from a client or court, a registered private process server shall strive to be prompt in the execution of the assignment consistent with the requirements of the client and of the relevant court rule or statute. When an unforeseen or unavoidable event prevents fulfillment of such obligation, the process server shall promptly report his or her inability to complete the assignment to the appropriate person.

### **Canon 10. Proofs of Service**

A registered private process server shall promptly execute and deliver to the appropriate person an affidavit, proof or declaration of service, or non-service, as the case may be, in the form and content and within the time required by the court or agency before which a matter is pending and the process issued. All proofs or affidavits of service shall be in the form prescribed by the court and shall bear the identification number assigned to each registered private process server by the Administrative Director of the Courts.

## ***Additional Amendments to Court Rules***

### **Rule 1:14 Codes of Ethics**

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The Canons of Conduct for Registered Private Process Servers, included as an Appendix to Part I of these Rules, shall govern the conduct of persons who are designated by the Court as registered private process servers.

## EXHIBIT "B"

### Introduction to Proposed Amendment to R. 4:4-7.

Pursuant to R. 4:4-7, the form of a proof of service is to be prescribed by the Administrative Director of the Courts. See also R.1:32-3.

The Administrative Director of the Courts has not prescribed the form of Return of Service to be used by sheriffs, or court appointees, in Superior Court, Law Division or Chancery actions but has prescribed a form of Return of Service for Special Civil Part actions. See Exhibit A.

The Administrative Director of the Courts has also prescribed a form of Affidavit of Service to be utilized by a person making service other than a sheriff, or a court appointee, as illustrated in Exhibit B.

The Return of Service historically signed and submitted by Sheriffs has been a single signature certification by the officer attesting that the information contained therein is true and accurate.

This type of return of service is acceptable because in doing so the officer is discharging the duties of the office that he or she swore to uphold when elected, or appointed. Their identity is known by virtue of such election, or appointment.

Private process servers, especially in states like New Jersey where essentially anyone 18 years of age or older not party to the action can serve civil process, are not so readily known, and have not been administered an oath to uphold the court rules or statutes related to service of process. Consequently, their form of return of service must be in the form of an affidavit, signed and sworn to in the presence of a notary public.

The New Jersey Professional Process Servers Association has submitted a proposal to the Administrative Director of the Courts for the amendment of R. 1:32-2A to establish a new category of persons authorized to access the Judicial Electronic Filing System (JEFIS) to persons known as "Registered Private Process Server". The proposal provides a registration scheme that will require, inter alia, the administration of an oath in order for a person to be designated a Registered Private Process Server. The proposal also calls for making public the names of such persons, and the issuance of uniform identification cards and identification numbers. With that designation and oath, a Registered Private Process Server should be able to submit a Return of Service in the same manner as a sheriff or court appointee.

The persons most likely to apply for, and meet the qualifications of a Registered Private Process Server, are professionals engaged in the process service business, not a person who occasionally serves process. Those professionals are engaged in their own businesses, or are employed by process serving companies. The economic business reality is that hundreds, if not thousands, of individual process must be served annually in order for a person or business to remain viable. Requiring individual notarizations of those thousands of affidavits of service is cumbersome, not efficient, and may lead to circumvention of notary public law.

New Jersey Notary Public Law requires that each and every notarial act, including the execution of a jurat, take place in the presence of a notary public. With each signing of an affidavit by the process server, the notary public is to audibly administer an oath and determine the voluntary nature of the signing. To believe that there are occurring thousands of individual, formalistic notarial acts with the signing of affidavits of service is naïve, at best.

Requiring the submission of affidavits of service by persons that can be readily identified amounts to needless notarizations where a viable alternate exists, i.e., single signature Returns of Service signed by the Registered Private Process Server under penalty of perjury. The precedent for this exists in the federal courts where unsworn returns of service are signed and submitted under penalty of perjury, as well as other states.

Recently, the State of Montana amended its law to redefine the term "affidavit" to include written statements signed under penalty lessening the number of jurats performed before Notaries. That new law provides that the deliberate falsification in any unsworn declaration constitutes the offense of perjury and is punishable as an offense of false swearing. New Jersey has a similar law in N.J.S.A. 2C: 28-2 which makes the offense of false swearing a crime of the fourth degree.

In New Jersey, R. 1:4-4(b) allows for certifications in lieu of an oath or verification. This type of certification is widely used by process servers when filing a proof of service of a subpoena served pursuant to R. 1:9-3. However, because of the specific wording of R. 4:4-7 that "[i]f service (of a summons) is made by a person other than a sheriff, or a court appointee, proof of service shall be by ... affidavit", certifications are not used in lieu of affidavits of service. This proposal seeks to change that.

## **Proposed Amendment to R-4:4-7**

### **4:4-7. Return**

The person serving the process shall make proof of service thereof on the original process and on the copy. Proof of service shall be promptly filed with the court within the time during which the person served must respond thereto either by the person making service or by the party on whose behalf service is made. The proof of service, which shall be in a form prescribed by the Administrative Director of the Courts, shall state the name of the person served and the place, mode and date of service, and a copy thereof shall be forthwith furnished plaintiff's attorney by the person serving process. If service is made upon a member of the household pursuant to **R.4:4-4** that person's name shall be stated in the proof or, if such name cannot be ascertained, the proof shall contain a description of the person upon whom service was made. If service is made by a person other than a sheriff, ~~or~~ a court appointee, **or registered private process server**, proof of service shall be by similar affidavit which shall include the facts of the affiant's diligent inquiry regarding defendant's place of abode, business or employment. If service is made by mail, the party making service shall make proof thereof by affidavit which shall also include the facts of the failure to effect personal service and the facts of the affiant's diligent inquiry to determine defendant's place of abode, business or employment. With the proof shall be filed the affidavit or affidavits of inquiry, if any, required by **R. 4:4-4** and **R. 4:4-5**. Where service is made by registered or certified mail and simultaneously by regular mail, the return receipt card, or the printout of the electronic confirmation of delivery, which shall include an image of the recipient's signature, provided by the U.S. Postal Service, or the unclaimed registered or certified mail shall be filed as part of the proof. Failure to make proof of service does not affect the validity of service.

**Note: Source - R.R. 4:4-7. Amended July 14, 1972 to be effective September 5, 1972; amended June 29, 1990 to be effective September 4, 1990; amended July 14, 1992 to be effective September 1, 1992; amended July 13, 1994 to be effective September 1, 1994; amended July 10, 1998 to be effective September 1, 1998; amended July 12, 2002 to be effective September 3, 2002; amended July 23, 2010 to be effective September 1, 2010.**