



**I Wasn't
Served ...**

(Because I Am Avoiding Service)

By Scott Gray

A combination of increased scrutiny of the validity of service, an increase by defendants to evade service, and an expansion of what constitutes valid service in Minnesota has created an interesting dichotomy in the process service industry, which arguably necessitates more careful review of affidavits or proofs of service by an attorney whether served by a sheriff or process server.

A number of factors have caused the issue of proper service to be of greater focus. Well-publicized issues of service fraud in New York, Colorado and Minnesota; robo signing incidents in the mortgage industry; a media blitz on debtors' rights; and, the formation of the Consumer Finance Protection Bureau have all added to the closer examination of service of process to ensure that defendants have received proper notice.

Concurrently, a recent Minnesota Court of Appeals opinion has expanded the latitude given to process servers in terms of what constitutes valid service of process, particularly in those instances when the defendant is uncooperative with the process server or is outright evading service.

THE NORM

Service of process and its related rules are a very small part of the legal landscape. Nonetheless, as one of the methods of properly commencing an action, personal service of process is a frequently scrutinized step in the evolution of a lawsuit. Insufficiency of process is a common defense alleged in an answer to a complaint. Whether or not a party has been properly served is a crucial factor in the commencement of an action, especially in cases involving statute of limitations issues. Without sufficient service of process, a district court has no jurisdiction over a defendant. *Smith v. Flotterud*, 716 N.W.2d 378 (Minn. Ct. App. 2006).

When service is required, attorneys rarely anticipate any difficulties or abnormalities when the process server encounters the defendant. An assumption exists that the server will go to the defendant's home, ring the doorbell, the defendant will answer, admit their identity, and willingly accept the papers in hand. In fact, this is a very good assumption in that Metro Legal Services completes approximately 85 percent of service in one attempt.

Although hiding in bushes, wearing costumes, jumping on hoods of cars, secreting papers in pizza boxes, feigning flower deliveries, wrestling matches and fist fights are often cited as routine events for a process server, and no doubt colorful and entertaining to the audience, they are rarely rooted in reality or practice. That isn't to say that most services are pleasant exchanges between the server and the recipient. Being served with a lawsuit can be an angering and frustrating experience and often defendants tend to focus their displeasure and lash out at the process server – yes, our colloquial mantra is don't shoot the messenger!

A SHIFTING MINDSET

Notwithstanding that the majority of services are routine and uneventful, uncooperative defendants are frequently encountered. This has become more prevalent in light of the mortgage foreclosure crisis

that plagued the country between 2004 and 2012. The foreclosure crisis created a breeding ground for a cottage industry of foreclosure consulting services that provide guidance to people at risk of losing their homes in methods of delaying or thwarting the efforts of the foreclosing lender. One such method provides instruction on how to evade being served with notice of the foreclosure sale, a key element to starting the foreclosure process.

Over this period of time, we have recognized an increase in people actively evading service from approximately 10 percent to nearly 33 percent of every foreclosure we attempt to serve. Coupled with the difficulties caused by the foreclosure crisis, the creation of the Consumer Finance Protection Bureau, a federal agency (established by the Dodd-Frank Act) is necessitating change and innovation in the process serving industry. The bureau's mandate includes writing rules, supervising companies, enforcing federal consumer financial laws, restricting unfair, deceptive or abusive practices, monitoring consumer risks, and enforcing laws that outlaw discrimination and unfair treatment in consumer finance. In fact the CFPB's website advertises "In the wake of the financial meltdown, we are tasked with standing up for consumers, making sure they are treated fairly, and restoring trust in the consumer financial marketplace."

The focus isn't just on whether service occurred, but how it occurred, especially when it relates to an uncooperative defendant. The need to improve and enhance openness, honesty and accountability in the process servicing community includes careful oversight of what actions a process server takes to complete valid service.

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