



# 10 Things

## I Wish Process Servers Knew

By Steve Sowell

### *Fast Facts:*

Civil process may not be served on a person attending a church service.

Personal service of process does not require "in hand delivery," nor does it require that the defendant take possession of the paper being served.

In the course of more than 20 years of litigation practice, I have filed suit against hundreds of people, and I have used dozens of process servers to effectuate service of process. It is axiomatic in litigation that the defendant must be served with the summons and complaint; however, I have found over the years that what I believe "good" service of process to be and what some process servers believe it to be are two different things. From my experiences, I have drawn up a wish list of things I'd like all process servers to know.

### #1

You may not serve civil process on a person attending a church service, anywhere on church property, or within 500 feet of the property while the person is going to or returning from a church service.<sup>1</sup> I suppose the legislature believes that process servers and defendants both deserve a day of rest. Civil process means not just the summons and complaint, but also subpoenas, and probably all other documents required to be served under some statute or court rule.

### #2

Personal service of process on an individual means (1) delivering the documents to the right person and (2) telling the person that you are serving him with legal papers. Process servers are sometimes confused about what exactly "delivering" papers means. In *Barclay v Crown Bldg & Dev, Inc.*,<sup>2</sup> the Court held that MCR 2.105 does not require "in hand delivery," nor does it require that the defendant take possession of the paper being served. In *Barclay*, the defendant saw the process server coming and locked himself in his office. The process server secured the summons

and complaint to the office door with a rubber band and advised the defendant through the door that he had been served. Both the trial court and the Court of Appeals held that this was sufficient service. Under *Barclay* and the cases it discussed, service is sufficient if the process server leaves the papers near the defendant or in a location subject to the defendant's control and advises the defendant that he has been served. Although the Court did not specifically discuss it, I presume that these two actions must be done contemporaneously.

How do you know it's the "right" person? Well, did you ask for her by name? Did she answer to the name? Most people will

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readily acknowledge their identities, so *ask*. If the person doesn't give a name, and if I didn't give you a physical description or picture (I don't usually have them, or I would have forwarded them with the summons and complaint), *don't* leave the papers with that person.

Don't worry that someone will identify herself as someone else. As one deputy sheriff remarked in his deposition (the defendant was contesting service), *nobody* identifies herself as *someone else* so she can *get* served. If it ever happens, I'll deal with it in court. You don't need to worry about it.

### #3

No matter how sweetly or sincerely someone tells you that he has the authority to "accept" or "acknowledge" service of process for another person, do not believe him unless he is willing to part with a copy of the *written appointment to accept service* (and then give me the copy). Under MCR 2.105(H), one may be authorized to accept or acknowledge service of process on another *only* pursuant to a *written appointment* or as provided by law. Giving a summons and complaint to a person who is not the defendant is not "personal service of process" as provided by MCR 2.105, and it just wasted my paper. It *might* be "substituted" service of process, but only if there is a court order. You'll know there is a court order because I'll give you a copy of it to serve together with the summons and complaint. If you don't have a court order, don't leave my summons and complaint with someone you know is not the person you are trying to serve.

### #4

There are two methods of serving a corporation: by personally serving, as discussed previously in #2, either (1) a director, trustee, or "person in charge of an office or business establishment of the corporation" *and* sending a copy of the summons and complaint to the corporation's principal office by certified or registered mail (don't worry about the mailing; I'll do it) or (2) an officer or the resident agent for the corporation. When I give you the summons and complaint, I'll tell you the resident agent's name and address, because I can find this information easily on the Internet. If I know the names of any officers, I'll also give those to you. If you can't locate any of these people, you can leave the summons and complaint with the "person in charge" of the office, but you *need to let me know the person's name*, and you *need to let me know that this was the person in charge*.

When John Hinckley shot President Ronald Reagan, there was (understandably) some confusion at the White House. Alexander Haig told reporters, "I am in charge here." He really wasn't. The Twenty-fifth Amendment and the Presidential Succession Act of 1947<sup>3</sup> specify who succeeds if the president dies, is incapacitated, or is otherwise unable to act, and Alexander Haig, as secretary of state, was far down the list. My point is that you can't just throw the summons and complaint on the desk of the receptionist at One American Way, Dearborn, and assume that she is "in charge" of Ford Motor Company World Headquarters. Ask for an officer or the resident agent. If you are told they are not there or are unavailable, ask for the person in charge of the office or business. When that person comes out, give her the papers. *Get her name!* If no one is willing to admit being an officer or in charge of the office, leave politely and let me know what happened. I'll prepare an appropriate affidavit for your signature, and I'll ask the court for substituted service of process.

### #5

Neatness counts; spelling generally doesn't.

Whether you are filling out the return of service or preparing an affidavit of attempted service, it needs to be legible. If the court can't read it, I can't get substituted service of process.

Neither the court nor I care whether you can spell, *except* when it comes to names. I promise not to make fun of you or correct you if you spell defendant "defendent" or if you spell business "bidness." I know what you mean, and so does the court. On the other hand, Sevier Street is on the other side of town from Seaver Street, and John Smith, Jon Smith, John Smythe, Jon Smythe, John Schmidt, and Jon Schmidt might be six different persons.



## #6

With apologies to Polonius,<sup>4</sup> when it comes to affidavits of attempted service, brevity is *not* the soul of wit. I have received returns of service (or affidavits of attempted service) with the curt and inscrutable notation “not known.” What is “not known”? Is the defendant “not known” at that address (and, if so, who told you that)? Is the property address “not known” because it’s a vacant lot? Is it “not known” when the defendant will return home from work? Did the process server “not know” how to find the place?

I have received returns with the similarly curt notation “address bad.” What, did it curdle? Tell me (and the court) what makes it bad. Is there no house there? Did someone either living there or living next to it inform you that the defendant had moved? Is the address bad because whatever house was there has been demolished or whatever business was located there has gone out of business? Give me (and the court) more detail.

I have received returns with the enigmatic notation “deceased.” How do you know? Did you kill him? Did he die from the shock of being served? Who told you he was dead? Did you verify that anywhere? If so, where?

I have received returns with the one-word notation “moved.” What moved? The house? The street? I presume you mean that the defendant moved, but how do you know? Is the house vacant (did you peer in the windows)? Did you talk to the current occupant? Did you talk to the neighbors? What exactly did they tell you?

These are the kinds of details the court (or more accurately, the court’s clerk) is looking for.

## #7

To paraphrase the title of Jacqueline Susann’s fourth novel, once is not (usually) enough. If I send you out and the property is a vacant lot, once is probably enough (although, believe it or not, not for some judges). But if there’s a house or a business on the property, you need to make at least three trips before you can call it quits. Most judges prefer to see one daytime trip, one nighttime trip, and one weekend trip (but never at church; see #1), all of which you have documented (date and time) in your affidavit of attempted service. Some judges require more than three attempts; if I know that in advance, I’ll let you know.

## #8

No paperwork is worth dying over, or even worth getting injured over. If you successfully serve the person, but get yourself killed before you can give me the return of service, you haven’t done me any good, and your next of kin probably isn’t very happy either. No one *ever* wants to be the defendant in a lawsuit, and some people blow their stacks rather easily. If you are trying to serve papers and someone threatens you, either physically or verbally, *back off*.

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## #9

A picture is worth a thousand words. In this day and age of cheap digital cameras, every process server should carry one. If you serve process for me on a regular basis, I’ll *give* you one. While I don’t require that you snap a photo of everyone you serve (some people object, violently, to being photographed; see #8), if you are posting an order for alternative service or a foreclosure notice, the front door will not object to a photo. If the property is a vacant lot, snap a photo. If the house looks abandoned, snap a photo. You don’t need to print it for me; just send me an e-mail with the photo attached. I’ll print it if I need it.

## #10

In the immortal words of Larry the Cable Guy, “Git-R-Done.” While most of my cases don’t need immediate service (some do, and I’ll tell you that up front), there are time limits on service of a summons. A summons is good for 91 days from the date of issuance.<sup>5</sup> While it can be extended for up to a year from the date the case was filed, it has to be extended by order before it expires, and some judges are stuffy about the length of an extension. I need some time after I get your affidavit of attempted service to prepare a motion and get it to the judge. If I don’t get either a return of service or an affidavit of attempted service from you in 30 days from the date I gave you the papers, I’ll call you. If it happens repeatedly, I’ll look for a process server who is a little less busy and can give my papers a better turnaround time.

Finally, to all you process servers out there: Thanks. I know it’s a tough job, serving people who don’t want to be served, racking up all those miles on your car, working late nights and weekends, and facing the occasional wacko who takes a shot at you. I appreciate your efforts on my behalf. ■

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## FOOTNOTES

1. MCL 600.1831.
2. *Barclay v Crown Bldg & Dev, Inc*, 241 Mich App 639; 617 NW2d 373 [2000].
3. 3 USC 19.
4. Shakespeare, *Hamlet*, act 2, sc 2.
5. MCR 2.102[D].