

Accountable Practices = Accountable Results

By Scott Gray

In 2009, an ugly practice of a Twin Cities area private process serving company was laid bare when it became headline news that they were responsible for nearly 200 default judgments being entered, and ultimately vacated at a tremendous expense to Plaintiffs' Counsel. This was caused by the unseemly and outright illegal practice of false service by leaving the process in a door, and signing a perjurious affidavit of service- which has become commonly known as "sewer service". Unfortunately, I was not overly surprised to learn of this as I suspect the practice of sewer service is far more common than anyone would imagine, especially when service of process relates to high volume, small debt collection service where the fee paid for service is generally set, and the likelihood of service being contested, or actually litigated, is minimal.

Why does this occur? The majority of process service/legal courier companies use independent contractors to go out and serve their process, and pay them only when service is completed. A common recompense is \$20 to \$25 for each paper served. No mileage, no salary, no benefits... they only get paid if they complete service. In certain cases, a particular service may be difficult in that the defendant is infrequently at home or evading service. After making numerous attempts at service, the independent contractor may become frustrated over the time and vehicle expense expended with no success, and the additional effort likely required to complete service becomes a losing proposition given the fixed reward for completion. These simple economies, along with an attitude or understanding of many that the action being served- will in more cases than not either never see the light of a courtroom, or if so will result in a default judgment, emboldens the independent contractor to cut his or her losses by effecting sewer service.

How is this avoided? The method by which accountable service of process is provided is quite simple- make the process server an employee and pay them for their efforts regardless of results. The vast majority of the most reputable process service companies around the country utilize employees rather than independent contractors for the very reasons I have outlined. We have all come to recognize that removing the burden of worrying about "completion only" based pay through salary and mileage reimbursement, in conjunction with providing commonplace benefits such as sick pay, vacation, health insurance, 401K, disability and workers compensation coverage is an essential component of insuring loyalty, dedication, integrity, and accountability in a process server.

Beyond sewer service, there are a number of additional negative byproducts that result from independent contractor process servers- five of the most significant are as follows:

1. In many cases standard legal services E & O policies deny coverage for errors committed by independent contractors of the policy holder.
2. An independent contractor will schedule their time and route their work in a manner that is most economical and efficient for them, not for the expeditious completion of the customers' project, generally resulting in slower service results.
3. There will often be a greater incidence of reported bad addresses that really aren't bad, as that is one sure means of independent contractors ridding themselves of a troublesome or money losing service assignment.
4. There is routinely a complete lack of daily supervision over the performance of independent contractors as they are assigned a number of service projects and are not expected to return until those projects are completed, whether that takes days or even weeks, as compared to employees that start at an office, work a consistent scheduled shift, and turn in their work for review by a supervisor before ending their shift.
5. False or "fake" attempts are unfortunately quite common, and far more likely to occur with independent contractors. Especially in the case of rush work, independent contractors and small service agencies often take on projects that over burden their resources and minimize their efficiency- simply stated they bite off more than they can chew and instead of acknowledging that they were logistically challenged and unable to make that rush attempt, they simply report to their customer that no one was home in hopes of buying time to actually get to the address.

Commencing a lawsuit via service of process is a very small part of an action, yet critical to the case. Valid, effective and accountable process service is essential to avoid problems and expense down the line battling contested service, and should be seriously contemplated when determining how to get your process served.

Scott Gray is the vice president and operations manager for Metro Legal Services with over 30 years of process service experience. Metro Legal Services, in its 43rd year of operation, is the leader in the upper Midwest in providing ancillary services to the legal community. Questions/comments welcome at 612-349-9512, or visit www.metrolegal.com