

Service of Process Made Difficult

By Scott Gray

Hiding in bushes, wearing costumes, jumping on hoods of cars, pizza boxes, flower deliveries, car chases... all occurrences that many process servers are known for touting as the norm in their daily activities, and are no doubt entertaining to the audience, but rarely rooted in reality or practice. That is not to say that people don't attempt to evade service and at times we must undertake a form of ruse to lure them out, but in the vast majority of cases, effectively serving someone who is evading the process requires straightforward surveillance to catch them coming or going from their residence or place of employment, and is generally more effective in result and economy than alternative methods such as service by publication.

Evasion of service has become more and more commonplace, especially since 2004 when foreclosures increased dramatically.



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If the intent is to stall an impending action, simply refusing to answer the door is in the short term a fairly effective strategy. Determining that someone is evading service versus simply refusing to answer the door is often difficult. There are many reasons someone won't answer the door... Yes, they certainly may be evading service, however it may be that children are home alone, people are hesitant to engage an unexpected visitor at night, the resident is ill, retires to bed early, is engrossed in a book or movie, or plain and simple doesn't want to be bothered for any reason.

The most effective method of identifying evasiveness is to call the recipient and ask them if they are evading. If they aren't, in those cases we are usually able to explain what we are attempting to accomplish and make amicable arrangements to serve them at a suitable time. If they are, at least we know what we are up against, we can accurately inform our client of the factual circumstances, and make suggestions as to the extent and potential costs related to performing surveillance.

Once we have determined that evasion is in play, it is unlikely that continuing to make routine service attempts will accomplish anything at all. It is at that point surprising how often it is suggested that we put the process in a pizza box and pretend to deliver a pizza. So, let's see... for three or four nights in a row someone knocks on the evader's door and he/she doesn't respond because they don't want to be served, yet the next night someone shows up with a pizza they didn't order, and voilà, they are tricked into opening the door?

Surveillance is what works in these cases. Proper and cost effective surveillance involves far more preparation than plunking a process server in a car outside a house and waiting. Blind surveillance can be incredibly expensive and in most cases isn't appreciably more effective than targeted surveillance. We have developed a protocol for structuring targeted surveillance, based on patterns of behavior and movement, resulting in a highly effective completion rate with cost efficiency at a fraction of that of blind surveillance. In fact, most of our actual "stakeouts" involve less than two hours of actual waiting time on site.



In the past, when we reported evasion to our clients, it was common that we would be told to prepare an affidavit of not found and they would serve the process by publication. A growing number of attorneys are now recognizing the value of utilizing surveillance to complete service. Comparing surveillance cost, which in most cases is less than \$300.00, with the costs associated with publication (especially in light of the ease by which judgments may be vacated when publication was the service method) it becomes clear that surveillance, the higher cost relative to routine service notwithstanding, is a powerful tool in the completion of effective service of process.

In the coming months, I will contribute bi-monthly articles aimed at various aspects of the legal services industry which I hope you find interesting, but more importantly useful and informative as you retain the services you need in your practice including service of process, filings, recordings, private investigations, searches and document retrieval. If you can better understand the approaches, system mechanisms, and pricing structures that accomplish these tasks, you will be in a better position to utilize the services offered by the industry and identify the value of experience, professionalism, systemization, and technology.

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 metrolegal.com.

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