

## **Preamble**

Standards and Best Practices are a recitation of some of the essential elements and best methods the association has determined to advance professionalism in the process serving industry and to fulfill our obligations as process servers while at the same time protecting the due process rights of persons affected by our service. Promulgation of these Standards and Best Practices can and should assist others in the establishment of programs beneficial to the process serving industry. These Standards and Best Practices can and should also assist others in a review and meaningful revision of official policies, statutes and rules. These Standards and Best Practices are promulgated for public awareness and use.

## **Standards, Best Practices and The Policy Manual**

The significant policies and procedures of the association are published in the NAPPS Policy Manual. The Standards and Best Practices, together with the Code of Ethics, form the basis of the policies and procedures recited in the Policy Manual. Although applicable only to members of this association, the Policy Manual is also published for public awareness and use.

## **SERVICE OF PROCESS**

1. For purposes of these Best Practices, "Primary service" of process refers to the service of initial or other process intended to acquire jurisdiction over a person or property. "Secondary service" of process refers to the service of subsequent papers exchanged between the parties following service of initial process. These Best Practices refer to both Primary and Secondary service of process.

The word or phrase "effected" refers to the date that legal process is delivered, sent or transmitted to a party.

The word or phrase "completed" refers to the date that legal process is legally binding upon a party. This date may be the same as when legal process is personally delivered to a party, or when presumed by law to have been received by a party.

2. Service of process or other papers for the purpose of acquiring jurisdiction over a person or property should be performed by a disinterested third party.
3. The preferred and most effective method of service of process upon a party is **in-person** delivery of process to the named party.
4. When in-person service upon a named party cannot be effected, the next best method of service should be in-person delivery of process to a person authorized by court rule or statute to deliver process to on behalf of the named party. For example, this includes such person as "member of household," "person apparently in charge at a usual place of business," "person of suitable age and discretion," "parent," "guardian," "registered agent" and "statutory agent,".
5. When service cannot be effected as described in 3 and 4 above, the next best methods of service is alternate methods authorized by court rule or statute upon a demonstration of

the fact that service cannot be effected by the methods in 3 and 4 above. This would include service by mail, posting, publication and electronic means. If service is authorized in a manner other than by in-person delivery, service should not be deemed completed until at least three days after service is effected, unless acknowledged by the recipient.

6. When service cannot be effected by any of the methods described above, the Court, upon a showing that service cannot be effected by any of these methods, may order service to be done in a manner reasonably calculated to provide actual notice to the party.

**Adopted by the Membership May 21, 2005**  
**Revised by the Board of Directors August 6, 2005**  
**Revised by the Board of Directors July 29, 2006**

## **PROOFS AND AFFIDAVITS OF SERVICE**

### **Preamble**

These Best Practices are intended to recognize and establish guidelines for the proper preparation and execution of proofs or affidavits of service.

### **Process Server's Work Product**

The work product of a professional process server is the proof or affidavit of service submitted by that person attesting to the fact that a particular person or entity was given legal process in a manner prescribed by law. The proof or affidavit of service is what the courts rely upon to determine whether jurisdiction has been acquired over a particular person, entity, or property. The proof or affidavit of service must be beyond reproach.

### **Unsworn Declarations Made Under Penalty of Perjury**

An Unsworn Declaration made under Penalty of Perjury is a written or printed recitation by the process server of the facts and circumstances surrounding the delivery of legal process to a particular person or entity consistent with applicable state or federal court rule or law. The declaration is to be signed only by the person making the statement.

### **Affidavits of Service**

An "affidavit" is a written or printed declaration or statement of facts made voluntarily, confirmed by the oath or affirmation of the party making it, and taken before an officer having the authority to administer such oath. An "affidavit of service" is intended to certify the service of a writ, notice or other legal document.

### **Signatures**

An Affidavit or Proof of Service may be signed using a variety of methods. Wet ink, an electronic signature (signature image), or a digital electronic signature with third party verification and date stamping are all valid. No matter what the method of signature, such signature should always be effected by the person who actually performed the actions being attested to. Designating another person to cause the server's signature to be affixed to an Affidavit or Proof of Service is specifically not condoned.

### **Notary Public**

A Notary Public is a person commissioned by a particular state jurisdiction to perform a variety of notarial acts. Among these, the Notary Public is vested with the authority to administer oaths, and execute jurats.

### **Jurat**

A jurat is a certificate by the person before whom a writing was sworn and is designed to compel truthfulness on the part of the signer. The jurat is completed during the execution of an affidavit and is generally written at the foot of an affidavit stating when, where, and before whom such affidavit was sworn. Before executing a jurat, a Notary Public must be satisfied as to the identity of the signor, and the voluntary nature of that person's signature. The signing of the affidavit, and the execution of the jurat, is required by all states to be done at the same time in the physical presence of each other.

The jurat initiates a legal process that could eventually result in criminal conviction and punishment if the signor is later found to have lied.

### **The Role of Notary Public in a Process Service Office**

A Notary Public, whether employed in a process serving business, or not, must adhere to the state laws regarding Notary Publics within the jurisdiction where he or she has been commissioned. These duties and obligations transcend other duties that may be assigned by an employer.

### **Content**

A proof or affidavit of service must accurately state the date, time, place, and manner of service, and any additional information that would reflect how delivery of process or other legal document was made to a person or entity served. When required, a proof or affidavit of service should also reflect the description or relationship of that person to the person or entity served, and the military status of the person served.

### **Record of Event**

A separate, permanent record should be maintained by the process server, or by the employer on his or her behalf, and must be available for inspection by the process server, court, or the person

requesting service.

**Comment**

These guidelines address three important aspects of proofs or affidavits of service: content, signature(s) and record keeping. They are designed to ensure that the proofs or affidavits of service be completed and signed by the person making service. The traditional and fundamental components of proving service must be maintained. The process server must attest to the facts under penalty of perjury, or by sworn affidavit, and personally sign, or, where permitted by law, cause his or her signature to be affixed electronically to, the proof or affidavit of service.

It is not proper for a proof of service to be signed before completion, or signed in blank to be completed later. It is not permissible to sign the process server's name to a proof of service on his or her behalf.

A written permanent record of the service should be maintained, and made available upon request. Although a process server's declaration is made based upon personal knowledge, a business may proffer evidence of service under Federal Rules of Evidence Sec. 807, or state equivalent. A business record, offered in lieu of a personal declaration of the server, when the server is unavailable, does not violate the hearsay rule if it is supported with a declaration of the custodian of the record. Making a record of the service based upon a writing made in the regular course of business does not violate these Best Practices, nor the NAPPS Code of Ethics.