

Service of Process: An Overlooked Challenge of Litigation During COVID-19

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The last two years have provided legal professionals with a crash course in the remote practice of law. Attorneys and judges have been forced to navigate COVID-19 protocols and adapt to the rapidly changing legal landscape in the digital age. While the pandemic created an abundance of new technological challenges, it also impacted one of the oldest standards in our judicial system—service of process.

Valid service of process is fundamental to a litigant's constitutional right of due process. If a defendant is not properly served with notice of a lawsuit, the court is without jurisdiction to take action over that party. The rules governing service of process vary by jurisdiction, and the method of service is largely dependent on the type of defendant (individual or corporation) and location of the defendant (in-state or out-of-state). Personal service is typically the preferred method of service, and many jurisdictions even require a diligent attempt at personal service before resorting to alternative methods. During the pandemic, however, closed businesses and public health concerns created a heavier reliance on substituted service by certified mail.

In response to COVID-19, the United States Postal Service ("USPS") implemented temporary modifications to signature requirements for certified mail return receipts. Effective March 20, 2020, USPS delivery personnel were instructed to maintain a safe distance, "request the customer's first initial and last name," and enter that information into the signature box on the return receipt form. Some jurisdictions temporarily amended their service requirements to provide that compliance with the USPS's COVID-19 protocols regarding return receipts would satisfy service requirements for some matters. However, ensuring complete uniformity in carrying out new COVID-19 policies and protocols is no simple task, especially for an agency that employs more than half a million people.

The USPS's policy modification resulted in an increase of certified mail return receipts that were either returned unsigned or contained an illegible signature with a "C19" notation. This presented unique challenges for both plaintiffs and defendants. Plaintiffs utilizing substituted service by certified mail faced an increased risk of having their complaint dismissed for insufficient service of process. Conversely, defendants were more likely to discover that a default judgment had been entered against them despite the fact that they were not served with a complaint. As a result, several courts

throughout the country have addressed the issue of whether a “C-19” notation on the return receipt establishes proof of service.

In [*Sports Invest US, LLC v. Wasserman*](#), a Los Angeles-based sports marketing and talent management company contested a default judgment that was entered in a Pennsylvania state court due to this exact situation. In June 2021, the plaintiff filed a complaint alleging intentional interference with the contractual relations of two professional soccer players on the U.S. Men’s National Soccer Team. Plaintiff attempted substituted service by certified mail. However, like most businesses in Los Angeles, the defendant’s headquarters were closed on this date due to COVID-19 and no staff members were present to sign for certified mail. Notably, the “Signature” and “Printed Name” sections on the certified mail return receipt did not abide by the modified USPS signature policy, and instead included illegible markings and a “C19” notation.

Default judgment was subsequently entered against the defendant even though it was without any notice of the pending litigation. In fact, the defendant did not receive notice of the lawsuit until December 30, 2021, when it received a court issued notice via first class mail. Shortly thereafter, the defendant petitioned the Court to open the default. On August 1, 2022, the Court issued a ruling in defendant’s favor and opened the default judgment. The Court agreed that because service of the Complaint was defective, the Court lacked personal jurisdiction to enter default judgment over the defendant.

On May 6, 2022, the USPS issued an [Industry Alert](#) rescinding the March 20, 2020 modifications to the customer signature capture process. The Industry Alert provides that, “Effective March 31, 2022, this temporary modification to our procedures was rescinded, and all USPS® delivery personnel must capture customers’ signatures for special services mail requiring a signature.” The modification further provided that “USPS employees can no longer perform the customer signature capture function for the recipient.”

The USPS’s return to its standard signature requirements will hopefully eliminate most issues that have arisen during the pandemic with respect to effectuating valid service of process. Nevertheless, attorneys should stay up to date on USPS policies and amendments to local court rules to understand what constitutes valid service of process in your jurisdiction.

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