

How to Handle Service of Process Effectively

Niall McMillan: Hi. Welcome back to Litigators Lounge, devoted to the intricacies of commercial litigation with Offit Kurman's commercial litigators.

I'm Niall McMillan and I'm joined today by my partner Anders Sleight. Anders, good to see you.

Anders Sleight: Niall, thanks for having me back in the lounge. How you doing today?

Niall McMillan: Doing well. Today I think we wanted to focus on service, a process, initiating that lawsuit by serving your defendant. Can you tell us a little bit about that?

Anders Sleight: Sure. And it's a good topic. Thanks for bringing it up, Niall, service of process sounds something like dry, or most people might think about, somebody scary looking, showing up at your front door with a lawsuit. But you don't have to think about it that way.

It's service of process at its most basic form is the very first step in a civil or commercial case. It's the official [00:01:00] notification to the defendant that they've been sued or that they've been named in a lawsuit. If service isn't done correctly the whole case can either be delayed or potentially even dismissed.

It's a really important part of every lawsuit, every civil or commercial case, but parties often get it wrong or they overlook critical aspects of service. So it's important to get it absolutely right. Just a few ways, how does it happen? Some states have different rules.

You want to check with your local attorney about the service process, rules in effect in your particular state or your jurisdiction if you're in federal court. But most states will allow service by some method of either using a court official, such as a sheriff or a constable.

They might come and visit your property, your home, or your business address and deliver it to you personally. That's the gold standard. It's called personal service. If you're able to achieve service on a party through personal service it's going to solve a lot of problems or defeat any arguments related to whether service is [00:02:00] proper or not.

A lot of other states will allow alternatives. Such as maybe certified mail service or what's called substitute service. Whether it's by posting or by mailing a copy. Some states will allow service upon a co occupant, whether that's a family member or a roommate's, somebody that lives in the same property as you, if you're sued in an individual capacity. If you're a business typically service is going to be accomplished on the registered agent, or in some states they're called a resident agent, but that's your designated agent for receipt of service of process. Usually a little bit easier to serve business entities individuals can be more difficult. You going to make sure that you have the right address, right contact information for them. Because if you're not serving the right address or the up-to-date address and you might not have good service on that individual. Always something very important to focus on, particularly at the beginning of the case, regardless of whether you're on the plaintiff's side or the defendant's [00:03:00] side.

Niall McMillan: Typically when someone thinks that they've served someone, they're going to file what's called a proof of service for the court. And that's going to lay out how they actually accomplish that. What are options though, if you're a defendant when you see that there's a proof of service filed against you, what are your options for either challenging that service or what do you do in response to that?

Anders Sleight: Great question. A lot of times lawsuits, the way that our civil system is set up is that, the notice of a lawsuit is a little bit antiquated, it's not like it's going to show up in your email inbox and you're going to have it right there. Maybe you're out of town or you're at a convention or something like that, and you may not be there when service occurs. So it's always important to keep an eye out. Stay in touch with your registered agent or your office staff to keep an eye out for these types of things, particularly if you may be anticipating a lawsuit being filed if you're on the defendant's side.

But in those cases, you want to look very closely at the proof of service to analyze, was the service done correctly? Was it served at the proper business [00:04:00] address or the proper registered agent? Did maybe you change your registered agent or in the individual context, is that your residence? Were you served at your residence or was somebody maybe it was an older address.

A lot of times in cases, clients will reach out at the last minute. Or after, services already occurred and maybe the deadline to respond is already past, but fortunately, most states have a preference for a hearing and adjudicating cases on the merits. That means that if a motion to vacate a default or some other ruling is filed, a lot of times the courts will be predisposed to grant those motions.

Not in every case, but there can often be a good basis to get a default opened up and allow you to actually litigate a case on the merits and put forward any defenses you may have. You want to take a careful look at your proof of service. Reach out to an attorney if you have questions or concerns about the method of service and any other issues that you think might be worth [00:05:00] raising.

Niall McMillan: Yeah, that makes sense. And good thing to remember is that with each of these notices or deadlines, so there's going to be upcoming deadlines from there that you need to respond to. It's always a good idea to contact your attorneys like the attorneys at Offit Kurman commercial litigators.

Anders Sleight: Absolutely. A lot of times, if you get served with a lawsuit, you might have a deadline 21 days or 30 days from receipt of that. It will usually stay within the lawsuit paperwork itself. But definitely good to double check and get working on your response to that lawsuit or if you're in the plaintiff's seat, to make sure that you've properly served and you can move it forward appropriately.

So reach out to us if you have any questions or need help with any of these matters.

Niall McMillan: Thank you, Anders. That's very helpful. Just a reminder Offit Kurman is a full service law firm with offices and litigators from the east to the west coast providing litigation services regarding employment, financial services, construction, government contracts and business disputes among other matters.

So please reach out to us if you have any questions and [00:06:00] thank you again, Anders.

Anders Sleight: Thank you Niall. Have a good day.