

Social Distancing and the Impact on Service of Process Amid the COVID-19 Pandemic

By: Robert Devine, James Burger and Susan Zingone

Litigation Alert

3.26.20

Service of process usually requires person-to-person contact and is an essential part of civil procedure. It notifies the defendant of the legal proceedings against him/her and establishes jurisdiction. "Process" refers to the documents that must be served on a defendant. If service of process is not performed pursuant to the governing rules of civil procedure, a lawsuit cannot proceed.

Service of Process in NJ and PA

Personal service is required to be the first attempted means of service in New Jersey. If personal service is not successful, then service may be made by mailing a copy of the process via registered or certified mail with return receipt requested to the defendant's usual place of abode or business/place of employment, or to an authorized agent. The party attempting to serve the defendant by mail can choose to mail the process by regular mail as well, and if the defendant refuses to accept or claim the registered or certified copy, and the regular mail copy is not returned, then service is considered effectuated.

Pennsylvania allows for a defendant to be served via personal service by handing a copy to the defendant or by delivering a copy to an adult family household member at the defendant's residence. Pennsylvania also permits service of process by mail. Process can be served by mail requiring a signature of the defendant. If the mail is unclaimed, alternative service must be attempted.

"Stay-home" orders issued to contain the COVID-19 pandemic may curtail personal service attempts, and restrictions on mail carriers may further impact effectuating proper service. What does this mean amid the COVID-19 pandemic when New Jersey and Pennsylvania residents are required to practice "social distancing" and thereby limit person-to person contact?

Based on New Jersey's March 21, 2020 stay-at-home order, the New Jersey Professional Process Servers Association suggested that individual companies make the determination on their own and take into consideration factors such as the number of court closings and whether process service is considered essential.

Impact on Service in Other Jurisdictions

Other jurisdictions in the United States are introducing tactics to limit the person-to-person contact that is typically necessary for traditional service of process. Connecticut suspended statutes of limitations and deadlines regarding service of process as a result of COVID-19. In King County, Washington, the court is no longer accepting personal service of process for claims against the county. Rather, summons and/or complaints are to be electronically mailed or mailed via first class mail.

Efforts to limit person-to-person contact at courthouses around the country have resulted in changes in paper filing procedures with the courts. Pursuant to Local Civil Rule 5.1.2, the Eastern District of Pennsylvania usually requires counsel to file initial papers in civil suits in person. However, in response to COVID-19, the court now encourages all initial papers be filed electronically. This Standing Order is set to expire on April 13, 2020, unless extended by further court order.

The Supreme Court of Rhode Island enacted a similar order declaring that the clerk's office is not accepting in person filings as of March 18, 2020. Rather, papers in emergency proceedings must be filed via electronic mail and papers in routine matters should be filed by mail.

In response to the Delaware Supreme Court's closure of all courthouses effective March 22, 2020, the Court of Chancery in Delaware placed a drop box near the entrance of where the Court of Chancery operates in order to allow for the continued filing of papers in civil actions by parties who do not have the ability to file such papers electronically.

Staying abreast of the varying and evolving court orders issued in response to the COVID-19 pandemic can be difficult. The New Jersey and Pennsylvania courts have not yet provided direction as to the role of electronic mail to effectuate service of process, possibly because postal carriers are still considered "essential personnel" and are thereby permitted to continue delivering mail at this time. However, as the number of COVID-19 cases increase, definitions of "essential personnel" may become further restricted. If postal carriers are no longer deemed essential personnel, and it is no longer feasible for private process servers to operate, more courts may require electronic service and institute alternative methods to effectuate service of process.

If you have questions about service of process or how your jurisdiction is handling court filings contact Robert Devine (deviner@whiteandwilliams.com; 856-317-3647), James Burger (burgerj@whiteandwilliams.com ; 856-317-3656) and Susan Zingone (zingones@whiteandwilliams.com; 856.317.3650).

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.

