



## *Labor and Employment Law Update*

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**INCOMING!**

### HOW STAFF SHOULD RESPOND TO LEGAL DOCUMENTS AND SERVICE OF PROCESS

#### I. INTRODUCTION

Various legal documents may be delivered or mailed to personnel at school sites, district offices, county offices of education, or other facilities. Staff members are often intimidated or confused by process servers and their efforts to serve legal documents. The purpose of this memorandum is to provide guidance to staff in identifying and handling legal documents and in dealing with process servers who may be attempting to deliver such documents.<sup>1</sup> The guidelines below should assist staff in handling such situations with more comfort and ease.

Most legal documents will include an attorney's name and a title with the name of a court and at least two involved parties (Jane Doe v. John Doe). They might also include words such as: Summons, Complaint, Subpoena, Plaintiff, Defendant, Order or Orders, Judgment, Declaration, Jurisdiction, Case No., Proof of Service, Ex Parte, Writ, Appeal, Motion, Petition, Notice, Deposition, etc. Some of the various legal documents staff may encounter include the following:

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<sup>1</sup> Once a lawsuit is ongoing, most documents will be served on the parties themselves or their attorneys, limiting any involvement by district or county office of education staff. Exceptions to this general rule are subpoenas which may be served on individual employees at any time. Please refer to SLS Memorandum "Subpoena Response Procedures" regarding the proper handling of subpoenas.

Summons and Complaint  
Civil, Criminal, Federal Court, and Administrative Law Subpoenas  
Probate documents  
Child Custody and Visitation Court Orders  
Contracts  
Public Records Act Requests  
Enforcement of Judgment documents

## II. TIME IS OF THE ESSENCE

The delivery of legal documents to a school site or school employee may trigger important timelines and other legal obligations, which if not dealt with in a timely manner, can have serious consequences for the District or the person to whom the document should ultimately be delivered. For example, failing to timely respond to a Summons and Complaint can result in a costly default judgment being entered against the person or entity sued. Additionally, a court can punish an entity or person with contempt for failing to comply with Subpoenas and other Court Orders. As further noted below, staff should be aware that they must *immediately* review any legal documents delivered to them and must *immediately* forward those documents to the appropriate person.

## III. DELIVERY OF LEGAL DOCUMENTS

### A. What is service of process?

A specific kind of formal delivery of documents called “service of process” is used by parties to a lawsuit to initiate that suit. Service of process affords the sued party the opportunity to respond to the lawsuit. Thus, proper service of documents is essential to any litigation.

People who deliver litigation documents are called “process servers.” Usually, these documents are served by professional process servers. However, any person who is at least 18 years of age and is not a party to the action may serve a Summons and Complaint to initiate a lawsuit.<sup>2</sup> For purposes of this memorandum, professional and lay process servers are indistinguishable and all servers will be referred to as “process servers.”

### B. What is staff’s role in the delivery or “service” of legal documents?

Other than the basic descriptions provided below, do not be concerned with the legal technicalities of service. School and district office personnel should not be intimidated by a process server. Most process servers will allow you to review the documents in order to best direct

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<sup>2</sup> See Code of Civil Procedure §414.10.

the server to the appropriate place. If working at a school site, you should remember that you have the right to deny access to school grounds when necessary. Staff should remain professional and courteous to the server, but firm if required. If a process server is persistent and/or unreasonable, immediately call law enforcement or legal counsel.

1. Personal Service

The most reliable and easiest form of service is personal service. Personal service means that the server actually identifies the person in question and hand-delivers copies of the documents to that individual. Service is complete at the time of delivery.<sup>3</sup>

In suits against a public agency like school districts or county offices of education, personal service may be made by delivering copies of the Summons and Complaint to the “clerk, secretary, president, presiding officer or other head of its governing body.”<sup>4</sup> At the beginning of each school year, all staff should be reminded that they are not to accept service on behalf of the District, the Board of Trustees, and/or the Superintendent. Instead, when any of these parties are named defendants, a process server should be directed to the Superintendent’s office. At least two staff members in the Superintendent’s office should be well-versed in the procedure for accepting service of legal documents on behalf of the educational agency.

If you are a named defendant on any legal documents being delivered, you should accept service of those documents. If your involvement in the matter referenced is work-related, you should then immediately forward a copy of the entire package of served documents as soon as possible to your tort liability carrier (SISC) and Schools Legal Service or other legal counsel as appropriate. If your involvement in the matter referenced is unrelated to your employment, you should proceed without involving the District or County Office of Education, its counsel, or insurance carrier.

If you are approached by a process server requesting to serve another District employee, first ask that the server allow you to review the documents to determine how best to proceed. If the server is seeking to serve an individual employee who does not work at your work site, but you know where the employee

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<sup>3</sup> Code of Civil Procedure §415.10.

<sup>4</sup> Code of Civil Procedure §416.50(a).

normally works, you can direct the server to the employee's normal work site. If the employee in question works in your department or at your school, you may ask that the employee come to the front office to receive service of process. If it is an inconvenient time for the employee because he/she is unable to leave the classroom or other designated work area, simply inform the process server that the employee is currently unavailable and that the server will have to return at a more convenient time.

Should you receive mailed, emailed, or faxed legal documents directed at another employee or the educational agency itself, follow your normal internal mail, email, or fax protocol. When following the normal protocol, be sure to *immediately* forward all legal documents to the individual addressee or the Superintendent's office.

## 2. Custodians of Records

At the beginning of each year, the District should designate employees to serve as custodians of records for the District. A custodian of records is someone responsible for keeping records in the ordinary course of the District's business. The appropriate custodian of records will usually be the top supervisor or administrator over those who maintain the files (e.g., Human Resources/Personnel Director for employment records, Business Manager for business records, and Principal for school student records.) This person should be able to attest to the identity of the records, how they were prepared, and the accuracy of any copies made of them.<sup>5</sup> In the case of student records, California regulations require that a certificated employee be designated at the beginning of each year to serve as custodian of records at the District level. At each school site, the Principal or a certificated designee must act as custodian of records for students enrolled at that school.<sup>6</sup>

## 3. Substitute Service

In some circumstances, "substitute service" can be used in lieu of personal service. When substitute service is used, the documents are served on someone other than the named defendant and are later mailed to the defendant at the same

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<sup>5</sup> Evidence Code §1561.

<sup>6</sup> 5 C.C.R. §431.

place the documents were left. To serve an individual defendant by substitute service, the process server may leave the documents to be served at the defendant's usual place of business with a person who is "apparently in charge" of that office or place of business, who is at least 18 years of age, and who is informed of the contents of the served documents.<sup>7</sup>

A process server may attempt to use substitute service to serve you on behalf of another employee. You are under no legal obligation to accept service in this situation. Unless you have received specific guidance from your Superintendent because you serve in the Human Resources or Personnel Department, *do not accept service for a fellow employee*. Once you accept service, you become responsible for those documents.

To serve a school district or county office of education via substitute service, the process server may leave a copy of the Summons and Complaint in the Superintendent's office during usual office hours with a person "apparently in charge thereof." This includes receptionists and secretaries. The process server will then mail copies of the documents to the person to be served at the address where copies were left.<sup>8</sup>

Please note that Schools Legal Service does not accept service of legal documents on behalf of any school district or county office of education. Should a process server attempt to serve such legal documents on Schools Legal Service, the server will be directed to the appropriate district or county office.

### **C. What should staff do if they have accepted service?**

As stated above, staff should be aware that papers served in litigation are extremely time-sensitive. If you accept service of any official paperwork, you effectively agree to take responsibility for those documents and your name will be noted in the process server's declaration indicating service was completed on a specific date.

Once you have accepted service, you should *immediately* read and review all of the served documents. When reviewing the documents, do not write on them or otherwise mark them except to place a receipt stamp with the date and your name and contact information on the

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<sup>7</sup> Code of Civil Procedure §415.20.

<sup>8</sup> Code of Civil Procedure §415.20.

envelope in which the documents were delivered. Be sure to save every document you accepted, including the envelope in which they came, even if it appears there are duplicates or extraneous pieces. *Immediately* transmit the entire package to the person or department indicated as the addressee on the paperwork. This step is crucial to assist legal counsel in appropriately responding to the served papers.

If you are the person or department administrator who receives served paperwork from another employee, provide a copy of the entire package of served documents as soon as possible to your tort liability carrier (SISC) and Schools Legal Service or other legal counsel as appropriate. As stated above, legal documents are usually extremely time-sensitive and you will want your counsel to have the earliest possible notice.

Should you have any specific questions or concerns regarding service of legal documents, please contact Schools Legal Service.

— Melissa H. Brown

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*Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.*