



Electronic Service of Process in IV-D Cases

Serve court papers on Facebook?! Many child support professionals recently read with much interest the headlines about a New York judge who authorized one parent to serve modification papers on another parent by posting on Facebook.¹ Beyond the headlines, however, this story took a familiar turn; at bottom, this was a case of substituted or alternative service. Details revealed that the court authorized service through posting on Facebook after a showing that personal service was ineffective and that the parent to be served would likely receive actual notice through Facebook because she was an active and recent user of the site. This news report begins a conversation that will likely continue in coming years about the impact of electronic media on traditional court and administrative processes for providing notice of court and administrative actions.

The initial impact has followed the development of electronic filing of court and administrative actions. As courts and agencies implement electronic filing for IV-D cases, some may consider providing for service of process by electronic means, or e-service. Like other automation improvements, e-service provides the opportunity for greater efficiency and cost savings over traditional paper service of process. However, IV-D programs face potential challenges in adopting e-service. This article describes e-service and identifies the challenges that must be addressed so that IV-D programs and courts may effectively implement e-service. By sharing their experiences with e-service, child support programs have the opportunity to learn from each other as they grapple with this emerging issue.

What is e-service?

E-service refers to the use of electronic means to deliver documents filed in litigation or in administrative proceedings to the involved parties. Traditionally, before a court or agency may exercise personal jurisdiction over a litigant and make binding orders, the litigant must have personal notice of the proceeding. The requirement of personal notice in advance of a court or administrative hearing is founded on the litigant's right to due process, assured by the Fifth and Fourteenth Amendments to the United States Constitution, as well as by state constitutions; it is also reflected in numerous federal and state laws. Personal service is accomplished through hand-delivery of the document that initiates the legal proceeding (e.g., original petition or complaint) to the litigant by an entity authorized by the court or administrative agency, often a law enforcement officer or other legally authorized entity. "When personal service is not reasonably possible, state laws and/or court rules provide for alternative means of providing notice to a party, called substituted service; examples may include service on another adult in the party's household or an appropriate individual at the party's place of employment, followed by mailing to the party at the same location."

¹ NCSEA Rapid Read, September 24, 2014, linking to <https://gigaom.com/2014/09/19/dad-can-use-facebook-to-serve-child-support-papers-judge-rules/>

E-service simply allows these legal documents to be served on litigants using electronic means, with documentation of that service also maintained electronically.

Standards for e-Service

In 2003, the Joint Technology Committee (JTC) adopted standards related to e-filing that also address e-service.² The Joint Technology Committee is a collaborative effort of the Council of State Court Administrators, National Council of State Courts, and National Association for Court Management.

Standard 1.2A deals with court rules related to e-service. The Standard envisions that parties will register to participate in electronic service and will access the system using a unique identifier such as a password. Those not registered to participate in e-service would be served through traditional methods. However, the comments associated with that Standard indicate e-service is not appropriate for the initial service of process at the beginning of a lawsuit:

“A number of court rules currently recognize such electronic service as sufficient to satisfy service requirements contained in the rules of civil and criminal procedure. Such rules apply only to the routine service of documents during the course of a legal proceeding. They do not apply to service of process required to notify the defendant or respondent of the filing of the lawsuit in order to establish a court’s jurisdiction to decide the case and to satisfy the due process of law requirements of the United States Constitution.”

Even so, the comment goes on to add: “It is only a matter of time, however, before court rules, decisions, or statutes will also recognize electronic service of process as sufficient to create personal jurisdiction over a party to a lawsuit.”

To document that e-service has been accomplished, the Standard provides for an electronic record similar to a paper return-of-service document that is accessible to the court and litigants.

Key issues for IV-D programs

- Unrepresented parties: Although lawyers and agencies may routinely participate in e-filing and e-service, these processes may be unfamiliar and confusing to IV-D customers who are not represented by counsel. IV-D programs may need to provide educational materials for their unrepresented customers about the availability of e-service, its benefits and challenges, and especially about the significance of receiving legal notices through e-service.
- Access to technology: With e-service, access to technology becomes, in effect, access to justice. Consequently, IV-D programs should consider access of low-income customers to technology that supports e-service. For example, if the

² The Standards may be viewed at this link: http://www.ncsc.org/services-and-experts/technology-tools/~media/Files/PDF/Technology/Recommended_%20Process_%20standards_02_26_03.ashx

technology available to significant numbers of IV-D customers is a smart phone, e-service participation will depend on the ability of customers to participate in e-service using their smart phones. Research indicates that many low-income adults earning less than \$30,000/year have access to technology through their cell phones. Eighty-five percent of low income individuals use cell phones. Thirty-nine percent of low income cell phone owners use their cell phones for email, and 43% use their cell phones for internet browsing.³

- Incorporation of new technology into IV-D practice and procedures: Implementing e-service requires changes to agency computer systems. The JTC Standard envisions courts implementing e-service, and where that occurs, the IV-D agency may incorporate e-service through its interface with courts. Where courts implement e-service, changes in the interface between the agency and courts would need to incorporate functionality for participating in e-service, serving documents electronically, and electronically documenting that service was accomplished for individual parties. Agencies themselves may implement e-service with similar e-service functionality for administrative proceedings. Of course, agency practice and procedures would need to reflect these technology changes as well. However, because the JTC Standard allows individual litigants to choose not to participate in e-service, IV-D agencies and courts would also need to maintain functionality for traditional service of process. Most important, because due process requires personal jurisdiction for initial judicial proceedings, agencies and courts would still need to accommodate traditional service of process for initial judicial actions to establish parentage and support. Because existing functionality of computer systems varies substantially among the states, costs of incorporating e-service into existing systems will also vary. Even if incorporating this new technology is costly, on-going costs of e-service should be substantially lower than costs associated with mail service, including printing, postage, and processing returned mail. However, there appears to be no reported data that provides a cost/benefit analysis of e-service in IV-D cases.
- Intergovernmental cases: Undoubtedly, some jurisdictions will adopt e-service before others. The 2008 version of the Uniform Family Income Support Act (UIFSA) already defines “record” to include electronic records and permits electronic evidence and communications.⁴

Implementation

In judicial process jurisdictions, courts often authorize e-filing and e-service, and IV-D programs must coordinate with the judicial administration agencies to implement e-filing and e-service. In jurisdictions that employ administrative process for support establishment and enforcement, implementation may also involve administrative hearing agencies. At this point in time, a number of IV-D programs participate in e-filing, yet few have implemented e-service. Some courts and child support agencies have authorization to use e-service but have not yet implemented it throughout the

³ <http://www.pewinternet.org/2013/05/29/technology-use-by-different-income-groups/>

⁴ Uniform Interstate Family Support Act of 2008, Sec. 100(20), http://www.uniformlaws.org/shared/docs/interstate%20family%20support/uifsa_final_08.pdf

jurisdiction, e.g. California. Although e-service is authorized by a California state court rule, local courts there have yet to adopt rules or implement modern e-service consistent with the state court rule. The California state court rule allows e-service by consent of parties, although consent may be implied from e-filing. However, consent may not be implied for non-represented parties.⁵ Two examples of implementation efforts now underway include:

Florida. Florida is, perhaps, the jurisdiction at the forefront of e-service. Florida mandates e-filing statewide through a court portal administered by the court clerks' association. The court portal interfaces with 67 county court-clerks. The IV-D program in Florida participates in e-filing through the court portal. As part of e-filing, e-service by email became mandatory as of September 1, 2012 for family law cases. Under Florida's extensive and lengthy court rules concerning e-service, e-service is not permitted for initial pleadings, absent a court order or statutory authority. A party not represented by an attorney may, at the party's election, participate in service by e-mail. To participate in service by e-mail, an unrepresented party must serve a designation of a primary e-mail address. The designation may include up to two secondary e-mail addresses. If an unrepresented party does not choose to participate in service by e-mail, then service (on and by) must be made by means other than e-mail, including service by mail.⁶

North Dakota.⁷ North Dakota courts mandate e-filing through a court-sponsored portal. The North Dakota IV-D program participates in e-filing. Other than service of the original summons and complaint, e-service of pleadings is required,⁸ except for pleadings filed by self-represented litigants and prisoners.⁹ An original summons and complaint must be served through traditional means.¹⁰

Sharing our Experiences with e-Service

E-service holds promise for better engagement of customers through technology, for streamlining service of process in many cases, for adaptability in both judicial and administrative processes, and for significant cost savings. However, as we begin 2015, it remains an open question how soon the promise will be fulfilled because experience has not yet yielded sufficient data based on use in IV-D cases. The child support community is in a unique position to gather and to share data as implementation of e-service develops. Especially useful will be information about costs and benefits of e-

⁵ Ca. R. Ct 2.251. See the Report to the Judicial Counsel on e-filing and e-service at <http://www.courts.ca.gov/documents/jc-20130628-itemC.pdf> Thanks to Michael Wright, California Administrative Office of the Courts for his description of the California rules.

⁶ Fla. R. Jud. Admin. 2.516. Thanks to Joan Koch, Chief Legal Counsel, Florida Department of Revenue, Child Support Program, for her description of the Florida process.

⁷ For details of electronic filing and service in North Dakota, see <http://www.ndcourts.gov/cle/> Thanks to James Fleming, Director, Office of Child Support Enforcement, North Dakota Department of Human Services, for information about the North Dakota process.

⁸ N.D. R. Civ. P. 5

⁹ N.D. R.Ct. 3.5

¹⁰ ND R. Civ. P. 4

service, education of customers about e-service, data concerning use of e-service by IV-D customers, and challenges that have arisen in implementing e-service. NCSEA's Best Practices and Emerging Issues Subcommittee welcomes comments as it continues to monitor e-service implementation. Comments may be provided to the Subcommittee by submitting them to customerservice@ncsea.org.

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