

Words of Advice on Preventing and Dealing with Assault

As the Association Assault Advisor I have received several calls within the last year or so and so wanted to pass on to all of you the advice I give our members when they call me.

First, it must be made said that the Association does not provide representation in or out of court. Instead, I, and others like me in years past, hope to impart some advice to you all based on our experience. Part of being a member of this Association is that you, like me, get to talk to people who have “been there, done that. I, like most people who have been in this profession for any length of time have experienced those rare, scary events that make anyone’s heart beat faster.

A quick bit of advice before I proceed and I must confess that 25 years ago, I did not heed this advice (of course I had an excuse-I was not as wise then!) and it got me into trouble sometimes.

- Don’t think you are always serving the bad guy. Sometimes the person being served is the good guy. Approach every serve with respect and friendliness but also firmness.
- Not everyone is evading service. Contrary to a somewhat popular belief (Process Server Rule #1 “They are all evading!”), some people are just not home. Don’t think otherwise until you have the facts.
- Don’t jump fences, go into backyards etc. I’m guessing you would get slightly irritated if someone did that at your home or business. I would. The Penal Codes that allow some exceptions to trespass for members of our profession (P.C. 602 (n) and P.C. 602.8) do not allow trespass in all instances!
- Do your homework. Know the law (start with reading and re-reading the Code Sections mentioned in this article), know the area, know the documents, know the parties if possible (it always is in Family Law or Unlawful Detainer cases), have good tools (GPS or maps, cell phone, camera, tape, etc.).
- If the situation gets out of control, or if you don’t like the look of it when you arrive, leave! No serve is worth your safety.

Second, even if you do it all right, sometimes things happen. After all, for the most part, people are not happy to see us. If something does goes awry, then be sure to write a narrative of what happened; as soon as you can. Events fresh in your mind are more likely to be remembered. If law enforcement responded to the scene, then obtain the responding officer(s) name and badge number and report number (if one is available).

Keep in mind that Penal Codes 241 (Assault) and 243 (Battery) state that if a Registered Process Server is assaulted or battered, the guilty party may be punished “by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in the county jail not exceeding one year, or by both the fine and imprisonment.” Of course, there are certain requirements (a.k.a. elements) that must be met and the battery statute allows for even more severe penalties. You can read these code sections, as well as the trespass statutes mentioned above, in their entirety, at www.leginfo.ca.gov/calaw.html.

You must be your own advocate throughout (including at the scene) this process. Should you ask for citizen’s arrest? Should you take pictures? Should you get names of witnesses at the scene? It depends! For example, in one event recently related to me, the server asked to press charges but the officer told her that if she did, the subject probably would, and they would both go to jail. She declined. If officers do respond, stay calm and don’t raise your voice. Your demeanor while talking to the officers will be perceived as your overall demeanor. If you are a hothead, it will do you no good. Worse, it will hurt your cause.

Perhaps you have other ideas. I for one cannot comment or advise you on what you should do in any given situation and the Association would certainly want me to say that neither me, nor our officers, directors or any other member, are not advocating any particular response or advice. Every situation is different and every company or person has their own ideas of how to respond to these issues, so if nothing else my hope is that this article will at a minimum generate some discussion with your boss, employees, contractors etc. Be safe out there!

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