

AB 2286: Why California Process Servers Should Be Regulated by a State Entity

The question of who should be responsible for regulating process servers in California has been debated for over 40 years. With AB 2286's introduction and later withdrawal from hearing this year, now is the perfect time to discuss what this bill would have changed, identify gaps in education and accountability for our industry, and take a look at why California process servers should be regulated at the state level.

We previously wrote about AB 2286 here: [Should Process Servers Be Regulated by the State Bar of California?](#)

As the Immediate Past President of CALSPro, our own Michael Kern has been involved with this legislation and supports the idea of moving regulation to the state level. "Currently, there's no enforcement. You just go in with a bond and register with the county and you're a process server," he said. "Even if you have no knowledge, no information, and no training, you can become process server, and that's not right. It shouldn't be that way, especially now when there is such a negative impact of improper service. CALSPro has provided process server training and education since 1984. We have also tested and certified process servers since then, even though California has not yet required it. It's time the State did."

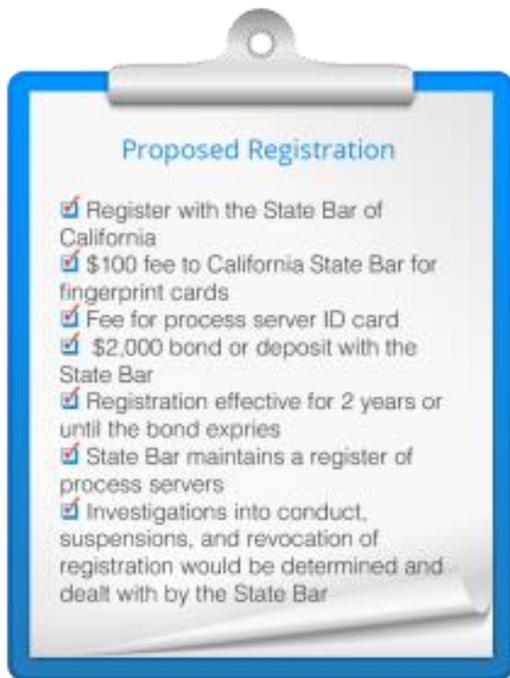
AB 2286: Shifting regulation of process servers to the California State Bar

While existing law requires process servers to register with the county clerk, AB 2286 would have placed registration monitoring on the State Bar of California. The bill was introduced by Assembly Member Donald P. Wagner with the first hearing scheduled in April of 2014.

However, it was the unexpected opposition expressed by the California Supreme Court that caused Wagner and the California Association of Legal Support Professionals (CALSPro) to withdraw the bill. In an [update from CALSPro](#), Legislative Committee Chairman Steve Janney shared that discussions between Assembly Member Wagner and the state association would continue with the possibility of resubmitting the bill in 2015.

How the law currently works vs. what was proposed with AB 2286

To understand why process servers are better suited to be regulated by the California State Bar or another state entity, let's first take a look at how the existing law works and what AB 2286 was intended to change.



Existing law requires:

1. a process server to register with the county clerk in the primary place of business by submitting an application and all necessary paperwork and information
2. any corporation or partnership to also register with the county clerk

3. the process server to present a \$2,000 two year term bond in the name of the registrant (as well as a \$100-\$200 filing fee for the bond with an additional \$3 per page)
4. the process server to pay a registration fee of \$142.
5. the county clerk to retain the certificate of registration
6. the county clerk to receive fingerprints (fingerprint fee up to \$85 paid by the process server)
7. the presiding judge of the superior court to review the criminal record of registrants and take appropriate action
8. the county clerk to provide a variety of administrative services required for registering process servers

What AB 2286 proposed:

1. process servers would be required to register with the State Bar of California
2. they would also pay a \$100 fee to the California State Bar to cover the actual cost of processing fingerprint cards
3. they would pay a fee to cover actual cost of issuing a registered process server ID card
4. They would need to submit a \$2,000 bond or, as an alternative, a deposit with the State Bar in the same amount.
5. registration would be effective for 2 years or until the bond expires, whichever comes first
6. the State Bar would maintain a register of process servers
7. investigations into conduct, suspensions, and revocation of registration would be determined and dealt with by the State Bar
8. a repeal of Chapter 16 of Division 8 of the Business and Professional Code (existing regulation requirements)

You can read the full text of the bill here: [AB 2286](#)

While AB 2286 would clarify some terms for process servers, the primary goal of the bill was to shift responsibility of regulating process servers from the county clerk to the California State Bar, an entity better suited for this type of regulation. Essentially, the proposed bill nearly switches out “county clerk” and replaces it with “State Bar” within the existing statute.

A regulation change 40 years in the making

Pushing for these regulations has been a charge led by process servers for over 40 years. In early 1970, the California Association of Professional Process Servers (the state association at that time) proposed legislation to license process servers through the State of California. The auctioneers association had proposed similar legislation regarding licensing, which was vetoed by then-governor Ronald Reagan due to his belief that the State of California could not afford the additional cost. He refused to sign anything into law that would cost the state additional funding and resources.

The county-level regulation was proposed as an alternative after speaking with William G. Sharp, the Los Angeles county clerk. With process servers pushing for regulation and sharp

recognizing that process servers do the vast majority of filing in the court, it seemed to be the most reasonable alternative to unattainable statewide licensing. Still, over the past four decades many process servers have shared the sentiment that statewide licensing is in the best interest for the profession.

Andy Estin, a legal support professional who has long been involved in process server associations at the state and national level, says that the California legislature has been promoting the use of registered process servers since the 1970s for two main reasons:

1. Sheriffs serve process at a substantial loss (this causes an unnecessary burden on the taxpayers and unfairly subsidizes litigants)
2. Court security and public safety are diminished by the assignment of process serving duties instead of courthouse security and public protection

In tandem with this recommendation, eight of California's 58 Counties have prohibited their sheriffs from serving civil process: San Diego County, Riverside County, Alameda County, Contra Costa County, El Dorado County, Lassen County, San Mateo County, and Santa Clara County.

After 40 years of process servers asking for their profession to be regulated by a proper state entity, enforcement at the county level being inconsistent, and opportunities for sewer service, isn't it time to make the change?

Should county clerks be managing the regulation of process servers?

This is the big question behind AB 2286 and previous attempts to bring oversight of process server registration to the state level. So, should county clerks be managing the regulation of process servers?

Our short answer to that question is no, and here's why:

1. Process servers have statewide standards that are being regulated at the county level
2. With 58 individual county clerks managing that process, the regulatory standards are already inconsistent
3. County clerks do not have an effective policy for dealing with process servers who either go rogue, create sewer service, or don't understand the Rules of Civil Procedure
4. Claims and complaints filed against process servers are forwarded to local district attorneys who schedule hearings before administrative law judges, offering inconsistent enforcement and disciplinary action
5. Nobody is monitoring the non-registered individuals who can serve a maximum of 10 papers each year without registering to make sure they are not exceeding that maximum
6. There is no education requirement, no enforcement, and no consistency for process servers

What we have is a statewide regulation enforced at a county level, making consistent regulation and enforcement throughout the state unrealistic. With 58 individual county clerks managing the

regulation and registering of private process servers, inconsistent application of regulatory standards and handling of complaints have already been reported. This is unsurprising given that there are no enforcement procedures for improper service, falsifying affidavits, etc.

Why California process servers need to be regulated at the state level

Rather than being regulated by county clerks, why not shift regulation and oversight to the State Bar, the Secretary of State, or even the Department of Consumer Affairs?

Doesn't it seem like a better fit?

1. The State Bar regulates attorneys
2. The Secretary of State regulates notaries
3. The Department of Consumer Affairs regulates businesses and consumer services

Lobbyist for the association Michael D. Belote was quoted saying, “[The California State Bar] seems like a more rational place to regulate [process servers],” and the association’s current President, Cliff Jacobs, agrees that being regulated by the same entity that regulates attorneys would be a natural fit. “We’re doing legwork in the legal field,” he pointed out.

Why should process servers be regulated by the State Bar, Secretary of State, or Department of Consumer Affairs?

1. Statewide regulations need to be enforced at the state level, not the county level
2. Regulations and complaint procedures would be consistent
3. These entities are better set up to regulate businesses and manage complaint procedures and disciplinary action against rogue servers
4. Process servers would be more closely monitored, as well as those who serve less than 10 papers per year
5. It’s an opportunity to elevate the profession and to introduce and coordinate much-needed education and testing requirements with the help of CALSPro.

As of today, no education or testing requirement exists. Education “certification” is only awarded to those who voluntarily participate in educational courses with the state association, about 250 individuals.

“I want process servers to be educated. If people are better trained, they’ll have a better understanding of how to do their jobs. Having the state association education classes coordinated with the regulating body will provide a better understanding of statutes, rules of civil procedure, and requirements for serving papers,” our own Michael Kern said. Testing requirements would also weed out the individuals who don’t know how to serve process. CALSPro President Cliff Jacobs agrees, and has stated that, “the goal is to keep the standards of service of process at the highest level.”

Though required education and testing may not be in the immediate future it may very well be on the horizon, and it’s not something county clerks are equipped to handle. New York City process

server regulations were hit with a massive overhaul that introduced a variety of requirements intended to eliminate sewer service. Though New York's association wasn't initially involved in those regulation changes, they eventually came to an agreement with their Department of Consumer Affairs, however, it was not without legal action being taken as recently as this year. We urge other process servers to learn from what happened in New York City.

"Process servers in California need to be held more accountable, and they're not," Kern says. "Why don't we take the charge in improving our industry rather than waiting for someone else to come along and say we need to do it better?"

Conclusion

After 40 years of process servers attempting to lead the charge, it seems that only more time will tell where the regulation of process servers will go. For us, what it comes down to is education, accountability, and raising the standards for process servers in California. With that in mind, we expect AB 2286 to be reintroduced in some capacity in 2015.

The goal, when outlined by Michael Kern himself, is simple: "It's about evolving and changing. What we're trying to do is raise the level of process servers in California. We have to make a change if we want to get things moving in the right direction."

- See more at: <http://www.kernlegal.com/blog/ab-2286-california-process-servers-regulated-state-entity/#sthash.IuJf24vA.dpuf>

About the Author:

Kern Legal Services was started back in 1961 and has been a premier Legal Support provider in California ever since. Since its inception in 1961, Kern Legal Services has focused on providing clients with a full range of litigation support services to law firms, insurance companies, businesses and private parties for over 50 years throughout California and Nationwide. Our team of professionals provides our clients with superior expertise in the areas of Service of Process, Court filing, Skip tracing and On-site document reproduction.

Dave Kern, the founder of Kern Legal Services, maintained a basic and extremely successful philosophy of not being the biggest, but being the best attorney service in California. Michael Kern, son and CEO of Kern Legal Services was brought on in 1987, and has had his hand in every aspect of litigation support service ever since. Kern's success is directly attributed to Michael's dedication and passion for the industry which directly caters to this country's most litigated State. In addition to Michael, our other key management employees have as many as 40 years of experience in the industry.