

NO SERVE – NO FEE PROCESS SERVICE? a no-no-no.

Treating a successful personal serve as a ‘win’ and all other instances as a ‘loss’ is akin to only paying the ticket price if your team, the Packers win when they beat the Giants; only the Mets when they beat Washington. Granted, that would certainly cut down expenses – in the Mets case (alas...MY team) substantially, and it would be neat if you only paid to watch the game if your team won, but that’s not going to happen because in the real world there’s as much sweat and hard work that goes into a loss as a win. Often more.

If failure to successfully personally or sub-serve a party was the be-all, end-all to a case, those touting the magic of “NO SERVE NO FEE” might have a point, and a rationale.

But they don’t.

The reality is no-serves occur, and the judicial system doesn’t say “That’s it, fellas and gals. Case is over.” No, it says “*Ok...you tried. And we insist you tried hard. But having tried hard, there are other ways to move the justice system along.*”

Interestingly, it is that “**tried hard**” part that is so key. In New Jersey, as in many states, judges will ... or should ... scrutinize the ‘effort’ of attempted personal service. If you didn’t do enough they’ll tell you and make you do more before allowing alternate service, via mail, via publication and in rare instances, social media.

You have to prove your effort.

In fact, talk with any reputable process service agency and they’ll tell you the hard, nasty and expensive truth: *no-serves cost them more than serves*, because with a non-serve, the server has had to try three, four or more times, often at multiple addresses, at different times of the day, on different days. There may have been stake-outs. There probably have been many miles driven for the \$25 or \$30 they are going to earn on the case. How many people are willing to invest multiple hours and incur multiple expenses to make \$25? Would you?

“NO SERVE NO FEE” has a magical, marketing ring to it, but behind the facade are three ugly truths:

1. With a non-serve, they make you pay for the information you need to move your case forward anyway: *the reasons for the non-serve*;



2. When a server has a low probability of completing a serve, they won't try much, because they aren't going to get paid either. Better to quit than diligently keep at it. That doesn't serve justice; that just serves themselves and you can hardly blame them.

3. It encourages sewer service for the same reason: low probability of serve, not going to get paid on a no-serve. Best to dump it, get paid and take the risk.

Your risk.

Recall what happened in New York, not all that long ago: hundreds of millions of dollars of foreclosures were reversed ... all because the process server sewer served. And why? They weren't paid for non-serves. So they dumped. And hoped.

So, congratulations: you didn't pay for process service. But beware: if the clerks are on their game you'll have to pay for the information on why it wasn't served and have to go through the process again because the effort in the no-serve wasn't up to judicial par.

And remember this: if there's a good address, 99% of serves are successful.

You'll pay a higher premium on a successful serve to a NO SERVE NO FEE agency than one charging you a flat rate to do the same job.

Your case is worth thousands. Or more. You'll pay more if it's served; you will save maybe \$60 if it isn't...and risk those thousands/millions. Worth it?

Because the real job is effort. At the end of personal service you want to have it served or be in a position to move the case along. With NO SERVE NO FEE servers you might not get either.

about the author

Robert W. Pladek was a lawyer a long time....and a long time ago. He moved into publishing, then legal services, including running two large New Jersey process service companies. He mostly sits, today, graying, as President of New Jersey Lawyers Service, NJLS, an award-winning process server and next day/same day delivery company. He writes a lot. Some would say, too much. Reach him at rpladek@njls.com.

