

# THE CASE OF THE FELONIOUS PROCESS SERVER



2019-2020 Civil Grand Jury  
of Santa Clara County

*December 14, 2020*

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## GLOSSARY AND ABBREVIATIONS

<b>Process server</b>	A process server is the person who serves process. The service of process is a procedure by which a party to a lawsuit gives an appropriate notice of legal action to another party, such as a defendant, so as to enable that party to respond to the proceedings.
<b>LiveScan or Live Scan</b>	Live Scan is a form of background check required by the state and federal governments, typically for state-issued licenses, employment, or volunteer work. The California government will check submitted fingerprints against its databases, and sometimes against federal databases, to search for an individual's criminal record.
<b>Subsequent Arrest Notification System</b>	A system created by the California Department of Justice to allow any entity authorized to use Live Scan to receive information on a person's criminal behavior occurring after the initial background check.
<b>Subsequent Arrest Notification Report</b>	A report issued by the Department of Justice to any agency authorized by California Penal Code § 11105 to receive state summary criminal history information. A notification is made upon the arrest of any person registered in the Subsequent Arrest Notification System as the result of an application for licensing, employment, certification, or approval. The subsequent arrest notification shall consist of any offense an individual is arrested for after the individual's original fingerprint date for an authorized applicant agency.

## BACKGROUND

The Civil Grand Jury received a complaint concerning a process server who had been convicted of felonies in another county, but whose Santa Clara County registration as a process server was not revoked as it should have been. The Grand Jury is concerned about the damage that can be caused by a process server acting in bad faith and has examined the process in an attempt to understand how situations such as this can be prevented in the future.

The California Department of Justice maintains a master database of state criminal history information on individuals.<sup>1</sup> Only specified entities or persons, which includes some local agencies that do background checks as part of initial employment, certification, or licensing functions, can access this information. These same entities contract with the Department of Justice to get subsequent notifications of criminal offenses through the Subsequent Arrest Notification System. This system is used by various agencies, organizations, and individuals authorized by the statute to be informed of criminal information so they can safeguard the public from certain types of professionals – foster parents, peace officers, healthcare workers, elderly caretakers, school teachers and staff, and certain financial jobs – who hold positions that can be abused and thus harm the public.

A process server is one of those positions of trust and must register with the Clerk-Recorder's Office. To be registered, an applicant must post a bond and undergo a background check. The Clerk-Recorder's Office directs an applicant to a local office that can perform LiveScan fingerprinting. The applicant's fingerprint information is sent to the California Department of Justice and Federal Bureau of Investigation to perform a criminal background check. The procedures for registration and the rules governing a process server are described in the California Business and Professions Code § 22350 et seq. Registration in any county in California allows a registrant to serve process in any other county in the state. Registrations must be renewed every two years.

Upon registration, the Clerk-Recorder's Office also utilizes a Subsequent Arrest Notification System Contract provided by the California Department of Justice. This system notifies the Clerk-Recorder's Office of any events that may affect the process server's registration.

The registration of a process server can be revoked if their bond expires without renewal. The registration of the process server can also be revoked by a presiding judge if a process server is charged with felonies or other misconduct in their duties. In Santa Clara County, the Clerk-

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<sup>1</sup> California Penal Code § 11105.

Recorder's Office logs into the Subsequent Arrest Notification System every Monday to be informed if a County-registered process server has been arrested or convicted of a crime. If the clerk is advised that the registered process server has been convicted of a felony, the presiding judge is authorized to review the criminal record and revoke the registration.<sup>2</sup>

In 2018, a process server registered in Santa Clara County was convicted of felonies in another county within California. When the process server was registered, the Clerk-Recorder had properly added them to the Subsequent Arrest Notification System list. Complaints regarding this process server were received by the Clerk-Recorder's Office, the District Attorney's Office, and the Civil Grand Jury. The Grand Jury learned that the Clerk-Recorder's Office checked (and re-checked) the Subsequent Arrest Notification System; however, the system did not have information regarding this person's felony conviction. The registration of this process server expired in 2019.

## METHODOLOGY

The Civil Grand Jury received a complaint on this matter. The Grand Jury reviewed available public information regarding the subject of this complaint. The Grand Jury interviewed staff of the Santa Clara County Clerk-Recorder's Office and the District Attorney's Office. The Civil Grand Jury reviewed relevant policies and procedures.

## DISCUSSION

The courts rely on the professionalism of process servers to properly inform a person of court proceedings that will impact that person. If a process server is doing their job improperly, a person may not know to appear in court or to address other legal proceedings. If that person fails to defend themselves, they may lose their property, their freedom, access to their family, or other life-altering events may occur.

The usual procedures for revoking a process server's registration are well documented and clear. The California Department of Justice maintains the Subsequent Arrest Notification System, as authorized by California Penal Code § 11105. Throughout the state, the Clerk-Recorder's Office retrieves the list of registrants who have been arrested or convicted of any offense by logging into the Subsequent Arrest Notification System. If the Clerk-Recorder's Office sees a notification of a felony conviction, the office should advise the presiding judge of the county Superior Court. The judge can review the criminal record and revoke the registration of the process server.

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<sup>2</sup> California Business and Professional Code § 22351.5(b).

None of the interviewees were able to recall when a public complaint in Santa Clara County alleged that a process server had committed a felony and the Subsequent Arrest Notification System did not list that felony conviction. It is unlikely that this issue would be brought to the attention of the Clerk-Recorder since a complainant would have to know of the felony; know that the felony disqualified the process server; and know that the Clerk-Recorder is responsible for registering process servers. In the complaint brought to the Grand Jury, the process server in question was convicted in another county of felonies directly related to the ability of the registrant to serve process, as verified in court records. However, the registrant's name never appeared in the Subsequent Arrest Notification System. At the time the Civil Grand Jury received this complaint, the process server was incarcerated, and their registration had expired. As a result, this person can no longer serve process.

However, there is still the possibility of the system not working correctly in the future. The Civil Grand Jury cannot speculate on why the Subsequent Arrest Notification System did not list the felony convictions. An error occurred somewhere in the process and it cannot be assumed that, where one error occurred, another error will not occur. The Civil Grand Jury has no access to information about how information in the Subsequent Arrest Notification System might or might not be corrected or how a background check may or may not be different. In reality, lightning can strike more than once. If this process server applies for registration in another county, and if a Subsequent Arrest Notification System check fails to report the felony convictions, as did happen here, this person could again serve process in any county in California. Furthermore, the Civil Grand Jury is in a unique position to become aware of this situation and it is authorized to investigate county agencies and make public recommendations for the improvement of the operations of these agencies.

## FINDINGS AND RECOMMENDATIONS

### Finding 1a

The Santa Clara County Clerk-Recorder's Office did not receive notification of felony convictions of a registered process server from the Subsequent Arrest Notification System. Because the Clerk-Recorder's Office did not receive a notification as required by California Penal Code § 11105, the process server's registration was not revoked.

### Finding 1b

The Clerk-Recorder's Office is not responsible for possible errors by the court or the state in entering and/or disclosing felony information that is supposed to make its way to the Subsequent Arrest Notification System. There is no agreed-upon process or procedure for the Clerk-Recorder's Office to communicate with the Department of Justice, other than the Subsequent Arrest Notification System. As a result, the Clerk-Recorder's Office cannot resolve questions regarding registered process servers who may have been convicted of felonies.

### Recommendation 1

The Santa Clara County Clerk-Recorder's Office should develop, publish, and distribute procedures which would allow it to reconcile conflicting information about a felony conviction of a registered process server. The Clerk-Recorder's Office should communicate with agencies authorized to assist it. These procedures should be available to appropriate staff by March 1, 2021.

## CONCLUSIONS

The Santa Clara County Clerk-Recorder's Office and the Santa Clara County District Attorney's Office were both cooperative with the Grand Jury's investigation. While the situation described in this report may be quite rare, it did occur. The Civil Grand Jury is uniquely positioned to both hear about and investigate this occurrence. Also, no other investigatory body would be obligated to disclose this communication breakdown if it were to occur. The consequences of a law-breaking process server operating in the state could have serious impact on the courts and the public. For example:

- Someone could miss a court date
- Someone could lose custody of children
- Court documents could go undelivered
- Divorce proceedings could be disrupted

The public counts on this system to be reliable. The courts rely on this system to be reliable. The Clerk-Recorder's Office needs to ensure that issues with process servers are properly resolved.

**REQUIRED RESPONSES**

Pursuant to Penal Code sections 933 and 933.05, the Grand Jury requests responses as follows:

From the following governing body:

<b>Responding Agency</b>	<b>Finding</b>	<b>Recommendation</b>
The County of Santa Clara Board of Supervisors	1a, 1b	1



## THE CASE OF THE FELONIOUS PROCESS SERVER

This report was **ADOPTED** by the 2019-2020 Santa Clara County Civil Grand Jury on this 14th day of December, 2020.

A handwritten signature in cursive script that reads "Karla Fukushima". The signature is written in black ink and is positioned above a horizontal line.

Ms. Karla Fukushima

Foreperson