

## 9<sup>th</sup> Circuit affirms service by e-mail in Internet case



**Alan H. Crowe**

The 9<sup>th</sup> U.S. Circuit Court of Appeals, in what promises to become a landmark decision, ruled on March 20 that a Las Vegas hotel-casino could effect service by e-mail upon a defendant in a foreign country with no physical address.

The initial AP reports on this decision spun the news to make it appear the court had given lawyers carte blanche to serve legal documents via e-mail. Not true.

The 26-page decision is a good read. The opinion traces the background of an alleged trademark infringement and the reader quickly grasps the dilemma that the Rio Casino Resort faced in dealing with the defendant, Rio International Interlink (RII), an Internet gambling operation.

RII conducted business by e-mail and through two websites—first through [www.riosports.com](http://www.riosports.com), which defendant shut down after a demand to cease desist from plaintiff, but then activated a new site [www.betrio.com](http://www.betrio.com) which hosted an identical sports gambling operation.

Defendant had no physical presence in Nevada and none in the United States. An international courier (IEC) in Miami had dealings with defendant but were not authorized to accept service on its behalf. IEC did, however, state the defendant was located in Costa Rica. Plaintiff hired a private investigator who could not locate an address for defendant in Costa Rica.

Rule 4(f) of the Federal Rules of Civil Procedure provides three options for serving process in foreign countries. The first two options were unavailable to plaintiff because Costa Rica is not a signatory to any international treaty, and service by letter rogatory or by agent weren't

available because there was no known address for delivery of the documents. The circumstances of this case cried out for an alternative means of service. And Rule 4 (f)(3) fit the bill. It permits service upon individuals in a foreign country *by other means not prohibited by international agreement as may be directed by the court.*

The court acknowledges there is no precedent for condoning service of process by e-mail but at the same time noted that the federal courts could not be shackled to "anachronistic methods of service" that prevents them from entry into the "technological renaissance."

The courts will likely see more of these cases relatively soon. Currently two other major Las Vegas hotels—Bellagio and Luxor—are suing web firms over trademark infringement Bellagio is seeking an injunction against several overseas Internet gaming companies to stop them from using the Bellagio trademark on their online casino websites.

There is little doubt that some lawyers will attempt service by e-mail without first getting a court order. And if there's no objection by the defendant, it's foreseeable that some judges will not question the validity of the service. That's not a pleasant thought.

### **GEORGIA BILL DEFEATED**

In the last issue we reported on HB 1065, the Georgia bill that would allow licensed Pis to serve process in Georgia without appointment. NAPPS was opposing the bill. This legislation had a full head of steam and looked almost unstoppable. **But Paul Tamaroff, after grabbing his lance and donning his white hat, jumped aboard his trusty steed and raced into battle**. Needless to say, he (we) won.

# STATE LEGISLATION - 2002 SESSION

Compiled Edited by  
**ALAN H. CROWE**  
*NAPPS Administrator*

## CALIFORNIA

AB 2493 (Pacheco) - Process Service. Would prohibit a court, as a condition of establishing reasonable diligence in serving a defendant, from requiring that a search be made of public databases—including DMV records—where access to residential addresses is restricted. Would permit a *registered process server* to levy more than once under the same writ of execution, provided the writ is still valid; would delete the existing recoverable service fee of \$1.50 for serving debtor's employer with a writ of execution, and would allow as a recoverable cost the amount actually incurred in effecting service. Introduced 2/21/02; Ref to Judiciary 3/14/02.

## GEORGIA

HB 1065 (Reichert) - Private Investigators. This bill would have amended Section 9-11-4 of the Georgia Code to permit a licensed "private detective" to serve process statewide without special appointment. Bill was amended on the House Floor to add that the PI must also have been "appointed as a permanent process server." This legislation, if passed, would virtually eliminate private process servers in Georgia and make Pis the defacto alternative to the sheriffs. Paul Tamaroff of Atlanta, a former NAPPS president and lawyer, represented NAPPS in opposing the bill. This is the second time Mr. Tamaroff has had to single-handedly fight legislation on this subject. His testimony and masterful briefs defeated it in 2000 and he gave an encore performance this year. The bill died in the Senate when the session ended 3/22/02.

## HAWAII

SB 1001 (Grunta) - Service by Mail. Section 634-36 of the Hawaii Revised Statutes provides that a defendant shall be served personally or by "certified, registered, or express mail, postage prepaid, with return receipt requested.." This bill would amend that section to "deem" that service by

registered mail be completed where mail is returned because it was declined or refused by defendant or if the return receipt is signed by a person other than the defendant. There is a requirement that plaintiff follow up by mailing a copy of the summons and complaint (first class mail) to the defendant with a notice that case will proceed and default will be taken unless defendant appears and defends the suit. Provision is provided whereby defendant can set aside default judgment upon showing that defendant was not at fault for the declining, refusing or simply not getting the summons and complaint. Introduced 1/23/01. Passed SENATE 3/6/01. To House Judiciary 3/12/01. Carried over to 2002 Regular Session 7/23/01. No activity in 2002.

SB 2400 (Tarn) - Process Servers. Would create the office of civil process and a commission to oversee the function of civil process servers. "The purpose of this Act is to restore the regulation of civil process servers and prescribe standards of qualifications and performance." Requires registration of all persons who serve more than 10 services in one year for compensation. Applicants must be 21, a citizen of the US, a high school graduate and be bonded for not less than \$25,000. Applicants must have served as an apprentice with a professional process server and must pass a written examination along with other requirements. Introduced 1/18/02. Reported from Judiciary with recommendation of passage 2/15/02.

SB 2409 (Tarn) - Process Servers. Would require civil process servers to wear identification badges and to carry wallet identifications provided by the department of public safety that designate them as a "deputy sheriff—civil section." Proponents claim members of public have difficulty determining if process servers approaching them with official-looking documents are really officers serving civil

*(Continued on page 36)*