



California Code of Civil Procedures Section 1011

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The California Code of Civil Procedures, Section 1011 is one of the more misunderstood service of process codes by both attorneys and process servers alike. There is a part (a) regarding attorneys, and a part (b) regarding a party. The rules for each have some similarity, but more importantly, major differences. Over the years, certain aspects of the code have been misinterpreted and misapplied to specific other portions of this code. What emerged as a result are at least three general major misconceptions that I will address and clarify here. I have included a copy of the actual code at the bottom of this article for you to refer to, and have taken the liberty to make specific portions of the code stand out.

The first thing to understand is that the very beginning of the code is very simple and straightforward. It states that **"The service may be personal, by delivery to the party or attorney on whom the service is required to be made"**. There are no time constraints, packaging requirements nor other allowances or restrictions. From there, alternatives are provided to effectuate service. What follows are the misconceptions and clarifications.

MISCONCEPTION 1: (re: Attorney) Service must be made between 9 a.m. and 5 p.m. at the attorney's office, or it is invalid.

MISCONCEPTION 2: (re: Attorney) Documents can just be left in a conspicuous place at the attorney's office, or residence, or slid under the office door, or leaning against, or taped to the door if it is locked during business hours.

MISCONCEPTION 3: (re: Party) Documents can be left for a party in a conspicuous place at their residence between 8 a.m. and 6 p.m.

There are very specific conditions under which the between 9 a.m. and 5 p.m. guidelines apply. 1. There can be **no one at the office with whom the papers may be left**. 2. The papers must be **in an envelope or package, clearly labeled** to identify the attorney. 3. The envelope or package must be left **"in a conspicuous place in the office"**.

There is no language requiring the envelope or package to be sealed, and for that matter, if the server did not have the opportunity to see what is in the envelope or package his proof can only accurately indicate a "sealed envelope" to describe what was served. Some people interpret "in the office" loosely, and will slide the envelope under the door if it is locked, but unless you can see what is on the other side of the door, how do you know that it is "in the office"? Perhaps it is in an ante room, lobby or hallway having several

doors to different offices. If you are able to see through a clear door and there is space enough to slide documents under it, in instances where documents are too large to fit under the door, does taking them apart and sliding them under the door in sections fulfill the requirements? Is that complying with the "in the office" condition, or for that matter the "in an envelope or package clearly labeled to the attorney" condition. It is open to interpretation, but I think not. Wouldn't you at least need separate envelopes, each labeled to identify the attorney, and perhaps even inscribed with something like "1 of 4, 2 of 4, etc.?" What you or your server interprets as "in the office" could easily be challenged by the intended recipient. This is especially true when considering the language that immediately follows the "conspicuous place" wording which states **"or, if the attorney's office is not open so as to admit of that service, then service may be made by leaving the notice or papers at the attorney's residence, with some person of not less than 18 years of age"**. Focusing on "not open to admit of that service", does that portion of the code infer that unless you are admitted in the office to seek someone with whom the documents can be left, you are then precluded from leaving them in a conspicuous place, and therefore cannot just slide the envelope under the door? Must you then try the residence or an alternate method that

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is provided for in the code? On a similar note, when instructions are provided by counsel to leave the documents leaning against, taped to, or slid under the door (again not fulfilling one or more of the specific conditions set forth in the code, and potentially invalidating the service), in good conscience can you state under penalty of perjury that you served the documents?

Part (b) of the code details service on a party and provides for service to be made "in the manner specifically provided in particular cases...". It continues with what appears at first glance to be very similar to the portion of part (a) that permits leaving the documents in a conspicuous place; however, if read all the way through carefully, you can clearly see that there is no contingency provided for leaving the documents at the residence unless specifically left with a person at least 18 years of age. There is no provision to leave it at the residence unless the party is served directly, or the documents are left with a person over 18.

To sum up the CCP 1011 basics, remember that the documents should be in an envelope or package (perhaps a box if too large for an envelope) clearly labeled to identify the Attorney; can be left at any time at the office with a receptionist or other person apparently in charge; but can only be left "in" the office in a conspicuous place if there is "no one" there between 9:00 a.m. and 5:00 p.m. with whom the documents can be left. Also, the documents must be left at the residence with the party or someone over the age of 18, and cannot just be left in a conspicuous place. There are other little known provisions of the code allowing for mailing the documents, or serving them on the clerk of the court, and I encourage you to spend a minute or two to read the code below in its entirety to garner a full understanding of CCP 1011.

CAL. CCP. CODE § 1011 : California Code - Section 1011

The service may be personal, by delivery to the party or attorney on whom the service is required to be made, or it may be as follows:

(a) If upon an attorney, service may be made at the attorney's office, by leaving the notice or other papers in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or with a person having charge thereof. When there is no person in the office with whom the notice or papers may be left for purposes of this subdivision at the time service is to be effected, service may be made by leaving them between the hours of nine in the morning and five in the afternoon, in a conspicuous place in the office, or, if the attorney's office is not open so as to admit of that service, then service may be made by leaving the notice or papers at the attorney's residence, with some person of not less than 18 years of age, if the attorney's residence is in the same county with his or her office, and, if the attorney's residence is not known or is not in the same county with his or her office, or being in the same county it is not open, or a person 18 years of age or older cannot be found at the attorney's residence, then service may be made by putting the notice or papers, enclosed in a sealed envelope, into the post office or a mail box, subpost office, substation, or mail chute or other like facility regularly maintained by the Government of the United States directed

to the attorney at his or her office, if known and otherwise to the attorney's residence, if known. If neither the attorney's office nor residence is known, service may be made by delivering the notice or papers to the address of the attorney or party of record as designated on the court papers, or by delivering the notice or papers to the clerk of the court, for the attorney.

(b) If upon a party, service shall be made in the manner specifically provided in particular cases, or, if no specific provision is made, service may be made by leaving the notice or other paper at the party's residence, between the hours of eight in the morning and six in the evening, with some person of not less than 18 years of age. If at the time of attempted service between those hours a person 18 years of age or older cannot be found at the party's residence, the notice or papers may be served by mail. If the party's residence is not known, then service may be made by delivering the notice or papers to the clerk of the court, for that party.



**Revocation of Membership
Decision of the Dispute Resolution Committee**

Effective February 7, 2013, the CALSPRO Dispute Resolution Committee revoked the membership of Attorney's Diversified Services (ADS). The Committee found that ADS failed to meet the standards of professional responsibility established by the Code of Ethics of our Association. ADS will not be eligible to reapply for membership for a minimum period of one year from the date of this decision and can only be considered for readmission with approval from the CALSPRO Board of Directors.