6-07/630.00 Person Sued in Representative Capacity

Often a defendant is sued in a representative capacity, e.g., trustee of a trust, executor of an estate. In making service, a deputy's sole duty in that respect, is to deliver to the defendant a copy of the summons and complaint and make return of that fact. It is not necessary in making service that the sheriff shall announce to a defendant the capacities in which he is sued or in what capacity he is served. He is informed of that by the complaint and summons. (Morrisey v. Gray, 162 CA 638 (1912)) The return of service should specifically show all the capacities in which the defendant is served.

Although most persons (natural or artificial) have the capacity to sue or defend a civil action (American Alternative Energy Partners II v. Windridge, Inc. 42 CA 4th 551), there are certain exceptions, including the following:

Minors and incompetents lack capacity to sue in their own names or to defend an action brought against them. Litigation must be conducted through a guardian, conservator of the estate or guardian ad litem. (CCP 372(a))

A probate or trust estate is not a legal entity, but a collection of assets and liabilities. Having no capacity to sue or be sued, litigation must be maintained by or against the executor or administrator of the estate. (Tanner v. Best 40 CA 2d 442; CCP 369; Estate of Bright v. Western Air Lines 104 CA 2d 827) In an action filed against "Estate of Jones," the complaint was amended to substitute the executors of the estate as defendants. (Lazar v. Estate of Lazar, 208 CA 2d 561)

Service of process on a trustee under deed of trust or mortgage does not impose any obligation on the trustee to notify the trustor or beneficiary of the action. (CC 2937.7)

An action to establish the decedent's liability for which the decedent was protected by insurance may be commenced or continued against the decedent's estate without the need to join as a party the decedent's personal representative or successor in interest. (PROB 550; PROB 552).

Before a summons against an individual sued in a representative capacity is assigned out for service, the "Notice to the Person Served" at the bottom of the summons shall be completed by (1) marking the box "as an individual defendant." If the summons is served using the substitute method, both copies of the summons shall be completed in this manner.

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010).)*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. [x] as an individual defendant.
2. [ ] as the person sued under the fictitious name of *(specify)*:
3. [ ] on behalf of (specify): Tom Jones

under: [ ] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
[ ] CCP 416.20 (defunct corporation) [x] CCP 416.70 (conserva
[ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (authorize
[ ] other *(specify)*:

4. [x] by personal delivery on *(date)* date of service

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Proced

When completing the Proof of Service, be sure to include all information regarding the person served and the manner of such service. EXAMPLE: "Serve Tom Jones, as Trustee of Jones Family Trust No. 5." The process server makes contact with Tom Jones. The Proof of Service should state the party served: Tom Jones, as Trustee of Jones Family Trust No. 5. The address of the service must appear on the Proof of Service. You must indicate the manner of service as personal (CCP 415.10).

3. a. Party served *(specify name of party as shown on documents served)*:
Tom Jones, Trustee of Jones Family Trust No. 5

b. [ ] Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) *(specify name and relationship to the party named in item 3*

4. Address where the party was served:
123 Main Street, Los Angeles California 90012.

5. I served the party *(check proper box)*

a. [x] **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on *(date)*: date of Service (2) at *(time)*: time of service

If the service is made by substitution (CCP 415.20), you must include the name and title or relationship. The party must be informed of the general nature of the process. The name of the party must still be indicated. A copy of the Summons and Complaint must be mailed to the Party served. Service by substitution must show attempts (diligence). Dates and times of all previous attempts of service declaration of diligence must documented on the Proof of Service. The declaration of diligence will be on an attached page.

3. a. Party served *(specify name of party as shown on documents served):*
Tom Jones, Trustee of Jones Family Trust No. 5

b. ☐ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a pers
under item 5b on whom substituted service was made) *(specify name and relationship to the party named in ite*

4. Address where the party was served:
123 Main Street, Los Angeles California 90012.

5. I served the party *(check proper box)*

a. ☐ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to
receive service of process for the party (1) on *(date):* (2) at *(time):*

b. ☒ **by substituted service.** on *(date):* date of service at *(time):* time I left the documents listed in ite
in the presence of *(name and title or relationship to person indicated in item 3):*
Jane Smith, housekeeper

(1) ☐ **(business)** a person at least 18 years of age apparently in charge at the office or usual place of busin
of the person to be served. I informed him or her of the general nature of the papers.

(2) ☒ **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usu
place of abode of the party. I informed him or her of the general nature of the papers.

(3) ☐ **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mai
address of the person to be served, other than a United States Postal Service post office box. I inform
him or her of the general nature of the papers.

(4) ☒ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be serve
at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on
(date): date mailed from *(city):* city mailed from **or** ☐ a declaration of mailing i

(5) ☒ I attach a **declaration of diligence** stating actions taken first to attempt personal service.