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In reversal, the Second District held that a petitioner seeking an alternative to personal service under CCP § 527.6(m)(2) must make a diligent effort to accomplish personal service before the court may authorize service by another method; process server’s declaration lacked the detail to establish a diligent effort to accomplish personal service where such declaration consisted only of conclusory statements

Yu v. Pozniak-Rice
(July 21, 2025)

California Court of Appeal 2 Civ B337415, Div 7 (Segal) 112 Cal.App.5th 1135, 334 Cal.Rptr.3d 886, 2025 FA 2191, per Segal (Feurer, J. and Stone, J., concurring). Los Angeles County: Moskowitz, J., reversed. For Lorain Pozniak-Rice (Appellant): Pro Per. For Jonathan Yu (Respondent): Pro Per. CFLP § C.16.5.

Jonathan Yu was in a romantic relationship with Mia Marx that ended in January 2023. On October 27, 2023, Yu filed a petition for a civil harassment restraining order under [CCP § 527.6](#) against Marx’s mother, Lorain Pozniak-Rice. In support of his petition, Yu alleged that Pozniak-Rice and her daughter began to “aggressively harass and stalk” him and his family after Yu ended his relationship with Marx. Specifically, Yu alleged that Pozniak-Rice blocked a garage entrance at his apartment complex while Marx chased Yu and his mother around the building while yelling racist and defamatory statements. Yu also alleged that Pozniak-Rice and her daughter posted signs throughout the apartment complex disparaging Yu. In his declaration, Yu had not given Pozniak-Rice notice of the request for a restraining order due to fears for his safety, stating he, “was afraid that the violence would reoccur when [he] gave notice that [he] was asking for these orders.”

On October 30, 2023, the trial court issued a temporary restraining order enjoining Pozniak-Rice from harassing or contacting Yu. The order also required Pozniak-Rice to stay at least 100 yards away from Yu, his family, and their homes, vehicles, and workplaces. The trial court also set a hearing on Yu’s petition for November 21, 2023.

At the November hearing, Yu told the trial court that after diligent efforts to serve Pozniak-Rice using a process server, he had been unable to locate and serve Pozniak-Rice. Yu tried to submit an email from the process server regarding service efforts, but the trial court denied consideration since it was not a sworn declaration of due diligence. The trial court extended the temporary

restraining order and continued the hearing to December 19, 2023, to give Yu more time to locate and serve Pozniak-Rice. The trial court also ordered Yu to personally serve Pozniak-Rice by December 14, 2023.

At the December hearing, Yu told the trial court that he still had not been able to serve Pozniak-Rice and asked the trial court to authorize service by an alternative method under [CCP § 527.6\(m\)\(2\)](#). In support of this request, Yu submitted a declaration by a process server, Manuel Berdichevsky, who stated he had unsuccessfully attempted to serve Pozniak-Rice six times at an address in Van Nuys. Specifically, Berdichevsky stated that “[d]espite extensive efforts, we have been unable to ascertain a current address or means of contact. My team and I have investigated all social media and reasonable locations we believe [Pozniak-Rice] would frequent.” Notably, Berdichevsky did not identify the specific effort he undertook to locate Pozniak-Rice or the reasons for believing Pozniak-Rice could be found at the locations in question.

The trial court found Pozniak-Rice was evading service and that was good cause to allow Yu to use alternative methods to serve the petition and related documents. As such, the trial court granted Yu’s request to serve Pozniak-Rice by mail and by email. The trial court then continued the hearing to January 8, 2024.

Prior to the January hearing, Yu filed proofs of service stating that he sent the required documents to email addresses he had for Pozniak-Rice and later mailed these documents to a post office box that he believed belonged to Pozniak-Rice.

Pozniak-Rice did not appear at the January hearing. Based on Yu’s proofs of service, the trial court determined Yu had served Pozniak-Rice. Yu then testified and affirmed the statements in his petition and declaration were true. The trial court ruled that Yu had shown by clear and convincing evidence that Pozniak-Rice had unlawfully harassed him and that, absent a restraining order, she would likely continue to harass him. As a result, the trial court (Los Angeles County’s Moskowitz) granted Yu’s petition for a restraining order for the maximum five-year term. Pozniak-Rice appealed stating that the substantial evidence did not support the trial court’s finding that Yu made a “diligent effort” to accomplish personal service under [CCP § 527.6\(m\)\(2\)](#), and the Second District reversed.

In a matter of first impression, the Second District first discussed the applicable law and standard of review. A restraining order under [CCP § 527.6\(a\)](#) permits a petitioner who suffered harassment to seek an ex parte temporary restraining order and, after notice and a hearing, a court may enter a protective order enjoining harassment for up to five years. Until recently, a petitioner was required to personally serve the respondent with a copy of the petition for a civil harassment restraining order, the temporary restraining order, and the notice of hearing under [CCP § 527.6\(m\)](#). Prior to January 1, 2022, the court discussed the challenge of personal service when a respondent evades

service and does not have a known address. In *Searles v. Archangel*, 60 Cal.App.5th 43, 274 Cal.Rptr.3d 170, the trial court denied petitioner’s request to authorize service over social media since the respondent was following petitioner’s social media accounts. The *Searles* court held that CCP § 527.6(m) did not approve alternative methods of service. However, the Legislature amended CCP § 527.6(m) to allow for electronic service in limited circumstances: ““after a diligent effort, the petitioner has been unable to accomplish personal service, and that there is reason to believe that the respondent is evading service or cannot be located, then the court may specify another method of service that is reasonably calculated to give actual notice to the respondent and may prescribe the manner in which proof of service shall be made.””

Next, the Second District reviewed the trial court’s decision to grant the restraining order by determining whether the findings, both express and implied, support the trial court’s decision and are justified by substantial evidence in the record. The Second District also reviewed for substantial evidence the trial court’s finding that Yu made a diligent effort to locate and personally serve Pozniak-Rice.

No published decision has yet considered what constitutes a “diligent effort” under CCP § 527.6(m)(2). But a similar issue routinely arises regarding the service of a summons in civil cases ...

Although there are no discussions regarding the definition of “diligent effort” under CCP § 527.6(m)(2), the justices deferred to the “reasonable diligence” requirement in civil cases under CCP § 415.50 to illustrate substantial evidence required to obtain an order for personal service by publication. Petitioners are required to conduct a ““systematic investigation and inquiry conducted in good faith”” including ““a number of honest attempts to learn defendant’s whereabouts or his address by inquiry of relatives, ...and by investigation of appropriate city and telephone directories, [voter registries, and assessor’s office property indices situated near the defendant’s last known location], generally are sufficient.”” Petitioners ““must state probative facts based on personal knowledge rather than hearsay or legal conclusion.”” In *Giorgio v. Synergy Management Group, LLC*, 231 Cal.App.4th 241, 179 Cal.Rptr.3d 465, the court found that the plaintiff established “reasonable diligence” required by CCP § 415.50 not only by providing declarations by counsel and the process server, but also with evidence of the defendant’s whereabouts including written responses from the post office.

Based on the similarities, the justices concluded that a petitioner seeking alternative personal service under CCP § 527.6(m)(2) must make a similar showing of ““diligent effort to accomplish personal service’ ...before the court may authorize service by another method.” This includes a statement of ““probative facts’ based on personal knowledge and demonstrating a thorough investigation designed to learn the respondent’s whereabouts.”” As such, the Second District

concluded that Yu did not make a “diligent effort” to accomplish personal service under [CCP § 527.6\(m\)\(2\)](#).

First, the Second District noted the insufficiency in Berdichevsky’s declaration. For example, Berdichevsky provided no information about his professional background and identified himself only as ““service provider”” under his signature line. There was no explanation about his experience or registration. Next, Berdichevsky declared an attempt to serve Pozniak-Rice six times at the same address but there was no explanation as to why Berdichevsky would find Pozniak-Rice at the address. Berdichevsky then made conclusory statements that he had made additional efforts to locate Pozniak-Rice but did not provide an explanation of any specific effort he had taken or any resources used in his attempts to locate Pozniak-Rice. The justices noted that Berdichevsky’s declaration that Pozniak-Rice was “evading service” was an opinion rather than evidence. Due to the absence of detail in Berdichevsky’s declaration, Yu failed to establish a diligent effort to accomplish personal service.

Accordingly, the Second District reversed the five-year civil harassment restraining order. The Second District further ordered the temporary restraining order to be reinstated and remain in effect for 21 days, subject to extension by the trial court. The Second District directed the trial court to give Yu an additional opportunity to serve Pozniak-Rice with all required documents and to conduct further proceedings on the petition.

COMMENT ...

The Second District did not find that Pozniak-Rice was evading service under [CCP § 527.6\(m\)](#) since she provided her current phone number, mailing address, and email address in her notice of appeal, civil case information statement, and opening brief. The Second District noted that Yu can serve Pozniak-Rice at those addresses.

Library References

11 Witkin, Summary of Cal. Law (11th ed. 2025) Marriage, § 370

Hogoboom & King, [Cal. Practice Guide: Family Law \(The Rutter Group\)](#) ¶ 5:70

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