

Proving proof of service by mail is false

The other party claims they served me, but I never got it. How do I prove the other party's server lied in their Proof of Service?

First, make sure to look everywhere it might be and ask anyone else who picks up your mail if they might have seen it, just to make sure.

Next, get a copy of the Proof of Service from the court file, and check that it is completely filled out, that the individual who mailed it was not a party, that all the information makes sense (dates match, etc.) and that the mailing address they used is the one you use on your court paperwork. Any of those things could be a basis to challenge the service.

Finally, you can schedule a motion for relief from the negative consequences of the false service (such as not being able to respond to a motion that you then lost).

Generally, items mailed are presumed to arrive, but you can defeat this presumption by presenting evidence such as declarations under penalty of perjury stating that it was not received, as long as they are not contradicted by the other party. ([Cal. Evid. Code § 641](#))

(https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=EVID§ionNum=641); *Bonzer v. City of Huntington Park* (https://scholar.google.com/scholar_case?case=4657139709573151132&q=20+CA4th+1474&hl=en&as_sdt=4,5) (1993) 20 CA4th 1474, 25 CR2d 278.) You can subpoena the person who signed the proof of service to appear as a witness and question them about their claim that they mailed it, and/or prove it with other valid evidence.

If the mail service was done by a registered process server, you may need to provide more evidence than if they are not. ([Cal. Evid. Code § 641](#) (https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=EVID§ionNum=647)). Most mail service is done by a staffer at a law firm or, if the other party is self-represented, by a friend of the party.

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