

SUPREME COURT, CIVIL BRANCH
New York County
60 Centre Street, New York, N. Y. 10007

Office for the Self Represented
Room 116, (646) 386 - 3025

How to Serve Legal Papers

Note: All persons involved in a lawsuit should consult an attorney. This office gives you information, forms and instructions on court procedures. As an office of this court, we cannot give legal advice or act as your advocate.

To give legal papers to other parties in a lawsuit is known as **service**.

Service of process is the serving of papers that start a lawsuit.

Service of process rules must be strictly followed, since this service gives notice that a lawsuit has been started. Failure to serve properly can result in the dismissal of the lawsuit. The person serving papers must be over the age of 18 and cannot be a party to the case. Refer to the Civil Practice Law and Rules (CPLR) 2103(a). Papers may be served by a friend, relative or a process server. Papers may not be served on a Sunday, or a Saturday upon someone who celebrates Saturday as the Sabbath. See General Business Law 11.

Service of Initiating Papers

Papers used to start an action or special proceeding are known as **initiating papers**.

The following are examples of initiating papers:

Summons with Notice

Summons and Complaint

Notice of Petition and Verified Petition

Order to Show Cause and Verified Petition

Every case filed in Supreme Court receives its own identifying case number known as an **Index Number**. For cases filed in New York county, the initiating papers must be filed in the County Clerk's Office, 60 Centre Street, Room 141B, in the basement.

A case is started only after getting the Index Number. Copies of the initiating papers must state the Index Number and the date the initiating papers were filed in the County Clerk's Office before they are served on the defendants or respondents in the manner required by the CPLR. Read the pamphlets, How to Commence a Civil Action and How to Commence a Special Proceeding, for more details on filing papers and the necessary fees. The filing fees may be waived upon proof of financial hardship, as explained in How to Apply for Poor Person Status. The pamphlets are available in Room 116.

Time Limitations and Filing Proof of Service of the Initiating Papers

Before the statute of limitations expires, you must start your lawsuit as described above. Also, proof of service must be timely filed in the County Clerk's Office, Room 141B, at the Law & Equity counter. If not done, your case may be dismissed.

A summons with notice or a summons and complaint must be served and proof of service filed within 120 days of getting your Index Number.

In a special proceeding where the statute of limitations is four months or less, after timely filing in the County Clerk's Office, copies of the papers must be served and the proof of service filed within 15 days after the date the statute of limitations expires.

If the papers are served by substituted or "nail and mail" service, the affidavit of service must be filed within 20 days of the date of service.

After service has been done, the person who served the papers must fill out an **affidavit of service**. The affidavit must be sworn to and signed in front of a notary. This affidavit must describe the date, place, time and how the papers were served and indicate the sex, skin and hair color, and the approximate age, height and weight of the person served. In a matrimonial case, the server must also explain how he or she knew that person served was the named defendant. See Domestic Relations Law 232-b.

Service upon a government agency: (in most cases)

The **City of New York** shall be served by personal delivery of the initiating papers to the Corporation Counsel, 100 Church Street, New York, N.Y. or to any person designated to receive process, in a writing filed in the County Clerk's Office, New York County.

The **State of New York** shall be served by personal delivery of the initiating papers to an Assistant Attorney General at an office of the Attorney General or to the Attorney General within the state.

A **State Officer**, who is sued solely in an official capacity, or a **State Agency**, shall be served by personal delivery to such officer or to the chief executive officer of such agency or to a person designated by the chief executive officer to receive service.

Another way to serve such officer or agency is by taking the following **two steps**:

Step 1: Mailing the papers to the chief executive officer of the agency or the designated officer by certified mail, return receipt requested in an envelope marked "URGENT LEGAL MAIL"

and

Step 2: Personal delivery on an Assistant Attorney General of the State of New York or upon the Attorney General. See CPLR 307.

Service on a corporation:

A corporation shall be served by delivering the process to an officer, director, general agent, cashier or assistant cashier (as defined in cases interpreting this law) or upon any other agent authorized by the corporation to receive service. See CPLR 311.

Personal service on a person shall be made in one of the following three ways: (See CPLR 308).

1. Personal Delivery - delivering the papers within New York State to the person to be served.

2. Substituted Service - ***two steps***:

Step 1: Delivering the process within New York State to a person of suitable age and discretion, who is willing to accept the papers, at the actual place of business, dwelling place or usual place of abode of the defendant or respondent.
and

Step 2: Mailing the papers by first class mail to the person to be served at his or her last known residence or mailing them to his or her actual place of business.

Important: The envelope used for the mailing must be marked "Personal and Confidential" and must not show in any way that the envelope contains papers about a legal action against the person being served.

3. Serving an Agent - delivering the initiating papers within New York State to a designated Agent (someone chosen by the person to accept process). CPLR 308(3).

This method cannot be used in divorce actions.

“Nail and Mail” service

If several genuine attempts at personal and substituted service have failed, and the case is not a divorce case, the papers may be served by taking the following ***two steps***.

Step 1: Affix the summons to the door of either the actual place of business, dwelling place, or usual place of abode within New York State of the person to be served
and

Step 2: Mail the process by first class mail to the person to be served at his or her last known residence or mail the process to such person at his or her actual place of business. CPLR 308(4).

Important: The envelope used for the mailing must be marked "Personal and Confidential" and must not show in any way that the envelope contains papers about a legal action against the person being served.

The affidavit of service by “nail and mail” must describe, in detail, the times and places of all the previous attempts at personal service, before “nail and mail” service was used.

Service of an Order to Show Cause (OSC) and Commencing an Action or Special Proceeding at the same time.

When a case is started by service of an OSC and Verified Petition or an OSC and Summons and Complaint, personal service is almost always required by the court. You must obtain **2 original affidavits of service** from the server.

One original affidavit of service of the petition or summons and complaint and OSC must be filed with the County Clerk Office, Room 141B, immediately after service is done.

The second affidavit of service is submitted to the Judge on the return date of the OSC. Make a copy of the affidavit of service for your records.

If service cannot be made as required in the OSC, the court may allow service another way, after a written request is made by the plaintiff or petitioner.

Service of Subsequent Papers

After the case is started and all parties have been served with the initiating papers, other papers in the case usually can be served with less formality.

A person, aged 18 or over, who is not a party to the case may serve papers by mail or delivery to a self-represented party directly or to the office of the attorney for a party.

Subsequent papers should not be served upon a party who is represented by an attorney. Even if the focus of the subsequent papers is only one party or a few parties, papers must be served on all parties in the case. Everyone who answers the initiating papers must receive a copy of the subsequent papers.

Instructions: This affidavit must be used for service of a Summons and Complaint, a Summons with Notice, a Notice of Petition and Verified Petition, an Order to Show Cause and Verified Petition or Subpoena. Print to fill in the spaces next to the instructions.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

[fill in names(s)] Plaintiff(s)/Petitioner(s)
- against -

Index Number

AFFIDAVIT OF SERVICE
of INITIATING PAPERS

[fill in names(s)] Defendant(s)/Respondent(s)
-----X

STATE OF NEW YORK
COUNTY OF _____ ss:

I, _____, [name of person who served papers],
being duly sworn, depose and say:

I am over 18 years of age and am not a party to this case.

I reside at [your address] _____

On _____, 200____, [date of service], at _____ AM / PM [time of day], I served the
attached papers [identify papers served] _____

_____ on the defendant in this case. The address of the place where the papers were served is [location where
papers served] _____

I served the papers in the manner indicated below: [check box that applies]:

1) **Individual** By delivering a true copy of each to the defendant personally. I knew the person
served to be the person named in those papers because [How did you know
defendant?] _____
_____ [Fill out description of defendant on page 2].

2) **Corporation** _____ [name of
business], a domestic corporation, by delivering a true copy of each to [Identify
person served] _____ [Fill out
description of person on page 2], who is [identify his/her job title] _____
_____. I knew the corporation to be that listed in
the papers served and I knew the title of person named above and that he/she was
authorized to accept service.

3) **Substituted** By delivering a true copy of each to **[Identify person served]** _____
Service _____ **[Fill out description of person below]** a
person of suitable age and discretion, at the actual place of business, dwelling house,
or usual place of abode in the state, and mailing, as indicated below.

Mailing
(Use with 3) I also enclosed a copy of the above papers in a postpaid, sealed envelope properly
addressed to defendant's last known residence or actual place of business, located at
[address] _____,
and I deposited the envelope in a post office depository under the exclusive care and
custody of the United States Postal Service within New York State.

Description
(Use with 1, 2, The individual I served had the following characteristics: **[Check one box in each**
or 3 **category]:**

- | <u>Sex</u> | <u>Height</u> | <u>Weight</u> | <u>Age</u> |
|---------------------------------|--------------------------------------|---|--|
| <input type="checkbox"/> Male | <input type="checkbox"/> Under 5" | <input type="checkbox"/> Under 100 lbs. | <input type="checkbox"/> 21 - 34 years |
| <input type="checkbox"/> Female | <input type="checkbox"/> 5'0" - 5'3" | <input type="checkbox"/> 100 - 130 lbs. | <input type="checkbox"/> 35 - 50 years |
| | <input type="checkbox"/> 5'4" - 5'8" | <input type="checkbox"/> 131 - 160 lbs. | <input type="checkbox"/> 51 - 61 years |
| | <input type="checkbox"/> 5'9" - 6'0" | <input type="checkbox"/> 161 - 200 lbs. | <input type="checkbox"/> Over 61 yrs. |
| | <input type="checkbox"/> Over 6' | <input type="checkbox"/> Over 200 lbs. | |

Color of skin **[describe]:** _____

Color of hair **[describe]:** _____

Other identifying features, if any **[describe]:** _____

Military I asked the person to whom I spoke whether the defendant was in the military of the United
Service States or New York State in any capacity and was told that he/she was not. Defendant did not
wear a military uniform. I state upon information and belief that the defendant is not in the
military service of the United States or New York State. The basis for my belief is the
conversation(s) and observation(s) described above.

Sworn to before me this
_____ day of _____, 200__

[sign your name before a Notary]

Notary Public

[print your name]