

SELF-HELP CENTERS

NOTE: PERSONS WITHOUT COUNSEL ARE ADVISED TO CONSULT AN ATTORNEY. COURT STAFF MAY NOT GIVE LEGAL ADVICE, PREPARE YOUR PAPERS OR ACT AS YOUR ATTORNEY.

HOW TO SERVE PAPERS WHEN COMMENCING AN ACTION OR PROCEEDING

The providing of legal papers to other parties in a case is known as service. Service of papers that commence a case is referred to as service of process and must be accomplished in a special manner, described below. Service of **subsequent papers**, however, usually may be done by First Class Mail. Rules regarding service must be strictly observed, especially with respect to service of process, since such service gives notice of the existence of the case and effectuates the court's jurisdiction (power) over a person.

A. Service of the Initiating Papers

The summons with notice, summons and complaint, or notice of petition and petition are referred to as initiating papers (or process). Basic fairness (and the law) require that, before a plaintiff or petitioner may obtain the relief demanded, all other parties must be formally notified that a case has been commenced. Therefore initiating papers must be served on all defendants or respondents in the manner required by the Civil Practice Law and Rules (the "CPLR" for short).

A person serving papers (process) must be 18 years of age or older and must not be a party to the case. CPLR 2103(a). Papers may be served by a process server or friend or relative of a party so long as he/she is not a party to the case.

Service upon a governmental agency: Governmental agencies shall be served by personal delivery of the initiating papers to the **County Attorney** (County) **or Corporation Counsel** (City) or to any person designated to receive process in a writing, and filed in the County Clerk's Office. **Personal service on the State of New York** shall be made by delivering

the process to an Assistant Attorney General at an office of the Attorney General or to the Attorney General in the State. **Service on a State officer** (employee) who is sued solely in his/her official capacity or upon a State agency shall be made 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. As an alternative, service on such officer may be made by taking the following two steps: 1) **mailing** the papers by certified mail, return receipt requested, to the officer or chief executive officer of the agency and 2) personal service on the State of New York in the manner described in the preceding paragraph. See, CPLR 307.

Service on a corporation shall be made by delivering the process to an officer, director, or general agent, or cashier or assistant cashier (in this context the term cashier has a special meaning which is defined in cases interpreting this law) or any other agent authorized by appointment or by law to receive service. CPLR 31 1.

Personal service on a natural person (CPLR 308) shall be made by one of the following methods:

1) **Personal Delivery:** (This is the highest form of personal service). Delivering the process within New York to the person to be served, or

2) **Substituted Service** (This type of substituted service is considered a form of personal service) (a two step procedure) [First] Deliver the papers within New York to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode (place of residence) of the person to be served and [Second] by mailing the papers by first class mail to the person to be served at his or her **last known residence** or mailing them at his or her **actual place of business**. (See NOTE, p. 3.)

3) **Serving an Agent:** Delivering the process within New York to a designated agent for the service of process. **CPLR 308(3). In divorce cases, neither this method, nor "nail and mail" service may be used.**

4) **"Nail and Mail" service:** If repeated, genuine attempts at personal and substituted service have failed, the papers may be served by using actual place of business, dwelling place, or usual place of abode within New York State of the person to be served **and [Second] 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. **See, CPLR 308(4).**

NOTE: The envelope used for the mailing (in second step of **Substituted Service** or the second step of **nail and mail service**) **must be marked "PERSONAL AND CONFIDENTIAL"** and must not indicate that the matter concerns a legal action against the person being served. The affidavit of service by "nail and mail" should describe in detail the prior attempts at personal service.

5) **Personal service by mail and publication:** Pursuant to (CPLR 308 (5), 312 (a) and 315-316).

6) **Service in a manner directed by the court.**

B. Timeliness and the Filing a Proof of Service of Initiating Papers

Before the papers are served, you must file your papers and obtain an index number in the Office of the County Clerk **before the statute of limitations has expired.** If you are bringing a special proceeding or an action in which the statute of limitations is four months or less, the papers must, after timely filing with the County Clerk, be **served no later than 15 days after the date when the statute of limitations expires. A summons with notice or summons and**

complaint must be served within **120 days of filing with the County Clerk**. If service is not made within these time limits, the action will be dismissed upon a motion by the opposing party unless you can show good cause for the delay or a reason the court should extend the time for service in the interest of justice. (See CPLR 306-b).

After service of process, the person who served the papers must fill out a statement, called an **affidavit of service**, which is sworn to and signed in front of a notary public. The affidavit of service must state the date, place, and time when the papers were served, and include a description of the person served. The description must state the sex, skin color, hair color, and approximate age and weight of the person served. In a matrimonial action, there is the additional requirement that the affidavit of service state how the server knew the person served was the defendant named in the action (see Domestic Relations Law § 232 [b]). If substituted or nail and mail service were used, the affidavit of service must be filed with the County Clerk within 20 days of the date of service. Although affidavits of service are not otherwise required to be filed, courts generally require that they be submitted and/or filed to assure that the defendant has been given notice of the action or proceeding. Thus, filing of affidavits of service is recommended in all instances.

C. Serving an Order to Show Cause

When a case is begun by order to show cause, service is performed in the manner ordered by the Court. Personal service is usually ordered. A copy of the affidavit of service should be filed with the County Clerk immediately after service, and the original affidavit of service is submitted to the court when the case is called on the return date. If service cannot be made as described on page two, paragraphs 1,2 or 4, the court may, after written application by plaintiff/petitioner, permit service by other means.

D. Service of Subsequent Papers

After the case is commenced and all parties have received notice of its existence, papers may usually be served with less formality. A person aged 18 or over who is not a party to the case shall serve papers, but mailing or delivering papers to the office of the attorney is permitted. Subsequent papers must be served on all parties to the case, even if the focus of the papers is only one party or a few parties; everyone has a right to know what is taking place in the case.

E. Service of a Subpoena

A subpoena is used to compel a person who is not a party to a case to testify at a trial or hearing, or to submit to a deposition (unless the person agrees to testify voluntarily). A subpoena may also require production of documents. A self-represented person must prepare the subpoena and submit it to the court to be "So Ordered," (**CPLR 2302**). After issuance by the court, the subpoena must be served in the same manner as a summons. (See, **How to Prepare a Subpoena**, available from the Public Legal Resource Center.)