

**SUPREME COURT, CIVIL BRANCH
QUEENS COUNTY**

COURT HELP CENTER

Note: All persons involved in a legal action should consult an attorney. This office provides forms and information on court procedures. Since we are an office of this court we cannot give legal advice or act as your attorney or advocate.

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, may usually be done by mailing. 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.

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**. 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 (“CPLR”).

A person serving papers 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 who is not a party to the case.

Service upon a governmental agency: The City of New York shall be served by personal delivery of the initiating papers to **Corporation Counsel** (at 100 Church Street, New York, New York) or to any person designated to receive process in a writing, filed in the County Clerk’s Office, New York County. **Personal service on the State of New York** shall be made by delivering the process to an Assistant Attorney General¹ at an office of the Attorney General or to

the Attorney General in the State. **Service on a State officer** who is sued solely in an official capacity or 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) **persona1 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 (as defined in cases interpreting this law) or any other agent authorized by appointment or by law to receive service. **CPLR 311**.

Persona1 service on a natural person (CPLR 308) shall be made by one of the following methods:

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

2) **Substituted Service** (a two step procedure) **[First]** Delivering 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** 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 the following two step procedure:

[First] 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**

[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.

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

Before the papers are served, you must file your papers and obtain an index number in the County Clerk’s Office (Room 106) **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**.

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. 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. If substituted or nail and mail service were used, the affidavit of service must be filed with the County Clerk, Room 100, within 20 days of the date of service.

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 original of the affidavit of service should be filed with the County Clerk immediately after service, and a duplicate 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 opposing attorney or other self represented party 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 Self Represented Information Office in room 109.)