

SUPREME COURT, CIVIL BRANCH
Richmond County
26 Central Avenue, Staten Island, N.Y. 10301

Office of Self Help
25 Hyatt Street 5th floor
Staten Island, N.Y. 10301
718 675-8589

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 to a case 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 and is a mechanism that formally brings the other party before the court. 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 on a Saturday if service is upon someone who celebrates Saturday as the Sabbath. See General Business Law 11.

Electronic Filing

The New York State Unified Court System operates an electronic filing system for cases filed and litigated in various state courts, including the New York State Supreme Court. This system is the **New York State Courts Electronic Filing System (“NYSCEF”)**.

In Richmond County Supreme Court, Civil Branch, electronic filing is mandatory. That is, new cases must, with four exceptions (Matrimonial, Article 78, Election Law, and Mental Hygiene law matters), be commenced through the NYSCEF system and filings with the court thereafter must be filed through NYSCEF. Thus, a person seeking to commence a new civil action or special proceeding (other than one covered by one of the exceptions) must file the commencement documents with the County Clerk of Richmond County through the NYSCEF system. Subsequent filings with the court after commencement, such as the submission of motion papers, must be filed via NYSCEF.

Although e-filing is generally mandatory in Richmond County, the rules permit persons who appear on their own behalf in this court to be exempt from the obligation to e-file.

Information on how the NYSCEF system works for unrepresented litigants can be found on

the NYSCEF website at www.nycourts.gov/efile.

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 (Civil Action)
- Summons with Complaint (Civil Action)
- Petition (Special Proceeding)

Every case filed in Supreme Court receives its own identifying case number, known as an **Index Number**. For cases filed in Richmond County, the initiating papers must be filed in the County Clerk's 130 Stuyvesant Place, Staten Island, N.Y. 2nd Floor, then served.

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. These copies must be served on the defendants or respondents in the manner required by the CPLR. In a civil action, the summons with notice or summons and complaint must be served. In a special proceeding, the petition must be served along with either a notice of petition or an order to show cause, which fix a return date for the petition. 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, please see the Help Center.

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, 2nd floor, 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 petition and notice of petition or order to show cause 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 the 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 therefor 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."

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**, both of which are required:

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 mailing them to 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) at the Outset of an Action or Special Proceeding

On occasion a case may be commenced by filing of a summons and complaint, the plaintiff may immediately obtain an OSC, and the plaintiff may serve the summons and complaint and the OSC at the same time. In such a situation, or when a special proceeding is brought on by Verified Petition and OSC, personal service is almost always required by the court. You must obtain **two original** affirmations of service from the server.

One original affirmation of service must be filed with the County Clerk’s Office, 130 Stuyvesant Street 2nd Floor, immediately after service is done.

The second affirmation of service is submitted to the Judge on the return date of the OSC. Make a copy of the affirmation 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 an unrepresented 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, but on the 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 all the subsequent papers.

INSTRUCTIONS: THIS AFFIRMATION MUST BE USED FOR SERVICE OF INITIATING PAPERS (A SUMMONS AND COMPLAINT, SUMMONS WITH NOTICE, NOTICE OF PETITION AND PERITION, OR ORDER TO SHOW CAUSE AND PETITION). SERVER MUST SIGN AND PRINT NAME AND USE BLACK INK ONLY. FILL IN THE NAMES OF THE PARTIES AND COMPLETE THE BLANK SPACES PRINTED IN BOLD TYPE.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

[fill in name(s)] Plaintiff(s)/Petitioner(s),

- against-

Index Number _____
AFFIRMATION OF SERVICE
OF INITIATING PAPERS

[fill in name(s)] Defendant(s)/Respondent(s).

I, _____ **[name of person who served papers]**,
affirm, depose and say:

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

I reside at _____ **[your address]**

On, _____, **[date of service]**, at _____ AM/PM **[time of day]**, I served a true
copy of the following papers _____ **[identify papers served]**,

On _____ **[name of party served]**, a Defendant / Respondent **[circle one]** in this case.

The address of the place where the papers were served is

_____. **[state location where
papers were served]**

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

- 1) **Individual** By delivering a copy of each to the defendant personally; I knew the person served to be the person named in those papers. **[Fill out description below]**

- 2) **Corporation** _____, a domestic corporation, by delivering a true copy of each to _____ **[Identify person served]** who is _____ **[Identify the individual to whom the papers were delivered and his/her job title]**; I knew the corporation to be that listed in the papers served and I knew the title of the person named above that he/she was authorized to accept service.

3) Substituted Service

By delivering a true copy of each to _____
_____ **[Insert Name of Person]**, 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.

Substituted Service

By affixing a true copy to the door at _____

Which is the defendants _____.

I made prior attempts to serve at this location on the following dates and times:

_____.

Mailing
(Use with 3)

I also enclosed a copy of the above papers in a postpaid (already had the stamps on it), sealed envelope properly addressed to defendant at defendant's last know residence of 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, or 3)

The individual I served had the following characteristics:

[Check one box in each Category]

Sex	Height	Weight	Age
<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 years
	<input type="checkbox"/> Over 6'	<input type="checkbox"/> Over 200 lbs.	

Color of skin _____ **[describe]**

Hair color _____ **[describe]**

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

Military
Service

I asked the person to whom I spoke whether the defendant was in active service in the military of the United States or New York State in any capacity and I 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 bases for my belief are the conversations and observations described above

Dated: _____

I, _____ (Print or Type Name), affirm this ___ day of _____, _____, under the penalties of perjury, under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Server's Signature