

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

**HELP CENTER  
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 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**

New cases in this court (except for matrimonial, Election Law and two other types, must be commenced and pursued by means of electronic filing through the New York State Courts Electronic Filing System (“NYSCEF”). Documents to be filed with the court must be e-filed through NYSCEF.

Unrepresented persons may, however, opt out of e-filing if they wish to do so. This is done by filing an opt-out form. For further information, consult the Help Center.

The discussion that follows assumes that the case is a paper case. In an e-filed case, the steps to be followed would be the same, but filings with the County Clerk and the court would be made via NYSCEF. Once service of process is made in an e-filed case, subsequent service of documents in the case on parties participating in e-filing is made via NYSCEF.

**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 New York County, the initiating papers must be filed in the County Clerk's Office, 60 Centre Street, Room 141B, in the basement, 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, 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 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** affidavits of service from the server.

One original affidavit of service must be filed with the County Clerk’s 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 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 affidavit cannot be used in divorce cases, but must otherwise 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 a Subpoena. Print to fill in the spaces next to the instructions.**

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

-----X

Index Number

\_\_\_\_\_  
[fill in name(s)] Plaintiff(s)/Petitioner(s),  
- against-

\_\_\_\_\_  
AFFIDAVIT OF SERVICE  
OF INITIATING PAPERS

\_\_\_\_\_  
[fill in name(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 \_\_\_\_\_, 20\_\_, [date of service], at \_\_\_\_\_ AM/PM [time of day], I served the  
attached papers [identify papers served] \_\_\_\_\_

\_\_\_\_\_ on the defendant/respondent 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/respondent personally. I knew the person served to be the person named in those papers because [How did you know defendant/respondent?] \_\_\_\_\_  
\_\_\_\_\_ [Fill out description of defendant/respondent 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 the person named above and that he/she was authorized to accept service.

3)  **Substituted Service** By delivering a true copy of each to **[identify person served]** \_\_\_\_\_ **[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/respondent'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, or 3)** The individual I served had the following characteristics **[Check one box in category]:**

- | <b><u>Sex</u></b>               | <b><u>Height</u></b>                 | <b><u>Weight</u></b>                    | <b><u>Age</u></b>                      |
|---------------------------------|--------------------------------------|---|--|
| <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]:** \_\_\_\_\_

Color of hair **[describe]:** \_\_\_\_\_

Other identifying features, if any **[describe]:** \_\_\_\_\_

**Military Service** I asked the person to whom I spoke whether the defendant/respondent was in the military of the United States or New York State in any capacity and was told that he/she was not. Defendant/respondent did not wear a military uniform. I state upon information and belief that the defendant/respondent 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 \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
**[sign your name before a Notary]**

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
**[print your name]**