



SERVICE OF CIVIL PROCESS

✓ new: rescinds: amends:		cross-reference: NYSSA Basic Civil manual & NY Consolidated Laws, Civil Practice and Rules accreditation standards: NYSLEAP Standard(s): 8.13
effective date: August, 2020	amend date:	

I. PURPOSE

To give notice by properly delivering and executing the various processes in accordance with law and Sheriff's Office policies and procedures.

II. POLICY

To properly record, serve and return all legal process delivered to the civil division in a professional manner. The service of process is a specialized trade, requiring a combination of thorough understanding of the principles of practice together with sound practical experience.

III. DEFINITIONS

Complaint: The initial pleading by which an action is commenced that sets forth a claim for relief. Together with the summons it is required to be served on the defendant.

Diligence or Due Diligence: Attempts at service made at a place and time likely to succeed. A reasonable attempt to deliver the process personally to the named person. Three attempts at various times during the day or evening on three separate days.

Infant, Minor or Child: Any person who has not attained the age of eighteen (18) years.

Suitable Age and Discretion: A person, at least sixteen (16) years of age, who understands the nature and purpose of the particular Order that is being served.

IV. TYPES OF SERVICE

A. Service of a Summons

1. Personal Service (CPLR 308(1))

- a. Delivery to the person to be served, also known as personal delivery. Serve the process to the person actually named in the process. An Affidavit of service shall be filled out containing the pertinent information regarding the physical

appearance of the person served, i.e. height, sex, weight, age, race, ethnicity, hair color and other physical descriptions.

2. Substituted Service

- a. Delivery to a person of suitable age and discretion (CPLR 308 (2)). Service must be made at the actual place of business, dwelling place or usual place of abode of the person served. Also a copy of the summons must be mailed to the person to be served at their last known address. This means to serve a person at the place where the subject resides. The person should be of a condition to understand the purpose of what you are doing. It would be proper to serve a child over the age of 16 or spouse, but not proper to serve someone who is mentally incapacitated, or who is under 16. Common sense should prevail when making service.

3. “Nail & Mail” service (CPLR 308 (4)).

- a. When with due diligence the first two forms of service cannot be made, service can be made by affixing the process to the front door of the residence, (dwelling place or usual place of abode). Several criteria must be met prior to effecting service by this method. The first is the term “due diligence”. You must make every reasonable attempt to serve the process in the first two methods. Attempts must be made at different times of the day and evening. One morning, one afternoon and one evening and on different days. Also the attempts must be logged, as proof of attempts is required.

4. Service Upon An Infant (CPLR 309)

- a. An infant is a natural person who is less than 18 years of age. Service upon an infant is made by serving a parent, guardian or any person having legal custody of the infant. If the infant is married, you must also serve an adult spouse or if there is none, serve a person with whom he resides or their employer. If the infant is fourteen years of age or older, you must also serve him. Check to see if there are specific instructions from the party requesting service.

5. Service Upon Incompetents (CPLR 309)

- a. A person declared incompetent is served by serving the incompetent and the committee appointed to manage their affairs, but the court may dispense with the service on the incompetent. Where a conservator is appointed for a person, service must be made on the conservator and the conservatee, unless the court dispenses with the service on the conservatee.
- b. Service on residents of psychiatric or skilled nursing facilities shall be made in accordance with Article 3 of NYS CPLR.
 - Notification of service shall also be made to a unit or facility supervisor.

6. Service Upon Inmates and Prisoners

- a. The Civil Deputy or civil staff shall verify the inmate's status and contact a jail supervisor to arrange service by a Corrections Officer.
- b. Service shall additionally be in accordance with Article 3 of NYS CPLR.

7. Service Upon A Partnership (CPLR 310)

- a. Serving any partner makes service upon a partnership. Make sure the person is actually a partner and not simply an employee.

8. Service Upon A Corporation (CPLR 311)

- a. Serving an officer, director, manager or general agent, cashier or assistant cashier makes service upon a corporation or any other agent authorized by appointment or by law to receive service. Attempts should be made to serve the President, Treasurer, Office Manager before serving other parties authorized to receive service.

9. Service Upon Governmental Subdivisions (CPLR 311): Service upon governmental subdivisions shall be made in the following manner:

- a. Upon a City; to the Mayor, Comptroller, Treasurer, Counsel or Clerk.
- b. Upon the County; to the Chairman or Clerk of the Board of Supervisors, Clerk, Attorney or Treasurer.
- c. Upon a Town; to the Supervisor or Clerk.
- d. Upon a Village; to the Mayor, Clerk or any Trustee.
- e. Upon a School District; to the Superintendent.

B. Service of Out of State Process

1. Service of out of state process shall be made in the same manner as usual process service unless specific instructions are received as to how service should be effected to comply with procedures from the State in which the process originates. Instructions should be in written form to eliminate confusion as to how to proceed.

C. Citations

1. Citations issued by the Surrogates Court require personal delivery. Service must be completed 10 days prior to the hearing date specified in the citation. Only the court can direct a different manner of service or dispense with any other requirement.

D. Order to Show Cause

1. Orders to Show Cause shall be reviewed to determine the specific manner of service required. This shall include time limit set by the court, and to whom the service must be made.

E. Subpoenas

1. Subpoenas are served in the same manner as a Summons. Review of Subpoenas shall be made carefully as they contain elements that are sensitive to proper service. Make sure as to whom the subpoena is directed. Subpoenas must be served prior to the time set for appearance.

F. Expedited or Unusual Service

1. All process received that contain time constraints shall be directed to the Civil Lieutenant or designee for service.
2. In any special circumstance, process will be directed to the Civil Lieutenant or designee for service in a timely manner.

G. General Returns

1. The Deputy will complete all necessary forms and reports and submit to a Civil Clerk for review and filing.
 - List all action on the case.
 - If served, record date and time or reason for non-service. Include listing of all service attempts made.
 - Affidavits will be returned to the attorney with all copies of process.
 - Copies of all returns will be maintained in the case file.

V. **FAMILY COURT ORDERS**

A. Jurisdiction: All Family Court Orders may be served and executed in any part of the state.

B. Processing: All Family Court papers received by the Civil Division shall be date stamped and recorded into the Civil Division computer records program. A Sheriff number will be assigned. Obtain the original plus three (3) copies.

C. Service of Process

1. Petition: In every Family Court proceeding, a copy of the Petition shall be served upon the respondent at time of service (FCA § 154-a). Specific sections under the Family Court Act (FCA) specify the time limits and manner of service for Family Court Orders. The following list provides specific time limits for service of process that is exclusively within the Family Court jurisdiction. If personal service is not made within the required time, an Affidavit of Attempted Service shall be returned to the court of jurisdiction.

- a. Support or Paternity Proceeding – Service of Summons and Petition may be made to the person summoned at least eight (8) days before the time stated for appearance; or by delivery to a person of suitable age and discretion at the actual place of abode of the person to be served (FCA § 427, 525).
- b. Termination of Parental Rights – Service of Summons and Petition shall be made to the person summoned at least twenty (20) days before the time stated for appearance (FCA § 617).
- c. Persons In Need of Supervision (PINS)
 - Service of Summons and Petition shall be made to the person summoned at least twenty-four (24) hours before the time of appearance (FCA § 737).
 - Service of a Notice of Motion shall be served upon parties, agencies or institution having custody of the child at least seven (7) days before the return date of the motion (FCA § 763).
- d. Family Offense Proceedings – Service of Summons and Petition shall be made to the person summoned at least twenty-four (24) hours before the time of appearance (FCA § 826).
- e. Child Protective Proceedings – Service of Summons and Petition shall be served within two (2) court days after their issuance (FCA § 1036).
 - If service cannot be completed within the time allowed, such fact shall be reported to the court with reasons thereof within three (3) court days after their issuance. The court may order substituted service.
- f. Orders of Protection – FCA Article 8
 - Service of Orders of Protection shall be made by the Civil Division Deputy or sworn personnel.
 - Orders of Protection, Temporary Orders of Protection, along with its Summons and Petition, if issued, may be served any day of the week at any hour of the day or night (FCA § 153-b).
 - Urgency of service is required as the Order is generally not enforceable until the respondent has been served.
 - Once the Order has been served, it is enforceable.
 - When serving the respondent, inform them if there is a provision requiring them to stay away from the family home.
 - When an Order of Protection includes an Order to surrender firearms, said weapons shall be taken into custody. All processing, security and storage shall be in accordance with Office policy.
 - As soon as practical after service of the order of protection, the serving Deputy shall enter the information into eJustice. If you are unable to make the entry, notify your supervisor to assist in that entry. If you are still unable to make the entry, you should note on the report card of service your effort and the reason why you were unable to enter the order.

- An affidavit of service will be prepared by the Civil Deputy or the Civil Staff and provided to the serving Deputy so it can be signed. Once signed it will be returned to the civil office.

2. All other process shall be served in accordance with the courts direction.

VI. PROOF OF SERVICE (CPLR. Section 306)

A. General Procedures

1. Once you have made your service, you now must provide the plaintiff with a means to prove to the court that you made a proper service. This is in the form of an affidavit.
2. It is vital and primary duties of yours to create, obtain, secure, and retain accurate records on all civil process. Failure to do so may result in lost court cases, money loss, and litigation directed at you professionally and personally.
3. Proof of service shall be in the form of an affidavit if the service is made by a Sheriff's deputy or other authorized public officer.
4. Many times the plaintiff or their attorney will supply you with their own certificate of affidavit. Matrimonial actions, out of state papers and many other types of service require special proof forms, so if the plaintiff supplies you with their form it is generally good practice to use it rather than your own. As with your own affidavits, any additional / different affidavits should be properly filled in and a copy kept for our permanent records. Originals should be sent to the plaintiff. Sometimes original out of state process and affidavits are to be sent directly to the specified court.

B. Time Limits Relating to Proof of Service

1. It is essential that you execute your proof of service as soon as possible, because if service is made on a natural person by delivery to a person of suitable age and discretion, the proof must be filed by the plaintiff within 20 days of the date of service.
2. Proof of service of a citation issued by the Surrogate's Court must be filed with the court clerk at least 3 days before the date set for hearing the citation. Therefore, return papers to the Civil Office as soon as possible.

VII. MAKING THE SERVICE

- ### **A. Locating The Person To Be Served** - Presumably you have been provided with an address for service and possibly a letter of instructions, you may also have been provided with a brief description of the person to be served. Proceed to the address and make the service. If you can't locate your person, make inquiry in the neighborhood to find out where the person is. If the person has moved to another location in Tompkins County, then proceed to the new address. If the person has moved to another County, you should let the other County make the service. Document the new address on the return paperwork that will be filed with the approved party or agency.

1. Limit your inquiries when attempting to locate a person. Common sense would dictate that first you probably have other papers that deserve equal attention, and secondly you are not looking for an escaped felon. Specifically, don't invite the whole neighborhood to a glimpse of someone's affairs. (Use Discretion)
- B. Identifying The Person To Be Served - There is no way to compel a person to identify himself/herself. An identification by a neighbor or co-worker is usually safe, but remember that service on the natural person, a member of their household, or their agent requires that you record a description of the person served. When serving a Corporation or Government Body, the important thing is to be sure you are serving an authorized person. A description of such officers or agent is also necessary here. If you are not sure you have the proper person for service, it is a good practice to seek further information from the plaintiff before proceeding.
1. Whenever possible ask the person served for their pedigree information. If they cooperate fine, if not, estimations are acceptable.
- C. Persons Privileged From Service - There are some classes of people who are legally immune from service. However, proceed with the service since the person claiming immunity has legal means available to them to prove their immunity.
- D. Gaining Entrance To Premises - Your entrance into any premises must be a peaceful one. If the entrance door is locked, DON'T BREAK IT IN. On the other hand if you are invited into a premise you might reasonably enter to find your subject. If you gain peaceful entrance and are subsequently ordered off the premises after searching for the defendant, you should leave at once.
1. There are exceptions to the above procedure. For instance, an order or seizure may have a court ordered "break and enter" clause. If it is not necessary to break and enter, do not.
 2. When on commercial property you can if necessary, and if you know for a fact that your subject is behind a closed door, enter and serve them.
 3. Remember that you are not acting under authority of a search warrant and could therefore be guilty of trespass. (Use Discretion)
- E. The Service - Deliver a true copy of the process to the person to be served. It is not necessary to touch the person to be served with the process. If he/she refuses to accept service, leave a copy in such a manner that he can readily reach it himself/herself. Don't forget to comply with any special instructions given to you.

VIII. MISCELLANEOUS THINGS YOU SHOULD NOT DO

- A. Service of process on Sunday is void except criminal process and orders of protection. Service on a Saturday on a person who observes that day as their Sabbath is a crime, but only if the service was made "Maliciously", that is, with a knowledge of such observance.
- B. Do not state any fact in a certificate or affidavit of service which is not true.
- C. Do not conceal process in any way or for any reason. Do not conceal a summons in an

envelope when delivering to defendant, even if he/she asks you to do so to avoid embarrassment. There are other methods to avoid such incidents, such as standing close enough to defendant to avoid anyone seeing what you are doing.

- D. Do not use trickery or deceit to effect service. You should be resourceful, but do not represent the process to be something which is not when making service.
- E. "Affix" does not mean to use a nail; a thumbtack, adhesive tape or rubber band will work well.
- F. Do not give legal advice to a defendant you are serving. These are matters for attorneys. Do not advise a defendant on the specifics of responding to a summons. Of course, you should always tell him/her what the process is that you are serving.
- G. Do not take the process back after making service.
- H. Do not use unreasonable force in effecting service. Protect yourself from assault in the event defendant takes unwarranted steps against you, but do not restrain defendant physically merely to make a service.

X. **OFFICE PROCEDURE**

A. The purpose and function of the office procedures:

- 1. To ensure a smooth flow of the workload and to maintain complete and accurate records, both manually and through our computer system.
- 2. All personnel are directed to follow these procedures to insure compliance with Civil Division procedures. These procedures will lend uniformity in our operations which will enable us to cross reference and update our files in order to minimize future research and to be able to better serve the legal community and the general public.

B. Receiving the Papers

- 1. First and foremost is your duty of reading and reviewing the papers. Always check the information on the jacket against the papers. Look on the process and accompanying letters for special service or affidavit instructions. Make sure you have enough copies of the process to make your service.
- 2. Enter into Softcode: docket number, type of process, and the name of party to be served and the date you received the process.

C. Service

- 1. All correspondence and phone messages are to be documented and retained with the jacket and become part of the permanent file.
- 2. If service cannot be made within a reasonable time, notify your supervisor.
 - a. Additional fees, mileage, etc. may be required.

D. After Service

1. Mark the jacket with the date served. Indicate if a substituted service was used.
2. Use the standard affidavit form. If different affidavits are used, do whatever is necessary and make a copy for our files. Collate the affidavits, jacket and all other papers and give to the civil clerk.
3. After the affidavits are typed and notarized, mail the original affidavit and any extra copies of the process to the person directed.
4. After mailing, the civil clerk will close the file in Softcode.
5. Copies of affidavits should be stapled together with all other paperwork and filed.
6. Do not forget to make any mailings as directed by statute.
7. The Lieutenant of the Civil Division is responsible to ensure that data entry is performed.

E. Miscellaneous

1. Attachments, orders of seizure and bulky documents will be housed in a large manila envelope. Pertinent information to be indicated on the envelope itself, such as docket number, parties and assigned officer.

By Order Of



Derek Osborne
Sheriff