



## SAN MATEO COUNTY LAW LIBRARY

### RESEARCH GUIDE #15

## PROOF OF SERVICE

This resource guide only provides guidance, and does not constitute legal advice. If you need legal advice you need to speak with an attorney. To find an attorney to assist you, you may contact the San Mateo County Lawyer Referral Service at (650) 369-4149.

### WHAT IS PROOF OF SERVICE?

A proof of service shows the court that a document was served as required by the law. After the summons is served, a proof of service must be filed with the court unless the defendant has already made a general appearance. See [California Code of Civil Procedures § 417.30](#).

Because of the potential for a plaintiff to falsely state he has served the documents on the defendant, a plaintiff to the legal action cannot serve the documents himself, nor can any other person involved in the case, such as a witness, serve the documents. No matter the method of service, it must be done and testified to by an uninvolved third party.

### WHAT TO DO:

#### Choose your Method of Service:

##### Personal Service

Choose a person to deliver the summons/documents.

Service of process can be done by:

1. A professional process server.
2. A county sheriff, marshal, or constable.
3. A friend, relative, or coworker who is over the age of 18 who is not a party to the lawsuit.

**YOU CANNOT SERVE THE PAPERS YOURSELF**

The process server must:

- Hand the papers directly to the person being served after receiving the documents from you
- Fill out a *Proof of Service Form* ([POS-040](#)) declaring to whom the papers were handed to,

- where, when, and how (personal service).
- Sign the Proof of Service and return it to you to file in court.

*Personal Service* is the most reliable type of service because the court knows for sure that the person being served received the papers and, if necessary, can question the process server about the “service”. Since it is the most reliable, Personal Service is valid in all types of cases. Because of its reliability, it is generally required when serving someone the first papers (i.e. petition or complaint) in a case.

### **Substitute Service**

*Delivery to someone else at defendant’s usual residence or place of business:*

1. If you cannot locate the person being served, you can have a process server do a substitution service.

The process server needs to attempt to serve the papers on the other party several times (usually 3 or more.)

2. If the process server is unable to find the receiver, he/she can leave the papers with someone on the last attempt. This can be someone who lives at the residence and is at least 18 years old.
3. If trying to serve the papers at the receiver’s work, then the papers can be left with someone at the office that is at least 18 years old and appears to be in charge.

The process server must:

- Tell the person other than the receiver that the papers they are handing over are legal documents for the other party.
- Write down the name and address of the person they are giving the papers to.
- Write down a detailed physical description, if the person receiving the papers does not want to give their information.
- Write up a “Declaration of Due Diligence”, which is a document to the court detailing all attempts made to serve the papers in person. It should be a detailed list including location (house/work), times of day, and results of attempts. The serving party can use a *Declaration Form* ([MC-030](#)) and must sign this document under penalty of perjury.
- Fill out a *Proof of Service Form* ([POS-040](#)) declaring the following information: when, where, and how the documents were served. The name of the person or detailed physical description of the person the documents were left with must be noted.
- Sign the Proof of Service and return it to you to file in court.

*Substituted service* is not a very reliable type of service because the court does not know for sure that the person that had to be served actually received the paperwork.

### **Service by Mail**

In service by mail, someone – *NOT a party to the case* – must mail the documents to the other party.

The process server must:

1. Mail the papers to the party being served. If it is a person, the papers can be mailed to his/ her home or mailing address. If it is a business, the papers must be mailed to the owner(s) at their business's main office.
2. Fill out a *Proof of Service Form (POS-040)* declaring to whom the papers were mailed to, what address, when, how (first class mail), and where they were mailed from.
3. Sign the Proof of Service and return it to you to file in court.

*Service by mail* is complete 5 days after the papers are mailed. Service by mail is easy but not very reliable because the court does not know for sure that the person that had to be served actually received the paperwork.

### **Service by Notice and Acknowledgement of Receipt**

Delivery to the receiver by mail with an agreement that this would be the method of service. The receiver is willing to sign a document for the court stating they received the papers. (Most commonly used for summons and complaints/petition in civil or family law cases). Authorized by the Code of Civil Procedure section 415.30 (a).

The process server must:

1. Mail the summons and complaint to the other party with 2 copies of the *Notice and Acknowledgment of Receipt (POS-15)*.
2. The receiving party signs 1 copy of the Notice and Acknowledgment of Receipt telling the court that he/she received the papers in the mail, and returns it to the process server in the enclosed stamped envelope.
3. Fill out a Proof of Service (*POS-040*) detailing to whom the papers were mailed, to what address, when, how (by first-class mail), and where they were mailed from. The process server has to attach the Notice and Acknowledgment of Receipt returned by the other side.
4. Sign the Proof of Service and return it to you to file in court.

*Service by Notice of Acknowledgment of Receipt* is complete on the date the Acknowledgment or Receipt portion of the form is signed by the other side.

### **Service by posting on the premises and mailing (for eviction cases ONLY)**

In eviction (unlawful detainer) cases only, a summons and complaint can be served by posting on the premises at issue in the eviction and also mailing. *Service by posting and mailing is used after several attempts to personally serve the papers have failed.* A landlord needs the court's permission to serve his or her tenant by posting and mailing.

For service by posting and mailing (sometimes called “nail and mail”):

1. The process server has tried to personally serve the papers on the other party a number of times (usually 3 or more) but cannot find the party at home. The process server must try different days of the week and different times of the day when the other person is likely to be home.
2. If the process server is unable to find the person to be served on each one of those times, **AND** is unable to find an adult on the premises to leave the papers with (to serve by substituted service, as explained above), then:
  - The process server must write up a “*Declaration of Due Diligence*,” which is a document to the court detailing all attempts made to serve the papers in person and by substituted service. It should include the dates he/she went to the house/property, times of day, and what the result was (for example, “No one answered the door”). The process server must sign this document under penalty of perjury. There is no form for this, but the server can use a Declaration (Form [MC-030](#)) or write it out on a 28-line pleading paper.

**AND**

- The serving party must file an application to the court asking for permission to serve by "posting and mailing" pursuant to Code of Civil Procedure section 415.45. There is no Judicial Council form for this procedure. The serving party can type the application to the court on a 28-line pleading paper which includes the following:
    - Application and Order to Serve the Summons by Posting for Unlawful Detainer.
    - The serving party’s Declaration in Support.
    - Proposed Order for Publication of Summons.
    - Attach the *Declaration of Due Diligence* to the application.
3. If the court grants permission to serve by posting and mailing,

The process server must:

1. Post the summons on the premises in a place where the other party (the tenant) is most likely to see it; **AND**
2. Mail a copy of the papers to the tenant at the tenant's last known address *by certified mail*.
3. Fill out a *Proof of Service* ([POS-040](#)) detailing to whom the papers were mailed, to what address, when, how, and where they were mailed from.
4. Sign the Proof of Service and returns it to you to file in court.

*Service by Posting and Mailing* is complete 10 days after the day the papers are mailed.

### **Service by Publication**

The summons and complaint is published in a newspaper of general circulation in the area where the receiver lives. Permission must be granted by the court for this type of service. It is most commonly used when the receiver's whereabouts are unknown.

The court will give permission to serve by publication **only** if you have proven to the court that you have exhausted all other service methods to locate the receiver. It is usually required to attempt to locate the receiver's last known address or work address, mailed letters to the last known address with forwarding address requested, try and contact the receiver's friends or family about his/her whereabouts, look through the phone book, and on internet.

There is no Judicial Council form for this procedure. Instead, the relevant documents must be typed on a 28-line pleading paper:

1. Ex Parte Application for Order of Publication of Summons, Points and Authorities, and Declaration in Support of Application for Order for Publication of Summons.
2. Proposed Order for Publication of Summons.
3. The process server's Declaration:
  - The process server will need to write up a "*Declaration of Due Diligence*," which is a document to the court detailing all attempts made to find the receiver. For example, if friends and family were called, write down the dates and what they told. If a letter was mailed to the last known address, explain when it was sent, what address it was sent to, and what the result was. The process server will have to sign this document under penalty of perjury. (SEE SAMPLE)
  - The process server will need to complete an Ex Parte Application for Order of Publication of Summons, Points and Authorities, and Declaration in Support of Application for Order for Publication of Summons request for the court order allowing you to serve by publication. You must also attach a Proposed Order. (SEE SAMPLE)
  - If the court grants the request to serve by publication, the judge will sign the proposed order and allow publishing the court document in a newspaper of general circulation in the area.

### **The serving party must:**

1. Make arrangements with the newspaper. The court clerks will usually have a list of newspapers that the court accepts for use.
2. Publish the documents for 4 weeks in a row, at least once a week. The newspaper must give you an affidavit showing the time and place the document was published.

*Service by Publication* is complete at the end of the 28th day after the first date the summons and complaint are published in the newspaper.

### **Service by Posting (at the courthouse)**

“Service by posting” means that the court clerk posts the summons and complaint in a visible place designated for court notices at the courthouse. Like “service by publication,” you have to ask the court’s permission to do this. It is usually used when you do not know how to find the other side and do not have an address or workplace for him/her. **BUT** in order to qualify for “service by posting” and do away with the requirement to publish your summons and complaint in a newspaper, you usually have to qualify for a fee waiver.

**Note:** *If you need to serve a divorce, legal separation or annulment summons and petition or a petition for custody and support of minor children on your ex-spouse or partner, and you do not know where he/she is, there is a special process. Contact your court clerk or self-help center for the process.*

Before the court will give you permission to serve by posting, you will have to prove to the court that you tried as hard as possible to find the other side. Every court is slightly different in what they require, but most require at least that you try to find the other side at his/her last known address or last known work place, mail letters to the last known address with forwarding address requested, call the other side’s friends and family or ex-coworkers to ask about his/her whereabouts, look for the other party in the phone book for any city where he/she is likely to be, and search on the Internet. To find out exactly what your court requires you to do before you can ask for permission to do service by publication, read your court’s local rules or ask your court clerk or self-help center.

Once you have taken all the steps, the court requires before asking to serve by posting:

1. To fill out and file a request for a fee waiver, asking to be allowed to serve by posting. Find out how to ask for a fee waiver.
2. To write up a “Declaration of Due Diligence,” which is a detailed document where you tell the court every attempt you made to find the other side. For example, if you called friends and family, write down the dates and what they told you. If you mailed a letter to the last known address, explain when you sent it, what address you sent it to, and what the result was. You have to sign this document under penalty of perjury. There is no form for this, but you can use a *Declaration* (form [MC-030](#)). Your court’s self-help center may have a local form to help you with this step too.
3. To complete an ex-parte request for the court order allowing you to serve by posting. You must also attach a proposed order. Again, ask your court’s self-help center if they have a local form for this.

If the court grants your fee waiver and your request to serve by posting at the courthouse, the judge will sign your proposed order and allow you to have your summons and complaint posted at the courthouse.

*Service by Posting* is complete at the end of the 30th day after the first date the summons and complaint are posted.

### **Service by certified mail (small claims ONLY)**

Only a small claims court clerk can serve your claim this way. The clerk will charge you a fee to serve the defendant by certified mail. You should check back with the court before the hearing to see if the

receipt for certified mail was returned to the court. Service by certified mail is complete on the day the certified mail receipt is signed.

**Service by certified mail (for a party who is out of state)**

When the party that has to be served lives out of state, papers can usually be served by sending a copy of the paperwork to be served to that party by first-class mail, postage prepaid, and return receipt requested. *The person who mails the papers must be at least 18 and NOT a party to the case.*

**The process server must:**

1. Mail the papers to the party being served. If it is a person being served, the papers can be mailed to his/her home or mailing address. If it is a business, the papers must be mailed to the owner(s) at their business's main office.
2. Fill out a *Proof of Service Form* ([POS-040](#)) declaring to whom the papers were mailed to, what address, when, how (first class mail) and where they were mailed from.
3. Sign the Proof of Service and return it to you to file in court.

*Service by certified mail* is complete on the 10th day after mailing of the papers.

Do NOT use this type of service to serve a party that is outside the United States. The process for serving someone outside the U.S. is very complicated. Talk to your court's self-help center or a lawyer for help.

**Service on someone who lives out of the country**

If you need to serve someone who is not in the United States, you may have to use the process set out under the Hague Convention. For example, if you are filing for divorce and your spouse is living in Mexico, you will have to use the Hague Convention to serve him/her with divorce papers. The process is complicated. Your court's family law facilitator or self-help center may be able to help you. Or talk to a lawyer.