

SERVICE OF PROCESS

STANDARD NO(S): NYSSACD # 101-103, 106, 109
NYSLEAP#: 8.13

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REFER TO: David Smith

I. OBJECTIVE:

It is the objective of the Civil Division to establish procedures for service of process.

II. DEFINITIONS:

- A. **Actual Place of Business** – Any location the defendant, through regular solicitation or advertisement, has held out as their place of business.
- B. **Suitable Age and Discretion (SAD)** – A person, at least 12 years of age, who understands the nature and purpose of the particular order that is being served.
- C. **Due Diligence** – Making every reasonable attempt (at different times during the day and on different days) to serve a civil process.
- D. **Natural Person** - Is a person other than a partnership, corporation, infant, incompetent, the state, or a governmental subdivision.
- E. **Infant** – Any natural person less than 18 years old.

III. DETAILS:

- A. Processing -
 - 1. The Civil Division will time stamp all copies of income and property executions.
 - a. All civil processes will only be accepted and time stamped in the Civil Division, during office hours from 8am to 4pm.
 - 2. The Civil Division will enter the papers and obtain a computer generated file number for each order received and record that number on the papers.
 - a. Copies of any correspondence, notes, returns or other facts pertinent to the process shall be filed with the case file folder and recorded in the computer notes file.

3. Fees

- a. A fee schedule established pursuant to Article 80 CPLR has been established and must be used for service and enforcement fees for all types of civil processes and round trip mileage charge.
 - i. Fee schedules and mileage charts shall be provided upon request to any interested party.
 - b. Fees and expenses must be collected in advance with the following exceptions:
 - i. State and political subdivisions shall not be billed for service.
4. Obtain the original plus three copies of the summons. Serve copies - not the original
5. Make sure the papers have the names of the plaintiff, defendant, and plaintiff's attorney, notice that failure to appear may result in default, and the court.
- a. Failure to identify the court where the action initiated is a jurisdictional defect.
6. When receiving a Supreme or County Court summons, make sure the index number and date the summons was filed with the county clerk is on the summons.
- a. If there is not a complaint with the summons, make sure there is a notice contained within the summons stating the nature of the cause of action, relief sought and sum of money which a judgment may take in the event of a default.
 - b. The plaintiff has 120 days to serve the summons and file proof of service.
7. If a matrimonial action is received with no complaint attached, the nature of the action must be legibly written on the front of the summons (e.g., Action for Separation).

B. Service –

- 1. Civil Process and mandates shall not be executed or served beyond the geographic limits of the county, except upon order of a court of competent jurisdiction or upon verification of statutes referred to within the mandate (CPLR §301, 302).

2. There are six (6) methods in which a summons may be served on a natural person. They are as follows:
 - a. Personal Delivery: or
 - b. Delivery to a person of “suitable age and discretion” (SAD), either at the defendant’s actual place of business, his dwelling place or usual place of abode, and first class mail to the defendant at his last known address or actual place of business. If mailed to business use a plain envelope, bearing the legend “Personal and Confidential”: or
 - c. Personal delivery to an agent of the defendant under §318, CPLR, except in matrimonial cases; or
 - d. Nail and Mail if service cannot be made using the first three (3) methods. Affix the summons to the defendant’s door at his actual place of business, dwelling place or usual place of abode and mail, 1st class, to his last known address or business. Attach the summons by use of a nail, tack, tape, rubber band, or some other device which will ensure a genuine adherence. Do not wedge between screen door and the doorjamb.
 - e. If the service methods described in a, b, c, and d are not possible, the attorney may ask the court for an order directing an alternate method of service.
 - f. Exceptions to personal service:
 - i. Matrimonial Actions must be served by personal delivery, unless ordered otherwise by the court.
 - ii. Alternate method of service in auto accident cases of non-resident defendant or defendant who has been out of state four (4) months or longer, and allegedly caused an auto accident in NY state, may be served by the Secretary of State followed by service on the defendant.
 1. Service on Secretary of State is made by personal delivery or mailing to his Albany office with \$5.00 fee. The Secretary serves defendants by certified or registered mail.
 - g. Service can be by publication if the plaintiff makes an ex-parte motion and the court grants this motion.

3. Service on an infant (person less than 18 years of age) is made by serving a parent, guardian or any person having legal custody.
 - a. If the infant is married serve an adult spouse or if there is none, a person with whom he resides or his employer.
 - b. If the infant is 14 years or older, we must also serve the infant (CPLR 309a).
 - i. If we serve the parent and the infant is not available we can give the second paper to the parent (sub-service), and mail to the infant.
 - ii. If the paper is mailed to parent and infant, we must mail two (2) papers.
4. Service on an incapacitated person unable to manage their personal needs or property for whom a guardian has been appointed is made by serving both the incapacitated and the guardian unless the court dispenses with serving the incompetent (Art 81 MHL).
 - a. Personal service on a person for whom a conservator or committee has been appointed shall be made by serving the conservator or committee and the conservatee or incompetent, unless the court dispenses with serving the conservatee or incompetent. (§309 CPLR)
5. Service on a partnership is made by serving any partner or the partners managing agent, or the partnership's executive secretary providing a copy of the summons is mailed to the partner intended to be served at his last known residence or actual place of business. Proof of service must be filed within twenty days.
 - a. Where service can not be made with due diligence, it may be made by affixing to the door of the actual place of business of the partnership and mailed as indicated above.
 - b. Service may be made to an agent designated to receive process.
 - c. Service may also occur by alternative methods if ordered by the court.
6. Provisions for personal service upon a limited partnership (LP) are more restrictive than service upon a partnership.
 - a. CPLR §310-a. (a) delivering a copy personally to any managing or general agent or employee authorized to receive process shall make personal service upon a limited partnership.

- b. CPLR §301-a (b) If service is impractical the court may direct the method, upon motion without notice.
- 7. Provisions for personal service on limited liability (LLP) companies.
 - 1. Service can be made by delivery to any member of the company if management is vested in its members, agents authorized to receive process, or any other person designated to receive process. If service is impractical the court may direct the method, upon motion without notice.
- 8. Service on a Domestic or Foreign Corporation is made by personal delivery on any of the following:
 - a. Director
 - b. Manager or General Agent
 - c. Cashier or Assistant Cashier
 - d. Officer
 - e. Any other agent expressly authorized by appointment or law to receive service.
- 9. Service upon governmental bodies, boards or commissions must be as follows:
 - a. County: chairperson or clerk of the board of supervisors (Legislature), clerk, attorney or treasurer.
 - b. Town: supervisor or clerk
 - c. Village: mayor, clerk or any trustee
 - d. Town or Village Board or Commission: town clerk
 - e. Park, Sewage or other District: clerk, trustee or member of the board
 - f. Board or Commission having a presiding officer: presiding officer
 - i. Service on other boards or commissions: any member
 - g. State Attorney General or any Assistant Attorney General
 - i. If instructed to serve a specific state official, serve such person.

- ii. Service on a state officer sued solely in their official capacity is made by delivering the summons to the officer or the Chief Executive Officer or his designee to receive process, or certified mail, return receipt requested and serving the Attorney General or any Assistant Attorney General pursuant to §307 (1) CPLR.
 - 1. The envelope used for certified mailing must bear the legend “urgent legal mail”.
- h. School District: school official as defined in the Education Law.
- i. Personal service on a court of three (3) or more judges: any one of the judges.
- j. Service on an inmate:
 - i. Law Enforcement Center:
 - 1. Advise the desk officer of the civil process to be served. You will wait for the inmate to be brought from their housing unit pod and will make personal delivery to the inmate.
 - ii. Five Points Correctional Facility & Willard DTC:
 - 1. Report to the front desk. Advise them that you have civil process for an inmate. They will notify an Inmate Records Clerk (IRC) who will come out to the front desk and will receive substitute service for the inmate.
 - iii. Hillside Children’s Center:
 - 1. Report to the front desk at the Administration building. Advise them that you have civil process for a client. They will receive substitute service for the client.
- l. Order to Show cause usually requires a specific manner of service and in a relatively short period of time. Read paper carefully.
- m. Subpoenas are served in the same manner as a summons, usually directing us to serve and tender a fee to a witness. The subpoena must be served before the set appearance date.
- n. County Law Section 650 requires the Sheriff to serve Civil Process whether or not issued by a court, i.e. notices to a tenant to vacate premises.

- o. When serving process from another state follow the service requirements of the jurisdiction where the action is brought.
 - 10. Papers may be served by any one not a party to the action who is 18 years or older.
 - 11. Civil Division employees shall not engage in the business of private process serving, nor shall they serve any process which has not been officially received and recorded by the department, unless specifically authorized by written regulations.
 - 12. At no time shall any employee advise or recommend an attorney or law firm to anyone in relation to any process being handled by the Civil Division, nor shall they offer legal advice.
 - 13. All process returned shall include a letter stating the reason for the return and will be signed by the returning deputy. A copy of this letter will be filed in the case file.
 - 14. All Sworn personnel must provide proof of service to plaintiff evidencing you have made proper service. This proof of service must contain:
 - a. The person who was served with description, method of service, papers served, date, time, address of service, facts pertinent to alternate person served, mailings and signature of the deputy.
 - b. If nail and mail service, also include the dates, times and addresses of attempted personal delivery.
 - 15. Copies of files are kept in the Civil Office for two years before being transferred to inactive records storage at the LEC for the proper retention period of six (6) years.
- C. Anytime any member of the Civil Division serves any employee of the SCSO with any paper or any type of action the Civil Officer will notify the Chief Deputy or higher Command Authority as soon as possible.