

# SERVING LEGAL PROCESS

## What is Service?

Service of process is making sure the defendant gets a copy of the papers you are filing. When you are starting a case, your case cannot go forward until the other side is served. Someone who is legally authorized to serve process must physically give a copy of all necessary forms to the defendant against whom you filed a Complaint.

The clerk of the court will issue a **Summons** when you file your **Complaint**. Attach the original copy of the Summons to one copy of all of the forms that you filed with the court (Complaint, **Civil Case Cover Sheet**, etc.). You must make sure that the Summons is attached to a copy of the Complaint. These papers must be served on the defendant.

## Uncontested Cases

If the case is uncontested, and the other side gives you a signed **Answer** to the Complaint or a signed **Marital Dissolution Agreement** (in a divorce case) which you file at the time you file your Complaint, you do not have to serve process. Just file the Answer or Marital Dissolution Agreement. This can save at least 30 days and expedite the date for a hearing.

## Methods of Service

Service can be made in one of several ways. You need to choose the method:

- by a deputy sheriff in your county or another Tennessee county (the preferred method),
- by private process in Tennessee or outside the state, using a friend or relative or other adult,
- by the Secretary of State when the defendant lives out of state,
- by certified mail, in Tennessee or outside the state, or
- by publication in a newspaper.

Whichever method you choose, proof that the defendant was served must be filed with the clerk of the court. A person can be served at home, at work, or anywhere else the person happens to be.

## Service by a Deputy Sheriff

You can have a deputy sheriff serve the defendant with the necessary papers for a fee. The fee for this service is usually about \$20.00. (It may be a different amount if the

defendant is located in another state. Be sure that the sheriff's office in the out-of-state county knows you want it to serve process, will do so, gives you the fee schedule, and tells you how to make payment.) If you decide to pay for this service, you can ask the clerk of court what the cost for the service is. It is your responsibility to find out whether or not the defendant has been served. The deputy sheriff will send the clerk a "return of service" to prove he or she served the papers. You may have to call the clerk several times before the defendant is served.

### **Service by Private Process**

This is an inexpensive way to serve someone inside your county, elsewhere in Tennessee, or outside the state. **YOU CANNOT SERVE THE DEFENDANT YOURSELF.** The adult serving the papers must give them directly to the defendant. The adult serving the papers may **NOT** leave the package on the defendant's doorstep; however, you can leave it at the opposing party's home **WITH A ROOMMATE OR WITH A RELATIVE IF THEY ARE OVER 18 AND RESIDE IN THAT HOME.** Use discretion, it's better to serve someone who is close to the opposing party than someone who is not, even if they live in the same residence.

If serving the opposing party directly, **THE SERVICE PACKAGE NEED NOT BE PLACED IN THE OTHER SIDE'S HANDS.** The defendant just needs to be given notice that he or she is being served and given the documents. Not holding the documents or dropping them is not a defense to service. The server can leave the documents at the defendant's feet. The person who served the other party person must complete an **Affidavit of Service** that is usually a part of the Summons. If it is separate, you must file a separate affidavit of service along with a copy of the Summons with the clerk of the court.

### **Service by the Secretary of State**

The Secretary of State has published a separate booklet on how to serve process through that office. Please consult it.

### **Service by Certified Mail**

This is an acceptable method of service, whether or not the defendant lives far from you, in Tennessee or another state. But it can be unsuccessful because it requires that the defendant accept the papers and *personally* sign the receipt (green card). This is a major disadvantage.

The adult serving the papers (someone other than you) should take the papers to the Post Office and follow the instructions for mailing by *certified mail, restricted delivery, return receipt requested.* The adult must fill out an Affidavit of Service indicating that he or she mailed the papers and the other party received them. If the defendant receives the papers, the receipt (green card) will be returned to you with the

defendant's signature. Attach the receipt (green card) and a copy of the Summons to the completed Affidavit, and file the Affidavit with the clerk.

There are, however, problems with this type of service. Opposing parties may refuse to sign for the letters or simply not go to the post office to pick them up. In these cases, other service types such as by deputy sheriff, by private service or by the Secretary of State would be preferable.

If the receipt (green card) is returned with the wrong signature or if the entire envelope comes back undelivered, you will have to make another attempt at service.

If you have problems serving a defendant by certified mail, you should try one of the other methods discussed in this booklet.

### **Service by Publication in a Newspaper**

Service by publication is only used when the person who has filed the Complaint has shown by affidavit that the defendant is a nonresident or the whereabouts of the defendant are unknown. Additionally, the person who has filed should show that reasonable efforts have been made in good faith to locate the opposing party. After those criteria have been satisfied, the court may order service by publishing the notice at least once a week in each of four successive weeks in one or more newspapers of general circulation published in the county in which the action is pending.

### **Serving a Person in Jail**

If the person you are serving is currently incarcerated, you may need his or her inmate number. You can obtain this by calling the jail or prison. You should *not* serve an inmate by certified mail. The inmate will not be able to sign for the package and the court may find that the service was not valid. You should serve by a sheriff or private process server. Use service by the Secretary of State if the defendant is a nonresident of Tennessee.

### **After the Summons is Served**

The person served has 30 days to respond to the Complaint.